Official Report (Hansard)

Tuesday 24 November 2020
Volume 133, No 4

Contents

Assembly Members

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

Northern Ireland Assembly

Tuesday 24 November 2020

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

Members observed two minutes' silence.

Ministerial Statement

Urology: Southern Health and Social Care Trust

Mr Speaker: I have received notice from the Minister of Health that he wishes to make a statement. Before I call the Minister, I remind Members that, in light of social distancing being observed by the parties, the Speaker's ruling that Members must be in the Chamber to hear a statement if they wish to ask a question has been relaxed. Members still have to make sure that their name is on the speaking list if they wish to be called, but they can do this by rising in their places as well as notifying the Business Office or the Speaker's Table directly. I remind Members to be concise in asking their questions. This is not a debate per se, and long introductions should not be entered into.

Mr Swann (The Minister of Health): Mr Speaker, it is with deep regret that I inform the House of a further occurrence of serious concerns about the clinical practice of a hospital consultant notified to my Department by one of our health and social care trusts. The incident concerns the clinical practice of a urology consultant, Mr Aidan O'Brien, who retired from the Southern Trust earlier this year.

On 31 July 2020, the Southern Trust contacted my Department to report an early alert concerning the clinical practice of the consultant. The trust informed my Department that, on 7 June, it became aware of potential concerns regarding delays in the treatment of surgery patients who were under the care of the consultant urologist employed by the trust. The trust became aware that two out of 10 patients listed for surgery under the care of the consultant were not on the hospital's patient administration system at that time. As a result of those potential patient safety concerns, an initial look-back exercise in relation to the consultant's work was conducted to ascertain whether there were other areas of potential concern.

The initial look back, which considered cases over an 18-month period of the consultant's work in the Southern Trust from 1 January 2019 to 30 June 2020, concentrated on whether patients had had a stent inserted during a particular procedure and if the stent had been removed within the clinically recommended time frame. The initial look back identified concerns with 46 cases out of a total of 147 patients who had the procedure and were listed as being under the care of the consultant during the period addressed by the initial look-back exercise.

When my Department was contacted on 31 July, the trust confirmed that the following actions had already been taken: discussions with the GMC's employer liaison service had been conducted; the case had been discussed with NHS Resolution, which recommended restrictions of clinical practice; restrictions were put in place by the trust preventing the consultant from undertaking clinical work in the trust and denying him the access or ability to process patient information; the trust requested that the consultant voluntarily undertake to refrain from seeing any private patients at their home or any other setting and that he confirm the same in writing; and a preliminary discussion was undertaken with the Royal College of Surgeons' invited review service regarding the consultant's practice and the potential scope and scale of any further look-back exercise that may be required.

The trust also established a review group to assess the further findings of the initial look-back exercise and to explore the potential need for a further look-back exercise in the context of the emerging concerns. That group has been working diligently since August, and I am now in a position to inform the Assembly of its most recent findings. Whilst Mr O'Brien has worked in the Southern Trust for 28 years, in consultation with the Royal College of Surgeons, the review group has looked at the time frame from 1 January 2019 until 30 June 2020. During that time, 2,327 patients were under his care. The review group identified the most vulnerable

group of urology patients in that cohort and concentrated on those patients initially.

There are areas of concern relating to elective and emergency activity; radiology, pathology and cytology results; patients whose cases were considered in multidisciplinary team meetings; oncology; and the safe prescribing of an anti-androgen drug outside established NICE guidance in the management of prostate cancer. Across those areas, to date, 1,159 patients' records have been reviewed, and 271 patients or families have been contacted by the trust. The group's work continues across those areas of concern. Further details of the various review strands are appended to the statement.

So far, nine cases have been identified that meet the threshold for a serious adverse incident (SAI) review, and all nine patients and/or their families have been contacted by the trust to inform them of the position of their respective cases. A further six cases are being reviewed in more detail to establish whether those patients have come to harm.

The consultant also had a significant amount of private practice. Much of that was carried out in private domestic premises and, therefore, sat outside the regulatory framework that requires the registration and external assurance of facilities in the independent sector in which clinicians may undertake private practice. That is also of significant concern to me, as many of those patients may be unknown to the Southern Trust or the wider Health and Social Care (HSC) system.

Following a recent media report about the developing situation, the trust has issued a statement and has advised patients that, if they are concerned about aspects of their urology care and require further advice, they should contact the Southern Trust by email or through its urology information phone line. That information line is available from Monday to Friday between 10.00 am and 3.00 pm, and the number is 0800 4148520.

I am sure that the House will agree that the issues identified by the trust's review group are of the gravest concern. The impact of the concerns will be felt most severely by the patients and families affected, and, unfortunately, we are only at the start of what is likely to become a long and detailed investigation of the matter. As Health Minister, I want first to unreservedly apologise to the patients and their families for any upset and distress that has been caused. I wish to reassure them that I will endeavour to ensure that they obtain appropriate treatment and support and the care that they need over the coming weeks and months.

I propose to take a number of actions to uncover how the situation developed over a number of years without any apparent action being taken by the trust to deal with the practice of the consultant before now. I need to determine quickly whether a further look-back exercise is required that might necessitate a significant review and recall of a larger group of patients, other than those identified to date, who require a review of their clinical care and treatment. In addition to that, given the large number of cases that have been identified as meeting the threshold for an SAI review, particular action will be required to ensure that matters relating to those patients and their care and treatment are dealt with in an effective and timely way.

I have therefore taken the following actions. First, I have established a urology assurance group, chaired by the permanent secretary of my Department, to provide external oversight of the various work streams arising from the initial look-back exercise initiated by the Southern Trust. Specifically, that group will review the progress of the initial look-back exercise; consider emerging strategic issues; commission and direct further work as necessary; monitor the impact on urology and related services in the Southern Trust; ensure coordination with other associated reviews or investigations; and oversee communication across all stakeholder groups, with patient care being the central focus throughout. I have published the terms of reference for the group alongside the statement. Secondly, the Royal College of Surgeons has been commissioned to carry out an independent review of a sample of the clinical cases included in the initial look-back exercise to determine whether a further, more extensive look-back or patient recall by the trust is required. Thirdly, in relation to the consultant's private patients who are not known to the Southern Trust, I have requested that Mr O'Brien's solicitors outline how he intends to provide a similar independent process to ensure that those private patients are alerted to issues arising and that their immediate healthcare needs are being met. While the Department has no explicit duty to take this particular matter forward, as part of our wider healthcare responsibilities, I want to do all that I can to safeguard patients who may have received care or treatment in a private capacity from the consultant.

The remaining issues to be addressed relate to the management of all past, present and future cases that would meet the threshold for an SAI

review, as well as establishing why this happened and whether action could have been taken by the Southern Trust to identify and address the apparent deficiencies in the consultant's clinical practice. Given the large number of cases already identified as meeting the threshold for an SAI review and my concerns that there may be more to come, a different and specific approach is required. The fourth action, therefore, that I intend to take is to establish a statutory public inquiry under the Inquiries Act 2005. I believe that that is the best way to ensure that the full extent of the concerns is identified and for the patients and families affected to see that those and all relevant issues are pursued in a transparent and independent way. My officials are preparing the way to get the inquiry up and running as soon as possible. That will take some time, and I would expect that the respective families and patients will have the opportunity to influence the inquiry's terms of reference. I must also be mindful of the statutory duties placed on me to discuss the issues with the appointed chair in advance of establishing the inquiry. Further details will be provided in that regard when they are available.

Inevitably, this type of work leads to a range of statistics relating to patient numbers, records reviewed, patient contacts and so on. Members will know that, behind every statistic, there is a patient, a family and their story and experience. These types of exercise can cause upset, distress and anxiety.

A significant element in all this work, therefore, will be to communicate with and support patients and their families as much as possible in the coming weeks and months. To help with that, the Southern Trust is developing a patient support package to include any counselling and psychological support that is needed, alongside the provision of family liaison and related support services.

10.45 am

Members will be all too aware that these significant concerns come hard on the heels of the recall of neurology patients by the Belfast Trust, and I am sure that Members will be keen to see the outcomes of that inquiry in due course. I recently met patients and families affected by the neurology recall and reiterated my apology to them for how they had been let down by the Health and Social Care system. To address those cases, as Members will know, an independent inquiry was initiated by the Department. That inquiry was established in the absence of Ministers, when it was not possible to constitute the inquiry under the Inquiries Act. To date, the work of that independent inquiry has been largely unaffected by that non-statutory approach, and I take the opportunity to thank Brett Lockhart QC and his team for their immense efforts in recent months. However, to ensure that, in the closing stages of the neurology inquiry, Mr Lockhart and his team have timely and unfettered access to all relevant information, I also announce that I intend to convert the Independent Neurology Inquiry to a statutory public inquiry under the Inquiries Act 2005. It is important to note that the inquiry team is at a very advanced stage of its evidence-gathering process, and I want to be clear that I do not intend this decision to add to or alter the work or timescales of the neurology inquiry team, nor do I expect to see changes in the way that evidence has been gathered or public access has been provided. That would not be in the interests of the patients and families affected. They have already waited too long for answers. My officials will be in contact with Mr Lockhart as soon as possible to ensure that the transition is as seamless as it can be.

The emerging situation in the Southern Trust causes me and my Department the gravest of concerns. While I remain convinced that the experience of patients who use our health service is overwhelmingly that of a safe and quality service, these incidents, regrettably, dent the confidence of service users. I fully acknowledge that, and I will do all that I can to ensure that lessons are learned to prevent situations such as these occurring again. I trust that Members will agree that what I have announced today constitutes robust and timely action in a deeply concerning situation. I commend my statement to the Assembly.

Mr Gildernew (The Chairperson of the Committee for Health): Go raibh maith agat, a Cheann Comhairle, agus gabhaim buíochas leis an Aire. Thank you, Minister, for coming today to make the statement. It is a detailed and concerning statement.

I note your reference to the neurology inquiry, and I welcome the fact that it has been translated into a public inquiry. There will be lessons there. I also welcome the fact that a public inquiry has been called into this issue. I also reference the O'Hara inquiry, which probably has information that will be of benefit in how we move forward with this.

Minister, I welcome the fact that you said, on 27 October, that you would make the statement, and I have met the Southern Trust on the issue. Will you provide us with an update on how the terms of reference for the assurance group

were developed and especially whether any urology patient voices are involved at this point? Will you outline the timelines for that urology assurance group and the review by the Royal College of Surgeons?

Mr Swann: I thank the Chair for his comments. I apologise for not being able to give him a personal briefing on this; there was an Executive meeting this morning.

On the terms of reference of the urology assurance group, as I said, the Department received the early alert from the Southern Trust in July 2020. By that stage, the trust had taken initial actions relating to the concerns, including the restriction of the consultant's clinical practice and access to patient information, notifying the GMC and discussing the matters with the Royal College of Surgeons' invited review service to understand the scope. Officials from my Department, the Health and Social Care Board (HSCB) and the Public Health Agency (PHA) have participated in weekly progress update calls with the trust since 10 October, summarising the current position and including the quantity of patient case notes that need to be reviewed and progress on the SAIs.

The object of the group is to review the progress of the initial scoping exercise; consider the emerging strategic issues; commission and direct further work as necessary; monitor the impact on urology and related services; ensure coordination with other associated reviews and investigations; and oversee communication across all stakeholder groups. As I said, detailed terms of reference and the membership of the group are attached to the statement and will be available to Members.

On the participation of patients, as we are in the early stages of the identification of a number of them, they have not been engaged yet, but they will be engaged in the terms of reference of the full inquiry, as my statement detailed.

Mr Buckley: I thank the Minister for his statement. This will no doubt cause a lot of concern for patients across the Southern Trust. I welcome the establishment of a public inquiry to ensure public confidence, and I reiterate my call to ensure that its chair is independent of the Southern Trust and, indeed, of all the health and social care trusts.

Does the Minister agree that there is a need to look back further and examine Dr O'Brien's entire 28 years at the Southern Trust and in private practice? The review group looked at the time between 1 January 2019 and 30 June 2020, so there is a need to examine his entire time at the Southern Trust. Will the Minister outline whether he anticipates any further disciplinary or police action in relation to Dr O'Brien's actions?

Mr Swann: I thank the Member for his comments. The chair will be appointed under the Inquiries Act and will, of course, be independent.

As I said in my statement, the first look back was from 1 January 2019 until 30 June 2020, and further look backs will be decided depending on what they find in that, what the urology review group bring forward and the references from the Royal College of Surgeons. That time frame will be looked at, and they will go as far back as necessary. It is important to instil as much confidence in patients as possible to ensure that they come forward, make contact using the number provided by the Southern Trust and seek the help and assistance that they need.

The outworkings of the inquiry with regard to Mr O'Brien will depend on the outworkings of the royal college and the inquiry itself; it is not for me to predetermine them.

Mr McGrath: I thank the Minister for his statement and welcome the fact that the neurology inquiry and this inquiry will be public inquiries with statutory foundation.

The statement refers to significant work being carried out at home or in a non-clinical setting. Will the Minister detail how widespread that practice is? Is he concerned that that may be at variance with the clinical rules, guidelines and accountability that we have? To give people assurance, might the public inquiry investigate that type of practice?

Mr Swann: We do not have specific numbers for that, which is why we have been in contact with Mr O'Brien's solicitor to make sure that whatever provisions are put in place also apply to the private group of patients that he was seeing, sometimes in a domestic setting. As I said in my statement, the Southern Trust does not hold those records, so anyone who has seen Mr O'Brien in a private practice or in a domestic setting should come forward to the Southern Trust and seek assistance from that information helpline, which is now available from Monday to Friday, 10.00 am to 3.00 pm. The telephone number is 0800 414 8520.

Mr Chambers: I thank the Minister for his statement on these two rather distressing and concerning issues, and I welcome his intervention. Whilst noting the increased powers and scope that the neurology review will have following its conversion to a public inquiry, I ask the Minister whether he is satisfied that, to date, the review has not been impeded in its work and that this is instead a case of ensuring that its future work will continue unhindered.

Mr Swann: The basis and need for the neurology inquiry to be converted to a statutory public inquiry is primarily to ensure that the Independent Neurology Inquiry team has access to all relevant information to draw its conclusions and make recommendations to my Department and to support a timely outcome of the inquiry team's report. Even though the inquiry team is at a very advanced stage of its evidence-gathering process, I do not foresee the decision adversely impacting on its work or timescales. As the Member would expect, I consulted the Independent Neurology Inquiry chair in advance of my decision, and he was fully supportive. I know that the patients and families involved are eager to see the publication of the cohort to recall, and I can advise that I expect to make a statement addressing that publication in the near future.

Ms Bradshaw: I thank the Minister for his statement. He will know that some of us have been campaigning for a long time for this neurology inquiry. Those of us who received private political briefings from Hugo Mascie-Taylor and Brett Lockhart know that they wanted this, so I appreciate that we have got to this stage today.

The common factor in Muckamore, neurology, hyponatraemia, this and others is clinical governance. How many times will MLAs be brought to the Chamber to discuss breakdowns in clinical governance? Will the Minister look at a more Health and Social Care-wide process to improve that?

Mr Swann: It brings me no pleasure coming forward to make these statements; in fact, it distresses and upsets me that we find ourselves in the position that we have to make them. When I engaged with the neurology families, the most distressing piece that I heard was that they had lost trust in our health service. That is why I have moved, as the Member acknowledged, for a public inquiry in relation to Muckamore and urology and am now transferring neurology across to that as well to make sure that we get to the root cause of the problems so that we can correct them. This is not just a recent manifestation that we have to address, but I hope and am sure that the inquiries will bring things to light so that we can really get to grips with what are — I will not go as far as to say that there are systemic failings in our health service, because it is not widespread — distressing incidents. There are many, many good people working across our Health and Social Care system who need support and need the structures to support them, but, when we find cases like this, we need to ensure that we find and bring to light all that went wrong and all that is needed to correct what went wrong, so that it does not happen again. In the outworkings of all the inquiries, there will be a strong thread of recommendations that, I hope, will leave our Health and Social Care system in a far better place from a clinical governance point of view.

Mrs Cameron: I thank the Minister for his statement to the House this morning on yet another health blow to the public in Northern Ireland and much worry for the people who have been involved in these urology cases.

Can the Minister give a commitment that there will be timely and urgent engagement with the affected patients, given the frustration demonstrated in the past by neurology patients who felt that they were not involved or listened to in that malpractice scandal?

11.00 am

Mr Swann: I give the Member that assurance. One thing that came to light when I met some of the neurology families and the charities was the frustration over communication. That is why I have asked the Patient and Client Council (PCC) to lead on the engagement. It was leading on the work that we did with the neurology families; it will now do similar work with urology patients and families to ensure that they are as fully embedded in the process as possible and kept up to date regularly with each step that is being taken. It is important that they know that the work that is being brought forward by the inquiries is there to support them as well as to identify what went wrong so that we can make sure that it does not happen again.

Mr O'Dowd: This is probably one of the most disturbing and concerning health statements that I have heard in the Chamber in the 17 years that I have been an MLA. Not one but two public inquiries have been announced today. In my opinion, the reason for that is the culture in our health service. Our consultants have far too much power. The vast majority of our

consultants are fine people who carry out healthcare and save lives daily, but the culture in the health service means that they have too much power. When someone has too much power, that person is not held to account.

I will give the Minister an example. Six months ago, I wrote to the same trust about a consultant. I made a formal complaint on behalf of the mother of a disabled adult. The consultant wrote back to me and told me that he was doing a fine job. He may well be doing a fine job, but it is not up to him to tell me that. He should have been investigated. Will the Minister agree with me that, until the culture changes and that power relationship between the trusts and consultants changes, we will be back here talking about another public inquiry into a different consultant at some stage?

Mr Swann: I thank the Member for his comments. Unfortunately, I recognise what he says. I stress, however, the point that he made about there being many fine consultants working across our Health and Social Care system. I want to be clear to the Member, the House and the public who are listening that there are very many good people working in our Health and Social Care system. I ask people to put their trust in them.

The relationship between trusts and consultants is a piece of work that will be brought to bear in the inquiries that I have announced today. Health Ministers before me have had the same struggle with that relationship and the same level of concern. It gives me no pleasure to announce two public inquiries on the same day. That indicates the concern that I have as Health Minister that things need to change. I am sure that that will be the outworking of all three inquiries that I have instigated and announced since taking over as Minister of Health 10 months ago.

Mr Clarke: Like others, I welcome the Minister's honesty in his statement and the detail in it. The Member opposite talked about a culture, but there is another culture among consultants, which is for private as well as public work. While the clinical side is referenced, the bit of the statement that worries me is where it states that two out of 10 patients were not on the patient administration system. At this stage, does the Minister know whether that has anything to do with the relationship between private work and trust work, or is there something wrong with the trust's administration itself? Will that be included in that inquiry's scope?

Mr Swann: Again, that came to light when the trust became aware that two of the 10 patients who were listed for surgery with that consultant were not on the hospital's patient administration system at the time, so that will be included in the inquiry's scope. As the Member highlights, the concern then is the relationship between what was being done privately, often in domestic settings, and how that goes unregulated, unrecorded and unnoted. Unfortunately, that leaves us having to contact Mr O'Brien's solicitors to make sure that he brings forward any records or any patient details that he holds.

The reason why, today, I am calling on anybody who has been under the attention of Mr O'Brien in a private capacity to come forward to the Southern Trust is so that, through the terms of the inquiry, we can support them as well and make sure that they get whatever medical and psychological support they need and deserve, even having been under Mr O'Brien's private care.

Ms Kimmins: I thank the Minister for his statement. As others said, what we face this morning raises serious concerns. Supporting governance is a key safeguard in the delivery of services. Can the Minister confirm whether annual appraisals were carried out for the individual involved? They are a way of identifying issues early on, so I am keen to hear whether they were completed in the lead-up to the issue.

Mr Swann: I thank the Member for her point. I do not have that information with me, but I can get it and update the House when we have it.

Mrs D Kelly: I thank the Minister for his statement. I welcome the public inquiry and declare an interest in that my grand-niece's late mother was one of Dr Watt's patients. Her mum is now part of the campaign to seek answers, and they will very much welcome the public inquiry.

In relation to Dr O'Brien, I must say that I have spoken to generations of nursing and medical staff and, indeed, patients of Dr O'Brien, who are shocked at this. He was held and continues to be held by many in the highest regard. Members have talked about the relationship between the trust and consultants. Is the Minister aware of and will the terms of reference look at events preceding the inquiry by the Southern Trust? Will the terms of reference include Mr O'Brien's grievance and legal action that, I believe, may be under way against the trust?

Mr Swann: If there is legal action, I cannot comment on it, as the Member will be aware. The terms of reference for the inquiry have yet to be finalised and will not be finalised until the chair has been appointed. However, there will be full engagement on how the terms of reference are drawn up to make sure that we get to the root cause of why this was allowed to happen and, indeed, why it happened.

Mr Beattie: I thank the Minister for his statement. I also thank him for his frank and honest answers and his decisive action in ordering a public inquiry. The Minister will know that this will cause deep concern to patients, past and present, in the urology service. Even this debate may cause them concern. Can the Minister give a commitment to patients in the Southern Trust that the urology service is safe and that they are receiving the appropriate treatment?

Mr Swann: I will give that assurance, because one of the things that the Southern Trust has done is make sure that Mr O'Brien's patients are now being supported by other consultants and receiving the treatment and the updates that they need. As I have said before, anyone who has concerns about whether they fall into the scope of the review or, indeed, whether they were under Mr O'Brien's care, can phone that number to seek help, medical or psychological, should they require it. One of the outworkings of the neurology inquiry was an understanding of the necessity to provide support and care. We possibly failed to do that in neurology, but we want to make sure that we get it right in the urology inquiry, given the concerns that have been raised today.

Mr T Buchanan: Like others, I thank the Minister for making his statement to the House today. I know that the thoughts of the Minister and of everyone in the House are with those patients today. I agree with Mr O'Dowd, on this occasion, that consultants have far too much power. They dictate to their employer where they will work, and that has to change. Given the length of Mr O'Brien's 28 years' service in the trust, were concerns raised about his actions prior to this? If not, does that not cause the Minister concern about those in the trust with responsibility, who, apparently, failed to pick up on this until late in the day?

Mr Swann: As I said, that will be the outworkings and some of the work that the inquiry team will look into, as well as how far back it goes and how many look-backs we need to have. As I said in my statement, the initial look-back was at the work completed between 1 January 2019 and 30 June 2020. The trust became aware only when two out of 10 patients listed for surgery under the care of the consultant were not on the hospital's patient administration system at that time. That came to light early this summer. The inquiry will pick up on a lot of that work and answer a lot of the Member's questions.

Ms Dillon: I thank the Minister for bringing the statement to the House and for his answers. Can the Minister outline how this will affect urology services not only in the Southern Trust but across the North? As was outlined, we have delays in normal circumstances, but, in the current circumstances of COVID, we have further delays. The dent in confidence that was alluded to in doctors and urology services may lead to some people not bringing themselves forward for services? What impact will that have? Those patients will have to go to other consultants now.

Mr Swann: The Southern Trust will work to make sure that any of Mr O'Brien's patients who need follow-up assessments or interviews, even in regard to work completed by Mr O'Brien, will be seen by other consultants in the urology team.

The Member is right to raise a concern about the pressures that our urology service is already under. Like many of our health services, it already has vacancies in posts, so it will put additional strain on that service. Should patients be assigned or designated to go to a urology service, I encourage them to take up that offer because, as has been said, there are many good clinicians still working in our health service across Northern Ireland, and they are there to provide the best health and social care that they can.

Mr Boylan: Cuirim fáilte roimh ráiteas an Aire. I welcome the Minister's statement. The Minister may have partly answered in his statement how he will contact patients, including those who were private, who were seen pre-January 2019. What extra supports can be put in place for those patients and their families, and how do we instil confidence back into the system?

Mr Swann: Putting that trust and confidence back into the system is the challenge that I have and that we all have. We have good people working in the system. We have a good health system, and I ask Members to encourage people not to lose faith in all the good people working across our health and social care sector. The Southern Trust has led in providing support mechanisms, and I

reiterate that there is a telephone number for people, should they be seeking support. The number is in the statement, and it has been made available.

The concern that we have is the number of people who were seen in private practice. Much of that work was carried out in private domestic services. Therefore, it sat outside the regulatory framework, which requires the registration of external assurances of facilities in the independent sector. That side of the work concerns me as well, and that is why we have been in contact with Mr O'Brien's solicitor to make sure that we get full access and that we provide as much support to the patients he saw privately as we do for those known to the Health and Social Care sector. However, patients seen privately by Mr O'Brien can seek that reassurance and support from the Southern Trust. They will be treated equitably with Southern Trust patients.

11.15 am

Mr McNulty: I thank the Minister for his statement. This will be a difficult day for patients, for the Southern Trust and, indeed, for Mr O'Brien. There are conflicting narratives here, Minister. Many whom I have spoken to, including former patients and colleagues, speak very highly of Mr O'Brien, and that is why this statement is such a shock. I welcome the setting up of the inquiry, as it will ensure accountability, fairness and transparency for all involved.

The Minister stated that Mr O'Brien treated a minimum of 2,327 patients through the trust's services, and then there are private patients, as well. The Minister then advised that 271 patients have been contacted. Minister, I am sure that you will recognise that, after today, many more patients and their families will be concerned. Given that it has been identified that many patients have not been impacted, will the Minister undertake to ensure that those patients for whom concerns have been identified will be contacted with the appropriate care and support as quickly and expeditiously as possible?

Mr Swann: The Member talks about numbers. As I said in my statement, it is important that, when we get into a situation and a process such as this, which is about the numbers of people who are being seen, the records being looked at and all the rest of it, we do not forget that, behind each of those numbers, there is an individual and a family, as well. It is important that we do not just try to look at this in those pure number terms.

With regard to the number that the Member referenced, the more than 2,000 patients were the patients who were in his care during the initial 18-month look-back exercise, which was conducted for the period between January 2019 and June 2020. Of those, 1,159 patient records were initially reviewed and 271 patients were contacted, and, out of that, there was an identification that nine serious adverse incidents would be initiated. That is why I have decided to establish the public inquiry, under the Inquiries Act 2005, to address those concerns.

Ms S Bradley: At the outset, I declare an interest for the part of the statement that refers to the neurology recall, as my husband is one of the patients who have been recalled.

Turning to the urology statement and its contents, I thank the Minister for the assurance that he has given of the current safety in the Southern Trust. However, I refer the Minister to the part of the statement where he says:

> *"two out of 10 patients listed for surgery under the care of the consultant were not on the hospital's patient administration system at that time."*

Will the Minister elaborate on that? Is a consultant personally and solely responsible for ensuring the administration duty of placing a patient on that list? Furthermore, will he give an assurance that the terms of reference of any investigation will be to look at processes such as this and to compare them with how they are operating in other trust areas? Thank you.

Mr Swann: I give the Member the commitment that the terms of reference will be as full and complete as is necessary. I am sure that the trust's becoming aware that two out of those 10 patients who were listed for surgery under the care of the consultant were not on the hospital's patient administration system at that time will also be a major part of the inquiry.

Mr Speaker: Members, that concludes questions on the statement. Please take your ease for a moment or two.

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

Private Members' Business

Functioning of Government (Miscellaneous Provisions) Bill: Consideration Stage

Mr Deputy Speaker (Mr Beggs): I call Mr Jim Allister to move the Bill.

Moved. — [Mr Allister.]

Mr Deputy Speaker (Mr Beggs): Members will have a copy of the Marshalled List of amendments detailing the order for consideration. The amendments have been grouped for debate in the provisional grouping of amendments selected list. There are three groups of amendments, and we will debate the amendments in each group in turn. The first debate will be on amendment Nos 1 to 9 and opposition to clause 2 stand part, which deal with the appointment, conduct and management of special advisers. The second debate will be on amendment Nos 10 to 12, 21 to 23 and 25, which deal with accountability to the Assembly. It should be noted that amendment No 25 is consequential to amendment No 21. The third debate will be on amendment Nos 13 to 20, 24 and 26 and opposition to clause 7 stand part, which deal with administrative reform and governance. It should be noted that amendment No 26 is consequential to amendment No 15.

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

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

Mr Deputy Speaker (Mr Beggs): We now come to the first group of amendments — the appointment, conduct and management of special advisers — for debate. With amendment No 1, it will be convenient to debate amendment Nos 2 to 9 and the opposition to clause 2 stand part.

Mr Allister: I beg to move amendment No 1: In page 1, line 7, after "(2)" insert "(b)".

The following amendments stood on the Marshalled List:

No 2: In page 1, line 12, leave out "involvement or".*— [Mr Allister.]*

No 3: In page 1, line 13, before "A minister" insert "Subject to section 3A".*— [Mr Allister.]*

No 4: In page 1, line 14, at end insert

"(3A) In section 8 (Code for appointments), after subsection (1) insert the words:

'(2) Without prejudice to the generality of subsection (1), the code must provide that the appointing minister must -

(a) create a job description and person specification for the post,

(b) set out the requirements to be met by a successful applicant,

(c) achieve a candidate pool from which the minister shall select on sustainable and lawful grounds, and

(d) complete and the department retain documentation associated with the above processes, including recording the minister's reasons for the selection made.'".*— [Mr Allister.]*

No 5: In page 2, line 9, after "adviser" insert "by reason of the holding of that post".*— [Mr Allister.]*

No 6: In page 2, line 12, leave out "him" and insert "the special adviser".*— [Mr Allister.]*

No 7: **New Clause**

Before clause 2 insert

"**Repeal of the Civil Service Commissioners (Amendment) Order in Council 2007**

A2. The Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007 is repealed.".*— [Mr Allister.]*

No 8: In clause 4, page 2, line 28, after "Office" insert "under the provisions of the Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007".*— [Mr Allister.]*

No 9: In clause 4, page 2, line 33, leave out subsection (3).— *[Mr Allister.]*

Mr Allister: I will proceed to speak to amendment No 1 and the other amendments in group 1. It is no part of my ambition to beat the record of last Tuesday and to be here at 2.15 am, but let us see how we go.

I begin by thanking the staff, including the Bill Office staff and the Committee staff, who, behind the scenes, do a great deal of work and a give a great amount of invaluable guidance and help. I also thank the Business Office staff and the Speaker's Office staff for their roles in progressing matters to this point. It all fits together in the necessary workings of bringing forward a private Member's Bill. I also thank the witnesses who came to the Committee and gave of their time and knowledge and afforded us useful insights into much pertaining to these matters. I thank the Committee as a whole for its thoughtful interrogation of the Bill. Having listened to the points made, most particularly in Committee but also outside, I believe that the amendments provide the opportunity for a better Bill than was first drafted.

That, of course, is the whole purpose of a thoroughgoing Committee Stage. I am grateful for that.

It will be noted that not all parties participated as fulsomely as others. Sinn Féin, as was its perfect entitlement, took a different approach. There was, essentially, non-engagement with many of the issues and an unaltered declaration from the beginning that, come what may, it was opposed to each and every clause of the Bill. That is, indeed, its entitlement. It was disappointing to note that the Bill was being judged on the identity of the sponsor rather than on its content. Indeed, Mr O'Dowd made it plain in the Second Stage debate that it was not for me to bring forward a Bill such as this. I encountered that again with Mr Pat Sheehan in the Executive Committee, where there was an attitude that the Bill should be rejected, essentially, because of its authorship, not its content.

The other major party in the Executive had probably greater reason to be stand-offish. It is, undoubtedly, a difficult topic, arising as it does from RHI and all the misdemeanours that that revealed. However, it is to the credit of the DUP that it took a more mature attitude to the Bill. Similar to the other parties on the Committee — the SDLP and the Ulster Unionists; unfortunately, the Alliance Party is not on that Committee — it took an engaging and mature attitude to issues, which cannot have been easy, in some respects.

This is not a green and orange issue. There is nothing about the Bill that is of that nature. It is not about whether you are pro- or anti-Belfast Agreement, as one Sinn Féin Member sought to suggest to me. It is not about attacking these institutions. The House needs no reminder of my view of these institutions, but the Bill is not an assault on the institutions. It is not about attacking the functions of spads. I know that spads have an important and necessary function in government. I am not disputing that; I accept it entirely. It is about bettering government. It is about bringing probity and principle where those have been demonstrated to be deficient. It is, therefore, about improving the standards and principles of the functioning of government, as the title of the Bill suggests.

As we go through today, the single most significant ideological, perhaps, and political issue that Members will have to address is whether codes of conduct are sufficient to deal with the issues that have been thrown up or whether we need legislation. That will be a fundamental dividing line in the debate. It is a dividing line to be drawn and a decision to be taken in light of not just the reality of what we need and what we do not but of the perception of the public. Stormont may be something of a bubble. RHI may have been eclipsed in the public focus by the pandemic. However, the issues that arose are such that the House cannot gloss over them. It needs to address and grasp hold of them.

11.30 am

The primary Sinn Féin approach seems to be that codes are enough. Indeed, there is a certain irony there, in that we have codes only because of the Civil Service (Special Advisers) Act (Northern Ireland) 2013, sections 7 and 8 of which brought in codes of conduct and appointment for special advisers. Yet the party that, today, will tell us that codes are enough was the very party that voted against even having those codes in the 2013 Act. Such was the party's antipathy to the restraint even of codes that it voted against it. We will hear from the Minister today. I cannot accuse him of voting against it because, in 2013, he was furloughed to Westminster. He was not here, but his party vigorously, vehemently opposed the very idea of codes. Yet, today, that party tells us that codes are enough.

Are codes enough? What happened in RHI is the answer. Codes, patently, are not enough. What RHI showed was that the codes were

systematically breached. I remind Members that the codes that existed during RHI required confidentiality from spads. Paragraph 24 of their terms and conditions was there, writ large, and it required integrity. Paragraph 5 of the code of conduct also underscored the need for confidentiality. It was all there in black and white: confidentiality and integrity were required by the codes. Did it work? Anyone who recalls some of the evidence, such as the sharing of official information with family members, will readily reach the conclusion that codes, demonstrably, were not enough. As an adequate control mechanism, codes have demonstrably failed.

Then, of course, we are given the assurance that things will be different now. Will they? Without the certainty of legislation, I seriously doubt that. Why would anyone who is determined to do the right thing fear legislation? Maybe the answer lies in a quite amazing letter that the Finance Minister wrote to the Finance Committee during its scrutiny of this Bill. On 27 April, the Finance Minister wrote to Dr Aiken, the Chair, setting forth his views on the Bill. Let me read a sentence or two from that letter. This is what it says in support of codes:

> *"But it is also important that those rules are amenable to interpretation and the application of judgement, and that the rules can be developed and enhanced as circumstances require."*

We have just passed through RHI, with all its ugly sides and all its plaintive rebuke of how things were being done, and the Finance Minister writes to the Committee and says, "Codes are enough. We do not want legislation, because we want something that is amenable to interpretation. We want something that allows the application of judgement. We want something that can be developed and enhanced as circumstances require." Why would you want a provision in legislation that says you shall not breach confidentiality and you shall behave with integrity — why would we want that to be amenable to interpretation? I say that the House should not want such to be amenable to interpretation.

Indeed, I was sitting in the House waiting for the debate to start, and Mr O'Dowd gave me an excellent line. When the Health Minister was talking about his inquiry into the urology services — and I say this in the context of the Finance Minister wanting to have the power to decide on interpretation — Mr O'Dowd said:

> *"When someone has too much power, that person is not held to account".*

Exactly.

Mr O'Dowd: Will the Member give way?

Mr Allister: Certainly.

Mr O'Dowd: There are accountability mechanisms in place here. We are actually sitting in one at the minute: it is the Assembly. The Assembly holds Ministers and their Departments to account.

Mr Deputy Speaker (Mr Beggs): Can the Member make his comments through the Chair so that the microphone can pick them up?

Mr O'Dowd: Sorry.

We also have our Committees. Our Committees hold Ministers to account, their Departments to account and their officials to account. So there is not an absence of accountability. No one is arguing for an absence of accountability. However, we are arguing that the measures the Member is taking are unnecessary and unwieldy.

Mr Allister: I could understand the Member's contribution if we had not had RHI. RHI is the reason why it is demonstrably clear that codes are not enough. I really do think that there is an element of delusion if Members think that codes can do it.

Mr Frew: Will the Member give way?

Mr Allister: Sure.

Mr Frew: Will the Member agree with me that the Member who just made an intervention and who talked about democratic accountability was the very Member, at the Second Stage of this Bill, who did not want or see fit that private Members should bring legislation such as this?

Mr Allister: Yes. I should make the point that it is not an either/or choice. It is not that legislation takes everything that could be in a code and legislates for it. The legislation sets the basic parameters. It still —.

Mr McGuigan: Will the Member give way?

Mr Allister: In a moment.

It still admits a role for codes. Sections 7 and 8 of the 2013 Act are explicit. They lay down some minimum requirements in codes and leave the rest to the discretion of the Department. So it is not that you have to

choose codes or legislation. The question is: are there some matters where codes have failed and you need to step it up a gear and put it into legislation? That is the contention behind this Bill.

I will give way.

Mr McGuigan: Will the Member accept that Justice Coghlin conducted a very fulsome inquiry into this issue that most people thought was conducted very thoroughly and came up with recommendations, none of which required legislation?

Mr Allister: I understand that, and I have read, obviously, the entirety of the RHI report. Lord Justice Coghlin is not the legislator. This Assembly is the legislator, and it is for this House to decide, with the useful guidance and assistance that came out of the RHI report, how it is going to handle that, and whether, in the circumstances where things have failed in the past, we now do need legislation.

Let me be clear. Legislation is binding, in circumstances in which codes are, in the Minister's words, "amenable to interpretation". I told the House at Second Stage about the declaration by Lord Bingham in a case involving a code of practice issued under the Mental Health Act in England. Lord Bingham summed it up very precisely. He said:

> *"It is in my view plain that the Code does not have the binding effect which a statutory provision or a statutory instrument would have."*

There you have it. It is about whether MLAs want the changes arising from the RHI inquiry report to be binding or not. When MLAs vote later today, let this be the compelling thought, "As I express my vote, do I want the changes that need to be made to be binding or not?". That is the defining issue. It is about our durability and the seriousness of our intent on the issue, and it is also a confidence-building measure to the wider public. I do not need to tell anyone in the House that this place suffers from public perception issues. I put it as gently as I can.

The Stormont bubble is not the jury in this matter. It is the wider public who are the jury and who will judge today whether we took the steps that they would expect us to take or whether we bottled it in our cocoon by saying, "We can look after all of this by mere codes that are amenable to what suits our interpretation". That is the defining issue. I have already said that codes and legislation can, perfectly happily, coexist. That is the infrastructure that I am inviting the House today to embrace.

Mr Deputy Speaker, you will be pleased to hear that I am coming to each of the amendments in turn now, having made those preliminary remarks. Amendment No 1 is purely technical, and I hope that we can all have some agreement on that. It is about tidying up a typographical error in the Bill.

Amendment Nos 2 and 3 are about the discipline of spads. My starting point is this: special advisers, so long as they hold office, are civil servants. Temporary civil servants, yes, but civil servants. They are beneficiaries of all the benefits, pension and salary of being civil servants, but, unlike the civil servants with whom they work, they are not subject to the discipline of the Civil Service. That is what I want to correct, because we have had experience in this place of how the discipline of spads worked or did not work. We had an incident way back relating to Red Sky. We had a Mr Stephen Brimstone, a special adviser. He, because of his conduct, was recommended by the Finance Department for formal disciplinary investigation. The Department asked Finance to look at the situation. The Department of Finance and Personnel, as it then was, independently recommended that he should be subject to a formal disciplinary investigation.

11.45 am

Did it happen? No. Why did it not happen? His Minister overrode it. He said, "We will have none of that and no investigation".

The Social Development Committee of the time, of which our current Speaker was the Chair and I was a member, did a report. One of the recommendations of that report was a change to stop the Minister aborting a disciplinary investigation. That was a recommendation in the report brought to the House. Today, I am inviting the House to carry that through by subjecting a civil servant who is a special adviser to the same disciplinary procedures as the Civil Service of which he is a part.

We have to remember that the Minister of Finance's view, which was expressed to the Committee, was that the revised ministerial code makes a Minister responsible for, and accountable for, the behaviour of their special advisers. If a Minister does not take action in response to a breach of the special advisers' code, they can be reported and investigated for a breach of the ministerial code. I do not think

that I do any injustice to what the Minister's contention to the Committee was.

The question is this: is that sufficient? I have to say to the House that neither presentationally nor practically does it resolve the problem, because the problem is this: the Minister hand-picks his spad, who acts as a civil servant but who is immune from Civil Service discipline and instead can be held to account by the one who chose him in the first place. One has to ask how many Ministers have ever been held accountable for a breach of the ministerial code.

We are told that you take care of this by putting the Minister in charge and that if he does not act he breaches the ministerial code. That is the theory. The practical question that I have is this: how many Ministers have ever been held accountable for a breach of the ministerial code? In that system, of course, any punishment for the errant spad lies with the one who chose him. It is as farcical as it appears.

We come back to the fundamental point: if a spad has all the benefits of a civil servant, why should he not be held accountable to the Civil Service code of conduct and the Civil Service provisions in respect of discipline? The point is made to me that the present Civil Service codes do not lend themselves to that. With respect, that is not an answer. It is up to the head of the Civil Service to adjust the codes to deal with the spad situation. It is not for me and it is not for this Bill. If this principle is passed, it is for the Civil Service to accommodate it.

I have heard it said that, "Oh, but we are taking away the Minister's entire accountability in respect of his spad".

No, I am not, because clause 1(3) recommends that:

> *"A minister who appoints a special adviser is" —*

remains —

> *"responsible for their management, conduct and adherence to the code of conduct."*

All that I am taking away from him is the right to interfere in the disciplinary process. He can still be involved and make the reference, and it might still come back to him, but he cannot interfere. That is the principle that lies behind amendment Nos 2 and 3. It lies there because of the experience of such interference in the past.

Amendment Nos 2 and 3 are worthy of the support of the House because they fill a gaping gap. It is farcical that a hand-picked spad is only ever subject to the whim and discipline of the person who appointed him, even though, as a civil servant, he could drive a coach and horses through their code and only the Minister can do anything about it. That cannot be right. That is why I am saying that we should make them subject to the Civil Service code of conduct and the disciplinary process.

Amendment No 4 deals with the issue of how a spad is appointed. The Department effectively double-crossed Lord Justice Coghlin on that issue. In his report, Lord Justice Coghlin was aghast at the breaches of the then code on the appointment of spads. Let me remind the House what the old code said. It required a job description. There is no surprise there, because we are filling a publicly paid post, so, surely, there should be a job description. The old code also required criteria by which the selection would be made, a candidate profile and the Minister to document the process. You will recall what Lord Justice Coghlin had to say about how some of that matter was breached. I go to volume 3, page 166, of his report. His findings state that:

> *"It is clear from the evidence received by the Inquiry that both of the two main parties in the Executive, the DUP and Sinn Féin, breached the spirit and/or provisions of the 2013 Act passed by the Assembly and the mandatory codes issued by DFP in accordance with sections 7 and 8 of that Act in one way or another.*
>
> *At the time of Mr Cairns' appointment as SpAd to Minister Bell in DETI in 2015, some two years after the passage of the 2013 Act and the mandatory appointment code, the procedure was not, as required by the appointment code, by way of a competitive selection from a candidate pool set up after a trawl by Minister Bell, but was instead conducted by the DUP through its then leader, and the then First Minister, Mr Robinson.*
>
> *Minister Bell accepted that the practice adopted in signing the letter of appointment effectively 'camouflaged' the complete failure to comply with the appointment code."*

He goes on to say that:

> *"The Inquiry finds that the practices adopted by the DUP and Sinn Féin in centralising the appointment, control, and management of*

SpAds effectively frustrated that purpose of the democratically enacted legislation."

Further to that, he states that:

"The realpolitik observed by some Ministers in these circumstances appears to have produced a number of advisers with wide powers and influence who were appointed and operated in practice outside the code of conduct for Special Advisers.

Nevertheless, it is important to bear in mind that SpAds were civil servants, albeit of a special type, and, as such, there is a public interest in ensuring that the appointment process was operated, and was seen to operate, in accordance with the relevant codes."

What did Minister Murphy do with those findings? Minister Murphy brought a code that had been found to have been breached multiple times in all those aspects — about candidate pool, candidate profile, setting criteria, documenting the process — and rewrote the code of appointment to simply strip all that out. So, the answer to the criticism that the codes had not been followed was simply to take out of the codes that which had not been followed. How perverse is that? Recommendation 41 of Lord Justice Coghlin was:

"that there should be robust compliance".

Mr Murphy's response was, "Just strip it out". So, you deal with the behaviour that was excoriated simply by making that excoriated behaviour no longer a breach. That is not good government. That is what amendment No 4 is all about. Amendment No 4 is about putting it back in because the Department could not be trusted to just work it on codes. Sections 7 and 8 of the 2013 Act gave them wide discretion. The code that was produced back then required a candidate pool, selection process, keeping a note — all the things that are in amendment No 4. We then discovered that Executive parties could not be trusted to do that either in RHI, where they simply breached it, or post-RHI, when they stripped it out. The purpose of amendment No 4 is to put it back in but, this time, to put it in legislation.

Let me quote some of the things that Felicity Huston, the former Commissioner for Public Appointments, told the Committee. She gave of her time. She came and gave evidence, with her vast experience of the basic requirements in public appointments. She said of Mr Murphy's code:

"This Code - published to the surprise of many before Sir Patrick's report and recommendations – omits any process or procedure for the actual selection of Special advisors. It has dispensed with any pretence at selection as would be understood by those commonly applying for a job. No Minister needs to explain what skills, experience etc were either required for the post or how he or she established whether the selected SPAD had those skills".

This is not me speaking. This is a former Commissioner for Public Appointments who stated that:

"As the ... January 2020 Code stands there can be no cause for complaint or lack of compliance because there is no process about which to complain.

A Code for Appointment would normally set out a basic appointment process ... Criteria for selection ... opportunity ... to demonstrate how they fulfil the criteria ... Some form of objective ... process ... Records of the above".

Yet, I repeat this point: all of that, which was in the old code, was systematically and deliberately stripped out. That is what the House is being asked to endorse today. When it comes to amendment No 4, the House will decide whether it is at ease with the fact that what at least, on paper, used to exist, no longer exists. There is no process for a person who has been appointed to a highly paid public office, as a public servant, as part of the Civil Service and paid from public funds. I suggest that Members should ask themselves whether they are content that no process should attend to that or whether they think that there should be a basic process of knowing the job, the job description and the criteria that are required to be met and to keep records of why the decision was made. I suggest that those are so elemental and basic that, as Felicity Huston said, you cannot ignore them. You cannot write them out of existence, yet that is exactly what has been done.

12.00 noon

I have heard it said by some that, if we accept amendment No 4, require a job description, set out the requirements to be met by a successful applicant, achieve a candidate pool and require the Department to complete and retain documentation about the process, you would rob a Minister of his right to appoint somebody politically akin to his viewpoint. That is absolute

nonsense. What is in amendment No 4 is not the entirety of the process. It details the basic fundamentals, and the Minister can build further elements around those. There is nothing in amendment No 4 that would prevent a Minister from appointing someone with political empathy to their standpoint.

I say that with the certainty of legislation. The Fair Employment and Treatment (Northern Ireland) Order 1998 is still the law and will be the law for any Minister making an appointment. It states:

> *"So far as they relate to discrimination on the ground of political opinion, Parts III and V"*

— those are the Parts that prohibit it —

> *"do not apply to or in relation to an employment or occupation where the essential nature of the job requires it to be done by a person holding, or not holding, a particular political opinion."*

Therefore, you can indicate, lawfully and legally, that any applicant needs to be someone who has political empathy with your standpoint as a Minister. There is nothing in law and nothing in amendment No 4 that would stop that. Therefore, it would be a straw man who would suggest that, if we put all that in, it would create a prohibition. Patently, it would not. Indeed, there has been some misinformation about that from the highest level. Minister Murphy wrote a four-page letter to his Executive colleagues on 17 November. In that letter, he stated:

> *"Where the law currently recognises the political nature of special adviser appointments and allows an exception for that on the merit principle" —.*

I had better read the whole paragraph. He stated:

> *"Ministers will no longer be able to choose the person they want to have as special adviser" —.*

Wrong. He continued:

> *"The code of appointments that we agreed earlier this year requires special adviser appointments to be delivered in line with employment law" —.*

Yes, so does the Bill.

> *"This Bill will require every special adviser to be appointed following a competition".*

Not exactly. It does not have to be a publicised public competition. It can be done by gathering a pool of candidates.

He says:

> *"This Bill will require every official adviser to be appointed following a competition drawing from a pool of candidates".*

Yes.

> *"regardless of the needs for those appointments to be personal appointments".*

No, they are personal appointments. The selection criteria can set that out. There is nothing in amendment No 4 that prevents that.

Then he says:

> *"and where the law currently recognises, the political nature of special appointments allows an exception for that in the merit principle."*

You can still do that by saying, "So long as I comply with the 1998 Order, I can have someone of my political affinity". I am not trying to interfere with that. I recognise that spads have to be in tune with their Minister. I recognise that Ministers need spads that they can work with. I am not saying otherwise, but I am saying that, when we come to spend public money on an appointment such as this, with all the privileges that go with it, the public are entitled to know that there was a candidate pool, criteria were set and a record was kept, rather than some huge sinecure being handed out to somebody unknown and secretly. That is what amendment No 4 is all about.

I respectfully suggest to the House that amendment No 4 is worthy of its support and goes some considerable way to restoring some probity to and public respect for the process of appointing spads.

I will move to amendment No 5. I should say before I do, that clause 1(5) — we will be voting on entire clauses — deals with setting salaries. Again, let me make it plain. I am not seeking to legislate that a certain amount should be the salary for a spad. All I am seeking to do is two things: tie the salary to the Civil Service, which is politically advantageous because it depoliticises it; and tie it to the higher level of grade 5. I want to tie it to the Civil Service and

to set the upper ceiling. I am not saying within that upper ceiling what any spad should be paid. Any code can set as many bands as it likes, but the one thing that it cannot do is to breach the ceiling. The codes still set the bands. The Minister and the appointment process selects from within those bands who is paid what. All it does is say that you cannot be paid above grade 5 of the Civil Service, which, presently, is something in the order of £81,000 to £82,000 a year. On the current bands, there is no one, apparently, being paid more than that, so there is no prejudice to anyone.

Mr Wells: Will the Member give way?

Mr Allister: Yes, I will give way.

Mr Wells: Does the Member agree that the salary levels up until 2017 were almost obscene? The top spads were getting £91,809 each. You had the situation where a junior Minister on a ministerial salary of £6,500 a year was serviced by a spad on £72,120 a year. Is that not an 'Alice in Wonderland' situation?

Mr Allister: It certainly is. The Member reminds me of something. The setting of salaries was so arbitrary — Ministers could change them when they liked — that, in about 2014, the then First Minister and Finance Minister changed the salary upper level to, I think it was, about £70,000 to about £90,000 overnight. Clause 1(5) is necessary in order to set the upper ceiling so that the public know that their money is subject to the restraint of a ministerial whim not being able to change the bands to make the sky the limit because an upper limit is set in statute.

I have heard it asked, "Oh, but what if we need some supercharged individual as an adviser, and we need to pay him megabucks. Are we not allowed to do that?". Appointing a spad is not the only way. This Government and many Governments depend highly on consultants and go out to a consultant on something. You also have the prerogative powers, and I will come to clause 3 in a minute. The prerogative power will still survive so that, if someone needs to make a case that they need a super-paid whomever at £150,000 a year, they can do it under the prerogative power of clause 3. The only change through clause 3 will be that you have to bring the matter to the House, but you can still do it, so it is not a prohibition on anything like that. However, it is a prohibition on paying your spad more than a senior civil servant at grade 5, and that, I think, is a sensible and necessary proposition.

Amendment No 5 deals with clause 1(6). I have to say to the House that this issue touches a raw nerve with many people. The House will recall that the primary function of the 2013 special advisers Act was to remove from office those with serious criminal convictions following the public outrage at the appointment of Mary McArdle, a convicted murderer, as the special adviser to the then Communities Minister. That might not have been the title then, but it is now. That was the catalyst for my bringing the 2013 special advisers Bill, and that, by virtue of the votes in the House, set in place a statutory provision that such a person cannot hold the position of special adviser.

What did we discover in the RHI inquiry? We discovered that Sinn Féin consciously and deliberately circumvented that legislation by appointing someone referred to in shorthand as a "super-spad". That person was no longer paid out of public funds but was put in a position to control the other spads of Sinn Féin and was to be accountable directly to the deputy First Minister. That was a total breach of the spirit of the 2013 Act. Clause 1(6) and amendment No 5 are about blocking that loophole, because, in those situations, what prevailed was that the super-spad had the full run of Stormont Castle, an office in Stormont Castle, and the Civil Service acknowledged him and dealt with him as though he were a spad. That made a mockery of the democratic decision of the House. Therefore, with clause 1(5), I seek to ensure that we close that gap.

Mr Wells: Will the Member give way?

Mr Allister: Yes.

Mr Wells: I refer the Member to paragraph 54.34 of the RHI report, where Lord Justice Coghlin says:

> *"In effect, an individual who could not legally have been appointed as a SpAd and who was not subject to the mandatory code, or other relevant codes, managed and co-ordinated those who were employed and paid from public funds as temporary civil servants and who were subject to the relevant legal structure and codes."*

Can the Member reassure us that his amendment will stop that from happening in the future?
12.15 pm

Mr Allister: Absolutely; that is what it is all about. Clause 1(6) is all about that. The Member beat me to it, because I was going to

that exact page in the RHI report. I am going to read a little more of it — this is page 158 of volume 3 — because, back at paragraph 54.32, it states:

"According to Mr Ó Muilleoir" —

he, of course, was then the Finance Minister —

"the 2013 Act, in prohibiting the appointment of Special Advisers with serious criminal convictions, was seen by Sinn Féin as:

'...an attack on the peace process, as undermining the inclusion which is the foundation of the peace process, and it was not our intention to discriminate against former political prisoners who had helped build the peace.'

As a result, Sinn Féin set up a centralised system under which Aidan McAteer, who did have a proscribed conviction and who was now to be neither appointed nor paid as a civil servant, was engaged to 'manage and co-ordinate' on a day-to-day basis the work of all Sinn Féin Special Advisers.

It seems that all of the Sinn Féin SpAds were aware that Aidan McAteer was acting as the senior Sinn Féin adviser with the direct authority of the deputy First Minister, the late Martin McGuinness. In his evidence to the Inquiry Sir Malcom McKibbin accepted that when he was first introduced to Aidan McAteer, he was told by the then deputy First Minister that he would be working underneath his (Mr McGuinness's) direction and authority. As such, according to Mr Ó Muilleoir, he was seen as occupying an elevated position with more authority than any of the other SpAds."

And then the sentence that Mr Wells quoted:

"In effect, an individual who could not legally have been appointed as a SpAd and who was not subject to the mandatory code, or other relevant codes, managed and co-ordinated those who were employed and paid from public funds as temporary civil servants and who were subject to the relevant legal structure and codes."

Do I really need to say anything more on the necessity of clause 1(6) and the need to shut that loophole?

It also informs another matter, which is the trust that can be placed in the proper implementation of codes. If a senior party in the Government was prepared to so deliberately circumvent the law of the land, then what confidence can anyone have in mere codes that are then amenable to their interpretation? That is a sobering question for the House, and it is one that needs to be addressed.

Members will recall that the 2013 Act quite properly became known by shorthand as "Ann's law", because of the fantastic work that was done by Ann Travers, sister of the murdered Mary Travers. Members will be aware that just a couple of weeks ago Ann Travers, writing in a local newspaper, identified this clause as being critical for both her and innocent victims who felt trampled and betrayed by the fact that a law that they thought had been established was circumvented in the manner in which it was. This House has an opportunity today to right that wrong, and I urge it not to miss that opportunity.

Amendment No 5 simply adds a few words, which came from departmental — I think it was the Executive Office — recommendations, as it felt that the clause did not have the clarity required. It simply adds words to make it clear that the special adviser being talked about is one:

"by reason of the holding of that post".

That is the limitation that is to be put on such a person. Given that the Civil Service was complicit, in the sense that it accepted the role of a super-spad in breach of the provisions of the 2013 Act, clause 1(6) puts this statutory duty on a permanent secretary:

"a permanent secretary must ensure that no person other than a duly appointed special adviser is afforded by the department the cooperation, recognition and facilitation due to a special adviser."

Amendment No 5 would then, after "special adviser", add the words:

"by reason of the holding of that post".

If you cannot trust the Minister, you put the duty on the permanent secretary. It therefore does two things. Clause 1(6) states that the Minister must ensure that the duly appointed special adviser, and only he, will exercise the functions of a spad, but, as a fail-safe, the amendment would put a statutory obligation on the permanent secretary to give no facilitation or cooperation to anyone who is not a spad in relation to the role of a spad. That is how clause

1(6) and the amendment seek to shut down that abuse of the system.

Amendment No 6 is a mere drafting amendment. We then come to amendment No 7. It seeks to introduce a new clause. This brings us into the territory of how many spads there should be in the Executive Office. The House knows from the initial drafting of my Bill that it was my strong contention, and it is still my personal belief, that an Executive Office with eight spads is way above what is required, when you consider that, at a particular time, that is the same number as there was for the entirety of the Welsh Government. I wanted to reduce the number of spads to four. Part of the function of a Committee Stage is to have discussions about a Bill, and I have to recognise that I am not going to achieve that. I am therefore now putting to the House an adjusted proposition.

Historically, the First Minister had three spads and the deputy First Minister had three spads. That was the position from 1998. That is how it was originally drafted: six spads in all. That is how it continued until 2007. In 2007, along came a junior Minister, with the emphasis on the word "junior", whose ego required a special adviser, so the law was changed to introduce special advisers for junior Ministers. That was done under the Civil Service Commissioners (Amendment) Order in Council 2007.

What I am seeking to do by amendment No 7 is to introduce a clause to repeal the authorising provision, the 2007 order. In other words, I am seeking to remove the right of a junior Minister to have a special adviser. As Mr Muir put it to me rather neatly in conversation, I want to restore the factory settings to what they were in 1998. In other words, we go back to where we were, with three special advisers for the First Minister, three for the deputy First Minister and none for the junior Ministers. I believe that that is right and appropriate.

Up until a few weeks ago — whether it was by consent in the Executive or otherwise, I do not know — there were no junior Minister spads. Then, suddenly, Sinn Féin maxed out its appointments and appointed a junior Minister spad. The DUP has not. Indeed, interestingly, through most of this pandemic, the Executive Office has managed with five spads: three Sinn Féin and two DUP. That has now been evened up, with the DUP having appointed a further one. There are now three each for the First Minister and the deputy First Minister, but Sinn Féin has additionally appointed a junior Minister spad. I am trying to undo that. I am undoing it in the context that you cannot just remove someone from a job if they have compensation rights, so clause 4 and the appendix will take care of that. However, sustaining eight spads is way beyond what is needed. By voting down amendment No 7, the message would be that we wanted to sustain the option to have eight spads. By voting for amendment No 7, Members would indicate that they wanted to have a maximum of six. That, I think, is correct. If amendment No 7 stands, I will propose the removal of clause 2, which is the one that would bring down the number of spads for the First Minister and the deputy First Minister, because I am reconciled to the fact that I will not do better than six, and I have to accept that. Therefore, if clause 7 is passed, I will oppose clause 2 standing part of the Bill. I hope that that is clear. The mission and ambition is to allow for six spads, and the mechanism is to reduce the opportunity for junior Ministers to appoint spads.

Mr Wells: Will the Member give way?

Mr Allister: Yes.

Mr Wells: First, as one who served here from 1998 to 2007, it is clear to me that junior Ministers could function perfectly adequately without having their own bespoke spads. I think that I had better name the individual who became a junior Minister in 2007: Ian Paisley Jnr. I do not think that everybody picked up the clue that he was giving us. When he took that post in 2007 and realised that other, senior, Ministers had a spad, he demanded one as well. That is the only reason for it. Of course, when Sinn Féin heard that Ian Paisley Jnr was getting a spad, it had to have one for its junior Minister.

It is interesting that the Independent Financial Review Panel carried out an independent assessment of the role of junior Ministers and decided that, such was their importance, their salary had to be reduced dramatically down to that of the Deputy Chairperson of a scrutiny Committee. That is an indication of the panel's assessment of the role of junior Ministers. Their role is more of a supportive one; they do not make policy, they do not have a vote at the Executive, and they cannot issue ministerial directions. Therefore, if someone is at the level of a Deputy Chairperson, and we would never dream of giving the Deputy Chairperson of a Committee their own personal spad, it is logical that there was never a need for them to have a spad in the first place and, with the demotion of the role of junior Minister, it is a complete anachronism to have them now.

Mr Allister: Yes. That was a comprehensive intervention that set the record straight on those matters. There it is. I hope that the House understands the how and why of what I am trying to do.

I will take the House to clause 3, which relates to the exercise of royal prerogative powers by the First Minister and the deputy First Minister. Royal prerogative powers, in the main, died out in the 17th century. However, they continue in some aspects. Amongst those upon whom they are bestowed is the Sinn Féin deputy First Minister when acting jointly with the First Minister to exercise a royal prerogative — a little irony on its own. The exercise of that power is unbridled. As the appointment, some years ago, of Mr David Gordon as Executive spokesman demonstrated, it is a power that can be exercised behind the backs of the Assembly. What happened with the appointment of Mr David Gordon was that the then First Minister and the then deputy First Minister, by decree, changed the law by royal prerogative. They brought in the provision enabling them to appoint David Gordon. The law that they made was called the Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016. Here is the critical point: it was done behind the backs of the Assembly.

