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Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
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House of Lords

Friday 27 January 2017

10 am

Prayers—read by the Lord Bishop of Durham.

Abortion (Disability Equality) Bill [HL]

Committee

10.06 am

Relevant document: 14th Report from the Delegated Powers Committee

Clause 1 agreed.

Amendment

Moved by ***Baroness Massey of Darwen***

After Clause 1, insert the following new Clause—

"Impact of this Act

(1) The Secretary of State must, at a time the Secretary of State considers appropriate, undertake a review of the impact of this Act on disabled children, their families and carers, and the provision of support services.

(2) The Secretary of State must make arrangements for a report of the review to be laid before each House of Parliament."

Baroness Massey of Darwen (Lab): My Lords, my amendment is very simple. It simply seeks a review of the impact of the Bill on disabled children and their families and carers, and it seeks to ensure that support services are appropriate. I think it is a very sensible amendment; we should be reviewing what we do and taking great care to ensure that disabled people have the support they need. I thank the noble Lord, Lord Shinkwin, for giving us the opportunity to discuss his Bill. I am aware of the complexities and sometimes the anguish that surrounds prospective parents making a decision about abortion. I am also aware that the noble Lord, Lord Shinkwin, has very sensibly consulted on the Bill. I shall not go into disability rights. I have huge respect for people with disabilities and their families, who often achieve brilliantly. I am very grateful to the noble Lord, Lord Shinkwin, for meeting me this morning to talk about my amendment.

This past week I was at Strasbourg, at the Council of Europe. We discussed new technologies to prevent abnormality in the foetus, often from genetic problems. One of those present supporting further research described the dilemma of parents. He and his wife discovered that she was carrying a child with Down's syndrome. They decided to allow the pregnancy to continue. My position on abortion is very simple: the final decision is the woman's choice. I realise that such women now often discuss such a crisis with their partner; sometimes not. That should remain their prerogative. Abortion is not, of course, always linked to disability. The Bill would remove Section 1(1)(d) of the Abortion Act 1967, which allows for an abortion when,

"two registered medical practitioners are of the opinion … that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped".

If the Bill were to become law, parents would no longer have the option to end a pregnancy after 24 weeks when faced with a serious antenatal diagnosis, including in those cases where there is no realistic possibility of a pregnancy resulting in the baby surviving after birth. I think that is a real problem.

The Royal College of Obstetricians and Gynaecologists, a very learned body, has addressed the issue of foetal abnormality. Its report provides information to assist doctors and other health professionals in supporting women and their families when an abnormality is diagnosed. Since the last guidance was issued in 1996 there have, as we all know, been great advances in the detection of congenital abnormalities, resulting in early diagnosis and clearer indications for the offer of termination of pregnancy. The law relating to termination of pregnancy has not changed since 1990, although it has been tested in a number of specific cases. The 1967 Act, as amended, sets out the grounds and time limits for termination of pregnancy for foetal abnormality. Interestingly, there is no legal definition of "substantial risk", or of "serious handicap". An assessment of the seriousness of a foetal abnormality is considered on a case-by-case basis, taking into account all available clinical information.

Bodies have discussed this issue of foetal abnormality endlessly and it is now time to review what has been going on in relation to disabled people. Some may say that I am adopting a very clinical position. I am not. As I said earlier, I recognise that decisions on abortion may cause emotional stress, strain and anguish. My ethical stance, as I said, is that it is a woman's right to choose. Therefore, I cannot accept many of the precepts of the Bill, much as I respect the noble Lord, Lord Shinkwin. My amendment simply seeks rational and objective evidence of the impact on disabled children to allow us to discuss such impact in a more analytical and considered way. I beg to move.

Lord Mackay of Clashfern (Con): My Lords, the idea of having a review of the effect of legislation strikes me as a very good proposition in general, and in particular in relation to this Bill. Obviously, as the noble Baroness has explained, the precise consequences of the Bill, which I congratulate my noble friend on bringing forward, are not very easy to see, because there are overlapping provisions in the Abortion Act which might deal with some aspects at least of the particular circumstances that the noble Baroness referred to. In my judgment, this is a useful amendment and a similar principle might well apply in other legislation as well.

Lord Alton of Liverpool (CB): My Lords, I agree with the noble and learned Lord and welcome the amendment from the noble Baroness. It strikes me that in this 50th anniversary year of the original legislation, which has led to some 8 million abortions, it would be a good thing if something like the amendment moved by the noble Baroness were attached to the original legislation. There is no sunset clause in it and it has never been reviewed, which I find staggering considering that 50 years have passed.

The amendment that the noble Baroness referred to, which was passed in 1990, extended the provisions of the 1967 legislation to enable the abortion of a baby

[LORD ALTON OF LIVERPOOL]
with a disability, right up to and even during birth. As I pointed out at Second Reading in support of the Bill introduced by the noble Lord, Lord Shinkwin, this has led in some cases to abortion on grounds such as cleft palate, club foot and harelip. Indeed, 90% of all babies with Down's syndrome, which the noble Baroness referred to, are now routinely aborted in this country. This is pretty close to eugenics and we need to consider much more deeply the issues that relate to the legislation governing the amendment that has been moved.

I sometimes think that instead of the tramlines on which we often find ourselves, with deeply held views—I respect the position that the noble Baroness takes; it is different from my own but I respect it—we need to go far more deeply into these questions. I am grateful, therefore, to the noble Lord, Lord Shinkwin, for giving us the opportunity to have this debate in your Lordships' House.

10.15 am

Baroness Stroud (Con): My Lords, I welcome and support the amendment. At Second Reading I made two points. First, the Bill removes discrimination from our legislation, as set out in Section l(l)(d) of the Abortion Act 1967. Secondly, the Bill's crucial objective is to address what takes place in the consulting room. A significant number of parents say that they feel very real pressure to have an abortion when what they want is support. The noble Baroness's amendment addresses that issue. I thank her and congratulate her on her amendment.

In 2015, 929 abortions [see *Official Report,* 30/1/17; col. 967.] were undertaken in England and Wales after 24 weeks under ground E. There may well be a need for additional support for parents should any of these children be carried to term in the future, rather than terminated within the 24-week timeframe, so this is a welcome addition to a very important Bill. But welcome though it is, it should not be argued that this causes a financial exposure for the Government. The Government are already required to provide for all these families, regardless of the choice they make. Having worked with the Treasury over a number of years, I know the danger is that it could view this as a financial exposure, which is not appropriate for a Private Member's Bill. My point is that we already have responsibility for these families in caring for them and supporting them in any way and with any choice they make. I welcome the amendment, with that caveat.

The Lord Bishop of Durham: My Lords, I was unable to be present at Second Reading but my noble friend the right reverend Prelate the Bishop of Bristol spoke on this matter, welcoming the Bill, and I add my support. I also welcome the amendment because I believe that, as others have already said, such a review would be very helpful.

One reason has just been demonstrated, although the noble Baroness would not have known this at the time; that is, the figure she quoted for the number of abortions that took place in this category after 24 weeks is different from the one that I have been supplied with. That said, the number is not hugely different. The point is that a relatively small number of abortions take place in category E after 24 weeks. If I understand it correctly, the noble Baroness's amendment would apply not just after the 24-week period but to the Act as a whole. That review would be very welcome because we do not know exactly what is going on.

The Bill is primarily about the rights of the disabled. It is really important that we move to recognising that if we believe viability is at 24 weeks, it is 24 weeks for all foetuses and none should be excluded from that. That is why I support the Bill as a whole.

Baroness Gale (Lab): My Lords, I thank my noble friend Lady Massey for moving this amendment. It has been welcomed across the House, which is a good sign that we can have a really good debate on this. It is a sensible amendment as it asks the Secretary of State to,

"undertake a review of the impact of this Act on disabled children, their families and carers, and the provision of support services",

with,

"a report of the review to be laid before each House".

As other noble Lords have said, Acts of Parliament are seldom, if ever, reviewed, so no one knows whether or not they are working. This amendment will ensure that Parliament can at least understand how the Act is working.

My noble friend Lady Hayter said at Second Reading:

"Despite the contribution that disabled people make to national life and their human right to equality of treatment, there are, sadly, still huge hurdles in the way of many of them being able to pursue a full, and indeed fulfilled, life".

She went on to comment on the lack of adequate resources to meet the additional needs of people with disabilities and made this very important point:

"Of course, all this is not helped by the Government's welfare reforms".—[*Official Report*, 21/10/16; col. 2558.]

There are approximately 12 million people living with disabilities, impairment or limiting long-term illnesses in the UK today. Of these, 5.7 million are of working age, 5.2 million are over 65 and 0.8 million are children. It is recognised that raising a child with disabilities costs up to three times as much as raising a child without disabilities. Twenty-one per cent of children in families with at least one disabled member are in poverty, a significantly higher proportion than the 16% of children in families with no disabled member.

The Government revealed in the Autumn Statement that they had set aside £360 million over six years to ensure that families with a disabled child will receive child disability tax credits in future. However, the payments will be backdated only to April, meaning that individual families may have lost out on entitlements totalling up to £20,000 over the past five years. This is a big loss. The recent UN committee investigation into the rights of disabled people in the UK said that a range of measures introduced since 2010, including the bedroom tax and cuts to disability benefits and social care budgets, had disproportionately and adversely affected disabled children. These are big cuts for people suffering from disabilities. Cuts to the employment support allowance work-related activity group will take more than £1,500 a year away from 500,000 disabled people—this from a fund that was designed

to help people stay in or find work. These cuts will reduce support for disabled people by £650 million a year.

An analysis from the TUC found that the Government are years behind schedule on their manifesto commitments to halve the disability employment gap. At their rate of progress, it will take until 2030. The research forecast that by 2020 just over half of disabled people will be in work, which is 11% less than the Government promised. There is no doubt that disabled people are suffering, and will suffer, from the cuts made by government so there is much more to do in this field.

That is why the Labour Party is calling for a complete overhaul of the current system. We are undertaking an intensive consultation exercise, with disabled people at the heart of shaping our approach, through our disability equality roadshow. It is why I am grateful to my noble friend Lady Massey for bringing this important amendment before us, which allows us to highlight the difficulties that people with disabilities have to face now and in the future. Can the Minister take note of the needs of disabled people, which are much greater than those of non-disabled people, to find ways of giving a lot more assistance than they receive at present?

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, I congratulate noble Lords on the quality of debate on this amendment and recognise the broad welcome that it has received from all the speakers. I also join noble Lords in paying tribute to my noble friend Lord Shinkwin for bringing forward the Bill and raising the issue of disability rights and their effect on abortion, and in commending the noble Baroness, Lady Massey, on the clarity and conviction with which she made her case today.

Like all issues of conscience, the issue of abortion is one that divides opinions in ways that transcend the usual political boundaries because of the very personal reasons that parliamentarians have for their beliefs. It is for that reason that Governments remain neutral on such issues. The role of government in issues of conscience is to implement the law as decided by Parliament. On that basis, were this amendment to be carried and the Bill passed, the Government would of course carry out the proposed review in order to monitor the impact of the legislation, and we would indeed report to Parliament in due course.

The amendment proposed fits well with the overall determination of successive Governments to improve the lives of disabled people and their families. That has been a cornerstone of the approach of this Government and the previous Conservative-led Government. The Children and Families Act 2014 introduced a new statutory framework for local authorities and clinical commissioning groups to work together to secure services for children and young people who have special educational needs and disabilities. The support available to families includes early intervention programmes that aim to help the child develop, as well as providing support to the family from health visitors, midwives and others.

I also recognise that this amendment would improve the evidence base available for policymakers. There is of course a general desire in this Government to have more evidence-based policy-making, which the amendment would clearly aid. But, in the end, this is an issue of conscience, so noble Lords are free to decide their views according to their ethical or religious beliefs.

Baroness Masham of Ilton (CB): My Lords, before the Minister sits down, are the Government supportive of the Equality Act?

Lord O'Shaughnessy: We are of course supportive of the Equality Act.

Lord Shinkwin (Con): My Lords, I thank all noble Lords who have spoken in support of my Bill, and I thank sincerely and in good faith the noble Baroness, Lady Massey of Darwen, for her amendment, which I not only accept but welcome as a logical extension to a logical Bill. It is a Bill that brings the law as it currently applies to disability before birth into line with how your Lordships' House has already ensured that the law applies to disability after birth.

The amendment is about the impact of my Bill. But it is a simple, wonderful truth that I owe your Lordships' House so much because of the impact of legislation that it has already passed. Without your Lordships' House, a commitment to disability equality would never have been enshrined in law. Noble Lords will know that noble giants such as Jack Ashley and Alf Morris, with both of whom I had the privilege of working and whose spirits I invoke today, led the fight to outlaw disability discrimination. All my Bill does is to carry on their noble work, because it would allow us to outlaw disability discrimination where it begins—at source before birth. It is simply unfinished business. The amendment would help because it would measure the Bill's impact on disabled children, their families and carers, and on the provision of support services.

When I think about the incredible role that strong women—women such as my own mother—play in the lives of their disabled children, anything that supports families and carers after birth and, crucially, on diagnosis before birth is welcome. Moreover, it stands to reason that such support services, be they provided by the state, charities, parents' organisations or disabled people's organisations, should be included in an impact review so that people can learn and disseminate best practice and, where necessary, ensure that improvements are made.

10.30 am

An impact review is important—but so too is how such a review is conducted. It is vital that, in keeping with the disability equality spirit of my Bill, any review of its impact should not only involve disabled people but, in my humble opinion, should be led by them. What a powerful statement it would make about the importance of disability equality, which your Lordships' House has done so much to champion over so many years, if the chair of the review was a wheelchair user or, indeed, anyone suitably qualified who has a disability, and if the majority of the review panel was also disabled. Why not? It would be logical.

I readily admit that maths was never my favourite subject at school—but even I can see from the trends in abortion on grounds of disability that the writing is

[Lord Shinkwin]
on the wall for people like me. People with congenital disabilities are facing extinction. If we were animals, perhaps we might qualify for protection as an endangered species. But we are only human beings with disabilities, so we do not.

In accepting this helpful amendment, I close with one thought. Our Paralympians represented their country in Rio with pride. What was the essential qualification for them competing at Rio? It was their disability. The country which applauded their success is the same country whose law regards that essential qualification for going to Rio—disability—as a reason they should die. How is that fair, right or logical? It is none of those things, which is why today I reflect on the remarkable impact that laws passed by your Lordships' House have had on my life as a disabled person. It is why I ask myself: how could I not have faith in our common humanity? How could I not have faith in the truth that there is more that unites than divides us? And how could I not believe that your Lordships' House will be true to itself and continue its noble fight for disability equality by passing this Bill?

Amendment 1 agreed.

Clause 2 agreed.

House resumed.

Bill reported with an amendment.

Arbitration and Mediation Services (Equality) Bill [HL]

Second Reading

10.35 am

Moved by ***Baroness Cox***

That the Bill be read a second time.

Baroness Cox (CB): My Lords, I am profoundly grateful to all noble Lords speaking in this debate and to many other noble Lords who have expressed their support for the Bill but are unable to be in their place today. The Bill seeks to address two interrelated issues: the suffering of women oppressed by religiously sanctioned gender discrimination, and a rapidly developing alternative quasi-legal system which undermines the fundamental principle of one law for all.

The Bill is strongly supported by many organisations concerned with the suffering of vulnerable women, including Karma Nirvana, the Council for Muslims Facing Tomorrow, British Arabs Supporting Universal Women's Rights, the National Secular Society, the Muslim Women's Advisory Council and the internationally renowned Canadian Muslim scholar Raheel Raza, who describes this Bill as a blessing to help women to achieve their rights.

I am especially grateful for their support because the problems are escalating and the need to find some solutions is ever more urgent. As Theresa May, when Home Secretary, highlighted almost a year ago:

> "There is evidence of women being 'divorced' under sharia law and left in penury, wives who are forced to return to abusive relationships because sharia councils say a husband has a right to 'chastise', and sharia councils giving the testimony of a woman only half the weight of the testimony of a man".

In a free society, individuals must be able to organise their affairs according to their own principles, religious or otherwise, but we must not condone situations where rulings are applied which are fundamentally incompatible with the laws, values, principles and policies of our country. The courageous Muslim author Dr Ida Lichter wrote to me this week saying:

> "Denying our Muslim women the benefits of British justice is tantamount to condescension and marginalisation of an oppressed minority".

This week, we heard deeply moving and disturbing first-hand accounts during a meeting of the All-Party Parliamentary Group on "Honour" Based Abuse. I will give two examples from the meeting, which are merely the tip of a huge iceberg, but they are two too many and we should not be allowing these situations which cause such aguish in this country.

The first is the story of Aala—a pseudonym, of course. She is originally from Pakistan and had an Islamic marriage in the UK. Aala was raped, abused and financially exploited by her husband. Her imam and her husband refused to negotiate an Islamic divorce, claiming that the marriage had never taken place, despite the fact that she had a video recording of the ceremony. She told us, weeping, that she is now so ostracised by her community, both in the UK and in Pakistan, that she feels such shame and loneliness that she has attempted suicide. Secondly, we heard from Fozia, who was sent under false pretences from Britain to Kashmir, where she was threatened at gunpoint into a forced marriage. Returning to the UK, she soon discovered that her new "husband" was entering into another marriage to help him to stay in the UK. When Fozia went to the police with her concern over bigamy, they told her, "We can't arrest him, because it's allowed in your religion".

Such suffering cannot be allowed to continue. Provisions must be introduced to ensure that the operation of sharia law principles in the UK today is not undermining the rights of women and the rule of law. I therefore briefly identify the concerns which the Bill seeks to address. I recognise its provisions cannot solve all the sensitive, complex and collateral issues, but I have been assured by the women whom they seek to help that they would be immensely useful.

First, the Bill seeks to address arbitration tribunals which apply discriminatory rules. The Arbitration Act 1996 allows parties to agree how certain civil disputes, often financial, should be resolved, including according to the law of another legal system. This permits arbitration to operate according to sharia principles. The Bill recognises Muslim arbitration tribunals and will not affect their operation in accordance with the law of the land. However, there is concern that even when these tribunals are operating within the terms of the Arbitration Act, some are practising gender discrimination such as: inequality between men and women regarding access to divorce, whereby the man can just say, "I divorce you", three times; polygamy, so that a man can marry four wives; child custody, whereby, in the event of a divorce, a father may claim custody of his children, often at the age of seven; inheritance provisions, whereby women and girls receive only half the amount of the legacy given to men and boys; and rules of evidence that provide that the value of a woman's testimony is

deemed to be just half that of a man's. That is why the Bill seeks to close any loophole that might remain in the Equality Act 2010 and strengthens court powers to set aside rulings based on such discrimination, if the woman is unhappy.

The second concern relates to arbitration tribunals acting outside their remit, for example by deciding cases relating to criminal law, such as those involving domestic violence and grievous bodily harm. The Casey review, commissioned in 2015 by the then Prime Minister and Home Secretary, cited claims that,

"some Sharia Councils have been supporting the values of extremists, condoning wife-beating, ignoring marital rape and allowing forced marriage … we were told that some women were unaware of their legal rights to leave violent husbands and were being pressurised to return to abusive partners or attend reconciliation sessions with their husbands despite legal injunctions in place to protect them from violence".

The suffering of vulnerable women can be exacerbated by the nature of the closed communities in which they may live, where they are subjected to enormous pressure not to seek outside professional help because that is deemed to bring "shame" on the family or the community. In many cases, women have suffered further difficulties because police, civil authorities and professional personnel have been reluctant to take action that might be deemed to give offence to the leaders of these communities—there are many cases of that.

This relates to the third concern that the Bill seeks to address: the crucial matter of consent, which must be at the heart of both arbitration and mediation. Women may be pressured by their families into going to sharia councils. They may also lack the knowledge essential for informed choice, such as about their rights under British law. Therefore, in terms of court orders arising from mediation or other negotiated agreement, the Bill creates enhanced mechanisms for orders to be set aside if there is evidence that the consent of one party was not genuine.

The fourth concern relates to the estimated 100,000 couples in Britain today who are living in Islamic marriages not recognised by English law. Women in such marriages risk being duped into believing they are married under the law of the land, only to find upon divorce they have few to no rights in terms of finance or property.

The influential Aurat report by the courageous Muslim woman Habiba Jaan described Muslim women's experiences of marriage in the West Midlands. The majority of women who had a religious-only ceremony were unaware their marriage was not officially recognised by English law. Many were deeply disturbed when they discovered their predicament and said they wished they had known the reality of their situation and its implications.

To try to address aspects of these problems, in November 2013, I moved an amendment to the then Anti-social Behaviour, Crime and Policing Bill, which would have protected women who are duped into believing they are married under the law of the land only to find upon divorce they have limited rights. I am sorry that the Government rejected the amendment. The Government rejected a similar amendment to the Policing and Crime Bill in November 2016, which would have ensured that any celebrant of a religious marriage had an obligation to ensure that the religious marriage is also legally registered. Others have suggested an amendment to the Marriage Act 1949, requiring all religious and secular marriages to be registered. That may be a suggestion for consideration on another day, for which I would greatly value advice.

In conclusion, it is important to emphasise that the Bill does not specify any particular faith tradition. If women from other faiths experience systematic discrimination, the provisions of the Bill would also be available for them. It is also important to recognise that the Bill does not interfere with the internal theological affairs of faith groups. If a woman with devout convictions accepts religiously sanctioned gender discrimination, the Bill would not inhibit the practice of her faith. But the problems I have highlighted often arise because choice is not informed or genuinely free.

Since the Bill was last debated, evidence of these concerns has increased. So too has the need for urgent action. I hope, therefore, that the Bill will receive a more sympathetic response from the Minister than on previous occasions, when the Government claimed that there is no need for such provisions as all citizens can access and benefit from their rights according to law. The chasm between the de jure situation and the de facto reality is an abyss into which countless women are falling and suffering as a result.

I also hope that the Minister will not use the ongoing Home Office inquiry as an excuse to delay viable legislation, especially in view of the widespread concerns expressed by many organisations about the composition of the review panel, which is chaired and advised by theologians, fails to include non-Muslim experts on Islam, and fails to include human rights experts.

Muslim women are today suffering in this country in ways in which, as I always say, would make the suffragettes turn in their graves. Many of them see the proposals of the Bill as a lifeline, or, as one lady said to me, "a light at the end of the tunnel of darkness and oppression". The Bill cannot solve all the problems, such as intimidation or the intention—mentioned by many Muslim women—of those who might continue their practices underground. But it would provide some much-needed help and show vulnerable British Muslim women that their concerns are being taken seriously rather than being ignored in the name of "political correctness" and "multiculturalism". I passionately hope they will not be disappointed again. I beg to move.

10.47 am

Baroness Donaghy (Lab): My Lords, I thank the noble Baroness, Lady Cox, for her doughty championship of equality and the importance of access to justice. She is a life force on so many issues. This is the third time that I have followed, or rather limped, in her slipstream to support the Arbitration and Mediation Services (Equality) Bill or similar versions, and I do so with pleasure and on the same three grounds that I have before.

First, as a former chair of ACAS, I understand the importance of arbitration and mediation. It was our bread and butter. It relied on the genuine consent of

[Baroness Donaghy]
the parties, a clear knowledge of what they were entering into and an understanding that they were equal before the conciliator or arbitrator. Any system which might be seen to misuse these procedures would be a reputational risk for arbitration and mediation in general.

Secondly, we should all be equal under the same laws. I say "should be", because equal access to justice today is a right which is becoming rather flimsy due to major cuts in legal aid and advice agencies imposed by coalition and Conservative Governments. Nevertheless, equality is a fundamental right.

