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OFFICIAL REPORT

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Abbreviation	Party/Group
CB	Cross Bench
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
UKIP	UK Independence Party
UUP	Ulster Unionist Party

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House of Lords

Friday 26 January 2018

10 am

Prayers—read by the Lord Bishop of Peterborough.

Conscientious Objection (Medical Activities) Bill [HL]

Second Reading

10.05 am

Moved by ***Baroness O'Loan***

That the Bill be now read a second time.

Baroness O'Loan (CB): My Lords, I beg to move that this Bill be now read a second time.

This Bill is designed to afford protection to those in healthcare who object on grounds of conscience to being asked to participate in end-of-life treatment. It is about a human right: the right to freedom of belief, religion and conscience. There have always been those who, when faced with a call to participate or engage in end-of-life treatment, object to so doing. Conscientious objection was first provided for in the United Kingdom in 1757.

If we think back, 100 years ago on this day, our country and the world were at war, but even at that most parlous time 16,000 men were excused from conscription to military service on grounds of conscience. Some, such as Quakers, did so because of their religious beliefs. Others, such as radical socialists, did so out of political principle.

During World War II, we accommodated 60,000 registered conscientious objectors. That was not easy for them—maybe some would say it was not easy for others who fought. It was not simple but it was possible to accommodate conscientious objection. The United Kingdom, therefore, has a long and proud record of recognition of rights of conscience and respect for conscience. It is a principle recognised in international law as well as in our domestic legislation. In 2011, the European Court of Human Rights interpreted the Article 9 right to "freedom … to manifest … belief" to include conscientious objection and overturned the conviction of an Armenian Jehovah's Witness for his refusal to perform military service at a time when there was no other option available to him.

As respect for conscience applies to those who refuse to participate in the taking of life in war, so it has been applied to those who refuse to be involved in what they see as the taking of life through healthcare practice. In 1967, when the UK legislated to decriminalise abortion in certain circumstances, provision was made for conscientious objection because it was understood that what was being made legal was regarded by some as the taking of life. Were it not so, there would have been no need for protection of conscience. In 1990, when the Human Fertilisation and Embryology Act was passed, there was again limited provision for conscientious objection, and in every instance in which your Lordships' House has discussed assisted dying there has been provision for conscientious objection. Where conscientious objection is permitted, it is not absolute. Medical practitioners must assist to save life or to prevent grave or permanent injury. It is a complex field. Some have statutory rights. Some, like GPs, have contractual rights not to engage, but it is a contractual right, not a statutory right, and some have no rights at all.

Why does it matter anyway? Professor Dan Brock, a leading bioethicist at Harvard, describes conscience as the basis of an individual's moral integrity, saying that it defines who, at least morally speaking, the person is. Maintaining moral integrity, he asserts, requires that a person does not violate their moral commitments. That is why we allow conscientious objection in healthcare so that people can maintain their moral integrity, without which major health and other problems will almost inevitably emerge. Through conscience, each of us decides whether an action is right or not. As Dr Sara Fovargue and Dr Mary Neal state, conscience is fundamental to moral agency and a proper feature of all areas of human endeavour, including professional practice. The provision of medical services, of course, is never value-free. Healthcare practitioners make moral judgments all day, every day, and these are often very difficult judgments.

In 2010, when the Equality Act was passed, freedom of religion or belief was accorded protected characteristic status, like sex, age and disability. Protection from discrimination and exclusion, on grounds of religion or belief is provided for in Section 10 of that Act, which defines religion and belief as,

"any religious or philosophical belief and a reference to belief includes a … lack of belief".

Conscience is not the preserve of the religious. Those who think that it is wrong to end human life do so for many reasons: scientific, philosophical, religious and other beliefs. The right to conscientious objection exists as a protection for medical professionals from the moral injury of being involved in actions that they believe destroy life. It exists, too, for the protection of patients who can believe that the professionals looking after them can act in accord with their conscience. Conscientious objection operates at the margin of medical treatment, where the duty to do no harm moves to accommodate positive action to end life.

It is not just domestic law that recognises the right of conscientious objection. The Council of Europe's Parliamentary Assembly adopted Resolution 1763 affirming the right of conscientious objection for medical professionals. This resolution states:

"No person, hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion".

It is non-binding but it reaffirms the normative understanding of freedom of conscience.

Society has changed, and the law has been interpreted differently in the United Kingdom. In 2014, the case of Greater Glasgow Health Board v Doogan and Another was heard by the Supreme Court. In this case, two senior midwives conscientiously objected to having to delegate tasks to, supervise or support those directly involved in abortion. They had been able to assert this right of conscientious objection for their

[Baroness O'Loan]
whole nursing careers—which started very shortly after the Act was passed—until an amalgamation of hospitals led to their being required to do this work. Ultimately they could not, in conscience, have any role in the provision of abortion. Those skilled, compassionate, experienced midwives were unable to continue to serve as midwives, doing what they had done all their professional lives: helping women through the sometimes difficult process of carrying and bearing a child. I know that is difficult; anybody who has carried a child knows the sensitivities attached to it. Those good women were lost to the profession because the Supreme Court decided that indirect roles taken by nurses and midwives were excluded from protection under Section 4 of the Abortion Act.

It cannot be consistent with conscience to say, "I cannot do this, but I will order you to do it". If one delegates, supervises or supports an activity, one is not unreasonable in concluding that one shares moral responsibility for what happens.

There is a lot of evidence that medical professionals are suffering serious disadvantage and discrimination for their beliefs. A 2016 ad hoc cross-party inquiry specifically into freedom of conscience in abortion provision received many accounts from medical professionals who had experienced discrimination in their work life due to their beliefs. I have heard so many stories of young doctors and nurses contemplating their future who have decided that although they would dearly love to be involved in obstetrics and gynaecology, and even though they are energised and feel vocationally called to the medicine of helping women through conception and childbirth, they nevertheless cannot do it because they could not, in conscience, kill an unborn child.

That is why I have introduced the Bill. Its provisions seek to affirm as a matter of statute that no one shall be under any duty to participate in activities they believe involve the taking of human life, either in the withdrawal of life-sustaining treatment or in any activity authorised by the 1967 or 1990 Acts. Such a reform would re-establish legal protection for medical conscientious objectors and reaffirm the Article 9 rights of healthcare workers. It would give reality to the protections afforded in the Equality Act.

There is a serious shortage of healthcare professionals; we are having to bring doctors and nurses from abroad. We spent £100 million bringing 3,000 GPs from other countries here this year, we are short of 3,500 midwives, and in 2016, according to the Royal College of Midwives, we spent nearly £100 million on agency nurses. There is a problem. Many young doctors, midwives and other healthcare professionals are leaving the UK. There are many reasons for this, but one of them is that those who labour at the coalface cannot engage in certain activities. We invest in their training; we need their skills—it is time to accommodate them.

I emphasise again that the Bill is not about reducing access to termination of pregnancy or to the withdrawal of life-sustaining treatment. It would simply mean that healthcare workers, of many different kinds, in registering their objection to the procedures defined under the Bill on appointment to a role, must be reasonably accommodated by those managing them so that they may work without involvement in those areas. Some 68% of abortions—126,000—are NHS-funded but provided by private companies. Some 2% are privately funded, and 30% take place in NHS hospitals, alongside all the other obstetrics and gynaecological procedures. Ninety-two per cent of abortions in 2016—some 170,000—were carried out at under 13 weeks' gestation. Increasingly, these are medical abortions, involving the use of medication. That gives rise to the necessity to protect the rights of conscience of both GPs and pharmacists not to provide these services. That is what the Bill seeks to do.

The NHS could accommodate the number of conscientious objectors rather than forcing staff for economic or other reasons to engage in procedures which those staff simply, for reasons of conscience, cannot do. Reasonable accommodation of conscientious objection is a matter of liberty and equality—of individual freedom and social inclusion. That is why this is important and timely legislation.

I have heard that there is widespread support for the Bill. I know it has attracted support from all sides of this House and from the Commons. I hope that in moving it through Second Reading we will enhance the quality of the service provided to all our people and the environment in which healthcare professionals work. I beg to move.

10.17 am

Baroness Young of Old Scone (Lab): My Lords, I fail to recognise the NHS and the healthcare system in this country that the noble Baroness has just described. I do not believe that there are shoals of professionals in this country who feel that their rights are insufficiently represented by current law. The existing provision for healthcare professionals to object on the grounds of conscience in certain well-defined circumstances is sensible and balanced, and the Bill is unnecessary and potentially dangerous.

I very much respect the concerns of healthcare professionals to decline to participate in a hands-on capacity in specific medical activities, for two reasons. First, they have that right to act in line with their beliefs. Secondly, however, in these often complex and vulnerable situations, where patients themselves have had to make difficult decisions about abortion, IVF or end-of-life care, those patients deserve to be treated by professionals who respect their treatment decisions. It is therefore important that healthcare professionals have a proper right to conscientiously object. That is allowed for in the current legislation and in the guidance issued by the General Medical Council, the Nursing and Midwifery Council, and in current employment law and the Human Rights Act.

But patients have important rights, too, and the Bill would threaten the very principle of respect for the wishes of the patient and their right to exercise choice. This must not happen. If I were being brutal, the Bill could be seen as a tactic to allow campaigning healthcare professionals to undermine legitimate—indeed, vital—patient choices. I will focus on three areas.

First, on employment law, the Bill has provisions for the employer not to "discriminate against or victimise" an employee for invoking conscientious objection, including on their terms of employment; their opportunities for promotion, transfer or training; dismissal; or by subjecting individuals to any other detriment. That looks unobjectionable—motherhood and apple pie—but it is unnecessary because existing employment and human rights law already defends the rights of employees in those circumstances. I believe we hear of only very few cases that come to law where individuals appear to have been discriminated against because there are only comparatively few cases.

The Bill's changes to the provisions have the potential to undermine the "occupational requirement" exemption under the Equality Act 2010, which, for example, allows an oncology ward not to employ a palliative care nurse who, due to their beliefs, has a conscientious objection to caring for patients whose life-sustaining treatment is, by agreement with the patient and the family, being withdrawn. The provisions in the Bill to extend the right of objection by healthcare professionals to activities required to prepare for or support the activities that are the subject of the Bill would exacerbate this risk even more, in that we could see a situation where a range of healthcare professionals dotted across the healthcare system and the care pathway, in delegating, supervising and planning entire aspects of healthcare and exercising their conscience, could make it impossible for the patient to achieve their rights, and the employer would have no ability to prevent that.

My second point is that the Bill lays no obligation on the objecting professional to refer the patient to someone else for the care they need and are entitled to. Some patients who are less informed about their entitlements and more vulnerable patients could simply fail to secure a service that they should have received. This inequity is unacceptable.

The third issue I want to cover is scope. Extending the scope of conscientious objection puts us on a path towards allowing some healthcare professionals to opt out of providing even basic end-of-life care. It elevates a healthcare professional's important personal beliefs above their duty to the patient, putting the needs and wishes of the patient last. It is the very opposite of patient-centred care.

We know that 68% of Britons want more control over decisions about their health, as the 2017 Ipsos Global Trends survey showed very clearly. We know that 82% of UK citizens do not want doctors to make decisions about end-of-life treatment on their behalf. The Royal College of Physicians, the National Institute for Health and Care Excellence and the Parliamentary and Health Service Ombudsman have recognised that more needs to be done to support dying people, particularly in exercising their right to make the decisions that are right for them. Therefore, I believe that the Bill is impracticable.

I entirely respect the concern of the noble Baroness, Lady O'Loan, about the ability of healthcare professionals to exercise conscientious objection, but I believe that the balance between the rights of the healthcare professional and the rights of the patient would be fatally skewed by the Bill. Just last week, the US Administration announced plans for a "conscience and religious freedom" division with the Department of Health and Human Services, together with new rules that would dramatically expand the ability of healthcare institutions and workers to refuse to provide medical care on the basis of conscientious objection. We are not Trump-land. Our current laws, rightly, put the needs of patients at the centre. That is what our healthcare system is for. I urge my fellow Peers to reject this Bill.

10.23 am

Lord McColl of Dulwich (Con): My Lords, I am pleased to speak in support of the Bill. The issue that it raises is simple: if someone objects to abortion or assisted dying on grounds of conscience, how far should they be entitled to opt out? The issue is simple but the solution is difficult.

The Supreme Court held that, as a matter of construction, the conscience clause provisions of the Abortion Act 1967 should be interpreted narrowly so that Mary Doogan was not entitled to refuse to help facilitate abortions by organising other nurses for the purpose of providing abortions. The aim of this Bill is to change the wording so that freedom of conscience can be invoked as a ground for refusing to do acts which are less directly connected to the abortion than is presently the case. I think that that is a good thing and I shall endeavour to explain why.

The first reason is that a significant number of dedicated healthcare professionals have profound moral objections to both abortion and assisted suicide. The role of the state is not to sit in judgment on those moral objections: it is not the state's role to coerce people into acting against their conscience. Therefore, it is a good and reasonable thing that the state should make the conscientious objection provision sufficiently broad to excuse acts which genuinely offend the conscience. The state should err on the side of respecting conscience, rather than placing valuable medical and nursing staff in a position where they have to choose between their vocation and their conscience.

I had a number of friends who, when applying for consultant posts in obstetrics, would be asked, "Are you prepared to take your share of the abortions?". If they said yes, they were considered for the appointment. If, on the other hand, they said, "Yes, I'm prepared to take my share of the abortions within the 1967 Act", they were not considered for the consultant post and many of them had to emigrate. They were very good clinicians and it was a great loss.

The second reason I support the Bill is that there is no evidence whatever that, if the Bill is passed, it will detrimentally affect anyone seeking an abortion.

The third reason I support it is that it is both unwise and unnecessary to force medics and nurses to act against their conscience in any sphere whatever. If we train them to do that in one sphere of work, we have only ourselves to blame if they do it in other aspects of their work. For those reasons, I support the Bill.

10.27 am

Lord Brown of Eaton-under-Heywood (CB): My Lords, I am always sorry to disagree with my noble friend Lady O'Loan but I fear that I cannot support this Bill.

[Lord Brown of Eaton-under-Heywood]

Of course, all of us will agree that proper account should be taken of a person's conscientious objection to participation in medical treatments which, they believe, offend against the principle of the sanctity of life. But what amounts to participation? How wide should this statutory exemption go? The treatments or non-treatments here under consideration variously relate to the withdrawal of life-sustaining treatment, to fertility treatments and to treatments directed at the termination of pregnancies. It is on the last of these—abortion—that I want to focus principally, in particular on the 2014 unanimous decision of the Supreme Court in the case of Doogan.

In her article in last week's *House* magazine, the noble Baroness said of Doogan that the Supreme Court,

"interpreted 'participation' in the Abortion Act's conscience clause to only mean direct performance. All right for surgeons, but this meant that nurses and midwives who conscientiously object to material involvement enabling the procedure were stripped of formal statutory protections".

A little later in the article, she suggested that her Bill would,

"re-establish legal protections for medical conscientious objectors, and re-affirm the Article 9 rights of healthcare workers".

I profoundly disagree with that analysis of the Doogan case and I want to make three basic points.

First, there is simply no question of Doogan having in any way changed the law on the rights of conscientious objection in this context, and no question therefore of today's Bill "re-establishing" or "re-affirming" anything. The Supreme Court was simply construing Section 4(1), the conscience clause, in the Abortion Act 1967 on the ordinary principles of construction, declining to give it either a particularly wide or a particularly narrow meaning. On this construction they held that the two practitioners—experienced midwives employed as labour ward co-ordinators—were exempted by the conscience clause from many of the tasks involved in that role, including any medical and nursing care connected with the purpose of undergoing labour and giving birth; but they are not exempted from the managerial and supervisory tasks carried out by ward co-ordinators, such as booking patients into the ward, allocating staff to patients and communicating with other professionals—for example, paging anaesthetists.