The Assembly is a legislative Assembly, but here was a law made not by the legislators. Here was a law made by royal decree. On foot of that law being made, David Gordon was then appointed. The Assembly was never consulted. We were never asked to approve the law. It was just done. In my terms, it was done behind our backs.

12.30 pm

The purpose of clause 3 is to repeal the 2016 Order and then, very importantly, not to remove the royal prerogative power but to say that, if that power is ever exercised again, it must be approved by affirmative resolution of the House. In other words, if the law is to be changed by royal prerogative under the Civil Service Order, the House must be aware of that and, in fact, must approve it. It does not strip out the prerogative power, but it tempers it by making it subject to the approval of the House. In 2021, that is the least that we should expect.

That takes me back to the point about someone saying, "Oh, what if we need a super-paid spad because of his miraculous knowledge?". That is how you would appoint him. You would appoint him under the royal prerogative power, but that would be subject to the House giving that power. I would find it very surprising, even with the antipathy of some to the origin of the Bill, if anyone would really think it appropriate that we should maintain unfettered the royal prerogative power and not subject it to our say-so as a legislative Assembly. That is what amendment No 7 is about.

Of course, amendment No 8 then has to make adjustments to clause 4, because clause 4 was first drafted to keep the legislation in line with my initial proposal that special advisers in the Executive Office reduce from eight to four and that, therefore, all Executive spads would cease to hold office on 31 March next year, and any reappointed, up to the quota, would be reappointed at that stage. That would no longer be necessary because, if we are only removing the junior Minister's spad, it is only the junior Minister's spad who needs to be catered for in clause 4. Amendment No 8 has been proposed to make that abundantly clear and therefore to reduce the impact of that.

That also means, of course, that Minister Murphy's letter —.

Mr Frew: I thank the Member for giving way. I was going to raise this point in my contribution to the debate. Clause 4(1) states:

> *"Any special adviser in post in the Executive Office shall cease to hold office on 31 March 2021."*

Can the Member clarify whether that is now required, given his amendments and the changes to the junior Minister's spad only? Is clause 4(1) required?

Mr Allister: Amendment No 8 will change it so that clause 4(1) reads:

> *"Any special adviser in post in the Executive Office under the provisions of the Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007 shall cease to hold office".*

In other words, it is only the junior Minister's spad. That is what amendment No 8 does. It reduces the need to replace or reappoint all the spads in the Executive Office, which would have been necessary had we been reducing the number from eight to four. We are reducing them in only the junior Minister's office, so only the junior Minister's spad is now caught by clause 4(1). Therefore, the other three of the First Minister and the deputy First Minister carry on unaffected. That is how it is.

Amendment No 9 is simply to take out clause 4(3), because the advice, ultimately, was that it was superfluous and not necessary. The law would speak for itself. Any appointments after 31 March would, obviously, have to be in accordance with the new law. So, clause 4(3) is removed by amendment No 9.

That takes me through all the amendments. I am quite happy to leave it there for now.

Dr Aiken (The Chairperson of the Committee for Finance): The Committee for Finance considered written evidence from 22 organisations and individuals. The Committee received oral evidence from seven organisations and individuals, including the Bill sponsor, the Minister of Finance, the permanent secretary of the Department of Finance and the, now retired, head of the Northern Ireland Civil Service, whose post remains vacant. The Committee considered papers and presentations from the Assembly Research and Information Service (RaISe) to support it in its deliberations.

The Committee considered carefully the views of all who provided written and/or oral evidence, and, on behalf of the Committee, I thank all who took the time to provide detailed evidence to inform and support the Committee in its consideration of the Bill. On behalf of the Committee, I also offer my thanks to the Bill sponsor, Mr Jim Allister, for providing oral evidence and for his willingness to bring amendments to address a number of concerns raised by the Committee, witnesses and stakeholders. I am grateful to Mr Allister and all members of the Committee for their input and engagement during the Committee Stage. I formally put on record our thanks to Jim McManus, the Committee Clerk; the Finance Committee staff and RaISe; and the Bill office staff, who worked hard to ensure that we got to this stage. We thank them all for their sterling and conscientious efforts.

Throughout the Committee Stage, the Committee was mindful of the distinction between Mr Allister's role as Bill sponsor and his role as a member of the Committee for Finance. It did, however, prove helpful to have Mr Allister as a member of the Committee, where he could hear at first hand the concerns of other members and respond to those concerns. In some cases, that was to provide clarity on the provision in the Bill, and, in other instances, it was to accept members' genuine concerns and to bring forward amendments that are among those we are considering today.

Before dealing substantively with the proposed amendments to the Bill —.

Mr Wells: Will the Member give way?

Dr Aiken: Certainly.

Mr Wells: The Member raised an important point, which was raised by the Member for Fermanagh and South Tyrone during the Committee's consideration, when she made the point that, perhaps, it could be seen as a slight conflict of interest in having the promoter of the Bill as a member of the Committee. In fact, I think that most members believed that that was extremely useful. It was fortuitous and coincidental but certainly made the Bill's passage through the Committee much simpler. What is his reaction to the suggestion that was made that, for future private Member's Bills, the sponsor should be allowed to be an ex officio member of the relevant Committee, so that the other Committees would benefit from the opportunities that ours had during the past two months?

Dr Aiken: I thank the Member not just for his comments but for his work during the Bill's Committee Stage. As was expressed by the Member for Fermanagh and South Tyrone, having the Member there did indeed make it much easier. In future, we should look at allowing Members who are bringing a private Member's Bill to be an ex officio member of that Committee during that stage to enable the smoother passage of legislation.

As Chairman of the Committee for Finance, I will refer to some general issues that were considered by members during the Committee Stage. The Committee report outlines details of the considerable debate during Committee Stage in relation to the need for this legislation or whether codes and guidance were sufficient or, indeed, preferable.

This was an important consideration as it goes to the very heart of the purpose and intent of the Bill.

A former head of the Civil Service informed the Committee that he was expressing the Executive’s view that codes and guidance were sufficient to address the issues that gave rise to the Bill. The Minister and the Department of Finance's permanent secretary echoed this view. However, a number of other stakeholders did not support the view that reliance on codes and guidance was appropriate, given the prevailing circumstances here.

The view of the Department of Finance was that many of the provisions that the Bill seeks to introduce are inherent in the codes and guidance that are already in place. The Minister and Department of Finance's officials referred to codes having been strengthened. A former head of the Civil Service informed the Committee that the strengthened codes and new guidance should be viewed as evidence of the commitment of the First Minister and deputy First Minister. Indeed, the New Decade, New Approach agreement contains a commitment that the Executive would produce strengthened codes "as a matter of urgency". Yet, as I will outline later, at least one of those codes was stripped of any provisions that would have provided an appropriate level of openness, transparency and accountability.

Members will be aware that the Committee divided on every clause. That was as a result of a fundamental disagreement within the Committee on whether codes or legislation were the most appropriate way forward. On balance, having considered the evidence and the unique circumstances in which we find ourselves in Northern Ireland, the Committee supported the legislative route as an appropriate means of providing the openness, transparency and accountability that the public demand.

The Committee also considered written and oral evidence on the independence of the Commissioner for Public Appointments, or the lack thereof. I am happy to provide more detail on that issue during the Final Stage debate. However, for now, I put on record that the Committee has made a recommendation in its report that the First Minister and deputy First Minister make legislative provision to bring the Office of the Commissioner for Public Appointments for Northern Ireland to international standards.

I will move on to the amendments. I will speak as the Chair of the Committee for Finance and will confine my remarks to those amendments that were considered by the Committee.

The amendment to clause 1(2), which was brought by the Bill's sponsor, is technical in nature, and the Committee was content with that amendment.

The Committee noted that amendment Nos 2 and 3 to clause 1(3) have been tabled by the Bill's sponsor to address the need to retain and respect the principle that a Minister should be responsible for the conduct of their special adviser. The Committee was content, therefore, to support the amendment.

Clause 1(3) proposes to bring special advisers into the Northern Ireland Civil Service's disciplinary process. Those provisions were drafted under the previous code of appointment for special advisers. The Committee noted that, after the introduction of the Bill, the code of appointment was considerably revised. The revision removed many of the provisions that were in the previous code. The revised code, which is just over one page long, contains little information on any formal requirements. In the view of a former Commissioner for Public Appointments, that is contrary to the fundamental requirements for a code of appointment.

Amendment No 4 provides for the reinstatement of the provisions that were removed from the original code. In noting criticism from the chair of the renewable heat incentive inquiry that the previous code had been ignored, the Committee was of the view that it was not appropriate to remove those provisions. The Committee, therefore, agreed to the amendment. In supporting this amendment, the Committee also noted that the revised code of appointment means that there is now no process for the appointment of special advisers with which to comply. That, in turn, renders the provisions under clause 1(4) largely nugatory. Amendment No 4 would make it a statutory requirement to have a due process of selection for special advisers.

During the Committee's deliberations, it considered the need to keep a job description for a special adviser as broad as possible to assist in appointing the most appropriate candidate for the position. The Committee came to the view that the amendment to clause 1(3) does not prescribe what should be in the job description and was, therefore, content with the amendment.

12.45 pm

In consideration of amendment No 2, the Committee agreed with the Department's view that the term "ministerial involvement" in the Bill was not compatible with the position that a Minister is responsible for the conduct and discipline of their special adviser. The Committee was, therefore, content to support the amendment brought by the Bill sponsor on that principle.

During its deliberations, the Bill sponsor informed the Committee that amendment No 5 would be proposed in order to address a Department of Finance concern that there is a need to ensure that clause 1(6) relates solely to

special advisers. The Committee was content, therefore, to support amendment No 5. The Committee also supported amendment No 6, which is a technical amendment.

In its deliberations on clause 2, there was Committee consensus on the assessment that eight special advisers in the Executive Office is too many. There was no consensus, however, on what the appropriate number should be or whether there is a need to legislate in order to achieve the appropriate number. In consideration of the fact that the current complement of special advisers is provided for in legislation through the Civil Service Commissioners (Northern Ireland) Order 1999, the Committee's view was that amending that order, as provided for at clause 2, was the appropriate vehicle for achieving any reduction.

Although there are six special advisers in post in the Executive Office rather than the permitted maximum of eight, it is important to make the distinction between the number in post and the complement. The complement of special advisers in the Executive Office is eight. There is nothing to prevent the First Minister and deputy First Minister appointing up to eight special advisers at any time in the future. The intent of the legislation is, first, to reduce that complement, and, secondly, to establish an agreed smaller complement, whatever that number may be.

The Committee agreed an amendment to the original proposal, which was previously tabled by the Bill sponsor, to remove the provision for junior Ministers to have special advisers. That would reduce the complement of special advisers in the Executive Office from eight to six. The Committee also agreed to a previous amendment to provide for two special advisers each for the First Minister and deputy First Minister. Together, those amendments if passed would result in a complement of four special advisers in the Executive Office.

Although the Committee agreed to clause 2 subject to the previously tabled amendments, there was considerable debate about whether four special advisers in the Executive Office was the appropriate number. When asked for his views on the provision for eight special advisers in the Executive Office, the then Head of the Civil Service stated that the First Minister and deputy First Minister:

> *"have chosen not to exercise that right at the moment."*

That goes back to my point that there is nothing to prevent them doing so in the future.

The Department of Finance's view was that reducing the number does not recognise the seniority or weight of the role. Similar views were expressed by the Executive Office. Neither the evidence from the Department of Finance nor the Executive Office was able to clarify how the seniority or weight of the role of a special adviser in the Executive Office differs significantly to that of a special adviser in any other Department, and neither did it explain how the seniority or weight of the role should be a factor in determining the complement. Surely, weight and seniority should be determined by job evaluation and grading, whilst complement should be determined by workload.

In written evidence, the Institute for Government expressed the view that:

> *"having a larger number of special advisers was not necessarily something that should be perceived negatively."*

It took the view that:

> *"more advisers are helpful for a multi-party government as more communication between ministers and their teams is necessary."*

The Committee considered that and other evidence, and, having divided, agreed by a majority of one that the appropriate number of special advisers in the Executive Office should be four.

I note the Bill sponsor's proposals to repeal the Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007 through amendment No 7, the introduction of a new clause A2 and his intention to oppose the Question that clause 2 stand part of the Bill. While recognising that that will have the effect of reducing the complement of special advisers in the Executive Office from eight to six, by removing the facility for junior Ministers to appoint special advisers, I am cognisant that those amendments were tabled after the Committee Stage. Therefore, I cannot comment further as Chairperson of the Committee, except to say that, if agreed, those amendments would have the overall effect of reducing the complement of special advisers in the Executive Office, which was one outcome on which the Committee achieved consensus.

In consideration of amendment No 8 to clause 4, the Committee accepted the Bill sponsor's explanation that his proposed amendment is, essentially, a technical amendment that relates to drafting issues.

I will now make some remarks about the Bill as leader of the Ulster Unionist Party. The Bill is — I choose my words carefully — a regrettable but necessary measure to restore a degree of confidence in the Northern Ireland Executive; confidence that, through a wide variety of issues, has, regrettably, been much diluted. Some of us hoped that, after a three-year hiatus of the Assembly that was caused by calamitous administration; very questionable, if not bordering on mendacious, practices; a dereliction of the normal processes of governance; and the failure to adhere to the custom and practice of government elsewhere in our nation, or even across the border, there would, at least, be a collective desire to reform from within. However, we have, I am afraid, all been let down.

When gathering evidence on the Bill, I was struck by how Sue Gray, the permanent secretary of the Department of Finance, commented that the court of public opinion would act as an incentive to good governance, as it would in Westminster, and by how other senior officials, including the now knighted Sir David Sterling, said that there was no need for a legislative approach because good behaviour and the commitment to New Decade, New Approach would encourage change. I wish that that were so.

However, the experience and evidence of the RHI inquiry showed that much needs to be reformed, and our lived experience since January of this year has shown us that the belief that change will be embraced by the Executive is, I am afraid, a forlorn hope. Indeed, the flow of information that comes from Departments, the obfuscation of Ministers about issues such as non-orders of PPE, and the paucity and accuracy of replies by some Ministers, such as the Economy Minister, on virtually every issue show that there has been no change in the culture of the Executive. After nearly 11 months, there has been every opportunity to make change, but there has been no, or very little, attempt by the Executive to reform themselves.

The intent of New Decade, New Approach and the RHI inquiry has been not only thwarted but, in effect, buried by some of the political parties that should be embracing change the most. It is our party's firm belief that, without a legislative imperative, no change will occur. That should be a concern for all of us who believe in the devolution of power. It was the belief of our party and the people of Northern Ireland that the Belfast Agreement would ensure that normal checks, balances and controls —

Mr O'Dowd: On a point of order, Mr Deputy Speaker. Will the Member state which amendment he is speaking to?

Mr Deputy Speaker (Mr Beggs): I ask the Member to ensure that he is referring to the Bill.

Dr Aiken: As my remarks unfold, Mr Deputy Speaker, you will find that they refer to the amendments in this group. A significant degree of indulgence has been given on other topics, so I am sure that the Member will understand.

Mr O'Dowd: On a point of order, Mr Deputy Speaker. Will you rule on whether the Member is speaking to an amendment?

Mr Deputy Speaker (Mr Beggs): Mr O'Dowd, I, in my role as Deputy Speaker, endeavour to show a degree of latitude. I encourage Members to speak to the relevant amendments. When I think that a Member has exceeded that, I will intervene.

Dr Aiken: I will be speaking to —.

Mr O'Dowd: On a point of order, Mr Deputy Speaker.

Mr Deputy Speaker (Mr Beggs): Mr O'Dowd, I will take a further point of order, but I hope that you will not persist in this action.

Mr O'Dowd: Mr Deputy Speaker, I do not think that there is any need for that tone, with the greatest respect to you and your office. There is absolutely no need for that tone. Will you please refer me to where Standing Orders refer to latitude to allow Members to speak beyond amendments?

Mr Deputy Speaker (Mr Beggs): It is the role of the Deputy Speaker to conduct the debate. It is my custom and practice in exercising that role to give a little latitude to Members, but I endeavour to keep them to the subject of debate. The Member, and all other Members, realise that and have seen me, on regular occasions, draw Members back to the relevant piece of legislation. I ask Mr Aiken to continue.

Dr Aiken: Thank you. I will, of course, refer to issues to do with spads and governance as I continue to make my remarks.
It should be a matter for all of us who believe in the devolution of power, and it was the belief of those like our party and the people of Northern Ireland in the Belfast Agreement, who thought that normal checks, balances and controls, like

those available across the rest of the United Kingdom, would ensure that good and uncorrupted governance would occur, but it has not. Indeed, when observers from outside Northern Ireland think that the court of public opinion, or just doing what is right, will suffice, that view is countered by actions like those of the deputy First Minister and other Ministers during Bobby Storey's funeral, undermining the very health message that all of the Executive were pledged to support, or the First Minister, Economy Minister and Agriculture Minister utilising cross-community voting mechanisms to block a non-cross-community health proposal, only to, one —.

Mr Deputy Speaker (Mr Beggs): Order. I draw the Member back to amendment Nos 1 to 9.

Dr Aiken: Thank you. One week later, they agreed to tighter restrictions. I will get to this point, Mr Deputy Speaker. That shows how far from the norm, and how immature, the Northern Ireland political process is. It is too fragile to be left to best practice and behaviour when clearly, in Northern Ireland, it is anything but. The crux of the issues is whether there is a need for legislation or whether codes and guidance are sufficient, or indeed preferable. The then head of the Civil Service, David Sterling, expressed a view that codes and guidance were sufficient, although this was the same official who, during the RHI inquiry, expressed a view that — I paraphrase — keeping appropriate records of meetings would not be conducive to the wishes of the two largest political parties.

Perhaps Members — this talks directly to the amendments referring to spads — who have read with a sense of incredulity, or even, like me, anger, of the activity of our Ministers, spads and senior civil servants in Sam McBride's book 'Burned' will, outside the diktats of their central committees and councils, realise that, unlike other Administrations, we now have to have a legislative framework. In his book, Mr McBride states that:

> *"Therefore, some of the worst behaviour set out in this book — which will to many readers appear morally corrupt, even if it is not in breach of the law — is in my experience the exception, rather than the norm."*

I wish and hope that that is so but, without a strong legislative framework, how can we avoid the temptation, or worse, of political corruption?

The legislation also deals with detailed concerns. A code for special advisers that is fit for purpose is vital. Curiously, indicating perhaps the sense of commitment from the Executive to reform themselves, one of their first actions was to remove existing safeguards. The words of a former Commissioner for Public Appointments suggested that action was contrary to fundamental requirements for a code of appointment.

Furthermore, having a process for employing a spad, bearing in mind that some parties wish for a salary cap for these individuals to be removed, with a current salary band equating them to that of a Minister, probably says more about the relative power that spads have. Even a cursory reading of the RHI evidence, where Ministers would be directed by spads who spoke with the authority of the party or from offices on the Falls Road, again shows that there is more than enough reason for legislation.

Mr McGuigan: Will the Member give way?

Dr Aiken: Yes.

Mr McGuigan: Does the Member agree with my party colleague who spoke earlier and talked about accountability mechanisms that recently, when he wrote a letter to Committees purporting to come from the Finance Committee, the Committee was able to hold him to account, and that, in fact, his letter was not on behalf of the Finance Committee but on behalf of the Ulster Unionist Party?

Dr Aiken: I thank the Member for that. Indeed, in Committee, I apologised for it. While we are talking about that letter, to make sure that there was no break —.

Mr Deputy Speaker (Mr Beggs): Order. It was a very interesting letter, but can we return to the subject of the legislation in front of us? Mr Aiken, have you finished your contribution, or is there more to come?

Dr Aiken: I have more.

Mr Deputy Speaker (Mr Beggs): It is now 1.00 pm, and the Business Committee is due to meet. I therefore propose, by leave of the Assembly, to suspend the setting until 2.00 pm, after which the first item of business will be questions to the Minister of Education. After Question Time, Mr Aiken will have the opportunity to continue his speech.

The debate stood suspended.

The sitting was suspended at 1.00 pm.

2.00 pm

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

Oral Answers to Questions

Education

Bangor Central Integrated Primary School

1. **Mr Muir** asked the Minister of Education for an update on a new build for Bangor Central Integrated Primary School. (AQO 1171/17-22)

Mr Weir (The Minister of Education): I thank the Member for his question. Through Fresh Start funding, my Department is delivering a hugely significant capital investment of almost £10 million in Bangor Central Integrated Primary School. The business case was approved by the Department in July 2020 and identified the preferred option of a new-build school on a new site on the Balloo Road in Bangor. The project will provide a brand new single-storey school with modern facilities, fully compliant with my Department's school building handbook. The school will be built on a new site 1·7 miles from the existing school in an easily accessible part of the town, with sufficient room for future expansion. The construction work will be able to take place without causing any disruption to the ongoing operation of the school.

In July 2020, the Education Authority (EA) appointed an integrated consultant team to undertake the design, and that work is now in the early stages of the design process. When completed, the new facilities will enhance the provision of integrated education in the north Down area and support the future growth of the sector.

Mr Muir: I thank the Minister for his response. As he has outlined, this will be a new site on the Balloo Road. What assurances can the Minister give that the children and young people who live in Bangor town centre will be catered for as a result of the move to the new site?

Mr Weir: If the Member is talking about transport, there is an entitlement for free school transport to be provided if children live beyond a certain distance from their school. It should be said that, because Bangor Central Integrated Primary School is the one integrated primary

school in Bangor, it does draw from a fairly wide catchment area.

As the Member will be aware from the response to the question for written answer that he submitted, the two main wards in the centre of Bangor represent about a third of the pupils who go to Bangor Central, with the other two thirds coming from outside that area. To some extent, the new build will shift, perhaps, the emphasis or the location, but, as happens on all occasions, any movement that children need to make will be catered for.

Miss Woods: The Minister will know that I have many questions on this, but, for now, can he outline what consultation was done with the school, the board of governors, and the parents about this move as well as with the wider community? Will he commit to meet me, a group of parents and interested parties regarding the proposed school move?

Mr Weir: I am always happy to meet the Member. I have met some interested parties on this. There was a project board for each of the Fresh Start projects, and that involved the school directly. Consultation and discussion took place. If the issue is about the location, we should remember that there are at least three separate issues on that. First, the statutory duty on the Department is to integrated education, not to a specific site or location. Therefore, when looking at this, it is about what is in the best interests of the sector as a whole.

Secondly, from the point of view of a business case and public costs, this has a considerable difference from simply building on site at the current location. The Member should also be aware that projects funded by Fresh Start capital require Treasury sign-off, so it is not simply a matter of what the Department feels and, indeed, is about providing a situation that gives best value for money.

Thirdly, looking at integrated education more broadly, there will be more room for the school at its new site. So if, for instance, an additional unit needed to be added to the school, there would be an opportunity for that to happen at a future point, whereas accommodation space at the Bangor Central site, which I am very familiar with, is much more limited. All those factors need to be considered. I am happy to meet the Member to discuss those, but she should be aware that the decision on location has been taken.

Mr Chambers: Minister, I certainly welcome the investment in my constituency. I understand that the board of governors and the staff of the school fully support the move, but there seems to be a body of resistance building against the move. Has your Department had any sense of that?

Mr Weir: It is natural that people see the history tied up with a particular site when a school is moving to a different location. As I indicated, if we were to provide a neighbourhood-specific site for every school that would not be an appropriate way of dealing with it. It is perfectly natural, and I suspect that most people, if they are linked with a particular school, will have a particular emphasis on its location. As the Member mentioned, the project board and the governors have accepted it. There is also, as I have indicated, a wider commitment in terms of a business case and what is provided to the Treasury in relation to it.

It is also the case that, because of the pressure on places in Bangor across the board, even at primary sector level, there is no question of displacement that will create problems, largely speaking, elsewhere, because there is really not much, if any, spare capacity in the system.

Mr Principal Deputy Speaker: Question No 2, in the name of Mr Andy Allen, has been withdrawn.

Integrated Schools: East Antrim

3. **Mr Dickson** asked the Minister of Education when decisions will be made on outstanding development proposals for schools in East Antrim moving to controlled integrated status. (AQO 1173/17-22)

Mr Weir: Development proposals (DPs) for transformation to controlled integrated status for two mid- and east Antrim schools were published on 26 March. They were DP 645 Carrickfergus Central Primary, where the proposal was to transform to controlled integrated status with effect from 1 September 2021 or as soon as possible thereafter, and DP 648, which is Seaview Primary School, to transform to controlled integrated status, again with effect from 1 September 2021 or soon after.

Area planning activity was paused, due to COVID, on 3 April 2020, with the exception of special education provision in mainstream and special school settings, so that all resources, including staff, could be redeployed in the Department's emergency response to the COVID-19 pandemic. As a consequence, the progression of DPs has been delayed.

However, we are now in a position where this can restart, and an extraordinary meeting of the area planning steering group was held on 21 October and a decision taken formally to resume all area planning operations and structures from that date.

The Department has extended the statutory objection period — objection can be letters both of support and of opposition — for affected DPs to provide a full two-month consultation outside the suspension period. The revised closing dates for the transformation proposals was 9 November 2020. Work on the assessment of the proposals has recommenced, and decisions on the DPs will be made as soon as possible.

Mr Dickson: I thank the Minister for his answer. I very much appreciate the difficulties that his Department has had during that time, and I very much welcome that it is now back on track to make these decisions. I particularly welcome the one on Carrickfergus Central.

In respect of Seaview, you will appreciate that it is less than three miles away from an already successful integrated primary school that is celebrating 20 years this year. How does the Minister see the development plan proposal, bearing in mind that there are two villages less than three miles apart?

Mr Weir: The Member will forgive me, but I do not know how much he is aware, directly, of the process. Development proposals, while they will be initiated by different bodies and brought forward, ultimately will come down a legal decision that has to be made by the Department and, where there is a Minister, by the Minister directly. Therefore, I am duty-bound, ahead of any decision on a development proposal, to make no comment at all on the merits of that case, either for or against that proposal.

While all factors will be borne in mind with regard to the situation in Seaview and Carrick, I will have to judge all those factors when they come to me. I cannot comment on, for instance, the distance between existing schools at present. Obviously, all factors will be taken into account before there is a decision.

Mr Allister: Will the Minister advise the House, in making decisions about these matters, how far are the wider community ramifications considered? Let us take Seaview, for example. The impact on the like of Carnalbanagh Primary School, which the Minister kindly visited, could be serious, in that a school that is struggling to regenerate itself and to get back going could have the rug pulled from under it by the further advancement of an alternative offering nearby.

Mr Weir: We look at the impact on surrounding schools. It is not simply about the sustainability of the schools. The key focus is on the direct education of the young people. If a school was transforming, for example, or if there was a merger or closure, it is about what the implications will be for the local children. Any school will look at the wider implications for nearby schools. As part of the process, a grid of nearby schools is highlighted. Within that is the distance from the school, and it is broken down by sector and the number of children there. All factors are taken into account, but the overriding considerations are the broader educational implications for those children and what is sustainable. It is rare that any development proposal will be entirely uncontroversial in its nature, apart from, perhaps, a minor indication regarding school numbers. Any decision on a school will have a ripple effect across the board.

Mr Principal Deputy Speaker: Question 4 in the name of Mr McGuigan, question 7 in the name of Mr Chambers and question 8 in the name of Mrs Cameron have been grouped.

Schools: 2021 GCSE and A-level Examinations

4. **Mr McGuigan** asked the Minister of Education when the Council for the Curriculum, Examinations and Assessment will be in a position to provide detailed contingency arrangements for public examinations in 2021. (AQO 1174/17-22)

7. **Mr Chambers** asked the Minister of Education for an update on his planning for public examinations in 2021. (AQO 1177/17-22)

8. **Mrs Cameron** asked the Minister of Education, in light of the recent decision by the Welsh Government, what additional steps are being taken to support local students undertaking GCSE and A-level assessments. (AQO 1178/17-22)

Mr Weir: I thank the Members for their questions. As the Principal Deputy Speaker said, I will answer all three together.

It is my priority that examinations to award Council for the Curriculum, Examinations and Assessment (CCEA) qualifications should go ahead as planned in 2021. I have already announced a number of adaptations to CCEA

qualifications, including the omission of assessments for whole units for most GCSEs and health-related adaptations for AS and A levels. However, I have also said that I will keep the situation under review. My officials have been working with CCEA to develop a range of further mitigations and contingencies to respond to the fluid public health situation. That work is at an advanced stage, and I hope to provide more information very soon.

In these uncertain times, the familiarity with the exam system provides greater certainty as learners know what they are working towards and how it is awarded. Additionally, when looking at the wider implications of examinations, we have to be careful that our students in Northern Ireland are not disadvantaged between one another. It will not simply be a question of what is done in CCEA, because a number of students, particularly at A level, will carry out examinations from boards outside Northern Ireland. Their qualifications must be seen as robust, portable and comparable to those of their counterparts in neighbouring jurisdictions.

Mr McGuigan: In his response, the Minister talked about disadvantage. There is no doubt that the educational experience during the pandemic has varied greatly to date and will continue to vary for as long as COVID is with us. There is no level playing field. My view is that the CCEA proposals do not go far enough. Given the level of disruption to classes, the level of COVID absences and the amount of lost learning time, will the Minister give further consideration to how the exam series in 2021 will be addressed?

Mr Weir: I have indicated that the exams will go ahead. It is important. There has been discussion — sometimes genuine; sometimes false — around when I will give certainty. The certainty is that the exams will take place. One of the by-products of all this is a genuine concern that has been raised that some schools that are concerned that exams will not take place are over-testing their pupils daily. That is negative. Schools should operate as normally as possible and should not place undue strain. One of the concerns with regard to the maintenance of exams is that we do not reach a situation where, if exams are abandoned, pupils are put under a seven-month microscope, effectively, where every assignment and action that they take is highly pressurised.

The Member is right. That is why we are looking at a range of adaptations. We have tasked CCEA with looking at optionality, which would give greater choice to students when they are taking it. It is also about what contingencies will be put in place.

While that may be a particular focus this year, it is not unique to this year. There will be a number of occasions in a normal year when pupils are not able to sit a particular paper — they are ill, perhaps, or disrupted in some shape or form. Those contingencies and what provision is put in place will need to be thought through. We will put in place a series of other adaptations. I hope to bring further clarity very shortly.

2.15 pm

Mr Chambers: Thank you, Minister, for your answer. You have sort of answered the question that I was going to ask. For the record, can the Minister commit to not changing his position so that students and parents at least have clarity about what they need to prepare for with regard to upcoming exams?

Mr Weir: It is entirely my position to ensure that exams take place. Nobody has a crystal ball and can say what position we will be in in a number of months. As even the Prime Minister indicated, there are still some difficult days ahead, albeit the overall position is improving. Exams represent the fairest route by which people can be judged entirely on their own merits. However, there have to be adaptations to this year's examinations because of the disruption that pupils have had and the fact that they have not necessarily been on a level playing field. The reality is that there is no perfect solution. It is noticeable that all jurisdictions are effectively doing exams by one means or another. Even if at least one of them is not saying that it is doing exams, it is doing exams by a different nomenclature.

Mrs Cameron: I thank the Minister for his answer. Will he outline what steps his Department is taking or could take to further alleviate pressure on pupils facing important assessments under these very challenging circumstances?

Mr Weir: The first thing is to try to give certainty to pupils. When we see the adaptations, we will want to send a clear message to schools. A number of people have raised concerns, less about examinations directly and more about the pressure that children are being put under on a daily basis. Some of that comes from schools. They are worried about parents suing them etc, so they have taken a view that they have to provide evidence of the assessment that they

produce. That has led to undue pressure being placed on children.

There has been a range of mitigations; some are driven by health and some will reduce the level of assessment. On a number of occasions, we have enabled a unit to be removed, particularly from GCSEs. It can be that up to 40% of a GCSE is not assessed. Effectively, then, a pupil will be assessed on 60% rather than 100%, which eases the burden considerably. To be fair, while there has been disruption, schools are becoming more adept at remote learning. It is not the case that, if someone is off, no work is being produced, albeit face-to-face teaching is very much to the fore. However, further adaptations need to be looked at. Those will focus on A level and AS level. I look forward to holding that conversation very shortly with CCEA, which is drafting proposals.

Mr Lyttle: I am aware of one school in Northern Ireland that has pupils who are in their fourth period of self-isolation. That entire year group has missed four weeks of school-based learning this term. Of course, there are pupils who, due to COVID-related absence, are physically unable to sit the GCSEs that are taking place this week. Why are contingency plans not already in place to address anxiety caused by those absences and to ensure that all pupils receive fair grades?

Mr Weir: Certain contingencies have already been put in place. CCEA has made clear that, if there is a reason that someone cannot sit this week's examinations, there will be further opportunities in March or July. It is about trying to get things correct. I want to see two things happen. CCEA has to come forward with its draft proposals. We then need to produce a holistic picture. Deloitte had been tasked to look independently at what happened in 2020, and it is due to report fairly soon. It is important that all those lessons are put in place to ensure that we have something that is as fair as possible.

It is about trying to equalise as much as possible. There is no doubt that in the current circumstances there is no perfect solution and no entirely fair solution. However, trying to ensure that our pupils get something that is fair and equally portable, that we have something that links in with what is happening elsewhere and that exams with levels of mitigations, adaptations and contingencies, represent the fairest way forward, particularly as we look towards the robustness of our exams.

If, for instance, we were to abandon exams in 2021, there would also be the consequence that, when you get to 2022, A-level students, who are probably doing, ultimately, the most important exams of their life, would be in the situation of never having sat a public examination before doing those A levels. That would massively disadvantage them when it comes to, for instance, employment or university places.

Mr McCrossan: I thank the Minister for his answers so far. Minister, most students, teachers and parents are in agreement that the fairest option facing you and our young people is to cancel GCSE examinations this year. In view of the importance, as you clearly stated, of the portability of qualifications and in light of Scotland and Wales unilaterally deciding to change their qualifications, is the Minister mindful not to recognise the Scottish and Welsh qualification in that regard?

Mr Weir: I entirely recognise what is happening in Scotland and Wales. Scotland's Highers, which are, effectively, used for entry into university, are keeping with examinations, as indeed is the layer below. Scotland has made an adjustment that affects about 10% of its pupils, but it has made sure that its pupils are not disadvantaged when it comes to employment and entry into university.

Wales has produced what I call the David Copperfield solution. It has presented a few mirrors and made it look like exams have disappeared. However, as part of its proposals, which have not been particularly well sketched out, it says that one of the key bits of their assessment will be external assessments that are "externally set and externally marked". Presumably, if an assessment is being done externally, there is only one of two ways to be fair: either you allow schools to do that completely willy-nilly, in which case you are not putting them on a level playing field; or effectively, those pupils do it in exam conditions.

Wales appears to suggest that it is not doing exams, but it is doing exams. That is not just my opinion. For example, the National Association of Head Teachers in Wales said that Wales is doing exams under a different title. That is exams under a different name. Let us get to the kernel of the truth: all jurisdictions, including Wales, Scotland, England and the Republic of Ireland, for their main set of students, are all doing examinations in 2021. Northern Ireland is a small jurisdiction. We cannot afford to simply go on a solo run, particularly given that close to 20% of our students at A level do English board examinations. We cannot have a situation

where we create that differential between students in Northern Ireland. That would be simply folly.

Miss Woods: I thank the Minister for his answers so far. The Minister will be aware that one of the key issues arising as a result of COVID-19 in general is effective and meaningful communication to ensure that education can continue in the safest manner for our teachers and pupils. Will the Minister detail what formal consultation he has had with teachers and trade unions regarding exams and school reopening in general since schools reopened in September?

Mr Weir: We met with a range of stakeholder groups, and from that, there are discussions that will take place on a regular ongoing basis with the trade unions. We also have a stakeholder group of school principals, and engagement has taken place on a couple of occasions with our officials and those principals on examinations in particular.

When the issues have been discussed, particularly with school principals, they have agreed that the best way forward is examinations. There is not a level of demurring from that. It is very difficult, and there is no perfect way to moderate centre-assessed grades if we were to use them. It has to be that one pupil in one school is on a level playing field with others as much as possible, given the constraints. It is clear that examinations, however imperfect, represent the best opportunity of a level playing field for students. They are competing not only to get their own grades but against others, particularly for university places and later for employment, and so that their grades can have a level of comparability. That is the case not just with their peers but when they are competing against others of different years, so there should be a level playing field in order that they can have a level of read-across within that.

Mr Principal Deputy Speaker: Given the issue, I thought that it was important that a single Member from each party got to ask a question to the Minister. I know that another Member wanted to ask a question, but I will make it up to you next time, Robbie.

COVID-19: Special Educational Needs Assessments

5. **Mr Frew** asked the Minister of Education, in the absence of face-to-face contact due to COVID-19 restrictions, to outline how educational psychologists provide assessments at all stages of the 'Code of Practice on the Identification and Assessment of Special Educational Needs'. (AQO 1175/17-22)

Mr Weir: I thank the Member for his question. During the period when face-to-face assessment was suspended, the Education Authority's educational psychology service continued to progress stage 3, 4 and 5 assessments, which had previously been consulted on and agreed with schools, and worked closely with EA colleagues in statutory operations to provide psychological advice when requested.

The service was able to gather information from questionnaires and other screening tools administered via telephone or video call; telephone consultations with school sources, such as the school's special educational needs coordinator; previous assessments; scores from standardised tests or other attainment information; and analysis of the child's developmental checklist, with a view that this information may be added to at a later stage, where necessary. In addition, the service provides advice and resources to staff, as well as training to support children and young people who are struggling at this time. The service continued to provide support during the period of school reopening, and face-to-face assessments resumed in September 2020.

Mr Frew: I thank the Minister for his answer. How will the Minister and the Department manage the backlog, which I am sure is mounting, and how will that be rectified before school placement time, given that some of these children may well have to attend special needs schools?

Mr Weir: The Member says that the backlog "is mounting"; saying that it "mounted" might be a more accurate tense to use. Yes, there is no doubt that some of the pressures from COVID meant that the extent of involvement changed. As I indicated, certain things could carry on, but the involvement was limited. Work continues on managing backlog cases, with the aim of reducing that number. The particular focus is on children who have been waiting longest, and that can include a range of actions to reconfigure processes and workflows across offices.

Reducing the backlog will be achieved through a combination of EA's continuing process improvement work and additional short-term staff resource. A capacity and demand analysis is being finalised to define the short-term resource that will be required and where that

short-term resource is indicated. For this year, a couple of days ago, additional money was granted through the monitoring round. There is short-term resource, but there is also a longer-term delivery model to try to ensure sustained performance within the 26-week period.

As indicated, delays have been too long, but we are starting to see an improvement. For example, a year ago today, 107 children were waiting a year and a half for the statementing process. By the end of September this year, no child was waiting a year and a half. Indeed, compared with the 158 children who, a year ago, were waiting a little over a year, that number, within a 16-week period, has come down to 10, and there is an 83% improvement in the number of children waiting over 40 weeks. Action has been taken. There is no doubt that COVID created problems, but there are new processes in place that will help to reduce that further.

Ms Rogan: Minister, has there been an assessment of the impact of reducing statutory obligations in respect of special educational needs to what are best described as best endeavours, and what effect has that had on the children?

Mr Weir: The indications are that what we tried to provide has led to an improving service. There was not really any alternative. What could be provided during COVID was not necessarily going to be absolutely the same as it was under normal circumstances. That is the case across a wide range of services. Our aim and focus is to try to make sure that the backlog is cleared and that we reduce waiting times. We have seen an improvement in waiting times through a short-term intervention, and a longer-term plan has also been put in place. There is no doubt that the longer any child has to wait, the fewer the services that can be provided for them and the more difficult it is for them. That is what we are trying to combat, but we have also got to work, particularly during that peak period of COVID, against practical realities.

2.30 pm

Mr Principal Deputy Speaker: That ends the period for listed questions. We now move on to 15 minutes of topical questions. Before I call Mr Allister, I announce to the House that question 10, standing in the name of Ms Paula Bradley, has been withdrawn.

Primary Schools: Early Closure

T1. **Mr Allister** asked the Minister of Education, who will be aware that the last week of the Christmas term in a primary school is a particularly exciting and significant week and whom he can imagine maybe excelling in the role of Wise Man, whether, given that, although that week will be different this year, schools will be preparing and children will be full of anticipation about in-bubble, in-class celebrations, he can assure the House that he will not countenance the closure of our primary schools a week early, as some have suggested, thereby bringing devastation to many kids looking forward to the festivities. (AQT 721/17-22)

Mr Weir: It was very nice of the Member, albeit he was probably being slightly tongue in cheek, to refer to me as a wise man. I am just glad that he did not refer to me as Herod. With regard to primary schools and post-primary schools closing, I am aware that there have been rumours floating about at times — I suppose this is Northern Ireland — but there is no substance to them. Schools will continue with their normal Christmas period up until the week before Christmas on that basis. There are no plans to close early. None of that has come from myself, the Department of Education or the EA; it is a little bit of whispering around the place. It is important that schools remain open.

It was also the case that, when the restrictions were talked about by the Executive, it was unanimously agreed by all the parties that schools should remain open. That is important from an educational and a social point of view. The Member is right that, although there will be certain constrained situations this year, it is important that various events around the nativity and a situation that I am aware of where a number of schools have booked a video photographer and suchlike go ahead. A number of things were missed out by necessity towards the end of the last academic year — those school-leaver-type situations — and I am keen to not add to that.

Purely from a health point of view, injecting an extra week's holiday before Christmas and effectively saying, "Here's a large number of children" and expecting them to simply stay at home would not work, with the best will in the world. That would probably create levels of socialisation which would be detrimental from a health point of view, so I am totally opposed to that. There are no plans to close schools early.

Mr Allister: I am grateful for the clarification from the Minister. Can he bring the same certainty in respect of the holding of the transfer tests in January?

Mr Weir: Yes, as far as I can. As the Member is aware, the Association for Quality Education and the Post Primary Transfer Consortium, which hold the transfer tests, are independent organisations, so ultimately it lies within their hands and the hands of the schools that host the tests. Certainly, there have been levels of engagement so that, for example, all the health and safety measures will be put in place. They are perfectly prepared for the tests, so there is no intention for them to be cancelled. The Member makes a very valid point: the more certainty that we can give people, the better, even if sometimes the certainty that we give is not the exact certainty that some others would want in relation to some of those issues.

Mr Principal Deputy Speaker: Mrs Dolores Kelly is not in her place and Ms Cara Hunter is not in her place.

COVID-19: School Transport

T4. **Mr O'Dowd** asked the Minister of Education, who will be aware of recent stories of concerns about pupils who are bubbling in their classroom but then get on to buses containing pupils from many schools — an issue that he had raised earlier in the year — whether there had been a scoping exercise to see where that happens and what measures we can take to ensure that it does not. (AQT 724/17-22)

Mr Weir: As the Member will be aware, as part of that we have moved to a situation that will hopefully reduce levels of transmission. For post-primary children, there is a requirement to wear masks on public transport and school transport.

We are up against practical restrictions, as about 80,000 pupils use free transport each day. I have instructed officials to work with Translink, the EA and the Department for Infrastructure. Although some additional money has been able to be levered in for additional transport, there are restrictions, and we need to try to make sure that we use that transport as wisely as possible so that, if there are additional pressures on some routes, buses can be brought in. We would also be happy to embrace some rejigging.

The Member also raises an important point about the threat that is out there. A lot of good work has been done directly in schools, particularly with bubbles. Schools do not represent a particular risk to pupils. The danger comes from the virus being brought into schools as a result of wider community transmission. With anything that can be done around buses and messaging, although messaging lies outside my direct control when it comes to, for example, issues around drop-off and pick-up, there is a role for all of us to be socially responsible. There will, however, be ongoing discussions to see whether any other action, such as rejigging of buses, can be done to ease the situation.

Mr O'Dowd: I thank the Minister for his answer. The media have to be careful in how they report infection rates associated with schools. They report them as being "in schools", but it is more important that they report them as being "associated with schools".

Have there been any discussions with the Department for Infrastructure on the provision of buses, particularly from Translink? There are also many private coach companies out there that are crying out for work. Is the Minister aware of whether contact has been made with them?

Mr Weir: There has been some contact. As part of that, the Executive have provided a small amount of additional money for additional safety on buses and to ease transport levels. That money is not, by its nature, infinite, so it is about trying to use it as well as possible. I have had good conversations with the Infrastructure Minister, and there is a commitment at departmental and operational level to work together to see whether any additional elements can be put in place.

One of the other issues, as we respond to events, is that the pattern of drop-off for children has adjusted a little. Some parents will have taken a view that they feel most confident delivering their children to and from school themselves, where they would not have previously, so all those things have to be factored in.

On Friday, among a number of schools that I visited, I had the great pleasure of visiting Jones Memorial Primary School in Enniskillen, which won the Fermanagh Sustrans award for active travel. Active travel should be strongly encouraged. I appreciate that active travel is not applicable to everyone or, indeed, given the weather conditions sometimes in Northern Ireland, something that can be done all the time, but, from the point of view of preventing the spread of COVID and creating a healthy

body and mind, the more we can do to encourage the embracing of active travel, where possible, the better.

Schools: Well-being Initiatives

T5. **Mr Gildernew** asked the Minister of Education, who recently announced £5 million for well-being initiatives in schools, when schools will be able to start spending the money on that important field of work. (AQT 725/17-22)

Mr Weir: To give a bit of a breakdown, the £5 million is effectively COVID recovery money. A total of £12 million was given for what I will call the broader academic side, most of which went into the Engage programme. About a quarter of a million pounds of that £5 million will go to youth services. A number of youth organisations have already been notified of an element of grant. The remaining £4·75 million will be divided among schools pro rata.

Given that the money will be spent on mental health and well-being, once individual schools have been notified of the money, which should happen very soon, there will be no barrier to them spending it. It is not an enormous sum for schools, but there will be complete flexibility in how they can spend that money, provided that it is used for mental health and well-being purposes. That might involve getting in some additional talks or counselling sessions. It could be to support the well-being of staff. While, naturally, we concentrate on the children, we need to ensure that staff well-being is also covered. It may be through additional extracurricular activities that they want to take place or even improving the school environment, perhaps, by buying equipment that would help. There is trust in schools to spend that money wisely and to determine, within their own budgets and situations, whether they might want to put additional money towards nurture, for example. They are the people on the ground. We give schools that same level of trust with the Engage programme.

Mr Gildernew: I thank the Minister for that answer. It is an opportune time to acknowledge the work that teachers do on the front line to protect the well-being of staff, the school community and children. How will the funding complement the work of the emotional health and well-being framework next year?

Mr Weir: The idea is that proposals will be brought to the Executive soon. We bid for an annual sum in the budget. To be fair, some money has also been provided by Health because of the linkages with that Department. The anticipation for emotional health and well-being is that £6·5 million will be mainstreamed into budgets that are provided mainly to schools. That will be for a series of projects. Some will be for work on the youth side and some for building resilience through the curriculum. Therefore, the £6·5 million will be for a range of projects, some of which will effectively be piloted because we want to see what works and what does not work. It will probably be more centrally driven, although schools will be able to take advantage of that. The £6·5 million will be mainstreamed in budgets, so what is there in 2020-21 will be there in 2021-22 and beyond. We may reach a situation where that amount of money expands. Nevertheless, it will be there.

The difference between the two is that the £5 million is from the COVID-19 funding. Therefore, it is effectively a one-off payment. To ensure that it is spent in year, schools will have flexibility and much wider discretion in spending that money than they will with regard to the £6·5 million, which will probably be directed into particular projects and processes.

Mr Principal Deputy Speaker: Mr Doug Beattie is not in his place.

Children and Young People's Strategy

T7. **Mr Buckley** asked the Minister of Education for an update on the children and young people's strategy and to say when it will be announced. (AQT 727/17-22)

Mr Weir: The children and young people's strategy has been created and is now being finalised. It has obviously been a long while coming, and some adjustments have been made down the years. It is now, I think, being circulated to Executive colleagues. To be fair, any comments that I have received from Executive colleagues have been, across the board, largely supportive. It should not be seen as in any way controversial, and therefore I hope that it can be signed off by the whole Executive before Christmas. It will produce a longer-term vision for children and young people.

Mr Buckley: I thank the Minister for his answer. Does he agree that, whilst COVID-19 demands a lot of prioritisation from the Minister's Executive colleagues and, indeed, the Department of Education, it is still important that Departments continue to bring forward important existing priorities?

Mr Weir: It is right. Executive colleagues and I have brought forward strategic plans for the longer term. That has been across the board. There is no doubt that COVID-19 has taken up what we might call a "broad bandwidth" in different Departments. At times, that has led to immediate concerns having to be covered. In particular, with regard to the attention that can be given at different levels, it has meant that officials who deal with area planning, for example, have had to be diverted to COVID-19-related activities temporarily.

For all of us, there are priorities that we need to ensure are maintained. They might have been slightly delayed because of COVID-19. However, collectively, in the Department of Education and beyond, there is a determination to work through, from a Programme for Government point of view, a range of those priorities, some of which have already started to be brought to fruition, not just by my Department but by others.

Mr Principal Deputy Speaker: We can have a single question from Ms Martina Anderson.

Schools: Transfer Tests

T8. **Ms Anderson** asked the Minister of Education, given that parents in Derry and across the North are concerned about putting their children through the transfer test because of COVID-19 and that any other cobbled-together test would be fraught with legal challenges, whether he agrees that we should just use applications. (AQT 728/17-22)

2.45 pm

Mr Weir: Apart from the fact that schools have a legal right to use academic selection, the tests are run separately. I understand that, given the current situation, everybody has concerns. A range of health and safety measures will be put in place. We are talking about gathering together about 10,000 young people across Northern Ireland, when, on a daily basis, around 300,000 go to school. It will not surprise the Member to know that I suspect that she and I have, shall we say, a divergent view on the issue of transfer. People can always make legal challenges on a range of things. I remember one of my predecessors — I think that it was Caitríona Ruane — predicting that the tests, first made by the Association of Quality Education (AQE) and the Post Primary Transfer Consortium (PPTC) 12 or 13 years ago, would collapse under the weight of legal challenges. We are a number of years on, and the tests are still here.

Mr Principal Deputy Speaker: Order, Members. That concludes questions to the Minister of Education. I ask Members to take their ease for a few moments while others clear the Chamber. Do not forget to clean the spot where you were before you leave. Thank you.

Finance

New Decade, New Approach: Civil Service Reform

1. **Mr McGrath** asked the Minister of Finance what progress has been made on Civil Service reform, as set out in 'New Decade, New Approach'. (AQO 1186/17-22)

Mr Murphy (The Minister of Finance): Good progress has been made to deliver the New Decade, New Approach (NDNA) Civil Service reform commitments. The Executive formed a subcommittee on responding to the renewable heat incentive (RHI) inquiry and reform in March 2020. It met in late July and last week and is currently working to complete the Executive’s response to the RHI inquiry.

A revised Civil Service code of ethics has been developed, including discussions with trade unions and Civil Service Commissioners. That will be finalised soon and become part of all Civil Service contracts of employment. It has significant changes on working for the Executive as a whole, on record-keeping and on raising and responding to concerns that are raised either internally or externally.

The review of arm's-length bodies is under way, with stage 1 complete. I am discussing with Executive colleagues the creation of a Civil Service reform team in DOF that will develop a wider reform plan. The Procurement Board will be reconstituted to include an expert advisory panel appointed from key sectors in the economy. I will consider last week's NIAO report on Civil Service capacity and capability and its potential for read-across to Civil Service reform.

Mr McGrath: I thank the Minister for his answer. The Northern Ireland Audit Office report on Civil Service capacity that you referred to highlighted major structural problems with the local Civil Service. How can we address those challenges without a head of the Civil Service? Can you tell us when that appointment will be made?

Mr Murphy: Quite a lot of the work that I have just outlined has been conducted without a

head of the Civil Service, so the world does not come to an end without somebody being in post as the head of the Civil Service. A lot of work continues on through the Departments and through the Executive Office. Of course, I would like to see a head of the Civil Service being appointed soon. I know that the First Minister and deputy First Minister are looking at steps such as interim appointments. I think that they want to look at the role of the head of the Civil Service, and, obviously, it will be up to them to bring forward that process.

Mr McGuigan: Minister, will review of the recruitment process for senior civil servants be part of the reform process?

Mr Murphy: Yes. A range of issues are to be reviewed in terms of Civil Service reform. It is a significant piece of work, and that is why I am putting together a reform team. It can scope out the broad areas and consult other Departments, Ministers and others on the full scope of issues that we want to see in Civil Service reform. There was a clear commitment in NDNA to do the work. It falls largely to my Department, which has responsibility for the Civil Service, and we are happy for it to be as broad as is considered necessary.

Mr Humphrey: In relation to the Northern Ireland Audit Office's recent reports on capacity, capability and attendance in Civil Service employment, how does the Department plan to take forward the recommendations — is he going to take forward the recommendations? — put forward by the Comptroller and Auditor General for Northern Ireland in those reports?

Mr Murphy: Clearly, we will look at them. We have initiated a process of Civil Service reform. We are putting together a group to take that forward, and the report fits into that discussion. Of course, there will be recommendations in that report that will require to be addressed as part of a response to your Committee and the Assembly as a whole, and I am sure that the Department will look at that. However, it will dovetail nicely with what we intended to do in terms of Civil Service reform, as we agreed under NDNA.

Business Support Schemes

2. **Mr Blair** asked the Minister of Finance what assessment his Department has made of the potential merits of compensating small businesses that have maintained the salaries of employees even though they were ineligible for support from the coronavirus job retention scheme. (AQO 1187/17-22)

Mr Murphy: I have been concerned that the Treasury's eligibility criteria for its schemes have excluded some businesses, and I have raised that directly and repeatedly with Ministers in London. In particular, given the local restrictions that the Executive put in place in October, I called on the Treasury to make furloughing available immediately for all businesses that needed it. I recognise, however, there was a gap for businesses not eligible before the 1 November extension of the scheme, but that sort of wage support can be put in place only by Treasury. First, the scale of the funding required is huge. Ulster University has estimated that the value of furlough claims in the North up to the end of July was £890 million. That is beyond the scope of our budget locally. Secondly, making those sorts of payments requires access to HMRC taxpayer data and systems that we do not have and nor could we get. That said, I will continue to use all the levers at my disposal to support businesses that are impacted, as I did most recently in putting in place the localised restrictions support scheme, paying double the amounts available under the London Government's scheme.

Mr Blair: I thank the Minister for that answer. Can the Minister provide an update on the number of applications to the localised restrictions support scheme and the number of payments in progress?

Mr Murphy: Yes. The number of applications is, I think, in the region of 12,000; the number of payments is over 5,000; and I think that in the region of over 2,000 have been rejected. More than half have been processed, and we are heading towards £20 million in payout on that scheme.

Mrs Barton: Minister, what was the outcome of the talks with Department for the Economy's officials over the weekend on the matter? Why has it taken nearly eight months to come up with the appropriate package?

Mr Murphy: The Member will know, because her colleague proposed the restrictions last Thursday, that we were not aware until Thursday that non-essential retail was part of the Department of Health's proposition for restrictions. In order to come up with a package to address those issues, you have to know where the businesses that need support are. Over the weekend, we had, in essence, to come up with a package, and that is what we did. Yesterday, I brought to the Assembly a substantial support package across a range of

Departments, including the Department for the Economy, to provide that support.

The funding available to us has changed. The furlough scheme has changed at very short notice. We knew just over only two and a half weeks ago that we had an additional £400 million. The restrictions themselves have changed the businesses that are required to close. All that has happened with little notice. As for the notion that we had months to come up with the schemes, I wish that we had had. I wish that we had known what restrictions would be in place and what funding would be available to us. I wish that we had known that the Treasury was going to change its mind abruptly on furloughing with no notice. I look forward to finding out tomorrow what will be in our budgets for next year when the comprehensive spending review is finished. It has not been ideal for planning, but we put together schemes and processes as quickly as we could once we had all the relevant information.

Mr Catney: Thank you, Minister. I realise that we are working to get that money out to businesses. Is there a possibility that the support announced yesterday for company directors could be utilised by small businesses?

Mr Murphy: The Member will know that the scheme to which he refers is being taken forward by the Department for the Economy. The scheme tries to address a section of our business community that has not received any support so far. I have made this point many times: as we are now, perhaps, getting on to the third level of support for some businesses, it is particularly acute for those who have not received any support to date. The Department for the Economy will roll out the scheme. I look forward to seeing the details, and I am sure that, if it can assist some of the businesses to which he refers, it will be of benefit to them.

Procurement: Security of Supply

3. **Mr O'Dowd** asked the Minister of Finance how procurement policy will reflect the importance of security of supply, given the learning from the COVID-19 pandemic. (AQO 1188/17-22)

Mr Murphy: Security of supply is a fundamental in all public-sector contracts. It is essential that commissioners continually monitor and assess the resilience of supply chains as COVID-19 continues to impact on demand and production in the manufacturing sector. Security of supply will also be impacted by EU exit if the British Government fail to secure a trade deal with the EU. I plan to appoint an expert advisory panel from industry to bring fresh thinking on procurement matters and to advise the Procurement Board of lessons learned during the pandemic to help to build the resilience of government supply chains.

Mr O'Dowd: I thank the Minister for his answer. He will be aware of many small and medium-sized enterprises that were capable of responding to the shortages of PPE and other equipment in the health sector but were not able to do so because they were disadvantaged by the scale of the contracts. Will the new Procurement Board ensure that there is not only value for money but a mandatory provision for social value?

Mr Murphy: From my perspective, the Procurement Board and the general procurement of contracts has to follow a set of criteria. However, the experience of the pandemic is such that security of supply has to be key whereas, previously, price was king with regard to procurement. The evidence during the pandemic was that there is sufficient capacity, skill and ingenuity in local manufacturing to meet some of the critical supply that is necessary for us on the island. Certainly, with regard to food, pharma and manufacturing, that critical supply exists here. One of the lessons that we have to learn across the island and between these islands is, as a consequence of this, that cheaper prices and goods on the other side of the world may be fine for saving some money, but they do not bring security of supply or assist local economic growth in the way that procurement should be tailored to do. There are a lot of lessons to be learned, and I look forward to the newly constituted Procurement Board getting stuck into the issue fairly quickly.

Mr Allister: The Minister will be aware of the recently exposed scandal of the obscene amounts of money paid to middlemen in obtaining PPE. Will he assure the House that the PPE that was acquired for and within Northern Ireland was free from any of those payments of obscene amounts of money?

Mr Murphy: Yes. Officials dealt with the contracts in China. I spoke to one of them, and he was amused at the amount of money that someone had received when the official was doing it as part of his public service to us. He did a remarkable job. The focus on the first attempt to obtain PPE here pales into insignificance compared with the obscene amounts of money that the British Government were prepared to pay to middlemen to achieve this. I would not say that it was panic, but there

was certainly great urgency in securing PPE, and we were not alone in trying to source material in the Far East. That undoubtedly added to costs, but it also added to the complications in accessing those goods. It goes back to the original question from my colleague Mr O'Dowd about security of supply, knowing your suppliers and easy access to them being as important as cheaper prices in the Far East.

Mr Nesbitt: Does the Minister agree with the interpretation of the House of Lords that the protocol suggests that, when it comes to security of supply for those who supply key sectors such as health, we will be subject to EU regulations rather than the will of the Executive?

Mr Murphy: That remains to be seen. There is much uncertainty on the Brexit issue. Legislation is going through the Houses of Parliament. The Lords has taken a particular view, and, from reading commentary, I know that the Commons intends to take a different view when the Bill comes back for further processing through the legislative framework.

3.00 pm

All of it is unsatisfactory as far as we are concerned and, I am sure, as far as the Member is concerned. We should not be in this position a couple of weeks away from the exit date. The mess is not of our creating. It is certainly not the creation of the democratic wishes of the people in this part of the world. It is not of our creation in terms of the negotiations and the processes developed between the British Government and the EU. The sooner it is resolved with a greater degree of clarity, the better for all of us.

Miss Woods: I thank the Minister for his answers so far. Security of supply will also be impacted by climate breakdown. Minister, will environmental and climate impact be reflected in procurement processes and policies going forward to ensure that the policy is sustainable? For example, will a sustainability clause or criteria be considered for security of supply?

Mr Murphy: Clearly, one of the first issues is that, if you are not transporting goods from the far side of the world, there is certainly an environmental benefit. Having goods produced on this island in these islands certainly cuts down on transportation costs. I am happy to look at all the issues that the Member has raised and ensure that the Procurement Board, when examining these issues, considers all those matters going forward.

Mr O'Toole: Will the Minister be more specific about issues on security of supply caused by Brexit? Have any orders been taken forward to forestall the uncertainty around 31 December? Will the Minister also briefly give an update on whether he has made any specific allocations or has been asked to make any for the procurement of the vaccine that, we all hope, is closer than we once feared?

Mr Murphy: With regard to the first question, there is huge uncertainty about what our future trading relations will be like. That could challenge significantly the security of supply. We need to bottom out all those issues. As yet, the Executive are still fairly in the dark about how this will eventually fall down. The British Government have not been keen to share information with anybody outside their own narrow confines.