Thirdly, I feel strongly that women's equality has to be fought for as vigorously today as in previous generations. Too often, it takes second place to other considerations: it is too sensitive, it might be seen to be anti-religious or anti-Muslim or—my favourite—women have gained all the rights they need and existing laws are sufficient as they stand.

If any women in this country today fail to get justice because they are misled about their rights or are surrounded by family who elevate custom and practice to the status of a right, then we are still a long way off from equal rights for women. As the noble Baroness, Lady Cox, said, the majority of women who marry under sharia law in this country are not aware that this does not give them legal rights under UK law on marriage, which places them at a potential disadvantage.

In the last debate on the subject, reference was made by the then Minister, the noble Lord, Lord Faulks, to the Home Office's counterextremism strategy, which was published in October 2015 and reported that the Government intended,

"to commission an independent review to understand the extent to which Shari'a is being misused or applied in a way which is incompatible with the law. This is expected to provide an initial report to the Home Secretary in 2016".

I remember feeling concerned that the issue of women's rights had been referred to anywhere in the Home Office, let alone the counterextremism strategy. It seemed at the time an insensitive and inappropriate thing to do. Nevertheless, my question to the Minister is: where are we now, 15 months later, on this independent review?

Also in the previous debate, the noble Lord, Lord Faulks, referred to the Law Commission's preliminary scoping study of marriage in England and Wales. The commission was due to report in December 2015 and we were assured that the Government would be considering the next steps. What progress, if any, is being made?

I would like to say something about custom and practice. It is very influential in all walks of life, for good or not so good. As a former trade unionist and still a strong supporter of trade unionism, I know all about custom and practice. To repeat an example I gave in a previous debate, I turned up to the electricity showrooms on the Chiswick High Road in the late 1960s to take out a hire purchase agreement on an electric fire for our rental accommodation, only to be told that I needed my husband's signature to take out that agreement. He had even less money than I did but he had the power of the signature. That was custom and practice, and it was only two generations ago. I remember the way in which women subjected to appalling domestic violence could be informed by the police, if they were brave enough to go to the police in the first place, that it was a domestic and they could do nothing. That was custom and practice.

In summing up the last debate, the noble Lord, Lord Faulks, said:

"Integration requires changes to society, not necessarily changes to the law".—[*Official Report*, 23/10/15; col. 904.]

That may be the truth, but it is not the whole truth. There comes a time when something that a society accepted as custom and practice has to be changed by the law in order to make it unacceptable. The Bill is an attempt to say that the law needs to step in, not necessarily to move us forward but to stop us moving backwards.

In conclusion, I really hope the Government will not continue to drift along in the brackish waters of scoping studies, Home Office counterextremism strategies and hoping-it-will-go-away working parties. I look forward to the Minister's positive response.

10.53 am

Lord Mackay of Clashfern (Con): My Lords, in this country we are privileged to enjoy extensive freedoms, particularly freedom of religion. However, the freedom of religion must accompany the freedom to change one's religion. It is extremely important that the kind of oppression that comes from the establishments in religion trying to prevent their followers from changing their religion should not be allowed as a matter of law in this country.

The Bill deals with that in what in my judgment is a very effective way, assuming that it became law. First, looking at the provisions of negotiated settlements, it makes it plain that the real consent of both parties is essential for that agreement to stand. That strikes me as fundamental. If a person wants to change their faith or some of its tenets, whether they are a man or woman, they should be absolutely free to do so without any possible restraint. Any attempt to restrain that is in the nature of oppression, which ought to be outlawed so far as possible. Some of these pressures are very subtle and difficult to eliminate or indeed discover or deal with publicly. However, the test put in the clause dealing with negotiated settlement, that the consent must be genuine, is tested by the criteria that are set out. I think that is extremely effective. It is probably as effective as any provision of law could be to deal with these sometimes subtle pressures, particularly on young people.

My second point is about arbitration, which comes first in the Bill. In a sense, arbitration is part of the machinery of our justice system. It is a very distinct procedure from the ordinary court procedure but, if properly carried out under the provisions of our law, it has the effect of becoming binding, just as a court judgment does. The Arbitration Act makes provision for that. There is a need to deal with the pressures that can come under that as a publicly recognised method of enforcement, or of reaching agreement and then enforcing that agreement. In that connection, therefore, the provisions of our ordinary law that apply to everyone else are applied, and the Bill does that in a very balanced way.

I am not saying it could not be subject to amendment, but it strikes me as extremely balanced at the moment for dealing with a problem that has been shown to exist in our country in more than one area of religious establishment.

It is important that this matter should be dealt with sooner rather than later. It is easy to put off, but on the whole the urgency of the situation merits action at an early date.

10.58 am

Lord Carey of Clifton (CB): My Lords, I support the Bill, which was introduced so eloquently by the noble Baroness, Lady Cox. I applaud her commitment to those who are oppressed, whether here or abroad.

It is so easy in our country to take for granted our freedom, our equality and our tolerance, but it does not take much knowledge of British history to realise that these values have been hard fought and are comparatively recent, as the noble Baroness, Lady Donaghy, has just said. Some might therefore wonder why it was necessary to enact this Bill when under civil law women are equal to men in every sense and have the same access to the fruits of freedom. The noble Baroness, Lady Cox, has set out the reasons admirably, but I would like to set out the following thoughts.

It is understandable that new citizens to our country will inevitably bring with them their cultural and religious expectations, and for the most part they are welcome to do so. In so many ways, they can enrich our common cultural life. Sometimes, though, some of those traditions may collide sharply with the resident nation and raise questions about compatibility. Such is the case when it comes to marital relationships when they appear before sharia courts. It is equally understandable that religious traditions will want to order their lives according to their faiths, and that is true for Christianity, Judaism and other traditions. However, we must all conform to standards expected by civil law in its commitment to uphold justice for everyone.

The noble Baroness, Lady Cox, outlined her concern for Muslim women trapped in bad marriages with intimidation and threats whenever they try to free themselves. Parliament exists to clarify the law whenever it is challenged, and it must come to the rescue of those unsure of their rights.

Some might say—this has already been mentioned—that a law such as this is unnecessary. All that the noble Baroness wishes to address is already there in current laws; all we need to do is apply them. That may be objectively true, but whenever there are loopholes, whenever there is confusion, whenever a minority of sharia courts—I am assured it is a minority—exist to trump, which is an interesting word, civil law, we must correct abuses by strengthening existing laws to ensure that Muslim women and other groups have the same rights as men.

11 am

Lord Dholakia (LD): My Lords, I thank the noble Baroness, Lady Cox, for introducing her Private Member's Bill. She raises important issues affecting the principle of equality before the law, and she has my full support.

The noble Baroness has travelled far and wide, and we are privileged to have her contribution in your Lordships' House. I have had the opportunity of attending a number of meetings convened by her. I heard at first hand testimonies of courageous women who have suffered unbearable forms of gender discrimination. We must add to this the practice of polygamous marriages and inequality of access to divorce. This is what victims suffer.

There are also child custody policies and matters connected with inheritance laws, so ably described by the noble Baroness. While we enjoy the protection of British laws, these women are drawn into practices that often disadvantage them.

Evidence of this nature, often in the name of faith-based practices, must be considered alien in any civilised society. Since the early days of Commonwealth migration, successive Governments have been proactive and have valued equality and diversity as one of their core values. The evidence is there for all to see. We have introduced legislation and other measures to establish equality of opportunity on grounds of race, disability, gender, age, faith and sexual orientation.

Despite these positive measures, one cannot say that all is well. That could be ascribed to the fact that we have no written constitution and limited guidance in the legal process and available documentation. The fact remains that there is serious divergence in the way an individual faces process and practice, often based on faith interpretations that seriously disadvantage them in access to justice. The Bill therefore demands serious consideration by your Lordships' House.

There have been a number of developments recently. The latest was the Casey review. This was set up by the Government to consider what could be done to boost opportunity and integration in our most isolated and deprived communities. An area of interest is the examination of practices by different communities and how faith-based problem-solving could disadvantage women and many of the second generation of youngsters born in this country.

An integrated society is possible only if we all subscribe to the law of the land. Debate on community cohesion is useless if we shy away from tackling the very essence of one law for all. Our democracy is based on rules of law, and we all have an opportunity to contribute towards this end.

I do not run away from the fact that, in many parts of the world, there are informal and accepted practices to resolve disputes without recourse to legal process. Many land disputes and family disputes are resolved by involvement of community elders. The crucial point is that, in cases of grievance, all citizens must have access to the law of the land, which must be supreme.

The questions which need to be answered are as follows: do informal processes treat individuals fairly; and, in the matter of gender equality, do informal interventions comply with the law of the land? All the research papers I have read point to the fact that in many cultures, women are not only disadvantaged but discriminated against in the way that faith-based procedures deal with them.

[LORD DHOLAKIA]

It is time to rebalance this anomaly. So-called laws which have no basis in statute are bad laws and should not be part of our democratic institutions.

11.05 am

Lord Kalms (Non-Afl): My Lords, when David slung his stone at Goliath's head, he killed him with one blow and a great victory against tyranny was achieved. Today, the fight for peace and victory is infinitely harder, but David had the right idea, as has the noble Baroness, Lady Cox, with the Bill, for which we are deeply indebted to her: aim for the head, and eliminate a vital organ of the growing poison that seeks to inject itself into our system of democracy and equality.

Yet sharia law need not be evil. It could even be welcome if it remained subservient to the laws and rules of our multicultural society, but being subservient is something that sharia finds very hard to do. Many who believe in sharia believe that it derives its legitimacy from God himself. We should not be surprised if they regard such a law to be superior to the law of man, the law of the land.

However, in a society such as ours, submission to the law of the land is precisely what all other systems of law and belief must accept. The law of this land, the law by which we all abide, is the fundamental basis of our security. In an increasingly diverse society, it is the bedrock of our common freedom, yet it is vulnerable, for the law which serves us so well is not always as carved in stone as some people think. As circumstances change, the law updates to protect every segment of our society, always without prejudice. The powerful and the needy obey it to the letter or are punished.

It is on occasion open for negotiation, and at such moments we must be exceptionally wary about what ideas we allow in. Women in our world enjoy 100% equality. Their word carries equal weight. Those are hard-fought-for principles. But sharia has come to an opposite view, to a degree that is both obscene and inexplicable to the western mind.

How can this country allow such inequality and intolerance, let alone in the name of equality and tolerance? How can this country, which has led the way in equality throughout its history, choose in the 21st century to turn a blind eye to laws which regard women as unequal citizens with an unequal say and an unequal voice?

Today, we are a multicultural society. Christian, Muslim, Jew of any denomination should feel safe, but to feel safe we must know that we are protected by a common law, one which holds back the worst excesses of fundamentalist religions. Our Muslim friends and neighbours, among others, are right to worry about where those excesses lead. Wherever the footprints of sharia lie, violence and oppression follow swiftly behind. It is not benevolent in Sudan, Nigeria, Syria, Iran or Saudi Arabia. In all these places, unspeakable murders are perpetrated. While some in the UK present sharia as an expression of peace, everywhere else it arrives, the people with Kalashnikovs are not far behind.

At this stage of our world's existence, politicians and scientists are struggling to find the right reaction to this problem. For so long, we have lived in a society where negotiation and compromise are the first steps, but these words—negotiation and compromise—are not in the lexicon of Islamic fundamentalists or those who advocate sharia. As we value the best aspects of our lives in this country, we should make a stand against the unequal and low regard for the value of human life that sharia offers.

Today the West is slow, ponderous, and uncertain. Most of our citizens who are Muslim share our philosophy; they enjoy the benefits that security, equality and entrepreneurship offer. They enjoy life, with its unique joys of family life; they enjoy sharing their festivals and the disciplines of their own faith—but above all they appreciate the climate of tolerance that abounds in great depth within these blessed isles. But these rights are not inevitable, and it is perfectly possible at any stage that a country such as ours, juggling the complexities of a diverse society, can unwittingly fall off the path.

The Bill is a small masterpiece. It isolates a deepening problem and focuses on an issue of greater importance than many people realise. Already many sharia courts have become illegal and unjust by any standards. They are controlled by fundamental Islamists and aim to stand not beneath but above the law of this land.

May I complete my words with a small anecdote? I recently watched a television programme about one Imam, aged about 35, English, erudite, charming and sitting in a beautiful book-lined study, being asked to explain his opinions on some Islam practices which he answered with reassurance and seeming common sense. The final question was deliberately simple. What was the Imam's views about the treatment of women who are stoned to death for adultery? We waited for a reassuring, 21st-century answer. His reply: "That is our law".

11.12 am

Lord Anderson of Swansea (Lab): My Lords, I adopt all that has been said so well by previous speakers. I was particularly impressed by my noble friend Lady Donaghy, who from her experience at ACAS spoke so well about the principles of equality, non-discrimination and seeking to protect the vulnerable. In respect of one of her points, I recall that, as a Member of Parliament, I was approached once by some workers who complained that they were being prosecuted because they had stolen construction materials from their place of work. As a sort of lawyer, I knew the Theft Act, brought in by my noble friend Lord Elystan-Morgan in 1968, and I asked what section of the Act they were going to rely on. They said, "custom and practice".

When I was approached by the noble Baroness, Lady Cox, I felt that I had a three-line whip to come here, because I admire her enormously. I admire her principled persistence, almost along the lines of Wilberforce. I remember the previous attempts to bring in this Bill in 2012, when the government response was at best lukewarm. I recall that in 2015 at least there was shown a greater recognition of the problems, and the then Home Secretary, now Prime Minister, Theresa May, said very clearly where she stood on this matter—and I hope that she might be reminded of that from time to time.

Of course, an inquiry was set up in May 2016, and there was a Home Affairs Select Committee inquiry parallel to that in June. I am inclined to withhold my

reaction to the inquiry until we see the terms of its conclusions, but I share some the concerns of the noble Baroness, Lady Cox, about the terms of reference and the members of that inquiry—and, indeed, that they have not gone far enough in either direction.

I recall the last attempt by the noble Baroness, Lady Cox, in 2015, so I went to look at the speech that I had made on that occasion and found to my surprise that I agreed with myself. My second thought was that today, in support of the noble Baroness on this all-party matter, I have, alas, nothing startlingly new to say—but I was reassured by the fact that that has never deterred parliamentarians from saying a few words. I shall not repeat what I said—or indeed what Mrs May, the Prime Minister, has said.

I have only two observations. There is a real problem revealed by the research of the noble Baroness, Lady Cox—the danger of a parallel jurisdiction developing in this country, as it creeps into areas of law, and even into the area of criminal law. I also agree with others that this is essentially, if not entirely, a women's issue, and that there is clear evidence of gender discrimination and coercion of vulnerable women by some—perhaps it is a minority, we do not know—sharia courts. There is the point about the ease of divorce. I was interested to note that, even in Egypt, President Sisi is now seized of this problem; he is trying to ensure that in Egypt, where the Grand Mufti is, women are not disadvantaged by very speedy divorce by the predominant men.

So I fully agree with the objectives of the Bill. Women should be made aware of their rights. For those women who are particularly vulnerable in some of the closed societies that are developing even within our own society, the judiciary should make every effort to ensure that they are aware of their rights and generally prevent a parallel system developing. Yes, we should probably give two cheers for the inquiry and the Home Office report—and yes, we are fully committed to the principles and clauses in the Bill proposed by the noble Baroness, Lady Cox, who is a great fighter for liberation not just in this country but also, as we have seen, in Burma, South Sudan and elsewhere. I am a great admirer of her work.

11.17 am

Lord Carlile of Berriew (Non-Afl): My Lords, I have occasionally heard it said that Private Members' Bills in your Lordships' House are an opportunity for self-indulgence. If anyone still believes that, they should look at today's business, in which we have four pieces of legislation, each one of which has the capacity to make an enormous and beneficial difference to people's lives. We are very privileged to be here on a day such as this—and I feel particularly privileged to be able to stand up in your Lordships' House and support my noble friend's Bill. She has been a doughty fighter on these issues for many years. I shall freely confess that she persuaded me of the merits of this legislation some years ago and I hope that the House will give full support to her today.

The relationship between religions and the law comes in many shapes and colours on a long scale. At one end of the scale—it was a great privilege to sit next to the noble and right reverend Lord, Lord Carey, when he made his speech—we have the established Church, whose compliance with the law is evidenced daily by its presence in this House. Unfortunately, at the other end of the scale, we have cults that impose rigid and often eccentric discipline on their disciples. I certainly do not accuse Islam of that, but it is part of the picture.

The law must be able to intervene when a point on the scale is reached that undermines accepted legal rights—and that is what this debate is about. I do not want to attack any religion. It is wrong to do so; people are entitled to their beliefs. As a lawyer, I certainly do not want to attack the value of arbitration and alternative dispute resolution. In her wonderful speech, the noble Baroness, Lady Donaghy, gave ample justification for that process, whatever one calls it. If a religious organisation provides alternative dispute resolution and does so fully within the law, we should all welcome it as a very useful process.

If that form of mediation or alternative dispute resolution adds a zone of comfort because all the parties happen to adhere to shared beliefs and views, so much the better. It is no different in degree from them all being members of a good trade union. They share a vision which, one would hope, helps them to agree when they have differed. However, the entry into something that is called a marriage but which is not seen as a marriage by the law undermines rights in a very dangerous way. It removes the legitimate expectations that all the rest of us who have entered into a marriage, or a comparable relationship, enjoy. The use of the term "legitimate expectation" is important in this context because it is recognised by the law that enables people to take legal action against those who have abused their use of administrative action. We call this by the shorthand, "judicial review".

The consent to a status of, for example, a wife has validity only if there is genuine consent to the consequences of that status. My noble friend's Bill enables people to acquire those consequences by law, rather than being deprived of them arbitrarily. Where bodies fail to inform an individual of their legal rights, they are failing to fulfil their duty of care to their members. A simple analogy would be the misdescription of goods under trades descriptions legislation. If we buy Chanel perfume and it turns out to be a fake, we are entitled to have our rights enforced. If we marry and it turns out to be a fake, we are surely entitled to the rights of a married person. So where such bodies act contrary to the law, it is a matter for real concern. Where there can be an effect on innocent third parties—for example, children—it is a matter for acute anxiety. My noble friend's Bill addresses those issues and I applaud it.

11.24 am

Lord Cormack (Con): My Lords, I am delighted to be able to follow the noble Lord, Lord Carlile, who is sitting in a new place. I know that he will bring enormous distinction to the Cross Benches. I also join in the many tributes to the noble Baroness, Lady Cox, who is a dogged, determined, persistent fighter who could adopt as her motto that of my dear friend Tam Dalyell, who died only yesterday: "the importance of being awkward". My noble friend is never put off by a brush-off from the Front Bench. Yesterday, I was delighted to see that the Foreign Secretary is beginning

[LORD CORMACK]
to heed some of her wise words on Syria. I very much hope that my noble and learned friend Lord Keen of Elie, who is doing a double stint on the Front Bench today, will be welcoming, positive and fully understanding of the importance of the points made on the Bill when he responds.

Less than 48 hours ago, your Lordships' House had an interesting short debate on the Higher Education Bill. The noble Lord, Lord Sharkey, moved an amendment drawing attention to the fact that the student loan system is a barrier to Muslim students attending our universities. He spoke with great eloquence and I was delighted to be able to support him, briefly, as I had on previous occasions. The Government share our recognition of this, because the only subject of real debate on Wednesday was the timing of when a new system would be brought in to help Muslim students by enabling them to feel that they were not transgressing their moral principles. That was entirely defensible, right and proper. It was not a question of sharia law overriding the law of the land. Rather, we were recognising—as we do with the religious feelings of other faiths—that there are certain things that people should be allowed to do. But what they should not be allowed to do is transgress the law of the land, which treats every citizen of this country as equal.

As other noble Lords have said, the noble Baroness, Lady Donaghy, with all her experience of ACAS, made a very cogent speech. I believe very strongly in citizenship ceremonies—I have attended one. I hope the noble Baroness would agree that it would be a very good thing if all those becoming British citizens were given a little document which said: this is your law, these are your rights and these are your responsibilities. This is what we are saying today to our Muslim fellow citizens: to the women, these are your rights; and to the men, these are your responsibilities. The law of our land does not allow you to take four wives or to dismiss a wife merely because you want to. The law of the land gives to every woman who enters into a marital relationship fundamental rights that are the equivalent of those enjoyed by every other woman in this country, regardless of religion, ethnicity or racial background.

There was an interjection earlier from a noble Baroness—whose name escapes me for the moment—asking whether the Government believed in equality under the law: of course they do. But if they do, they must, when my noble and learned friend responds to this morning's debate, show that they do not just believe but that they practise. Setting up commissions and committees is sometimes an extremely good idea and is often a necessary preliminary to legislation—but we have pushed this into the long grass for far too long. There are women in our land today who are suffering; they are being ostracised from their own communities, and that is not acceptable. If someone is a British citizen, he or she has all the rights and duties of a British citizen. That, in effect, is all that this Bill seeks to say, and I very much hope that it will be enacted.

This House is deeply in debt to the noble Baroness, Lady Cox, who is a doughty fighter and a wonderfully persistent person. I hope that she will carry on being a thorn in the side of government, where necessary, for as long as she is here—and may that be a very long time.

11.29 am

Lord Green of Deddington (CB): My Lords, I too pay tribute to the courage and determination of my noble friend Lady Cox. Not being as brave as the noble Lord, Lord Cormack, I would not dare to imply that she is awkward, but there is no doubt whatever that she has been absolutely tireless in bringing the suffering of Muslim women in Britain to the attention of the public.

As one who has lived for many years in Muslim countries, I have every respect for devout individual Muslims. That said, it is surely fundamental that there can be only one law in this country, and furthermore, that institutions operating in Britain should do so in accordance with the rights that people can expect in this country, be they men or women—that is, there must be equality under the law.

The problem in this instance is the growing body of evidence that arbitration by sharia courts in practice discriminates against women in a manner that is frankly unacceptable in British society. That makes it all the more important that any such mediation should be voluntary and not the result of family or community pressure. The strength of those pressures is rather hard to imagine for those of us who belong to the majority community, but it is very clear to anyone who has lived in a Muslim country and seen the way in which women are obliged by pressures of family and tradition to fall in behind their men. The noble and learned Lord, Lord Mackay of Clashfern, was therefore exactly right to focus on the voluntary nature of any such mediation.

The draft Bill before us tackles these issues in an intelligent and targeted way. It does not interfere with the legitimate mediation services, which are already bound by equality legislation, nor does it interfere with the internal theological affairs of any religious group. However, it addresses a lacuna in our law which, in practice, permits discrimination against women in a manner that is unacceptable, as I have said. Indeed, as the noble Lord, Lord Carlile, has just said, we have reached the point when it is time to intervene.

Finally, I was going to draw attention, as the noble Lord, Lord Anderson, has, to the actions of the President of Egypt, a Muslim country, who has said that there must be an end to oral divorces which have been permitted. I find it deeply ironic that the President of a Muslim state feels able to take decisive action to remedy a clear injustice when our own Government apparently will not. I hope the Minister will prove me wrong.

11.33 am

Baroness Falkner of Margravine (LD): My Lords, I too thank the noble Baroness, Lady Cox, for persevering in bringing this important matter before your Lordships' House on such a regular basis. I hope that this time the Government will hear what the House is saying loud and clear.

I put my name down to speak in this debate very late yesterday, which is why I was unable to attend the several briefing sessions on the Bill that the noble Baroness held. The reason I put my name down so late was that I had not intended to speak in this debate. I thought that the work I had done in this area until

about a decade ago had worn me down sufficiently that I no longer wanted to examine multiculturalism and theology, particularly Islam. However, I looked at the speakers' list and appreciated that, of the dozen or more Muslim Peers in this House, not a single one had put their head above the parapet. As a liberal, I am afraid I frequently put my head above the parapet, so here I stand.

