PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

NORTHERN IRELAND (MISCELLANEOUS PROVISIONS) BILL

(Except clauses 1 to 9)

Second Sitting

Tuesday 16 July 2013

(Afternoon)

CONTENTS

New clauses considered.
Bill to be reported, without amendment.

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED

£5·00

PBC (Bill 009) 2013 - 2014

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Saturday 20 July 2013

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: Mr Philip Hollobone, † Katy Clark

† Anderson, Mr David *(Blaydon)* (Lab)
† Campbell, Mr Gregory *(East Londonderry)* (DUP)
† Collins, Damian *(Folkestone and Hythe)* (Con)
† Donaldson, Mr Jeffrey M. *(Lagan Valley)* (DUP)
† Durkan, Mark *(Foyle)* (SDLP)
† Ellison, Jane *(Battersea)* (Con)
† Goggins, Paul *(Wythenshawe and Sale East)* (Lab)
† Goodwill, Mr Robert *(Lord Commissioner of Her Majesty's Treasury)*
† Hilling, Julie *(Bolton West)* (Lab)
† Johnson, Gareth *(Dartford)* (Con)
† Leech, Mr John *(Manchester, Withington)* (LD)
† Lloyd, Stephen *(Eastbourne)* (LD)
† Murphy, Paul *(Torfaen)* (Lab)
† Nash, Pamela *(Airdrie and Shotts)* (Lab)
† Parish, Neil *(Tiverton and Honiton)* (Con)
† Penning, Mike *(Minister of State, Northern Ireland Office)*
† Pound, Stephen *(Ealing North)* (Lab)
† Shelbrooke, Alec *(Elmet and Rothwell)* (Con)
† Wharton, James *(Stockton South)* (Con)

Simon Patrick, David Slater, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 16 July 2013

(Afternoon)

[Katy Clark *in the Chair*]

Northern Ireland (Miscellaneous Provisions) Bill

(Except clauses 1 to 9)

New Clause 2

Analysis of PSNI Historical Enquiries Team material

'(1) If the Secretary of State appoints one or more persons to prepare an analysis of the work of the Historical Enquiries Team of the Police Service of Northern Ireland, any existing provision prohibiting publication of the material to be analysed shall, subject to subsection (2) below, not apply for the purposes of this section.

(2) No personal information shall be included in the analysis as published without the permission of the person concerned or, if they are dead, of their relatives.'.—*(Mark Durkan.)*

Brought up, read the First time, and Question proposed (this day), That the clause be read a Second time.

2 pm

Question again proposed.

The Chair: I remind the Committee that with this we are considering new clause 6—*Annual report on activity relating to Northern Ireland's past*—

'(1) The Secretary of State shall lay a report before Parliament in respect of each year as soon as possible after the end of the year to which it relates.

(2) The Secretary of State may appoint a person or persons to produce the report required under subsection (1).

(3) A report laid under subsection (1) shall contain in relation to the year to which it relates—

(a) a summary of the work of the Historical Enquiries Team of the Northern Ireland Police;

(b) a summary of the work of the Police Ombudsman for Northern Ireland insofar as it relates to Northern Ireland's past;

(c) a summary of the work of other public bodies which, in the opinion of the Secretary of State, relates to Northern Ireland's past;

(d) a summary of responses made by Her Majesty's Government or any other Government or body to any of the work covered by the report; and

(e) a clear indication where the findings of any work summarised in the report contradict remarks recorded in the Official Report of the House of Commons or House of Lords, especially by a Minister of the Crown.

(4) After a report under subsection (1) has been laid before Parliament the Secretary of State shall provide a statement to Parliament which shall contain references to—

(a) the comparative standard of enquiries conducted by the Historical Enquiries Team during that year;

(b) the progress made during the year in dealing with Northern Ireland's past;

(c) any apologies that have been given by any Government or public body in relation to the work summarised in the report; and

(d) any other relevant issues or concerns as they relate to Northern Ireland's past.

(5) Any existing provision prohibiting publication of the material to be summarised under subsection (2)(a) shall, subject to subsection (6) below, not apply for the purposes of this section.

(6) No personal information shall be included in the report as laid before Parliament without the permission of the person concerned or, if they are dead, of their relatives.'.

Mark Durkan (Foyle) (SDLP): It is a pleasure, Ms Clark, to resume under your chairmanship.

When we adjourned, I was telling the Committee about a case in my constituency that was investigated by the Historical Enquiries Team. Billy McGreanery was shot by a Grenadier Guard in September 1971. At the time, the Army stated that he was a gunman, and that version of events was spread by the authorities and was reflected in various parliamentary accounts and elsewhere. Billy's family never accepted that, nor did those who were present with Billy that evening.

The HET found that the local Royal Ulster Constabulary commander, Frank Lagan, had recommended prosecution for murder. After examining the material from the investigation, he did not accept the soldier's account. That position was subsequently endorsed by RUC headquarters, which passed the papers, with the recommendation for prosecution, to the prosecuting authorities.

The HET was able to establish that the Attorney-General for Northern Ireland ruled in respect of that case—it became a general ruling—that there could be no prosecution of soldiers for anything they did in the line of duty. That took on significance, because it happened only a couple of months before the events of Bloody Sunday.

While the case is significant because of those implications, the family had received the clear finding by the HET, which questioned the soldier who had been involved. The family shared the report with the Ministry of Defence, because the HET does not send reports to any Department, including the Northern Ireland Office and the MOD; it seemed to be the private property of the family.

The family subsequently received a letter from the Army's chief of staff, offering an apology. They asked me to have that apology acknowledged by Ministers on the parliamentary record, but that was refused. We were told, "No, it is not policy to reflect such apologies in such instances," and that there was no need for it to be on the parliamentary record, even though some of the previous—and false—versions of the case were on the official record, either here or at the Northern Ireland Parliament of the time.

I then had to apply for an Adjournment debate in Westminster Hall, whereupon the Minister for the Armed Forces vocalised the apology, and did so fulsomely, which was well appreciated by Billy McGreanery's niece and nephew, who were present to hear it. That demonstrates the gap whereby the HET can do good work and make clear findings, which are sometimes a comfort and provide satisfaction to families, giving them a bit more

knowledge, and perhaps on the back of which they get some apology, but that does not seem to join up with anything more widely.

That is one example of why new clauses 2 and 6 are needed. We must do more in respect of the work with the HET. There are many issues, questions and concerns about its work. People question whether it has the necessary capacity and budget, and it is facing new budget strains because of decisions taken in the context of devolution.

Also, Her Majesty's inspector of constabulary recently produced a pretty damning report that found that, while conducting cases involving the Army causing deaths, the HET adopts a different approach from that used in any other cases that it investigates. Indeed, HMIC said that the difference, which is obvious, is unlawful. The report also points out that no such case has been referred for consideration for prosecution, unlike other cases that the HET has investigated.

I hope that my new clauses, particularly new clause 6, take some account of the issues of concern. New clause 6 provides for the Secretary of State to make an annual statement, alongside a report, which they could have either their officials or a person or persons prepare. Part of the report would consider the work of the HET in that year, which would reflect the issues, points and patterns that had emerged. Accompanying the report would be a statement from the Secretary of State, which could include a comparison of the standards being exercised by the HET in various cases. Therefore, Parliament could receive from the Secretary of State assurances that concerns of the sort that are now markedly obvious were being taken account of and addressed.

However, not only for that reason is there merit in having an annual report and a statement from the Secretary of State, as those could also take account of findings from the police ombudsman as they related to the past, or indeed of any other investigation or inquiry. That could include, for instance, some of the lessons in the de Silva report or issues that emerge from other past reports or investigations, whether those were set up publicly and officially or semi-publicly. There is a proposal for a panel of inquiry on the Ballymurphy killings. The results and observations of any such inquiry could be picked up in the annual report commissioned by the Secretary of State.

I suggest in new clause 6 that the report reflecting on the work of the HET in a given year, and that of the police ombudsman in relation to the past, could give clear indications as to how previous events that were investigated were treated by Parliament, because many were the subject of quite different accounts on the parliamentary record from what is emerging in the context of those inquiries. It should not be for the families to get MPs to busk around and try to create a situation in which the record may be corrected.