I am advised by the Minister of Health that the vaccine will be procured centrally in the British government system and supplied to us. The logistics of rolling out a vaccination programme will be a matter that the Executive will meet the cost for.

Renewable Heat Incentive: Disciplinary Proceedings

4. **Dr Aiken** asked the Minister of Finance, in light of renewable heat incentive (RHI) disciplinary proceedings, whether any processes have been put in place to prevent those disciplined from being given official or semi-official roles during retirement. (AQO 1189/17-22)

Mr Murphy: The RHI disciplinary proceedings are ongoing, and I await their determinations.

Dr Aiken: I thank the Minister for that rather short reply. Will the Minister consider introducing legislative changes to ensure that civil servants or those employed by public bodies who have been subject to a disciplinary process but have, subsequently, retired and are, therefore, under the current legislation, exempt from sanction can be prevented from being re-employed as consultants on boards or in any other official capacity?

Mr Murphy: The Member knows that the RHI process is ongoing and affects a certain number of individuals. We do not wish to speculate about what they may do now or in the future until that process has run its course. In general terms, he made a point that is worth looking at: the functions that someone who is

subject to a disciplinary process can or cannot avail themselves of, as the case may be. beyond their term in public service, depending on the outcome of any such investigation. That is something that, as part of the review and reform of the Civil Service, we will want to address.

Mr McAleer: Minister, when will the Executive subcommittee on the RHI recommendations conclude its work?

Mr Murphy: The RHI subcommittee met last week and processed further some of the issues that we have been dealing with in the ongoing work on codes. It is our intention to bring that to the Executive in December for approval and clearance before Christmas recess.

Mr Principal Deputy Speaker: Question 5, which stands in my name, has been withdrawn — Mr Blair, were you rising in your place about question 4?

Mr Blair: Thank you very much indeed, Mr Principal Deputy Speaker. Will the Minister provide an update on the panel that was due to be set up following RHI to investigate ministerial conduct?

Mr Murphy: The formation of that panel is the responsibility of the Executive Office. I hope that that is taken forward as a matter of urgency. It is an incomplete part of the process that we have been dealing with in the Department of Finance and the RHI Executive subcommittee. I will bring that to the attention of the Executive because, clearly, if we are bringing that proposition to the Executive for completion in December, we want to see that panel in place as well.

Mr Lunn: I go back to the question of discipline. The last case that I can remember of a civil servant being disciplined was quite a serious one, and the punishment was a letter being placed in his file for 18 months. He was not hanged. Does the question of official or semi-official appointments after retirement not depend, to some extent, on the severity of the offence and the punishment?

Mr Murphy: Yes. Clearly, if there were a misdemeanour of some sort, it would depend on the level of judgement attached to that. The question that Dr Aiken posed outlined that that should be looked at. I am not sure that there is clear policy on that or an analysis of what level of misdemeanour would merit disbarment from particular future appointments or roles in public life. It pertains in other jurisdictions in these islands, so we should certainly look at it. Setting aside the RHI experience, I think that there should, in general terms, be a policy for the Civil Service and ongoing public appointments.

Mr Principal Deputy Speaker: Question 5, which stands in my name, has been withdrawn.

Finance: Centrally Held Funding and Barnett Consequentials

6. **Mr Dickson** asked the Minister of Finance what actions he is taking to ensure that £500 million of centrally held funding and any further Barnett consequentials are spent effectively in this financial year. (AQO 1191/17-22)

Mr Murphy: Yesterday, 23 November, the Executive agreed allocations of £338·1 million of the £500 million that was held centrally. There is also £150 million that has been set aside for the consideration of longer-term rates support. A further £26·6 million is being held in reserve in case there are further requirements later in the financial year.

Mr Dickson: Thank you, Minister, for your answer. You are responsible for assessing bids from other Departments and then issuing that funding. It is therefore incumbent on you to ensure that that money is spent, spent well and spent before the end of the financial year. In light of the lateness and lack of ambition of other Ministers, what action is your Department taking to ensure that money that is bid for from you and approved by you is spent appropriately?

Mr Murphy: There is and has been a clear understanding among Ministers and Departments that, when they are asked to submit bids — that is how the process works — this is COVID-related money, so it is to be spent in this financial year and directed towards the three broad pillars of the Executive response to COVID: supporting vulnerable people, supporting the health service and supporting business. Bids must meet one of those criteria. We require Departments to demonstrate the area in which they want to spend the money and that they fully understand the requirement to have it spent out by the end of the financial year. We will continue to monitor that. Of course, the Member will know that the January monitoring of the general departmental spend will be coming through as well, and we may well receive further Barnett consequentials early in the new year. It has been a challenge to manage all of that additional money and deal with the stripped-down resource available to the

Civil Service because of the pandemic. Nonetheless, it is incumbent on us to make sure that it is spent wisely in the right areas and spent out before the end of the financial year.

Ms Dolan: Minister, have the British Government responded to your request and the request of the Scottish and Welsh Finance Ministers for greater flexibility to ensure that the funding is spent fully and effectively this financial year?

Mr Murphy: There have been discussions with Treasury right up to recent days, and I intend to speak to the Chief Secretary to the Treasury tomorrow. As the Member may know, we expect an announcement on the comprehensive spending review tomorrow that might give an indication of the finances that will be available for next year's Budget. We have pressed consistently for flexibility. In particular, if we are to receive further Barnett consequentials early in the new year, that will add to our case that this kind of drip feed of money, with no long-term planning attached to it, is difficult for any devolved Administration to manage. It reinforces the general point that we have been making about the need for flexibility in the management of public finances.

Mr O'Toole: I will be brief. Following the results of the spending review, which we expect tomorrow, will the Minister give the Assembly an update on exactly where we are with unallocated new Barnett consequentials, so that we are better able to scrutinise where the finances are at this critical time?

Mr Murphy: We hope to receive that tomorrow. That is the date that we have been given, and I have a call scheduled with the Chief Secretary to the Treasury tomorrow. I anticipate knowing that, and I am happy to come back to the House when we get a handle on it. There have been a series of Budget discussions with other Ministers. A couple are still outstanding because other business has overtaken them, and we need to have those discussions and understand what the budgetary requirements of the Departments are for next year. However, it will depend on the amount available to us. I am happy to update the Assembly and the Member's Committee when we get some answers on all that.

Procurement Policy

7. **Mr Chambers** asked the Minister of Finance whether he will consider the reform of public procurement policy to allow local and individual public-sector teams to choose the best options for them when it comes to cost-effectiveness and suitability. (AQO 1192/17-22)

Mr Murphy: The Executive's public procurement policy requires public bodies to process procurements under a service-level agreement with Central Procurement Directorate (CPD) or a relevant centre of procurement expertise (COPE) to provide a coordinated and strategic approach to securing best value for money. Recognising that it can be more cost-effective for public bodies to carry out their own procurement of low-value goods and services, the service-level agreement allows for public bodies to do this, if they use established procedures that maintain accountability and transparency in expenditure decisions.

Mr Chambers: I thank the Minister for his answer. A school in my constituency had to pay hundreds of pounds and wait weeks for a simple window repair to be carried out because it had to go through the central provider for all schools in Northern Ireland. The principal could have hired a local independent contractor to do it 75% cheaper and had it repaired the next day. This seems to be a problem for many public-sector organisations, not just schools. Will the Minister consider changes for small-scale expenditure in such areas?

Mr Murphy: As I said in my answer, there is a level at which there can be a degree of discretion. Of course, there has to be accountability for all these arrangements. We need to make sure that work provided by contractors is up to the standard required for a school or any other public building, because it has to serve that building for some time. Of course, standards have to be applied and there must be a level of accountability and transparency in how the money is spent so that it is not going to some favoured contractor or supplier. I am not making any reference to the school that you mentioned, but, in general terms, that should not happen. There has to be a balance in making sure that this is good value for money, that it can be got locally if it is below a certain level and that the person or company that supplies it adheres to a certain standard that is recognised by the procurement people.

Mr Humphrey: I agree with the Member for North Down. As a school governor, I have had to face similar situations.

In the light of the protections that the Minister talked about in value for money for the Northern Ireland taxpayer, does he believe that the

Central Procurement Directorate provides value for money for Northern Ireland plc?

Mr Murphy: When we were discussing the question, as an elected representative, I anticipated where the question was coming from. The people in procurement, perhaps, were anticipating wider issues. I am sure that all of you are frequently told, "This could have been got much cheaper, if only you had gone to a local supplier". I get all those arguments as a locally elected representative, and I want to ensure that government spend assists local economic growth. Of course procurement, like all other agencies, has to present value for money. We have initiated a series of changes to the Procurement Board. We are bringing in more expertise from outside agencies. The procurement policies that are followed are, obviously, agreed by the Executive, so there is Executive-wide ownership of them. The responsibility of that board will be to bring policies to the Executive for approval. That is where a lot of these issues can be interrogated, but, of course, as with everything in public expenditure, we want to ensure that it represents value for money.

Mr Dickson: The Minister will appreciate that some of the very best local procurement is done through social enterprises. What action is your Department taking? You have already promised some social value legislation for Northern Ireland. How quickly can we see that on the statute book, and will it happen within the life of this Assembly?

Mr Murphy: In the next meeting that I have with the newly constituted Procurement Board, social value will be one of the main items on the agenda. Like you, I am very much of the view that social enterprises and projects not only provide excellent value for money but have the added value in what they do for people in the community who might otherwise not be employed. They make an added contribution to society, as well as the economy.

I am a keen advocate of social value. It has to measure up to being value for money, but, in my experience, and, I am sure, yours, social value can do that in many ways. We want to see social value be very much part of the procurement make-up, and we have been actively looking at the idea of having legislation. There is a limited time left in the mandate for initiating legislation and taking it through all its legislative stages, but, if there is time, I am willing to look at that.

3.15 pm

Mr Principal Deputy Speaker: We have time for a question from Mr George Robinson and an answer from the Minister, but there is no time for other Members to ask a supplementary question.

COVID-19: Furloughed Workers

Mr Robinson: Can the Minister give assurances that reducing the number of furloughed workers as soon as possible will give an economic boost to the Northern Ireland economy?

Mr Murphy: The question goes back to the discussion about how we spend our money. I am firmly of the view that we should spend our money as locally as we can in order to support local businesses, workers and the economy. That is why, when I spoke publicly yesterday about the high street voucher scheme that the Member's colleague is proposing, I encouraged families, as we all should, to spend that voucher in local businesses to support our local economy. Anything that we can do on public procurement or that Departments can do with their annual £3 billion of spend has the potential to make a real impact on the local economy and should be used in that way.

Mr Principal Deputy Speaker: Thank you. That ends the period for listed questions. We move on to 15 minutes of topical questions.

Localised Restrictions Support Scheme

T1. **Mr Robinson** asked the Minister of Finance how many allocations have been made under the localised restrictions support scheme and how much money has been paid out. (AQT 731/17-22)

Mr Murphy: The Department for the Economy will have to answer about its own scheme. The Department of Finance scheme is administered through Land and Property Services (LPS) and deals with businesses that have premises closed down owing to the restrictions. There have been 12,000 applications, and almost £20 million has been paid out to over 5,000 businesses. About 2,500 applications have been rejected. Some of the applicants applied to the wrong scheme. Business owners will have heard that money is available for a certain business sector and have thought that is where they go, but they do not have business premises and so need to apply to the Department for the Economy scheme. There is quite a lot of crossover with the schemes, with

some businesses applying to the wrong scheme or perhaps to both to make sure that they get on to one of them. That is how the scheme has been rolled out. The Department wants to see the scheme gather pace as quickly as possible. As I say, however, upwards of £20 million has been paid out to date.

Mr Robinson: Minister, what proportion is still to be allocated?

Mr Murphy: There have been 12,000 applications, and, judging by the figures, more than half of applicants have either been paid or been rejected. The figures are increasing daily, as some of the data issues that affected the scheme early on have been ironed out. Bear in mind that, from the end of this week, a new element is being introduced to the scheme, and that is the non-essential retail scheme. That will put additional pressure on LPS, and I want to see as much paid out as possible before that additional element of the scheme comes in next week.

Civil Partnerships

T2. **Ms Sheerin** asked the Minister of Finance whether he can confirm when people who currently have a civil partnership will be able to convert it to a marriage. (AQT 732/17-22)

Mr Murphy: The Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020, which introduce the ability to convert same-sex civil partnerships into marriages and opposite-sex marriages into civil partnerships, come into operation on 7 December 2020. There will be no fee for signing the conversion declaration in the first year.

Ms Sheerin: Thank you, Minister, for confirming that the fee will be waived for the first year. Given that many people who have a civil partnership would have preferred a marriage if the choice had been available at the time, can the waiver be extended?

Mr Murphy: It will apply for the first year anyway. This has been a key issue for people who have not been able to have their partnership legally recognised, and it is a great advance that it is now the case that they can. As I say, there is no fee for signing the conversion declaration in the first year.

Councils may apply additional fees for the attendance of a registrar at an approved venue, and the General Register Office will bring forward legislation to set the fee for years 2 and 3. We will be able to look at that at the time and see what the take-up is like. If the payment of the fee becomes a barrier, I will make an assessment then as that comes forward.

High Street Voucher Scheme

T3. **Ms S Bradley** asked the Minister of Finance, who yesterday advised the House of the £95 million high street voucher scheme, what checks he made ahead of the announcement to make sure that the money reaches the high street and is not swallowed up by national or multinational organisations that helped people through the pandemic but have also fared well in the pandemic. (AQT 733/17-22)

Mr Murphy: The checks and balances that are done on any scheme as it is brought forward are done by officials in the Department. The question that you pose is whether the Department for the Economy can ensure that that money is spent in certain business premises and not in others. Obviously, that is a question for the Department for the Economy. I am not certain that that can be done with such a scheme, and that is why yesterday I encouraged people to shop locally, not just for this scheme but over the whole Christmas period and into the future because it is our local economy that needs support. I encourage and expect all Ministers to do likewise. The question of how the scheme would differentiate in that way is not to do with due diligence; it is a policy matter. Deciding that the scheme will pay into certain businesses but will be barred from paying into certain other businesses would be a matter of policy for the Department for the Economy, not a matter of due diligence.

Ms S Bradley: I am sure that the Minister will understand that many local small businesses, for instance in towns such as Kilkeel, Warrenpoint and Rathfriland in my constituency, that have been described as non-essential are vital to our economy. They will not be heartened to find that no due diligence has happened ahead of that announcement. I urge the Minister to put in place strategies that will reach those vital businesses to keep their doors open going into 2021.

Mr Murphy: It is incorrect, given that I have answered the question by saying that it is not a matter of due diligence but a matter of policy for the Department for the Economy on how to target that, for you to respond by saying that no due diligence has been done. Due diligence has been done on the scheme, as I have said. However, it is a matter of policy if the

Department for the Economy wants to use that scheme to direct it away from what you describe as multinational businesses and into the local economy. Of course we want to support the local economy. That is why the schemes that will be brought forward are to support local businesses, and it is why the Executive are encouraging people to shop locally and to support local businesses. It is why the schemes that we talked about earlier as being rolled out have been directed at small- and medium-sized enterprises to try to give them that level of support. That has been consistent right through the pandemic.

Mr Principal Deputy Speaker: Ms Joanne Bunting is not in her place.

Business Support: Derry City and Strabane

T5. **Ms Mullan** asked the Minister of Finance how many businesses in Derry applied for the business support grant specific to the Derry City and Strabane District Council area. (AQT 735/17-22)

Mr Murphy: The Member will know that businesses in Derry have been closed down for much longer than anywhere else and, obviously, have suffered accordingly. The latest figures that I got yesterday showed that over 70% of businesses had received the support that they had applied for. Of course, that scheme will be rolled on now. It was changed midstream to add additional businesses to hospitality, and it has now been rolled on for further weeks. I want to see that money being paid out as quickly as possible to get it to the people who need it in Derry and Strabane over the coming weeks.

Ms Mullan: Minister, thank you for your response and for the support that you have given to local businesses in my area. How many have received the initial payment and subsequent payments as the weeks have rolled on?

Mr Murphy: As I said, the initial payment was for a smaller number of businesses, and we increased the payment level. Of course, the payment level to businesses in Derry had to be upped as well because, if you remember, the original lockdown restriction phase of this was for the Derry City and Strabane District Council area only and the level of payment was increased. Of course, there had to be retrospective payment to some of those who had already received it at the lower level. So, it has been quite complex and complicated, but, of course, the objective has been to get that payment up to the right level and out as quickly as we can, recognising that we now have another couple of weeks to go with that. Bear in mind that all these things have changed, midstream, the programme that we designed. Other decisions came forward that altered it in terms of the amount of money available to us and the additional restrictions and, now, the additional period of restrictions. Those all came in subsequently. It is a matter of trying to catch up with the decisions taken by other Executive Departments.

Business Support

T6. **Mr Givan** asked the Minister of Finance whether it is not an indictment of his Department that around half of eligible applicants are still waiting to get a payment from Land and Property Services (LPS), for which the Minister is responsible, weeks after the scheme was announced in a fanfare, which will come as a shock to the public, and that, on a crude assessment, approximately at least £20 million is sitting in his coffers still to be paid out and the businesses that need that support still have not got it. (AQT 736/17-22)

Mr Murphy: First, as I have said, the schemes have changed, not only in their scope but in their level of payment, and we have been catching up. I want to see them done quicker. I want to see the rest of those schemes paid out tomorrow, if possible, or certainly in the next number of days, so that all of that money is out where it needs to be. I have to say that if you compare Finance with other Departments and put up a chart, you will find that this scheme has paid out much more quickly and much more favourably than schemes from any of the other Departments.

Mr Givan: Minister, that is exactly the point. You and your colleagues have been incredibly quick to point the finger at other Departments, and yet the Department that you preside over has been failing to get this scheme to pay out. The public want to see the money paid out, and those businesses need it.

In terms of how the rates base is going to be calculated going forward, we have increased vacancies on our high street and pressures on our public finances. Is a review taking place of how there will be a fair share of the burden on the public purse, spread across everyone in society, for the next financial year?

Mr Murphy: Well, first I have not been pointing the finger at anyone. I have been encouraging people to do schemes as quickly as they can, and encouraging my Department to do likewise. I am not interested in the point-scoring that the Member refers to. To be quite honest, I am interested in getting support out onto the ground as quickly as we can.

The Member will have noticed the announcement yesterday that the Executive agreed to set aside £150 million for further rates interventions in the first half of the next financial year. We have been consistently hearing from business that those are vital. If we can get that scheme done and the rates intervention scheme done, it will be of great assistance. Of course it has to be done with fairness, absolutely, and I am delighted that one of the side effects of this pandemic has been the DUP discovering socialism and fairness for all people.

Civil Service: Recruitment

T7. **Ms Dillon** asked the Minister of Finance how many vacancies in the Civil Service have been filled by the most recent recruitment drive. (AQT 737/17-22)

Mr Murphy: I do have not the figures for the recruitment drive that has been ongoing at all levels in the Civil Service. Clearly there is a significant number of vacancies at the lower levels, and that is why we have been encouraging people who are currently employed by agencies to apply for those. We have improved the terms and conditions of agency workers who have been working for quite some time, particularly in Departments such as Communities. There is an ongoing drive on that.

One of the areas that our review and reform of the Civil Service will look at is the age profile. It is quite clear that we need a much younger cohort coming into the Civil Service and an influx of new ideas and talent, but that has to be achieved in a managed way, and that will be done through recruitment during the time ahead.

Ms Dillon: Speaking as somebody who once worked in the lower levels of the Civil Service and who knows what the pay was like at that level, I commend many of our civil servants who are working at that level, trying to deliver all the schemes that Members have been talking about in the Chamber today. It is not an easy job to do.

Will the Minister outline, given the recent Audit Office report on the capacity and capability of the Civil Service, whether he agrees that we now have an urgent need for a review? He outlined that we need to look at the age profile, but we also need to look at what we are asking of some of our civil servants for the pay that they get.

Mr Murphy: There is a range of matters in that. One is the age profile and the ability to recruit a younger cohort. There are also questions about the level at which people come into the Civil Service and the skills and experiences that they bring. There are questions about the ability to recruit people from other jurisdictions into the Civil Service and the experiences that they can bring from working in other jurisdictions as well. Those are key questions, which, I think, have not been addressed in previous reviews of the Civil Service and its practices. RHI highlighted a number of those, but it is not because of just that. There was an impetus, as there should be, which led to an agreement among all Executive parties on a need for a fundamental review of the Civil Service, and that is what we intend to do.

3.30 pm

Mr Principal Deputy Speaker: We have time for one question from Mr McCrossan and one answer from the Minister.

Rates: Reval2020

T8. **Mr McCrossan** asked the Minister of Finance, given the pressures that businesses face, whether it is his expectation that Reval2020 will go on. (AQT 738/17-22)

Mr Murphy: Yes, there are a number of exercises to do with rates. One that we wanted to try to address very quickly was the ability to continue with rates relief — a rates holiday — for some businesses going into the new financial year. We have the Reval and rates exercises, and we are responding to the pandemic in the middle of all that. A lot of people will not have recognised that, in last year's Budget, we introduced a very effective reduction in commercial rates. They went down by almost 18%, which is something that businesses had been asking for. We will continue to do that work, but we are also trying to respond to the pandemic. That is why the focus has been on trying to secure additional money to take a further rates intervention in the early part of the next financial year.

Mr Principal Deputy Speaker: Thank you, Members. That concludes questions to —.

Mr Wells: On a point of order, Mr Principal Deputy Speaker. Either the Minister of Finance has the gift of prophecy and a crystal ball or there is collusion going on, because, during the questions on marriage and payments in Londonderry, I noticed that he had turned to the answer before the questioner had finished the question, and he had turned to the answer for the supplementary questions before they had been asked. I understand that topical questions are supposed to test the Minister's mettle and to find out whether he is on top of his brief. Could it be that Members from his party have been giving him the text of the questions in advance of their being asked? Is that in order for topical questions?

Mr Principal Deputy Speaker: The Member has been here since 1998 — a lot longer than I have been here. I am sure that the Member will accept that such behind-the-scenes chicanery would never occur in an institution such as this.

Mr Murphy: Further to that point of order, Mr Principal Deputy Speaker. I did, in fact, turn to see if I could find the figures for Derry, but I did not have them in my folder. That disproves entirely the Member's point that the question was set up. I had not got the figures.

Mr Principal Deputy Speaker: If Members take their ease for a moment, we will return to the Consideration Stage of the Functioning of Government (Miscellaneous Provisions) Bill. Before you leave the Chamber, please wipe down the surface that you were at. Thank you.

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

Mrs D Kelly: On a point of order, Mr Deputy Speaker. I apologise to you and Mr Principal Deputy Speaker for not being in my place during topical questions.

Mr Deputy Speaker (Mr McGlone): Thank you for that. It is duly noted.

Private Members' Business

Functioning of Government (Miscellaneous Provisions) Bill: Consideration Stage

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

Debate resumed on amendment No 1, which amendment was: In page 1, line 7, after "(2)" insert "(b)".— *[Mr Allister.]*

The following amendments stood on the Marshalled List:

No 2: In page 1, line 12, leave out "involvement or".— *[Mr Allister.]*

No 3: In page 1, line 13, before "A minister" insert "Subject to section 3A".— *[Mr Allister.]*

No 4: In page 1, line 14, at end insert

"(3A) In section 8 (Code for appointments), after subsection (1) insert the words:

'(2) Without prejudice to the generality of subsection (1), the code must provide that the appointing minister must -

(a) create a job description and person specification for the post,

(b) set out the requirements to be met by a successful applicant,

(c) achieve a candidate pool from which the minister shall select on sustainable and lawful grounds, and

(d) complete and the department retain documentation associated with the above processes, including recording the minister's reasons for the selection made.'".— *[Mr Allister.]*

No 5: In page 2, line 9, after "adviser" insert "by reason of the holding of that post".— *[Mr Allister.]*

No 6: In page 2, line 12, leave out "him" and insert "the special adviser".— *[Mr Allister.]*

No 7: **New Clause**

Before clause 2 insert

"**Repeal of the Civil Service Commissioners (Amendment) Order in Council 2007**

A2. The Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007 is repealed.".— *[Mr Allister.]*

No 8: In clause 4, page 2, line 28, after "Office" insert "under the provisions of the Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007".— *[Mr Allister.]*

No 9: In clause 4, page 2, line 33, leave out subsection (3).— *[Mr Allister.]*

Mr Deputy Speaker (Mr McGlone): The group 1 amendments deal with the appointment, conduct and management of special advisers. Members should direct their comments to these specific amendments. Mr Aiken was speaking before the debate was interrupted for the lunchtime suspension. Therefore, I ask Mr Aiken to resume his speech.

Dr Aiken: I will conclude my remarks on the group 1 amendments. The Ulster Unionist Party will support the amendments tabled by Mr Allister. I strongly encourage all Members to join us in trying to help to restore trust in our institutions. It is regrettable that the Executive or, indeed, elements of the Executive who should be using their best endeavours to restore that trust are thwarting the efforts at reform. As that is the case, we, as legislators, must do what is right and make the necessary legislative changes that can help to restore that trust.

Mr Frew: This is the second week in a row when I am going to be —

A Member: Brief. *[Laughter.]*

Mr Frew: No, there is absolutely no chance of that, but that was a great intervention. Thank you.

I will add to the comments from Mr Jim Wells, who, in an intervention on the Chair of the Committee, spoke about the fact that Jim Allister sits on the Finance Committee. While that was by accident, it was very useful. The Member was able to contribute in real time, hear the evidence in real time and engage not only with the witnesses but with the Committee in real time. That was advantageous not only to the sponsor of the Bill but to the Committee as a whole. I tabled an amendment that did not get past the Speaker's Table, which I accept 100%; of course I do. However, Standing Orders should be looked at because there is merit in an ex-officio member being on a Committee during Committee Stage of any private Member's Bill in order to afford the Committee that insight and link to the Bill sponsor. That will provide good government and good legislation, which is what we all want.

I sat through Committee Stage of the Functioning of Government (Miscellaneous Provisions) Bill and have read it through in great detail. There is no doubt that every party and every Department in this place has a responsibility to pursue reforms that rebuild public confidence in the governance of Northern Ireland: the Executive and their decisions; the policies that they wish to adopt; the behaviour of Ministers; the behaviour of spads; the roles that spads play and the parameters within which they operate; the interactions between Departments, Ministers and spads; the interactions between Departments and Statutory Committees; the transparency of Departments; the information that is offered to Committees; respect for MLAs as individuals, when we ask questions of Departments; and respect for MLAs as they perform their important role on the Statutory Committees and even in the Chamber. We all need to ensure that we are treated with respect and that democracy is as transparent as it possibly can be.

Is it transparent at the minute? It is as transparent as a brick, so we need to do something to reform it. If we have to do it step by step, small as those steps may be, we should all put our shoulders to the wheel to achieve that. I see the Bill as a small step in the right direction. It has increased its footage by the fact that it has gone through a Committee Stage and has been forged in fire, if you like. I commend most of the parties for doing the heavy lifting in that regard because it was very useful. As the Bill's sponsor has admitted, the amendments to the Bill, which, hopefully, will be passed, will make it a better Bill.

I have enjoyed my time on the Committee for Finance looking at the Bill and getting into the nitty-gritty of it. I heard in the media and in commentary by some journalists that, because I sit on the Committee for Finance on my own with regard to the party Whip, I am not involved in some sort of reform agenda or mission: my party is up for reform. My party wants to see reform. My party acknowledges that mistakes have been made in the past, and it is up for dialogue and a conversation on reform to ensure that this place gets better and that we

add and inject confidence into the system. In our party manifestos, going back a number of years, we have asked for the development of a Northern Ireland reform plan. The party and I recognise that this private Members' Bill may touch on some aspects of reform, but it will not be able to cover it all, even though, with the best intentions, the Bill's sponsor has added "Miscellaneous Provisions" to its title, which was very useful. Sooner or later, Ministers will have to work on reform, and we would like to see that reform piece.

At Second Stage, I think, Mr O'Dowd commented that a private Members' Bill should not tackle the issue, but I say this: why not? Why should every Member in this place not put their hands to the wheel to make this place better? They are entitled to do that. They are Members of the Assembly and have a seat like everybody else, so why not? Why should it be left to the Executive or to Ministers in the Executive? We are all Assemblymen and Assemblywomen and are all entitled to table legislation.

We have also asked for fundamental reform of the Northern Ireland Civil Service. We have even asked for a review of the number of special advisers and how they are appointed and regulated. We have asked for greater transparency and improved record-keeping. We also acknowledge that the Committees play an incredible role in the work of the Assembly, and that role should be enhanced. Those are all objectives that my party has pushed for over many years, and they are the objectives that are in the Bill. Of course we were going to support the Bill at Second Stage when other Executive parties abstained, and of course we were going to give the Bill a fair wind in a Committee process that would bring it out the other side, forged in fire, in a much better place and in much better shape. We have done that.

If every party in this place is not here for reform, what are they here for? If they are not here to make a positive change to the population, make people's life better and reform the country into something greater, what are they here for? The Bill is just one vehicle through which we can do that. It is just one small step. It is not even a big step — I am sure that the Bill's sponsor would agree with that — but it is a step in the right direction.

I enjoy Committee work. It is probably my favourite bit, and I like the scrutiny most, when I interrogate facts and figures. It is quite enjoyable and good when the departmental officials come to see us, and that is all part of the functioning of government that must be healthy and must exist. However, I am living through two Committees at present: the Justice Committee and the Finance Committee.

It is no reflection on the Chairperson of the Finance Committee, who has done a sterling job — I will thank him now in case I forget to do so later — that there is a marked difference between the two. Do not get me wrong: when it came to the principles of the domestic violence Bill, which we debated last week, most of the parties definitely wanted legislation to be passed; however, with the functioning of Government Bill, that was not the case.

3.45 pm

Mr Deputy Speaker (Mr McGlone): On that point, may I draw the Member back to discussing the amendments, please?

Mr Frew: Yes, I will, Mr Deputy Speaker.

On that Bill, even with the amendments, there was hardly any dialogue. On amendment Nos 1, 2, 3, 4 and 5, there was hardly any real dialogue or input from the Members opposite. I ask this simple question: why? If you do not like the spirit of the Bill, why did you abstain at Second Stage? If you do not like the spirit of the Bill, why did you not seek to amend it? Why did you not interact with the Committee and effect change at that stage, given that, today, we will vote on every single amendment and clause? Why did you keep shtum? One Committee member did not keep shtum, and I will get to that later.

Amendment Nos 1 and 2 affect clause 1. Again, the sponsor of the Bill has gone through this very adequately and helped my understanding, so I will not have to delve too much into that. The first six amendments are to clause 1. Why are clause 1 and those amendments so important? There is no reason why, if you have a spad — a special adviser — in one Department, and his experience and expertise are in that particular Department, a spad in another Department should have any say or control over them. That spad should be the responsibility of his or her Minister. That is one of the aspects of clause 1. You can understand why that would be the case when teamwork is involved: when you are in the Executive Office, and there are multiple spads. It is just good common sense to have some sort of direction and, maybe, even some sort of hierarchy. However, it may well be that, even within that Department, spads will have different expertise, and they will go off in different directions and do different things. That is not an issue.

It is right and proper that, with any job, there will be a disciplinary code. There will be a set of standards. Of course, clause 1 does just that. It states:

> *"special advisers are subject to the processes and procedures of the disciplinary code operative in the Northern Ireland Civil Service".*

Special advisers do not only interact with their Minister, their political party and members of other political parties; they interact daily with the Civil Service. Why would it not be the case that you have some sort of standards and disciplinary code? I have no problems with that at all; in fact, I think that it is good.

Then, of course, we have the ministerial part of this. There is absolutely no reason why Ministers of the Assembly, who are in an Executive, should not be subject to standards. It is perverse to investigate a Member attending a fake graveside oration when standing beside that Member is a Minister who is not subject to a standards investigation. It is just bizarre. Ministers should be subject to the same disciplinary matters as a Member. Why should I fall under more serious rigour than a Minister of this country, no less? Why should the standards be different? Why should the investigatory procedure be different? Of course, we also very much support that.

Then we get to the issue around clause 1(6). I will speak to that. It says:

> *"A minister must ensure that only the duly appointed special adviser in the department will exercise the functions, enjoy the access and receive the privileges of the post; and a permanent secretary must ensure that no person other than a duly appointed special adviser is afforded by the department the cooperation, recognition and facilitation due to a special adviser."*

It is no way to go — no way to go — to have a figure, shadowy or otherwise, being able to conduct themselves in a sphere where there are serious decisions being taken on behalf of the people of Northern Ireland and not being accountable to democracy or accountable to a Minister but accountable to a higher place, even a secret place or a sinister place. No way should we in this House support anything that even smells like that.

What have we lived through? What have we learned over the last number of years? Well, it has been quite insightful. We heard about our Civil Service — in fact, the head of the Civil Service, no less — sending emails to other permanent secretaries saying that they think their Minister is not in a position to make decisions and that they have to go and speak and dialogue with others who are not democratically accountable, others who are not elected, others who have not been appointed and others who have no disciplinary code or standard to follow.

That is what the Civil Service has informed us of, and that is simply not good enough. It is simply not to be in this place of democracy. We should be a place of transparency. We should be a place of accountability. We should strip away anything that queries or questions that or that puts suspicions or doubts in the minds of our people. We should be completely transparent and completely accountable. Here is the sinister thing about it. The Bill's sponsor has already mentioned his previous Bill. When the Bill sponsor brought a previous Bill that changed the functions of government and how it works and operates, we then had a party that actively went about trying to get by that law, trying to subvert the will of this House and trying to ignore —.

Mr McGuigan: I thank the Member for giving way. I have been listening very carefully to his style, content and tone in the debate, and I was drawn to this quote from a famous man that, hopefully, he will enjoy:

> *"Thou hypocrite, first cast out the beam out of thine own eye; and then shalt thou see clearly to cast out the mote out of thy brother's eye."*

I find the comments of the Member from North Antrim bizarre given, first of all, the behaviour of the MP from his party in that constituency in relation to transparency and accountability, and also given the fact that the RHI inquiry has come about because of the misdemeanours, behaviour and wrongdoing of DUP Ministers and spads.

Mr Frew: Even if I achieve nothing else today in the House, I have been able to get my colleague from North Antrim to quote scripture. Amen. *[Laughter.]* Is that not great? Amen. Hallelujah. *[Interruption.]* Do you know something? Yes, we should all look at our own houses. Do you know something else? We have done so. We come to this Bill in the spirit of change and in the spirit of wanting reform. Do you know why? It is the right thing to do. I wish that the party opposite would take even a small bit of that reform seed. Would it not be

great and mighty for the people of Northern Ireland to see that and not have one party hold this place back?

Here we have a Minister — a Finance Minister, no less — who had to seek approval from senior republican figures ahead of making key decisions. By the way, one of those key decisions was to bring a Budget to this very House. That did not happen, and it left Northern Ireland and the public in dire straits. What good is a Finance Minister if he cannot produce and bring a Budget to this House? It is probably the only duty that a Finance Minister has, but he cannot even do that.

It is not a good place to be in to have secret spads, super-spads, unaccountable spads, and people who are not even called spads running spads. That is no place to be in. Moreover, they were liaising with our senior civil servants, including our permanent secretaries. Here we have a situation in which a permanent secretary ignores or goes over the head of the appointed spad to talk to a super-spad, a secret spad, a do-not-call-me-a spad, and that is the way in which that party has been running government here. That is the way in which civil servants have been conducting themselves. This clause does away with that, and is it not good to see it on this blue page? Is it not good that we will hopefully secure this clause in legislation?

No more Connolly House interference. No more. We are the democratically accountable place in this country, not the army council, not Connolly House and not secretive and sinister figures in the republican movement. No more. This is the reform that we want to see. It is what the people deserve, because they want to see accountable and transparent Ministers being accountable and responsible for transparent and accountable spads, who then will liaise with senior civil servants, including grade 5s, permanent secretaries and everything else that goes with it. That then sprinkles down into a far better and bigger system, a brighter system, a better and more transparent place and something that we can all become proud of. That is what we want to see in Northern Ireland, and that is what this clause — clause 1(6) — does. It helps remove the barrier to that. Let us hope that, when the Bill is passed, if it is passed, all Executive parties adhere to it and adopt it in the spirit in which it is being passed.

Although we will not be opposing clause 1, I still have an issue with putting a cap on the pay structure. That is not because I disagree with capping the figure but because of the inflexibility that may arise from the figure being in statute. It is not to do with the figures, because what the Bill's sponsor is proposing is not far off the pay structure that we have at present. There is only £4,000 of a difference in the highest band ceiling from what the Bill's sponsor is proposing.

We need more dialogue on that, and we need to do a bit more work on that at Further Consideration Stage.

4.00 pm

Mr Wells: Will the Member give way?

Mr Frew: Yes, I will give way.

Mr Wells: I have no doubt that the honourable Member for North Antrim has been lobbied heavily by spads on this issue. I can think of 91,402 good reasons why spads do not want the present situation to change, but, given the track record of spads in this Building over the past five or six years, how can he justify any system that allows people who are not out of their thirties, who have never secured a single vote in an election in their lifetime, some of whom have minimal experience of the systems of government, earning £91,000 a year? Surely there has to be some limit on that.

I remember being ruthlessly whipped as an obscure Back-Bencher, which, of course, I have remained, and being told that the only way to incentivise spads was to increase their pay from £77,000 to £91,200. I would feel quite incentivised by £77,000, but the spads were putting pressure on their Ministers to increase it to £91,000. Surely, if the Member does not back Mr Allister's proposals today, we will get back to the situation where spads are earning obscene salaries — much higher than the Ministers whom they serve, and we could once again have a situation where a junior Minister on £6,500 a year being looked after by a spad on £85,000 a year. Can he not see the total obscenity of that situation?

Mr Frew: I thank the Member for his intervention. We have to remember that when he talks about the accountability of Ministers, spads are not in that place; spads are a public, political appointment. They are also attached to the outside world. They are not attached, or they should not be attached, to the political bubble. Sometimes, it is hard for Ministers, with the busy hours and everything that they do, not to become attached and encapsulated in that bubble, and that is where you need a spad in the real world. In the real world, you are competing with the private sector. It is about the flexibility to attract the right person. We are not

talking about the £90,000 that the Member quoted. With Mr Allister's clause, there is a ceiling of £80,847, but, at the minute, the top band is £70,000 to £85,000, so you are talking about just over £4,000. So, whilst I take the Member's point, it is splitting hairs.

He raised a valid point about the codes, saying that they could change more easily than statute. I agree; they could. There is a risk in that, but, moving forward with reform, as an MLA, I would not support that increase. That would be a political decision, but it is the inflexibility that statute brings with it —.

Mr Wells: Will the Member give way?

Mr Frew: I will in a minute — that could lessen the attraction for someone who works in a specialist field and would be quite useful to have in a political party and in a political context.

Mr Wells: Take it from me, as someone who was around here probably before the Member was born, the reality is that what we have in this Building is a single transferable spad. We had absolutely no trouble in attracting people to show an interest in becoming special advisers. Indeed, as far as I can recall, only one special adviser has ever left, and he left to become a High Court judge, and a very good adviser he was too. Clearly, he left to take on a very attractive salary, but all the rest stayed. There have been special advisers around this Building for 16 and 17 years.

At Westminster, when a Minister falls, his spad goes with him. Therefore, it is a very volatile and temporary position. Here, you can be a spad for three or four Assembly terms. If your Minister leaves, you take over whoever the new incoming Minister is from your party or you move to another Department. The Member knows the names that I will be quoting later. Mr Johnston, Mr Crawford, etc, went on for years and years. If they were unhappy on their measly £77,000 a year, would you not expect some fallout? Would you not expect them to be headhunted for posts with even better salaries?

Is it not ridiculous that there are spads who are paid more than a Minister? Surely, one has to accept Mr Allister's point of view, which is that there needs to be a ceiling. As Mr Allister eloquently stated, there may be a time when we need some high-flying person to come in, perhaps from industry, but there is provision for that. They do not have to become a special adviser; they can become a consultant to the Department. Therefore, Ministers do not have to break their pay code in order to achieve the expertise that they require. I suspect that even the person who is on £80,000 per year might be motivated. The ordinary man in the street would regard that as an absolute cricket score. What we have been paying spads is just horrendous. A ceiling must be agreed. Mr Allister's proposal is the best way forward in the interim.

Mr Frew: I thank the Member for his intervention. I do not disagree that a ceiling is needed; it is a case of what that ceiling should be and where it should be placed. It might well be the case that something needs to be put down in statute. What I am saying is that that still needs to be teased out at Further Consideration Stage. I am still open to debate on the Member's proposal. We will see how that works out. I want to ensure that the Member is aware that I do not oppose clause 1 as it stands at present. I am talking about my party's concern with that subsection of clause 1. We might want to do something at Further Consideration Stage. I am simply putting Members and the Bill's sponsor on notice, if you like, in that regard.

Whilst the Bill works on the function and operation of a spad, and also on the conduct of a spad and Minister, amendment No 4 deals with the appointment of a spad. I have concern about amendment No 4 for that reason. I take Mr Allister's argument on the issue. However, other parties and Members also had difficulty with it and, probably, still do. They will speak to that in their own words. They are quite capable of doing that themselves. If it is a purely political appointment, the chances are that, if you were a Minister, you would know who you wanted to appoint. You would try to headhunt people, to use a term from the private sector, whom you thought could help you to stay in the real world as best they could. If a pool were created of three, five, seven or 10 people, and you could appoint only one person, I doubt whether the other people who did not get the job would be of your political persuasion any more. Therefore, there are issues around the appointment process. The last thing that I want is for us to put something in legislation that any party could circumvent, put up a sham and run a process but come to the same conclusion and outcome.

Ms Ennis: On a point of order, Mr Deputy Speaker. Is it not a rule of the House that Mr Frew must address his remarks through you rather than to another Member, in this case, Mr Wells?

Mr Deputy Speaker (Mr McGlone): That is true. I am sure that the Member who is speaking will engage with that. However, I realise that he has also been engaging with other Members in the Chamber. I am sure that he will adhere to proper protocol.

Mr Frew: I am sorry. It is just my style. I cannot help it. I am not good at this. Thank you very much for your correction.

Mr Catney: Freestyle.

Mr Frew: Freestyle is correct. You can say that again, Pat.

There you have it. Again, let me be brutally honest with the Bill's sponsor and the House: there will be things that my party wants and things that it does not want. We are prepared to engage, work alongside others, compromise and reform. That is the democratic process.

Mr O'Toole: I thank the Member for giving way. I will come to this issue in my remarks in a moment or two. Specifically on clause 1, is his concern that amendment No 4 curtails the ability of Ministers to make political appointments? He was not entirely clear about that. Under the amendment, which provides for new paragraph 3A, the Minister must create an appointment process, but it is not entirely clear that they can do so on a political basis. I know that the Bill sponsor talked about that in some detail in his opening remarks, but it would be helpful if the Member could clarify his view.

Mr Frew: As I was about to go on to say, I just do not want it to become a sham, shadow process whereby there is an outcome already realised. If you have to go through a process to get to that point, it becomes a sham, and it weakens the Bill.

We are also concerned about subsection 2(d). Again, if that amendment is passed by the House, there is absolutely no bother with trying to work through it with the Bill sponsor. Subsection 2(d) states:

> *"complete and the department retain documentation associated with the above processes, including recording the minister's reasons for the selection made."*

Again, when the appointment of a spad by a party is purely political, that is an interaction with a political party and the Department. Again, whilst the spad will be accountable to the Minister, the standards, the codes, the disciplinary codes and everything else that goes with it, that is a further tier and connection to the Department. I am not sure that that is necessary, and I am not sure that some parties would not try to circumvent that process to advance a desired outcome.

I will move on to the numbers game. This was always going to come down to a numbers game. On that, I thank the Bill sponsor, because he was very gracious in considering amendments that came forward, and that is to be commended. Most of the parties recognise that eight spads in the Executive Office is too many. When we looked at it, it was clear that having three each would be suitable. I know that the Bill sponsor wanted to run with two each — four in total — thereby halving the current allowance. I genuinely think that that is just too tight. It is too tight for the parties that populate the Executive Office. I must commend the Bill sponsor for his adaption of the clauses. I agree with what he has done in removing the junior Minister's spad and allowing the three positions at Executive level to sit as they are. Most of the parties are, I think, content with that.

There was a remarkable intervention at Committee Stage. All through the Committee Stage, members of the party opposite hardly spoke at all. They opposed everything, including the Bill's long title. However, they did make this interjection, or I should say that Mr Lynch, when the Chairperson asked him what he thought of that aspect, made this interjection:

> *"We believe that six in TEO is the appropriate number."*

Why is that so remarkable? It is so remarkable because that was the only time that members of that party gave any commentary on the Bill. They were opposed to everything. I remember it clearly, because I thought, "Oh, here we go. We are getting a wee bit of engagement here", but that was it. Mr Lynch is no longer on the Committee. He was replaced by my colleague from North Antrim. It is good that we have that colleague from North Antrim on the Committee and in the Chamber today. Mervyn was here earlier. He has gone now, but I wish he were here, because then we would have the good team of North Antrim pushing through reform, quoting scripture and everything. It is a great day. I ask the Member opposite, who made an intervention earlier, whether he supports his colleague Mr Lynch, whom he replaced on the Committee, when he said that six in TEO is the appropriate number. If that is the party position, that is fine. That was the only party position that the party opposite ever gave on the Bill. That is

why it is so remarkable and why it has been logged in my memory ever since.

4.15 pm

We support the aspect of the Bill that reduces the number of spads and removes the junior Minister's spad. We do not believe that they are required. We believe that three spads each are sufficient for both parties. That does not mean that you have to fill those posts, by the way. You do not have to populate three posts; you can have two spads if they have sufficient expertise. You can have one, two or three spads, but three is the balance. Three spads would assist the Executive Office to perform the functions that it is required to perform on behalf of the people of Northern Ireland.

I support all the amendments in group 1, except for amendment No 4.

Mr Wells: Will the Member give way?

Mr Frew: Yes.

Mr Wells: The honourable Member said that he fought a lonely battle. Does he accept that, as an erstwhile colleague, I gave him my undoubted support throughout Committee Stage? On the Committee, his reaction to the Bill was positive, and he supported the Committee's report: he has now raised issues that he is concerned about. Why did he not raise those concerns in Committee? That would have been the obvious vehicle to deal with them. Was he, perhaps, taken into a darkened room by a spad and re-educated on those issues, as I was many times?

A Member: Unsuccessfully.

Mr Wells: Unsuccessfully, indeed, but I still have the stripes on my back to prove that that happened. Was he, perhaps, re-educated by senior spads and told that, particularly on the issue of their pay, he had gone too far and followed his genuine intellect rather than party instructions? Why has there been this hint of an about-turn, and who gave him the friendly word in the ear to change his mind, as I experienced on many occasions?

Mr Frew: The Member knows me well, and I know the Member well, and he knows that we as a party decide these things together. I consulted as many elected Members as I could, along with everyone else in the party.

I will correct the Member in this regard: I have been consistent. In Committee, I raised issues about the flexibility of the pay cap and the appointment procedures for spads, because they are political appointments. The Member is wrong in that regard, and he will have to go through all those Committee meetings to pick out the moments when I raised those concerns. Members will be aware of that because they had the same concerns.

I do not know what sort of relationship the Member had with some of the elected Members and non-elected members in my party, but I can certainly tell him that I have never experienced the horror show that he depicted. I have never experienced a horror show like that, and I suspect that I never will.

Does the Member want another intervention?

Mr Wells: Yes.

Mr Deputy Speaker (Mr McGlone): Before the intervention, can we stick to discussing the amendments and not the machinations or otherwise in the darkened rooms of the DUP?

Mr Wells: Honourable Members are keen to know what goes on behind the scenes in the DUP. Certainly, when I speak, they will hear an awful lot about that *[Laughter.]* I have an excellent relationship with the vast majority of ordinary members of the DUP, and I had a relationship with the spads that I will reveal later.

The point is that the Member did not, in my opinion, raise concerns in Committee on the appointment of spads, and he did not express concern about Mr Allister's capping of their salaries. I still believe that, while he does not have the scars to show it, a friendly word has been had with him that certain spads will not accept Mr Allister's cap on their salary. Has the Member had that discussion, and has he changed his tune because of that?

Mr Deputy Speaker (Mr McGlone): Sorry, can we bring this back, please, to discussion of the amendments rather than, "He said, he said, I think he said" or "I think he did otherwise"?

Mr Frew: Yes, Mr Deputy Speaker. I know that the Member misses the party life, and I would love to see him fully back in the party some day. We all look forward to that. I think that I speak for the Members here and for those who are not present that we would like to see him back, and, hopefully, he will not experience anything similar to what he spoke about today.

Yes, Mr Deputy Speaker, we will get back to the Bill.

I have summed up as much as I can on clause 1. We will support clause 1 and all the amendments that have been proposed to it, apart from amendment No 4. I put the Bill sponsor on notice about the pay structure and pay cap to see whether any flexibility can be added to the statute book at any given stage in the process going on to this. I support the Bill, as I said, and I wish the Bill sponsor and the Bill well. I wait to hear other Members speak to the clauses and amendments so that we can get the fullest picture that we can on this.

Mr McHugh: At the outset of the debate, I listened to the proposer, and he was patronising or congratulating all the other members of the Finance Committee who, he feels, are there supporting him. He created the impression that we, as Sinn Féin members on that Committee, were silent or were doing absolutely nothing, but the truth is to the contrary. We participated fully in that Committee in every respect, not just when his Bill was going through but when listening to the people who came to the Committee to give evidence. Quite a number of people were there giving evidence, and we, as I said, participated fully in every respect.

Fundamentally, we disagree with the premise of the Bill. However, in every other respect, we were there as active participants. In fact, we were so active that I can clearly remember the representatives from the Human Rights Commission saying that the objectives on spads as a result of the RHI inquiry could be met in every respect through a code of conduct every bit as easily as they could through legislation. They were the very people who stated that at the time, and they were concerned about legislation and the way that it could end up criminalising and putting spads and parties in a straitjacket. That has to be noted at the outset.

I was listening to the previous speaker, and I note his emphasis on respect. As a member of the Committee that dealt with many of the issues in the Bill, he should listen to his statement and act in accordance with what he says. I have not always experienced respect in that Committee, even to the extent that I had to address it to the Chair of the Committee. That was not only about me as a participant on the Committee but about other people who came to give evidence. That is because, very often, they can be shown total and absolute disrespect.

This section of the Bill that we are here to address at this point —.

Mr Frew: Will the Member give way?

Mr McHugh: I will not give way, because, if I do, I could be here until tomorrow, and I do not have that kind of time.

Mr Frew: On a point of order, Mr Deputy Speaker.

Mr Deputy Speaker (Mr McGlone): Will the Member resume his seat?

Mr Frew: Can the Member prove at any time that I was disrespectful to anyone at the Committee? If I was, I would have apologised there and then. Can the Member give the House any sort of evidence or proof that that was the case?

Mr Deputy Speaker (Mr McGlone): Before the Member rises, I do not want us to have a round of ping-pong around the Chamber over respect. If we could move on with the amendments and focus on those, please.

Mr McHugh: In fact, I intend to move on, because, very often, when the disrespect was shown to me, it was behind my back. At times, I could hear it like a bull roaring for its turnips. Every time you opened your mouth you could hear some of them coming at you.

This section of the Bill is less about reform and more about fundamentally undermining the role of the Ministers' special advisers. However, we should not be surprised by that, given that the author of the Bill and most of the tabled amendments has consistently set himself against the peace process, the Good Friday Agreement and its institutions. That the code of conduct for special advisers was revised and published in January and the ministerial code of conduct was revised in March means little to Mr Allister. That is despite the fact that those codes were strengthened after much consideration during the negotiations that preceded the New Decade, New Approach deal, which addressed the relationships between Ministers and their spads. Instead, Mr Allister has sought to further his anti-power-sharing agenda by tabling inappropriate legislation that, rather than building on the findings of the RHI inquiry, would undermine them. Remember: the RHI inquiry did not recommend legislation.

Listening to some Members today, you would think that, with regard to the RHI inquiry, the people who were at fault were members of my

party; in fact, central to all of that was a culture within the party on the opposite side of the House, a culture that allowed spads to operate in the fashion that they did. Unless that culture changes, a code of conduct or legislation will not impact one way or the other. Legislation in itself or even a code of conduct, if it came to that, would be a bit like putting a block in the way of a river going to the sea: the river will go over it, under it or around it, but it will get to the sea. Unless, in the first instance, that culture changes, it is a complete and absolute waste of time. We can approach this through a code of conduct rather than through the proposed legislation. Taking a legislative route, as proposed, is completely disproportionate. Mr Allister is well aware of that because many who gave evidence to the Committee were at pains to point out the same fact.

Special advisers are political appointments and justifiably so. It stands to reason that elected political representatives have political advisers, as all five parties in the Executive have. We all understand that well. These changes are about fundamentally changing the role of spads and picking apart the institutions. Applying the normal Civil Service process to spads ignores the reality of the role. Again, that brings into play the whole idea of legislation and the fact that people could be subject to criminal charges and the like. We have seen from the RHI scandal and in the case of DUP Ministers and spads what happens when the relationship breaks down between spads and their Ministers. It is important that Ministers and spads can, if necessary, go their separate ways. It is even more important that a Minister can appoint a new spad to take over, within a short space of time, the considerable workload left behind by a previous adviser. If that is not apparent, some people, it seems, have not learned from the RHI inquiry. Given that the Bill is about undermining the functioning of government, Sinn Féin will oppose all clauses of this cynical and counterproductive Bill.

Mr O'Toole: In speaking at Consideration Stage of the Functioning of Government (Miscellaneous Provisions) Bill, I am conscious of two things — not just two things but two things in particular. The first is the need to rebuild public trust and confidence in these institutions, which were eroded so painfully by the renewable heat incentive scandal and have not yet been adequately addressed by the Executive; indeed, in some ways, faith in the institutions has eroded further in recent weeks and months, albeit not for the reasons revealed by the RHI scandal. Secondly, it is vital that, in scrutinising proposed laws to improve the transparency and probity of our governance, we use legislation in the right way. That means that the law should be aimed at addressing the serious issues that persist in our politics while avoiding or at least minimising unintended harms to other areas of our governance.

At that point, I will address some of what has just been said by the Member for West Tyrone about legislation. He used what was, in many ways, a very persuasive metaphor, as he often does. He uses language very well and in interesting ways. He talked about a wave choosing to crash around laws. There is some truth to that. It is, of course, even more true of codes and guidance.

In approaching the Bill, we have not sought to be slavish to the idea that legislation is always the answer, but nor do we think that the proposed use of legislation is somehow inherently wrong. I will talk about that in a little more detail.

4.30 pm

The approach of the SDLP in the Finance Committee has been broadly to support many of the intentions of the Bill and the majority of its clauses but not all of them. We retain specific and real issues around some of the clauses and amendments that I will go on to discuss. I will just touch, in parentheses, on the point that Mr McHugh made about the Bill sponsor's intentions. The Bill's sponsor touched on it at the beginning of his remarks. It is almost redundant to say this, but it is worth saying it anyway: although I work with the Bill's sponsor, often productively, on the Finance Committee, there are many things that he and I do not agree on. I am happy to state that I am fairly confident that we will not agree on most things going forward, whether that is about Brexit or any number of other things. Nor am I or my party under any illusions about the Bill sponsor's warm, fuzzy feelings about the Good Friday Agreement, which we helped to deliver and care so profoundly about. If we thought that specific measures in the Bill were about undermining that settlement, you can be sure that we would be very judicious about supporting them. As I have said, we welcome a good deal of the legislation, but we have real reservations about some of the measures. I will talk about both the areas of our support and our areas of concern as we come on to specific clauses and amendments in the groupings that we are discussing in this phase of the debate.

First, if you will permit me, Mr Deputy Speaker, I will talk in slightly wider terms about the Bill, the broader context around transparency and

governance in this place and the principles that our party has brought and will bring to bear as we make specific judgements on clauses and, indeed, the final legislation when it comes before us. As I said, the RHI scandal and the subsequent public inquiry and Coghlin report revealed systemic failings across our political institutions and the Northern Ireland Civil Service. Of course, RHI was not an isolated incident. It was distinctive because of the scale of the financial overcommitment and because it demonstrated a remarkable collision of poor political leadership and poor performance at multiple levels of the Civil Service. There are, however, a litany of examples of grubby clientelism and even corruption, that continue to stain this institution, including Red Sky, the National Asset Management Agency and the social investment fund.

I go back to the theme of biblical quotations, which we touched on earlier. I listened to Paul Frew, my Committee colleague. Mr Frew and I have engaged and sparred on many occasions in the Finance Committee. I too am not a religious person, but, having listened to Mr Frew's peroration, a lot of which I agreed with, I am tempted to say, given the context of his party — the DUP — and some of its record over the past decade, that there is more joy in heaven over one sinner who repenteth than there is over 99 righteous persons. We will see how the rest of the debate goes. One may debate whether there are 99 righteous persons in the DUP or the Northern Ireland Assembly.

When the institutions were resuscitated at the beginning of this year, the 'New Decade, New Approach' document acknowledged that strengthening transparency and accountability were "a matter of urgency". The broad response from the Executive and specifically from the Department of Finance has been to say that legislation is not required to achieve the improvements in governance and in public confidence in governance that, virtually all of us recognise, are required. Indeed, it was pointed out again by the Member for West Tyrone, Mr McHugh, as if it were a trump card, that Sir Patrick Coghlin's report did not specifically call for a legislative response. That is true, but nor did Coghlin say that the Assembly should not legislate to improve the standards of governance here. Indeed, his report is clear:

> *"The recommendations ... may ... not even be sufficient to address the range of shortcomings revealed by the Inquiry."*

There is nothing in the RHI report or in NDNA that specifically precludes or advises against legislating to improve transparency and governance here.

The question that we should ask ourselves — we have been asking it as Committee members, and our party has been asking it — is whether the Bill before us, its specific clauses and the amendments offer the best means of addressing the challenges that, we know, exist. Our view is that legislation can do only so much to create a culture of transparency and good government. As I said, I agree with some of what Maolíosa McHugh said about the limits of legislation, but it is also true that, in Northern Ireland, we have seen codes and guidance repeatedly fail to deliver high standards of governance. Without wishing to be too partisan about it, I think that any external viewers watching or listening to Sinn Féin and DUP Members rowing over their relative levels of transparency might conclude that it is a little bit like watching two bald men arguing over a comb.

The past decade has led to a serious crisis in public confidence. Any means of improving standards and recovering that confidence has at least to be considered. To the argument of the Minister and the Department that we should not consider legislation at all, I gently point out that the Minister's party colleague in Dáil Éireann Mairéad Farrell TD has introduced her own private Member's Bill, which seeks to tighten rules on lobbying and the enforcement of public standards; in fact, I believe that that legislation is being moved in the Dáil tonight. The two pieces of legislation are not exactly overlapping, but there are similarities. They are both about lobbying and transparency. If the Minister's issue is with the principle of legislation, it would be helpful to understand why this part of Ireland does not need any legislation to deal with those issues but the other part does. I will not use the word "partitionist", but others might. John O'Dowd said earlier that we had enough transparency here. If we have enough transparency here, why the different treatment? What is different here? I say that not as a facetious party political point, although it might sound like one, but because there is a real question here: why the inconsistency? If, in the view of the Department, some legislation may have merit but this Bill does not achieve what is needed — let me be clear: we have significant reservations about the Bill, and I will go through those reservations in this debate and in the debates on the other groupings — if the position is that this specific legislation does not address in the right way the challenges that we face, it would be helpful to understand why the Department has not sought to amend the Bill or, indeed, give more detail on

how we address in ways other than legislation the real issues arising from RHI and other scandals.

I finally come to the clauses and amendments in the group. As we have discussed, clause 1 is largely about the rules, regulations and guidance around special advisers — not "guidance", sorry, but legislation, of course. Before I get on to the meat of the individual amendments and clauses, I want to bring a little of my personal experience to the debate. I was a civil servant in Whitehall. A large part of my job was working with special advisers. I worked with special advisers from all three main British political parties in various Whitehall Departments, so I bring a particular perspective. I want to be absolutely clear about this, because it is really important: special advisers perform an absolutely essential role in all politics, particularly in parliamentary forms of government. I do not agree with everything that Mr Wells said. He may have experience of particular spads in darkened rooms — I am sure that we will hear all of that later on, hopefully after the watershed — but, in principle, there is nothing unseemly about the presence of special advisers in government; indeed, there are strong arguments that special advisers are critical to the effective functioning of government in systems with large, permanent and impartial civil services. That is a critical part of how we have looked at the provisions on special advisers.

One thing that it is critical to understand about the work of special advisers — whether SDLP, Sinn Féin, DUP, Fianna Fáil, Labour or possibly even, one day, Traditional Unionist Voice special advisers, who knows — is that their job is in part to protect the permanent apolitical Civil Service. That is why special advisers exist. If they were not there, private secretaries, press officers and policy advisers would be dragged into giving advice to Ministers that would necessarily shade into party-political territory. It is important that, as we debate this — as I say, the SDLP supports many of the provisions — we are clear about the role and importance of special advisers and uphold their role.

