**Northern Ireland (Miscellaneous Provisions) Bill**

[Northern Ireland (Miscellaneous Provisions) Bill](http://services.parliament.uk/bills/2013-14/northernirelandmiscellaneousprovisions.html)[14th Report Delegated Powers Committee](http://www.publications.parliament.uk/pa/ld201314/ldselect/lddelreg/89/89.pdf)

***Committee***

**3.07 pm**

**3 February 2014**

*Relevant document: 14th Report from the Delegated Powers Committee.*

*Clauses 1 to 5 agreed.*

*Amendment 1*

*Moved by* ***Lord Empey***

**1:** After Clause 5, insert the following new Clause—

“Opposition status in the Northern Ireland Assembly

(1) The Northern Ireland Assembly may, at any time after the passage of this Act, request that the Secretary of State introduce opposition status and rights for members of the Assembly, subject to the provisions of this section.

(2) Within six months of receiving a request from the Northern Ireland Assembly, the Secretary of State shall, by regulation, introduce the following rights for Assembly members with opposition status—

(a) speaking rights;

(b) supply days; and

(c) chairmanship and deputy chairmanship of the Public Accounts Committee,

and shall make clear that these rights are to be allocated to members with opposition status in a manner that is proportionate to their relative number in the Assembly.

(3) It shall be for the Speaker of the Northern Ireland Assembly to determine what is proportionate under subsection (2) and to set this out in the Assembly’s Standing Orders.

(4) For the purposes of this section, opposition status shall apply to any party with at least one seat in the Northern Ireland Assembly which is not a part of the Executive and which has notified the Speaker in writing of its desire to be accorded opposition status.”

**Lord Empey (UUP):** My Lords, the purpose of the amendment is very simple. Basically, Members will recall that in 1998, in the Act that implemented the Belfast agreement, a rather complicated form of mandatory coalition Government was introduced to provide for the return of devolution to Northern Ireland. Let me say at once that, while it is a complicated and unusual system, I support that system and that nothing in the amendment before the House alters it

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in any way at all. In other words, if parties achieve at the election sufficient support to entitle them to sit in the Northern Ireland Executive and exercise executive powers and occupy ministries, then that is entirely a matter for them. At present, if a party decides not to sit in the Executive or does not have sufficient numbers to qualify for a seat in the Executive, it has the option either of not taking its seat in the Executive or of remaining on the Back Benches. However, the missing link here is that those who are not in the Executive have no status as regards the Assembly’s proceedings.

Amendment 1 seeks to give the option to allow the Assembly, should it so wish, to apply to the Secretary of State, who would respond. That would allow the Assembly to draw up Standing Orders, under characteristics that she would determine, which would provide parties that wish to seek opposition status with the opportunity to seek that status from the Speaker. That would give people who took that position basic rights such as speaking rights, where the Speaker would call a member of the Opposition in response to a government amendment or a government proposal, but in proportion to the size of the parties. It would give the opposition the power to have supply day debates, which I think would be accepted in any reasonable jurisdiction. Finally, it would ensure that someone not from a Government-supporting party chaired the Public Accounts Committee and occupied the deputy chair of that committee. We must be the only jurisdiction in these islands where government party representatives also chair the Public Accounts Committee; that is a severe weakness of our current system.

Much has been made of the Assembly perhaps already having sufficient powers to create an Opposition, and there is no doubt that there are Standing Orders that the Assembly could make which could provide for such a facility. However, what the Assembly gives, the Assembly can take away. The main purpose of doing this through London is to ensure the independence of that Opposition and that it is not dependent on the good will of whichever parties happen to dominate the Assembly at any point in time, so that it does not have to rely on other parties for its supply days, speaking rights or any resources that might be made available. That would be one small step on the road to a more normal political set of arrangements. Given the fact that the vast majority of the 108 MLAs in the Stormont Assembly are supporters of the Government in one form or another, we do not believe that this is anything but a minor step in the road to making the Executive more accountable for their actions or inactions.

Some folk have said, “Would we be interfering in any way with the current arrangements and the rights and entitlements of parties under the Belfast agreement?”. The answer is an emphatic no. The time is neither right nor appropriate for any significant change in how the Executive are constructed, albeit I am sure that many of us wish to look forward to a day when we have a more normal arrangement for a Government, such as we have in Scotland or Wales. However, we are not there and perhaps will not get there during the lifetimes of most of us in this Chamber. We can, however, make one small step to give those who do not occupy positions in the Government the opportunity to hold

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that Government to account. No rights would be removed; I see this as an additional right that currently does not exist.

When this amendment was tabled a number of comments were made at home in the local press. I must say that I have not yet heard anybody come out and say that they are opposed to the concept of an Opposition. It is a very hard thing to stand against. I noticed in the Irish news that on 24 January, a spokesman for the Social Democratic and Labour Party said that the SDLP believes that the British Government should make provision for legislation for opposition in the next mandate in a way that protects partnership working under d’Hondt and is in line with the spirit of the Good Friday agreement. That is precisely what this amendment is designed to achieve, and it sums up clearly exactly what I and my colleagues wish to see.

**3.15 pm**

It is perfectly clear that any changes that one makes or proposes in relation to arrangements for the governance of Northern Ireland are very sensitive. For that reason, the amendment makes it clear that, while provision might be made, the actual application and trigger for its implementation would have to come from the Assembly itself. In other words, although it could legally do so, there would be no question of this Parliament imposing this change without the Assembly’s consent. Therefore, to reassure the many people who are mindful of the Sewel convention in devolved matters—and much has been heard of it in terms of Scotland and elsewhere—the convention is not offended by my proposal for two reasons. First, matters pertaining to the Assembly and the Executive Committee of the Assembly are actually excepted matters. Secondly, and more importantly, the fact that the Assembly itself would have to trigger a request, which could be triggered only by cross-community consent, would mean that the convention would not be offended.

For those reasons, I believe that the time is right; we have, unfortunately, been going through a period of great stalemate. Looking to the years ahead, a modest move such as this, which does not offend anybody’s rights or require any imposition, would be the minimum movement that most people would expect 16 years after the agreement was reached. Those of us who were involved in negotiating that agreement—there are a number in the Chamber today—know that nobody foresaw that, so many years ahead, we would still not be further down the road to a more normal political situation than we are. However, if the system is made more accountable and it is not possible for parties simply to stall things, in the sure and certain knowledge that they control 95% of the membership of the Assembly, giving an opportunity for an opposition and accountability to take root can only have a positive impact on the governance of Northern Ireland and the political process in general. I beg to move.

**Lord Lexden (Con):** My Lords, I attached my name to this important amendment readily and enthusiastically. I very much agree with my noble friend Lord Empey that a firm, statutory basis should be provided through this Bill for the creation of a formal Opposition with

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the appropriate rights and privileges if and when the Northern Ireland Assembly should wish to bring it into being. This proposal has been formulated by my noble friend, drawing on his deep knowledge of the Assembly in which he served and of the Executive, of which he was a distinguished Member. It has attracted widespread interest and no small measure of support in Northern Ireland, as recent comments in the Ulster press have indicated, comments to which my noble friend has referred. Within the Assembly itself, advocates of the need for an Opposition are making themselves increasingly heard. They do not believe that the Assembly should remain in perpetuity the only legislature in these islands in which the Government face no Official Opposition who could hold them publicly to account.

Speaking as a staunch Conservative and Unionist, I am convinced that my noble friend’s proposal should, through his amendment, be incorporated into this Bill. Over the years, I have always been inclined to back forward-looking measures proposed by members of the Ulster Unionist Party, with which my party was closely allied for the best part of 100 years until the relationship broke down after 1972. My noble friend, as chairman of the Ulster Unionist Party, has done much to encourage closer contact with Conservatives once again. Indeed, at the previous general election, Conservatives and Ulster Unionists in Northern Ireland stood on a common platform. It included the following statement:

“Over time we would like the institutions of Northern Ireland to evolve into a more normal system with a government and opposition. But we recognise that any changes are for the future and will only come about after full consultation and with the agreement of the parties in the Assembly”.

This amendment seeks to give effect to that Conservative and unionist commitment.

However, the amendment has not been brought forward in any narrow party spirit. My noble friend has made clear that it rests on a conviction that the prospects of political progress would be assisted in the longer term if the Northern Ireland Assembly had available to it the power to establish an Official Opposition on the basis of primary legislation passed in this Parliament. As he said, that would give any Opposition who are called formally into existence a greater independence and strength than one established under the Assembly’s current standing orders, as is perfectly possible. All the central elements of the Assembly, including the arrangements for the appointment of chairmen and deputy chairmen, and for the modus operandi of the committees themselves are enshrined in schedules to the Northern Ireland Act 1998. The role and functions of an Official Opposition are obviously no less important. They, too, should rest on a statutory basis.

I have stressed that the amendment reflects no narrow party political interest. I hope that it will attract support throughout the House as a measure which seeks to encourage a significant useful step forward in the government and law-making processes of Northern Ireland without in any way dictating to the Assembly or attempting to impose a timetable for change upon it. Should we not seek to give the Assembly

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firm, open encouragement to move in a direction that we believe to be right at a time that it believes to be appropriate?

During Northern Ireland’s first period of devolved government after 1921, Parliament at Westminster gave no advice and guidance and ignored Northern Ireland for more than 40 years, with disastrous consequences. We must not repeat that terrible error, as my noble friend Lord Empey has often reminded us. Here, in this amendment, lies an opportunity to offer a view on a crucial aspect of Northern Ireland’s political future and to provide the means by which progress towards it could be achieved. When my noble friend on the Front Bench comes to reply to the debate, I hope she will be able to indicate that the Government will give this amendment sympathetic consideration, paving the way for the incorporation of its extremely important objective in the Bill itself.

**Lord Alderdice (LD):** My Lords, I should like to pick up on the latter part of the helpful speech of my noble friend Lord Lexden. He reflected on the fact that ignoring the problems of Northern Ireland from 1921 onwards turned out to be disastrous not just for Northern Ireland but, indeed, for the United Kingdom. Therefore, I support the notion put forward by the noble Lord, Lord Empey, my noble friend Lord Lexden and, indeed, the noble Lord, Lord Trimble, that the question of opposition within the Northern Ireland Assembly requires attention.

Indeed, if one looks back at the period up until the breakdown of Stormont, I think it is true that in the whole of that period only one person occupied an executive position who was not a member of the Ulster Unionist Party. That was the right honourable David Bleakley from the Northern Ireland Labour Party, who was for six months the Minister of Community Relations in the very late stages of that unionist Administration. That represents the problem. Those who wanted to be in government were denied that opportunity and were kept in permanent opposition. This was very much to the fore in the minds of everyone during the negotiations on the Good Friday agreement—how to make sure that those who wanted to be in government but had a permanent minority status could participate in the Government and share responsibility. It was not in the minds of anyone at that time to insist that people had to be in government; the problem was the blockage as regards getting into government.

There were many other things that were not clear in the minds of some of those involved. For example, I think it is probably the case—I see that the noble Lord, Lord Trimble, is not yet in his place—that the leadership of the Ulster Unionist Party and of the SDLP, which were the two largest parties within unionism and nationalism, scarcely at that time conceived that they might not continue to be the two largest parties. Of course, the situation changed dramatically. When the new institutions were constructed, instead of bringing people together across the community divide, they promoted strength within the two sections of the community. Not only did they not provide for an official status for an opposition but they did not

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provide for a proper status for those who did not want to describe themselves as unionists and nationalists. Instead of the cross-community voting system being as I and my colleagues tried to promote, with a need for a two-thirds majority to form an Executive, it was decided that they needed a majority within both the unionist and nationalist communities and a majority of the whole. That made it very difficult for people to appeal across the community divide and to have a proper and reasonable status for those who did not want to consider themselves either unionist or nationalist. Once one moved down that road one created a real problem for any formal opposition status.

What the noble Lord, Lord Empey, said about the absence of an Official Opposition being a problem is true. He is right to raise it and I support the fact that he has raised it. I hope that my noble friend the Minister will be able to indicate to us that the Government will take this matter seriously as we go through the remaining stages of the Bill. Does this way of addressing the problem achieve what the noble Lord, Lord Empey, and his colleagues want? First, the noble Lord has rightly said that it would be perfectly possible under standing order arrangements to be made in the Assembly for there to be a position for the Opposition. That is the situation in this Parliament and it would be perfectly possible. However, he made the point that the two largest parties as they are at present probably have little motivation to support such a thing. That is quite true but that is also true of the amendment before us as it requires the two largest parties with the majority in the Assembly to sign up for this. It does not give the Secretary of State the opportunity to push it. I understand why the noble Lord does not want in any sense to suggest that there should be imposition from outside. The people of Ireland, north and south, respond particularly badly to being pushed in any direction at all, even one they would agree with if left to themselves. Nevertheless, the great vulnerability of the proposition he puts forward is that it does not take us much forward beyond what the Assembly could do itself if it chose to do so.

My erstwhile colleagues in the Alliance Party tried to play a role as an Opposition when they did not have sufficient support to get a ministerial position. Undoubtedly, they felt that the speeches they made and the stances they took were constructive. However, the observation they made is exactly the one that the noble Lord, Lord Empey, makes—that there is no official position and that is a substantial weakness. Would it be possible for a party at present simply to go into opposition? Yes, it would. It simply means that during the running of d’Hondt the nominating officer of a particular political party does not put a name forward. The party is then automatically not in the Executive and therefore is in opposition. The problem is that it would not have any further status without some kind of negotiation.

I was encouraged, as I know the noble Lord, Lord Empey, was encouraged, by the editorial in the *Irish News* as it suggested that not only had we presently a cross-community basis for government but that it was possible that we might have a cross-community basis for opposition. The SDLP and the Ulster Unionists might come together on this and make a presentation

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to the Assembly that said, “Together, we think it would be more constructive for us to go into opposition”. There is a bit of a tendency in Northern Ireland to say that the Government over here should sort out the problem. However, I would urge that not only do my noble friend and Her Majesty’s Government here take this issue seriously, but the noble Lord, Lord Empey, and his colleagues in the Ulster Unionist Party should take it seriously in discussions with the SDLP. A cross-community presentation that said, “Let’s have an opposition and we will form that together by volunteering not to take executive positions”, would be a very powerful political position to take. Along with some legislative encouragement of the kind the noble Lord suggests, that might begin to make a difference.

In principle the noble Lord is right. The Belfast agreement was a good agreement but not a perfect agreement. The noble Lord pointed to one of the things that is imperfect—an imperfection that will become clearer as time goes on. My uncertainty is not about the principle or the value, but the delivery. This gentle nudge might help to push us in the right direction or show that something further is necessary. I hope that my noble friend, the Secretary of State and others in the Government will take the principle seriously to see whether through this amendment, another amendment or by another process it is possible to move our politics in Northern Ireland forward.

**3.30 pm**

**Lord Browne of Belmont (DUP):** My Lords, I am sure that we all desire to see the Assembly at Stormont working better. This means reforming our political institutions and how government works. I believe that many clauses in this Bill will go a long way towards achieving progress on normalising politics in Northern Ireland.

Following four decades of terrorism and division, politics in Northern Ireland is changing and it is our duty to deal with the legacy of that period and seek to build a more united community. My party leader the First Minister of Northern Ireland has made it abundantly clear time and again that we are prepared to facilitate any party which wishes to opt for an opposition role within the current structures at Stormont. To date no party has taken up this offer. The DUP has always been willing to support additional resources and speaking time for a genuine Opposition as a first step towards the normalisation of our democratic structures.

In the long term, the best means of governing Northern Ireland would involve a voluntary coalition Executive and weighted majority voting in the Assembly, resulting in an end to community designation. This would be consistent with normal democratic institutions while respecting the particular circumstances of Northern Ireland. While a voluntary coalition could improve the performance of devolution in Northern Ireland, it would be a mistake to assume it is a panacea. However, that system could provide for both an Executive and an official loyal Opposition outside government instead of a disloyal Opposition within government. This should be the long-term goal of all the parties of Northern Ireland. However, we must be realistic about the ability to achieve it in the short term.

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As the party which has constantly sought to improve the Assembly structures in Northern Ireland, we are in favour of an Opposition. In truth, this process could and probably should take place at the Northern Ireland Assembly. Therefore, I should be most grateful if the Minister could clarify whether at present the Stormont Executive and Assembly have the full power to approve an Opposition with speaking rights. I am of the firm belief that in a democracy there needs to be an Opposition, and I am firmly behind the principle of the amendment. However, I am not convinced as yet that this amendment is the best way to achieve that aim.

**Lord McAvoy (Lab):** My Lords, the noble Lord, Lord Empey, makes, and has made in discussions with us, a reasonable case for this principle. Like the noble Lord, Lord Alderdice, we can see where the pressure for this is coming from. Words such as “unique” have been used several times to describe the situation in Northern Ireland, and that is still the abiding mantra that we need to take into account. However, devolution is devolution, and this is a matter for MLAs to consult and decide upon. Should any newer reforms be proposed which require necessary legislation to be brought before this House, we should fully consider them.

The issue of an Opposition is not mentioned within the Northern Ireland Act 1998. It is therefore a devolved matter that can and should be dealt with at Stormont. Despite the *Irish News*, and despite positive statements that have been made, there is no detectable overall consensus among MLAs on a move towards a formal opposition model such as exists here at Westminster. The point has been made that the Assembly is the only legislature not to have these powers, but there are people here who know better than me and who have more experience of the situation in which the 1998 agreement came about. It divided a society. As was so eloquently put by the noble Lord, Lord Alderdice, the problem of a permanent Opposition was that it never had a chance of getting power and felt it had no say. The Belfast agreement was designed to deal with exactly that situation.

In June 2013, the Assembly and Executive Review Committee concluded that it was possible to grant informal recognition to non-executive parties in the Assembly on a proportional basis. As has been mentioned, this could be achieved through additional speaking rights, recognition of non-executive status in the order of speaking and the allocation of time for non-executive party business. All this lies within the purview of the Assembly; it requires no legislation in Westminster. There has been a widespread desire expressed to see a situation such as this come about. Surely the true test will be when the Assembly brings forward a unanimous recommendation along these lines and takes action within the powers that it already has. The structure of the committees within the Assembly already provides a vehicle for regular accountability. They are organised so that Ministers face a committee within their jurisdiction which is headed by a representative of another party.

The 1998 agreement established an Executive in Northern Ireland which would be inclusive. In the same way, the responsibility for accountability must be exercised in an inclusive manner. The committees

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of the Assembly already allow the Executive to be held to account, commensurate with the fundamental principle of inclusivity. Furthermore, there is a broad consensus about giving non-executive parties informal recognition. This could be given by the Assembly itself. It would have much more power behind it if it came about in that way. There does not appear to be a full consensus among MLAs about reforming the structure to create an Official Opposition. It is essential that all the structures within the Assembly operate in an inclusive manner and are supported by broad cross-party consensus. The question is: do these conditions exist or not? It is the responsibility of MLAs to consult and agree upon newer structural reforms for an Opposition. This is an ongoing process. If, once consensus is reached, it is necessary for legislation to be brought before the House, we shall fully consider it.

We are very responsive to and aware of the sentiments that have been expressed, but the Assembly is on a journey. Unfortunately, we do not yet seem to have reached the stage where it can take the next step, but we believe that it is getting there and the move must come from there, although at present the necessary conditions do not seem to exist. For this reason, although we understand the amendment of the noble Lord, we cannot support it.

**Lord Empey:** My Lords, perhaps I may first respond to the noble Lord, Lord Alderdice. He made the point that he felt the amendment would not achieve the purpose being advocated for it. I understand that, but there is a clash between the issue of imposition and the issue of consent. While the mandatory coalition has been set out in statute, during those negotiations we did not set out in statute proposals for an Opposition because, to be honest, the main objective at the time was to get agreement on devolution. That was seen to be the way we could move on from where we were, in those bad dark days, to where we wanted to be. But, as the noble Lord, Lord McAvoy, has just said, it is a journey.