During my Adjournment debate, the MOD said, "We will not do a written ministerial statement to record the fact that we have made an apology in given cases." If people do not want to do that case by case at that level as those cases arise, we should at least have a device such as an annual report, with a statement from the Secretary of State, to reflect when such apologies have been made, even if by other Departments. That would put it on the record that an open Government apology had been made.

New clause 6 would not only give some better reflection of the work that is going on, but allow the Secretary of State to make a statement on other activities and the progress made in relation to the past. I hope that the Haass talks and other efforts might get us to a position where we can make more progress on those wider issues.

The scope of the report or reports that may be commissioned by the Secretary of State would be inclusive rather than exclusive. The Secretary of State could commission somebody—it might be the HET—to prepare the bones of the report on its work for the year. It might be the police ombudsman, or others, who is asked to prepare a report on their work for the year. That is not prescriptive or restrictive, but it would, I hope, be done by people who have the confidence of many of the people still burdened with the problems of the past.

New clause 2 provides for a different kind and style of report from the annual report. Alongside criticisms, we often hear people acknowledge that they have heard expressions of satisfaction and comfort from many families regarding what they have received from the HET. However, we do not seem to be able to turn that into anything of cumulative value. There is no collective or authoritative analysis of some of the patterns and issues that are more apparent in various HET reports.

There are some misgivings, of course. People say that reports from the HET on deaths caused by the state seem to get a lot more airplay and more media profile than HET reports on atrocities or murders by the IRA, for instance, and that those by loyalists get more media treatment because of the issue of collusion. There is no reason why the Secretary of State could not use the power that I envisage in new clause 2 to ask for someone to produce a report that draws together a lot of the cases that the HET has looked at, perhaps involving, specifically, the IRA in overall terms or in particular areas.

There are many victims of IRA violence who feel that their loved ones were shot not just because they were part-time members of the Ulster Defence Regiment, but because they were part-time members of the UDR who happened to be the first sons in farming families. That was seen as part of a land war with a sectarian dimension. In the HET report on the Kingsmill massacre, which I do not think has received sufficient acknowledgement or recognition even in the House, the inherently sectarian nature of that vicious violence was apparent. Many people try to tell me—particularly young people who did not live through the troubles—that loyalist violence was sectarian but IRA violence was not. It is as if the IRA somehow conducted a clean war—everybody else was in a dirty war, but the IRA was clean.

There is value in the work of the HET if, like me, people get the opportunity to see some of the individual reports, but nowhere are they put together as a resource and drawn upon to bring out some of those wider lessons and issues. The Secretary of State should be enabled to do that—to commission that sort of work—so that people can be made more aware of the broader value of the HET. We are all behind the pillar on so many different HET reports, but we should not join those taking the line that absolutely nothing is being done about the past or for any victims.

[Mark Durkan]

Notwithstanding the criticisms of some aspects of the work of the HET, if there is good work being done that is helpful to families, communities and society overall, we should be trying to capitalise on that value through a report, which would be available under new clause 2, if deemed appropriate, and an annual report, which would be available under new clause 6.

The report under new clause 2 would mean that the various annual reports and the reports that went into them could be translated into a more substantive record of value, interpretation and understanding. I can see limits in having only an annual report available. How would we build up the patterns, the body of evidence and the consideration? That is why I propose two different new clauses, which offer different styles and scope of report, but are all about ensuring due standards.

At this stage in the life of the HET, perhaps we ought to say that we have picked up on some of the issues, that we want to see the value of the good work that has been done and that we want to provide sufficient statutory underpinning and standards to ensure that that happens. That is what my two new clauses aim to do.

2.15 pm

Paul Murphy (Torfaen) (Lab): It was a great pleasure to serve under your chairmanship in the Chamber last week, Ms Clark. It is also a great pleasure to follow my hon. Friend the Member for Foyle. I have been following his speeches for 17 years and they are always significant and to the point in dealing with the deep problems that Northern Ireland has had for many decades.

I was interested in the characteristically powerful speech of the right hon. Member for Lagan Valley this morning on the important issue of victims. My hon. Friend the Member for Foyle widened the debate by referring to how we deal with the past. It was a great tragedy that the Eames and Bradley report was marred by a single recommendation, because it contained some interesting ideas, as was mentioned earlier.

When I was the Secretary of State for Northern Ireland, one of my jobs was to try to cope with the issue of dealing with the past. I went, for example, to South Africa to see how the peace and reconciliation process worked there. I do not think that what it did could be picked up en bloc and applied to Northern Ireland, but there were lessons to be learned. Sir Hugh Orde, the Chief Constable of the Police Service of Northern Ireland, and I agreed that there should be a Historical Enquiries Team, to which my hon. Friend the Member for Foyle referred. The past is not an easy issue, not least because dealing with it is costly; it must compete with the other important issues the Governments in Belfast and Westminster face. However, we cannot go forward without dealing with the past, as sensitive as it is.

I support new clause 6, but I am not convinced by new clause 2. New clause 6 is important because it keeps the issue boiling. I am not saying that we necessarily need to legislate for that, but in my view the Secretary of State and the Northern Ireland Executive have a duty to ensure that dealing with the past is an issue that is kept alive.

Reporting to Parliament every year on the activities of the Police Service of Northern Ireland, the Historical Enquiries Team, Government Departments, the Northern Ireland Office and the Northern Ireland Executive with regard to this issue ensures that it is not forgotten. I am not suggesting for one second that the Minister or his colleagues believe that it should be forgotten. However, with all the pressures that are on the Government, such as spending, health, education and everything else that needs to be dealt with, including the problems in Northern Ireland over the past few days, it is easy to forget that it is still an important issue.

I do not know whether Richard Haass will have a remit to cover this issue—he is, incidentally, an extremely good man, who played a vital part in bringing about an agreement in Northern Ireland in the political and peace fields—but perhaps he can have a look at it. The issue of reporting, which my hon. Friend the Member for Foyle raised, is significant. There might be problems with new clause 2 because of the sensitive material that inevitably has to be used in those cases. However, I support the thrust of his argument, which is that we should not forget this issue, and Parliament should be kept aware of it either through a report or another mechanism.

Stephen Pound (Ealing North) (Lab): May I make unanimous our gratitude for your chairmanship this afternoon, Ms Clark? To hear my right hon. Friend the Member for Torfaen give us his unrivalled insight into the very heart of the matter—he is as proximate to it as it is possible to get—is a real privilege. I hope that we all appreciate it.

My hon. Friend the Member for Foyle raised some extremely important points. None of us would doubt that he has raised issues of great significance. He raised them well, and he made his points extremely strongly. The confidentiality of documents, and the current prohibition of certain documents is an issue of intense sensitivity. Like many people, when the de Silva report was published, I was pleasantly surprised to see how little documentation had been redacted. I appreciate that the argument could be made that we did not see the whole story, but a great deal of information came out.

The Historical Enquiries Team—my hon. Friend the Member for Foyle quite rightly referred to this issue—has a problem with its widespread acceptance within Northern Ireland. I am sure that quite a few members of the Committee have done as I have and have actually visited the HET. One thing that is quite extraordinary—almost stunning—is seeing the warehoused documents stock. Although I do not wish in any way to criticise my right hon. Friend the Member for Torfaen or anyone else involved in the establishment of the HET, it may be that we drew the terms for it a little too widely.

One point that is always made to me when I visit is that cases do not have to be referred by the family concerned, or indeed by anyone. A classic example is the case of a farmer who died just outside Forkhill and had no living relatives; that case is being investigated by the HET even though no one has asked for that investigation. It is taking place simply because the HET is carrying out a comprehensive investigation of all the deaths during the troubles. Perhaps we drew the terms of reference a little too widely, but at the time we had no choice—we simply had to do that. However, it could

well be that my hon. Friend the Member for Foyle has indicated a method of travel that could increase public confidence in the HET.