I turn to what the Bill is not. Many in the Muslim community say that the Bill seeks to target the Muslim community. However, I rebut that claim. This is not an anti-Muslim Bill. It could be argued that it is an anti-Muslim man Bill in that the power which might be restricted if the Bill were to pass would potentially impact on a certain category of Muslim men who are self-selecting in giving themselves powers as religious experts and theologians. Many in this House may not know that there is little religious hierarchy in Sunni Islam since its emphasis as a religion is on individual accountability and a huge amount of consensus in decision-making. That is why I refer to several of these people who sit on sharia councils as self-selecting. I argue that the Bill sets out to help not just Muslim women but all women who face discrimination through theological edicts and culture.

I did some research on this issue in 2008, when a well-respected publication wanted me to write a cover story about the impact of sharia in the United Kingdom. This followed research that had come from the think tank Policy Exchange, which found that significant numbers of Muslims in the UK wanted to be governed by sharia while living here. So I visited mosques which ran sharia councils and read a lot of literature but, most importantly, I spoke to men and women about why they undertook to marry or settle disputes under sharia in any event when other remedies were available. The reason most frequently given to me was that it was an expression of identity, particularly for young women. That was frequently accompanied by another reason—namely, that Jewish people have their own court, so why not us? It has been implied in the House today that there is an assumption that it is mainly newly arrived people who turn to sharia councils to settle their marital disputes. However, I found that this practice was becoming a trend among second, third and fourth-generation women, who were using identity politics as an excuse to define themselves.

A further and more difficult reason was that the young women were coerced by family to undertake this kind of marriage. As we heard when the forced marriage legislation was going through this House, it is very hard for a young person, in a culture which venerates family and community, to go against the perceived wisdom. To say to parents—and indeed to extended family members, as you may well be marrying a cousin—that you are doing so to seek legal protection in the union puts you in the position of effectively saying that you do not trust the other side, and you expect to need legal protection. In other words, you are challenging the bona fides of the other side. How many 17, 18 or 19 year-olds in these communities would be able to do that?

I turn to another aspect under Clause 2, which deals with inheritance. It is true that the treatment of the division of an estate is discriminatory and that this inequality is seldom challenged. My own experience was very different on the demise of my mother. She was highly educated and would have been described as a feminist. She was so troubled by the idea of treating her daughters unequally in Pakistan that she discovered, unusually, that even in that country—a Muslim country—if she made a will setting out a different allocation of assets than that prescribed under sharia, it would be legal. The key was that she had to make a will. She did this, and my late brother, a great liberal and champion of equality, did not demur, even though he was the great loser under that settlement.

The problem here is that if you do not have the strength to challenge the system, which is your family and community, you are unable to seek legal protection. The presumption within the community that the man has greater rights is so entrenched that it is very difficult to assert otherwise. That is why the mere existence of the law on the statute books would make a profound difference to the lives of many women in this country. We should support the Bill on that basis.

11.39 am

Baroness Deech (CB): My Lords, this is the third time in five years that I have spoken in support of my noble friend Lady Cox's much-needed Bill. It now seems that our system of balloting for precedence in Private Members' Bills needs revision. This one is so important that it is regrettable that it has come so far down the list. Indeed, obviously that is my opinion of my own Bill, which will be debated today.

I congratulate my noble friend on her persistence and on her renowned dedication to human rights, in particular women's rights. The issues she has presented, both in this House and in the various evidence sessions she has organised, are so serious that it has led many to question whether the Home Office review into the application of sharia law in England and Wales is sufficiently robust. The inquiry is limited to the application of sharia law as opposed to its place—if any—within the rule of law. The panel does not include human rights experts or non-Muslim experts on Islam, and potentially its deliberations and subsequent consultations might be used to delay reform, the need for which has been so cogently established over the years.

The Bill raises two immensely significant issues with which we grapple in many areas of everyday life. One is the relationship between democracy and religious beliefs, and the second is the extent and meaning of the rule of law. In relation to the clashes, when they occur, between democratically enacted law and religious beliefs, in nearly every case this country's judges and legislature have sided with the law. Religious beliefs do not excuse murder, or discrimination against women or gay people. Yet occasionally there is a weakening in our system; for example, when people use the phrase "it's their culture" in order to turn a blind eye to unacceptable practices. We must not go down that route, and it is more vital than ever today to stick to our guns, as Europe sees the mass movement of people of different religions and practices, with the consequent need for integration and for majorities and minorities to live together in peace and respect. If bakers are not allowed to refuse to bake a gay cake, how much more

[Baroness Deech]
serious an issue and how clear the answer if a religious minority is in breach of our law in an important part of its entire way of life.

In 2015, we all celebrated the 800th anniversary of Magna Carta. I am well aware that Magna Carta was the product of a sexist, classist and unfree society, as we see it now in retrospect. Only seven decades later, the country turfed out the entire Jewish population for centuries. The symbolism of Magna Carta now as an ideal of the rule of law took centuries to unfold. But in 2015 we celebrated it as the basis of us all being subject to the same system of law, having equal rights to the law and to be treated equally by it. If, as my noble friend says, sharia courts are misrepresenting themselves as courts with legal authority, and if women are being forced to accept the rulings of non-legal courts, that is unacceptable. If there are claims that sharia law takes priority over secular law, or there is a call for the introduction of sharia law in some areas or over some practices, that is not to be tolerated by the rule of law—and exactly the same is true of any other minority religion. The Bill makes that clear by settling the limits of arbitration and stopping discrimination in private courts.

I am especially concerned about the fate of women under attempts to force them into sharia jurisdiction. In our law, the welfare of children is paramount, and their welfare may be seriously jeopardised if Muslim mothers are forced to accept unwise conditions about their upbringing as the price of a religious divorce. English law recognises rape within marriage as a crime, likewise domestic abuse, and those crimes must not be swept under a carpet of a parallel legal system. In English law, marriage, property and the family are not zones into which the law may not intrude—the very opposite, in fact. In the Bill it is made clear that the fundamental principles of equality and respect for the rule of law apply to all, and that religious courts of whatever persuasion have to be subservient to the family, criminal and property law of this country. Access to our courts must be open to all, and communities and marriages should not be conducted outside the law of the land. The Select Committee which is currently considering the Licensing Act 2003 might see fit to bring mosques into that ambit so that they are not licensed unless also licensed to carry out weddings that are recognised in English law. Leaving women bereft of rights under a parallel legal system is not acceptable. This House and the other place must face up to this, and I hope to hear from the Government that they will progress the Bill.

11.44 am

Baroness Massey of Darwen (Lab): My Lords, I thank and greatly admire the noble Baroness, Lady Cox, for her insistence and persistence in fighting for the rights of women under the law. It is interesting that no matter how many times the noble Baroness brings back the issue of mediation and arbitration to your Lordships' House, so many of your Lordships not only attend but speak, and with increasing eloquence and determination. I shall be very brief today, because so many of the problems have been aired and so many points have been validly made.

The noble Baroness has consistently talked to women —mainly Muslim women—about their severe problems and their oppression under religiously sanctioned gender discrimination in this country. She has written many articles and reports on this subject, talked to many organisations, and has asked Governments to change the law in similar Bills, in 2012-13, 2015-16, and again now. As we know, the Government in 2016 established an independent review into the application of sharia law, which will report in 2017. I hope that it will take account of the important point made by the noble Baroness, Lady Cox, that many Muslim women,

"are unaware of their legal rights".

If they are unaware, how can they act?

The noble Baroness's brilliant 2015 report for the Bow Group, *A Parallel World*, says it all. She gives numerous examples of discrimination from women and from organisations to illustrate her powerful case. She says in the preface to the report:

"I have sat and wept with those who are oppressed, abused and treated as second class citizens. One Muslim woman told me: 'I feel betrayed by Britain. I came here to get away from this and the situation is worse here than in the country I escaped from'. This cannot be allowed to continue. Provisions must be introduced to ensure that the operation of Sharia law principles in the UK today is not undermining the rights of women and the rule of law".

As the noble Baroness has consistently pointed out, she fights incredibly hard for women. Again, she points out:

"The Bill does not interfere in the internal theological affairs of religious groups. In a free society, and in accordance with the hard-fought tradition of freedom of religion and belief, individuals must be able to organise their affairs according to their own principles, whether religious or otherwise. However, attempting to operate a parallel legal jurisdiction and to allow the de facto creation of new legal structures and standards is unacceptable",

in this country. She is asking for a positive response from the Government. I sincerely hope that she gets it. We shall be watching every move.

11.48 am

Baroness Flather (CB): My Lords, I am proud to call the noble Baroness, Lady Cox, my very dear friend. She is a bully, you know, and what is so good is that she does her bullying in such a way that you do not mind it—you are pleased to help her. I also congratulate the noble Baroness, Lady Donaghy, on her speech. The speeches related well to each other and set the scene for us.

I am concerned about a number of things. First, I lay the blame squarely at the door of the Government. There is no way that a Government should be allowing a parallel system to affect their citizens. We have first to decide whether the Muslims and the Muslim women are citizens of this country. If they are, they all deserve, and ought to be given, equal treatment. There should not be another system of so-called law which is a religious law—not a law of the land—and which interferes with and decides how people, particularly women and children, are treated.

Through my noble friend Lady Cox I have met women and heard stories about events which you cannot believe are happening in our country. I have come from elsewhere to live in this country and I respect this country. It has never interfered with my belief—I am not a Christian—and the important thing is that I respect its laws and culture.

I want to say something important about the word "culture". A lot of the people who deal with minority women are told, "This is our culture", but what does that mean? If they are beaten and chastised, that is their culture. If they are not given any money, that is their culture. If they are not given a divorce, that is their culture. But what is culture? I always imagined that it was something that developed for the good of society—not something that is no better than a social practice. You can have social practices which are appalling or social practices which are wonderful, but you cannot have an appalling culture. Hiding behind something called "culture" is one of the worst things to have come about, particularly when it is cited by social workers and other people who deal with these issues.

According to scholars, sharia law is discriminatory against women in every respect. No matter what we do, it will never provide equality. Therefore, it is our Government's job to make sure that women are not discriminated against under sharia practice. Pakistan has only just passed a law saying that honour killing is now viewed as murder. It has taken a long time but it came about because a woman burned her daughter. India is now trying to stop multiple marriages, saying that everybody is entitled to marry only one person. Strictly speaking, we do not allow multiple marriages here, but when the Home Affairs Committee tried to tackle that, it discovered that it would cost the Government a huge amount of money to take care of all the so-called non-wives, because under that system there is always a wife, a nanny, a cousin or somebody else to look after the children.

As your Lordships know, when a Muslim man divorces his wife, with great ease, he puts her out on the street. When people ask why he is doing that, he says, "Why does it matter? The Government will look after her. She won't starve or sleep on the street. I don't have to worry about that". As somebody has already stated, fathers are entitled to take children who have reached the age of seven. You can get a British divorce if you have a British marriage, but if you go to Pakistan or any other Islamic country the husband can take the children away because the woman is not divorced in the eyes of Islamic law. I learned this graphically from a woman who had had a British divorce and tried for six years to get a sharia divorce. This is an absolute scandal.

When the noble Lord, Lord Faulks, was a Minister, I discussed with him the possibility of at least registering the marriages of all the people who come to live in this country. Their marriages, at least, should be registered and, once they are, questions of bigamy and rights come up. Without that, the women have nothing. Let us get on with it and change things.

11.54 am

Lord Elton (Con): My Lords, I do not want my noble friend to be bowed down with the compliments she receives in this debate but I would like to put them in context. She has been congratulated many times on her persistence in going to the aid of this particular oppressed minority in our community, and it should be seen in the light of the last decade or two having been spent doing exactly that and in much more perilous and exacting circumstances right round the world. Let that not be overlooked.

The case made by my noble friend is very simple: it is that a large number of people in this country are being misled as to the powers of bodies which adjudicate on how their lives are to be lived in a very fundamental, important and intimate way. Some of them are under a misconception when they arrive in the process; others are given the misconception by the people managing the process. Where an official of any of these bodies is represented as having the power and authority of the English common or statute law, they deliberately mislead and make a false statement, which has damaging consequences—sometimes almost lethally damaging consequences—on the people appearing before them.

My noble friend's Bill is directed at remedying that by criminalising a false statement with that effect, and the House is definitely very much behind her on that. Personally, I would go further. I think that giving that impression to, or gratuitously leaving it in the mind of, a person using the services of that body by what the lawyers call either suppressio veri or suggestio falsi—in other words, knowingly allowing them to be misled as to the force of what is decided—should itself be a punishable offence.

I want to touch on just one other aspect in this prolific debate, in which so much has been covered, and it is rather a large point made earlier by my noble friend. The Government will be making up their mind on the scale of this phenomenon—there are those who say that it is very small—and will take advice from a body that they appointed to give them that advice. I ask the Government, through my noble and learned friend on the Front Bench—to be sure to assess that advice with very great care in the light of the positions and experience of the people giving it. That is not to question the probity of their advisers; it is simply to recognise that a person's view is determined to a large extent by the viewpoint from which they take it, and their perceptions are to some extent qualified by their preconceptions. It is very important that none of the evidence should be lost from sight.

I am sorry: I said that I had only one point to make but I have one other. An article in a periodical about law and religion in the UK has suggested that my noble friend is attacking this problem from the wrong end. Rightly, she targets the people who are misleading the clients—if that is the right word—of these courts. The article suggested, with apparent authority, that this was quite wrong and that really the problem was the consent given by the victims. That is a fairly extraordinary assertion from our point of view. It may not be so from the point of view of others who are part of the culture, to which my noble friend Lady Flather referred; but in fact the victims are not fluent in the English language. If the victims were fluent in the English language and familiar with the customs and practices of British society, there might be half a case in that statement, but they are not. Typically, they do not have one word of the English language and therefore are completely unaware of their rights. This Bill will restore to those people rights which have been theirs since they set foot in this country, and I hope that it is accepted by the Government.

Noon

Lord Rowe-Beddoe (CB): My Lords, I am most pleased to support this Bill, which, as has already been said many times around the House, is another example of the indefatigable force that is my noble friend Lady Cox. As we have heard, she is interested not only in this, but in so many things worldwide.

I have been increasingly concerned, as I am sure many of your Lordships have, to learn of the abuses to which some Muslim women—I emphasise "some"—are being subjected while living in our country and, as such, subject to the supremacy of our law. As the noble Lord, Lord Dholakia, mentioned, I was with him this week at a meeting at which we were presented to three ladies who gave us oral statements of what had happened to them. They described the most appalling abuse—"appalling" is a rather mild word. One striking criticism that was left with me, which was inferred from what we heard, was the failure of our police in certain cases to deal properly with such incidents as reported by Muslim women. We can speculate as to why some police may have taken the decision, if indeed they did, not to deal with this properly, but I am sure that this should be investigated and addressed. We can all understand what the possible reasons for it may be, but we must take seriously this apparent disinclination of certain police or police forces to provide appropriate support when abuse is reported.

In most cases, the strength of the abused is enormous, even to make such a complaint. We have to understand that these people live in a different world from ours. To have the courage to come forward and even suggest that they have a complaint to make, and then for it not to be taken seriously, is very depressing. In the interests of time, I shall move on, but so many noble Lords have referred to certain things in this area that I clearly endorse. I want to focus on the fact that we must strengthen the duties of police and social services to ensure that women are made aware of their legal rights under our law. As has been said, so many of them do not even speak our language. It is therefore not an easy task, but it must be addressed. I urge the Government to support the Bill.

12.03 pm

Lord Blencathra (Con): My Lords, it is a pleasure to support the noble Baroness in this very important Bill. I too pay tribute to her persistence in keeping these gross injustices perpetrated against women to the fore. She is the undoubted expert in this area and I urge the Government to implement this Bill as soon as possible. In my opinion, the measures needed to prevent women being treated as chattel go well beyond this modest Bill, but I accept her judgment that the changes she proposes are so reasonable that no fair-minded person, or man or Government, should sensibly oppose them.

I take the view that in commercial transactions, businesses, companies and individuals who are equal can agree any arbitration system that they wish. We know that our English commercial courts are regarded as the finest in the world and are usually the place designated in contracts for dispute resolution. Other contracts may stipulate arbitrators from professional institutes. The key point is that where parties are equals, they can select any system for civil dispute resolution that they like, so long as it is not in breach of a country's civil or criminal law. I do not pretend for one second to understand the theory of how sharia law should work. But I have read the case studies circulated by the noble Baroness and I am appalled at what is happening in our country today. It is clear that Muslim women are not being treated as equals. I have not heard one word to say that the case studies circulated by the noble Baroness are false or exaggerated, and we can assume that these are not just 30 isolated instances but rather the norm, when male religious leaders ignore national law and decide cases according to their interpretation of religious law.

Here I think we have to judge matters not on what a highly educated, fair imam implementing proper principles from the Koran should in theory do, but on what happens in reality in dozens of sharia courts where less-well-educated and biased judges are imposing their bigoted judgments on women who have no ability to fight back. Where is the justice in all those cases where a woman complains about being repeatedly beaten and the sharia court takes the man's word for it but asks the woman to produce two witnesses? Where is the justice when a judge laughs at a woman and says, "If he beats you, why did you marry him in the first place?", or tells a woman that he does not want to hear her side of the story, only the man's? Where is the justice in that wicked pronouncement that, "the husband was entitled to beat her because she was disobedient"?

The problem we have in this country, and possibly in our parliamentary bubble, is that we respect religious systems of marriage and divorce. Of course people should have the right to go through a form of religious divorce, if they want to. However, we may have made the mistake of assuming that all religious divorces treat women as fairly as they are treated in a UK civil divorce, and that is simply not the case. Any UK divorce judge who behaved in the way or said the things that some sharia judges have would be removed within 24 hours, never allowed into a courtroom again and possibly prosecuted for hate speech—and rightly so. We must remove the blinkers from our eyes that sharia divorces are equal to UK civil divorces. They are not, and women are being ruthlessly discriminated against.

This Bill is modest and seeks to tackle some of the injustices. However, I hope that the Government review of sharia law will go much further. I hope we will see a recommendation that no sharia religious divorces will be valid unless, in every case, a civil court also pronounces on it. That is not part of this Bill, but it is a very serious problem that will have to be addressed sooner rather than later.

Time does not permit me, so I have deleted from my speech all the paragraphs on police failure to act on the actions of Muslim women. Largely, that is because the police do not like to get involved in domestic disputes. Unfortunately, because of that, Muslim women are suffering a great injustice.

I conclude, if I may, by making a practical suggestion to your Lordships. I suspect that after the next Loyal Address, the House of Commons will have one major Bill with which to deal—the so-called great repeal Bill.

This House may have very little to do and we may have time on our hands. I suggest to all parties and all groups that we gang up and present the Leader with a suggestion: that this Bill, or one very like it, should be government legislation, starting in this House after the next Loyal Address, when your Lordships will have ample time to get it perfectly correct. I believe that my noble friend's Bill is absolutely meritorious in its own right and deserves to succeed. The Government should implement it as soon as possible or, if not, take it over as government legislation. Let us get it through this House.

12.08 pm

Lord Singh of Wimbledon (CB): My Lords, I too would like to compliment my noble friend Lady Cox on her hard work in bringing this important measure before us today, and on her tireless efforts to help vulnerable people across the globe.

Whenever anyone mentions religion in Questions in your Lordships' House, there is a noticeable air of embarrassment—"Why are we discussing religion? Religion is a wholly private matter". As a Sikh, I totally disagree. In the Sikh view, the whole aim of religion is to make us better human beings, with a responsibility to help the less fortunate and work for greater fairness and justice for all.

Unfortunately, looking at the way that religions operate and their seemingly meaningless rituals does not always inspire us with confidence. A very real problem is that religious teachings are easy to state—I could put key Sikh teachings on one side of A4—but far more difficult to live by, and instead an undue emphasis is placed on rituals and culture that have nothing to do with the ethical imperatives of religion. To make things worse, leaders of religions have often misused their positions of authority to pursue political power, sometimes by violent means, living in luxurious palaces while countenancing poverty and suffering among those they controlled.

As a result, religion found itself, particularly in the west, banished to the margins of society to quietly contemplate the hereafter, rather than working for the betterment of society. Meanwhile, secular leaders have taken over the business of running society, without interference from religion. But our do-it-yourself society often forgets to place due emphasis on rights, wrongs and responsibility in its decision-making. Let me elaborate on the dangers of this do-it-yourself approach. Whenever I am asked to help with a self-assembly, I throw the instructions to one side, start putting all the pieces together and stand back to admire my handiwork only to find it skewed and ready to fall apart.

I invite noble Lords to stand back and look at society today. We have a record prison population with many repeat offenders—more than 100, some with acute mental problems, took their own lives last year—more people getting divorced, often resulting in family breakdown, with a record number of children being taken into what we euphemistically call "care". I could go on. An ever-growing proportion of our national budget is now spent on sticking-plaster solutions that ignore the underlying causes of not paying due attention to ethical imperatives for a healthy society.

Logic suggests that we should look again at the guidance for responsible living contained in our different faiths. But unfortunately, guidance in religious books is not always clear and is at times confusing. Ethical teachings are often entwined with questionable or oppressive cultural practices that are at variance with what we today see as fundamental human rights. To be effective, and make the contribution to society that the founders of our religions intended, religions must open themselves to scrutiny and questioning. In speaking in gurdwaras and to Sikh and inter-faith groups, I always urge the questioning of religious teachings, particularly if they seem to be at variance with common sense and human rights. We need to do this to make religion relevant to the world of today.

The mixing of religion with sometimes oppressive culture—the noble Baroness, Lady Flather, referred to this—is a particular problem. The Labour Minister and founder of the health service, Aneurin Bevan, said that whenever he heard the word "culture" he immediately thought of bacteria. Today we know that there are good and bad bacteria. Similarly, there is also good and bad culture—good culture that enhances respect for elders and responsibility towards others. However, there is also oppressive culture that denigrates those of other beliefs, women, or those who simply appear different. The prevailing culture at the time of Guru Nanak, some 500 years ago, in both the West and the East, saw women as lesser beings. It had, bacteria-like, infected and distorted the ethical teachings found in different faiths. Sadly, negative attitudes to women are still all too evident in much of the world today.

The power and hold of negative culture is easy to understand when we look at the Sikh community. Guru Nanak, the founder of the Sikh religion, was appalled by the way that women were treated in the India of his day. He taught the dignity and complete equality of women. The same teaching was also emphasised by nine succeeding Gurus and is incorporated in our holy scriptures, the Guru Granth Sahib. Women can and often do lead Sikh services, and girls are encouraged to enter the professions. The Sikh chaplain to the British armed services is a woman. Yet, despite such clear teachings, some men in the community are still clearly influenced by the more negative culture of the sub-continent.

Negative attitudes to women, all too evident in Islam, have become embedded in religious texts which, as we have heard, give less weightage to the word of a woman, and lesser inheritance rights. There are also particular problems with attitudes to divorce. These negative attitudes prevent Islam from playing its full part in social improvement. I have many Muslim friends and most are happily married and a credit to society. But sharia law and divorce are heavily weighted in favour of men and are at variance with the law of this country. We cannot have a parallel judicial system, particularly one that discriminates against women. We have today heard many examples of the weightage against women in the proceedings of sharia courts and the resulting suffering. We have heard the concerns of our Prime Minister, Theresa May, when as Home Secretary she referred to wives being left in penury and a supposed right of husbands to chastise their wives.

