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Northern Ireland Assembly

Tuesday 23 November 2021

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

Members observed two minutes' silence.

Executive Committee Business

Non-domestic Rates Valuations (Coronavirus) Bill: Accelerated Passage

Mr C Murphy (The Minister of Finance): I beg to move

That the Non-domestic Rates Valuations (Coronavirus) Bill proceed under the accelerated passage procedure.

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

Mr C Murphy: The Bill under discussion today is a short but important one. It corrects an unintended consequence of the public health measures that were introduced in response to the pandemic. Article 39A of the Rates Order 1977 requires events that affect the physical enjoyment of a property, and where they could affect its rental value, to be taken into account when assessing the net annual value (NAV). Article 39A was intended to apply to localised events, such as the Primark fire in Belfast in 2018; it was not designed to deal with a general pandemic. Therefore, the legislation will remove the impact of COVID-19 as a valid ground for appealing net annual values in the 2020 list. Similar legislation is being introduced in England, Wales and Scotland.

To be clear, the Bill will not affect the right of ratepayers to appeal net annual values for any other reason. It is also the case that businesses have been financially supported in response to the pandemic. Businesses here have received rate relief and grants on a more generous basis than those in England, and that far outweighs any potential refund that they would have got under article 39A.

A new revaluation is under way that will reflect the impact of the pandemic on the property market at 1 October 2021. I will propose to the Executive that an estimated £50 million Barnett consequential from the equivalent legislation in Westminster be ring-fenced to support business ratepayers in the next financial year. Those are the ways in which the impact of the pandemic on businesses should be and has been responded to. Article 39A is not an appropriate vehicle for dealing with the pandemic, as Governments in England, Scotland and Wales have also concluded.

I will turn to why I am seeking Assembly approval for accelerated passage, as required under Standing Order 42(4). Since the introduction of the public health measures, my Department has engaged with specialist counsel, here and in England, on the matter of article 39A. After the announcement in March 2021 that legislation would be introduced in Westminster to remove COVID-19 as a valid ground for challenging valuation, my Department focused on a local solution in the same vein.

It was not as simple as adopting the same approach here. Our rating legislation is similar, but there are important differences to consider. We are ahead of Scotland in bringing forward legislation on the matter, because the equivalent Bill has yet to be introduced in the Scottish Parliament. In England, the equivalent Bill is still being brought through Westminster. The pending close of the mandate here, however, means that there are only a few months in which to enact the legislation.

Accelerated passage is less than ideal, and my Department is having to undertake engagement on the Bill and its provisions in a much more compressed time frame than it would wish. The approach is necessary, however, given the exceptional circumstances of the pandemic and the short time remaining in the mandate. My Department has made a detailed assessment of the financial implications of legislation not being passed. The higher end of the revenue losses sits in the region of £255 million over a three-

year period from April 2020 to March 2023. It is vital that that revenue not be lost to public services delivered by the Executive and councils.

Finally, let me address two of the concerns that the Committee for Finance expressed during engagement with officials. One is that there has been insufficient consultation with businesses. Even if there were time to undertake a three-month consultation, it would not be meaningful. The Bill is an emergency measure that is necessary to safeguard funding for public services delivered by the Executive and councils. For that reason, similar legislation has been taken forward without consultation in England, Wales and Scotland. Another concern is that the legislation is retrospective. I agree that retrospective legislation is unusual. There is, however, no other way of dealing with the issue. Again, the Governments in England, Wales and Scotland have come to the same conclusion.

The Bill addresses an unintended consequence of the pandemic. It is necessary in order to provide protection of funding for public services. That is why the same approach has been adopted across the water, and it is why all Executive Ministers have endorsed the approach. Accelerated passage is required, owing to the short time available in the mandate. I hope that the Assembly grants accelerated passage and protects public services.

Dr Aiken (The Chairperson of the Committee for Finance): I thank the Minister for his remarks. He has helpfully summarised the key points about, and the background to, the Non-domestic Rates Valuations (Coronavirus) Bill. I do not propose to go into the Bill's principles, as we will have the opportunity to do that at Second Stage. Suffice it to say that the Bill amends the grounds for appeal against non-domestic rates valuations. It does so retrospectively and in respect of the impact of the coronavirus pandemic. The Department has indicated that that is necessary in order to secure income for councils and the Executive from business rates and to avoid a potential deluge of appeals, largely from hotels, bed and breakfasts, pubs and, indeed, some shops. The legislation is understood to match provisions in England, Wales and Scotland.

It would be remiss of me not to thank the Minister for the oral briefing from officials on 3 November 2021 and for a number of detailed written responses to the Committee on relevant issues. The Minister also informally briefed me, as Chairperson of the Committee, on the issue on 19 October. It is nonetheless unfortunate that a public oral briefing for the Committee that was scheduled for 17 November could not go ahead for unavoidable reasons. Had it happened, there might have been more certainty among members of the Committee today.

What is the problem with accelerated passage for the Bill? The Bill may prove to be both necessary and unable to be amended. The promise of a ring-fenced £500 million Barnett consequential may go some considerable way to easing its impacts on the hotels, B&Bs, pubs and shops that are affected. Further delay may even have unexpected consequences in respect of speculative business rates increases by some district councils. All of that tends to militate in favour of granting accelerated passage. The problem is that this is an important piece of legislation that applies financially significant changes retrospectively. It also completely does away with the single but important element of the rates valuation appeals process.

The Department has been aware of this looming problem for some time. The equivalent Westminster legislation contained other provisions, which the Economy Committee considered in May and the House voted on in June. Why has the Department taken so long to bring those provisions to the Assembly? Why has the Department chosen, until very recently, not to consult business stakeholders and local government? All members of the Committee feel uncomfortable about what the Bill does. All members of the Committee might have appreciated more time to scrutinise, to run through the alternatives and, most importantly, to listen to the stakeholders who will be affected.

The Committee listened to the Department's reasoning. Quite frankly, members cannot understand the delays and the absence of consultation. Most of us do not accept the argument that, because there is no legal obligation, there is no need to consult. I will say that again: the argument is that there is no legal obligation and, therefore, no need to consult. Just think about that, Members of the Assembly. That is clearly wrong: stakeholders always deserve to be told about departmental policy, and that should happen long before a Bill appears.

We have also listened to our constituents. Some of them feel that the measures are being unnecessarily rushed through. Some members of the Committee also feel that it is a dangerous precedent. The Department has failed to

consult, has burned up all the scrutiny time and has attempted to bounce the Assembly into passing retrospective legislation that limits an important appeals process — and all of that at the eleventh hour of this Assembly's mandate.

There are important fundamentals in the Bill that are worthy of further consideration. I cannot necessarily promise that, if a short Committee Stage were held in the concluding weeks of this mandate, we would come up with viable alternatives. However, I can promise that, if there is a Committee Stage, we will use the limited time well and do our best to get to the bottom of all these issues.

Despite all the foregoing, the Committee voted against opposing accelerated passage. As the Chairman of the Committee, on behalf of my party, I declare that we abstained. The members who abstained were in the majority. We abstained because, when it was put to a vote, we had insufficient information to base our thoughts on and we needed to consult our parties. In summary, it is fair to say that none of us likes the Bill, but most of us will simply have to keep our own counsel when it comes to its accelerated passage. However, shortly, I will elucidate my own party's position. I expect that some members of the Committee will eloquently and quite properly set out a strident position either for or against the motion. We will await the outcome of the Lobbies.

That concludes my remarks on behalf of the Committee. I now wish to add some further comments as an Ulster Unionist MLA and my party's finance spokesman. As has been stated, Members will realise that this is a disquieting and unusual piece of legislation. While, throughout COVID, we have been aware of the need to act with speed and, in some cases, retrospectively, we have done that under the imperatives of probable health and potential economic shocks. On many occasions across the House, we have heard about our antipathy for rushed legislation. Indeed, the imperative for effective scrutiny of legislation was highlighted in the lessons identified from the renewable heat incentive (RHI) debacle. The issue raised was that ineffective scrutiny was conducted because information was either inadvertently or deliberately held from Members of this legislature. I am not suggesting that the latter is the case in respect of this request for accelerated passage, but it is very clear that we have not been given sufficient time to scrutinise the proposed legislation.

10.45 am

It is safe to say that our Committee has developed an effective working relationship with Land and Property Services (LPS) and, in particular, Ian Snowden. His evidence to the Committee was, unlike that of some who have come before us, frank and clearly delivered, albeit unpalatable to many of us. He made it clear that consultation had not been carried out as, in all likelihood, the outcome would have been contrary to what the Department wished. He was frank about that. The fear that LPS would be subject to legal action by a wide variety of claimants was based on briefings that had been received from across the rest of our nation but that we have been unable to fully validate.

Members, as well as many of our councils, will also have been briefed about the potential shortfall of £255 million. Thank you for updating that, Minister. Again, we have not been able to probe or validate that figure or the implications of it for local government. Regrettably, many of us who look back to the RHI era tend to treat such figures with a degree of sometimes healthy scepticism or otherwise. In the absence of consultation from outside the Civil Service and with accelerated passage, the Committee would be unable to challenge or probe further that figure and would be unable to quantify the real figure. Equally, you will have heard that £50 million may or may not be made available by Treasury as a ring-fenced departmental expenditure limit (DEL). We would like to assert that that will be the case, but we have not seen any correspondence from HM Treasury to that effect. However, I do not doubt the belief in the Department that that is the case, although, from previous experience, belief might not be enough, regrettably.

We are being asked to accept four things. First, we are being asked that there should be no right of appeal, as the clauses point out, for "any matter directly or indirectly" due to COVID, as you will see if you read the Bill. That raises the fundamental question, "What would be allowable over this period?". Secondly, this is retrospective legislation, but, as pointed out by the head of LPS, even if the legislation were passed in the next mandate, it would still be retrospective. What is the need to rush the legislation through without scrutiny? Thirdly, there has been no consultation. That is because whatever consultation there would have been would, most likely, have been against what the Department was seeking. That was explained to the Committee in some of the most frank evidence that it has received. Members can rest assured that we as a Committee were unhappy with that and have written separately to stakeholders to ask them

for their views. From the — albeit limited — replies that we have received, it is safe to say that there was considerable antipathy to the proposed legislation. Finally, Members should plan to grant accelerated passage only by exception, in extremis. That we do it with seemingly monotonous regularity, especially around budget and finance Bills, sets a default pattern that we, as legislators, should resist.

There does not seem to be a necessity for accelerated passage, so, for the above reasons, the Ulster Unionist Party cannot support accelerated passage. Doing so would abdicate the responsibility that we as Members of the legislative Assembly are charged with by the people of Northern Ireland. We can and should allow proper and detailed consideration of the legislation. Not to do so would be a failure by us all collectively.

Mr McHugh: In his opening remarks, the Minister outlined the urgent nature of the legislation and why he has sought to forgo the usual scrutiny process to ensure that it passes in this mandate. I agree entirely that accelerated passage is not an ideal way to pass legislation, but this is an emergency Bill that deals with an unintended consequence of the COVID-19 restrictions.

I will deal with the Bill when we come to the Second Stage later today, but it is important to remind the House of the extraordinary circumstances that preceded the Bill. The COVID-19 restrictions came into effect just three days before the current net annual value — NAV — list came into effect on 1 April 2020. We can all agree that, while the restrictions announced at that time were necessary to save lives, they were also hugely damaging to businesses. The current Rates Order provides criteria by which a business owner may appeal their NAV, and extensive legal opinion has advised that COVID-19 would fall within the criteria for a successful appeal.

That means that almost every business would be within its rights to appeal its NAV and to seek a refund from LPS. As the Minister said, it is calculated that that would cost up to £255 million, which would directly affect public services, particularly those delivered by our local councils throughout the North of Ireland.

It is important to make two points. First, the British Government and other devolved regions are all dealing with exactly the same issue and are bringing forward their own versions of the Bill. It is disingenuous for some media commentary to suggest that we could have avoided the issue, given the absolute need to bring in restrictions at the time when they were brought in. Secondly, time is fast running out to deal with the issue in this mandate. With only a few months until the end of the mandate and an already heavy legislative workload to contend with, there would be little hope of passing the Bill before dissolution without accelerated passage.

Councils rely very heavily on rates. It is estimated that 75% of the funding available to councils comes directly from rates. If the issue remains unsolved well into the next mandate, councils may see the need to protect their funding by raising the district rate on businesses. Sorting this issue out quickly will provide certainty to councils and, in turn, businesses, which will be keen to avoid any increase in their rates at this time.

Much has been made about the lack of consultation on the Bill. Consultation should only be undertaken if it will be meaningful. Instead, we need engagement with councils and businesses to explain what the Bill will mean for them. Businesses may rightly feel that they will need all the support that they can get after the pandemic, but we must seek solutions that will support businesses in a sustainable way, such as further rates relief and a new revaluation, which also minimise the cost to our block grant.

Finally, I remind the House that the Executive have backed the accelerated passage of the Bill. As we are still in the middle of a pandemic and attempting to get to grips with the crisis in our health system, we need to ensure that public finances remain on a sustainable footing. The plan that the Minister laid out is the only way that we can hope to support businesses and protect our public services at the same time.

Mr K Buchanan: I am thankful for the opportunity to add my brief comments on the motion on accelerated passage for the Non-domestic Rates Valuations (Coronavirus) Bill. The Bill would have impacts on businesses that apply retrospectively to April 2020. There has been limited consultation by means of only recent communication with the business sector.

As the Chair of the Committee noted, the Bill is necessary to secure income from business rates for district councils and the Executive and to avoid a deluge of appeals. Considering the complexities and difficulties that the pandemic has caused to our businesses, it would be foolish not to give detailed consideration to the Bill. However, that has to be done through the correct and proper channels. The Committee's

fundamental scrutiny of the Bill is needed. As noted, businesses and stakeholders have had limited consultation on the Bill's proposals. The Bill would, undoubtedly, impact our economy in some manner. I will not support accelerated passage and will give more commentary at the Bill's Second Stage.

Mr O'Toole: First, it is worth saying that my party and I recognise the circumstances surrounding the Bill. As has been said, the Finance Committee took evidence from Ian Snowden at the beginning of the month. Mr Snowden was admirably frank and direct in his description, as the Chair of the Committee said, of why he believes that the Bill is necessary and why he does not think that it is appropriate to undertake meaningful consultation.

It is worth acknowledging that a similar situation is faced by Administrations in England, Wales and Scotland. Legislation has been proceeded with in those jurisdictions, but, of course, in none of those jurisdictions has said legislation proceeded by, in effect, emergency procedure. The related Bill in England is in Committee Stage in the House of Lords and has been for some time. It has been proceeding through Parliament since spring of this year.

One of the questions that we could do with an answer to is why, when the UK Government started to proceed with their legislation in March 2021, it took the Northern Ireland Department of Finance so long to bring this Bill before us or, indeed, to alert the Finance Committee to the need for the legislation.

We have serious concerns about the lack of scrutiny trifecta, if you like, that is created by the desire to use accelerated passage. There is, as has been said, no consultation. I recognise the frankness with which Ian Snowden informed us that the lack of consultation was because it would not be meaningful. However, considering the reputation of the Assembly and that of the Finance Committee, the fact that there has not been consultation puts even more duty and emphasis on this Chamber and the Finance Committee to be seen to be scrutinising and understanding the Bill in detail. If we grant accelerated passage today, we are clearly not doing that.

It has already been mentioned that the Bill is retrospective. There is a pretty fundamental principle of natural law in terms of retrospective legislation. It may well be that, when we debate the principles of the Bill at Second Stage, we see that that is necessary and essential, and we are totally open-minded on that in terms of scrutinising the Bill. There are serious questions about the necessity of the Bill and the impact on the tax base, particularly in relation to revenue for local government if the Bill is not passed. However, let us have that debate and let us scrutinise it. The retrospective nature of the Bill, as with the lack of consultation, means that it is even more important that we are seen to do our job of scrutinising the legislation.

The Finance Committee has had one detailed evidence session about the draft legislation with the chief executive of LPS. I should, in parentheses, pay tribute to the hard work that LPS has done to get grants and to react quickly with speed, ingenuity and dedication to the coronavirus crisis. No one disputes the work that LPS and Ian Snowden and his staff have done over the last nearly two years. However, the fact that they have fulfilled their duties in their work does not excuse us from doing our work here as legislators and as members of the Finance Committee, which is scrutinising and understanding the legislation.

We are concerned about what precedent would be set by accelerated passage. Of course, in a sense, we have set many precedents before with accelerated passage; virtually every Budget Bill in this place goes through via accelerated passage. If we want the reputation of this institution to improve, we need to show that we are doing proper scrutiny of legislation. I accept that this legislation may be necessary, and I have absolutely no difficulty with saying that. The fact that this is already happening in other jurisdictions and that there may be a real threat to the tax base are things that we should take seriously. I am not being flippant and saying that we should not scrutinise the Bill further. It is understandable that business organisations might say, on behalf of their members, that they do not like the principle of the Bill. That does not mean that we should not engage and understand what it would mean in substance. I will go through the detail of the Bill when we come to the debate at Second Stage. Suffice to say that we will not support accelerated passage today, for the reasons that I have outlined.

It is worth taking a step back and looking at the broader reputation of these institutions, which is not great. If we are all honest with ourselves, over the last few years, the fact that we did not have an operational Assembly for three years makes it even more important that, when there is an Assembly, we do not simply wave legislation through on the nod. It has been said that this Bill needs to pass before the end of the mandate. If that is true, and I am open-minded and willing to engage on that, there are, of

course, multiple ways to get the legislation through before the end of the mandate. I am sure that the members of the Finance Committee would not be averse to additional meetings, were that necessary, and to giving the Bill priority, because it is really important legislation.

I welcome the fact that we have had significant bits of paper from the Department and the Minister on the context of the Bill. However, in order to do our proper job of scrutiny, we need to go through it, take evidence and ask questions about it. I acknowledge that there were extenuating circumstances last Wednesday that meant that the Minister and his officials could not attend.

However, it is important that we get to the bottom of the legislation, and that does not necessarily mean objecting to it or throwing it out. It means doing our job of scrutiny.

11.00 am

I, as seems to have been the case with a member of the media, got a letter from someone claiming to be a whistle-blower about some of these matters. Most of their claims or arguments are not ones that are not already in the public domain. I have absolutely no way of verifying whether the statements are true, but it adds to the importance of us, as legislators, doing our job.

It was mentioned before, and I am sure it will be mentioned again — it might be mentioned by the Minister, so I am going to try to head it off at the pass — that the Executive agreed to the measure. That is grand. I am not in the Executive. I know that my party is in it, but it is not our job to wave through legislation even if the Executive are very busy. No doubt, the Executive discuss lots of things, but if we in this place are not here to scrutinise the Executive, what are we here for?

We are open-minded on the principles in the Bill. It will be controversial. It is ambitious and unique, but we are not in any way going to throw off our responsibility to scrutinise it. However, scrutinise it is what we need to do, so we will not support accelerated passage today.

Mr Muir: We are, first of all, debating whether to grant accelerated passage to the Bill, and then we will move to its Second Stage once we have concluded that, so my comments will focus on whether we should grant accelerated passage.

It has been said that the Executive agreed the Bill and accelerated passage, but that is important for me and my party in considering the issue today. Hopefully, I will be able to outline some matters that aided me and my party in coming to our position on whether to agree to grant accelerated passage. So far, it has been a respectful debate, and, hopefully, that will continue.

There are a couple to issues to bear in mind. One is that the window between now and the dissolution of the Assembly is closing. It is not a matter of many months but actually of weeks. The window for the Assembly's being dissolved and our moving into the election period is getting shorter and shorter.

I am struggling to think of situations when extensions to Committee Stages were not sought. That seems to be the norm in this place. There is obviously a rationale for that, but I am conscious of the risks associated with a Committee Stage that gets extended. I am also conscious of the fact —.

Mr Wells: Will the Member give way?

Mr Muir: No, I am going to continue.

I am also conscious of the fact that councils will have to strike their non-domestic and domestic rates in February. Whilst dissolution is on the horizon in March, in February we will have councils having to strike their rates with this issue and with the risk associated with valuations hanging over them. I have real concerns about where councils will be placed when striking rates if accelerated passage is not granted.

I am also conscious that similar legislation is passing through Westminster and is due to be passed in Scotland. I am conscious of the concerns that have been expressed about the Bill. Those, perhaps, are for discussion at Second Stage. I am reading through concerns that were expressed in, for example, Scotland. I am also concerned about the financial implications of not acting. A sum of £255 million is money that we can ill afford to lose. It is a significant risk to our budgets and is something that we have to take into account.

I am sensing in the Chamber that if accelerated passage is not granted, the Bill will move through the standard procedure. On that basis, the Committee Stage is 30 working days. I encourage the Committee, on which we do not have a member, to complete its deliberations within those 30 working days —

Mr Wells: Will the Member give way?

Mr Muir: I am continuing, Mr Wells.

— over recess to ensure that when we come back here on what is scheduled to be 25 January for Consideration Stage, we are able to move at pace with the Bill.

As a result of my and other parties not having representatives on the Finance Committee, the issue again arises of access to papers and briefings on the legislation. I encourage not only the Assembly institutions but the Department to take into account the briefing of parties on issues associated with the Bill.

Hopefully, I have outlined respectfully my view and that of my party on the issues. As a result, despite having concerns, we will support accelerated passage because we understand the implications associated with not doing that.

Mr Wells: The gentleman from North Down is a relatively new Member, but he will learn that there is not much sense in having "respectful debate", as he calls it, if Members who wish to make valid points about his contribution do not get a chance to do so.

None of what I am about to say is in any way to criticise the work of Land and Property Services. I have never found — it is unique in that sense — an organisation that is part of government so easy to work with than Land and Property Services has been over the past 19 months. I have found its staff to be responsive, hard-working and efficient. Indeed, I reached the most unusual situation about two months ago in that everybody whom I had referred to Land and Property Services was happy with the outcome of that body's decision and work. Indeed, I was getting very suspicious as to how that could possibly be the case, but it is true. LPS has done Trojan work over the past 19 months, and it is unfortunate that it is a request from LPS that we are debating today, because we have such confidence in its ability and particularly that of its chief executive, Ian Snowden. However, any of you who read Sam McBride's article in the 'Belfast Telegraph' on Saturday will, I am sure, have been extremely worried about where we are going with this legislation.

Mr McHugh, during discussions in Committee, said that we must support accelerated passage because the Executive have ratified it. If that is the basis on which we, as MLAs, sit in the House, we can all go home. We can forget about it, because the primary role of Back-Bench MLAs in the Assembly is to scrutinise the work of the Executive. Simply saying that the Executive have approved accelerated passage and it must therefore be granted totally undermines the purpose of having an Assembly in the first place. We might as well be nodding donkeys just saying, "Agreed. Agreed. Agreed". Time moves on, and we have Mr McBride's article and the allegations made by a whistle-blower. I do not know — the same as Mr O'Toole — whether those allegations are true or otherwise, but, if we grant accelerated passage, we will not get a chance to find out.

The request for the Bill to have accelerated passage falls on every criterion. It falls because there has been no consultation whatsoever with the stakeholders who will be affected by it. It falls because those stakeholders were not even informed that it was going to happen. It is an awful pity, but I understand why the Minister was not at the Committee meeting last Wednesday, and I accept that he had important things to do, but I would have asked him some questions. Yes, I can understand it to some extent, although I do not agree with his logic of saying that there was no time for consultation. However, could his officials not have at least written to the major stakeholders and said, "Look, folks, this is coming your way"? That would have at least given them an understanding of where we are going with this legislation.

It also falls on another criterion. Mr Snowden, in perhaps the most honest contribution that I have ever heard in Committee during my 27 years here, said that there was no consultation because they were not going to change their mind anyhow and it would be "meaningless". It is very dangerous to set a precedent that we will not consult because it is meaningless and because we are not going to change our mind. That is manna from heaven to Executive Ministers, because they think, "Well, we are not going to change our mind. Therefore, we will not bother with consultation". Well, look where that has got us in the past in the House. Look at the major mistakes. Look at the egg on the faces of Ministers and the Executive as a result of that precedent. That worries me.

Perhaps the most dangerous aspect of this is that the legislation is retrospective. It goes back well over a year and is applied to appeals that were lodged way back in April 2020. Westminster, the Dáil and every democratic institution in the world will apply retrospective legislation only in the most extreme circumstances. Indeed, in Westminster, there had not been any retrospective legislation for over a century until the Nazi War Crimes Bill was introduced. That is how serious the

introduction of retrospective legislation is considered to be. As far as the Minister is concerned, however, that is a double-edged sword. If this legislation is retrospective, it does not have to be rushed through, and there is no reason for accelerated passage. We can go through the proper consultation procedure and Committee Stage, and, at the end of the day, if the Minister persuades us of the merits of the Bill, it will be applied retrospectively, and there is no issue with the delay.

Had Mr Muir had the common sense and manners to allow me my interventions, I would have made my points. It looks like the motion on accelerated passage will be defeated. If that happens, the commitment given by the Chair, and it is a commitment that most Committee members would give, is that we understand the Minister's dilemma, and, if we have to meet on a Thursday or Friday and have special sessions to get this through within the 30 days, we will do that. As a member of the Committee, I will endorse any action that gets this legislation through as quickly as possible but still gives us the opportunity to investigate some of the difficulties that we have with it.

Mr McHugh and Mr Murphy said that other parts of the United Kingdom have similar legislation. Yes, they have, but not by accelerated passage. A Bill is going through Committee Stage at Westminster as we speak. It was not felt necessary to take these extraordinary steps of making the legislation retrospective or pushing it through within a short period. That point should have been made by those Members. They should have been honest and said that they were adopting a different strategy from everybody else.

I said that it was unfortunate that Mr Murphy, the Minister, could not appear on 17 November. Had he appeared, we would have been asking for the crucial information, the chronology: what did he know, and when did he know it? Those of you who are bit older will remember the famous phrase used at the Watergate inquiry. When did the Minister first become aware of the need for this legislation, and why did he not act sooner? Why are we being left in a situation, at the end of November, rushing through legislation, the need for which must have been apparent to him and his staff many months ago? Again, because he could not come to the Committee, and because it is possible that we will be denied scrutiny of this legislation, we might never know. However, we want to know exactly what is going on. That was the issue of how the Bill is being dealt with. I will vote against accelerated passage, and it looks as though the majority of MLAs will do so as well.

Let us move on to another reason why accelerated passage is not appropriate. Some businesses have been very badly affected by coronavirus. I see what the Department is getting at. It does not want a vast number of appeals to be made on the basis of coronavirus. There are, however, businesses that have been affected by coronavirus to such a level that they have almost been wiped out. I cited the example of travel agents, who have had the most wretched time over the last 19 months. Their losses have been on a totally different scale from those of so many other businesses.

I made the point at the Committee. As I say, I have been here for only 27 years, so I am a new boy. Over those 27 years, I have never had a situation in which a Minister responded to a letter from a Committee before it had been sent. That is exactly what happened this time. The Minister's staff, or maybe it was the Minister, were watching the Committee meeting and taking down the points one by one, and, before our excellent Committee Clerk had even had a chance to put pen to paper, there was a response to points that we had not yet raised.

I noticed that the Minister tried to head me off at the pass by referring to the issue of travel agents. There may be those who have been so badly affected by coronavirus that special exemption can be made for them without opening the floodgates to thousands of businesses. I accept the Minister's point that almost every business in Northern Ireland can say that its rateable value has fallen as a result of coronavirus. That is a valid point, and I also see his point that, if we open the floodgates, there could be thousands, or tens of thousands, of applications for a reduction in rateable value. To some extent, however, the Minister could be throwing the baby out with the bathwater by not dealing with the small percentage — it is a very small percentage of businesses — that have been absolutely hammered, and, frankly, their rateable value is practically nil at the moment because of what has happened to them.

Therefore, I will vote against accelerated passage. I welcome the fact that other Members, having read the material that was sent to them over the weekend, will agree with me. I urge the entire House to unite behind not setting a dangerous precedent that could be used time and again to neuter the role of the Assembly.

11.15 am

Ms Bailey: Many issues with the request for accelerated passage have been raised, and the

points were well made. I will not labour any of them further.

There have been many examples of fiscal mismanagement from the five-party system of governance over the years. Of course, RHI was the most prominent. With that in mind and given the ramifications of the Bill, particularly during an unpredictable global pandemic, we should all be extremely wary of allowing accelerated passage. Time is tight in this mandate, and we have an unprecedented list of legislation to work through. The Minister is bringing an Executive Bill to the House, however, so it needs to be pointed out that it already has scheduling priority over most of the other Bills that we will potentially look at. For those reasons, on top of a lot of others, the Green Party will not support the motion to grant the Bill accelerated passage.

Mr Allister: I, too, will not support accelerated passage. I will keep my remarks brief, as that seems to be the consensus in the House.

By its very nature, accelerated passage should be reserved for particular and demanding circumstances. It is not to be an easy fallback or a convenience, it is something, rather, to be used in extremis and only in such circumstances. The issue being addressed in the legislation has been known about across the United Kingdom for months upon months. Other legislatures in the United Kingdom have proceeded to act. This Executive did not, and then, at the last moment, they come and say, "Because we did not act, the House needs to give us accelerated passage". I am sorry, but that is not how it works.

The House has a duty of scrutiny and an obligation to our constituents that necessitate, where there is no good cause, the refusal of accelerated passage. No good cause has been presented. On the contrary, we have the most toxic mix of legislation that is retrospective and on which there has been no consultation, and, to top that off, we have a request for accelerated passage. That is a step too far.

Mr Carroll: Throughout the pandemic, I have said that the Executive have shown contempt and disdain for the normal practices of accountability, scrutiny and allowing MLAs who are not on the Executive to look at, scrutinise and suggest amendments or different paths to the approaches taken by Ministers, including on legislation. Today is another example of that approach. Legislation that has not been consulted on and that, frankly, most people outside this Building did not even know was being discussed, never mind proposed to become law, is to be rushed through by accelerated passage. That is completely unacceptable. The argument that we are in unprecedented times cannot be used as an eternal excuse by Ministers to gut democracy and cut out important legislative stages.

Unfortunately, we are almost two years into the pandemic, two years during which the Department could have consulted and acted on the legislation that is being debated today. The approach of using accelerated passage smacks of the elite arrogance that dominates Westminster: "We know best, and the plebs should just be quiet". I pay tribute to the journalism, particularly that of Sam McBride, that exposed the Bill and the proposed use of accelerated passage. It seems that, when he criticised the party opposite, he was favoured; now that he has criticised a Sinn Féin Minister, he may have fallen out of favour. I say to him that he should keep up his scrutiny. He did an important piece of journalism for me and other MLAs. I will vote against the accelerated passage procedure.