At present, given the sensitivity of the issue and some of the other aspects that have been referred to, the Opposition do not intend to vote for or against new clause 2; were there a vote, we would abstain. New clause 6, however, is a magnificently, exquisitely crafted, superbly jewelled and structured new clause—the Fabergé egg of new clauses—so all we need do is stand back and admire it. Her Majesty's Opposition will be unequivocal in our support for new clause 6.

I was saddened to hear someone say on the Floor of the House a few hours ago that the Secretary of State was not rolling up her sleeves enough and getting stuck in. The comment was made by a Government Member that she spends all her time with her sleeves rolled up, getting stuck in. New clause 6, tabled by my hon. Friend the Member for Foyle, would give the opportunity or the platform—the bully pulpit—for her to come to the House once a year and list all the things she has rolled up her sleeves and achieved. That can only be a good thing. It would show that the urgency that everyone referred to is being translated into action. I cannot imagine anybody possibly objecting to that.

My hon. Friend the Member for Foyle has done not just the Committee but the House—and, ultimately, his constituents and the people of Northern Ireland—a great service by tabling new clause 6. It gives me great pleasure to say, on behalf of the Opposition, "We're with you, people of Foyle, and will be supporting your MP on this one."

The Minister of State, Northern Ireland Office (Mike Penning): Follow that! We have had a sensible debate, informed by the extensive knowledge of the former Secretary of State who brought in the HET. As for the HET itself, I know the shadow Minister said that it was perhaps a bit looser than it should be, but we are where we are with it. We also have to say—I often do, and am often criticised for doing so—that we have to let devolution work in Northern Ireland. The HET is a devolved matter, to be resolved within the devolved Administration.

I think that this matter is something that Haass could look at. That is a sensible compromise. We went through full pre-legislative scrutiny in the Northern Ireland Affairs Committee. The measures in the new clauses were not recommended by that Committee, unlike the measures in other clauses. I am afraid that I will therefore oppose new clause 2 and new clause 6, if it comes to it. It is important that the community comes together under Haass to look at this matter. If, as a result, we get agreement, the Government can move on that; however, we have to have community agreement.

Mark Durkan: I welcome Members' contributions on the new clauses. I can understand some of the reservations that have been expressed about new clause 2. On reflection, if such a power was given to the Secretary of State, it would allow her to commission various sorts of reports, such as reports that covered more than the work of one year, or that looked at particular types of cases. They could also extend to the work of the police ombudsman in so far as it relates to the past—an issue that is covered in new clause 6. It is an idea or concept that is there to meet a gap; I do not think that it does so perfectly, but it was a genuine effort to try to solve the conundrum that is there because of the lacuna around the statutory authority for the HET and the other restrictions on how it works. We need to try to devise ways around that, and rather than trying to reinvent the wheel or create some completely new instrument, there is a way of harnessing more of the good that the HET already does in the sort of work that new clause 2 mentions.

New clause 6 is about recognising not just that there is value in the work that the HET undertakes, but that there are concerns about it. There are concerns that some of the findings that emerged from the HET, from the police ombudsman and from other inquiries perhaps need somewhere better to go with each other. In particular, there is a role for Parliament in this regard, because although the Minister says that these matters are now devolved, many of these issues in the past were not devolved. Many of the periods under report and the issues that would be the subject of investigation would have been the subject of very particular accounts during the years of direct rule, and those are now often seen to be very misleading accounts.

It is not just that incidents did not necessarily happen in the way that soldiers or policemen at the time said that they did, but that many assurances were given to the House at the time. Particular concerns and allegations from party colleagues of mine such as John Hume and Seamus Mallon were dismissing with "No, there is no collusion; all intelligence is fully shared and followed, and we intercept and intervene in all cases to protect life." It is now clear that all the assurances that were given, including on the parliamentary record, were bunkum. Many insinuations were made against the character of my colleagues because of the concerns that they were raising about shoot-to-kill policies and other issues.

We cannot just say that, because the HET falls under the Police Service of Northern Ireland, which is devolved, it is not our problem as a Parliament. In many ways, it is here that the record should be set right. Parliament can also give the lead and encouragement to the parties trying to move forward in other ways in relation to the past. It can particularly help to make good the sense, which I still hear from many people, that there is an unevenness and an inequality in relation to the past. I referred to the fact that people are saying that the media seem to be more interested in headlining one type of case that emerges from an HET report than another. Parliament can ensure that it is not open to that accusation by ensuring that there is a reflective, comprehensive annual report, and that it is the job of the Secretary of State not just to table that report as a combined narrative but to address Parliament on the issue of whether all the due standards that Parliament and the public interest would require are being met.

I particularly appreciate the strong expression of support from my right hon. Friend the Member for Torfaen, as well as from the shadow Minister, in respect of new clause 6. I am always tempted to test any support that I can get from wherever I can get it. However, I am also mindful that I have not heard in this debate from other colleagues in the region, least of all from the Democratic Unionist party. If I sought a vote because of the support expressed by the Opposition, I would not want to create a situation in which the DUP felt, for whatever reason—perhaps because of a lack of

[Mark Durkan]

consideration and exchange between ourselves, or a lack of consultation with victim groups—compelled to vote tactically against the measure in a way that might prejudice its giving the idea a fairer wind and wider consideration in future.

2.30 pm

I am hugely tempted, because it is not often that the hon. Member for Ealing North offers such profuse support for anything that I propose, least of all a new clause of this order. However, in an attempt to ensure that we build agreement and understanding, and avoid division or tit-for-tat tactics in relation to issues in the past, I have decided that discretion may be the better part of legislative initiative. I welcome the Minister's indication that the Government are not opposed in principle to variants of my idea if they emerge from wider conversations, and I hope that he will encourage others as he has encouraged me. On that basis, I beg to ask leave to withdraw the clause.

Clause, by leave, withdrawn.

New Clause 3

PLEDGE OF OFFICE BY FIRST MINISTER AND DEPUTY FIRST MINISTER

'After section 16A(9) of the Northern Ireland Act 1998, there shall be inserted—

"(9A) The First Minister and Deputy First Minister shall each make their pledge of office orally in full at a sitting of the Assembly.'.—*(Mark Durkan.)*

Brought up, and read the First time.

Mark Durkan: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss new clause 4—*Cross-community election of First Minister and Deputy First Minister*—

'In section 16A of the Northern Ireland Act 1998 (Appointment of First Minister, Deputy First Minister and Northern Ireland Ministers following Assembly election)—

(a) subsections (4) to (7) and (9) (which relate to the appointment of the First Minister and Deputy First Minister) shall cease to have effect;

(b) after subsection (3) there shall be inserted—

"(4) Each candidate for the office of First Minister or Deputy First Minister must stand for election jointly with a candidate for the other office.

(5) Two candidates standing jointly shall not be elected to the two offices without the support of a majority of the members voting in the election, a majority of the designated Nationalists voting and a majority of the designated Unionists voting.

(6) The First Minister and the Deputy First Minister—

(a) shall not take up office until each of them has affirmed the terms of the pledge of office; and

(b) subject to the provisions of this Part, shall hold office until the conclusion of the next election for First Minister and Deputy First Minister.".

(c) in subsection (3)(b) the reference to subsections (4) to (7) shall be replaced by a reference to subsections (4) to (6).'.

Mark Durkan: New clauses 3 and 4 relate to the position of First and Deputy First Minister in the Assembly. Although new clause 3 appears first on the amendment paper, I would first like to address new clause 4, which would simply restore the factory settings of the Good Friday agreement in the Northern Ireland Act 1998. The Good Friday agreement provided for the joint Office of the First Minister and Deputy First Minister, and provided that the First Minister and Deputy First Minister would be elected jointly.

As I understand it, when the Bill was going through Parliament, the shorthand for the Office of the First Minister and Deputy First Minister became the jointlies, because of all the clumsy references to things that the First and Deputy First Minister acting jointly could or should do. Everything about the office was to be joint: their powers, their purposes and their nomination and election. That was a deliberate and important concept, not least when we were negotiating the agreement, particularly in Strand 1 under the chairmanship of my right hon. Friend the Member for Torfaen.