The full, careful and compelling judgment of the noble and learned Baroness, Lady Hale, considered how the conscience clause applies to each of an agreed list of 13 specified tasks, which are all set out in the judgment. The Library Note is good but it is not the same as reading the judgment. This Bill is designed to overturn that judgment—see the end of Clause 1(2). Parliament is entitled to change the law to widen considerably, as this would, the definition of and approach to participation—but change it would be, not a restoration of Parliament's original decision.

The second point arising from Doogan concerns Article 9 of the Human Rights Convention, which also was dealt with by the Supreme Court, as was the Equality Act 2010, with regard to discrimination on the grounds of religion or belief. On these principles the court recognised an employer's duty to make reasonable adjustments to the requirements of a job to cater to religious beliefs. However, it pointed out that the extent of the duty is context specific. It added that this would, to some extent at least, depend on issues of practicability. The court said it would be much better to resolve those in employment tribunal proceedings in the context of a particular case than by an overall declaration of the law in either a judicial review or, as I would suggest, in the present Bill.

The third point is this. The Royal College of Midwives and the British Pregnancy Advisory Service both intervened in the Supreme Court proceedings and argued against the petitioners that to give a broad scope to the right of conscientious objection would put at risk the provision of a safe and accessible abortion service and, furthermore, might encourage other employers to adopt a policy of refusing to employ anyone who has any conscientious objection to abortion. This would reduce the job opportunities available to highly skilled and experienced midwives, perhaps with less extensive objections than these particular petitioners. In short, the Bill takes altogether too absolute and extreme a position and it would be unwise to adopt it.

I add, finally, this. To invoke in support of this Bill, as the noble Baroness did in her *House* magazine article and has again done today, the appalling treatment of conscientious objectors who resisted fighting in the First World War, is over the top. Rather like the Bill itself, it lacks the balanced approach that these present issues deserve. I am against this Bill.

10.33 am

Lord Dholakia (LD): My Lords, as a precursor to this debate I have read with great interest the article from the noble Baroness, Lady O'Loan, in the *House* Magazine. I declare an interest as a member of the All-Party Parliamentary Group for Choice at the End of Life.

I am concerned about the implication of this Bill, particularly as the existing medical and legal regulations work well, striking a sensible balance between allowing healthcare professionals to conscientiously object without abandoning their patients and causing distress to patients and their families.

I support the right of healthcare professionals to refuse to participate in a hands-on capacity in specific medical activities and I am confident that this right to conscientious objection is well established within current medical laws and protocols. I am concerned that this Bill, which aims to expand existing sensible provisions on conscientious objection as it relates to the withdrawal of life-sustaining treatment, will have a detrimental effect on comprehensive, person-centred care currently provided by multidisciplinary teams. In some situations I fear the Bill, if enacted, could lead to patients being abandoned by healthcare professionals. This could also have a detrimental impact on the families and loved ones of patients approaching the end of life at what is an already difficult time.

The Bill would undermine the Mental Capacity Act 2005. Existing legal provisions and guidance on conscientious objection strike the right balance between respect for healthcare professionals' beliefs and ensuring the best interests of the patient. As an example, I point

out that the Bill threatens to undermine the entirely reasonable provisions of 2007's Mental Capacity Act 2005 Code of Practice, which is very clear that healthcare professionals do not have to do something that goes against their beliefs, but they must not simply abandon patients or cause their care to suffer, so should refer their patient to another colleague willing to participate.

I am not aware that the National Mental Capacity Forum has expressed a view on this Bill but I hope that organisations with an interest in protecting and advancing patients' capacity to make decisions over their health and care will ensure that conscientious objection should not become a limit on patients' ability to decide for themselves.

The Bill would negatively impact patients and their families. Let me explain. Providing care for those approaching the end of life can be challenging for healthcare professionals but the well-being of the patient must be the first concern. If the patient has capacity and wishes to do so, they are entitled to make their own decision about consent or refusal of treatment and should be supported to do so. Equally, under the Mental Capacity Act 2005 in England and Wales, if the patient has made an advance decision to refuse treatment or appointed a lasting power of attorney for health and welfare, their decisions or those of their attorney must be respected.

Those decisions should be respected in a timely manner. It would be completely unacceptable for a patient approaching the end of life to have to continue treatment they did not want while awaiting transfer to a palliative care or other team of healthcare professionals that did not object to their decision; and it would be completely unacceptable for the patient's family to have to watch them receiving this unwanted treatment, but I am afraid that that could be the implication of the Bill.

Let me cite a couple of examples relating to this argument. The cases relate to Mrs N and Paul Briggs. Decisions on withdrawing treatment for people who are in a persistent vegetative or a minimally conscious state—prolonged disorders of consciousness—are necessarily complicated. In several of these cases—such as that of Paul Briggs, the policeman who suffered a brain injury in a car crash on his way to work, and Mrs N, a woman who was in a minimally conscious state over a period of many years due to advanced multiple sclerosis—it has taken huge efforts by their family members, sometimes in the face of objection by professionals, to get their cases heard by the Court of Protection.

Mrs N's daughter told the judge who eventually heard her mother's case:

"I cannot emphasise enough how much the indignity of her current existence is the greatest contradiction to how she thrived on life and, had she been able to express this, then without a doubt she would".

Similarly, before the courts decided on Paul Briggs's best interests, his wife Lindsey wrote:

"I love my husband but he is dead in all but his body. I don't know when I will ever lay him to rest in peace. That's a limbo no one should be in".

It must have been incredibly difficult for them to see their loved ones suffer over a period of years, receiving treatment that they did not believe they would ever have wanted. Even when the Court of Protection has decided that withdrawing treatment is in the best interests of the patient, some families have to struggle to find healthcare facilities where the staff members do not conscientiously object to their decision.

Let me conclude by saying that the existing rules allow for any healthcare professional to conscientiously object to withdrawing life-sustaining treatment as long as they find another healthcare professional to take over their patient's care. I fear that the Bill will impose an additional unnecessary strain at an already distressing time on people at the end of life and on their families. It would also run counter to the principles of patient-centred care. I hope that the Bill will be substantially amended in Committee.

10.40 am

The Lord Bishop of Peterborough: My Lords, yesterday, the River Restaurant downstairs helped us to celebrate Burns Night all day. I thoroughly enjoyed the Scotch broth at lunchtime, but I resisted the main course as I was eating out in the evening. I even resisted the whisky bread-and-butter pudding. The main course which I resisted was vegetarian haggis, celebrating Robert Burns in a way that respected the consciences of those who do not want to eat meat. That is a very proper and good thing to do. There is no legal requirement to provide vegetarian haggis, but it was welcome to many and I think that I would have enjoyed it.

Lord Cormack (Con): It was indeed very good.

The Lord Bishop of Peterborough: Clearly the noble Lord particularly enjoyed it.

Yesterday was not only Burns Night; it was also for church people the festival of the Conversion of St Paul. In his teaching, St Paul is very strong in asserting that although Christians are free to make many decisions morally, they must always respect the conscience of those who are weaker—those who have a tender conscience. That is an absolute requirement of the Christian faith. Those whose consciences are more tender or weak than our own must be respected and not be forced to go against those consciences. We have the same teaching in other areas of religion as well. The Old Testament makes it very clear that the vulnerable and the weak are to be supported and helped. In the teaching of Jesus, he criticises those leaders who lay burdens on ordinary folk that are too heavy for them to bear.

In the history of the world since the time of Christ, in particular in our own country, we can see a great deal of influence by the Judeo-Christian tradition, including the development of free societies, of what we now tend to call liberal democracies. In those societies a great deal of attention has always been paid to the rights of consciences even when, because they are more tender and sensitive, they go beyond the views of many other people. Every free society respects the rights of conscience to a great extent, and we have some of that in this debate. Societies that restrict the rights of conscience tend to be those which are tyrannical and on the extreme left or extreme right of politics.

[The Lord Bishop of Peterborough]
In free societies, a great deal of tolerance is shown to those who have conscientious objections to all sorts of things.

This is not just a matter of religion. Conscience is a very deep part of what it means to be human. It is not only religious rights we are talking about; it is very deep human rights. People should not be forced to go against what they believe to be right or wrong. This Bill, which I support strongly and look forward to seeing further debated and possibly amended, recognises some changes since the Abortion Act. Today, most abortions entail far more involvement by nurses and pharmacists than they did in the early days. Methods of carrying out abortions have changed. I believe that it is right to extend the conscience clause, for example, to pharmacists since their involvement is greater than it used to be. As a society, we need to find ways to modify the law as it was set out in 1967, not just to affirm the conscience clause there. I believe that this is a matter of public concern, of public policy and for public debate. If the 1967 Act needs to be clarified, that should be done not just in the courts but in Parliament on behalf of the people of this country. If the 1967 Act is proving to be in some way unsatisfactory in that some people's consciences are not being allowed for, we need to do something to modify it. That means not reducing the possibility of abortion or people's freedom to seek medical treatment, which I want to underscore, but allowing those who have a tender conscience to exercise it. I support the Bill.

10.45 am

Lord Cashman (Lab): My Lords, I am pleased to follow the right reverend Prelate, who has spoken of the burden to bear. When you are member of a minority, it is a burden that you have to bear. Indeed, it is sometimes reinforced by religious opinions and belief. I respect and defend the right to freedom of religion and belief, but I do not respect the right to impose religion and beliefs upon others who do not share them, and in so doing diminish the rights of others. I therefore rise to speak against the Bill, which I find deeply worrying and troubling. It is an attempt to rewrite laws that respect conscientious objection and which have been working well. It is an attempt to rewrite laws in light of the 2014 Supreme Court judgment, delivered by the noble and learned Baroness, Lady Hale, in the case of Greater Glasgow Health Board v Doogan and Anor, as so eloquently outlined by the noble and learned Lord, Lord Brown of Eaton-under-Heywood. If this Bill were to become law, we would see conscientious objections so widened beyond the wise and learned words and judgment of the noble and learned Baroness, Lady Hale, as to make services such as IVF treatment, end-of-life care and abortions difficult to access and sustain nationally. We would witness the imposition of belief to curtail the legal choices and options of others.

Over the past 50 years, many changes have been made, particularly since the 1967 Act. They are positive changes which have been vigorously fought for and fought against: women's rights; the right to abortion; fertility treatment and IVF for married, non-married and same-sex partners; equality and rights for LGBT people, rights that some people, organisations and religious bodies still refuse to accept and continue to do their best to hold back. Indeed, the woman's right to choose is still shamefully denied in Northern Ireland and same-sex marriage is still not available. All of this is connected. As I have said, I defend the right to freedom of religion and belief, but not the right to impose it whereby in so imposing, you reduce the rights of others.

I share the deep concerns of Doctors for Choice UK, whose members have written to say that they support the current legal provisions that allow medical practitioners to opt out of providing treatment that conflicts with their personal and religious beliefs, but that extending the activities to which a healthcare professional could claim a conscientious objection from "hands-on treatment" to,

"any supervision, delegation, planning or supporting of staff in respect of that activity",

could have a hugely adverse effect on healthcare provision in the United Kingdom. The British Pregnancy Advisory Service is of the same opinion. Doctors for Choice UK also believes that extending conscientious objection in these ways, again as outlined by the noble and learned Lord, Lord Brown of Eaton-under-Heywood, would have the potential to create a staffing crisis in certain areas of healthcare. That is particularly true in the National Health Service where hospital wards and disciplines simultaneously cover a number of procedures and conditions.

I thank these organisations, in particular Dignity in Dying, which maintains that as an unintended consequence, the Bill could undermine the principle of person-centred end-of-life care and drive a wedge between non-participating healthcare professionals and their patients. The Bill would allow any healthcare professional—any healthcare professional—to refuse to participate in the,

"supervision, delegation, planning or supporting of staff",

in any activity with which they do not agree. As has been said, but it is worth repeating, nothing in the Bill would oblige the objecting healthcare professional to refer that patient's care to another. For example, if someone with advanced cancer has their artificial nutrition and hydration withdrawn, a healthcare professional could object to providing basic care. This could include providing mouth care, managing a syringe driver for pain relief and the alleviation of terminal agitation, prevention of pressure wounds, co-ordinating spiritual and family support and, if appropriate, arranging to discharge the person to die at home or in a hospice.

Having witnessed my own partner die of cancer in the Royal Marsden Hospital, and in the light of yesterday's debate led by my courageous noble friend Lady Jowell, for the reasons outlined and for many others, I cannot and will not support this Bill.

10.51 am

Lord Mackay of Clashfern (Con): My Lords, I should probably declare an interest as an honorary fellow of the Royal College of Obstetricians and Gynaecologists. I have also had some responsibility in connection with the other matters referred to in the Bill.

As far as I am concerned, the simple analysis is this: a person who has an objection to abortion thinks that it is wrong to carry out an abortion, generally speaking. There is, of course, a provision limiting that where the mother's life is at risk. The present law does not allow conscientious objection in that respect. That is a very general realisation of what the conscientious objection will be, but the basic conscientious objection is that it is wrong, in the general case, to perform an abortion. The question is: to what extent should one be required to do what is contrary to one's belief? People believe that it is wrong. Therefore, it would be right that they are protected from doing what they think is wrong.

I am very familiar with the judgment of the Supreme Court and the noble and learned Baroness, Lady Hale, whom I respect particularly because of various reasons that I will not go into. I respect her judgment very much indeed. It is a judgment on the Act of Parliament as it was. In the Scottish courts, three judges of the Court of Session decided that the wider interpretation was possible. They were in favour of Mrs Doogan and the other lady. The situation was a particular one. These ladies had been in the health service for a considerable time. They were happy to do what they were doing and they did not have to do anything that they thought was wrong. The arrangements were changed and they were then required to do something that they thought was wrong. That was where the matter came into the courts.

I have been in correspondence with Doctors for Choice, which kindly sent me an email explaining what it thinks. I replied to ask for some more detail on what it thought. What it comes to is this: it believes that the National Health Service depends to a substantial extent on people doing what they believe to be wrong. I find it very hard to see that that can be right. On the other hand, I do not think—the Minister may be able to tell us—that the amount of conscientious objection to the various items referred to in the Bill is very large, but let us assume that there is a substantial number. What it is then saying is that it is necessary, in the present circumstances, to depend on people who are serving in the health service to do what they think is wrong. So far as I am concerned, that is precisely what the conscientious laws of this country have been for many years. It is not necessary or right to force people, as part of their employment, to do what they believe to be wrong.

It is said, as a number of noble Lords have mentioned, that the Bill will cause some problems for some people. We have to make the point that the obligation to provide these services is not on the employee but on the health service itself. Therefore, it has the responsibility of making the necessary arrangement to accommodate the views of those who think that these activities are wrong. I do not believe that it is right that the health service or any other service should rely to a substantial extent for its success in requiring any of its employees to do what they think to be wrong. For that reason, I support the Bill. Of course, the detail of it is subject to amendment if necessary, but so far as I can see the phraseology is not very far from that adopted by the Court of Session in Scotland as the interpretation that it thought should be placed on the Act of Parliament as it was.

10.56 am

Viscount Craigavon (CB): My Lords, I oppose this Bill, but I was grateful to have the article, which has been referred to, in the *House* magazine by the noble Baroness, Lady O'Loan, to provide some sort of background to how she got to this point, as well as the excellent Lords Library Note, which expanded on some of the references that the article mentioned, in particular the Supreme Court judgment, all of which I will come to shortly.

One might ask, as they do more robustly in the House of Commons on Private Members' Bills, what is the need for this particular Bill? Given that we saw the first appearance of a Bill very similar to this one from the noble Baroness in our House in June 2015, when it had time only for a First Reading, I was initially wondering whether the need for this legislation had arisen to meet popular demand and discontent at the present law, or whether it might have been created by a small group of the well-intentioned for their betterment of mankind. I hope what I can show here is that the direction is from the top down and that there may not be the popular clamour for more statute law to deal with what is before us.