In the 21st century, the pace and demands of modern politics mean that special advisers have an enormously important role to play. As I said, they act as a bridge between Ministers, their parties and the permanent Civil Service. At a basic level and nothing to do with the specifics of our unique institutions, we operate a 24-hour Government. To be fair to the Minister, who is here today and who will be doing a long stint in the Chamber, he will have been working over the weekend. A large part of his having a special adviser will be about having support in what is a relentless job. We should not underestimate or demean the importance of that role. The way we scrutinise the Bill is about protecting and enhancing that role and ensuring that some of the bad practice that existed during the RHI scandal can be repaired. In seeking to improve the way that special advisers function, we should not fall into the trap of implying that special advisers are by nature a bad thing: they are not. Special advisers can be a very good thing. Nonetheless, we know that there are real issues with how they functioned in this place during the RHI period.

What does the clause do? Clause 1 restricts the ability to create a hierarchy of special advisers except in the Executive Office. We support that measure — it is fine, as far as it goes — along with the technical amendment that the Bill sponsor proposes. It will not transform how we do government here, but it is putting in law something that is common sense. Although it removes the ability to form formal hierarchies across spad networks, let us face it: informal seniority will probably still exist between spads of the same party, particularly because some will have more experience and will have served longer in jobs and parties. Hopefully, however, it will clarify that Ministers outside the Executive Office are officially responsible for their spads rather than some other senior spad.

Clause 1(3) amends the Civil Service (Special Advisers) Act (Northern Ireland) 2013 to provide:

> *"special advisers are subject to the processes and procedures of the disciplinary code operative in the Northern Ireland Civil Service".*

In Committee, we saw merit in that measure and still do. However, there is the outstanding question of whether the measure clouds the capacity of Ministers to be clearly responsible for the conduct of their special advisers, which was, of course, one of Sir Patrick Coghlin's recommendations. The Bill sponsor talked a bit about that in his opening speech. In the Committee deliberations, he said that the fact that special advisers were civil servants but were not subject to Civil Service disciplinary procedures was an anomaly. That is true in one sense — they are temporary civil servants — but they do not enjoy quite the full benefits of Civil Service employment rights as they can lose their job when their Minister does. Special advisers also lose their jobs when an election is called. It would be helpful if the Bill's sponsor could say a little more on that in his winding-up

speech. Although we are broadly supportive of most of clause 1, his thoughts on that tension —.

Mr Wells: Will the Member give way?

Mr O'Toole: Yes.

Mr Wells: I sat through every minute of the deliberations of the Committee. As with Mr Frew, members had adequate opportunity to raise any concerns that they had, and I thought that the Committee worked well in dealing with scrutiny of the Bill. The Member is now raising issues that he wants to be teased out with the honourable Member for North Antrim: would it not have been better to have resolved those in Committee rather than bringing them at this stage to the Assembly?

4.45 pm

Mr O'Toole: This is the Consideration Stage of amendments, I say with respect. I did raise many of these issues at Committee Stage. The purpose of Bill scrutiny, with respect to Mr Wells, is that we continue to tease out detail. There is nothing illegitimate about asking further questions and asking for clarity. With respect, he seems to be implying that certain DUP spads acted as thought police. He is not thought police for individual members of the Finance Committee, who are entitled to have their own views and their own perspectives on how they debate this Bill. I am happy to give way to him on substantive points, but, if at every point where he is going to ask me to give way he is going to claim that I did not make that precise point verbatim three or four months ago, I will not give way, to be perfectly blunt about it.

Clause 1(3) amends that Act. We are, broadly speaking, sympathetic to that, but, as I said, it would be helpful to hear from the Bill's sponsor on what I have just raised, given that, as I said, there is a danger that we imply that spads are exactly like civil servants. Clearly, they are not. They are political appointees, and there is clear merit in having clarity around the disciplinary procedure, but there is also a risk that we go too far down the road of defining special advisers as exactly like other civil servants, when the fact that we are debating this Bill in this way makes clear that they are not ordinary civil servants.

Amendment No 4 is, in a sense, the first very substantive amendment. It provides for a recruitment process that was previously provided for in the code, but, as the Bill's sponsor said, it was — if I remember the adage correctly — a custom honoured more in the breach than in the observance. In making a judgement on this amendment, we would like more clarity on whether the Bill's sponsor foresees any issues with using party political sympathy as a legitimate recruitment rationale. Put directly, it is not unreasonable for any party in this Chamber to appoint a spad at least partly on the basis of party alignment.

I have spoken to the Bill's sponsor, and he has been helpful on that point. In his opening speech, he mentioned the Fair Employment Order. To get our support for that amendment, we would need to be fairly clear that there would be an amendment at Further Consideration Stage to make the Bill absolutely clear that, in effect, an appointment could be made based on party political alignment. It is really important that we are clear about that. It is one thing to create a process, as the previous code did, and ensure that it is in law that a process happens, but it is another thing to question the ability, frankly, of clear party political allegiance to be the driving factor, or at least one of the driving factors, in those appointments. So, it would be helpful if the Bill's sponsor could make clear that he is willing to amend the Bill at Further Consideration Stage. As I said, if the clause remains as drafted, we will find it difficult, at a later stage, to support it. It would be helpful to get clarity before today's vote, if possible.

Clause 1(5) has been talked about at some length. We view it as sensible tidying up, and we support it. The remaining provisions in clause 1 are fairly sensible, and we do not have issues with the sponsor's remaining technical amendments.

The Bill's sponsor has given notice of his intention to oppose his original clause 2 and replace it with an amendment that would have the effect of providing a limit of six, rather than four, special advisers in the Executive Office. We think that this is sensible. It is, as I think others have said, something of a reversion to what the situation was in 1998.

Clause 3 amends the Civil Service Commissioners (Amendment) Order (NI) 2016 and removes the negative resolution procedure. Again, this provision causes us relatively little problem, although I think that it is worth putting on the record that, obviously, this procedure was used famously — notoriously — once, a few years ago. Though I can understand and we support the tidying up of it in legislation, it is also worth putting on the record that there will be legitimate circumstances in which the First

Minister and deputy First Minister will want to make exceptional appointments. Those exceptional appointments are provided for via the means of consultancy and the special adviser route, albeit I acknowledge some of the points made around pay limits, but we are supporting that.

Clause 4 relates to the provision of compensation for special advisers who lose their job as a result of new clause 2. That makes sense, in that, if the previous clause passes, it would be very basic good government and decency to ensure that there are proper compensation procedures. It also sets the date at which these Executive Office spads cease to hold office as 31 March 2021. In Committee deliberation, the Bill sponsor talked about whether he is willing to push that date back to the end of March 2022. It would be helpful if he was able to give a bit more clarity on that, given that, even if the Bill passes quickly, it will struggle to receive Royal Assent before Christmas and not long before, if the Bill remained as it was, March 2021. You would effectively be telling these people that they would be losing their jobs in the space of a few months on the basis of legislation in the Assembly.

That in itself rather makes the point that I was making earlier in relation to clause 1, which is that spads are not quite the same as other civil servants. We would simply not be debating the ending of any old civil servant's employment in this way on the Floor, so it would be helpful if the Bill sponsor would indicate that, at Further Consideration Stage, he would be minded to move to March 2022, as a means of, frankly, being fair to people who are in employment at the minute, whatever the fate of the final Bill.

In concluding on this grouping, let me reiterate that there is not only significant merit in some of these measures; there is benefit in demonstrating to the public that we are addressing many of the significant concerns that arose from RHI. Nevertheless, we would like clarity from the Bill sponsor specifically around amendment No 4 and about further amending amendment No 4 to be absolutely clear about the political nature of spad appointments.

At that, I will wrap up my remarks for now, but I suspect that I will have much more time on my feet this evening.

Mr Muir: I speak, on behalf of the Alliance Party, on the amendments and clauses included in group 1: the appointment, conduct and management of special advisers. I say at the outset that this is the second piece of substantive legislation that I have considered as an MLA in my short time in the House. The first was the Executive Committee (Functions) Bill. Dealing with this legislation has been an experience.

Before I address the specific clauses and amendments, I feel that it is important to address the context of the Bill and the Alliance Party's stance concerning the general issues under consideration. I will come to the specific amendments, but I feel that is important to set out the context.

Published on Friday 13 March, just one day after the Republic of Ireland was placed into lockdown as a result of COVID-19, the RHI inquiry report presented clear findings on what happened and recommendations for change, with the Northern Ireland Audit Office (NIAO) charged with monitoring and pursuing implementation of the recommendations. A number of Audit Office reports have already been published in pursuit of that duty and will be considered in due course by the Public Accounts Committee (PAC), where I also serve.

The findings of the RHI inquiry should, however, be recognised in the round when considering this Bill. I acknowledge the aims and objectives of the Bill sponsor and what he seeks to achieve, but, as we will debate today and this evening and possibly into the morning, the Alliance Party has to differ on a number of aspects in terms of whether the methods proposed achieve the outcomes desired and are appropriate and balanced.

Today's debate is not about whether RHI conduct was acceptable or not, because, of course, it was not. It is about whether the proposed Functioning of Government Bill will help government to function better. Our view is that, in some aspects, it will not, and, in fact, it will be the opposite.

I do not come in opposition to the principles held, nor as an opponent of openness, transparency and good governance generally. Nothing could be further from the truth. Throughout the years, the Alliance Party has been consistent and robust in its support for openness, transparency and good governance at all levels of government, despite the opposition of some. We are, however, firmly wedded to our adherence to evidence-based decision-making. Populist politics should not be allowed to run roughshod over the need for good policy and correct legislation.

Passing legislation is a serious matter that must be carefully considered before it is voted on and, eventually, becomes the law of the land. That is precisely why we have the relatively long procedures, including Committee Stage, in this place to debate and ponder legislative proposals. I have tried to follow deliberations undertaken in the Finance Committee, but the formal inhibitions in this place concerning access to papers and documents tabled and considered at Committees for those parties not able to secure a place on the Committee remains a matter of concern. I do not have a place on the Finance Committee. I have raised the issue in writing with various people in the Assembly. The issue must be addressed to enable full and active briefing and participation of all MLAs on all Assembly business. I have watched some of the Committee proceedings. I am not attracted to serve on it, but I would like to be able to get access to the papers. I also note that, as a result of the proposed amendments, large elements of the Bill are very different from those that were consulted on originally.

I turn now to the matters under direct consideration in group 1, which is what I intend to focus on. The Alliance Party will support clauses 2 to 4 relating to the reduction of special advisers in the Executive Office. We agree with many aspects of clause 1, but we will struggle to support the clause as a whole, because we believe that it could inhibit the achievement of the overall objectives that the Bill's sponsor seeks to achieve: the better management of special advisers and ensuing that, with regard to accountability, the buck stops with the Minister.

I will begin with the amendments and clauses that we will support. We do not object to the removal of spads for junior Ministers, nor do we oppose the repeal of the Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016 or clause 4, as amended. We do not see the need for more than six spads in the Executive Office, and we support the changes proposed to reflect that: taking it back to the factory setting, as Mr Allister said. Furthermore, there are elements of clause 1 that we agree with in principle. We support the capping of spad pay at the rate of senior civil servants. Spads should be paid less than Ministers, who are accountable for taking Executive decisions. We ask the Minister of Finance to confirm whether he agrees with that position.

We do not accept the argument that additional flexibility is needed on spad pay in order to attract particular skill sets. Spads are inherently political appointments, and anyone who is appointed purely for their technical knowledge could surely apply for a position as a senior civil servant through the regular appointments process. However, there are elements of clause 1 relating to the appointment and dismissal of special advisers more generally that we cannot support.

Amendment No 4 proposes additional requirements regarding the appointment of a special adviser. Ministers must be open with the public that the special adviser role is not a normal role. It is already recognised in legislation, so the appointment process is inherently different. That is recognised in other parts of the United Kingdom and Ireland.

There is another essential part of a functioning relationship between a Minister and a special adviser as well as political alignment. Ministers must be able to have full trust in their special adviser. Their relationship is inherently personal in nature, and Ministers will often know the person in a personal capacity in advance of the appointment. To pretend otherwise, as if it is a regular recruitment process, when the nature of the role means that it cannot be, would create a completely false sense of process. One of the major problems identified by the RHI inquiry was what occurred when the relationship between a Minister and a spad broke down — when a spad was appointed by and answerable to not their Minister but another spad and the party hierarchy. The principle should be maintained, as set out in the revised ministerial code, that Ministers are fully responsible for the appointment of their own spad. Another problem and issue that the RHI inquiry raised was that Ministers are responsible and accountable for the actions, conduct and behaviour of their spad.

That should always have been the case. It is right that the relevant codes have been updated, as recommended in the Coghlin report.

Clause 1(3) forbids "ministerial ... interference" in the:

> *"processes and procedures of the disciplinary code"*

of the spad. We believe that, when a special adviser breaches the disciplinary code, rather than the spad simply facing a penalty from the Civil Service, the Minister should be fully responsible for the spad's actions and their response to it.

5.00 pm

Mr Wells: Will the Member give way?

Mr Muir: Yes.

Mr Wells: That issue was teased out in Committee. We dealt with the case of the Department for Social Development, as it was at the time, where a spad clearly acted well beyond the rules and caused a great deal of concern amongst Members. The issue led to disciplinary action. The problem was that the Minister intervened and said that the matter should be taken no further. How can the Member rely on the Minister to take disciplinary action against somebody whom they appointed?

Mr Muir: I thank the Member for his intervention. I will cover that in my next remarks.

If we are in agreement in the Assembly that the conduct of the spad is the responsibility of the Minister, it should be the Minister who disciplines the spad when they are in breach of their code. They should be held to account if they fail to do so, and that is the important issue. I welcome Mr Frew's conversion to change and reform; it is very revealing. The use of the petition of concern to block sanctions against and censure of the Minister is something that we will come to later in the Bill; that is a change that we need. Bringing in permanent secretaries not only to determine spad misbehaviour but to enact disciplinary action for what are ultimately political appointments can also place civil servants in difficult and invidious positions.

While there are amendments in the group that we can support, on the appointment and conduct of spads, we believe that the amendments, while well-meaning, are inconsistent with the fundamental link between the Minister and their spad and the nature of that relationship. Two of the fundamental issues that arose during the RHI inquiry were that spads were not accountable to their Ministers and that Ministers did not take responsibility for their spads' actions. We do not for one second question the seriousness of the behaviour that occurred during RHI. We absolutely believe that spads should be subject to a robust code of conduct and held accountable for their actions, along with the Ministers who appointed them. However, we believe that that is best achieved through the recommendations in the RHI inquiry report and not through some of the amendments and clauses in the group.

Mr Storey: Listening to the debate in the House and then upstairs in my office, I was really taken aback by the number of biblical quotations I heard. The Member has just mentioned conversion, so I was reasonably comfortable coming to the House, given that today is the 448th anniversary of the death of that well-known Scottish reformer, John Knox, who famously said:

> *"When I think of those who have influenced my life the most, I think not of the great but of the good."*

We should all take that to heart for this reason: we are dealing with flawed humanity. I will continue the biblical quotations. The apostle Paul said in Romans 7:

> *"For I know that in me (that is, in my flesh,) dwelleth no good thing: for to will is present with me; but how to perform that which is good I find not."*

That brings us to consider the need for any legislation. Why do we need laws? Why do we not just live by our own opinions, ideas and views? Why is there a need for legislation in a modern society? It is because there is a fallen humanity. We are not perfect. We are human. We make mistakes. We err. It is good for politicians to recognise that.

I have been in the House since 2003, and the one thing that I have always struggled with is that it is almost impossible to find a Member on any Bench who will stand up and say, "Do you know what? We got it wrong". It seems as though, every time that there is a debate, we are always right, we always have the answer, and we never have the sense of being able to admit that there is error on our part. The legislation and the clauses —.

Mr Deputy Speaker (Mr McGlone): May I interrupt on a technical point? The microphone is not picking you up, Mr Storey.

Mr Storey: That would be an awful thing *[Laughter.]* I am sure that the country will be all the worse for that.

The fact that the Bill was necessary is an indication that we have not got it right. I commend the Bill's sponsor. Just today, I was thinking that it is almost 40 years since I first met him. I was a very young schoolboy, I have to say, and I was going to a meeting of what was then the North Antrim association. As the secretary of that association, I was in absolute fear of the legal mind of a man who would quiz

every detail of the minutes of the meetings that I had taken. I commend him, because the Bill recognises that many of us are, like him, totally opposed to the architecture of this place, with the structures that we have to work under and the mandatory nature of our coalition. This is not a normal democracy. This is not the same as any other jurisdiction in the United Kingdom, where the Government are appointed on the basis of who wins the election. Here, everybody is in the Government, when it suits them. Of course, we know that there are times when every party takes the view that some decisions are not collective, and they go their own way.

The Bill is a recognition that there is a need for change. The Member referred to Mr Muir's point that it was about going back to factory settings. I would say that it is about more than that, in that, as originally constructed, the factory had fundamental flaws. Who in their right mind would create a Government with five parties? Really? It is no wonder that we have chaos. It is no wonder that we have all the difficulties and challenges that we do. It is not easy. In the Bill, there is recognition also —

Mr Catney: Will the Member give way?

Mr Storey: Yes, I will give way.

Mr Catney: The Member has been here since 2003, so I am sure that he will know better than I do that the reason why we have five parties in the Executive is that we had one-party domination here. We all saw the abysmal rule, the misrule and the gerrymandering that came from that. Having five parties in the Executive was a political solution.

Mr Storey: I thank the Member, although I do not agree. Let us remember that, when we had our own Government, we had an education system that was fit for purpose and we made decisions that were for the benefit of all in the community. What happened and what I readily admit to was that there was discrimination against working-class communities, unionist and nationalist. My grandfather had no vote. Why? He had no land. When we come to the context of the reasons why we have —.

Mr Deputy Speaker (Mr McGlone): May I bring the Member back to the present day and the amendments?

Mr Storey: Yes. I noticed your impatience, Mr Deputy Speaker. As we head into next year, with the centenary of Northern Ireland, we will be able to have that discussion and set right some of the misconceptions that there have been. I heard some on the opposite Benches talking about a failed state.

What are we trying to do with the Bill? We are trying to do what my party has set out previously. I pay tribute to my North Antrim colleague: on this occasion, I refer to Mr Frew. I have other North Antrim colleagues who have worked on it: the sponsor of the Bill and Mr McGuigan, who was eloquently quoting scripture earlier. We are having an influence on him, I trust, for good.

The late John Ramsay, chairman of the North Antrim Unionist Association, a colleague in the Ulster Unionist Party, served with me on the old council in Ballymoney. He said that a political manifesto was only good for the day of the election and that, after that, the world moved on. Sometimes, some have to stick to what they say in their manifesto. I will quote from one. I was going to give my colleague Paul Frew credit for what he has done in bringing many of the issues of the Bill to the Floor today, but let me quote:

> *"Review of the number of special advisers, and how they are appointed and regulated.*
>
> *Greater transparency and improved record keeping...*
>
> *Develop a Northern Ireland Reform Plan to be agreed by Executive parties across all aspects of Government".*

Let me pause there, because what the Bill does is to prove the merit of private Members' Bills. It is difficult to get agreement to get anything through the Executive. Collectively, we should take this to heart. Private Member's Bills have a place and a purpose, if they are accepted and found to pass the tests that are set for the acceptance of a Bill. Some of us are working on private Members' Bills on other issues, and we see where the challenges and difficulties arise. When it goes into a Committee of the House, the Bill becomes owned by that Committee and not so much by the sponsor of the Bill. There is merit, and it is good, even for this flawed democracy, that we use the processes that we have.

I thank the Chair of the Finance Committee, and it is probably from a personal perspective rather than anything else. I welcome the fact that he took on the responsibility — very willingly, I have to say. At a Chairpersons' liaison meeting, he put his hand up and said, "We would be happy to take the Bill and take responsibility for its scrutiny". I place on record my appreciation for his being willing, because it

is a huge task that the Committee has undertaken.

The Bill is rooted in a desire for change, and change is coming. The party opposite has lectured us for a long time about openness and transparency. What openness and transparency has there been by the party opposite in regard to even something as sacred as a funeral? Really, I think that that raises —.

Mr Deputy Speaker (Mr McGlone): Can I draw the Member back to the amendments, please?

Mr Storey: Yes, thank you.

Transparency and openness, whether it is in the appointment of spads, the keeping of minutes or what certain people are paid — all of that — should not be anything that any Member of the House should run away from. We should not have to conceal anyone's payments. The clauses that we are discussing give the House an opportunity to make change and not change for the sake of trying to placate some political wish list.

Let us remember why we are here. Are we really here to serve ourselves? That is not what we tell the electorate when we go to the door. We are here to serve the community of Northern Ireland. Addressing the issues through the Bill will help us to give more confidence to people, despite all the scepticism and all the concern in our communities about the very existence of this place. If we make progress on the Bill, it will be to the betterment of the governance of the House and ensure that decisions are made in a way that is open.

5.15 pm

I will conclude, because I can see my colleague Jim down in the corner. I give an assurance to Members that I have not been in a darkened room; I have not been accosted; I have not spoken to one spad; I have not had any arm-twisting; and I have not had anybody from the party come to me saying, "This is what you will say, Storey, and if you do not say that, you will be up in front of the hierarchy in the morning". I am glad to support the comments that outline my party's position on the Bill.

Mr Wells: At the outset, I pay tribute to the Chair of the Finance Committee. When I was appointed to the Finance Committee in April 2015, it was seen as a punishment. Normally, when one errs and strays like a lost sheep — to add to the scripture — in a party, one's punishment, if one has been a really bad boy, is to be appointed to the Finance Committee. If one has been horrendously badly behaved, one is appointed to the erstwhile Committee of the Centre, now the Committee for the Executive Office. I have had that experience, and one of the happiest times of my political career was when my Chief Whip said to me, "I am taking you off the Committee of the Centre".

I have to say, however, that the Finance Committee has been one of the most interesting and rewarding that I have sat on in my 26 years in the Assembly. Every week, we notice that there is a full turnout, which is interesting. Nine out of nine members are always present, albeit perhaps one or two of them remotely, and something very interesting always comes along, so the time flies. If somebody had asked me two years ago whether that could happen on the Finance Committee, I would have thought that it was impossible, but all the Committee members who speak to me find it an extremely enjoyable, interesting and fulfilling body, and that is no doubt down to the expert chairmanship of Mr Aiken.

He and the members have taken the Bill through its Committee Stage, and I think that the Bill has come out much better as a result of that scrutiny. We spent many hours taking evidence from expert witnesses. We teased out the nuances of the various aspects of the Bill. I notice that several members, having gone through that, have suddenly had a Damascus-road experience and have received additional information about where they are going with the Bill. Without wanting to be controversial, that would have been better done in Committee. Although I accept from the honourable Members that they were not spoken to by the spads, perhaps the Chief Whip or the party leader had a little word in their ear and said that they were too constructive and helpful to Mr Allister's Bill in Committee and that it is now time that they had the ultimate Damascus-road experience. That having been said, I think that the Committee worked well together. We were a good mix of youth, good looks and experience, and, as a result, we were able to tease out issues. I am not saying who had which attribute. Mr Allister and Mr Wells certainly did not have the good looks, but we had the experience. The Bill benefited enormously as a result of the scrutiny, however.

People are very critical of the Assembly, and I accept that they have every right to be, but I think that, in two aspects, we do serve the public well. The first is through the role of the Committees, which is often very positive, and the second is our scrutiny of Ministers through

questions for written and oral answer. On those aspects, we can stand with all the other legislatures in the United Kingdom and say that we are doing a relatively good job. Other aspects, of course, leave a lot to be desired.

My Deputy Speaker, you will remember that, on 27 April 2015, I resigned as Minister of Health. I did so holding a commitment from my party that, after the dust had settled on the totally untrue allegations that were made against me, which led to one individual getting a three-month prison sentence, I would return as a Minister. That never happened, but little did I know that, when I made that decision to stand down, I would create a situation that would bring about the downfall of the Assembly and lead to the RHI crisis. You may ask, "How is that possible?". By stepping down as a Minister, I enabled one Jonathan Bell to be appointed to the Executive. Had Mr Bell not been appointed, the RHI crisis would never have occurred. It was only Mr Bell's explosive interview that created the crisis in the Assembly, where we moved from a position of wanting a short, sharp, private inquiry to a position of there being demands for the full RHI inquiry under Lord Justice Coghlin, who, in my opinion, did an excellent job. Clearly, had I not stepped down, Jonathan Bell would not have been appointed because there would have been no slot for him and there would have been no RHI crisis. Little did I know what chaos I had created.

That has given me the freedom this afternoon to speak openly and honestly about my experience of special advisers, state my understanding of what I believe has been going on, and say why I am such an enthusiastic supporter of Mr Allister's Bill. I pay tribute to him. He has been tenacious throughout in his work on the Bill and he has listened. We have heard the words "reasonable" and "Jim Allister" in the same sentence. How often do you have that? He has been flexible; he has altered the main tenets of his Bill to meet the concerns of the Committee, which is to be applauded. The Bill is much better as a result of his activities.

If you were to ask me the names of the top five political influencers who have had the most control over the legislators in their countries over the past five years, I would give you this rundown: number five, Vladimir Putin; number four, the chairman of the Central Committee of the Chinese Communist Party; number three, Kim Jong-un, the supreme leader of North Korea; number two, Dominic Cummings; and number one, Timothy Johnston, the senior spad in the Executive Office. *[Laughter.]* There is not a blade of grass on the DUP lawn that has not been sown, nurtured and harvested by Timothy Johnston. He was senior spad, senior chief executive and Chief Whip rolled into one. Why do I make that comment? To show how we have a system in this country that has led to one individual having such supreme power that there is a need for Mr Allister's Bill. We have only to look at the RHI inquiry report. I note that the Sinn Féin representatives, who have remained remarkably quiet today, have not quoted from the damning remarks by Lord Justice Coghlin throughout his time as chair of the inquiry.

Look at the Aidan McAteer situation. Jim Allister, with the support of the Assembly, in 2013 got legislation passed that would prevent someone who had a criminal terrorist conviction from being appointed to the position of special adviser. As we know, that followed the disgraceful decision to appoint Mary McArdle as special adviser in the Department of Culture, Arts and Leisure, which then became the Department for Communities. We know the whole situation behind Mary McArdle's appointment. Sinn Féin was so embarrassed by the appointment and concerned about the uproar that, eventually, she was quietly removed from the position and sent to Connolly House.

We saw a genuine attempt by Mr Allister to stop those evil people, who had committed horrendous terrorist crimes, enjoying salaries of £50,000, £60,000, £70,000 and £80,000 a year as special advisers. How did Sinn Féin deal with that? They came up with a cunning plan. They are very good at cunning plans, just as they were very cunning about Research Services Ireland Limited, which managed to siphon £700,000 from this Assembly into a non-existent research company.

Their cunning plan was to make Mr Aidan McAteer the super-spad. Again, if we had not had the RHI inquiry, we would have no understanding of Mr McAteer's role. I am waiting to hear the Members opposite try to justify the existence of Mr McAteer and his role. As the RHI inquiry confirmed, every decision taken by a Sinn Féin spad or a Sinn Féin Minister was referred to Mr McAteer. Mr Aidan McAteer had a controlling role. The reason why, of course, they could not appoint Mr McAteer as a spad in his own right was that he had a criminal terrorist conviction, as mentioned in the RHI report. In the report, you see many examples of frustrated permanent secretaries and senior civil servants saying, "We cannot get a decision from a Sinn Féin Minister because it is lying on Mr McAteer's desk in Connolly House". That was a clever way of circumventing the provisions of Mr Allister's Act. Mr McAteer,

unfortunately, was not quite as influential as Mr Timothy Johnston — that would be impossible — but he was an extremely influential character. The result was that the Bill was circumvented, and Mr McAteer ruled the roost.

Then, we had Máirtín Ó Muilleoir. What ever happened to Máirtín Ó Muilleoir? Once the rising star of the Sinn Féin Front Benches, he is now gone. He is like Basil McCrea. Nobody hears anything about him; he has just disappeared. We had this ridiculous situation of Mr Ó Muilleoir — I did not agree with much of what he said, but he was sharp enough — having to wait for the decision of Mr McAteer, who, apparently, did not seem to have any qualifications whatsoever to occupy such a senior position. I inadvertently created the RHI report, and it did, indeed, reveal that.

It also revealed the power of Mr Johnston. It was very telling that, when Mr Bell had a disagreement with Mr Cairns, his special adviser, that led to a slight difference of emphasis in London, Mr Bell, who was the Minister for Enterprise, Trade and Investment, made it very clear that he wanted to dispense with the services of Mr Cairns. Mr Johnston made it absolutely clear that he had no right to do so, and that it was he, Mr Johnston, who would make the decision as to whether the special adviser was removed or otherwise. Therefore, Mr Johnston had much greater power than the actual Minister. Time and again, that was my experience with the DUP.

Mr Johnston exercises a role way above his status or position, and that has always been the case. Mr Johnston is still very much a strong individual in the party. He is very intelligent and very hard-working, but he is extraordinarily powerful, with a power that I do not believe should be vested in any one individual.

Then, we had perhaps the most disgraceful incident, which has not been alluded to so far, that was revealed not only by the RHI report but by some very interesting Christmas reading that we had last year — 'Burned' by Mr Sam McBride — and I must pay tribute to Mr McBride for revealing so much of what happened. We had the situation where Mr John Robinson, who, at that stage, was the senior spad in DETI, having taken over from Mr Cairns, decided that, in order to take the heat off his Minister, the First Minister and the DUP in general, he would leak material to Sam McBride implicating two senior civil servants in briefings on the RHI. The clever ploy there was that, by doing so, the attention would be diverted from the senior Ministers.

Even though he was on a salary, at that time, of about £75,000 a year, he did not seem to have enough money for the stamps, so he sent the material with the wrong postage on it, and it did not get to the 'News Letter' until 19 January 2017, when Mr McBride, being his usual shy, retiring self, seized on those emails and published them on the front page of the 'News Letter' on 20 January 2017.

What was unusual about that was that, in that report, Mr McBride did not publish the name of the two civil servants. Andrew McCormick — a gentleman that I know very well because he was heavily involved in Health, and I have the highest regard for him — rang Mr McBride and pleaded with him not to name the two civil servants. Indeed, he was about to meet Mr McCormick when his Minister, Mr Hamilton, intervened and told him not to do so. We now know that Mr Robinson colluded with Mr Hamilton to release that information.

We had the bizarre situation where Mr McCormick came into the office where John Robinson and Simon Hamilton were sitting and said, "This is terrible. Somebody has leaked this information to the press, to Sam McBride. What are we going to do about it?". Little did he know that the Minister and the spad had done that, and he was never told.

I served briefly as a Minister, for nine months, and if I had ever discovered that my spad had behaved in that way — and he would not have — he would have been out the door as quickly as possible. It is absolutely disgraceful behaviour to undermine your permanent secretary in that way and, basically, keep things hidden from him.

That is the sort of thing that was going on, and the problem was that the tail was wagging the dog throughout.

I do not blame any Minister, frankly, for the RHI situation. I believe that our Ministers took their eye off the ball and it was the spads, the special advisers, who created the chaos that brought down this institution for three years. Therefore, there needs to be very strong controls on their activities. In the two major parties, they have behaved appallingly.

5.30 pm

What interests me is that Sinn Féin members are sitting there like little mice in the corner. They are not answering any of these points because they know that they do not have a leg to stand on. They put up Mr McHugh as the big

hitter to speak on their behalf. Where are the stars of Sinn Féin? Where are Mr O'Dowd and Mr Murphy? Why are they not speaking out to defend the activities of their spads? The reason is that they know that they are indefensible.

Mr Deputy Speaker (Mr McGlone): Will the Member start to address the amendments, please?

Mr Wells: Yes. I will address the amendments. With regard to one of the amendments that Mr Allister has, quite correctly, put forward, he said that there must be a limit on special advisers' pay. I agree with him totally. Let us put on record what special advisers in the Assembly were being paid out of taxpayers' money at the time of the RHI crisis. Mr Richard Bullick was paid £91,809 per annum; Mr Timothy Johnston, £91,809; Dr Dara O'Hagan, £89,480; Mark Mullan, who I never had the benefit of meeting, £75,000; Andrew Crawford, who, unfortunately, I met on many occasions, £68,747; and John Robinson, £84,000 a year. Those are staggering salaries, and they are way out of line with what is paid to spads at Westminster and in other devolved Assemblies in the rest of the United Kingdom.

As I said earlier — I will say it again — I remember a time when we paid senior spads only £82,000 a year, and they were having trouble getting by. Life was tough. Those people were in their thirties and forties and, as I said earlier, had never fought an election in their life and had no political experience but happened to be friends with the Minister. They were having trouble getting by on £82,000. I remember sitting in room 315, as a member of the DUP, and being told by the then party leader that we had to support an increase in the salary of senior spads to £92,000 a year. I remember thinking, "This is not right". Then, I thought, "You could pay the price for opposing it". We meekly traipsed through the Lobbies to vote for a £92,000 a year salary for senior spads.

When the Assembly fell in January 2017, each of those spads received a pay-off that was equal to half their salary. Therefore, Mr Bullick got £45,904; Timothy Johnston, £45,904; Dara O'Hagan, £44,700; Mark Mullan, £37,500; and Andrew Crawford, £34,373. The first £30,000 of that was tax-free. Am I wrong? Have I not seen Dr O'Hagan walking around the corridors of this particular institution as a spad? In other words, even though they lost their jobs, they were quickly resurrected.

The point that I made to Mr Frew is that the reason why spads in London, Leinster House, Cardiff and Edinburgh are so highly paid is that, inevitably, with the volatility of politics, Ministers will fall all the time and, therefore, the spad falls. They may be a spad for only two or three years, or they may have transgressed like Dominic Cummings and be a spad for all of eight months before being ordered out the door. That is what can happen in London. However, in Northern Ireland, of course, that does not happen. Spads continue on regardless of their Minister. I have nothing against Dr O'Hagan personally, but she certainly seems to have been around this Building for a very long time. Similarly, Mr Johnston seems to have been around this Building for an eternity. I certainly remember Mr Crawford moving quite happily from one Minister to another. Therefore, the fact is that the pay reflects a volatility that does not exist in this Building.

The only spad who I can remember who moved on because of pay — in fact, he was actually quite a nice individual, which is unusual for a spad — was a gentleman who was here between 2000 and 2002 and moved on to become a High Court judge. He has done very well. We have managed to retain all the rest of them. Therefore, on the point that there needs to be a stupendous salary to motivate and attract spads, it seems that that is not necessary.

Mr Storey: I thank the Member for giving way. I concur with a lot of what he said. However, there is a fallacy that somehow we have more spads, and there have been all sorts of quotations about that. There are 24 spads in the Prime Minister's office. You can look this up, as I just did there now. Dominic Cummings is on almost £100,000. There are four pay bands for special advisers.

Mr Deputy Speaker (Mr McGlone): Sorry, but can the Member speak towards the mic, please?

Mr Storey: Apologies, Mr Deputy Speaker.

There are four pay bands for spads. Band 1 is from £40,000 to £60,000; band 2 is from £57,000 to £78,000; band 3 is from £73,000 to £102,000; and band 4 is from £96,000 to £145,000. Sometimes, the generalities expressed about what individuals are paid and how many there are are not always rooted in fact.

Mr Wells: Well, Mr Storey, there is a world of difference between serving a population the size of Leicestershire and serving the Prime

Minister of the United Kingdom, which has a population of 60 million or 70 million.

Mr Storey: Will the Member give way?

Mr Wells: I certainly will.

Mr Storey: That is not how it is portrayed. We have always been told that there are more spads in the Executive Office than there are in Westminster, but that is not the case.

Mr Wells: Again, dealing with somewhere the size of the United Kingdom, along with the number of MPs and Ministers at Westminster, is rather different from dealing with what would constitute the size of a county council in most parts of England.

The point is that Mr Cummings has gone. Mr Cummings was earning less than our senior spads were getting in 2017. Mr Cummings, given the power that he exercised — he was the second-most influential spad in the United Kingdom — yet he was earning less than £92,000 a year. The fact that he has now gone tells you how volatile a position it is. Our spads do not have that problem. Our spads are around for a very, very long time. Therefore, the salary has to be capped.

(Mr Speaker in the Chair)

I was worried by what Mr Frew said, because what he wants is flexibility. We cannot have anything too rigid, because Ministers must have the discretion to ensure that, if they get a star performer — their best mate — he or she is endowed with a fabulous pay rise. We have to bring that under control. Mr Allister's view that we peg it to a specific level in the Civil Service is a good one. That takes the decision as to what special advisers are paid out of ministerial control. Special advisers will therefore come in knowing exactly what they will get, and they will stay on that level throughout their career. Do remember that, when they do go, they get a very substantial redundancy payment. Indeed, we had a situation where a spad was made redundant because that person had become an MP, and walked out with fabulous severance pay. It cannot be right that someone can do that, but the system here allows that to happen. We simply cannot allow those sorts of pay grades to continue. Therefore, I will support Mr Allister's proposal in its entirety.

To be honest, I think that the Member has been too generous. He must have got up one morning in a very good frame of mind when he decided to set that pay scale. Frankly, given the behaviour of spads in the past, I would like to see 10 years of very good behaviour before I would award them those sorts of pay grades. I accept that, in the interests of getting unanimity, we should, indeed, go along with what he is suggesting. I hope and pray that we can get the Bill through unscathed.

Someone said earlier today that there is a lack of public confidence in this institution. You can say that again. We only have to turn on a radio show from 9.00 am to 10.30 am — I will not name the individual concerned — to hear what the public are saying about us. We are held in the same high esteem as drug dealers and armed gangsters, and that is probably impugning the integrity of other decent armed gangsters in Northern Ireland. The reality is that people have an incredibly low view of us. When they see that we cannot keep our special advisers under control and that we are paying them a salary that none of the ordinary men on the street could ever attain, they think, "What on earth are they playing at?". Therefore, it cannot be in a code. It has to be in legislation, and the numbers have to be restricted. I would prefer four, but I understand why Mr Allister, having taken soundings, has gone for six.

To take up Mr O'Toole's issue, I do not think that there is going to be much of a problem with severance payments, whether they happen at the end of March 2021 or 2022. As far as I know, there are only six spads in position at the moment. If we remove the right to have a junior Minister spad, I presume that the parties will simply move the person affected to become a permanent deputy First Minister or First Minister spad, so I do not see there being any real effect on public expenditure. I think that four is enough, but I can live with six.

Mr Speaker, I reserve the right to come back at the next two stages. I think that we are in for a very long night on the Bill. I congratulate the honourable Member for North Antrim for his tenacity and hard work. I congratulate the Chair of the Committee and the Committee staff, in particular Jim McManus for all his efforts, and other members of the Committee — some of them, anyhow.

There were three members of the Committee who were, obviously, given scripts in Connolly House and told to oppose everything. I have been in this Building for 26 years, and I have never come across members opposing the short and long title of a Bill. You just do not do that. That is like saying that you oppose the fact that this is Tuesday. It just never happened.

I see that Mr McHugh is saying that they are going to vote against every clause and every amendment from Mr Allister. Dear help the Members who miss tonight's sitting, because their voting records are going to be absolutely destroyed if they do not go through the Lobbies. I am going to stick it out, and I will be here to vote for Mr Allister on every aspect of his Bill.

Mr Catney: You will be pleased to know that I have a shortened script and a longer script *[Laughter]* so I have decided that I am going to go for the shortened script, definitely. I am going to try to keep it as quick as I can.

Mr Speaker: Try the shorter one first of all, Pat.

Mr Catney: Thank you, Mr Speaker. I am supportive of the intent of the Bill, which is to provide clarity on and scrutiny of the appointment of special advisers, how information is recorded and handled and the accountability of Departments and Ministers to the Assembly.

I thank the Bill's sponsor for his work in bringing it forward, and, despite my reservations with parts of the Bill, for his willingness to work with the Committee in order to find consensus and a way forward to the vital reform that it could provide for all. There are clauses that I am happy with, and some, I feel, need some work.

I could go back to the bad government, I could go back to what the people out there want and I could go back to my election in Lagan Valley in order to come up here to try to make changes. It is cumbersome and slow moving up here, but we want change, and I also like to go with small steps.

I know that Matthew, who spoke on criminal sanctions, will rise again to speak on that. Unlike the apparent position of some parties, however, I do not think it is sensible, or, indeed, correct, to oppose every single clause. It is a tough choice, but I think that I could bring myself to vote for clause 15, which is the short title of the Bill. *[Laughter.]* I thank the Bill's sponsor for his proposed amendment to clause 1, which, for the most part, brings more clarity. I still have concern about amendment No 4 on whether the political nature of the appointment of special advisers needs to be included explicitly. I appreciate the argument that Jim put forward, which was that nothing in the clause prevents including political affinity in the job description, but something needs to be put back in there in black and white in order to secure the principle in the future operation of the Bill.

I welcome amendment No 7 and new clause A2. I know that there was some back and forth at the Committee about the number of special advisers that are required in the Executive Office. Jim has done well to find the suitable number of six. Similarly, I had concern about how the clause operated to reduce the number of special advisers. I support the clarity given in amendment Nos 8 and 9 that not all special advisers in the Executive Office will need to be reappointed by the action of clause 4.

I have set out some points of clarity that will be required going forward. I still hope that those can be provided at Further Consideration Stage and that there is a way forward for the Bill. I think that we can all agree that RHI was only the latest and most publicised issue with the function of the Executive and that change must be achieved.

I thank the Bill's sponsor and everyone who has contributed to it: the Committee, the Chair of the Committee and Jim McManus.

5.45 pm

Miss Woods: I, too, thank the Member for bringing forward this vital legislation. I am glad to speak to its Consideration Stage today.

At Second Stage, we supported the principles of the Bill. Gladly, we also support the amendments in group 1. I note, disappointing as it is, that some in the Chamber will not support the Bill and would rather leave this to simple codes

It was said earlier that it is not the place of a Back-Bench MLA to table legislation such as this and that this is not how anyone should judge legislation and its effects on the running of the House. In response to that, I ask this: why not? When the Executive were restored in January of this year, we all hoped that lessons had been learned and that we would not see a return to the type of governance that brought us RHI, Red Sky, the National Asset Management Agency (NAMA) and a host of other shenanigans that we are yet to know about. We hoped that the lofty words and the wish list in 'New Decade, New Approach' meant just that. Unfortunately, I remain unconvinced, and, crucially, the public remain unconvinced. We need confidence in the institutions, we need accountability, and we must have transparency. I have absolutely no confidence that we would ever see legislation such as this come from the Executive. Who brings forward this legislation is not relevant. What is relevant is what it seeks to do, as many Members have suggested.

I, like Mr Wells, have read the RHI inquiry report. It was light Christmas reading. I note that it concluded:

> *"The sad reality is that, in addition to a significant number of individual shortcomings, the very governance, management and communication systems, which in these circumstances should have provided early warning of impending problems and fail-safes against such problems, proved inadequate."*

It has been made very clear that what happened with RHI was not a one-off mistake; it was merely indicative of a system and culture that failed to put accountability, transparency and effective governance at its root. For these institutions to put this front and centre, there is much more to be done. Transformation must happen.

I welcome the words of the head of the so-called reformist wing of the DUP, Mr Frew, as he makes the case for change, but we must go further. The earlier discussion between Mr Wells and Mr Frew on the internal workings of the DUP was fascinating. However, the RHI report cannot be left to gather dust with all the other reports and strategies that came before it. There is an onus on every one of us to recognise the need for action and to promote transparency and accountability in every action that we take as elected representatives —.

Mr Storey: I thank the Member for giving way. Does she accept that the RHI inquiry also highlighted serious misgivings about and failings in the Civil Service? Will she, when we are on the issue of openness of transparency, agree that, if you wanted to read the most ambiguous and limited set of minutes, you should go on to the Executive's website and read the most recent iteration of the weekly meeting held by the head of the Civil Service? You will see a large need for openness and transparency.

Miss Woods: I thank the Member for his intervention. Yes, of course, there is such a need. As I said, we need to go further than this legislation. Every action that we take must recognise the need for openness and transparency.

There is an onus on every one of us. The job of governing is not an easy one, and I do not underestimate the role of our Ministers and the work that they must undertake, particularly in dealing with the unprecedented situation that we are in with the pandemic and all that it entails, Brexit on the horizon and climate breakdown looming. However, if we are to tackle the challenges of our time, we need proper oversight processes in place so that our politics are not beset by controversy and crisis.

On the specifics of today, the Green Party will — it will be no surprise — support all the amendments in group 1. The role and dominance of spads in our Executive has been, rightly, viewed with suspicion. Special advisers are a feature of most Governments, and few could argue that the provision of specialist advice to Ministers is not beneficial to good government, but we need to have good government. It is right that checks and balances are in place to ensure that their role and remit is as it should be. Spads are temporary appointments, so it is only right that they are treated like civil servants, both in pay and in their abidance to the code of conduct. As Mr Allister stated, it does not mean that they do not become political appointments. I do not understand how an upper scale of over 80 grand would not be an attractive salary for anyone with experience. We need to have a ceiling somewhere, as an interim, as outlined in the group 1 amendments. It is also right that there is greater transparency around their recruitment and any interests that they might have, given how close they are to the decision-making process. As Mr Allister has outlined, we have codes already. We had codes before, but codes are ignored. It is also right that, perhaps, we know who the spads are.

While I support amendment No 7, repealing the Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007, I also would have supported clause 2 as it stood. I stated earlier that I do not underestimate the role of Ministers, and I stand by that. It is complex — the role of the Executive Office may, indeed, be even more so — but I see no legitimate or convincing arguments for having eight spads in that Department. I would have supported a reduction to four as a reasonable and practical level of support for the work of the office, but I appreciate the reason for Mr Allister not moving that today. We fully support the removal of the junior Minister spad allocation. Here is hoping that three is, indeed, the magic number.

I will be short. We will support group 1, and we wish Mr Allister all the best with his Bill.

Ms Sugden: I generally support the group 1 amendments. I bring a level of experience to the debate, having appointed a special adviser. I want to put it on record that not all spads are bad, not all spads are party political: some are

there to do the job as interpreted by the Minister who appointed them. My interpretation of the role of a spad was to assist in the delivery of government programmes, to oversee the work of a public-sector Department through strategic external experience, to build relationships with internal and external stakeholders, to be a sounding board to echo back to me the bad as well as the good, and to be someone that I could trust to have my back. Who could I, at 29 years old, know with those abilities and the necessary experience and whom I could trust? Fortunately, I did. I received many CVs from people reaching out to offer their skills, and fair play to them for doing that and putting themselves out there. I considered them, if only to assure myself that the person that I was appointing was the right person for the job.

Mr Wells: Will the Member give way?

Ms Sugden: Yes.

Mr Wells: Does the Member accept that, with the salary ranging from £65,000 to £92,000, she did not have any problems attracting suitably qualified candidates?

Ms Sugden: That is an interesting point. My special adviser took a pay cut to take on the role of special adviser and lost out financially. That is how skilled and perfectly capable she was. I was going to come to that point, but I appreciate the Member making the point for me. She will not mind me saying that she took a pay cut. She worked for an international company with the vice president and had worked in New York, London, Belfast and Paris. She was an incredible and unassuming individual, and we really had the opportunity to do wonderful things. Undoubtedly, she was the best person for the job. Interestingly, I have no doubt that, had Mr Allister's Bill and arrangements been in place, she would have been the person who would have got the job on merit. I did not want my special adviser to be political, albeit she was politically astute and had been politically active; I wanted her to help me deliver. I was very clear about that, as was she.

I can only speak from my experience, and I know that that is not how spads are typically appointed. I am in a unique position: as an independent MLA, I am not constrained by political party lines or political party history. For me, the job was always about getting the job done. That is what every Minister's intent should be. That is what they agree to when they accept the responsibilities of being a Minister. During the sideshows of the RHI mess, I often heard, "Poor Minister Me. The big bad spad made me do it". The spad did not. You made a choice to accept the terms of the relationship when you agreed to be Minister. When I appointed my spad, it was really obvious to me that there was an unwritten rule that the special adviser was my responsibility; that she answered to me; that she was held to account by me; and that she could be removed by me. It was not an equal relationship, and my special adviser was certainly not superior to me. She understood that and had no difficulty with it. If any Ministers, on taking the role, agree to lesser terms than that, that is entirely on them. That is what I, as Minister, understood the role to be. I would not have accepted it had it been any other way. I would not have taken it up, because I would not have accepted the responsibility. Again, I appreciate that my experience as an independent Member will be different from that of anyone who is in a political party, but this is about delivery, government and getting things done. Any Ministers who accept the role and are prepared to relinquish their power lack integrity. If they do that, it is clear to me that they took the job for the title and the salary, and nothing else. It is important that we move the focus away from bad spads. It is bad Ministers who have allowed this to happen.

During my time as an MLA, I have learnt not to pay too much attention to Mr Allister's theatrical performances. The media do a wonderful job of that *[Laughter.]*

Mr Storey: You are going downhill now.

Ms Sugden: Please bear with me *[Laughter.]* I suspect that that is why he does it. I do, however, pay attention to his consideration of law, policy, process and detail and to his incredible ability to make sense of those things. I do not share Mr Allister's opinion of these institutions. I recognise the value of the devolved institutions, despite their dysfunctionality. I agree, however, with what Mr Allister said in his opening comments: the Bill is not politically written. It may have had a political intent, but Mr Allister is well aware, as we all are, that the golden rule of politics is that it is the art of the possible. Had the Bill been politically written rather than politically driven, it would not have been possible. The fact that it has been able to get to Consideration Stage shows that it is as much about process and governance as it is about any sort of political intent. Politicians come and go, but these institutions will remain. Why? There is no better alternative. Ironically, the Bill gives me hope. I believe that Mr Allister is seeking to improve

these institutions, which leads me to believe that, one day, he might buy into them *[Laughter.]* I want to speak to only the amendments that give rise to issues for me. That does not mean that I will necessarily stand in their way, but I would appreciate it if Mr Allister would give me some clarity around them. Amendment Nos 2 and 3 would ensure that special advisers will be subject to the same disciplinary process as civil servants. Who would conduct that process? Would it be the Civil Service? Is that appropriate, given that the Minister, not the Civil Service, appointed the person? I would have difficulty if the Northern Ireland Assembly Commission, for example, were to discipline my staff as the employer, albeit it pays the wages and sets the terms. Perhaps there is some way of tidying that up so that the reporting structure that is required in any employment contract is made clear. In a way, we would subject individuals to a disciplinary process by someone who is not their employer. How would that look under the current arrangements?

I do not disagree with the intent of accountability. We are all subject to accountability structures. Ironically, Ministers are not subject to the same accountability structures. Had that been an area that was strengthened, perhaps the Bill would not be necessary. As it is drafted, it feels like a blurring of lines in the relationship between employer and employee. I am keen to know whether that upholds current employment law or at least complements it.

Amendment No 4 seems to have given some Members cause for concern. I did not initially like it. I felt that it created a process that could limit the political discretion of the appointment. Having scrutinised the wording, however, I do not believe that it does.

If anything, it puts on record what I believe should already happen, a process similar to that which I would have conducted when I was in that role: seeking the correct person for the job. It also allows for political discretion, in that the Minister creates the job description and person specification. Arguably, if a Minister already has someone in mind, they can write it in a particular way to allow that person to be appointed. All the amendment does is require a Minister to put it in writing and justify their decision. Therefore, while initially I was intent on not supporting that amendment, I do not believe that there is too much wrong with it.

6.00 pm

I agree with the suggestion that we should reduce the number of special advisers in The Executive Office from eight to six. I do not see the necessity for having any more than that, particularly when you compare it with other jurisdictions, where there is not the same representation of spads in Departments.

It is important to put on record what special advisers are there for and what their purpose is. I have outlined that insofar as what I needed to do. It is interesting, because I am almost agreeing with everyone on this side of the House. I believe that, ultimately, the buck stops with the Minister, who is the appointing person. However, if we do not have the appropriate and relevant structures in place to ensure that Ministers are holding to account the people they appoint, maybe Mr Allister's Bill is necessary.

It is disappointing that some Members have chosen not to engage. As I said, we politicians are coming and going. Mr Allister tends to cause controversy and, to an extent, we like him for that. He is not here as Mr Jim Allister, private citizen; he is here representing the people of North Antrim, and when we disrespect him, in his office as MLA, we disrespect the mandate that the people of North Antrim gave him. We are all entitled to have that opinion.

We need to get back to ensuring the integrity of the Assembly and to building confidence among the public. To be fair to Mr Allister, we ask: should this Bill be necessary? No, it should not. I would like to think that people's good intentions drive what should be done. Sadly, however, as we have seen in what has characterised the past three or four years, that has not been the case. There is nothing wrong with putting on record, or putting into writing, what should be the case. Therefore, I support this group of amendments, although I seek clarity from Mr Allister in respect of amendment Nos 1 and 2.

Mr Carroll: I support many parts of this Bill, including the clauses and amendments in group 1, which I now address.

The damning accounts given in the RHI inquiry, Sam McBride's 'Burned', and countless column inches should be reason enough to accept that these changes should be made via legislation. We simply cannot trust Ministers in this Executive to hold to account themselves or their spads via codes that they can tinker with, and have tinkered with, quite freely.

It is clear to me, listening to Mr Allister's opening remarks, that he and I would probably

disagree about the remit of spads. If I had my way, we would not have unelected officials, with significant power, swanning around Departments in the unaccountable manner exposed by scandals such as RHI. I find it unsettling that spads are afforded any powers or given privileges far above those afforded to other civil servants and far above what any unelected individual should expect to hold.

It is also clear that, for far too long, the big parties have, with impunity, ridden on a gravy train, at public expense and often at the cost of the public purse. For that reason, I welcome the bulk of what is before us, in particular, those clauses and amendments that seek to curtail such behaviour. For example, I support the reduction in the number of spads by removing them from junior Ministers' offices, as outlined in amendment No 7. I also endorse clause 3. Many will find it humorously ironic that Sinn Féin would endorse or use something called a "royal prerogative" to appoint someone to effectively act as a spin doctor, who was charged with enhancing the profile and image of the Executive. In other words, they sell to the public the benefits of a cosy Sinn Féin/DUP friendship. I do not find that in the least bit humorous; I find it utterly unsurprising. I also find the fact that they used the power of the monarchy to appoint a PR doctor from public funds, without a shred of oversight or transparency, utterly unsurprising. The First and deputy First Minister must not be allowed to engage in such underhandedness in the future.

My party is also inclined to support amendment Nos 2, 3 and 4. It is patently clear that someone paid from the public purse to advise a Minister should be hired with some degree of record-keeping and regulation. The need for this is redoubled by the fact that the current Minister of Finance saw fit to change the code for appointments to remove such measures. What does the Minister of Finance have to hide when he is hiring spads that stops him from supporting basic record-keeping for that process? The legislation does not prevent him from picking the right person for the job, the person who works best with him or the person who meets the criteria outlined in a job spec. I cannot fathom why Ministers are uncomfortable with, or opposed to, explaining their choices to the public, who will be forking out for the well-paid role.

Unfortunately, amendment Nos 2, 3 and 4 apply to clause 1. My party is not content to support that clause in its entirety because of clause 1(6). The simple reason is that my party would not have supported Mr Allister's Bill in 2013, as it disproportionately impacted on ex-prisoners. Therefore, my party cannot support any attempt to enhance or beef up that legislation. To be clear, my party will support amendment Nos 2, 3 and 4, but will oppose clause 1 in its entirety. My party does this in the hope that if it is defeated and clause 1 stands, the Bill will, at least, address the serious issues in the process of appointing spads and discipline them more rigorously.

Finally, what happens in the Chamber today and tonight should be closely watched. Parties that claim to support openness and transparency and claim that they work for their community but cannot bring themselves to slow the pace of the gravy train that they stand to benefit from are acting in their own interests, not the interests of the public. Those parties are not acting with the fervour that scandal after scandal on this hill commands. I suggest that this place needs root-and-branch reform, root-and-branch restructuring and a wholesale break from the shambolic governance of the past. This Bill, in its entirety, does not deliver that, but parts of it certainly help in that endeavour.

Mr Speaker: I call the Finance Minister, Conor Murphy, to respond.

Mr Murphy (The Minister of Finance): I have the task of responding to the Bill because the Executive gave me the task of leading its response to the RHI inquiry, chairing the RHI subcommittee and bringing the matters approved by it to the Executive for approval. Having listened to much of the debate, I could almost think that, perhaps, Sinn Féin is in the Executive on its own; would that it was. However, it is as if the approach agreed for dealing with these matters across the Executive since it was re-formed did not happen at all. The debate today is as if there had been no response at all to the RHI inquiry, no agreed response among the five parties that make up the Executive and no follow through on that response.

The evidence given to the RHI inquiry directly informed the extensive talks on transparency, accountability and the operation of the Executive in the summer of 2019, and that formed the work stream of the talks that led, ultimately, to New Decade, New Approach.

Representatives of the five main parties were involved in the discussion about improvements to the ministerial code, special adviser codes and the NICS code of ethics. The conclusions of those discussions were reflected in New Decade, New Approach. The parties agreed to an ambitious package of measures to strengthen transparency and governance

arrangements in the Assembly and the Executive in line with international best practice. The Executive were committed, as a matter of urgency, to produce strengthened drafts of the ministerial, Civil Service and special adviser codes to be implemented immediately.

Mr O'Toole said in his contribution that the Minister of Finance had decided that legislation was not necessary. That is not true at all. The Executive, including your party colleague, decided that legislation was not necessary. The Executive have followed through on every aspect of the work that led to New Decade, New Approach and agreed on every aspect of the work since, without objection as to how that approach has taken place.

He also questioned why Sinn Féin, as a party, supports legislation in the Dáil but not in the Assembly. Clearly, the parties — some of whom are the SDLP's sister parties — in the Government in Dublin have not committed to strengthening codes and increasing transparency. As a matter of fact, some of the recent public appointments justify the call for legislation, because clearly some of the appointments are not transparent. If the party beside me wants to get out of or wriggle away from the commitments that it gave and on which its Executive colleague has followed through, let it do that rather than trying to present this approach to opposition to legislation or a different approach to legislation to me and me alone. I happen to chair the subcommittee, and I happen to lead on behalf of the Executive on this matter, and every aspect of anything that I have brought to the Executive has received full support from every Executive party.

The measures that we agreed included issues addressed in this Bill: making clear the accountability of Ministers to the Assembly; strengthening Ministers' responsibility for their special advisers; publishing details of Ministers' meetings with external organisations; publishing details of gifts and hospitality received by special advisers, of their meetings with external organisations and of their pay; and strengthening requirements for record-keeping and protections for whistle-blowers. The parties also agreed to establish a robust, independent enforcement mechanism to deal with breaches of the ministerial code and related documents.

Among the first decisions of the restored Executive in January was, unanimously, the agreement and publication of the special adviser code of conduct, the revised code of appointment for special advisers. It was not my proposition, as Mr Carroll said, but the Executive's agreed proposition. It is not my code but the Executive's code, agreed among all of the parties in the Executive. There are new arrangements for special adviser pay and a revised model and letter of appointment.

Interestingly, Mr Storey and Mr Allister — sorry, I meant Mr Wells; I sometimes mix the two — majored on the issue of pay. The pay scales did not, in fairness, prevent him from joining the Executive. He knew all about this and objected to it but decided to take the post when it was offered to him. He set aside his principles. The pay scales have been reviewed, and Mr Storey said that the Bill will allow us to see what the pay is. The pay was published. The Department of Finance published the pay. That document, published on 14 February, contains the list of all the special advisers; the bands that they are put in; the restrictions, and the cap that has been put on their pay, which is nowhere near £91,000. It has the details of all of them and which band they are on. I say that to correct the debate, because some of it is as if there is a complete vacuum with ongoing activity on these matters.

The Executive parties, in fairness to them — all of your colleagues — have filled this with the action that we agreed to do, and they did cap the pay of special advisers. They did publish the names and the pay scales that these people are on. It is as if this has appeared out of the ether with Mr Allister's Bill. Our approach to this has nothing to do with the politics of Mr Allister. This is the Executive's agreement, and I am here to represent the Executive's agreement. I think that he overestimates his importance in that regard. The Executive have decided an approach to this, and I have been tasked with chairing and leading that approach and bringing that back to the Executive. Each aspect of this has had full Executive agreement.

Mr Wells: Will the Member give way?

Mr Murphy: I am happy to give way.

Mr Wells: I suggest to the Member for Newry and Armagh, the Minister, that, yes, the Executive may well have given him an undertaking that they would oppose this Bill but that, when the relevant Ministers went back to their parties, they received a very clear message from the Back-Benchers that they were going to support Mr Allister's Bill. The party leaders realised that they could not win the argument.

Mr Murphy: If the Member wants to outline some rationale for a kind of duplicitous approach to this, that is fair enough. That is his

understanding of it. I had an RHI subcommittee meeting last Thursday, I think it was, in which we progressed further the work that we had already set out to do, with the full agreement of the Ministers who were there. An agreement was made to bring that to a further RHI subcommittee meeting in December, in order to bring it to the Executive for approval in December. If that was the case, Ministers and the Executive that I am dealing with are still on the same course and pathway that they agreed to take, which emerged from the five-party work stream prior to the resetting of the Executive being affirmed in 'New Decade, New Approach' and which was then followed through immediately by the Executive when they were appointed.