I am not, and I know that my noble friend Lord Lexden is not, totally wedded to the language of the amendment, but perhaps I can elaborate on why we feel that something needs to be done here as opposed to leaving it to Belfast alone. The reason is simple: we have to remove ourselves from the current political arrangements and look ahead a number of years. If we are going to establish an institution or see it modified, we cannot confine ourselves to the current politics; we have to look at the long term. I will tell the Committee, and in particular the noble Lord, Lord McAvoy, why we feel it is necessary to have a dimension of this set out here. First, we happen to have a legislative vehicle in front of us, and that does not often occur. The second reason is this. The noble Lord, Lord Browne, mentioned that the First Minister had said that he would be happy to facilitate any party at Stormont that wished to take up the opposition role. However, that is not the point I am getting at because it would apply only if a particular party, at this point in time, wanted to fill that role. Of course it would be up to any party to say so, but so far no party has said that it

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wants to. The point, though, is that it would be at the grace and favour of whoever was in place at the time, and that is the difficulty.

I can give an example that happened last year in the Assembly. At a very late stage in the Planning Bill, at the very last moment an eight-page amendment came in from the First Minister and the Deputy First Minister which would have had the effect of taking power away from the existing Minister. The amendment had not gone through the Committee procedure because it came in late. It was bounced on to the Floor of the Assembly at the last moment and it was put through. It failed to be implemented only because of legal activity by the Minister and it has not come into effect, but the example illustrates why it is necessary to have an element of independence. For instance, as my noble friend Lord Lexden said, under Schedules 3, 5 and 6 of the Northern Ireland Act 1998, even a simple body like the NI Assembly Commission, dealing with property issues, grass cutting and appointments of staff, is set out in statute. Standing orders are indicated so that they set out the characteristics of the committees. It is not impossible, therefore, to marry these two things.

I accept entirely the point made by the noble Lord, Lord Alderdice, that the weakness lies in the fact that you still have to get consent, but I feel that having the trigger at Stormont to implement something that is enabling—this is an enabling amendment—and thus having it on the stocks so that it is ready to go, would shorten the time the Assembly would require to move forward and take the next step. There would be no imposition.

I still think that this is the best way forward, albeit I accept that there could be a stalemate. The fact is that the Assembly and Executive Review Committee has been sitting for years. It has talked about everything, but nothing has actually emerged. For that reason, I believe it is necessary to move forward with these proposals. I would certainly request the Minister to consider them, that we should have discussions with the Opposition and the other parties between now and the Report stage, and that we should see whether we can find a mechanism to square this circle and achieve our objectives.

**3.45 pm**

**The Parliamentary Under-Secretary of State, Wales Office (Baroness Randerson) (LD):** My Lords, I thank the noble Lord, Lord Empey, and my noble friends Lord Lexden and Lord Trimble for tabling this amendment. It has given us the opportunity to discuss and debate an important issue. This has done the process of government in Northern Ireland a service. There has been considerable support across the House for the principles behind this amendment, although some doubt in some quarters as to whether the amendment would work in the way in which the noble Lord, Lord Empey, believes that it would.

We all recognise that an effective, responsible Opposition perform a valuable service in a democracy in keeping a Government on their toes and ensuring they deliver effectively on the basis of sound policy. That has been common to the speeches made this afternoon. Opposition helps to expose abuses. It gives

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people a clear choice between alternative approaches to issues of public concern. It is likely to enhance challenge to government and to spur on innovation. That is something that the present system in Northern Ireland, notwithstanding much scrutiny work by the Assembly, arguably lacks.

The system of government under the Belfast agreement in Northern Ireland is unusual, and, as the noble Lord, Lord Empey, has said, complex, in that it involves a mandatory coalition in which all parties meeting certain size criteria are entitled to take part. Oppositions therefore do not come into being as they do here. Parties, as noble Lords have pointed out, are entitled to decline their right to fill their allocated posts. They are entitled to take up an opposition stance. However, as noble Lords have pointed out, no party has so far sought to do so. The noble Lord’s amendment seeks to deal with the issue of why there would be that insecurity in seeking opposition status.

The Government consulted on the question of an Opposition in 2012, but concluded that there was not sufficiently broad support among the parties to justify proceeding with legislation that would change the legislative structure deriving from the Belfast agreement in any way. At that point, the Government also made clear that they would in no circumstances envisage departing from the basic principles of power-sharing and inclusivity.

The noble Lord, Lord Browne, asked for clarification on the issue of powers. At the time that they consulted, the Government raised the possibility that the Assembly itself could make some greater provision for an Opposition through changes to its procedures, as laid out in Standing Orders. This point has been well canvassed here this afternoon. It would be open to the Assembly to make provision in that way for, as has been suggested, extra speaking rights, entitlement to supply days, and arrangements for the chairing of the Public Accounts Committee, with which the amendment deals—the “missing link”, as the noble Lord, Lord Empey, called it. Those are the attractions of opposition. There are attractions to being in government. If you want parties to choose opposition status, they have to have a guarantee for that to be an attractive position to seek.

The issue has been considered by the Assembly’s own Assembly and Executive Review Committee, but no consensus has yet emerged. Many will find this failure to provide more effectively for opposition a disappointment.

The noble Lord, Lord Browne, asked whether the Assembly had the powers to accord the rights set out in the amendment through its Standing Orders. As I understand it, the point of the amendment of the noble Lord, Lord Empey, is to prevent those rights being removed at a point in the future. The Assembly could do this itself but, as the noble Lord, Lord Empey, has pointed out, it could take away that right in the future. I believe it is that uncertainty that the amendment seeks to address. It is important that a formal Opposition should have sufficient status if they are to be effective in holding the Executive to account. The Government will reflect on what has been said in the debate and we will certainly return to this on Report.

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My noble friend Lord Lexden reflected on the breadth of support for the principle of opposition. That is clearly the case here today but there are of course, at the same time, differences among us as to how you might seek to enshrine that position of formal opposition status within the Standing Orders of the Assembly. My noble friend Lord Lexden also pointed to this as an important step in what one would call the normalisation of Northern Ireland politics. That is the thread that runs behind the Bill.

My noble friend Lord Alderdice looked back to the history of the situation and referred to what was, at one point, the permanence of the Ulster Unionist Party’s position in government for a long period of time, and the dramatic change that then occurred. He discussed the reasons why that happened and the problems within the current arrangements for those parties that do not want to be designated as either unionist or nationalist. Those parties also have to be taken into account in the arrangements for any future Opposition. My noble friend Lord Alderdice pointed to some technical problems with the amendment, which the Government will have to take away and consider.

As the noble Lord, Lord McAvoy, said, this is really a decision that must be taken within the Assembly. The UK Government can point in a direction, facilitate and encourage, but the Government would certainly not, in any way, seek to impose anything from outside. The principles of power-sharing and the Belfast agreement are absolutely fundamental in this, and any arrangements must be made with cross-community support and with a broad agreement across society. The Assembly has also discussed this. Mr John McCallister MLA raised the issue and is contemplating a Private Member’s Bill in the Assembly on the issue of opposition in the coming months. I regret to say that, so far, there is no indication of any greater consensus forthcoming on that than there was when the Government consulted on the issue of an Official Opposition in 2012.

I return to the amendment of the noble Lord, Lord Empey, which would not overcome that lack of consensus. In the view of the Government, there would need to be an approach from the Assembly to the Secretary of State before any of the rights that he envisages could be accorded. However, as he explained, the intention behind his amendment is that the Assembly could not then unilaterally withdraw these rights. Once accorded by the Secretary of State, they would presumably be permanent. The noble Lord has made a very good point. He has called this “one small step” and “an additional right”.

The debate has given us all a good deal to think about. The Government will certainly reflect on what has been said on all sides this afternoon, and no doubt the House will return to the issue on Report. I hope that at that stage there might be a clearer sense of how we should proceed on this issue, essentially of what steps might be taken, consistent with the Belfast agreement and the current legislation, to facilitate the operation of opposition parties.

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**Lord McAvoy:** My Lords, I apologise for interrupting. This is an important point. Will the Minister bear in mind the wise and experienced opinion of the noble Lord, Lord Alderdice, that opinions that can be seen as instructions from outside are often counterproductive?

**Baroness Randerson:** The noble Lord is absolutely correct. He is emphasising the point that I made that the Government are well aware that there should be no direction from outside. It is absolutely fundamental that the Assembly itself reaches this agreement. The Government see their role as that of facilitating the operation of the opposition parties within the Assembly when the Assembly reaches that decision for itself.

There will clearly be views on this from well beyond this Chamber today, including from Members of the Northern Ireland Assembly, and I emphasise that the Government are interested in hearing those views. I hope that, in view of the indications that I have given, the noble Lord will agree at this point to withdraw his amendment.

**Lord Empey:** My Lords, I am grateful to the Minister for her decision that the Government will reflect on this. It is interesting that everyone around the Chamber agrees the basic principles. Perhaps we should invite Mr Richard Haass to come in and help us between now and Report. Failing that, if the Minister and other parties—

**Lord Alderdice:** My Lords, if cross-community were the key element in reaching an Executive, some kind of cross-community negotiation of those parties that could reasonably be expected to be in opposition might be a very fruitful way forward for consideration.

**Lord Empey:** I do not think that it would be appropriate to turn down any suggestion. However, we must not look at this purely in the current context of who happens to be around at this point in time. We must look years ahead. This is a structural issue. The Minister got the main points in her summing-up. The tensions here are that, first, we do not want to impose and, secondly, we must be consistent with the Belfast agreement. However, if you have to ask somebody for the right to be in opposition then there is a flaw. That is why one further step is required. Nevertheless, on the basis of the Government’s announcement that they will reflect on these issues and, I hope, discuss them with those who have participated in this debate today, I beg leave to withdraw the amendment.

*Amendment 1 withdrawn.*

**4 pm**

***Clause 6: Reduction in size of Assembly to be reserved matter***

*Amendment 2*

*Moved by* ***Lord McAvoy***

**2:** Clause 6, page 6, line 30, at beginning insert—

“( ) In Schedule 3 to the Northern Ireland Act 1998 (reserved matters), at the end of paragraph 1 insert “except such functions as are specified by the Secretary of State by order made by statutory instrument.””

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**Lord McAvoy:** My Lords, the amendment allows us the opportunity to reflect on the continued importance of Westminster and the Northern Ireland Office in Northern Ireland. There is a vital role for Governments and the Secretary of State in bringing peace, progress and prosperity to Northern Ireland. These are areas where, at times, it is appropriate for the Government to lead and others to support, at all times working in partnership with the Assembly, the Executive and the Government of the Republic of Ireland. Much progress has been made since the Good Friday agreement, but there remains a need for a comprehensive and inclusive process to deal with the past—the name Haass comes to mind—a process that has the victims and survivors of violence at the centre. As yet, there is no consensus within Northern Ireland as to the structures which would enable this. Nevertheless, it should be a priority of the Northern Ireland Office to facilitate and advance dialogue in this area. Dealing with the legacy of what has become known as the Troubles is expressly a responsibility of the Northern Ireland Office. The publication of the Executive’s cohesion, sharing and integration strategy is good news, and the Secretary of State should co-operate with the Executive and provide support for initiatives designed to build, and to continue to build, a shared future in Northern Ireland.

Northern Ireland’s future, like that of other parts of the United Kingdom, can be built only on a strong economy and a compassionate welfare system. These are additional areas in which the Government must work with the Assembly. The Government should also acknowledge the effects that their policies on the economy and welfare are having in Northern Ireland. What could be regarded as inattentiveness has been evidenced in the Government’s inequitable welfare reforms. Thirty-two thousand households in Northern Ireland will be affected by the bedroom tax. Northern Ireland is being disproportionately affected, since almost 90% of social housing stock is family homes of three bedrooms or more—another exposure of the falsehood that people can somehow easily downsize their homes.

This amendment restates the important role that Westminster and the Government have to play within Northern Ireland. The use of these powers would help. The Northern Ireland Act established an important role for the Secretary of State; this Bill will reaffirm this. Both restate the need for active engagement by the Secretary of State with issues that affect Northern Ireland. The amendment is entirely probing to enable some discussion on the affairs of Northern Ireland.

**Baroness Randerson:** I thank the noble Lord, Lord McAvoy, for his amendment. It is always worth considering whether the arrangements in place for devolution are as effective as they might be and whether there is anything we can do to improve the way in which we work with devolved Administrations.

The noble Lord referred to the role of the Secretary of State and to the Haass talks. I reflect back to his speech on the previous amendment, in which he made it absolutely clear—and rightly so—that it was vital that we respect devolution and that the Government do not intervene where it is a matter for the devolved Assembly. I remind the noble Lord that the Government

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on occasions walk a narrow line between encouraging and leading in relation to the development and the firming-up of devolution in Northern Ireland. They walk a narrow line between that and interfering.

As noble Lords have already pointed out, interfering is a major mistake. The Secretary of State is very aware of this, in relation to the Haass talks in particular, because those talks were convened by the leaders of the political parties in Northern Ireland. It is a sign of the development and firming-up of politics and political institutions in Northern Ireland that these leaders felt confident enough to put hugely complex and difficult issues—the most difficult ones they face—into the discussions led by Dr Richard Haass. I am delighted to see that those discussions are still going on, with two meetings of the leaders of the political parties scheduled for this week. It is therefore absolutely essential, at this moment, that we trust them to take those issues forward and avoid the temptation to interfere. That does not mean that the Secretary of State is not watching this moment by moment and day by day or that she is not anxious for the Haass talks to succeed and for there to be progress on those difficult issues.

The noble Lord made it clear that this was a probing amendment, but it is essential that I address the details of it. Amendment 2 relates to ministerial functions. It is already the case that, if the Assembly wants to legislate to alter the functions of a UK Minister, or confer functions on a UK Minister, all it needs to do is ask for the Secretary of State’s consent. The formal consent process takes about 10 days. The amendment would, therefore, have a very limited impact because it would only remove that consent process in a small number of cases specified by the Secretary of State in advance.

The current process is not onerous and there have been no complaints from the Northern Ireland parties about the way that procedures have operated in this area to date. It is also notable that the consent process is very rarely used. Only one Assembly Bill—the marine Bill—has so far required the Secretary of State’s consent since the current Assembly was elected in 2011. Consent in relation to that Bill did not relate to ministerial functions, so it would not have been affected by the proposed amendment. Although I am grateful for the opportunity for debate that this amendment has brought, I do not believe that we should legislate for a problem that does not exist. I hope that the noble Lord will withdraw his amendment.

**Lord Empey:** My Lords, before the Minister sits down I apologise: I should have been in a moment earlier. I want to reflect on the amendment in the name of the noble Lord, Lord McAvoy. Clause 6 deals with the reduction in size of the Assembly being a reserved matter. There is a general view that, at 108 Members, the Assembly is too big. Compared with the Welsh and Scottish assemblies it is proportionately far bigger, but the reason for this was a deliberate decision to try and make it as inclusive as possible. Some two years ago we thought that a solution would be brought upon us with the change in parliamentary constituencies, because reducing the

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number of parliamentary constituencies would automatically reduce the size of the Assembly—QED. However, one or two people around your Lordships’ House and in other places had different views, and consequently that did not come to pass. However, it would have been an important step.

I have to caution the House that the Assembly deciding on how to reduce its numbers is as important as actually reducing the numbers. Using the existing system, if you reduced the numbers and left the existing constituencies the same, it would be perfectly possible to have a major political impact. It is a bit like the American states: the winning party then determines the boundaries of the new congressional districts, and so it goes on. This is a similar type of issue, and we have to be very cautious as to how we deal with it.

There is a general sense overall that the operation of the Northern Ireland institution is far too complicated and expensive, and everyone has the general view that it should be reduced. How you do that is very important and can have a significant political outcome, so I caution your Lordships that if we agree to this, it will hand the ability to whoever happens to be in charge when this happens to draw up the numbers to suit themselves, because proportional representation under the single transferable vote is very sensitive to the number of seats in each constituency that are contested.

**Lord Alderdice:** My Lords, I spoke to this question at Second Reading. I have a concern about the question of the reduction in the numbers of Members of the Assembly. I do not share the view expressed by the noble Lord, Lord Empey, and others in other places that the Northern Ireland Assembly is too big. I think that there is a certain minimum size; I hear from colleagues in Wales that the Welsh Assembly is too small, and that it is actually very difficult for it to accommodate all the requirements for committees to scrutinise Ministers, for internal committees and to do all the necessary things. There is a certain minimum size below which it is difficult to address all the required functions. Of course, in the case of Northern Ireland, unlike in Wales and Scotland, there is a very significant cross-border responsibility that is present in dealing with another state, which is not something that has to be done in quite the same way by other devolved institutions.

I am not convinced about the question of the reduction of the size of the Assembly, particularly since, after the Belfast agreement, there has been a decision to bring a major reduction in the number of local authorities and the number of elected representatives. We are going to move from a substantial number of elected local representatives to a much smaller number, while at the same time talking about a possible reduction of Assembly Members. I am not persuaded by that.

The second issue is the question that the noble Lord, Lord Empey, picked up: the people who will deliver on a decision will be the majority. In the old days the majority was from one side of the community, and the manipulation of electoral boundaries and votes was not at all unknown—in fact, it was quite a significant issue. One of the problems that I find,

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looking back at it from this side of the water, is that people over here sometimes assume that if major parties on both sides of the community agree, that is all you need to know. It is perfectly possible for two large parties, one on either side of the community, to agree to do something that is a major and inappropriate disadvantage to minority parties on both sides of the community or from neither.

There is a real danger that if this became a reserved matter, the two largest parties, one on either side of the community, could come forward with an agreed set of proposals that would advantage them electorally and politically in a way that was inappropriate but would be very difficult to resist because of, if we take the argument that the Minister made, the danger of a Secretary of State or people from this side of the water imposing their will. What does that mean? It means that if the two largest parties in the Northern Ireland Assembly came forward with a proposal, it would be rather difficult for a Secretary of States to withstand it and not be accused of inappropriately affecting affairs when there would be a cross-community agreement to move on that front. So there is a real danger, and I have to say that I am not at all enthusiastic about giving powers to the two large parties in the Assembly—that is what this amounts to—to affect the number of elected representatives per constituency. That would have a major impact, and we could live to rue the day if it were able to proceed.

**4.15 pm**

**Lord Bew (CB):** My Lords, I support the words of the noble Lord, Lord Alderdice. This is a more significant change than the House has fully grasped. We have recently lost a distinguished Member of the House of Commons, Mr Paul Goggins, who was widely respected on all sides. When he was Minister of State for Northern Ireland he used to say at the Dispatch Box that, “Electoral law will remain in this House for all time”. Today we are, in a sense, changing that. The reasons why he thought that are very close to the reasons given by the noble Lord, Lord Alderdice. I fully accept the point made by the noble Lord, Lord Empey, that there is a general public perception in Northern Ireland and throughout the United Kingdom that there is great expense associated with the running of the Stormont Parliament. However, it is a lot easier to make a case for a reduction in the number of relatives assisting and the number of special advisers, as well as in this area, to deal with the question of public expenditure.

There is a fundamental point here. The very large number of representatives—108 for a small population—permits a greater role for smaller parties than otherwise would have happened, and these smaller parties have something relatively fresh to say in the context of Northern Ireland. Do not forget that we have a Parliament at the moment where 105 out of 108 Members support the Government. All of them would support the Government if it were not for the fact that we have this very broad system of allowing 108 people to be elected.

**Lord McAvoy (Lab):** My Lords, I welcome the opportunity to restate the important role that Westminster and the Government play within Northern Ireland in

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building a shared future. The Secretary of State and the Northern Ireland Office must be actively involved and engaged in assisting the people of Northern Ireland to deal with past violence and the legacy of the Troubles. The Government have a duty to lead, but not prescribe, working with the Assembly, the Executive and the Irish Government. The Government must also take responsibility for and consider the effects of their economic and welfare policies in Northern Ireland. However, having listened to what has been said, and having indicated that it was a probing amendment, I beg leave to withdraw the amendment.