Mr C Murphy: It is evident that the motion to approve accelerated passage will not pass. Of course, that is the prerogative of MLAs. Regardless of whether the Executive decide that it is the appropriate approach, parties, individual MLAs and Back-Benchers are, of course, very much entitled to take their own position. I fully respect their choices on the matter.

A number of Members mentioned that this is going through other legislatures and that accelerated passage was not required. Those legislatures are not ending their mandate in May; we are. Therefore, there is a time frame for this. Mr Muir outlined some of the consequences of not doing it within the time frame. The reality is that we are ending our mandate in May, and the only option for me, as a member of the Executive coming to the Assembly to move the legislation through in the time needed, is to ask for accelerated passage. If the Committee wishes to engage in its own form of scrutiny, it is very much entitled to do so, if the House supports that. Not moving this through within the time frame will have consequences for the setting of budgets, knowing what the rates propositions in the budgets are and, indeed, councils striking their own rates and budgets early in the new year.

As I say, I fully respect the democratic mandate of the House and its entitlement to take its own approach to those matters. I hope that we can work together. Mr O'Toole said that there are multiple ways to speed up the legislation. My

officials and I will certainly engage with the Committee in the time ahead. I thank Members for acknowledging the fact that —.

Dr Aiken: Will the Minister give way?

Mr C Murphy: OK. I will give way.

Dr Aiken: As the Committee Chairman — obviously, I do not expect the motion on accelerated passage to go through — I assure you that the Committee will work assiduously to make sure that we give the legislation the appropriate scrutiny. We will ensure that we get through it as quickly as we can and that, going forward, it is acceptable and proper legislation. Minister, you have that assurance from me as the Committee Chair. Looking around, I think that I can safely say that the rest of the Committee are fully supportive of me saying that.

Mr C Murphy: I thank the Committee Chair for that. I also thank him for acknowledging that there was an attempt to gloss over my inability to appear at the Committee last Wednesday. For the record, the Executive meeting was called forward to Wednesday to facilitate people going to the British-Irish Council in Wales. It was then moved, at a late stage, to the afternoon, which knocked out my ability to attend the Committee, to which I had committed to going at a late stage. I had a brief conversation with the Chair the day before to offer an early reappearance before the Committee if I was not able to make that meeting on Wednesday. There was some attempt to portray that as me somehow ducking the issue, which clearly was not the case.

I appreciate the officials from LPS briefing the Committee in that regard. Mr Wells was effusive in his praise of LPS, as many Committee members and Members of the House have been over the last 18 months, given the fact that it repurposed itself from a rate collection agency to a grant-giving body and given its communication with the public on all of this. On the one hand, we say, "They did a wonderful job", and, on the other hand, we say, "Why the hell were they not working on this legislation over that whole period?". It is the same people doing the same job. There were issues, and I have provided a chronology to the Committee. That may not have made its way to Mr Wells's inbox, but I attempted to ensure that it was provided yesterday so that Committee members had that chronology of when advices were received, when courses of action were taken in other jurisdictions and how we have ended up taking our course of action at this time. I hope that that will inform the Committee. I am happy to go there and give my evidence in support of what the officials said in that regard.

Mr Wells in particular mentioned compensation for businesses. Of course, he acknowledged that over £1 billion of support was given to businesses. Regardless of whether we can move ahead with this today — it is evident that we will not get accelerated passage, but I will move the Second Stage and start that process as soon as this debate concludes — the essence of this is that the legislation was not intended for issues like a pandemic; it was intended to address localised restrictions on a business's ability to operate. We recognised that through the support that we provided to businesses over the pandemic. We did the two-year rates holiday. We had the localised restrictions support scheme (LRSS) for businesses. We recognise that, for many businesses, that may not have been enough, but it was as much as the Executive could give. That, allied with the furlough scheme from Treasury, meant that a lot of businesses were able to keep their head above water. Hundreds of them have, I am sure, acknowledged that to you, as they have done to me as the Minister responsible. People will end up being doubly compensated if this anomaly is not closed. That is the unique nature of the legislation, and that is why it has to be retrospective. I appreciate that that creates its own difficulties as well. The Committee has undertaken to look at it, and we will give it every support that we can in the time ahead to do that as quickly as it can, because we are also aware of the consequences of not doing this quickly.

I am glad that Mr Wells acknowledges the good diligence of Department officials in monitoring the Committee, because that is their job. We have a departmental Assembly liaison officer whose specific role is to work with the Committee. Of course we monitor. The reason that we responded to the questions that, we knew, were coming to us was to facilitate the Committee with information when it was having its discussion on accelerated passage so that it would have that information, rather than us waiting for the Committee to write to us and it not having the information at the meeting where the matter was discussed. I am sure that he will acknowledge that that level of cooperation is a useful standard for engagement between Departments and Committees.

Mr Carroll's argument that we had a two-year wait for this is not correct, and the evidence that will be presented in due course will show that it is not.

I recognise, given the discussion in the House, that this is not likely to pass. As I said, I fully respect the decision of Members to scrutinise the Bill. I emphasise to them that there is a need for urgency and that there are consequences for public finances and for councils' ability to organise their public finances if it is not passed with some degree of expedition. As I said, the Committee is, given the Chair's undertakings, willing to work with us. We will do that in the time ahead, and, although I have moved the motion, I am fairly certain what the outcome will be.

Mr Speaker: I thank Members for all of their contributions. Before we proceed to the question, I remind Members that the motion requires cross-community support.

Question put and negatived (cross-community vote).

Mr Speaker: The Non-domestic Rates Valuations (Coronavirus) Bill may not proceed under the accelerated passage procedure. Members, please take your ease for a moment or two until we move onto the next item.

Non-domestic Rates Valuations (Coronavirus) Bill: Second Stage

Mr C Murphy (The Minister of Finance): I beg to move

That the Second Stage of the Non-domestic Rates Valuations (Coronavirus) Bill [NIA 44/17-22] be agreed.

Mr Speaker: In accordance with convention, the Business Committee has not allocated any time limits on the debate.

Mr C Murphy: I very much welcome the opportunity to open the debate on the Bill, which introduces an urgent and critical measure required to stabilise central and local government tax bases between now and the implementation of Reval2023. This short Bill performs one important technical function: it mitigates the risk of appeal to rateable valuations within the non-domestic valuation list brought on COVID-19 grounds. The Bill also contains a power to allow the Executive and Assembly to respond to any change in the naming conventions surrounding coronavirus or any new pandemic that may arise in the future. The exercise of that power will be subject to Assembly agreement.

In layman's terms, the Bill primarily serves to mitigate an unintended consequence of the Executive's emergency public health measures that were implemented in March last year. Following Executive agreement, the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 came into effect at 11.00 pm on Saturday 28 March 2020, specifying businesses here that were either required to close or were restricted in their operation. That once-in-a-generation public health intervention occurred just three days ahead of the publication of the new valuation list. If the health regulations had been introduced on 1 April or later, this Bill would not have been necessary. The Bill is necessary because of a technicality.

Members will acknowledge that those emergency health steps had to take priority at the time, but Members will also appreciate that they were not intended to erode the tax base of a rating system that delivers critical revenue for Executive Departments and typically funds up to 75% of council expenditure.

This important Bill mitigates that unintended impact of the Executive's public health measures on the rating system. It prevents the pandemic restrictions from being used as a means of reducing valuations for business rate purposes, when the Executive were already taking forward separate policy measures to support those businesses that have been adversely affected by the pandemic.

11.30 am

I will briefly illustrate the need for the Bill by making reference to a previous operation of the statute as intended. The rating and valuation system, as framed, is intended to deal with matters affecting property on an individual or local level. The Bill does not change that long-standing feature. To give an example, the Primark fire created a set of circumstances in which the statutory provision worked as intended. That localised event took place in 2018, after the valuation date and prior to a new list, and had a specific impact on a number of properties. The effects of that localised event were properly taken into account in an adjustment of the net annual values (NAVs) for those properties.

What was not envisaged under long-standing rating legislation either here or in England, Scotland and Wales was an event that would impact on almost every business property within the jurisdiction. However, the coronavirus pandemic — or, more specifically, the nature

and timing of the measures that were put in place to control it — led to such an event. This short Bill is necessary to deal with the unintended consequences of that set of circumstances.

Neither the traditional kinds of challenge received by my Department nor the ability to appeal valuations is removed by the Bill. All the traditional reasons for and forms of valuation challenge, such as structural alterations and roadworks, are unaffected by the Bill. The Bill is solely concerned with the challenges that could lead to a double benefit from this system, namely a reduction in rates bills due to valuation reduction based on pandemic restrictions when rate relief has already been provided to compensate for those same restrictions.

There are some other issues that I am sure Members will be keen to comment on and that I want to address. One of those is the retrospective nature of the Bill. As with the interventions taken in England, Scotland and Wales, the Bill has effect from the start of the pandemic. At the Committee briefing with my officials, there was discussion about the retrospective effect. It is critical to note that, in our case, that is not only justified but necessary, because any change to a valuation following an appeal is backdated to 1 April 2020. For the Bill to have the necessary effect of protecting the rate revenues, therefore, it must be retrospective to the same date. In this case, that is the date of impact on the valuation list.

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

I also note that, in most cases, the retrospective effect is only notional. As many have not had rates bills since the start of the pandemic, no backdated rates bills will arise from the Bill. If anything, it does the opposite, acting retrospectively to prevent the misguided scenario of backdated reductions being processed and awarded to ratepayers who, thanks to Executive support, have had no rates liability at all for the last few years. I would find that situation inappropriate at a time when public finances are so squeezed and we need funding for services such as health and education, which have been at the front line during the pandemic. That is why the Bill steps in to act in the public fiscal interest.

There are two other issues that I want to put to bed around timing and consultation: issues that were also of note in the accelerated passage debate. On timing, this is an extremely complex policy issue arising at the end of the mandate. While the Bill is still moving through Westminster, Members will note that our Bill has to be tailored to our local needs and local rating legislation. Extensive legal advice from experienced counsel underpinned the thinking behind the Bill. For the Bill to be precise in its effect, that process could not be rushed. Despite that, Members will note that the complexity was navigated successfully in only a matter of months, bringing the Bill forward in a devolved context to allow time for passage before the end of the mandate. Neither my Department nor the Executive could plan around the timing of the pandemic or the time required to address the complexities arising from it. The alternative, which would be to have no Bill or a delayed Bill, would only make the issues that face us collectively even more difficult.

On consultation, there are certain fiscal matters that do not lend themselves to public consultation because they are brought forward as financial matters that are pursued in the public interest. Consultation must be meaningful. Following Executive agreement of the Bill, however, my Department undertook significant engagement to raise key stakeholders' awareness of the Bill and its objectives.

Having noted some of the contextual issues, I will turn to the detail of the legislation. The Bill consists of just one substantive clause in relation to the rating system. Clause 1 provides that matters that are attributable to coronavirus should not be taken into account in the net annual value of a hereditament in a non-domestic rating list. In other words, rateable values are not affected by coronavirus. Clause 1(1) makes retrospective provision for the matters affecting the net annual values, as referred to in article 39A(1A) of the Rates (Northern Ireland) Order 1977:

> *"to be treated as not including, and as never having included, any matter directly or indirectly attributable to coronavirus."*

Clause 1(2) gives examples of what is to be included in matters that are directly or indirectly attributable to coronavirus. Clause 1(3) provides an enabling power to allow the Department of Finance to make consequential retrospective changes to the clause in the event of any future change to the naming conventions surrounding the coronavirus or pandemic outbreak, such as if the virus mutates and is renamed "COVID-20" etc. Clause 1(4) makes use of the enabling power in clause 1(3), subject to draft affirmative control in the Northern Ireland Assembly. That gives the

Assembly the highest level of control over the exercise of that power. Finally, clause 1(5) provides the definition of the terms "coronavirus", "net annual value list", "Rates Order" and "statutory provision" in the Bill.

To underscore the importance of some of my opening comments today, I highlight the financial implications that are associated with the Bill. Although no direct cost implications are associated with the implementation of the Bill, the failure to implement the Bill presented to the Assembly has an upper revenue loss estimate of £255 million. Notwithstanding what some have tried to suggest, that is a realistic estimate. That is money that the Executive and local government cannot afford to lose in the context of funding front-line services. Failure to pass the Bill is, therefore, likely to result in either the cutting of public services at local and central government level or consequential increases in the rate poundage. I do not think that Members could support the hiking of rates to confer a valuation reduction on businesses that have already had a two-year rates holiday. The Bill represents a reasonable solution in comparison with the chaos of unwarranted refunds, rate hikes and systemic tax-based losses, not to mention clogging up the courts with appeals for years to come, which would add more uncertainty to revenue streams.

The Executive have already provided compensatory and mitigating rate relief to the business ratepayers who were affected by the health restrictions through the separate provision of more than £515 million in COVID-related business rate relief for the 2020-21 and 2021-22 rating years. We all wish that the pandemic had not occurred and that the public health measures that were taken by the Executive in March 2020 had not been necessary. That, in turn, would have rendered today's Bill unnecessary. What the Executive did not intend to do with those public health measures was to destabilise our only devolved tax or to create a massive risk to the tax base and local government income. The Executive share my view that, as has already been decided in England, Scotland and Wales, the COVID rates holiday, and the supplementary rate relief funding that will be provided on passage of the Bill at Westminster, is the correct means of dealing with the effects of the pandemic. Damaging wholesale valuation reductions are not. The Bill secures that objective and preserves the rating system as we know it. I therefore commend the Bill to the Assembly.

Dr Aiken (The Chairperson of the Committee for Finance): I thank the Minister for his opening remarks on the Non-domestic Rates Valuations (Coronavirus) Bill. I also record the Committee's thanks for the oral and written briefings on the Bill that were provided by his Department.

The Bill is designed to deal with the unexpected situation relating to non-domestic rates following the imposition of coronavirus restrictions. As we all recall, in response to the pandemic, restrictions on businesses had to be applied. We had all hoped, of course, that that was all very much in the past tense and that future restrictions would be avoided through the good offices of our health workers, the continued roll-out of the excellent vaccination programme, and the application of sensible precautions. I will leave further discussion of the current state of the pandemic to another time. For now, I will talk about 2020 and the start of the pandemic. Then, the restrictions were followed with support packages, including business support grant schemes and business rates holidays. Several billion pounds was provided by our Government, and many millions of pounds found their way through those measures to our hard-pressed businesses. By and large, those schemes appear to have been successful and seem to have kept many, but, unfortunately, not all, of our important home-grown businesses afloat.

Non-domestic rates provide a vital income — I do not think that anyone could disagree — for local government and the Executive. The rates holiday scheme protected those sources of income and gave everybody a breathing space. As things began to return to something that looked like normality, the collection of business rates resumed. As the Minister pointed out, under normal circumstances, businesses would be able to appeal their rates valuation under article 39A of the Rates (Northern Ireland) Order 1977.

The basis for appeal appears to be quite broad, and it is designed to be a catch-all for the use, occupation, state of businesses or other:

> *"matters affecting the ... physical enjoyment of the hereditament".*

The pandemic has clearly affected the above. All of us, in our constituencies, our market towns and our city centres, can see the impact of the pandemic, from the missing and much-missed anchor tenants, to the small traders who did not survive, the reduced, on occasion, Monday morning traffic flows and the diminished weekday footfall. However, we can also see a different side of things. Thankfully, there appears to be an increase in weekend

shopping, and we can see the growing Christmas high street spending around us. There is clearly a mixed picture, with a few business sectors having experienced consistently strong turnover during the pandemic and others being very much in recovery mode. Nonetheless, consumer and business confidence in the fundamentals of our local economy will grow and confidence will return as the pandemic wanes.

Given the changing situation, it is difficult to apply the usual approach to business rates valuations and the associated appeals process. Other parts of our nation are in the process of simply doing away with the impact of the pandemic as the basis for appeal. That approach, which is replicated in the Bill, gives us all, as Members, a degree of concern. First, it seems a little unfair to entirely take away an element of the appeals process. The Department argues that if that does not happen, there will be a deluge of appeals and a loss of income of some £255 million may follow. I wonder if there may be some middle way that might, in exceptional circumstances, allow the avenue of appeal whilst limiting the financial exposure for local government. Perhaps the Minister will comment on that in his winding-up speech.

Further to the finances of the Bill, the Minister advised us of a £50 million Barnett consequential that he wants a future Executive to ring-fence, particularly for businesses. I do not doubt the Minister's sincere wish to ring-fence that money, but as it refers to a future Executive, it is just that — a wish. We have not seen any of the detail. If I have that wrong, I hope the Minister will correct me. The Committee would love to see any correspondence from the Treasury that confirms that the £50 million will be coming in our direction. Perhaps in their contributions, Members from other parties will also indicate whether, if their party finds itself with the relevant portfolio in the next mandate, they will grant the Minister's wish and pay that money to our hard-pressed businesses, because it is a wish. It is not a guarantee.

The Bill also applies the constraint on rates valuation appeals retrospectively. I am not aware of there being much legislation passed by the House that applies measures retrospectively. At its heart, that seems unfair. At present, if a business buys a premises, it takes on the rates burden with a particular understanding of its right to appeal the relevant valuation. Not only is the Department now seeking to change that but it is seeking to backdate the change. The Committee can understand why that is proposed, and members do not have an alternative yet. That said, it is reasonable to say that all members are concerned about that and the precedent that it might set. More retrospective legislation may be on its way to correct for localised restrictions support scheme (LRSS) payments, which were made ultra vires.

As indicated in the previous debate, the Bill has materialised after almost no prior consultation with key businesses or local government stakeholders. The majority of Committee members view that as a bad precedent. As the Bill progresses to its amending stages, the Committee will endeavour to use the concluding weeks of the mandate to correct that and to seek the views of key stakeholders in order to inform the later stages of the Bill. Minister, as I said in the previous debate on accelerated passage, the Committee will work closely with you and your Department to achieve that.

The Committee has not formally agreed a position on the Bill. The Bill may well pass its Second Stage, and members of the Committee will set out their differing views with their usual eloquence and alacrity.

11.45 am

Mr McHugh: Ar dtús, ba mhaith liom buíochas a ghabháil leis an Aire as a ráitis. I thank the Minister for his statement. This is, indeed, a complex and technical policy area. It is clear, however, that there will be huge financial implications for our councils in particular if we do not proceed expediently with the Bill.

The Finance Committee was glad to receive evidence on the Bill from Land and Property Services (LPS); its presentation was clear about why the Bill is needed. The Bill intends to deal with the unintended consequences of COVID-19 restrictions on the rating system. Currently, business owners may appeal their rates if they think that their net annual value is unfair. They must show, however, that an event has had a direct or indirect impact on their business or on other businesses in the local area that has had an effect on the overall value of their property.

The Department sought extensive legal advice, from which it is clear that COVID-19 constitutes such an event. The problem is that COVID-19 affected almost every business to some degree. We are therefore in a situation in which almost every business will have grounds to appeal their current NAV, which came into effect last April. The result will be that LPS will be required to refund a portion of the rates paid by

thousands of businesses, which could add up to a total of £250 million over a three-year period.

Although businesses would, of course, welcome any outcome that would reduce their rates burden, we must ask ourselves whether that is the best way in which to support businesses. Over the past 18 months, over £550 million has been spent in providing rates relief to businesses. That came in the form of a four-month rates holiday last year for all businesses and a two-year rates holiday for those sectors most affected by the pandemic, such as retail and hospitality. In addition, thousands of businesses benefited from LRSS and support grants during the lockdown.

We know that the pandemic is still with us. While many businesses have bounced back strongly, others have struggled and still require support. The British Government have pledged another £50 million to provide relief to those who need it. If the Bill does not pass, businesses will appeal their NAVs, and up to £250 million will have to be found from our already stretched block grant or from an increase in rates for businesses and families. As I said, councils will be very hard hit by that. Some 75% of all revenue available to them is provided by rates, so, clearly, they will not be able to provide anywhere near the same level of services without a huge increase in business rates. The rates that we pay also provide public services such as health and education. Given the consensus in the House that health needs to be the priority, are we prepared to slash the health budget in order to pay for this?

The Department of Finance has already started the next revaluation, which will take effect from 2023. The revaluation will take into account the economic impact of the pandemic, and the businesses that suffered worst can expect their new NAV to reflect that. We therefore have a clear choice. We can allow the Bill to pass and prevent £250 million being lost to councils and our public services while providing further rates relief and implementing Reval2023, which will support our businesses after the impact of the pandemic. Alternatively, we can do nothing and bring on ourselves a situation where we will inevitably see cuts to our councils and other public services. There is only one feasible option before us. That is why we must support the Bill.

Mr K Buchanan: I am thankful for the opportunity to add my comments to the Second Stage of the Non-domestic Rates Valuations (Coronavirus) Bill. As we know, the pandemic changed almost everything overnight. What was considered normal is now considered to be the past, and the unimaginable is becoming normal. Schools were shut, hospitals were under more pressure, and businesses were forced to close. Restrictions and closures quietened the cities, the open markets and the towns.

At that time, the restrictions were followed by financial support schemes. The UK Government provided several billion pounds. That support was distributed by many Departments. Under the Department of Finance, Land and Property Services did an excellent job and implemented business support grant schemes and business rates holidays. Vital support also came through the furlough scheme provided by the United Kingdom Government. Those schemes have been successful and have spared or saved almost all our locally run businesses and jobs. Unfortunately, some businesses were unable to make it through those hard times, and many still struggle. Recent proposed controls will put additional pressure on those businesses. As we start to reopen our economy, those businesses are evaluating their position in the market. The support from the high street voucher scheme will give a massive boost to local high street businesses. The new year, which, for some, means the end of the rates holiday, will see additional pressure placed on them. As pointed out by the Chair, while non-domestic rates provide vital income for councils and the Executive, they are a strain for struggling businesses.

The new antecedent valuation date (AVD) is 1 October 2021, with a new valuation date list due in April 2023. The previous valuation list was published on 1 April 2020, with an AVD of 1 April 2018. The issue, as I understand it, relates to the date on which the health regulations were implemented. Had they been implemented three days later, the AVD, which was October past, would have taken into account the effects of the current pandemic.

Under article 39A of the Rates (Northern Ireland) Order 1977, the normal appeal process is that businesses appeal on the basis of their net annual value, and they do so after the valuation list is produced. The appeals can be general and based on a range of issues. The issue in question relates to businesses that appeal using coronavirus as the main or attributing factor. The Bill would remove the ability of businesses appealing their net annual value to cite coronavirus as a factor.

I understand that the Minister has also indicated that £50 million in Barnett consequentials would come from the United Kingdom Government.

Maybe the Minister can confirm in his closing remarks whether he has received confirmation that that will be received regardless of the Bill's passing. If that is the case, can it be ring-fenced for rates support in this mandate and/or the next mandate? If so, that would go some way to easing the impact on the hotels, B&Bs, pubs, shops etc that are affected.

The retrospective aspect of the Bill applies the constraint on appeals to appeals made before April 2020 that relate to coronavirus. I am not aware of the House having passed any similar legislation. Earlier, one Member referred to his short time in the House — he has been here for 27 years — and he is not aware of any. I am not aware of it happening in the short time that I have been here, and it seems unfair to those appealing.

The most frustrating part of the Bill is the fact that the Department has been aware of the issue since early spring 2020. It has known about the issues arising from COVID-19 and has not acted until now. I appreciate the earlier comments about the excellent work that LPS has done and is doing during the pandemic. However, our next election date was always going to be in May, at the latest, so it was always coming.

Until very recently, the Department had chosen not to consult business stakeholders and local government. A letter was issued at the beginning of November 2021 setting out the intent of the Bill and offering an opportunity to raise concerns with LPS. Today, the Bill is at Second Stage.

As raised in the previous debate, the Committee has had very little time to fully and thoroughly consult on the Bill or understand what its implementation would mean. We have been unable to connect with local businesses and stakeholders or review the pros and cons of the Bill. That could set a bad precedent. I support the Bill passing Second Stage, which will allow it to go to the Committee for further scrutiny. Taking on board previous comments from the Chair and, no doubt, with support from other Committee members, we will do all that we can to deal with the Bill as speedily as possible.

Mr O'Toole: In the previous debate on accelerated passage, to which, I am pleased to say, the Assembly did not agree, it was mentioned that there were significant questions to answer about the process and timeline around the Bill. That is the case. The Minister is correct that we have had some of that information. He said that more had been sent to the Committee, and I look forward to scrutinising it. I am glad that we will now have a proper legislative process, even if it has to be done in a hurry.

The Bill is unique legislation. In a sense, there are three connected issues that cause concern and therefore require scrutiny. The first is the question of compressed scrutiny. That has been dealt with via the Assembly's rejection of accelerated passage.

The second is the question of process. Not to sound too "Watergate" about it, but who knew what when, and were proper procedures followed? I have an open mind on that. Given some of the concerns that have been expressed to me, including via an anonymous letter and other reporting, it is important that we understand exactly when, for example, the Department was first fully abreast of the potential fiscal risk from the anomaly and, if it was aware and, indeed, had received legal opinion on it earlier in the process, why that information was not brought either to the Assembly as a whole or to the Finance Committee.

It may well be the case that LPS was busy handling the payments that it made. I have acknowledged, and will do so again, that LPS did an extraordinary job of turning itself into a grant-paying agency, handling, at times, I am sure, an overwhelming number of requests from elected representatives and businesses very well. That, however, does not exempt it, or, indeed, the Department of Finance, from being asked robust questions about how it handled that information and about when legal opinion was first sought around the applicability of the 2020 revaluations. It is therefore important that we get clarity on those dates. When exactly was the Department first aware of the potential fiscal risk, and what exactly did it do about it then? It is important that we ask those questions.

The third question is on the substance of the Bill itself. The Minister mentioned that LPS has worked hard, in unique circumstances, to turn itself into a grant-paying agency. I completely acknowledge that. He said that that is why its officials had less time to work on the Bill. The Minister also said, however, that it is a short Bill, which it is. That is not to say that it is not substantial, but the Bill is effectively one short, sweeping clause that retrospectively entirely removes coronavirus as a potential ground for appealing the valuation of a property.

As I said, my party will go into the scrutiny stage with an open mind. It is important that we

acknowledge that we cannot be flippant about the potential fiscal risk. If a quarter of a billion pounds of our limited resources is at risk, we cannot be flippant about the Bill, even if business groups have specific concerns about its sweeping nature. As legislators and as people who want money to be spent on public services, we must be cognisant of the fact that there may be a fiscal risk. The Finance Committee will have to ask questions about whether that fiscal risk is as great as the Department has estimated, interrogate that and test the numbers. I do not know whether the Minister or my Finance Committee colleagues have a view on this, but I suggest that we seek an opinion from the new independent fiscal council. It may feel that it is not something to which it wants to contribute. It has, however, published a significant report today on public finances in the region and is starting to make its voice heard in the public debate, so it can perhaps give us evidence on the potential fiscal risk.

Dr Aiken: Thank you very much for giving way. I apologise to both the Member and the Minister, because, unfortunately, I have to head off to get jabbed. Thank you very much for your contribution to the debate. I would not like the Minister to think that I was being disrespectful. The Health Minister has instructed me to go and get jabbed, so I am going to do it.

Mr O'Toole: I thank the Chairman for that intervention. I am glad to see that he is off to get jabbed. I point out that I am too young to be eligible for a booster just yet, but anyway. *[Laughter.]* As I was saying, when we come to debate the substance of the Bill, we need to ask those questions.

First, we have dealt with the question of accelerated passage: we are not doing that. We need to understand, then, the process that was followed in identifying the issue and bringing it before the Assembly. Thirdly, we need to deal with the substance of whether the case is made that there is a £255 million fiscal risk to the public purse here, specifically and especially in relation to councils, if we do not proceed with the measure, and whether there are, potentially, different ways of doing it. My party and I will go into that with a genuinely open mind, because it is important that we protect revenue here. It is also important, as I said in a previous debate, not only that we do serious scrutiny but that we are seen to do it.

12.00 noon

I will make one other point. It has been stated that an estimated £50 million Barnett consequential is coming to the Executive that could be ring-fenced to provide further rates support to businesses. The implication is that that support would be in lieu of or some kind of compensation for the compensation that businesses might otherwise succeed in getting were this law to be passed and, therefore, the appeal not to be necessary. We need to understand whether that Barnett consequential is coming anyway. At times, it has been implied that this law needs to be passed in order for that Barnett consequential to become applicable. I want to understand whether that is the case.

We will not stand in the way of the Bill proceeding through Second Stage to Committee Stage. It is important that, having said in the debate on accelerated passage that we want to do more scrutiny, we actually do that scrutiny and take it seriously. Part of the context for that is the broader fiscal picture for the Executive and these institutions. My party strongly believes that our institutions should move towards being better at raising and spending money here. That is partly why the Minister — there is probably some agreement between us on this — has appointed not only the fiscal council but a new Fiscal Commission to look at that. When we have a tax base to defend and revenue for public services is entrusted to us, it is important that we are serious about scrutinising those questions. The ambition of the Bill, its unique nature and the fact that other jurisdictions have scrutinised the matter make it important that we do our scrutiny properly. I am happy, as other Members of the Committee are, to commit to doing that speedily rather than slowly.

This is a unique Bill, around which there are substantial questions and concerns, including those raised with me by someone who describes themselves as "a whistle-blower". There are also real questions to ask about the fiscal position. We will do our job, as a party and as MLAs on the Finance Committee, by asking those questions, because that is why we are here in the first place.

Mr Muir: The past 20 months have been an incredibly difficult time for local businesses, which have faced huge uncertainty, financial worries and a range of restrictions throughout the pandemic. It is important that we acknowledge the hardships that many businesses have faced and the strain that that has put on business owners and staff.

The situation that we find ourselves in risks putting additional financial pressure on local businesses and, indeed, on households. As things stand, councils considering their rate-setting process, which must be concluded in February of next year, will be aware of the risk of significant payouts being needed for thousands of non-domestic properties on the basis of appeals due to COVID-19. With that in mind, they will need to make financial preparations to cover the cost, increasing rates to ensure that they will have the money to cover successful claims and to continue to provide essential services. That risks hitting households that are struggling with the soaring cost of living and local businesses, just as they are struggling to recover, with even higher rates bills. The implication for the regional rate has not been mentioned today, but clearly it is an additional risk.

The Alliance Party will support the Bill in the hope that passage through the Assembly will prevent any further increase in rates for businesses that have already been hit hard throughout the pandemic. Our counterparts in Westminster and Scotland are progressing similar legislation, and it is important that we do the same. We must act quickly to ensure that the Bill passes before the end of the Assembly mandate to provide some certainty about the rates base for councils and businesses, which, no doubt, will be following our debate today.