Mr Frew: I appreciate the Minister's giving way on this. I recognise what he saying, because his argument is consistent with the argument that he brought to the Finance Committee along with David Sterling, the then head of the Civil Service, and his own permanent secretary, Sue Gray. I can tell the Minister that, whilst he was conducting and relaying that argument to the Committee, it was alien to me because at no time during which I have been tasked by my party to sit on the Finance Committee, at no time during Second Reading and at no time during consideration in the Committee was I ever informed by my party that it was against this Bill and at no time when I asked did it say that it was against this Bill.

6.15 pm

Mr Murphy: The Member and I have had many discussions across the Chamber about the nature of how his party does its business. I cannot get into that any further. I can reflect only the discussions around the Executive table, the agreed approach and the follow-through on that approach, and the approval of the codes. At no stage has anyone in the Executive ever suggested that legislation is required to replace, supplement or complement the work that we have been doing in the Executive. At no stage has any Minister ever suggested that over the last nine months.

Following the RHI inquiry, the subcommittee on reform conducted the review at its first meeting in July. The majority of the inquiry's recommendations have already been fulfilled by the existing revisions to the codes and guidance. The subcommittee agreed to make recommendations to the full Executive for a couple of minor additions that would fulfil the terms of the inquiry's recommendations. Those amendments have been circulated to Executive members without objection, and they will be formally agreed by the Executive shortly.

In summary, the parties in the Executive followed the evidence to the inquiry, committed themselves to act in response through revisions to the codes, and the Executive have followed though on that commitment and satisfied themselves that they have fulfilled those recommendations, including the recommendation to revise the codes.

I will move on to the Bill. As I said, my opposition to it is in order to be consistent with what my Executive colleagues and I have agreed and to follow through on that work. It has nothing at all to do with the politics of the sponsor of the Bill.

Mr O'Toole: I am grateful to the Minister for giving way. I echo what Paul Frew said about his consistency, and he has been consistent on this point. Speaking for my party, I believe that the work streams inside the Executive are not mutually exclusive with the Bill. As I said, we do not support all elements of the Bill. However, will the Minister reflect on the fact that passing the Bill, either as it is now or with amendments — as we hope — does not preclude positive, constructive progress along with the work streams in the Executive subcommittee?

Mr Murphy: In recent weeks, I accused Mr O'Toole of being a great man for an each-way bet, and he has proved that again tonight. He tends to have an each-way bet on all these issues. He is with the Executive and with the Bill at the same time. That is his prerogative and the prerogative of his party. I can deal only with the people who are sent along to the Executive subcommittee and to Executive meetings, and follow through on that course. As an Executive Minister, that is my job here tonight: to respond to the Bill with the consistent approach that the Executive have taken since they were re-formed back in January.

Mr Frew: Will the Minister give way?

Mr Murphy: May I finish my point? I took issue with the Member on two points. He said that it was my decision not to pursue legislation when it was clearly the Executive's decision not to do so. No one at an Executive meeting has ever proposed pursuing legislation.

The Member then challenged the consistency of my party's approach, even though I am here representing the Executive position. He challenged the consistency of my party's

approach in the Dáil, where it is a completely different set of circumstances.

Mr Frew: I appreciate the Minister giving way. I do not need an answer immediately, and I am sure that he has advisers and support staff here. Will he provide dates for when the Executive settled on opposition to the Bill?

Mr Murphy: The Executive were never asked to approve or vote against the Bill formally. The Executive agreed a course of action that they would take in response to RHI. That was around strengthening the codes, the RHI recommendations and the work that your party and four other Executive parties undertook in summer 2019, when they looked at the evidence being given to the RHI inquiry and decided, in advance of its recommendations, the areas that would need to be strengthened in terms of the existing codes, protocols and practices, and they brought forward a series of recommendations. The Executive agreed immediately at one of the first, if not the first, Executive Committee meeting to take forward the recommendation in that area of work. In response to the RHI inquiry report, when it came out some time later, they decided to proceed with that course of action.

The Executive have not been asked to take a position on the Bill, but, as I said, they have consistently concluded that the response to the RHI inquiry and its recommendations would be through the work that they had agreed on strengthening the codes and increasing transparency. At no stage did anyone propose that legislation would be required.

The group 1 amendments aim to reform the function and behaviour of special advisers. The evidence to the RHI inquiry certainly highlighted the fact that things go wrong with special advisers.

The revised code of conduct for special advisers, which the Executive published and agreed in January, already captures a significant proportion of those measures and, indeed, goes further in setting out the parameters of good practice. The revisions to the ministerial code of conduct that were agreed in March by the Executive are equally important here as they have to define the relationship between the Minister and the special adviser.

The Executive have given serious attention to the codes and guidance that cover the standards of behaviour in government. The codes and guidance were subject to extensive discussion during the talks in 2019, as I said previously. They were a significant part of the 'New Decade, New Approach' document and were subject to Executive scrutiny before and after the publication of the RHI inquiry report. The RHI inquiry recommended amendments to the codes rather than legislation. In addition, I am not convinced that the way to bring about the desired change is through this legislation. Putting administrative arrangements into primary legislation makes them difficult to adjust, and it opens up relatively minor matters to legal challenge, which benefits no one, apart from lawyers.

Clause 1(2), which would be amended by amendment No 1, would make it unlawful for a special adviser to be responsible for managing any other special advisers, except those in the Executive Office. Of course, in all other Departments, the special adviser is accountable to their Minister and to no one else. That is inherent in the relationship between the two by virtue of the fact that special advisers are appointed by their Minister. I will add that the appointment process has been the same for all special advisers to the Executive. If other parties felt that there was anything untoward or that a better standard could have been adopted, they could have chosen to go out to public appointment for their special advisers and published the details of who they interviewed. They could have chosen to advertise, but they all chose to appoint their special advisers under the arrangements that were put forward. Mr Wells, do you wish me to give way?

Mr Wells: He knows that that is not true. He has not answered the point — none of his colleagues has answered it — about the role of Mr Aidan McAteer, a super-spad who was not subject to any form of appointment and was not responsible to any form of Civil Service code. He was appointed by his party as a super-spad to control the activities of all the other spads, who were answerable to their Minister. In fact, Mr McAteer was answerable to Mr Martin McGuinness, the deputy First Minister, not to the relevant Minister. How does the Minister explain that activity by Mr McAteer and how does a code stop that happening again?

Mr Murphy: The codes that have been developed here have been developed since RHI. They have been developed in response to it and agreed by the five parties. We have been criticised for taking away what some people said was a sham process of going through an appointments process on paper and making it clear that the appointment of the special adviser was the responsibility of the Minister alone, that

they were accountable to the Minister and that the Minister would be held accountable to the Assembly. That has all changed since the period that he is referring to. The Minister is responsible to the Assembly for that appointment and, under the ministerial code, can be answerable for the activities and behaviour of their special adviser.

I lost my train of thought when responding to the Member. Clause 1(3), which amendment No 2 would amend, requires a special adviser code of conduct to ensure that special advisers are subject to the discipline chapter of the NICS handbook, and the Minister cannot interfere in that disciplinary process. I am glad that the Bill's sponsor has recognised that that clause, as originally drafted, was eternally inconsistent. It would make no sense to insist that the Minister must be responsible for the conduct and discipline of a special adviser and then say that he or she cannot be involved in that discipline. The clause remains out of step with the purpose and function of a special adviser. Special advisers are our personal appointments. They are supposed to be someone whom the Minister has hand-picked, and that is quite right. A Minister is surrounded by officials whom they have no role in choosing. To have one hand-picked political appointment is not going to undermine the effectiveness of the Civil Service, but it provides an invaluable alternative perspective and political support. I heard other Members allude to that when relating their personal experience. Claire Sugden alluded to it, albeit she had a non-political special adviser.

If one has a personally appointed special adviser, one has to be able to treat them as such. If the personal relationship breaks down — that experience that has been referenced — that appointment cannot continue. The Minister and special adviser have to part ways and do so immediately. The breakdown of the relationship between a former Enterprise, Trade and Investment Minister and his spad was a contributory factor to the RHI debacle. To expect the Minister to go through the time-consuming path of Civil Service discipline in order to remove a special adviser is ridiculous. A special adviser cannot be moved to another post during an investigation, and the tax-paying public would not thank us if a special adviser was put on paid leave until their disciplinary process was complete. This provision undermines the implementation of the RHI inquiry recommendations. The inquiry wanted Ministers' responsibility for their special advisers to be absolutely clear. Rendering Ministers' responsibilities subject to the NICS handbook compromises that clarity.

Amendment No 4 falls into the same trap. It requires a Minister to conduct an appointments process that reflects the appointments process for civil servants. As I said, as far as I am aware, all Ministers in the current Executive have made their appointments in the way that has been outlined and could have chosen to take other steps had they wished to do so. The Bill sponsor makes the mistake of thinking that special advisers ought to be just like other civil servants. Ministers have plenty of civil servants, and we need a special adviser. Such a process would also mean that a Minister was without an adviser for weeks after taking office as that process was conducted. I would like to correct a misapprehension. When the RHI inquiry concluded that Ministers ought to have followed the terms of the code of appointment, which, at the time, did require a selection process of this kind, the inquiry was not reaching a conclusion that the selection process was necessary. It was observing that, if there were rules, those ought to have been followed. I believe that the current rules are appropriate and proportionate and that they ought to be followed rather than changed, as the Bill would require.

Amendment No 5 seeks to address some unfortunate drafting of clauses 1 to 6 in the original Bill, but it still tries to apply a legislative solution in an inappropriate way. The clause aims to ensure that only special advisers are treated as special advisers and that they are not answerable to anyone other than their appointing Minister, with a couple of exceptions. If we want to ensure that special advisers are treated in accordance with their role and that no one else is given special access to Ministers and Departments, it is a matter of leadership. Ministers have to behave like Ministers, and permanent secretaries have to maintain the correct standards in their Departments.

Amendment No 7 and clauses 2 and 3 all attempt to cut the number of special advisers in the Executive Office. I am interested to note that, where the Bill sponsor originally tried to cut the number to four, he has now cut it to three for the First Minister and the deputy First Minister. The work expected of the special advisers in the Executive Office is significant and heavily weighted. Given the volume of work required to manage effective decision-making in a mandatory coalition, the task of special advisers here cannot be compared with the task of special advisers in the offices of the First Ministers of Wales and Scotland.

In conclusion, I do not believe that any of the provisions in respect of special advisers are required. Of course, there have to be rules for ensuring that special advisers are accountable

and responsible but these are already set out in their terms and conditions, including in the code of conduct. The force with which some Members have insisted that these measures are necessary does not give credit to all those special advisers who work hard providing invaluable support to Ministers and fulfilling their essential roles in Departments.

As I said at the outset, we have been consistent in saying that the way to deal with the RHI inquiry was through the strengthening of codes. We have brought those to the Executive. They emerged from the work of the five parties that make up the Executive and whose approach that was. That was reflected in the recommendations of the inquiry. We have consistently taken that work forward in that manner. That is why I, leading the work stream on this issue in the Executive, oppose the legislation.

Mr Allister: I will seek to hone in on the issues that drew most attention and raised the most questions, but I want to start by responding to what the Minister said. The Minister seems to have a very churlish attitude to the Assembly's wanting to consider legislation. It is as if we do not need the Assembly; that we simply have Executive decree. He goes out of his way to tell us how much the Executive, allegedly, are opposed to the Bill and that, effectively, we should not be discussing it at all as it is a matter for the Executive. Sorry, this is a legislative Assembly. This is a legislative Assembly that is here to discuss and decide upon legislation. Legislation ultimately rests with the House; not with the Executive but with the House.

The exercise in which we are engaged is that very exercise. It is a pretty churlish and poor start to imply that, really, we should leave all of this to the Executive and not busy ourselves in these matters. It is not clear to me, in fact, whether Minister Murphy is here, as he proclaims, representing the Executive, when members from other Executive parties seem to dispute that, or whether he is here to represent the Department of Finance, which would have primary responsibility for the oversight of the legislation. I would have thought that he is here in the latter capacity, rather than the former. However, in whatever capacity he is here, he cannot chip away at the right of the House to legislate. That is a fundamental of our very existence.

6.30 pm

All of that revolves around a point that I made in my first speech today, and that point is whether we individually and collectively think that codes that have failed lamentably in the past are a suitable vehicle to exclusively deal with the issues or whether we think that they need the bite of legislation. I was interested to note that some of our foremost commentators had a pretty poor view of dealing with the matter by codes only. Writing in 'The Irish News' at the time that the codes were published, John Manley was quite clear that the codes were disappointing and were not enough. I also noticed that the 'News Letter' editorial headed:

> *"Code on Stormont special advisers does not go far enough"*

started with a very compelling sentence, which I think the House would do well to live by. That was:

> *"For the Northern Ireland Assembly to command the respect and confidence of the public over a long period of time, it must right the wrongs of the previous administration ... One of the key questions, of course, is whether the new code goes far enough and the answer is that it does not."*

The 'News Letter' editorial goes on to state that giving the codes true bite is required and that they should be complemented by legislation. Suzanne Breen, another notable commentator, had this to say:

> *"In terms of the spad code of conduct that Conor Murphy unveiled today, I think it is massively disappointing."*

She went on to make some complimentary comments about the Bill's sponsor, but modesty forbids me from reading those out. She then said:

> *"to continue with eight spads in the Executive Office, that is absolutely ludicrous".*

It is not just that some jumped-up MLA, who is a Back-Bencher and should know his place, thinks that he knows better than the Executive and dares to bring to a legislative Assembly a proposal for legislation. It is that some of the most seasoned commentators on our political process seem to hold the same view.

Ultimately, it comes down to the defining issue of whether we are prepared to place our trust on the broken reeds of codes or whether we are going to give them the bite of legislation. I remind the House again that the party that says that we do not need anything but codes is the

party that said that we do not even need codes. In 2013, it was the party that voted against the very introduction of codes. Here it is again, fighting that same rearguard action to avoid oversight and restraint.

Of course, one of the most compelling reasons why it is seeking to avoid that is something that Minister Murphy talked very little about: clause 1(6). Why is clause 1(6) there? It is there because, with calculation and deliberation, Sinn Féin set about deliberately circumventing the law of the land by appointing a super spad to oversee everyone else, knowing, conscious and boasting of the fact that it breached that particular provision as it did not regard itself as being bound by it. As Mr Ó Muilleoir put it, Sinn Féin was not going to be told by Jim Allister what it could or could not do. Sorry, it was not Jim Allister. It was the Northern Ireland Assembly that said what it could and could not do the moment that it passed the Civil Service (Special Advisers) Act (Northern Ireland) 2013.

It is the same mentality that then has to inform us when we ask whether codes are enough. The party that said that we never needed codes then set about breaching the provisions of the statute, yet they are the people who are called as character witnesses to say, "You don't need legislation; you just need codes". That is confirmation of why you need to give codes the bite of legislation. I urge that view again on the House.

Mr Wells: Will the Member give way?

Mr Allister: Yes.

Mr Wells: Does the Member accept that, if the codes are so wonderful and so enforceable, they have nothing to worry about, because the legislation will never have to be invoked?

Mr Allister: As I said this morning, if one were determined to do the right thing, why would one fear legislation? Legislation is only a restraint from wrongdoing if you are minded to do wrong. It is not a restraint if you are minded to do right. That is a very apt point.

I will home in on two issues in particular that excited most comment from the House and posed to me, very properly, questions. Clause 1(3) is about subjecting the special adviser to the Civil Service disciplinary procedures. I remind the House of two points. First, special advisers are civil servants. They have all the benefits and all the privileges, so they are civil servants. What the Minister wants is that, although they are civil servants, they should be exempt from the discipline of the Civil Service. Secondly, I remind the House that, on the one occasion in our history where a spad was being disciplined, the Finance Department conducted the investigation according to its rules and found that a disciplinary process was justified, but a Minister intervened and said, "No. It will not happen". That is exactly what Minister Murphy wants to continue with.

Mr Murphy: Will the Member give way?

Mr Allister: Yes.

Mr Murphy: I have listened to a lot of what the Member has said, whilst biting my tongue through most of it. First, if I regarded the Assembly as having no role in legislation, I would not be here. I would not have deigned to come to the Assembly to answer and to explain the reasons that I oppose your legislation. I am not treating the Assembly or elected Members with any contempt at all.

I will say clearly that I am not proposing to continue with that. That is a misrepresentation of the position that I outlined, because the strengthening of the ministerial codes would mean that, if a Minister were to decide not to discipline a spad, thereby refusing to be accountable and responsible for them, they would be held to account. The standard of discipline is higher than in the Civil Service, because someone would not be summarily dismissed from the Civil Service but would go through a lengthy disciplinary process during which they would continue to be paid as they sat waiting for the outcome of the process, and the Member knows that full well.

The Minister being held to account was not the situation when former Minister Nelson McCausland was asked to account for the behaviour of his spad. Like a lot of other Members, including Mr Wells, you present today as if nothing has happened since that time, by alleging things and, quite rightly, drawing attention to issues that needed significant improvement. Those improvements have taken place, however, and the codes are there to hold Ministers to account, rather than simply to try to get the Finance Department to get a Minister to do the right thing.

Mr Allister: Let us consider that. The Minister says that the Minister then, for failing to discipline, could be in breach of the ministerial code. Who decides whether the Minister deserves discipline? The incestuous arrangement is that the nominating officer who put him or her in the post is the very person

who then decides whether the Minister has breached the ministerial code.

How cosy is that? How farcical is that? How destructive is that to public confidence in a system? Although, theoretically, a Minister can be held liable in respect of a breach of the ministerial code, he will be held liable only by his own party and his own appointers.

I asked this morning, and I repeat it: has a Minister ever — ever — been held liable for a breach of the ministerial code under this system? I am firmly positive that the answer is no, and the reason is that it is a system that is guaranteed to provide a human shield for the Minister. In each party, there is a human shield of protection under the provisions pertaining to the ministerial code, so the Minister need not talk to the House in glowing terms about how, if he or some other Minister failed to discipline, they themselves would be in breach of discipline. Who is he kidding? He is certainly not kidding the public, because the public know that there is nothing about this system that is capable of that level of enforcement.

On the issue of disciplining a civil servant, the starting point and the premise is that they are civil servants and so there is no exemption, but there is an involvement for the Minister. That is plain in the Bill. The Minister maintains his involvement in that process, and it could well be that the provisions that the Civil Service specifically drafts for the disciplining of spads might involve the Civil Service independent investigation presenting the evidence to the Minister and requiring the Minister to take the decision. There is nothing in my Bill that does not allow that. The Minister is prevented from interfering, from stopping the process, and from meddling in it, but he can still be involved in the sense of making the referral in the first place or dealing with the outcome in the second place. It is a fiction to suggest that this denudes the Minister of any control over a spad.

What control did the Minister have in the past? The Minister, in the past, could have sacked his spad provided he did it in compliance with employment law. The Minister could still sack his spad provided he does it in compliance with employment law. There is nothing here that reduces that right for the Minister. It ensures that any errant spad who is a civil servant must face the rigours of the Civil Service process in respect of his discipline. According to how the Civil Service drafts this, and provided it is all within the code of conduct, that can still preserve a key role for the appointing Minister. That point needs to be very clear. Ms Sugden asked that question, and that is the point that I have been trying to deal with — this blurring of the relationship, as she said.

It is quite possible that, under clause 1(3), the Civil Service does the investigation — it might have been initiated by the Minister or it might have been initiated by someone else — and the outcome is referred to the Minister and the Minister acts accordingly. That is all entirely feasible under clause 1(3). However, clause 1(3) makes sure that there is a process that is proper and fit for standard and one governed by the process that affects other civil servants. What could be wrong with that for a spad who is a civil servant? It is important not to distort what clause 1(3) is about.

6.45 pm

Coming on to amendment No 4, some parties have said that they cannot support it. Can I start by making this point? The Minister said that they had strengthened the codes. Well, you certainly cannot say that about the code of appointment, because, as I pointed out this morning, the old code of appointment required you to consider a pool of candidates, required you to have the criteria for the post and required you to keep a note of why you chose the person you chose. Of course, Mr Murphy came along and stripped all of that out. He did not strengthen the code; he weakened it.

Amendment No 4 seeks to put back in that which was previously in the codes, which Justice Coghlin found was simply ignored, so that it will be given the bite of being in legislation. Create a job description, set out the requirements for a successful applicant, achieve a candidate pool, complete and retain the documentation. That is exactly what Ms Sugden described herself as doing. It does not say that you have to put an advert in the 'Belfast Telegraph' to say, "I'm going to appoint a spad", but it does require a job specification and job criteria. It does require a candidate pool, but the legislation is not prescriptive on how you assemble that candidate pool. You must have a pool, otherwise it is open to the public ridicule that you simply appointed your best mate, with no objective rational explanation and no need to even keep a record of why you appointed them. The first thing that the Department knows is that Joe Bloggs has been appointed. What the criteria for the post were no one knows. What the job description was, no one knows. How that person met any perceived description, no one knows. Was more than one person considered? No one knows. I remind you of the evidence of Felicity Huston: you cannot conduct recruitment to a public post in that clandestine manner.

Mr O'Toole: I am grateful to the Member for giving way. I want to make a couple of points very briefly. This gets to the heart of something that concerned several of us who are supportive of other bits of the clause. It is really important that we acknowledge that spads are fundamentally political appointments. If Joe Bloggs is the right person for the Alliance Party Minister, the SDLP Minister, the TUV Minister or the Sinn Féin Minister, that is that.

My party would find it very difficult to support this amendment without a specific insertion in the Bill saying that party political alignment is a legitimate reason for appointment. I ask him to reflect on that and whether he is able to offer that at Further Consideration Stage.

Mr Allister: Yes, I appreciate that. I pointed out this morning that we have, in the Fair Employment Order, that protection; you cannot be guilty of discrimination on the grounds of political opinion if you are making a political appointment. So, it is already there, in a sense. However, if it helps, I anticipate that it would be possible, at Further Consideration Stage, to add to amendment No 4 and align something to the effect of, "For the avoidance of doubt, since these are political appointments, there is no issue relating to making a political choice". I am sure that there is wording that could be much more polished than that, and it seems to be entirely compatible with the 1998 Order and, if it is required on the face of the Bill, it can be put there.

Mr Stalford: Will the Member give way?

Mr Allister: Yes.

Mr Stalford: Hopefully, the Member will find this helpful. The Member will know that, when organisations such as the Presbyterian Church in Ireland, the Church of Ireland and church groups advertise for paid posts in places like church house or church headquarters, they put in their adverts phraseology such as, "The applicant should agree with the ethos and identity of the potential employer". I am just trying to be helpful with that suggestion.

Mr Allister: Yes, and, if that is required in legislation, that can be in legislation. My point is that amendment No 4 is not prescriptive of everything. You would still have your essential criteria, and you, as the Minister, could put in your essential criteria a requirement that applicants must have a political empathy with the Minister's political stand. That would be entirely lawful. Churches do that sort of thing, and they are not breaking the law. Likewise, a Minister who puts that in here would not be breaking the law.

The point of amendment No 4 is that it is an insult to the intelligence of the paying public that you never even have to have a job description for a job that they are going to pay for; you never even have to have any requirement set forth for a job that they are going to pay for; you never even have to consider more than one person for a job that they are going to pay for; and you never even have to keep a note in respect of a job that they are going to pay for.

That is why I say that amendment No 4, which draws carefully and exclusively on what was in the old code, does not go beyond that and does not expand it. It draws carefully and explicitly on what was in the old code; a code that existed for many years. It simply puts it into legislative form. Why does it do that? It does that because Lord Justice Coghlin said that those codes on appointment needed to be rigorously implemented, having pointed out how flippantly they were treated in the appointment process heretofore.

It is nothing new that suddenly would have to be done. It is something that always should have been done, and now it is being given the bite by putting it in legislation. If it helps the House and others, I do not see the difficulty with a "For the avoidance of doubt" clause, which I will undertake to discuss with those who are interested before Further Consideration Stage and bring that forward as an amendment.

Ms Sugden: I appreciate the Member's giving way. My initial apprehension about amendment No 4 is probably the same as that of other Members. It somehow suggested to me that there was a limitation of political discretion. Can I confirm with the Member — he will know this better than me — that any decisions or process that one Minister adopts will not limit any future Ministers, set a precedent of any sort or suggest that Ministers will be limited in having their political discretion? For me, rereading this, it seems as though you are essentially putting on record what, in your consideration, should already be done.

Mr Allister: Absolutely, and, if it had not been so flagrantly breached, as illustrated in RHI, this would never have been necessary. Indeed, I remind the House that amendment No 4 brings something that was not in the Bill initially, because the Bill was drafted before the new code of appointments stripped all this out. I never for a moment thought, given the evidence at the RHI inquiry, that any Minister would be so brazen as to take out the very criteria that had

been breached and had been criticised by a Lord Justice for being breached, and that the answer to that would simply be, "Excoriate the criteria, take them out and then no one can say that we are in breach".

The very fact that this is an amendment and was not in the original Bill is because it took me greatly by surprise that the Minister came forward with a proposition as brazen as he did that the code of appointments should be stripped out of the very things that were in the old code and that, as Ms Sugden said, should be happening anyway, but they did not happen. That is why we now need to put them in legislation. That is why, I believe, the Committee, at that stage, was convinced of the merits of amendment No 4 and voted for it.

The other point that I want to deal with is the point that Mr Frew raised about the cap on pay.

I will make it plain again: all that I seek to do is to insert a ceiling. I am not interfering with the bands or the Department's discretion to juggle the bands or do anything else. I am simply saying that for two reasons: one is because it is good to depoliticise and not have Ministers being accused of upping the salary just to placate their special advisers, which, as we know, happened in the past —

Mr Murphy: Will the Member give way?

Mr Allister: Yes.

Mr Murphy: The Member should be aware, given that he is the sponsor of the Bill and was present during its Committee Stage, that that is no longer the case. The bands and levels of payment are set by officials in the Department of Finance; they are not set by me but by officials. To correct something that was the case in the past is not correcting something that is the case in the present.

Mr Allister: The Minister is half right; I acknowledge that. However, it is then still subject to a political process of approval. The codes have to be approved. That is where the political imprimatur comes in, whereas, if the ceiling were set with a linkage to a generous Civil Service grade, no one could say that it was politicians looking after their own. That is why it makes good sense to link it to a Civil Service grade. There is nothing to say that, in future, those bands could not be radically revisited. However, under my system, they or the ceiling would be revisited according to the natural progression of grades in the Civil Service. That is how it should be. I have heard no one say that a grade 5 salary is not generous enough. Some have said that it is too generous. I think that it is about right. That takes it out of the political arena. I would have thought that that was highly preferable.

Mr Frew asked whether it was inflexible. The answer, of course, would be to have no ceiling and not have £85,000 in the bands. If one wants maximum flexibility, one must remove everything. However, the principle is about where the upper limit should be set. Should it be set by a Department through its officials and approved by Ministers, or should it be set by a linkage to a Civil Service grade? I think that the latter is the better prospect.

There is, perhaps, a legitimate concern: what if we need a super-duper expert on something or other, and he turns his nose up at £81,000 or £82,000? I have suggested to the House that there are two remedies to that situation: that person could be appointed as a consultant in the Department, or prerogative powers could be used to create an appointment, subject to the approval of the House. Therefore, if the situation were arrived at where maximum flexibility was needed to address an issue such as that, there is a mechanism for it. It is not all or nothing here. A cap on pay, in principle, is right. I do not think that it is inflexible in that it will move as the grade moves. However, if it proved to be less than satisfactory for the filling of a particular post, there is an opportunity to do something about it through the other mechanisms.

I hope that I have dealt with the main points. I have not gone through what everyone did and did not say. That never strikes me as being a fruitful exercise. I hope that I have dealt with the issues. Since no one is seeking to intervene, I will assume that I have done that, satisfactorily or otherwise. Therefore, on that basis, I will conclude my remarks.

Amendment No 1 agreed to.

Amendment No 2 made: In page 1, line 12, leave out "involvement or".— *[Mr Allister.]*

Amendment No 3 made: In page 1, line 13, before "A minister" insert "Subject to section 3A".— *[Mr Allister.]*

Amendment No 4 proposed: In page 1, line 14, at end insert —

"(3A) In section 8 (Code for appointments), after subsection (1) insert the words:'(2) Without prejudice to the generality of subsection (1), the

code must provide that the appointing minister must —

(a) create a job description and person specification for the post,

(b) set out the requirements to be met by a successful applicant,

(c) achieve a candidate pool from which the minister shall select on sustainable and lawful grounds, and

(d) complete and the department retain documentation associated with the above processes, including recording the minister's reasons for the selection made.'"— *[Mr Allister.]*

Question put, That amendment No 4 be made.

Some Members: Aye.

Some Members: No.

Mr Speaker: Since we cannot determine the outcome of the vote, the House will divide. Clear the Lobbies. The Question will be put again in three minutes. I remind Members that they should continue to uphold social distancing throughout all the votes that may be held this evening and that those who have proxy voting arrangements in place should not come to the Chamber. Thank you.

Members, please resume your seats. Before I put the Question again, I remind Members that, if possible, it would be preferable to avoid a Division.

Question, That the amendment be made, put a second time.

Some Members: Aye.

Some Members: No.

Mr Wells: The Ayes have it.

Mr Speaker: OK. The Ayes have it. *[Laughter.]*

Before the Assembly divides, I remind Members that, as per Standing Order 112, the Assembly currently has proxy voting arrangements in place. Members who have authorised another Member to vote on their behalf are not entitled to vote in person and should not enter the Lobbies. I remind Members to ensure that social distancing continues to be observed at all times while voting is taking place. Please be patient at all times and follow the instructions of the Lobby Clerks.

The Assembly divided: Ayes 27; Noes 60.

AYES

Dr Aiken, Mr Allen, Mr Allister, Ms Bailey, Mrs Barton, Mr Beattie, Ms S Bradley, Mr Butler, Mr Carroll, Mr Catney, Mr Chambers, Mr Durkan, Ms Hunter, Mrs D Kelly, Mr Lunn, Mr McCrossan, Mr McGrath, Ms McLaughlin, Mr McNulty, Ms Mallon, Mr Nesbitt, Mr O'Toole, Mr Stewart, Ms Sugden, Mr Swann, Mr Wells, Miss Woods.

Tellers for the Ayes: Mr Allister and Mr Wells

NOES

Ms Anderson, Dr Archibald, Ms Armstrong, Mr Blair, Mr Boylan, Mr M Bradley, Ms P Bradley, Ms Bradshaw, Ms Brogan, Mr K Buchanan, Mr T Buchanan, Mr Buckley, Ms Bunting, Mrs Cameron, Mr Clarke, Mr Dickson, Ms Dillon, Mrs Dodds, Ms Dolan, Mr Dunne, Mr Easton, Ms Ennis, Ms Flynn, Mrs Foster, Mr Frew, Mr Gildernew, Mr Givan, Ms Hargey, Mr Harvey, Mr Hilditch, Mr Humphrey, Mr Irwin, Mr Kearney, Mr G Kelly, Ms Kimmins, Mrs Long, Mr Lynch, Mr Lyons, Mr Lyttle, Mr McAleer, Mr McCann, Mr McGuigan, Mr McHugh, Miss McIlveen, Mr Middleton, Mr Muir, Ms Mullan, Mr Murphy, Mr Newton, Ms Ní Chuilín, Mr O'Dowd, Mrs O'Neill, Mr Poots, Mr Robinson, Ms Rogan, Mr Sheehan, Ms Sheerin, Mr Stalford, Mr Storey, Mr Weir.

Tellers for the Noes: Ms Ennis and Mr Givan

The following Members' votes were cast by their notified proxy in this Division:

Mr K Buchanan voted for Ms P Bradley, Mr Buckley, Mrs Dodds, Mr Dunne, Mr Easton, Mrs Foster, Mr Givan [Teller, Noes], Mr Harvey, Mr Hilditch, Mr Irwin, Mr Lyons, Mr Middleton, Mr Newton, Mr Poots, Mr Robinson, Mr Stalford, Mr Storey and Mr Weir.

Mr Butler voted for Mr Allen, Mrs Barton, Mr Beattie, Mr Chambers, Mr Nesbitt, Mr Stewart and Mr Swann.

Mr Muir voted for Ms Armstrong, Mr Blair, Ms Bradshaw, Mr Dickson, Mrs Long and Mr Lyttle.

Mr O'Dowd voted for Ms Anderson, Dr Archibald, Mr Boylan, Ms Brogan, Ms Dillon, Ms Dolan, Ms Ennis [Teller, Noes], Ms Flynn, Mr Gildernew, Ms Hargey, Mr Kearney, Mr G Kelly, Ms Kimmins, Mr Lynch, Mr McAleer, Mr

McCann, Mr McGuigan, Mr McHugh, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mrs O'Neill, Ms Rogan, Mr Sheehan and Ms Sheerin.

Mr O'Toole voted for Ms S Bradley, Mr Catney, Mr Durkan, Ms Hunter, Mrs D Kelly, Ms Mallon, Mr McCrossan, Mr McGrath, Ms McLaughlin, and Mr McNulty.

Question accordingly negatived.

Amendment No 5 made: In page 2, line 9, after "adviser" insert "by reason of the holding of that post".— *[Mr Allister.]*

Amendment No 6 made: In page 2, line 12, leave out "him" and insert "the special adviser".— *[Mr Allister.]*

Clause 1, as amended, ordered to stand part of the Bill.

New Clause

Amendment No 7 proposed: Before clause 2 insert

"**Repeal of the Civil Service Commissioners (Amendment) Order in Council 2007**
A2. The Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007 is repealed.".— *[Mr Allister.]*

Question put, That amendment No 7 be made.

Mr Speaker: I have been advised by the party Whips that, in accordance with Standing Order 113(5)(b), there is agreement that we can dispense with the three minutes and move straight to the Division.

I remind all Members to follow the instructions of the Lobby Clerks and to respect the need for social distancing throughout.

The Assembly divided: Ayes 61; Noes 26.

AYES

Dr Aiken, Mr Allen, Mr Allister, Ms Armstrong, Ms Bailey, Mrs Barton, Mr Beattie, Mr Blair, Mr M Bradley, Ms P Bradley, Ms S Bradley, Ms Bradshaw, Mr K Buchanan, Mr T Buchanan, Mr Buckley, Ms Bunting, Mr Butler, Mrs Cameron, Mr Carroll, Mr Catney, Mr Chambers, Mr Clarke, Mr Dickson, Mrs Dodds, Mr Dunne, Mr Durkan, Mr Easton, Mrs Foster, Mr Frew, Mr Givan, Mr Harvey, Mr Hilditch, Mr Humphrey, Ms Hunter, Mr Irwin, Mrs D Kelly, Mrs Long, Mr Lunn, Mr Lyons, Mr Lyttle, Mr McCrossan, Mr McGrath, Miss McIlveen, Ms McLaughlin, Mr McNulty, Ms Mallon, Mr Middleton, Mr Muir, Mr Nesbitt, Mr Newton, Mr O'Toole, Mr Poots, Mr Robinson, Mr Stalford, Mr Stewart, Mr Storey, Ms Sugden, Mr Swann, Mr Weir, Mr Wells, Miss Woods.

Tellers for the Ayes: Mr Allister and Mr Wells

NOES

Ms Anderson, Dr Archibald, Mr Boylan, Ms Brogan, Ms Dillon, Ms Dolan, Ms Ennis, Ms Flynn, Mr Gildernew, Ms Hargey, Mr Kearney, Mr G Kelly, Ms Kimmins, Mr Lynch, Mr McAleer, Mr McCann, Mr McGuigan, Mr McHugh, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mr O'Dowd, Mrs O'Neill, Ms Rogan, Mr Sheehan, Ms Sheerin.

Tellers for the Noes: Ms Ennis and Mr McGuigan

The following Members' votes were cast by their notified proxy in this Division:

Mr K Buchanan voted for Ms P Bradley, Mr Buckley, Mrs Dodds, Mr Dunne, Mr Easton, Mrs Foster, Mr Givan, Mr Harvey, Mr Hilditch, Mr Irwin, Mr Lyons, Mr Middleton, Mr Newton, Mr Poots, Mr Robinson, Mr Stalford, Mr Storey and Mr Weir.

Mr Butler voted for Mr Allen, Mrs Barton, Mr Beattie, Mr Chambers, Mr Nesbitt, Mr Stewart and Mr Swann.

Mr Muir voted for Ms Armstrong, Mr Blair, Ms Bradshaw, Mr Dickson, Mrs Long and Mr Lyttle.

Mr O'Dowd voted for Ms Anderson, Dr Archibald, Mr Boylan, Ms Brogan, Ms Dillon, Ms Dolan, Ms Ennis [Teller, Noes], Ms Flynn, Mr Gildernew, Ms Hargey, Mr Kearney, Mr G Kelly, Ms Kimmins, Mr Lynch, Mr McAleer, Mr McCann, Mr McGuigan [Teller, Noes], Mr McHugh, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mrs O'Neill, Ms Rogan, Mr Sheehan and Ms Sheerin.

Mr O'Toole voted for Ms S Bradley, Mr Catney, Mr Durkan, Ms Hunter, Mrs D Kelly, Ms Mallon, Mr McCrossan, Mr McGrath, Ms McLaughlin, and Mr McNulty.

Question accordingly agreed to.

New clause ordered to stand part of the Bill.

Mr Speaker: I pause to make sure that Members are in the Chamber before we move on to the next amendment.

Before I put the Question, I remind Members that we have debated Mr Allister's opposition to clause 2 stand part but the Question will be put in the positive as usual.

Clause 2 disagreed to.

Clause 3 ordered to stand part of the Bill.

Clause 4 (Special Advisers in the Executive Office)

Amendment No 8 made: In page 2, line 28, after "Office" insert "under the provisions of the Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007".— *[Mr Allister.]*

Amendment No 9 made: In page 2, line 33, leave out subsection (3).— *[Mr Allister.]*

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

Mr Speaker: By leave of the Assembly, I intend to suspend the sitting for 15 minutes.

The sitting was suspended at 7.43 pm and resumed at 8.00 pm.

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

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

Mr Deputy Speaker (Mr McGlone): We now come to the second group of amendments, which deal with accountability to the Assembly. With amendment No 10, it will be convenient to debate amendment Nos 11, 12, 21 to 23 and 25. It should be noted that amendment No 25 is consequential to amendment No 21. I call Jim Allister to move amendment No 10 and address the other amendments in the group.

Mr Allister: I beg to move amendment No 10: In page 3, line 4, at end insert

"(1A) In Section 17(1)(a) after 'Part' insert ', provided the Commissioner is satisfied the complaint is not frivolous or vexatious or otherwise an abuse of the complaints process'".

The following amendments stood on the Marshalled List:

No 11: In page 3, line 11, leave out from "means" to end of line 12 and insert "means Section 1 of the Ministerial Code as provided for by Section 28A of the Northern Ireland Act 1998."— *[Mr Allister.]*

No 12: In page 3, line 14, at end insert

"(6A) In Section 27(1) after 'Assembly' insert 'or minister'."— *[Mr Allister.]*

No 21: **New Clause**

After clause 11 insert

"**Accountability to the Assembly; provision of information**

11A. Ministers and their departments have a duty to report to an Assembly committee such information as that committee may reasonably require in order to discharge its functions, being information which —

(a) has been requested in writing; and

(b) relates to the statutory functions exercisable by the Minister or their department."— *[Mr Allister.]*

No 22: In clause 12, page 4, line 30, leave out from "relevant" to "actions" on line 31 and insert "judgements of the courts relevant to the functioning of government,".— *[Mr Allister.]*

No 23: **New Clause**

After clause 12 insert

"**Assembly scrutiny of the Executive's in-year monitoring process**

12A.—(1) Ministers and their officials must provide the relevant Assembly Committee with a written or oral briefing on the department's submission to each monitoring round in advance of it being submitted to the Department of Finance.

(2) The Department of Finance shall publish the outcome of each monitoring round within 7 days of Ministerial approval being granted.

(3) Within 14 days of the publication of the outcome of the monitoring round provided for in subsection (1), the Minister of Finance must lay before the Northern Ireland Assembly a statement specifying the changes to each department's net budget allocation as a result of this exercise.".— *[Mr Frew.]*

No 25: In clause 14, page 5, line 10, at end insert

'"department' means a Northern Ireland department as set out in Schedule 1, Departments Act (Northern Ireland) 2016."— *[Mr Allister.]*

Mr Allister: In this group, we come to deal essentially with clauses 5 and 12, plus my suggestion to insert a new clause. Clause 5 deals with the tricky issue of how complaints against Ministers should be dealt with. We all know that we, as Members of the Legislative Assembly, have a Commissioner for Standards. A new person was appointed recently. We all know that, if someone has a complaint to make against us, they are the arbiter in that. They decide whether to uphold the complaint or not and report the matter back to the Assembly. Until this point, within the Executive, there was, of course, not really a process for a complaint against a Minister. It was a bit of a mystery as to how that would be advanced. New Decade, New Approach suggested that there should be a process whereby the First Minister and deputy First Minister would appoint three commissioners who could report on any complaint against a Minister. What I primarily want to do here is compare and contrast how that would work with how my proposal that it should go to the standards commissioner would function; in other words, that we should have a single standards commissioner that deals with you, whether you are a Minister or an MLA. Of course, Ministers are both. At the moment, we have a bit of a ludicrous situation where a Minister can be proceeded against by the standards commissioner but only in respect of his role as an MLA, not in respect of his role as a Minister. Since that essential mechanism and process exists, my basic and simplistic contention is this: why would we reinvent the wheel when all that we have to do is expand the remit of the standards commissioner?

The last motion that the Assembly passed before it fell apart in January 2017 was proposed by Steven Agnew and passed without division. It, in essence, did what I am seeking to do here. It called for the expansion of the powers of the standards commissioner to also deal with complaints against Executive Ministers. When that motion was passed, it gave rise to the then standards commissioner making comment on it in his 2016-17 report. In paragraph 2.3 of that report, he wrote:

> *"I note that on 24 January 2017, the last sitting day before it was dissolved ahead of the March election, the Assembly, without the need for a division, passed a motion calling for urgent legislation to extend the role of the Commissioner to cover complaints of alleged contravention of the Ministerial Code of Conduct. There is at present no process for the investigation of such complaints. The investigation of such complaints would have many similarities to work already undertaken by the Commissioner. It would be most unlikely to require any significant increase in resources. It would have the advantage that when considering a motion to exclude a Minister or junior Minister from office for an alleged breach of that Code the Assembly would have the benefit of a report of an independent investigation into the alleged conduct."*

Here we have the then Commissioner for Standards saying that it would be perfectly feasible to do it and that it would not have many resource implications. In other words, he was saying that the process and the infrastructure are already in place so that he or she could take on the extra work. That seems to me to be eminently sensible.

'New Decade, New Approach' called for something a bit different. Of course, it has not advanced the situation very far. It states:

> *"Complaints that a Minister has breached the Ministerial Code ... will be referred to the Commissioners for Ministerial Standards.*
>
> *The Commissioners will decide whether a complaint has sufficient merit to be considered, and will decline to investigate a complaint that is frivolous, vexatious, or made in bad faith.*
>
> *The Commissioners will number three in addition to the Assembly Commissioner for Standards, and will be appointed by the First Minister and deputy First Minister.*
>
> *The Commissioners may ask for the facts from the Secretary to the Executive to inform their decision as to whether to investigate a complaint.*
>
> *The Commissioners' decision to investigate or not to investigate, and the grounds for their decision, will be published. There will be strict, published, timeframes to adhere to for each stage of the process.*
>
> *When the Commissioners investigate a complaint, they will publish the findings of their investigation. Their findings will include whether or not the Minister has been found*

to have breached the terms of the Code or Guidance, and the relative seriousness of the breach. The findings will not include any recommendation regarding sanctions. This will ultimately be a matter for the relevant Party/Assembly process."

That is what is proposed there. What I want to do now is to compare the mechanics and usefulness of that process with what the process would be if the powers were given to the standards commissioner. There are many striking distinctions between the two that go to the very heart of the veracity of the process that would be involved.

The first distinction is that the standards commissioner is set up in statute and his function and powers are laid out. It is not clear to me whether the powers of the three commissioners would be in statute, but I have certainly seen no sign of such. The commissioner in question, namely the standards commissioner, is appointed by open competition. He is not an individual hand-picked by the First Minister and the deputy First Minister like the three ministerial commissioners would be. No, he is appointed by open competition. That is in section 19 of the Assembly Members (Independent Financial Review and Standards) Act 2011.

Here comes the real significance. The standards commissioner has the statutory power to compel witnesses and to command the production of papers. That is in sections 28 and 29 of the 2011 Act. He can take evidence on oath. That is in section 30. It is a criminal offence not to cooperate with or answer questions from the standards commissioner. That is in section 31. He has statutory independence. That is in section 18. Compare that with the notion that three hand-picked ministerial commissioners would investigate alleged complaints against Ministers. Those commissioners would have no powers to compel the production of papers, to compel witnesses or to take evidence on oath. Indeed, pitifully, their accumulation of evidence, if we can call it that, is confined to what the permanent secretary or the secretary to the Executive tells them. The commissioners, according to New Decade, New Approach, may ask for facts from the secretary to the Executive to inform their decision. However, in their own right, they have no powers to collect evidence, to interrogate evidence or to take evidence under oath; it is all a sham. They are hand-picked by the First Minister and the deputy First Minister and appointed with no powers of enforcement. Compare that with the standards commissioner. The Executive are saying to us, "You, as mere MLAs, will be subject to the full panoply of investigative powers of the standards commissioner. He can take evidence against you on oath, can compel papers and documents, and can really interrogate the allegation. However, when it comes to Ministers: no, no, we do not want any of that. We do not want commissioners who have teeth, powers and who can take evidence on oath. We just want commissioners to investigate what the head of the Civil Service tells them".

Frankly, why should we, as MLAs, be subject to the rigours — it is right that we should be — of the standards commissioner but Ministers be exempt? That is what lies at the heart of clause 5. We should have an equal playing field: if MLAs are to be investigated for breaches of our code, and so we should, Ministers should be likewise investigated for breaches of the ministerial code. It is a question of a level playing field, equity and fairness. It is abundantly clear that, for the standards commissioner, the whole architecture already exists; the functions and the powers are already there. Why, oh why, therefore, would we come up with some other scheme that was not as vigorous as the one to which MLAs are subject? This is about an essential levelling up of accountability; it is indefensible that Ministers are in this special category. They are the people with the real power; we are the people with lesser power, but we are subject to the higher investigation and they to the lower. That is a preposterous situation for the House to sustain, and clause 5 gives us an opportunity to address it.

Part of the farce is illustrated by the fact that it says in New Decade, New Approach that the existing standards commissioner could assist the three commissioners. If the present standards commissioner was acting as a commissioner investigating a Minister, he would have none of the powers that he has in his real role of investigating an MLA. He would simply be able to go the head of the Civil Service and ask for the facts. What he is told he is told. He could not compel witnesses or documents, and he certainly could not take evidence under oath. He would be second-rate when performing that role, as opposed to the first-rate facility that he has when performing his regular role. I can think of no sensible compelling reason why the Assembly commissioner, as the House decided in January, should not also exercise their powers in respect of Ministers.

The Standards of Conduct Committee at the Welsh Assembly produced a very interesting report in 2018. It recommended the very thing that I am suggesting: Ministers, equally with

MLAs, should be subject to the work and oversight of a standards commissioner. That seemed to be sensible to that jurisdiction, and I suggest to you that it should be sensible to this House. So, clause 5 is about a levelling up in that regard.

8.15 pm

Then there are three amendments to clause 5. You will have noted that, in 'New Decade, New Approach', there is a protection at paragraph 1.5 of annex A, which says:

> *"The Commissioners will decide whether a complaint has sufficient merit to be considered, and will decline to investigate a complaint that is frivolous, vexatious, or made in bad faith."*

There is no such protection for you as an MLA, so amendment No 10 is about giving not just you but Ministers that same protection to insert into the legislation that a complaint proceeds:

> *"provided the Commissioner is satisfied the complaint is not frivolous or vexatious or otherwise an abuse of the complaints process".*

It has been said of old that what is sauce for the goose is sauce for the gander, and that applies equally to the process of investigation, so amendment No 10 supplements the levelling-up process in that regard.

Amendment No 11 flows from evidence supplied by, I think, the Executive Office, which helpfully pointed out that, as originally drafted, the Bill embraced the entire ministerial code. There was some stuff in the ministerial code that was not really about conduct but about cooperating North/South and all that sort of thing, so I tabled an amendment that would restrict the ambit of investigations to paragraph 1 of the ministerial code; that is to say, the standards that are required in public office. Amendment No 12 is simply a tidy-up amendment to make sure that the whole thing reads fluently in regard to the legislation and adds a Minister to the ambit of it. That is the essence of clause 5 and the amendments relating to it.

I will move to clause 12, which I thought would probably be the most non-controversial part of the Bill. It simply takes the standpoint that improving the functioning of government is not a one-off event or a snapshot in time. It should be an ongoing process because things change, and that is why clause 12 recommends a biennial report from the First Minister and deputy First Minister setting out matters pertaining to the functioning of government and bringing forward resolutions to any issues that have been thrown up. Every two years, the First Minister and deputy First Minister would bring a report to the House, and that would gather together things that had emerged in the previous two years, maybe from the Audit Office, from the ombudsman, from the Commissioner for Public Appointments and, doubtless, from judicial reviews, because, very often, judicial reviews turn upon the procedures of the issue being challenged, and, very often, judges say, "government should not be doing that in this way. It should be doing it in some other way". There will be many lessons to be drawn, so clause 12 is about drawing those lessons together and setting out what the propositions are and how they will be resolved.

Indeed, the Committee report before the House today identifies one such issue, and the Chair has already referred to it. When the former Commissioner for Public Appointments appeared before us, she drew our attention very compellingly to the deficiencies in the set-up of that office in that its set-up and operation does not meet international standards. Therefore, that will need to be addressed, and if that is still an extant issue, you would expect it to be addressed in one of these biennial reports. With some recommendations, you do not have to wait for the two years — I am not suggesting that you should — to address something; if it is crying out to be addressed, it needs to be addressed. However, there will be issues from reports that are gathering dust on the shelves, and we are all familiar with that. Those need to be taken down and examined, and every two years we need to ask, "Have we ticked that box? Have we done that? Have we improved that? How can we improve that?". That is what clause 12 is all about.

There is another example that might come to this House. I am on the Audit Committee, which is beginning an investigation of the oversight of the Audit Office. It has come as a considerable surprise to some of us that there is no independent board governing the Audit Office; there is elsewhere in the four nations generally, but here there is no such supervision. That is something, subject to what the Audit Committee says, that this House may be advised to act upon.

There will be many unforeseen but inevitable propositions coming forward to make improvements. I make the point again: this Bill, in its own small way, tries to improve aspects of the functioning of government, but it is not an

end in itself. Clause 12 can make it a launch pad for keeping those matters under review by making it a statutory requirement that every two years there is a report to this House. That way, we can all see what we have not done and what we need to do. Why would we fear that? Would that not be a good thing? Clause 12 is in those terms.

Mr Frew has an amendment, and I will not steal his thunder other than to say that I generally support the proposition; the more scrutiny opportunities that we have, the better. The other amendment that arises in this group as far as I am concerned inserts a new clause and is amendment No 23 — sorry, amendment No 21; I was about to steal his thunder. Amendment No 21 states:

> *"Ministers and their departments have a duty to report to an Assembly committee such information as that committee may reasonably require in order to discharge its functions, being information which—*
> *(a) has been requested in writing; and*
> *(b) relates to the statutory functions exercisable by the Minister or their department."*

Of course, we have scrutiny Committees, but it surprised me somewhat, when I got down to studying the legislation, that there is no statutory duty to service those Committees with papers that are requested. There is, of course, in section 44 of the 1998 Act, the facility for a Committee that is dissatisfied with the cooperation to go to the point of compelling the production of documents. Any Committee that has ever used that facility knows that it is a last resort, is complex and is laborious, and it eventually falls to the Speaker to make various orders. The idea of this new clause is that by establishing a statutory duty on Departments to do what they should already be doing — in most cases, I suspect, they already are doing it — you would probably dissipate the need to resort to section 44. It is about toughening up the provisions of the legislation and underscoring the accountability to the Assembly of the Executive and the Ministers by imposing a statutory duty to provide information, and it sets the conditions for that. Again, that can only be a good thing; it strengthens scrutiny, and I do not see why anyone would object to that.

When the Carnegie UK Trust, which is much respected in these matters, sent us evidence, it was quite effusive about the idea and thought that it would very much improve openness and transparency. It said this — sorry, this is about clause 12, but I will quote it now that I have come to it:

> *"Reporting to the Northern Ireland Assembly on a biennial basis will improve accountability, transparency and public awareness of these ways of working, and the progress made towards improving the societal wellbeing outcomes in the Programme for Government."*

That was about clause 12. I meant to say that the Carnegie UK Trust had supported that.

This new clause seems to be justified in its own right. If it is what the Department is already doing, well and good, but it puts it on a statutory footing, which means that there is no wriggle room. There is no opportunity to play around with it, so the amendments in this group and the clauses to which they relate are worthy of your support.

Dr Aiken: Mr O'Dowd will be very happy that my remarks will be much shorter and more germane this time than they were the last time.

Concern was expressed in Committee that the provision in clause 5 to bring Ministers under the same procedure for complaints as MLAs could lead to large numbers of complaints relating to ministerial decisions on policy issues that may be considered unpopular. I am grateful to the Bill's sponsor for listening to and acting on those concerns.

The Committee was informed as early as July of the Bill's sponsor's intention to bring an amendment to enable the Commissioner for Standards to sift out complaints against Ministers or MLAs that are considered frivolous, vexatious or otherwise an abuse of the complaints process. The Committee, therefore, welcomed amendment No 10, which addresses its concerns in that respect.

The Committee was content with amendment No 11, which provides for clause 5 encompassing only the Pledge of Office, the code of conduct for special advisers and the Nolan principles. That addresses a concern in the Executive Office that the original drafting included more of the ministerial code than was necessary.

In the Committee's deliberations, it accepted the Bill's sponsor’s explanation that amendment No 12 is a necessary but incidental amendment to add Ministers to the ambit of the Commissioner for Standards.

Amendment No 21 introduces clause 11A. During the Committee's deliberations, it noted the intention of the provisions in clause 11A to

strengthen the overall scrutiny functions of Committees by providing them with enhanced authority to seek information from Departments without having to resort to section 44 provisions in the Northern Ireland Act 1998.

Although the current Committee for Finance has not had to resort to section 44 since its formation, it has had occasion to consider its use in order to receive information to which we were entitled. For that reason, the Committee would like to have taken evidence on clause 11A. However, given time constraints towards the end of the Committee Stage, we were unable to do so. For that reason, the Committee was able only to note the amendment.

The Bill's sponsor informed the Committee that amendment No 22 to clause 12 is essentially technical in nature. The Committee asked him to expand on the phrase:

> *"judgements of the courts relevant to the functioning of government".*

The Bill's sponsor outlined that judicial reviews are, by their nature, challenging processes and that it is most likely that it would be judicial review judgements that criticise government.

As the Bill's sponsor said, the Carnegie UK Trust welcomes the provisions in clause 12 and informed the Committee that:

> *"Reporting to the Northern Ireland Assembly on a biennial basis will improve accountability, transparency and public awareness of these ways of working, and the progress made towards improving the societal wellbeing outcomes in the Programme for Government."*

The Committee was content to support amendment No 22 as an appropriate addition to clause 12.

Amendment No 25 to clause 14 is technical in nature and is consequential to the amendment to introduce clause 11A, on which the Committee did not come to a view.

Mr Frew: I will speak to the amendments and clauses in the group. I will start with clause 5 and the amendments. I thank the Committee and the Bill's sponsor for their work. I echo the sentiments of the Chairperson in thanking the Bill's sponsor for listening to the Committee.

8.30 pm

One of the issues that I pushed on was the fear that Ministers may be more liable to get more complaints than MLAs simply because of the position that they are in and the decisions that they have to take. Even though it is right that Ministers in this place, who were MLAs before they became Ministers and joined the Executive, should be held to the same standards and account as MLAs, there is that difference in the processes, the policy development and the decision-making powers that they have. I would not want to leave any Minister open to a whole raft of complaints to the standards commissioner because of a planning application, policy development or the closure of a school or something of that nature. That is why I asked for that to be included. I am glad that the Bill's sponsor ceded to that. I am sure that he knows that and supports it, most definitely, because it removes that possibility.

Whilst it might add another layer to the standards commissioner's role, it is a quicker and more efficient way, so if there are those frivolous and vexatious complaints, they can be moved to one side and the commissioner can carry on with the work that they have been assigned to do. That is important because we do not want the system to be bogged down for fear that that work will not get done for the other MLAs that there may well have been complaints about. It is, most definitely, correct that a Minister should be held to account by the same standards as us. The Bill's sponsor said, "MLAs do not get the protection that we are now putting into the Bill". However, I think that that is fitting and just because of the reasons that I outlined with regard to the decision-making powers, policy development and, at times, harsh decisions that Ministers have to make. You cannot please everybody all the time.

Mr Allister: Will the Member give way?

Mr Frew: Yes, I will.

Mr Allister: The amendment would afford that to complaints against MLAs as well. Any complaint would be sifted to determine whether it was vexatious or frivolous. That is right.

Mr Frew: I had not read that in, but I will bow to the Bill sponsor's wisdom on that. It is his Bill. After all, he knows it best. He knows it better than any of us, so I thank him for that clarification.

I will talk about amendment No 22, which would amend clause 12 on the biennial report. Yes; I see that as the way forward, because laws will be passed in the House that people — I mean

individuals, Ministers and parties — could well try to ignore. It has happened in the past. It is very clear that we need a reporting system that monitors things that change, things that are not enacted and things that need to change in the future. I think that reporting is the way to go. We had it last week on the domestic violence Bill when talking about reporting and monitoring that legislation. I believe that that is good practice going forward. I most certainly support laying a biennial report in the Assembly.

I will speak to the new clauses. Amendment No 21 would create a new clause on the provision of information. It is massively important. Once we started to talk about it, I lapped it up and said yes, yes, yes. I am sick of the way that Departments treat Committees. I am sick that we have to wring information out of Departments and Ministers. At times, Departments and their officials treat Committees with great contempt. We have seen it, even since the Assembly came back. It seems as though nothing has changed, nothing went wrong and we are back to square one. That is not where we are at, and it is never where I will be at. I will never go back. I will never go in reverse. I want to see improvements. However, I have not seen those improvements, and I have not seen that culture change. I still see a Civil Service and Ministers prevaricating on information that the Committee has requested.

I will give you one example, Mr Deputy Speaker. In this Chamber, a good number of months ago, I raised — in my gentle manner, as you know I do — the issue of the emails on the PPE order that we had requested but which had not come forward to the Committee. We had asked for all emails and correspondence connected to that. "All" is a very small word. It has three letters: A, L, L. It is very simple to understand, yet we did not receive "all" those emails. We kept asking the same question, but it was treated like a different request. It was not a different request. It was the same one being repeated over and over again until we were provided with the information that we received. It took weeks. In fact, I think that it took months to get that. Then we were able to look at the bigger, wider picture.

The reputational damage that was being done to the Minister, to the officials, to the permanent secretary and to the Department was mighty. It was mighty not because of what was contained in those emails, although that was quite embarrassing, but because a vacuum was being created at will by the Department in opposing the release of that information to the very scrutiny Committee that is designed to scrutinise it. That is no way to behave. That is no way to have a relationship between scrutiny Committee and Department. I hope that lessons are learned. However, I have been in this place long enough to know that lessons do not get learned. That is why the new clause is so important. The legislation is there, and it has to be rigorously applied. This is echoing that legislation, bringing it to a more modern piece of legislation and echoing the fact that we should not be treated with disdain.

Scrutiny Committees fulfil a very important role in this place, not least given the fact that we have a five-party coalition Executive and that we have a very small, fragmented opposition. It is therefore critically important for me as an MLA, even though my party is part of the Executive, to know that there are safeguards and fail-safe mechanisms in place so that, if — God forbid; heavens above — a Minister, no matter which party they belong to, makes a mistake or does something that is not quite right, the scrutiny Committee is there not only to scrutinise but to support — to support — the Department and, sometimes, yes, to fix. I have evidence of that. I have experience of that throughout my career as an MLA, and it is very important. It is also very important that Committee members take that role very seriously. That is why I embraced this Bill when it was introduced. There are things in it that I did not like. I did not like the direction of travel in some places, but I embraced it, and I engaged. I communicated with the Bill sponsor, I communicated with the Chairperson, and I communicated with the Committee members. Hopefully, what we have produced here is a Bill that we in the Assembly can all be proud of.

I therefore support amendment No 21 and the new clause that brings added accountability to the Assembly with regard to the provision of information. That is a no-brainer. It should not even have to be said, and it should not even have to be written in a Bill. However, it has to be, because I have no confidence — no confidence — that a Committee will get everything that it requests. It has also happened in the Justice Committee, so it has not just affected the Finance Committee.

I cannot lay everything at the door of the Finance Minister and his officials. It also happened on the Justice Committee with monitoring rounds. Unforgivable. That is not the place that we need to be. We need to be in a far better place, and let us hope that this, in a small way, goes some way to correcting that imbalance and removing the disdain that some of our officials at the highest level and some of our Ministers have for their Committees. That

cannot be abided and should not be abided by anyone in the House, and I will not support anything less.