*Amendment 2 withdrawn.*

*Clause 6 agreed.*

*Clauses 7 to 9 agreed.*

***Clause 10: Civil Service Commissioners for Northern Ireland***

*Amendment 3*

*Moved by* ***Lord Empey***

**3:** Clause 10, page 9, line 7, at end insert—

“(3) Subsections (1) and (2) shall only enter into force after the remaining provisions of this section have been complied with.

(4) The Secretary of State shall establish a body corporate called the Northern Ireland Civil Service Commission (“the Commission”).

(5) The Commission must publish a set of principles to be applied for the purposes of recruiting persons on merit on the basis of fair and open competition.

(6) Before publishing the set of principles (or any revision of it), the Commission must consult the Secretary of State.

(7) Northern Ireland Civil Service management authorities must comply with the recruitment principles.”

**Lord Empey:** My Lords, I know that a number of your Lordships have been contacted by the Civil Service Commissioners for Northern Ireland. While the commissioners do not oppose the devolution of their functions, they are very concerned that they at present do not have the benefit of formal legislative provisions. This distinguishes them from their counterparts here in Whitehall. Civil servants generally are sometimes, like politicians, the butt of jokes, and I am sure many a cartoonist has made a living out of it, but the Northern Ireland Civil Service over many difficult years ensured a degree of civilisation where proper governance continued, despite threats, both personal and real. It is important that its impartiality in serving whatever Administration it happens to serve is maintained.

I see one distinguished former Secretary of State in his seat. He will know the importance of having that impartial advice available. I believe that the Civil Service Commissioners want to ensure that that remains the case. They would like the Constitutional Reform and Governance Act 2010—it puts the Home Civil Service Commission on a statutory footing and enshrines in law the requirement that selection of appointment to the Civil Service should be on merit, following fair and open competition—to apply to the Northern Ireland

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Civil Service. I think that they are very anxious that devolution of this function should not take place until that is achieved.

That is not a very difficult issue. We have seen in the past 24 hours what can happen when people have to say things about public appointments. Given the circumstances which we come from, and the history, background and substantial achievements of the Northern Ireland Civil Service under difficult circumstances, it is important that we take any and every measure we can to ensure that that impartiality is guaranteed, is in statute, that there is no ambiguity and that no political influence could subsequently be brought to bear were attempts to be made over the years to try to interfere in who was appointed to which posts.

This is a sensitive issue throughout the United Kingdom. The amendment is just another small step in attempting to ensure that that impartiality is guaranteed long into the future, and that it, and the respect in which the Civil Service is widely held in Northern Ireland, is retained. I beg to move.

**Lord Alderdice:** My Lords, I was happy to put my name to the amendment which the noble Lord, Lord Empey, pioneered. I support many of the things that he said.

I will give two examples; a modest one, and one perhaps more substantial and persuasive. This question of maintaining the non-partisan stance and community appreciation of the Northern Ireland Civil Service is of enormous importance. Quite a lot has been written about the peace process in Northern Ireland, and most of it concentrates on negotiations between politicians, the people who are brought in from outside to assist, the role played by the Prime Minister and the Taoiseach and, in some cases, the impact of the United States, the European Union, the NGOs and so on. Very few of those papers point up the importance of civil servants in the Northern Ireland Civil Service, yet they were absolutely critical. A few of those civil servants—nominated by the Secretary of State and his successors—basically spent all their time engaging with politicians right across, and in some cases beyond, the spectrum to keep the process alive. Whether Governments changed, whether leaders of the political parties changed, with all the ups and down of elections those civil servants continued to meet. They would make minutes. They would ensure that meetings were held. They would keep people in touch with each other.

Very little is written about it. It was absolutely essential. As I have involved myself in peace processes in various other parts of the world, I have come to realise how important it was. In many places, almost right across the Middle East, for example, this is not a tradition in the civil service. It is difficult to make peace processes work in some of these places precisely because there is no civil service there of that kind—no non-political, non-partisan civil service.

I give another example. One of the problems I had when I became the first Speaker of the Assembly was how to staff it. Nobody had been there for decades, running, as clerks or other officials, an Assembly. There was only one body of people who could be called upon in sufficient numbers: the Northern Ireland

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Civil Service. People, particularly on the nationalist and republican side, were very anxious about this. They had come to a view, for particular reasons, some of them based on experience and some of them on suspicion, that the Northern Ireland civil servants would be biased towards unionists. We had a lot of negotiation about it, but we all came to the conclusion that there was no alternative, so the agreement was that we would take these people in—however, on only a three-year contract. During that period, there would be open advertisement, and people would come in from other places in society and outside Northern Ireland. There would have to be this transitional process.

The fascinating thing was this: as that period of three years went on, it became increasingly apparent to nationalists and republicans that the concerns they had had about the non-partisan nature of the Northern Ireland Civil Service were actually pretty groundless. As we came near the end of the time, people from those communities wanted to keep on many of the staff who had proved themselves perfectly capable of being loyal to a power-sharing cross-community Executive and Assembly. That was the quality of people and, to some extent, the culture, which was a more non-partisan one than was realised.

I have a real anxiety—in this situation, I do not think that examples on this side of the water are necessarily perfect—that Members of the Government on both sides in Northern Ireland might well be tempted to influence the appointment of some senior civil servants in a way that would not ultimately be in the interests of any of us in Northern Ireland. I ask the Minister to take very seriously the amendment put forward in the name of the noble Lord, Lord Empey, and myself, and to take it away and look at whether it is possible to accommodate the very legitimate concerns—not concerns about devolution of the function but about protection of the devolution of this function from adverse and partisan impact.

**Lord Butler of Brockwell (CB):** My Lords, I was one of those contacted by the chairperson of the Northern Ireland Civil Service Commissioners about this matter and I support the amendment. As the noble Lord, Lord Empey said, this is a simple matter. It really should be straightforward and I cannot see that there can be a serious objection to the amendment that the noble Lords, Lord Empey and Lord Alderdice, have tabled.

In the Constitutional Reform and Governance Act 2010, the provision was made to enshrine in statute the obligation of the Civil Service Commissioners that appointment to the Civil Service should be on merit following fair and open competition. We have always taken that as a constitutional principle of our Government. That Act did not apply to Northern Ireland—not that it was deliberately excluded for any particular reason, but it simply did not apply. However, exactly the same principles should apply, and I think everybody would want them to apply, to the Northern Ireland Civil Service. Indeed, because of the divided history of the Northern Ireland community there is a particularly strong reason why they should apply.

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I was very pleased to hear what the noble Lords, Lord Empey and Lord Alderdice, said, because over many years I worked with members of the Northern Ireland Civil Service, as it were from the inside rather than working with them from a political perspective. My experience was exactly the same as theirs, as I would have expected: that members of the Northern Ireland Civil Service were politically impartial and appointed on merit. It took 150 years before these principles of fair and open competition were embodied in statute in Britain, following the Northcote-Trevelyan report. Once they have been embodied in statute, it seems to me that the same thing should be done for Northern Ireland, and before a question of devolving this function should take place. I strongly support the amendment. I hope the Government will say that they see no objection to it.

**Baroness Smith of Basildon (Lab):** My Lords, I am grateful to the noble Lords who have spoken on this. I too support the principle of the amendment before us. It is a very important principle. I was also contacted by the Northern Ireland Civil Service Commissioners and they make a powerful case. They were established, as noble Lords will know, by the Civil Service Commissioners (Northern Ireland) Order 1999. The principle is that a person shall not be appointed a situation in the Civil Service unless a selection is made,

“on merit on the basis of fair and open competition”—

the merit principle. The commissioners have the power to consider, make decisions, and have appeals made to them under the Northern Ireland Civil Service code of ethics, and their notepaper says:

“Ensuring appointment on merit and safeguarding ethics”,

which is, indeed, their role.

Noble Lords from different backgrounds have made important points, and I will also make a point, having served as a Minister in Northern Ireland and in Whitehall. The Northern Ireland Civil Service is a much smaller unit. Everybody knows everybody else in Northern Ireland, and sometimes it seems—I am sure that other noble Lords will confirm this—that everybody knows everything about everybody else in Northern Ireland. Many senior Northern Ireland civil servants had a profile that was not known here in Whitehall, but they were known across Northern Ireland in their respective roles as Permanent Secretaries. Therefore this is not just about things being done in the right and proper way and about there being impartiality; the perception of impartiality must also be there for all those who are appointed, and for others.

**4.30 pm**

On the point on the transfer of powers, I have not seen anything that did not agree with devolving the responsibilities. However, before they are devolved the Government have to work with the Assembly to ensure that legislation brought forward to provide those safeguards ensures the continued impartiality of appointments made to the Northern Ireland Civil Service and the impartiality and independence of the commissioners who regulate those appointments. As we have heard, that provision is in place for other UK Civil Service posts, but it is not currently there as a

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devolved matter. Therefore before responsibility is devolved, something in legislation should enshrine that impartiality. I hope that the noble Baroness will be able to give an assurance today that there will be no further devolution of these issues until that impartiality is enshrined in statute.

**Baroness Randerson:** My Lords, I thank the noble Lords, Lord Empey and Lord Alderdice, for their amendment and the spirit in which it was put forward, and I thank all noble Lords who have spoken in this debate. They rightly emphasise the key issue: the importance of the impartiality of the Civil Service. My noble friend Lord Alderdice referred to the key role of the Civil Service prior to the days of the Good Friday agreement. I was in a small way involved in the early discussions and, from my own experience, was acutely aware of the key role of the Civil Service in Northern Ireland in that regard, the importance of its expertise and, above all, the importance of its impartiality and the trust with which it could therefore be regarded.

It is worth emphasising that Clause 10 does not change the current procedure for the appointment of Civil Service Commissioners for Northern Ireland. Appointments are currently an excepted matter; the Bill proposes to make them a reserved matter, in common with the functions and procedures of those commissioners. Commissioners will continue to be appointed by the Crown: that is, on the advice of the Secretary of State. The Civil Service Commissioners (Northern Ireland) Order 1999, which currently governs the functions of the commissioners, will continue to apply. However, that leaves open the possibility of the future devolution of responsibility for appointment of the commissioners and that of their functions and procedures. Under Section 4 of the Northern Ireland Act 1998, that could only happen with the agreement of Parliament and that of the Northern Ireland Assembly voting with cross-community support. However, before any proposal of that sort is put forward we would certainly intend to consult publicly.

We believe that the devolution of responsibility for the commissioners at some point may well be appropriate. Matters have moved a long way since the Good Friday agreement and the initial devolution of responsibility in 1999. For example, we had big changes in 2010, focusing on policing and justice. The commissioners’ independence and the maintenance of an impartial public service are of paramount importance. I thank the noble Lords for their suggested safeguards in this regard. It is clear across the Chamber today that there is agreement on the importance of the impartiality of the Civil Service and agreement that there should be additional safeguards to those currently provided for in legislation. The Government are certainly open to the possibility of new statutory safeguards at the point of devolution and welcome the suggestions made. We hope to hear more when the time comes for the consultation. We have heard what your Lordships have said here but we believe that it is premature to specify preconditions to devolution in the Bill today. The necessary protections should be carefully debated before devolution takes place, as it would be inappropriate to make such significant changes without a thorough consultation.

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**Lord Lea of Crondall (Lab):** I apologise to the House for asking a question as a disinterested observer, although not an uninterested observer. Given that this is Committee stage and that there seems to be general agreement around the Committee on the principle of the amendment—unless I have missed something—why does the Minister not find it possible to say that consideration will be given to this matter before the end of proceedings on the Bill?

**Baroness Randerson:** My response to the noble Lord is that, as I was in the process of saying, we do not disagree with the concept of the safeguards that have been suggested and laid out in the amendment. However, we believe that before we devolve the Civil Service Commissioners’ role, we need to have public consultation so that we have a fuller understanding of what the public expect. It is also worth pointing out that safeguards are already in place in relation to the Civil Service Commissioners in England. Therefore, it is right and appropriate to compare the safeguards proposed in this amendment with those in place for the Civil Service Commissioners in England. In the case of England, they go to several pages; they are very much more detailed. The proposals in the amendment are an indication of the sort of lines one would wish to put in place, but the Government believe that they are nowhere near detailed enough for the final situation. They would need a great deal more fleshing out and should rightly be fleshed out following public consultation.

**Lord Hurd of Westwell (Con):** I have been following this debate with some care and would like to join, from my own experience as Secretary of State, in welcoming the spirit with which the Northern Ireland Civil Service conducted its affairs at a time when the pressures on civil servants as individuals must have been really quite substantial, coming from several parts of the community. They resisted those pressures, as far as I could tell, with persistence because they believed in the principles which have been endorsed in every speech made here, including that of my noble friend. She is straining at a gnat. We are all familiar, from being in government, with occasions when Ministers are asked to take this line. She is saying, “Yes, the principle is fine,” and so on, “but we need more thought; we need more time, we need more consultation”. We have had quite a substantial consultation in this House this afternoon. The principle is not at stake and is not being questioned. Is this not an opportunity to endorse that principle, which is hugely important for the future of the Province? It seems that the House should take the opportunity offered to it this afternoon to underline its strong endorsement of the principle, rather than be deflected by the arguments for delay.

**Baroness Randerson:** I thank my noble friend for that point. However, I do not see this as an argument for delay. This measure must go through the appropriate legal processes and there should be proper public consultation. With all due respect to your Lordships, there is another side to public consultation which involves, for example, asking the opinions of the elected representatives in Northern Ireland.

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**Baroness Smith of Basildon:** If my understanding of the noble Baroness’s lengthy speech is correct, she is not arguing that there should be delay as regards the principle but is saying that it is absolutely accepted by the Government, and is talking now only about process. Is that correct?

**Baroness Randerson:** Absolutely. The noble Baroness is entirely correct. I had hoped I had made it clear in my opening remarks on this issue that the Government fully support the principle and intend to ensure that safeguards are put in place. However, they believe that there should be public consultation to ensure that those safeguards are as full and detailed as is necessary. The Government also believe that although the intention of the noble Lord’s amendment is entirely satisfactory in many respects, it is deficient in technical terms because the safeguards it specifies are nowhere near detailed enough compared with those for the Civil Service in England.

**Lord Butler of Brockwell:** The Bill contains the powers to devolve this function of the Civil Service Commissioners. If we are going to put that in the Bill, surely the sensible time to legislate for the safeguards is at the same time as making that provision. If not, why have this provision in the Bill? If the provision is to go ahead, the Government ought to undertake such consultation as they think necessary but introduce a suitable amendment on Report.

**Baroness Randerson:** The Government are listening very carefully to what is said this afternoon, which will inform the content of our consultation paper when it is produced, and we will take close account of what is said more generally by parties and public figures in Northern Ireland. The body that it is proposed to devolve—the Civil Service Commissioners—has, as the noble Lord pointed out, raised our awareness of this issue and is very much involved with the whole process. I should point out that there will be a vote here and in Stormont before the Civil Service Commissioners are devolved. Therefore, noble Lords will be able to discuss once again the details of the safeguards to be put in place as regards the impartiality of the Civil Service. I hope that noble Lords who have spoken this afternoon will contribute fully to the consultation that will take place in due course. However, for the present, I hope that the noble Lord will not press the amendment. I cannot agree to it for the reasons I have outlined—namely, it is technically deficient and does not provide the detail that is required properly to protect the impartiality of the Civil Service in Northern Ireland.

**4.45 pm**

**Lord Lexden:** Can my noble friend confirm that she will consider most seriously the point made by the noble Lord, Lord Butler of Brockwell, about the extension to Northern Ireland of the 2010 Act, which, after 150 years, as he mentioned, finally enshrined in law the Northcote-Trevelyan principles of impartiality? I speak in part here as a member of the Constitution Committee of your Lordships’ House, which contains most enthusiastic supporters of the 2010 Act.

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**Baroness Randerson:** I thank my noble friend for his intervention. I am fully aware of the noble Lord’s tremendous expertise and am very happy to take into account the point he made. I assure noble Lords that the Government will be taking careful note of everything that has been said here this afternoon.

**Baroness O'Neill of Bengarve (CB):** Is the Minister willing to confirm from the Dispatch Box that, should the consultation reveal that public sentiment is not going to endorse the principles of Civil Service independence, it will not be the outcome of the consultation that is carried through but rather those principles for Civil Service independence?

**Baroness Randerson:** In public consultation in Northern Ireland, the Government look particularly at a consensus across parties and communities. Therefore, it seems to me highly unlikely that there would be a consensus of opinion—a broad agreement across parties and communities—that there should not be an impartial Civil Service. That would be highly unlikely. In that consultation, we would be looking for the details that we would require for proper safeguarding of the position of civil servants in Northern Ireland.

**Lord Butler of Brockwell:** I am very sorry to ask the Minister one more question. She said that there would be a further vote before devolution took place. Can she say that, if there is agreement that these principles should be applied, the effect of that vote would be to give them statutory force?

**Baroness Randerson:** It is the Government’s intention that we would be moving to devolution with safeguards that would have the kind of statutory enforcement that exists for England. I hope that satisfies the noble Lord.

**Lord Empey:** My Lords, when we started out on this amendment, I thought it was a very simple matter that would not be at all controversial. It just shows you that you never can tell around these parts. First, nobody in Northern Ireland has asked for this. The Assembly certainly has not made an approach. To some extent, the issue has come as a bit of a surprise. As I said—I think there is widespread acceptance round the House—the Northern Ireland Civil Service did a good and impartial job. There are a number of former Ministers in their places to confirm that, including the noble Baroness on the Opposition Front Bench, who ran a number of departments and has many years of experience. I accept that there may well be technical deficiencies in the amendment that the noble Lord, Lord Alderdice, and I have tabled. We are very happy for the amendment to be taken away and those technical deficiencies resolved. However, the Minister referred on a number of occasions to consultation. It is not clear to me what the consultation is on—whether it is the principle of devolution or not. To have a consultation on the merit principle would take us back to ground zero. If we do not or cannot accept that, we will pretty well have thrown in the towel.

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I suggest that the Minister should look at this before Report because it is an issue to which we may well have to return. Everybody in the Chamber agrees, so it ought to be possible to resolve it. In that spirit, I beg leave to withdraw the amendment.

*Amendment 3 withdrawn.*

*Clause 10 agreed.*

***Clause 11: Northern Ireland Human Rights Commission***

*Debate on whether Clause 11 should stand part of the Bill.*

**Lord Alderdice:** My Lords, this clause deals with the potential for devolution of certain aspects of the Northern Ireland Human Rights Commission. Human rights is a particularly important and sensitive issue in all jurisdictions, not just those in which there are conflicts. It takes on particular characteristics where there is communal and intercommunal conflict. I well remember discussions at a very early stage among the political parties and the two Governments, well before those with which George Mitchell and colleagues were involved—right back to the days of Sir Ninian Stephen, whom some of your Lordships will probably have forgotten. It was very interesting because at that stage four political parties and the British and Irish Governments were involved. It was fascinating that the four political parties could all agree that we needed robust human rights protections. It is generally not that difficult to get people, particularly opposition parties to agree. In those days, all the parties in Northern Ireland were opposition parties. If you say, “Do you want the rights of your people to be protected?”, they say, “Yes, of course”. If you say, “Do you want the rights of everybody else to be protected?”, it is difficult to say, “No, I just want our rights protected”.

The four parties involved at that stage all agreed and those who found it most difficult were the British and Irish Governments. They could see the implications of embodying this in statute and setting up human rights commissions, and so on. What is important about that is that when people are in government they have a very different perspective on human rights from when they are in opposition. This is why I have a real anxiety and wonder how much thinking there has been about the question proposed in Clause 11. I would be interested to know from the Minister who exactly has asked for this; certainly the Northern Ireland Human Rights Commission has not asked for it. If the Northern Ireland Government have asked for it, I am particularly suspicious—not because of the occupants of those offices but because, in principle, the point of human rights commissions is to speak truth to power and to challenge.