As we have been made aware in the briefings we have received, the four councils referred to with their registers in Clause 1(2) all have their own procedures for dealing with conscientious objection when it is not covered by statute law. I was not sure that the noble and learned Lord, Lord Mackay of Clashfern, was fully aware of that. I will mention that in more detail. These have slight variations but cover broadly the same ground, particularly in passing on to others responsibilities that one individual can reject for reasons of conscience, and are framed to suit the particular needs of each of these four councils.

I noticed that the one major change to the earlier 2015 Bill was the addition, in Clause 1(2)(d), of the General Pharmaceutical Council. That adds to the numbers who could be directly or indirectly affected by this Bill—about 53,000 members who are on its register. I therefore would have thought that at least some sort of proper consultation with the council should have taken place before incorporating it in this Bill, but I understand that that has not happened. That is very much from the top down.

It also may have been thought that pharmacists could become a major channel for the distribution of medical abortion pills. The noble Baroness made that connection in her speech. But, as I explained, without any further statute law, the General Pharmaceutical Council already has a perfectly good provision in place for conscientious objection by its members, framed for their particular professional circumstances.

To try to put all these councils in a common straitjacket of general and far-reaching statute provisions would be counterproductive and require extensive continuing legal dispute and interpretation.

The Supreme Court judgment of the noble and learned Baroness, Lady Hale, particularly in paragraph 38 and her interpretation of "participate", is a very good division of the existing position between what is suitable for statute law and what can be fairly achieved by

[Viscount Craigavon]
individual guidelines, which, as the noble and learned Lord, Lord Brown of Eaton-under-Heywood, said, can be context specific or decided in employment tribunals.

From a practical point of view, we have learned from the various submissions that we have received on this Bill, from organisations with complex medical procedures and specialised manpower, how much uncertainty this Bill would cause in day-to-day running, mainly in one never being quite sure what staff would be available to meet ever-changing needs and circumstances, with the patients being the ones to suffer.

In the article that I mentioned at the beginning, the apparently simple phrases,

"the taking of human life",

and,

"to take a human life",

occur. Most of us here know that they are the beginning of divergent views in the fields we are addressing today—the noble Baroness, Lady O'Loan, used the same phrases. For example, when exactly does human life start? When is withdrawing life-sustaining treatment or turning off a machine justifiable? Many more questions are begged by those simple phrases, which might give us a false sense of a shared starting point. I hope that I have highlighted some of the potential difficulties with this Bill, which I oppose.

11.01 am

Lord Green of Deddington (CB): My Lords, I congratulate the noble Baroness, Lady O'Loan, on bringing forward this Bill, which sheds a welcome spotlight on a very important area. I can be very brief, because most of the main arguments have been made.

I start from the position that nobody should be obliged to participate in a procedure to which they have a conscientious objection. The noble and learned Lord, Lord Mackay, has already spoken with his usual eloquence and power on that aspect. The issue, however, turns on what we mean by "participation". The Bill is very wide on that subject; the noble Lord, Lord Cashman, referred to it twice. Let me read the key words again:

"'Participating in an activity' includes any supervision, delegation, planning or supporting of staff in respect of that activity".

As the noble Baroness, Lady Young, pointed out, that is very wide.

I find myself in agreement with the judgment of the noble and learned Baroness, Lady Hale, that it is unlikely that Parliament originally intended to include a host of ancillary, administrative and managerial matters in the coverage of the Bill. On the other hand, I think that she went too far in confining the application to those,

"taking part in a 'hands-on' capacity".

That seems far too narrow. I hope that in further discussions, perhaps in Committee, a middle course can be found.

The situation in respect of the withdrawal of life-sustaining treatment appears to be different in respect of nurses, who cannot lawfully raise a conscientious objection. Their professional code, as I understand it, calls for them to arrange for a suitably qualified colleague to take over. This of course is a hugely sensitive area, but, as a layman, it seems that the present formula is about the right balance in this field. To extend the wide definition in the Bill to issues arising from life support seems to me to be a step too far. For my part, this Bill would need some amendment before I could support it.

11.04 am

Lord Anderson of Swansea (Lab): My Lords, I also speak as a layman and someone who feels it a privilege and refreshing to be able to take part in such a debate, which is non-partisan and features so many experts, leading lawyers and leading medics in this field. It is the House of Lords at its best.

I put on record immediately that I am not with the noble Baroness, Lady O'Loan, on abortion, which I see as justified on social grounds, but I am with her on conscientious objection—indeed, I would go so far as to say that, for me, the recognition of conscientious objection, from village-Hampdens on, is the sign of a civilised society as against a non-civilised society. My presumption always would be in favour of conscientious objection.

The problem, as my noble friend Lady Young said, is that if one agrees, as I do, that the Court of Session was correct and that the current law needs to be extended, where does one draw the line? How does one find some position of defining "participation"? Can it be extended so far as to be ridiculous? There is of course much learning both in respect of participation and of remoteness, but I think that many people would agree that we need to go beyond a very narrow interpretation of grounds of conscientious objection which a number of colleagues here have put on the relevant provision in the 1967 Act. Yes, we should extend it, but we should also, perhaps by amendment in Committee, say how one defines the extent of participation so as not to make it ridiculous.

The importance of freedom of conscience is recognised in many international instruments—I know that the noble Baroness, Lady O'Loan, has gone through a number of them—from Articles 1 and 18 of the Universal Declaration of Human Rights to Article 9 of the European Convention on Human Rights. For the rest of this week, I have been in Strasbourg sitting on the Legal Affairs and Human Rights Committee and on the committee responsible for the selection of judges to the court. As the noble Baroness said, our own Equality Act has religion and belief as protected characteristics and includes reference to lack of religion or belief.

Freedom of conscientious objection should surely be not just a wish but relevant in practice. It should be relevant in practice also in the workplace. The European Court of Human Rights has interpreted the convention rights in the case of Eweida v United Kingdom, which was that of the Coptic Christian who wished to wear a cross while working for British Airways. A strong court held in her favour on the basis of her freedom of religion. Some concerns have been expressed both in the Assembly of the Council of Europe and here that

the unregulated use of a conscientious objection clause could limit a woman's right of access to lawful medical care. That would be taking it too far. The noble Baroness, Lady O'Loan, has already mentioned Resolution 1763 passed by the Parliamentary Assembly of the Council or Europe in 2010, so I shall not quote what is already on record.

It is surely wrong to deter individuals from entering and remaining in the medical profession, particularly in the case of Doogan, where the circumstances of employment of the two women had changed from the time when they first entered that employment. The question about recruiting and retaining is particularly relevant in the National Health Service, and not just during the current winter crisis. We should be conscious of any deterrent or obstacle which might be put in the way of caring individuals who are inclined to apply for work in the health service. Clearly, the NHS is struggling at the moment to hire and retain GPs. The number of surgeries—which I accept is a wider matter—dropped from about 8,500 a decade ago to 7,500 today. We all want to see a GP when we need to and no additional barriers should be put in place. There must surely be a reasonable way to accommodate conscientious objection, so far as possible, while finding appropriate lines as to how far one can go.

A possible precedent might be the way that the Committee of Ministers of the Council of Europe dealt with the prisoners voting case, the case of Hirst, in 2005. Happily, in December of last year a reasonable accommodation was reached on the "margin of appreciation", and I applaud David Lidington, the Minister, for his work in that context. Is there not a "margin of appreciation", or a reasonable accommodation, in these cases, whereby Solomon or the reasonable person can say, "The current law has been construed too narrowly; we need to go further, but we need to draw those lines"? I hope that, perhaps in Committee, perhaps by amendments, we can find a way through this, but I agree that we need a debate on this highly sensitive issue; therefore, for the moment, I support the Bill and the excellent way it was put forward by the noble Baroness, Lady O'Loan.

11.11 am

Baroness Eaton (Con): My Lords, in my contribution to the debate on this important Bill, which I welcome and thank the noble Baroness, Lady O'Loan, for introducing, I wish to discuss the concept of conscience and how necessary I think it is to have effective provisions to protect it in medicine. When we talk about conscience, it seems to me that we mean the part of ourselves that constitutes moral integrity; the deeply held and important moral judgments of our conscience constitute the central personal core. They define who we are, at least morally speaking, and what we stand for: the central moral core of our character. In order for any individual to maintain their integrity, they cannot violate their fundamental moral commitments. If they achieve this, it gives others clear reason to respect them, not because those commitments must be true or justified in the eyes of everyone else, or even just the majority, but because the maintaining of moral integrity is a crucial action, central to our personal coherence and well-being.

Conscience involves the moral wholeness of the person, their emotional, intellectual and moral life. When someone betrays their conscience, they do nothing less than disregard a deep, core aspect of their personal identity. Given this reality, it is utterly impossible to detach conscience from anyone's professional life, least of all a medical professional who deals with often grave moral situations every day. A conscientious doctor, nurse or midwife is conscientious because of their internal moral life, not merely because they are proficient at mechanistically following official rules and guidelines. To illustrate how important legal conscience protections are, it would be helpful to note one crucial difference between the obviously pertinent parallel made already by the noble Baroness, Lady O'Loan, between conscientious objection in military service to what someone believes is unjust killing and conscientious objection in medicine. That difference is the nature of the role of the clinician.

Medical professionals are vocational actors, not mere conscripts in a logistical machine or functionaries for the medical system. They are not people who are providing a shopping service. The patient sees a doctor for advice and guidance and the nurse for direct care, but these are not merely employees of the NHS who must do whatever the system tells them to do. We would not want a doctor to do something that went against their professional judgment, no matter what a patient may want. I am reminded that, according to the Mental Capacity Act, one may refuse consent to treatment but one may not demand that something be done to you. The integrity of the individual clinician is part and parcel of the integrity of medicine itself. Would we really trust a doctor who did whatever we wanted and put aside his judgment for the sake of fulfilling our wishes? Of course not. We would want them frankly to give us their best and most conscientious judgment. For them to compartmentalise, as I think some think they should, their most fundamental moral beliefs from their professional behaviour would be to seriously compromise their integrity. This would be in no one's best interest.

It is crucial, then, to the right practice of medicine for both medical professionals and patients, as in public life itself, to protect freedom of conscience. The Bill, it seems to me, would allow for areas of medicine that are particularly controversial to remain open to those people who have very high conscientious standards, and who would therefore be welcome individuals to enter those sorts of roles. It would require a minority of medical professionals to be reasonably accommodated, a concept which I believe is highly important in this debate, and thereby included in a manner consistent with our treatment of minorities more generally. In so far as this is the case, it would allow for a society that is more truly liberal and open as well as qualitative in its medical care, due to the fully integral character of those allowed to act within it, in all sectors of medicine. That can only be for the common good.

If we care about conscience in society, and particularly in medicine, then we should maintain a framing of our laws that allows for as much liberality as is sensibly feasible in conscientious objection when it comes to the perceived ending of human life. The Bill achieves that very thing. For that reason, I am delighted it has been introduced and passionately support it.

11.16 am

Baroness Richardson of Calow (CB): My Lords, the NHS relies on the conscientious commitment of many thousands of people who are willing to use their skills and training in order to promote the well-being of patients and to provide particular care with compassion. Every patient deserves to be treated by those whose primary task is to seek their welfare and respect their wishes. Very many of those who work in the health service do so out of religious conviction. Their faith has led them to believe that this is a way, through a vocation, to give particular service to others, and this is to be welcomed. Their faith stimulates what they do and sustains them through the very difficult things they are required to do. A minority of these find that their faith, or their belief system, is incompatible with what they are asked to do on occasions. Their firmly held convictions are established as a right in law to be respected and protected already.

The Bill has the express intention of clarifying what those with a conscientious objection ought or ought not to be invited to participate in. Its intention is to clarify that participation, but in fact the Bill goes much further than that: it expands the level of participation that could be protected, not only, as we have already heard so many times, the hands-on, active participation, but extending it to,

"supervision, delegation, planning or supporting",

the staff. It fails to determine where responsibility lies for the exercise of care for those patients for whom the conscientious objector finds it difficult to care. Current practice is that they must inform colleagues and patients and that care must be passed on to another, but what is defined as participation in the Bill seems to deny that right. It removes that responsibility but does not define where it should go.

I am well aware that anecdotes do not always make good evidence, but personal experience informs opinions. My husband at the age of 42 was diagnosed with a brain tumour. For the next 10 years, we managed that condition at home, with repeated operations and procedures, increasing disability and family trauma. Then his consultant decided that he would attempt aggressive surgery, which was carried out. At the end of the operation, the consultant said to me that the tumour had been removed but, in doing so, he had done extensive damage to the left frontal lobe; my husband had had a stroke during the procedure, and he was unlikely to have any good life, he was unlikely to live through the night, and it was not in his best interests to do so. He was, therefore, not putting him into intensive care but on to an open ward so that the family could say their goodbyes.

In the evening, my husband was obviously failing, and the on-duty registrar was called. He insisted, despite all my pleas, that my husband should be put on life support in intensive care. It was his duty, he said, to do so, to preserve his life. He survived; we suffered 8.5 months of attempted rehabilitation in hospital; and he had 14 years of residential care before he died, aged 69. My family paid a very high price for that doctor to have a clear conscience. Of course, honestly held conscientious objections must be respected and protected, but it must not be in order to jeopardise the duty of care and respect for the best interests of the patient and the wishes of the family.

I was a little concerned, reading the excellent Library briefing, that at the end it gives some figures from a survey held in 2012 of the views of medical students. Of the 733 people who were asked for their views, almost half believed in the right of doctors to hold conscientious objections and to be protected. As medical science grows and develops and more interventions are likely to raise moral and ethical dilemmas, perhaps it will be necessary to clarify aspects of the law as it relates to conscientious objections, but this Bill is not the way to do it.

11.22 am

The Earl of Oxford and Asquith (LD): My Lords, I find many reasons to support this Bill on moral, philosophical, legal and practical grounds, but I wish to be brief and I shall try to confine myself to four or five points. First, there is inadequate protection in the law at the moment, I believe, for the issues of conscience addressed by the Bill. Yes, there are lines of professional guidance issued by the General Medical Council and the General Pharmaceutical Council, but the guidance is not underpinned by statutory provision, and guidance is easily changed by a small number of people or by pressure groups. The presumption of conscientious objection can be quickly eroded.

Secondly, I disagree with the arguments of some previous speakers that the Bill will restrict access to any service that the National Health Service is obliged to provide. What it does is to clarify the right to conscientious objection in so far as case law has indeed narrowed the interpretation of what participation actually means in the operations under consideration. Furthermore, since the passing of the Abortion Act 1967, medicine has developed to the extent that the role of the doctor or surgeon is now less prominent than it was then. There are now nurse prescribers and pharmacist prescribers, and it is doubtful that the present state of the law adequately protects those practitioners if they wish to invoke an objection against becoming involved.

Thirdly, on practical grounds alone, it is clear that the current state of the law is deterring some nurses and, indeed, newly qualifying doctors from entering on a career in obstetrics and gynaecology. There is not only a fear of discussing this issue; people are being put off from applying for such posts lest their moral convictions result in a failure to advance in these careers. This is not a question of adherence to a specifically Christian confessional morality. I know of one case in which a distinguished registrar, a highly skilled and eminent gynaecologist who is a Muslim, was undoubtedly sidelined in his career because of his objections to conducting the kind of operations addressed in this Bill. He did not find that the protection offered by Clause 1(3) before noble Lords today was available to him. But, as the noble Baroness, Lady O'Loan, has said, it is not even a question of confessional adherence to any religious belief. The right invoked in this Bill of any individual, irrespective of belief, is fundamental to our law, and it is fundamental to European laws.