I move on to my amendment No 23. I will speak to that and then sit down, Members will be relieved to hear. The amendment has three limbs. To be fair, I wanted to do much more, I really did. I tossed and turned, and I really wanted to go after the procedure used in the formation of a Budget. I see the Budget as being a two-yearly thing. I spoke in the House on the Budget Bill a couple of weeks ago on that very matter and laid the groundwork. I served notice that I was going to do this. Quite simply, I wanted to make sure that there was a statutory duty on the Minister to commence a Budget cycle and to lay it before the House in a timely fashion.

We have had experience of a Finance Minister failing to bring a Budget to the House. The Assembly fell, and the country was left without a budgetary process. Civil servants took over, and Ministers in Westminster had to put in place emergency legislation in order for us to get by. That was nowhere near a sufficient process; it was a terrible process. It was a necessity, however, because there had not been a Bill passed in the House. The only duty that I can see on the Minister of Finance is a requirement to bring a Budget by the end of March, before the start of the new financial year. That is an excepted matter, however, so it seems that we cannot touch it. I will keep pushing and probing to see what we can do.

Amendment No 23, which deals with monitoring rounds, is the next best thing. In my experience, not just in this phase of devolution since we came back, but over the past 10 years, I have seen massive inconsistencies in the way in which Departments handle Committees when it comes to providing monitoring round information. It could simply be that a Minister is querying something or is not sure of something or is dotting the i's and crossing the t's and that type of thing. That may delay the process, and it may be just a case of good, sufficient and thorough ministerial governance. That could well be the case, but the Committee should have a role to play in it.

Subsection (1) of my amendment — the first limb — places a requirement on Ministers and their officials to:

> *"provide the relevant Assembly Committee with a written or oral briefing on the department's submission to each monitoring round in advance".*

They should do that. What I find, though, is that, across Departments, that information can be inconsistent. There might be reasons for that, but I do not know why. It should not be the case, but it is the case. The amendment in some way tries to regulate for a uniform approach.

I have not been too hard on the other Ministers, simply because there is time for things to bed in. There will be a Further Consideration Stage, but there will be other opportunities throughout the legislative life of —.

Mr O'Toole: I thank the Member for giving way. We are considering proposed new clause 12A. In subsection (1), how wedded is the Member to the idea of Committees getting submissions on monitoring rounds in advance of their going to Departments? While we agree with the aim of greater scrutiny and more power for Committees, is there not a risk that you conflate the policymaking role of Departments with the scrutiny role of Committees? If bids are going in in advance, there is a risk of gumming up the policymaking process, because we will then be getting into a bun fight.

8.45 pm

Mr Frew: There is that risk, but there is a balance between accountability and the role of the Committee in supporting, scrutinising and assisting. I do not mean that Committees will have any way of shaping submissions if they are brought to Committees in advance. A Minister signs off on their monitoring round; it is the Minister and Department's monitoring round. They will know best what they need and what they do not. That should not really be the role of the scrutiny Committee at that point, but it is a way of getting that information to members through the vehicle of the Committee, which could then populate the thought process of the parties represented on the Committee. If that were the case, there would be no surprises with regard to bids. Hear this: I am open to amendment. I say this to Members, especially members of the Committee: if you think that you can better the amendment, please do. Please come and talk to me, and we will see what we can do. I am open to that.

The second limb states:

> *"The Department of Finance shall publish the outcome of each monitoring round within 7 days of Ministerial approval being granted."*

Again, that is an attempt to get some speed and consistency into the process.

The third limb states:

> *"Within 14 days of the publication of the outcome of the monitoring round provided for in subsection (1), the Minister of Finance must lay before the Northern Ireland Assembly a statement specifying the changes to each department's net budget allocation as a result of this exercise."*

I point to that last line:

> *"a statement specifying the changes to each department's net budget".*

One thing that I have learned from being on the Finance Committee is that Budget material is hard to read. You need to be an experienced MLA or a master craftsman like Matthew O'Toole, the Member for South Belfast, who had daily experience of it, to really get into the detail and see what the figures mean. Sometimes, you see just a blur of numbers with a lot of zeros; sometimes, the zeros are not even provided. It is hard to read the Budget. I have attempted to make sure that something is published that specifies the changes in each Department's net Budget allocation.

Mr O'Dowd: Will the Member give way?

Mr Frew: Yes, I will.

Mr O'Dowd: I am sure that the Member has, as I have, sat through many monitoring round statements in the Chamber. Attached to the back of the monitoring round statements is what the clause asks for: it sets out what each Department is getting extra. My experience of monitoring rounds is that they are usually good news stories. There is no hesitation from a Finance Minister in coming to the Chamber and telling the world that he can give out money; it is when they have to take money off you that they are more reluctant to come to the Chamber. I do not wish to lengthen the debate, but I am not sure that the new clause is necessary to carry out the functions that the Member wants.

Mr Frew: I accept that argument. There are two aspects to it. The first is that I hope that it is not necessary; I hope that it is uniform and standard procedure; I hope that that is what takes place. However, I am not sure about the other Departments and Committees. This is a way of ensuring uniformity and speed. Let us face it: it is the Assembly that votes on the spring Supplementary Estimates much later in the year, which is, basically, the combination of monitoring rounds anyway. In a way, it is about making sure that MLAs, who make decisions, pass legislation in the House and clear Budgets and everything else, get sight of that in a way that allows us to see the change.

It is not always the case that we throw more money about at monitoring rounds. There will be times when Departments give back and times when it is right that Departments give back. I am not saying that I want the information so that I can see that there has been a big net fall in a Department and can say, "Oh, big bad Finance Minister; you've taken money off a Department. Big bad Finance Minister"; I am saying, "Well, hold on. Why was that money handed back, and why was it good that that money was handed back? If that money is put to the centre, what use will it have in the centre?". Those are just primitive questions from MLAs who maybe do not sit on the Finance Committee.

I have sat on other Committees, and I have noticed that, sometimes, financial aspects of scrutiny are neglected. I am not saying that as a criticism; it is just a mark of life. The Agriculture Committee will be about suckler cows, beef cattle stock and less-favoured areas. It will not necessarily be about finance, although there is a lot of finance involved, not necessarily at the monitoring-round stage. This is a way of ensuring that all MLAs on all Committees will get good, timely information so that they can see drops and increases in a more consistent way.

I could have gone further, and I retain the right, at Further Consideration Stage, to go further. The Assembly votes for the spring Supplementary Estimates much later in the financial year. I toyed with the idea of tabling an amendment that the House votes on every monitoring round. That would just bring an added layer of accountability. I still have not worked out in my head whether something good could go wrong with that accountability. I am teasing that out in my head, and my head is quite primitive —.

Mr Murphy: On a point of order, Mr Deputy Speaker, perhaps you could advise us, while the Member is teasing stuff out in his head, that Further Consideration Stage will apply only to consequential amendments that come from the Consideration Stage. It is not a point for tabling a new amendment to a Bill.

Mr Deputy Speaker (Mr McGlone): I am sure that the Member will tease that out in his head.

Mr Frew: Yes, I will try to tease that out, Mr Deputy Speaker.

If the amendment stands, something could be done with it. Again, I put the welcome mat out: if Members see fit to amend the amendment and make it better, I am absolutely there with you. Let us see what we can do. When MLAs work together, whether in a Committee, by consensus or in partnership, we get things done. That is where we want to be. I encourage Members to knock on my door, speak to me, speak to other Members or speak to the Bill's sponsor, and let us ensure that the legislation that we are about to pass is fit for purpose and will do the job that it is designed to do.

Ms Dolan: I would genuinely welcome a situation where Mr Allister was sponsoring a Bill truly motivated by improving the functioning of government here, notwithstanding the fact that it would run contrary to his approach to power-sharing thus far. However, it is clear from the debate on the first group of amendments that, once again, the motivation of the Bill's author is to fundamentally weaken the functioning of government by undermining the important role of ministerial advisers. The amendments in group 2 carry on in that vein with regard to the Assembly and, by extension, elected MLAs.

The amendments in this second group are, at best, unnecessary and, rather than improve ministerial accountability, they dismiss and ignore the current scrutiny function of the Assembly and its MLAs. The Assembly, like Committees, is an important forum for the scrutiny of the Executive and Ministers. As we all know, the scrutiny role is a fundamental part of the work of the Assembly, and it is the responsibility of each MLA to perform that role. It is an essential rule to delivering good governance and is necessary to hold Ministers to account. In reality, the clauses do nothing to enhance that role.

Amendment No 21 is a case in point. Under section 44 of the NI Act 1998, the Assembly has the power to call witnesses and documents. Ministers already appear regularly at Committees to engage with and answer questions from MLAs. Ministers are required to answer listed and topical oral questions approximately every fortnight on the Floor of the House. Many in the Chamber are willing and more than capable of putting questions to Ministers on the Floor of the Chamber and challenge them where necessary. This is as it should be. It is our responsibility. It is what we were elected to do.

The amendments ignore the fact that the Assembly and its Members have held and continue to hold Ministers to account. It is not about improving scrutiny because, in reality, the amendments will not do that. It is about undermining the credibility of this institution, and we all know what Mr Allister thinks about the power-sharing institutions and the Good Friday Agreement that established them. On that basis, given that the Bill is about undermining the functioning of government here, Sinn Féin will oppose all the clauses of this cynical and counterproductive Bill.

Mr O'Toole: I will, hopefully, like other Members, make my remarks on group 2 briefer than they were on group 1, and they will probably be briefer than they will be on group 3, in which there is significantly more meat and quite a bit more controversy.

First, given that she will be going to bed soon, I should say that it is my wife's birthday. I am missing it to be here with Jim Allister and Jim Wells. I leave it to the House to decide whether I made the right decision. She probably thinks that I have, but anyway *[Laughter.]* I have already set out our approach to the Bill's general principles and our general support for many of the intentions but with specific concerns in some areas. There will be more of both in the next section. However, on the group 2 amendments, it is fair to say that we are broadly supportive of practically all of them, and we think that they are constructive as far as they go.

I do not agree with the previous Member who spoke. I will reiterate something that I said in the debate on the previous group: our party bows to no one in how serious we are about protecting the institutions. Part of our scrutiny of this will be and has always been a question of whether it strengthens or weakens the institutions, and we will continue to take that view of individual clauses and amendments.

On the group 2 amendments, as I said, in general, we support them. One of the things about the legislation — the Northern Ireland Act 1998 — that created this institution is that, along, obviously, with the negotiations that led up to the Good Friday Agreement before that, it led to the real possibility of, in some ways, a more dispersed democratic approach to scrutiny. We obviously had power-sharing at the core of the way that this institution worked. We remain committed to that. For the purpose of putting it on the record again, I am under no illusion that other people who sponsor or support the Bill are not keen on mandatory

coalition, but we remain committed to the principles of power-sharing.

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

As I said, one of the key drivers, instincts, thoughts and impetuses in the development of the institutions was not just around power-sharing but around the dispersal of scrutiny authority and putting specific scrutiny functions into Committees. It is fair to say that the potential laid out in the Northern Ireland Act 1998 has not always been lived up to. That is not necessarily a point about the scandals that we have talked about before and will talk about again in the debate on the next group around RHI and other bits of grifting and borderline corruption; it is about how we do government, do it well and do scrutiny well. As I said, good government relies on Ministers, special advisers, the Assembly and the Civil Service all performing our respective roles effectively. The last few years have prompted a serious examination of us all in terms of how well those roles have been performed, not just by individuals but by the structures within which those individuals operate.

We have talked at some length about codes and guidance versus legislation in relation to the earlier part of the Bill. With regard to scrutiny around ministerial accountability, it is clear that some of the codes and guidance have not lived up to their billing in delivering what is not just the actuality of ministerial accountability but the perception among the public of ministerial accountability.

9.00 pm

At this point, it is worth saying that I have noted something since joining the Assembly. I was privileged to be asked to come here; it is a privilege to serve with all of you, despite our profound political differences. I have been struck by the fact that there is a significant amount of goodwill. Members are trying to do the best, as they see it, for the people, places and communities that they serve. If you paid attention to some media coverage, you would think that absolutely everything about these institutions is totally falling apart and distrusted. It is not, but there are real issues. There is a problem. Someone mentioned a certain radio programme: if you turn on the radio at 9.30 am every day, you get a certain version of this place. That may not be an entirely accurate or exact reflection of where we are, but it performs a function. That debate and the sense that things need to get better in how we hold people to account are real. We need to think about how we do ministerial accountability and scrutiny.

The Assembly is the prime source of devolved authority in this place. Our laws and governance should reflect that and uphold accountability to the Assembly. It is sometimes easy to forget that. I do not say that to undermine or take away from the important work that the Executive do, but, as I say, the Assembly is the prime source of devolved authority and the Executive are derived from that.

The SDLP supports amendment No 10 to clause 5, which protects Ministers from frivolous and vexatious complaints. It adds to the original clause. We also support amendment Nos 11 and 12 to clause 5. On our general support for clause 5, as others have said — the Bill sponsor delved into some detail — it brings complaint procedures against Ministers into the same ambit as those for MLAs. It is worth taking a step back and looking at the wider context around codes and ministerial standards. It is fitting in some ways that we are debating that this week. At Westminster, we have seen what happens when standards of accountability for Ministers go completely by the wayside. We have all seen the shocking and appalling reaction of Boris Johnson not only to clear evidence of bullying but to a top-to-bottom damning report from the now former adviser on the ministerial code, who has resigned because the code was not taken seriously by the UK Prime Minister. It is important to think about that context. There is a real crisis across the water and, if we are honest, here too. As I said, we should not overdo it, but there is a serious issue about people's trust in ministerial accountability and how we hold Ministers to account. That has been exacerbated by the events of this year and people's perception that Ministers have acted with a degree of impunity. Anything that we can do to counteract or improve that process has to be considered seriously.

The measures in the Bill are, hopefully, a positive step forward. I talked about the inquiry into Priti Patel, but I hope that what we will do in the Bill is to show that we can take the lead in these islands, for a change, in delivering more robust and free-standing ministerial accountability. That does not mean that the accountability function of the Assembly or the media, for that matter, is undermined by the commissioner's remit being extended to Ministers. If the Bill passes with the clause as it is, it would be worth whichever Department is responsible for taking forward the enhanced role of the Commissioner for Standards looking at its resourcing and staffing. Given the context

that we are in of having an extreme backlog of complaints about MLAs, it would, I am afraid, be unacceptable and pretty naive of us to burden the commissioner with extra work without adequately and realistically resourcing them. We in the SDLP believe that what is proposed is an appropriate vehicle to oversee the fundamental standards and principles that are expected of Ministers.

I will move on briefly and put on record my party's support for amendment No 21, which, we think, is reasonable and hard to argue with. Again, it would put in statute what should already be happening. The Bill's sponsor can perhaps say something about this, but it does not prevent any Department being frank with a Committee about material that is not ready yet. Clause 21 will not hugely overburden Departments with duties in addition to their existing ones under the Northern Ireland Act. However, it is a useful addition, because, as we have said, scrutiny adds to the proper functioning of government.

It is worth saying that there are some here who are sceptical of mandatory coalition as a principle. Certainly, one thing that, I think, we can all agree on, whether you were a supporter of the Good Friday Agreement or a frenzied opponent of it, is that, with a structure of government like this, it is particularly important that Committees are able to do their job.

A recent Institute for Government report on the working of devolution in Northern Ireland was explicitly critical of Committee oversight. The report said that Committees needed more support by way of research and information. That is no reflection on RaISe, which does a wonderful job for us. However, it is true to say that we could have more resource for our Committees, and, if the Bill helps to beef that up by putting the information that is required from Departments on a statutory footing, why not?

We support amendment No 22, which is sensible. On clause 12 more broadly, what is proposed is a pretty sensible innovation, to be honest. It will not necessarily instantly transform how people see the institutions, but the fact that senior Ministers have to come to the Assembly to explain how government is functioning would be a useful discipline and should not create any disproportionate burden on civil servants or Ministers. It is useful, given that the institutions are, like everything else, a work in progress, and, in one sense, it is arguable that a biennial report that leads to practical constructive improvement and consensus on improvements is not damaging to the institutions but could strengthen them. Perhaps I should not have said that, because Mr Allister may want to withdraw the clause now. Biennial reporting is a useful tool and hopefully could also improve delivery of the outcome-based approach that we have moved to in the past few years. Obviously, we have not had an updated Programme for Government, in some ways understandably, because of COVID, but this is something that we could look at in complement to a new Programme for Government, whenever that comes, probably during the next mandate. There are positive things there.

The arguments against seem to be primarily around the fact that it duplicates what is already codified. I am, perhaps more than some, willing to give particular credence to arguments about not creating a disproportionate burden on civil servants, and I will talk a fair bit about that in the next grouping because, particularly, given my career history, I am very cognisant of that. We have to be careful, as we pass laws, that we are not simply creating disproportionate burdens on civil servants in lieu of changing culture. On this grouping, I genuinely do not see that we are creating enormous burdens on civil servants or Ministers.

Mr O'Dowd: Will the Member give way?

Mr O'Toole: Yes, I am happy to give way.

Mr O'Dowd: While you may not be creating an undue burden on civil servants, the question that you have to ask yourself is this: are you creating effective law?

Mr Deputy Speaker (Mr Beggs): Can I ask the Member to use the microphone so that Hansard will record his words?

Mr O'Dowd: This is not like passing a motion on a Monday or a Tuesday that has no impact. This is legislation that we are passing, so ask yourself this question: will the clauses that you pass support effective law?

Mr O'Toole: The Member asks a good and very fair question, and I touched on that a bit in my previous remarks. There are areas of the Bill that, we think, are counterproductive and superfluous in some places, so we will not support those. In this area, I do not see that this is a counterproductive law, in the sense that it is not creating, as far as I see it, a disproportionate burden on our Administration. There is a separate question about the volume of the statute book, and I am sure that people more qualified than me will have strong views on the length of the statute book and whether it

is tidy or untidy. I do not think that the specific provisions create any undue burdens.

I move on to Mr Frew's amendment. As I alluded to in my interventions, we have some questions around the timing in new clause 12A, but we are certainly happy to take up his invitation at the next stage. We may not be able to vote actively for it at this stage, but, if it goes through to the next stage, we will work with him to look at the content. He has talked about the three-legged stool of the clause: we certainly think that the second two have a lot of merit.

On subsection (1), going back to what Mr O'Dowd just said about creating the right law, frankly, there is a risk that, if you put it in law that every Committee has to be provided by its Department with a briefing in advance of its submission to a monitoring round, you are, in law, creating a process that could lead to unintended consequences and to political bun fights and people haggling before monitoring rounds. We have to be careful about distinguishing between the role of an Executive — people like the Finance Minister, who is here today — who have a role in policymaking, and our role as scrutineers. Yes, there is a huge job in co-design and in Committees having a role in policy input and policy development — there is nothing wrong with that in principle — but formalising it in law as a kind of upfront thing before a monitoring round is a —. However, if it proceeds, we are happy to work with the proposer of that amendment to see whether it could either be made retrospective in terms of the information being provided in that new clause or clarified in some other way.

We also support the technical amendment to terminology through amendment No 25. At this stage, I am glad to end my comments there. I think that I was quite brief. I look forward to voting and moving on to the third grouping.

Mr Deputy Speaker (Mr Beggs): I call Andrew Muir. Sorry, it is Stewart Dickson.

9.15 pm

Mr Dickson: Apologies, Mr Deputy Speaker, if my name was not in front of you. I will speak on behalf of the Alliance Party on the amendments in the second group, which are on ministerial accountability to the Assembly.

That Ministers are accountable to the Assembly is indeed a fundamental principle of our devolved Government. We believe that Ministers should be held accountable for breaches of the ministerial code and that Members' questions and requests for briefings and papers should be responded to fully and promptly. The need to reform and, ultimately, remove the petition of concern as a block to censure of a Minister for contravention of the ministerial code and, indeed, of Members when they may have committed misdemeanours is something that we as a party sought to achieve prior to the re-establishment of the institutions and is that we will continue to press for.

In the lead-up to RHI, some Ministers, at times, showed complete and unacceptable disrespect for the Assembly and its scrutiny function. We fully recognise that there is a great deal of work that needs to be done in that regard. Multiple examples of that disrespect were highlighted by Sir Patrick Coghlin in his report, and we support the implementation of the recommendations designed to redress that.

Since the return of power-sharing earlier this year, the Minister of Finance has, through the Executive subcommittee on the RHI inquiry, pledged to the House to establish a three-person panel, including the Assembly Commissioner for Standards, to investigate breaches of the ministerial code. With the subcommittee due to report its final recommendations before the end of the year, we will hold the Minister of Finance accountable for ensuring that the panel is swiftly established; indeed, we would very much welcome an update on its progress from him to the Assembly during this debate. We do not expect that other members of the panel need to be commissioners; rather, they should be people of rigour, independently appointed and with the ability to act. We would like to hear more from the Minister of Finance about their powers and the terms of their appointment. We believe, however, that it is important that the new Commissioner for Standards be supported in what is a separate and additional role to that which she currently holds for Members of the House. On that basis, we are minded not to support clause 5, which brings the conduct of Ministers and the ministerial code directly under her remit. We are keen to get the necessary assurances from the Minister of Finance about the establishment of a panel to investigate ministerial conduct and that establishing it will be properly and completely fulfilled in line with the recommendations of the Coghlin report.

I turn now to amendments Nos 21 and 23. Amendment No 21 would put into legislation a requirement for Ministers to provide information to the Assembly and its Committees. Amendment No 23 concerns the timing of in-year monitoring processes. The Good Friday Agreement, enacted by the Northern Ireland Act

1998, gives Committees the power to call for persons and papers. The power to require attendance at Committees is included in section 44 of the 1998 Act, and we simply cannot see why it is believed that further legislation will make any tangible difference, but we will wait to be persuaded before voting on amendment No 21. On amendment No 23, the in-year monitoring process is extremely important, and Members must be able to scrutinise it fully. There is, however, a need for flexibility around the timing; indeed, we have seen that this year with the unprecedented disruption caused by the pandemic. For that reason, we feel that issues of timing are better and more appropriately dealt with through Standing Orders, where they can be ruled on by the Speaker's Office.

Mr Frew: I thank the Member for giving way on that issue. One of the reasons that I did not put dates in amendment No 23 is the flexibility that is required with having monitoring rounds and a Budget process every two years. That is why I put in a time frame of days rather than include a date for a Minister to have a duty to come to the House.

Mr Dickson: I welcome that flexibility and the recognition that to have fixed dates would not be an appropriate way forward. For that reason, issues of timing are more appropriately dealt with, as I have said, through Standing Orders.

We have no objection to clause 12, which requires the First Minister and the deputy First Minister to bring a biennial report to the Assembly on the functioning of government. As with so much of the Bill, real change will come through the implementation of the Coghlin report and through changes to culture and accepted work practices. At the end of the day, you can take a horse to water, but you cannot make it drink.

Mr Wells: It is well after 9.00 pm, and, of course, this is only a warm-up session for the real battle, which is to come after these amendments. In the debate on this group, there will be no revelations from me about the misdemeanours of spads, so this will be rather dull. Maybe part 2 will occur in the debate on the next group.

This group of amendments is rather uncontentious. I would like to think that they will go through without the need for a Division, because they make eminent sense. Every sensible MLA will give Mr Frew's amendment their full support. I agree entirely with the clause that gives the Commissioner for Standards the power to weed out vexatious complaints. I am a regular customer of the standards commissioner; indeed, there were times when he or she would have had little to do if it had not been for me and the former Member for North Antrim, who is now the MP for the constituency. Between the two of us, we kept up a steady flow of complaints to the commissioner.

I will give two recent examples. There was one from my attendance at a four-party panel discussion in Belfast, where someone asked me my view on gay marriage. I looked round the audience and thought, "If I give my views on gay marriage to this audience, first, I will not be home until about 2.00 am and, secondly, it will cause an awful lot of dissent", so I said, "I would prefer not to answer that question". A member of the LGBT community reported me to the Commissioner for Standards for not answering the question.

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

Mr Wells: Mr Deputy Speaker, far be it from me to question your ruling — that, of course, would be heresy — but it is related to the amendments, because the Commissioner for Standards is being given the power to weed out vexatious complaints. I believe that that was a vexatious complaint. Of course, under the rules that applied then, the commissioner had no choice but to look at it. Obviously, he quickly ruled in my favour because I am perfectly entitled not to answer any question put to me at a panel discussion.

More recently, I had cause to ring an office in Essex, of all places, on behalf of a constituent. I think that it was about a speeding problem. Amusingly, the lady who answered the call had the broadest Essex accent. Whilst I believe that I speak English properly, she could not understand a word of what I was saying, and I could not understand a word of what she was saying. I said, "I am sorry, but we cannot make ourselves understood. You will have to slow down". She took great exception to that comment and reported me to the Commissioner for Standards. That is what I call a vexatious complaint. It is not what the rules were set up to achieve; they are meant to deal with issues of real concern that would cause concern to the public. That is why I think that that is important.

The former Ministers in the Chamber will know that you have to take some difficult decisions. I remember that one of the most difficult decisions that I had to look at was in respect of Dalriada Hospital in north Antrim; indeed, I was lobbied intensely by people in this very

Chamber. Some 14,500 residents of Moyle lobbied me, which was about 95% of the adult population of the district. That is how many signed the petition saying, "Save Dalriada Hospital". As I said earlier, as it turned out, I decided not to close Dalriada Hospital. However, had I done so — it was a 50:50 decision — I am confident that there would have been about 14,500 people making a formal complaint to the Commissioner for Standards against that decision as malpractice. That is how controversial it was. I have never in my life seen a community as engaged as the Ballycastle and Glens community was about Dalriada Hospital. If we are to have a system through which the commissioner can deal with complaints against Ministers, we have to have a filtering mechanism that stops that happening, or else the system will become unworkable.

I can think of other examples. For instance, school closures are emotive issues. A small rural primary school is down to 30 or 40 pupils, the Minister has to decide to close it and, inevitably, that causes great concern. However, if he goes through the proper procedures, he will make the right decision, albeit a controversial one, and he cannot be subject to a huge number of complaints. Another example was the recent decision by the Infrastructure Minister on the North/South interconnector. That is a hot potato in border areas.

If MLAs are to be protected from frivolous and vexatious complaints, so should Ministers. That has an awful lot of merit, and I would hope that that would go through without any dissension.

The other proposals make eminent sense. Mostly, monitoring rounds involve the Minister divvying out goodies to Departments. However, it is important that Members can scrutinise monitoring rounds because they indicate that some Departments do not have sufficient control of their budgets to spend all that they were allocated. It is important that Members, particularly those who serve on the Finance Committee, find out why that happened. It should not occur. If Ministers have good control of their budgets, they should go right to the wire, as it were, with their expenditure. We need to understand what projects have been withheld or held up and why that was the case.

I will not speak long on this group — I emphasise "this group"— of amendments. I would like to think that I would not be called to be a Teller for the votes on them.

Mr Catney: From the outset of my comments on this group of amendments, I give my full and firm support to the concept of Departments and Ministers having greater accountability to Committees in the Assembly.

Although I disagree politically with the Bill's sponsor on many issues, one of the more interesting aspects of daily life here since the Assembly was restored and one of my permanent likes is watching him hold Departments to account. I am sure that permanent secretaries have a treasure chest of war stories of coming up against him; it is a task that holds a suitable level of trepidation. That being said, there is a clear need for greater accountability and scrutiny to allow cleaner, more honest government and to restore the public's faith in this place. That will allow it to come to reasoned, sensible decisions that are based on sound evidence rather than political whim.

I support clause 5. It is right for Ministers to fall under the same complaints procedures as MLAs; it would be ridiculous for them not to be included. However, I welcome the amendments tabled by the Bill sponsor to add protection against frivolous and vexatious claims. We have only to look at some of the statistics from the Local Government Commissioner for Standards, which show that around 50% of complaints against councillors come from other councillors, to see how the system could be abused rather than used for its intended purpose.

Amendment No 21 is important in providing a statutory footing for the duty of Ministers and Departments to provide information to Committees and to allow for greatly enhanced scrutiny. In addition, as the Bill's sponsor will know from sitting on the Finance Committee, the clause will enhance the efficiency of the work. I am no expert on Committees. The Finance Committee is the first Committee on which I have served, but I find it a good and constructive Committee. Much of the information that we require is provided to us. There are times when the process of getting that information is slow, but I think that that tends to be the case for all Committees. Information should not have to be chased up repeatedly, and the amendment will, I hope, reduce the number of unnecessary delays.

I turn to Mr Frew's amendment No 23. I know what the Member is trying to achieve with the amendment and of his dedication to open decision-making. I agree with his desire to have more scrutiny of monitoring round bids. My issue, again, is with the operation of the clause. Many departmental budgetary pressures are time-sensitive, and the whole point of monitoring rounds is to allow Departments to

act quickly and to give them the flexibility to deal with in-year pressures.

It may be cumbersome for Departments to come to the Assembly before every bid is submitted. Could that be done retrospectively to allow for the scrutiny that is required while keeping the process of monitoring rounds moving efficiently?

9.30 pm

Mr Carroll: The first two amendments in this section — amendment Nos 10 and 12 — are technical, but amendment No 12 is an important addition to the role and remit of the Commissioner for Standards. Other Members have talked about that. As it stands, the commissioner can investigate any MLA who is suspected of breaching the code of conduct or other wrongdoings. It is quite remarkable that the person designated to investigate complaints and breaches, effectively, has a blanket ban on Ministers being investigated. It is right and proper that there is a process, albeit that it is often a slow and laborious one; nonetheless, a process exists for MLAs to be investigated for breaches, potential breaches, misconduct and so on. Why is the same level of accountability and scrutiny not in place for Ministers? Are we really saying that Ministers are untouchable and that, as the current unamended and unchanged legislation does, Ministers are beyond any real investigation? Effectively, that will be the de facto situation unless changes are implemented to this legislation. Whilst the current state of affairs is obscene, it is in line with the general approach of Stormont in which Ministers are rarely held to account for their actions in any meaningful sense. A Minister resigning for wrongdoing is a rare thing in the House.

Amendment Nos 21 and 23 introduce two new clauses. Amendment No 21 would bring an important change to the way in which this Building and its Committees function. I have lost count of the number of times that I or other members at the Health Committee have asked reasonable questions, which are not outlandish and are not in the public domain, but have not received an answer or even an, "I will get back to you". The fact that this amendment places a responsibility on Ministers and Departments when a Committee may reasonably require information in order to discharge its functions is right and proper. I hope that it will go some way to increasing the scrutiny function of Committees in the Assembly more generally and will increase the information that Committees, including the Health Committee that I sit on, can get access to.

In the normal budgetary and in-year monitoring round process that occurs, my experience in the Health Committee is that it is extremely difficult to find out the rationale for and the detail on why some bids are made or not made. Even political anoraks would find it difficult to explain or understand that process. Surely, any transparency around the process can only be a good thing. Any attempt to increase the information that Committee members get, to further open up or to make the budgetary process more transparent and to explain why Ministers make certain decisions can only be a good and welcome thing. It is for those reasons that I will support the amendments.

Mr Deputy Speaker (Mr Beggs): I call on the Minister for Finance, Conor Murphy, to respond to the debate on the second group of amendments.

Mr Murphy: Go raibh maith agat, a LeasCheann Comhairle. The amendments in the second group all seek to ensure that Ministers are more effectively accountable to the Assembly. That is a sentiment and principle that I absolutely adhere to and encourage. However, the question, as one of my colleagues asked, is whether this legislation is the way to do that or whether it makes any substantial improvement to it. The effort here is misplaced. Amendment Nos 10 and 11 make some small tweaks to clause 5, which puts the investigation of ministerial standards within the remit of the Assembly Commissioner for Standards. Stewart Dickson, who has left the Chamber, asked questions relating to that. It is a matter for the Executive Office to establish the ministerial panel and to build on the remit that has already been established, and I look forward to it doing that as a matter of urgency.

The investigation function that has been agreed by the Executive provides for the involvement of the Assembly Commissioner for Standards as an ex officio member, if that were required. The ministerial standards panel is intended to be fast, reactive and efficient in dealing with complaints about breaches of the ministerial code of conduct. It is not clear that the Assembly Commissioner for Standards would be able to fulfil the same role, and that concern has been raised by others. The panel for the ministerial code of conduct will be obliged to report publicly. That arrangement is unlike anything else in our neighbouring jurisdictions — reference has been made to the ongoing difficulties in the London Government — but it will rely on the independence of the panel from the heads of government.

Mr Allister, in challenging this, said that it is hand-picked. The reality is that the people on the Finance Committee are hand-picked. Members on the Committee for the Assembly Commissioner for Standards are hand-picked as well. Members on all Committees of the Assembly are hand-picked, and, of course, there is a responsibility on the members who are appointed to report publicly, and that will bring a degree of independence to them and a responsibility to ensure that their work stands up to scrutiny. The place of the Assembly in bringing procedures against a Minister under section 30 of the Northern Ireland Act would remain. In fact, that would be enhanced, because all members will be given a panel members' report on which to act.

Amendment No 21 appears to be wholly unnecessary. The Assembly already has the power to call for witnesses and documents under section 44 of the Northern Ireland Act 1998. I have yet to hear a convincing reason why this new clause is necessary and what it adds to the existing statute. The Assembly has the capability to achieve its ends under section 44.

Amendment No 22 makes minor textual changes to clause 12, but it repeats the error of other provisions in this group by minimising the Assembly's scrutiny role. Rather than recognising the responsibility of the Assembly for reading, digesting and acting on the reports of the Civil Service Commissioners, the Comptroller and Auditor General and the Commissioner for Public Appointments, it asks the First Minister and deputy First Minister to provide the summary report: in other words, to give their filtered view to the Assembly of the reports of all those independent organisations, when the reports are readily available for Members and Committees to scrutinise as they so wish.

Amendment No 23 has been grouped with the other amendments on accountability when it might just as easily be grouped with the next set of amendments, which is concerned with matters of administration. It places into statute the administrative arrangements for Departments to brief their respective Committees. It is unclear exactly what is being proposed by the amendment. I routinely make a statement to the Assembly that sets out the changes to each Department's budget, which have been agreed by the Executive in each monitoring round. That happens well within the seven-day timescale proposed in this amendment. The amendment has the potential to increase significantly the administrative burden on Department of Finance staff without a corresponding increase in the Assembly's ability to scrutinise Executive decisions.

Mr Allister: The Minister has just said that the Assembly Commissioner for Standards is hand-picked.

Mr Murphy: No, I said that the members of it are.

Mr Allister: I will give way if the Minister wants.

Mr Murphy: I said that the members of the Committee on Standards and Privileges are hand-picked. The members of the Finance Committee, the Member included — he happened to hand-pick himself — are hand-picked. He makes it seem almost disparaging that the members of the ministerial panel would be hand-picked. Of course, they have a public scrutiny role that is itself open to scrutiny through the reports, and my argument is that they will provide that in a professional way.

Mr Allister: Let us consider and contrast this. The Commissioner for Standards, who deals with MLAs, is appointed having been identified through a fair and open competition. Contrast that with three hand-picked commissioners. The Assembly Commissioner for Standards has the power to compel documents and witnesses. Contrast that with the three commissioners, who have to rely on the information that the head of Civil Service gives them. The Commissioner for Standards can take evidence on oath, but there is no such provision for the three commissioners. It is a criminal offence not to cooperate with and answer questions from the Commissioner for Standards. There is no such provision for the three commissioners, so there is no comparison. Yet the Minister is contending that, while ordinary MLAs should be subjected to the rigour of such a process, Ministers should be exempt from that and that, rather, they should be treated with, as I will put it, kid gloves by three hand-picked commissioners who have no powers to get to the truth about anything. That is what the Minister is offering the House: second-grade and second-rate accountability for Ministers, as opposed to Rolls Royce accountability for MLAs. That is patently inequitable.

Of course, when you look further at it, you may ask this: if the system that the Minister is proposing is so foolproof and so good, where is it? The greatest challenge to clause 5 would be to have the three commissioners in place so that he could say, "We have delivered. This is redundant and is not needed." For nine or 10 months, there has been no delivery. Is there

going to be legislation to establish those three commissioners? Where is that? Really, the Minister is suggesting and saying to the House, "Even though we, the Ministers, haven't done anything about it, you shouldn't do anything about it and you certainly shouldn't put Ministers under the same scrutiny as MLAs". That is not tenable, and the passage of time has made it even more untenable.

Turning to some of the points that Mr Dickson made, he said that his party would like to get rid of the petition of concern on these issues. So would I. I was minded to table an amendment that would prohibit the petition of concern being used on any Assembly Commission report, but the advice was that the petitions of concern are excepted matters and are outside the competence of the Bill. That is why that amendment is not there.

Mr O'Toole asked whether the commissioner would be properly resourced and who would resource them. The answer is that the Assembly Commission would, because schedule 4 to the 2011 Act is very clear. It says in paragraph 3.1:

> *"The Commission"*

— that is, the Assembly Commission —

> *"shall provide the Commissioner with such administrative and other support, including staff, services and accommodation, as the Commissioner may reasonably require for the purpose of discharging the functions imposed on the Commissioner by this Act."*

If we amend the Act to impose the investigation of Ministers upon the commissioner, it follows that the Assembly Commission will be under the obligation to provide extra support if he needs it. I remind the House that the last commissioner said in his annual report that he thought that that could be done without any stretch on resources, but if he was wrong about that, the provision already exists for it and he does not have to wait on the Executive or anything else, because the obligation is on the Commission.

Paragraph 4 in the schedule states:

> *"The Commissioner may, on such terms as the Commissioner may determine, secure the provision of such goods or services as the Commissioner considers necessary for assisting in the exercise of the Commissioner's functions."*

So, the commissioner is given very strong powers to require resources to deploy services. If the commissioner finds that he needs the assistance of an expert in something, under paragraph 4 of schedule 4, he has the authority to get that. It all can be done, it all should be done and clause 5 is a very important opportunity for the House to demonstrate that there are no protected species and that Ministers are subject to scrutiny. Is that not a good place to be?

Amendment No 10 agreed to.

9.45 pm

Amendment No 11 made: In page 3, line 11, leave out from "means" to end of line 12 and insert "means Section 1 of the Ministerial Code as provided for by Section 28A of the Northern Ireland Act 1998."*— [Mr Allister.]*

Amendment No 12 made: In page 3, line 14, at end insert

"(6A) In Section 27(1) after 'Assembly' insert 'or minister'."*— [Mr Allister.]*

Clause 5, as amended, ordered to stand part of the Bill.

Clause 6 (Records of meetings)

Mr Deputy Speaker (Mr Beggs): We now come to the third group of amendments for debate. With amendment No 13, it will be convenient to debate amendment Nos 14 to 20, 24 and 26 and opposition to clause 7 stand part. It should be noted that amendment No 26 is consequential to amendment No 15. I call Jim Allister to move amendment No 13 and to address the other amendments in the group.

Mr Allister: I beg to move amendment No 13: Leave out clause 6 and insert

"**Records of meetings**

6.A civil servant, other than a special adviser, must make and the department must retain an accurate written record of every internal departmental meeting attended by a minister recording, in particular, those present, date and time, topics discussed, and every decision and action point.".

The following amendments stood on the Marshalled List:

No 14: Leave out clause 8 and insert

"**Presence of civil servants**

8.—(1) A civil servant, other than a special adviser, must be present and take an accurate written record of every meeting held by a minister or special adviser with non-departmental personnel about official business; except for liaison with the minister's political party.

(2) The department must retain the record made pursuant to subsection (1).".— *[Mr Allister.]*

No 15: **New Clause**

After clause 8 insert

"**Record of being lobbied**

8A.—(1) In the event of a minister or special adviser, other than as provided for in section 8, being lobbied, then, the minister or (as the case may be) special adviser must provide at the earliest opportunity a written record to their department of all such lobbying and the department must retain such records.

(2) In this section "being lobbied" means to receive personally a communication, either oral or written, on behalf of the person making the communication or another person or persons, relating to:

(a) the development, adoption or modification of any proposal of the department to make or amend primary or subordinate legislation;

(b) the development, adoption or modification of any other policy of the department;

(c) the making, giving or issuing by the department of, or the taking of any other steps by the department in relation to, —

(i) any contract or other agreement,

(ii) any grant or other financial assistance, or

(iii) any licence or other authorisation; or

(d) the exercise of any other function of the department.

(3) For the purposes of subsection (2), it does not matter whether the communication occurs in or outwith the United Kingdom.

(4) Nothing in this section shall apply to a communication —

(a) made in proceedings of the Northern Ireland Assembly or the Executive Committee, or

(b) arising in the course of liaison with the minister's political party.".— *[Mr Allister.]*

No 16: Leave out clause 9 and insert

"**Use of official systems**

9.—(1) A minister, special adviser or civil servant when communicating on official business by electronic means must not use personal accounts or anything other than devices issued by the department, systems used by the department and departmental email addresses.

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

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

(b) make an accurate record on the departmental system of any verbal communications relating to departmental matters.

(3) It shall be an offence for any minister, special adviser or civil servant to fail to comply with the requirements of subsection (2).

(4) In proceedings in respect of a charge against a person ("A") of the offence under subsection (3), it is a defence for A to show that the course of behaviour was reasonable in the particular circumstances or was in the public interest.

(5) A person is taken to have shown the fact mentioned in subsection (4) if —

(a) evidence adduced is enough to raise an issue as to whether the course of behaviour is as described in subsection (4), and

(b) the prosecution does not prove beyond reasonable doubt that the course of behaviour is not as described in subsection (4).

(6) A person guilty of an offence under this section is liable on conviction

(a) on indictment, to imprisonment for a term not exceeding 2 years;

(b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.".— *[Mr Allister.]*

No 17: In clause 10, page 4, line 10, leave out "21" and insert "28".— *[Mr Allister.]*

No 18: In clause 10, page 4, line 12, leave out "close".— *[Mr Allister.]*

No 19: In clause 10, page 4, line 13, leave out "21" and insert "28".— *[Mr Allister.]*

No 20: Leave out clause 11 and insert

"**Offence of unauthorised disclosure**

11.—(1) Without prejudice to the operation of the Official Secrets Acts 1911-1989 and save in the discharge of a statutory obligation or in the lawful pursuit of official duties, it shall be an offence for any minister, civil servant or special adviser to communicate, directly or indirectly, official information to another for the financial or other improper benefit of any person or third party.

(2) In proceedings in respect of a charge against a person ("A") of the offence under subsection (1), it is a defence for A to show that the course of behaviour was reasonable in the particular circumstances or was in the public interest.

(3) A person is taken to have shown the fact mentioned in subsection (2) if —

(a) evidence adduced is enough to raise an issue as to whether the course of behaviour is as described in subsection (2), and

(b) the prosecution does not prove beyond reasonable doubt that the course of behaviour is not as described in subsection (2).

(4) A person guilty of an offence under this section is liable on conviction

(a) on indictment, to imprisonment for a term not exceeding 2 years;

(b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.".— *[Mr Allister.]*

No 24: In clause 14, page 5, line 10, at end insert

'"family member' has the same meaning as set out in Schedule 1(3) to the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011.".— *[Mr Allister.]*

No 26: In clause 14, page 5, line 10, at end insert

'"The Executive Committee' means the Executive Committee as established by section 20 of the Northern Ireland Act 1998.".— *[Mr Allister.]*

Mr Allister: I want to take a moment to explain the architecture of the Bill at these sections and of the amendments. Clauses 6 to 8 hang together. There is a tripartite structure here, which is anticipated when you read through the amendments to come into place. Clause 6 is to deal with the regular departmental meetings where decisions are taken and the Minister is present. Clause 6, in consequence, requires that a proper note should be kept. Old clause 7, which will now be on foot of amendment No 14, if accepted, deals with scheduled meetings with third parties by the Minister, etc. Again, under amendment No 14, proper note should be taken. Old clause 8 is now restructured through amendment No 15 and recast in terms of lobbying. That is to deal with the situation where Ministers, in respect of their own Department, find themselves lobbied about an issue, probably on an unscheduled and unsolicited basis. If it were a scheduled meeting with an interested party, it would be covered by clause 7, now amendment No 14, but you are talking about a situation unscheduled and unsolicited where a Minister or special adviser are lobbied about a matter. That is what amendment No 15 will now cover.

These are about keeping proper records of all of that. There was an interesting short report from very influential sources at the beginning of this year. Our Public Services Ombudsman, our Audit Office Comptroller and Auditor General and the Information Commissioner's Office (ICO) produced a short little pamphlet called 'Records Matter'. In the foreword to that, they said this:

> *"The importance of good record keeping cannot be overstated. This is because*

records provide evidence of activity. They can help to tell us why a decision was made, who made it and when. They are necessary to create confidence in any decision making process, to promote accountability and transparency, and to enable others to verify what has been done. Good record keeping is also vital for corporate memory."

The report goes on to state —. In fact, that is the essence of it. For the sake of time, I will not read any more from it. It is clear. It is our primary scrutineers — the ombudsman, the Comptroller and Auditor General and the head of ICO regions — who are making it very clear that good record-keeping is critical. That may be obvious, but they are still making it very clear.

We know from RHI, however, how deficient record-keeping was, and why. Let me remind the House of some of the evidence. Andrew Crawford told the inquiry that, in seven years, he never saw minutes of a meeting involving a Minister. We all recall the whistle-blower, Ms Hepper. It emerged in evidence from the whistle-blower that no records had been kept. We also had the infamous evidence of Mr Sterling, who said that a conscious decision had been taken not to keep records for fear of FOI, because, he told us, the major Executive parties did not want matters to be recorded that were discoverable under FOI. On record-keeping, Mr Brimstone told the inquiry:

"That wasn't the way we worked".

We also know from the inquiry report that, whatever guidance there was, it was never followed. I take you to finding 299 in volume 3. It is one of the findings by Lord Justice Coghlin about meetings with Ofgem etc:

"Applicable departmental Private Office Guidance about the minuting of meetings was not followed. In the absence of having been withdrawn or amended, it should have been followed."

There you have it, fellow Members: a culture, as established from those who gave evidence, of patent defiance of the normal expectation that records would be kept. Hence, clause 6 imposes an obligation for the keeping of records. Some might ask why that is needed in legislation and say, "We will do it in codes". Is that like the private office guidance to which Lord Justice Coghlin referred, which required the keeping of notes but none was kept?

The fallibility of codes is beyond dispute. Their public credibility is so shot through that, frankly, it is untenable, if not unconscionable, to say that we can deal with all those things merely through codes without legislation. Codes have demonstrably failed. Why? Because they have no bite. Legislation gives bite. That is why we need to put it in legislation. Will it be a burden? Not to those who do things right. Will it be a burden to those who want to cut corners? Yes, and so it should be. If the protestation is, "We're in a new culture. All is now well. That was the past. This is the now", there is no burden in putting it in legislation. Resistance to putting it in legislation raises this obvious question: what is one afraid of? If notes are to be kept anyway, and if the codes say that they should be kept, where is the burden in putting that in legislation?

It is a public trust issue. Public trust was shot through by RHI. My goodness, I am sure that, many's a night, ordinary citizens sat in their living rooms watching TV reports and shook their head at how things were done. After hearing that notes were deliberately not taken because they might unleash an FOI and that guidance was just ignored, I do not think that too many of those people who sat shaking their head would be satisfied if we said, "Oh, it's OK, because we're going to put it in a code". They want better than that, and they are looking to the House for something better than that. They are looking to the House to put it in legislation. The public trust issue could not be more stark, given what Mr Sterling told the inquiry. How, in light of that, could codes ever suffice? If we now intend to do things right, what do we fear?

In light of some points made to me, amendment No 13 somewhat reduces the ambit of clause 6 by taking out the requirement for noting "ministerial indication of intent". It keeps it tighter. It is about noting:

"every decision and action point."

Of course, there are the natural prerequisites of noting:

"those present, date and time, topics discussed".

I say this to the House: who could object to that? If you object to it, why? What would anyone want to hide by not having a statutory duty? If we had never had RHI, I could understand why people would say to me, "Oh, you're being unnecessarily burdensome and cumbersome, and all that's too much", but we had RHI. I am not asking for anything more in legislation than what we are told is now in the codes. The practical outworking — the work

product required — of putting it in legislation is no greater, so why not do it?

Amendment No 14 deals with third-party meetings with non-departmental staff. I am sure that it is a relatively regular occurrence for a Minister to be asked to meet lobby groups and various others. Such groups will meet the Minister at Stormont, in his office or wherever. What amendment No 14 requires is that:

> *"A civil servant, other than a special adviser, must be present and take an accurate written record",*

where official business is discussed. The only exception to that is the necessary political exception of where the Minister is meeting with his political party. It is not for the House to pry into the representations made to a Minister in his own political group, so there is an exemption for that.

10.00 pm

I move to amendment No 15. I recast that clause considerably to put the focus on lobbying. The definition of "lobbying" I have taken from the ingloriously named legislation in England, the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014. There, "lobbying" is defined, and I have used the same definition. I am saying in amendment No 15:

> *"In the event of a minister or special adviser, other than as provided for in section 8,"* —

that is to say, other than at an organised meeting with a third party —

> *"being lobbied, then, the minister or (as the case may be) special adviser must provide at the earliest opportunity a written record to their department of all such lobbying".*

Deliberately, it does not specify the precise mechanics of that written record, but all such lobbying must be placed on record, and the Department must retain those records.

Just a word about what "lobbying" means. It does not mean Minister Murphy being lobbied about something in the Department for Communities. It restricts the lobbying to his own Department — to any Minister's own Department. It is not a catch-all in respect of all government. In one way, it would be good to have that, but it gets a bit unwieldy. It restricts it to specifics, proposals:

> *"to make or amend primary or subordinate legislation;"*

If someone comes along, and says, "I hope you will be able to make the following change in the law, I'd like that to happen" for whatever reason, or someone coming along, and saying, "A policy needs adopted, a policy needs modified", or someone coming along and wanting to talk, as amendment No 15 lists, about a contract, grant or licence — if you are lobbied on those kernel things or on any other function of the Department, there should be a record retained.

We all know that in respect of RHI there was effective cover-up of lobbying. Meetings were held with Moy Park, for example, at home and abroad, of which no notes or records were kept. That is a matter of record.

Why should there not be a record? Of course there should. Now we are told, "Oh, the codes will take care of that". So, in recent weeks, I tabled this question to every Minister:

> *"to ask the Minister ... what process or mechanism exists within his Department whereby a written record is kept of any lobbying of the Minister or special adviser in relation to departmental functions, policies or proposals."*

I have had no answer from the Executive Office, I have had no answer from the Department for Communities, and I have had a variety of answers from some other Departments. The Department of Agriculture, Environment and Rural Affairs said:

> *"All correspondence received by my Department is logged and recorded appropriately in line with NICS policies and guidance."*

Members will have noted that that was not the question. The question was about lobbying. The answer is:

> *"All correspondence received by my Department is logged".*

I am sure that it is, but that was not the question. Does one infer from that answer that there is no process, even yet, for the logging of lobbying?

The Departments of Education and Health gave me an identical answer:

"My Department holds records of all correspondence, lobbying or otherwise using the HP Records Management System."

Health and Education claim that they have such records. The Minister for the Economy gave this answer:

"Information relating to all Ministerial correspondence and invitations are retained in the formal NICS electronic records management system known as HPRM, in line with NICS Records Management policy and GDPR obligations.

Details of all of the Minister's meetings, including those also attended by the Special :I, with external organisations and individuals are also collated and provided to the Department of Finance for publication quarterly. The Department also holds a record of meetings attended solely by the Special Adviser."

I remind you that the question was this: "What process or mechanism exists whereby a written record is kept of any lobbying?". I was not asking about invitations or ministerial correspondence, but that is what I was told.

This is what the Department of Finance said:

"The Department has systems and processes in place to maintain the record keeping requirements of the Ministerial and Special Adviser codes of conduct. All written communication received by the Ministerial Private Office is recorded in the Knowledge Network (KN) System.

Officials are present at all meetings concerning departmental or executive business and records of those meetings are recorded and stored on the NICS record management system, HPRM.

In accordance with the requirements of the Ministerial and Special Adviser Codes of Conduct, where the Minister or Special Adviser meets external organisations or individuals and finds themselves discussing official business without an official present they are required to advise the Private Office."

There is a new dimension. When they answer the question, we have other Departments that tell us that things are logged on the HP records management system. However, we have the Department of Finance telling us that, if someone is lobbied, you are required to advise the private office. What I draw from that is that, in truth, there is no system; otherwise, you would not have all those disparate answers, which are telling us that they, each to their own, do different things, if they do anything.

That is why I recommend amendment No 15 to the House: make it abundantly clear that, if you are lobbied, a record of that might be kept. That might well be the Minister coming into the private office on Monday morning and saying, "At the golf club dinner on Saturday night, I was lobbied about our upcoming energy policy in order to make sure that there is more generosity for wind turbines". As long as that is recorded in the private office and there is a record, I am not prescribing the specifics. It is really for the Department of Finance, which has all these systems with HP, KN and everything else, to give a directive as to where it should be recorded. However, at the minute, there does not seem to be a system that is consistently in place. Again, the importance of that is that the RHI inquiry threw up the evident deficiency in recording and the concealment of lobbying. That is not good for transparency or openness, nor is it a healthy situation in government. I recommend to the House that there should be a clear and consistent requirement across that. That is why we need the statutory duty. It seems that, in other places, the party most opposed to this idea — Sinn Féin — thinks that it is quite a good idea, because, tonight or tomorrow, as we heard, a Sinn Féin member is introducing a private Member's Bill on lobbying in the Dáil. Well, if it is good enough for the Dáil, Sinn Féin might think that it is good enough for here.

Mr O'Dowd: Will the Member give way?

Mr Murphy: Will the Member give way?

Mr Allister: Yes, I will give way to whichever one.

Mr O'Dowd: Sorry, I will give way to the Minister.

Mr Murphy: I will let my party political colleague deal with the party political point. With regard to lobbying — as a matter of interest, I speak as a former Regional Development Minister, a post currently held by Mr O'Toole's colleague, the Minister for Infrastructure — does the Member envisage that, if Minister Mallon were walking to the shops in north Belfast and was stopped and asked to get a street light fixed, she is obliged to record that? That is the exercise of "any other function" of her Department. If she were

asked to get a pothole fixed, is she obliged to do that and to record it? That is lobbying, as far as I understand it and as the Member explained it to us. The lobbying that he envisages and identifies as a flaw was exposed by RHI. However, can he see where this exercise on legislation takes us and the ridiculous nature of "any function" of a Minister's Department? If, for example, a Minister were asked to get a street light or pothole fixed, that Minister would now be obliged in law to report it to her Department.

Mr Allister: The Minister is giving examples in extremis, but, if it helps, I will not die over proposed clause 8A(2)(d). If, at Further Consideration Stage, you want to remove the reference to the "exercise of any other function", I am amenable to that. The key things are the making of policy, the making of legislation, the granting of benefits, contracts, licences and all of that. If it helps Sinn Féin to support the amendment, I am happy to undertake that at Further Consideration Stage, I will move an amendment to remove the reference to:

"any other function of the department."

I do not want to diminish this to a point at which a Minister who is asked about a street light has to record that. You would like to think that a Minister would do something about it, but it is not necessary to record it. I am content to remove that difficulty for Sinn Féin by agreeing to an amendment to take out the line that appears at proposed clause 8A(2)(d). If that solves the issue and gets Sinn Féin on board, that would be a plus. I am happy to do that. However, the fundamentals here need to be addressed.

Frankly, colleagues, it is an embarrassment that so much happened with RHI. If those who had cause to be embarrassed the most have the maturity to face up to that, why are others dragging their feet? It is not just about the politics of the House; it is about the public looking to see whether we have made any credible changes. Have we put anything in place that will ensure that things like this will not happen again? We owe it to the public to do that. We heard some ridiculous lines today that this is all about me trying to undermine the structures of government. Think about it: "Transparency and openness will undermine the structures of government". I do not like these structures of government — that is no secret — but I live in this place and want things to be as good as they can be, within the limitations of those structures, for ordinary people. I have a vested interest in making things better, wholly without prejudice to my view of the institutions. This is not about a Machiavellian way to undermine the institutions; indeed, the tempting and easy thing for me, given my political standpoint, would be to sit back and watch the Executive wallow in the disasters of their own making. That would be tempting and easy, but it is not the course that I choose to take. There is no political agenda. I said at the start of the debate that this is not about green or orange. It is not about being for or against the Executive or the Belfast Agreement. It is about trying to get better and more credible working functions in government. That is not too much to ask.

10.15 pm

I move on to clauses 9 and 11. The House will be aware of the embarrassments caused by how some spads conducted themselves. The House will remember the evidence in the RHI inquiry that, by dint of using private email accounts etc, information was hidden; indeed, only in the latter stages of the RHI inquiry did some of it come to light. The motivation was pretty obvious: if things were not on the official system, they were never going to be discovered in a departmental search and were never going to be subject to FOI. Thus, the thrust of clause 9, although I have recast its wording, is to ensure that a process that facilitated hiding information is pulled up short. I recast it in a way that means that the mischief that it now addresses is the hiding of information by failure to put it on to the official system. From the evidence given, I was readily persuaded that there are circumstances where, with the best will in the world, Ministers, spads and civil servants might have no option but to use their private systems by virtue of where they are etc. That is not a problem, provided that they put it on to the official system. That is what amendment No 16 now focuses on. It simply says:

"If out of necessity it is not possible to comply with the requirements of subsection (1)".

In other words, subsection (1) is the expectation that you use official systems. The amendment states:

"If out of necessity it is not possible ... the minister ... special adviser or civil servant must within 48 hours, or as soon thereafter as reasonably practicable" —

we are not being overprescriptive —

"(a) copy to the departmental system any written material generated during the use of non-departmental devices or systems; and (b) make an accurate record on the departmental system of any verbal communications relating to departmental matters."

Again, that is to make sure that that which hitherto was being hidden cannot continue to be hidden. The Minister will tell us, "Oh, it's all now in the codes. Codes require you to do all this". I will say it again: the codes are a broken reed. They neither deliver on past performance nor buy the street cred that is required. Of course, where this offence is concerned, lest some hapless civil servant find himself inappropriately on the wrong side of the law, there is the reasonable excuse defence and the public interest defence; indeed, I go further in the amendment. Of course, you can never be an accused, let us remember, unless there is a prosecution brought that passes the Public Prosecution Service tests of "reasonable prospect of conviction" and being "in the public interest" — being "in the public interest" might be very germane to a prosecution such as this — but, if it gets past that and there is a prosecution, I have cast this in such a way that, once the accused raises the reasonable excuse or public interest defences, with some evidence, it is for the prosecution to disprove that beyond all reasonable doubt. It is hedged about with many protections, so that people should not unwittingly fall victim to it.

The penalties are as specified. There was an issue from the Department of Justice on whether the penalties were proportionate. After I reduced the penalty from five years to two in clause 11 — I will come to that shortly — I received a letter from the permanent secretary of the Department dated 16 October saying that the Department of Justice would consider the revised criminal sanctions in amended clauses 9 and 11 to be consistent and proportionate. That was the point that the Human Rights Commission raised. The Department of Justice raised it, and it appears now to be properly satisfied about that matter. That is clause 9.

I will return to amendment Nos 17 to 19 in a moment. However, because we are talking about the criminal offences, I will go to clause 11, which is about creating a criminal offence. To that I have proposed amendment No 20, which begins:

"Without prejudice to the operation of the Official Secrets Acts",

which is to say that there may be issues about national security. They fall under that; that is not what this is dealing with. The amendment continues:

" and save in the discharge of a statutory obligation",

which might be fulfilling an FOI request,

"or in the lawful pursuit of official duties",

which might be a spad briefing the press on the instructions of his Minister, a lawful duty. Therefore, save in those situations:

"it shall be an offence for any minister, civil servant or special adviser to communicate, directly or indirectly, official information to another for the financial or other improper benefit of any person or third party."

The word "improper" is used on the advice of the Northern Ireland Human Rights Commission. Therefore, if, for the purpose of "financial or other improper benefit", someone discloses official information, it becomes a criminal offence. However, again, there are the two critical defences of the public interest, which could be for a whistle-blower, or reasonable behaviour. Again, if those are raised, the prosecution has to disprove them.

Why is that offence necessary? We all know the sort of things that happened in RHI. Let me remind you of some of them. One spad, Mr Crawford, admitted that, in 2013 and 2015, he gave documents to family members. He admitted that he knew that it was confidential information. He gave information to his brother-in-law. All of that was happening at the time when the tariffs were going to change. He admitted that he gave confidential information to Gareth Robinson, son of the then First Minister, for a third party whom he named as a Mr Green. He gave a privileged legal document to Gareth Robinson. A civil servant, Mr Wightman, acknowledged that he gave documents to Moy Park about the tariff reduction. Of course, Mr Simon Hamilton and Mr John Robinson leaked emails from their own Department back to their permanent secretary and to the 'News Letter' to lay a false trail and create a diversion. Were those not things done for the improper benefit of third parties? I suggest that they were, yet I have in my possession a letter from the Chief Constable saying that no investigations are arising out of RHI of any of those people. Does that not tell the House that there is a gaping hole in our criminal law that we need to plug? We need to

plug it with an offence of unauthorised disclosure, and that is why amendment No 20 sets out in the terms that it does that proposition. I recommend that amendment to the House. It is essential and necessary.