I reiterate the need for the Finance Minister to make good on the commitment in the explanatory and financial memorandum to introduce rates relief for those hit hard by COVID-19. Those businesses often align with those that were hit hard by Reval2020. The impact of that has not been felt yet due to the relief that was granted. Just before the pandemic, I met businesses that were affected by Reval2020 and their representative trade bodies. They expressed genuine concerns that some businesses may struggle as a result of Reval2020. After an unprecedented 20 months, it is vital that the Minister can provide support to those who, due to COVID-related rates relief, have yet to feel the pinch as a result of the new measures. We are all aware of the cliff edge that businesses face in April 2022, when the current rates relief for many sectors is due to end. We need to ensure that a transitional relief scheme is ready for businesses so that we do not lose any more of them as a result of the impact of COVID-19.

If the Bill passes the Second Stage today, it will move to Committee Stage. I will reiterate the comments that I made at the debate associated with accelerated passage. My party supported accelerated passage; the House did not. I note that decision. I clearly outlined the reasons for our support, but we are where we are. I urge the Committee to make good on its commitment to make sure that the Committee Stage is expedited and the Bill comes back to the House for Consideration Stage within the statutory time frame, which ends on 25 January.

I will also reiterate that, as we are potentially moving to Committee Stage, arrangements should be put in place for those who are not on the Finance Committee to receive briefings on the legislation to ensure that any debate at Consideration Stage and Further Consideration Stage is informed by the information and facts associated with the issue. It is a complex issue, and there are different views on it, but there is a key financial risk for households, businesses and Northern Ireland's public finances. It is important that we safeguard those and go forward with proper scrutiny of the legislation, but I am conscious of the timescale. There are only a number of weeks left in the mandate, and councils are legally obliged to strike their rate in February.

Mr Wells: I welcome the tone of the debate. It is clear that the Minister has taken on board the Committee's concerns about accelerated passage and the sweeping nature of the Bill. At the outset, I say that I will not oppose the movement of the Bill to the Committee Stage. Any problems that we have with the Bill can be teased out in Committee. Now that we have been allowed that opportunity, I see no merit in opposing the substance of the Bill, whilst, of course, preserving my position — I am sure that many others feel the same — that I reserve the right to raise concerns about the substantive nature of the Bill in Committee.

I commend the Chair for the commitment that he has given to the House. I think that he has the full support of the Committee that we will do everything that we can to meet the statutory 30-day deadline. That is a more than reasonable request, but it is also incumbent on the Committee to get its skates on. I tend to be one of the more long-winded and verbose members of the Committee for Finance, and therefore I will have to exercise some self-discipline to ensure that we get the Bill through as quickly as possible.

In his opening remarks, the Minister stated that he had provided the chronology. He has slightly missed the point that, had he been able to come before us on 17 November, we would not only have had that chronology but could have teased out how we ended up in this position. It is one thing having a piece of paper; it is

another having the opportunity to quiz the Minister and his officials on it. That said, we now have an opportunity to deal with all those issues.

To help speed things up, I know exactly where the Minister is coming from on the Bill. Everyone understands the dilemma that he and LPS find themselves in. No reasonable person would want to open the floodgates. I suppose that, basically, every business in Northern Ireland would claim that their business and income had been affected by coronavirus. I cannot think of any business that would not say that, apart from, maybe, some of the multinational supermarkets or the off-licences. Very few businesses would not argue that the coronavirus has had a devastating impact on them, so I understand the dilemma.

One thing that I will ask when the Bill comes to Committee is whether it is possible to have a threshold, an exceptional circumstances clause or a special provision that would allow businesses that have been totally or to a large extent wiped out by coronavirus to appeal. I understand the difficulties that that could cause. How do you define what is "exceptional"? Where do you set the threshold? How do you stop people clogging up the system with bogus appeals that have no merit but will still have to be heard? I want to examine that to see if that is possible for the businesses that have been particularly badly affected.

Apart from that, it has been a good debate. Sense has prevailed. There has been agreement on the way forward. Therefore, there is no merit in pushing the Second Reading to a Division.

Mr Catney: I fully recognise the circumstances surrounding the Bill. I understand that the scope of the issue goes further than the ongoing valuation appeals to those that will have to be taken regarding the valuation of similarly circumstanced properties and that it could amount to £255 million, as has been stated. Further, I understand that a similar situation is faced by the Administrations in England, Scotland and Wales, where the result has been the passage of similar legislation to remove the right to appeal valuations on the basis of the unintended consequences of COVID-19.

There are serious concerns about the lack of scrutiny that has been created by the Minister's unprecedented desire to use accelerated passage for legislation that has not been consulted on and that applies retrospectively. That continues a long line of concerns surrounding the number of Executive Bills that are passed with little scrutiny or evidence gathered. That is not the way to produce clear, properly functioning legislation. It seems to be unique to Northern Ireland, because, while similar legislation has been proposed in England, Scotland and Wales to deal with non-domestic rates valuations, similar emergency procedures for accelerated passage have not been used. The impact of the use of accelerated passage for legislation that has not been consulted on is that it could be rammed through in a matter of weeks, without most of the impacted businesses even knowing that it exists. With any other legislation, the Committee —

Mr Deputy Speaker (Mr Beggs): Order. I ask the Member to take his seat. I remind the Member that the debate on accelerated passage has already happened and the Assembly expressed its view on it. We are now at the Second Stage of the Bill.

Mr Catney: Thanks for that. I am being supportive of it. My party colleague has stated that support. I am just going through the circumstances.

It is notable that, despite the Department not having time to consult on the impact, the Minister has stated that the Department sought extensive legal opinion from April 2020 on the impact of the COVID health regulations on article 39A of the Rates Order, which affects the Bill that we are talking about. In addition, LPS took the time to get advice from the Department's solicitors. There was an obligation to consult and manage and get a response. As this is a unique taxation matter, there is, by the Department's reckoning, neither a statutory obligation nor a legitimate expectation to consult on the Bill. That could impact on the NAVs of hotels and pubs by up to 60%, of shops by 30% and of sporting facilities by 50%. Surely, that creates a legitimate expectation to consult.

The Minister stated in a letter to the Finance Committee that a consultation would not be meaningful, as no outcome from the consultation could change the intent or nature of the Bill.

For any legislation to be meaningful, it must be clear, accessible and able to act in a just and actionable way for those impacted. Passing retrospective legislation without consultation and by accelerated passage does not achieve that.

12.15 pm

Serious questions need to be asked about the Minister's approach to the legislation. The Department confirmed that it first asked for a legal opinion on the impact of the coronavirus health regulations on article 39A of the Rates Order 1977 in March 2020. The Department stated that the legal position was clarified in August 2020. At the very least, the non-domestic valuation list was published when there was a question over the legal position, and the Department has been aware of a potential issue for 19 months and of a confirmed issue for 15 months. Why are we rushing through all this legislation now, when we are 19 months down the line? Surely there was the opportunity to open discussions on the Bill after the legal opinion came back, which was, at least, in August.

The Minister stated that it would have been premature to consult councils and affected groups before the Executive signed off on the accelerated passage of the Bill. Why? Presumably, the Minister would still have brought forward legislation on the issue, as it still needed to be dealt with. If he had opened discussions earlier, he could have avoided the whole debate and leaving businesses afraid of future large bills appearing through their doors.

There is an understanding of the unprecedented situation that we have been dealing with here with COVID-19 and the need to deal with it. However, the answer cannot be for us to pass retrospective legislation without consultation, when there are so many questions around how much of an impact it will have on our businesses, how that impact will be negated and how the Minister missed so many opportunities to pass it in an open, honest and accessible way.

Mr Allister: I approach the Bill with a number of unanswered questions. It takes us back to the 2020 revaluation. Article 39A of the Rates (Northern Ireland) Order 1977 is very clear that statutory provisions require certain matters to be taken into account in setting the revaluation. One of them is the "physical enjoyment of the hereditament". Since the 2020 revaluation was for 1 April, it was abundantly clear before 1 April that the physical enjoyment of the hereditaments was adversely affected by COVID, yet the revaluation proceeded as if it was not. Now, legislation attempts to block appeals against the very point that COVID should have been taken into account. My first unanswered question is this: how did we get to the point where the 2020 revaluation was issued, with the knowledge that there was bound to have been adverse impact on the physical enjoyment of the hereditaments owing to COVID? Why did we proceed to issue that revaluation on 1 April?

I imagine that, certainly, those of us in the Finance Committee have seen the letter from the person who calls themselves a "whistle-blower". We have no way of measuring its truth or otherwise, but if we put some credence or weight on what the letter claims, before 1 April, the Department was advised that, by law, it would have to take the impacts of COVID into account. Now, if that is right, it adds to my question: why did the Department, therefore, proceed with the revaluation knowing that it had not taken into account the adverse impact? Was it always the intent to say, "We'll do it anyhow and sort it out later"?

Mr Catney: I thank the Member for giving way. Does he agree that if you own a small fish and chip shop opposite a pub, of course your takings will have dropped because of COVID and you are going to lose the rental value of the property if it was set on the open market?

Mr Allister: Yes. The Member reminds me that, also under article 39A of the Rates (Northern Ireland) Order 1977, you have to take into account not only the "physical enjoyment of the hereditament" but its physical setting. Clearly, a chip shop beside a pub that is no longer open is bound to experience the adverse impact on its physical setting. So, of course, that is right. It underscores my question, however, which is this: how did we get ourselves into this situation, where we proceeded to issue a 2020 revaluation knowing that it must have been infringing the requirements of article 39A?

My second major question concerns the fact that we are heading towards a 2023 revaluation based on 1 October 2021 just past. Is that revaluation going to reflect the COVID impact at October 2021 going forward into future years? Or is the Department minded to find some device or mechanism to nullify the impact of COVID on the 2023 revaluation? We need to hear a declaration of intent from the Department on that.

When I look at the Bill, I wonder whether some thought process has been given to clause 1(3), whereby further regulations amending the section, which is the power given in clause 1(3), could be made to take care of the 2023 situation. I trust that the Minister can be forthright in explaining both how we got to this point with the knowledge, before the 2020 valuation was issued, of the adverse impact of COVID and whether or how he anticipates dealing with the 2023 valuation, given the

COVID impact that is bound to prevail there as well.

Mr Carroll: I am deeply concerned about this legislation and what it says about how the Executive dealt with the beginning of the pandemic and how they intend to resolve an issue that could cost hundreds of millions of pounds. All the while, this is coming from an Executive that already have, to put it mildly, a questionable record in wasting public money.

Another MLA has, rightly, asked two important questions: what did the Minister know about the situation and when did he know about it? I will add one more: will he verify the whistle-blower's account, which was that his Department received and ignored legal advice that could have avoided the situation? Does he accept or deny that? I would like an answer to that when the Ministers sums up, because I find it alarming that, in a recent newspaper article, a departmental whistle-blower has claimed that the legislation is:

> *"an attempt to reverse a massive error which civil servants knew they were making but went ahead with despite their legal advice highlighting the problem."*

I cannot go along with that, my party cannot go along with that and I do not think that anyone else should go along with that. Nor are we happy to go along with the Minister's apparent assertion that because businesses got some support during the pandemic, he and his Department are within their rights to cut off the appeals process for them. What precedent does that set?

From yearly Budgets to COVID regulations, Stormont's record on democratic scrutiny is abysmal, but this latest effort from the Minister takes the biscuit. It is crude in the extreme to claim that MLAs who do not go along with this get-out clause for the Minister will be responsible for a £255 million loss to the public purse, or whatever the amount being quoted, or that small businesses that take up their right of appeal will be responsible for the loss of £255 million to the public purse. To be clear, the fault for this latest financial scandal is with the Minister and his Department for apparently failing to take seriously the legal advice to make an alteration in the rates because of the COVID pandemic. Any attempt to blame those who had no idea that they may have been wrongly charged and who, in many cases, suffered through the pandemic is not only crude but shameful.

If the Minister believes that those who received relief during the pandemic should pay more through their business rates, he should write it into legislation and bring it to the House. However, that is not what happened here. In response to his Department's mistake, the Minister is attempting to shift blame elsewhere. It is shamefully similar to the Executive's approach to the pandemic since March 2020 and is symptomatic of the mantra that it is one law for the politicians and another for everybody else. The fact that the pandemic cannot be taken into consideration with rates valuation is not only absurd but totally unfair. Not all businesses were supported, and some that were supported were supported more than others.

It is impossible for me or other MLAs who are not in the Executive or on the Finance Committee to get the full details behind this scandal. That a journalist, through a whistle-blower, has provided the most clarifying information to me and the public is a shameful indictment of the Minister and his Department's role in this. I cannot in good conscience rubber-stamp legislation that has been rushed through with such a laissez-faire attitude, and nor can I in good conscience vote against the interests of those running small businesses who have been in contact with me throughout the pandemic, who did not receive enough support, who are still suffering financially and who are in places having to work through this pandemic, while the Executive have abandoned the basic principles of social distancing and track and trace in order to keep themselves out of poverty and their small businesses alive.

The Minister has not bothered to address or consult them about the Bill. He has shown utter disrespect to those who were impacted by the pandemic and the Executive's disastrous approach to it. Is it any wonder that he tried to rush this through today without any scrutiny.

I will vote against the Second Stage of the Bill if my vote is counted today.

Mr C Murphy: I thank Members for their contributions. I will try to address some of the points raised.

I will say at the outset that I absolutely support some of the last points, and legislation supports the right of people to come forward and be whistle-blowers. One difference is that I will stand in front of the Assembly and account for all the decisions that the Department and I have taken. My officials will go in front of the Committee, and, in a public fashion, account for and provide documentary evidence to support

what they did. After that has run its course, maybe you can judge whether there is a scandal here and not simply from one article in one newspaper on a Saturday afternoon.

Some Members raised questions in relation to the £50 million Barnett consequential. The Barnett consequential will come to us if the legislation is passed in Westminster. Interestingly, the House of Lords is complaining about the legislation being rushed through Westminster. Scotland has not yet introduced its Bill, and, by the way, none of the other legislatures are facing the same issues as us with the prospect of a mandate ending in the next couple of months. That Barnett consequential will come across if the legislation is passed. It will be provided for the purpose of the passage of the Bill. Of course, it is not hypothecated, but, in answer to Mr O'Toole's question, if the Bill is not passed today within that time frame, I am not sure what argument he would like me to deploy to say that the Executive should ring-fence that £50 million for rates support when the non-passage of the Bill leaves open the prospect of people appealing and getting further support for something for which they have already been paid. On that basis, I am not sure what argument I would make for ring-fencing £50 million to provide support to businesses if the legislation does not pass. The £50 million Barnett consequential, however, will come to us if the legislation is passed in the British Parliament.

12.30 pm

One of the issues that concerns the Chair is the right to appeal. It should always concern us when the right to appeal against anything is removed. Of course, in this case, it applies only and singly to the issue of coronavirus, given that the Executive had already taken measures.

Again, I do not recognise where Mr Carroll is coming from. We have provided over half a billion pounds of support to businesses through rate relief and grants during the pandemic. He wants to protect the public purse and make sure that public funding goes to public services, which are under pressure, yet he seems to be making an argument against supporting the Bill by saying that he would prefer that money to go to businesses. I am sure that he would be the first to stand up in the Chamber and denounce me if I had decided to not introduce legislation and had just allowed that to run its course and, in doing so, potentially, undercut the public purse.

Steve Aiken, as Chair of the Committee, mentioned the possibility of a middle ground approach. Of course, the Committee now has the opportunity to discuss and analyse the Bill. This goes back to the point that Mr Allister made, and I will deal with that as well. I would argue that Reval 2023 and the date that we have settled on — 1 October — is, in fact, the middle ground. That will take account of the impact of the pandemic on businesses in the time ahead when we get to the Reval in 2023. I will answer Mr Allister's point. I have said publicly that it will take account of COVID, so there is no sleight of hand to try to head this off down the track somewhere. That is the middle ground in that we are saying to businesses, "You were paid. You got compensation for the impact of the pandemic on your business". The Assembly, in passing the legislation, agreed which businesses would and would not get support, and we felt that some did not need support during the pandemic. However, we had, in fact, compensated those people. We therefore need to act on something that would give them the opportunity to be doubly compensated. In that regard, the middle ground is to take account of the impact of the pandemic through the revaluation on 1 October and how that will impact in 2023.

Steve Aiken incorrectly asserted that rates bills are resuming. I remind him that the two-year rates holiday goes on until at least 31 March, and it will then depend on what we are able to do after that.

Keith Buchanan and others raised the issue of the time frame and the advice received in spring 2020. There are two pieces to that. One is whether the impact of coronavirus could be a factor in allowing somebody to claim compensation, and there was advice around that. The second piece is the potential impact of that. This is November 2021. He should take himself back to spring 2020. The initial restrictions were brought in for, I think, a period of six weeks. The legislation was time-bound and could only go that far. None of us knew, in spring 2020, what the financial impact would be. We were hoping that an initial lockdown would enable us to cope with the virus, and, as a matter of fact, a lot of businesses reopened in summer 2020. Then, around this time last year, we went into a more protracted lockdown that lasted through to the spring. That meant that the cost of this — it may well have been a smaller cost to the Executive and one that they could have absorbed in a different way — has gone up incrementally over the duration of the pandemic. That is an added factor.

There are two factors. One is whether people would have the power to claim compensation on that basis, having already been

compensated for that, and the other factor is what the total cost of that was to the Executive. That necessitates the legislation. None of those things was known in spring 2020. They have developed, and legal advice has developed, and that is why the Bill was introduced in Westminster only in late spring this year. It was different, and we had to introduce our own legislation. That is why Scotland has yet to introduce a Bill in its legislature on the same issue as we have been dealing with since that time. I assure Members that nobody was sitting back and putting the public purse in jeopardy in the hope that this would go away or that we would not have to deal with it. The full costs of this have accumulated over the period of lockdown, and, the longer the lockdown has gone on, the greater the costs that have accumulated.

That brings me to Matthew O'Toole's point about the Estimates. Of course, he can interrogate this when the Committee comes to deal with it. The revenue loss outlined is estimated. It was developed through very detailed analysis of every property sector and the likely impact of the pandemic on each sector across four scenarios. We believe that they are realistic and that they take account of relevant factors that will minimise the risk, including a very generous package of rate relief. We have implemented the publication of a new valuation list on April 2023, and that will act as a backstop for the losses.

It is, however, the strongly held opinion of the commissioner of valuation and the director of rating policy, both of whom are chartered surveyors with much experience, that the courts tend towards a wider interpretation of rating legislation in applying reductions to rateable values. The estimations have not been taken lightly.

Andrew Muir made the point about being briefed. I am happy for departmental officials to brief him on the matter, if he so wishes, in the time ahead. I appreciate his argument to the Committee about expediting the matter. He raised the issue of transitional rate relief. It is a traditionally complex scheme that applies in Britain. It is generally self-funded, meaning that the reval winners fund the reval losers. As far as our circumstances are concerned, it is less than ideal.

Mr Wells has gone, but I need to correct what I said in the debate on accelerated passage, which was that I had provided Committee members with a chronology. I since understand that that is on its way and has not reached Committee members yet. I apologise for incorrectly saying that in the earlier debate. We will provide it, and the officials and I will be there, if need be, to talk to the Committee in the time ahead.

We have all heard about and get this, but Mr Wells mentioned the exceptional circumstances that people have suffered. We have asked Ulster University, beyond the end of this rates holiday and coming into the new financial year, to look at businesses that continue to struggle and that will do so in the time ahead. Of course, we no longer have the COVID financial support that we had from Whitehall and Treasury to meet those costs. If the Executive were to do something in the new financial year, it would come from their own coffers. We have, however, looked at those matters.

The issue of travel agents that Mr Wells mentioned in the earlier debate is a useful example. We were trying to find a way to support travel agents, and we recognise the loss that they have incurred. Eventually, the Executive Office undertook to put together and did put together a programme of support for them. One of the issues with travel agents in particular, however, is that half of them operated out of their home or in their own property and thus did not have a rateable property. It is difficult for a rates provision such as this to reach all those businesses in a way that would be equitable. We should recognise that.

Pat Catney raised points about the impact of article 39A. As I said to Mr Buchanan, there are two impacts to be considered: will it be liable as a consequence of coronavirus, and what is the cumulative cost? We did not know that, because, in spring 2020, we were operating on the same basis that everyone in the Chamber was operating on, which was that, if we took sufficient action to deal with it, coronavirus might be with us only for a short period. It has gone on, however, and restrictions have been reintroduced and extended for longer than any of us dared to consider at that time in 2020. Hindsight is a wonderful thing, but we were dealing with two issues. One was the impact of coronavirus, while the other was not knowing its extent and whether it could be dealt with in another way until the full cost was known.

I dealt with Mr Allister's second point about not intending to use this again, because we have given a commitment that we will take account of the impact of the pandemic on businesses at 1 October 2021, and there is no intention on my part or that of officials to use any sleight of hand to undo that date in the time ahead.

The question that the Member asked was this: why am I moving ahead with that? The answer is that it had already been legislated for. The valuation list had already gone through a process. We were heading into a situation in which there was a choice, at that stage, on 1 April 2020. We knew from the valuation list that about 60% of properties were due a reduction in valuation, so we could stay with that, knowing that we would impact negatively on 60% of properties, or we could move ahead to see what the coronavirus restrictions brought. At that stage, the restrictions were predicted to be for only six weeks. That was the choice that was made in April 2020. The decision was to go ahead, but I am sure that the Member will get a chance to explore that decision.

Mr Allister: Will the Minister give way?

Mr C Murphy: I am happy to give way.

Mr Allister: My point was slightly different. As I read it, under article 39A of the Rates (Northern Ireland) Order 1977, there is a legal obligation that, at the date of issue of the revaluation, it should have taken into account anything that affected, adversely or otherwise, the physical enjoyment of the hereditament. Was the Department in receipt of legal advice by 1 April 2020 that it therefore had to, or should, take account of the COVID impact on the valuation list that it was about to issue? Did it issue it nonetheless?

Mr C Murphy: As I said, those were some of the issues that the Department was grappling with. It received legal advice prior to 1 April 2020, and there was further exploration with officials and further legal advice over the months beyond that. Therefore, the issue was not settled in those terms on 1 April 2020.

As I said, the balance of choice was the Department setting aside the 2020 revaluation — people could still have appealed on the basis of the 2015 revaluation — knowing that 60% of businesses were likely to face a more beneficial outcome and denying them that in order to wait to see what came out of COVID. Therefore, there was, as I do not doubt that there was in some of the public airing of this, a difference of opinion about the best course of action to take. The course of action was decided and others are, of course, free to disagree with that if they choose.

The legal advice began two or three days before 1 April 2020 and continued over that period. Questions and answers went backwards and forwards, views were given, probed and challenged and some of the legal advice changed as time went on. There will obviously be an opportunity for the Committee to analyse all of that in the time ahead. Suffice it to say that there are, of course, questions and matters to which the Committee will want to apply itself. Of course, departmental officials and I will undertake to give whatever support and advice that we can to the Committee.

I do not buy into the notion of scandal that people tried to present. If people want to go with that, it is fair enough. This is a particular problem. The circumstances did not apply in any other circumstances that any of us had come across before. The pandemic hit and affected all businesses to a certain extent, which was why all businesses got four months of rate relief at the start of the pandemic. There was a further focused exercise through which the Executive and the Assembly agreed that certain businesses would get a rates holiday, not just for the rest of that financial year but for two years, to accommodate and compensate them for the impact of the pandemic. Those businesses that were forced to close were also able to access the LRSS to compensate them for that closure.

To have provided all that compensation from the public purse, and then, in a further drain on the public purse, to have allowed businesses to claim again on the basis of legislation that was never intended to deal with wholescale closure — it was intended to deal with a localised closure and a limited impact on businesses — would have been unfair. I absolutely do not say that because I resent the support that businesses got. They needed that support, they were entitled to it and we were very glad to be able to give it to them. However, the public purse — the money that we need for public services — would have taken a further hit if those businesses had been allowed to claim again. I fully respect the points about retrospective legislation and the denial of a right to appeal — matters that will concern all MLAs — however, from our perspective — I hope that, as we go through the stages of the Bill, the Committee and, indeed, the Assembly will also come to this view — this unique course of action is the only one that is open to us to deal with the issue. It will deal with this specific issue, not the wider issue of appealing rates amounts on the grounds that the matter was supported when the Executive had the funds to do so. With that, I commend the Bill to the Assembly.

Question put and agreed to.

Resolved:

That the Second Stage of the Non-domestic Rates Valuations (Coronavirus) Bill [NIA 44/17-22] be agreed.

Mr Deputy Speaker (Mr Beggs): I ask Members to take their ease for a few moments.

12.45 pm

Criminal Justice (Committal Reform) Bill: Consideration Stage

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

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

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 the provisional grouping of amendments selected list. There is a single group of four amendments, which deal with preliminary investigations and changes to consequential amendments. The debate will be on amendment Nos 1 to 4 and opposition to clauses 1 and 2 stand part.

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

Clause 1 (Abolition of preliminary investigations)

Mr Deputy Speaker (Mr Beggs): We now come to the group of amendments for debate. With amendment No 1, it will be convenient to debate amendment Nos 2 to 4 and opposition to clauses 1 and 2 stand part. I call Mr Jim Allister to move amendment No 1 and to address the other amendments in the group.

Mr Allister: I beg to move amendment No 1:In page 1, line 5, after "repealed" insert-

"save in respect of preliminary investigation proceedings resulting from a direction under Article 29A".

The following amendments stood on the Marshalled List:

No 2: In page 1, line 5, after "accordingly" insert-

"save in so far as is necessary to give effect to Article 29A of the Magistrates' Courts (Northern Ireland) Order 1981".— [Mr Allister.]

No 3: In clause 4, page 5, line 43, leave out from "for" to end of line 44 and insert-

"for the word 'documents' substitute 'copy of the notice of committal'".— [Mrs Long (The Minister of Justice).]

No 4: In schedule 1, page 9, line 13, leave out paragraph 18.*— [Mr Allister.]*

Mr Allister: To understand and appreciate the amendments that I have moved, one has to examine the backstory of the matter, which the House will, I think, find intriguing, interesting and maybe a little surprising. In 2015, the previous Justice Minister, Mr David Ford, brought before the House the Justice Bill. In that Bill, he sought to remove all oral evidence from committal proceedings. The House disagreed. It accepted an amendment from me at Consideration Stage, which preserved the option of oral evidence at committal stage if the magistrate was persuaded that it was in the interests of justice. Mr Ford then returned to the House at Further Consideration Stage with a more fleshed-out amendment that was compatible with the House's decision. In consequence, we have section 7 of the Justice Act 2015, which says:

> *"The Magistrates' Courts (Northern Ireland) Order 1981 is amended as set out in subsections (2) to (5)."*

The relevant amendment came in section 7(2), which inserts after article 29 of the Magistrates' Courts (Northern Ireland) Order 1981 the following as article 29A, which was passed without Division at Further Consideration Stage:

> *"(1) Committal proceedings in a magistrates' court in relation to an indictable offence are to be conducted—*
>
> *(a) in a case where the court directs under this Article that a preliminary investigation is to be held, by way of a preliminary investigation;*

(b) in all other cases, by way of a preliminary inquiry.

(2) An accused may apply to the court for a direction that a preliminary investigation is to be held."

I should interpose to say that the phraseology "preliminary investigation" is the one that allows oral evidence, while "preliminary inquiry" does not. It goes on to say:

"(3) Magistrates' court rules may make provision in relation to an application under paragraph (2), including provision—

(a) for an application to set out the grounds on which the application is made and contain such other information as may be prescribed;

(b) requiring an application to be made before a prescribed time;

(c) for the procedure to be followed in determining the application (including provision for representations to be made to the court by the prosecution or the accused).

(4) The court, after considering the application and any representations made to the court, may direct the holding of a preliminary investigation if (and only if) the court is satisfied that a preliminary investigation is required in the interests of justice.

(5) In determining an application under paragraph (2) the court shall in particular have regard to—

(a) the nature of the offence or offences charged;

(b) the interests of the persons likely to be witnesses at a preliminary investigation."

So, this House, in a settled view on an amendment moved by the Minister — it did not provoke a Division in the House — decided that the 1981 Order would be amended to preserve in very particular circumstances the right to have oral evidence in committal proceedings. Those very particular circumstances were that it would be in the interests of justice. The matters that would inform the decision on whether it would be in the interests of justice included such things as the nature of the offence and the interests of the witnesses themselves. One might have thought, therefore, that that became the law of this land.

I have to tell the House that, in the most astounding course of events, six and a half years later, the Department has still to move the commencement order for that section. Six and a half years ago, the House decided that the path that it wanted to tread on committal proceedings was to abolish all oral hearings except for those where it was found by a judge to be in the interests of justice, and yet the Department of Justice took it upon itself to defy the decision of the House and to circumvent that decision by never moving a commencement order. What an audacious challenge to the authority of the House. Today, six and a half years later, we have arrived at the situation of what this House declared to be law never yet having been implemented. The purpose of my amendments — amendment Nos 1 and 2 — is to require the implementation of what we agreed six and a half years ago and to preserve the right to have oral evidence in committal proceedings, if the magistrate is persuaded — the onus is on the defence — that that is in the interests of justice.

When I discovered that, I was shocked beyond words, so I went to the Justice Committee's report — the Committee that examined this Bill — to see what it was told about this. I found that it was told very little about it. If you look at the explanatory document that accompanies the Bill, you will not find a word of explanation for why the commencement order was never made or why the Department thought that it was fit and able to defy the House. In the Committee's report, there is a reference in paragraph 69, which says:

"The Department had previously sought to abolish the option to hear oral evidence from victims and witnesses at a committal hearing in the Justice Bill 2015. As noted earlier in the report, this did not receive sufficient support"

— in fact, it was rejected —

"during the passage of the Bill through the Assembly and, instead, an amendment was passed that ensured oral evidence could only be called if a judge was satisfied that the interests of justice require it. The Department advised the Committee that these provisions, placing the decision on whether to allow oral evidence at a PI or mixed committal in the hands of the judiciary, had not been commenced – while the Department was working with criminal justice partners to introduce the relevant provisions, the Fresh Start Three Person Panel published its report which included the recommendation that legislation should

be brought forward to further reform committal proceedings to remove the need for oral evidence before trial. The recommendation was accepted by the Executive in its Action Plan",

which, it says here, was published in July 2018. That surprises me. The report continues:

"The Department therefore believes that Clause 1 and Clause 2 are required to fulfil the Fresh Start Recommendation and that retaining the interests of justice test provided for in the 2015 Act would fall short of addressing the recommendation."