[LORD SINGH OF WIMBLEDON]

I conclude by complimenting the noble Baroness, Lady Cox, who does so much to help women across the world, often in dangerous and perilous circumstances. The proposals in her Bill will not only enhance and help safeguard the position of women in the Islamic community but, importantly, also leave Islam stronger and better able to play its full part in the world of today. It is time for all our religions also to do a little spring cleaning to bring true religious teachings to the fore in helping give ethical direction to society. As a Sikh I strongly support the Bill and hope it goes on to become law.

12.17 pm

Viscount Bridgeman (Con): My Lords, I thank noble Lords for permitting me to speak in the gap. Unfortunately, my name was put down for the debate in the name of the noble Baroness, Lady Deech, that follows and not this one, for which I must accept responsibility.

Much has been said in this debate about sharia law, but I suggest that in the United Kingdom, particularly England, it is out of control. For one thing, no one from within the Muslim community whom I have spoken to at any level knows how many of these councils exist. May I express a personal view? At the time of the fall of the Berlin Wall, there were generations who had grown up knowing nothing but totalitarianism—first the Nazis, followed seamlessly by communists—and many individuals so affected found it initially difficult to adjust to life with western values. Most Islamic immigrants to the United Kingdom come from Pakistan, from a country where power is, I need hardly say, male power, which at every level is all-important. It is understandable that immigrants from that country will seek to exercise power over their communities in this country through the creation of and participation in sharia courts, with frequently little knowledge and experience of the customs and particularly law of this country.

Certainly the interpretation of Muslim law and practice varies widely between councils. Many of the sharia courts represent themselves as courts with legal authority and Muslim women are being coerced into agreeing to go before a so-called sharia court rather than a UK court. That is why Clause 1(4) of the Bill is particularly important in placing a duty on public bodies to ensure that women in polygamous households and, significantly, those who have had a religious but not an English civil marriage, are made aware of their legal position and relevant legal rights under English law.

Two days ago the noble Baroness, Lady Cox, convened a meeting of the All-Party Parliamentary Group on "Honour" Based Abuse at which three exceptionally courageous Muslim women gave evidence of the abuse, both mental and physical, to which they had been subjected in the course of their marriages and then break-ups. A number of interesting points emerged from the meeting. The first is that sharia courts appear to have comparatively few British-born members, and I am aware that here I am in conflict with the information received by the noble Baroness, Lady Falkner of Margravine, but this can be seen as an encouragement to building up a stable and responsible Muslim population. However, as long as immigration from predominantly Muslim countries continues at a significant level, the danger of sharia councils being filled by members, many of whom have recently arrived in this country and whose activities are in conflict with the law of the land in the United Kingdom, will remain.

The second point that emerged at the meeting was the level of funding of sharia courts that comes from the UK Government. Can the Minister give the House an idea of the nature and extent of this funding and the source within government from which it comes? The third and somewhat disturbing point which came up is the lack of police co-operation experienced by more than one of the witnesses, an issue referred to in the speech of the noble Baroness, Lady Cox. This may be due to sensitivities to possible racist prejudices or simply a lack of awareness of the extent of the reach of sharia courts. In any case and whatever the cause, the effect of this Bill, if and when as I hope it becomes law, will be significantly reduced if female Muslim victims are unable to count on the support of the police. I hope that the Minister will speak to his colleagues in the Home Office in an effort to ensure that at the national level, the police are made aware of their responsibilities in these inter-Islamic disputes.

Perhaps I may say finally that many tributes have been paid to the noble Baroness, Lady Cox, but I want particularly to emphasise the example she has set and the leadership she has shown in inducing these women, often under great community danger, to come forward and talk to us.

12.22 pm

Lord Kennedy of Southwark (Lab): My Lords, along with other noble Lords I offer my congratulations to the noble Baroness, Lady Cox, on securing a Second Reading for her Bill today. The noble Baroness is a highly respected Member of your Lordships' House with an enviable record as a campaigner, a fighter for justice, someone who does not shy away from tackling the big issues and, as the noble Lord, Lord Cormack, has said, someone who will not be put off by a brush-off from the Front Bench.

The Bill seeks to make provision regarding the application of our equality legislation to arbitration and mediation services. The effect would be to prevent providers of such services doing anything that would constitute discrimination, victimisation or harassment on the grounds of sex. I agree very much with my noble friend Lady Donaghy when she made the point that women have had to fight for equality, so that where women are relying on custom and practice, we have a long way to go. Sometimes the law needs to step in and take action to ensure that matters do not start going backwards.

As we have heard, the Bill seeks to achieve these aims by inserting a new subsection into the Equalities Act 2010 and the Arbitration Act 1996. The 1996 Act allows parties to have their civil disputes arbitrated outside the civil court system, although the court can set aside the decision if the arbitration does not comply with accepted standards of fairness and procedure as set out in the Act itself. With her vast experience as a former chair of ACAS, my noble friend Lady Donaghy

talked about the importance of arbitration and the need for both parties to be able to agree freely. I concur with the comment of the noble Lord, Lord Carlile, about the value of arbitration and its particular value when it is undertaken by a faith group, as well as his words about the rights of citizens to take action where such bodies act contrary to the law of the United Kingdom.

The Bill also seeks to provide important clarification that discrimination includes treating evidence given by men as being of greater value than that given by women. It would also give powers to the court to set aside any order based on a mediation settlement agreement or other negotiated agreement if it believes that, on the evidence before it, one party's consent was not genuine. There are further provisions in the Bill that place obligations on public bodies to inform individuals who have been married under certain religious practices or those living in polygamous households that they may be without legal protection.

We live in a great country. For all our problems, and they may be few or they may be many, whatever your viewpoint is on particular issues, justice, tolerance, respect for the rule of law and equality are all things that this country both stands for and stands up for. We have the right to campaign, to demonstrate, to have our say and to be treated equally by our fellow citizens, as well as having a fair chance at taking the opportunity to share in and be protected by the law equally, no matter who we are. That is all about being a citizen of the United Kingdom and living in this country.

The Bill does not state that it applies to any one faith or religion. As the noble Baroness, Lady Cox, has made clear to noble Lords, it applies to all faith groups equally. It may be that at certain times the protection of our freedoms that this Bill seeks may be used by a particular faith group more than others. I am very clear that discrimination against women and girls is wrong. Where Muslim women and girls are being discriminated against and denied their rights, that is wrong. It must be challenged, it must be opposed, and Parliament and the Government have a duty to challenge such behaviour and to take action to ensure that such discrimination is ended.

The first way that discrimination is challenged is often when brave people speak out against injustice, which we have seen throughout our own history and across the world. Usually such people are condemned as mad. They are generally abused and may suffer even further discrimination. Then a wider group of people will come around to their view so that they are not as denounced as they had been previously. Finally, often those who doubted in the first place then come forward with their own views so that something becomes the norm and the law is changed. We can see the contrast from where we were during the campaigns for women's suffrage and where we used to be in respect of gay relationships between consenting adults before the publication of the Wolfenden report, and where we are today, with equal marriage, the acceptance of gay relationships and equality of gay people in respect of their rights and responsibilities. Attitudes have changed, and they should also change in this area.

When we hear shortly from the noble and learned Lord, Lord Keen of Elie, I suspect we may be told that the Government are aware of the concerns expressed and that they will continue to consider and review the issue. However, the protections needed are already in place. I hope that I am wrong and that the noble and learned Lord will go further in his remarks today. We will also hear, I am sure, about the independent review of sharia law which was established in May 2016, and that the Government want to receive the report on the review to consider its findings in the light of the evidence and to see whether anything further needs to be done to ensure that everyone, including Muslim women and girls, is provided with the protections they need to ensure that their rights are protected and that they are able to access justice. I hope that the noble and learned Lord will be able to give as full as possible a response to the points which have been raised, in particular by the noble Baroness, Lady Cox.

My noble friend Lord Anderson of Swansea has again spoken in support of moving forward, as indeed he did on the previous attempt to make progress in this area. He said that he fully supports the Bill and the principles behind it. Like me, he supports the noble Baroness, Lady Cox, in her attempts to champion the rights of women and girls and to address the specific problems suffered by some who are unaware of their legal rights.

In conclusion, I thank the noble Baroness for bringing this Bill before your Lordships' House. Having its Second Reading so late in the parliamentary Session means that I am not sure how much further progress it is going to make without the Government's help and support. This is a problem which needs to be addressed more widely, as the reality is that the vast majority of Private Members' Bills put forward by noble Lords do not even get a Second Reading, although a great many of them seek to do good work and would make a difference to our lives in this country. We need to review the procedure. In the meantime, however, I look forward to the response of the noble and learned Lord.

12.28 pm

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I join all sides of the House in putting on the record my admiration not only for the determination of the noble Baroness, Lady Cox, but for the courage of the women to whom she has listened. Without their courage and that of others, we would not be debating this sensitive problem today. I understand the desire of the noble Baroness and her tireless fight to bring this matter out of the shadows and into the light of day. The Government are absolutely clear: we share the concerns raised by noble Lords in the debate that people can suffer because of decisions made by sharia councils in particular, or because the families and communities of coerced persons prevent them from understanding that they are as equal before the law as any Member of this House. These are concerns that the Government take very seriously. We know that any effective proposals to address the problem must come from thoroughly understanding its complexities and source. That is why the Prime Minister, in her previous role as Home Secretary, launched the full, independent sharia review last year, chaired by

[Lord Keen of Elie]
Professor Mona Siddiqui. That is also why the Government, on the broader problem of opportunity and integration, of which disadvantage to Muslim women is part, commissioned the independent review by Dame Louise Casey, who reported last month. Your Lordships will see that the Government are committed to shining a light on this problem.

Your Lordships will know, too, that women's experiences of sharia councils and the issue of unregistered marriage are central to the sharia review. The Casey report has framed concerns about these in the broader narrative about how people with different backgrounds can be part of a cohesive society—a point touched on by many noble Lords in the debate. The report found that British Muslims overwhelmingly had a strong sense of belonging to Britain. We should not lose sight of that larger picture.

The Government are absolutely clear too that the authority of the courts in England and Wales is intact. There is and will be no parallel legal system. People are free to live their own lives according to their religious principles and the Government will not prevent them doing so. What there is in sharia and other religious councils is a means for people to seek decisions that will carry weight with their communities. This entire process should be voluntary and free from any form of force, but we have heard today of instances in which it is not. What for some is religious freedom is for others a source of injustice. That is the key to the problem before us. By its nature, of course, this is a problem that is not amenable to any easy solution.

Your Lordships have raised many of the issues that were put to Dame Louise relating to sharia councils and the reasons why some women may have recourse to them. We should always acknowledge that there are Muslim women for whom a religious pronouncement of divorce is important and who freely and knowledgeably choose to go to a sharia council, as followers of other religions may do with their own councils. It is important to acknowledge this: as I have said, the Government have no wish to curb religious freedom. None the less, it is of serious concern to us where women may have recourse to sharia councils because of coercion or lack of awareness of their rights. We appreciate that behind much of this are also the problems of lack of integration, of understanding, of language skills and sometimes of education. The source of that is very much lack of opportunity. The Casey report frames these issues in the contexts of integration, but also, crucially, of opportunity and understanding. That is a context we should never lose sight of.

I assure the House that the Government are taking the findings of the report extremely seriously. Like my right honourable friend the Secretary of State for Communities and Local Government in another place, however, I do not wish to say anything that might prejudge our response to the Casey report in spring this year or, for that matter, to the findings of the independent sharia review.

With that in mind, I turn to the measures in the Bill. As noble Lords are aware, sharia councils are not part of the court system in this country. I noted references to sharia courts on occasion in the debate. We do not recognise the existence of sharia courts. We understand the danger that some sharia councils may purport to perform as courts or hold themselves out as courts, but they have no legal means of enforcing their decisions. Furthermore, the evidence at this stage is that very few sharia councils will carry out arbitration, and then in only very limited circumstances. We appreciate, none the less, that there have been concerns about arbitration by sharia councils in some instances, or about their straying into matters that only a court can adjudicate on. I assure the House that the Government are taking those concerns on board and view them very seriously.

The Government do not consider it necessary to amend the Equality Act 2010, as Part 1 of the Bill proposes, so that it applies to arbitral tribunals. Section 33 of the Arbitration Act 1996 already imposes a duty on arbitral tribunals to act fairly and impartially, and awards can be challenged in the court if this duty is breached or there is any other serious irregularity. Section 142 of the Equality Act 2010 already makes contracts unenforceable if they treat someone in a discriminatory way. That would apply to contracts as a result of mediations that were discriminatory, including any that might be facilitated by religious councils.

The Government still consider that amending the public sector equality duty is neither the best way to address this issue nor an appropriate use of the duty. I am the Government. The duty is broad—deliberately so—and the Government remain concerned that this breadth of application could be undermined if specific requirements were to be separately identified within it.

Part 2 proposes amendments to the Arbitration Act 1996. The existing law already imposes on tribunals a mandatory duty to act fairly and impartially. Where the family court in England and Wales has discretionary powers to make orders, such as in relation to making arrangements for children following the breakdown of a parental relationship, it is not possible to enter into an agreement to be bound by the outcome of an arbitration process, as a court could always override that outcome.

Part 3 proposes amendments to the Family Law Act 1996. It is, however, already the case that contracts cannot be enforced if they are made under duress. In family law cases, a judge will not make an order based on a negotiated agreement unless satisfied that there was genuine consent. Because the family court already has the power to set aside such orders, the Government's view remains that the amendments proposed are unnecessary in this context.

The Government do not lightly create new offences. Before we might have cause to consider the new criminal offence of falsely claiming legal jurisdiction proposed in Part 4, we would need to consult and to hear compelling evidence that it was genuinely necessary. We would also wish to await the findings of the independent sharia review.

I appreciate that the noble Baroness, Lady Cox, may be disheartened that she has not persuaded the Government that her Bill would be necessary or effective. Our reservations about it remain.

Lord Carlile of Berriew: The noble and learned Lord said that a new criminal offence is unnecessary. Does he not agree that the criminal offence of holding oneself out as a medical practitioner has been extraordinarily effective? Does he not think that there is an extremely strong case not for doing nothing but for providing a similar sort of offence for those who hold themselves out to be a court or tribunal?

Lord Keen of Elie: There are, of course, provisions already in respect of that. We do not propose to do nothing, as I seek and have sought to explain.

As I said, our reservations about the Bill remain. It would be unfortunate for the Government to rush into any legislative change that did not, in the end, turn around the experience of the women whom the noble Baroness seeks to champion.

Lord Cormack: A few moments ago my noble and learned friend gave us a variation on "l'etat c'est moi". Having listened to the debate, which I trust he has, and having heard persuasive speeches from all parts of the House, will he at least, in his capacity as the Government, which he has proclaimed to us all, agree to meet all of us who have spoken in the debate and have further discussions?

Lord Keen of Elie: I am perfectly prepared, as I represent the Government at the Dispatch Box, to take forward further discussions on this matter. Those discussions could most constructively be held once we have the sharia review available and once we have our response to the Casey report in the spring. The noble Lord might want to contemplate further discussion in that context. We are not seeking to delay; we are seeking to get this right.

We have not left the matter there, either. I do not wish to detract from the immediate focus of today's debate, but there are other areas in which we are taking matters forward. Many noble Lords have spoken on the issues of understanding, of education and of the appreciation of rights which underpin many of the difficulties that Muslim women face in the context of sharia councils. We are now spending substantial amounts each year on assisting people to integrate into our society, particularly by arranging for the teaching of English. That is but one step, I appreciate—but it is a step in the right direction.

Turning again to the issue of unregistered religious marriage that underlies much of the recourse that women have to sharia councils, I note that there is no consensus on the issue—or, indeed, on sharia councils themselves—even among Muslim women's groups. Several divergent suggestions have been put forward on the matter of marriage. One, for example, suggests regarding Islamic marriages as void, so that parties can seek financial remedies. Another suggests requiring religious ceremonies to be preceded by a civil ceremony, as in some other jurisdictions. The Casey report emphasised the importance of registration of marriage. All these issues will have to be considered.

The noble Baroness, Lady Cox, moved an amendment a few months ago in Committee on the Policing and Crime Bill. It required celebrants of religious marriages to comply with marriage law and to register the marriage, as well as introducing a criminal offence of failing to meet the requirements. However, as my noble friend Lady Chisholm said in the debate, it is unclear how many unregistered marriages would continue. Marriage is not a straightforward area of law, as these divergent suggestions show, and particular difficulties arise when women are unaware that their marriage has no legal effect.

My noble friend indicated that the Government will consider unregistered religious marriages in light of the sharia review which is expected to report this year. That remains the case. It is clear from Dame Louise Casey's report that integration, education and understanding are significant in how we address the issues we have been debating today—many noble Lords acknowledged that. We await the Government's response to the report so that we can take this matter forward.

I turn to particular points made by noble Lords in the debate. The noble Baroness, Lady Donaghy, referred to the continuing fight for women's equality. I do not intend to engage in a fight with the noble and doughty Baroness, but I see women's equality—indeed, all aspects of equality—as more than just a goal: it is a journey. As any wise traveller knows, when you are on a journey you constantly and regularly check your progress, your destination and the obstacles in your way. The spikier parts of inequality have been addressed, but the issue has not been resolved, and it will be a continuing journey.

On the question of the independent review, I indicated that that will report this year. As for the Law Commission, we are considering its report in conjunction with that of Dame Louise Casey. The noble and learned Lord, Lord Mackay of Clashfern, among many noble Lords, referred to the subtle pressures that are brought to bear on women in the present context and the need to identify the reality of consent. Again, that goes back to the theme of education and understanding, rather than sharp-end legislation. The noble and right reverend Lord, Lord Carey of Clifton, talked about the need for sharia courts to comply with civil law. I do not even recognise the concept of a sharia court, but I take him to refer to sharia councils—and, yes, they are bound by the rule of law, and the law is there to correct abuse.

The noble Lord, Lord Anderson, assured us that he agreed with himself—I am sure we all take comfort from that. He talked about the judiciary making women aware of what their rights are. Yes, that is important, but it should be more than just the judiciary: we should all be making an effort, whether it be central government, local government, social services or police forces, to make women aware of their true rights and what their families' true obligations amount to.

The noble Lord, Lord Carlile of Berriew, whom I was pleased to hear from behind me—if perhaps a little too far to the right—also talked about the need to intervene in circumstances where there is an abuse of alternative dispute resolution. Such alternative dispute resolution, as many noble Lords said, is to be welcomed, but it must operate within the law, and we must make that clear.

A question was raised about the extent, if any, of central government funding to sharia courts. Again, I say that I do not recognise the existence of sharia courts.

[Lord Keen of Elie]
I am not aware of UK government funding to sharia councils. It is possible that there is funding for particular projects carried out by such councils. Although I do not have such details to hand, I undertake to write to my noble friend Lord Bridgeman to confirm such details as we have of any alleged UK funding for sharia councils.

Finally, the noble Lord, Lord Kennedy, spoke of all those rights that we enjoy, or that we are at least entitled to enjoy, within the United Kingdom. But those rights also include the right to religious freedom. That is why it is so important to ensure that we do not upset a delicate balance between rights and obligations. That is why the Government will look at this matter with great care in light of the sharia review, the Casey report and the recommendations of the Law Commission.

Lord Blencathra: I think my noble and learned friend has acknowledged that the cases quoted by all noble Lords who have spoken are real and genuine—there is grave injustice there—but he has shot down every suggestion in the noble Baroness's Bill to deal with them—and he has just said that the Government will look "with great care" following the sharia review. I hope your Lordships will forgive me for being cynical, but that sounds like kicking this into the long grass again. Looking at it "with great care" sounds like rather slow motion. If the sharia review suggests there is a problem, can we have a guarantee that there will be government legislation sooner rather than later?

Lord Keen of Elie: The noble Lord will appreciate that, even at the Dispatch Box, I cannot give guarantees of government legislation.

Lord Carlile of Berriew: But you are the Government.

Lord Keen of Elie: That is beyond my pay grade. However, I challenge the suggestion that I have sought to shoot down the various proposals made by the noble Baroness, Lady Cox. I acknowledge the importance of the issue that she has brought before this House. I acknowledge the importance of us being able to address these issues openly and effectively. I acknowledge the importance of considering whether all persons within the United Kingdom—and they are not required to be British citizens for this purpose—have the protections of the rule of law in the face of coercion or threat, even if it is supposedly religious-based. Therefore, I do not accept that I have sought to shoot down the proposals put forward by the noble Baroness, Lady Cox.

There are aspects of the Bill which we would say are legislatively unnecessary because of existing legislation. There are aspects of the Bill which we would consider need to be thought through with greater care. There are issues here that should be considered in light of the sharia review, which is coming out this year, and in light of the report from Dame Louise Casey, which we received in December, just one month ago—and we intend to do that. We do not intend to head in the direction of any long grass in that context.

Lord Anderson of Swansea: We have not heard any mention of the principles on which the Government rest. Do they at least accept in principle that to give less weight to a woman in any adjudication is wrong?

Lord Keen of Elie: Do I need to repeat that? With the greatest of respect, this Government and certainly I would never consider that there was any basis for such a proposition. I acknowledge the need for equality not just of gender but in all respects. This Government acknowledge the importance of equality not just in respect of gender but in all respects. But in pursuing it we must have regard to the rights of individuals to perform their own religious functions in a way they see fit. But above all of this stands the rule of law and we remain determined to ensure that those who purport to carry out religious functions do so in accordance with the rule of law and with respect for all individuals, whatever their gender or ethnic background.

I assure the noble Baroness that this Government are concerned about the issues that have been raised, understand the seriousness of the issues that have been raised and appreciate the contributions that have been made by your Lordships' House in addressing these points. I therefore express to her and all noble Lords who have spoken today my sincere appreciation of their contributions on what is not only an important issue but a complex one.

Lord Kennedy of Southwark: We have all heard the Minister's concern, his appreciation and everything else—but can he just tell us what is going to happen next for the Government?

Lord Keen of Elie: My Lords, I thought that I had already explained it. Lest the noble Lord was not in the Chamber at that stage, we are considering the Casey report, which was received in December of last year; we are awaiting the sharia review; and we will bring these materials together in order that we can establish an informed view of the extent of the problem and what the potential solutions may be.

Lord Kennedy of Southwark: I thank the Minister for that. I am very worried now when I hear the word "review". I tabled a couple of Written Questions asking what "review" means when it is mentioned at the Dispatch Box. I was told in a Written Answer from the Government that there is no definition of a review. The Minister will appreciate that when I hear that word I am very worried about what it actually means. I hear what the Minister says but, equally, I hope that he has heard the concern from all round the House in this debate.

Lord Keen of Elie: I have of course heard the concerns that underpin this Private Member's Bill. I have of course also understood the depth of feeling and the depth of concern that there is to see these problems addressed.

12.52 pm

Baroness Cox: My Lords, I record my very deep gratitude to all noble Lords who have spoken in this debate, bringing so many distinctive and diverse contributions,

with so much experience, professional expertise, compelling arguments and compassion in support of the Bill. I wish I could also thank the Minister for his response. I think the word "brush-off" has been used more than once when referring to the responses I often receive from the Front Bench. Much more importantly, the Minister's reply will disappoint countless people who are hoping for some effective government action to be taken as a matter of urgency to help alleviate the problems that have been widely documented and highlighted in this debate. It seems that Her Majesty's Government are living on a different planet of reality from the realities which have been put on the record in this debate. Those realities are widespread and the examples given are just the tip of an iceberg of great suffering. Instead, we have another delay during which countless women will continue to suffer, without any of the very modest remedial measures which the Bill could provide and which they emphasise would be of great help to them. They will be deeply disappointed.

There is much important subsequent business awaiting your Lordships so I will not take up any of the points raised in the debate, although I would wish very much to take up the points raised by the Minister, some of which I fundamentally disagree with. But I greatly look forward to working with all who have shared their concerns and expertise, to continue to seek ways forward in which we may address the serious problems we have discussed today. I give renewed thanks to everyone who has contributed to this debate and supported the Bill.