Some people had the idea of appointing an Executive by a system such as d'Hondt or Sainte-Lague, and we settled on d'Hondt. People wondered where the accountability would be if Ministers were appointed simply on the basis of their own party's mandate, by their own party, without vetting or vetoing from anybody else. There was also the question of where the Assembly's clout would come from in terms of overall accountability and authority. Those of us who came up with the idea of the joint Office of the First Minister and Deputy First Minister sought to answer that partly by ensuring that the First and Deputy First Minister would be elected by the Assembly on the basis of cross-community support, and would be nominated jointly.

That was hugely important and symbolic. It was not an idea that my party had particularly pursued or developed throughout the negotiations. To be quite honest, the idea of the joint office occurred to me on the back of the pictures of David Trimble and Seamus Mallon going to Poyntzpass after the murders of Philip Allen and Damien Trainor. We saw the leader of Unionism and the leader of nationalism almost literally standing together and binding the wounds of the community, only a month out from the agreement. My right hon. Friend the Member for Torfaen will remember the shocking impact of that double murder of two friends, Catholic and Protestant, whose friendship was a parable for the way Northern Ireland should be and could be.

The way that Seamus Mallon and David Trimble dealt with that—Poyntzpass was right on the border of their two constituencies—inspired the thinking that helped to answer the problems we were having in the talks about whether someone who gets the first appointment under d'Hondt should become First Minister and whether the post of Deputy First Minister should just go to the next party. In that case, there could be two Unionists or two nationalists, so there was a question of cross-community balance. There was also the question of cross-community support for voting. A number of issues and problems were resolved.

There was also the question of whether the First Minister would be responsible for co-ordinating the internal affairs of the Government of Northern Ireland and whether the Deputy First Minister would be responsible for co-ordinating external affairs and lateral relationships

north-south and east-west and with Europe and America, and so on. People were not sure how well that would work in practice, so the answer to everything was to go for joint office. It was hugely important that the First Minister and Deputy First Minister should be jointly elected by the Assembly.

During the long period of suspension after 2002, particularly following the Assembly elections that took place during suspension in 2003, the negotiations involving the two Governments, Sinn Fein and the DUP led to the idea that we could not have the First Minister and Deputy First Minister appointed by election in the same way unless we forced other parties to vote for the First Minister and Deputy First Minister. In what was called the comprehensive agreement in December 2004 that was meant to involve Sinn Fein, the DUP and the two Governments but fell apart over sackcloth and ashes, the lack of photographs and all the rest of it, the proposal was that in future parties would only be able to appoint Ministers under the Good Friday agreement if they had first voted for the First Minister and Deputy First Minister.

Whereas the DUP was able to oppose David Trimble and Seamus Mallon as First Minister and Deputy First Minister and still get its Ministries, when it voted against David Trimble and myself as First Minister and Deputy First Minister and still got its Ministries it was changing the law for everyone else—no do unto others as you would have them do unto you. Similarly, Sinn Fein, which had been able to abstain on the election of the First Minister and Deputy First Minister the first time, although it did vote for David Trimble and myself the second time, also wanted to change the rules. The rest of us had to bow to the two parties under that rule.

We defied that rule, and the Social Democratic and Labour party made that very clear. I have seen accounts saying that I used very bad language to Tony Blair, but I do not have any memory of that—my memory is normally good on such things, but he certainly would have been aware that I hoped to have the same political values when I used those four-letter words in very blunt terms, but I certainly do not recall doing so. I did make it very clear that we would not be voting for Sinn Fein and the DUP for First Minister and Deputy First Minister simply as the price of our admission to office.

I resent the idea that potentially the first party to be excluded under the terms of the Good Friday agreement would be a party such as the SDLP simply for exercising the democratic right to abstain; it was not even a case of voting against. Thankfully, it was in a Committee Room along this corridor on the morning of the St Andrews talks in 2006 that the DUP clearly got the message from us, because that remained the intention and the understanding of the two Governments, Sinn Fein and the DUP between 2004 right through to the commencement of the St Andrews talks in 2006. Because of the resolution we were able to show to the DUP delegation we met that morning before travelling to St Andrews, and because Reg Empey, as leader of the Ulster Unionist party, had permitted me to say that the UUP was in the same position, the DUP went to St Andrews saying, "We cannot do joint elections because we do not want to be in the Lobby on our own with Sinn Fein voting for Ian Paisley and Martin McGuinness as First Minister and Deputy First Minister."

I do not know why the DUP did not take us up on our threat, because it would have achieved voluntary coalition, albeit with Sinn Fein, not with the SDLP and other Unionists. In essence, that is what it would have been. The only argument we heard for making that change was, "That's the way it's done in other places. Other people wouldn't be in government unless they voted their confidence in the Head of Government and the Cabinet." Those are arguments for voluntary coalition.

Sinn Fein and, particularly, the DUP were not in a position simply to go into the Lobby alone to vote in Ian Paisley and Martin McGuinness, so the agreement was changed. The joint election was done away with, and a new provision was made that the First and Deputy First Ministers would be nominated separately and would get separate letters of nomination from their respective party leaders. That is how it was done.

My argument since then has been that while people said that that was a deviation necessary to get devolution established and a First and a Deputy First Minister appointed, I see no reason to stay with it. On many occasions, Sinn Fein and the DUP have been happy to go into the Lobby, together or on their own, to vote down the rights and interests of and the concerns expressed by other parties. They no longer seem to be embarrassed or to have any difficulty in doing that, so they have overcome their hang-up.

We also have the provision that the Justice Minister is not appointed by d'Hondt as per the agreement, but is instead appointed by a cross-community vote. Many people in Sinn Fein and the DUP argued that there is particular value in having the First and Deputy First Ministers elected by a cross-community vote, but I would say that the same value applies, perhaps even more so, to the position of the First and Deputy First Ministers, and we should go back to what was provided for in the agreement.

Although I am tempted to press the measure to a Division—Members would have the choice of voting for or against something in the Good Friday agreement—I do not want to put them in such a bind as to be voting against the Good Friday agreement again. I hope people see that this option should be considered, encouraged and made available.

New clause 3 does not rest on new clause 4 being agreed to, and it would apply in any event in relation to the First and Deputy First Ministers, whether jointly elected as required by the agreement and as new clause 4 provides, or whether appointed by separate letters, as happens at the minute. Given that the First and Deputy First Ministers have particular roles in relation to the overall workings of the institutions and the wider representation of Northern Ireland—not just in relation to the Government here and the North South Ministerial Council, but with the EU and the United States and at wider international level—when they take the pledge of office they should do so in full, in the hearing of the Assembly.

When we wrote the idea of the pledge of office into the agreement, it was our understanding and intent that the pledge would be read out and that people would hear it. We talked about it being a useful bit of political liturgy, with people hearing the Ministers taking office in those new institutions making the pledges that we were writing into the agreement.

[Mark Durkan]

As the person who drafted the pledge of office, I am very conscious of the fact that we made deliberate decisions on such things as

"to serve all the people of Northern Ireland equally".

There would not be the ambiguity of serving all the people equally or serving people equally, or of not saying "Northern Ireland", thereby avoiding the issue. Once the Progressive Unionist party, which was pretty agnostic on whether there should be a pledge of office, saw the terms that we were putting into the pledge, it became very enthusiastic, not least because it liked

"all the people of Northern Ireland"

being specifically and unambiguously referred to and those words being key to the pledge of office that all Ministers would take. Ministers would not serve their own definition of "the people" and the words "all the people" would be there explicitly. For those reasons, we always believed that there was value in the full pledge being recited, particularly by the First and Deputy First Ministers, given that their responsibilities go much wider than their departmental remit.

In many ways, the significance of the pledge was added to via St Andrews and elsewhere, where ideas that some of us had put forward about expanding the pledge of office to include clear commitments to support the police, respect the courts and operate all the institutions and so on were considered. If those commitments had been added to the pledge of office, I believe that it would have been helpful for people to hear the pledge of office vocalised in that sort of way.