That is why in Scotland, it is not the Scottish Government but the Scottish Parliament that addresses these issues. I want to explore whether we are talking about devolution to the Executive—to government—of more control of the Northern Ireland Human Rights Commission, about which I would have considerable

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anxiety, or whether we are talking about the possibility that it might be devolved to the Northern Ireland Assembly, where a whole range of the community is represented by elected representatives. There is a sort of reason for this. One of roles and responsibilities of the Speaker of the Northern Ireland Assembly is that every piece of legislation, before it comes to First Reading, must have the Speaker’s approval that it conforms to the European Convention on Human Rights. Before the legislation leaves the Assembly, in case any amendments have been passed that change that, it must have approval again. At various stages, the Northern Ireland Human Rights Commission can intervene in the legislative process precisely to make sure that the governing parties cannot of themselves put into legislation things that do not conform to proper international human rights requirements.

I would be interested to find out where the drive has come from for this particular change. Is it a question of giving more power to the Northern Ireland Executive to control those who are supposed to hold them to account, or is it possible that we might look at devolution to the Northern Ireland Assembly? That would at least ensure that it was not those in government appointing those who scrutinise government, but rather that it was the Assembly as a whole. At least that would be some form of protection.

**Lord Bew:** My Lords, I support the concerns expressed by the noble Lord, Lord Alderdice. Clause 11 embodies a significant step towards the devolution of function in relation to the Northern Ireland Human Rights Commission.

I do not want to leap ahead to the amendment in my name and the names of the noble Lords, Lord Lexden and Lord Black. That will be discussed in its own time. There is, however, a particular irony here. The key issue in that amendment is the continuing reluctance of the Northern Ireland Assembly to accord to the citizens of Northern Ireland the same level of freedom of expression that exists in the rest of the United Kingdom since the recent passing of the Defamation Act 2013. It seems a heavy irony that we should be proposing to devolve functions related to human rights precisely at the same time as we have a denial by the same Assembly of what is a pretty sensitive question in this particular respect. I do not want to anticipate a later discussion but it is relevant to the points made by the noble Lord, Lord Alderdice. The timing of this seems at least a little odd.

**Lord Empey:** My Lords, I have some sympathy with the points made by the noble Lord, Lord Alderdice. This kept coming up time and again in the Haass process—and I am sorry that I did not have the opportunity to sell tickets for it at an earlier stage; I know it would have been a sell-out for many noble Lords. It goes to the core of what people feel about their cultural identity and how they express that identity. Everybody talks about human rights in that context. What might seem a relatively modest administrative change does have significant consequences, and it could not have been put better than by the noble Lord, Lord Bew.

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**Baroness O'Neill of Bengarve:** My Lords, I declare an interest as chair of the UK Equality and Human Rights Commission. We have an asymmetric situation in the United Kingdom, whereby Scotland has a separate human rights commission reporting to the Scottish Parliament, as the noble Lord, Lord Alderdice, said; Wales does not have anything separate; and Northern Ireland has a human rights commission. However, the status of all three human rights commissions is jointly considered under the United Nations process. The A status of the human rights performance of the UK is an extremely important feature of our foreign policy. The fact that we retain an A status, despite the asymmetries and anomalies of the way in which we are structured at the moment, seems to make this a matter that deserves further consideration.

I know that the Joint Committee on Human Rights has given this some consideration along the lines that the noble Lord, Lord Alderdice, suggested—namely, that it might be better if the Northern Ireland Human Rights Commission, at present without a chair, were to report to the Northern Ireland Assembly. I take no view on this matter, but I think it is something that raises wider issues and needs further consideration.

**Baroness Smith of Basildon:** My Lords, I was taken by the comments made by the noble Lord, Lord Alderdice. I was surprised when he said that the Northern Ireland Human Rights Commission had not asked for this. He said that he had not really expected it in this Bill. I wonder if it was consulted prior to the Bill being drafted. Who else was consulted prior to this coming forward? Obviously, the impartiality and independence of the commission is crucial and must be both retained and maintained. The comments that have been made beg questions which I hope the noble Baroness can address and thus give the Committee some reassurance. I look forward to her comments and to being given some information on who was consulted prior to this move being made.

**5 pm**

**Baroness Randerson:** My Lords, I thank noble Lords for their contributions on such an important topic. My noble friend Lord Alderdice emphasised the fundamental importance of human rights to the successful establishment of devolved government in Northern Ireland. I shall deal first with the bread-and-butter issues for the clause to stand part of the Bill.

Clause 11 moves certain functions relating to the Northern Ireland Human Rights Commission from the excepted to the reserved category. Human rights issues have long been politically sensitive in Northern Ireland and at the time of the 1998 Act it was considered that functions relating to the new commission should remain in the Secretary of State’s hands. In the context of stable devolved institutions and of their development in the future, it may become desirable in due course to devolve responsibilities relating to the NIHRC if the Northern Ireland political parties so wish and if the Secretary of State considers that the Northern Ireland institutions are better placed than the Government to carry out the functions concerned. Clause 11 will mean that the appointment, functions, procedures and funding of the NIHRC will be reserved.

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The Government made a commitment, in their response to the Northern Ireland Affairs Committee’s pre-legislative scrutiny report on the draft version of this Bill, to consult formally on any future devolution of responsibilities relating to the NIHRC and the other arm’s-length bodies discussed prior to any such devolution taking place. I reiterate that commitment today. We will also ensure that the NIHRC retains its responsibility for the scrutiny of non-devolved matters relating to Northern Ireland such as national security and terrorism in the event of any future devolution of responsibilities for the institution.

We understand the concerns that have been expressed both in this Committee and elsewhere that in the course of devolution the independence and freedom of action of the NIHRC should not be compromised. Indeed, not only do we understand those concerns, we fully share them. The independence of the commission is essential to its effectiveness. Its international standing is high and reflects that independence. We are well aware of the importance to the commission itself of the Belgrade and Paris principles, and it is essential that those are abided by. I also ask noble Lords to consider the benefits of devolution. I understand the concerns, but I ask them to consider the benefits. We believe that if it can be accomplished without compromise to the independence and important international standing of the commission, it would be a good thing. It would show that the institutions have matured. After all, in 2010, we accepted that they should take responsibility for sensitive matters such as policing and justice. It is not outrageous, therefore, to suggest that they should be capable of accommodating the independent oversight of institutions, as indeed they already do in various areas such as that of the police ombudsman, with due respect for propriety. So we do not believe that it is unthinkable that, at some point soon, the devolved institutions in Northern Ireland should take on responsibility for the NIHRC, but we are not asking for decisions at this point. All that the Bill does is to make it possible for such decisions to be reached and for effect to be given to them at a later date. If that happens, it will be after full consultation, because these issues need debate in Northern Ireland, of which we have had very little so far. Devolution would require votes in the Assembly by cross-community support and in both Houses here, so we shall certainly come back to these issues before any act of devolution.

I shall respond to some of the points made by noble Lords. The noble Baroness, Lady O’Neill, referred to the current lack of a chair of the commission. In fact the position will be advertised in the immediate future, so this temporary situation will be rectified in the near future. The noble Lord, Lord Bew, referred to the issue of timing. We shall come back to this, because it is the topic of an amendment later in these proceedings.

My noble friend Lord Alderdice asked who had initiated this, and the noble Baroness, Lady Smith, made a similar point. The Government have had discussions with various Northern Ireland political parties about possible devolution of the commission. Officials have also discussed the matter with the chair and the chief executive of the commission, and I discussed it with them a couple of weeks ago. I emphasise

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that the Government believe that it is important above all that there is broad support across the community for devolution before it takes it place.

**Lord Alderdice:** My noble friend may be able to help me and the House with one question of information that I asked, on whether what we are being asked to do is devolution only to the Executive, or whether it would open the possibility of devolution to the Executive or to the Assembly.

**Baroness Randerson:** I apologise to my noble friend for omitting that. We are not looking at a precise model of devolution at this moment, because that, of course, is to be effected after consultation. However, we are well aware that devolution in Scotland has been to the Parliament and that that is a very successful model of devolution. It is sensible to follow successful models where they exist rather than to apply a different model. However, the details will be subject to further consultation and will become obvious after there has been full consultation.

*Clause 11 agreed.*

***Clause 12: District electoral areas for council elections***

*Debate on whether Clause 12 should stand part of the Bill.*

**Lord Empey:** My Lords, there is no question that, from an administrative point of view, having the district electoral areas dealt with by the same commissioner who deals with each individual ward makes sense. However, as has been mentioned in the context of other issues, this is a very significant development under proportional representation, because the drawing up of district electoral areas out of wards has two consequences. The decision on how many seats to award for each district electoral area has consequences under proportional representation, and which particular wards make up that DEA is also an extremely sensitive issue. There are grey areas in many respects.

You cannot of course go around in life with a conspiracy theory always at the front of your mind, but I have to say that current experience—within the past couple of years—is not encouraging. I refer to the recent reorganisation of local government, which I have previously referred to elsewhere. The recommendation of the commissioner was overruled in one case. In my opinion, a scandalous gerrymander has occurred in the city of Belfast, and barely a word is said. I have absolutely no confidence that the time is right for this particular function to be considered for devolution. A lot of people say they want the single transferable vote system of proportional representation but fewer people perhaps have had full experience of it. We have had 40 years of experience and understand the significance of deciding on the number of seats. For each local government area, you have a number of district electoral areas, each of which is a collection of wards. Those areas can include, in our case, five, six or seven; in the Irish Republic it could be four or three. Those decisions on the number are very significant. Equally, deciding which particular group of wards form the DEA is also significant.

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In many respects, that can lead to putting the cat in charge of the cream, to be perfectly blunt. At this stage, I feel that this is not an appropriate thing to do. Recent experience, as I said, is not encouraging and we could start to create the particular problem which, as referred to, was a problem in the past. Do we really want to go back down there again? It is not a big deal—I have to tell noble Lords that the people on the streets are not talking of little else—and not a source of difficulty, so why move to a position where that could happen? The point might well be made that we have done our local government DEAs—we have just passed the order today—so this is not something that will arise in the near future. That is indeed true, but so what? If it will not arise, and will not be necessary right now or in the foreseeable future, we can wait. Whenever it does come round, and when is needed, we can hope things will have sufficiently matured politically so that anxieties such as the ones I am expressing today are no longer held by individuals. It is for that reason that I put down this proposal.

**Lord Alderdice:** My Lords, the noble Lord, Lord Empey, suggested that this is not a matter that is talked of every Friday and Saturday night in the pubs of Belfast. He is right about that, at this point, because it is not an issue. However, I have found in conversations with political friends and colleagues in the United States that districting is very much a matter of debate, because it is actually in place. You do not need to be a particular student of Northern Ireland history to know that manipulation of electoral boundaries and arrangements was a fundamental problem which led to many of our difficulties. I am a little puzzled as to why this has come up at this stage. I am delighted that we are 15 or 16 years on from the agreement, but we are not 15 or 16 years more mature than at the time of the agreement and it is quite clear that it is very difficult to reach agreement on a whole raft of issues in the Northern Ireland Assembly. I would feel much more relaxed about this if, over the past 15 or 16 years, we had passed a whole series of constructive pieces of legislation in the Northern Ireland Assembly and agreed on all sorts of community initiatives that had to be done, and if the walls of partition were coming down in the city of Belfast and the word “dissident”—whether loyalist or republican—was consigned to history and so on. In that case, I would probably not be standing up here.

However, I am not persuaded that the situation has changed so dramatically. If issues of flags, parades and the legacy of the past are bringing people out onto the streets, I fear that applying districting to Northern Ireland could well become a matter of enormous contention. I am not persuaded that adding this to the pot at the moment assists the parties in Northern Ireland in reaching agreement. It adds a further complexity and difficulty, and I am not persuaded that we need or could benefit from that at the moment.

**5.15 pm**

**Lord McAvoy:** My Lords, Clause 12, with Clauses 10 and 11, will have the effect of converting some of the functions relating to certain arm’s-length bodies

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from excepted to reserved matters. This is a small change but it is right that we support it. It grants more power to the Assembly, allowing it to legislate on these matters, but only with the consent of the Secretary of State. The noble Lord, Lord Alderdice, is absolutely correct to refer to past difficulties. I would not accuse him of being pessimistic about the progress made over the past 16 years. However, there is a failsafe with the involvement of the Secretary of State.

The district electoral areas for council elections in Northern Ireland are in need of reform and rationalisation. It is only right that the Assembly plays some role in such rationalisation. The changes effected by this clause are a recognition and endorsement of the growing maturity of Northern Ireland’s political structures. It reflects faith in the ability of the Stormont Assembly to scrutinise changes properly and to reach cross-community consensus. Concerns have been raised over whether it is possible for the Assembly to oversee such important and sensitive changes. Again, this clause reflects the proper functioning of devolution within the framework of Northern Ireland. The clause recognises the ability of the Assembly to make decisions in the cross-community interest and to hold the Executive to account, while clearly outlining the responsibilities of the Secretary of State and Westminster in aiding and scrutinising change in Northern Ireland.

Any legislation by the Assembly regarding these matters will require the consent of the Secretary of State. Governments in Westminster will therefore be beholden to study extensively whether such changes truly have cross-community support within Northern Ireland. That is a big responsibility. This guarantees that changes to district electoral areas in Northern Ireland cannot be designed for the benefit of two or a handful of political parties, but in full accord with the guiding principle of the 1998 agreement—that of inclusivity. This is not Westminster abdicating responsibility in this area. Instead, it imposes a major responsibility on Westminster Governments to impartially scrutinise legislation from the Assembly.

Clause 12 should stand part of the Bill as the changes it makes are part of the process of normalising politics within Northern Ireland and accord a suitable and appropriate role to Westminster in this. The clause allows the Northern Ireland Assembly to rationalise local government electoral areas, but appropriately requires the Secretary of State to give assent to any of the Assembly’s legislation. This empowers the Assembly and endorses its ability to make inclusive decisions and scrutinise them. It also retains a vital role for the Secretary of State in the scrutiny process and allows her to make decisions when the Assembly cannot reach cross-community consensus. This short clause strikes an important balance between Westminster and Stormont in this sensitive area of boundaries and should stand part of the Bill. It is another step in a long journey.

**Baroness Randerson:** I thank noble Lords for their contributions to this debate. I welcome the support of the noble Lord, Lord McAvoy. I must address the concerns of the noble Lord, Lord Empey, and my noble friend Lord Alderdice, who have both expressed doubts about this proposal.

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Clause 12 moves matters relating to district electoral areas to the reserved category. Noble Lords will be aware that in Northern Ireland local government boundaries are determined by the Northern Ireland Assembly following a report by the Local Government Boundaries Commissioner for Northern Ireland. Local government electoral areas are then determined by Westminster following a report by the District Electoral Areas Commissioner. The noble Lord, Lord Empey, clearly explained that the responsibilities are split at the current time.

It has been the clearly expressed view of successive District Electoral Areas Commissioners that this method of establishing district electoral areas could be improved. Separating out the two processes as I have described leads to increased costs, extends the timetable for boundaries processes by about a year, creates barriers to public understanding and participation, and reduces accountability in the process.

In concluding his December 2013 report, the most recent District Electoral Areas Commissioner, Mr Richard Mackenzie, noted that he had received a number of representations which were outside his remit. This indicated a lack of understanding about the difference between the local government boundaries and district electoral areas processes. He recommended that the processes of setting ward boundaries and electoral areas should be carried out simultaneously and under one authority. This proposal is for a process of potential rationalisation of a cumbersome system. The previous commissioner, Dr Maurice Hayes, also recommended that the reviews be combined. He believed this would lead to higher public participation and a reduced timetable for boundaries decisions.

Moving these matters to the devolved category would allow the Northern Ireland Assembly to rationalise the way in which local government electoral areas are set, subject to the consent of the Secretary of State. For example, the Northern Ireland Executive might create a single local government boundaries commission responsible for both local government and electoral area boundaries, such as exists in Scotland, Wales and England. However, electoral areas would continue to be set via legislation at Westminster in the event that the Assembly did not reach agreement on a suitable alternative model.

I am grateful to noble Lords for expressing their concerns about this. If the Government decide that it would not appropriate to devolve these matters, it may yet be appropriate for the Assembly to legislate on this issue with consent. I therefore resist the proposal by the noble Lord, Lord Empey, that Clause 12 should not stand part of the Bill.

*Clause 12 agreed.*

*Clauses 13 to 20 agreed.*

*Amendment 4(rev)*

*Moved by* ***Lord Shutt of Greetland***

**4(rev):** Before Clause 21, insert the following new Clause—

“Civic forum

(1) The Northern Ireland Act 1998 is amended as follows.

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(2) After section 55 insert—

“55A Civic forum: establishment

The First Minister and Deputy First Minister shall consult with the civil and voluntary sector within Northern Ireland in order to bring forward proposals to the Northern Ireland Assembly to give effect to a working and effective Civic forum.”

(3) In section 56 (civic forum), after subsection (2) insert—

“(2A) A motion for approval under subsection (2) shall be made no later than 1 April 2015.””

**Lord Shutt of Greetland:** My Lords, I see that this amendment has been reprinted on another sheet of paper and described as Amendment 4(rev). I have looked at the amendment on the main document and I see that “Civil” has become “Civic” I am rather in favour of a civic forum being civil as well. However, I turn to the substance.

The business of having a civic forum was set out in paragraph 34 of strand 1 of the Belfast agreement. Earlier today we heard the Minister say that the principles of the Belfast agreement are fundamental. The Civic Forum was then enshrined in Section 56 of the Northern Ireland Act 1998. The problem is that, in terms of that Act, it is almost an aspiration, or something that may happen between now and infinity.

A Civic Forum was established in October 2000 but it was suspended, alongside the Northern Ireland Assembly, in 2002. That is now 12 years ago and the Civic Forum is still not functioning. We must realise why it was put there in the first place. When the Belfast agreement came to pass, there were tremendous numbers of people in civic and civil society in Northern Ireland egging on that there was an agreement and they wanted to be part of it. There is a sense that we are all in this together, but there are those who cannot bring themselves to be part of political parties. We know what has happened throughout our kingdom with membership of political parties. There are plenty of people who are interested in the political process and civicness but cannot bring themselves to be associated with political parties. An opportunity arises, under the Belfast agreement, for such people and those in non-governmental bodies, quangos and everything else to be involved in this forum. It will bring people together. We hear about there being a “shared future”—a splendid phrase—in Northern Ireland. The establishment of the Civic Forum will hold the political parties to making certain it is a shared future and not a shared-out future.

In 2013 the Northern Ireland Assembly passed two resolutions that the Civic Forum should be reconstituted. The amendment in my name is gentle but firm. It is gentle because it suggests there is time—up to 12 months—to re-form the Civic Forum and that there is further consultation. This is not putting it into legislation with a heavy hand. I hope we can, by legislation, make certain that the Civic Forum happens and is effective and that the principles of the Belfast agreement are fundamental. I beg to move.

**Lord Alderdice:** My Lords, I commend my noble friend Lord Shutt of Greetland and support his amendment. We have been discussing a number of amendments which go way beyond what was agreed

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by the Northern Ireland parties and the two Governments in the Good Friday agreement. There is some space for debate and discussion on those issues, but at least one of the parties which supported the agreement had the mantra that it has to be in the agreement; the Belfast agreement has to be fully implemented. Here, in one hugely significant element, the Belfast agreement is not being implemented.

One might ask why, if there was sufficient enthusiasm to get it into the agreement, it fell into disarray so quickly. One could look at the forum itself and whether it performed to its maximum; one could, perhaps, say the same thing about the Assembly. However, there was a dynamic there which may not be familiar to the House. During the long period of direct rule, the Government here at Westminster—the Secretary of State and members of the Northern Ireland Office—wanted to find some way to relate with the Northern Ireland community. There was great difficulty in relating with elected representatives who were, in any case, elected either to the other place or to local authorities because there was not an Assembly. It was very common to invite people from NGOs and civil society generally to drinks at Stormont and Hillsborough, and to discuss with people who were running sometimes very commendable NGOs what would be a good way of spending money locally, how things should be organised and who might be appointed to bodies.