The Department is saying, "Never mind the House; the Three Wise Men from Fresh Start know better". What would 90 MLAs know? Fresh Start recommendations override the legislative will of this House.

These amendments are an attempt to restore the equilibrium and authority of this House. After lunch — because I suggest that you are about to call me down, Mr Deputy Speaker *[Laughter]* — I will explore the merits of those amendments and why, in the interests of justice, it is right to keep the option for oral evidence.

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 Question Time to the Minister of Justice, after which we will continue with this debate, and Mr Allister will be able to complete his commentary.

The debate stood suspended.

The sitting was suspended at 12.59 pm.

2.00 pm

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

Oral Answers to Questions

Justice

Mr Principal Deputy Speaker: Question 6 has been withdrawn.

Prostitution: Historical Convictions

1. **Mr Gildernew** asked the Minister of Justice whether she will review historical convictions related to prostitution where women have been recognised as victims of trafficking. (AQO 2781/17-22)

Mrs Long (The Minister of Justice): I am aware of the initiative announced by the Justice Minister for Ireland to expunge convictions for certain repealed offences related to prostitution. I understand that her Department has commissioned a review of the criminalisation of the purchase of sex provisions introduced in the Criminal Law (Sexual Offences) Act 2017. Legislation to provide for the expungement of convictions for offences repealed by the 2017 Act will await the outcome of and recommendations made in that review.

It is often the case that human trafficking is linked with other organised crime in the sex industry and that victims may be targeted for sexual exploitation because of their vulnerabilities, which could include poverty and drug addiction.

There are existing protections in Northern Ireland for those forced into prostitution through no act of their own. Under section 22 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, a slavery or trafficking victim is not guilty of an offence where the person does the act because they are compelled to do so.

I will meet the Justice Minister, Helen McEntee, in the near future and will discuss the issue further with her. I will continue to monitor developments in Ireland and consider their applicability for Northern Ireland.

Mr Gildernew: Minister, you have largely answered my question on the expungement of records. Clearly, you are aware that it is taking place in the Twenty-six Counties. Are you

indicating a firm commitment that the records of those who have been victims of trafficking and who have been convicted of prostitution or offences of that nature will be expunged?

Mrs Long: Victims of trafficking are already not guilty of an offence where they are complicit in an act because of compulsion, so they would not be convicted of an offence in Northern Ireland. However, my officials will explore, in liaison with colleagues in the Irish Justice Department, the approach that is being taken there on making legislative provision for historical offences. My Department will also undertake research on how victims of human trafficking might be identified and on the potential number of convictions for all repealed prostitution offences. Once I have all the relevant information, I will consider a way forward.

Mr Blair: Given the appropriate emphasis placed on this issue by the police, the Policing Board and, indeed, the Department, what advice would the Minister give to those who come across what they believe to be modern slavery?

Mrs Long: Anyone who comes across a situation that, they believe, may be linked to modern slavery has not just a moral duty but a duty to wider society to report that to the police as early as possible. We know that there are people in our community who have been trafficked here. People are trafficked within our communities and from here to elsewhere. It is hugely important that the public are aware of the signs of trafficking. A lot of work has been done by a huge number of voluntary organisations and partner bodies with us to raise awareness of human trafficking and its signs. I hope that people will make themselves familiar with the indicators of trafficking and will have the confidence to come forward and make disclosure to the police where they believe that human trafficking may be involved.

Ms S Bradley: The Minister cited other legislation relating to cases that may be held against a person who has been established as having been trafficked and said that the person's record would be expunged. Has she given any thought to joining the dots in all that legislation to ensure that any person found to be trafficked walks away with an appropriately clean record?

Mrs Long: It is already the case that an act committed by a victim of human trafficking under coercion will not be an offence. Those protections are there. The issue is with what happened before 2015, for example, to people who may have been prosecuted for coerced prostitution at that time. Of course, there will be further gaps. The Member will be aware, from her membership of the Justice Committee, that we are looking at areas around human trafficking and what we can do for victims of it through that legislation.

It is my hope that we will continue to refine and improve what we do not just in our support of victims of human trafficking but through the prevent and pursue priorities in our strategy, because I would like to see the organised criminals behind human trafficking taken off our streets.

Mr Buckley: The scourge of human trafficking is still an all too common sight on our streets, and my thoughts are with all who have been affected by it. Will the Minister outline the support packages that exist to help those who have been the subject of human trafficking? Does she believe that the police are doing enough to end that scourge?

Mrs Long: There are a number of parts to that question. We are about to put the support that we offer on a statutory footing through the Bill that is going through the Committee. We have extended the current minimum provision in Northern Ireland — that was done by David Ford during his time as Minister of Justice — and intend to put that on a statutory footing. Also, an incredible amount of work has been done by the PSNI.

A number of people are considered to be first responders when it comes to human trafficking, so we are looking for an increase in the number of referrals to the national referral mechanism. That will reflect not only the increase in the scale of modern slavery and human trafficking but the greater awareness of the issue that may have contributed to the increased identification of victims.

We also want to see an increase in the number of prosecutions. They are complex crimes. Often, because the crime has been committed elsewhere, it can be difficult to secure convictions. Despite those challenges, it is hugely important that the PSNI continues to enhance its capacity to tackle those crimes and, by engaging with other law enforcement agencies and stakeholders, continues to pursue offenders using all the available tools at its disposal.

‘How the Criminal Justice System in Northern Ireland Treats Females in Conflict with the Law’

2. **Ms Ní Chuilín** asked the Minister of Justice for her assessment of the Criminal Justice Inspection report ‘How the Criminal Justice System in Northern Ireland Treats Females in Conflict with the Law’. (AQO 2782/17-22)

Mrs Long: I welcome the publication of the Criminal Justice Inspection Northern Ireland (CJINI) thematic inspection of how the criminal justice system treats females in conflict with the law in Northern Ireland. It provides a useful insight into the challenges faced by women transitioning through and out of the justice system. I also recognise the need, as suggested by CJINI in its inspection, to move from a gender-informed approach to a more gender-responsive one. That is not about a different standard being applied to police actions, prosecution decisions or probation practice because the defendant is a women or a girl; rather, it is about how the criminal justice organisations and our partners take account of and deliver services specific to women and girls to provide equitable outcomes.

I remain committed to supporting and improving life chances and outcomes for women and girls who come into contact with the justice system. However, I also recognise that, given the range of issues involved, justice cannot do that alone. Therefore, I am grateful for the ongoing co-design and delivery working that we enjoy with voluntary, community and statutory partners.

I have carefully considered the full range of strategic and operational recommendations in the report and have asked my officials to ensure that they are considered in full before the finalisation of our new justice-wide strategy for supporting women and girls who come into contact with the justice system. The strategy will be trauma-informed and focus on the breadth of contact that women and girls have with the justice system, seeking to support them at an early stage in the community and in and beyond custody. The strategy is under development, and we will seek to publish it around the end of the financial year. Naturally, my officials will keep in contact with CJINI as we progress that work.

Ms Ní Chuilín: Minister, I appreciate your responses. You have answered two questions that I was going to ask.

I welcome your support for the CJI report, which is really important. You also mentioned that, with co-design and co-production in mind, you are still looking at part of your strategy. Will that be part of your strategy, along with your NGO partners, to ensure that the disproportionate outcomes for women and girls in the justice system are looked at through the lens of not only greater equality but better life outcomes?

Mrs Long: It is hugely important that we do that. There is a need for a strategic approach across the criminal justice system and justice agencies when we work with women. I also accept that there is more that we can do in individual agencies and across the justice sector to address the needs of women and girls in a more gender-responsive and trauma-informed way. The most appropriate vehicle for delivering on that is the new justice-wide strategy for women and girls in contact with the justice system. If we can co-design that with our partners, we will get the best possible outcome, which, as I said, we will, hopefully, be able to produce in this mandate.

Mr Lyttle: I welcome the Justice Minister's commitment to early intervention to prevent offending by women and girls. We will require prison accommodation for those who enter our care, so will the Minister provide an update on the new female facility?

Mrs Long: Subject to the necessary funding being made available, the target date for the delivery of the new female facility is mid-2025. The estimated cost of the project is £33·5 million. Delays in the development, however, could increase costs through construction cost inflation and the potential loss of resource savings.

I am committed to delivering the strategy, which focuses on supporting women and girls as early as possible, but I am absolutely committed to ensuring that, where appropriate, where women are held in custody, it is done in the best possible circumstances.

'Report on Speeding up the Justice System'

3. **Ms Dillon** asked the Minister of Justice for her assessment of the Public Accounts Committee’s 'Report on Speeding up the Justice System'. (AQO 2783/17-22)

Mrs Long: I welcome the Public Accounts Committee (PAC) report, which highlights the scale of the challenge that we face in tackling delay in Crown Court cases. Those are often the most serious cases and can have a big

impact on victims and on public confidence in the system. It was pleasing that the PAC noted some of the work that has been ongoing to speed up the justice system, and one area in particular that the report focuses on is digital working. That has been particularly important in the context of COVID. It has enabled justice organisations to work within relevant health guidelines and is something that we will look to build on further. The report also acknowledges, however, that backlogs created by COVID will take time to clear.

In the report, the PAC acknowledged the significant role that committal reform will have in speeding up Crown Court cases and alleviating stress on victims and witnesses. It is therefore timely that the Criminal Justice (Committal Reform) Bill is back before the Assembly for debate this afternoon immediately after Question Time concludes.

Ms Dillon: I thank the Minister for her answer. Also outlined in the report is that one of the failures in speeding up justice is the lack of connected working and partnership working among the agencies in the justice sphere. Having had the benefit of being on both the Justice Committee and the Policing Board, I know that that is a real issue. I wonder how it can be addressed. I know that some work has been done, but that work is clearly nowhere near enough, given what the report has highlighted. Will the Minister respond on how we can improve on that?

Mrs Long: My officials are working with colleagues in the relevant criminal justice organisations on preparing a formal response to the six recommendations in the PAC report. It will be laid before the Assembly in due course. Further work is required to explore in more detail the issues that were raised. I realise, however, that more needs to be done to tackle delay in Crown Court cases, and I broadly welcome the report's findings, which have the potential to contribute to efforts to tackle delay.

The Department provides support to Crown Court cases performance groups (CCCPGs), which were established in 2019 and are chaired by the judiciary, bringing together justice agencies and defence lawyers to lead performance improvements at the local level. The Working Together Board, which is jointly chaired by the PSNI and the Public Prosecution Service (PPS), continues to drive improvements in file quality and effective decision-making. Those are just two examples of where partnership working has improved and how we can make more progress going forward.

Mr Catney: Will the Minister confirm whether any research is to be commissioned on the reasons behind the high number of adjournments and on whether those adjournments were avoidable? I ask that in the context of the culture of adjournment, as identified in the report, and considering their negative impact on victims and witnesses.

Mrs Long: Adjournments are for the judge who is in control of the court to make a judgement on. It is for the judge to rule whether the reason for the adjournment that has been sought by either side in the court is an acceptable one for further adjournment. In making that decision, the judge will take account of the impact on victims and witnesses and on the accused, because, of course, until proven guilty, that is an innocent person who may be subject to bail conditions or, indeed, may be being held on remand. It is therefore important, as we speed up justice, that we look not only to deal with the machinery of justice but to look at the reasons for adjournment. It is not something on which we hold statistics in the Department, but it is something of which the judiciary is aware.

2.15 pm

DOJ Legislative Programme: Update

4. **Mr Lyttle** asked the Minister of Justice for an update on her legislative programme. (AQO 2784/17-22)

Mrs Long: On my appointment as Minister of Justice in January 2020, I set out an ambitious legislative programme that involved a proposal to bring forward five separate Bills during the remainder of the mandate. I am pleased to advise the House that, as a result of the excellent work of the Office of the Legislative Counsel, together with the concerted efforts of departmental officials and the Committee, that plan is progressing well.

The Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 received Royal Assent on 1 March. Departmental officials are now progressing measures to facilitate the implementation of the new powers that are contained in the Act.

Two Bills have completed Committee Stage and have now progressed to Consideration Stage: the Damages (Return on Investment) Bill, which was debated on Monday 15 November, and the Criminal Justice (Committal Reform) Bill, which is due to be debated today. Subject to completion of the Consideration Stage debates on those dates, I am planning

for the Further Consideration Stage and Final Stage of both Bills to be completed before Christmas recess commences on 18 December.

Two further Bills are at Committee Stage: the Protection from Stalking Bill, which is due to complete Committee Stage on 10 December, and the Justice (Sexual Offences and Trafficking Victims) Bill, for which Committee Stage has been extended to 28 January 2022. Completion of the Consideration Stage, Further Consideration Stage and Final Stage of both of those Bills in the time that remains of the mandate will be challenging. However, I am confident of delivering all five of the proposed Bills before the Assembly rises for the next local elections in May 2022. I am grateful for the support of the Assembly and Committee in being able to do so.

Mr Lyttle: I thank the Justice Minister for the leadership that she has shown in delivering the legislative change and executive decision-making that will keep communities safe, and for doing so frequently in the face of death threats and heinous misogynistic online abuse. Thank you, Minister, for the courage that you show in that regard. There have been many times in the mandate when I have been extremely grateful that Naomi Long is Justice Minister. Can the Minister give an update on her work to prevent abuse in sport and faith settings?

Mrs Long: I thank the Member for his question. I think that we are meant to pay tribute to outgoing Members, rather than those of us who intend to run again, so do not write my eulogy just yet, Chris. It is important that I tell Chris that he has been an incredibly supportive MLA and member of my team, and, as a result, will be hugely missed.

Greater protection needs to be provided for young people who are in the care of adults who are in a position of trust in environments that are not currently prescribed in law. As it stands currently, the law protects only those young people who are in the care of adults in certain statutory settings, such as education, youth detention and social or hospital care. I intend to change the law to extend the scope of the "abuse of position of trust" offences that are contained in the Sexual Offences (Northern Ireland) Order 2008 by making an amendment to the Justice (Sexual Offences and Trafficking Victims) Bill at Consideration Stage.

I should mention that I have deliberately sought to bring that proposal forward within this mandate. I had previously intended to develop proposals more slowly for introduction in the next mandate. However, recent developments, such as the introduction of proposals for an extension of the law in England and Wales, and further representation from key interests, have persuaded me that earlier action is required. Draft clauses are currently in development. I hope to be able to share those with Members soon, and particularly with the Justice Committee, which is currently scrutinising the Bill.

That having been said, I can confirm that, on the basis of consultation and engagement carried out in partnership with the National Society for the Prevention of Cruelty to Children (NSPCC), I intend to extend the scope of the offences to the specific areas of sport and faith at this stage. That reflects those areas that have been highlighted as being of particular concern and where, unfortunately, the abuse of power by adults who are responsible for children in those settings has become all too prevalent.

Ms Dolan: I thank the Minister for her answers so far. I welcome the progress in bringing forward essential legislative change, particularly in the areas of domestic and sexual violence and abuse. I commend the Minister and her Department for that. As the Minister is aware, serious concerns remain that the Justice (Sexual Offences and Trafficking Victims) Bill that relate to upskirting, down-blousing and image-based sexual abuse do not go far enough to effectively tackle those problems. Can the Minister therefore commit to strengthening the Bill if required?

Mrs Long: The Bill is now with the Committee. I intend to listen carefully to the feedback that I receive from the Committee. Where I believe that robust alternatives exist that can be included in the Bill, I am, of course, open to doing that, and have demonstrated that on a number of occasions as we have passed legislation through the House.
Members need to reflect on the fact that, whilst it may be the last piece of legislation to pass in the mandate, it will not be the last piece of legislation to pass through the House. There will be plenty of opportunities for us, in future mandates, to improve legislation and refine what we do. It is important, at this point, that we focus on completing the legislation that is before the House so that none of the work by the Committee, the Department and our statutory partners is lost because of us running up against the deadline of the end of the mandate.

Sentencing Guidelines

5. **Ms Brogan** asked the Minister of Justice for her assessment of sentencing guidelines in cases involving indecent images of children. (AQO 2785/17-22)

Mrs Long: As members will appreciate, it is not appropriate for a Justice Minister to comment on the sentences imposed by the courts or on associated sentencing guidelines. Sentencing is a matter for the independent judiciary. It is a complex exercise that is carried out by highly trained judiciary, based on the evidence presented during the course of the trial and guided by any relevant sentencing guidance.

Sentencing guidance is also a matter for the courts. It is created to assist judges in ensuring a level of consistency in the sentences that they impose. There is provision for the review of sentences in the most serious cases. Where a sentence is considered to be unduly lenient, it is open to referral to the Court of Appeal for reconsideration.

We have robust legislative frameworks to deal with a variety of sexual offending behaviours, including those carried out against children. The specific offence of making indecent photographs of children in the Protection of Children (Northern Ireland) Order 1978 carries a maximum sentence, on indictment, of up to 10 years' imprisonment. Adult offenders convicted of that offence, or those who, irrespective of age, have been sentenced to at least one year’s imprisonment, are subject to notification requirements of the sex offenders register. They also come within scope of civil prevention orders aimed at managing risk, such as the sexual offences prevention order (SOPO).

Breach of notification requirements or conditions of a SOPO is a criminal offence that carries a maximum sentence of up to five years' imprisonment. I am very conscious of perpetrators exploiting the new opportunities arising during the pandemic period by taking advantage of the vulnerabilities of many within our society and their increased use of online communication to stay in touch. I am committed to ensuring that appropriate law is in place to enable our authorities to deal with that kind of abhorrent behaviour. In addition to the existing offences, I am taking forward new provisions, in the Justice (Sexual Offences and Trafficking Victims) Bill, that will strengthen the law to provide additional protection for our community.

The UK draft online safety Bill is making its way through Westminster. The draft Bill provides a particular focus on protecting children and young people from a range of online risks such as grooming, revenge porn, hate speech, images of child abuse and posts that relate to suicide and eating disorders. The draft Bill also includes proposals on how to address terrorism, disinformation, racist abuse, pornography and online scams.

Ms Brogan: I thank the Minister for her answer. In recent weeks, representatives of safeguarding organisations have criticised the sentencing guidelines for cases involving indecent images of children, particularly in relation to those cases in which offenders have avoided prison after pleading guilty to charges of making indecent images of children. Does the Minister intend to review the sentencing guidelines?

Mrs Long: Sentencing guidance is created by the courts. It can take the form of guidance in guideline cases that are often issued by the highest court, the Court of Appeal, or it can be in guidelines issued by the Lady Chief Justice's sentencing group. The purpose of sentencing guidance is to assist judges in coming to what can be complex decisions and to ensure that there is a level of consistency in sentencing. My Department therefore has no role in the matter.

It should also be borne in mind that one consideration for any judge is the opportunity for rehabilitation of the offender and management of the risk. It may be better in certain cases in which an offence would attract a rather short custodial sentence to provide a longer, non-custodial option so that more rehabilitative work can be done with the offender, rather than them simply exiting jail with no additional support or supervision afterwards. That is a balance that only the judge in charge of the case can seek.

Whilst I understand, of course, the reasons why people are concerned when they see these cases, I encourage people to read the full judgement so that they fully understand the weight that the judge has applied to different issues, and, if they remain concerned, to write to the Lady Chief Justice, who will be more than happy to facilitate engagement.

Blasphemy and Blasphemy Libel

7. **Mr Stewart** asked the Minister of Justice what steps have been taken to review blasphemy and blasphemy libel as common law offences in Northern Ireland. (AQO 2787/17-22)

Mrs Long: The common law offences of blasphemy and blasphemy libel are archaic and have no place in a modern society. I am committed to freedom of and freedom from religion, and am sympathetic to removing such outdated and unused offences from the law. My intention was to remove those common-law offences during this mandate. However, as Members will be aware, I did not get the full support needed to legislate in that respect as part of a miscellaneous provisions Bill.

Mr Stewart: I thank the Minister for her answer and her responses to me on the matter over the past year or so. Before the laws on blasphemy, which are, in reality, dead letters, were removed in England and Wales, there was public consultation. Key stakeholders, such as the Church of England, were in favour of deletion. Why has similar preparatory work not taken place here? Will the Minister commit to seeking the views of church groups and other interested parties in a formal public consultation?

Mrs Long: The reason that consultation has not taken place is that we have not developed policy in this area because there is not sufficient support for us to do so. My Department, like every other, has limited resource. Given that we are trying to legislate on five pieces of substantive legislation, and all the other work that the Justice Department is engaged in, we do not have the capacity to develop policy in an area that is not listed for legislation to be taken forward on. However, as I have said, it is my desire to see that done. There is a significant benefit to doing so. Before that happens, there will, of course, be a public consultation.

Ms Ferguson: You will be aware that the blasphemy laws have been repealed in the South, and likewise in England and Wales and Scotland. Would you agree, as you have previously, that, although the laws are still on the statute here, they are outdated, do not represent the modern Ireland that we live in today, and should be removed as soon as possible?

Mrs Long: I agree that the laws are both archaic and, more importantly, unused. Therefore, it makes sense to abolish them. My Department is competent to legislate in this area. Members are aware that I made efforts to do that as part of the overall miscellaneous provisions Bill preparations. Unfortunately, that was not possible because we ended up with a Bill that was much narrower in scope and that would not allow us to bring later amendments that might have addressed the issue. However, it is important, not only because they are archaic and unused, but because their removal would send out an important message to other jurisdictions where blasphemy laws are not unused and where they lead to people of a different faith to the majority persuasion being persecuted and, in some cases, sentenced to death. It is very difficult to go with any degree of credibility to those countries and demand the repeal of their blasphemy laws while our laws remain on the books.

Mr Blair: The Minister has touched on this, but I will ask the question. I am aware of the Minister's long-standing commitment to freedom of and freedom from religion. Does she share my frustration that we do not have a legislative vehicle to repeal those offences and that that should now be a priority?

Mrs Long: I agree that it is frustrating that we do not have a vehicle. I have to say that it will not be our priority in my Department over coming months simply because of the pressure of other work that we desire to finish by March of next year. However, we hope to bring forward a miscellaneous provisions Bill in the next mandate and that the blasphemy laws will fit comfortably into that. It is not particularly complex legislation to repeal. As other Members have suggested, we will, of course, want to give people the opportunity to respond to any public consultation on that. However, it will not dramatically change the view that having archaic legislation on the books that is not in use is not particularly helpful to anyone.

Mr Principal Deputy Speaker: We have about 60 seconds left. There is just time for Mrs Barton to ask her question and get an answer.

Assets Recovery Community Scheme Fund

8. **Mrs Barton** asked the Minister of Justice for her assessment of the assets recovery community scheme fund in delivering community initiatives. (AQO 2788/17-22)

Mrs Long: Funding from the assets recovery community scheme, which is administered by my Department, is used to prevent crime, reduce the fear of crime and support victims, communities or the environment. Since its inception in 2011, the scheme has invested in a wide range of programmes and interventions and delivered tangible benefits through organisations working for the good of their communities and in support of key justice priorities. The effects of the funding allocated to

community initiatives under the scheme have been entirely positive.

The funding awards have provided a range of positive outcomes for individuals, groups and their wider communities. The fund is about using money that would otherwise line the pockets of criminals and fund their lavish lifestyles to support positive action and interactions in the community, such as offering interventions and diversionary activities for young people to prevent them from engaging in antisocial behaviour; helping to offer a better pathway to those at risk of offending or reoffending; and supporting people with addictions to improve their health and life chances. It has also offered work experience and mentoring initiatives to prisoners and individuals under probation supervision to support their resettlement and reintegration into family and community life, and to challenge repeat offending; supported initiatives to raise awareness of and address important issues such as domestic violence, human trafficking and scams; and delivered community safety initiatives to help people feel safer in their home and local community.

2.30 pm

Mr Principal Deputy Speaker: We now move to 15 minutes of topical questions. Question 2 has been withdrawn.

Abuse: Adolescent Relationships

T1. **Ms Hunter** asked the Minister of Justice, in the light of this Thursday being the International Day for the Elimination of Violence against Women and the fact that it is reported that one in four young women, aged between 15 and 19 years old, has experienced psychological, sexual or physical abuse from a partner, what steps her Department is taking to address abuse in adolescent relationships in Northern Ireland (AQT 1821/17-22)

Mrs Long: I thank the Member for her question and for her continued interest in the issue. She is, of course, right to highlight the issue of violence against women and girls. It is something that we recognise and see through not only domestic abuse and violence in our communities but the kind of intimidation, misogyny and sexism that we see in wider society. It has a huge impact on not only the mental health and well-being of young women and girls but their aspirations. Such intimidation and behaviour limits their life choices. Trying to deal with those issues is a priority for me, and it is something that I want to see being developed. However, when it comes to dealing with young people, particularly, the key vehicle is the Department of Education. The previous Minister, who I see in the Chamber at the moment, had committed to a review of the minimum content order and had engaged with me, proactively, on the issues and how Education could play a role in delivering on the Gillen review, for example, when it comes to such issues as consent and other matters, in the school curriculum. Sadly, that has not been reflected in the performance of his successor. I have written to the Minister of Education, asking for an update on the issue, on two occasions, and have not had any response, and, given comments that were made at a recent Executive meeting, it appears that she has resiled from the idea that there is any review ongoing of relationships and sexuality education in schools.

Ms Hunter: I thank the Minister for her response. I express my support for, and solidarity with, her following the events that took place last week. I agree with her wholeheartedly: education is a big part of the answer in teaching young people what abuse looks and sounds like. It is extremely disappointing that the Education Minister has not responded on the matter. Will the Justice Minister assure us that her Department will liaise with the Department of Education, where possible, in the future, to ensure that, on these sensitive issues, our curriculum is fit for purpose for young people?

Mrs Long: I thank the Member for her support; indeed, I thank many Members for their support over the past week. Those of you who know me well will know that I will not be deflected by bullying, be it online or in person. However, I recognise that there will be those who witness it and will question whether, as women, they want to step into the public eye and, potentially, have themselves subjected to such abuse. That is wrong, because it deprives our community of important voices that need to be heard.

The Member asked about my Department continuing to engage with the Department of Education. We ran three workshops with the Department of Education, and we have worked well with its officials in trying to move things forward. However, it is important that the policy is driven by the Minister. Therefore, it is important that we are able to sit down and have the conversation about how we can move this forward during this mandate, in the hope of being able to provide for a fresh start in the next

mandate, because, obviously, the legislation would not happen in the current mandate.

It is hugely important that we provide proper relationships and sexuality education. It should be age-appropriate and sensitive, but it should also be fact-based, and it should equip young people for life. That means giving young people the information that they need and showing them what healthy relationships look like. The assumption that every young person will have a role model for that at home is profoundly flawed. We see that when we know that one in three women will have been subjected to domestic abuse and violence. Therefore, we need to provide that sort of wrap-around support in schools. In doing so, we will also create an opportunity for young people to come forward and confide in teachers their experiences of domestic abuse and violence in the home.

Retail Workers: Legislative Protections

T3. **Ms Brogan** asked the Minister of Justice for her assessment of legislation to protect retail workers from abuse and assault. (AQT 1823/17-22)

Mrs Long: At present, the Department's focus is on those working in front-line services, such as first responders and others, when providing additional support and criminal offences in relation to that. We are, of course, open to listening to the case, if one is to be made, for putting in additional protections for those working in shops and retail environments. All of us recognise that those who work in the retail industry and those who are front-line workers in many other sectors are exposed to the public on a daily basis. That can be a joy at times, but, as elected representatives, we all know that it is not always so. It is important that people are properly protected and that employers take a no tolerance approach in order to protect their employees when such things happen.

Ms Brogan: I thank the Minister for her answer. A recent survey by USDAW revealed that 90% of respondents have been assaulted in the last 12 months and that one in seven has been physically attacked. Last week marked Respect for Shopworkers Week. Does the Minister agree that this is an opportune time to consider more legislative protection that will act as a deterrent against that behaviour?

Mrs Long: There is always an opportunity, particularly coming out of the COVID pandemic, to reflect on how shopworkers have been going the extra mile to support the community. It is a good time to reflect on those issues. Not all solutions, however, will be legislative solutions; there may be others that can be implemented much more quickly by, for example, providing better support and reporting mechanisms to the police and others when offences occur.

There is an issue here in how we, as a community, treat those who work in the service industries around us. To me, the abuse that I see meted out to people, whether it is in shops, restaurants or wherever else, is completely unacceptable. When people are there to provide a service for you, you have a duty to behave respectfully when you engage with them. Falling short of that should be socially unacceptable, not just against the law.

Tackling Paramilitarism Programme: Update

T4. **Mr Dickson** asked the Minister of Justice for an update on the tackling paramilitarism programme. (AQT 1824/17-22)

Mrs Long: The purpose of the cross-Executive programme is to build safer communities that are resilient to paramilitarism, criminality and coercive control. That is important work to end the harm caused to our society by paramilitary groups. Phase 2 of the programme began in April this year, and its implementation continues. The projects in the programme continue to work collaboratively to deal with the harm caused by paramilitary groups and to support people and communities to build resilience. The programme has continued to support those who are most vulnerable throughout the pandemic and continues to promote collaboration and problem-solving amongst project partners to deal with coercive control from paramilitary groups.

The work to tackle paramilitarism, criminality and organised crime will succeed only if it is supported by political leadership from elected representatives in order to invoke change and create a society where paramilitarism is resigned to the past. We must lead in a way that empowers communities and promotes participation. That will enable us to best address some of the challenging issues around the scourge of paramilitarism.

Mr Dickson: I appreciate your answer, Minister. Moneylending is one of the most difficult areas to tackle in relation to paramilitary crime. In my constituency of East Antrim, I am only too aware of the corrosive effect that it has had on families and individuals once they get

into the cycle of borrowing from paramilitaries in their community. There are excellent community groups, such as Christians Against Poverty and others, that provide a great deal of support, but they, too, are hampered, because, when they go to assist a client to repay the debt —

Mr Principal Deputy Speaker: Will the Member get to his question?

Mr Dickson: — the paramilitaries refuse to accept the funds. Minister, will the programme assist in dealing with the scourge of moneylending?

Mrs Long: Illegal moneylending is a much under-reported crime and it is a crime that we know causes significant harm in communities. It is under-reported for a number of reasons, including fear of retribution and shame of becoming involved with paramilitary organisations in order to borrow money. Let me be really clear about this: there should be no shame involved for those who have borrowed money from individuals in the community who then go on to try to use that indebtedness to abuse that individual and coerce them into activities that they are not interested in.