2.45 pm

I have taken the opportunity of considering this Bill to put forward again that idea for improvement. It is to follow through on what was the intent—the excellent intent—when we drafted the agreement. We did not intend that Ministers taking office would simply read out a form of words that said, "I affirm the pledge as set out in section such and such of the Northern Ireland Act 1998." We had intended there to be something with a bit more grace and a bit more meaning than that.

Again, I stress that this new clause is essentially an "advertising amendment". I make that point very clearly; I do not intend to trouble people with a Division on this issue. However, this is an important matter for those of us who take the agreement, and the offices of First Minister and Deputy First Minister, seriously. I take the office of Deputy First Minister seriously, not least because I held it. I accept that I suffered the curse of the architect who had to live inside his own design and try to work with it. Nevertheless, that joint office is important—it is important now just as it was important in the past—and I want to see that importance underpinned by the sort of changes that I am suggesting in the new clause, although I do not want to press it to a Division.

Paul Murphy: My hon. Friend refers to "vocalising"; I think that I was present at that meeting with Tony Blair and my hon. Friend used robust but not obscene language. He made his point very well.

There is no question that what the new clause proposed by the SDLP and my hon. Friend refers to reflects what was, in fact, agreed around the table at the time of the Good Friday agreement. It was also reflected in the 1998 Northern Ireland Bill, which I steered through the House of Commons. So there is no doubt that that was the case and there was good reason for it. The reason was that the widest possible collegiality, collectivity and pluralism, if you like, of the people who represented the parties at that table would be reflected in the way in which the First Minister and the Deputy First Minister would be elected, and it was jointery. My hon. Friend was a very fine Deputy First Minister and indeed played a huge role in bringing about peace in Northern Ireland—there is no question about that.

However the issue is, of course, that by 2002 the edifice had collapsed, for all sorts of reasons that we do not have to go into today. So it was hugely significant that further progress had to be made. I pay tribute to the DUP, who of course were not signatories to the Good Friday agreement but nevertheless came in and were signatories to the St Andrews agreement and other agreements after that. That meant, as my hon. Friend has said, that that original joint approach to selecting the First Minister and Deputy First Minister was effectively abandoned. However, it was abandoned with good reason, in the sense that there probably would not have been any progress without such an abandonment.

The issue that my hon. Friend refers to is whether, having got to a situation where all parties in Northern Ireland take part in the governance of that place, we should now go back to the original wording of the Good Friday agreement, or of the 1998 Act, and have that joint support for the First Minister and Deputy First Minister. I can see some merit in it, for the reasons it was agreed in the first place, not least that the people in Northern Ireland and, indeed, the Republic, voted for that. However, it comes down to the big issue and big principle that have run through not only our Committee proceedings, but Second Reading and other debates, of how far we change those things—and how we do it if we want to change them—in the next few months and years.

My purpose during the negotiations, and that of the British Government and the Irish Government, was to make politics in Northern Ireland as boring as they are in the rest of the United Kingdom and the Republic, so that politicians in Northern Ireland would have to make decisions, which are often not very exciting, on health, education, local government and planning in the way that we do. Those decisions are challenging, but not necessarily as exciting as the high politics of making an agreement. Consequently, with the establishment of the Assembly and the Executive, politics are becoming—I will not say boring—ordinary, in the sense of having to act like any other parliament or Government. That rightly takes time, money and energy. The people of Northern Ireland expect their representatives here and in the Assembly to tackle issues that reflect their everyday life—their health, education and so on.

However, from time to time, because it is Northern Ireland, issues such as those that we have experienced in the past three days—parading, whether the flag should be flown from the top of City hall in Belfast, the dissident IRA—show that, inevitably, the deep-rooted problems are still there.

How do we deal with them? My hon. Friend the Member for Foyle is right not to press the new clause. He put me on the spot because he and I drew it up.

However, he is right, because there is a way in which its purpose can be achieved. That means over to the Minister, the Secretary of State and, of course, the First and Deputy First Ministers in Northern Ireland. They, with the Irish Government, are guarantors of the Good Friday and St Andrews agreements.

Today, the House has been chock-a-block with Northern Ireland business: the Northern Ireland Bill of Rights in Westminster Hall, the ten-minute rule Bill of the right hon. Member for Lagan Valley and what we are doing in Committee, not to mention the statement about the past few days. The day has been dominated by issues that affect Northern Ireland and that are still important.

How do we tackle them? I believe that a Committee in the Assembly already deals with how to look at the institutions of government in Northern Ireland and the Good Friday agreement. There is a similar Committee in the Republic of Ireland. It therefore behoves the Government, in the form of the Northern Ireland Office, to help in that process. That can sometimes mean considerable proactivity, but the issues are sensitive.

However, just because people have very different views, that does not mean that we cannot get resolution. If we had said that, there would be no agreement. When Sir John Major started talks before the Labour Government took office, no one believed that anything would happen, but neither he nor his successors gave up. Sometimes, if the issue is worth it, one has to seek consensus in a positive way.

I therefore believe that my hon. Friend the Member for Foyle is right not to press the new clause, and to draw the Committee's attention—and, I hope, that of the Northern Ireland Assembly—to the fact that the problems have not gone away, that they need to be addressed, but that they can be tackled only by proper consensus among the parties.

Stephen Pound: When my hon. Friend the Member for Foyle moved his previous new clauses, all was amity, and I do not in any way seek to break those bonds of fraternity. However, a small cloud drifts across the sun on this occasion because, although no one could be anything other than sympathetic to the intentions behind the motion, the fact that my right hon. Friend the Member for Torfaen has already referred to the Assembly and Executive Review Committee, which is currently sitting to discuss the matter, as well as the north-south aspect, means that it is probably not appropriate to make a decision at this stage.

There is also an important point of principle. It may not appeal to every member of the Committee, but certainly the Opposition are reluctant to put ourselves in a position whereby Westminster legislates on matters relating to the Assembly's internal operations, unless the Assembly's express wishes are made available to us.

My hon. Friend the Member for Foyle is seldom wrong, and seldom less than positive, helpful and forward looking. He speaks from a wealth of experience, particularly of the unfortunate architect. However, on this occasion, the people who should consider the matter are doing so, in the place where it needs to be considered. On that basis, I am delighted that we will not be in the position of having to make an awful, painful decision were a vote to be taken. Fortunately, not for the first time, my hon. Friend has spared us the pain.

Mike Penning: I am grateful to the hon. Member for Foyle for expressing his views so articulately, but indicating that he would not press the amendments to a vote, not least for the reasons alluded to by the shadow Minister, which was exactly the same position as when we were in opposition and the Labour party in government—we gave them support for those same reasons. It is crucial that we wait for the several reports, not least from Northern Ireland, but also from the south. Her Majesty's Government, with the help of Her Majesty's Opposition, will then work with the First and Deputy First Ministers, which is massively important, to move the agenda on, based on what they would use. On that basis, I am pleased that the hon. Member for Foyle has aired his views and that he is not minded to press the amendments.

Mark Durkan: I thank hon. Members for their compliments, even with the barbs in some of them. I have a couple of points to make in reply.

First, we have again had reference to the Government and the House only legislating on the basis of things that all the parties have agreed in Northern Ireland, but I make the point that, when the change was made in the St Andrews agreement to alter the Good Friday agreement requirement that the First and Deputy First Ministers should be jointly elected by the Assembly, there was not all-party agreement; two parties agreed with that change. There seems to be one rule for certain changes, and another rule for other changes. Governments will claim the exigencies of the political moment, that that is what has to be done, but if changes can be mounted on the back of the requirements of two parties, for no better reason than they did not want to be seen in the Lobby on their own together—that was the only reason why that significant change ended up being made—it seems realistic to seek something different.

Also, not everything that has supposedly been looked at in the Assembly and Executive Review Committee is something that the various members of that Committee will say has been actively and seriously looked at. Let us not fool ourselves that that Committee is on the threshold of delivering something substantive on the issues, so that we should not usurp or disturb it in any way.