We will be told that codes can cover that. Let me remind the House that the old codes required integrity, honesty and confidentiality. Did they work? Patently not. With that patent failure, why would we put our trust in codes? The real importance of this is this: if codes were not a deterrent for spads who had in their terms and conditions references to integrity, honesty and confidentiality, why would they be a deterrent in the future? That is where a criminal sanction comes into its own. A criminal sanction speaks deterrence and causes those minded to do things to stop and think, because of the knowledge that, if they do them, they are breaking the law and could go to prison. That is a far greater deterrent and compulsion than thinking, "If I break this code, so what?". This is the real essence. Codes were not good enough in the past, and I do not believe that they will be good enough in the future. If they are good enough for the House, clauses 9 and 11 will not be supported; if we have learnt the lessons, the House will support the clauses.

I will go back to clause 10, which deals with the establishment of a register of interests for Ministers and spads. Again, we are told that the new code is adequate: it is not.

There is no register of interests in the new code. There is only a declaration of interests, which is unpublished. That is not good enough. If a register of interests is good enough for MLAs, it is good enough for Ministers and spads. That is why clause 10 puts an obligation on the Department of Finance to be the recipient of declarations and to publish them in a routine fashion.

10.30 pm

Amendment Nos 17 and 19 are merely to align the time frames with what is in the code, changing them in the Bill from 21 days to 28 days, so that there is continuity. I think that that is sensible. Amendment No 18, if it recommends itself to the House, is to better define the relationship of family members, and it draws on a definition already in Assembly legislation.

That is my run-through the amendments in this group. Clauses 6, 7 and 8, and the associated amendments, deal with record-keeping, and clauses 9 and 11 deal with the serious issue of providing real deterrents for would-be wrongdoers. Clause 10 deals with the register of interests.

Dr Aiken: Before I start, I pass on to my friend from South Belfast my regards to his wife and wish her very many happy birthdays. Apologies for keeping you here.

Mr O'Toole: I was not complaining. It is my job. Thank you.

Dr Aiken: It is above and beyond.

Ladies and gentlemen, the Bill's sponsor asked that the Committee consider clauses 6 to 8 together as they are a suite of provisions dealing with meetings involving Ministers and/or special advisers. Clause 6 deals with internal meetings, clause 7 with external and unscheduled meetings, and clause 8 with planned meetings with non-departmental personnel.

The Committee sought the views of the Department of Finance on the provisions of clause 6 as drafted. The Department highlighted that, in light of the code of ethics, which places a duty on civil servants to keep accurate records, it considers that the clause "appears to be unnecessarily specific." The Committee sought clarification on what the Department meant by that and on how the code of ethics has been revised to address the issue of maintaining accurate records. The Department responded, less than helpfully, that it does not consider it appropriate to legislate in that area.

The Bill sponsor informed the Committee that amendment No 13 reduces the burden of what must be recorded and that the amendment is in response to points made by the Department of Finance. Perhaps in his remarks the Minister can clarify whether the amendment also addresses the Department’s concern that clause 6, as originally drafted, appeared to be "unnecessarily specific".

The Committee noted the intention of the Bill sponsor to oppose the question that clause 11 stand part of the Bill.

Mr Allister: Clause 7.

Dr Aiken: The Committee noted the intention of the Bill sponsor to oppose the question that clause 7 stand part of the Bill.

Mr Allister: You said clause 11.

Dr Aiken: Did I? My apologies.

No objections were voiced in the Committee to that proposal. However, as the Committee had not had the opportunity to consider the proposal in detail, or the Bill sponsor's related proposal to introduce clause 8A, members were content to support clause 7 as drafted.

The Bill sponsor informed the Committee that the intention of amendment No 14 is to make clause 8 more compatible with terms used elsewhere in the Bill. The Committee was content with the explanation and supported the amendment.

Amendment No 15, which proposes the introduction of clause 8A, is proposed by the Bill sponsor in conjunction with his opposition to clause 7 stand part. The Committee considered clause 8A only during its deliberations and received no formal evidence in relation to the clause. As was the case with clause 11A, given the trying time constraints towards the end of the Committee Stage, the Committee was unable to take evidence on clause 8A. For that reason, the Committee was only able to note the amendment.

Mr Deputy Speaker, I would like to address amendment Nos 16 and 20 together. These amendments relate to clauses 9 and 11, both of which propose the introduction of criminal offences and both of which were opposed by the Committee. The Committee devoted considerable time to taking evidence in relation to these two clauses and, indeed, a considerable part of the Committee report is devoted to the evidence received in relation to clauses 9 and 11. I cannot, however, enlighten the House on the reasons why the Committee opposed these clauses, as the opposition only became apparent at the last minute during the formal clause-by-clause decision-making stage.

The Committee had concerns in relation to the provisions in clause 9. The Bill's sponsor informed the Committee that, in bringing clause 9, the intention was to have official records to discourage people from hiding information in the event that actions may be investigated.

The Committee was concerned about the proposed requirement to always use departmental systems and email addresses and the potential for this requirement to impede good government. It was put to the Bill's sponsor that officials, acting in the interests of the Minister and the Department outside of these parameters, would have to do so in the knowledge that they would have to construct a reasonable-excuse defence. The Bill's sponsor subsequently indicated his willingness to consider an amendment to clause 9 in relation to the construction of a reasonable excuse where unavailability of official systems may impede good government. This provision is included in amendment No 16.

The Department of Finance expressed concerns that, in its view, no electronic communication is likely to take place on wholly departmentally controlled or departmentally owned systems. The Department of Finance view was that clause 9 could have the effect of potentially criminalising considerably more electronic communications by Ministers and civil servants than was intended by the legislation.

The Committee was cognisant of the fact that it may not always be possible for a Minister, civil servant or special adviser to access official systems and there could be occasions when the use of non-official systems may be required. There were concerns that, as originally drafted, clause 9 made it an offence for a Minister, civil servant or special adviser, when they were on official business, to use personal accounts or anything other than departmental systems. At an early stage, the Bill's sponsor informed the Committee of his intention to bring an amendment to change the proposed offence from being the use of non-official systems and process to the failure to record the use of non-official systems and processes back into the official system within a reasonable period of time.

The Committee also spent considerable time, during its evidence sessions on both clause 9 and clause 11, in consideration of the need for and proportionality of the criminal offences proposed in these clauses.

In relation to clause 9, the Committee heard evidence from the Northern Ireland Human Rights Commission which recommended giving consideration to:

> *"a specific disciplinary offence which falls short of criminal liability within Ministerial, Civil Service and Special Adviser codes of practice."*

The Committee also considered evidence from the Department of Justice regarding the proportionality of sentence. The Department of Justice suggested that:

> *"At most, if the Committee is satisfied that an offence and penalty should remain a part of any Bill going forward, the Department would consider a maximum penalty*

commensurate with a summary only conviction to be proportionate."

The Committee focused on two specific areas during its deliberations on clause 9. First, members discussed the changes proposed through the Bill's sponsor's proposed amendment No 16 and, secondly, the matter of criminal offences. Members generally welcomed the proposed amendment in that it would change the focus of the clause from the use of non-official systems per se to the failure to record the use of non-official systems within a reasonable time period.

There was discussion within the Committee on the issue of the need for criminal offences. Concern was expressed both about the principle of including a criminal offence in the clause and in relation to the two-year maximum tariff. Members discussed the value of having a hybrid offence, as provided for under the clause. Consideration was also given to the need to accept the offer from the Department of Justice to consider any revisions to the clause in relation to the proportionality of the proposed sentences. At no time were any proposals or suggestions brought forward or considered to amend clause 9 to remove or amend the proposed sanctions.

When it came to the Committee's formal clause-by-clause decision, the Committee supported amendment No 16, which would introduce a reasonable excuse defence and make the offence the failure to record the use of non-official systems rather than the actual use itself. The Committee was not, however, content to support the clause as amended. The Committee divided and agreed, by a majority of one, not to support the clause.

Similarly, during its deliberations on clause 11 and amendment No 20, the Committee considered the issue of the need for criminal offences and the extent of the sanctions proposed in both the clause as drafted and the clause as amended. There was discussion within the Committee, and concern was expressed about the principle of including a criminal offence in the clause. There was discussion in relation to the two-year maximum tariff proposed by the Bill sponsor's amendment and on whether it would be preferable to return to the proposed five-year maximum tariff proposed in the clause as drafted. However, there were no proposals or suggestions brought forward or considered to amend clause 9 to remove or further reduce the proposed sanctions. A number of members indicated support for the aspect of the proposed amendment designed to address the issue of legitimate press briefings by special advisers and the provision of information under Freedom of Information Act requirements. When it came to the formal clause-by-clause decision, the Committee divided and agreed, by a majority of one, not to support the amendment and not to support the clause as drafted.

In relation to Clause 10, the Committee was content with the Bill sponsor's explanation that amendment Nos 17 and 19 are proposed to secure alignment with the code of conduct provision in respect of the time period within which all Ministers and special advisers must inform the permanent secretary of the Department of Finance of their registrable interests and of any changes to those registrable interests. The Committee was also content with amendment No 18, which is a refinement of the definition of "family members" in respect of the registration of interests. Finally, no issues were raised during Committee deliberations in relation to Clause 14 or amendment Nos 24 and 26. The Committee is content with these amendments.

Mr Frew: As this will probably be the last time that I speak, I take this opportunity to lay on record my thanks to the Committee Chairperson for his thorough work in relaying to the House the views and work of the Committee. It was very adequately done, and I thank him for that. It would be remiss of me if I did not thank the Committee Clerk and all his backroom staff for the work that they have done in supporting Committee members in their deliberations on the Bill.

I also take the opportunity — if I have not done it already, but I think that I have — to thank the Bill sponsor for his work, first of all, in producing a Bill. I encourage every single Member of the House to consider a private Member's Bill. It is the way to go. All sorts of weird and wonderful laws can be created with private Member's Bills. I encourage all Members to consider introducing one, as I have in the past. We are here as legislators, but it gives you a real buzz when you can change law and bring in law that will make a positive difference to people's lives. I encourage all Members who have not already done so to attempt it.

The Bill sponsor and I are from different parties. We are usually at loggerheads on all sorts of issues, policies and everything else. Of course, it is not only that; there is also the dynamic that we are constituency rivals. At election time, there is no quarter given — absolutely not — and I would not expect there to be. In a constituency setting, we always work on cases together. There are cases where people come

to all five MLAs and we all work together for the common interest and good of our people. However, we have been placed on the Finance Committee together. I thoroughly enjoy my time on the Finance Committee, and I —.

Mr Deputy Speaker (Mr Beggs): I ask the Member to address the amendments before us.

Mr Frew: Yes, I will. My point, Mr Deputy Speaker, is that, having engaged with the Bill's sponsor in Committee, the great potential that could be churned from the Bill was clear to see.

10.45 pm

Hansard will not be able to record this, but you have only to look at this section in my copy of the Bill to see the black and red type, with the red type showing the amendments that the Bill's sponsor made to his Bill after listening to Committee members. That can only be a good thing and can only be welcomed. I appreciate the Member listening to Committee members when he could have turned his face away, just as I could have turned my face away from some of the things that he wanted to do and his motives.

I genuinely believe that the Bill's sponsor wants to make good legislation. It is a matter of personal pride, but it is also to make this place better. Why would you not support, look at, gauge, listen to, communicate and engage with the Member on that? The party opposite has missed a massive opportunity by not engaging with the Bill's sponsor or interacting with the Committee on changes that it could have brought to the Bill with amendments and new clauses on things that it might have seen as being needed or fit for purpose.

Mr O'Dowd: Will the Member give way?

Mr Frew: I will.

Mr O'Dowd: I am at a loss as to know what the Member's contribution has to do with the amendments; he is talking about amendments that could have happened. I alert the Member to this: I will divide the House on six of the clauses tonight. That will be at least one hour of voting that you have to look forward to after your contribution.

Mr Deputy Speaker (Mr Beggs): I encourage the Member to reference the amendments that we are here to debate.

Mr Frew: Yes, Mr Deputy Speaker. Threats have not worked in the past, and they will not work now. *[Interruption.]* We are here to do a job; let us do it mightily. *[Interruption.]*

Mr Deputy Speaker (Mr Beggs): Order.

Mr Frew: I will move on to the clauses and amendments. The Bill's sponsor is right: clause 6 — it was clause 7 — clause 8 and clause 8A is a triumvirate of clauses. They very much tidy up the clauses and the Bill and have been tabled because of our concerns, requests and everything else. In amendment No 13, the Member proposes to change the wording of clause 6 from:

> *"every meeting attended by a minister in departmental service"*

to:

> *"every internal departmental meeting attended by a minister".*

That is to be applauded. What we do not want — it was a scenario that the Minister painted — is to have an unworkable situation in which Ministers, spads and civil servants feel as if they are hamstrung and tightened and in which they are frightened or scared to move. They are real people in real-life situations. They may sometimes be criticised for being in the Stormont or Executive bubble, but they are real people with real lives and they need to get out and about, and anything that would make them hamstrung should not be allowed.

Amendment No 14 deals with the presence of civil servants and refers to "non-departmental personnel". I thank the Member for putting in place an exception for:

> *"liaison with the minister's political party".*

I requested that of him and he listened. That is a credit to him and an improvement to the Bill.

That brings me to new clause 8A, which is proposed in the Bill sponsor's massive amendment No 15. That creates a new clause that deals with keeping records of being lobbied. Of course, that will hopefully replace the former clause 7, which dealt with records of contacts. We will vote on that. I heard what the Bill's sponsor said about the Minister's query and concern about requests over every pothole or street light being recorded, but — thank you, Mr Chairperson — as an MLA, if I were walking through Tesco and a constituent asked me about a pothole, if I did not write it down, it

would not be done, because my mind would be on Jaffa Cakes, Frosties and everything else. My mind would not be on the pothole, so I would have to write it down. What is the problem with having logged it already in real time, either on my phone or on a notebook that I carry with me for constituency issues? What would be wrong with pulling a leaf out of that notebook and handing it to the private office, even if it is about a mundane thing like a pothole or a street light? Do you know something? In real life, that can annoy people to the highest degree. I would rather see that than see nothing recorded on lobbying, because that is the scale that we have tipped. That is through the history of what we have learnt from the inquiry, and it is what we are trying to guard against.

Mr Wells: Will the Member give way?

Mr Frew: Yes, I will give way.

Mr Wells: Mr Allister was very generous in his contribution on amendment No 15, because he offered the Members from Sinn Féin a compromise and said that he was minded to drop new clause 8A(2)(d), which states:

> *"the exercise of any other function of the department."*

Mr Allister, being his very reasonable self, was throwing out an olive branch to the Members on the opposite Benches. However, what I did not hear from them was their response to that offer. It would help the House enormously if they could inform us whether that is sufficient to get them on board with amendment No 15, which is new clause 8A, and that suggestion that not every pothole —. I think that that is a balanced argument. We all walk through Tesco — other supermarkets are available — and we are lobbied constantly on minor issues. That happens all the time. Like Mr Frew, if it was not for me having the oldest mobile phone in Northern Ireland with a little Dictaphone in it — it will be 21 years old this week — and, say, Mrs Smith or Mrs Jones wanted their pothole fixed, it would be in one ear and out the other. Therefore, that is a balanced argument.

Mr Murphy and Mr O'Dowd, two of the big beasts in the Sinn Féin jungle, are here this evening. What is their view on what seems an eminently reasonable suggestion from Mr Allister? It is no good doing what their three Committee members did. They sat for day after day and said, "Not an inch. No surrender. We are not having any of the Bill." In fact, Mr McHugh voted and led his team to vote against the short title of the Bill, something that I have never seen in 26 years in this Building. You just do not do that. Are they going to accept the olive branch offered by Mr Allister?

Mr Frew: I thank the Member for his intervention. I am happy to give way to an intervention from any Member because that is good dialogue and open debate, and I encourage that.

On amendment No 15, which would introduce new clause 8A, I will give the Bill's sponsor credit because, again, he listened and added the liaison with the Minister's political party. There has to be space for debate and policy development in most of these things. That should give comfort to the party on the opposite Benches about party policy development and party political activity.

All the proposed amendments to the clauses that we have gone through — those are clauses 6, 8 and new clause 8A — offer protection from being wrongly accused of something, being somewhere, saying something or committing to something that you did not do. We all need to be protected from that from time to time. There will be times when people will be cunning and will try to entrap you just because of the job and the position that you have. All sorts of dilemmas could creep up with that, so there has to be a certain degree of protection. Recording things offers you a level of protection.

I have held office in various community things and organisations throughout my life, and if, for example, I was in a treasurer's post and thought that I was £1 out in the accounts at the end of the year, I would be horrified. I would want to keep a record of everything — I mean every expenditure and income — to ensure that I was correct. I would have to do that all year round in order to make sure that I had the confidence to know that I could truthfully tell or read a report out to a Committee or organisation and that I would be thorough, truthful and accurate. Surely the record-keeping of a Minister, a Department, a spad or an official is incredibly important. I have no problems and no issue supporting the amendments.

I then come to the offences that are created. Again, the Bill sponsor listened, because he has completely changed clause 9, where it would have been an offence even if you had made a mistake and emailed something to a private account. I know that Ministers should have their own business phones, apparatus or laptops, but in my private phone here, I have two accounts: my MLA account and my personal account. There have been many times

when I have formulated an email, have hit "send" and have then realised that I have sent it from the wrong email address. It is easy to do, and it should not be a crime. The easiest thing to do is to then forward that on to your official email account so that your staff can pick it up. What would be wrong if a spad, Minister or permanent secretary had to send, or sent by mistake, an email from their personal account and then, having realised they had made that mistake — a genuine mistake — forwarded that on to their official email account? That is it logged, because you have got it through the system. It is as simple as that. You have to ask the question: why would you not then log, register or forward that email? Why would it not be reasonable to expect that official, Minister or spad to do that? That is where doubt creeps in and where transparency needs to take over. Again, it is as much about protection for that official, that Minister or that spad as anything else, and it is so that things can be retrievable and so that information can be retrieved and the public can get access to it. It is as simple and as plain as that.

The Member has also put a time limit on that, which is:

> *"48 hours, or as soon thereafter as reasonably practicable".*

You can see that, in the formation of amendment No 16, Mr Allister has given the person every opportunity to correct the wrong. I think it was Mr Jim Wells who said earlier that "reasonable" and "Jim Allister" did not always go line to line in the same sentence, but let us give credit where credit is due. It is reasonable what the Bill sponsor has produced here, and, again, I support it, because he has also added in a defence of public interest. Again, I support that.

Clause 10 is "Register of interests", and no one should be against a register of interests. It is clear that we are in a privileged position as MLAs. We have a tough job and we are servants to the people, but we also have privileges and access to things and to powerful people such as Ministers, permanent secretaries and all of that, so it is right that we have a public register of interests. Why should that not also apply to a Minister or a spad? To me, that is just common sense and adds to the transparency and accountability of government.

I will move on to the other offence that is created. It is completely and utterly improper for a:

> *"minister, civil servant or special adviser to communicate, directly or indirectly, official information to another for the financial or other improper benefit of any person or third party."*

There is absolutely no leeway there. It is wrong to do that for improper benefit of any person or third party, and there needs to be a deterrent. It could be that you have completely skewed a contract to favour one company over the other. That is not fair and it should not happen, so I welcome this amendment to clause 11. Again, the Bill sponsor has listened, because he has completely changed this. He has also listened to other Members who were concerned and worried about the level of tariff, and he has reduced that from five years to two years, which I think is proportionate. Again, I will say that I do not want to see anybody convicted of any of these offences.

There is no need for that to happen, and I hope that nobody falls foul of them. Why should they? This should be a standard that is set. Everybody should know the parameters and abide by the standards that the Assembly sets. They are not unreasonable standards or draconian standards but, in many ways, common sense.

11.00 pm

I support the offences that are created in the Bill. They will add to the deterrent and, as the Bill sponsor rightly said, make people think twice about what they do in this place. There will be times when there is pressure on. There will be times when the press are hounding people for a policy development piece or the direction that a Minister has taken or that a Department is going in. That will lead to pressure from the press and MLAs and rightly so, because we must ensure that this system of democracy is as robust and transparent as possible. Do you know what? Democracy is fragile. Surely, we in the House know that, having been out of this place for three years, and for what? Let us make it better. Let us improve on what we already know and bring confidence back to the House and to all of our people. This is not about orange and green but about good government. Let us embrace it, take it on and improve it. This is the first step on a long road of reform that the Assembly must take and that the Executive must heed for the betterment of our people and our children and for their prosperity.

Mr Deputy Speaker (Mr Beggs): I call Philip McGuigan.

Mr McGuigan: Go raibh maith agat, a LeasCheann Comhairle. You called me while I was googling "opposite of the big beast" so that I would not be offended if I were interrupted by Jim Wells. Anyway, I stand, as a meek kitten, to make my contribution. Tá lá fada agus díospóireacht fhada againn inniu. Tá mé tuirseach anois, agus, mar sin de, beidh m'óráid gairid. It has been a long day and a long debate. There have been some long contributions, and, at this stage I am tired and wary of the promise from my party colleague, so I will try to keep my contribution short.

I am not exaggerating when I say that I have heard little in the debate that has been anything other than predictable. A lot of the subject matter discussed and debated, as the Minister pointed out, is based on a different period — one that led to RHI — and not on the situation as it is now. As colleagues of mine have said, the Bill is not about good governance or improving the functioning of government, as its title benignly suggests. Mr Wells pointed out that we voted against the short title in Committee and rightly so, because, although it is an innocent-sounding title, behind it lies an intent to undermine the functioning of government in what is an already extremely difficult situation, given the challenges of mandatory coalition. The Bill is about undermining the Executive and the Assembly and making it more difficult to deliver for people. Am I surprised that that is the approach from Mr Allister? No. Despite the claims that the Bill is about better government, I am not naive enough to believe that the sponsor of the Bill, Mr Allister, has, to keep the biblical quotations from earlier going, had a road to Damascus epiphany. I do not think that he wants to see our Executive working better, and I do not believe that he is motivated by a new love of power-sharing.

Mr Allister's contribution in this institution is based on his relentless negativity about it. He is unapologetic in his opposition to the Executive, in his opposition to power-sharing and in his efforts to undermine the Good Friday Agreement and the peace process that built that historic agreement. He is unremitting in his crusade to turn back the tide of history and reassert the glory days of discrimination, sectarian domination and unionist one-party rule in this floundering political entity, itself based on a gerrymandered partition of the island.

Of course, all of this is wishful thinking. It is a fantasy that only Mr Allister and a few increasingly delusional followers and fellow travellers indulge themselves in. Unfortunately, having listened to some of the contributions today, it is clear that there are a few of those fellow travellers in this House, Members who have waxed long and lyrical about the faults of the Executive. Indeed, some had the joint position of First Minister.

Some of those Members who spoke with feigned indignation are blind to the reality that the RHI inquiry was necessitated by the actions of their own Ministers and special advisers, and the only serious wrongdoing identified by that inquiry was on the part of their party Members, whether Ministers or advisers.

I am not sure that this Bill will save New York from another late-night rendition of 'Breakfast at Tiffany's', although, if it did, it might give some purpose to this otherwise unnecessary and vexatious piece of legislation. The very sensible and necessary recommendations of the RHI inquiry are being implemented in full and in a way that Judge Coghlin suggested. The proposer of the Bill is rubbishing the reform recommendations and the new code of conduct before they have been tested and, as I said earlier, on the basis that the old code was ignored by one party in the Chamber.

The third group —

Mr Wells: Will the Member give way?

Mr McGuigan: Go ahead.

Mr Wells: The Member knows fully that it was not just one party. His party's super-spad, Mr Aidan McAteer, in Connolly House, had total control over the properly appointed spads from his party. It is clear that Justice Coghlin produced evidence that the Member's party was not lily-white in this matter. How does he explain and justify what Mr McAteer was up to?

Mr McGuigan: I watched with close interest the proceedings of the RHI inquiry and have read the report, and, like many members of the public, I think that it is clear where the responsibility and blame lies for RHI, like Red Sky and all the other scandals that have been mentioned here today.

In the third group of amendments, clauses 9 and 11 would create two new criminal offences. Clause 9 would make it a criminal offence for a Minister or special adviser to conduct government business on non-governmental systems, such as personal email or phone. Such an offence in the Bill would warrant a criminal conviction of up to two years in jail. Clause 11 would make it —.

Mr Allister: Will the Member give way?

Mr McGuigan: Go ahead.

Mr Allister: Perhaps the Member should read the amendments because he would then know that that is not the proposition.

Mr McGuigan: Clause 11 would make it an offence for a Minister or special adviser to pass confidential government information to non-governmental sources. Such an offence would warrant a criminal conviction.

There are two major issues with the Bill. The first is the severe risk, which has already been pointed out, that would result from entirely reasonable actions, which this legislation would render unlawful and open to criminal conviction: for example, using a borrowed phone, laptop or printer to conduct urgent business outside office hours. Those involved in government will know that, often, business is not confined to convenient office hours. I say that as we sit here at 11.00 pm.

Of course, genuine mistakes are easily made with ever-developing and changing technology. Ministers and advisers would be under constant threat of criminal charges for trying to do their jobs effectively in pressurised situations when they should be focused on the job in hand and not worrying about some minor, but, in the context of this Bill, criminal, error.

These are not abstract or outlandish possibilities. The Human Rights Commission raised serious concerns about them when it gave evidence at Committee Stage, and others stressed in their evidence the importance of proportionality. The proposed clause or amendment does not address the problems of proportionality, and it was clear, in the commission's view, that creating a specific set of criminal offences was neither necessary nor proportionate.

The offences and accompanying punishment are entirely unnecessary, disproportionate and betray the real intent of the Bill: to criminalise those who operate our power-sharing arrangements, whether Ministers, advisers or civil servants. Those clauses would make the functioning of government, the difficult job of the power-sharing Executive, even more challenging. That is the very point and purpose of the Bill: to undermine power-sharing and disrupt the functioning of government. From start to end, even in its title, the legislation is wrong and should be opposed. Sinn Féin will oppose the Bill whether its clauses are amended or unamended.

Mr O'Toole: We are slowly getting there. First, it is worth saying in response to the previous Member — and I have made the point a couple of times now — that the suggestion that everything in the Bill is somehow about the Bill's sponsor is clearly an absurd proposition. In a strange way, there is a strange irony in the suggestion that by supporting the majority, part or even all of the Bill — my party will obviously not support all of it, as, although there is much that we like, there are specific provisions that we do not like — it, somehow, means that you are being co-opted into agreeing with the Bill's sponsor on every aspect of his view of the world and these institutions. That, I am afraid, is absolutely ludicrous.

In a sense, one of the principles that underlies this place is the idea of power-sharing and that, by working together, people of different divergent — sometimes, even sharply divergent — profoundly contradictory, in-tension perspectives can produce good outcomes for citizens. Believe it or not, it is even worth taking that viewpoint when it comes to a proposal that is made by the Member for North Antrim. I say that with absolutely no illusions about his views on the functioning of these institutions. He has reiterated them tonight. Throughout the process, my party has looked at the Bill, its specific measures, clauses and amendments, with, as WB Yeats would say, "a cold eye". We will continue to do that.

I will move on specifically to the third and, thankfully, final group of amendments for discussion, which contain measures that my party welcomes and supports but also the ones that are most controversial in the Bill and those with which my party has most difficulty. Again, that gives a lie to the idea that the purpose of scrutinising the Bill is about wholesale acceptance of absolutely every clause in it. Whether one agrees with the fundamental principle of legislating in this area, the purpose, principle and practice of legislating is to debate measures and clauses, say where one has difficulty, try to get to a position that one can support, and, if one cannot do that, vote against it. That is what we are doing now. That is what my party is doing and what I am doing here.

I will go straight into the first amendment in the group. Amendment No 13 creates a new clause 6, which requires a written record to be kept of every single internal departmental meeting that is attended by a Minister, recording, in particular, those who are present, the date and time, the topics that are discussed, and every

decision and action point. The SDLP will not support that clause, either in its original form or as amended. It is true, and I am happy to acknowledge it, that the Bill's sponsor has moved towards a position of slightly lessening the burden that would be created by clause 6. I would acknowledge that, in general, the Bill's sponsor has been constructive when it comes to listening to feedback. That having been said, my party will be honest about the fact that it feels that the measure is disproportionate. In explaining why, I will draw, again, from my own experience as a civil servant.

What is an internal meeting with a Minister? Is it every time that an official speaks to a Minister, or every time that they sit down at a table with an agenda in front of them? If you are a civil servant who works closely with a Minister, particularly someone like a private secretary, you will, in all probability, have dozens of interactions with the Minister every day. Indeed, you are not doing your job if you do not have dozens of those interactions. If you are a Civil Service press officer, you may need to go back and forth with the Minister and their special adviser to refine statements or clarify pieces of information. If you are a permanent secretary, the Minister will, in all probability, have your mobile number and will have been told to contact you to resolve urgent and important issues.

11.15 pm

Here is the thing: all those things are important. Everything that I have just described is critical to the functioning of government, and that is what the Bill is about. If the Bill is about the ordered functioning of government, which is what we want it to be about, and which is why we are supporting large parts of it, we need to think about how government functions. A large part of how government functions is that officials are able to be in relatively close contact with their Minister on a fairly regular basis. No doubt Ministers, including the Finance Minister, the Economy Minister and, I am sure, my colleague the Infrastructure Minister, particularly in responding to COVID-19 and an unbelievably dynamic situation, will have been in relatively constant contact with officials. Sometimes, that might even include text messages or WhatsApp messages.

Mr Allister, to his credit, presented in a very convincing barristerial way, but I am afraid that it is more complicated than he makes out. Again, I draw on my experience as a Civil Servant. Creating the burden of requiring that a record of every departmental meeting be kept is, I am afraid, a real problem for the good functioning of government, unless you are clarifying very clearly that what you mean by a "meeting" is one that has been scheduled for a specific purpose and that has an agenda, but I am not sure quite how you would do that.

I now come to a point, which I will come back to later, about how you improve the quality of our Civil Service. Last week's report from the Northern Ireland Audit Office pointed to the very real, big structural challenges that this place faces with the quality of its Civil Service. We heard a bit from the Minister earlier about Civil Service reform. It is right and necessary that we respond to the public outcry over RHI and understand exactly what went wrong, and the Coghlin report is invaluable in that. The report talks about minute-keeping. Personally, I am not convinced that legislation addressing a lacuna in record-keeping in what was DETI is fundamentally getting at the deep structural challenges talked about in Coghlin's report. I accept that minute-keeping was clearly not up to where it should have been there, but there is a broader challenge. As well as responding to RHI, we need to think about how we massively overhaul and improve our Civil Service and how it performs in this place. To be blunt about it, our Civil Service is not performing as it should. As a result of a decade of austerity and the issues with where people join in the Civil Service, its age profile is too high, and it does not attract enough of the right people. In saying that, in no way do I denigrate the very hard-working, decent people in the Civil Service.

Let us be absolutely clear: we need our Civil Service to improve. We feel that clause 6 would create significant challenges by adding to the everyday burden of being a good-functioning Civil Service. For that reason, we will not support it. It is not because we think that minute-keeping is not an issue or that it was not touched on in the Coghlin report, but we are not convinced that that measure —.

Mr Wells: Will the Member give way?

Mr O'Toole: Yes, I will give way.

Mr Wells: Does the Member accept that, in business and in local government, minute-keeping is absolutely essential? If so, why, then, is he trying to torpedo an amendment that would make that compulsory at the highest level of the Civil Service in Northern Ireland?

Mr O'Toole: First, I am not trying to torpedo the idea of minute-keeping. What I am saying to the Member is that the clause as drafted is very onerous. It is worth saying that I have worked in

both the private sector and the Civil Service. You may think that the practice of minute-keeping on actions in every internal departmental meeting is much better in the private sector and the corporate world, but I am not sure that that is completely borne out by experience. Major tech companies and banks do not tend to record every face-to-face interaction with senior people, so we will not support clause 6.

Mr Allister: Will the Member give way?

Mr O'Toole: I will.

Mr Allister: If the Member had taken up my repeated invitations to sit down and discuss those issues with me, perhaps there would have been an opportunity to meet the Member's concerns. I repeat: if the Member has concerns about the width of the ambit of clause 6, I am still prepared to have that discussion before Further Consideration Stage. However, I find it rather surprising that he never took the opportunity to discuss the concerns that he is now articulating about that clause.

Mr O'Toole: I am happy to look at any further amendments that the Bill's sponsor wants to make before Further Consideration Stage. We considered this long and hard. We spoke to the Member about the Bill at several junctures, and we support large parts of it. We have thought long and hard about the burden that that measure creates, but, yes, I am happy to discuss further changes to it at Further Consideration Stage.

Mr Wells: Will the Member give way?

Mr O'Toole: Yes, I will give way again.

Mr Wells: I know that the Member is not going to like me for saying this, but I have to say it again: he sat on that Committee for many weeks and had ample opportunity to raise his concerns. This issue was discussed at length in the questioning of witnesses and in the preparation of the report. It really is disappointing that, having had that huge opportunity — we would have given him more — he now decides at this very late stage, having not taken up the opportunity to discuss it with the Bill's sponsor, to try to wreck one of the most important parts of this private Member's Bill.

Mr O'Toole: I direct the Member to the Committee report on the private Member's Bill, which makes clear that we did not support that clause when it was voted on in Committee. We had reservations, and I articulated them then.

This is not about wrecking; this is about simply setting out concerns. That is what this is about. With respect, I am not sure that it is conducive to the general tone of a Bill being developed collectively to address Members who have concerns in that way, albeit I take the points that he makes.

Clause 7 gives notice of the Bill sponsor's intention to oppose original clause 7.

Amendment No 14 — new clause 8 — requires a civil servant to take a note, which must be kept, of:

> *"every meeting held by a minister or special adviser with non-departmental personnel".*

That is worthy of support, and we will support it. We believe that that is an area in which guidance and codes would be enhanced by legislative underpinning. Just to draw a distinction, this is what happens when you interrogate particular measures, think about how they interact, and draw in your personal experience and talk to those with experience. There is a specific burden in clause 6. New clause 8 is very much worthy of support.

Amendment No 15 introduces new clause 8A, which requires a Minister or special adviser to provide a written record to their Department of "being lobbied". It is a significant improvement on previous versions of the Bill. It creates a significant and novel burden on Ministers and special advisers to record instances of being lobbied. In other jurisdictions, in Westminster and in Dublin, in slightly different forms, it has been the practice to require those doing the lobbying to own, as it were, the burden of keeping the details or registration, but that is not necessarily a reason not to support it.

There are strong reasons for arguing that Northern Ireland, given the record of some of our Ministers, should not be afraid of being in the vanguard of transparency laws. However, that new clause did not have as much scrutiny at Committee level, as the Committee Chair said, given that it was introduced late. That is not a criticism of the Bill's sponsor. It was introduced in that way because he was responding to feedback. However, there are vital questions on which we would like to engage with the Bill's sponsor as we consider that.

That could be something for Further Consideration Stage.

Questions that we would like to engage with are about protections from vexatious complaints. Some of that was touched on by the Minister, and there are still questions on that. Those could be addressed through clarifying language, and the Bill's sponsor indicated that for clause 8A(2)(d). That is interesting. We would like to discuss that further because we think that there is real merit in what is being said here. Another question is an explanatory question about whether that is the right thing to do. It may well be, but it is worth teasing that out as we further explore why we are putting the burden of disclosure on Ministers when others have sought to place it on those who are lobbying. By the way, I am not saying that the latter is the right approach. We appreciate the strength of the rationale for this proposed new clause, but we are keen to understand more details before we are able to commit to finally supporting it as it is drafted. However, we obviously will not oppose it tonight.

Just as we did in the Committee, we will not support clause 9, which is the new criminal offence relating to the use of non-official email systems. I am afraid that, even as a summary offence, our view is that it is disproportionate and that it would have a chilling effect on lots of civil servants. The reason is in my phone, as I would be guilty of lots of crimes. That is because in my Hotmail account I still have evidence that I used my phone for official business. The Bill's sponsor will say, in many ways, reasonably, that that is covered by the 48-hour get-out clause that he introduced in his amendment. I think that, having considered this long and hard and to be genuine and honest with the Bill's sponsor, we considered it. We considered it as a party and discussed it in Committee, but we still find that it does not meet our test of being a proportionate response to an issue. I am not saying that people should be at complete liberty to use personal systems. However, the question that we asked is a very real one — I think that he asked it in a debate on one of the justice Bills in the last few weeks — and it is about how the most serious thing that a legislature can do is create a context of depriving someone of their liberty. We have to be really careful about that. We have thought about it long and hard, and we cannot support clause 9 as it is with that offence, so we will not support the clause.

I will cover clause 11, which is one of the two criminal offence clauses. Of the two, this is the one that may have more merit. The reason for that is that, from our perspective, the offence of the disclosure of information specifically for the benefit of a third party is very clearly a more egregious offence than using unofficial systems. I think —.

Dr Aiken: I thank the Member for giving way. Again, one of the things that I think we looked at but did not get any details on was investigating what the crime of insider trading would be. The tariff for the crime of insider trading was somewhere in the region of about seven years, along with some other criminal penalties for it. Obviously, if you looked at some of the issues that have been raised, particularly in reference to the RHI inquiry, you could very clearly seen them as insider trading, and there is definitely a requirement in that case to look specifically at where we are with the tariff.

Mr O'Toole: That is one of the things that we discussed at Committee. We still have significant questions on clause 11 that we want to tease out at Further Consideration Stage. We will not oppose it tonight, but in order to give it our final support, we would like to tease out some more of those issues. Specifically, it would be helpful if the Bill's sponsor could clarify — it would be helpful if he could do this tonight when wrapping up — what is meant by "improper". It may be that his greater experience of the statute book and case law will lead him to a definition of "improper" that is mysterious to the rest of us and already in law. However, we want more clarity on that.

We, collectively, would like his views on whether he thinks the offence would be better restricted to senior civil servants, that is, those who are above a certain grade. Elsewhere in the Bill, the salary for special advisers is linked, I think, to those at grade 5, who are, broadly, people in the senior Civil Service.

11.30 pm

Is there an argument that this offence should be limited to people in the Senior Civil Service, given that one of the comments that I have just made was around the general issues that we have? Frankly, we have broad structural issues around our Civil Service, going everywhere from morale down to high levels of sick leave and just needing a structural overhaul of the quality of our Civil Service. Notwithstanding the very good, sincere and hard-working people who work in it and who have given their all this year, we do have significant issues. One of our worries about clause 11 is that its current breadth could act as a chill factor on not just the couple of dozen Ministers and special advisers who operate in this place or, indeed, the relatively small, but very powerful, number of senior civil servants, but the more than 20,000

members of the Northern Ireland Civil Service who will, theoretically, be captured by this potential offence. It would be helpful to get the sponsor's views on that. We welcome the fact that he has introduced a similar exemption for communications with a Minister's own political party. That is useful, and again I acknowledge the Bill sponsor's constructive approach on that.

I will just go back to clause 10, which we are supporting, so I do not need to talk about that in any more detail, which is good because I have lost my notes on it.

It may not be something for future amendment but, in clause 11, it might be helpful to get the Bill sponsor's views on when, in a sense, criminal liability ends in relation to this. For example, the way that the amended clause 11 is currently drafted subject to amendment No 20 is that:

> *"it shall be an offence for any minister, civil servant or special adviser to communicate, directly or indirectly, official information to another for the financial or other improper benefit of any person or third party."*

It would be helpful to get an answer around where in the chain that ends. For example, if a special adviser or Minister gives that information to a business lobbyist from a representative group in good faith and that meets the test of not being improper, but the second person in that chain improperly passes the information on to a party that they know, is the spad, civil servant or Minister responsible? When does their liability end? It would be good to get some clarity on that. We would like some more clarity on these points before we are able to support this clause, but we will not oppose it at this stage. Let us be clear that we strongly sympathise with the intent of creating a real deterrent to serious malfeasance, and we do not have a problem with that. We think that there is a real argument for it. However, potentially capturing everyone, from an administrative officer — someone working in a benefits office — up to a permanent secretary is a high bar, so we need to understand more about that.

I have already talked about issues around the Northern Ireland Civil Service. In concluding my remarks on group 2, I want to say that we are sympathetic to many of the reforms in this Bill and several in this group of amendments. It is clear that there is real value in giving a strong statutory footing to the updated codes and procedures that are intended to deal with many of the failings of RHI. However, legislation is not necessarily appropriate in all areas. We have given an honest and rigorous appraisal of this Bill. We are debating it now and, where we differ from the Bill sponsor or other parties, including Sinn Féin, we are open and upfront in saying so. The bar to create criminal offences is, necessarily, very high, but it is also true that the public in Northern Ireland want to see real, meaningful legislative action taken to address many of the long-standing issues that were revealed by the RHI crisis.

We will look to find the correct legislative means of addressing those issues. There are lots of them in the Bill, and we look forward to exploring them in more detail.

Mr Muir: I will speak on behalf of the Alliance Party on the amendments in group 3 on administrative reform and governance. Unfortunately, the Alliance Party is unable to support a number of amendments in the group and a number of the associated clauses.

Before I continue, it is important to recall the background to and origin of the Bill: RHI. When responding to the inquiry report in this place on 16 March, I said:

> *"The revelations that emerged in 2016 relating to the non-domestic renewable heat incentive scheme and the actions of certain Ministers, special advisers and some civil servants" —*

and others —

> *"damaged public trust in these institutions, with legitimate ... outrage and anger at ... comments such as 'Fill our boots'." — [Official Report (Hansard), 16 March 2020, p13, col 1].*

I went on to say:

> *"Now that the inquiry is over and the report has been published, we must ensure that the report and its recommendations are not allowed to gather dust." — [Official Report (Hansard), 16 March 2020, p14, col 1].*

As we know, in the days, weeks and months since 16 March, the focus has very much been on one clear and present threat, namely COVID-19. Many lives have been lost, our health service is under immense strain and our economy is enduring the worst economic downturn in its history. Departments and public services have rightly been focused on responding to that, but they must start to realign and refocus on general priorities, as we hopefully start to follow the road out of COVID-

19 following the expected introduction of vaccines. A key element of the work that must be progressed apace is all the recommendations arising from the RHI inquiry report. A number of the recommendations have already been delivered, but more needs to be done, especially on the commitments in 'New Decade, New Approach'. That brings me to the amendments and associated clauses that are being considered this evening in the third and final group. If passed into law, they will make many elements of practice and procedure legal requirements, with significant criminal sanctions attached. Ultimately, it is for us all tonight, or perhaps tomorrow morning, to decide whether they are an appropriate and balanced response to RHI. Alliance feels that many aspects that are due to be considered in the group lean too far towards being unbalanced and will, in some instances, make the business of government more difficult, inefficient and bureaucratic, without the required level of benefit.

Clauses 6 and 8 require civil servants to attend and take notes of internal and external meetings respectively. Of course we agree that minutes should be taken of all ministerial meetings with external parties, as well as minutes of significant internal meetings where departmental decisions are agreed. That not only is a critical element of transparent government but should be common sense and good practice for any professional organisation, let alone government. Sir Patrick Coghlin's report was rightly damning about the failure to take or retain minutes of key meetings leading up to RHI. The Alliance Party could not agree more with the inquiry's view in that regard. Sir Patrick's report did not propose legislation to address that issue, however. Administrative tasks in the Civil Service, such as ensuring that minutes of relevant meetings are taken, should not be dealt with via legislation. It is not the appropriate vehicle for that task. As was recently confirmed to me in response to a question for written answer from the Finance Minister, the responsibility for ensuring that minute-taking takes place, as is requested in the Bill, already formally rests with private secretaries and permanent secretaries, with the revised Northern Ireland Civil Service code of ethics placing that explicitly as a requirement. Such a requirement will form part of the terms and conditions of employment. For those reasons, Alliance is unable to support the legal changes proposed as a result of the clauses. For those who disagree — I accept that other Members disagree — please consider the implications of passing such legislation, the impact that it will have and the desired outcome. The real outcome will be much different from what is desired and will simply inhibit good government.

Similarly, although new clause 8A, which covers lobbying, is well intentioned, the Alliance Party cannot support it, because it misses the mark in what it is trying to achieve. We would, however, be interested to see any amendments at Further Consideration Stage that improve and clarify the proposals. Transparency around the lobbying of Ministers is absolutely essential. The RHI inquiry showed the depth of a certain firm's influence over Ministers' decisions, which the public were rightly disgusted by. Whom Ministers meet and what they are being lobbied on is a matter of public interest and should absolutely be a matter of public record.

We support the updates to the spad code and guidance for Ministers, which requires them to detail all their engagements on departmental matters with external organisations or persons. Furthermore, the Alliance Party supports the creation of a register of lobbyists, as has been established in the Republic of Ireland and in Scotland. More can and should be done to ensure that the influence of lobbyists in Northern Ireland is transparent, and we will continue to support that.

However, as drafted, the amendment is insufficiently defined. Ministers may have to record as lobbying any conversations through any channels, be they verbal, email, letter or social media, or anything related to their ministerial portfolio. Ministers trying to ensure that they obey the law could find themselves tangled up in bureaucracy, while those who wish to break the rules will find a way round them. On that basis, we do not believe that this amendment will solve the issue that it sets out to address, and we cannot support it.

As I said, however, we are open to clarification, improvement and betterment of the Bill at Further Consideration Stage, taking into account law already enacted in the Republic of Ireland, which clarifies what lobbying is and places the burden to record and log activity on the lobbyist rather than the lobbied.

My party will not vote for clauses 9 or 11, which attempt to cover the use of unofficial communication channels and unauthorised disclosure respectively. Sir Patrick's report emphasised that Ministers and spads are expected to use official channels when communicating on official business and should be held to account when they do not do so. As per recommendation 41 of Sir Patrick's report, the spad code has been updated to reflect that in the most unambiguous of terms. The

updating of freedom of information legislation, to ensure that all correspondence via all channels is covered, is needed and is something that the UK Government ought to action. Criminal sanctions already exist for the unauthorised disclosure of information through the offence of misconduct in public office. The Information Commissioner and courts already have the right to investigate and prosecute in the most serious cases. However, the bar for doing so is necessarily high, and rightly so, in order to protect public servants from vexatious prosecution and to protect whistle-blowers. For that reason, we do not believe that the proposed clauses are an appropriate method to address the serious issues identified. Where there is evidence of misconduct in public office, we support prosecutions, but we do not feel that the legislation proposed in these clauses is appropriate. The failure to get the desired prosecution of certain persons is not a sufficient evidence base to make this law desirable.

I will talk about our opposition to amendment No 18 and our support for clause 10, provided that amendment No 18 falls. I will then make some closing remarks on behalf of my party.

Clause 10 proposes that the Minister of Finance should create a publicly available register of interests for Ministers and special advisers. We note that Ministers are already required to declare their interests when appointed and that special advisers are required to declare their interests through the revised special advisers' code. However, we have no objection to putting that requirement into legislation and giving responsibility to the Minister of Finance. The RHI inquiry exposed significant conflicts of interest held by spads in dealing with RHI, and the public was rightly appalled at what they heard. A register of interests helps to ensure transparency regarding the interests of those charged with ministerial responsibility and their advisers.

However, amendment No 18 is a mistake, as it would undermine the effectiveness of the clause as a whole. The amendment removes the word "close" from the requirement to register family members' interests. It is not reasonable, in law, to require a Minister or special adviser to register the interests of relatives whom they may not have spoken to for many years and with whom they may have no meaningful relationship. The Bill would require Members not only to register the interests of siblings, aunts, uncles, nieces and nephews but also those of their spouse or civil partner. The numbers could run into triple figures. It is not a reasonable argument that we should commit to legislation something that is a serious conflict of interest. It is far better to keep the term "close" in the Bill, as per the original wording.

My party takes seriously the issue of transparency and good governance. On that basis, we have looked in detail at each clause and given full and due consideration to whether it will improve the functioning of government in Northern Ireland. I say that sincerely, as the Bill has taken up many days of my life.

In the majority of cases, my party believes that the full implementation of the recommendations of Sir Patrick Coughlin's report is the more effective way to respond to the appalling behaviour of Ministers and special advisers throughout RHI. Furthermore, in the majority of cases, we have found that the provisions in the Bill, however well-meaning, could make the functioning of government worse, rather than better, in Northern Ireland.

Finally, at a quarter to midnight tonight, and as someone new to this place, I suggest that we need to consider how we make legislation. We have heard lots of quotes from scripture, and some of the contributions were short, brief and succinct, but others were long. In closing, I will quote from Proverbs:

> *"Whoever restrains his words has knowledge, and he who has a cool spirit is a man of understanding."*

Mr Wells: I have found the last couple of hours extraordinarily disappointing. We have spoken at length about how the Committee has worked well together to amend and revise Mr Allister's legislation. Now we find that it has been ambushed with changes that could easily have been brought up at the Committee and dealt with. Some of the concerns are simply based on a lack of understanding of the Bill; some could have been brought up months ago. For example, I am very disappointed by what Mr O'Toole said. He asked what level of the Civil Service should be liable for the punishment if a civil servant steps out of line. Why, oh why, did he not raise that at the Committee? That could have been sorted out months ago.
It is one thing for Mr Muir, who has a defence, as he was not on the Committee, to ask questions, and maybe it was a defect that no member of his party sat on the Committee. Mr Muir can argue that he did not have the opportunity to cross examine officials and to speak at length to the Bill's sponsor. However, the SDLP does not have that excuse.

Mr O'Toole: Will the Member give way?

Mr Wells: I certainly will.

Mr O'Toole: What are we doing here? This is Consideration Stage. How dare the Member stand up and lambast me for raising legitimate questions about a Bill that I am scrutinising. To be honest, it is not a reasonable thing to do. If the Member regards himself as a watchdog for what questions are asked and when at Committee Stage, that is not a productive approach. We are entitled to ask further questions at Consideration Stage. That is what it is for.

Mr Wells: Mr Muir made the point about why we are still standing here at a quarter to twelve, still debating this. Part of the reason is that issues that could have been sorted out weeks ago, by the honourable Member and others, are now being raised at this very late hour. He has raised legitimate points —.

Mr Muir: Will the Member give way?

Mr Speaker: Mr Wells, there is no point in rehashing who said what when. Please, address the group of amendments in front of you, as that is what you are here to do. It is midnight; a lot of staff are working here as well as MLAs. Show a bit of respect, and stick to the group of amendments in front of you. You do not need to give all of the anecdotes or the cross arguments, and that goes for Mr O'Toole as well.

Mr Wells: Mr Speaker, with all due respect, I cannot accept what you are saying.

Mr Speaker: Sorry, Mr Wells. I do not want to hear that because I do not want to have a row with you. I certainly am not going to parry anything with you tonight. I am making the point that there is a group of amendments in front of us. Please, stick to the group of amendments. We will have no further discussion on the matter.

Mr Wells: Mr Speaker, what I am saying is that there is a group of amendments before us. Members have expressed concerns about the amendments. What I am saying is that the best place to deal with those concerns was during the Committee Stage of the Bill when there were hours to tease out the concerns that are being expressed tonight. I do not appreciate that, having sat through every minute of scrutiny of the amendments at the Committee Stage and the formation of the Committee's report, out of nowhere, like rabbits out of a hat, concerns are being produced here, at a very late stage, when many of them could have been dealt with. Mr Muir was not on the Committee, but, equally, Mr Allister's door was always open, as it was for other members of the Committee, to discuss these issues.

Mr Muir: Will the Member give way?

Mr Wells: I certainly will.

Mr Muir: As Mr Allister will know, we have engaged on a number of occasions, and those have been respectful engagements. Part of democracy is that a Bill is tabled at Consideration Stage, you offer your views, you debate them and you vote on them. It is democracy, and that is what we are doing. They are legitimate views. Mr Allister has views that I disagree with, but they are legitimate views that he holds. We debate them, and do you know something? We vote on them.

Mr Wells: Mr Muir cannot then complain about being stuck here at almost midnight if he is raising issues —.

Mr Muir: Will the Member give way?

Mr Wells: I certainly will.

Mr Muir: One of the reasons why we are still here is that Members are talking ad infinitum and are going on forever.

Mr Speaker: Mr Muir. Andrew Muir, please. Resume your seat, please. Can we return to the debate at hand? Thank you.

Mr Wells: The only thing that I agree with Andrew Muir on tonight is his wearing of an orange tie, and that is about the only redeeming factor to what he has said.

Mr Muir: And orange socks.

Mr Wells: Orange socks. That is good. That is as close as the Alliance Party will ever come to anything orange.

It is frustrating that here we are, at this late hour, raising issues very late on in the day, particularly when Mr Allister has moved so far to try to accommodate the legitimate concerns that have been raised. How much further could he have gone to meet those concerns? Yet, still we are here at this unearthly hour of the night.

I was going to use this opportunity to dig deep into my experience of dealing with spads, but I am conscious of the fact that it is now nearly five minutes to 12. I could keep Members here

until two in the morning giving my views on how the system of special advisers works in the Assembly. I am concerned when I hear people such as Mr Muir say that we do not need the legislation and the amendments because we have codes. He is a new boy to the Assembly. He has been here for less than a year. He will know just how effective those codes have been since 1998. If those codes had worked, we would not need this debate tonight. We would not need Mr Allister's legislation. What the RHI report showed very clearly was that special advisers from all parties ran a coach and horses through the codes and totally ignored them. That is why we need the underpinning of legislation. Really, the meat of this Bill and its important aspects is the legislative underpinning. If we do not have that ultimate sanction, I am afraid that the Bill will be greatly weakened.

There is still a last opportunity — the opportunity of Further Consideration Stage — and I say to the DUP and the Ulster Unionists that you have behaved entirely honourably. Strangely, I also say that Sinn Féin has too, because Sinn Féin made it absolutely clear at every stage of this Bill that it would oppose every line, jot and tittle of it. It would oppose the short title, the long title and even the colour of the cover of this Bill. It was not having any of it, so we knew exactly where we stood with Sinn Féin from the word go.

Unfortunately, we thought that we had other parties on board and that we had dealt with all the questions that they had, and now we find, at midnight, that concerns have suddenly been produced like a rabbit out of a hat. I urge those parties to take advantage of the Further Consideration Stage and to speak to Mr Allister to try to find whether there are ways to meet their concerns. That is the whole process and the procedure that is adopted. I think that it is that lack of dialogue with various Members that has been the problem here. What I am hearing is based on a lack of understanding of what the Bill's intent is, and, in some cases, there is a lack of understanding of the actual content of the Bill. That is very unfortunate at this late stage.

I had many notes prepared, but, as I said, I would like to get home before two in the morning, so I will not take this any further. I do leave this Building tonight with an intense sense of disappointment.

Mr Carroll: I rise to support much of what is being proposed in clauses 6, 7 and 12, which, undoubtedly, will strengthen the process of scrutiny and accountability and will help to rein in the flagrantly undemocratic nature of government operations here. Obviously, there are a few technical amendments too, but I will keep my comments to the main legislative changes that are being proposed.

The RHI scandal exposed the shocking practice at the heart of the functioning of government in this Building. One thing that was obvious was the complete lack of democratic accountability among politicians and their untouchable spads, who, at times, seemed to regard public funds as play money to be handed out among friends and relatives.

Shocking and sickening as that was, it did not even get to the heart of the matter.

At least part of the reason that they got away with so much during RHI was the lack of basic checks and balances in place for Ministers and their officials. That allowed them, essentially, to do what they wanted. Stormont Ministers and their advisers are continually held to a different standard from others. Clear evidence indicated a close relationship between Ministers, spads and elements of the big agribusiness sector, with huge companies such as Moy Park lobbying their way towards unfair and indefensible handouts of public money to further line their pockets, including, as others have suggested, undocumented trips to Brazil and relationships that led to hundreds of millions of pounds of public money being wasted, without minutes of meetings even being taken and no paper trail or accountability. Scandalous stuff indeed.

Clause 6 requires a Civil Service note to be kept of all ministerial meetings. Clause 7 requires all ministerial and special adviser meetings outside their respective Departments to be logged in future. Amendment Nos 14 and 21 relate further to that and mandate Ministers to report to Committees in more detail about their work efforts. Clause 8 requires ministerial and special adviser meetings with non-departmental personnel to be attended by a civil servant and a note taken. That, again, would help in scrutinising the actions of the Stormont elite.

Those moves will, hopefully, help to militate against instances involving the misappropriation of public funds, which we have seen too often in this place, and prevent the massive disparity of treatment between working-class people and self-appointed political elites in Stormont.

I will quickly give one example that accurately draws out the hypocrisy. It is worth mentioning in the light of clause 9 and amendment No 20.

In July 2018, a 59-year-old mother of four, Anne Smith, from my constituency of West Belfast, was sentenced to six days in prison for failure to pay a TV licence. It shone a spotlight on the obscene disparity in the state's punitive approach towards people like Anne Smith, who struggle to get by, and the casual impunity that is extended towards those responsible for misappropriating up to £800 million in public funds through RHI. To date, not one individual among those in government or in the private sector who gloated about "filling their boots" in the RHI scandal has spent one hour in jail, nor are we likely to see that. Arlene Foster, who presided over the scandal as the Enterprise, Trade and Investment Minister in charge of RHI, walks free in the confidence that she will likely never face jail time. She is held up by some as a successful stateswoman instead of as somebody whose Ministry presided over the looting, effectively, of public funds.

As was mentioned, the First Minister famously used Post-its to go back and forth with her spad, Andrew Crawford, who was extremely close to Moy Park and the main co-culprit at the heart of the RHI scandal. Crawford served seven years as Arlene Foster's spad at DETI and could not recall ever seeing a formal note of a meeting — not ever. It is unbelievable and unacceptable. It is also unacceptable to think that some in the Chamber suggest that we do not need legislation to change that kind of arrangement.

Children are asked to show their working-out when they do their homework and their maths, but it appeared to have been OK for Ministers and spads not to take records of meetings about the serious business that they were undertaking. Part of the reason for such disparity is that the legal system generally is stacked against ordinary and working-class people. We support the clauses and amendments that force political elites in the Chamber to document and, therefore, justify their actions.

Mr O'Dowd: Will the Member give way?

Mr Carroll: Yes, I will give way.

Mr O'Dowd: The Member has to understand that some of the legislation will not send the elites to jail; it will send the working class to jail — the civil servants. Surely, civil servants are working-class. Some of the amendments that you are about to support will send civil servants to jail.

Mr Speaker: Mr Carroll, your microphone is not always picking up. You might need to make sure that you speak into the mic.

Mr Carroll: Yes. I find it remarkable that, despite all the stuff being outlined by me and others about the scale of RHI, Mr O'Dowd and his colleagues cannot support changes to document the actions of spads and Ministers.

It is remarkable stuff indeed. I do not know how that punishes the working class at all; it is obviously designed to target spads and Ministers.

Like I say, if it is good enough for working-class people to be hauled in front of courts over TV licences, it is good enough for Stormont Ministers for potentially facilitating much bigger crimes.

12.00 midnight

Clause 12 would establish a process whereby the First Minister and deputy First Minister would report every two years on the functioning of government and initiate improvements. As a Member who sits on the opposition Benches, I would particularly welcome that. We have long criticised the lack of information and the way that information is relayed by the Executive in a limited sense to us, other smaller parties, independents and so forth. That would be a welcome change from our perspective.

Finally, I want to say something briefly about clause 11, which makes it a specific criminal offence for a Minister or special adviser, not the working class, to communicate confidential government information to a third party. I had an issue with how that was originally worded because it was broad-sweeping and unqualified. I can imagine situations, albeit they are way outside scandals like RHI, where Ministers should be in a position to disclose information; for example, when there is a public duty to disclose information that could be harmful to people in this city or beyond. I am not for a closed house on releasing information. Clearly, though, there should be repercussions for Ministers or spads who are in the business of leaking financial documents for the benefit of their business-owning wealthy friends. One should not shy away from acknowledging that that has happened.

We are, therefore, glad to see amendment No 20. We cannot back clause 11 in its original form because it does not create room for, for example, whistle-blowing or releasing information in the public interest, nor can we

ignore the related human rights concerns that were raised by the Human Rights Commission. For that reason, amendment No 20 is worthy of support. We will support it because it qualifies the matter by stating that Ministers and spads cannot release information to third parties that results in financial or similar gain. It also qualifies it to take account of defending matters that are in the public interest. I leave my comments there.

Ms Sugden: I will not go into detail on any amendments on the Marshalled List other than the ones that give me some issues or cause for concern; in most cases, that is probably quite minor.

I will start with amendment No 13, which relates to the records of internal departmental meetings. I have sympathy with Members who expressed concern about the burden that that may put on civil servants and Ministers in respect of their meetings. Even from a constituency office perspective, I am quite obsessive about keeping a record of any meetings that I have, whether those be via telephone, via video call, face to face or via social media. I must admit that that creates an awful burden for me, and, in some cases, I am not getting back to people for a month because of the level of correspondence that I receive. I caution Mr Allister that maybe something could be put into the amendment about substantive meetings, which may be more valuable to make a record of.

There is another question that I will ask about the amendment. The Bill sponsor is quite clear in this and other amendments that he is talking about departmental meetings. In this new world of Zoom calls and video calls, are those included? Are we looking at virtual calls? Are we recording telephone calls? I can say from my own experience that it is very lonely being a Minister. If there is a sense that someone is always looking over your shoulder, whether it is with every good intention or even with bad intentions — it happens — that would leave me vulnerable in the sense that I would not want to talk to anyone. Where does that go where policymaking is concerned? I understand the purpose of the amendment, and I have no difficulty in keeping records of meetings. However, it perhaps goes a bit further than is necessary, and, as others said, it is perhaps disproportionate in that respect. I would be keen to see how to make it more workable in the practical day-to-day workings of running Departments. I appreciate that all those things seem like a good idea in theory. They support the ideas of accountability and transparency, and that is what we all should strive towards. However, their workability gives me some cause for concern and may lead some Ministers to, if you like, go underground, whereby they will not speak to their civil servants or express their concerns. I would not want it to have that unintended consequence, because I appreciate its intention and where it comes from.