We talk about human trafficking and the victims of human trafficking, but many people in our community are coerced into drug dealing and prostitution and into allowing their children to be involved in drug dealing in order to support local paramilitary organisations as a result of inability to repay loans. From our research, we know that, in the majority of cases, illegal lenders are either paramilitaries or are backed or directed by local paramilitary gangs. That is one of the many ways in which paramilitary gangs exploit and harm vulnerable people.

The illegal moneylending public awareness campaign has been running since June this year, and I encourage Members to look on the Justice Twitter feed — perhaps not my Twitter feed, unless you want a really depressing read — because there is some really good material there about moneylending. An evaluation process is in place and a baseline pre-campaign survey was conducted in spring 2021, and that will be repeated in spring 2022 in order to assess its effectiveness.

In the current climate, people are experiencing real financial challenges, with the continuing difficulties presented by the pandemic, an end to the furlough scheme and increasing energy and fuel prices, all in the run-up to Christmas. This is a challenging time for many people, which will make them more vulnerable to the advances of illegal moneylenders. In the campaign, we have redirected people towards the kind of advice that they need in order to avoid becoming embroiled with illegal moneylenders. To keep the focus on the issue, the next phase of the moneylending campaign will launch on Monday 29 November, and new adverts will run until the end of January 2022. I ask Members to share those adverts and amplify the campaign's message, which is important for our constituents.

Race Hate Crime

T5. **Mr O'Toole** asked the Minister of Justice, after adding his voice to those standing in solidarity with the Minister and condemning the loathsome online bullying that she has had to endure, and stating that, while not wanting to be flippant, he and the Minister have spoken in the past about sharing a hair colour and, with that colour, the need to be able deal with obnoxious remarks, albeit not only is she well able for it but she is a public representative who has shown through the test of time that she will not be bowed by such behaviour, to state what she and her Department are doing to tackle race hate crime, given that, with him representing the most diverse constituency in Northern Ireland, indeed perhaps on the island of Ireland, when he meets people from the BAME community and different groups, including, the week before last, the Sudanese community, he regularly hears that they feel that reporting hate crime has become almost pointless, and it is a real concern that race hate crime is dramatically under-reported in Northern Ireland, with Patrick Corrigan from Amnesty saying recently that this place risks becoming “a safe haven for racists”. (AQT 1825/17-22)

Mrs Long: I thank the Member for his solidarity; we redheads need to stick together. It is important to remember, of course, that redheads are also fierce and, therefore, will not be bowed by such abuse.

On the issue of hate crime, we are, as you know, looking at Judge Marrinan's report and are trying to take that forward. We will need to do further consultation on some areas, which we intend to do in the near future. Some of those areas are quite complex in terms of how we define the hate crime — whether we have it as an aggravating factor to an existing sentence or define it as a crime in itself. However, once that consultation has concluded, we will be in a position to make the final policy decisions, hopefully next year, and to prepare the rest of the hate crime Bill for introduction in the next

mandate. It will probably be the second Bill in the next mandate, after the miscellaneous provisions Bill, which I referred to earlier and which will be required as a catch-all for some of the things that had to come out of the current Justice Bill. However, I am hopeful that it will be passed by the Assembly with good support, because there is ample evidence that people in our community are being subjected to many kinds of hate crime.

I encourage people who see a hate crime being committed or who are subject to a hate crime not to lose heart and to report it to the police. If they are dissatisfied with the response that they get from the police, they should then report that to the ombudsman. It should not go unreported, and nor should it become acceptable. We should certainly not allow ourselves to become a safe haven for racism.

Mr Principal Deputy Speaker: I will allow a 10-second question and a 10-second response.

Mr O'Toole: Does the Minister agree that, as we introduce the Bill, it will be critical to consult our BAME communities early in order to give them the confidence that this place will not forever be a safe haven for racists?

Mrs Long: Yes.

Mr Principal Deputy Speaker: That is the way to do it; you get a gold star.

That concludes questions to the Minister of Justice. I invite Members to take their ease to allow for a change at the top Table. We will then move on to the next item of business.

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

Executive Committee Business

Criminal Justice (Committal Reform) Bill: Consideration Stage

Clause 1 (Abolition of preliminary investigations)

Debate resumed on amendment No 1, which amendment was:

In page 1, line 5, after "repealed" insert-

"save in respect of preliminary investigation proceedings resulting from a direction under Article 29A".— [Mr Allister.]

The following amendments stood on the Marshalled List:

No 2: In page 1, line 5, after "accordingly" insert-

"save in so far as is necessary to give effect to Article 29A of the Magistrates' Courts (Northern Ireland) Order 1981".— [Mr Allister.]

No 3: In clause 4, page 5, line 43, leave out from "for" to end of line 44 and insert-

"for the word 'documents' substitute 'copy of the notice of committal'".— [Mrs Long (The Minister of Justice).]

No 4: In schedule 1, page 9, line 13, leave out paragraph 18.*— [Mr Allister.]*

Mr Deputy Speaker (Mr McGlone): I call Mr Jim Allister to resume addressing amendment No 1 and the other amendments in the group.

Mr Allister: Before lunch, I was dealing primarily with the backstory to these amendments. I highlighted the fact that what I seek to do is what the Assembly thought that it had done and, in fact, had done in 2015, but it was thwarted by the Department taking upon itself the decision to defy the Assembly and never to make a commencement order in respect of the changes that were made.

Mrs Long (The Minister of Justice): I thank the Member for giving way. He will take into account the fact that the 2015 legislation could

not be commenced because of the election in 2016. He may also remember that, shortly after the election in 2016, we had the collapse of the Assembly and another election in 2017. We had a three-year hiatus during that period, so the only real opportunity for that legislation to be commenced has been since 2020. Of course, in the light of the evidence that was placed before me, I believed that it was better to revisit the issue than simply to commence the legislation that was already on the books. I do not believe that that legislation would have served the purpose of either its original intention or, indeed, the subsequent reports that emerged during that time.

Mr Allister: The date of Royal Assent to the 2015 Bill, which made it the Act, was 24 July 2015. The Assembly continued to sit until January 2017, so there was an 18-month period during which commencement orders could have been made.

Mrs Long: Will the Member give way?

Mr Allister: In a moment.

The explanation, such as it is, that the Minister has just given is, of course, totally different from the explanation that was apparently given to the Committee, as reflected in paragraph 69 of its report. I give way.

Mrs Long: First, the Member again ignores the fact that, between 2015 and 2017, there was an election in 2016. There was a hiatus in the Assembly in 2016, so it is not true that it sat the entire time during that period. It is also not the case that legislation can be commenced swiftly, particularly in such a technical area. Even the passing of this legislation will not lead to its immediate commencement. Preparatory work and operationalisation need to be done before any Bill can be commenced, so it is not unusual for commencement to take, for example, a year. It is likely to take a year for commencement of the Domestic Abuse and Civil Proceedings Act 2021 to get under way, and that is legislation that had unanimous support in the House. The conspiracy theories are perhaps best left to others. We should focus on the content of the debate.

Mr Deputy Speaker (Mr McGlone): That would be helpful, now that we have had a bit of chronology. Thank you.

Mr Allister: Yes. Even if, as the Minister suggests, we take out the 2016 election, there was certainly more than a year of the Executive and the Assembly sitting between July 2015 and January 2017. We have been back now almost two years. Neither the Minister nor her predecessor ever thought to come to the House to say, "In 2015, the House passed certain legislation, but, for the following reasons, it has not been commenced". The House was kept in the dark. Never once did the Minister come to the House and give an explanation of why she was not moving a commencement order. When her officials gave evidence to the Committee, if the Committee report is an accurate reflection, there was no talk about, "We did not have time"; it was, "We changed our minds because three wise men decided, in the Fresh Start Agreement, that it would be better to do something else".

Mrs Long: Will the Member give way?

Mr Allister: I will, but the Minister will have an opportunity to speak later, no doubt.

Mrs Long: It is incredibly difficult to understand how one can claim that the House was kept in the dark. I have announced, updated and set out my legislative programme and brought legislation to the House, and the Bill has gone through its First Stage and Second Stage. It has gone through Committee Stage. No one has been in the dark during the process, and, to be clear, the explanation set out by my Department is accurate. There were, as I said in my original intervention, subsequent reports and interventions by others that made it all the more important that we revisit the issue. As I said, there is no conspiracy here, and there is no lack of transparency. The Member should be careful about insinuating that there has been.

Mr Allister: One would have thought that, if what the Minister now says is the full story, the explanatory and financial memorandum would have made that clear. However, it does not even mention the fact that the commencement order was never moved.

Whatever way you look at this, we are in a situation where, six and a half years ago, the Assembly decided what the law should be on the subject. Then, despite that, the Department, which seems to think that it is above the House, decided, because some others had taken a different view, that it would not bother with that. Six and a half years later, here we are with me reading out a law that was approved by the House six and a half years ago and never actioned. One wonders how many other commencement orders have never been made in respect of legislation passed by the House.

So that it is clear what my amendments would do, they would reinstate what is in article 29A. I want to take a little time, because I was rushed just before lunch, in explaining practically what that would mean. It would mean that the vast majority of committal proceedings would not be by preliminary investigation; in other words, no evidence would be called. If an accused thought it appropriate to seek to have evidence called, under article 29A(2) they, the accused, could apply to the court for direction that a preliminary investigation be held. However, it is not there for the asking. Under 29A, the court has to weigh the matter and determine it on the question of whether it would be "in the interests of justice". In determining whether it would be in the interests of justice, 29A(5) lays down the clear test. This is what the magistrate has to be persuaded of; the onus is on the accused. He has to bring the magistrate to the point of believing that oral evidence would be "in the interests of justice". The tests in determining that are to:

"have regard to ... the nature of the offence".

So there could be a distinction between, maybe, a sexual offence, a violent offence and a non-violent one. The nature of the offence has to be put into the balance. One is conscious that there are people concerned about the victims of sexual offences, for example, so that their interests are particularly regarded. Not only does it say, in 29A(5), that the judge must take into account "the nature of the offence"; it says:

"the interests of the persons likely to be witnesses".

It is both the nature of the offence and the frailty or otherwise of the witness. Only if the magistrate is persuaded that, taking those things into account, it is nonetheless in the interests of justice to hear oral evidence is oral evidence ever heard. That does not seem to me to be an imposition too far; indeed, the 2015 resolution was a compromise in itself — very much so. Then we arrived at a situation that was acceptable to this House, where the nature of the witness and the nature of the offence were determinant issues in weighing up what was in the interests of justice.

Mr Beattie: I thank the Member for giving way. On the very point that you have talked about, article 29A(2) says:

"An accused may apply to the court for a direction".

You outlined clearly that, under paragraph (5), the court will then make a decision. What happens if the court makes a decision and says, "No" to that request? Is there or do you foresee there being a right of appeal? Would that slow the process down?

3.00 pm

Mr Allister: No. It is clear that you have to get a direction from the Magistrates' Court. You have to require a direction for oral evidence for oral evidence to be heard. So, no, I do not anticipate there being any appeal provision in that. I suppose that you could have a "case stated" appeal. That is a breed or type of appeal that allows you, if you wanted to argue that the judge got the law wrong on something, to cause him to state a case to the higher court. However, there is no rerun appeal such as you would have elsewhere. If you were convicted of theft in the petty sessions, you would have the right of appeal to the County Court etc. My understanding is that you would not have that right of appeal and you could get the oral evidence only on foot of a direction obtained through all of those hurdles. The purpose of the amendments is to bring us back to where, we thought, we were in 2015 in respect of that compromise.

The question then arises of why it matters. We need to understand that committal proceedings are an integral part of the trial process. When you say that you have a right to a fair hearing under article 6 of the European Convention, it encompasses the final hearing, the committal hearing, everything in between and, indeed, some things before. The process has to meet the article 6 test. It is not a process that is likely to be abused. If you take the situation that existed before we even got to this point in the law, in 2014, only 74 out of the hundreds and thousands of committals that were made went by preliminary investigation. That is a minuscule amount. Of those 74, 18 resulted in the person not being returned for trial; in other words, the magistrate threw it out on foot of the evidence at the time. The rest went on to trial. Of course, the corollary of that is that the public purse was saved the cost of 18 trials, a not insignificant thing.

The whole idea of a committal process is to see whether there is a prima facie case. That is the test. At the ultimate end of the criminal process, there can only be guilt beyond all reasonable doubt, but, for a committal, all that you have to do is show that there is a prima facie case, which is a much lower threshold. Of course, the reason why many are content with a return on the papers by way of preliminary examination

(PE) is simply that they want to get to the Crown Court as quickly as possible to get it over with, or they might know full well that they have no answer and there is no point quibbling over it, or they might decide that they will quibble over some of the evidence but will keep their powder dry, as it were, until they get to the Crown Court and not give the prosecution a dry run at it. There are all sorts of reasons why preliminary investigations and the calling of evidence are small in number, but it is still an important right to be able to call evidence.

Really, what it comes down to at the end of the day is this: where a judge says that it is in the interest of justice that evidence should be heard at a preliminary stage, knowing that that is in a very small number of cases, does the House think it right that, nonetheless, we should eschew the interest of justice and say, "No. There will be no evidence heard, because of our ideology that we don't do that", which seems to prevail in the Department of Justice, or do we think that there is nothing wrong with a fail-safe that says, "If a magistrate is persuaded that it is in the interest of justice to hear evidence, it should be heard", and he decides, having heard the evidence, whether the case reaches the threshold of a prima facie case?

I will say one other thing. If you have no committal process with a capacity for oral evidence, everyone in this country who goes on trial will do so on the foot of statements that have never even been sworn by the deponents, never mind tested. Remember what a set of preliminary inquiry papers are: they are a collection of statements from the complainants etc. They are rarely the words of the complainant. Invariably, they are the product of a police officer talking to the complainant and putting the complainant's story in the police officer's words. That is then typed up and presented as the preliminary inquiry papers, which are never sworn. On that basis, a citizen is returned for trial. In some cases, courtesy of the Gillen changes, depending on the nature of the charge and the nature of the witness, you can have a situation in which that witness is only allowed to be asked the questions that the judge approves. You have to hand in the questions that you are going to ask, and if the judge says, "No, you can't ask that", you cannot ask it. Therefore, you can have a really impossible situation in which someone is returned for trial without sworn evidence on the papers and with statements effectively written by police officers, to which the complainant has assented, and, even when they get to trial, there is no free and open cross-examination, because the questions are limited to those approved by the judge. That is where we have got to in the Province on some of those matters.

I am saying that the very least that we should do is to build into that system the protection that, if an accused can persuade a magistrate that it is in the interest of justice to hear some of the evidence in order to decide whether it passes the test and whether it is worth a trial, we should have that provision, rather than saying, "No, no, no". What are we scared of in allowing evidence to be tested? What is it that we think is not desirable about subjecting something to an interest of justice test? That is the question that the House has to grapple with in this matter.

What I am proposing is very modest. It is the least that, I believe, is possible. It is not something that anyone should have any difficulties with. The test of it all is this: is it in the interest of justice? Are we not interested in the interest of justice? Do we not trust our magistrates to decide what is in the interest of justice? If we do not, that is another matter. If we do, what is there to lose from that approach? I say to the House that it is time to return to the compromise of 2015 and embrace that in the Bill.

That is why I have tabled amendment Nos 1 and 2, and I say to the House that, if amendment Nos 1 and 2 are accepted, I will not need to oppose that clauses 1 and 2 stand part because they will have been satisfactorily amended. The choice that I am putting to the House is to restore ourselves to the 2015 position. I think that that is rational, reasonable and right. My other amendment, amendment No 4, is a corollary to amendment Nos 1 and 2. It is necessary to adjust the schedule by removing paragraph 18 because paragraph 18 seeks to repeal section 7 of the 2015 Act, which brought in article 29A.

I will leave it there. I trust that I have made it clear what the ambition is. I think that it is a modest but worthwhile ambition. I hope that the Minister could embrace it as being in the interests of justice.

Mr Storey (The Chairperson of the Committee for Justice): Before addressing the amendments, with your indulgence, Mr Deputy Speaker, I wish to make some general remarks about the Bill in my capacity as Chair of the Justice Committee. I pay tribute to my predecessor, now the First Minister, who at that stage was the Chair of the Committee, and to the work of his colleagues in the preparation of the report. The Committee supports the Bill, which will remove the need for victims and

witnesses to have to give general evidence pre-Crown Court trial by providing for the abolition of preliminary investigations and mixed committals. It also seeks to get more cases to the Crown Court more quickly by expanding the range of evidence to which direct committal will apply, and it makes a number of technical amendments to smooth the committal process.

The Bill is deemed to be a step forward in the Department's aim of abolishing the traditional committal process entirely, and the Committee is of the view that the phased approach being taken is an appropriate one. As the then Committee Chair outlined during the Second Stage debate on the principles of the Bill, there have been many calls for reform or, indeed, eradication of the committal process over recent years. In addition to the time that it takes for cases to progress through the criminal justice system, one of the key concerns about the process is the impact that it has on victims and on witnesses, who may be required to give oral evidence at the committal stage as well as at the trial itself. The experience of giving oral evidence can be traumatic, particularly under cross-examination, and has a significant impact. The Bill should improve the experiences of victims and witnesses as they will not be required to do that twice for the same case.

Following the Second Stage, the Committee published a media signposting notice in the main newspapers inviting written evidence on the Bill, and it wrote to a range of key stakeholders. Some 16 written submissions were received. The then Lord Chief Justice, Sir Declan Morgan, also provided a very useful commentary on a number of issues on behalf of the judiciary. The Committee took oral evidence from the Bar of Northern Ireland, the Law Society and the Public Prosecution Service, and the issues that were raised in the written and oral evidence were explored with the Department of Justice in writing and in oral evidence sessions. The Committee also sought the advice of the Examiner of Statutory Rules on whether the range of powers in the Bill to make subordinate legislation are appropriate, and, to assist consideration of the issues highlighted in the evidence, it commissioned two research papers on the reform of the criminal justice process in other jurisdictions and on statutory time limits. The Committee considered the Bill's provisions and the issues raised at 15 meetings before agreeing its report on the Bill at its meeting on 10 June 2021.

I thank members of the Committee for their contribution to the robust and careful scrutiny of the Bill and the issues raised in the evidence during Committee Stage. I also thank the organisations that provided helpful written evidence and particularly the representatives of the organisations who attended to provide oral evidence. Their contributions greatly assisted our understanding of the committal reform process in general and the changes that the Bill will implement. I also record the Committee's thanks to the departmental officials who provided additional information and clarification in writing and in oral evidence during the process.

3.15 pm

The Committee also appreciates the support and assistance provided by Assembly staff, including the researcher, the Examiner of Statutory Rules, the communications office, Assembly Broadcasting and staff from Hansard, who all played an important role in supporting the Committee to undertake its legislative scrutiny role in general and with the Committee Stage of the Bill in particular.

Finally, I thank the Committee team, who supported the Committee not just to complete the Committee Stage of the Bill but to progress the Damages (Return on Investment) Bill and the Protection from Stalking Bill, which were also under consideration by the Committee during that period.

It may assist the Assembly's consideration of the amendments to clauses 1 and 2 and to the schedule, tabled by Mr Allister, if I briefly outline the Committee's consideration of the provisions of the Bill, which he has already referred to. One of the stated aims of the Bill is to help to speed up justice and reduce delay in the criminal justice system. In the written and oral evidence that the Committee received, there were conflicting views on whether the Bill will have a noticeable impact in that regard. Concerns were expressed that it will simply shift delays from one part of the system to another. The Committee believes that early engagement between all parties, as well as effective case management procedures, is vital and that it is essential that the necessary frameworks and resources are in the right place to prevent delays being shifted in that way and to make a material reduction in the time taken for cases to be completed.

The Committee is not convinced that the Bill is a silver bullet but views it as one element of a wider programme of work that is required to speed up the justice system. Clearly, there are issues in other stages of the process. Data from the Department indicates that much of the delay comes at the earlier stages before the case reaches court. That illustrates the need for

more robust investigatory and disclosure processes. It is vital, therefore, that any reallocation of resources is not focused solely on the courts but encompasses the early stages of the process.

Despite the aim of the Bill being to reduce delay, the Committee remains concerned about the time taken for cases to progress through the criminal justice system. That issue has been evidenced for a considerable number of years without any demonstrable progress being made. The Committee therefore indicated that it wants to receive regular reports on the specific impact that the Bill has on reducing overall delay in the criminal justice system.

Notwithstanding the questions about whether the Bill will have an impact on delays in the system, the majority of those who responded to the Committee's call for evidence expressed support for the Bill and for the removal of oral evidence at committal stage. References were made to the impact that that has on victims and witnesses and to the additional stress and anxiety caused by the potential of having to give evidence twice. Instead of testing evidence to determine whether there is a prima facie case, some also contended that it was used as a tactic to test the resilience of the victim. The then Lord Chief Justice, Sir Declan Morgan, noted that a number of judges expressed concern that it may occasionally be used in that way.

The Committee also wants to see consideration being given to capturing how legislation improves the experiences of victims and witnesses once it is enacted. The main concerns about the Bill came from the Law Society of Northern Ireland and the Bar of Northern Ireland. They raised a number of issues that are relevant to the amendments we are considering, including whether there is a need to abolish oral evidence completely at committal stage or to instead apply the interest of justice test provided for in the Justice Act (Northern Ireland) 2015; the impact of the abolition of oral evidence and the right to a fair trial; the removal of preliminary investigations; and the mixed committal as a filter for weak or vexatious prosecutions.

Under the provisions of the 2015 Act the accused can, in certain circumstances, be directly transferred to the Crown Court for trial without the need for a traditional committal hearing. As introduced at the time, the Justice Bill also sought to abolish oral evidence at committal stage, but it was amended by the Assembly to provide for oral evidence to be called if a judge is satisfied that it is in the interests of justice to do so, as we heard from Mr Allister.

In its scrutiny of the Bill, the Committee ascertained that the interests of justice provisions in the Justice Act 2015 were never formally commenced, and it appreciates that concerns were expressed about that. The Committee sought an explanation from the Department regarding why those were not commenced, and it requested clarification and information on the other issues and concerns that have been outlined.

The Committee also requested further information from the Department on the Criminal Procedure Act 2021 in the Republic of Ireland, which introduced pretrial hearings in that jurisdiction, and how it compared with the current position in Northern Ireland and the position as changed by the Bill. In addition, it asked for that to be specifically covered in the research paper. Details of the Committee's consideration of those issues are set out in the report on the Bill.

The Committee was unable to assess the validity of the assertions made in the evidence that was received that the interest of justice test, as provided for in the 2015 Act, would appropriately safeguard the rights of all parties, given that it was never enacted, but it noted the recommendations from a number of reviews and reports that called for the implementation of direct committal. The Committee was advised that a defendant's right to a fair trial is not compromised by the removal of preliminary investigations or mixed committals as that right is secured at the trial stage of the criminal proceedings.

In weighing up the small number of cases to which the interest of justice test may apply against the thematic effect that the requirements to give oral evidence pretrial may have on victims and witnesses, the Committee concluded that the removal of oral evidence at committal stage will reassure victims and witnesses that they will not have to give oral evidence or be subject to cross-examination twice. As the Lord Chief Justice advised, it is difficult to argue for the retention of the process by which a small number of cases may be eliminated when considered against the risk of an injurious impact on victims and added delay to case progression, which affects not only victims and witnesses but defendants, who may spend a significant time in custody awaiting trial. Having considered the evidence received, the Committee agreed that it was content with the provisions of the Bill as drafted and does not seek to make any amendments to them.

After its consideration of the Bill was completed, the Committee was advised by the Minister of her intention to table an amendment to the Bill to make a small change. That is amendment No 3. As it currently stands in the Bill, any request for a legal aid certificate to the Crown Court can be made only after evidence has been shared with the court. To prevent any delay in providing legal representation for the defendant, the amendment will ensure that the legal aid certificate can be applied for at any stage after the case is directly committed to the Crown Court. The Committee noted the rationale for and the text of the amendment at its meeting on 14 October.

I have concluded my comments as the Chair of the Justice Committee. I will now make a few comments as a Member of the House and a member of the DUP. I thank the Member who spoke previously for the detail that he provided about the amendments. We should respect the experience that he brings to these matters, given his long history and association with things legal.

Our party fully supports the aims of tackling avoidable delay in the criminal justice system. I do not think that anybody in the House would argue that that is not a commendable thing to seek to achieve. We all know of the trauma that victims can go through when there is delay in seeking to get to a conclusion. There is a particularly pressing need to remove existing barriers to more efficient and timely court proceedings. That will benefit victims, first and foremost, but it will also ensure that accused persons have access to a fair and expeditious trial.

We take on board the points made by the Member for North Antrim. There is a need to ensure that the step change in relation to committal proceedings does not dilute the principles of justice or lead to otherwise weak cases being brought to trial in the Crown Court. We support the amendments, therefore, that protect the principles of preliminary investigations in those distinct cases in which a defendant seeks to claim a trial by jury.

The point has been made about this House: while it is far from perfect in its construct, it is what we have. How many times have we heard Members talk about the primacy of what the Assembly has decided on other issues? I may differ with them on a particular issue because my party or others were not able to secure enough votes after the relevant debate, but this is, for what it is worth and despite the weakness that comes from a five-party mandatory coalition, the House that has been appointed to pass legislation.

I share the concern — maybe that is putting it mildly — of Mr Allister. It was good to hear him use the word "compromise", because it is not something that he is given to doing. However, it is part of the process here: we try to come to an agreed position. That was done, and there was a settled will of the Assembly. I heard the Minister's interventions, but I am not convinced by what she said. That is because, in addition to paragraph 69 of the Justice Committee's report, which Mr Allister mentioned, we have the Department's clause-by-clause response to various comments made by the Bar of Northern Ireland. The Department states:

> *"Through the Justice Bill in 2015, the Department previously sought to abolish the option to hear oral evidence from victims and witnesses at a committal hearing. The experience of giving sometimes traumatic oral evidence, particularly under cross-examination, at both the committal hearing and then again at the Crown Court ... However, this did not receive sufficient support".*

It did not receive support at all. The Department continues:

> *"and, instead, an amendment was made that ensured oral evidence could only be called if a judge was satisfied that the interests of justice require it."*

Then it says this:

> *"However, in 2016"*

— not in 2017 or 2018 —

> *"the three person panel"*

— the three wise men; I know that we are heading towards Christmas, but I did not think that we were going to get there this soon —

> *"appointed by the Executive to report on a strategy for disbanding paramilitary groups recommended that 'the Department of Justice should bring forward draft legislation to further reform committal proceedings to remove the need for oral evidence before trial'."*

No account seems to have been taken by the Executive or the Department of what had been approved and agreed in the House. It is for those reasons —

Mrs Long: I thank the Member for giving way. It is wrong to say that no account was taken of what was agreed in the House. A programme board was set up by the Department to take through the commencement of the 2015 Act. The Fresh Start Agreement was not published by three individuals; it was accepted by all five parties in the Executive, and an action plan was produced on that basis. That was further reinforced by a commitment to committal reform as part of the New Decade, New Approach (NDNA) agreement. So, it was not the case that the Department ignored the decision that the House made in 2015; instead, that was overtaken by the decision of the Executive, including the Member's party, on how this would move forward. It would not have made sense for the Department to, potentially, do committal reform twice. Therefore, the effort that was being invested in bringing forward the committal reform from 2015 was redirected towards that which the Executive had agreed and reinforced their commitment to in 2020.

3.30 pm

Mr Storey: I thank the Minister for giving us that explanation. It raises a further question, however, which is this: what has primacy, the Executive or the House? Is it what was enacted, or is it subsequent political agreements? The Minister is right that it is a five-party mandatory coalition. I was not part of the deliberations at the time, but I have subsequently been moved to take up the position that I have now as Chair of the Justice Committee, and, having given it consideration, I believe that there is merit in what is being said about the House. I do not think that the NDNA agreement or any other document can direct this legislation to go in some other way, with limited reference to what happened in the House in 2015. If you read through the Committee report, you will see that the reasons given by the Department for why the 2015 legislation was not enacted are pretty light. The Member also provided an answer about the timescale. If you look at the timescale, you will see that there was surely ample time for the legislation that had been approved by the House to be enacted.

My next point is important. The Minister provided assurance about the capacity for evidence to be tested at an early stage in the Crown Court in the absence of preliminary investigations or mixed committals. That will need to be watched closely going forward. On balance, however, it is important that we strike a balance with the amendments between trying to reinstate what was approved and progressing the Bill. This is not about alleging that the amendments are about wrecking the Bill: they are not. I do not think that that was the Member's intention when the amendments were tabled, nor I do take that to be the case from anything that he has said in the House. I have heard the Member speak on many previous occasions in the House and know that, if he wants to wreck something, he is the one who can dismantle it, but I do not get the sense from him today that that is his intention or what he is about.

It is also striking that the Independent Reviewer of Terrorism Legislation made some observations in his latest report. He stated:

> *"Compared to the rest of the United Kingdom, the slow pace and procedural heaviness of criminal proceedings in Northern Ireland has a deleterious impact on the use of terrorism legislation:*
>
> *Individuals accused of terrorism offences either risk spending unacceptably long on remand waiting for trial, or are released on bail despite the seriousness of the offences of which they are accused".*

Special advocate support offices are used in other parts of the UK to minimise the risk of hearings being delayed, but there is not one in Northern Ireland.

That is just one other aspect of the caseload, but it underlines the deep and far-reaching challenges facing our criminal justice system. No one should therefore underestimate the challenges that the Minister and her Department face, but, on balance, following my comments and what has been said previously, it is our party's intention to support amendment Nos 1 and 2.

Ms Dolan: I, too, express my thanks and appreciation to the Committee staff for getting us to this stage. Sinn Féin supports the Bill as drafted and the Justice Minister's amendment No 3. It is a small, technical amendment to the Bill that followed an issue raised by the Office of the Legislative Counsel. It will ensure that legal aid certificates can be issued more quickly, which, in turn, will ensure that there are no delays in providing legal representation for the defendant. We are happy to support that.

Sinn Féin will oppose Jim Allister's amendments, which are an attempt to obstruct the primary objectives of the Bill in order to preserve the status quo. It is the same status quo that has helped lead us to a failing criminal justice system that has led to constant delays to justice and has, report after report tells us,

failed victims. Amendment Nos 1, 2 and 4 go completely against the principles of the Bill, which are to speed up justice and better protect victims and witnesses. They attempt to preserve aspects of the 2015 legislation that first sought to deal with the issue of committal reform, despite the landscape changing significantly since then. The committal reform Bill presents an opportunity to usher in a new era for the criminal justice system by setting in motion a process to eradicate the outdated and unnecessary committal process. The Bill's primary objective is to improve the operation of the criminal justice system by reforming committal proceedings, which is the procedure used to determine whether sufficient evidence is available to justify putting a person on trial in the Crown Court. We know that the Department's aim in the longer term is to eradicate the traditional process entirely. Sinn Féin supports that aim.