**5.30 pm**

I have to say that a considerable resentment grew up between politicians and those in political parties on the one hand and members of civil society on the other, because politicians felt that they themselves were often in danger and considerably exerting themselves—going out, knocking on doors, delivering leaflets and desperately trying to get votes—and then being ignored by the Government when it came to sharing things out, whereas those who did not go out to try to get votes but set up their own frequently unaccountable, though in many cases quite commendable, organisations were actually being favoured. So, when politicians started to take control of things after the Good Friday agreement, they were not in a mind to share them with anyone, certainly not those who they felt had been the beneficiaries of government largesse over a period of 20 or more years. There was antipathy towards the Civic Forum and civil society organisations on the part of the newly elected representatives in the Northern Ireland Assembly. So not only was there not quite the momentum that there might have been in the Civic Forum but there was a real antipathy.

Has that changed in any way? There are still feelings of that kind around, but I revert to the very first debate that we had in Committee about an Opposition. One of the difficulties when so many people are in government is that any opposition parties will be a minority, possibly in some cases a permanent one. If they are going to have an impact—noble Lords will recall that I raised questions about the amendment at that stage because of the lack of leverage that smaller parties had in the Assembly—then one way in which those who question the Government within the Assembly might gain some help, strength, leverage and public accord might well be if there were a civic forum that

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could also address these issues and might well also say, “Well, actually, here’s a situation where the Opposition in the Assembly may not have the numbers but they have the argument”. In this way, a civic forum could help the Assembly to strengthen its scrutiny function when a majority of Members of the Assembly were members of government parties, under any kind of arrangement based even loosely on the Good Friday agreement.

While we can understand where this important element of the agreement was not implemented beyond 2002, it seems that there could be a change that may well make it possible to bring it back into play. The Civic Forum will never be any kind of emulation of your Lordships’ House, but it may nevertheless be able to perform not a governmental, parliamentary or legislative function but still a useful one. In any case, we should all be trying to ensure the full implementation of the Good Friday agreement, because that is what most of the progress of the past 15 or 16 years has been based upon.

**Lord Empey:** My Lords, there is no doubt that the noble Lord, Lord Shutt, is correct that the Civic Forum was and is in the agreement. It fell into disuse in part because of the resentments that the noble Lord, Lord Alderdice, referred to. People said that many of these individuals were usurping the role of elected representatives, and that feeling persists. The other reason, though, was that it did not get off to a terribly good start. It did not distinguish itself during the relatively short period of its existence. That does not rule out having a look at it again, but I suspect that that was the reasoning.

Another issue, and we will be coming to this in the next amendment, is that if the agreement had been left as it was agreed, there would be strong pressure on those who signed up to it in principle to follow it. However, as we will be referring to in the next amendment, the Government unilaterally changed the agreement in 2006, so therefore a lot of people do not feel as obligated to the full agreement as they would have done prior to that happening.

Another point is that people are getting a constant stream of criticism about the costs of the Northern Ireland Assembly and its complications, and they felt, “Well, here we have another layer. Were we right to agree to this in the first place? Is it going to be too expensive? Do we really need it? With 108 MLAs representing the people, do we need this?”. That is the kind of argument, but there is no question of doubt about the fundamental point that the noble Lord Shutt, makes: it is in the agreement. It is not the only thing that is not implemented—I hear a sound from a sedentary position that I know may well emerge in a moment or two from this chrysalis and bring blinding light to the House. Those are some of the reasons why we are where we are.

**Lord McAvoy:** My Lords, once again the Labour Front Bench will come to the rescue of a Minister who is under siege from her own side of the House. I do not usually see myself as a knight in shining armour coming to the rescue of a Conservative Government, but there is always hope for sinners repenting.

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I will be repeating a familiar refrain. The Civic Forum is a matter for the Northern Ireland Assembly and does not require legislation in this House. The 1990 Act gave responsibility for the creation of the forum to the Office of the First Minister and Deputy First Minister, and gave them the responsibility for scrutinising the body as well. Provisional arrangements for the Civic Forum were created and approved in this manner. These arrangements also established that there would be a review of the forum after one year of its operation. This was deferred until 2002, but unfortunately the suspension meant that that was not completed.

Since 2007 the Civic Forum has once again been under review, and surely a six-year to seven-year review tells a story of its own. The review was initiated by the Office of the First Minister and Deputy First Minister. This decision and the review have rightly been approved, scrutinised and debated by the Assembly. The transitional Assembly’s Committee on the Preparation for Government concluded that a review of the mechanism for civic society to promote its views was necessary. Here, sad to say, the opinions expressed by the noble Lord, Lord Empey, about the role in society of quite a large Assembly raise necessary doubts. It serves some nebulous cause to have a good thing in operation, but on the other hand we have to be professional and sharp about things and not just have bodies just for the sake of them. Anyway, as I said before, this comes under the aegis of the Assembly.

The best way in which to engage with the community in the political process is surely a matter for the Assembly and Northern Ireland politicians to decide upon. There are indications that there is a nationalist/unionist split—I use the terms roughly—about the worth of the forum and whether it should be reinstituted. As the noble Lord, Lord Empey, said, in this era of austerity the costs of an extra, subsidiary body have resulted in some doubts about it as well. Once again, though, I say that the initiative must come from the Assembly. This is devolution in practice.

I regret that I have not been able to support the noble Lord, Lord Shutt, because he has a respectable record on Northern Ireland issues. No one doubts his concern about the Northern Ireland situation or his anxiety to contribute to that process. I respect his record on Northern Ireland and genuinely regret that we have not been able to support his amendment on this occasion.

**Baroness Randerson:** I thank my noble friend Lord Shutt for his amendment and all noble Lords who have contributed to a short but interesting debate. As my noble friend highlighted, the community and voluntary sector plays a vital role in Northern Ireland society, as it does in my home country of Wales and in other parts of the United Kingdom. Alongside the important services it provides to citizens, the community and voluntary sector can be particularly influential in informing debate and helping to shape our society. I believe that is what led to the Civic Forum being established under the Belfast agreement. However, as noble Lords have already said, the Civic Forum has not always commanded the support of the parties in Northern Ireland. In its short existence between 2000 and 2002, the forum met a total of 12 times and produced a number of papers

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on various issues. There was a wide range of useful papers. For some in Northern Ireland that was seen as beneficial and important in delivering good government but, as the noble Lord, Lord McAvoy, has just pointed out, for others it was seen as poor value for money. Others also pointed to it being ineffective.

Whatever the situation, the Civic Forum fell by default when the Assembly was suspended. I believe that the disagreements on how effective it had been are what prompted the First and Deputy First Ministers to initiate a review of the Civic Forum in 2007 which would make recommendations on the way forward. As noble Lords will be aware, that review has never been published but that has not quelled the interest of the parties at Stormont on progress around the Civic Forum and, as my noble friend Lord Shutt pointed out, it was debated last year in the Assembly. What was clear from that debate is that there is no clear consensus to this day on the merits of the Civic Forum or the manner in which it should be constituted in the future.

My noble friend Lord Shutt pointed out that political parties are not always popular these days as organisations to join and that civic involvement is often the favoured choice for members of the public. That is an important point and it points to the continued, or potential, significance of a forum if it were to be re-established. As the noble Lord has pointed out, the Civic Forum is an important component of the Belfast Agreement. His proposed amendment requires that the First and Deputy First Minister launch a formal consultation on the Civic Forum. I expect they may argue that this has already been carried out through the review which they launched in 2007, although the current status of that review is unclear. I say to my noble friend that I reread the Belfast agreement at the weekend and it is quite clear that this is an issue for the executive and the parties at Stormont to agree, as the noble Lord, Lord McAvoy, said. Ultimately, the onus is on the parties at Stormont to agree a way forward on the Civic Forum.

If the Civic Forum is to reappear, it would be essential for it to have a clearly delineated role. It would be especially useful to agree that beforehand. That prospect would obviously follow only from the review undertaken by the First Minister and Deputy First Minister, which has never been published to this day. We are therefore speculating about a potential re-establishment which, although still under active consideration within the Assembly, is in my view some way off—if it is on the horizon at all. This is very much an issue for the parties at Stormont. I thank the noble Lord for raising the issue and hope that, in doing so, he has given the issue some renewed impetus. I hope that the parties in Belfast will take notice of our debate here and the comments of your Lordships this afternoon. In the mean time, I ask my noble friend to consider withdrawing his amendment.

**5.45 pm**

**Lord Shutt of Greetland:** My Lords, I thank the three noble Lords who have spoken, and the Minister. I understand that it is always possible to put up an argument against something. Costs have been raised. There are plenty of costs in Northern Ireland that I could have a go at before getting at the costs of a body

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such as the Civic Forum. The reduction in numbers of those who are going to be involved in local government is another reason why setting up the forum would be right.

**Lord Lexden:** Am I right in my understanding that members of the Civic Forum were unpaid and, if that was the case, that its re-creation would add little, if anything, to public spending?

**Lord Shutt of Greetland:** I believe it was the case that they were unpaid. There was, obviously, a bureaucracy and there is no doubt that that was the cost of the Civic Forum. My noble friend is right to make that important point. If they were unpaid, I often wonder whether there was any point trying to get a group of people together at 10 am on a Wednesday if all those people were in work. They would be far better meeting at 10 am on a Saturday. I do not know what the position would have been on that but, if you have a body such as this, it is important that it should meet when it is convenient for such people to meet.

The Minister agreed that it is important that this has been aired; I am delighted that it has been. However, it beggars belief that a report produced in 2007 has not seen the light of day in 2014. The years from 1939 to 1945 are fewer than that but think of all that happened in that period. I cannot understand how it can be the case that no one said, “We have managed to put this report through the duplicator and get the reports done, so that they can be distributed to people who are interested”. However, there is more to do and, for the moment, I withdraw the amendment.

*Amendment 4 withdrawn.*

*Clauses 21 to 25 agreed.*

*Amendment 5*

*Moved by* ***Lord Empey***

**5:** After Clause 25, insert the following new Clause—

“Election of the First Minister

(1) The Northern Ireland Act 1998 is amended as follows.

(2) Omit sections 16A (appointment of First Minister, deputy First Minister and Northern Ireland Ministers following Assembly election, 16B (vacancies in the office of First Minister or deputy First Minister) and 16C (sections 16A and 16B: supplementary).

(3) Before section 17 (Ministerial offices) insert—

“A17 First Minister and deputy First Minister

(1) Each Assembly shall, within a period of six weeks beginning with its first meeting, elect from among its members the First Minister and deputy First Minister.

(2) Each candidate for either office must stand for election jointly with a candidate for the other office.

(3) 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.

(4) The First Minister and 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.

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(5) The holder of the office of First Minister or deputy First Minister may by notice in writing to the Presiding Officer designate a Northern Ireland Minister to exercise the functions of that office—

(a) during any absence or incapacity of the holder; or

(b) during any vacancy in that office arising otherwise than under subsection (7)(a);

but a person shall not have power to act by virtue of paragraph (a) for a continuous period exceeding six weeks.

(6) The First Minister or the deputy First Minister—

(a) may at any time resign by notice in writing to the Presiding Officer; and

(b) shall cease to hold office if he or she ceases to be a member of the Assembly otherwise than by virtue of a dissolution.

(7) If either the First Minister or the deputy First Minister ceases to hold office at any time, whether by resignation or otherwise, the other—

(a) shall also cease to hold office at that time; but

(b) may continue to exercise the functions of his or her office until the election required by subsection (8).

(8) Where the offices of the First Minister and the deputy First Minister become vacant at any time an election shall be held under this section to fill the vacancies within a period of six weeks beginning with that time.

(9) Standing orders may make provision with respect to the holding of elections under this section.

(10) In this Act “the pledge of office” means the pledge of office which, together with the code of conduct to which it refers, is set out in Annex A to Strand One of the Belfast Agreement (the text of which Annex is reproduced in Schedule 4).””

**Lord Empey:** My Lords, a few moments ago we were talking about the Belfast agreement and the obligation of those parties who supported it to uphold it. Undoubtedly, if you make an agreement you might subject it to a referendum, a subject regularly discussed in your Lordships’ House. We are getting in the mood now for all sorts of referendums. We had a referendum in 1998 and the agreement was agreed. However, that is not where it ended. One of the reasons we have difficulty is that that agreement was worked out after many months—in fact, years—of delicate negotiations. At the core is the concept of a partnership, which is the point that the noble Lord, Lord Alderdice, made earlier. I understand his point about designation and that he has an issue, but at the core was the concept of a partnership. That partnership was such that those at the top of the Government each had a hand on the wheel. That obviously made decision-making much more difficult but it was the only way that we could figure of getting people to consent to the re-establishment of devolution.

The noble Lords, Lord Kilclooney and Lord Alderdice, and others, sat at the table when these matters were discussed; the noble Lord, Lord Maginnis of Drumglass, sat there with the rest of us. We looked at these issues and came to a conclusion. We set out, as was set out clearly in the 1998 Act, how we were going to identify the First Minister and Deputy First Minister. These are the people who are charged with the responsibility of oversight and for steering the business of the devolved Assembly. They jointly chair the Executive.

In legal terms, the two personages are absolutely equal; there is no distinction between them. I know

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that clearly because, when I occupied the post for a short time with Seamus Mallon, the first issue we had to agree was the notepaper: you could not send out a letter from the department without both signatures. Because Seamus Mallon was the Deputy First Minister and I was coming in in place of the noble Lord, Lord Trimble, who was the First Minister, he assumed that his name would go to the left-hand side of the notepaper, and that mine would go to the right-hand side. I said, “No. I am not substituting for you; I am substituting for him”. Consequently, we were unable to send a letter out for a week. The settlement was that I went on the left-hand side as Minister for Enterprise, a post which I held in parallel with First Minister, and his name stayed where it was. That was a classic case. The point is that it is a partnership.

Unilaterally, and behind our backs in 2006, this process was torn up. In the original agreement, the First and Deputy First Ministers’ names had to go before the Northern Ireland Assembly in a joint Motion that they both be appointed to their respective positions. That meant that the Northern Ireland Assembly had to agree, by cross-community consent, who the First and Deputy First Ministers would be. The Northern Ireland Assembly now has no say in that. That was removed at a stroke and replaced by the current system, which is that whichever party is the largest from one designation and whichever is the largest from the other designation between them occupy the two posts. The Assembly is not involved.

What has happened? This turns all subsequent elections into sectarian headcounts. People go around the country saying, “If you don’t vote for me, Martin McGuinness will be First Minister”. Somebody else says, “If you vote for me, I can put Peter Robinson out”. The fact that there is no difference in the powers that either of them exercises is set aside. If we made any mistake in 1998, perhaps the titles that we chose for these two offices were wrong. We have created a hierarchy where no hierarchy exists.

However, that is how the system works. How it came about is another bone of contention. The agreement was agreed by all parties sitting around the table with Senator Mitchell. On this change, which radically altered the dynamics of devolution, my party was not consulted, the Social Democratic and Labour Party was not consulted and I suspect that the Alliance Party was not consulted. It may have applied to others, too. It was just done, and appeared in the draft of the Bill. It was not part of the St Andrews agreement; while it was part of the St Andrews agreement Act, it was not dealt with at St Andrews. It came out of nowhere; it was just produced as a deal and appeared in the Bill. When I saw it, I knew exactly what was happening and why. It was a major mistake, and people say to us that every part of the agreement should be implemented, when a part of the agreement that was implemented in good faith was simply torn up before our eyes, without our consent or knowledge.

I cannot say how strongly many of us feel about this, and it has contributed very much to the stalemate that we have. I understand that the Government were doing their best to get the show back on the road. I do not impugn the motives of the Prime Minister of the time who did this. However, it was a significant and

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unfortunate course of events, first, to create a row over nothing—when there is no difference between the powers of the two persons elected—and, secondly, to change the dynamics of electoral politics in Assembly elections much more in favour of sectarian headcounts than ever was the case before. Under the original proposals in the Belfast agreement, you would not have had a situation where the First and Deputy First Minister were elected without the consent of the Assembly.

Once you lose the link between the Assembly and the First and Deputy First Minister, they inevitably feel less obligated. That is a mistake. It is interesting that, in the Irish Parliament, the Taoiseach is elected by the members of the Dáil. You might say that if that is the case, it is the very last thing that I would want in Northern Ireland but it is not, because the partnership principle is paramount. If we made a mistake, we did so in the titles of the two positions. However, who could have foreseen that somebody would go behind your back eight years later, without consulting you or participating in any process whatever, and just produce a clause in a Bill out of nowhere? I hear so many speakers—the noble Lord, Lord McAvoy, and others—saying today, “Oh, this is the Assembly and we cannot do anything—it was part of the agreement”, or, “It was up to Stormont”, or whatever. That is true, but whenever it suited the Government they just made a change like that without a by-your-leave.

That is the rationale for the amendment. It is also almost, to the word, the same position that was adopted by the noble Baroness, Lady Harris of Richmond, who is not in her place at the moment. She pioneered a similar amendment in 2006, when the St Andrews agreement Bill was going through this House. She opposed the introduction of this proposal on the same grounds and I think that the then Opposition took the same view. That is the background, and why the amendment is before your Lordships.

**Lord Alderdice:** My Lords, I do not think that the noble Lord, Lord Empey, expects the amendment to be passed. He is raising it to make an important point.

I will briefly take his point from a slightly different angle, which is particularly important for people looking into Northern Ireland from outside. Everyone is familiar with the fact that the history of the 20th century in Northern Ireland was one in which a substantial minority felt that it was not fairly involved and a significant majority was constantly in control. That is largely true. However, from that came an assumption that if you could get an agreement that had support from the majority on the two sides of the community, it must be a good thing and should simply be accepted without too much argument.

That is a serious mistake. It is wholly possible to create an environment in which a majority rule in two sections of the community can be, if not as bad, certainly not very commendable. When we look at the majority in the community as a whole, we realise that that, on its own, is not satisfactory in a divided community. This is an issue way beyond just Northern Ireland. When people look into divided communities, whether in Syria, Israel/Palestine or other areas, they should not assume that just because you get a majority on each side that you have a satisfactory outcome. It may

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be more satisfactory than getting a majority from only one side, but it is not of itself a satisfactory outcome. When noble Lords look not just at this Bill but at other Bills, it is important to think about the implicit warning of the noble Lord, Lord Empey: solving the problem is not just a matter of satisfying a majority within each of the two pillars. On that, and on the principle behind it, he is right and not just for Northern Ireland.

**6 pm**

**Lord Browne of Belmont:** My Lords, in Northern Ireland we currently have the longest period of stable government in a generation. What is detailed in the amendment tabled by the noble Lord, Lord Empey, simply takes us backwards and returns us to a position that was in the Northern Ireland Act pre-St Andrews. There is a legal requirement placed on the Assembly to provide a report on how the Assembly can be improved. My party would be reluctant to pre-empt the work going on in the Assembly to review their workings and all the political institutions by supporting an amendment such as this.

None of the other ministerial appointments, with the exception at present of the Justice Ministry, require cross-community support so it seems rather odd that we would isolate the First Minister and Deputy First Minister’s positions. Therefore, we oppose any changes in relation to this. Of course, one favours normalisation but not this bit-by-bit approach. It is important to take a comprehensive approach. If changes are to be made, one must look at the totality of the system so that the people are reassured that doing certain things is offset by other things. Therefore, I cannot support the amendment.

**Baroness Smith of Basildon:** My Lords, this is an issue that the noble Lord, Lord Empey, has returned to in the past and I am sure he will do so again. I do not feel we can support it here today. Clearly, as I recall, the time leading up to the St Andrews agreement was tense in Northern Ireland. I seem to recall various deadlines in reaching agreements so that the Assembly could be re-established after what was then four and a half years of suspension—a situation that nobody wanted to be in at the time. The agreements made there were not just agreements made there and then. There were discussions for several weeks after, before the legislation came to your Lordships’ House. My noble friend Lord Rooker took the legislation through your Lordships’ House at that time. Legislation giving effect to the St Andrews agreement and ongoing discussions was passed by both Houses.