Bill read a second time and committed to a Committee of the Whole House.

Rehabilitation of Offenders (Amendment) Bill [HL]

Second Reading

12.55 pm

Moved by ***Lord Ramsbotham***

That the Bill be read a second time.

Lord Ramsbotham (CB): My Lords, I ask noble Lords to note the date of the Rehabilitation of Offenders Act that my Bill seeks to amend. Much has happened in the criminal justice system during the 43 years since then which makes parts of it obsolescent, if not worse, and explains why both the recent Labour and coalition Governments proposed its review. The problem with Private Members' Bills is that they can really tackle only one issue at a time and depend on being granted time by a Government, if they are to progress beyond Second Reading. So pressing is the need to reform a most important aid to the successful resettlement of prisoners into the community that, following the example of the noble Lord, Lord Dholakia, whom I salute for his tireless pursuit of reform over many years, and in anticipation of the reforms that Michael Gove, when he was Secretary of State for Justice, was expected to announce, I tabled my Bill last May, acknowledging that it was by no means complete in setting out what needs to be done.

Then, in November last year, Liz Truss, the present Justice Secretary, published *Prison Safety and Reform*, the first White Paper on prisons since 1991, which she described as,

"a blueprint for the biggest overhaul of our prisons in a generation".

On reading this, particularly the part about rehabilitation, I noted these two aspirations:

"We need a fundamental shift in approach so we are focused on preparing offenders for future employment in modern jobs. We need to provide prisoners with skills for which there is a real demand from employers".

If these aspirations are to have a hope of being realised it is important to ensure that those skills can be employed, which is precisely the purpose of the Act. In consequence, I have completely changed my approach, believing that an essential overhaul could be more speedily achieved if included in the White Paper implementation process, rather than being left to a private Member to tackle small parts separately.

My introduction to my Bill is therefore nothing other than a plea to the Minister to accept my contention, in the hope that amendment of the Act will henceforward be taken on by government. If he does not, I will continue to introduce my proposals in the form of successive Bills, which means years of undue delay. I must apologise to the House for, in my enthusiasm to seize what I saw as a possible opportunity for early achievement of my aim, failing to correct a number of factual errors, particularly in Table A accompanying Clause 1. I am also conscious that, because policy responsibility for criminal record disclosure legislation straddles the Home Office and the Ministry of Justice, reform will involve cross-departmental action, which it is beyond the pay grade of a private Member of this House to conduct.

The Act which my Bill seeks to amend was most ably described in 2015 by the noble Lord, Lord Faulks, then Minister of State in the Ministry of Justice, in his opening remarks in Grand Committee on a report from the Joint Committee on Statutory Instruments on the exceptions order to the 1975 Act. He said that,

"the primary legislation concerning the disclosure of criminal convictions and cautions … seeks to help the reintegration into society of offenders who have put their criminal past behind them. It does this by declaring certain convictions, after a specified period, as 'spent'. Once a conviction has become spent, an individual is not required to declare it when, for example, entering most employment or applying for insurance".—[*Official Report*, 9/2/15; col. GC 259.]

The Act was criticised for many years, on the grounds that the length of its rehabilitation periods and the exclusion of prison sentences of over 30 months from its scope did not do enough to rehabilitate offenders. Consequently, following particularly trenchant criticism from the Better Regulation Task Force in 1999, the Labour Government published a review entitled *Breaking the Circle* in 2002, following which they launched a consultation. In their response to that, published a year later, they said that they planned to publish a draft Bill containing their proposals for pre-legislative scrutiny. However, no draft Bill emerged, the Government claiming that, following the Soham murders, they could not set any timescale for changing the law, which I have always regarded as a lost opportunity.

[Lord Ramsbotham]

In his foreword to *Breaking the Circle*, the noble and learned Lord, Lord Falconer, wrote:

"Removing the barriers to employment for ex-offenders must be a key element of any rehabilitation strategy".

The report examined the,

"actions needed by Government, employers, and the public to support the resettlement efforts of those offenders who wanted to lead law-abiding lives, and to put their past behind them".

Evidence proved that employment could reduce reoffending by between one-third and one half and that a criminal record seriously diminished employment opportunities.

The noble and learned Lord, Lord Falconer, had the importance of the Act to any rehabilitation strategy absolutely right, and in 2010 the coalition Government raised the hopes of those of us who sought its reform by including its revision in the consultation document *Breaking the Cycle*. The Government said that they would review the operation of the Act in line with their announced aim of putting more offenders "on the right path", by enabling them to

"become law-abiding citizens and contribute to society",

by finding a job and a home.

Acknowledging that the Act was overly complex and confusing, leading to many people not realising that it applied to them, *Breaking the Cycle* described it,

"as being inconsistent with contemporary sentencing practice".

Therefore the Government said that they were taking a fundamental look at the objectives of the Act and at how it could be reformed, which included consideration of broadening its scope so that it covered all offenders who received determinate sentences and reductions to the length of rehabilitation periods.

In the event, there was no mention of the Act in the Government's response to the consultation. To be fair, however, the Government tabled a new clause to their Legal Aid, Sentencing and Punishment of Offenders Act 2012, which reformed the Act in two key ways. First, its scope was extended to cover custodial sentences of up to 48 months and, secondly, the length of some of the rehabilitation periods was reduced. Surprisingly, although the remainder of the provisions in the Bill were enacted in March 2013, this clause was not brought into force until a year later.

Since I tabled my Bill, I have been in constant touch with two organisations which have been working on reform of the Act for years: Unlock, in which I should declare an interest as its president, and the Standing Committee for Youth Justice, which, in March last year, published an outstanding report, *Growing Up, Moving On: International Treatment of Childhood Criminal Records*. I have also spoken with the Minister for Prisons, Mr Sam Gyimah, and the Minister for Youth Justice, Dr Phillip Lee, encouraging both to adopt reform of the Act as part of the White Paper overhaul process. I have also spoken with the noble Earl, Lord Howe, and discussed the errors in table A, which I propose to correct by amendment in Committee.

That will not be the only amendment that I will be tabling. In the context of,

"the biggest overhaul of our prisons in a generation"',

my first concern is with the current title of the Act. "Rehabilitation of Offenders" is misleading, because the Act does not say anything about how rehabilitation should be conducted but is all about criminal record disclosure. Why not call it the "Disclosure of Criminal Records Act"? By the same token, I also dislike the term "rehabilitation periods", as they are better described as "disclosure periods".

I now move on to the tone of the Bill, if Bills have a tone. The tone of the present legislation has been described as "a licence to lie" for people with convictions. Rather, I believe that it should be that no one released from prison should face a lifetime of disclosure, without the prospect of review. Asking an applicant, or employee, about spent criminal convictions, unless authorised to do so in excepted professions and occupations, should be made an offence. The 48-month spent limit should be removed, with determinate sentences of over four years becoming spent four years from the end of the sentence, as proposed by the Government in their 2003 response to *Breaking the Circle*. Those serving an indeterminate sentence should be given the opportunity to achieve rehabilitated status through a process of evidence submission to a criminal records tribunal administered by members of the judiciary. As an incentive to desist from crime, anyone recalled to prison would automatically have their disclosure period reset.

On the adult side, three other areas should be looked at. The first is motoring offences, which currently take five years to become spent, leading to such absurdities that an eight-month sentence, for actual bodily harm, will be spent before a fixed penalty notice for speeding. The Ministry of Justice and the Department of Transport say that they are working on this but, since the 2014 LASPO reforms, all has gone quiet. The second is court orders, which currently still have an impact when a conviction becomes spent. An ancillary order, such as a restraining or sexual offence order, can lengthen a rehabilitation period despite not forming part of a sentence. This results in some offences remaining unspent for many years, sometimes indefinitely. Finally, there are compensation orders, which, currently, have to be paid in full before the order is spent. The whole compensation order system is ineffective and riddled with mistakes, with neither courts nor the police maintaining proper records of payment, so why not the same fixed one-year period as fines?

I move on to childhood criminal records. *Breaking the Circle* contained the following:

"Consideration should be given to the development of criteria to identify young offenders convicted of minor and non-persistent crime so that their records may be wiped clean for the purposes of employment … at age 18".

I have told the House before that, when inspecting the prisons in Barbados 16 years ago, I found just such a scheme in operation, with only the most serious offences carried forward, and have frequently asked, "If Barbados can, why can't we?".

The main change that is needed is to ensure that, at age 18, a child's custodial sentence qualifies for a procedure leading to the possibility of it becoming spent, except of course life sentences and those for very serious offences. Youth rehabilitation orders should become spent as soon as an order is finished, bringing

them in line with referral order periods. Detention and training orders should become spent six months after the order is finished rather than, as now, those of less than six months not being spent for 18 months, and those of over six months not for two years.

It has also been suggested that all under-18 custodial sentences greater than two years but less than four should become spent two years after the end of a sentence, and those greater than four years and less than life—which, currently, can never be spent—seven years after. There should also be consideration of whether it is appropriate that the same threshold for custodial sentences should apply to both children and adults.

Included in the overhaul of the Act should be a review of the accompanying Rehabilitation of Offenders Act (Exceptions) Order 1975. In particular, the Government should establish an effective system for identifying and stopping ineligible checks, which too many of the 4 million checks each year currently are.

The Ministry of Justice should lay down clear criteria regarding the eligibility of applications. The Disclosure and Barring Service should publish and maintain accurate guidance on its processes. Together, the Government and the DBS should then take action against employers that do not take reasonable steps to ensure that checks they apply for are eligible. Regrettably, although knowingly carrying out an illegal check is a criminal offence under the Police Act 1997, to date there have been no prosecutions as the DBS does not see itself as an enforcement body.

I hope I have made my case for an amendment, amounting to overhaul of the Rehabilitation of Offenders Act 1974, being adopted by the Government as part of the overhaul of our prisons, rather than apart from that process. Any rehabilitation programme worth its salt should include a disclosure scheme devised specifically to assist the employment process. The ineffectiveness of the existing Act has been compounded by the many changes since 1974, including sentence inflation, that have shifted the way in which offenders are treated by the criminal justice system in both sentencing and rehabilitation, rendering it unfit for purpose. Of course the protection of the public must remain the paramount driver of any assessment of risk, which is why certain types of employment should be excepted from some of the limitations on disclosure. But the scheme, which must be clearly explained to both employers and offenders so that they understand it, should apply retrospectively to all ex-offenders and be backed by a Criminal Records Tribunal. I beg to move.

1.11 pm

Lord McNally (LD): My Lords, the noble Lord, Lord Ramsbotham, has explained the Bill in his usual thorough and clear way. It is my great pleasure to support the Bill and the noble Lord's suggestion that the Government could envelop it in their wider programme of reform.

On 17 March I will stand down at the end of my term as chairman of the Youth Justice Board. That will bring to an end seven years of association with the Ministry of Justice, half of it with the MoJ as Minister here in the Lords and half as chairman of the Youth Justice Board. I say that because the two points I want to make are relevant to each of the jobs I have done.

Looking at the speakers list today, I see I am flanked by four speakers who have been extremely influential as mentors during my time at the MoJ: the noble Lord, Lord Ramsbotham, himself; the noble Lord, Lord Carlile of Berriew; the noble Earl, Lord Listowel; and the noble Lord, Lord Dholakia. I suppose I should add a fifth, the noble Baroness, Lady Chakrabarti, who is now on the Labour Front Bench, although I am not sure she was a mentor during that period; she was more of a menace—in the most constructive way.

One of the things I am most proud of is Section 139 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Unlock described it as positive but not perfect, and of course that is perfectly true. The fact is, though, that the reforms were as much as we could get our coalition partners to agree to. I was deeply influenced in my attempts by the noble Lord, Lord Dholakia, who had been pressing for more radical reforms. The truth is that my reforms were an exercise in the art of the possible. As the noble Lord, Lord Ramsbotham, explained in his introduction, the truth is that over the period both major parties lost enthusiasm for any more radical reform.

However, today gives us an opportunity to test the water to see if there is an appetite in government for further reform. We know the matter is in front of a number of bodies. At present, for instance, the Justice Committee is completing an inquiry into youth criminal records, and it is that particular area that I want to address in my remarks. Its activities follow the recommendation of the Carlile committee on court reform. I hope that my noble friend—I think I can still refer to him as that, although we now seem to be separated by quite a gulf; but not, I hope, in attitudes—will refer to that in his speech, because the Carlile report was an important help to government in charting their way for reform.

It was also a key recommendation in the review conducted by Charlie Taylor into the youth justice system. The Secretary of State is at present considering next steps for youth justice reform. I urge her to keep in mind that the youth justice system is not simply the junior branch of the adult criminal justice system. The Taylor review is clear that we should develop a distinct approach to treating childhood offending. "Children first, offenders second", is the mantra that Charlie Taylor advocated. It has been the guiding light of the Youth Justice Board both in the community and in the secure estate over the board's 17 years of existence.

There is a strong case for following the logic of the Taylor report and the Government accepting the Carlile recommendation for the expungement of criminal records at attaining the age of 18, excluding homicide, serial sexual offences and other violent crime. As the noble Lord, Lord Ramsbotham, explained, this is not woolly liberalism, but sound common sense, as is the continuation of anonymity for young offenders who come before the courts. All the evidence shows that resettlement into a job is the best way to avoid reoffending. I pay tribute to companies such as Timpson, National Grid and many others in the private sector who are willing to take on ex-offenders. The existence of a criminal conviction can undo years of successful rehabilitation work.

[LORD MCNALLY]

The Government are bound to say today that they are awaiting the outcome of a number of cases before the court regarding disclosure, and the findings of the Justice Committee inquiry, but I hope that the noble and learned Lord will acknowledge that the impact of the 1974 Act has been beneficial, but that it now suffers the problems of age and that we need the kind of widespread reform of criminal records advocated by Nacro, Unlock and the Standing Committee for Youth Justice.

About two years ago, I went to Bucharest for a conference on treatment of youth justice, and I was genuinely surprised and shocked—perhaps I should not have been—by the number of colleagues from other parts of Europe who said to me, not in a hostile but in an understanding way, "Of course, we know that yours is a punitive and penal policy towards young offenders, whereas ours is welfare based".

I hope that we are moving in the direction of a welfare-based approach to young offending. Charlie Taylor is right: they are children first, offenders second. Of course victims have to be protected, but I remind colleagues of the key findings of the report to which the noble Lord, Lord Ramsbotham, referred. It stated:

"This report examines how childhood criminal records"—

those acquired under the age of 18—

"are treated in 16 jurisdictions. Of all the areas we looked at, the system in England and Wales is one of the most punitive. A criminal record acquired by a child in England and Wales can affect that person for longer, and more profoundly, than in any other jurisdiction under consideration … The overall environment is such that a childhood criminal record, even for a relatively minor offence or misdemeanour, can have severe implications during childhood and beyond into adulthood; this can affect an individual's education, employment and other prospects for years to come".

That is the wrong that I hope that the Bill moved by the noble Lord, Lord Ramsbotham, begins to right, and I look forward to a positive response from the Minister.

1.19 pm

Lord Carlile of Berriew (Non-Afl): My Lords, I start by saying how strongly I support the Bill proposed by the noble Lord, Lord Ramsbotham, who has built up an enormous wealth of knowledge about the penal system since he first became involved in it as Chief Inspector of Prisons, and we listen to him with great respect.

Your Lordships will not be surprised to hear me say, after the speech that we have just heard, that it is a great pleasure to follow my noble friend Lord McNally, albeit from this distance, rather than sitting next to him these days. Both from the Government Front Bench during the coalition and in his very distinguished period as chair of the Youth Justice Board, he has made an immense contribution. The Youth Justice Board has done a remarkable job in recent years, particularly in helping to reduce the number of young people held in custody.

If I have a slightly adverse comment about the Bill it is that, for my taste, it goes nothing like far enough. I do not believe that there is any really convincing evidence that using criminal records to prevent people obtaining perfectly ordinary jobs after a conviction that comes somewhere in the middle of the criminal calendar does anything other than send them back to prison. My view is that we should be very radical about these matters. There is, of course, cross-party support for being very radical about these matters, and I respectfully remind the noble and learned Lord who will reply to this debate of the contribution made by Michael Gove on these matters. It may be dangerous to cite Michael Gove these days as an argument ad majorem on almost any issue, but it has to be said in a debate like this that Michael Gove showed remarkable commitment to reforming the youth justice system. I believe that Michael Gove and Charlie Taylor, who has already been mentioned, and who produced his excellent report, were committed at the very least to the kinds of proposals that we are hearing now. I hope that the new Lord Chancellor will, within a short time, see that she, too, should support this agenda.

I want to say a few words about youth justice. As has already been mentioned, I had the privilege of chairing an unofficial, all-party parliamentarians group that reported on the youth courts system in June 2014. The group had as one of its members a then Back-Bencher who is now the Solicitor-General, Robert Buckland. As a committed Conservative of long standing, he was as enthusiastic as anybody about the changes that we were suggesting. "Treating children as children" should be a mantra that we keep repeating; it means a great deal more than some similar mantras that we have been hearing in recent times in the political agenda.

I recall in particular one instance, when I was a Member of the other place between 1983 and 1997, a woman who was a teacher came to see me one day at a constituency surgery. She was having a successful career as a teacher, and it was really time for her to move on and look at becoming a head of department in another school. She had a conviction for possession of cannabis while at university for which she had been fined £25. I should say that I do not, but I would not mind betting that quite a few Members of your Lordships' House of a certain age were fined £20 or £30 for possession of cannabis. I see a few nods around the House, but I shall not name the nodders. She was prevented from obtaining that new job because, when the choice came between her and another person of equal merit, it was that conviction that prevented her obtaining her promotion—she told me so because she had been told so. It seems to me ludicrous that that should still obtain today. She was a person who was not going to get into trouble again; the fact that she did not obtain the job as head of department meant that she would carry on working in her present job—but there are people who are prevented from obtaining employment who, because of a criminal record obtained when they were very young, do not obtain a new job and go on to commit crime and walk round and round and round in that terrible revolving door that is the entrance to a prison.

As we have, alarmingly, been hearing this week, we see in prisons all the worst aspects of a criminal justice system that is built on punishment. Of course there are people who should be locked up, but when I was a young barrister, nearly half a century ago, I was told never to use the word "punishment" in a court room.

Now it is used all the time. We are losing integrity by that approach to the criminal justice system. The Bill makes proportionate provisions that would make a significant, if not complete, contribution to people whose lives have started badly but whose potential can be unlocked.

1.25 pm

The Earl of Listowel (CB): My Lords, it is a great privilege to follow my noble friend Lord Carlile. Thanks to the report of his important inquiry, we are now beginning to see solicitors and barristers in juvenile courts being trained to work with those clients. For many years now we have sought to ensure that professionals in courts understand child development and the vulnerability of their clients. I pay tribute to the noble Lord for his great achievement.

I warmly welcome this Bill, in the name of the noble Lord, Lord Ramsbotham, and particularly the attention it focuses on dealing with the criminal records of young people in a more sensitive way. I stress to the Minister that I hope the Government will look at the criteria for 18 year-olds, particularly as they affect young people from care, who are vastly overrepresented in the juvenile secure estate. The review by the noble Lord, Lord Laming, recognised that far too often in the past we failed to avoid criminalising these young people. In order that they may have a better go at life, and that we can do better for them, I hope the Minister will be prepared to look at these young people in particular.

Many of these young people will become mothers and fathers themselves. Many will have had a very poor start and I am sure we would all want them to have employment and a home to give stability to their children. I attended a National Grid Transco award ceremony where a father who had stuck in employment received an award. It was a moving moment to see his very young child and partner there to celebrate his achievement. I thank the noble Lord, Lord McNally, for his kind comments. His contribution was, as always, humane, pragmatic and moving. I hope the Minister will pay great attention to his final words in particular. I am grateful to him for his work in heading the Youth Justice Board. It has been particularly difficult because the board has been so successful at reducing the number of children in custody. We are now left with about 1,000 children who are often very troubled and very troubling. The noble Lord has a great and challenging portfolio and he has done a very good job in managing it.

The Bill is timely, at a time when the Prime Minister has recognised that so many people and families in this country have been left behind. Austerity highlights this, but it is a historic problem. We have seen the closure of children's centres—which are vital for dealing with social disadvantage and for social mobility—and youth services, which are vital for reducing offending. There is a housing crisis; we are approaching the high levels of 2003, with many families staying longer in bed and breakfast than they should do. This affects the mental health of children in those families and their access to education and friends. Child and adolescent mental health services are struggling, having been the Cinderella for a long time, and many libraries have been closed.

Childhood in Britain today is a challenging experience for many young people. One in five will grow up without a father in the home. This is difficult for boys and particularly difficult for girls. They have access to social media. As they become adolescents, they become far more interested in their peers than adults, and they can find all the worst examples of behaviour very easily on the internet. Parents are often torn between their work and their family. There is a growing awareness of the difficulties of adolescence and of the impulsiveness that I think we all recognise. Now the doubting Thomases can look at a brain scan and see why young people can be so impulsive.

I have talked a little about the care experience. There are still many shortcomings in the care system, despite very welcome work by many Governments. Half of young people and children in custody have been in care, as have a quarter of adults. The specialist mental health services for looked-after children have been cut. Foster carers talk of the difficulty of accessing social workers for support. Children's homes still have very low-qualified staff compared with those on the continent and care leavers receive patchy support.

I will end on a hopeful note. Thanks to the work of Minister Timpson and the noble Lord, Lord Nash, in this House, we are seeing progress. The latest Children and Social Work Bill introduces a new covenant to offer better support to care leavers. I mentioned the National Grid, and Timpson has been mentioned. The Technical and Further Education Bill will provide better vocational options for young people. Much good work is being done. This timely Bill will build on that good work and ensure that 18 year-olds who started life badly and have often had very poor support get a better chance in life so that they can get a job and a home and be good mothers and fathers to their own children. We can break the cycle that is behind this issue. I look forward to the Minister's response.

1.31 pm

Lord Dholakia (LD): My Lords, I add my support for this Bill introduced by the noble Lord, Lord Ramsbotham.

I have made two previous attempts to reform the Rehabilitation of Offenders Act that ultimately received the support of the coalition Government. It is for this reason that I want to put on record my thanks to the noble Lord, Lord McNally, who is now the chairman of the Youth Justice Board. I endorse what the noble Earl, Lord Listowel, said—namely, that this is probably one of the most successful agencies operating in the criminal justice field today. I also add my thanks to the former Justice Minister, Kenneth Clarke, who was the Secretary of State at the time, for the support that he gave to my measures.

The impact of these measures has helped to shape the lives of thousands of people by directing them away from the criminal justice process. The Bill seeks to extend the protection which the Rehabilitation of Offenders Act provides to former offenders who have served sentences of over four years but have left crime behind them and stayed out of trouble for periods of eight years or more—a long time.

[LORD DHOLAKIA]

The Rehabilitation of Offenders Act 1974 provided that, after specified rehabilitation periods, ex-offenders do not have to declare spent convictions when they apply for jobs. The Act does not apply to people applying for jobs in sensitive areas of work such as criminal justice agencies, financial institutions and work with young people or vulnerable adults.

Initially, the Act applied only to offenders serving sentences of up to two and a half years. However, following my introduction of a series of Private Members' Bills to reform the Act, the coalition Government agreed to extend the Act to include offenders who have served sentences of four years or less. Even now, however, many genuinely reformed ex-offenders can never benefit from the Act. More than 7,000 people a year are given sentences of over four years. At present they can never be rehabilitated for the purposes of the Act, however much they do to change their ways and over however long a period. Our provisions are still notably less generous than the rules which apply in many European nations—a point well made by my noble friend Lord McNally. Most European countries typically apply rehabilitation periods to sentences that are longer than four years, and their rehabilitation periods are often significantly shorter than ours.