In its 2018 report, 'Speeding Up Justice', the Audit Office said that committal reform is needed urgently to cut delay in the justice system. That sentiment has been backed up in hugely important reports such as the Fresh Start panel report, the Gillen review of serious sexual offences cases and a number of CJINI reports. Furthermore, it was a key commitment in the New Decade, New Approach deal and remains one to which we are committed.

It is not just about speeding up the justice system. We are all acutely aware of the difficulties and challenges faced by often vulnerable victims and witnesses of serious crimes as they attempt to navigate the daunting and intimidating criminal justice system, particularly in cases such as rape or serious sexual assault. We know how difficult and traumatising it can be for victims to be cross-examined under oath at the Crown Court, so it is inexcusable that the current system allows victims to be doubly traumatised by having to go through that process twice. Worse than that, the associated stress, anxiety and fear that is faced by those victims is only compounded by the fact that around a third of people who request a preliminary inquiry or mixed committal hearing revert to written-only evidence on the day of that hearing.

Committal reform is supported by all the key criminal justice organisations and has the support of the office of the Chief Justice. The system is being abused, and it is time to get work done. We support the Bill and oppose the amendments.

Ms S Bradley: As the SDLP's member of the Justice Committee, I support the Criminal Justice (Committal Reform) Bill. The primary objective of the Bill is to improve the operation of the criminal justice system by reforming committal proceedings. As the explanatory and financial memorandum recognises, the process of oral hearings and cross-examination before a case is presented to the Crown Court can have a significant impact on victims and witnesses, who have to give often traumatic evidence more than once. The wrong that is being served to victims and witnesses during the committal period is in itself a wrong that is worth fixing in legislation. The arguments that have been made for that are clearly evidenced in the Gillen report of 2019. In addition to those considerations is the often cumbersome nature of the hearings. It is cited that the oral evidence can also be lengthy, with hearings lasting up to one or two days, and that problems are often experienced in organising witnesses to attend, which can lead to adjournments and increased delays in the Magistrates' Court before a case is sent to the Crown Court. The SDLP, therefore, endeavours to support the safeguarding of witnesses and victims, while aiming to streamline the judicial process more efficiently and remove any additional costs that arise as a consequence of delays.

The thinking that has underpinned the draft legislation comes from the Fresh Start panel of 2016, the 2018 Northern Ireland Audit Office report, the 2018 CJINI 'Without Witness' report, the 2019 Gillen review and the 2020 New Decade, New Approach agreement. During our scrutiny of the Bill at Committee Stage, we satisfied ourselves that the objective of taking a significant step to safeguard witnesses and victims in the justice system can be delivered by expanding the list of offences for direct committal and removing preliminary investigations that are based on oral evidence. That is a welcome development that weeds out some of the trauma and intimidation that can risk access to justice.

We recognise also how the lag in the committal reform process can add to the delay in case resolution, but I remain to be convinced that the Bill's speeding up of criminal justice will effectively address that delay. My concerns are based on the evidence that we heard of how operational difficulties, such as work on phone triage and technical work that is required ahead of presenting evidence, remain significant blockages in the system. It is therefore unlikely that the removal of committal will result in a sudden, steady flow of cases through the Crown Court; indeed, without a serious eye to the commissioning of resources, there is a strong possibility that a bottleneck situation

could be created at the entry level of the Crown Court.

The SDLP supports the Bill as a positive next step in reforming the justice system. We do so while keeping an open mind to the fact that the new judicial landscape will take time to become embedded. Weighing any loss in value derived from the committal process in the cases that have been listed against the empowering nature of the reform in supporting victims and witnesses, we believe that it is in the interests of justice to proceed.

Having considered the Member's amendments, I am not entirely unsympathetic to their objective. As the Chair of the Committee stated, the Member is not proposing the amendments in order to break the Bill. An important principle — when a judgement has been made by the House, any Department should act on it — has been played out on the Floor. I heard the Minister's chronological account, explaining why that did not happen, but I see that there was a window of time during which it could have happened. That said, the question that I have to ask myself is this: had that legislation been commenced, would I look at the amendments in a different light? I know that they are presented in a way to suggest that it had been commenced, and the Member who tabled the amendments gave reasons for that. I assure the Member that it is in my nature not to turn out anything before I am satisfied that it could not be reused or made fit for purpose; I have a utility room at home that gives evidence of that. When looking at the amendments, the question I had to ask myself was this: if, in, rightly, doing everything that we can to safeguard a cohort of people whom we recognise as perhaps being, at the least, uncomfortable inside the justice system, we look at an amendment that would preserve legislation that, by my reading of it, provides a wide caveat that it is for the magistrate to decide in all cases those in which it may be in the interest of justice to proceed using the preliminary inquiry, that is exactly the opposite of what we are trying to do. One hand is going in one direction, and this legislation takes us to a different place. Having said that, I am mindful that, in the South of Ireland, the Government are consciously contemplating the introduction of preliminary hearings in an effort to speed up their justice system. The Minister there, Helen McEntee, has been noting the stressful effect that delays can have on all parties, particularly victims and witnesses.

The legislation that the amendments seek to preserve contains, in my reading, too wide a discretion for the courts and could significantly undermine the safeguarding work in the Bill.

The SDLP is passionately supportive of safeguarding the protections for victims and witnesses, and we must assure ourselves that any proposals or efforts to seek the retention or reintroduction of anything that resembles a committal process at any time must have tailored, inbuilt protections for the victims and witnesses whom we are trying to safeguard today.

The proposed amendments do not do that. They open the goalposts far too wide and create a problem. I appreciate the intent behind them, and I can see where the Member is coming from. Unfortunately, in their current state, we are not in any position to support those amendments.

3.45 pm

In conclusion, the SDLP will support the Bill and amendment No 3, but we will oppose amendments Nos 1, 2 and 4.

Mr Beattie: I think that we all agree that our criminal justice system is far too slow. That undermines justice. It makes it really difficult to keep witnesses focused and able to maintain their ability to act as witnesses. Public confidence is also undermined by our slow justice system. We give bail to people with serious accusations and charges against them because the system is far too slow to deal with them. When people see that, it undermines the system. They think that our criminal justice system is not working, which is not particularly true.

The aim of the Bill is to speed up the criminal justice system. At the end of the day, it is not just about getting justice more quickly. That is important for the victims, of course, but it is also important for society to see that justice happens and happens in a timely manner. If you follow the justice process in Northern Ireland and compare it to justice in other parts of the United Kingdom, you will see that it is far slower. The Bill is about speeding up the justice process and protecting witnesses. That is important, and that is the intent.

It is very rare that I come to a debate having not made up my mind, and that I listen to what people have to say in order to decide whether I will go one way or the other. I have listened intently to what has been said. The amendments attempt to revive article 29A of the 2015 Act. I get all the nuances about why it did not come in and should have come in, and that is fine. We can look back at the 2015 Act, if we wish. Trying to revive article 29A as an escape

valve is absolutely laudable. It is perfectly right to bring that forward for debate. That is a good and sensible amendment. However, I look at that in contrast to what we are trying to achieve. We are trying to speed up the system in order to get justice more quickly and help victims. Would that amendment, in some ways, slow that down? Playing one off the other, I think that it would. I asked Mr Allister about:

> *"an accused may apply to the court for a direction that a preliminary investigation is to be held."*

He was quite right when he outlined that the court would make a ruling in the circumstances. However, my concern is that it would still take an awful lot of time. If more and more people do it, that would clog up the system. I do have concerns, and I think —

Mr Allister: Will the Member give way?

Mr Beattie: Yes, of course.

Mr Allister: Surely past experience shows that very few people seek to go down the preliminary investigation route. The Assembly has to answer this question: is expedition in those few cases more important than justice? By rejecting those amendments, the Assembly would be running away from making the interests of justice front and centre in those cases. Can that be right?

Mr Beattie: There are two points in that. We need to try to future-proof stuff. While there may be a small number who put in for a preliminary investigation now, that does not mean that it will be a small number in the years to come. If you believe in our justice system, you will believe that justice can be delivered in the Crown Court and that it does not just have to be delivered in the preliminary investigations. If the preliminary investigations are taken away, that does not mean that justice will not be served. I still feel that justice will be served.

As was said earlier, the amendment is too wide. My concern — it is my only concern — is that it would undermine the very reason why we are progressing the Bill, which is to speed up justice. It is a valid amendment, but, unfortunately, it is not an amendment that I can support. I will support the Bill, as drafted. I will not support amendment Nos 1, 2 or 4, but I will support amendment No 3.

Mr Dickson: Like others, I welcome the opportunity to debate the Consideration Stage of the committal reform Bill. It will greatly improve and modernise our justice system, as others have said, and it will, hopefully, deliver an enhanced victim experience by accelerating justice and ensure that the taxpayer receives value for money. The Bill has taken into account the recommendations from the Fresh Start Agreement, the Gillen review and the Northern Ireland Audit Office. It will end the need to give pretrial oral evidence at a committal hearing, which, unfortunately, can be a traumatic experience for victims in the justice system. More than that, if we do not address the issue now, people in Northern Ireland will continue to be affected by a long, drawn-out system, and delays in the system, which elevates costs for little tangible gain. It is worth noting that the committal process was abolished in England and Wales a number of years ago. I do not believe that there are any substantive reports that indicate that what happened as a consequence of that caused any detriment.

I support the Bill and the amendment tabled by the Department, which, although technical, refers to the issues of legal aid certification, but I cannot support the subsequent amendments from Mr Allister, which aim to revert provisions that were already legislated for in 2015. We have heard the Minister explain why the change in that regard has not happened. Committal reform has been on the agenda for some time. Much of this process was started by a previous Justice Minister David Ford. He began with an ambitious programme for reform when he was Justice Minister, and, today, the Minister is continuing that tradition in reforming and improving our current system. The Bill is a vital step towards reforming the justice system, and it will improve it for the defendant, the victim and the taxpayer. It will ensure that the process is faster and that rights are respected, and, in doing so, it will build confidence in our justice system and in how it serves all the people of Northern Ireland.

Mr Storey: I thank the Member for giving way. I am always concerned when Members talk in the House about how something will give a greater return for the taxpayer or, as is the case in this instance, say that a measure will dramatically speed up the justice process. Members must realise that there are over 600 people on remand, currently. That is my understanding. We are not seeing the system speeding up, and we are not seeing the outcomes envisaged in what was proposed by a previous Justice Minister. Sometimes, we have to anchor some of these reforms, as I said previously, not only to one element but to a wider piece of work including other elements of the judicial process, so that we get better

outcomes. It should be grounded in that sense of reality. There should be a recognition of the number of people who are currently on remand, albeit it is only one aspect of the judicial system. There are over 600 people on remand. That is a huge cost to the taxpayer.

Mr Dickson: I thank the Member for the intervention. I do not disagree, but I will defer to the Minister.

Mrs Long: I thank my colleague for giving way. I wish to put two things on record regarding the intervention by the Committee Chair. First, prior to COVID, we were seeing improvements in throughput in the criminal justice system. In fact, we had seen around an 11% increase, I think, in the number of cases being cleared. With COVID, we now have a backlog to clear in addition to trying to speed up justice. There are genuine challenges in that. I hope that he will support me as I make bids in order to continue to be able to invest in the criminal justice system.

Secondly, no one is arguing that the Bill is a silver bullet that will unlock everything in the justice system. It would be wrong to suggest that it was, but an important point is that the provision is a key part of the criminal justice system to which everyone on the Criminal Justice Board, which regularly looks at how to speed up the justice system, has committed and believes needs to be taken forward as a matter of urgency. The judiciary, represented by the Lady Chief Justice, as well as the Public Prosecution Service (PPS), the PSNI and all those other moving parts in the justice system have had an opportunity to discuss it in the Criminal Justice Board and to fully support.

Mr Dickson: I thank the Member and the Minister for their interventions. I also thank the Minister for clearly setting out the complexity of and interrelationship between all the changes.

I agree with the Member opposite, who is the Chair of the Committee, that, while the Bill makes a fundamental change and will bring forward additional changes, there are other aspects of the justice system that require reform. I, for one, believe that there are far too many people in prison and that we need a much wider range of interventions that go way beyond the Department of Justice and its remit. There are responsibilities for the Department of Health and the Department of Education. If we were to tackle issues and produce interventions at much earlier ages and stages in people's lives, before they, unfortunately, end up in prison, many of the reforms would be of even greater benefit.

We have to take the current system into consideration. It is slow, and there are delays. The Bill is a key building block to deliver that change. Delaying justice for defendants infringes on their right to a fair trial within a reasonable time frame, and that is required and outlined by article 6 of the European Convention on Human Rights.

I welcome the legislation and the amendment from the Department. The Bill is not just about accelerating justice, but it is a major step in addressing the cost that victims and defendants face when their lives are put on hold by a system that currently holds them back.

Mr Weir: I am tempted to say, "I rise to speak", but that may be the wrong terminology given my circumstances. At the start of my contribution, I declare an interest as a non-practising member of the Bar. I cannot and do not claim to have the eminence of the proposer of the amendments. The proposer of the amendments has been eminent in the law for many years; to paraphrase, he was eminent at the Bar before my arrival was imminent. In my short period at the Bar, I never reached the dizzy heights that the Member who proposed the amendments reached, though, once during my pupillage, I served under him.

When it comes to the amendments, I appreciate the departmental amendment. It is fairly uncontroversial, and I do not think the House will spend a great deal of time probing it on the basis that everyone accepts it. In many ways, there was a certain level of disappointment that there was a need for the Member to table the amendments, because, I believe, the position on preliminary investigations that we unanimously reached in 2015 — at least, those of us who were here in 2015 — was reasonably balanced.

I have listened to the debate, and I do not want to go too far into the exchange between the Minister and the proposer of the amendments about the failure to commence the legislation from 2015. It is disappointing. We appreciate that, when the House passes legislation containing commencement provisions, it sometimes can commence immediately on Royal Assent, and, at other times, it can take a bit longer. It somewhat beggars belief that the legislation has not been commenced six and a half years later. I have listened to the debate, and I have no desire to get into questions of the whys and wherefores and to either second-guess or impugn the motivation of the

Department or the Minister, but, having listened to the rationale, I am not particularly convinced of the merits of that level of delay. We would have been in a better position had we reached the point where the amendments did not have to be brought forward and had what seemed to be a relatively settled position in 2015 been simply honoured by way of commencement.

4.00 pm

When we look at the criminal justice system and the trial system, we see that the overriding onus on us all is the preservation and protection of justice. For those who are involved in the criminal justice system, that impacts on a wide range of people. It can be justice for the victims of crime, justice for witnesses, justice to ensure that there is a fair trial for defendants and, from that perspective, justice in the wider context of what is in society's best interests as a whole. To that extent, again — it goes to the heart of the amendments — that has a range of particular connotations.

I accept and support the motivation and general principles of the Bill. Any actions that we can take to ensure that we can remove undue delay from the criminal justice system are good. To that extent, therefore, I was very happy to support the Bill at Second Stage. Whether or not the amendments are successful today, I will be happy to continue to support the right motivations in the Bill.

In terms of the balances and the interests of justice, it is certainly in the interests of justice that it delivers for the public purse in a reasonable fashion. Committal proceedings play an important role in that regard. It is also important that justice is timely. Consequently, even if the amendments are accepted, the general principle, which essentially says that, in the vast majority of cases, a preliminary investigation — the initial stage of committal proceedings — is not necessary from a time point of view, is a case that is well made. That should be the general presumption in our system.

It is undoubtedly the case — the Chair of the Committee indicated a similar view — that, while I believe that the legislation is a step forward, it is not a silver bullet. It will not eliminate all actions that could lead to delays. It does not mean that we will have a faster justice system. It is also the case that the burden that could be placed on victims of crime and on witnesses should be kept to a minimum. The general principle that essentially says that, where possible, we do not subject witnesses to having to give the same evidence twice is an important one.

All those things need to be balanced, but, when trials do not need to proceed, we should ensure that they do not proceed unnecessarily and that there is a fair trial. Consequently, the protections that are potentially being put in place by Mr Allister's amendments represent a reasonable compromise.

Mr Beattie's argument that there is a genuine concern that those protections might be used to clog up the system does not bear a relationship with the real world of trials. In the vast majority of trials, as Mr Allister indicated, defendants are not looking to initiate preliminary investigations in order to delay the system. Indeed, in many ways, given that the only hurdle to be overcome at committal stage is for the prosecution to show that there is a prima facie case, the opportunity for a defendant to be exonerated by way of being found not guilty is a much easier route when it comes to full trial. The prosecution has a much greater burden to show that it is beyond reasonable doubt.

The argument that that would be used in some way as a form of deterrent, either to the prosecution or, indeed, to witnesses, would hold water more strongly were it in some way an automatic right that was being triggered. However, that can only be where it is through the very clear filtration of a judge deciding in that particular set of circumstances, which, even in current circumstances, is relatively rare, that it is in the overwhelming interests of justice.

To succeed at a preliminary investigation, then, the defendant's counsel would have to show that there is not even a prima facie case against the defendant. That is an extremely difficult burden for a defendant to prove. What it does mean is that there is a filtration mechanism for cases without real merit that were taken against the interests of justice. Access to that mechanism is only through a judge deciding that it is in the interests of justice. As was indicated, it is not on the basis of these amendments, one of which is an appeal mechanism on the grounds of merit. That would not differ from a normal trial. It would apply only when the judge made an error in law. On a different level, many Members across the Chamber will have experience of dealing with non-criminal behaviour in, for example, a social security appeal tribunal. They will know how difficult it is, having failed on the merits of a case, to find a successful argument in law for why that verdict should be overturned.

This will be put in place in an extremely rare set of situations. However, if it means that, in the small number of cases where there is not a prima facie case, we can stop an expensive public trial and serve the interests of justice, that seems to be a balanced situation.

I spoke at the outset of the eminence of the Member who proposes this. Undoubtedly, the 2015 position and, indeed, the amendments that he puts forward today represent a compromise. Clearly, many who are from a strong legal background are much more eminent than I am — some may even claim greater eminence than the proposer of the amendments, although I am sure that that might be questioned by others — and they would go much further than these amendments.

It was in 2015, and it is today, a compromise. I welcome that compromise and the position taken by the proposer of the amendments. This is a reasonable route that does not impugn or impede the general thrust of the Bill. The thrust to reduce and remove undue delay is right. Having the safeguard of the amendments means that I am willing to go through the Lobbies to support Mr Allister's compromise. I am similarly prepared to support the Minister's amendment.

Ms Bradshaw: I support amendment No 3, which is to enable the issuing of legal aid certificates, and I will oppose all other amendments.

The other amendments are wrecking amendments, as highlighted by other Members. From A Fresh Start to the Gillen review to New Decade, New Approach, it has been agreed that the Bill is a vital reform to create a more efficient and, indeed, fundamentally fairer justice system. The only people who would want to wreck the Bill are those who wish to ignore a good practice on behalf of victims and who want to act against the interests of victims.

It is well established, as the Member proposing the amendments well knows, that oral evidence at committal stage is not just unnecessary but contrary to good process. Doing away with it will stop the intimidation of victims and witnesses, thus enabling more cases to proceed. Most of us think that more cases proceeding, more victims being heard and more perpetrators being punished is a good thing.

With regard to terrorist suspects, removal of oral evidence at committal stage —

Mr Allister: Will the Member give way?

Ms Bradshaw: I will just finish this, and then I will give way.

— is a recommendation of the Fresh Start panel and the Northern Ireland Audit Office. It should be noted, therefore, that those supporting these wrecking amendments are opposing Audit Office recommendations.

I will give way now.

Mr Allister: The Member talks about good process. Does she really think that it is good process that someone can be returned for trial in Northern Ireland without there even being demonstrated at any point that there is a prima facie case against them? Is that good process?

Ms Bradshaw: I am happy to give way to the Minister.

Mrs Long: With respect, it is not the case that people are simply returned for trial in the way that the Member suggests. An evidentiary threshold has to be met by, for example, the PPS.

What we are introducing here is the right for somebody to cross-examine witnesses at the earliest point in the process. Prima facie evidence can be established on paper, so there is no need for there to be such a continuation. *[Interruption.]*

Mr Deputy Speaker (Mr McGlone): Sorry, but can we have just one Member speaking at a time, please? Minister, please continue.

Mrs Long: There is no need for there to be a continuation with oral hearings. For their own reasons, however, it may suit some in the justice system for oral hearings to continue, because they will be required to represent their clients and so on, but removing them from the process does not speed up justice and does not impact on the effectiveness of justice. As I said, the Criminal Justice Board has oversight of this and has agreed that it is a better way forward than what was previously agreed.

Ms Bradshaw: Thank you, Minister.

Mr Allister: *[Inaudible.]*

Mr Deputy Speaker (Mr McGlone): Sorry, but the Member has the Floor. Please continue, Ms Bradshaw.

Ms Bradshaw: Thank you, Mr Deputy Speaker. In effect, removal of oral evidence at committal

stage removes the stage at which intimidation can be a factor and reduces the trauma of the process for victims and witnesses. Ultimately, it is a fundamental part of a Bill that improves the experiences of victims and witnesses and thus gives them greater and truer access to justice.

In cases of serious sexual offences such as rape, Criminal Justice Inspection has spoken in favour of what we are doing with the Bill, while noting that the no-bill application process remains in order to provide an ongoing safeguard against spurious allegations.

In the end, the Bill is not about the technicalities of how the justice system works but about human beings. In that context, we should all remember that what we choose to prioritise in our public pronouncements matters. Access to justice —

Mr Storey: Will the Member give way?

Ms Bradshaw: I will.

Mr Storey: I thank the Member for getting to that point. What is being proposed is equally about human beings. Sometimes, in the House, we have a very narrow view of what constitutes a human being. I have heard the Member in the House rightly defend, in other circumstances, minorities, small groups, people who are isolated and people who are vulnerable. If that is the argument, surely she has to carry it across. I am disappointed that the Minister made an assertion — I can say this because I have never been and never will have the ability to be a member of the legal profession — and almost assumed that, somehow, there is an attempt here to satisfy someone's mates and that, because there is payment for representing clients, this is part of trying to ensure that those who have a vested interest be considered. That is unfair to many in the legal system who work extremely hard in very challenging and difficult circumstances.

Ms Bradshaw: The Member is somewhat misrepresenting the Minister's position on that. I will also pick up on his point about marginalised and minority groups. Very few sections of society are more vulnerable than victims of rape, for example. It is those people, and other victims of crime, for whom I am standing up and taking this position today.

As I say, access to justice matters most of all for the victims, and I trust that most of us will recognise that the system needs to change in order to give those victims a voice free from the intimidation and terror about which some have spoken so courageously in recent weeks. I commend the Bill and amendment No 3.

Miss Woods: I do not intend to speak for very long. The Chair gave a very good overview of the Committee's scrutiny over almost the past year. Thanks has to go to the Committee Clerk and the staff.

Many have pointed to the abolishing of the committal stage as a means of addressing some delays in the criminal justice system, and that rationale has been put to us previously. It is an argument that has been made across the world during reform of judicial processes, and, as we know, it is not new to Northern Ireland. The Assembly debated the matter previously, and the Committee discussed, at length, delay in the system, the effect of removing the committal stage and whether removing it would do what it says on the tin. I met a number of stakeholders and individuals — I thank them for their time — who were concerned that removing the committal stage would not reduce delay, as most of the delay lies elsewhere in the system, including, for example, the time taken to get forensic evidence and information and the time taken to compile police reports and complete the investigatory stage. As I said previously, I have some sympathy with those arguments.

That is reflected in the Committee's report as well. This legislation alone will not fully address the delays in the criminal justice system, nor is it intended to do so solely. Much more can be done, as others have said.

4.15 pm

I appreciate that a larger piece of work is going on with the criminal justice agencies on this issue. New information-sharing systems are being trialled and developed, and further work is planned as part of the committal reform programme. However, challenges remain. In my view, those still-existing challenges are not a reason for not removing the committal stage, which the Gillen review recommended in order to deal with unnecessary delay and the re-traumatisation of victims having to provide evidence where it is not strictly necessary. The Department must have a way of reviewing and reporting on the legislation before us and its effect on the system and of involving the Committee to ensure that the post-legislative scrutiny is there and to ensure that the legislation is having the intended effect: looking at the impact on victims, as well as possible unintended consequences of delay simply being moved further up the line, as it were. I hope that this review, and the post-legislative

scrutiny, will occur and involve the Committee and others. I will touch on this later, in my comments on Mr Allister's amendments.

I stress again the importance of resourcing the Bill. Ministers and Departments do not like having commitments and resourcing stated in primary legislation, which is why I did not push this in Committee, but we heard, loud and clear, from organisations pointing towards resource deficits. The Bill will require resourcing, specifically with regard to the amendment on legal aid. It is a matter that I, and other members of the Committee, would like further clarity on in future. I accept that the Department has produced figures on that for the Committee but, for the record, there will be an impact on legal aid with this Bill. The modelling and the changes that will happen require a new framework to be put in place, as we have with the departmental amendment in front of us. Whilst technical, it addresses some of that in the legislation, and I will support it. However, the wider figures and impact need to be discussed in future.

I turn to Mr Allister's amendments. I appreciate the Member's consistency on this matter. I was pleased to engage with him on the Bill, and also on his amendments and points of view. I note his opposition to clauses 1 and 2. Granted, he was opposed to those at Second Stage and before, but while I will not support the amendments in his name, amendment Nos 1 and 2, at this stage, I understand his rationale and arguments on process. The 2015 Justice Act was amended by the House, giving a residual discretion to the magistrate in the interest of justice, and those regulations were voted for by the majority of the House but were not commenced, as we have heard. However, the Committee was unable to assess the validity of the assertions made during the scrutiny stage that the "interests of justice" test provided for in the 2015 Act, which Mr Allister seeks to claw back through the amendments, would appropriately safeguard the rights of all parties as stated, because the provisions had not been enacted.

Notwithstanding the arguments made in favour of removing this so-called test and not having it in the Bill before us, this leads me to question — not just on this specific issue; it goes much broader than this — how it is decided within Departments when they enact and when they do not. If it is the will of the House, and the law, what are the processes in place to ensure that legislation is enacted and processes followed up on? It also gives rise to questions at the level of post-legislative scrutiny, given by this House over the years or, indeed, by the Committees that have scrutinised legislation previously. That is something to consider for all MLAs, present and future. If we pass legislation, with the Department of whatever charged with commencing regulations, to what extent are we and Committees, or the House, considering that down the line? A balance needs to be struck in additional pressures on Committees and what outcomes can be achieved. However, it seems beneficial for everyone involved — the Minister of whatever Department, the Department, the Committee and the public — to know that, if legislation is passed, it is reviewed, meets the purpose and is actually the law.

That is of concern to me, and that is why I have some sympathy with Mr Allister's amendments — not something that I thought that I would say today — despite not agreeing totally with the content, as I do not think that it is needed for the purposes of the more victim-centred approach and removing the requirement to give traumatic evidence more than once. We need to remind ourselves why we are here. We are implementing, in part, recommendations from the Gillen report, 'A Fresh Start' and the Audit Office. Our criminal justice system needs reform, full stop.

The Bill will not solve all the issues that I touched on, including delays, the need for increased resources for forensics, front-loading, communication and information sharing, so I do not necessarily buy the argument that it is about addressing delay wholly. Much more needs to be done to tackle that, and that will come from matters that do not involve primary legislation. However, the Bill should remove the unnecessary re-traumatisation of victims and witnesses, simplify the justice system, in part, and provide for somewhat of a balance among other measures that are being looked at in the courts and the justice system.

Mr Deputy Speaker (Mr McGlone): Mar athrú, ar thaobh mo láimhe deise, tá Gerry Carroll. For a change, on my right hand, I have Gerry Carroll.

Mr Carroll: Thank you. It is just for the debate. It is not for any other reason, Mr Deputy Speaker *[Laughter.]* We have great sympathy for and solidarity with victims, particularly those of traumatising crimes, such as those of a serious sexual or abusive nature, who are made to wait unacceptable lengths of time to get verdicts. From the testimony of such victims, it is clear that that wait can be traumatising, as can be having to give testimony more than once. As other Members said, Gillen outlined in his report that we must

deal with those cases more appropriately and that victims of and, indeed, witnesses to such crimes should not have to give testimony numerous times. We must ensure, however, that following Mr Gillen's advice for improving the system for victims does not encroach on the right to a fair trial and a fair process.

In that sense, I share some of the concerns that were raised by the CAJ in response to a discussion report on the reform of the committal process. It stated:

> *"While increased efficiency in the ... system is a laudable aim, it must be subservient to the need to ensure that the inherent safeguards in the ... system, comprising the right to challenge the prosecution ... and [challenge] prosecution witnesses at an earlier stage than trial".*

A balance can be struck between ensuring that victims and witnesses are not made unnecessarily to testify more than once and not endure a prolonged journey through the justice system while, at the same time, ensuring the right to fair process for a defendant. I am concerned that there were far too few references to the latter in the Committee discussions or documents from the Minister that I saw relating to the Bill. There is also far too little evidence that the measures in the Bill would shorten the process for victims. Therefore, while we would have hoped for a more robust cause for direct committal in the event of a guilty plea in cases of serious sexual child abuse or other such crimes, we are not comfortable with the sweeping approach that has been set out by the Minister in the Bill, which will go far beyond that and remove any opportunity for a judge to review oral evidence before trial.

We are content to support the amendments, which will put in place what was agreed by the House in 2015. I find myself shocked that the Minister, whose party speaks, often loudly, about transparency, considers it acceptable that a democratic decision of the House would not be implemented because of any report, no matter how serious, or because of the will of the five-party Executive without a vote. I find it ludicrous that the Executive have utterly failed to deliver on many commitments from previous agreements, including the Fresh Start Agreement and New Decade, New Approach, yet the Minister took those agreements as sufficient reason not to implement a law that was passed six years ago because the Executive apparently changed their mind. To be honest, I have more sympathy with her explanation that there was little time to implement the law, but that almost becomes a moot point when she, in her own words, said that the commitment to changing the process in closed-door Executive deals was a reason to delay implementation. What will happen if the Bill falls? Would she finally implement the 2015 measures?

I am disappointed that there has not been a more reassuring attempt to ensure an as-efficient-as-possible trial process for victims while not unpicking the right of defendants to a fair process.