I am keen to understand the Member's rationale for making an exception for a Minister's political party in amendment No 14. I understand that, but I stand here as the independent Member for East Londonderry, and I appreciate the engagement that I have with other political parties away from civil servants. I ask the Member, rather than making it specific to Ministers' political parties, to consider potentially making an exception for other peer-elected representatives. The political conversations and relationships that we have as Members are better served away from civil servants.

I always maintain that a Minister's role is not necessarily to be the head of a Department; I see it almost as a politician holding the Department to account from within. That cannot happen if civil servants are present at meetings. I ask the Member for North Antrim to consider extending that exception to other politicians on the same level, rather than restricting it exclusively to a Minister's political party. I understand why that is the case, but I work alone and it is about those relationships and conversations that I have. If anyone remembers my time in the Department of Justice, it was important for me to have that engagement with Members without there being civil servants in the room. That dynamic could cause some issues with the conversations and the relationships that are necessary away from the gaze of civil servants. Politicians are the buffer, if you like, between civil servants and the people.

Mr Frew: Will the Member give way?

Ms Sugden: Yes. Please go ahead.

Mr Frew: It could actually also pick up the scenario of a Minister standing here at the box at Question Time and then, with their head fried, walking down the corridor to their office. Bold Jim or Paul could bounce up on them and say, "Minister, can you do A, B and C for me?", and then they walk into their office with their head fried after Question Time.

Ms Sugden: Absolutely. Even from my experience this past weekend, I was in conversations with Ministers about the COVID-

19 restrictions. It is not that I would feel uncomfortable that they would go back to the Department and say that they were speaking to me over the weekend, but I think that there is something about being able to engage or lobby. The two corridors either side of us are called Lobbies for a reason: they give Members the opportunity to lobby Ministers in that space. We are overstepping a little when we start to bring civil servants into holding Ministers and politicians to account. As a Back-Bench Member of the Northern Ireland Assembly, I certainly would not want to be held to account by a civil servant. I do not think that that is appropriate, and potentially it is what the amendment suggests.

"Record of being lobbied" — I do find this one interesting. Andrew Muir raised the point that, in other jurisdictions, the emphasis is on the person who is doing the lobbying rather than the person who is being lobbied. I am studying for a master's degree in communication and political lobbying at Ulster University, and, for me, communication and lobbying are a two-way street. How do we draw a line over the potentially hundreds or thousands of people who contact us daily? Do we have to make a record of those, even if they were unsolicited? I appreciate that the Member has considered potentially limiting that, but it is unreasonable to expect that every time someone contacts you. Again, what does "contact" mean? Is it face-to-face contact? Do we include direct messages on Twitter or private messaging on Facebook or other forms of social media? I cannot begin to tell you, Mr Speaker; I have received hundreds of messages today. That puts a significant burden on me and my constituency office, and I am a representative of only one of 18 constituencies in Northern Ireland. I appreciate that there are Departments that are full of civil servants who could assist with that, but I do not think that it is as simple as saying that I can forward something on to the Minister. I spend hours daily forwarding my messages and capturing a record of that, probably for my own protection. Other Members have talked about that. If we are going to have a record of being lobbied, we need to be careful about what that looks like in practice and what it means. Is it just communication coming one way, or is it something that a Minister has responded to?

It is difficult to do what the amendment suggests, and it does put a real burden on the Minister. We as politicians are, after all, human and may aspire to ministerial office. I feel uncomfortable that, where the constraints and limitations placed on the job are envisaged in the legislation in order to have the perfect Minister, they are not practical, and perhaps the intent is not that.

The Bill came from a specific place: to address a lot of the issues that arose out the scandal of a couple of years ago. That is not a bad intent by any means, but we have to be careful to remember that most people do not have those intentions. Are we going to throw the baby out with the bathwater by limiting some people in their job and applying sanctions to them, when perhaps theirs was just an error in judgement? To be fair to Mr Allister, there may be an opportunity with the amendment or in the process itself to determine what the intent was, but perhaps that is just process.

I will now talk about the use of official systems, and I will again speak specifically about the Department of Justice. The official system there is much more obstructive, if you like, than any of the other systems in government. The email addresses for the Department contain "x.gsi.gov.uk", and there is a firewall there. To be honest, it is a really antiquated system. If we compare it with other systems and security Departments in jurisdictions in the United Kingdom, it is outdated. If I am to support Mr Allister's amendment about systems, for a start, we need to upgrade those systems and make them workable. It would not have been possible for me to forward or cc such messages in the Department of Justice, because it is just not possible. My special adviser at the time had to go home with an additional box attached to her laptop, which was clunky and awful, in order to be able to do her job. She was not able to access things if she was not going through that laptop.

I do not disagree with the point. We should try as far as possible to use official systems, not least for the protection of the information. If we are to do that, however, we need to put the technology in place so that the official systems are accessible. As a younger MLA, I want my diary on my phone. I want my papers, which used to come in two big briefcases, to be available on my tablet. I want those things to be accessible to me, because, when you are driving an hour and a half down the road to East Londonderry, it is those things that make the job much easier. I recognise the intent behind the amendment, but let us be realistic about what is needed in order to put that into place. Perhaps it is something that we will just have to put in place if it finds its way into law.

Mr Muir: Will the Member give way?

Ms Sugden: Yes.

Mr Muir: Does the Member accept that, although the drafting is well intentioned, the amendment does not reflect the new technology that exists, such as cloud computing, bring your own device (BYOD) and all the rest of it. It is framed from an understanding of email, but, frankly, email is yesterday's technology. The importance is for the legislation to be correctly drafted to ensure that, as has been outlined, civil servants are not unduly captured by it when they do something that is perfectly legitimate but could be considered a criminal offence.

Ms Sugden: Yes, and I think that that is where the limitation of this law lies. In my experience, the systems that we use today and tomorrow will not be the systems that we will be using in five to 10 years, yet we might enshrine something in law that potentially has an expiry date because of technological developments. I appreciate the:

> *"48 hours, or as soon thereafter as reasonably practicable"*

window, but is it reasonably practical? I will be the first to admit that, with the level of correspondence that I receive, it takes up to a month to get back to constituents. That is how busy I am, and that is how heavy my workload is. Forty-eight hours may seem reasonable and, perhaps, if you are in a Department, you prioritise those things, but, my goodness, I prioritise everything at the minute but am still not getting back to people as soon as I would like. We need to be mindful that, in practice, these things may not necessarily work out. Are we really going to criminalise people for that? I probably would never become a Minister again if that became the case, because I would be held to account for something that it was not my intent to do. Perhaps the amendment will help to explore those things if Ministers are ever held to account.

Amendment No 17 deals with the register of interests. I have no difficulty with that. I would have assumed that to become a Minister you already have to be an MLA and, as such, that register of interests would already be in place. Certainly, when I register my interests, I look across the wide remit of every Department. If I were to find myself in, say, the Department of Justice or the Department of Agriculture, Environment and Rural Affairs, those interests would already have been disclosed in some way.

I am not against it. We should absolutely extend it to special advisers, particularly if it is a political appointment. If anything, that keeps everyone right and ensures that your pursuit is within the confines of what anyone thinks it is for.

12.15 am

Mr Muir talked about the issue with close family members. I thought that that was a technical point, although maybe Mr Allister will correct me. I had assumed that the Register of Members' Interests had confined it to more immediate family members and that removing "close" was just to tidy up the wording because it was already covered. I am not sure whether that is the case, Mr Allister.

Mr Allister: As I sit here, I think that I have been persuaded by Mr Muir that amendment No 18 may not be as appropriate as I thought, so I am minded, in winding up on the group, to indicate that I will not move amendment No 18, at least until I give it further consideration. However, I think that we still have to have some definition of a close family member.

Ms Sugden: Yes, I concur with Mr Muir and with Mr Allister on that point: we live in Northern Ireland, and everyone is related to everyone *[Laughter.]* If we were to include records of extended family members, we would be here all day and would get no business done. We need to limit what it means. I felt that it was already expressed in the standards for MLAs, particularly in relation to financial interests, but we may want to consider that before making it a necessity.

On the criminal offence of improper benefit to any person or third party, I do not think that there is anything more to say on that. If it is improper and intentional, people need to be held to account, particularly when dealing with the disclosure of government information. That is not appropriate. We cannot, on the one hand, say that we cannot take records of meetings because of the development of policy and then find ourselves, on the other hand, disclosing that information for other purposes. I am happy to support that.

I am generally supportive of everything else, and I look forward to Mr Allister's responses to some of my points. There is an interesting point about record-keeping. As MLAs, we are already, to a degree, governed by law, such as the general data protection regulation (GDPR). I would be interested to hear whether what Mr Allister has drafted is compliant with the laws that are in place. For example, there is an amendment in relation to lobbying. If you are

taking a record of people's details, do you have to let them know that you have done that? Do you have to dispose of it within a certain time frame? Is it even appropriate to keep that information if you are not going to use it because, for example, the lobbying intent might not have had any value? Those are a couple of areas where I have concerns, and I look forward to hearing Mr Allister address them.

Mr Murphy: I rise to finish my contribution to a long and detailed debate. Much of the time, the discussion has been framed on the premise that all of this bad behaviour, which we are all very aware of — RHI, Red Sky, NAMA and other scandals and issues that came to public attention — happened because procedures and processes were inadequate. I think that the inquiry found that the observance of some of the procedures was inadequate as well. It has been said that nothing has happened since, that all of this could happen today because nothing has happened in between times to protect against it and that, therefore, the only thing that really gives, as Mr Allister would say, the teeth or the bite — the ability to inflict punishment as a consequence of those things not being met — is legislation such as he has drafted.

Since getting to the meat of the debate — the latter end — we have spent a lot of time talking about the law of unintended consequences. The last number of Members, in particular, talked about that. That brings us to Mr Allister's central question: the House has to decide whether the Bill is necessary and can do what is needed to address the deficit that he sees in the approach that the Executive and the five parties that make up the Executive have agreed. The question is whether that approach is correct and appropriate or whether it is deficient and can be enhanced only by the teeth of Mr Allister's legislation.

The law of unintended consequences was summed up best for me by Mr Carroll, who said that he harsh bits of this — the bite part of this; the bits that are going to punish people — are intended only for the elites. I have been called many things in the Assembly, but "part of the elite" is not one of them. He said that it does not affect the working classes and described the offence as being for any Minister or special adviser. However, he left out the middle bit about civil servants in amendment No 20, which he lauded in his contribution:

> *"it shall be an offence for any minister, civil servant" —*

it does not specify the grade of civil servant; it could be an administrative officer (AO), the head of the service or anything in between; for them, it will be an offence punishable by jail —

> *"to communicate, directly or indirectly, official information to another for the financial or other improper benefit of any person or third party."*

That law of unintended consequences is probably best summed up by his contribution because, clearly, he thinks that it will hit the people whom, he thinks, should be punished. It is a natural instinct for people to say, post RHI, "We want to see heads hanging on the gate at Stormont. We to see the people who are responsible punished." Then you bring forward a blunt instrument like this, and the people whom, Mr Carroll thinks, he is protecting, namely ordinary civil servants, are suddenly in the frame for all of that. Then, the hand-wringing would happen if someone were caught up in it who was not really the person we wanted to see caught. We have to be sure, if we are going to pass legislation that involves penalties such as imprisonment. As Mr O'Toole said, that is the one area of legislation where you have to be ultra careful, because you are depriving people, potentially working-class people, of their liberty. You have to be sure that what you are supporting does exactly what you want it to do. From listening to the debate, particularly that on the third group of amendments, it is clear to me that Members have different outlooks on what the Bill will achieve.

It is not that I do not see any value in enhanced scrutiny: I absolutely do. It is valuable at any time in any legislature, but, building on the experiences of RHI and the inquiry and its recommendations, it is not only valuable but essential — absolutely essential — that there is increased scrutiny, accountability and responsibility to ensure that those practices cannot happen again. I absolutely and utterly support that. That is why I have taken the lead, on behalf of the Executive, to improve these matters with the support of other Ministers, but I see no virtue or value in legislating in the way that is proposed in this Bill. Good administrative practices are better set out in guidance and codes that can be updated and adjusted as necessary.

The amendments that the Bill sponsor has tabled make significant improvements to some unfortunate drafting. Without those amendments, the Bill could have had a profoundly damaging impact on good government. However, I am still determined to

oppose the clauses, even as amended, as they cut across good practice.

The Chair of the Finance Committee asked whether it was the Department's view that clause 6 was still too specific: the answer is yes. Specifying the contents of the minute of a meeting does not appear to be an appropriate matter for primary legislation and does not take account of the appropriate application of judgement. Amendment No 13 clarifies who is responsible for minuting ministerial meetings and what those minutes must include. To illustrate the mistake of legislating for such a matter, I pointed out that the provisions, as drafted, did not define what a "meeting" was, and a number of contributors referred to that. A meeting might include a conversation in a corridor, as Members have alluded to, or it might include a conversation with a taxi driver when you are travelling to a meeting. It might include, for instance, the Education Minister addressing an assembly hall full of students about education policy matters that affect their life. The amendment would render unlawful any record of a meeting that failed to include every decision taken, without any reference to and regardless of the relevance of that decision. The amendment would also render unlawful any minute that did not record the name of every person present. Does the secretary have to compile a list of all 500 schoolchildren who attended that meeting with the Education Minister in an assembly hall, listened to him talking about education policy and had the opportunity to question him or lobby him on education policy and how it affected their lives? How does recording that information square with the data protection consequences of the Department storing the details of 500 children for no other reason than the law says that it must?

Amendment No 14 looks equally unwieldy. Logically, it would require a civil servant to be present and take a note wherever a Minister might happen to meet a person other than another Minister or official just in case they began to discuss official business. That might be in a constituency office or in the canteen of this Building. For all we know, it could be a chance meeting in a supermarket or after church. That issue should not be in legislation. The good practice guide is where it belongs, so officials can apply their judgement and take the context into account.

Mr Wells asked about the suggestion that Mr Allister made when I asked him about it. I was illustrating the absurdity of the idea of what constituted a lobby, and he accepted that it was an absurdity to have to record it if somebody stopped you on the street and asked you to get a street light fixed. Of course, I could expand that slightly. If somebody stopped you on the street and asked you to get six street lights fixed, you might think that that is reasonable, but that might be the thing, as the Member will know, that makes a development an adopted development or not an adopted development. Where does one draw the line? Is it one street light or two street lights? Is it one pothole or two potholes or the resurfacing of an estate that allows a contractor to get his bond back? Where does the definition end?

Mr Wells: Will the Minister give way?

Mr Murphy: I give way to Mr Wells.

Mr Wells: The Minister makes a valid point. If Mr Allister were to come up with a form of wording that would deal with that, would he support that amendment?

Mr Murphy: That is the point that I am getting to. Even should he remove:

> *"the exercise of any other function of the department"*

above that, it states:

> *"(i) any contract or other agreement,*
> *(ii) any grant or other financial assistance, or*
> *(iii) any licence or other authorisation;".*

That is so expansive as to include any one of those issues that I mentioned. I would not support that. It is obviously ludicrous, and I have used an example of how ludicrous it could get when trying to define what lobbying is and where it is constituted. Clearly, I would not support that. The whole clause as drafted brings us into all that territory at any stage.

Amendment Nos 16 and 20 attempt to narrow down the effects of clauses 9 and 11. Those clauses, as originally drafted, would, as the Bill sponsor clearly now knows, have a devastating impact on government, but the amendments do not detract from the fact that the Bill would criminalise activity in such a way as to do serious damage to the effectiveness of government. Why should any official or Minister have the threat of criminal proceedings hanging over their communication using their own telephone or using a home printer after the office has closed? Why should an official or Minister be threatened with legal action to determine whether their briefing to the press or talking to a constituent was for anyone's improper benefit? Of course, the clauses as

amended set out all sorts of protections to defensible breaches, but I cannot see why the courts should have the final say on whether an official is guilty of poor practice. I cannot allow for the possibility that a junior colleague might one day be in the middle of a test case where the margins of this imprecise law are explored.

Finally, amendment Nos 6, 17, 18 and 19 all relate to clause 10, which is a good example of unnecessary provision. The Register of Ministers' Interests and the register of special advisers' interests are already required. The latter register of special advisers was published, I think, in July this year. The guidance for Ministers requires publication of a statement of relevant interests twice yearly. The intention of that is to ensure that that is published, but, of course, each Minister is an MLA, and our interests are published in the Register of Members' Interests of all 90 MLAs, so that is clear. If there is some discrepancy between what I declare as an MLA and what I declare as a Minister, that should be a matter for public concern and investigation. Legislating for those things is superfluous and adds no value.

As I have said throughout the debate, I am absolutely for proper and improved scrutiny and accountability. I have invested significant work in leading the Executive's response in that regard, and my Department has invested significant work in preparing, drafting and having approved codes for spads and Ministers and on Civil Service conduct. We are about to embark on a significant review of the Civil Service here as well. All of that is intended to lead to much greater effectiveness, responsibility, accountability and transparency. That is its purpose. That is entirely proper for any democratic institution, particularly one such as this, which has gone through financial scandals and has seen scandalous practices exposed.

The Bill has a series of unintended and, perhaps, from the sponsor's point of view, intended consequences that some Members who support it have not clearly thought through. Opposition to the Bill is not opposition to greater scrutiny, accountability or transparency, but it is saying that that can be done in a much better way. That is the course that the Executive and the parties to the Executive designed over the summer of 2019 and have followed through ever since.

12.30 am

Mr Speaker: I call Jim Allister to make his winding-up speech on the third group of amendments.

Mr Allister: One will always find reasons not to do something. Of course, that is the fundamental approach of the Department and the Minister. You would nearly think that RHI had never happened or that we did not have the scandals to which I referred, because such are the little things that have happened that they can all be dealt with by codes — codes that the Minister, in his own words, wants to keep as flexible as possible and "amenable to interpretation". What does it say about an intent to address those issues seriously to say that the answer lies in flexible codes that are amenable to the Minister's interpretation?

That is the choice that remains. It was the choice at the beginning of the debate, and it is the choice at the end of the debate. Do we want cosy codes that we can change, tweak and amend to suit purposes, or do we want the bite of legislation? That is the fundamental and abiding choice. That is a choice to be made in the context of one of the worst illustrations of bad government, which the RHI inquiry exposed. If the response of the House is that we do not really need to do anything and we certainly do not need to do anything that we cannot tweak, change and interpret as we go along, I say to the House that it is living in a bubble. People in the Province were rightly scandalised by what emerged. If the response of the institutions is to say that we will do nothing that is binding or lasting and that we will create no deterrents, the House will further diminish its public standing because it will have failed to tune in to the expectation that more than a few transitory, amendable, amenable codes is the answer. That, I say again, is the fundamental choice.

I remind Members of what I read to you from Lord Bingham, when he outlined that codes are just codes:

> *"It is in my view plain that the Code does not have the binding effect which a statutory provision or a statutory instrument would have."*

That is the choice that each one of us is making: do we want the changes to be binding? Do we want to address the issue of people giving official information to the benefit of family and friends? Do we want to make a binding deterrent to that, or do we want to comfort ourselves by saying that, because we have drafted amenable codes, it will not happen again? Really? That is the fundamental choice. We must ask ourselves why it is that people want amenable codes and interpretation and do not want anything binding. That is the Minister's position. Why is that? The essential voice on

that is coming from Sinn Féin, which, of course, as I pointed out, never wanted codes in the first place. It voted against them. Now it wants to make sure that, if we must have codes, they will not have the teeth of legislation. That is a poor position for the House to be in.

I listened carefully to the debate. There are points that I am amenable to taking on board, but no point can be taken on board if the relevant clause falls at Consideration Stage, because, at Further Consideration Stage, you cannot reinsert something that has been decided on in principle at Consideration Stage. If Members are interested in ensuring that we could better some clauses — we probably could — we can do that at Further Consideration Stage only if they are still here. If they are gone, they can never be bettered. I say this to those with concerns: if your concerns are about improving those clauses, I am up for addressing them. I have always been up for talking to Members who have concerns about those issues, and I am certainly up for that going forward.

Ms Sugden, for example, raised some interesting points. She talked about amendment No 13 being too restrictive, and I think that Mr O'Toole also talked about that. She asked what "every internal departmental meeting" means and whether we are talking about substantive meetings. I must say that my inclination is to say that, yes, we are talking about substantive meetings. It is about finding the wording that embraces that without creating loopholes, which is always the challenge. I do not think that it is about the whispered meeting down the hall. Clause 6 and amendment No 13 are talking about a departmental meeting where a Minister and a special adviser are gathered together inside a Department and are settling and making decisions and deciding actions. That is the thrust of amendment No 13 and clause 6.

Ms Sugden: Will the Member give way?

Mr Allister: Yes.

Ms Sugden: I suppose, but we need to clarify that, because, from my experience, those conversations and agreements on the actions to be taken forward did not happen just in Castle Buildings. For example, I was receiving phone calls at all hours of the evening about departmental policy that was immediate and required. Any intention behind that needs to be consistent, and such conversations do not happen just in a government building.

Mr Allister: I appreciate that point, but you have to have a baseline. The baseline surely is the decisions that are taken between a Minister and his civil servants and special adviser on an identifiable occasion, and, if such a decision is taken, that decision should be recorded. Otherwise, we will get to the ludicrous situation of Andrew Crawford saying that, "In seven years, I never saw a minute of a meeting involving Ministers". It is that mischief that needs to be addressed. Yes, we could find reasons to do nothing, but doing nothing is open season and an open invitation for things to carry on as they were.

Mr O'Dowd: I thank the Member for giving way. There is a difference between the minutes of a meeting not being taken and decisions not being recorded. Any ministerial decision has to be recorded in a submission that is sent to the Minister by the Civil Service and is available under a freedom of information request; indeed, civil servants cannot action spends or take any action without a submission signed by their Minister.

Mr Allister: Then, there would have been no RHI, would there? That is the reality. The ex-Minister says, "This is how things are done": we would not have had RHI if that was how things were done. It was the very absence of those things that lay of the heart of all of that.

Mr O'Dowd: Will the Member give way?

Mr Allister: Yes.

Mr O'Dowd: The Member needs to understand this: RHI came about because the House passed bad legislation. The Minister brought legislation to the House that she had not even read.

Mr Speaker: John O'Dowd, your microphone is not picking you up. You are not being recorded.

Mr O'Dowd: Thank you. The reason RHI came about was that the House passed bad legislation. The Minister brought legislation to the House that she had not even read, and Members voted for it. There is a danger tonight of Members voting for bad legislation again. It proves the point that legislation does not cure all ills, but it can cause a few of them.

Mr Allister: It was not the legislation that caused the then head of the Civil Service, Mr Sterling, to say that there was a conscious decision not to record, lest it provoke freedom of information requests. That was not

legislation; that was a culture. That was a conscious decision by Ministers in the Office of the First Minister and deputy First Minister that matters should not be recorded lest it give rise to FOI.

We cannot just push away the idea that we need to do anything with the straw men that are being set up in this debate. You have to face them with the realities of some of the evidence in RHI, and, in facing them with some of those realities, you have to make a decision. Are we going to do something about it, or are we going to shrug our shoulders? If we are not going to shrug our shoulders, we need to do something about it, and it starts with the recording of decisions. That might require some finessing of which decisions, where and when, but the principle that those who urge rejection of amendment No 13 and clause 6 want to reject is the principle of keeping any record about anything significant. That is the invitation that is being issued to the House. On the other hand, I issue an invitation to make sure that we craft legislation that will for ever make sure that the head of the Civil Service cannot say that there was a policy decision not to take notes, because such a decision would be in breach of the law. That is the basis of the invitation to do something about these matters.

Ms Sugden raised the point about whether the political exemption should be wider. The one danger with that is the public perception of creating a cocoon for the political elite: "If you are a politician, this does not catch you". There is a logic to saying that a Minister must have the freedom to discuss with his party policy options and policy ways forward. I am not saying it is impossible, but it is more difficult to frame that in a way that it captures every political representation made to a Minister, because some of those representations will be in the category of lobbying. If they are in that category and if you come to another RHI, should it be concealed that party A lobbied party B to do something? That should not be concealed, but I hear what the Member says.

Ms Sugden: I appreciate the Member's giving way. I understand what he says, but I see my role as an MLA to lobby Ministers on policy. I am held to account by the people whom I represent to ensure that I do that. I have great difficulty here, where it feels like a civil servant is holding me to account. That is not the right dynamic or direction of travel. I am held to account by the people of East Londonderry, not by a record kept by a civil servant. I would not support it if it stayed limited to a Minister's political party, but I would offer that we could extend that to political peers in the sense that it is Ministers and MLAs, if that is appropriate.

I think that because that political dynamic is something that is expected, and it is not necessarily appropriate that a civil servant almost takes on that role of holding me to account as a Member of the House. By all means, he has a direct relationship with the Minister, but he does not have that relationship with Members of the legislature.

12.45 am

Mr Allister: I am not sure that I entirely follow. I do not think that it is the civil servant who would be holding you to account. I do not get the essence of how it is the civil servant who is holding you to account. If you are the Minister, you are being held to account, as is the civil servant, as is the special adviser, to keep a proper record. That is where the holding to account comes in.

Mr Wells: Will the Member give way?

Mr Allister: Mr Wells.

Mr Wells: The honourable Member for East Londonderry Ms Sugden has raised legitimate concerns that she has with various amendments and clauses, as have Mr Muir and Mr O'Toole. Surely the best way forward is for those individuals to allow the amendments to pass at this stage and then table amendments for Further Consideration Stage to meet their concerns, rather than vote against the amendments tonight. If they vote against them, the amendments will fall completely and there will be no opportunity whatever to amend them. Voting for them can be done tonight without prejudice, and they can make it clear that they are voting for them but reserving the right to amend or oppose them at a later stage. The danger is that the concerns that are being raised by those three individuals could lead to their parties voting against the amendments and there being no opportunity to improve them at a later stage.

Mr Allister: I think, in part, that I have indicated that. Of course, there were opportunities before today to table amendments. Until last Wednesday, there were opportunities for all of us to table amendments. If those concerns had manifested themselves in amendments, we might have had an even more constructive debate on the issues.

I started the winding-up speech on the group by saying that you will always find a reason to do

nothing. By not tabling amendments and then criticising the amendments that are tabled, you can easily find a reason to vote things down. I say, however, to those who are concerned that I have indicated a willingness to be amenable to sound suggestions, but I can do that only if the clauses survive this stage. There is room to move forward. I think that Ms Sugden and Mr O'Toole have made points that require being addressed, and I am certainly more than willing to try to do that. Some of those points I can almost answer here and now, but, if we are going to have a discussion, I am happy to wait. I am not so sure that Mr Muir has indicated that he is that persuadable, but my door is open on the issues. The thrust of Mr Muir's argument was pretty much like the Sinn Féin thrust, in that codes are enough, so he does not seem to me to be willing to consider more than codes.

Mr O'Toole: Will the Member give way?

Mr Allister: I will in a moment.

If I am wrong about that, I will be delighted to have that discussion.

Mr O'Toole: I thank the Member for giving way. To be fair to him, he has been amenable throughout to conversations and feedback. If I did not make it clear enough in my speech, I say that we are certainly amenable to amendments, specifically to new clause 8A and the replacement clause 11. We find it difficult to see how clause 6 can be amended in a way that makes it, frankly, workable, so that is different. To be absolutely clear, however, our position is that we are not opposing the other two amendments but are looking to have discussions about improving them.

Mr Allister: I made the point that they hang together. There is a triumvirate connection between the recording of an internal meeting of the Department, a meeting with externals in the Department and the lobbying of Ministers etc. However, I am in the hands of the House; I cannot dictate the outcome of any of these votes.

Mr Wells: Will the Member take an intervention?

Mr Allister: Yes.

Mr Wells: Mr O'Toole seems to be trying to meet us halfway. I can do the maths here this evening. He could adopt the purist position of voting against the Bill and the amendments tonight, but, the de facto situation is that the clause that he wishes to amend will, therefore, fall. If it falls, he has no opportunity to meet Mr Allister to obtain the amendments and changes that he requires. That is the difficulty that we face if he takes a purist stance.

Mr Muir is in a much more difficult situation. He is, basically, in the Sinn Féin camp of opposing the entire Bill. From what I can see, he did not seem to support any of it. Equally, if he has concerns, he can abstain tonight to enable the Bill to go through, although he would be perfectly within his rights to vote against clauses at Further Consideration Stage. He is not going beyond the point of no return this evening. The same applies to Ms Sugden. If they wish to achieve the changes that they require, it is in their hands, because it is clear that Sinn Féin will not even vote for the colour of the cover of this legislation. They are not going to have it. Therefore, it rests with Ms Sugden, Mr O'Toole and Mr Muir whether they can obtain the changes that they want; they will not be held to it at the Further Consideration Stage. We are not going to say that, because you support it tonight, you are duty-bound to support it at Further Consideration Stage if you do not get the changes that you require.

Mr Allister: The Minister said, in respect of amendment No 15, that I had tentatively offered, at an earlier stage, to drop 8A (2)(d) in relation to the function of the Department. The Minister then said that all the rest of it is far too wide. Sorry, that is the definition of lobbying in the UK Parliament's legislation. The essence of it is being lobbied about key components, about legislation, policy and things that the Department can do, such as issuing grants and contracts. Surely, if someone is lobbied about those things, that should not remain a secret. If it turns out that a Minister makes a volte-face or suddenly announces a very generous grant to a particular interest, there will be no record, ever, of how his mind was shaped and changed by the lobbying interest.

That is why it is important that, if a significant influence is brought to bear on a subject, there should be a record of it in the Department. To deny a record of that gives a Minister carte blanche to have his mind changed by vested interests, and no one will ever be the wiser about it. It is clear from RHI that Moy Park was a very active lobbyist on tariffs, when they should be increased and when they should not be decreased, among other things. Yet, not a word of it is recorded in that Department. Was that right? I say that it was not, and I am trying to remedy that situation by requiring that, if Moy Park comes lobbying again on those issues, there has to be a record. The choice is between keeping a record or having no record and

leaving yourself open to the same scenario again.

Mr Murphy: Will the Member give way?

Mr Allister: Yes, I will give way.

Mr Murphy: Of course, it is not the choice, and we have made that clear. There a requirement for records to be kept, minutes to be kept of meetings, interests to be declared and interests to be published. All of that is there. It is not a straight choice at all. The Member is going back to the premise that nothing has happened since RHI, and that is clearly not the case.

I have been struck by the past number of exchanges with his trusty sidekick Mr Wells, who has been riding wingman. The Bill has been through a Second Stage debate and a lengthy Committee Stage, during which all of the issues were talked about, and here we are, at almost 1.00 am during Consideration Stage, and there is a frantic attempt to put a sticking plaster over all of the obvious holes that have become apparent in the Bill over the course of the debate. If that is what people have to offer, I am glad that we are not biting on it.

Mr O'Dowd: On a point of order, Mr Speaker. It is now 12.55 am. The debate has been going on for approximately nine hours. The issues have been well debated. The proposer of the amendments has had ample opportunity to propose and respond. I propose that the Question now be put.

Mr Speaker: The last Member who is down to speak is on his feet. If we have no more interruptions, we may be able to get to the end of the contribution of the person who is winding up the debate. I will not move any further on that.

Mr Allister: Thank you, Mr Speaker. I am drawing to a close. I have reiterated the point that there is a fundamental choice to be made about whether you want legislation or not. If you do not, you have to explain why. That raises a number of questions. Each of the clauses, with the amendments that improve them, is worthy of support. I trust that they will receive that support. If they do, I am pledged that I will seek to address the issues that some people have with them. For some, there is no addressing them. It would not matter what I did; I could stand on my head, and it would not make any difference. However, there are Members who have genuine concerns, and I am quite prepared to deal with those, if I have the opportunity to do so.

Question put, That amendment No 13 be made.

Mr Speaker: I remind Members that they should continue to uphold social distancing. Members who have proxy voting arrangements in place should not come to the Chamber.

Before I put the Question again, I remind Members that, if possible, it would be preferable if we could avoid a Division.

Question put a second time.

Mr Speaker: Before the Assembly divides, I remind you that, as per Standing Order 112, the Assembly currently has proxy voting arrangements in place. Members who have authorised another Member to vote on their behalf are not entitled to vote in person and should not enter the Lobbies. I also remind you, once again, to ensure that social distancing continues to be observed.

The Assembly divided: Ayes 42; Noes 44.

AYES

Dr Aiken, Mr Allen, Mr Allister, Ms Bailey, Mrs Barton, Mr Beattie, Mr M Bradley, Ms P Bradley, Mr K Buchanan, Mr T Buchanan, Mr Buckley, Ms Bunting, Mr Butler, Mrs Cameron, Mr Carroll, Mr Chambers, Mr Clarke, Mrs Dodds, Mr Dunne, Mr Easton, Mrs Foster, Mr Frew, Mr Givan, Mr Harvey, Mr Hilditch, Mr Humphrey, Mr Irwin, Mr Lyons, Miss McIlveen, Mr Middleton, Mr Nesbitt, Mr Newton, Mr Poots, Mr Robinson, Mr Stalford, Mr Stewart, Mr Storey, Ms Sugden, Mr Swann, Mr Weir, Mr Wells, Miss Woods.

Tellers for the Ayes: Dr Aiken and Mr Wells

NOES

Ms Anderson, Dr Archibald, Ms Armstrong, Mr Blair, Mr Boylan, Ms S Bradley, Ms Bradshaw, Ms Brogan, Mr Catney, Mr Dickson, Ms Dillon, Ms Dolan, Mr Durkan, Ms Ennis, Ms Flynn, Mr Gildernew, Ms Hargey, Ms Hunter, Mr Kearney, Mrs D Kelly, Mr G Kelly, Ms Kimmins, Mrs Long, Mr Lynch, Mr Lyttle, Mr McAleer, Mr McCann, Mr McCrossan, Mr McGrath, Mr McGuigan, Mr McHugh, Ms McLaughlin, Mr McNulty, Ms Mallon, Mr Muir, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mr O'Dowd, Mrs O'Neill, Mr O'Toole, Ms Rogan, Mr Sheehan, Ms Sheerin.

Tellers for the Noes: Ms Dolan and Mr McGuigan

The following Members' votes were cast by their notified proxy in this Division:

Mr K Buchanan voted for Ms P Bradley, Mr Buckley, Mrs Dodds, Mr Dunne, Mr Easton, Mrs Foster, Mr Givan, Mr Harvey, Mr Hilditch, Mr Irwin, Mr Lyons, Mr Middleton, Mr Newton, Mr Poots, Mr Robinson, Mr Stalford, Mr Storey and Mr Weir.

Mr Butler voted for Mr Allen, Mrs Barton, Mr Beattie, Mr Chambers, Mr Nesbitt, Mr Stewart and Mr Swann.

Mr Muir voted for Ms Armstrong, Mr Blair, Ms Bradshaw, Mr Dickson, Mrs Long and Mr Lyttle.

Mr O'Dowd voted for Ms Anderson, Dr Archibald, Mr Boylan, Ms Brogan, Ms Dillon, Ms Dolan [Teller, Noes], Ms Ennis, Ms Flynn, Mr Gildernew, Ms Hargey, Mr Kearney, Mr G Kelly, Ms Kimmins, Mr Lynch, Mr McAleer, Mr McCann, Mr McGuigan [Teller, Noes], Mr McHugh, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mrs O'Neill, Ms Rogan, Mr Sheehan and Ms Sheerin.

Mr O'Toole voted for Ms S Bradley, Mr Catney, Mr Durkan, Ms Hunter, Mrs D Kelly, Ms Mallon, Mr McCrossan, Mr McGrath, Ms McLaughlin, and Mr McNulty.

Question accordingly negatived.

Question put, That the clause stand part of the Bill.

Mr Speaker: I have been advised by the party Whips, in accordance with Standing Order 113(5)(b), that there is agreement that we can dispense with the three minutes and move straight to the Division.

The Assembly divided: Ayes 42; Noes 33.

AYES

Dr Aiken, Mr Allen, Mr Allister, Ms Bailey, Mrs Barton, Mr Beattie, Mr M Bradley, Ms P Bradley, Mr K Buchanan, Mr T Buchanan, Mr Buckley, Ms Bunting, Mr Butler, Mrs Cameron, Mr Carroll, Mr Chambers, Mr Clarke, Mrs Dodds, Mr Dunne, Mr Easton, Mrs Foster, Mr Frew, Mr Givan, Mr Harvey, Mr Hilditch, Mr Humphrey, Mr Irwin, Mr Lyons, Miss McIlveen, Mr Middleton, Mr Nesbitt, Mr Newton, Mr Poots, Mr Robinson, Mr Stalford, Mr Stewart, Mr Storey, Ms Sugden, Mr Swann, Mr Weir, Mr Wells, Miss Woods.

Tellers for the Ayes: Dr Aiken and Mr Wells

NOES

Ms Anderson, Dr Archibald, Ms Armstrong, Mr Blair, Mr Boylan, Ms Bradshaw, Ms Brogan, Mr Dickson, Ms Dillon, Ms Dolan, Ms Ennis, Ms Flynn, Mr Gildernew, Ms Hargey, Mr Kearney, Mr G Kelly, Ms Kimmins, Mrs Long, Mr Lynch, Mr Lyttle, Mr McAleer, Mr McCann, Mr McGuigan, Mr McHugh, Mr Muir, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mr O'Dowd, Mrs O'Neill, Ms Rogan, Mr Sheehan, Ms Sheerin.

Tellers for the Noes: Ms Dolan and Mr McGuigan.

The following Members voted in both Lobbies and are therefore not counted in the result: Ms S Bradley, Mr Catney, Mr Durkan, Ms Hunter, Mrs D Kelly, Mr McCrossan, Mr McGrath, Ms McLaughlin, Mr McNulty, Ms Mallon, Mr O'Toole

The following Members' votes were cast by their notified proxy in this Division:

Mr K Buchanan voted for Ms P Bradley, Mr Buckley, Mrs Dodds, Mr Dunne, Mr Easton, Mrs Foster, Mr Givan, Mr Harvey, Mr Hilditch, Mr Irwin, Mr Lyons, Mr Middleton, Mr Newton, Mr Poots, Mr Robinson, Mr Stalford, Mr Storey and Mr Weir.

Mr Butler voted for Mr Allen, Mrs Barton, Mr Beattie, Mr Chambers, Mr Nesbitt, Mr Stewart and Mr Swann.

Mr Muir voted for Ms Armstrong, Mr Blair, Ms Bradshaw, Mr Dickson, Mrs Long and Mr Lyttle.

Mr O'Dowd voted for Ms Anderson, Dr Archibald, Mr Boylan, Ms Brogan, Ms Dillon, Ms Dolan [Teller, Noes], Ms Ennis, Ms Flynn, Mr Gildernew, Ms Hargey, Mr Kearney, Mr G Kelly, Ms Kimmins, Mr Lynch, Mr McAleer, Mr McCann, Mr McGuigan [Teller, Noes], Mr McHugh, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mrs O'Neill, Ms Rogan, Mr Sheehan and Ms Sheerin.

Mr O'Toole voted for Ms S Bradley, Mr Catney, Mr Durkan, Ms Hunter, Mrs D Kelly, Ms Mallon, Mr McCrossan, Mr McGrath, Ms McLaughlin, and Mr McNulty.

Question accordingly agreed to.

Clause 6 ordered to stand part of the Bill.

1.30 am

Mr Speaker: I will pause for a moment or two to make sure that everybody who wishes to return to the Chamber before the next vote can do so.

Clause 7 (Records of contacts)

Mr Speaker: Before I put the Question, I remind Members that we have already debated Mr Allister's opposition to clause 7 stand part of the Bill. The Question will be put in the positive, as usual.

Clause 7 disagreed to.

Clause 8 (Presence of civil servants)

Amendment No 14 proposed: Leave out clause 8 and insert

"**Presence of civil servants**

8.—(1) A civil servant, other than a special adviser, must be present and take an accurate written record of every meeting held by a minister or special adviser with non-departmental personnel about official business; except for liaison with the minister's political party.

(2) The department must retain the record made pursuant to subsection (1).".— *[Mr Allister.]*

Question put.

The Assembly divided: Ayes 53; Noes 33.

AYES

Dr Aiken, Mr Allen, Mr Allister, Ms Bailey, Mrs Barton, Mr Beattie, Mr M Bradley, Ms P Bradley, Ms S Bradley, Mr K Buchanan, Mr T Buchanan, Mr Buckley, Ms Bunting, Mr Butler, Mrs Cameron, Mr Carroll, Mr Catney, Mr Chambers, Mr Clarke, Mrs Dodds, Mr Dunne, Mr Durkan, Mr Easton, Mrs Foster, Mr Frew, Mr Givan, Mr Harvey, Mr Hilditch, Mr Humphrey, Ms Hunter, Mr Irwin, Mrs D Kelly, Mr Lyons, Mr McCrossan, Mr McGrath, Miss McIlveen, Ms McLaughlin, Mr McNulty, Ms Mallon, Mr Middleton, Mr Nesbitt, Mr Newton, Mr O'Toole, Mr Poots, Mr Robinson, Mr Stalford, Mr Stewart, Mr Storey, Ms Sugden, Mr Swann, Mr Weir, Mr Wells, Miss Woods.

Tellers for the Ayes: Mr Allister and Mr Wells

NOES

Ms Anderson, Dr Archibald, Ms Armstrong, Mr Blair, Mr Boylan, Ms Bradshaw, Ms Brogan, Mr Dickson, Ms Dillon, Ms Dolan, Ms Ennis, Ms Flynn, Mr Gildernew, Ms Hargey, Mr Kearney, Mr G Kelly, Ms Kimmins, Mrs Long, Mr Lynch, Mr Lyttle, Mr McAleer, Mr McCann, Mr McGuigan, Mr McHugh, Mr Muir, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mr O'Dowd, Mrs O'Neill, Ms Rogan, Mr Sheehan, Ms Sheerin.

Tellers for the Noes: Ms Dolan and Mr McGuigan

The following Members' votes were cast by their notified proxy in this Division:

Mr K Buchanan voted for Ms P Bradley, Mr Buckley, Mrs Dodds, Mr Dunne, Mr Easton, Mrs Foster, Mr Givan, Mr Harvey, Mr Hilditch, Mr Irwin, Mr Lyons, Mr Middleton, Mr Newton, Mr Poots, Mr Robinson, Mr Stalford, Mr Storey and Mr Weir.

Mr Butler voted for Mr Allen, Mrs Barton, Mr Beattie, Mr Chambers, Mr Nesbitt, Mr Stewart and Mr Swann.

Mr Muir voted for Ms Armstrong, Mr Blair, Ms Bradshaw, Mr Dickson, Mrs Long and Mr Lyttle.

Mr O'Dowd voted for Ms Anderson, Dr Archibald, Mr Boylan, Ms Brogan, Ms Dillon, Ms Dolan [Teller, Noes], Ms Ennis, Ms Flynn, Mr Gildernew, Ms Hargey, Mr Kearney, Mr G Kelly, Ms Kimmins, Mr Lynch, Mr McAleer, Mr McCann, Mr McGuigan [Teller, Noes], Mr McHugh, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mrs O'Neill, Ms Rogan, Mr Sheehan and Ms Sheerin.

Mr O'Toole voted for Ms S Bradley, Mr Catney, Mr Durkan, Ms Hunter, Mrs D Kelly, Ms Mallon, Mr McCrossan, Mr McGrath, Ms McLaughlin, and Mr McNulty.

Question accordingly agreed to.

Clause 8, as amended, ordered to stand part of the Bill.

New Clause

Amendment No 15 proposed: After clause 8 insert

"**Record of being lobbied**

8A.—(1) In the event of a minister or special adviser, other than as provided for in section 8, being lobbied, then, the minister or (as the case may be) special adviser must provide at the

earliest opportunity a written record to their department of all such lobbying and the department must retain such records.

(2) In this section "being lobbied" means to receive personally a communication, either oral or written, on behalf of the person making the communication or another person or persons, relating to:

(a) the development, adoption or modification of any proposal of the department to make or amend primary or subordinate legislation;

(b) the development, adoption or modification of any other policy of the department;

(c) the making, giving or issuing by the department of, or the taking of any other steps by the department in relation to, —

(i) any contract or other agreement,

(ii) any grant or other financial assistance, or

(iii) any licence or other authorisation; or

(d) the exercise of any other function of the department.

(3) For the purposes of subsection (2), it does not matter whether the communication occurs in or outwith the United Kingdom.

(4) Nothing in this section shall apply to a communication —

(a) made in proceedings of the Northern Ireland Assembly or the Executive Committee, or

(b) arising in the course of liaison with the minister's political party.".— *[Mr Allister.]*

Question put.

The Assembly divided: Ayes 42; Noes 33.

AYES

Dr Aiken, Mr Allen, Mr Allister, Ms Bailey, Mrs Barton, Mr Beattie, Mr M Bradley, Ms P Bradley, Mr K Buchanan, Mr T Buchanan, Mr Buckley, Ms Bunting, Mr Butler, Mrs Cameron, Mr Carroll, Mr Chambers, Mr Clarke, Mrs Dodds, Mr Dunne, Mr Easton, Mrs Foster, Mr Frew, Mr Givan, Mr Harvey, Mr Hilditch, Mr Humphrey, Mr Irwin, Mr Lyons, Miss McIlveen, Mr Middleton, Mr Nesbitt, Mr Newton, Mr Poots, Mr Robinson, Mr Stalford, Mr Stewart, Mr Storey, Ms Sugden, Mr Swann, Mr Weir, Mr Wells, Miss Woods.

Tellers for the Ayes: Mr Allister and Mr Wells

NOES

Ms Anderson, Dr Archibald, Ms Armstrong, Mr Blair, Mr Boylan, Ms Bradshaw, Ms Brogan, Mr Dickson, Ms Dillon, Ms Dolan, Ms Ennis, Ms Flynn, Mr Gildernew, Ms Hargey, Mr Kearney, Mr G Kelly, Ms Kimmins, Mrs Long, Mr Lynch, Mr Lyttle, Mr McAleer, Mr McCann, Mr McGuigan, Mr McHugh, Mr Muir, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mr O'Dowd, Mrs O'Neill, Ms Rogan, Mr Sheehan, Ms Sheerin.

Tellers for the Noes: Ms Dolan and Mr McGuigan.

The following Members voted in both Lobbies and are therefore not counted in the result: Ms S Bradley, Mr Catney, Mr Durkan, Ms Hunter, Mrs D Kelly, Mr McCrossan, Mr McGrath, Ms McLaughlin, Mr McNulty, Ms Mallon, Mr O'Toole

The following Members' votes were cast by their notified proxy in this Division:

Mr K Buchanan voted for Ms P Bradley, Mr Buckley, Mrs Dodds, Mr Dunne, Mr Easton, Mrs Foster, Mr Givan, Mr Harvey, Mr Hilditch, Mr Irwin, Mr Lyons, Mr Middleton, Mr Newton, Mr Poots, Mr Robinson, Mr Stalford, Mr Storey and Mr Weir.

Mr Butler voted for Mr Allen, Mrs Barton, Mr Beattie, Mr Chambers, Mr Nesbitt, Mr Stewart and Mr Swann.

Mr Muir voted for Ms Armstrong, Mr Blair, Ms Bradshaw, Mr Dickson, Mrs Long and Mr Lyttle.

Mr O'Dowd voted for Ms Anderson, Dr Archibald, Mr Boylan, Ms Brogan, Ms Dillon, Ms Dolan [Teller, Noes], Ms Ennis, Ms Flynn, Mr Gildernew, Ms Hargey, Mr Kearney, Mr G Kelly, Ms Kimmins, Mr Lynch, Mr McAleer, Mr McCann, Mr McGuigan [Teller, Noes], Mr McHugh, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mrs O'Neill, Ms Rogan, Mr Sheehan and Ms Sheerin.

Mr O'Toole voted for Ms S Bradley, Mr Catney, Mr Durkan, Ms Hunter, Mrs D Kelly, Ms Mallon, Mr McCrossan, Mr McGrath, Ms McLaughlin, and Mr McNulty.

Question accordingly agreed to.

New clause ordered to stand part of the Bill.

Clause 9 (Use of official systems)

Amendment No 16 proposed: Leave out clause 9 and insert

"**Use of official systems**

9.—(1) A minister, special adviser or civil servant when communicating on official business by electronic means must not use personal accounts or anything other than devices issued by the department, systems used by the department and departmental email addresses.

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

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

(b) make an accurate record on the departmental system of any verbal communications relating to departmental matters.

(3) It shall be an offence for any minister, special adviser or civil servant to fail to comply with the requirements of subsection (2).

(4) In proceedings in respect of a charge against a person ("A") of the offence under subsection (3), it is a defence for A to show that the course of behaviour was reasonable in the particular circumstances or was in the public interest.

(5) A person is taken to have shown the fact mentioned in subsection (4) if —

(a) evidence adduced is enough to raise an issue as to whether the course of behaviour is as described in subsection (4), and

(b) the prosecution does not prove beyond reasonable doubt that the course of behaviour is not as described in subsection (4).

(6) A person guilty of an offence under this section is liable on conviction

(a) on indictment, to imprisonment for a term not exceeding 2 years;

(b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.".— *[Mr Allister.]*

Question put.

The Assembly divided: Ayes 42; Noes 44.

AYES

Dr Aiken, Mr Allen, Mr Allister, Ms Bailey, Mrs Barton, Mr Beattie, Mr M Bradley, Ms P Bradley, Mr K Buchanan, Mr T Buchanan, Mr Buckley, Ms Bunting, Mr Butler, Mrs Cameron, Mr Carroll, Mr Chambers, Mr Clarke, Mrs Dodds, Mr Dunne, Mr Easton, Mrs Foster, Mr Frew, Mr Givan, Mr Harvey, Mr Hilditch, Mr Humphrey, Mr Irwin, Mr Lyons, Miss McIlveen, Mr Middleton, Mr Nesbitt, Mr Newton, Mr Poots, Mr Robinson, Mr Stalford, Mr Stewart, Mr Storey, Ms Sugden, Mr Swann, Mr Weir, Mr Wells, Miss Woods.

Tellers for the Ayes: Mr Allister and Mr Wells

NOES

Ms Anderson, Dr Archibald, Ms Armstrong, Mr Blair, Mr Boylan, Ms S Bradley, Ms Bradshaw, Ms Brogan, Mr Catney, Mr Dickson, Ms Dillon, Ms Dolan, Mr Durkan, Ms Ennis, Ms Flynn, Mr Gildernew, Ms Hargey, Ms Hunter, Mr Kearney, Mrs D Kelly, Mr G Kelly, Ms Kimmins, Mrs Long, Mr Lynch, Mr Lyttle, Mr McAleer, Mr McCann, Mr McCrossan, Mr McGrath, Mr McGuigan, Mr McHugh, Ms McLaughlin, Mr McNulty, Ms Mallon, Mr Muir, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mr O'Dowd, Mrs O'Neill, Mr O'Toole, Ms Rogan, Mr Sheehan, Ms Sheerin.

Tellers for the Noes: Ms Dolan and Mr McGuigan

The following Members' votes were cast by their notified proxy in this Division:

Mr K Buchanan voted for Ms P Bradley, Mr Buckley, Mrs Dodds, Mr Dunne, Mr Easton, Mrs Foster, Mr Givan, Mr Harvey, Mr Hilditch, Mr Irwin, Mr Lyons, Mr Middleton, Mr Newton, Mr Poots, Mr Robinson, Mr Stalford, Mr Storey and Mr Weir.

Mr Butler voted for Mr Allen, Mrs Barton, Mr Beattie, Mr Chambers, Mr Nesbitt, Mr Stewart and Mr Swann.

Mr Muir voted for Ms Armstrong, Mr Blair, Ms Bradshaw, Mr Dickson, Mrs Long and Mr Lyttle.

Mr O'Dowd voted for Ms Anderson, Dr Archibald, Mr Boylan, Ms Brogan, Ms Dillon, Ms Dolan [Teller, Noes], Ms Ennis, Ms Flynn, Mr Gildernew, Ms Hargey, Mr Kearney, Mr G Kelly, Ms Kimmins, Mr Lynch, Mr McAleer, Mr McCann, Mr McGuigan [Teller, Noes], Mr McHugh, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mrs O'Neill, Ms Rogan, Mr Sheehan and Ms Sheerin.

Mr O'Toole voted for Ms S Bradley, Mr Catney, Mr Durkan, Ms Hunter, Mrs D Kelly, Ms Mallon, Mr McCrossan, Mr McGrath, Ms McLaughlin, and Mr McNulty.

Question accordingly negatived.

Clause 9 disagreed to.

Clause 10 (Register of interests)

Amendment No 17 made: No 17: In page 4, line 10, leave out "21" and insert "28".— *[Mr Allister.]*

Amendment No 18 not moved.

Amendment No 19 made: In page 4, line 13, leave out "21" and insert "28"— *[Mr Allister.] Clause 10, as amended, ordered to stand part of the Bill.*

Clause 11 (Offence of unauthorised disclosure)

Amendment No 20 proposed: Leave out clause 11 and insert

"**Offence of unauthorised disclosure**

11.—(1) Without prejudice to the operation of the Official Secrets Acts 1911-1989 and save in the discharge of a statutory obligation or in the lawful pursuit of official duties, it shall be an offence for any minister, civil servant or special adviser to communicate, directly or indirectly, official information to another for the financial or other improper benefit of any person or third party.

(2) In proceedings in respect of a charge against a person ("A") of the offence under subsection (1), it is a defence for A to show that the course of behaviour was reasonable in the particular circumstances or was in the public interest.

(3) A person is taken to have shown the fact mentioned in subsection (2) if —

(a) evidence adduced is enough to raise an issue as to whether the course of behaviour is as described in subsection (2), and

(b) the prosecution does not prove beyond reasonable doubt that the course of behaviour is not as described in subsection (2).

(4) A person guilty of an offence under this section is liable on conviction

(a) on indictment, to imprisonment for a term not exceeding 2 years;

(b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.".— *[Mr Allister.]*

Question put.

The Assembly divided: Ayes 42; Noes 32.

AYES

Dr Aiken, Mr Allen, Mr Allister, Ms Bailey, Mrs Barton, Mr Beattie, Mr M Bradley, Ms P Bradley, Mr K Buchanan, Mr T Buchanan, Mr Buckley, Ms Bunting, Mr Butler, Mrs Cameron, Mr Carroll, Mr Chambers, Mr Clarke, Mrs Dodds, Mr Dunne, Mr Easton, Mrs Foster, Mr Frew, Mr Givan, Mr Harvey, Mr Hilditch, Mr Humphrey, Mr Irwin, Mr Lyons, Miss McIlveen, Mr Middleton, Mr Nesbitt, Mr Newton, Mr Poots, Mr Robinson, Mr Stalford, Mr Stewart, Mr Storey, Ms Sugden, Mr Swann, Mr Weir, Mr Wells, Miss Woods.

Tellers for the Ayes: Dr Aiken and Mr Allister

NOES

Ms Anderson, Dr Archibald, Ms Armstrong, Mr Blair, Ms Bradshaw, Ms Brogan, Mr Dickson, Ms Dillon, Ms Dolan, Ms Ennis, Ms Flynn, Mr Gildernew, Ms Hargey, Mr Kearney, Mr G Kelly, Ms Kimmins, Mrs Long, Mr Lynch, Mr Lyttle, Mr McAleer, Mr McCann, Mr McGuigan, Mr McHugh, Mr Muir, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mr O'Dowd, Mrs O'Neill, Ms Rogan, Mr Sheehan, Ms Sheerin.

Tellers for the Noes: Ms Dolan and Mr McGuigan.

The following Members voted in both Lobbies and are therefore not counted in the result: Ms S Bradley, Mr Catney, Mr Durkan, Ms Hunter, Mrs D Kelly, Mr McCrossan, Mr McGrath, Ms McLaughlin, Mr McNulty, Ms Mallon, Mr O'Toole

The following Members' votes were cast by their notified proxy in this Division:

Mr K Buchanan voted for Ms P Bradley, Mr Buckley, Mrs Dodds, Mr Dunne, Mr Easton, Mrs Foster, Mr Givan, Mr Harvey, Mr Hilditch, Mr Irwin, Mr Lyons, Mr Middleton, Mr Newton, Mr Poots, Mr Robinson, Mr Stalford, Mr Storey and Mr Weir.

Mr Butler voted for Mr Allen, Mrs Barton, Mr Beattie, Mr Chambers, Mr Nesbitt, Mr Stewart and Mr Swann.

Mr Muir voted for Ms Armstrong, Mr Blair, Ms Bradshaw, Mr Dickson, Mrs Long and Mr Lyttle.

Mr O'Dowd voted for Ms Anderson, Dr Archibald, Ms Brogan, Ms Dillon, Ms Dolan [Teller, Noes], Ms Ennis, Ms Flynn, Mr Gildernew, Ms Hargey, Mr Kearney, Mr G Kelly, Ms Kimmins, Mr Lynch, Mr McAleer, Mr McCann, Mr McGuigan [Teller, Noes], Mr McHugh, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mrs O'Neill, Ms Rogan, Mr Sheehan and Ms Sheerin.

Mr O'Toole voted for Ms S Bradley, Mr Catney, Mr Durkan, Ms Hunter, Mrs D Kelly, Ms Mallon, Mr McCrossan, Mr McGrath, Ms McLaughlin, and Mr McNulty.

Question accordingly agreed to.

Clause 11, as amended, ordered to stand part of the Bill.

New Clause

Amendment No 21 made: After clause 11 insert

"**Accountability to the Assembly; provision of information**

11A. Ministers and their departments have a duty to report to an Assembly committee such information as that committee may reasonably require in order to discharge its functions, being information which —

(a) has been requested in writing; and

(b) relates to the statutory functions exercisable by the Minister or their department.".— *[Mr Allister.]*

New clause ordered to stand part of the Bill.

Clause 12 (Biennial report)

Amendment No 22 made: In page 4, line 30, leave out from "relevant" to "actions" on line 31 and insert "judgements of the courts relevant to the functioning of government,".— *[Mr Allister.]*

Clause 12, as amended, ordered to stand part of the Bill.

New Clause

Amendment No 23 made: After clause 12 insert

"**Assembly scrutiny of the Executive's in-year monitoring process**

12A.—(1) Ministers and their officials must provide the relevant Assembly Committee with a written or oral briefing on the department's submission to each monitoring round in advance of it being submitted to the Department of Finance.

(2) The Department of Finance shall publish the outcome of each monitoring round within 7 days of Ministerial approval being granted.

(3) Within 14 days of the publication of the outcome of the monitoring round provided for in subsection (1), the Minister of Finance must lay before the Northern Ireland Assembly a statement specifying the changes to each department's net budget allocation as a result of this exercise.".— *[Mr Frew.]*

New clause ordered to stand part of the Bill.

Clause 13 ordered to stand part of the Bill.

Clause 14 (Interpretation)

The following amendment stood on the Marshalled List:

No 24: In page 5, line 10, at end insert

"'family member' has the same meaning as set out in Schedule 1(3) to the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011.".— *[Mr Allister.]*

Mr Allister: On a point of order, Mr Speaker. I thought that amendment No 24 was dependent on amendment No 18, which was not moved. I should not move amendment No 24, I think.

Mr Speaker: Let us just check that, Jim.

I am advised that the amendments are not mutually exclusive, if that helps.

Mr Allister: Can I revisit the matter and say, "Not moved"?

Mr Speaker: You can not move amendment No 24.

Amendment No 24 not moved.
Amendment No 25 made: In page 5, line 10, at end insert

"'department' means a Northern Ireland department as set out in Schedule 1, Departments Act (Northern Ireland) 2016.".— *[Mr Allister.]*

Amendment No 26 made: In page 5, line 10, at end insert

"'The Executive Committee' means the Executive Committee as established by section 20 of the Northern Ireland Act 1998.".— *[Mr Allister.]*

Clause 14, as amended, ordered to stand part of the Bill.

Clause 15 ordered to stand part of the Bill.

Schedule agreed to.

Long title agreed to.

Mr Speaker: That concludes the Consideration Stage of the Functioning of Government (Miscellaneous Provisions) Bill. The Bill stands referred to the Speaker.

Adjournment

Mr Speaker: The Question is that the Assembly do now adjourn.

Some Members: No.

Mr Speaker: If you do not agree, I will suspend the sitting. Good night.

Adjourned at 2.29 am.

Suggested amendments or corrections that arrive no later than two weeks after the publication of each report will be considered by the Editor of Debates.

They should be sent to:

✉ **Editor of Debates, Room 248, Parliament Buildings, BELFAST BT4 3XX**

☎ **028 9052 1135**

simon.burrowes@niassembly.gov.uk

Hansard reports can be made available in a range of alternative formats, including large print, Braille etc. For more information, please contact:

✉ **Hansard Admin Unit, Room 251, Parliament Buildings, BELFAST BT4 3XX**

☎ **028 9052 1463**

hansard@niassembly.gov.uk

To receive an alert each time an updated plenary report is published, you can follow @NIAHansard on Twitter