To conclude, I have lived much of my working life in countries and under regimes whose citizens have had no presumption to conscientious objection or to

the protection of freedom of conscience. When conscience is not so protected within a society, it is discernibly the case that individuals may develop as diminished human beings—as a person who may have no alternative but to act in violation of principles that he or she recognise as defining his or her humanity. To withhold or deny this protection can have a profoundly damaging effect on personality and, ultimately, can lead, in my observation, to the impoverishment of moral beings. Thus I agree with the broad thrust of the argument advanced earlier by the noble and learned Lord, Lord Mackay. For these reasons, I believe that the passage of the Bill, maybe in an amended version, will present the world with a refined example of British medical ethics, destined to be the admiration of many.

11.27 am

Lord Shinkwin (Con): My Lords, I begin with an apology. I have just had some injections to treat a facial nerve disorder, which has affected my pronunciation, so on this occasion I may have to speak slightly more slowly than usual to make myself understood. I shall try not to speak too slowly.

I congratulate the noble Baroness, Lady O'Loan, on introducing her Bill, which I support—and I do so not only as someone whose severe disability would have made me a prime candidate for abortion but also from the patient's perspective, which, as the noble Baroness, Lady Young of Old Scone, said, is so important. Today is quite a big day for me, as 22 years ago to this very day I almost died. Twenty-two years on, I remember that my neurosurgeon could not give me odds on surviving, but I am still here. I am acutely aware that it could so easily have been very different. The treatment that I received quite literally sustained my life; equally, its withdrawal or denial would undoubtedly have ended it.

In terms of their relevance to me personally, I can tick the box for Clause l(l)(a), l(l)(b) and l(l)(c) of this Bill. As a patient who has placed my life in the hands of medical professionals and may well need to do so again, I believe, as I am sure all noble Lords do, that trust in both their clinical competence and their personal ethics is an essential element of the patient-practitioner partnership. I therefore totally agree that no medical practitioner with a conscientious objection to participating in the activities covered by the legislation mentioned in Clause 1(1), because it goes against their personal beliefs, should be under any duty to so participate. I also agree that there is a pressing need to clarify the law in light of the way in which it has been weakened by precedent and practice, as we have heard.

As the noble Baroness, Lady O'Loan, said, conscience is not the preserve of religion. Indeed, I certainly do not assume that a medical practitioner's personal beliefs will necessarily be informed by a religious faith. For example, they may know a person who was diagnosed with a disability before birth and has turned on its head their preconception of a disabled person's quality of life, their capacity to contribute to society, and their ability to love and be loved as an equal, valued human being. I should add that as I have stated previously in your Lordships' House, I do not take a position on abortion per se, which is covered in Clause 1(1)(b) and (c). I do, however, take a position on equality.

The central point for me and, I hope, for all noble Lords participating in this debate is that genuine equality does not have a cut-off point, a beginning or an end; neither is it relative. Equality is as fundamental to who we are as human beings as the other unique hallmark of humanity: our capacity to anchor our actions within the context of conscience. For it is our conscience, surely, which exposes the dangerous deceit that it is somehow consistent with the concept of equality for a more powerful group of human beings to act as if they were more equal than another, weaker group of human beings and, moreover, for them to decide that their superiority in strength means that they can pretend that exercising their power is a human right. A group may be more powerful—which group is not more powerful than disabled human beings?—but it is never more equal. Anyone who cares to read George Orwell's *Animal Farm* knows that he well and truly nailed that lie.

The Bill defends not just the fundamental human right of freedom of conscience, but the right not to prevaricate on prejudice or to equivocate on equality. It defends a human being's right to choose to recognise our common humanity and thus our intrinsic equality, regardless of disability or, for that matter, race, sexuality or gender. For, if we truly believe in genuine equality, how can disabled human beings be treated any differently from any other protected characteristic group covered by the Equality Act 2010 at any stage of our existence, whether before or after birth? Surely a medical practitioner is entitled, in all conscience, to ask themselves that simple question. This is not religion. It is cold, hard, clinical logic and if, having asked themselves that question, they should come to the logical conclusion that participating in the activities covered in Clause 1(1) compromises their conscience, the law must protect them in line with Clause 1(3). No medical practitioner should suffer discrimination for their conscientious objection to discriminating on grounds of disability.

The Bill attacks no one, it condemns no one and it threatens no one. Instead it affirms, upholds and protects what we all value: integrity, equality, our common humanity and the greatest human right of all—the freedom to think, speak and act in accordance with our conscience. In backing the Bill, we not only affirm our shared values; as equal human beings, endowed with a conscience, we affirm ourselves.

11.36 am

Lord Singh of Wimbledon (CB): My Lords, I support this important Bill. It is a timely recognition of the importance of conscience and ethical belief in looking at the end-of-life decisions, and the increasingly complex issues and personal dilemmas, that many face in their daily lives. Speaking from a Sikh perspective, I fully support the Bill's sentiments as well as its aims and objectives. Majority opinion can, at times, be unthinking and we need to be wary of being pushed, or pushing others, to support debatable attitudes that at times affront ethical and moral principles.

This year, as has been mentioned, while commemorating the centenary of the end of the carnage of World War I, we should pause and reflect that it was also a war in which conscientious objectors were

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brutally treated—or even shot—for their belief that it is wrong to kill. Something of the same dilemma was faced by Sikh soldiers when the Indian army attacked the Golden Temple in Amritsar in 1984. This attack on the holiest of Sikh shrines, on one of the holiest days in the Sikh calendar, was clearly political. Soldiers were ordered to shoot innocent pilgrims. Not surprisingly, some Sikh soldiers refused and were accused of mutiny. Some were shot, others were cashiered out of the army and some were to spend years in prison. They were accused of treason and disloyalty to their oath of allegiance to the state. True, yet in refusing to shoot non-combatants they were being true to the ethical teachings of their religion. This requirement to be true to our conscience is embedded in Sikh scriptures. Guru Ram Dass, the fourth Guru of the Sikhs wrote:

"All human powers men make pacts with
Are subject to death and decay
Righteous teaching alone prevails".

In the Nuremberg trials at the end of the Second World War, many Germans accused of war crimes against the Jews and others pleaded that they were duty bound to follow orders, however questionable. The court held that the requirements of any state were secondary to the overriding norms of civilised behaviour.

Rapid advances in the field of medicine and today's increasing tendency to overfocus on the rights of an individual can easily lead us to ignore the rights of wider society, and the ethical dilemmas that sometimes questionable procedures pose for those immediately involved. The downside of what we do is not always immediately apparent. The initial, clearly limited and humane objectives of the Abortion Act 1967 have, over time, been largely ignored. Abortion has become contrary to the original intentions of the Act and the ethical teachings of most religions and beliefs. It has simply become another method of birth control. We must have the right to object and to not take part in what we consider to be the unnecessary taking of human life.

The Human Fertilisation and Embryology Act 1990, which legalised embryo-destructive forms of research, the rapid expansion in molecular biology and new genetic modification techniques can impinge on deeply held ethical beliefs, and people should not be compelled to do anything that they believe is contrary to respect for life. While conscience clauses were included in the initial legislation, they have been continually eroded by social pressures to conform. Those involved in procedures that impact on sincerely held ethical beliefs must be given the right to opt out.

The need to respect conscience goes beyond the field of medicine. Yesterday, I was invited by the DfE to give a Sikh perspective on relationship teaching in schools. As a Sikh, I am appalled at the undue emphasis on sexual relationships and sexual identity currently being taught in school. Young children are led to question their gender and are unhelpfully offered support to make permanent potential differences, which are generally passing phases in growing up. Parents and teachers should have a right to question or opt out of such teachings.

Today we should heed the words of the great philosopher James Russell Lowell who wrote:

"We owe allegiance to the State; but deeper, truer, more
To the sympathies that God has set within our spirits core".

This Bill is timely, well considered and necessary. I give it my full support.

11.41 am

Lord Dubs (Lab): My Lords, I first had the pleasure of meeting the noble Baroness, Lady O'Loan, in Northern Ireland many years ago, and I was very impressed by the work she did there and the excellent way she contributed to the peace process and decent life in Northern Ireland. It is therefore with some regret that I have to differ from her on this occasion. I feel pretty bad about that, but I feel I must do so. She was such an important figure in those years in Northern Ireland.

Of course we all agree about the right to conscientious objection. It seems to me that we are simply debating where to draw the line. There is no real point of principle here. I think the current provision for conscientious objection in medical practice has just about got the balance right between healthcare professionals' moral beliefs and patient freedom. I fear that this Bill would tip the balance in the wrong direction, away from the rights of patients. That is the basis of my objection. I do not think the case has been made out for the Bill, at least, not to my satisfaction.

There is one particularly important point. There is nothing in this Bill which would oblige the objecting healthcare professional to refer a patient's case to another professional who did not have an objection. In other words, if a doctor, nurse or whoever is unhappy about being asked to carry out a procedure or form of treatment, surely they should be able to do what has traditionally be done, which is to say, "I can't do this, but I'll refer you to somebody else who can". That is an enormous gap in the Bill. I do not think I have misread the Bill; it is not there, and that is unfortunate.

The Bill would significantly widen the scope of conscientious objection. It would increase the number of medical procedures to which conscientious objection would apply under the law. It would broaden the range of professionals to whom it would apply. For example, Clause 1(2) states:

"'participating in an activity' includes any supervision, delegation, planning or supporting of staff in respect of that activity".

That participation may be so peripheral to the activity itself that it is extending the principle of conscientious objection too far. I much prefer the comment of the noble and learned Baroness, Lady Hale, about it having to be hands on, but even if we feel the noble and learned Baroness was too narrow, the Bill goes far too far in the subsection I read out because we are talking about supervision, delegation and planning.

Let me spell it out. For example, you might have a palliative care clinical nurse specialist supervising the specific care needs of patients on an oncology ward, including those who may have refused life-sustaining treatment, such as chemotherapy. It is the right of patients who suffer from cancer to refuse chemotherapy, and I know some people who do. Surely that ought not to be within the ambit of the Bill. I could give many other examples. The rights of patients should not be forgotten in this way.

The Bill also seeks to expand the activities to which a healthcare professional could object. It is crucial not to distinguish between people starting treatment and people stopping treatment at a time of their choosing. We heard a very emotional speech from the noble Baroness, Lady Richardson, about her family circumstances. It seems to me that the right not to have treatment and the right to stop treatment are fundamental, and my fear is that this Bill would make that freedom less effective

Lastly, there are people who want to refuse life-sustaining treatment in advance because of the possibility of deterioration in their mental health condition. I fear that the Bill is silent on whether healthcare professionals can conscientiously object to enabling mentally competent adults to refuse in advance life-sustaining treatment which others may regard as necessary.

I regret having to object to the Bill, but I do. I think it would be to the detriment of patients and I do not believe it takes the argument of conscientious objection any further in a sensible way.

11.47 am

Baroness Cox (CB): My Lords, I congratulate my noble friend Lady O'Loan on introducing this Bill. The points I wish to make have already been made in far more eloquent contributions than mine will be, but I wish to put on record very briefly my reasons for strongly supporting this Bill. I should acknowledge my position as an honorary vice-president of the Royal College of Nursing.

As a former nurse, I feel very strongly about the issues under consideration. It seems that of all healthcare professionals who would be positively affected by the successful passage of this Bill, none would be more so than nurses and midwives as nurses are likely to be asked to assist in the withdrawal of life-sustaining treatment and midwives are likely to be asked to assist with enabling abortion, the two more relatively common practices addressed by the Bill.

This is a matter not of imposing values or beliefs on patients but of asking for the right to conscientious objection where a human life is being taken, by asking the National Health Service to accommodate professionals who have religious or philosophical convictions which directly inform the conscientious performance of their role. Such beliefs are given protection under law from discrimination in conscience clauses recognised—indeed, originally called for—by professional bodies. I refer, for example, to the inclusion of the conscience clause in the Abortion Act. The Royal College of Nursing, the General Nursing Council, which today is the Nursing and Midwifery Council, and the Royal College of Midwives all called for a provision to help to protect the professionals they represented, and rightly so. It was this representation which informed the framing of the Act and which should inform our interpretation of it today.

As the Royal College of Nursing position statement on abortion states:

> "We equally acknowledge and respect those nurses, midwives and health care assistants who have a conscientious objection within current legislation".

This acknowledgement is important because it reflects the understanding that conscientious belief is not just a personal idiosyncrasy but an essential element of what it is to be a human being and, most importantly in this context, a human being providing healthcare and medical treatment. That is why such belief is protected under equality legislation, and why we have taken pains in previous law to accommodate the conscience of medical professionals. Unfortunately, as has been highlighted by others, recent legal judgments have demonstrated a degradation of conscience protections in law. Correcting this situation, as the Bill would do, thereby allowing freedom of conscience for healthcare workers, ensuring their freedom from unjust discrimination and respecting diversity of belief, would be a very significant and much-needed achievement.

For the sake of those serving in the medical, nursing and midwifery professions, for the sake of the patients they serve and for the sake of the integrity of healthcare professions, I believe ensuring that conscientious objection is given proper protection in law would be a truly important reform, which this Bill seeks to do. That is why I give it my strongest support.

11.50 am

Lord Rowe-Beddoe (CB): My Lords, I support the Bill brought forward by my noble friend Lady O'Loan. I bring your Lordships back for one moment, as has just been referred to by my noble friend Lady Cox, to the Title of the Bill we are debating: "Conscientious Objection". In the context of the word "conscience", I support and agree with the mainstream academic view, which was briefly referred to earlier, articulated by ethicist Professor Dan Brock of the Harvard Medical School in 2008:

> "Deeply held and important moral judgments of conscience constitute the central bases of individuals' moral integrity; they define who, at least morally speaking, the individual is, what she stands for, what is the central moral core of her character".

The truth is that there is a sense—which I think Brock draws out rather well—in which the role of conscience highlights an important part of what makes us human.

There is something decidedly sinister, oppressive and inhuman about societies that do not make space for conscience and which make people suffer for remaining true to their moral judgments of conscience informed by secular or religious values. As academic and expert in this field Dr Mary Neal of the University of Strathclyde legal department puts it:

> "Conscience clauses exist primarily to protect people from moral responsibility for what they regard as wrongdoing".

This seems a vital part of our legal framework and one which, in the areas of medicine we are discussing today, is widely respected internationally.

Article 9 of the European Convention on Human Rights outlines that everyone has the right to freedom of thought, of conscience and of religion. Furthermore, as has already been referred to, Resolution 1763 of the Parliamentary Assembly of the Council of Europe calls on Council of Europe members to guarantee the right of conscientious objection for medical procedures in the very areas described in the Bill, while, importantly, also ensuring patients are able to access appropriate treatment.

At this point, some might say that although they have no desire to force people to act against their conscience, people with conscientious objections to

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procedures covered by Clause 1 should not enter the medical profession—no one has to be a doctor, a midwife or a nurse. I do not find that position at all persuasive. As someone who has spent his life in business—commercial, education and the performing arts—I am as keenly aware as anyone that every industry wants hard-working, dedicated people operating in their fields. We want hard-working, dedicated doctors, nurses and midwives working in this country. Individuals who enter these professions often do so because of their deep concerns for human life. It is therefore no surprise that the medical procedures covered by Clause 1 would be problematic to some of them. In the absence of the Bill, I believe two groups would get into difficulty.

First, let us consider those who have already trained and become medical professionals, and who have conscientious objections to abortion. The 2016 report *Freedom of Conscience in Abortion Provision* highlights evidence of clear conscientious objection-based discrimination against those already in the medical profession. These were not frivolous claims but serious concerns expressed by those who reported that they would not be able to progress their careers if they objected to abortions. It is for this reason that I strongly support the employment discrimination protections in Clause 3.