Mrs Long: Before I address the amendments that were tabled by Mr Allister, I want to speak to my amendment, amendment No 3. That is a relatively minor technical amendment to clause 4(9)(c) of the Bill, which will ensure that the ability to apply for a legal aid certificate remains relatively consistent with current practice. Legal aid certificates are generally requested in the Magistrates' Court. However, there are some occasions when that will also happen in the Crown Court, for example, when there is a change in legal counsel. Clause 4(9)(c) of the Bill, as drafted, means that any requests for criminal legal aid certificates in the Crown Court can only be granted after evidence has formally been shared with the court. That may cause unnecessary delay in appointing legal representation as the sharing of evidence may take place after the defendant has been committed to the Crown Court. The minor amendment means that a Crown Court judge could grant a criminal legal aid certificate and read the notice of committal, rather than having to wait until the evidence is formally shared. I assure Mr Carroll, based on what he just said, that that is entirely to protect the rights of the defendant.

I move now to the amendments proposed by Mr Allister. Mr Allister spoke at length on his proposed amendments to clause 1 and to the schedule. He also gave notice of his intention to oppose that clauses 1 and 2 stand part of the Bill. I want to address the amendments and the opposition proposed by him.

Through the Justice Bill in 2015, my Department sought to abolish the option to hear oral evidence from victims and witnesses at a committal hearing. The experience of giving sometimes traumatic oral evidence, particularly under cross-examination, at a committal hearing and again at a Crown Court trial, can have a significantly detrimental impact on victims and witnesses. However, disappointingly, that did not receive sufficient support during that Bill's passage. Instead, an amendment was made that ensured that oral

evidence could be called if a judge was satisfied that the interest of justice required it. That fell short of that Bill's original intention. That is the article that Mr Allister refers to in his amendments. In effect, he is proposing that the provisions set out in the Justice Act (Northern Ireland) 2015 should stand. Let me explain why you should reject those amendments and support the Bill.

In 2016, as plans to implement the processes defined by the 2015 Act were in their development phase, a pivotal change in support on that matter emerged. The three-person panel appointed by the Executive to report on a strategy for disbanding paramilitary groups recommended:

> *"While it is crucial that criminal proceedings should follow due process and comply with human rights, justice delayed is justice denied. The time it takes for cases to come to court could be reduced, securing more convictions and building community confidence in the criminal justice system. To this end, we recommend that the Department of Justice should bring forward draft legislation to further reform committal proceedings to remove the need for oral evidence before trial".*

That was accepted by the Executive in their action plan published in July 2016. Clauses 1 and 2 of the Bill are designed specifically to give effect to recommendation A10 of that Fresh Start panel report. Therefore, it is not just my Department calling for that change. The changes are required to fulfil a Fresh Start commitment that was made after 2015. Mr Allister's proposed amendments fall short, and if they are accepted, my Department and the Executive cannot deliver against that commitment.

A number of other political agreements and independent scrutiny reports have also called for changes to the present committal process. If Mr Allister and others are concerned that it happened only as a result of three people on a panel, I assure them that that is not the case. The other reports that have called for reform of the committal process in its entirety are the Northern Ireland Audit Office's 'Speeding up justice' report from 2018, the Criminal Justice Inspection NI's 'Without Witness' report from 2018 and 'New Decade, New Approach' from 2020.

It is worth noting that the longer-term intention of my Department is to remove the traditional committal process entirely, ensuring that cases are directly committed to the Crown Court as soon as it is clear that the matter is serious enough to proceed on indictment. That is in line with a commitment arising from the Northern Ireland Audit Office's 2018 report, 'Speeding up justice'. That report found:

> *"The reform of committal is the Department's first move towards eradicating a judicial process which is widely considered as providing minimal value whilst imposing onerous demands upon victims and witnesses ... At its worst, committal can effectively amount to a preliminary trial, with victims and witnesses required to provide testimony which they will have to deliver again at trial in the Crown Court. This is, at the least, stressful to participants and in some cases may deter them from attending for trial."*

It is also worth reminding the House of Sir John Gillen's 'Report into the law and procedures in serious sexual offences in Northern Ireland' from 2019, in which he noted that the committal process had either been reformed or abolished in a number of the jurisdictions that he considered.

Sir John said of committal proceedings that:

> *"The paucity of cases where any material benefit is achieved for the defendant is completely outweighed by the disproportionate cost of and stressful nature of such hearings. More importantly is the fact that precisely the same issues of liability can be dealt with by the Crown Court at an equally early stage."*

Sir John went on to conclude that:

> *"I can see no justification, therefore, for continuing with the present system, which is wasteful of time, costs and resources in circumstances where the vast majority of cases will be transferred anyway to the Crown Court."*

4.30 pm

We have been engaged in a discussion, both by the Committee Chair and Mr Allister, around process, and other Members have referred to those process issues as well. I want to address them, but I do not want the process issues that happened during a unique period in this Assembly's lifespan, when we had a period of three years' hiatus, two elections — one immediately after the other — and a short period before the COVID crisis when we came back 18 months ago, to deflect from the

substance of the Bill, which is what should be of concern to us as we decide how to vote.

Section 7(2) of the Justice Act related to the ability of a judge to hear oral evidence in the interests of justice. That was included in the 2015 Act as the result of an amendment from Jim Allister. The Department had originally intended to abolish oral evidence at the committal hearing as part of that Act, as you have heard. The Department had established a multi-agency project group to implement the committal reforms provided for in that Act. When the Fresh Start three-person panel on disbandment of paramilitaries produced its report, it included a recommendation for the Department to introduce further legislation to abolish the use of oral evidence as part of the traditional committal process. The Department's focus, therefore, turned to introducing new draft legislation to deliver that recommendation. The Assembly then collapsed in 2017. I remind Members that it was not just Alliance Justice Ministers who presided over those decisions, although some feel very comfortable in pointing the finger at me today. There have been three Justice Ministers during that time, not one.

Section 7(2) of the Justice Act 2015 replicates the amendments proposed to the Bill today that mean that oral evidence can still be called if a judge is satisfied that the interests of justice require it. As I said earlier in the debate, those amendments fall short of the Fresh Start commitment in the Executive's action plan. I want this Bill to provide reassurance to victims and witnesses that they cannot be called to provide oral evidence at the committal hearing, and that is consistent with the various expert reports, including the Gillen review, a report from the Criminal Justice Inspection Northern Ireland and a report from the Northern Ireland Audit Office, in addition to the report from the Fresh Start panel.

It also has to be understood that the Fresh Start three-person panel recommendations were accepted by the Executive in their Fresh Start action plan, which was published in July 2018. It was unclear, at that time, how long there would not be an Assembly in place, and the focus was therefore on preparations to deliver what the Executive agreed in that action plan. There was no other cover for Departments to make alternative provisions. Committal reform represents a significant change, and there would be a risk, obviously, of trying to change that system twice, with some changes from the 2015 Act and then further changes from a subsequent committal reform Bill, not to mention the nugatory expenditure and effort that that would entail. The committal reform Bill before the House today is a stronger piece of legislation, which will help to tackle delay in the most serious cases that are heard in the Crown Court and will improve the experience of victims and witnesses on their journey through the criminal justice system.

Non-commencement in that regard is a red herring today. Had the 2015 legislation been commenced, we would still be here today because of subsequent commitments that were made by the Executive, not the previous Executive three times ago but the current Executive, in NDNA. We would still have had to bring this Bill forward today. I do not want people to be deflected by those process issues from considering the substantive issues that actually impact on victims and witnesses.

The Bill also includes proposals to directly commit more cases to the Crown Court, which will see those cases bypass the traditional committal process entirely and, with that, will create the option of providing oral evidence at that stage. For cases that are not included in the initial roll-out of direct committal, there will, however, continue to be a traditional committal process. Victims and witnesses can presently be called on to provide oral evidence at that stage. Without the changes that are proposed in the Bill, that process will continue. Clauses 1 and 2 will ensure that those victims and witnesses do not have to provide oral evidence and face cross-examination as part of the committal process.

I have heard all too often of the impact on vulnerable victims and witnesses who have had to give traumatic evidence not once but twice as part of our current criminal justice process. I have witnessed the anguish of victims, victims' families and witnesses who have been subjected and exposed to the most horrendous crimes — rape, sexual assault and murder — only to be further traumatised by the very process that is supposed to bring them justice. I have searched for words of comfort and explanations for why we have to continue with a process that does not appear to provide any significant purpose. It does not provide an effective means by which to filter cases, and it adds unnecessary delay to an already complex process.

I agree that the number of that type of committal hearing is low. For example, in 2019, only 6% of committal hearings, involving 109 defendants, were processed by calling for oral evidence. In addition, there are occasions when victims and witnesses are called to give evidence only to be told at the last minute that they are not needed. We know that that

occurred in cases relating to a further 53 defendants in 2019. In his report, Sir John Gillen noted that:

> *"committal proceedings ... are often listed as mixed committal, which then turns into a conventional preliminary enquiry hearing on the morning of the matter, after the complainant has suffered the stress and worry of a court appearance, only to be told they are not required. This is quite unnecessary and that practice should be strongly deprecated, given the additional stress and delay this process is causing."*

The trauma caused to victims and witnesses in those cases drives me to support the changes that are proposed in the Bill. Even one such case is too many.

One of the major reasons for bringing the Bill forward was to provide victims with the reassurance that they could not be called upon to provide oral evidence and potentially face cross-examination at a committal hearing. I have already cited the various expert reports and political agreements that call for that move.

Whilst much of the focus has been on rape and sexual assault cases due to the particular vulnerability of the witnesses who, in many cases, are also the alleged victim, there is also an issue with that in relation to terrorism. In addition to the three-person panel, the Chair of the Committee mentioned the Intelligence and Security Committee's (ISC's) report from October 2020 into Northern Ireland-related terrorism. There was no engagement with my Department in the drafting of that report, but, in the report, it is clear that security services were supportive of how the Bill could speed up direct committal because they recognised the positive impact it would have on dispensing with terrorist cases. I hope that Members consider that when they come to vote on these matters.

Voting for any one of Mr Allister's amendments will have a negative impact on victims and witnesses because the amendments do not provide reassurance that they will not be called to give evidence twice. Mr Allister's amendments would ensure that there is still an avenue through which victims might be called to provide oral evidence and face cross-examination in advance of their case reaching the Crown Court. For many people, including those giving evidence in terrorist trials and those who have been subjected to some heinous crimes, the thought of having to face the individual against whom they are giving evidence not once but at least twice in the process is sufficient for them to decide not to give evidence at all. We should be cognisant of balancing that concern against the lack of impact that the measure has on a fair and free trial for the defendant.

Besides the obvious impact on victims and witnesses, the preparation and process around arranging these committal hearings can add both a delay and a burden to an already stretched system. We know, for example, that the number of hearings for a preliminary investigation or mixed committal can be, on average, three to four times greater than those required for a preliminary inquiry that uses only written evidence. Therefore, if Members vote for any of Mr Allister's amendments today, not only are we failing to address the concerns of victims and witnesses about giving oral evidence more than once but we are losing a crucial opportunity to make the system more efficient for all users and members of the public.

Ms Bradley is, of course, correct: this alone will not suddenly speed up justice. However, it is a critical part of a wider programme of work to speed up justice. Ms Bradley and Miss Woods raised a number of issues that I will address specifically.

In relation to the funding of committal reform, the Department of Finance has previously approved a business case for £1·3 million for the capital costs that are associated with the IT changes that are required to implement direct committal. The main aim of direct committal is to transfer cases to the Crown Court more quickly than at present and therefore shorten the overall time that they take to complete. We anticipate that, in effect, there will be a rebalancing of resources: less work will be done in the lower court tier — the Magistrates' Court — and more will be done in the higher court tier — the Crown Court. It is also worth saying that, although the Crown Court is the more expensive tier, part of the benefit of direct committal is that the judge will have oversight of the case from the earliest point, which will allow certain efficiencies to be made in terms of court time, even in the upper tier. There is, overall, a benefit in taking that forward.

The Bill also seeks to allow all offences, in the case of an adult, that are triable only on indictment to be directly committed. We estimate that offences that are triable only on indictment are about 25% to 30% of those in the Crown Court caseload. That was about 370 cases during 2019-2020. We have over 300 offences in statute that meet the definition of an offence triable only on indictment. However, provisional data that is available to my Department indicates that the number of those

offences used in recent years is much lower. That approach brings a wide variety of offence types within direct committal. However, in deciding on which offences should be included in the first phase roll-out of direct committal, we sought to strike the right balance between the number of cases that would give a meaningful evaluation and ensuring that the roll-out could be successfully managed, given the changes that it will bring to the criminal justice system.

The Department's intention over the medium to long term is to eradicate traditional committal processes entirely. The offence classifications that are outlined in the Bill will provide the basis for further roll-out. We will do that on a phased basis to avoid the bottleneck to which Ms Bradley and Rachel Woods made reference. Also, with respect to Rachel Woods's concern about monitoring progress, the Committee has a full role in that.

I have spent 20 years in politics, a significant number of those years in this House, and it pains me to say that it only recently became the case that the House has sat for as long as it has been suspended during my time in this place since 2003. For half of the time since 2003, the House has been suspended. If the Committee and Members want to have full scrutiny and oversight of what happens in the development of legislation, there can be no better way than making these institutions sustainable. That is how Members would have been able to talk to the Department about the balance of decisions that had to be taken between, on the one hand, the Executive's commitment to Fresh Start and, on the other hand, the desire of the House in 2015 to maintain some form of committal process.

Only a very small number of cases are halted at committal. The majority proceed to the Crown Court for trial. Again, using 2019 as an example, only 4% — 75 defendants — were not committed to the Crown Court. Furthermore, turning to the evidence that was provided by the Public Prosecution Service during the Committee Stage of the Bill, we find that PPS inquiries into those cases did not identify any case in which the undermining of oral evidence by cross-examination resulted in a case being dismissed. I will repeat that, because it is absolutely crucial to the votes on these amendments this afternoon.

At Committee Stage, the PPS evidence was that its inquiries into cases that were not committed to the Crown Court did not identify any case in which undermining the oral evidence by cross-examination resulted in a case being dismissed.

4.45 pm

What of the defendants themselves, trying to navigate a complex process and often held on remand or subject to strict bail conditions for lengthy periods? A number of Members reflected that they want to hear more about that. The traditional committal process adds delay. Only in very few cases, regardless of whether oral evidence is called, does it have the purpose of filtering cases that should not proceed to the Crown Court. On balance, the rights of a defendant, as defined in the European Convention on Human Rights, to a fair trial are secured during the trial process and the procedures that surround it and are not diminished by the removal of oral evidence at a traditional committal hearing. In fact, the rationale of reducing delay will help to achieve a fair trial in a reasonable period, so, if you are an innocent defendant, that is absolutely in your best interests.

Therefore, I can find no strong argument for retaining the committal process in its entirety and definitely cannot find one for retaining an unnecessary and harmful aspect of the process, namely the calling of oral evidence, which appears to no longer serve a useful process. That process has long since been abandoned by comparable jurisdictions such as England and Wales.

The proposed new legislation in the Republic of Ireland is not the same as what was agreed in the Assembly in 2015, nor is it the same as the effect of the amendments that are being debated today. It allows for a pretrial hearing in the same court as where the evidence will eventually be heard. That is exactly what could happen with committal reform.

Mr Allister's amendments fall far short of the commitment given by my Department and the Executive to reform committal proceedings in line with Fresh Start and far short of the commitment given in NDNA by the five parties in the Executive. They also go against the decision of the Justice Committee, which scrutinised the legislation and opted not to amend it. For those reasons, I cannot support the amendments and call on the House to reject them. Support the inclusion of clauses 1 and 2 and paragraph 18 of schedule 1 to the Bill.

Mr Allister: I have heard it all when, today, I hear an amendment that has, at its heart, the protection of the interests of justice described as a "wrecking" amendment. Some people seem to have such disrespect for due process and the law that even the concept of innocent until proven guilty is an irritant and

inconvenience. I really do wonder just how many in the Department of Justice and in the House have lost their way in terms of the basic concepts of justice, never mind democracy. The Minister patently glories in the fact that she and her Department know better than the House. The House dared to disagree with her predecessor and to propose and accept an amendment. The House dared to insert a change in the Bill, and it even dared to unanimously agree that change. Then, we have a Minister, a Department and the mandarins within it who think, "Don't worry about that. That was only ill-informed and ignorant MLAs. We know better; we have three wise men in Fresh Start who know so much better. We don't need to heed what 108 MLAs foolishly thought. Oh, no. We preen ourselves as those who know everything on these matters".

Mrs Long: On a point of order, Mr Deputy Speaker. Is it in order for the Member to castigate a Member who is not present? These decisions were taken during the time of my predecessor, Claire Sugden, and she is not in the Chamber to defend the decisions that she took.

Mr Deputy Speaker (Mr McGlone): I do not believe that that is a point of order, but it is noted.

Mrs Long: Further to that point of order, Mr Deputy Speaker, there is a convention that, if a Member is going to criticise someone in the House, that Member should let that individual know in advance. Perhaps it would be helpful if we were to know whether Mr Allister has allowed Ms Sugden the opportunity to rebut some of what he has said?

Mr Deputy Speaker (Mr McGlone): That is not a point of order. It may be a convention as you see it, but we can get that clarified. Mr Allister will no doubt elucidate.

Mr Allister: I will make it absolutely clear: the Minister whom I was criticising is the Minister in the House. It is the Minister in the House who stood up today and sought to justify overriding the view of the House and railroading her opinion and that of her Department and some other miscellaneous persons through the House. It is not Ms Sugden but Minister Long who has taken that stance, arrogantly and audaciously, in the House today.

There is a fundamental not just of justice but of democracy. The fundamental of democracy is that, if you have a legislative Assembly, you allow it to legislate, and, when it legislates, you heed what it says. We are now in the situation in which commencement delayed is the will of the House denied, and the Minister glories in that and thinks that that is great and is the right thing to do. Really, have we so lost our way democratically, never mind in law, that we think that that is the right course to pursue?

Mrs Long: I thank the Member for giving way. I will ask him two questions. First, will he point me to the clause in the Bill that changes the presumption of innocence until guilt is proven? Secondly, he may be aware of all the rules of democracy, but is he also aware of chronology and the fact that time moves on?

Mr Allister: Time moves on with a Minister who never thought it worthy to come to the House and say, "Remember, back in 2015, you very foolishly passed what became section 7 of the 2015 Act. I just want to tell you that I am not going to commence it". Never once did the Minister come to the House and reveal that secret. Such was the contempt for the House that she thought she could just sweep the House aside and never mind its will. It was the will of some people in the House who have today somersaulted. Sinn Féin spoke in favour and voted strongly to support the 2015 amendment. I remember Mr McCartney speaking about it. Today, it is shredded. Others, too, spoke in those terms.

I come back to this point: what is this alien thing that I am asking the House to embrace? This alien thing is to endorse the view that the interests of justice should determine whether evidence in a particular circumstance should be called. We now want to eschew the interests of justice, override the interests of justice and declare that we know better.

Ms Bradley told us that amendment No 1 is too wide. Are the interests of justice really too wide? Let us be very clear: what the amendment does is to decree that a magistrate — a judicial officer with many years experience — will be the one to decide, having regard to the nature of the charge and the nature of the witness, thereby protecting the frailty of a particular witness. The magistrate will decide whether it is in the interests of justice. Is that too wide? Are the interests of justice too wide? I really do say to the House —

Ms S Bradley: Will the Member give way?

Mr Allister: Certainly.

Ms S Bradley: Does the Member recognise that the interests of justice also include making

all participants in the justice system feel comfortable and at ease in order for them to be able to achieve justice? Does he recognise that any absence of effort to make every participant comfortable in giving evidence and being part of the procedure will lead to an injustice? That is why we are debating committal reform in the first place.

Mr Allister: A witness can feel uncomfortable and as though they are in a distant and foreign place when they give evidence, but I am afraid that the giving of evidence is at the very heart of the justice system. You cannot proceed to convict without evidence. Therefore, you have to hear it. Whether it happens in the Magistrates' Court, the Crown Court or both, it is unlikely to ever be the most comfortable of processes.

There is someone else to consider in the justice system: the citizen who is told that they are innocent until proven guilty also has rights. That person has the right to challenge evidence. That person has the right to question evidence. It is not a question of saying, "Here is a victim. We accept them as a victim, and we will cosset them to the point where we will prejudice the person whom we are calling the accused and diminish his or her rights in order to cosset others". The fundamental principle that a person is innocent until proven guilty has outworkings, and among the outworkings is the fact that that person is entitled to defend themselves.

Let us take a simple enough case where someone is accused of an act of theft, and they know that the primary witness is himself a person of ill repute, with a record the length of your arm, who would lie just for the sake of it, and they know that their statement is lies. The House is saying that that person should not have the right to persuade a magistrate to hear that person's evidence so as to bring the torture of their prosecution to an end. That is equally important in the justice system. Think of the 4% of cases. Think of the 18 cases in 2014 where, when the evidence was heard, the case was thrown out. Do the rights of those people not matter? Are they just to be trampled? Are they not to be acknowledged? Are they to be put through not just a committal but, ultimately, a trial before they are vindicated?

Mrs Long: Will the Member give way?

Mr Allister: It is not just a one-way street: there are other players involved who have rights as well. When I say that all that we want to do is insert into the committal process a test as to whether there is sufficiency of evidence to return for trial, and to make that on the basis of whether it is in the interests of justice to hear that evidence, I do not think that that is too much to ask, but, to the Minister, it obviously is.

I will give way.

Mrs Long: I do not disagree with what the Member said about the need for the witness statements to be tested. That right is upheld during trial. The question is whether we need a preliminary process of inquiry that allows people to be cross-examined more than once. There is no purpose to that. In fact, the case would move much further and faster for the defendant were it to be remitted straight to the Crown Court, where that testing of the evidence could then take place in a single process. This is not to deny rights. The Member has asserted a number of times that we are ignoring the principle of being innocent until proven guilty. I ask him again to point to the clause in the Bill that does so.

5.00 pm

Mr Allister: The criminal justice process is, or has been until now, a two-stage process: committal and trial. Both have to be fair under article 6 and both have to be compliant in that regard. For some people who are afforded the right to cross-examine witnesses at the committal stage, it will be the end of the process, because the magistrate may well decide, "This evidence is not believable. It is not credible. No one should go to trial on this. That is the end of it". In the Minister's view, however, that person should never have that opportunity. They should be compelled and forced to go to the full trial, wasting public money on trials that are not necessary because the evidence is so fallible that it will fall at first cross-examination. Why not have that first cross-examination where it is thought appropriate: at the first stage?

Mrs Long: I thank the Member for his generosity in giving way. I turn again to the original statement that I read out. I read it twice because it is so important. The cases of which he speaks were analysed by the PPS, and not one was thrown out because of the oral evidence being tested in the hearing. It would have been better if they had gone to the Crown Court more swiftly, because the oral evidence served no purpose: it was not the reason why the cases were thrown out.

Mr Allister: That was the assessment of the PPS — the people who have a vested interest

in saying that the case was worthy in the first place. If the cases were not thrown out on the lack of value of the oral evidence, on what basis were they thrown out? How did they ever get there, with a PPS that has to be satisfied by a public interest test and the likelihood of conviction? How did those cases ever get into the system? Had it not been for the committal process, they would have stayed in the system to trial; they would not have been thrown out. Would that have been in the interests of justice? Was it in the interests of justice that those cases were thrown out at committal?

If the Minister says that it was not, she is saying that cases unworthy of trial should, nonetheless, go to trial. She is hoist by her own petard if she says that cases that the PPS evaluated were thrown out, but she would have had no committal. She would have had cases go to trial, at the expense of the public purse and everything else, that she and the PPS now say were unworthy, even though the PPS authorised them in the first place.

Mr Deputy Speaker (Mr McGlone): At the risk of interrupting the discourse, I make the point that we do not want to veer off — I understand Mr Allister's points and the sequencing of his argument — into discussing cases outwith the debate that have been before the courts and thrown out. It is not that well-tuned-in people such as you will go in that direction, but I caution against it, in case it happens.

Mrs Long: I thank the Member for giving way. He raises an important point, but there are lots of reasons why a case may not be taken forward. New evidence could emerge that could be dealt with by the Crown Court. Mental health issues or, indeed, other health issues could intervene. Again, the Crown Court could deal with that matter. There is no question of this being about saying that people should be found guilty if they are not guilty. It is simply about saying that the issue of a pretrial hearing causes significant challenge in the delivery of justice and the speed of delivery of justice. The serving of justice is not in any way diminished by the fact that the cases will go straight to the Crown Court.

Mr Allister: The Minister has not explained how, under her preferred system of no committals, she would deal with the 100 or so cases of 2019 that fell apart and did not proceed. Those cases would have had to proceed.

Of course, by removing committal, you also remove something that we have not yet discussed: the early stages of disclosure. More often than not, it is the compulsion of disclosure that demonstrates the inherent flaws in a case that can cause it to collapse. The Minister does not want that at an early stage. She wants to keep the person charged until the last moment, when the jury delivers its verdict, whereas there are cases where justice requires that the evidence is so flawed that it should be exposed as flawed and the person released forthwith. Those are the cases where, if there is an application to hear the evidence, in the interest of justice, there is nothing to lose in allowing committal proceedings.

This is not a grand demand for carte blanche on committal cases. This is very much the bare bones of the 2015 compromise that said, subject to the filter of a magistrate, an experienced person, who, having regard to the nature of the witness and the charge, has to decide whether or not it is in the interest of justice to hear evidence. It is a minuscule but important number of cases.

It staggers me that so many MLAs in the House are so anxious to run away from a test of something being in the interest of justice. What are you scared of in subjecting something to the interest of justice test? Should that not be at the heart of everything? Yet, that is what drove an arrogant Department to decree, "We will ignore what the Assembly says", and it is what drives the Assembly today to say, "We will ignore the opportunity to put it right. We will just bulldoze with that which we have because we do not really care about the interests of justice".

Question put, That amendment No 1 be made.

Some Members: Aye.

Some Members: No.

Mr Deputy Speaker (Mr McGlone): Clear the Lobbies. The Question will be put again in three minutes. I remind Members, particularly given the current health situation in the community, that we should continue to uphold social distancing and that Members who have proxy voting arrangements in place should not come to the Chamber.

Question put a second time.

Some Members: Aye.

Some Members: No.

Mr Deputy Speaker (Mr McGlone): Before the Assembly divides, I remind Members that, as per Standing Order 112, the Assembly has proxy voting arrangements in place for some Members. Members who have authorised another Member to vote on their behalf are not entitled to vote in person and should not enter the Lobbies. Again, I remind all Members of the requirements for social distancing while the Division takes place, especially with the rise in infection in the wider community. I ask you to ensure that you maintain at least a 2-metre gap between yourselves and others when moving around the Chamber, the Rotunda and especially in the Lobbies. Please be patient at all times, observe the signage and follow the instructions of the Lobby Clerks.

The Assembly divided:

Ayes 30; Noes 54.

AYES

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

Tellers for the Ayes: Mr Allister and Mr Weir

NOES

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

Tellers for the Noes: Ms Bradshaw and Ms Dolan

Question accordingly negatived.

Amendment No 2 proposed:

In page 1, line 5, after "accordingly" insert-

"save in so far as is necessary to give effect to Article 29A of the Magistrates' Courts (Northern Ireland) Order 1981".— [Mr Allister.]

Question, That amendment No 2 be made, put and negatived.

Mr Deputy Speaker (Mr McGlone): Before I put the Questions on clauses 1 and 2, I remind Members that we have debated Mr Allister's opposition that the clauses stand part. The Questions will be put in the positive as usual.

Clause 1 ordered to stand part of the Bill.

Clause 2 ordered to stand part of the Bill.

Clause 3 ordered to stand part of the Bill.

Clause 4 (Direct committal for trial: miscellaneous amendments)

Amendment No 3 proposed:

In clause 4, page 5, line 43, leave out from "for" to end of line 44 and insert-

"for the word 'documents' substitute 'copy of the notice of committal'".— [Mrs Long (The Minister of Justice).]

Question, That amendment No 3 be made, put and agreed to.

Clause 4, as amended, ordered to stand part of the Bill.

Mr Deputy Speaker (Mr McGlone): No amendments have been tabled to clauses 5 and 6. I propose, by leave of the Assembly, to group these clauses for the Question on stand part.

Clauses 5 to 6 ordered to stand part of the Bill.

Schedule (Amendments and repeals: Abolition of preliminary investigations and mixed committals)

Amendment No 4 proposed:

In page 9, line 13, leave out paragraph 18.— *[Mr Allister.]*

Question put and negatived.

Schedule agreed to.

Long title agreed to.

Mr Deputy Speaker (Mr McGlone): That concludes the Consideration Stage of the Criminal Justice (Committal Reform) Bill. The Bill stands referred to the Speaker. Thank you for your time and input.

Members, please take your ease before we move on to the next item of business.

5.30 pm

Assembly Business

Adjournment Debate

Mr Deputy Speaker (Mr McGlone): I inform Members that I have been advised that Mr Stalford is not in a position to introduce his Adjournment debate on Belfast Rapid Transit in South Belfast later. The Assembly will therefore adjourn after the debate on the legislative consent motion on the Police, Crime, Sentencing and Courts Bill.

(Mr Speaker in the Chair)

Executive Statements to the Assembly

Mr Speaker: Members will be aware that, in the past, I have been clear about the importance of respecting the distinct roles of the Executive and the Assembly. I have also recorded that the Executive responded very positively to my concerns some time ago about ensuring that significant decisions are announced in the Assembly. Last week, I received some requests from Members to discuss issues on the Executive's agenda before the Executive had concluded their decisions. I did not think that that was appropriate, as the Executive are entitled to space to make their decisions. I turned down those requests on the clear expectation that, once the Executive discussions had concluded, a statement would be made in the Assembly.

I am therefore very frustrated that a press conference has been held this afternoon to set out the Executive's decisions, yet, on a sitting day, there has been no request made to come to the Assembly. It will not have escaped anyone's notice that, in the past number of days, we have had any number of examples in the media and on social media of Ministers setting out their own views on the COVID restrictions. That is entirely their right, yet no Minister could come to the Assembly today. That is not acceptable for the Assembly. I want to be clear about that and inform Members that I intend to follow up with the Executive today's oversight. I also want to place on record that I fully understand that the Executive face many significant challenges at this point, and that those matters are their priority. However, I find today's occurrence to be unacceptable in terms of respect for this Assembly.