Mike Penning: I completely accept the point that the hon. Gentleman is making, but we have got to give the Committee that chance. He sits on that Committee—

Mark Durkan: I do not.

Mike Penning: Sorry, I apologise. If we do not give the Committee that chance now, it will never make a decision, so let us see what comes out of the review.

Mark Durkan: The point of advertising the amendments in this Committee is partly to give some encouragement, prompting and questions from outside. I am no longer in the Assembly, nor on the Assembly and Executive Review Committee, but I know that it is not the case that those things are under live and imminent consideration in that way. I am indicating that, having heard what I have said, if there are bad arguments, I will be a hit man against bad arguments whenever they are heard—I am doing that in this instance.

[Mark Durkan]

I also make the point about the difference, although some people might not think that there is not much of one, between the First and Deputy First Ministers being nominated simply by letter from their respective party nominating officers and by the Assembly. I believe, however, that that can make a difference. Certainly, when I was Deputy First Minister, I was particularly conscious of having been elected Deputy First Minister by the votes of Unionists as well as nationalists, so when it came to the death of the Queen Mother, I was there at the recall of the Assembly, which took place to pay respects. Similarly, I went to the funeral—it was a bit of a surprise to the First Minister that I was going, and I do not know if he particularly wanted me to go. As far as I was concerned, I was Deputy First Minister for the whole community, elected on a cross-community basis, so I owed respect to those in my community and those they particularly respect and have a loyal affinity to—for example, the Queen Mother and the Queen. We received the Queen in the institution of the Assembly, a decision for which I was attacked by Martin McGuinness and others at the time. A hoarding was unveiled in Bogside, and I was teased for my support for policing and for having met the Queen. I was glad that subsequently Martin McGuinness discharged a requirement of his office when he met the Queen. I do not see why it had to be contrived to take place in some other premises under some other auspices. I see no reason why it should not have happened in the institution of Assembly, as for my meeting.

3 pm

The joint mandate of the Assembly encourages and allows the First Minister and the Deputy First Minister to act as more than cheerleader and champion for their own community or their own political identity. It allows, and in many ways compels, them to reach that bit further. That is relevant in dealing with a shared future and various symbolic issues. I want to use our debate on these advertising clauses as a prompt to colleagues at home and others to consider some of those issues. There are things in the way the Assembly works that we can take forward.

I have made criticisms of the parties that currently hold the office of First and Deputy First Minister for the way they dealt with local government boundaries and the interests and concerns of other parties on a number of matters. There is a danger that parties are encouraged to treat those offices as their respective party properties. That should not be the case. The appointments should come from the Assembly voting jointly. There is also symbolism in the Ministers reciting the pledge of office in the presence of the Assembly as a whole and on the public record.

I do not wish to press the new clause to an awkward Division. I thank Members for their consideration, and I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 5

REDUCTION IN VOTING AGE TO BE A RESERVED MATTER

'In Schedule 3 (Reserved matters) to the Northern Ireland Act 1998, after paragraph 7 insert—

7A The alteration to any age between 16 and 18 of the minimum voting age for elections to the Assembly or local government elections in Northern Ireland.".'.—*(Mark Durkan.)*

Brought up, and read the First time.

Mark Durkan: I beg to move, That the clause be read a Second time.

The clause relates to a reduction in the voting age, a matter that the whole House has discussed a number of times. I have voted for the reduction of the voting age in amendments to various Bills, and I have supported private Member's Bills on the subject. The option is always to reduce the voting age to 16, but the Committee may have noticed that the chosen band in the new clause is between the ages of 16 and 18. I have chosen that band because I am conscious that in the south of Ireland the Constitutional Convention recommends amending the Irish constitution to reduce the voting age to 17. There will probably be a referendum next year.

I will not rehearse all the reasons why I believe in reducing the voting age, but if the age was 16 in the north and 17 in the south, some people might be happier to support the same age for north and south. The reason the proposal is to reduce the age to 17 in the south, rather than 16, is that the age of consent in the Republic is 17. In opting for 16 the Constitutional Convention did not want to be seen as opening up the issue of reducing the age of consent, as it felt that the arguments might get conflated and create tactical opposition to reducing the voting age to 16. People might have felt that the age of consent could similarly be reduced as well, and that 16 would then become the going rate, as it were. That is why the recommendation has been made for 17 in the south. I am still comfortable with the fact that I voted in this House for 16 as the voting age, because that is on a par with other things. However, I am conscious that under Northern Ireland's particular circumstances, some may say that if they were to accept the option of reducing the voting age, they would not necessarily want the only option to be to reduce it to 16.

Again, this is a situation where, given the scope of the Bill in other parts, I thought that it was relevant to raise the issue. I will not rehearse all the arguments for and against voting at whatever age. Others can do so if they want, but again, the proposals lay down a marker indicating that many people support a reduction in the voting age. The Northern Ireland Assembly has voted with a majority for a reduced voting age, so the Assembly has expressed a will in that regard. I have been told, in relation to other amendments, that we have to be duly sensitive to the Assembly, that we have to take account of things that might be considered there, and that we have to consider the wishes of the institutions and the other parties, but I reflect that the Assembly has voted on this matter. I am not saying that it was overwhelming, or that the vote did not have its own divisions, but in that regard, we in this House essentially have a working prompt from the Assembly that it is open to the voting age being looked at. The new clause is a reply to that expression of interest on the Assembly's part.

Mike Penning: I know that that is the hon. Gentleman's view, and I am aware of the vote that took place in the Assembly, but the Government do not feel that it is a matter for this Bill; it is a matter for United Kingdom

legislation. No other part of the UK—the devolved Assemblies—would have the powers to reduce the voting age from 18. I agree that further debates are needed, but elsewhere and not on this Bill. With that in mind, if the hon. Gentleman does not withdraw the amendment, we will oppose it.

Mark Durkan: I am very tempted not to withdraw for once, but overall, I think it would be sensible to do so, simply because I do not want to put hon. Members on the spot or in any difficulty. I know that other hon. Members have found other ways to give, express and record their views in relation to other Divisions that have taken place on private Members' Bills and other initiatives over the years. I do not wish to detain the Committee on the matter, which is why I did not get into all the arguments on the merits of reducing the voting age.

However, I make the point that the Assembly would have the power only in respect of Assembly elections and local government elections, but nothing else. Given the significant powers that we are entrusting to people on the possible future fixing of boundaries and other very sensitive electoral matters, I do not see that it is a particular jump to give the Assembly latitude over the voting age. The House has previously given latitude over the voting age to the Scottish Parliament, for instance, for the referendum in Scotland. I do not see that it is a big jump from that point of principle, to allowing devolved democratic institutions some latitude to widen their franchise, particularly for younger people.

I believe that younger people voting would be a very positive addition in Northern Ireland. Think of the positive impact, the visuals and the very clear statements that came from so many of the young people who gathered to hear President Obama, yet the vast majority of them would not have a vote. They might have more of an impact on political life in Northern Ireland and a more beneficial influence on the political parties and the political process if they were equipped with a vote earlier. They could make a bigger and better difference to our politics if they had the vote, but I will not to press the new clause to a Division to secure a negative or a discouraging result for those many young people in Northern Ireland who would like the voting age lowered.

I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 7

PETITIONS OF CONCERN

'(1) In section 42 of the Northern Ireland Act 1998 (Petitions of concern), omit subsection (3) and insert—

"(3) When a petition of concern is lodged against a measure, proposal or a decision by a Minister, Department or the Executive ("the matter"), the Assembly shall appoint a special committee to examine and report on whether the matter is in conformity with equality and human rights requirements, including the European Convention on Human Rights and any Bill of Rights for Northern Ireland.

(4) A committee as provided for under subsection (3) may also be appointed at the request of the Executive Committee, a Northern Ireland Minister or relevant Assembly Committee.

(5) The Assembly shall consider the report of any committee appointed under this section and determine the matter in accordance with the requirements for cross-community support.

(6) Standing Orders shall provide for—

(a) a committee appointed under this section to have the power to call people and papers to assist in its consideration of the matter; and

(b) the size of such a committee and the timescale for a decision.