The noble Lord, Lord Empey, whom I have known for many years—indeed I followed him into his department, DETI, in Northern Ireland—has never been a great fan of the St Andrews agreement. He has had criticisms of it for some time. However, there is no doubt that that agreement led to the re-establishment of the Assembly and the process we have now. I really feel that it is not appropriate to unpick just some parts. The noble Lord, Lord Browne of Belmont, made an important point about the ongoing review by the Assembly. However, it would be unfortunate in this

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legislation to unpick one part of the St Andrews agreement, even though I understand the concerns raised, and it is not something that we will support today.

**Baroness Randerson:** I have listened with great interest to noble Lords. I will keep my comments short because noble Lords who have taken part in the debate have spoken with the advantages of experience and expertise, which come with having been part of the events that we are discussing. They were key actors in the events. Therefore, the role for me here is to lay out the Government’s point of view on the amendment. In this, we agree with the noble Baroness that it is not appropriate to unpick one part of the agreement.

Noble Lords will be aware that the Government opposed amendments on this issue in Committee in the Commons, and that is the position they intend to maintain today. I recognise the noble Lord’s strongly held views on this matter and I can sympathise with a lot of what he and my noble friend Lord Alderdice have to say. In some ways, it may be a welcome change to revert to the pre-St Andrews method of electing the First and Deputy First Ministers of Northern Ireland, involving as it did an overt demonstration of cross-community support and—as the noble Lord pointed out—the involvement of the Assembly.

However, the St Andrews agreement, and the subsequent legislation, is the basis on which devolved government was restored in 2007. The arrangements by which the First Minister and Deputy First Minister are nominated by designations in the Assembly emerged at St Andrews. This was a change, as the noble Lord said, from the 1998 agreement. There was one change subsequently, with the effect that the largest party in the Assembly nominated the First Minister, but the basic principle comes from St Andrews and I do not think we should now move from it. It would be highly disruptive. The reality is that such changes as those proposed by the noble Lord would require a degree of cross-community support that is still lacking.

**Lord Maginnis of Drumglass (Non-Afl):** I am grateful to the Minister for giving way. Would she accept that the Belfast agreement was voted for by the people of Northern Ireland as well as by the people in the Irish Republic? Would she also agree that St Andrews was never voted on; that it was in fact a sleight of hand—a carve-up between the two parties—that would not allow, and preached against, the Assembly having any virtue; that that is what we are left with now; and that the chances of making any progress if she continues with that recipe are virtually nil?

**Baroness Randerson:** I accept of course that the Belfast agreement was voted on on both sides of the border and, as the noble Lord has pointed out, the St Andrews agreement is in a different category. As the noble Baroness pointed out, it was a response to an urgent and difficult situation. It was not an agreement dealing with things as one would ideally wish them to be, but an agreement dealing with a very difficult situation. However, I take issue with the noble Lord

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that there has not been progress. I understand frustration at lack of progress—I think everyone who is involved with and visits Northern Ireland might feel that frustration—but there is progress. When I look back at what the Northern Irish devolved Government was like in about 2000, maybe 1999, they have moved on significantly in that time. With every year that passes, they become more secure. As the noble Lord, Lord Browne, pointed out, this is the longest period of stable government we have seen in a generation.

At the moment, it would reopen old debates, risk destabilising politics in Northern Ireland and divert attention from the important challenges that Northern Ireland faces, if we were to revert to the old method for electing the First Minister and the Deputy First Minister. I should like to concentrate noble Lords’ minds for a moment on the new challenges that Northern Ireland faces, which are the importance of rebalancing the economy, reducing social division and building a properly shared future. Therefore, I ask the noble Lord if he would be willing to withdraw his amendment.

**Lord Empey:** My Lords, I thank the Minister but may I say several things because there is an issue of fact that needs clarity here? The current method of electing or identifying the First Minister and the Deputy First Minister does not come from the St Andrews agreement. It was not discussed at St Andrews—let us be very clear about that—but emerged after a deal between Sinn Fein and the Prime Minister of the day. I want to make it absolutely clear that it was not dealt with at St Andrews. Therefore, if we are to talk about unpicking, the unpicking was the removal of the process that was voted on by the people in 1998. However, it was never part of the St Andrews agreement, which was an agreement between two Governments, not between the parties. I want to make that absolutely clear, because if that is the case, it makes a major difference. It emerged as a deal subsequent to St Andrews.

**Lord Lexden:** Can the noble Lord say whether the current arrangements were debated at any stage by the Northern Ireland Assembly itself? If it held such a debate, did it endorse that which now exists, or did it reach some other conclusion about them?

**Lord Empey:** I cannot recall a debate of that nature, but other noble Lords are present who were Members of the Assembly then. Perhaps they can jog my memory, but I do not recall it.

I repeat: this was never part of the St Andrews agreement. I understand and accept that Governments were faced with a terribly difficult situation: they had to get restoration. However, we must remember why there was instability in the first place. We still had people who were prepared to threaten us with terrorism, and other people who opposed the very agreement that established the Assembly. Leaving that to one side, the original unpicking was done by the removal of the original process in the agreement, and it was never part of the St Andrews agreement.

However, I have made my point. I welcome the longevity of the current Assembly, of which I was part, and I know that we are all glad that it has survived. That is not a mean achievement, and I would

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not take it away from anybody; it is a very significant achievement, which I welcome. However, survival is one thing but good governance is another, and we have to balance the two. With that, I beg leave to withdraw the amendment.

*Amendment 5 withdrawn.*

*Amendment 6*

*Moved by* ***Lord Empey***

**6:** After Clause 25, insert the following new Clause—

“Amendment of Crime and Courts Act 2013

(1) The Crime and Courts Act 2013 is amended as follows.

(2) In section 61 (short title, commencement and extent), for subsection (18) substitute—

“(18) Part 1 of and Schedules 1 to 4 to this Act extend to Northern Ireland.”

(3) Omit Schedule 24 (the NCA: Northern Ireland).”

**Lord Empey:** My Lords, during the passage of the then Crime and Courts Bill through this House I asked the noble Lord, Lord Taylor of Holbeach, who was answering that evening, what he would do in circumstances where the National Crime Agency did not extend to Northern Ireland. What would the Government do if they identified a national threat in the event that the National Crime Agency did not apply to Northern Ireland? His answer to me was that he would “act responsibly”. Quite a lot of time has passed, and I know that the Northern Ireland Office is in discussions with the Home Office and that they are working in consultation in Stormont with the parties that are objecting. I wish them well; I understand that it is a very delicate matter. However, let us be absolutely clear about the downstream consequences of this.

Not a large amount of time has passed since the establishment of the National Crime Agency, but to replicate the services that would be needed would cost the PSNI resources that it simply does not have and never will. Even if it was able to do that, it would lack the connectivity and intelligence that would be required in order for it to act effectively. I therefore put to your Lordships that while everybody has been prepared to be patient, to encourage and to wish the negotiations well—I hope that they are progressing—I would be very interested if the Minister could tell us what progress has been made. Are we any nearer to getting this dealt with? Just as we will deal with another amendment shortly, where Northern Ireland is becoming a vacuum as regards other issues, we cannot afford for it to become a vacuum where crime can establish itself and from which it can operate with impunity. I know that Customs officers and others have power to act and that they do, and that the border agency can act on the relevant matters—and that is fine. However, there are still whole areas outwith what the border agency and other intelligence services can deal with. It cannot be satisfactory to say that we have a National Crime Agency that is not national.

**6.15 pm**

I therefore put it to your Lordships that we have here a gap in our defences as a country. I partly understand the reasons why the agency is not there. First, Sinn Fein will never agree to anything that is

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done on a national basis, particularly in this area—I might be wrong about that, and I hope that I am. The other party that objected to it has other reasons, and I hope that it will be possible to address them. However, at the end of the day, our objective must be to have the best security and anti-crime prevention that we can put in place. To have this gap in Northern Ireland creates a vacuum, which will be filled over time if it remains. However, I will hold the Government to the commitment that they made through the noble Lord, Lord Taylor of Holbeach, when he said that if circumstances arose in which there was a clear risk to the United Kingdom as a whole the Government would act responsibly. The question is: when will that time arise? I beg to move.

**Lord Alderdice:** My Lords, I have spoken on this issue before on a number of occasions. I did so right from the beginning, when the legislation first came forward, when it became apparent to me that there needed to be discussion not just with parties of Northern Ireland but with the Government of the Republic of Ireland, because we have a land border with them.

One of my concerns at home in the last little while has been that a new generation of people, including politicians, have come forward who do not know what had to be done in the past to reach the agreements. They do not understand the language and the choreography that was necessary. That is not just a matter for Northern Ireland. It is apparent to me that on this side of the water there are people in senior positions in government who do not realise what had to be done to reach accommodations in the past. For example, it was unthinkable, even in those days, that a Government—in which the noble Lord, Lord Hurd, who is no longer in his place here, served—would have embarked on a key issue of security policy that involved the border area without any discussion with the Government of the Republic of Ireland, and that was long before many of the agreements with which the subsequent political progress was made. The Labour Administration, particularly under Tony Blair, would never have engaged in some kind of agreement on security issues without discussing it with the Government of the Republic of Ireland. The Taoiseach and the Prime Minister had a very close relationship.

When I raised the question of whether there had been serious discussions between the Home Office and the department of justice in the Republic of Ireland—and I am talking about the Bill team stage, not after the legislation had been passed—I was astonished, because I was looked at as if it was an extraordinary question. Yet the responsibilities of the NCA will include border regions, and there is only one land frontier in the United Kingdom. I have raised that again and again, and I must say that from time to time Secretaries of State and Ministers—in particular I mention in dispatches David Ford, the Justice Minister—have worked extremely hard to try to ensure that the Irish Government were brought in to assist us in getting the agreement of some of the parties in Northern Ireland that find it most difficult to agree on those kinds of things. Therefore there have been efforts from within elements of the British Government here and from within the Northern Ireland Executive, but it is also clear that at some very

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senior levels there is no appreciation that you cannot simply take these things for granted within that part of the United Kingdom.

I support the noble Lord, Lord Empey, in raising this question, not because I think it should be dealt with in this particular piece of legislation, but—as he said earlier on, and it is true—because it is not every day that a piece of legislation relating to Northern Ireland comes forward without being governed by emergency provisions of some description and rushed through the two Houses. In fact, this is probably the first time in 16 years that we have had a piece of Northern Ireland legislation that has not come through under emergency provisions of some description. Therefore, it gives us an opportunity to raise these kinds of matters.

This is a serious issue: it is not going to go away; it has the potential to become more serious; and, unless the British Government relate with the Irish Government in trying to assist parties in Northern Ireland to achieve an outcome, I do not think it is going to be successful. I warned about this at the time and it did not seem to register, so it is no surprise that we are in the difficulty that we are in. People did not take the advice at the time; they did not think it was necessary. I hope they have learned and begin to take action. As I said, this does not fall in the lap of either the current or the previous Secretary of State for Northern Ireland because they actually realised the problem, but it was not in their bailiwick at the time. It was in that of another government department. They worked very hard, as did the Justice Minister, David Ford, but I hope the warning that the noble Lord, Lord Empey, has cited will be heard again and reverberate until we get a proper outcome for this.

**Lord Browne of Belmont:** My Lords, I am pleased to support the amendment of the noble Lord, Lord Empey, in relation to the National Crime Agency. Failure to extend the full operation of the National Crime Agency to Northern Ireland seriously jeopardises security in the province. Failure to extend the work of the agency to cover every part of the United Kingdom is the equivalent of putting up an “open for business” sign over the Province.

In the Police Service of Northern Ireland, we have one of the most accountable police forces in the world, with constant checks and balances, scrutiny and high-level review. With the introduction of the National Crime Agency, this high level of scrutiny would continue. The head of the National Crime Agency, under statute, would appear in front of the Northern Ireland Policing Board once every year. Significantly, the NCA could not operate in devolved matters at all without the instruction of the chief constable. Despite these control mechanisms, some politicians in Northern Ireland have constantly blocked attempts to allow the full operation of the NCA. That leaves those involved in all levels of organised crime in a much better position than they were previously. A fully operational National Crime Agency would be a vital tool in tackling serious and organised crime such as human trafficking and the illicit drugs trade and in preventing terrorist attacks. At a time when my noble friend Lord Morrow is

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working tirelessly to stamp out human trafficking in Northern Ireland, it is vital that an operational agency is in place that can support this work. Therefore, I support this amendment.

**Lord Lexden:** My Lords, a most important note of warning has been sounded by my noble friends Lord Empey and Lord Alderdice. There can surely be no more important issue of concern to the whole United Kingdom than the national security of us all. It is intensely worrying that, in one part of our country, the national interest is not being secured fully and effectively. That is the simple point at issue. The principle is the same as applies to the amendment in my name to which we are coming shortly. We have in this House the right to look to all those involved in the Government and the law-making processes in Northern Ireland to do everything possible. In no area is it more important than this: to secure the total interests of the United Kingdom as a whole.

**Baroness Smith of Basildon:** My Lords, I find myself in great sympathy with the amendment posed by the noble Lord, Lord Empey. He and I have discussed this before. I regret that my experience of trying to raise this issue with Ministers was identical to that of the noble Lord, Lord Alderdice. I was leading for us on Home Office issues on the then Crime and Courts Bill, and when this issue first came up I raised it with Ministers on the Bill team. The advice I was given was not to draw attention to it. That is pretty horrendous, because people knew there were concerns and issues to be addressed. I believe that early intervention and early political engagement from both Governments could have addressed those issues.

On a number of occasions, on the Floor of this House and outside, I asked Ministers about it and found myself in the curious position of discussing with Home Office Ministers what was happening and being told it was a matter for the NIO; and when I raised it with the Secretary of State at the briefing on Northern Ireland issues, I was told it was a matter for the Home Office. So the NIO was telling me it was the Home Office and the Home Office was telling me it was the NIO, and I was really worried that this just fell between two stools.

Devolution does not mean disengagement. The British Government had a responsibility when setting up the National Crime Agency—or, as I now call it, the nearly-National Crime Agency, because it is not a national crime agency—to ensure that very early on, when the proposal was first discussed, there were discussions between both Governments and between the political parties. I hold David Ford in very high regard; I regard him as a friend. He is, however, one person in one Government. In the old days, under the Labour Government, there would have been political engagement and political discussion on something as important as this. As the noble Lord, Lord Empey, and the noble Lord, Lord Browne, have indicated, the difficulties and the problems are not just for Northern Ireland, but also for those who are genuinely trying to fight crime across the whole of the UK, who are finding themselves hampered because of this gap in

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provision in Northern Ireland because the Government did not properly engage. Therefore, I support the principle of what the noble Lord, Lord Empey said, but I do not feel that I can support it as a whole because there has to be that engagement first. Merely saying “it will apply” does not resolve the issue.

Will the Minister answer some questions? Can she tell me—and I think the noble Lord, Lord Empey, also referred to this—what has taken place since the legislation received Royal Assent to ensure discussions and engagement in Northern Ireland so that we can move to a position where the National Crime Agency is a genuinely national crime agency? What has happened so far? Also, what will happen next? Can she give the House an assurance that both Secretaries of State—the Home Secretary and the Northern Ireland Secretary—will engage in Northern Ireland to ensure that we can have a National Crime Agency that fulfils the needs of Northern Ireland in the way they should be met?

**Baroness Randerson:** I thank the noble Lord for this amendment because it has given us the opportunity to discuss a very important issue and it has given me the opportunity to clarify the position of the National Crime Agency in Northern Ireland. Given the sensitivity of policing in Northern Ireland, and the potential gravity of the impact of this amendment, I have assumed that this is a probing amendment. It was clear at Second Reading that your Lordships consider the role of the National Crime Agency in Northern Ireland to be of great interest and significance. That has been re-emphasised here this afternoon.

To be clear, the National Crime Agency is operating in Northern Ireland, but as a consequence of the Northern Ireland Executive’s failure to agree to take forward a legislative consent Motion, the Agency’s powers and activities in Northern Ireland to tackle serious and organised crime are restricted. The NCA is providing support and expertise to partners in Northern Ireland and continues to take forward its own investigations within the scope of the limitations on its powers and responsibilities. We, however, remain keen to extend its remit to cover crime falling within devolved responsibilities, if agreement can be reached on this within the Northern Ireland Executive; the Crime and Courts Act provides the necessary order-making powers to achieve this.

**6.30 pm**

I turn to the amendment itself. Removing Schedule 24 from the Crime and Courts Act would in fact put us in the position of legislating on the NCA in Northern Ireland without consent. As the noble Lord knows, that is not something that we are prepared to do. Schedule 24 is about respecting the devolution settlement and the important convention that we do not legislate on matters within the competence of the devolved Administrations without their consent. It would not be appropriate to overrule the Executive on this matter or, indeed, in this way.

Although I am not persuaded by the need for this amendment, I recognise the objective that it seeks to achieve—that of securing a fully operational National Crime Agency in Northern Ireland which is unrestricted

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in its operational activities. The noble Lord, Lord Empey, is right to say that the NCA has expertise that the PSNI cannot match. For example, in fields such as cybercrime and in its connectivity with international agencies it goes to places that the PSNI is not able to. However, I hope the House will agree that it is equally important that this is achieved with the agreement of the Northern Ireland Executive and Assembly and with the appropriate safeguards for the agency’s activities to respect the devolution of policing in Northern Ireland.

The noble Lord, Lord Empey, asked for an update and other noble Lords also asked for the latest information. My noble friend Lord Alderdice raised the issue of the will to succeed on this issue. I emphasise that because this is a devolved process it is absolutely right that the discussions were led by the Northern Ireland Justice Minister, David Ford, to whom my noble friend paid tribute for his role in this. Government intervention in the process, whether during the then Crime and Courts Bill or now, would not be appropriate. Given the sensitivity of this matter, which is so central to the devolution settlement, we could have undermined discussions altogether. We must continue to support David Ford in his efforts and certainly not do anything to undermine them. He has continued to try to reach agreement with the nationalist parties on this. The Policing Board itself is currently considering the impact of the situation on policing in Northern Ireland and on the ability to detect crime.

I want to make it absolutely clear what the NCA is still able to do. While NCA officers are not able to be designated with the powers of a Northern Ireland constable, NCA officers in Northern Ireland are able to be designated with customs and immigration powers and will focus on serious and organised customs and immigration crime. The NCA in Northern Ireland still has tax powers under the Proceeds of Crime Act, so will continue to be able to remove any ill gotten gains accumulated through taxation, but civil recovery activity is restricted to non-devolved investigations. Examples include using its customs powers to target work on the importation of drugs and guns from outside the UK, and using its immigration powers to target human trafficking in Northern Ireland. Despite the considerable powers that the NCA still has, an unavoidable consequence of the failure to get agreement is that the capability of the agency in Northern Ireland is less than that available in the rest of the UK.

Comments were made by some noble Lords about the Government’s efforts to get agreement. We made a number of significant changes to the then Crime and Courts Bill prior to its introduction in order to encourage agreement. In recognition of the fact that policing is a very sensitive issue in Northern Ireland, we were willing to go further and make substantial changes to the NCA arrangements to reflect the situation in Northern Ireland. We remain hopeful that there will be further progress in the future and that this is not a closed issue because we accept, and agree, that the situation is not satisfactory. I urge the noble Lord to consider withdrawing the amendment.

**Baroness Smith of Basildon:** I asked a specific question about what arrangements had been put in place in discussions that had taken place prior to the Bill

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coming forward and what is taking place now. I appreciate that the noble Baroness may not be able to give me that information now but I am happy for her to write to me.

**Baroness Randerson:** I thought I had done my best to answer that question but I will, of course, examine the record tomorrow and if I can provide noble Lords with further information I will be very happy to write and provide further detail.

**Lord Empey:** My Lords, like most amendments at this stage in a Bill, this is a probing amendment. However, as I pointed out, this is a miscellaneous provisions Bill, and therefore noble Lords will seek to insert measures in it as the opportunity is available to do that. I think that is the tradition of the House and I am merely following in that wake.