Secondly, let us consider the implications of asserting that only those without a conscientious objection should enter a medical profession. This will clearly be a huge disappointment to those who aspire to be medical professionals and who otherwise would have become talented doctors or nurses. I know all noble Lords are greatly disturbed by the news of the shortage of medical staff in the National Health Service. In this context, putting any barriers at all in the way of entering the medical profession because individuals feel they cannot exercise their freedom of conscience is clearly counterproductive.

The irony that some should argue against conscience on the basis that it will apparently restrict services is greatly compounded by the fact that the right to conscientious objection proposed in the Bill, and already in law, applies only to individual professionals. The National Health Service in both England and Wales has a legal obligation to provide abortion services and the responsibility to ensure sufficient provision.

I do not wish to see medical professionals condemned to being impersonal distribution mechanisms rather than people. I do not wish—I am sure none of us do—to have services delivered, especially healthcare services, by people who have been forced to renounce a key aspect of their humanity. We want doctors and nurses who are more, not less, human and that will only happen if we honour their humanity. I want to live in a country where we have a richer conception of human beings and where we do not weaponise consumer rights, such that the consumer can demand his pound of flesh from the provider without any concern for the moral difficulty it might place him or her in. It seems to me that part of the challenge of living in a civilised society is having the grace to exercise one's rights in a way that has regard for how doing so impacts on other people. I am committed to this Bill.

11.58 am

Baroness Meacher (CB): My Lords, I express my great respect for my noble friend Lady O'Loan but also my considerable concern about the likely consequences if this Bill were to reach the statute book. I also pay tribute to the extraordinarily moving contribution from my noble friend Lady Richardson, which for me says it all. The focus of my remarks will be Clause 1(2) and in particular the widening of the definition in that clause of the term "participation" in the treatment process. I will limit my remarks to the issue of withdrawing life-prolonging treatment at the request of the patient.

In this context, the issue today is the right of patients to decide when and whether to accept medical treatment. In the past, of course, it was assumed that doctor knew best and the patient should not have any say in what happened to them should they fall into the hands of the medical profession. But in recent years, a basic tenet of medical treatment has become the right of the patient to know about the side-effects of treatment and the consequences of non-treatment, so that they can make an informed decision about what they know is in their own best interest.

The centrality of the patient in treatment decisions is assumed throughout adult life—until the months before death. The General Medical Council makes clear the duties of medical practitioners in its guidance, *Treatment and Care towards the End of Life: Good Practice in Decision Making*, published in 2010. Importantly, the GMC makes it clear that a doctor must not refuse to withdraw life-prolonging treatment because of a conscientious objection without first ensuring that arrangements have been made for another doctor to take over. In other words, a conscientious objector can—fair enough—have a conscientious objection, but must not interfere with the ending of life-prolonging treatment if that is the wish of the patient. If it is the wish of the patient it is because it is in the best interests of the patient. The patient's wishes must be paramount. Similar emphasis is placed on the patient's right to decide in the Mental Capacity Act Code of Practice—which I believe my noble friend Lady O'Loan knows extremely well—and by the Nursing and Midwifery Council.

The provisions of this Bill will place an unnecessary additional burden on the medical professionals and others in our already drastically overstretched NHS. This worries me deeply, because we want patients to get the treatment that they want and deserve. If the GMC's and other guidance is not fully complied with, the important needs of patients will not be met. The current law works well; as they say, if it ain't broke don't fix it. The law allows medical professionals to conscientiously object without abandoning their patients and without compromising the principles of person-centred care. Clause 1(2) of this Bill intends—as noble Lords know well after all these very good speeches—to extend the definition of "participating" in the withdrawal of treatment to encompass,

"any supervision, delegation, planning or supporting of staff".

As other noble Lords have said, this is in direct conflict with the Supreme Court decision, delivered by the noble and learned Baroness, Lady Hale, that:

"'Participate' in my view means taking part in a 'hands-on' capacity".

It is terribly important, I think, that a medical professional should not be required to do something directly contrary to their conscience. I hope your Lordships will want to uphold the Supreme Court decision and, therefore, to reject this Bill. My noble and learned friend Lord Brown set out that decision in detail, which was most helpful.

I support the concern of the noble Lord, Lord Dubs, that this Bill also says nothing about whether healthcare staff could conscientiously object to helping mentally competent adults with their advance care plan, including clarifying situations where they would want treatment to be withdrawn. If that happened, it would have a swathe of further detrimental effects for patients. It is important for us all to try to put ourselves in the position of a dying person whose suffering has become unbearable and whose treatment is only prolonging a situation they find intolerable. The patient wants the ability to decide how much suffering they are willing and able to take. Can anyone really say that the patient should be denied that right?

Particularly vulnerable, if this law were passed, would be a terminally ill patient in a hospice who decided that they wanted treatment to cease, but whose charge nurse with management responsibility for their care had a conscientious objection to that patient's decision. Would that charge nurse really be able to ensure that someone else took over their management responsibility? Would there be such a person? This law is dangerous. It would have a negative impact on palliative and hospice care. Terminally ill patients could be required to suffer more than they already do—people suffer enough—and, therefore, wrongly, in my view.

This is a complex issue, but I believe that the current law strikes a pretty good balance. I therefore cannot support this Bill.

12.04 pm

Lord Elton (Con): My Lords, to begin, perhaps I should try to allay some of the anxieties of the noble Baroness, Lady Meacher, by referring her to Clause 1 of the Bill, which restricts its effect to activities under the Human Fertilisation and Embryology Act 1990 and the Abortion Act 1967, so it is not, I think, going to take us into the area of hospices and so on. I will speak very briefly, because so much has been said already, and said well. My noble and learned friend Lord Mackay has set out very clearly most of the reasons why I support this Bill in legal terms, and my noble friend Lady Eaton has set them out in philosophic terms. I would rather turn to the practicalities, as there is a common concern, not limited to those who oppose the Bill in principle, about the extent to which the exemption in the Bill applies.

Two things need to be kept in mind as we start this. The first is to empty our minds of our own views as to the rightness or wrongness of the termination of life. What we are looking at is the rightness or wrongness of requiring people to do things which are absolutely abhorrent to them. The question is, how close to the deed that is done do you have to be before you are right to think that you are in some sense guilty? Therefore, it might be helpful to look at how we apply this test elsewhere. For instance, if there is a burglary and I make arrangements for the burglar to have somebody keep watch while he burgles, or if I arrange a getaway car and delegate the driving duty to somebody else, it would be quite clear in a court, I would have thought, that guilt attached to me because I had made it possible for the burglary to take place.

So the question is, in my mind, at what stage in the administrative and preparatory procedures can a person who is involved in them properly say that, "If I had not done this, that would not have happened", or "If I had not provided this particular pharmaceutical product, or had not myself been present at a particular time enabling a certain function to take place, it could not have happened"? The definition we must seek in Committee is one which makes clear where the line stops in the administrative and preparatory train—the line below which there is no guilt, where what you are doing is organising the bus service that goes past the house that was burgled and not the car in which the burglar got away. It is a very simple illustration; I hope it is helpful.

I warmly and enthusiastically support the Bill and the intentions of the noble Baroness. I would like to say a lot more about a lot of other contributions, but I think your Lordships really want to bring this to an end, because we are focusing clearly on what the real issues are.

12.08 pm

Lord Alton of Liverpool (CB): My Lords, I congratulate my noble friend Lady O'Loan on bringing this timely Bill to your Lordships' House and on her eloquent and persuasive introductory remarks. My unremunerated interests linked to various charities which work on these issues are declared in the register. I served as a member of the All-Party Parliamentary Pro-Life Group's inquiry into freedom of conscience in abortion provision, which has been referred to during the course of this debate. The inquiry was admirably chaired by the Member of Parliament for Congleton, Fiona Bruce.

On Wednesday this week, I met Mary Doogan, one of the two midwives referred to by my noble friend and by the noble and learned Lord and others. The call of the midwife is an incredibly high calling. It is a call to bring new life into the world. To tell such women that they must facilitate the taking of the lives of babies in the womb or lose their jobs is not the hallmark of a liberal or tolerant society.

In the 18th century, the renowned German philosopher, Immanuel Kant, understood conscience as,

"an internal court in man".

It is a core premise that conscience acts as an external constraint on human behaviour. Whether it is inspired by religious or secular belief is largely irrelevant. Conscience is not founded on whim or personal preference; rather, it provides meaningful conviction that allows people to structure their own ethical identity and exercise their judgment. It was in accordance with Kant's dictum that the framers of the 1948 Universal Declaration of Human Rights, written as the world emerged from the horrors of the Second World War,

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understood conscience. Conscience features prominently in the document, with the very first article recognising that:

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience".

Both the Universal Declaration of Human Rights and the European Convention on Human Rights explicitly guarantee the right to freedom of conscience for all, and it has been recognised in every major human rights treaty since then. It was also recognised in another place and here during the debates in 1967 that formed the Abortion Act. It was David Steel, now the noble Lord, Lord Steel, who told the House of Commons:

"The Bill imposes no obligation on anyone to participate in an operation",

and that:

"The Clause also gives nurses and hospital employees a clear right to opt out".—[*Official Report*, Commons, 13/7/1967; col. 1318.]

The case of Mary Doogan shows how that assurance, which was given in sincerity and in the genuine belief that it would be implemented, has at least been diluted and watered down. While conscientious objection was specifically enshrined in Section 4 of the Act, in practice the report that we undertook over the last two years found that medical professionals are far too dependent on the individual attitudes and discretion of their personal line managers or colleagues. During the inquiry, evidence from the British Medical Association confirmed that some doctors had complained of being harassed and discriminated against specifically because of their conscientious objection to abortion. The inquiry also heard evidence on how career progression opportunities—a point that the noble Lord, Lord McColl of Dulwich, with so much experience in this field, made during his speech earlier today—particularly in the field of abstract obstetrics and gynaecology, had been limited for those wanting to exercise their conscience.

I was particularly struck by a piece of evidence from one of the country's leading paediatricians, Professor John Wyatt. He told us:

"Over the last century there have been many startling and egregious cases in which the core moral commitments of medicine have been corrupted and violated because of state coercion exercised on physicians".

The vast majority of evidence that we received accorded with what Professor Wyatt said to us and recognised the importance of conscience as a key part of what it means to live as a free and fulfilled individual in a diverse and democratic society.

My noble friend Lord Rowe-Beddoe referred to Dr Mary Neal, a senior lecturer in law at the University of Strathclyde. I met her earlier this week too. In her written evidence, she said:

"We should not expect someone who believes abortion to be seriously morally wrong to be willing to participate in it in any capacity, and conscience provisions should be drafted and interpreted so as to protect health care practitioners against any such expectations".

At its core, the Bill is about the minority's right to dissent from mainstream opinion and to resist compelled action. It prevents the abuse of a dominant position and is deeply concerned with the right of individual liberty. Most of the arguments against the Bill that have been advanced during today's debate simply do not stand up to scrutiny. The Abortion Act already limits the scope of conscientious objection. If it were working in such a pernicious way as some have described in preventing people from participating in abortions, it really would not enable one abortion to take place every three minutes in this country, 20 every hour—that is, over 8 million since the passage of the legislation. So I do not believe that argument stacks up.

However, the state has a duty to safeguard the conscience of individual professionals, as well as providing an effective healthcare service. The denial of conscience is an attribute, indeed the hallmark, of an illiberal society because it is an act of coercion. A doctor, nurse or midwife is not a functionary or an automaton; as the father of a young doctor, I am acutely conscious of the high calling of a healer. Two and a half thousand years ago Hippocrates, the father of medicine, enunciated a revolutionary devotion to the preservation of human life. Here I agree with the noble Baroness, Lady Richardson: we are not compelled to go to heroic lengths to keep someone alive who would otherwise die. That is not at the core of palliative medicine, and her heartbreaking story is an example of bad medical practice. However, nor should we tell doctors that they have to give lethal injections to take life.

My noble friend's Bill is consistent with the tradition of Hippocrates, who said, in a fundamental move away from more primitive medical traditions, that there would be prohibitions on abortion and euthanasia. He refused to accommodate those who believed that "care" and "kill" could be used as synonyms. Nor does my noble friend, and that is why I hope her Bill will receive a Second Reading in your Lordships' House today.

12.15 pm

Baroness Barker (LD): My Lords, I declare an interest as the new chair of the All-Party Parliamentary Group on Sexual and Reproductive Health in the UK, a position that I have taken over from the noble Baroness, Lady Gould. I place on record my thanks to her for all the work that she has done during her time in that position.

In that capacity, I have had the great privilege of talking to my noble friend Lord Steel. He could not be here today but if he were then, like me, he would seek to vigorously oppose the Bill from the noble Baroness, Lady O'Loan. He would also have picked up the noble Lord, Lord Alton, on his partial quotation from 1967: what my noble friend went on to say was that conscientious objection was written into his Bill but with the proviso that no woman would be denied access to the services that would then become legal. He wanted to say to noble Lords today, had he been present: do not be fooled by this Bill. It would take us straight back to the period of the early 1960s, when practitioners such as the senior registrar in the West Midlands effectively denied women their legal rights.

I often talk to students about the contrasting systems of the US and this country when it comes to discussing and legislating on matters of morality and conscience. I draw a contrast with the US where, such is the level of religiosity in debate that no elected politician can

go against the prevailing religious orthodoxy and therefore they do not, and matters of conscience and morality are litigated in the courts. We in the House of Lords do things rather differently: we bring in all shades of religious opinion and debate these matters extensively. I ask them to compare and contrast the two.

I think it is right that we have our system and that we engage in debates such as these. I therefore agree with the right reverend Prelate that it is important that we look at these matters in very informed and deliberative ways. I agree with him that it is perhaps time that we reviewed the 1967 Act; it was written 50 years ago and times have changed. Unlike him, I believe it is now too restrictive and wish to see it liberalised.

I want to address the issue of conscience. I listened very carefully to the speeches by the noble Baroness, Lady Eaton, and the noble Lord, Lord Elton. Someone reading our debate today might come away believing that it is only those who object to abortion who are holders of conscience and morality. I do not believe for a moment that is true. I remember talking to Lord Winstanley, a young doctor who helped my noble friend Lord Steel to take—

Lord Elton: Would the noble Baroness give way? I made it clear at the beginning that the question of whether you believe an act is right or wrong is absolutely immaterial; what matters is the effect on the person. I attribute no beliefs to anyone.

Baroness Barker: The point that I wish to make stems from exactly that. Noble Lords will remember that during the passage of the Marriage (Same Sex Couples) Act there was a proposal that registrars, who are public servants, should, according to their conscience, be permitted to deny services to people who would be married under that Act. The effect of that would have been that were people like me, and in this case the noble Lord, Lord Cashman, to turn up to a register office to register the death of our loved one, we would not be accorded the same treatment and dignity as any other person.

The noble Baroness, Lady Young, talked about the United States of America. The Bill is one example of a much larger movement in which people who oppose certain legislation on matters of what I would consider to be social progress use the issue of conscience as a proxy by which to undermine laws which are democratically passed. That is a serious and insidious development, and one that we in this House should strongly resist. This is not about the clarification of conscience, it is about the extension of people's rights to opt out of provisions of laws which have been carefully considered and agreed in great detail in our democratic institutions.

The impact of the Bill is exactly what the noble Baroness, Lady O'Loan, sought to deny. She said that this is not about restricting access to services. It absolutely is. We already have examples of that. We have examples in the NHS of GPs who refuse to provide access to contraceptive services. There are boroughs in London where there is no provision. What happens in those circumstances? It is poor women and women who do not have the freedom or wherewithal to travel elsewhere to get those services who suffer.

This is a deeply pernicious Bill. I hope that, when we get the opportunity to do so, we will vote against it in such overwhelming numbers that we put an end to the arguments that lie behind it, which I believe are thoroughly disingenuous.