Executive Committee Business

Police, Crime, Sentencing and Courts Bill: Legislative Consent Memorandum

Mrs Long (The Minister of Justice): I beg to move

That this Assembly agrees to the extension to Northern Ireland of a number of provisions within the Police, Crime, Sentencing and Courts Bill relating to the Crime (Overseas Production Orders) Act, the management of sex offenders, the National Driver Offender Retraining Scheme (NDORS), application of section 29 of the Petty Sessions (Ireland) Act 1851 to the provisions in the Bill enabling a judge in England and Wales to make an order authorising the police to obtain information about the location of human remains outside of a criminal investigation, and the application of an amendment to the Proceeds of Crime Act 2002 to Northern Ireland to bring electronic money and payment institutions within the scope of account freezing and forfeiture powers in Northern Ireland.

Mr Speaker: The Business Committee has agreed that there should be no time limit on this debate. I call the Minister of Justice to open the debate.

Mrs Long: The Police, Crime, Sentencing and Courts (PCSC) Bill was introduced at Westminster on 9 March and deals with a number of policing and justice issues. Members will be aware of the contentious nature of some of the powers included in the Bill, which will apply only in England and Wales, and will have their own position on those matters. However, with due respect to those particular issues, there are some non-contentious provisions in the Bill which impact on devolved responsibilities. Our seeking a legislative consent motion (LCM) on those non-contentious matters is without prejudice to individual parties' positions on the wider Bill.

The motion we consider today covers five unrelated matters that will extend to Northern Ireland, namely: amendments to the Crime (Overseas Production Orders) Act 2019, the management of sex offenders, putting the national driver offender retraining scheme on a statutory footing, special procedures for access to material relating to the discovery of human remains, and an amendment to the Proceeds of Crime Act 2002 to bring electronic money and payment institutions within the scope of account freezing and forfeiture powers to match provisions in England, Scotland and Wales.

I turn first to the amendments to the Crime (Overseas Production Orders) Act 2019 (COPO). Members may recall that COPO is a UK-wide Act with provisions that relate to both reserved and devolved matters. The Act creates a stand-alone legal regime for UK law enforcement agencies and prosecuting authorities to obtain electronic data directly from overseas communications service providers for the purposes of criminal investigations and prosecutions. They can do this by applying for an overseas production order.

The development of the Act was a prerequisite for the UK to progress a data access agreement with the United States of America. It will enable UK law enforcement and criminal justice agencies to access information held by service providers who process, create, store or communicate electronic data on behalf of UK citizens. It will also enable the UK to enter into similar agreements with other international partners.

The Act was commenced for Northern Ireland in February 2021, and the PSNI has been working with the Home Office regarding plans for implementation. The Home Office has advised that, during implementation planning, some practical issues were highlighted that require legislative amendments.

An amendment to the Act is required to allow appropriate officers to access and obtain communications data that is associated with the content, for instance details of who sent an email, the date and time it was sent and from what IP address. A further amendment will allow orders to be served by a third party. Currently, an overseas production order is required to be served by the Secretary of State for England, Wales and Northern Ireland, or by the Lord Advocate for Scotland. This mirrors the process in mutual legal assistance, in which the Home Secretary and the Lord Advocate perform a role in both outgoing and incoming requests. The proposed amendment will provide the Home Secretary with the flexibility to delegate tasks related to the serving of an overseas production order to an appropriate body, for example, one that has the required technical and secure capacity to transmit data of that kind.

The final amendment will rectify an omission in the original Act. During the parliamentary process, an amendment was inserted that requires a judge to be satisfied, before

approving an overseas production order, that the electronic data requested is likely to be relevant evidence. However, a consequential amendment was not included to make reference to that relevant evidence test.

The Bill also contains legislative proposals to amend the Sexual Offences Act 2003 to enable UK-wide enforcement of new civil prevention orders relating to the management of sex offenders, which are soon to be introduced in Scotland. The changes proposed, therefore, are consequential to the intended commencement of the Scottish orders. The provisions that will extend powers to Northern Ireland by way of this LCM will enable the new orders that are being introduced in Scotland to be managed and enforced more effectively where sex offenders move across the UK.

The new Scottish orders — sexual harm prevention orders (SHPOs) and sexual risk orders (SROs) — replace existing civil preventative orders made under the 2003 Act, and they are being introduced in line with a similar approach taken in England and Wales in 2015. The new Scottish orders were legislated for in the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, but that legislation has not yet been commenced as the Scottish Government are keen to ensure that the cross-jurisdictional provision that is proposed in the PCSC Bill is in place first. I consider it essential in ensuring that there is no loophole in the law for those sex offenders who move from one UK jurisdiction to another. Public protection must be our key focus, and we must continue to do all that we possibly can to keep our communities safe from the risk of further offending from that type of behaviour.

In practical terms, the new provision would mean that individuals who are subject to the new orders made in Scotland or England and Wales could not move to Northern Ireland to evade the prohibitions imposed. As with the England-made SHPOs and SROs, the Scottish orders can be tailored by our local courts to better suit an individual's new environment and in line with our public protection arrangements. Courts will be able to vary, renew or discharge an order. Breaching a Scotland-made order or its notification requirements, which is a criminal offence, can be enforced by our local authorities and courts in the same way as the England and Wales arrangements without the need to transfer the offender back to Scotland. Finally, the Bill's reciprocal provision will enable the courts in Scotland to manage and enforce Northern Ireland orders in the same way.

In addition to those new provisions, the PCSC Bill will close a legislative gap. Under the provisions of the 2003 Act, Northern Ireland courts can vary a sexual harm prevention order or a sexual risk order that is made in England or Wales, but there is no reciprocal provision to allow the courts there to vary an equivalent order from Northern Ireland. The new provisions of the PCSC Bill will close that gap and strengthen the courts' ability to manage a Northern Ireland order in England and Wales by including additional powers for renewal or discharge. Those additional powers are also included for the Northern Ireland courts.

I firmly believe that those further reciprocal provisions, combined with those that allow for the recognition of the new Scottish orders in Northern Ireland, will ensure more consistent and effective management of sex offenders across the UK jurisdictions, enhancing and strengthening public protection. Tabling the legislation in the Bill will ensure a joined-up and timely approach by all the UK jurisdictions. Any sex offender who seeks to move around the UK and, perhaps, tries to avoid the rule of law will have no hiding place.

I now turn to the national driver offending retraining scheme (NDORS). Members will be familiar with the arrangements that are already in place, whereby someone who is caught speeding can, in certain circumstances, undergo a driving course as an alternative to paying a fine and having penalty points on their driving licence. Those classes can have a powerful impact on participants and can help to change reckless behaviours. The Bill will amend the Road Traffic Offenders (Northern Ireland) Order 1996 to put that scheme on a statutory footing.

5.45 pm

The legislation will provide a clear statutory basis to charge fees for courses and permit any excess fees to be used for the purposes of promoting road safety. It will also provide powers for the Department to make specific further regulations in that area. We have been working with the Policing Board, the Police Service of Northern Ireland, the Department of Finance and other relevant stakeholders on the application of the provisions to Northern Ireland. Officials have engaged with colleagues in the Department of Finance who are content, from a budgeting perspective, for the PSNI to retain the surplus income in-year. We are very keen to ensure that Northern Ireland is not exposed to any unnecessary risk as a result of being left without statutory cover for those arrangements

when such has been introduced in England and Wales.

The fourth matter on which the LCM process is engaged is the introduction of special procedures for access to material relating to the discovery of human remains. The purpose of those clauses is to help the police in England and Wales to locate human remains in situations where it is not currently possible to do so. The legislation will allow officers to apply for a search warrant or production order to obtain access to and seize material and information that may indicate the location of a deceased person's remains without the need for it to count as evidence in the investigation of a criminal offence, as currently required when applying for such search warrants. The clauses mirror, as far as is possible, provisions for obtaining search warrants and production orders in the Police and Criminal Evidence (PACE) Act 1984.

The Bill will, therefore, provide new powers for the police in England and Wales to apply to the courts for an order to access special procedure material that may relate to the location of human remains. However, they also provide conditions under which the police can apply to the courts for access to special procedure material or excluded material. That mirrors schedule 1 to the PACE Act, which provides similar conditions for search warrants applied for under section 8. The relevant measure for us is that the Bill will also include provisions — again, similar to those in PACE — for orders issued in England and Wales to be executed in Scotland and Northern Ireland under the Summary Jurisdiction (Process) Act 1881 and the Petty Sessions (Ireland) Act 1851 respectively.

The fifth matter to be included in the LCM is an amendment to the Proceeds of Crime Act (POCA) 2002. That provision will bring Northern Ireland into line with the rest of the UK in that area. Members may recall that, due to late notification from Treasury, there was insufficient time for me to bring an LCM to the Assembly on that clause under the Financial Services Bill, subsequently the Financial Services Act 2021. I laid a memorandum before the Assembly on 26 March 2021 setting out the timing issues and indicating that I would request that the UK Government prioritise the identification of another suitable Westminster Bill to achieve that amendment as soon as practicable. I am pleased that the UK Government were able to bring forward that clause by Government amendment to the Police, Crime, Sentencing and Courts Bill.

The clause amends the definition of "relevant financial institution" under the Proceeds of Crime Act for Northern Ireland to match the definition for England, Wales and Scotland that was achieved under the Financial Services Act 2021. It means that account-freezing and forfeiture powers can be used in respect of money not only in bank and building society accounts but in accounts maintained by electronic money institutions and payment institutions, such as Revolut and PayPal, in Northern Ireland.

That ensures that law enforcement agencies here can avail themselves of powers that are available elsewhere in the UK. It will prevent the scenario where money in an account with an electronic money or payment institution that is suspected of being derived from criminal conduct, or for use in future criminal conduct, would be beyond reach. That is an important issue to address, given the increasing use of electronic money and payment institutions. We need to ensure that our legislation keeps pace with changing technology and criminal behaviour in order to remain effective in tackling organised crime. The account-freezing and forfeiture powers under POCA provide a valuable tool for law enforcement bodies and serve notice to criminals that they cannot hide their dirty money in such facilities.

Where the court orders the forfeiture of funds from an account, half of the amount is returned to the relevant law enforcement agency — for example, the PSNI — to enhance asset recovery work. The other half is used to fund asset recovery capabilities across the UK. I am working with the UK Government to change the current arrangements so that all proceeds of crime recovered in Northern Ireland stay in this jurisdiction, not only to enhance asset recovery processes but to be made available for investment in community projects to reduce crime and the fear of crime.

Members may ask whether those matters could be legislated for by the Assembly. In some matters, we are dealing with legislation made at Westminster or that applies across the UK, therefore necessitating the Westminster route. Given the advanced stage of the Bill and the timescales involved, it would not prove possible to legislate locally on those matters in a timely fashion. I also believe that, in the matters concerned, it is important to maintain consistency across the UK, and that is best achieved through the LCM process. Westminster colleagues are keen to have the request considered as soon as possible as the timescales are challenging.

Before I finish, I want to place on record my thanks to the Justice Committee for its report, and I welcome its support for the LCM. I would also like to record my thanks to Executive colleagues for their consideration of these issues. Building on that report, I am keen to hear the views of Members today and to seek legislative consent.

Mr Storey (The Chairperson of the Committee for Justice): On behalf of the Committee for Justice, I will outline the detailed engagement that it has had on the provisions to be included in this legislative consent motion.

Department of Justice officials attended the Justice Committee on 14 January to provide oral evidence on the provisions that had been identified at that time for inclusion in the forthcoming Bill to be introduced at Westminster. The Committee was told that those related to the amendments to the Crime (Overseas Production Orders) Act 2019 to address practical issues that had arisen during its implementation; the cross-jurisdictional enforcement of the Scottish sexual harm prevention orders and the sexual risk orders; and statutory authority for the national driver offender retraining scheme. The Minister has set out the details of those provisions, which, you will be glad to know, I do not intend to repeat.

The Department advised that, with the constraints on the legislative programme in this mandate, it would not be possible to achieve the equivalent legislation for those provisions via an Assembly Bill in the same timescale that could be achieved with the Westminster Bill. In addition, the forthcoming Bill included UK-wide provisions and would enable gaps to be addressed more quickly in a way that would be beneficial to Northern Ireland. The Committee agreed to consider the matter further when the Bill was available and the Executive had reached a position on the proposal to extend the provisions to Northern Ireland by way of an LCM. The Department subsequently wrote to the Committee on 28 January to advise that the Executive had agreed to the proposal to introduce the LCM, and it provided the further information requested by the Committee during the oral evidence session.

The Department also advised of another provision that was expected to be included in the Bill for which consent would be required. That will provide powers for the police in England and Wales to apply to the courts for an order to access special procedure material that may relate to the location of human remains without the need for it to count as evidence in the investigation of a criminal offence, as is currently required when applying for search warrants. The Department advised that the PSNI had confirmed that it was content with the provisions and that the Home Office had advised that it expected them to be very rarely used.

Further correspondence was received from the Department on 17 February advising of an additional provision requiring consent relating to the powers to extract information from mobile devices. That is to address a recommendation by the Information Commissioner's Office that the legislative framework should be strengthened to ensure clarity for victims and witnesses and offenders, to address inconsistencies between forces and to clarify the lawful basis for the data extraction.

Having considered that correspondence, the Committee agreed to ask the Northern Ireland Human Rights Commission, the Attorney General for Northern Ireland and the Northern Ireland Commissioner for Children and Young People for their views on all the provisions to be included in the proposed LCM, including their compatibility with the European Convention on Human Rights. Both the Human Rights Commission and the Attorney General drew attention to and raised a number of issues in their responses on the provisions regarding the extraction of data from mobile devices. The Committee was, however, subsequently advised on 16 June 2021 that the Executive had not agreed to the inclusion of that provision in the LCM but instead may return to the issue once the related code of practice has been consulted on. The Committee has continued to follow up on that issue separately, so I do not intend to cover it any further this evening.

The Human Rights Commission also advised that the amendments to the Crime (Overseas Production Orders) Act 2019 regarding the communication data will impact on the right to privacy and freedom of expression and that further safeguards will be required in order to ensure that the acquisition of such data does not violate articles 8 and 10 of the European Convention on Human Rights. The commission suggested other issues that the Committee may wish to seek more information on, including who would be a prescribed person allowed to serve overseas production orders; how individuals subject to the Scottish sexual harm prevention orders and sexual risk orders would be identified when moving between jurisdictions; and any potential implications for the work of the Independent Commission for the Location of Victims' Remains (ICLVR). The commission also recommended that, in order to

ensure equal access for all, the cost of the fees for training courses for low-level driving offences, which are used instead of fixed penalties, should not be prohibitive and that any changes in policy relating to the cost of course alternatives should be accompanied by a section 75 equality impact assessment (EQIA).

As suggested by the Human Rights Commission, the Committee wrote to the Independent Commission for the Location of Victims' Remains for its views on the potential implications of the provisions relating to the location of human remains for its ongoing work. It responded by advising that it is an implementation body and the legislation and policies that underlie it are fundamentally a matter for the Irish and UK Governments. The Committee therefore wrote to the Department to ascertain if the views of the Department of Justice in the Republic and the Northern Ireland Office had been sought on the potential implications of the provisions relating to the location of human remains on the work of the remains body. The Department initially advised that neither organisation had been contacted but that the Home Office was of the view that the provisions did not impede or undermine the work of the ICLVR, although there was no indication of what information that view was based on. Having sought clarification of the basis on which the Home Office had reached that view, the Committee received confirmation from the Department of Justice that the ICLVR had advised that it was content that the provision had no adverse effects on the commission or its endeavours.

The Committee also asked the Department for its response to the issues raised by the Human Rights Commission. For Members' information, details of the subsequent extensive engagement on those issues between the Committee, the Department and the commission is set out in the Committee's report. In its most recent response, the Department set out information about the oversight arrangements relating to the SOPO and advised that similar oversight will be considered for future international cooperation agreements, as and when they are required. The Department also confirmed that, as recommended by the Human Rights Commission, it will complete a section 75 screening exercise when preparing secondary legislation relating to speeding courses as an alternative to prosecution and that, as part of that process, it will consult relevant stakeholders, including the commission. The Committee will, of course, be able to ensure that that has taken place when it considers any secondary legislation that is brought before it.

In respect of the issues relating to the SOPOs, the Department has advised that effective risk management processes agreed between police forces and probation services are in place across the UK and are compliant with international human rights standards. The Committee sought further details on the risk management processes that are already in place for the management of sex offenders who move between jurisdictions and noted that the framework is provided by the public prosecution arrangements for Northern Ireland. In responding to the points set out by the Department, the Northern Ireland Human Rights Commission urged the Committee to protect the monitoring and review of oversight functions but advised that it otherwise had no further comments about the management of sex offenders and the amendments to the SOPOs.

The LCM seemed to the Committee to be never-ending. In addition to the provisions that I have already mentioned, on 16 June 2021, the Committee was advised that the Home Office will make an amendment to the Bill to bring electronic money and payment institutions within the scope of the Proceeds of Crime Act 2002 freezing and forfeiture powers in respect of Northern Ireland. The Committee has been pursuing the issue separately since 18 March, when it noted the correspondence from the Minister of Justice that advised of a request from the Economic Secretary to the Treasury to consider legislative consent for a clause in the Financial Services Bill. The Minister indicated to the Economic Secretary to the Treasury that it would not be feasible for an LCM to proceed within the short time provided. The Committee requested further information from the Department on the potential consequences for Northern Ireland of not being included in the provisions and clarification of whether cryptocurrency was covered by the provision. It has also sought the views of the Northern Ireland Policing Board.

6.00 pm

The Department's response advised that cryptocurrencies had been made subject to criminal restraint orders under the Proceeds of Crime Act. That has the effect of freezing property, which may be liable to confiscation following a trial and the making of a confiscation order. The Committee was also advised that the Minister had written to the Home Secretary to ask for her support to identify a suitable legislative vehicle by which to extend the relevant provisions to Northern Ireland as soon as was practicable. The Policing Board response highlighted a number of concerns and

pointed out that, without the extension of the powers, the PSNI would be at a disadvantage compared with other police services in the UK and would be required to use existing restraint and confiscation powers that can take some time and are resource-intensive for the PSNI, the Public Prosecution Service and the courts. The board stated that it was likely that similar investigations regarding the funds of a suspect resident in Northern Ireland and a suspect resident in England would be treated differently, with the Northern Ireland investigation taking longer and using greater resource.

The Committee considered the responses from the Policing Board and the Department on 10 June and agreed to ask the Department for an update on the engagement with the Home Office to identify a suitable Bill by which to extend the relevant provisions in the UK Financial Services Bill to Northern Ireland. The Committee is, therefore, supportive of the proposals to include the provisions in the LCM for the Police, Crime, Sentencing and Courts Bill.

On 21 October, the Committee considered the memorandum that had been laid by the Department of Justice on 12 October and agreed that it was content with the proposal to extend to Northern Ireland by way of a legislative consent motion provisions in the Police, Crime, Sentencing and Courts Bill relating to the Crime (Overseas Production Orders) Act; the management of sex offenders; the national driver offending restraining scheme; the application of section 29 of the Petty Sessions (Ireland) Act, 1851 to the provisions of the Bill, which will enable a judge in England and Wales to make an order authorising the police to obtain information about the location of human remains outside of a criminal investigation; and the application of an amendment to the Proceeds of Crime Act 2002 to Northern Ireland to bring electronic money and payment institutions within the scope of account-freezing and asset forfeiture powers in Northern Ireland. As is set out in the Committee report, the Committee for Justice supports the Minister of Justice in seeking the Assembly's endorsement of the legislative consent motion.

That concludes my comments as the Chair. I trust that I have accurately reflected the time that was taken by the Committee to give due consideration to important provisions in the LCM.

I will conclude with a few comments in relation to the LCM as a Member of the House and on behalf of the DUP. The provisions of the Police, Crime, Sentencing and Courts Bill that extend directly to Northern Ireland are a positive step forward in the fight against serious and organised crime in Northern Ireland. I do not think that any of us doubts that the tentacles of serious and organised crime have, sadly, invaded our communities in recent times. The ability to freeze and forfeit the proceeds of crime and terrorist property that is held online and in e-money institutions, in addition to banks and building societies, will open a new front in the war against organised crime gangs and paramilitaries. If we are serious about dealing with the scourge of organised crime gangs and paramilitary activity, we must use all possible tools at our disposal to ensure that that is the case. Tackling illegal wealth is an integral pillar of preventing harm and breaking the pernicious cycle of control and intimidation in the communities in which those groups operate.

Sadly, they operate in communities that face many challenges, including deprivation, a lack of employment and a lack of opportunities. Those who engage in such activity have a better and more lucrative lifestyle, and, sadly, some claim to represent their community, but that is far from the case.

I trust that the new power for local agencies to access samples of material that may relate to the location of human remains without the need for that to count as criminal evidence will unlock the door for better opportunities to give closure to victims and their families. That is welcome, particularly given our unique history and the long-standing absence of truth and justice for many victims of terrorism and other atrocities in Northern Ireland.

I also welcome the move towards mutual recognition and enforcement across the United Kingdom in relation to sexual offenders. Ensuring that sexual harm prevention orders and sexual risk orders are operational across each of our four regions and can be amended by authorities in each jurisdiction is a logical but important move. That reflects the fact that the risk of harm or repeat harm does not vanish the second that a sex offender moves from one community or country to another. I welcome the Minister's comments on that in the House this evening. We owe it to the victims of those serious offences to promote a joined-up approach. While the principles are sound, the success of the legislation will ultimately depend on authorities across the UK putting in place practical arrangements to identify and track offenders at an early stage.

As a party, we would have preferred to have the provisions relating to the extraction of

information from mobile and encrypted devices included as part of the legislative consent motion. However, the purpose of those changes was, on the back of concerns raised by the Information Commissioner, to clarify the lawful basis for data extraction from devices, mainly those of victims and witnesses, and with their consent. Without that, Northern Ireland authorities risk having to once again play catch-up with those in the rest of the United Kingdom. Once again, police officers in Northern Ireland face finding themselves with less security and clarity in doing their job to protect us all.

While we welcome the progress that has been made, we sound a note of caution about what may follow in the weeks and months ahead. I encourage the Minister to do all that she can to ensure that all the necessary provisions that are at her disposal are put in place so that we have a full suite of legislation that ensures not only that our communities are safe but that those who inflict harm on them have the full force of the law coming after them.

Ms Dolan: Sinn Féin supports the motion. The LCM for the Police, Crime, Sentencing and Courts Bill contains small but important provisions that, taken together, will help our justice system to respond to important issues related to organised crime, sexual offenders and locating human remains. I do not intend to discuss all aspects of the LCM, but I want to speak about some of them, including those that relate to the Scottish sexual harm prevention orders and sexual risk orders.

It is important that all jurisdictions cooperate with each other when it comes to the management of sex offenders to ensure that there are no safe havens for them. I note the ongoing work to find a resolution to the finding of the Information Commissioner's Office that there was insufficient legal clarity on the grounds on which data can be extracted from mobile devices. Data extraction has big implications for data protection and privacy, so it is important that we get that right. While it was first proposed to include it in the scope of this LCM, given the concerns of the Attorney General and the Human Rights Commission, it is only right that it has been left out until a code of practice can be drawn up and agreed. I also welcome the late inclusion in the LCM of a provision to bring electronic money and payment institutions within the scope of the account-freezing and forfeiture powers in the Proceeds of Crime Act

Organised crime gangs wreak havoc on the streets of Ireland through their illegal activities, including human trafficking, drug importation and drug dealing, as well as their associated violence, which is often serious and includes killings. Those criminals do what they want purely for financial gain, so it is important that we keep up to date with modern technology to equip the legal system with the appropriate tools to target their finances and assets. While Sinn Féin would have preferred that the Assembly legislate on such matters ourselves, I understand that it was difficult to find a substantial legislative vehicle to do so during this mandate, so I support the LCM.

Ms S Bradley: I rise as the SDLP member on the Justice Committee to support the LCM. I state at the outset that, when I see the word "LCM" in front of the Committee, I sit up straight, and, when I hear the words "data sharing", I sit up even straighter. We initially looked at this to question what it was about, and, to be fair, whilst I would always prefer that the work of the House not be done via an LCM, I have to conclude that there are times when it is a good vehicle, and today is an example of that. Any efforts that we make in unison against crime should be with other jurisdictions, and we should not allow any gaps to exist if they are at all avoidable.

I will not go over the points that were made clearly by the Minister, the Chair and the member of the Committee, but I will put it in a wider frame. The Committee has been repeatedly warned of the suboptimal position that we are in regarding speed of access to data post Brexit. Whilst it is important that we work in unison across all jurisdictions, we must also be mindful of how this work, when tied up and working smoothly together, could feed into a wider picture. It is a smaller world, and it is particularly small when you on an island and part of that island is in the European Union. We must see this as a piece that we have to be tight together on, but we also need to put our minds to it. I ask the Minister to put some context to that if she can. I appreciate that this is not being drafted in that way, but, ultimately, when we step back and look at the bigger picture, we have to ask ourselves if it can be used in a way that will genuinely work in unison against crime, regardless of who the players are that we are working with.

I will leave it at that.

Mr Blair: I start by thanking the Minister for her detailed statement and her explanation of the LCM. Given that the Police, Crime, Sentencing and Courts Bill has already been introduced in the UK Parliament and the powers relate to legislation that applies across the UK, I recognise the practical reasons for the

legislative consent motion, as opposed to our own legislation, to ensure parity with the rest of the UK, including the inevitable time constraints that the Assembly faces in the current mandate.

Some say that the original Bill contained provisions — mostly, it has to be said, relating to England and Wales — that represented a slide towards authoritarianism, so, at this point, I want to highlight the fact that the Alliance Party opposed the introduction of the legislation at Westminster, especially the parts that, in our view, marked an undermining of human rights and civil liberties. However, the provisions in the Bill now passed that extend to Northern Ireland and make the LCM necessary provide for a more joined-up approach to matters relating to public protection and tackling crime, including the enforcement of sexual offences orders and powers to make regulations and charge fees in relation to the national driver offender retraining scheme, as well as asset-freezing and forfeiture powers. Those will enable us to ensure consistency of approach across jurisdictions on matters that will be of benefit to Northern Ireland. Therefore, from a law enforcement perspective, I and Alliance colleagues support the extension of the Police, Crime, Sentencing and Courts Bill to Northern Ireland.

Mrs Long: I thank Members for considering the motion today and for their valuable contributions to the debate. I am pleased with the support that colleagues have shown and the recognition that it is sensible that the provisions be carried in a Westminster Bill.

6.15 pm

Members of the Justice Committee know that I like to keep them busy with primary legislation going through this place, and I assure them that I would resort to an LCM only as a port of last resort. It is important that, as a legislative Assembly, we have spent so much of our time over the past 18 months doing precisely that: legislating. However, on this occasion, it is appropriate that the amendments are made in the Westminster Bill. I am pleased that, so far, there has not been resistance to that.

One query that was raised was about data sharing and the sensitivity around that. I want to turn to Ms Bradley's remarks, if I may. With regard to the EU, our data sharing arrangements have largely been able to be replicated through continued access to Prüm and a number of other databases. However, there is functionality loss as a result of no longer having access to the second generation Schengen Information System (SIS II). That functionality can be replicated, but it will require bilateral arrangements between each member state and the UK.

Obviously, we have been clear with the Home Office that we believe that it is something that should be taken forward and that Ireland should be first on the list of member states that we should work with. Clearly, there are cross-border matters for which we would want to have that live data sharing available. However, as I say, there has been, broadly, through the Future Security Partnership (FSP), a reasonable level of continued access to cross-jurisdictional cooperation and data sharing, albeit that there will be some constraints with regard to, for example, being able to ensure that, now that we have the data adequacy agreement, it is maintained.

I also want to reflect briefly, if I may, on the important point that the Chair of the Committee made, particularly with respect to the proceeds of crime. It is incredibly important that all of us in the House speak with one voice when it comes to those organised crime gangs and paramilitary organisations that exist in our communities, have a parasitic relationship with ordinary people who live and work in our communities, and spend their time, essentially, taking money off the people who should have it, absorbing it into their own amassed wealth, and creating criminal enterprises that place people at risk.

Earlier, we talked about the impact of loan-sharking, for example, and the enduring level of coercive control that loan sharks are able to exert over members of the community. There is nothing more frustrating to me, as Justice Minister, to hear and see those people flaunt that wealth in the face of people in the community who are in hardship, are vulnerable and are being exploited by those individuals in order that they can make money and maintain control.

It is important to me that we try to ensure that the proceeds of crime that are collected in Northern Ireland are retained here in Northern Ireland, not only so that we can continue to reinvest it in the work that we do on the proceeds of crime, but particularly, as I said, that we can invest it in communities that are affected by the crime. Only when the community sees the money that is being taken from their pockets — and put into the pockets of criminals — being restored into the community and invested in services that make a difference to them will they have the confidence and motivation to come forward and work with us in

the criminal justice sector to try to ensure that those organisations can be disbanded and disrupted.

That is a hugely important piece of work that we all need to do. I pay tribute to the Member for raising it. We all know those people in our communities who swan around and appear to do no work but have no shortage of income. From time to time, we all ask serious questions about how that can happen. We introduced the Criminal Finances Act provisions earlier in the mandate specifically because we want to ensure that that can no longer be the case. We do not want there to be any incentive for any young person to feel that crime will pay. It is our job in the Assembly to legislate so that crime will not pay.

I also thank other Members for their comments, which were helpful, in the wider debate. Just to reflect what John Blair said: I am in the rather strange position of coming here to ask Members to support amendments in a Westminster Bill that my party does not support as a whole but has no objection to those particular elements of it. Like other Members, I live in hope that the Bill will be ameliorated by its passage through Westminster. Although we do not have any influence over that here, it is important.

If these were controversial measures, we would not seek an LCM. The Executive would not seek support, and, I am sure, the Committee would not give it. These are non-controversial amendments, but they are important nevertheless. They will have huge impact here. We seek your support, notwithstanding the fact that many of us in the House think that the Bill, as a vehicle, is a somewhat poor excuse for justice legislation.

Question put and agreed to.

Resolved:

That this Assembly agrees to the extension to Northern Ireland of a number of provisions within the Police, Crime, Sentencing and Courts Bill relating to the Crime (Overseas Production Orders) Act, the management of sex offenders, the National Driver Offender Retraining Scheme (NDORS), application of section 29 of the Petty Sessions (Ireland) Act 1851 to the provisions in the Bill enabling a judge in England and Wales to make an order authorising the police to obtain information about the location of human remains outside of a criminal investigation, and the application of an amendment to the Proceeds of Crime Act 2002 to Northern Ireland to bring electronic money and payment institutions within the scope of account freezing and forfeiture powers in Northern Ireland.

Mr Speaker: As announced earlier, Mr Christopher Stalford is not in a position to introduce the Adjournment topic today.

Adjourned at 6.20 pm.

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