Since the Act was implemented, sentence lengths in this country have significantly increased. Many offenders who would have received sentences of four years or less in 1974 are receiving sentences of five, six or seven years today. This means that many offenders who would previously have been helped by the Act now find that their offences will never become spent during the whole of their lifetime.

The buffer periods which are proposed in the noble Lord's Bill would begin after the sentence was completed—including any post-release supervision. The offender would then have to remain crime-free for a buffer period of four years for custodial sentences of four years or more. This would mean that those benefiting from the Bill would have to avoid crime for at least eight years, and in some cases for a much longer period, before the provisions applied to them.

The new provisions would not apply to jobs in sensitive occupations, as I mentioned earlier. However, the provisions of the Bill would further reduce the scope for unfair discrimination against ex-offenders in the job market. Regrettably, such discrimination is still widespread. Surveys of ex-offenders in Nacro projects—I declare my interest as president of that organisation—have shown that 60% have been explicitly refused a job because of their criminal record.

Of course, it is sometimes reasonable to refuse an ex-offender a job because of his record. For example, obviously we must bar offenders with a history of offences against children from working with children. We should bar offenders with a history of offences against elderly people from work caring for elderly people. The Bill would not apply to cases such as these, which are covered by the exceptions to the Act. However, in many cases employers turn down applicants because of offences that have no relevance to the jobs for which they are applying. Unfortunately, the scope for discrimination against ex-offenders is wide, because decisions to employ or refuse people jobs are not made at the top of companies; they are made by a large number of individual managers and personnel staff who usually have had no specific training in how to deal with applications from people with criminal records.

Unfair discrimination against ex-offenders is wrong in principle, because it imposes an additional illegitimate penalty of refusal of employment on people who have already served the judicially ordered punishment for their crime. It also reduces public safety, because an ex-offender's risk of reoffending is reduced by between a third and a half if he or she gets and keeps a job. The whole community benefits when offending is reduced—and reformed offenders are also helped to avoid returning to wasting their lives in criminal activities.

I conclude by saying that the Bill would enable more people with criminal records to start again with a clean slate after a substantial number of years free of criminal activity. This is a worthy aim, and I am delighted to commend it and to support the Bill.

1.37 pm

Lord Berkeley of Knighton (CB): My Lords, as a past trustee for many years of the Koestler Trust, which puts the arts into prisons and encourages prisoners to take up music, painting and writing, I support my noble friend Lord Ramsbotham and his important Rehabilitation of Offenders (Amendment) Bill.

One of the most telling results of the work of the Koestler Trust is the bestowal of the gift of hope, the possibility of redemption and the extinguishing of stigma—so, too, with the effects of the "spent" system. We heard yesterday of the appalling rise in the number of suicides in our prisons and we constantly hear about overcrowding and understaffing leading to some prisoners spending 23 hours out of 24 in their cells, denied proper exercise and time in the open air and natural light. These are not statistics of which a civilised society can be proud.

Therefore, while a Conservative Government may well feel that they are pledged to send out a message of strict punishment for criminals, they are in a spot, because they are running out of places to put them. Far better, surely, to take a lead from Norway, where prison is avoided wherever possible and an enormous emphasis on creative rehabilitation has led to a 20% rate of reoffending, as opposed to 60% here, for those with short-term prison sentences, and 70% in America.

Hope can be achieved in a number of ways, but certainly the ability to feel that a debt to society has been paid, to wipe clean a slate and to be rewarded by having an offence and sentence regarded as spent is a vital part of rehabilitation, especially in the young, whose youthful indiscretions might otherwise permanently blight adulthood. I sense all round your Lordships' House particular concern for this aspect of imprisonment and children.

Artistic endeavour and the prospect of earning respect through good behaviour are linked, and both lead to a more cohesive society inside and outside prison. Freud described creativity as an extension of fantasy, and fantasy as a way of transcending the travails of reality. Furthermore, psychologists such as Viktor Frankl have demonstrated how in, for example,

the concentration camps in the Second World War inmates who were able to conjure up a future—that is the important point—through writing, composing or painting had a greater chance of survival. I am not, of course, comparing our prisons to terrible places such as Auschwitz but I think that some of the things that we have learned from—if I may put it this way—humanity in extremis about existential thought and about hope provide useful lessons from which we should and must learn.

Surely it is vital and an attractive prospect for the Government to reduce the pressure in prisons by rewarding those who demonstrate good behaviour and a desire to move on in life. It is not a soft option but common sense to seek to foster a more redemptive criminal justice system.

1.42 pm

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I rise with some trepidation among the experts taking part in this debate. I thank the noble Lord, Lord Ramsbotham, for introducing this important Bill.

The process of the rehabilitation of offenders upon completion of a sentence has a dual purpose. The Rehabilitation of Offenders Act serves as an extension to custodial, monetary or community sentences by mandating ex-offenders to inform employers and voluntary organisations, when asked—usually during the application process for employment—whether they have any unspent convictions.

For many who have entered the criminal justice system, the Act also provides an opportunity to be relieved of the obligation to declare such information after fixed periods of time. This protection not only incentivises the ex-offender, as we have heard, to remain on the right side of the law; it also provides them with the certain knowledge that, at some point, they will no longer have to identify themselves as a criminal.

Notwithstanding the exceptions for very serious crimes, where offences are never spent, or environments where public safety is paramount and even spent convictions must be disclosed, the Rehabilitation of Offenders Act is a ray of hope for anyone seeking to make more productive life choices than those of their past. This is extremely important in helping them to reconnect with their families, where their term in imprisonment has caused rifts and stresses, especially where children are concerned. Knowing that they will not always have to carry the stigma but can move forward can be a life saver.

The existing Rehabilitation of Offenders Act provides no opportunity for an ex-offender's sentence to be spent if a custodial sentence of four years or more is imposed. Although it is widely accepted that custodial sentences are reserved for more serious crimes, it must be said that many offenders in this category are left with little option when any hope of gaining employment is taken away from them.

The 2013 Ministry of Justice analysis of the impact of employment on reoffending following release from custody identified a marked reduction in reoffending when offenders entered employment. They had a job for which they were paid and were, therefore, able to support accommodation and a home—all essential to well-being and self-esteem. When able to maintain employment, the reoffending rate dropped dramatically. Reoffending rates for prisoners released after at least a year in prison dropped from almost 70% to 32% when they were able to maintain employment.

For low-level offenders, the existing Act serves merely as an extension to their sentence. Can you imagine that anyone sentenced to four years in custody for a serious assault at the age of 18 would still have to declare that conviction well into their 60s, even if this was their only custodial sentence? As the noble Lord, Lord Carlile of Berriew, mentioned, at 18, many of us were very different people from those sitting in the Chamber today. I am not suggesting that we were offenders, but we will have taken wrong turnings at some time. We have been lucky enough to move on.

Experience shows that the existing Act will not prevent the dishonest from lying to gain employment. However, it impedes the progress of those who could otherwise lead progressive and law-abiding lives, contributing to the economy through gainful employment. The reduction of the buffer period in the proposed Bill, during which convictions remain unspent, does not reduce the sentence or access to training and support services, neither does it provide an opportunity to wipe the slate clean. The reductions detailed in this Bill will give ex-offenders the opportunity to apply for jobs sooner, earn a wage earlier and pay their own way without the justifiable fear of rejection because of poor life choices.

The criminal justice system in the UK seeks to strike a balance at a time when budgets are increasingly tighter and it costs £37,000 to keep one person in prison for a year. The Government should be making use of all available tools to reduce reoffending and encourage ex-offenders to make better choices for themselves, their families and the wider community. Although I would never argue against the delivery of justice and the provision of security and protection from the most dangerous individuals, we must also recognise that the entire notion of modern, balanced, restorative justice is built on the belief that an individual has the capacity to rehabilitate, to learn to make positive life choices and to become a productive, contributing member of society. I welcome this Bill and sincerely hope that it will eventually pass all its stages and become law.

1.47 pm

Baroness Chakrabarti (Lab): My Lords, my noble friends and colleagues are far too kind in giving me this opportunity to respond to a debate in which I think I have agreed with every word that has been spoken from across the House. The debate has been particularly pointed for both the humanity and logic in the contributions from all sides. It is always a particular privilege to listen to the noble Lord, Lord Ramsbotham, on any issue relating to prison reform and rehabilitation more generally. I must confess that when I was a child, the name Rambo conjured a rather different figure—a bloodthirsty cinema character played by Sylvester Stallone. Years later, when I entered the law, then the Home Office and finally a human rights NGO, the name Rambo was often whispered. I came to realise that it was the noble Lord, Lord Ramsbotham, to whom everyone referred. He has an incredible record of holding successive Governments to account on

[Baroness Chakrabarti]
urgent issues—becoming increasingly urgent, I might add—in our penal system. It is in this knowledge that I completely support from this side his call for a Second Reading of this important Bill and everything he is trying to achieve by bringing it forward.

As we have heard, the Bill seeks to reduce rehabilitation periods and is one aspect of vital reform that is necessary to the now completely outdated 1974 Act. Despite commitments from successive Governments to push through reform in this area—we heard about the excellent *Breaking the Circle* report, produced by the Labour Government in 2002, to which the noble Lord referred in his introduction—we have seen only incremental changes over the years. That Act is now completely inconsistent with contemporary sentencing practice. The result is that, far from allowing reformed individuals the second chance that is promised in the Act, its shortcomings leave many excluded from any prospect of rehabilitation and meaningful employment after they have completed their sentences.

Under the current legislation, as we have heard, the rehabilitation periods—in truth the disclosure periods—are overlong and not based on any real evidence. For those serving sentences of over four years, convictions can never be spent. Individuals are therefore forced to live with the shadow of their convictions, through a lifetime of disclosure and without the prospect of review. In addition, the legal regime relating to criminal record exposure, as laid out in the 1974 Act, is inclusive of children. Children, who find themselves exempt under this Act from the presumption that their spent sentence will not be disclosed, face a very uncertain future of indefinite disclosure, alienated from opportunities in education, employment and housing. As we heard from the noble Lord, Lord Dholakia, sentencing inflation over the years has changed and weakened the efficacy of the original 1974 Act regime.

In terms of non-disclosure of convictions, rehabilitation is just one part of a system that is supposed to serve those individuals and the general public. It is an essential tool in reducing crime and ensuring public safety. For our criminal justice system to be effective, it must be reformed in the round. We face a crisis in our prisons. Cuts to public spending under this Government, I am sorry to say, have been at the expense of prison security and public safety. Currently, over 84,000 prisoners are held in just 118 prisons, 75 of which are overcrowded. These 118 prisons are underresourced, understaffed and increasingly, dangerous places of violence. The Secretary of State herself has admitted that rates of violence and self-harm have increased significantly over the past five years, with 6,000 assaults on staff and 105 self-inflicted deaths in the 12 months leading up to June 2016. Since then, we have seen riots in six prisons across the country. It is not surprising in this context that our prisons are failing to deliver rehabilitation and, alongside a privatised probation service, are failing to reduce reoffending.

Against that backdrop, I share the noble Lord's frustration with the much-anticipated White Paper, *Prison Safety and Reform*, published in November. Far from being,

"a blueprint for the biggest overhaul of our prisons in a generation",

as promised, it lays down only sketchy policy objectives, very little guidance on implementation and even less on cost. The debate today takes place in this wider context and I urge the Government to respond to this Bill. I understand that the noble Lord, Lord Ramsbotham, intends to initiate a more substantial, cross-departmental review, beginning with criminal records disclosure and ending with the criminal justice system as a whole.

Finally, I commend the noble Lord, Lord Ramsbotham, for his perseverance and courage in bringing this issue back again and again. Yes, ultimately, this is an issue of human rights, but it is also one of sound public policy. He has dedicated so much of his working life to this and I hope to continue to dedicate mine in the same way. I look forward to making contributions to this House and to his campaign.

1.55 pm

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I thank the noble Lord, Lord Ramsbotham, for bringing this matter back for debate in the House today and congratulate the noble Baroness, Lady Chakrabarti, on what I think is her first contribution to a Bill before this House. The Government share the noble Lord's support for individuals with criminal records who wish to turn their lives around, and securing a job is often the first step on that journey. The Rehabilitation of Offenders Act 1974 exists primarily to support the rehabilitation into employment of reformed offenders who have stayed on the right side of the law.

Perhaps I may provide a little background to the 1974 Act and how it can support ex-offenders. Under the Act, following a specified period of time which varies according to the disposal administered or sentence passed, most convictions resulting in custodial sentences of up to and including four years become spent. Where a conviction has become spent, the offender is treated as rehabilitated in respect of that offence and is not obliged to declare it for most purposes. This could include when applying for employment, but also when applying for insurance cover or a bank loan. However, the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 lists areas of activity and proceedings which are exceptions to the 1974 Act. This means that the employer or some other relevant body is entitled to ask for and take into account certain details of a person's spent cautions and convictions. These activities are usually concerned with working with children or other people in vulnerable circumstances, or where sensitive information is handled and there is a risk to the public of an abuse of trust. For example, the exceptions order covers teachers, prison staff, healthcare professionals and employees of the Crown Prosecution Service.

Where an occupation is listed on the exceptions order, an employer is eligible for a standard or enhanced Disclosure and Barring Service check that will contain details of certain spent and unspent convictions for the individual in question. Such DBS checks, as they are known, fall under the responsibilities of the Home Office. However, I would like to respond to certain observations made by the noble Lord, Lord Ramsbotham. Thorough guidance on the DBS application process, eligibility for checks, and the disputes mechanism are available on the DBS website. It also includes a new

electronic eligibility tool which can help individuals to check whether a particular role is eligible for a DBS check, so that information is publicly available. The DBS checks are submitted via a registered body which is responsible for confirming that a particular role is eligible for a DBS check, and a statutory code of practice is already in place setting out the obligations that apply to those registered bodies. Should an applicant feel that they have been asked to undertake a DBS check in relation to a role that is not eligible, they can ask the DBS to investigate it. The DBS provides support and guidance for registered bodies and will take steps to suspend, and where necessary cancel, registered bodies that do not comply with the code of practice. So the DBS seeks to assure people that registered bodies are compliant with the existing code of practice.

The noble Baroness, Lady Chakrabarti, referred to the 1974 Act as outdated but as the noble Lord, Lord McNally, pointed out, it was in fact reformed and amended by the rehabilitation provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which came into force in March 2014. As a consequence, a conviction resulting in a custodial sentence of four years or less, unless it is a public protection sentence, may now become spent. Previously, only convictions resulting in custodial sentences of 13 months or less could become spent, so a material change has been made. At the same time the coalition Government also reduced most rehabilitation periods. The present Government believe that these reforms are proportionate and that we have struck the correct balance between protecting the public and helping ex-offenders to put their criminal pasts behind them.

I turn to the specific proposals the noble Lord included in the Bill. First, we do not consider the proposals to amend the rehabilitation periods for offences necessary. It does not appear that the proposed rehabilitation periods take account of the 2014 reforms I just mentioned. As such, the Bill attempts to amend repealed legislation.

The Government have also introduced additional reforms to help improve the opportunities available to those with criminal records. In response to a Court of Appeal judgment in May 2013 we amended the exceptions order to the Act to enable old and minor convictions, cautions, reprimands and warnings to be filtered so that they do not automatically appear on a criminal record certificate. It remains the case that cautions and convictions for specified sexual and violent offences, and certain other offences relating to safeguarding vulnerable people, continue to be subject to disclosure, as do the most serious convictions for any offence that resulted in custodial sentences.

For other non-specified offences, however, cautions received as an adult do not need to be disclosed after a period of six years; for a conviction it is 11 years. In other words they are "filtered" out from the relevant certificates. This is dependent on the offence being the only conviction on an individual's record. This addresses a point made by the noble Baroness, Lady Bakewell, on someone committing an offence in their youth and then finding at the age of 60 that this is necessarily disclosed. There is a filtering policy and process in place that means that such a minor offence that she alluded to cannot be taken into account by an employer. These periods are halved when the individual concerned was aged under 18 years at the time of the relevant offence. Again, youth offending is addressed in that context.

The second area addressed by the noble Lord's Bill is the specific rehabilitation periods. The Bill would allow community orders to become spent after 12 months or, in the case of young offenders, six months. Such orders may last for up to three years, so this could result in many such orders becoming spent before they have been served. I am sure that was the intention. It may be that the intention is to apply these periods after the relevant period of three years has expired. Again, there is an issue there. Community orders are available for almost all imprisonable offences—obviously in appropriate cases—and it may not always be appropriate for offences resulting in community disposals to become non-disclosable as quickly as the Bill suggests.

As I mentioned, the Government have recently reformed this legislation. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 introduced reforms that commenced in 2014. The Government recognised in the interim that certain forms of sentencing practice had become more severe, as suggested by the noble Baroness, Lady Chakrabarti, and that as a consequence fewer ex-offenders would benefit from the original provisions of the 1974 Act. That is why the revised rehabilitation periods take account of the punitive weight of the disposal, and hence the likely seriousness of the offending. They also take account of the reoffending data, which show the length of time for which people are most at risk of reoffending. We consider that those amendments, which were accepted by Parliament, bring about the necessary proportionality to the existing legislation.

Thirdly, the noble Lord's Bill seeks to allow determinate custodial sentences of any length to become spent. I recognise that he would like the current legislation to go further by enabling determinate custodial sentences of any length to become spent, but the Government consider that the present amendments to the Act that came into force in 2014 achieve the correct balance between rehabilitation of offenders and public protection. This is a two-sided coin and these issues have to be balanced. We do not feel there is a case for the law to go further at this stage.

Reference is also made in the Bill to the service justice system. Officials in the Ministry of Defence have highlighted a number of inaccuracies in the draft Bill from an Armed Forces perspective. There are out-of-date references to the service justice system, in that the Bill refers to the Army Act 1955, the RAF Act 1955 and the Navy Discipline Act 1975.

Lord Ramsbotham: Before the Minister goes on, I mentioned that I had met with the noble Earl, Lord Howe, and discussed this, so I know that they are there. They were not corrected by me but I know what they are.

Lord Keen of Elie: I am obliged that the noble Lord knows what they are; I wanted to advise the rest of the House, since other noble Lords may not be as familiar with these matters as the noble Lord has become

[Lord Keen of Elie]
following his discussions with my noble friend Lord Howe. I am concerned with the underlying thrust of the noble Lord's Bill, not with matters of minor detail, and I quite appreciate that in the context of a Private Member's Bill it may often be of assistance to have discussions about how apparently repealed legislation can be removed from a Bill and the Bill improved. I appreciate that. I am not attempting to make some ad hominem observation or criticism of the noble Lord at all; I just want to underline that the proposals made regarding the Armed Forces are skewed.

The point I was coming to is that the Armed Forces Act 2006 removed many forms of disposal that were previously used by the Armed Forces. In fact, the reforms to the Rehabilitation of Offenders Act in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 have been adopted by the Armed Forces, so we have the same issues arising both for the Armed Forces and elsewhere.

In summary, the Government understand the noble Lord's concerns and we are, of course, committed to helping ex-offenders who wish to make a fresh start and put their criminal history behind them. We are desperately anxious to ensure that people do not simply leave the prison gate one day and return another. Despite this, we do not support the noble Lord's Bill, given the reasons I have already outlined. I note the noble Lord's views, I understand them and I would welcome the opportunity to engage further with him about how we can increase the support that is available to ex-offenders. We have already made some progress in this area.

I acknowledge that these matters are all interconnected. Rehabilitation, disclosure, opportunity for education within prison, opportunity for employment as people go through the gate from prison—all these things are linked. Since 2016, we have been running a campaign to encourage more businesses to provide training and work opportunities for offenders and ex-offenders. This has been carried out in close collaboration with the Department for Work and Pensions See Potential campaign. The noble Lord, Lord McNally, cited a number of instances where employers have come forward. This underlines the point made by the noble Lord, Lord Berkeley, that our prison system has to provide hope and opportunity, not just punishment.

The present campaign emphasises the general advantage to society of securing employment for ex-offenders and thereby reducing reoffending and unemployment. I have other examples, further to those mentioned by the noble Lord, Lord McNally. Amey, the large engineering firm, is now expressly training offenders and then recruiting ex-offenders into its workforce. Bounce Back is a construction training organisation that employs people on release from prison and, indeed, is now training them in construction skills during their period of imprisonment—albeit some prison governors have become slightly concerned at the sight of prisoners erecting scaffolding in the prison yard. It is important that such skills are made available. I understand the challenges on the present prison estate, which is why that, too, is being addressed at the present time. It is also why we have sought to give further responsibility to individual prison governors to determine how they take forward issues of prison education and prison education funding within their own institutions in order to secure the best outcomes.

It is our hope, now that the matter of education has moved from the Department for Education to the Ministry of Justice, that it can be expanded and improved within the prison estate. But, of course, expanding opportunity within the prison estate can be done only on the foundations of an improved prison estate itself. That is why the Government have made such a commitment to improving the physical prison estate in order to achieve greater and better results so far as recidivism is concerned, so far as opportunity is concerned and so far as the future lives of former offenders are concerned.

We are concerned to turn lives around and we do not wish to see them turned around and back to prison. We wish to see people given the opportunity for employment, given the opportunity for education and given the opportunity to change their lives. At this time we do not consider that the proposals of the Bill are appropriate. Nevertheless, I thank the noble Lord, and indeed all noble Lords, for their contributions to this debate.

2.10 pm

Lord Ramsbotham: My Lords, I thank all those who have taken part. In particular I thank the noble Baroness, Lady Chakrabarti, for her kind words, and welcome her to her first appearance on the Front Bench, which I should have done beforehand. Over the years I am sure that many of us came to welcome the briefs that were provided from Liberty when she was directing that organisation. We hope that that tradition will continue and we look forward to many contributions from her in her current position.

I have to say that I am extremely disappointed by the Minister's response. When I represented the Bill as having been in close contact with a number of organisations—particularly Unlock, of which I am president, which is the national association of ex-offenders and therefore in touch with the difficulties that they are experiencing day after day—they did not put their concerns about the Bill lightly. As I said, these organisations and many of the ex-offenders do not understand all the conditions. The Minister may have mentioned that the DBS had a website, and so on. How many of them have access to that? I also said that employers did not understand, which was why there were so many ineligible requests for disclosure being made by employers. I made a particular plea for a mechanism to deal with that ineligibility, which the Minister did not answer.

Lord Keen of Elie: With great respect to the noble Lord, I pointed out that applications for DBS checks have to be made through a registered body, and that those registered bodies are subject to a published code of practice.

Lord Ramsbotham: But I remind the Minister that that is not happening. Even though there is the possibility of prosecuting people for making wrong approaches, it has never happened because the DBS says that it is not an enforcement body. Therefore, there is something missing.

I am very glad for the support for my proposal around the House. What I am suggesting is that in the context of the White Paper, it would be sensible for the Government to look at all aspects of resettlement, including this one. My offer to the Minister is that all those who have raised problems on the outside are more than willing to take part in that process. I hope that their evidence will not be taken lightly, because it has been drawn up over many years. As the noble Lord, Lord McNally, said, the list in Section 139 of the Legal Aid, Sentencing and Punishment of Offenders Act, in response to the two consultations, *Breaking the Cycle* and *Breaking the Circle*, was all that the coalition Government could get through. There were many others—and, indeed, are many others—and some of them have been lying dormant since 2002. It is time that they were brought forward.