Lord Elton: Before the noble Baroness sits down at the end of a powerful and lucid speech, as she is sitting on the Front Bench, is she delivering the line of her party on the Bill or is she speaking personally?

Baroness Barker: I make it absolutely clear. As on all other Benches, we have a variety of beliefs on this subject, but what I can say in all clear conscience is that I represent the majority of my colleagues on these Benches.

Lord Swinfen (Con): Perhaps the noble Baroness will answer one simple question to clarify what I think she said. Am I right in thinking that she said that a medical practitioner who had a conscientious objection to helping with an abortion would still have to help with an abortion if it was necessary? That is what I understood that she said.

Baroness Barker: For the avoidance of doubt, I agree with the statements made in the court judgment of 2016: that no practitioner should be compelled to take part in the hands-on offering of a procedure, but they cannot indirectly deny women access to treatment to which they are legally entitled.

12.23 pm

Baroness Thornton (Lab): My Lords, in many ways, the noble Lords, Lord Elton and Lord Singh of Wimbledon, gave the game away about this legislation. It is in fact in opposition to a whole range of legislation—on abortion rights, human fertilisation and embryology, the Equality Act and several others referred to by other noble Lords. When I read the Bill, the words, "wolf in sheep's clothing", came to my mind. I need from the outset to make the Labour Party's position on this Private Member's Bill clear. We will not, of course, oppose the Bill at Second Reading, but only because that is the custom and practice of this House. However, this proposal flies in the face of our public policy, and much of the legislation it seeks to change we put on the statute book or supported. I will lead from the Front Bench the opposition to the proposals it contains.

I agree with my noble friends Lady Young and Lord Cashman, the noble and learned Lord, Lord Brown, the noble Lord, Lord Dholakia, the noble Viscount, Lord Craigavon, the noble Baronesses, Lady Richardson—whom I commend for a moving and appropriate contribution—and Lady Meacher, and, of course, my friend the noble Baroness, Lady Barker.

I say to the right reverend Prelate the Bishop of Peterborough that the word I looked for in his contribution was "equality". The reason I looked for that is because many of us in this House have struggled with how to reflect conscience and ensure equality. I ask him to reflect on that, because many of the proposals in the

[Baroness Thornton]
Bill will affect LGBT rights and the rights of other groups. Because he is wise in his ways, he needs to reflect on the fact that the Bill will restrict rights to abortion and other procedures.

It will dramatically extend the scope of conscientious objection, increasing the number of medical procedures to which it could apply under law, increasing the types of professions to which it would apply and expanding the activities which would be applicable, from abortion to IVF and the withdrawal of end-of-life care. The reason it is significant is that it represents the new front in the attempt to undermine our equality laws, to extend the number of areas where conscientious objection can be used to refuse to provide services. In this case, the extension proposed in the Bill is so radical that it has the potential to have a real impact on everything from obstetrics and gynaecology provision to geriatric care and care in chronic and terminal conditions.

Like other noble Lords, I believe that the reason the Bill is brought forward is because of the case of the Scottish midwives, who lost in the Supreme Court. They lost a case where they wanted the right to refuse to supervise staff who performed abortions or refer patients to staff who would be willing to participate. The noble and learned Baroness, Lady Hale, rejected that case, giving the judgment which has already been mentioned, so I will not repeat it, but which I think was wise.

I also agree with the noble Baroness, Lady Barker, that this Private Member's Bill follows a trend we have seen in America with the introduction of state legislation to undermine LGBT and other equality laws by an increase of a so-called conscientious exemption for public employees providing services. We believe that the current provision of conscientious objections, which refer to the refusal to perform certain activities on moral or religious grounds, are balanced and work in practice. All the medical professional bodies support the legal provision of conscientious objection to allow healthcare professionals to practise in line with their personal beliefs, alongside the guidelines that make clear the obligations of an individual with a conscientious objection to ensure that their patient can access appropriate care.

I will not repeat what is in Section 4 of the Abortion Act 1967, to which many noble Lords referred, but it works. The Human Fertilisation and Embryology Act 1990, along the same lines, provides for individuals to opt out of providing fertility treatment, the storage of human eggs, sperm and embryos and research on early human embryos. Parliament did not have in mind, when it passed that legislation about the provision about health services, hospital managers who decide to offer abortion services, the administrators who decide how best that service can be organised, the caterers who provide patients with food and the cleaners who provide a safe and hygienic environment.

I thank the organisations who sent me many briefing materials, including the Library. However, I have to say that I did not think that the brief from the Library was complete or balanced, which is an issue that I have raised with the Library. Perhaps it is better if our extremely good, excellent and brilliant researchers stay out of this area when providing briefs for noble Lords, because it is dangerous territory for them to enter. That being said, they do an excellent job.

We believe that the current law and practice works, and the recent testing in the courts is further evidence that that is so. I hope that the Government will also be able to say that they believe that the current legal framework and practice works. This is the position that we support. This is the position that we will continue to support.

12.30 pm

Baroness Chisholm of Owlpen (Con): My Lords, I congratulate the noble Baroness, Lady O'Loan, on securing this Second Reading of her Bill, which aims to clarify the extent to which a medical practitioner with a conscientious objection may refrain from participating in certain activities relating to abortion care, assisted reproduction and fertility treatment, and withdrawal of life-sustaining treatment. As is usual with these sensitive matters, the Government are taking a neutral approach to the Bill.

As the noble Baroness, Lady O'Loan, and the right reverend Prelate the Bishop of Peterborough mentioned, it is of course right that medical practitioners and other health professionals should have their personal beliefs respected. As the noble Lord, Lord Dholakia, said, the right to object to participating in treatment is enshrined in the Abortion Act 1967 and the Human Fertilisation and Embryology Act 1990. As the noble Lord also mentioned, while medical practitioners are within their rights to refrain from participating in certain medical activities on the basis of conscientious objection, this should cause no detriment or barrier to the care patients are entitled to. Section 4 of the Abortion Act 1967 allows those with a conscientious objection to opt out of participating,

"in any treatment authorised by this Act",

unless that treatment is immediately,

"necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman".

The noble Baroness, Lady O'Loan, mentioned private clinics. Interestingly, two-thirds of abortions are carried out by the independent sector, where staff actively choose to work in abortion care.

The courts, including most recently the Supreme Court, have considered whether participation in treatment should include activities ancillary to the actual procedure, such as managing ward resources, supervising other staff and providing post-operative care to women on the ward. In December 2014, the Supreme Court held that "participate" should be construed narrowly and the conscientious objection provision should cover only those activities that involve actually taking part in the termination procedure. Section 38 of the Human Fertilisation and Embryology Act 1990 regulates the provision of certain fertility treatments, services and research involving use of human embryos. It already allows staff to withdraw from participation in an activity covered by the Act if they have a conscientious objection to it. However, similarly to the Abortion Act, that Act does not define participation. The department therefore relies on guidance issued to medical practitioners by regulatory bodies such as the General

Medical Council. This helps ensure that rights of conscientious objection are exercised within the parameters set out by the current legislation and in line with the principles of good medical practice. In addition, each of the nine regulatory bodies that regulate health and care professionals in the UK has its own publication, setting out the standards, behaviour and conduct expected of the professionals on its register. The Act provides protection for all staff who feel unable to take part in an activity regulated by the Act to which they have a conscientious objection.

Life-sustaining medical treatment benefits the patient by restoring or maintaining health as far as possible. If, however, all suitable treatments fail or cease to provide benefit to the patient, they may ethically and legally be withheld or withdrawn and the focus of treatment changed to the relief of symptoms. As noble Lords know, in practice the decision to withhold or withdraw life-sustaining treatment is often very difficult. It is also very stressful for the patient's family and the staff who have been looking after them. The noble Baroness, Lady Richardson of Calow, talked movingly about her experiences with the treatment of her husband. Guidance from the GMC states that doctors may withdraw from providing care if their beliefs about providing life-prolonging treatment lead them to object to complying with either a patient's decision to refuse such treatment or a decision that providing such treatment is not of overall benefit to a patient who lacks capacity to decide. However, as the noble Baroness, Lady Meacher, mentioned, the guidance is also explicit that doctors must first ensure that arrangements have been made for another doctor to take over their role and that it is not acceptable to withdraw from a patient's care if this would leave the patient or colleagues with nowhere to turn. The noble Baroness, Lady Young of Old Scone, and the noble Lord, Lord Dholakia, mentioned the importance of patients' views for their end-of-life care. The Government's commitment to everyone at the end of life is to focus on the perspective of the dying person and those important to them.

Before I end, I will answer a couple of questions raised during the debate. The right reverend Prelate the Bishop of Peterborough mentioned pharmacists. The General Pharmaceutical Council informed us that it is currently analysing responses to its recent consultation on religion, personal values and beliefs in delivering person-centred care. The GPC will then make a decision on any changes to standards for pharmacy professionals. My noble and learned friend Lord Mackay of Clashfern asked if there was data on the number of conscientious objectors. The data on the number of staff with these views is not held centrally.

As the noble Baroness, Lady Meacher, said, these are difficult and challenging issues. I have listened with interest to the range of views expressed today. I join noble Lords in paying tribute to the noble Baroness, Lady O'Loan, for bringing forward the Bill and for highlighting the complex issues surrounding conscientious objection. I have heard and taken note of all that noble Lords have said today. The department will want to reflect on the points raised. I thank her, and other noble Lords, for their contributions on this important issue.

12.37 pm

Baroness O'Loan: My Lords, I thank all noble Lords who took part in this debate, which has been interesting and, as I expected, challenging. The noble Baronesses, Lady Barker and Lady Thornton, raised what the noble Lord, Lord Steel, said. At the very end of Report, when the House of Commons debated possible amendments to the conscience clause, the noble Lord—then Mr David Steel MP—said:

> "It also gives nurses and hospital employees a clear right to opt out".—[*Official Report*, Commons, 13/7/1967; col. 1318.]

First, I will say a few words about what this Bill does not do. It is not a game; this is a very serious issue. The Bill does not remove patient decision-making in any respect. I reassure the noble Lord, Lord Dholakia, and others that it is not about abandoning patients or their families. It is not about causing them to suffer. It is not about forcing people to be treated against their will, as the noble Lord, Lord Steel, said. The terrible experience of the noble Baroness, Lady Richardson, with whom the whole House would want to express sympathy, was bad medical practice. It is not about restricting access to abortion. It is not about allowing patients to force medical professionals to do anything. It is not about seeking to reject or deny the welfare and wishes of patients. It is not about depriving people of the right to reject treatment or refuse consent to it. It is not about the merits or otherwise of abortion, fertility treatment or withdrawal of treatment at the end of life. It would not have a negative effect on hospice care.

I watched my brother-in-law in the hours before his death from motor neurone disease. He was incapable of moving, pondering at length on the proposed next treatment, before he accepted what was suggested, having satisfied himself that it was in accordance with his conscience. He died very shortly afterwards. This Bill would not deny others that right. It would provide a right of conscientious objection to those who genuinely object to engaging in particular medical situations. It is about highlighting the fact that the responsibility to provide National Health Service care is a responsibility of the health service, not the individual employee. It is about according statutory protection—not guidance, not administrative protection—to staff who do not have it, because the right to conscientious objection is not a universal right accorded to all medical practitioners by statute under the Abortion Act. It does not protect, for example, GPs and pharmacists.

The Bill is about allowing medical practitioners to act in accordance with their conscience. It is about recognising that people who have a fundamental objection to doing something should not be forced to arrange others to do it. It is about making the health service inclusive so that all medical practitioners can take their rightful place in the discipline of their choice rather than being restricted to areas in which they can work or being forced to leave the United Kingdom. As the noble and learned Lord, Lord Mackay, said, the Bill is about asserting that it is not necessary or right to force people to do things that they hold to be wrong. It is about legislating to ensure that we have the best possible health service, staffed by the best possible medical practitioners, providing the service in

[Baroness O'Loan]
accordance with the wishes of the patient and capable of accommodating the conscientious objection of medical practitioners.

There seems a slight disconnect in the suggestion that if the Bill were passed it would be impossible to provide services to people. It would be interesting to know how many conscientious objections there are. However, the evidence suggests that the Bill would not deprive people of treatment. Therefore, I ask the House to give it a Second Reading.

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

Registration of Marriage Bill [HL]

Second Reading

12.42 pm

Moved by ***The Lord Bishop of St Albans***

That the Bill be now read a second time.

The Lord Bishop of St Albans: My Lords, the purpose of this Bill is to correct a clear and historic injustice. When a couple are married and that marriage is registered, there is currently provision only for a father's name to be recorded. This is an archaic practice and unchanged since Victorian times, when children were seen as a father's property and little consideration was given to a mother's role in raising them.

As we approach the centenary of the Representation of the People Act, it is only right that we consider how existing legislation excludes, or does not recognise, the contribution made by women. This Bill allows for this important and symbolic change to be made. As I am a bishop in the Church of England, it is important to note that the Bill will allow mothers' names to be included when registering all marriages, not just those taking place in Church of England churches. I also draw your Lordships' attention to an identical Bill introduced in the other place by the second church estates commissioner, Dame Caroline Spelman. We are hoping that between us appropriate time will be given so that this change can be made.

A marriage officially recognises the start of a new family. Including parents' names on marriage registers gives children an opportunity to recognise the contribution of their parents in bringing them to that day. It is only right that mothers are recognised in their role just as much as fathers. Unsurprisingly, and as many Members of this House are aware, calls for reform of this system of marriage registration are not new. Indeed, in August 2014, the then Prime Minister David Cameron announced his support for a move to facilitate the inclusion of mothers' names on marriage registers, and Members in the other place from all major parties have supported Early Day Motions in favour of the change. Much to the amusement of the staff in my office, a number of magazines written for what one might call the stylish woman have been interested in, and supportive of, my Bill. However, that should not be surprising. I imagine that many Members of this House who have been married themselves or whose children have married will have been shocked that only the father's details are recorded. As someone who has performed hundreds of marriages, it seems to me wholly unreasonable that mothers are systematically overlooked on this special occasion.

The Church welcomes this change and has been working for many years with the Home Office and General Register Office on the finer points of its implementation. We have also solicited feedback from the Dean of the Arches, archdeacons and diocesan registrars.

Interestingly, I have also received a great deal of correspondence from genealogists, who are anxious for this change to be made. They find the current system of registration very frustrating as it registers only one half of the family tree. I believe that the Bill I have put forward is the best way to enact this necessary change. But, unfortunately, to enact the change is not as simple as creating another box for mothers' names on marriage certificates, as has previously been proposed. To do so would require 84,000 hard-copy marriage registers, located around the country, to be replaced at a cost of roughly £3 million. It would also not solve the problems that arise when 84,000 hard-copy registers serve as the formal legal record. Books can be easily lost or damaged, and an opportunity for fraud exists when blank registers and certificate stock are stolen. Thus, the Bill also provides for marriages to be registered electronically, as is already the case in Scotland and Northern Ireland. The General Register Office already has a system for this sort of electronic registration, and, apart from set-up costs, no wheels need to be reinvented.

Before I outline one or two further details of the Bill, I will mention what it does not intend to do. It does not alter who can get married, where they can get married or who can perform that marriage. The Bill does not propose any changes to marriage ceremonies or the Church of England's doctrine of marriage. These are all far greater questions, but they all fall outside the scope of this quite narrowly focused Bill. I understand that some Members of this House may have strong feelings on some of the other issues, but respectfully submit that I hope that these concerns will not get in the way of this simple and important change being made, which many people have wanted for such a long time.