(7) In relation to any specific petition of concern or request under subsection (4), the Assembly may decide, with cross-community support, that the procedure in subsections (3) and (5) shall not apply.".'.—*(Mark Durkan.)*

Brought up, and read the First time.

Mark Durkan: I beg to move, That the clause be read a Second time.

New clause 7 is another motion about getting back to what was intended by, and is in the Good Friday agreement. A petition of concern is a provision in the agreement to try to answer a concern that many people were raising: if Ministers are appointed by d'Hondt—by their own parties—and if they have executive authority, they could take decisions that many people might have issues with, and find inimical to their identity and pernicious to their interests. People need to be able to challenge that in some way, because not all the powers and decisions of Ministers, particularly Executive decisions, are necessarily subject to statements or procedures in either the Assembly or an Assembly Committee.

Equally, the point has also been made that when legislation is proposed, there must be ways of taking account of arguments over the equality impact or rights being potentially prejudiced. At the same time as we were developing proposals for the Assembly and its ministerial and Committee structures, under the chairmanship of my right hon. Friend the Member for Torfaen, we were also scoping out the equality and human rights provisions of the agreement—not least a Bill of Rights.

At the level of joined-up protections, we had the idea that a petition of concern could be used to flag up concerns about human rights and equality issues. A given number of Members of the Legislative Assembly, in signing that petition could say, "Right, the measure has to be frisked for equality and human rights considerations" rather than just proceeding by majority vote in the normal way for most everyday decisions in the Assembly. The petition of concern was designed to provide such a pause break on measures that people felt should be examined. The petition of concern is covered in the Good Friday agreement, in paragraphs 11, 12 and 13, but when it came to giving life to it in the Northern Ireland Act 1998, there was no reference whatsoever to those paragraphs in the first draft of the Bill. Although there were provisions in respect of the Bill of Rights, the Assembly and voting mechanisms, and the role of the Human Rights Commission and the Equality Commission, there was no specific reference to a petition of concern and what would flow from it, as outlined in the agreement.

In meetings with my right hon. Friend the Member for Torfaen and Mo Mowlam, the Secretary of State at the time, we pointed out the gap, and were met—perhaps not best met—by the inclusion of a provision in the Bill that simply said that Assembly Standing Orders would provide for the sorts of procedure outlined in the agreement

[Mark Durkan]

in paragraphs 11,12 and 13. When it came to it, Assembly Standing Orders either did not make that provision or did not do so accurately.

3.15 pm

Instead, we have ended up, not with the procedure that is carefully outlined in the agreement, but petitions of concern being used and played like political jokers, to be complete dead-end vetoes, to kill issues and the effect of votes—permanently, if that is the will of whoever has wielded the petition of concern. That was never what the petition of concern was intended to do.

Only last week we saw the petition of concern used in the Assembly simply to protect a Minister who had serious questions to answer. The petition of concern was never meant to be used to protect a Minister from accountability or scrutiny, or to prevent the Assembly from setting up a proper inquiry into matters of public concern, at which any Minister should be happy to account for and acquit himself of any allegations against him, his party or party donors. That is how the petition of concern was used last week, just as petitions of concern have been used and abused in other cases. When parties are able to resort to it as a free veto on anything they feel like, or as a tit-for-tat veto against somebody else's, unfortunately they will do it. They will lift the tool and use it in that unintended and unplanned way.

With new clause 7, I have tried to reflect what is in those paragraphs in the agreement, in the Act, and to permit the Standing Orders of the Assembly the necessary latitude around how a special committee might be composed on the back of a petition of concern.

For the record, I want to say the agreement states about petitions of concern. Paragraph 11 reads:

"The Assembly may appoint a special Committee to examine and report on whether a measure or proposal for legislation is in conformity with equality requirements, including the ECHR/Bill of Rights."

That was the intended Bill of Rights for Northern Ireland. That paragraph continues:

"The Committee shall have the power to call people and papers to assist in its consideration of the matter. The Assembly shall then consider the report of the Committee and can determine the matter in accordance with the cross-community consent procedure."

Paragraph 12 of the Good Friday agreement reads:

"The above special procedure shall be followed when requested by the Executive Committee, or by the relevant Departmental Committee, voting on a cross-community basis."

Paragraph 13 reads:

"When there is a petition of concern as in 5(d) above, the Assembly shall vote to determine whether the measure may proceed without reference to this special procedure. If this fails to achieve support on a cross-community basis, as in 5(d)(i) above, the special procedure shall be followed."

The point of the petition of concern, as it applied to votes in the Assembly, proposals to the Assembly or measures brought forward in the Assembly or by Ministers under their departmental authority, was not that it was a permanent show-stopper, but that it would create a position whereby those who said that they had concerns or objections would have to put up or shut up.

They would have to prove in front of this special committee that there was an equality issue or a human rights concern. The committee would obviously have the power to take evidence and the intention was that a special committee set up on the back of a petition of concern could take evidence from the Equality Commission for Northern Ireland, the Human Rights Commission or anybody else with valid or worthwhile evidence to give.

That committee would then report and if it turned out that the concerns were not that material or could be addressed by amendments that were already coming forward from the Minister or someone else, the vote could be taken to let the matter proceed in the normal way. It was never the case, however, that the measure was to be used as an entirely free and permanent veto.

We have an added difficulty in the way in which things work or sometimes do not work in Northern Ireland. We have got into a gridlockracy whereby the fact that one party is in a position to present a petition of concern creates an anticipative block on what another party or another Minister might bring forward. Often measures and issues that need to be tabled for wider discussion do not get tabled simply because people—Ministers and parties—are afraid that they will be hit with a petition of concern early on.

That is why matters such as the school transfer procedure have not been committed to legislation. A legislative solution would be in the interests of parents, teachers and children in Northern Ireland so that they would know, at least with a broad certainty for a generation or so, what the transfer system for moving from primary to secondary school will be like. Ministers cannot legislate on that because they feel that, as soon as they table legislation, they will be hostage to a petition of concern. Instead, they rely simply on doing things by ministerial guidance. If we get changes of Ministers and changes of parties and changes of guidance, there is then uncertainty.

That was not what we intended when we negotiated the agreement and certainly when we campaigned for the agreement and got people to support it. We argued that it would be better than ad-hocracy at one level, with another wee fix here and another one there, or gridlockracy at another level. Petitions of concern do not even have to be tabled any more. They just have to be anticipated to have the effect of a predictive veto. The predictive veto means that we are not getting the level or quality of public discussion on serious issues that we should. These things are then seen to be the private property and the private problem of somewhere in the bowels of Government, quite frequently in the Office of the First Minister and Deputy First Minister. Frankly, the rest of us should not have the luxury of heaping the blame there. We should have to take the responsibility of addressing these issues in a wider public arena through the Assembly or elsewhere.

That is really what new clause 7 is about. It takes the opportunity to say that the petition of concern, as it is provided for in the Standing Orders of the Assembly, is not the petition of concern as was written in the Good Friday agreement. I can fully understand why the decision was made for legislative economy in 1998: just leave it to the Standing Orders of the Assembly to do it. The fact

that Standing Orders have failed to do it and to do it right has also meant that it causes deeper problems in relation to the democratic governance of Northern Ireland. Parties are now complaining about the veto being used in that way.

We recently had the 15th anniversary of the Good Friday agreement and I was particularly struck by the fact that Martin McGuinness as Deputy First Minister said in an interview that one of the things that needed to be looked at was the way the veto was working and the petition of concern.

Similarly, at the implementation of the Good Friday agreement committee in the Oireachtas, Francie Molloy, previously Principal Deputy Speaker of the Assembly, now the hon. Member for Mid-Ulster—apologies, Ms Clark, for the name reference—made the point that he felt that the petition of concern was being used too much as a weapon of first resort, that too many things were being stymied and that perhaps it should be reviewed. Again, before the Minister or the shadow Minister says it, I know that these matters will and should be discussed at the level of the Assembly and Executive Review Committee.