In regard to this specific amendment, I will have to look at *Hansard* tomorrow but the Minister said, if I heard her correctly, that we could not, or would not, overrule the Northern Ireland Executive. Let us be very clear—Parliament can overrule any devolved Administration. Devolution means that part of our functions and powers are devolved, but it also means that they can be undevolved. We have a convention to which we normally stick, and I understand that. However, if the Minister is saying that the Government will not introduce any legislation on this matter in Northern Ireland, she is effectively giving Sinn Fein a veto over a crime issue. That is a very disturbing comment. I will check the record tomorrow and, if necessary, return to the issue at a later stage. However, when the noble Lord, Lord Taylor of Holbeach, answered my question on the Crime and Courts Bill, the clear implication of what he was saying was that, if progress was not made, the Government would have to take the national interest into account. That was the inevitable implication of what he said to me. If that is not the case and we are saying that whatever happens we are not going down this road, that in practice is a veto for Sinn Fein, which is not a very good thing to do in the interests of national security.

I hope that the Minister is listening. I wish the discussions that are taking place well. Those holding the discussions have not perhaps been dealt the best hand, and comment could fairly be made on that. However, let us not be under any illusions—the fact that we have an underperformance in this area in Northern Ireland, which is an inevitable outcome of the agency not operating totally and without limits, must mean, ultimately, that crime, like anything else—like nature itself—will fill a vacuum. We have enough people in Northern Ireland with certain skill sets. I need hardly finish the sentence as noble Lords know what I mean, but let us not encourage them. If there is no prospect whatever of our doing anything in this regard, that is not much of an incentive to those involved in the negotiations as we are throwing away their hand.

**Lord Maginnis of Drumglass:** Is the reality not that by resisting this amendment and the suggestions in it, there is again—I choose my words carefully—a behind

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backs hope and ambition that strand 1 of the Northern Ireland agreement will, by necessity, be infringed? Is that not the inevitable outcome? It has not happened yet.

**Lord Empey:** I know my noble friend Lord Maginnis is very sensitive that these matters have not been involved in negotiations. It just goes to show the interconnectivity between these different issues and how sensitive they are.

My objective here is not to make life more difficult for those holding the negotiations. I want them to succeed because I believe in the national interests. It is in the interests of everybody in the United Kingdom that they succeed. However, let us not throw away or indicate that under no circumstances would the United Kingdom Government take certain measures. If you do that you are giving people a guarantee that if they dig their heels in they can prevail. On that basis, and on the basis of checking the report and reflecting on what has been said, I beg leave to withdraw the amendment.

*Amendment 6 withdrawn.*

*Amendment 7*

*Moved by* ***Lord Lexden***

**7:** After Clause 25, insert the following new Clause—

“Defamation

(1) Section 17 of the Defamation Act 2013 (short title, extent and commencement) is amended as follows.

(2) In subsection (2), after “Wales” insert “and Northern Ireland”.”

**Lord Lexden:** My Lords, this is another probing amendment. As has already been mentioned, it raises the same principle that lay at the heart of the previous amendment—the incomplete implementation of a matter of vital national interest throughout our country. The amendment seeks to probe the Government’s response to the Northern Ireland Executive’s failure to implement the Defamation Act 2013—a failure for which the Executive have provided no clear or convincing explanation. I introduced a short debate in Grand Committee back in June on this issue. The Executive gave no account of their inaction then and have not done so since. This has been a story of evasion and irresponsible delay.

The House will recall the momentous significance of last year’s Defamation Act, which recently came into force in England and Wales, cutting them off from Northern Ireland where libel law is concerned for the first time in history. The Act makes the law cheaper and easier to use. It tackles the dire impact of the old libel regime on free speech and updates an antiquated area of law that was out of step with the rest of the world. It is a liberalising, modernising law that will confer lasting benefits throughout our society. It is wholly unjustifiable that the people of Northern Ireland, an integral part of the United Kingdom, should be excluded from the benefits and protections of this new law. It is important that the damage that this will do should be clearly understood. The Province’s exclusion will have harmful effects on six main aspects of its internal affairs.

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First, jobs will be put seriously at risk. Some 4,000 people work in publishing in Northern Ireland and another 2,000 work in the broadcast media. Some of them will lose their jobs if media companies decide that it is too risky to operate in a jurisdiction that stifles freedom of expression and then move out of the Province. Secondly, thousands of ordinary people—citizen journalists, casual bloggers, social tweeters and those who produce news for their families on Facebook—will be exposed to the intense dangers of costly libel actions that can wreak great havoc on individual lives. Thirdly, new investment will be deterred. The companies leading the digital revolution are unlikely to invest money, which the Northern Ireland economy needs so badly for its future success, while the Province retains a law of defamation that is hopelessly out of date. Fourthly, those who teach in Ulster’s great universities and colleges will be deprived of the new defences for academic freedom that the Defamation Act confers. Will higher education in Northern Ireland be able to maintain its international reputation for excellence if academics face the threat of legal action for voicing controversial or unconventional opinions? Fifthly, the Executive’s failure to act means that UK publishers will face difficult decisions. They will either have to edit each edition of their newspapers separately in order to avoid being caught by outdated libel laws or they will have to withdraw their papers from sale in Northern Ireland. Sixthly, the Executive’s inaction is bad for democracy in the Province. That is the inevitable consequence of laws that inhibit investigative journalists because the dice are loaded in favour of wealthy or powerful claimants and their lawyers. When those under investigation hire lawyers, most regional and local newspapers almost invariably react either by sanitising their reports or dropping the investigation.

**6.45 pm**

All these six implications of what the Executive have left undone matter profoundly. However, there is an even more fundamental issue at stake. The new dual system of defamation, overturning centuries of unity in our country, will create doubt and confusion in an area of law where absolute clarity is essential. There will be intense legal uncertainty as courts in different parts of our country seek to resolve the conflict of law across the Irish Sea and between the United Kingdom and the European Court of Human Rights in Strasbourg.

This calamitous state of affairs has naturally aroused widespread concern within Northern Ireland. To its very great credit, the Ulster Unionist Party has committed itself to achieving the only possible solution—the application of the new Defamation Act to the Province. To that end, the Ulster Unionist leader, Mr Mike Nesbitt, has introduced a Private Member’s Bill in the Northern Ireland Assembly. A wide public consultation has shown practically unanimous support for his Bill. Mr Nesbitt said:

“My consultation indicates only one per cent of the population agrees … the laws of defamation are as good as they can be. Apart from two or three lawyers, I am unaware of any real opposition to reform”.

We can help Mr Nesbitt more swiftly to the great goal he has set himself than the protracted and uncertain

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proceedings a Private Member’s Bill allow, particularly if the Executive are unwilling to reconsider their inadmissible position. Through the Bill before us today we can extend the new Defamation Act and all the benefits and protections it confers to our fellow countrymen and women in Northern Ireland without further undue delay. That is what this amendment provides.

Action by the Northern Ireland Executive could resolve the issue at once. As my noble friend Lord Empey has already said, it is contrary to the standing constitutional conventions that this Parliament should legislate in an area within the competence of a devolved legislature. However, here, as in national security, we are faced with a great national issue in which an overriding United Kingdom interest is at stake. I ask the Government to give this amendment the most careful consideration. I beg to move.

**Lord Bew:** My Lords, I support the amendment, which is in my name and those of the noble Lords, Lord Lexden and Lord Black. I support it very much for the reasons that the noble Lord, Lord Lexden, has given. I declare an interest as I served on the Select Committee of both Houses that worked on the defamation question in the year leading up to the Defamation Act which has recently passed. The committee was chaired by another Ulsterman, the noble Lord, Lord Mawhinney. Both of us feel a certain pain that the one part of the United Kingdom in which the Act is not effectively operating is the part from which we come. I feel a particular pain on the grounds that the noble Lord, Lord Lexden, has already referred to—that a key part of the Defamation Act was to enhance academic freedom. It consequently means that my fellow academics at Queen’s University in Belfast are now second-class citizens with respect to academic freedom as it is now being defined and protected in the rest of the United Kingdom.

There is an important point here with respect to the recent Haass talks. One of the key reasons why those talks failed in Belfast was around the issue of dealing with the past. Do we honestly believe that the antediluvian libel laws, which restricted freedom of certain key questions with respect to the past in Northern Ireland, should be maintained to improve understanding of the past? The idea is too ridiculous to consider for a minute.

Although I was deeply committed to the Defamation Act when it went through the House, I fully accept and understand that there are serious reasons why serious people had objections. I can respect that, but we are in a changed situation. As far as the bulk of the United Kingdom is concerned, this is now the law of the land. It places people in Northern Ireland in a different situation; it is not simply a matter of the merits or demerits of the old law. It is the new concrete situation that has been created by the change in the rest of the United Kingdom that I want to consider. On my way here I read the *Belfast Telegraph* in which a Member of the Northern Ireland Assembly referred to the debate that he knew would take place here this afternoon. That Member made a fair and certainly accurate point which I accepted, that this is a devolved matter for the Assembly. However, there are some things that are

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devolved matters for the Assembly which are, as it were, matters which stay in Northern Ireland, if I can put it like that.

Whether one approves or disapproves, the Northern Ireland Assembly’s view on gay marriage is an issue that is internal to Northern Ireland. Another issue that does not quite stay in Northern Ireland is the position of the Northern Ireland Assembly on abortion, which effectively means exporting many of Northern Ireland’s problems to the United Kingdom. None the less it can be argued that there are issues where the Assembly reserves its competence on devolved matters which affect only the people of Northern Ireland. In this case there is an “incoming” element—the United Kingdom media, which have to operate within Northern Ireland, and the greater risk to which they are now exposed. It has to be remembered that the people of Northern Ireland have many virtues, but not being naturally litigious is not one of them. I have put that as a double negative as I think that it is the most polite and accurate way of stating it.

There have been many major libel cases in Belfast over the years of the Troubles in which very heavy costs were paid out by our national media. Put ourselves in the position now of a Northern Ireland judge. In the past a Northern Ireland judge at least had the comfort that his job was to interpret the libel law as it existed throughout the rest of the United Kingdom. If a case comes up tomorrow, the Northern Ireland judge is now dealing with a much more difficult and complicated question. He will be dealing with media produced in the rest of the United Kingdom where certain assumptions now exist about what can and cannot be said and operating and trying to deal with a legal problem in a part of the United Kingdom where those assumptions do not exist. The Government have to think seriously about the almost intolerable position that the Northern Ireland judiciary will be placed in if it is left with this status quo. I do not know quite how one makes these judgments.

We have talked much about the European Convention on Human Rights and how it is part of the Good Friday agreement. It is also a part of the continuing responsibility of the Secretary of State in the Northern Ireland Office. The European Convention on Human Rights is significant in the important respect of the defence of freedom of expression. I remind the Government that under the conventions they are committed to, and under the terms of the Good Friday agreement, these issues of freedom of expression are potentially part of their remit.

**Lord Black of Brentwood (Con):** My Lords, in supporting this amendment I declare my interest as executive director of the Telegraph Media Group, and I draw attention to my other media interests in the register. I believe that all those who have an interest in safeguarding jobs in Northern Ireland, who have an interest in the health of its creative economy—which is so often the motor of economic progress—and who have an interest in the quality of its governance, have great cause to be thankful to my noble friend Lord Lexden for tabling this probing amendment so that this issue can be properly addressed.

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As my noble friend said, we last looked at it in a debate in June when I set out from the perspective of somebody involved in the media the profoundly damaging consequences of the Northern Ireland Executive’s inexplicable decision not to implement the Defamation Act in Northern Ireland. I do not need to go over that ground again, not least because my noble friend has summarised it so eloquently. I support absolutely his analysis of the six things that will flow from this decision. There is certainly no doubt in my mind that this quixotic decision will cost jobs. It will put off the vital investment that is needed to create a sustainable economy based on modern industries, and it will expose ordinary people in Northern Ireland—anyone who uses social media, which I suspect is the vast majority of the population there—to the intense dangers of costly legal actions that can destroy lives.

Three things have happened since we had that debate in June that make the case for action ever more powerful and urgent. First, as my noble friend said, has been the strong response to the consultation on Mr Mike Nesbitt’s Private Member’s Bill. It is a very thorough and very well publicised exercise that has produced an overwhelming response in favour of the Bill. I praise Mr Nesbitt for the way in which he handled the consultation so magnificently. People in Northern Ireland have clearly understood the dangers of the status quo and the need to bring Northern Ireland’s libel laws into line with England and Wales. The case was powerfully made out in the *Belfast Telegraph* today, as mentioned by the noble Lord, Lord Bew. So, the media are in favour of change. We now know that ordinary people are in favour of change. Civic society in Northern Ireland wants action, and international press freedom organisations have been queuing up to support change. The only stumbling block appears to be the Northern Ireland Executive, who, as my noble friend said, have never produced one compelling argument in favour of their position. That is the first thing. We now have a very clear view of public support.

Secondly, since the debate, there has been the sealing of the royal charter on press regulation. Since that took place in October, I understand that the Northern Ireland Executive have decided to opt out of the provisions, or rather not to opt in to them. I say that I understand because it is not easy to discern how, when or why the decision was taken. As noble Lords will be aware, I am no fan of the royal charter—completely the opposite because I believe that it has potentially long-term damaging consequences for press freedom. But I have to set my personal views on that to one side. The point is that the charter is now part of a hugely complex legal web, including provision of exemplary damages in libel and privacy cases that is now ensnaring the rest of the UK media. If Northern Ireland is outside of that and outside of the Defamation Act, that will produce massive legal uncertainty of the sort talked about by the noble Lord, Lord Bew. There will be uncertainty for the media, for litigants taking actions against newspapers, magazines or any other media, and for the wider creative economy. Uncertainty is the enemy of the law and it is also costly. It will cost jobs, as we have heard, and it will cost extra money for those seeking

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legal redress. So the decision on the charter compounds the problem over defamation in a way which will be deeply destabilising.

**7 pm**

The third and most crucial point, which the noble Lord, Lord Bew, made, is that the Defamation Act has now been implemented, which was not the case when we last debated this matter. That means that many of the dangers which I and others have been warning about move rapidly from the theoretical to the real. The biggest risk, as has been alluded to by my noble friend Lord Lexden, is to the future of media plurality in Northern Ireland. As we all know, a healthy democracy requires a range of different voices to flourish. Yet that is now in real jeopardy because, in effect, we have two libel jurisdictions in the United Kingdom. As a result, in a very short time, UK publishers will have to confront a difficult choice. Either, as my noble friend Lord Lexden has said, they will have to edit each edition separately for Northern Ireland. That will often mean sanitising the copy, and readers and viewers in Northern Ireland will not always get the full story that people outside Northern Ireland might. Or else—perhaps simply for reasons of cost, which is, of course, a big matter for many hard-pressed media companies—they will have to contemplate withdrawing newspapers from sale in Northern Ireland. That is a very real issue and in many ways the clock is ticking so fast that we are at five minutes to midnight.

If Mike Nesbitt’s Private Member’s Bill does not proceed—and it seems that the Northern Ireland Executive and some of their friends in the Northern Ireland legal establishment will always find ways to kill it—then we will have to take legislative action here in order to avoid the very real dangers that will be done to media plurality in a part of our country that desperately needs it. I know that that sort of action is unprecedented, but not to take action would be a deeply irresponsible act in itself. I support the amendment.

**Lord Empey:** My Lords, briefly, I support the amendment in the names of my noble friends Lord Black, Lord Bew and Lord Lexden. This will come as no surprise. I believe that the consultation had more than 200 responses, which those familiar with this process will know is a big response. It was not only the quantity, but the quality and variety of those who responded that was very significant. The Minister has spoken about consultations today. I think the responses to the consultation on Mike Nesbitt’s Bill were greater than to the national consultation, because the penny has dropped and people have realised what the implications are. Some very serious players responded.

There has been a development in Northern Ireland which, on the surface, I welcomed at first. The Minister of Finance has asked the Law Commission to have a look at this. However, it has emerged that the timetable that the Law Commission is considering could take us into years. It is talking about another consultation, scoping studies, and so on. This could go on literally for years. In fact, it could supersede the lifetime of the current Assembly. In those circumstances, I think there is a lot of food for thought in this amendment, which I support wholeheartedly.

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**Lord McAvoy:** My Lords, the noble Lord, Lord Bew, who supported the original decision, was characteristically frank and honest in indicating that there was heavy opposition to what is being proposed here. When you get that sort of difficult situation, you must resort—maybe that is the wrong word, but you must go back—to basic principles. The basic principle is that there is devolution in Northern Ireland. It is a difficult subject, but the Assembly and the Executive will need to take full, political responsibility for it. I have heard powerful pleas, but I am taken with the honest assessment of the noble Lord, Lord Bew, that there are serious differences and points of view on this. In that event, the Assembly must make its own mistake—if, indeed, this is a mistake. We have devolution, and devolution is the principle that we have to go by.

**Baroness Randerson:** I thank all noble Lords for their contributions and I thank my noble friend and the noble Lord, Lord Bew, for the amendment. This is a very important matter. When we previously debated it, I was struck by the very high level of expertise, and by the very real concern felt by many noble Lords about the fact that the law on defamation in Northern Ireland has not been reformed. My noble friend Lord Lexden outlined the legal and economic impact of the failure to extend the defamation law to Northern Ireland. He also emphasised legal uncertainty.

Several noble Lords referred to the fact that there are also differences in defamation law in Scotland. As the noble Lord, Lord McAvoy, has pointed out, this is the result of devolution. As a Minister, I can sympathise with the frustrations of noble Lords about devolution. It may be that the slowness of response in Northern Ireland is particularly frustrating on occasions. However, it is essential that we respect the devolution process, and part of that process is that you have different laws in different parts of the country. I am not suggesting that I regard it as a good thing that Northern Ireland has not updated its defamation law. I do not regard it as a good thing at all that Northern Ireland is in this position. However, it is important that we respect devolution and, under the Sewel convention, decisions on whether legislation in transferred areas should apply to Northern Ireland would normally fall to the devolved Administration. This repeats the arguments we had in our previous debate.

That does not mean we do not have a view on the matter. The Government have been active in encouraging the Executive to consider the need for change. As I indicated when we last debated this issue, there was contact at official level prior to the introduction of the then Defamation Bill to establish whether the Northern Ireland Executive wished to seek the approval of the Assembly to a legislative consent Motion. Following completion of the Bill’s passage, my noble friend Lord McNally wrote to the Minister of Finance and Personnel to commend the Act to him and to set out its benefits.

Noble Lords and many other organisations and individuals have highlighted concerns about the possible effects of there being differences in the law between Northern Ireland and England and Wales. My noble friend Lord Black pointed out that this is an area where it is particularly difficult to have different laws in different parts of the country. It is important that

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the Northern Ireland Executive assess the impact on their economy, and on academia in Northern Ireland, as the noble Lord, Lord Bew, said. It is also important that they take into account those key issues when deciding whether they wish to extend the legislation to Northern Ireland.

Several noble Lords have referred to Mike Nesbitt’s consultation in terms of its size and the quality of the responses. It is important to remember that 90% of those who responded to the consultation wanted the extension of the law to Northern Ireland. It is therefore important that Mike Nesbitt should be able to develop his legislation and take it forward.

Reference was made to the fact that Simon Hamilton, the Northern Ireland Finance Minister, has asked the Northern Ireland Law Commission to examine the matter and concerns were expressed about the timescale for this. It is something which of course the Government cannot influence, but it is important that we should encourage all those with an interest in this issue in Northern Ireland to pursue it as quickly as possible in order to provide certainty for academia, for the press—as my noble friend Lord Black mentioned—and for all those who are affected by the lack of an update to this legislation. It is clear that active consideration is now being given to it and, in view of the action being taken at Stormont and the devolved status of the issue, the Government cannot support the amendment. I am pleased that we have been able to debate the matter, and I commend the noble Lords, Lord Bew and Lord Lexden, for their continued efforts, but I respectfully ask that the amendment be withdrawn.