I will also comment on the way in which this change will be enacted. It has been drawn to my attention that there may be some anxiety either in this House or in the other place about the power the Bill grants the Secretary of State to,

"make provision in relation to the registration of marriages in England and Wales",

by regulation. Concern has been expressed that this constitutes a Henry VIII clause. Before your Lordships take a view on the constitutional appropriateness of the power provided for in the Bill, I humbly submit that the Bill is very bounded, both at Clause 1(1) and in the accompanying Explanatory Notes. The powers enacted by the Bill are simply those required to make this change in the simplest and most logical manner possible.

I am also extremely grateful to all Members who have come to speak in today's debate, and I hope that I will gain their support so that this necessary change can be made. I beg to move.

Lord Young of Cookham (Con): My Lords, I gently remind those taking part in this debate of the advisory Back-Bench speaking time and urge them to follow the excellent example of the right reverend Prelate.

12.49 pm

Baroness Anelay of St Johns (Con): My Lords, I congratulate the right reverend Prelate on bringing forward the Bill and on his explanation of its purpose and the clauses. I warmly welcome the Bill. We are advised that the Home Office assisted in the drafting of the Explanatory Notes; I hope, therefore, that this means that when the Minister comes to respond, she will be able to indicate both that the Government support the Bill and explain how that support will be demonstrated.

As the right reverend Prelate set out, for almost two centuries wedding certificates have featured the names and occupations of the spouses, plus the names and occupations of their fathers. Today we have the chance to begin the work to ensure that the details of the couple's mothers can be included too, on a new online schedule-based system. The Bill puts right what most people would be astonished can still be the case in 2018—that the father's details can be recorded for posterity but not the mother's.

Cross-party work has been done on this for some years to achieve this move towards equality in the registration of details on marriage in England and Wales. However, in the past, as the right reverend Prelate set out in detail, it was argued that changing the paper certificates would be too expensive. Indeed, it would mean producing hard copies of the registers if we were simply to go ahead without legislation and without consideration of cost. To add the mother's name would mean producing those hard-copy registers at an estimated cost of £3 million. The solution in the right reverend Prelate's Bill to create a digital register is therefore most welcome. It removes the objection on cost grounds.

The Bill also has a practical impact. It removes the opportunity for criminal gangs to steal blank registers and certificate stock to create a false identity. I note that the impact assessment was prepared back in October 2015 and that it states that in the previous 12 months there had been 12 burglaries in church buildings, causing the loss of marriage registers and certificate stock. Can the right reverend Prelate or the Minister update the House on those figures for the period since October 2015?

I have only one further question, which I would be grateful if the right reverend Prelate might address when he responds to this debate. He might perhaps say a little more about the powers conferred by regulations in Clause 1. Clause 1(4) empowers the Secretary of State to amend the Marriage Act 1949 to create a specific criminal offence aimed at enforcing the registration of marriage. It passes the buck, so to speak. This House recently expressed its concern in debates on a government Bill about new criminal offences being created via regulations or statutory instruments. I would not wish to see any difficulty in passing the Bill; therefore, I would be grateful if the right reverend Prelate could take this opportunity to dispel any concerns others might have.

I also congratulate my right honourable friend Dame Caroline Spelman on her work on this matter and on securing a Second Reading debate in another place. There has been some puzzlement in the press about why there are two Bills. As a past Chief Whip, I am not puzzled in the slightest. It is wise for the right reverend Prelate and my right honourable friend to take this course, because it has several advantages—which I wish I had taken when I put forward a Private Member's Bill. It gives a greater chance not only of securing a Second Reading debate but of smoothing the successful passage of the Bill; it gives an early indication of the strength of support in both Houses; and it can identify and address any concerns expressed by parliamentarians.

As we know, Private Members' Bills face notoriously choppy waters as their sponsors seek to make progress to Royal Assent. In another place, there has often been an objection to Lords starters being passed simply because they originate from an unelected House. A single cry of "no" is enough to kill a Bill outright at Second Reading.

That happened to me when I sponsored a national heritage Bill in 2001. Having had good scrutiny in this House, it passed to the Commons, where it was summarily rejected. However, that was not the end of the story. I had a great sponsor there in Sir Sydney Chapman. He did not give up. Perhaps I could say that he "spoke to the people concerned" who were against the Bill and they changed their minds. Another date was found and it became the National Heritage Act.

I hope that the cross-party support for this Bill and the fact that a No. 2 Bill is tabled in the Commons will ensure that nobody seeks to jettison this Bill when, as I hope it will, it reaches another place. I wish it an untroubled and speedy passage.

12.55 pm

Baroness Donaghy (Lab): My Lords, I have pleasure in supporting the Registration of Marriage Bill and hope that it receives a smooth passage through Parliament. I thank the right reverend Prelate the Bishop of St Albans for initiating the Bill and particularly for his clear exposition of the case. As he mentioned genealogists, I should perhaps declare my interest as a fully paid-up member of findmypast.com.

I speak as an outsider. I was married in Peckham register office and have no direct experience of the process that the right reverend Prelate described. I am not a member of a church and, if civil partnerships had been available to heterosexual couples, that would have been my personal preference.

It is fair to say that preparing for this debate has been a complete education for me—both fascinating and exasperating. How can it take so long to do anything in this country? I was fantasising that, if we had given

[Baroness Donaghy]
the job of sorting the bureaucracy surrounding marriage to the Brexiteers, it would have kept them out of mischief for a decade.

I see that there have been noble attempts in the recent past to change things. They have all failed, probably because of a combination of too little parliamentary time and too little priority, and possibly because it has been in the "too difficult" in-tray. We have an opportunity to simplify a procedure, hopefully before the 200th anniversary of the legislation in 2037. As the noble Baroness, Lady Anelay, said, let us use the 100th anniversary of votes for women to make the change and add both parents' names to the marriage certificate. I had to do a double-take when I saw that mothers' names were not included, and most people whom I have spoken to were not aware of that either. I understand that, as has been said, in Victorian Britain the father would be seen as the head of the household, but in this day and age that is becoming extraordinary.

I understand that there are draft regulations, but so far I have not been able to access them. When she replies, will the Minister give an assurance that they will be available before Committee? The Explanatory Notes and impact assessment, as well as the Library note, were extremely useful, and I have now become best friends with RON, otherwise known as Registration Online. I understand that it is proposed to put "parent" on the form, rather than "mother" or "father". Just as there are guidelines at present on the definition of "father", I am reassured that there will be careful definitions covering all aspects of the description of "parent".

One anxiety that I had and which has already been expressed by the noble Baroness, Lady Anelay, was about the transfer of responsibility to register the marriage to the married couple, with the possibility of fines being imposed for failing to carry out their responsibility. The right reverend Prelate's office very kindly checked with the GRO, which said that in Scotland, where this system exists, the penalty for failing to register has not yet had to be used. I do not have any information about Northern Ireland, where the system also exists, but I imagine that the same is the case there.

As I said, we have the opportunity to simplify a procedure, save on costs and improve security. At present, criminal gangs obtain access to blank documentation and use it to provide false evidence of a marriage taking place. The fact that there is one robbery every month should be an important incentive to remove the requirement for blank registers and certificate stock to be held in churches and religious buildings. Although changes to the content of the register entry could be made by secondary legislation, as has already been said, any change would necessitate replacement of all 84,000 marriage register books currently in use in 30,000 religious buildings. The change to an electronic system will enable the form and content of the marriage register entry to be easily amended to include, for example, the details of both parents of the couple without having to replace all marriage register books. That is why this primary legislation is so necessary. Similar Bills have had support from various Ministers and the Fawcett Society has said it would be "another step forward".

I understand that the Church of England is not the only institution which will be affected by the passing of the Bill but, as long as it is the established Church, surely Parliament has an obligation to facilitate a long overdue improvement. I wish the Bill all speed.

1 pm

Baroness Meacher (CB): My Lords, I wholeheartedly support the Bill and congratulate the right reverend Prelate the Bishop of St Albans on sponsoring it. It is long past the time when mothers' names should have appeared on marriage registers and I share the view of the noble Baroness, Lady Donaghy, that it is truly remarkable that it has taken all these many years to reach this point.

I particularly support the comments which I believe will be made by the noble Baroness, Lady Bakewell—the speaking order is not ideal but we will manage—about the need for legal recognition of humanist marriages and the opportunity for this Bill to bring that about.

I introduced the amendment to the same sex marriage Act 2013 which provided for legal recognition of humanist marriages. The objective of my amendment was taken up by the Government, who tabled their own amendment making provision in law for humanist marriages to be legally recognised, a move that had broad support in both Houses. This is nothing controversial. The limitation of the Government's amendment, however, was that it required a ministerial order to bring this provision into being.

Since then I have patiently attended many meetings with Ministers who have assured us that they are making progress. However, we are now in 2018 and this section of the 2013 Act remains to be brought into effect. The aim of the noble Baroness, Lady Bakewell, as I understand it, is simply to ensure that progress is made on this issue. Legal recognition of humanist marriages would be hugely popular and would require nothing else except adding the term "humanist marriages" in some document which already provides special provisions for Quaker marriages. It is not exactly complex or time consuming. Given Brexit, I understand that one cannot have time-consuming matters, but this is not one of those.

When humanist marriages are already overwhelmingly popular in Scotland, Ireland and elsewhere, surely it is past time that legal recognition is given in this country. I therefore hope there will be a consensus across the House that, five years after the law permitting legal recognition of humanist marriages was passed, a small amendment to this Bill to activate this provision should be agreed.

1.03 pm

Baroness Bakewell (Lab): My Lords, I welcome the Bill wholeheartedly and congratulate the right reverend Prelate the Bishop of St Albans on sponsoring it. It is very welcome.

How could one not have realised for so long that mothers' names have not been on marriage certificates? What an extraordinary accident of history that that has not been acknowledged. I relish the idea of putting the 84,000 marriage registers out of order and digitalising the process. It is well overdue as an enterprise.

As the noble Baroness, Lady Meacher, has already said, I am using the occasion to raise an issue where this Bill, by amendment, could bring to fruition a long-hoped-for reform of marriage laws, which I understand is within the scope of this Bill—the legal recognition of humanist marriages in England and Wales.,

Let us revisit the history, because it is very telling. As we have heard, five years ago the Marriage (Same Sex Couples) Act promoted major debates in the House of Commons and in this House in which many spoke in favour of such recognition, but the Government did not act as we had hoped. Their own amendment gave a power in the future that is enshrined in Section 14 and which mandated the Government to consult. They did so and found that more than 90% were in favour of registering humanist marriages. They asked the Law Commission to do a scoping exercise. The commission did so and emphasised the unfairness of the situation as it exists. There has been consultation and there has been inaction.

Elsewhere, things have changed. In Scotland, legal recognition of humanist marriages was passed in 2005 and by 2016, 17% of marriages in Scotland were humanist. This is a popular format for people of humanist belief—I will expand on that term in a moment. Humanist marriages were given recognition in the Republic of Ireland in 2012 and by 2016, 7% were humanist. Northern Ireland is similar to England, so civil and religious marriages are legal but humanist marriages are not, or at least not yet. Last summer, the High Court in Belfast ruled that under Article 9 of the European Convention on Human Rights, recognition must be extended to humanist marriages. That decision has been stayed pending an appeal to the Attorney-General for Northern Ireland and a decision is expected soon. Meanwhile Jersey has issued a new draft law which is expected as soon as next week. Change is afoot to recognise with generosity and sincerity a commitment to acknowledge humanist marriages.

Humanism and a humanist marriage are not the same as a civil ceremony. Humanists have a set of moral beliefs that command huge respect throughout the belief communities of this country. Humanist beliefs involve an acknowledgement that we can live ethical and fulfilling lives on the basis of reason and humanity. These beliefs are recognised and widely held in this country. They put the burden of moral behaviour on the here and now in this world. It is an increasingly popular way of expressing a spiritual outlook that does not acknowledge the supernatural, and it is recognised by many of my Christian friends.

Lord Garel-Jones (Con): I am most grateful to the noble Baroness. Along with other speakers, I strongly support this admirable Bill which has been introduced by the right reverend Prelate. I hope that he and the House will be able to accommodate the amendment which is being moved by the noble Baroness.

Baroness Bakewell: I will move the amendment when, as I hope, the Bill goes through to the next stage. It is time to legally recognise such sincere marriages where people come together with a shared set of beliefs that simply have not yet gained recognition in England and Wales.

1.08 pm

Baroness Morris of Bolton (Con): My Lords, it is a pleasure to make a brief contribution in support of this small but highly significant Private Member's Bill on the registration of marriage. I pay tribute to the right reverend Prelate the Bishop of St Alban's for introducing the Bill into your Lordships' House and to my right honourable friend Dame Caroline Spelman for tabling it another place. They are to be congratulated on their wonderful collaboration in ensuring that this Bill secures a Second Reading as soon as possible.

Just over a year ago my daughter was married, so from recent personal experience, I know that from being at the heart of all the wedding preparations, decision-making and stress, when it came to the document that gave legal status to the marriage, my name and my son-in-law's mother's name were airbrushed out of the picture, as is the case for all other mothers. It is time that this anomaly was put right, and moving from a paper-based system to an electronic one will allow this to happen.

My thinking, and chatting to my daughter and friends—my daughter was appalled; she had not realised my name was not on her wedding certificate—raised a question to which I do not know the answer. As my mother taught me that if you are unsure you should always ask the question, even if it seems glaringly obvious, here goes: under the present law, what happens if someone does not know who their father is? Is there simply a gap, or does the certificate say, "Father unknown"? At least by adding the mother's name to the register, in the vast majority of cases one relative would be named on the marriage certificate.

I realise that when something seems simple, it is not always easy to rectify. There can be unintended consequences and costs, but the way the Bill seeks to overcome that is to be congratulated. The means by which this is to happen—the signing of a certificate that is then handed to the registrars for input on to the electoral register—has another benefit, in that it will still allow for those lovely photographs of signing the register, which are often some of the most special in a wedding album.

I do not know whether your Lordships are watching the BBC documentary "A Vicar's Life", which follows three vicars in Hereford and south Shropshire. If not, I suggest that you get it on catch-up. One of the vicars, Nicholas Lowton, has important documents stolen when thieves break into his church and take an old box. They later discard the documents, which are found in a field and returned to the church damp. I now know from watching that episode that to stop mildew growing on important papers that have got wet, you simply cover them up and put them in the freezer—an important life skill that we should all be aware of. But it made me realise that, lovely as they are, paper-based records are vulnerable, so there is another benefit to the electronic register as well as certificates, which could be stolen.

Finally, I pay tribute to the country's registrars. They were enormously helpful when my daughter was married and I wish them well in accommodating the

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changes the Bill will bring when, as I sincerely hope it will, it reaches the statute book. I give it my wholehearted support.

1.12 pm

Baroness Seccombe (Con): My Lords, this will be another brief contribution. I add my congratulations to the right reverend Prelate the Bishop of St Albans. In 1994 I had the privilege of piloting a marriage Bill through this House. As a result of that legislation, couples were able to choose where a civil marriage could take place, in addition to a register office, and that location had to be a suitable one. It also ended the practice whereby a suitcase was left in a property near the site of the marriage ceremony to prove residency in the appropriate area. Each Bill brings forward legislation to modernise customs and conventions that have existed for centuries. I believe this Bill is a further step in that direction, which I commend.

The Registration of Marriage Bill amends the legal document so the mother's name will be included as well as the father's. I am delighted by this inclusion, which, as we have heard across the Chamber, is long overdue. However, I have two very minor questions for the right reverend Prelate. The first concerns ensuring that the certificate given to couples is a secure document that cannot be hacked or interfered with by some clever, computer-literate person. After all, a marriage certificate is a financially valuable document at certain times in our lives, and security is a high priority.

Secondly, I would not wish the cost of marriage to be raised—we all remember that it used to cost seven and sixpence—which always seems to happen if changes occur. This process seems a little more bureaucratic, which is disappointing, and the extra duties required of couples could mean that they decide against marriage. That could result in fewer people entering into matrimony, which I am sure is not what the Church or other authority would wish.