As I gave notice, I intend to table amendments in Committee. In the interim, I hope that the Minister will reconsider his rejection of what is on offer, because the issue is far too serious to be let go with the prospect of annual Bills and annual making progress on small points.

Bill read a second time and committed to Committee of the Whole House.

Divorce (Financial Provision) Bill [HL]

Second Reading

2.15 pm

Moved by ***Baroness Deech***

That the Bill be read a second time.

Baroness Deech (CB): My Lords, this is not the first time that this Bill has been before you, and I assure you that it will not be the last, for it or something similar, for there is a moral, legal and practical imperative for the Government to do something about this area of the law. Unlike the current law, which is widely disliked, criticised and out of date, this Bill would, above all, improve the lot of every child whose future needs are jeopardised by the waste of parental assets in fighting over money.

There has been much publicity recently about the alleged advantages of so-called no-fault divorce, but bitterness and mud-slinging cannot be eradicated from divorce. Mediation and reasonableness can be achieved only when the far more antagonistic and inflammatory law of financial provision and asset splitting is cleaned up. This is what the Bill will do. It is more urgent than ever because legal aid has been removed from this area of the law and there is no prospect of its restoration. Judges and self-representing litigants complain. The judges complain that they have to do the work of lawyers for the couple appearing before them without advocates and with little idea of the law, dragging out hearing times. The ex-spouses complain because they are thrown into a situation where there is no signpost to a fair outcome, at the most stressful time of their lives. They are expected to mediate and negotiate without any pointers. The Law Commission, which has called for reform, compared the current adjudications on maintenance to a bus driver who has been told to drive a bus but not been told where it is going.

The law has been developed by the judges over the last 40 years, almost as if the guiding statutory provision in the Matrimonial Causes Act 1973 did not exist. In all this time, it has not been thoroughly debated in Parliament, despite the enormous changes in society with same-sex marriage, women reaching equality in work and education, and profoundly different attitudes to divorce and the family. The judges have scrambled to keep up. They have tried manfully to do so, but the result of their swerving from one principle to another, as they carve up assets and income, has been to leave lawyers and divorcing couples less and less able to predict what might be a proper outcome for them. Stories abound about the different views of judges in different parts of the country. Their attitudes may well have been shaped in a different era and according to their own views of their marital roles.

The law that seeps through to the public and into the textbooks inevitably arises from big-money cases that go to the highest courts. These pontifications are not necessarily helpful to low-income families. I am not alone in blushing at the media stories of the divorcing wives of oligarchs who claim, and are awarded, for their alleged needs sums from their husbands such as £2.1 million per annum on travel; £83,000 per annum on cocktail dresses—a sum that would provide 19.7 million water purification tablets for Africa—and £39,000 per annum on watches, which is equivalent to funding a month's food for 1,695 malnourished children. Meanwhile, the ex-wives of low-income husbands have to struggle along as best they can. This is one of the reasons why the consideration of needs, as the Government will no doubt call for, is regressive and subjective.

This area of law desperately needs public and parliamentary input. Go to any of the blogs about this and see the misery of couples who have spent a fortune on settling and do not understand why their sense of fairness is disregarded. Read the many reports that have tried to reform this area, and you uncover an area of misery, wasteful expense and incomprehension.

The Law Commission reported on this area and backed prenuptial agreements. It said that after a few more years of work, it might end up with a formulaic system for the division of assets on divorce. In the meantime, the Family Justice Council has issued guidance running to 64 pages. The council is a group of family law professionals, not judges or members of the public. Its guidance is opaque and not binding, and it brings into question the role of Parliament. How can it be right in a democracy to leave guidance to unelected, non-judicial people who should be applying the law, not making it? What a statement it amounts to, in relation to the unsatisfactory condition of the law, that Parliament has apparently thrown up its hands in despair. Each year 100,000 children and twice as many adults are adversely affected by this. They call on the Government to do something. The current law has a reputation for putting people off getting married because it is so arbitrary.

At the crux of the issue is the value of judicial discretion in every case versus plain rules, as contained in the Bill. Our divorce judges are doing their best with care, generosity and sensitivity, but the result is uncertainty,

[Baroness Deech]
expense and unpredictability. The rule of law demands that the law be predictable and certain, all the more so when the Government have removed the prop of legal aid.

A couple of prominent family judges will no doubt say they are opposed to reforming the law to bring in clear and understandable firm rules, but they are the ones whose intricate judgments have aggravated what is already obsolete. Their preference for individual tailor-made solutions is unaffordable. Judicial objections amount to saying that there should be no Marks & Spencer because we all look better in a Savile Row suit tailored in the latest style. A senior judge wrote recently to warn of what he called,

"the crude and amateurish reform of the delicately calibrated law of financial provision following divorce, which is currently attracting some support in the House of Lords".

That is a very narcissistic comment. It is Parliament's job to make policy in the interests of the entire country. It is the judges' job to apply it, not to determine the legislation. That is a reminder of the separation of powers. There are also a few solicitors with a vested interest in no reform because their task of leading couples through the maze of the existing law is very well paid. Happily, the vastly experienced, outstanding family lawyer, the noble Baroness, Lady Shackleton, who is unable to be in her place this afternoon, is on side and wishes me to emphasise her wholehearted support.

What does the Bill say? It will provide that prenuptial agreements about what might happen to a couple's money on divorce and how needs arising from the marriage might be met will be binding, subject to the usual contractual rules. At the moment, we have the worst of both worlds. Judges have said that prenups can be binding, but they have applied so many conditions to their validity that couples now spend hundreds of thousands of pounds litigating over whether the prenup is binding, which defeats the purpose. Prenups will not undermine marriage. Those countries which have binding prenups have lower divorce rates than ours. Many a widowed or divorced older person has told me that they would like to marry their companion but fear to do so because if the second marriage ends in death or divorce, the assets from the first marriage which they wish to hand down to their children would end up in the ownership of the second spouse. Binding prenups would give them peace of mind and could also deal with the vexed issue of maintenance.

The substance of the Bill is this: it adopts a system which prevails in most of Europe, the US, and especially our neighbour, Scotland, called the division of post-marital assets. The presumption would be that a fair starting point is the equal division of all the property and pensions acquired by the couple after marriage. Assets owned before marriage, inheritances and gifts would remain in the possession of the owner and not be available for transfer. Thus in a short marriage there would be little to divide but in a long marriage, where the couple started with nothing, everything would be divisible. There is flexibility in the Bill to allow for the home to be retained for the use of, say, a mother with children still in education.

Fortunately, a few months ago a university researcher's review was published of the Scottish law on which this Bill is very closely modelled and which has been in operation for 30 years. The Scottish law was given the highest praise. The report was called *Built to Last* and its conclusion was that not a word of the Scottish law should be changed and that it had been,

"successful in achieving one of its aims which was to encourage parties to reach their own agreements about the financial and property consequences of divorce".

The report quotes an interviewee as saying:

"English law is broken and needs mending: but ours doesn't … generally speaking, it's a gem".

This is the gem the Bill puts before your Lordships and which the public deserve and need. Nor has there been a problem in Scotland with more divorced wives claiming state benefits: claims for ongoing maintenance are diminishing in England and Wales year by year and are nothing but an ongoing source of trouble.

Many noble Lords who are unable to be here this afternoon but are in support, such as the noble and learned Lord, Lord Mackay of Clashfern, say: "Why do the Government not get on with it? The Bill is so obviously sensible and sooner or later, it will be the law". I can only hazard a guess that successive Governments are scared of what they see as moral issues—although this law is more practical than moral.

Women want reform, for there is a growing number of wives who are better off than their husbands and resent, even more than men do, having to give what they see as a disproportionate amount of their hard-earned assets to the man who left them. The public desperately want new, clear law. Most people prefer the certainty of misery to the misery of uncertainty.

My proposed law combines autonomy with fairness. It will give divorcing wives entitlement and end the practice of treating them as supplicants for a discretionary allocation. It will protect the family business and the working wife. It has the potential to save millions in litigation costs. It will provide a good starting point for mediation and negotiation. It will restore some dignity, clarity and reasonableness to family law. The proposals are firmly based in the successful laws of other countries and on the reports of reform organisations here.

Divorce means divorce. The Bill will provide couples with a White Paper for a fair deal and a smooth transition to a single life. No more negotiations without a plan; no more hard exits. Will the Government recognise the problems and take action? I beg to move.

2.28 pm

Lord Kirkhope of Harrogate (Con): My Lords, first, I refer to my entry in the Members' register of interests as a practising lawyer—but not, I must emphasise to the noble Baroness who has just spoken, a divorce lawyer in recent times, so my vested interest does not extend to the things that she suggested a lot of lawyers might be thinking about in discussing this matter. I am here to urge some caution, based on my own experience, not only as a practising lawyer who has had contact with family law matters but also as a former Home Office Minister aware of the effect of legislation and the importance of considering it and sometimes protecting oneself from it.

This is a very interesting subject and we need just perhaps to be slightly historical—not hysterical, but historical. Before 1857, the whole issue of divorce was entirely in the hands of the Church and it was not until the Matrimonial Causes Act 1857 that it was possible to have divorce in the secular courts. Indeed, all the matters relating to financial provision and the like had to take a much lower position in the considerations that followed. It was not until 1937 that a further Matrimonial Causes Act was introduced, which in context allowed other grounds, and very strict grounds for adultery, to be used for the separation of parties in divorce actions.

I remember in 1969, when I was an articled clerk, the Divorce Reform Act. My old law lecturer, Bernard Passingham at Guildford, wrote the best book on the subject. We dealt with remaining divorces only on grounds of irretrievable breakdown, with no fault on either side—no fault in terms of the legislators, perhaps, but not necessarily reflected in the views of couples who were coming to divorce.

The Matrimonial Causes Act 1973, in which the noble Baroness, Lady Deech, wishes to repeal Section 25(2), is in my view an important piece of legislation, which I believe in general has been very successful. There are of course well-known cases where there have been areas of despair—concern that abuse has taken place and so on—but I still believe that the wideness and flexibility of that Act is its most important aspect, along with its consideration of the needs of a child or children to be most important. I fear that the proposals by the noble Baroness will to some extent take away the priority of our need to consider children.

In 2004 Lord Justice Thorpe, in a case called G v G, said that, using the width of discretion available to him under Section 25, the judge could balance conduct against the shortness of marriage, adding in a wife's contribution and essentially having flexibility in determining financial matters. Indeed the 2014 Law Commission, to which the noble Baroness has referred, made this statement in the context of the financial settlements:

> "The objective is, and should be, to enable the parties to make a transition to independence, in a way that takes account of the choices made within the marriage or civil partnership, its length, the parties' ongoing shared responsibilities (for example, for any children), the need for a home and the standard of living during the relationship. We think this is what, for the most part, the courts are doing anyway".

Despite concerns in some areas, I believe it is important that we maintain that flexibility. I therefore fear the rigidity of these proposals and the danger that the repeal of this part of that Act would not serve the purposes of giving extra flexibility.

I shall refer, if I may, to prenuptial agreements, which are also part of the noble Baroness's proposals. There are concerns regarding these agreements, which have grown in number extensively over the last few years. Yes, they are often a good idea, but it is important that we follow the terms that were referred to—there are other speakers in the Chamber today who will have much better knowledge of the Supreme Court than I do—in October 2010 in the case of Radmacher v Granatino, when it was said that prenuptial agreements are fine but there has to be a set of principles to have them drawn up in a proper manner if they are going to be upheld in the courts. That covered a number of things but it also included whether the terms of the agreement meet everyone's needs, including those of the children.

I come back to children in my remarks because I think that they are important. This is what worries me in scrutinising these proposals: we have to be sure that the priority of children remains. Nothing—no deals, no agreements—must get in the way of the consideration of children, who are the ones, despite the suffering of the parties themselves, who suffer the most in society. Our duty is to protect them.

2.34 pm

Lord Walker of Gestingthorpe (CB): My Lords, I strongly support the Bill. I shall be brief partly because time is limited but also because the noble Baroness, Lady Deech, has explained so clearly and cogently the case for her Bill. Having said that, I cannot resist making one comment on the interesting speech of the noble Lord, Lord Kirkhope of Harrogate.

The Bill that became the Matrimonial Causes Act 1857 was opposed in the other place by Mr Gladstone on the very proper ground that it discriminated against wives as compared with husbands as to the grounds for divorce. It was opposed by Bishop Wilberforce of Oxford in this House because he did not approve of divorce. The question of financial provision did not arise in 1857, because the property of every married woman, unless protected by equity, had vested in her husband on marriage. That continued to be the position until the Married Women's Property Act 1882.

Returning to the Bill, I shall be brief, but I emphasise the uncertainty of outcome under the present law. It depends on the exercise of a very wide judicial question, depending on a number of factors between which there is no hierarchy established by statute. Such a wide discretion is not, and cannot be, exercised in a uniform and predictable way. That has been confirmed in the latest reports from the Law Commission. It cites well-documented fieldwork which shows variation between different judges, different groups of courts and different regions of the country.

It is true that, from time to time, general guidance to judges has been given by the court of last resort. That is now the Supreme Court; before 2009, it was, of course, this House acting in its judicial capacity. Inevitably, the cases that go to the court of last resort, cases that are sufficiently robust in terms of money to stand two appeals, are very much the exception. They are the biggest of the so-called big money cases and are by no means typical of the problems of ordinary married couples.

As the noble Baroness, Lady Deech, said, civil legal aid is no longer available for divorce, except where children are concerned or in cases of domestic violence. The costs of legal advice and representation and court fees—which I emphasise—rise inexorably. The court's discretion as to how the costs are to be borne is a further uncertainty in the matter. Of course, the judge's discretion, both as to the order he makes and the order he makes on costs, must be exercised judicially, but judicial exercise of discretion still gives great room for unpredictable outcomes.

[Lord Walker of Gestingthorpe]

The financial outcome is so unpredictable in contested cases that it is hard—I would go so far as to say impossible—for judges to give confident advice on the outcome. That makes expensive contested proceedings more likely, because the parties cannot be advised sensibly what would be a proper settlement. Divorce is often traumatic enough without the whole family's resources being depleted by swingeing legal costs.

The Bill would authorise antenuptial settlements, subject to appropriate safeguards. There are appropriate safeguards, but I believe that the noble Baroness, Lady Deech, is of the view that it is desirable that those safeguards should not be too complicated or too many, because the more grounds there are for challenging an antenuptial settlement, the more there will again be expensive contested proceedings. In the absence of such agreement, it would introduce new rules similar to those which are working very well in Scotland. The new rules would limit judicial discretion and make the outcome more predictable, reducing the volume of contested proceedings. The principle is made very clear in the Bill that the needs and rights of children of the marriage will always, as before, continue to take priority. I commend the Bill to your Lordships' House.

2.39 pm

Lord Dykes (CB): My Lords, I must deliberately exercise great care after speeches by three considerable legal experts at the beginning of this debate. I speak very much as a layman—but declaring none the less a personal interest in having experienced divorce proceedings that ended in 2001. I have no complaint, by the way, about the proceedings, which were entirely satisfactory, but I noted even then, when there was a very low degree of contention and a high degree of amicability, the gradually amassing cost of the proceedings because of endless discussions of assets and other matters, which led the lawyers themselves to say that it was about time that we exercised control over the rise in the amounts of money involved. In this case, fortunately, there was no actual hardship or difficulty in those costs—none the less, that is one of the realities of these matters. Again, in the reverse sense, extra costs arise from the arbitrariness of different judges' deliberations—and I make no criticism of individual judges, as it is a very difficult job for them.

I congratulate the noble Baroness, Lady Deech, on introducing the Bill and wish her well with it. She herself was chairman of the Bar Standards Board from 2009 to 2014, so has considerable knowledge and legal expertise in all matters of law and not just in divorce.

We have reached a crucial stage whereby the haphazard nature of the press reports about proceedings, the huge amounts of money involved, and lots of Sturm und Drang and drama mean that rationalisation and modernisation is long overdue. If you take the rising amounts of money, for all sorts of reasons, with the devastating blow of the removal of legal aid, you have a cocktail of real difficulties, which is unfair on modern society in Britain. I add my expression of support to what the noble Baroness said about the system in Scotland, where they provide a good example of moderate, sensible law-making in comparison, sometimes, with English or British law-making, in quite a variety of fields. But here again, too, the comments of people interviewed on the Scottish law and how it was working were extremely encouraging.

I was grateful for the excellent House of Lords briefing document on this Bill. I note that Resolution, an illustrious body that we often study very closely, commented on this issue, saying:

> "Divorce law relating to finances is complex and difficult to understand. Outcomes can be difficult to predict, even for legal professionals. Section 25 of the Matrimonial Causes Act 1973, which determines how money is divided up on divorce, has fundamentally remained unchanged for the last 40 years".

That is 40 years in a rapidly changing society—I think that that really is unacceptable. I hope that there will be enormous encouragement today, including, I hope, a positive response from the Minister when she comes to reply.

In one paragraph of the excellent briefing document from the sponsors and supporters of the Bill, I note the excellent summary, which describes the Bill and its qualities. It says that if the Bill is enacted, the result should be better opportunities for mediation, less need to go to court, reduced trauma for children—a very important point that the noble Lord, Lord Kirkhope, mentioned lower costs and an easier time for litigants in person and a fairer outcome, recognising partnership in marriage. For the first time, it would recognise equality of spouses, rather than subjecting their claims to the view taken by a judge. Above all, it would be the result of democratic debate in Parliament, and take account of public opinion and the need for certainty in law.

I hope that the noble Baroness, Lady Deech, and other supporters of the Bill in Committee will look closely at Clause 3, and the excellent points that she made on the quality of prenuptial agreements. Subsection (1)(d) needs to be made absolutely watertight in its description to avoid the kind of difficulties there have been in the past.

Over the years we have all heard the music hall jokes about marriage and divorce. I particularly like the very cynical New York joke which I heard some years ago: marriage is like a banquet where you start with the pudding and work backwards. In this case, we need to repair some of the damage in society that has come from divorces—sometimes they are needless, sometimes unavoidable. Sometimes people avoid marriage altogether for all sorts of modern reasons—no one can complain about that. I hope that this time there will be a more positive government response. We go through this rather sad process of knowledgeable Members of this House putting up extra Bills, particularly on Fridays. We then expect the inevitable government reaction that we heard twice today from the noble and learned Lord, Lord Keen of Elie, who was unable to accept any suggestions at all. I hope that the newly-appointed Minister on duty will be more positive in this case.

I first got into the House of Commons years ago. In 1972, although I was a PPS in Edward Heath's Government, I was still allowed to put forward a Private Member's Bill because I came number two in the ballot. I introduced a Bill to control and govern

the movement and parking of heavy juggernaut lorries which were becoming a menace in Britain at the time. It was pure "Yes Minister". Right at the beginning, a senior civil servant said that under no circumstances could they even begin to consider such an idiotic and ridiculous Bill. Nine weeks later, the same person phoned me to say: "Now that we have looked at the text again and have our own components to put in to your excellent Bill, we propose to proceed with it". They did so, and it became the Dykes Act governing the movement of heavy lorries. That was a sweeping change, and I would not expect a drama of that magnitude to take place today. None the less, the Bill deserves the support, not just of the House but of the Government.

2.47 pm

Lord Carlile of Berriew (Non-Afl): My Lords, I will speak briefly in support of the Bill in the name of my noble friend Lady Deech, who has committed a great deal of endeavour, energy and her formidable intellect to devising it. Very good reasons for supporting the Bill have been given by other noble Lords and, especially, by my noble friend in her opening speech. As my noble friend Lord Dykes has just said, the issue is the depletion of assets. We should think about the assets of people of moderate or nearly no wealth. For divorcing couples of that kind, the loss of assets in costs means that there is often very little left, much to the prejudice of the children. I agree with the noble Lord, Lord Kirkhope, that they are an important part of the picture.

When I was a young barrister—though not for the last 30 or 35 years—I used to do divorce cases. In those days, there was actually a degree of certainty about the money. It was not fair, because there was what we called the two-thirds/one-third rule. I am sure your Lordships can guess who got the two-thirds and who got the one. However, at least there was certainty and very little argument over money in most cases. Also, in those days we did not have the huge oligarch cases on the regular basis that we see now. The celebrated cases then mostly involved Members of your Lordships' House. However, in those days we did not have any certainty about children. As a barrister, I was involved in some painful and distressing cases—and I do not distress easily in my professional role—about who should have what was then called custody and access to the children. In one case in which I appeared the father killed the two children a year after he received a settlement over them which he did not like. We have much more certainty today about arrangements for children. There are presumptions about natural parenthood which inform the courts and there are not such great battles over children, though I certainly do not suggest that there are none.

Now it is the other way round. As the noble and learned Lord, Lord Walker, illustrated, one of the problems is that the appeal cases—the precedents which lawyers read and on which they advise their clients—often involve vast sums of money and have no real relationship to the ordinary divorcing couple. This Bill seeks to address the position of the ordinary divorcing couple by inserting some certainties into the picture, which I applaud.

The Bill also seeks to give particular status to prenuptial settlements. There is a degree of dislike among young people of prenuptial settlements as they suggest that they do not have absolute confidence in each other. When some of them are divorced years later, the suggestion is that they should have had less confidence in each other. If it is a true relationship, the creation of a prenuptial settlement should not break it asunder. If it does, it tells them something. Therefore, I do not think that we have anything to fear from prenuptial or, indeed, post-nuptial settlements as long as they are conducted fairly. This deliciously short Bill puts those principles into statutory form and produces greater certainty for people who unfortunately, having married, find that they can no longer remain married to one another. Therefore, I hope that your Lordships will support my noble friend's Bill.

2.51 pm

Lord St John of Bletso (CB): My Lords, I join in warmly supporting my noble friend's Bill and her efforts to reform and bring more certainty to the financial provisions in Section 25 of the Matrimonial Causes Act 1973.

I was encouraged by the recent publication, just two Fridays ago on 13 January, of the report by the Ministry of Justice on the implementation of Law Commission proposals. I note that the Family Justice Council has developed and introduced financial guidance for separating couples and unrepresented litigants. I also note that the Ministry of Justice is working to develop an online tool, supported by formulae, to assist separating couples and clarify how to make financial arrangements on divorce. I had hoped that the publication would give a clearer commitment to legalise a binding form of prenuptial agreement. I hope that the Minister will give us some guidance on whether this may be forthcoming in the future.

I speak from a personal background of having specialised in family law in South Africa, where I practised as an attorney under the Corpus Juris Civilis—Roman Dutch law—which is very similar to Scottish law, where antenuptial agreements are binding and where there is a clear framework for the determination of financial settlements. As all speakers have mentioned today, this Bill is to a large degree crafted on Scottish law. For that reason, I warmly support it as it is far more efficient, less expensive and less stressful for children.

Clearly, there is a need to provide clearly defined guidelines for divorcing couples and move away from the precedent of largely judge-made law, which bears little resemblance to the statute, which frankly is outdated. Even though the divorce rate continues to fall, almost a third of the 110,000 divorces in England and Wales every year go to court for financial orders. That overloads the divorce courts, causing lengthy delays, stress and, again, excessive costs. I entirely agree with my noble friend that long drawn-out divorces are highly detrimental to children. As my noble friend Lord Carlile mentioned, hard-earned family assets are often lost as a result of the litigation costs.

I therefore wholeheartedly support Clause 3, which makes pre-nuptial and post-nuptial agreements binding, as long as both parties receive independent legal advice

[Lord St John of Bletso]
and make full disclosure. I also agree that there is no evidence that marriage breakdown is encouraged by pre-nuptial or post-nuptial agreements. If enacted, an added benefit of the Bill would be to provide better opportunities for mediation, which we all support. I am grateful for the useful research note that we received from the Library, in which reference was made to the then Minister, the noble Lord, Lord Faulks, who expressed concerns in Committee on my noble friend's similar Bill that:

"The Government are not convinced that the certainty that the Bill and these amendments intend to provide would not come at too great a cost in rigidity".—[*Official Report*, 21/11/14; col. 629.]