**Lord Lexden:** My Lords, I think that for the most part we have probed this issue most usefully, apart from the noble Lord, Lord McAvoy, who did not seem to want to probe it at all. We should be careful before concluding that this sovereign Parliament would be wrong in taking action, and doing so over the head of the devolved legislature, as I think that that is a principle that we must be very reluctant to accept. Devolution does not mean the abnegation of sovereignty by this Parliament.

In respect of Scotland, the existence of a separate defamation law is explained by its own historic body of separate law. England, Wales and Northern Ireland have hitherto always marched together. I have listened carefully to the Minister’s comments and I am deeply grateful to all those who have spoken to express their grave concerns about this issue both on the part of Parliament here and, more importantly, for the people of Northern Ireland. I will want to consider it further in conjunction with my noble friends who have spoken along similar, if not identical, lines to mine and decide with them what further action might be appropriate. On that basis, I beg leave to withdraw the amendment.

*Amendment 7 withdrawn.*

**7.15 pm**

*Amendment 8*

*Moved by* ***Lord Empey***

**8:** After Clause 25, insert the following new Clause—

“Junior Ministers

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In section 19 of the Northern Ireland Act 1998 (junior Ministers), after subsection (1)(b), insert—

“(c) that any department exercising any of the functions specified in paragraph (b) shall do so under the direction and control of the junior Minister.””

**Lord Empey:** My Lords, I shall be brief. The power to appoint junior Ministers in Northern Ireland already exists. Junior Ministers are appointed by the First Minister and the Deputy First Minister and, while only two have ever been appointed in each Assembly and they have always exclusively been in one department, the Department of the First Minister and Deputy First Minister, that does not preclude them being in other departments. Indeed, it does not prevent the appointment of more than two. What I feel is lacking is that while junior Ministers could be appointed to more than one department simultaneously, I want to try to achieve in Northern Ireland the same thing as is available here, and even in Dáil Éireann. You can have a Minister who serves in more than one department, as we have in this House. The noble Lord, Lord Green of Hurstpierpoint, worked in the Department for Business, Innovation and Skills and the Foreign Office, and his successor does the same. Moreover, there are other examples in the Government.

The one thing that a junior Minister does not have is any executive authority. The junior Minister works exclusively for the Minister whose department he or she happens to serve in. What I am hoping to achieve is that, with the agreement of the relevant Minister, some power could be devolved to the junior Minister—they might be called a deputy Minister—so that that person can carry out a specifically indicated function. I shall give an example of what I am driving at. Years ago, we set up what was called the West Belfast and Greater Shankill Task Force, which was set up to deal with areas of deprivation. The thinking was that if you could prove to people in such an area that devolution worked, you would encourage support for it and you would improve the social and economic circumstances of that community. Invariably, a number of departments were involved. Two departments appointed the task force, one for which I was responsible and one for which, I think, Mr Nigel Dodds was then responsible. It meant that several departments were involved. What we had was a ring-around-the-roses of all these people being involved with the task force. While, obviously, the political situation over devolution did not help, the fact was that even after all those years, we were not able to get the outcome that we all wanted.

I thought it would be a good thing to be able to appoint a junior Minister in more than one department and, with the consent of the departmental Ministers, have some executive power in and of him or herself. Currently, such power is not available to a junior Minister. Executive power flows through the departmental Minister where the person is based. I want to find a practical solution by having someone in charge of tackling underachievement in particular areas, and for that individual to be able to deliver that responsibility rather than have it spread over a whole range of departments with different budgets, funding priorities and so on. I am sure that, having been there, the noble Baroness will know what I mean. That is the purpose of this amendment. I beg to move.

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**Baroness Randerson:** I thank the noble Lord for his amendment and I recognise the importance of cross-government co-operation in addressing certain challenges in which several departments have a role. Indeed, as he has just said, there are several examples here in Westminster such as the Minister of State for Policing, Criminal Justice and Victims and the Minister of State for Trade and Investment. It is plausible that we should consider a similar approach in Northern Ireland, and the noble Lord has already highlighted some of the areas in which it could be most effective.

The noble Lord will recall that this issue was debated when he was First Minister in the Assembly in 1999, and a determination was made to appoint the junior Ministers in the Office of the First Minister and Deputy First Minister. Section 19 of the Northern Ireland Act 1998 already provides for what his amendment is intended to achieve. The section permits the First Minister and Deputy First Minister to issue a determination to appoint junior Ministers. It is conceivable that, in that determination, the First Minister and Deputy First Minister could specify that the junior Minister is appointed to lead on a particular issue and across more than one department. That determination could, for example, specify that a junior Minister would work alongside the Ministers for Regional Development, the Environment and Agriculture on issues such as—to take a very topical example—flooding.

Section 19 also provides sufficient safeguards around the appointments of junior Ministers. Subsection (4) requires that any determination on the part of the First and Deputy First Ministers be approved by a vote of the Assembly. As the Government read it, the amendment may open the way to encroachment by junior Ministers on the authority of departmental Ministers. That would be a significant departure from existing structures. As to junior Ministers contributing in other ways to the working of the Executive, the noble Lord’s points will have been heard. I hope that the noble Lord will agree that this is a debate that should now be taken forward in the Assembly. I hope that he will consider withdrawing his amendment.

**Lord Empey:** I thank the noble Baroness for her response. Of course I want this to be debated in the Assembly, but I take issue with the substance of her point that what we have currently does what I seek to achieve. The point on which we differ is that you cannot unilaterally give departmental power to a junior Minister. Each departmental Minister has certain functions, and they cannot and should not be usurped. An example is the attempt last year to usurp the functions of the Minister for the Department of the Environment. It would have to be clearly spelt out that no encroachment could be made on the powers of a departmental Minister unless that Minister consented, because the politics of this are very important. You cannot have a Minister from one party come into a department and take part of the departmental Minister’s powers away. That would be vey dangerous. So I interpret things slightly differently from the noble Baroness.

All I am trying to do is to find a solution to a problem that I have identified. I accept that the debate should move to Stormont but I wanted to highlight it

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because a problem exists. It is easily solved. Flooding was an excellent example, but I think that the noble Baroness, Lady Smith, knows that the departmental system at home is very rigorous and substantial in number. Therefore, in trying to resolve some of these cross-cutting issues, we have to look for innovative and creative decisions. That is the rationale for my proposals. I beg leave to withdraw the amendment.

*Amendment 8 withdrawn.*

*Amendment 8A*

*Moved by* ***Lord Empey***

**8A:** After Clause 25, insert the following new Clause—

“Victims and survivors

In Article 3 of the Victims and Survivors (Northern Ireland) Order 2006, at the end insert—

“(3) In this Order references to victim and survivor shall not include an individual appearing to the Commission to be any of the following—

(a) someone who is or has been physically or psychologically injured as a result of or in consequence of their undertaking a criminal act in a conflict related incident;

(b) someone who was in whole or in part responsible for an unlawful conflict related incident if that person took part in all or any of the planning or execution of that unlawful act.””

**Lord Empey:** My Lords, this is a more sensitive issue. We have had much discussion on the fate of victims and survivors, and one theme has transcended virtually all attempts to resolve it: that many victims and survivors feel that a victim is almost equated with a perpetrator. This amendment seeks to make it clear that any person who has been,

“physically or psychologically injured as a result of or in consequence of their undertaking a criminal act in a conflict related incident”,

is not a victim. It is not clear that that is the present position. Similarly, somebody who was involved in the planning of a conflict-related incident is guilty of an unlawful act and therefore should not be treated as a victim.

From the experience of the Haass process in recent months, and in particular towards the end of last year as we came to the close of the process, it is clear that a huge constituency of people feels, after all this time, that they see on their screens relentless pressure for inquiries, for the state to explain its actions and for the security forces to explain their actions and be accountable for them. Yet the average individual who has been a silent victim feels that they are not valued accordingly. For example, recently some Sinn Fein figures who were actively engaged in the terrorist campaign said, “Well, we are not terrorists or guilty of terrorism”. The implication was that the fact that they shot somebody—as some of them openly admitted they did—does not mean that they were terrorists. I do not accept that. There is a fundamental divide on that issue.

I believe that if somebody voluntarily engaged in a conflict-related act of violence or were involved in the planning of such an act, they cannot be classified or regarded as a victim. This amendment seeks to make that absolutely clear. It is a very modest proposal to set out that there is a difference between those who were actively involved in terrorism as perpetrators and those who were the victims. I beg to move.

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**Lord Alderdice:** My Lords, I agree with the noble Lord, Lord Empey, that the issue of victims and survivors is a very difficult and delicate matter, and one that needs attention, but I do not feel able to go along with him on this amendment. There are many reasons, but at this time of the evening I shall restrict myself to a couple.

First, in discussing the needs of victims and survivors, two different issues have been mixed. I think this affected the Haass process as well. The first issue is the welfare, treatment, counselling and all that is involved in helping individuals who have suffered as victims—people who have been in bombings, shootings or attacks, or have observed them, or who have been affected through their families. These individuals need to receive appropriate care and attention, which has not been happening. This has never been given proper attention. I remember quite some time ago putting two Written Questions to the Secretary of State asking if had there had been any exploration of the sort of funds and resources that were required in other countries to deal with these kinds of things. The answer was no, it had not even been looked at.

There is no question that the care that individual victims need has not received the attention that it ought to have had. The health service, perhaps even more than the voluntary organisations, has not had the resources it ought to have had. I say that as someone who set up and ran a centre for psychotherapy to try to deal with a range of problems, including some of these difficulties. However, that is a separate issue from how a community as a whole deals with the impact of violence upon itself. That is different in kind. The two things are confused all the time, which is one of the reasons why we have not got anywhere with addressing this issue. I do not want to say more because it is a major, complicated and difficult issue, but I am quite clear that there are two separate questions. One question is in many ways not frightfully contentious, so it is surprising that so little attention has been paid to it, but the other is more complex and difficult. This amendment does not sufficiently distinguish between them.

The second reason is that there is a kind of black and white clarity in the amendment. That certainly applies in respect of certain individual circumstances; there is no doubt about that. You can point to particular circumstances in which it is clearly an iniquity that matters are dealt with in the way that they are. However, big cases of that kind do not necessarily make good law, because many smaller circumstances would be swept into an amendment like this. Because someone breaks the law—not necessarily in a major way—it does notmean that there should be no possibility of any kind of recognition of their situation.

***7.30 pm***

For example, somebody can infringe the law in a minor way—maybe some young person who has been drinking too much throws a stone at a police car, or something like that—and there is a wholly disproportionate response. There is no real threat to anyone but they are shot dead or left brain-damaged. Would one say that there should be absolutely no

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question of any kind of compensation for that young person and their family because of some stupid thing that they did, when a wholly disproportionate reaction was observed? This is the kind of real problem that one has when one tries to put all the complexity of the circumstances of conflict into a simple black and white amendment, where you are either in or out. The reality is that things happen in the dead of night, with big crowds of people and some having drunk too much. A more recent example is perhaps of somebody involved in a flags protest. They are breaking the law but some wholly disproportionate kind of action is then taken. Is there to be no recognition of that at all?

That is the second problem I have with this amendment. It deals in a simple black and white way with something that requires a whole volume of complex legislation to deal with it. However, in making it clear that I cannot support the amendment, I do not want to fail to recognise that the noble Lord, Lord Empey, is pointing to perhaps the most difficult and complex, but least resolved and addressed, parts of the legacy of the Troubles. That is what he is doing and he is absolutely right to do it. It is a running sore that these issues have not received the attention that they deserve in all the ways that I have described. However, for the reasons that I have adumbrated, and some others, I do not feel able to support him on this occasion.

**Baroness Smith of Basildon:** My Lords, this is a very sensitive and complex issue. Of all the meetings and conversations I had and events that I went to when I was a Minister in Northern Ireland, the ones that had the most profound effect on me were those during the years when I was a Victims Minister from 2003 to 2006. If I look back, I think now that I was singularly unequipped to deal with some of the issues that I faced. People would tell me their life stories, what had happened to them and about the impact on them and their families. They would come from both sides of the community: I recall the anger of the Ballymurphy victims as well as the quiet resilience of those RUC widows left to bring children up on their own. Among all of them, I felt that it would be very hard for me to define who was a victim or who felt they were a victim.

I did some of the work on the definition taken in 2006, although my right honourable friend David Hanson took the order through. It is extraordinarily difficult to try to define who is a victim and who is not. I totally understand the comments made by the noble Lord, Lord Empey, having spoken to so many people affected by physical and psychological trauma and damage during the Troubles in Northern Ireland. On the point made by the noble Lord, Lord Alderdice, about people’s ongoing needs, there is that difference between individual needs and the collective needs of the community. I was also Health Minister at the same time. Trying to provide an adequate health service for the needs left by those 30 years is extraordinarily difficult. The challenge has not yet been met, in respect of both physical and mental health issues.

People who you talked to were scarred by what had happened to them and damaged by what they had seen and heard; some were damaged by what they had done themselves or by what members of their family had been involved in. An extraordinarily wide range

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of people were considered to be victims and felt themselves to be victims. That is why, in the 2006 Act, there was that fairly wide near-attempt at a definition. The definition we take is of those who felt that they had suffered as a consequence of those years. I am not defining some as having suffered more than others—clearly some have been through the most terrible and horrendous experiences and others have been able to cope better with what they have experienced. However, in each case, if somebody came forward and felt that their life had been altered and that they had suffered as a result, whether due to life-changing injuries or life-changing mental health issues, we did not feel able then, and I still would not know how, to differentiate any kind of hierarchy.

More than 3,000 people lost their lives and thousands more were injured and affected. These are sensitive and complex issues. Obviously those from Northern Ireland speak with far greater authority and understanding, and with direct experience, of the issues than I ever can, but our approach has been consistent and ongoing in support of a comprehensive and inclusive process to deal with the past. We stand by that and I hope that the Assembly has also asked for the British Government to be involved in that process. It would be a major step forward if the Government were to take a lead. There needs to be an inclusive and comprehensive process in Northern Ireland, covering the two areas that the noble Lord spoke about: one dealing with the physical needs and the other trying to help a community that is still scarred by what happened.

I remember many years ago, while Nelson Mandela was in prison, talking to a white South African involved in the ANC who had come over to talk to people. He commented on some people—white South Africans—who were hedging their bets, as I think somebody in the audience he was speaking to put it. Somebody said, “They’re just trying to save their skins”. He replied, “We’re all trying to save our skins”. There is a very similar situation in this case, with a whole community whose members are all trying to heal together. We have to have the British Government at the heart of that, with the Irish Government. There is a legacy of the Troubles that is difficult to address but, collectively, it can be done. It is not easy—there is certainly no consensus to start with and there are points at which it will be very difficult to gain consensus along the way, but it may be gained on very small areas.

I fully understand why the noble Lord, Lord Empey, has brought this amendment forward, but one of the difficulties with it is that definition. One of the things we looked at in 2006 was the issue of children whose family had perhaps been involved in terrorist activities and who were orphaned as a result or whose lives were changed. They were victims and, as children, were innocent. Once you get into definitions, it does become more complex. I remember a particular case I dealt with where a mother wanted her son, who had been accused of terrorist activities and had been shot by the Army, to be vindicated. That has now been done and it was totally accepted that her son was never in the wrong but had we taken the definition at that time, he would have been labelled a terrorist. Things have changed over the years.

We cannot support the amendment but we understand what is behind it. What I hope the Minister takes away

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from this debate is that the British Government need to be at the heart of a process. I know that the Assembly has called for that process and for talks on how we deal with the past to start. A wide range of people need to play their part in letting Northern Ireland deal with the past and trying to heal some of it.

**Baroness Randerson:** I think that noble Lords might agree with me when I say that the noble Lord, Lord Empey, has saved the most complex and intractable issue until last. In a sense, all the other issues we have discussed here today flow from the problems associated with the issue of victims.

The amendment moved by the noble Lord, Lord Empey, relates to the definition of a victim in the context of the role of the Commissioner for Victims and Survivors. Many noble Lords here today will have far more direct knowledge than I about the impact of the conflict in Northern Ireland on people’s lives over more than three decades. I recognise that those of us who do not have personal experience of the conflict must approach this debate with considerable humility and great care. I recognise the concerns that the noble Lord is making clear here today. Like the noble Baroness, I have met people in Northern Ireland who have explained to me the nature of the impact that the Troubles have had on their lives and the result of the conflict in terms of the damage that it has done to them. These are people who still suffer today.

Noble Lords will be aware of the recent talks chaired by Dr Richard Haass, where the right approach to dealing with Northern Ireland’s past was debated in detail. A key element of the approach taken during those talks was that victims and survivors should be central to any efforts to deal with the past. The Government commend the progress made by the parties in Northern Ireland in dealing with these issues during the Haass talks and I hope that progress will continue to be made in the future. As I said earlier in this debate, there are still meetings going on between the party leaders, and the Government remain hopeful that progress will be made.

The noble Lord, Lord Empey, has made a moving argument. However, the Commissioner for Victims and Survivors is the responsibility of the First Minister and the Deputy First Minister. Any change to the definition would require cross-community support in the Assembly. The Government are particularly anxious not to cut across the initiatives in the Haass talks. To address the issue here, in this Bill, might have a negative impact on the ability of the parties in Northern Ireland to develop an inclusive process of dealing with the past. I am sure that noble Lords will agree that the all-party talks, building on progress made by Dr Haass, still represent the best chance of making progress on these matters. In the mean time, I hope that the noble Lord will consider withdrawing his amendment.

**Lord Empey:** My Lords, I take the point that the noble Lord, Lord Alderdice, made about the differences between the recognition of the individual and the provision of services that can be made available to that person as a victim. However, there is a growing recognition that that has been an issue. My party leader, Mike Nesbitt,

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proposed at the end of last year a new mental health initiative where we could perhaps teach the rest of the world the expertise that we have developed in treating people because, sadly, we will all be facing the downstream consequences of the trauma caused by Iraq and Afghanistan. That will be coming before us and I do not think that, as a country, we have any grasp as yet of the scale of what people will face. Even now, 30 or 40 years after they were involved in the conflict, people, including those in the security forces, are still presenting with trauma. The noble Lord, Lord Alderdice, is a professional in this area and knows perfectly well what I mean.

**7.45 pm**

I accept that whenever you try to define something it becomes very difficult to define what is right, who falls off and so on. The noble Lord quoted examples that were perfectly fair and reasonable. I understand them entirely. However, one of the issues that cause the vast majority of victims the most pain is what they see as the lack of equivalence between what happened to them and what is happening to the people who were the perpetrators. When they see politicians who openly admit to killing individuals prancing about on our television screens and glorying in what they did, that adds to their trauma and distress. It shows an absolute lack of sensitivity. My previous colleague, Michael McGimpsey, was the Minister for Health when we had the Bamford review on mental health, which showed that we could improve the services that are provided to the individual. I totally support that aspect of the argument of the noble Lord, Lord Alderdice.

It is not my intention, and was not my intention, to try and make life more difficult. However, the issue that causes the greatest hurt is this issue of equivalence. We must deal with it. It has come up in the House but it was not pursued to the finish. Perhaps it is unfinished business. Let us hope that it is unfinished business and that we can get an outcome. There are things that need doing, whether or not Haass produces an outcome. There should be common ground among us on that.

As we come to the end of what the Minister may feel has been a longish day, I hope that she will have some hard work to do after we have finished. On a lighter note, this is difficult to say, but I wanted to thank the NIO Bill team and the Minister for their availability during the last few weeks. I am waiting for the bolt of lightning to strike at any moment. However, I reassure her that, between now and Report, I will not go away, you know. I beg leave to withdraw the amendment.

*Amendment 8A withdrawn.*

*Clause 26 agreed.*

*Clause 27 agreed.*

***Clause 28: Commencement***

*Amendment 9 not moved.*

*Clause 28 agreed.*

*Clause 29 agreed.*

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*Schedule agreed.*

*House resumed.*

*Bill reported without amendment.*