However, given that the first problem was perhaps that this House was not as thorough as it could have been when legislating for the precise intent of the petition of concern in the '98 Bill, it is entirely valid for those of us in this House to own up and say that there is a gap in the legislation that could have been filled better, and to do that in a way that encourages others to address the issue. As long as the petition of concern continues to be used as it currently is in the Assembly, it will discredit the democratic reputation of the institutions: it is seen as a bar on transparency and accountability.

The petition of concern is used in ways that put people under pretty invidious pressure. Recently, Sinn Fein tried to put pressure on the SDLP to make up their numbers on a petition of concern in respect of the Civil Service (Special Advisers) Bill. If the petition of concern led only to proper consideration of a measure to examine equality and the human rights implications of something, people would not be tempted to use it in that way and put others under partisan pressure in the way that Sinn Fein did on that occasion. Some of us would find it easier to sign a petition of concern if we thought it would have that proper effect, instead of it meaning that someone does not want to hear anyone else's concerns but wants to use it as a veto on the part of one party.

Mr Jeffrey M. Donaldson (Lagan Valley) (DUP): I shall be very brief. The points that were made earlier suggest that perhaps some of the amendments that have been tabled are premature in so far as other processes are under way that need to be given due regard. On the voting mechanisms of the Northern Ireland Assembly, my party would be reluctant to pre-empt the work that is going on in the Assembly to review its working and all the political institutions by introducing such a measure. I was present when the hon. Member for Foyle made a speech several years ago and talked about removing the ugly scaffolding of the Good Friday agreement. I fear that he is still a scaffolder rather than someone seeking to pull things down by removing some of the props that inhibit our progress towards normalisation in Northern Ireland.

In principle, we favour greater normalisation, but not this bit-by-bit approach. We must take a comprehensive approach. If changes are to be made to the safeguards that are built into the system, we must look at the totality of the system holistically so that people are reassured that doing certain things is offset by other things. It is about negotiation, so we do not want the new clause because it is isolated from other changes that need to occur to make the Assembly more normal, efficient, accountable and responsive in its functioning. The hon. Gentleman seeks that, but I do not think this partial approach is the way forward.

Mike Penning: The Government will oppose new clause 7, not least because of the arguments we made in relation to many previous new clauses. The Assembly and Executive Review Committee has said specifically that it is looking at petitions, and I do not think it right to use the Bill in the way proposed in this new clause and some of the previous ones. There has to be a collective agreement in Northern Ireland and the devolved Administration for normalisation to continue to take place. I agree with the right hon. Member for Lagan Valley: it cannot be drip, drip, drip. There must be a coming together, or one side may believe that it is getting more than the other side. They need to come together. The Assembly and Executive Review Committee is specifically looking at the measure among many others. With that in mind, I hope that the hon. Member for Foyle will withdraw his new clause.

Mark Durkan: I note the arguments against the new clause. The right hon. Member for Lagan Valley said that amendments such as this cannot be made piecemeal but that the approach must be holistic. That is not what we heard earlier in relation to his amendments.

Mr Donaldson: It is a bigger issue.

Mark Durkan: Yes it is bigger issue, and it requires a much more holistic approach than a piecemeal change to the definition or a qualification on the definition of "victims". The issue of the past is much bigger and wider, and of course the issue of victims' needs and rights is also much bigger.

The Minister referred to the fact that the Assembly and Executive Review Committee will look at the matter again. I simply make the point that the Assembly and Executive Review Committee has looked at a lot of things. At times, there is a limit and nothing is agreed until everything is agreed. If we end up with no changes and adjustments until something comprehensive is done, we end up with no movement.

There are difficulties with petitions of concern, which are being used in ways that were not intended—as permanent and predictive vetoes even to prevent issues from being tabled. The intention was that they would ensure that when issues were tabled, people did not feel that they were rushed into decisions, or that decisions were imposed on them without due scrutiny, and that decisions would be properly scrutinised and checked. Given that the default was originally in legislation in the House, I do not think that it would be completely untoward for the House to remedy that default, particularly as the Assembly had several chances to correct Standing

[Mark Durkan]

Orders fully and properly and has not always done so. Although Standing Orders have improved in respect of providing for the idea of a special Committee, they still are not in perfect rhyme with what was laid down in the agreement.

We went through the procedure painstakingly when negotiating the agreement, and the right hon. Member for Torfaen might recall that the now Lord Alderdice, leader of Alliance party, was particularly actively involved, because he was concerned that our proposals for a petition of concern could lead to open-ended vetoes and could encourage tit-for-tat vetoes. He wanted more qualification of what a petition of concern could do. We developed another procedure, which at the time he described as elegant, that would mean that those putting forward petitions of concern would have to stand over their concerns, and those appointed to give special consideration to the equality issues, such as people in the Equality Commission or the Human Rights Commission, would have to give authoritative evidence. Indeed, it would be a platform for them to give authoritative evidence to a specially appointed Committee as well. That was what was intended at the time of the agreement. We should never think it untoward or behind anybody's back to try to get back to some of the first principles, and some of the first and best promise, of the agreement itself.

Of course, as with the other new clauses, I will not foolishly put this one to a Division. Again, in that sense it is another advertising new clause, precisely to advertise one of the points that I made in a speech in Oxford in 2008, which the right hon. Member for Lagan Valley mentioned, when I was asked by the British-Irish Association to reflect on the agreement, 10 years on, and to look forward 10 years. I said that a problem we had was the entirely negative veto effect of the petition of concern. Rather than being there to prevent decisions that would abuse people, it was being used simply to prevent decisions and to prevent initiatives from even being tabled, and that was not right or proper. I said that we intended quite a number of the aspects of the protections that we built into the agreement to be biodegradable: as the environment changed, we would be able to rely less on some of those plastic protections built into the agreement, with the undue emphasis on community designation and other things. As the person who drafted the section of the agreement about designation, I know that it is not the most graceful thing, but it is there and I defend it. I just think we need to rely less and less on such provisions in an active way in the Assembly, or any other institutions, now or in future.

We can grow and go forward. The new clause suggests that we can do that partly by going back and keeping faith with what we initially provided in the agreement. On some of this stuff, we have gone off-road from the agreement and got into difficulties because of it. We should be trying to get on to the right road. If the right hon. Member for Lagan Valley really does believe in more transparency and more accountability, he would join me in disapproving of the way in which that petition of concern was absolutely abused last week. On that basis, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

Mike Penning: On a point of order, Ms Clark. May I record my personal thanks to you and Mr Hollobone for the pragmatic way in which you have chaired the Committee today? I thank the Clerks, the *Hansard* reporters, and the doorkeepers, whom we have managed not to trouble, which is excellent news. I thank members of the Committee for their participation both on the Floor of the House and here today. I particularly thank my Parliamentary Private Secretary, my hon. Friend the Member for Elmet and Rothwell; the Secretary of State's PPS, my hon. Friend the Member for Folkestone and Hythe; and the shadow Minister, the hon. Member for Ealing North, for the pragmatic and helpful way in which they have helped us to scrutinise the Bill. We have completed the scrutiny process in good time, so the Committee has had a great opportunity for line-by-line scrutiny of the legislation. I look forward to seeing it on Report and at Third Reading.

Stephen Pound: Further to that point of order, Ms Clark, when you rule on that point of order, would you indicate to me how it might be possible for Opposition Members to associate ourselves wholeheartedly with the generous, warm and very welcome comments made by the Minister? May I add my thanks to the Ministers, past and present, and also to our good colleague, the hon. Member for Foyle, who has made an invaluable contribution throughout the afternoon. I appreciate that this may be pushing the boundaries of a point of order, but this has been an extremely well organised and well run Committee in which important business has been done. It has been conducted expeditiously and in good spirit, and that is in no small way thanks to you and Mr Hollobone.

The Chair: The hon. Gentlemen have made their points.

Mike Penning: Rule him out of order.

Stephen Pound: He was out of order first.

The Chair: Order. I suspect that both hon. Gentlemen are regularly out of order.

Bill to be reported, without amendment.

3.36 pm

Committee rose.