I am sure that when the Bill, I hope, comes to Committee, there may be scope to amend Clause 5(1)(c), for example.

In conclusion, I congratulate my noble friend on her tenacity in promoting the Bill and wish it a speedy passage through your Lordships' House.

2.56 pm

Baroness Watkins of Tavistock (CB): My Lords, I support the Bill brought forward by my noble friend Lady Deech.

It is important to remember that no one enters a marriage expecting to get divorced. At the time of marriage most people are deeply in love, and the last thing on their mind is how to settle the division of assets during the emotionally charged process of a divorce. Therefore, to encourage pre-nuptial settlements seems an eminently sensible idea. Other noble Lords have outlined some of the challenges experienced by couples when trying to reach fair and just financial settlements for both parties. This is particularly difficult when one party does not wish to get divorced.

We now have non-binding *Guidance on "Financial Needs" on Divorce*, which was published in June 2016, but it remains complicated. My noble friend Lady Deech has argued that we have largely judge-made law, with the exercise of wide judicial discretion, which, though careful and sensitive, leads to unpredictability and uncertainty and often militates against mediation and out-of-court settlements. Legal aid is no longer available for this area of law and many parties, particularly those of lower means, are often left unrepresented, with no straightforward set of principles to assist them in dividing assets and income. This frequently results in long, drawn-out procedures, which are certainly costly in emotional terms, and which in turn can result in stress, not only for the two parties involved in the divorce but for any children who are involved, particularly if for financial reasons their two parents still have to live under the same roof. It should be noted that many organisations, including the Centre for Social Justice, have made the case for reform.

David Davis recently said in the other House in relation to the Brexit process—a form of divorce—that information to be provided in new legislation should be "straightforward". The Bill has just that merit: the man or woman in the street could easily understand the principles it contains. Many noble and learned Lords have spoken in this debate. I, of course, have no experience of the law but understand the aims of the Bill. To continue for a moment with the Brexit theme, the four nations of the UK will need to work more closely together, while maintaining their national identities and delegated powers. I have been involved in two company mergers, one in the NHS and the other in a housing association, and the principle of taking the best from each party to build the new organisations was adopted by both boards. In each case, this was successful. The Bill relies on the proven efficacy of Scottish jurisdiction, which would administer a simpler and more certain law in England and Wales—indeed, it has been described as a gem. I believe that adopting the Bill, which is largely modelled on Scottish legislation, to provide similar certainty in all marriages and civil partnerships in England and Wales would lead to advantages and be a positive benefit.

If the Bill is passed, it is likely to shorten the period of negotiation relating to financial matters during any divorce and result more quickly in stability for the families involved. It will reduce lengthy bitter discussions about the division of wealth and provide a swifter, straightforward approach to the financial division of assets in divorce. It may well also reduce some of the harmful effects of prolonged exposure to parental disharmony that some children experience—it will be no surprise to noble Lords that there is evidence that prolonged periods of parental argument can be extremely detrimental to children's mental health. I would hope that that would, in turn, reduce at least some of the anxiety and depression in young people in families where divorce is occurring. I therefore see nothing but merit in the Bill, the principles of which I fully support.

3.01 pm

Baroness Meacher (CB): My Lords, I strongly support the Bill of my noble friend Lady Deech. She set out the case for it in her usual eloquent and systematic way, and she has almost certainly said all that really needs to be said. I will take only a few minutes of the House's time to reinforce some of the points that she made.

I have been close to too many divorces which have tragically gone to court. The reason for the courts becoming involved has seemed to be, time and again, that each side has, perfectly reasonably, come to a completely different conclusion about their rights to their property. The Bill would greatly reduce the number of contested cases, as others have said, and that must be in everyone's interests—and most particularly in the interests of children, who inevitably suffer months, if not years, of instability that could be avoided. Also, importantly, these contested cases lead to much greater animosity between the parents than would otherwise be the case. There is absolutely no doubt in my mind and in the minds of most other people that really poor relationships between children's divorced parents are always far more detrimental than any financial settlement could compensate for.

Reform in this area has become more pressing as divorce has become more commonplace, as my noble friend Lady Deech pointed out. There are 110,000 divorces a year, involving about 500,000 people, including children. Help for those suffering individuals must surely be a priority. Our Prime Minister has said that her priority is to help ordinary people who are going through great difficulties in life. I cannot think of many people who are going through more difficulties in life than the children of a divorcing couple.

A major concern is the loss of legal aid to this area of the law and the growing number of people with modest means representing themselves in court—50,000 in 2013, as we know from the Library briefing. This, in the context of a lack of clarity in the law, leads to endless adjournments and delays as the litigants and judges struggle to find a way towards a solution. My noble friend referred to the careful and sensitive exercise of judicial discretion in these situations, and I think that that is perhaps the only point on which I might disagree with her. In my experience, judges in the lower courts struggle terribly to deal with the conflicting accounts and mountains of paper, and there is no question that on occasion they come to erroneous decisions. These then have to be sorted out in the appeal court—and, again, an appeal means yet more months of delay and yet more waiting around and uncertainty.

An important reform in this Bill is that prenuptial agreements would be binding on the conditions set out, as my noble friend Lady Deech made clear. In my view, this alone could achieve a significant reduction in cases reaching the courts, to the benefit of all.

I have to say I find it extremely difficult to understand the conclusion of the noble Lord, Lord Kirkhope, that somehow confusion and uncertainty are a help to the children involved.

The fact that a very similar law has been in place in Scotland for some years and is operating successfully simply reinforces the argument that the Bill should be given government time to reach the statute book. There is no need for a pilot and no need for concerns about unintended consequences; we know that the Bill would work.

At a time when government takes the views of the public exceptionally seriously, it is of note that, in this case, 72% of those asked in a YouGov poll supported the proposal that the courts should recognise prenuptial agreements. Perhaps the Minister would like to comment on the public support for such a reform and on whether the Government have a response to this that is different from their response to the Brexit vote.

3.05 pm

Lord Stone of Blackheath (Lab): My Lords, I rise for one minute to mention something personal in support of the Bill. My son, Daniel Stone, spent a lot of time and effort to qualify as a lawyer specialising in family law. After a few years of practice, with great courage and much regret, and after long conversations with myself, he decided to leave the profession. His reason was that he was upset and distressed to find that the divorce laws lacked compassion and fairness. It was too costly and complex a process, in which many people were unable to find satisfactory, equitable settlements. I support the noble Baroness, Lady Deech, and applaud her for bringing this Bill to the House so that we can begin to address these issues.

3.06 pm

Lord Kennedy of Southwark (Lab): My Lords, like other noble Lords, I congratulate the noble Baroness, Lady Deech, on bringing forward her Bill and securing a Second Reading. The Bill proposes to amend Section 25 of the Matrimonial Causes Act 1973 and replace it with a series of principles that would apply in the determination of applications for orders in divorce, including prenuptial and post-nuptial agreements.

I am not a lawyer, so I have come to the Bill as a lay person. I looked at what marriage is: it is, of course, an agreement by which two people enter into a certain legal relationship with each other that creates and imposes mutual rights and duties. However, when you look carefully, it is a contract—a very special contract—that comes into force if special formalities are observed and, apart from death, can be set aside or terminated only by a court of competent jurisdiction. People enter into this contract because they love each other, want to be with each other and want to make a life together, possibly with children.

Marriage as an institution is something that Members on these Benches fully support. We believe that it is one of the bedrocks of stable relationships and society. We are very proud on these Benches that we introduced civil partnerships for gay people some years ago, and that we fully supported the then coalition Government, in the last Parliament, when they decided to introduce equal marriage for gay people. We did that because we agreed with the Government that marriage is an important institution and that gay people have the right to be treated exactly the same, and to enjoy the same benefits and to face the same challenges in the society of which they are equal members. It is something that I very much wish was on the statute book in Northern Ireland.

I then looked at what exactly divorce means. It is, of course, the termination of a marital union and the cancelling and/or reorganising of the legal duties and responsibilities of marriage. I found it interesting that, with amendments over time, we are using an Act that, although ground-breaking at the time, came on to the statute book 44 years ago. That may not be long in terms of legislation, but divorce is a live issue affecting thousands of people every year, either as divorcing spouses or as their children. I reflected on how different the UK is today from 1973. On these Benches we welcome the Bill and believe that it is timely. I give my support to the Bill.

Clause 2 provides that either party subject to proceedings for divorce may apply to a court for an order in relation to matrimonial property only. Legislating on an approach to the division of assets would certainly provide greater certainty for separating couples, and we want to see some safeguard to make sure that the economically weaker spouse is protected.

Clause 3 would make prenuptial and post-nuptial agreements binding on the parties, subject to a number of exceptions and safeguards. Binding agreements could provide couples deciding to marry with the ability to plan with more certainty. I can see the argument that it would bring into full view the potential costs to each party, that significant money could be saved in lawyer and court costs and that it could take some of the hostility and bitterness out of the process for the divorcing parties.

I also understand that in many other jurisdictions, as we have heard, prenuptial and post-nuptial agreements are very common and that in many such cases they have much lower divorce rates. We should examine carefully the proposals and test the competing arguments

[Lord Kennedy of Southwark]
that on the one hand it would undermine marriage and on the other that it would strengthen it. Clauses 4 and 5 propose that the net value of the matrimonial property is shared fairly between the parties. The proposals seek to limit costly litigation by providing a process for asset division. They seek to remove or certainly limit the role that the court plays in deciding the appropriate division of assets and maintenance.

The Bill seeks to deal with important issues and to find solutions to situations that are far from satisfactory at present. I have highlighted some of those issues. I believe that if the Government are fair and reasonable, the Bill could make progress through your Lordships' House. As an Opposition, we are happy to support it. I should say that I am not a lawyer and I have no interest in the Bill. I am happily married and have never been divorced—and I am not looking to get divorced. I was getting a few funny looks this week when I sat at the kitchen table reading papers on divorce.

In closing, I bring to noble Lords' attention that, although it is not proposed here, there is nothing in the rules of the House to prevent the Bill going to a Grand Committee in the Moses Room rather than coming to the Floor of the House and disappearing, never to be seen again. As the noble Lord, Lord Carlisle, said in an earlier debate, many Private Members' Bills do a lot of good and we need to find a way to move them on.

3.11 pm

Baroness Buscombe (Con): My Lords, I thank the noble Baroness, Lady Deech, for introducing the Bill and for enabling the House to once again debate the important issue of financial provision on divorce. We take this issue very seriously. I want to reassure all noble Lords who have spoken today that I have had good discussions with my colleague in another place, Sir Oliver Heald QC MP, the Minister responsible, concerning progress and plans for an all-encompassing reform of private family law.

The Bill has a very commendable aim of seeking to assist divorcing couples and civil partners undergoing separation in resolving disputes over the division of property and periodical payments or "maintenance". The Government agree that there is scope for greater clarity and certainty concerning the law and the court's practice in this important area, but we wish to identify ways to achieve this that do not cause hardship and undermine fairness, which, I say with great respect, this Bill would be likely to do. Clarity and predictability must be balanced with the need for flexibility, with the possibility that flexibility can sometimes bring fairness that certainty precludes.

We also recognise that the law cannot be based on a one-size-fits-all approach that does not cover the uncertainties that life presents. The law must have the breadth to meet the various circumstances in which divorcing couples find themselves at the end of a marriage. There is also a need to take into account the fact that aggrieved individuals are likely to be the most vocal, and that the evidence base in this area is sometimes anecdotal, including in relation to how, why and at what stage settlements are reached.

The Bill seeks radically to change the law of financial provision on divorce and differs substantially from, and goes much further than, the recommendations made in 2014 by the Law Commission concerning matrimonial property agreements and clarifying the approach to financial needs on divorce. Those recommendations were made after wide public consultation which included a public attitude survey. The coalition Government provided a preliminary response to the Law Commission stating that further careful consideration would be given to its proposals in the next Parliament. That Government took forward one of the proposals in the report by funding guidance for separating couples, *Sorting Out Finances on Divorce*, to help make the law and the court's practice on financial needs and arrangements more understandable and accessible.

That guidance was published in September 2015 by the Family Justice Council and is being promoted in a number of ways including online and through advice agencies. It provides information about financial settlements for couples who are getting divorced or ending a civil partnership, including matters such as maintenance, housing and pensions, as well as the type of orders a judge is likely to make. The original Family Justice Council guidance is on the judiciary.gov.uk website and a simplified, plain English version of it is available on the Advicenow website, which is a charity dedicated to ensuring that people are aware of their legal rights. It also contains advice for unrepresented litigants—this I think is particularly important—to make use of in court by giving concise and easy to understand information about the law.

In respect of that I would refer, as did the noble Lord, Lord St John of Bletso, to a note from the noble Baroness, Lady Deech, dated 27 January which does indeed make reference to guidance. However, that guidance is actually for the judiciary. For anyone else it is somewhat complicated in that a lot needs to be considered in the law. What I am talking about is known as a "survival guide" which responds to much of what noble Lords have been talking about in the debate in terms of providing simple and straightforward references to what people can do in different circumstances. It is incredibly easy to understand and helps couples to sort out their financial affairs without asking the court to decide. It explains consent orders, the process for mediation and the fact that people can access legal assistance for that. It also explains what happens if couples cannot agree and have to go to court. I commend the guidance to all noble Lords.

The corresponding guidance for judges, which is strongly endorsed by the President of the Family Division, Sir James Munby, followed in June last year. The president has described the guide as providing a "succinct summary of the law" and a "useful tool" for the judiciary in relation to making orders to meet financial needs following divorce and the dissolution of civil partnerships.

The Government are also looking at other ways to make the law more easily understandable. We want to make the best use of technology to equip individuals with the information they need to resolve the disputes that often arise following divorce. We are investigating

current practice in financial disputes with the aim of developing a tool, again referenced by the noble Lord, Lord St John of Bletso, to help separating couples sort out financial disagreements. The development of this tool will assist couples in resolving financial disputes without going through the courts.

The Government recognise that when disputes go to court, that only increases the acrimony and tension which often arise in such circumstances, and we are therefore considering how to provide improved information and signposting so that more people are made aware of how mediation can help in dispute resolution. We strongly believe that agreements are more long-lasting and sustainable when individuals are able to make decisions for themselves without the intervention of the court. I think that all noble Lords who have spoken in the debate would agree with that. Mediation is generally considered to be a more cost-effective way of resolving disputes than going to court and must be considered before a person can apply to the court for a financial order unless there is evidence of domestic violence or another exemption applies. It can help separating couples make their own financial arrangements and reduce tension when individuals are faced with making difficult decisions about their money and property at such a stressful time.

The Government are also considering the Law Commission's recommendation to introduce qualifying nuptial agreements which would make prenuptial and post-nuptial agreements legally binding, subject to certain protections. These agreements, unlike those proposed in the Bill, could not be used to enable one party to contract out of responsibility to provide for the other party's financial needs.

The other recommendations in the report are currently under consideration by the Government as part of developing our plans for wider private family law reform, and we will announce our response in due course. Our reforms will be underpinned by the Government's ambition to enable people to resolve their disputes in a way that is just, affordable and transparent. I want to reiterate that the Law Commission's proposals are based on extensive consultation, which this Bill's far more radical proposals are not. The likely effects of the Bill's proposals are also far less clear.

I will very briefly outline the current law of financial provision on divorce. The majority of couples resolve the financial consequences of divorce by agreement, but where this is not possible the court has a wide discretion to decide how their property and income should be distributed, guided by case law and the fundamental principles of financial provision set out in Section 25 of the Matrimonial Causes Act 1973. This includes consideration of the circumstances of the parties and any children in their care, and concepts of fairness and needs. Importantly, the Act requires that the first consideration of the court is the welfare of any child of the family aged under 18.

Other factors in Section 25 include: the income and earning capacity of the parties; contributions made to maintaining the home and the children; the financial needs and obligations of the parties; the age of each party and the duration of the marriage; any physical or mental disability suffered by either party; the conduct of the parties, if it is such that it would be inequitable to disregard it; and any benefits that the parties will lose as a result of the divorce or dissolution.

The first of the main provisions in the noble Baroness's Bill is that prenuptial and post-nuptial matrimonial property agreements should be binding upon couples on divorce, except in very limited circumstances. The Government are concerned that this does not take adequate account of the needs of parties following divorce, which may have changed since the agreement was made. For example, if the matrimonial property agreement was a valid contract but left one party destitute, we believe it would nevertheless be binding under the Bill. We are currently considering proposals from the Law Commission on binding nuptial agreements with safeguards not present in the Bill. We would wish to consider these more fully within the context of the broader private family law reforms before committing to legislate to make agreements enforceable.

The second provision is that, subject to certain exceptions, matrimonial property—defined essentially as all property obtained during the marriage, except that obtained by a gift, inheritance or succession—should be divided equally between the parties. This would also be potentially unfair and could cause extreme hardship, particularly for lower-income families and for families with children, where the matrimonial home might need to be retained for the children to have a home. A straight division of matrimonial property would not necessarily work in the best interests of the children, who would face the trauma not only of divorcing parents but of their family home having to be sold. All noble Lords have spoken about the needs and priorities of children. This is something we take very seriously and must retain. Indeed, my noble friend Lord Kirkhope of Harrogate urged caution, particularly concerning the priority of children and the possibility of that priority being at risk. I suggest to the noble Baroness, Lady Meacher, who suggested that he was in that way against certainty, that this is more about the priorities of children and the need to be flexible.

I am aware, and welcome the fact, that the Bill has been amended to remove its previous proposal that, although the court should have regard to provision for children, it would not have to make the needs of minor children its first consideration, as the law requires it to do currently. While this softens the Bill somewhat it remains unclear what the effect would be on the provisions overall and the extent to which they could be overridden to ensure that the needs of children were adequately met. As I have said, the lack of flexibility for the court of course remains in cases where children are not the primary consideration.

Support for a "sharing principle" appears to have, in the main, developed out of the "big money" cases, referenced so eloquently by the noble Baroness, Lady Deech. It is seen as unfair that one party would receive a surplus of high-value net property that had been accumulated together over many years. In the vast majority of divorces, financial provision is about meeting needs. Generally, people do not leave a marriage equally—one partner generally has better employment prospects and caring responsibilities are often distributed unevenly.

[Baroness Buscombe]
Under the current law, distribution of assets is usually weighted to make up for this. For example, assets may have to be distributed unequally to reflect the fact that one of the parties may not be able to secure a mortgage due to age or ill health. A 50:50 presumptive split of property would generally benefit the person with better ongoing employment prospects or earning capacity and fewer caring responsibilities. This is likely to disproportionately negatively affect women.

The third major provision is that periodical payments for spousal maintenance should be for a maximum period of five years, subject to narrow exceptions. While only one in 10 divorces in England and Wales ends up with periodical payments of spousal maintenance, a five-year limit would not take account of need in the way the current system does and could cause hardship for many couples, and for women in particular. While the Bill gives the court the power to make exceptions to the five-year limit, it nonetheless introduces a presumption against continuing financial support after divorce. The current law recognises the risk that one of the parties in a divorce might not have reached a financial position where they no longer need financial support after five years.

The Law Commission has concluded that, although the courts are given a wide discretion, in practice, financial orders and other financial settlements tend to lead the parties to financial independence in the majority of cases, although the time needed to achieve this will vary according to the circumstances of the parties involved. Having to adjust to a new financial reality may take longer than five years; for example, for a woman who put aside her career because of the competing demands of raising children. We believe, therefore, that it is better for the court to retain the discretion to provide as it thinks best to meet the circumstances of each individual family.

The Bill also provides that the court should not consider the conduct of the parties unless it affects the financial position of either party or it would be unfair not to consider it. The Matrimonial Causes Act 1973 already provides for the court to consider conduct if it would be unfair not to take it into account. The Government believe that this provision is adequate and should be retained. I appreciate the noble Baroness's desire to ensure that financial division on divorce or dissolution of a civil partnership is made simpler, so that people will more easily be able to estimate what they are likely to receive. In turn, people would be better able to negotiate with each other and couples should be more confident to enter into agreements determining what they would receive on divorce. I say again that this "survival guide"—so well named—contains examples of what couples might receive in different circumstances. It helps to manage expectations, which is an enormous assistance, but we agree that this is not enough.

The Government recognise that more needs to be done to help divorcing couples reach agreement. The Government, as I have said, are considering the Law Commission's report on matrimonial property agreements and other financial arrangements on divorce and will respond formally in due course in the context of our wider plans for family law and system reform. The Government will not oppose the Bill receiving its Second Reading today but we have concerns about its approach; that it could cause hardship to many families; and that its proposals, which would radically change the law in this area, have not been subject to public consultation. We believe that we are already considering many of the issues raised by the noble Baroness's Bill and how these might be addressed as part of a wider approach to family private law reform. Finally, I thank all noble Lords who have taken part in this debate, particularly the noble Baroness, Lady Deech.

3.27 pm

Baroness Deech: My Lords, I thank everyone who has stayed here on Friday afternoon to support the Bill, particularly the noble and learned Lord, Lord Walker, who has helped me throughout this very long process. I assure noble Lords, particularly the Minister and the noble Lord, Lord Kirkhope, that children do, indeed, have priority in the Bill. There is nothing in it to change the existing law about children. Indeed, I wish as much attention were paid to extracting maintenance from unwilling fathers as is paid to other elements of family law. We have a very bad track record there. This law would not change it; indeed, it would extend the age up to which you have to house your children to 21 rather than 18, given that so many of our children are at university until that age. It allows for a house to be retained for the housing of children where this is necessary.

Secondly, the law I am putting forward is by no means experimental. It has been acted on with great success in Scotland for 30 years. There is nothing more that needs to be learned about it. I suspect that the Government are fearful of an increase in ex-wives going on welfare. This has not actually happened in other countries.

If the Government really want to tackle the problem of the damage and cost of family breakdown, which is the price we pay for the pursuit of liberty and happiness, we could cut the cost by making better efforts to extract child support from fathers and investing in affordable childcare to help women back into work. As it is, although I am very pleased that the Government are taking this seriously and are making some moves, the Minister's reply speaks only of applying sticking plasters to an ill patient who is bed-blocking, who really needs be cured and booted out. The principles underlying the old law remain but they are not just and mediation is difficult because there is no direction, sense of justice, certainty or feeling of fairness at the end. I think the Minister knows and the House knows that reform will come sooner or later.

Luckily, I have no interest in this. I have never been divorced and I have never earned anything from family law, but I claim a distant relationship to the late Leo Abse MP, who fought for years to reform divorce law and succeeded in the end.

There is one other serious issue I would like to raise. This Government risk becoming a do-nothing Government. It is quite striking that widespread expertise in the three Bills that have been before us today—years of expertise, not just from me as an academic but from the noble Baroness, Lady Cox, the noble Lord, Lord Ramsbotham, and others—has been swept aside. We all say that this House earns its place in the British

constitution because it contains expertise and experience. Do the Government not risk undermining the contribution and reputation of this House when not just today but in the Higher Education and Research Bill—with dozens of vice-chancellors and professors and experts—our comments have just been stonewalled? The Government need to listen to this House if they value it and its place in our constitution, which is what we have all said, and yet the expertise is being dismissed by—dare I say it?—ministries that may know less about the topics than the people who have spoken in the various Bills today and this week.

Constitutionally, I do not think that I am able to ask for the Bill to be referred to a Grand Committee. I therefore end by asking the House to give it a Second Reading.

Bill read a second time and committed to Committee of the Whole House.

House adjourned at 3.33 pm.