I am a keen advocate of marriage. I was married for 58 years and dearly wish that families could share such happiness as I have been blessed to have. I give wholehearted support to the Bill.

1.15 pm

Lord Desai (Lab): My Lords, I speak as someone who in his youth thought marriage would become obsolete by the time he grew up, but that was not to be. I welcome the Bill, especially the fact that the mother's name will be added to the father's name, but I wonder, in the days of IVF and such things, whether the concept of mother and father would be applicable with such certainty everywhere. Perhaps we will need another Bill in another 10 years to clarify that.

I speak as a humanist, and practically all that I wish to say has been said by my noble friend Lady Bakewell. I shall therefore say just that I welcome the introduction of the mother's name, I welcome the conversion to online registration, and I wish that the noble Baroness's amendment receives as much support as the Bill.

1.16 pm

Baroness Flather (CB): My Lords, this is a very interesting occasion, because I cannot criticise anything. I would have liked to say something critical, but the right reverend Prelate's Bill is so sensible and necessary that there is nothing to say in criticism—I am sure that some minor improvements may be made if it goes to Committee, but the Bill is necessary.

Such a long time ago, when the mother's name was left out, how was one to know whose child it was? The noble Baroness, Lady Morris, has already referred to that in a sideways way. The only person who knows whether they are a parent of that child is the mother, not the father, yet the mother is left out.

I have no criticism to make, but I want to bring up something else, because one rarely gets an occasion when one can bring up something which I think is pretty serious. I am sure that noble Lords know that many marriages in this country have no registration. All Muslim sharia marriages have no registration. This is not right. It means that women have no rights under such marriages; they have no status, and they are thrown out by their husbands without anything. If you then say to the men, "Why don't you do something about looking after your ex-wife and children?". They say, "Why? The state will do that. Why should we do it?". In every respect, it is wrong that anybody who comes to live in this country should not have a marriage registered properly. The sooner the Government pay attention to that, the better it will be for all those Muslim women who have no rights and for the state which has to look after the families of men who get away without doing anything. I know that this issue is not part of the Bill, but it is an occasion to raise it. We have talked about humanist marriages and I would like to talk about sharia marriages. Sharia is not proper law. It changes from country to country, and it almost changes from imam to imam making judgments. We have to be extremely careful, and some thought should be given to this matter.

1.20 pm

Baroness Scott of Needham Market (LD): My Lords, I add my thanks to the right reverend Prelate for introducing this small but very important Bill. The Civil Registration Service is one of the hidden administrative gems of this country. Every year, up and down the land, around 1 million births, marriages and deaths are recorded. It happens routinely, usually without drama, but provides the legal, evidential base for our very existence and its accuracy is key. Civil registration was introduced in 1837 and is administered by registrars in 174 local authorities as well as the General Register Office up in Southport.

When civil registration was introduced, the system drew heavily on the framework that was already in use for the recording of baptisms, marriages and burials. The keeping of church registers had been pretty haphazard until 1538, when Thomas Cromwell ordered that each priest should keep a record of the baptisms, marriages and burials in the parish. Later, they were required to be kept on parchment, because it was more durable, and held in a secure parish chest. Copies were made regularly and sent to the bishop, and Rose's Act of 1812 standardised this information on pre-printed forms which included only the father's name and occupation. Civil registration drew on this experience.

In the case of marriages, copies from local events are sent to superintendent registrars and then to the Registrar-General, who holds the central repository.

Mistakes are not commonplace but they do happen. Indeed, serious family historians faced with a discrepancy will go back to the local original in case an error has crept in. Each time an entry is manually copied there is more scope for error, and under the current arrangements these are very complex to correct. The system basically serves us well, but in various ways it simply has not kept pace either with social change and expectation or with technological development. The Bill deals very well with two examples of that, namely digitisation and a recognition that the role of women has changed somewhat since 1837.

Back in 2002, the Government published a White Paper called *Civil Registration: Vital Change*. It proposed widespread reform, mostly through the use of regulatory reform orders, but very little progress was ever made with these vital changes, despite extensive public consultation. A few changes were made under the 2016 Act, under which a pilot scheme now allows historical copies of certificates to be provided by PDF, which is very useful for family historians, and the Digital Economy Act 2017 will allow for electronic verification between public authorities and the GRO. However, that is pretty much it, so I really support the proposals contained in the Bill.

Every noble Lord has emphasised the sheer lunacy, almost, of excluding mothers from the marriage certificate, so I do not think I need do anything other than wholeheartedly agree with that. Noble Lords may have gathered that I am something of an enthusiast for this topic: this comes from my interest, shared with the noble Baroness, Lady Donaghy, in family history. As such, I tend to take a long view of these things. One of the most vexing questions for serious researchers is the standard of proof to which you work: adding more detail, particularly adding the mother's name to a marriage certificate, is really important as a great piece of extra validation for future generations of family historians. However, it goes further than that, because when you get serious about family research it is not about the perennial question you are asked: "How far back can you go?". What you are really interested in is how your ancestors lived and what they did. The details on civil records are really important in understanding that. Future generations will know that much more about their female ancestors. That is important because genealogy always defaults to the male line, simply because the surname remains constant. The writing out of the mother in marriage records just adds to this diminution of the female line, despite the fact that, as the noble Baroness, Lady Flather, pointed out, it is the only line that comes with biological certainty.

Government has been moving to digital systems for some time now, and civil registration should not be an exception. The Bill deal with marriage records. If it is passed, the Government should consider how to progress with birth and death records, but for now we should welcome the beginning of a digital parish chest. The Bill will allow the updating of the marriage entry and the positive equality aspects we have talked about. We should be mindful that, beyond the provision of mothers' names, the Bill allows us to future-proof civil registration so that later parliamentary decisions can be dealt with; for example, recognising those who have two female or two male parents, or, as the noble Baroness, Lady Morris, pointed out, no legally recognised father.

What this is not is a Bill about marriage itself. While I and my party fully support humanist marriages, this Bill is not about that. I urge the noble Baronesses, Lady Bakewell and Lady Meacher, and the noble Lord, Lord Desai, to be very careful about opening this up to a broader sphere. As the noble Baroness, Lady Flather, said, she might want to bring something in about sharia marriages, but there is a danger that the Bill would become unworkable and we would lose it. That would be a pity; debates here and in another place have demonstrated widespread support and we should give it a speedy passage.

1.25 pm

Baroness Gale (Lab): My Lords, I thank the right reverend Prelate the Bishop of St Albans for bringing this Bill before us today, and thank him very much for our meeting earlier this week, which I found very helpful.

This Bill is much welcomed, and it has been welcomed all around the House today. Many regard it as a matter of equality. It will update the current system of registering marriages, which has not changed since 1837, and bring it into the 21st century. Moving from the paper-based system to an electronic-based system is common sense, and should make them much more secure, as well as ensuring that all marriages will be electronically registered. It is expected that that system could save money in the long term, estimated at around £31 million in the first 10 years.

I would like to seek clarification, as others have said, on Clause 1(4), where it says that if a person fails to deliver the,

"signed marriage schedule or signed marriage document, the regulations may provide that a person who fails to comply with such a requirement—

(a) commits an offence, and

(b) is liable on summary conviction to a fine not exceeding level 3 on the standard scale",

which is currently set at £1,000. I know that my noble friend Lady Donaghy raised that, as did the noble Baroness, Lady Anelay. In the Bill it says that it is an offence, but in the Explanatory Notes it says that it would be a criminal offence. I am no legal expert on this, but I hope that we can have some explanation for that. I understand that the clause is based on the Scottish model from 1977, but it has never been used, and that if people slip up and do not send the certificate back in time they get a reminder and no other action is taken.

Many will be aware of the campaign to add the mother's name to the marriage certificate. Like other noble Lords, I think this move is long overdue. Successive Governments have failed to address the fundamental inequality in marriage registration certificates in England and Wales, where the names and occupations of the fathers of the bride and groom are included but the mothers' are not. The Prime Minister at the time, David Cameron, promised to act on this, at the Relationships Alliance summit in 2014, where he said the system did not reflect modern Britain and should be updated. That was four years ago. In January 2015 the then Immigration and Security Minister, James Brokenshire MP, said that the Government would continue to develop options that would allow mothers'

[Baroness Gale]
names to be on marriage certificates as soon as practicable. That was three years ago. He also said, in answer to a Parliamentary Question in 2015, that the Home Office would work,

"with all interested parties to confirm the most efficient and effective way to enable mothers' names to be recorded on marriage certificates. Achieving this is likely to require additional funding and changes to legislation, IT systems and administrative processes. The Government will confirm a timetable for the introduction of the changes in due course".

Has that work been carried out, as that commitment was made three years ago?

If we look at the contrast with registering civil partnerships, which came into law in 2004, the mothers' details are included on the registration certificate. Scotland and Northern Ireland already include their details. I was surprised by this, but Scotland has included mothers' names since 1855. There were no such things as computers then; it was all done by paper and pen. If it could be done in 1855, I would have thought it quite easy to do it much earlier than we are talking about doing.

In 2014, as many people will be aware, the Change.org campaign gathered 70,000 signatures on a petition that said:

"Marriage should not be seen as a business transaction between the father of the bride and the father of the groom".

The Fawcett Society joined in this campaign and said:

"Requiring that marriage certificates recognise mums … would be another … step forward",

in gender equality.

As my noble friend Lady Donaghy mentioned, and as I believe others did, we should have both parents' names on the marriage certificates. Since we now have civil partnerships and same-sex marriages, one day some children of those couples will no doubt get married. I believe that the Bill will cover having their parents' names on their marriage certificates as well. The Bill is a welcome step forward. As we mark the centenary of women getting the vote, what better measure could the Government take than to ensure it becomes an Act of Parliament by the end of 2018, as a tribute to all those who have campaigned and are still campaigning for equality for women?

1.31 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I congratulate the right reverend Prelate the Bishop of St Albans on bringing forward and outlining the purposes of what is quite a narrowly defined Bill, which will reform the way marriages are registered and enable updating of the marriage entry to allow for the inclusion of mothers' names. This is a very important issue that the Government fully support, and I am grateful to him for bringing forward the Bill to remove the current inequality in marriage entries.

As the right reverend Prelate and other noble Lords have said, the then Prime Minister gave a commitment in 2014 that the content of the marriage entry would be updated to include the details of both parents of the couple. The marriage entry clearly does not reflect modern Britain and it is high time it was updated. Statistics show that there are currently some 2 million single parents in the country, around 90% of whom are women. As it stands, if any of their children were to get married they would be able to include only their father's details in the marriage entry, as the noble Baroness, Lady Gale, said in her concluding remarks. Their mother's details would not be included, even though they had brought them up as a single parent.

As the right reverend Prelate explained, moving to a schedule system is the most cost-effective way to bring about this change. As the noble Baroness, Lady Gale, said, a schedule system has been in place in Scotland since 1855, and it is also in place in Northern Ireland. The same system is already used in England and Wales for civil partnerships. It just would not make sense to update the content of the marriage entry by amending and replacing the 84,000 bound marriage registers currently in use in registry offices, and approximately 30,000 churches and other religious buildings. If any amendments were required in the future, they would need to be replaced again. It would not be cost-effective to update the marriage entry in this way.

To reprint the marriage registers alone would cost £1.9 million. Along with other costs associated with recalling all the current registers and dispatching new registers, this would bring the total cost to around £3 million, on top of the ongoing costs associated with maintaining a paper register system. Changes would also be required to the IT system and to ensure the appropriate training and guidance is provided to registration officers and all the religious bodies affected by the changes.

The changes proposed in the Bill would mean that marriage entries would be held in a single electronic register rather than in thousands of books, making the system more secure, more efficient and far simpler to administer and amend, if necessary. As a result, there would no longer be any need for bound marriage registers and certificate stock to be held in churches or other religious buildings. My noble friend Lady Anelay of St Johns asked about the number of burglaries in the past 12 months. There are a number of burglaries each year from religious premises. The move to a schedule system will remove the risk of registers and blank certificate stock being stolen in order to create an identity from the marriage records to use for fraudulent purposes. Provisional figures for the past 12 months show that there were eight burglaries involving marriage registers in church buildings.

Moving to a schedule system would be the biggest reform of how marriages are registered since 1837 and would move away from the outdated legislation currently in place. As I am sure noble Lords agree, when considering how the marriage entry is updated we will need to ensure that the needs of all the different family circumstances in society today are taken into account.

My noble friend Lady Anelay and a number of noble Lords wanted clarification of the powers conferred by regulations in Clause 1(4). In a debate on a government Bill, this House recently expressed its concern about new criminal offences being created by regulations and statutory instruments. The Registration of Marriage Bill contains powers enabling the Secretary of State to

amend the Marriage Act 1949 and other enactments in order to bring marriage registration in line with the process for civil partnerships in England and Wales as well as marriages and civil partnerships in Scotland and Northern Ireland. Clause 1(4) empowers the Secretary of State to amend the Marriage Act 1949 to create a specific criminal offence. This offence is modelled on an existing offence in Section 24(2)(e) of the Marriages (Scotland) Act 1977 and will be committed if a party to a marriage fails to comply with a notice requiring him or her to deliver a signed marriage schedule or document to enable the registration of the marriage. The offence would be punishable on summary conviction by a fine not exceeding level 3 on the standard scale, which is currently £1,000, as the noble Baroness said.

It should be noted that for all civil marriages and religious marriages at which a registrar attends, the signed schedule will be retained by the registrar at the marriage ceremony and taken back to the register office for entry into the marriage register. This accounts for around 75% of all marriages, so it is not envisaged that the offence will be used extensively. No issues have been identified in other jurisdictions with signed schedules being returned to the register office. In fact, traditionally the best man or a family member takes responsibility for ensuring that the marriage is registered.

Although a new offence is created, it is also proposed to remove or reduce the scope of other registration offences in the Marriage Act 1949. At present, it is an offence under Section 76(1) for any person to refuse or without reasonable cause to omit to register any marriage as required under the Act. This offence is potentially committed by a number of people responsible for registering marriages, including registrars, members of the clergy, authorised persons and specified persons in the Jewish and Quaker religions. Under the Bill, only registrars will be responsible for registering marriages so this offence will have a far narrower field of application.

In addition, those currently responsible for registering marriages are required under Section 57 of the 1949 Act to make and deliver to the superintendent registrar a certified copy of entries made in the marriage register book or a certificate stating that no entries have been made since the date of the last certified copy in the previous quarter. It is an offence under Section 76(2) for a person who is required to make these quarterly returns to refuse or fail to deliver any such copy or certificate to a superintendent registrar. Under the Bill, the requirement to make quarterly returns and the associated offence will become redundant and so can be removed.

Although the Bill introduces a new offence at Clause 1(4), it is not considered that the introduction of this proposed new offence or the reduction or removal of existing offences will have any appreciable impact on the justice system. The Ministry of Justice has been consulted about this proposed offence and has not raised concerns to date.

The noble Baroness, Lady Meacher, and other noble Lords including the noble Baroness, Lady Bakewell, asked about humanist marriage. I need to be very clear that the scope of this Bill does not include solemnisation of marriages.

Baroness Bakewell: The issue is not solemnisation but registration, which the Government have shown no opposition to. They merely ask for consultation; the consultation approves. They refer to the Law Commission; the Law Commission approves. It is not an issue on which the Government are offering any opposition; it is simply a matter of implementation according to their judgment.

Baroness Williams of Trafford: Perhaps I may continue to explain. The Bill only includes provisions to introduce a schedule system and to change how marriages are registered to facilitate the changes to the marriage entry to include both parents. That is the scope of the Bill. It is very narrowly about marriage registration and not about solemnisation. It is not intended at all to include wider marriage reform.

Lord Garel-Jones (Con): As the Minister will be aware, every single person who spoke in the debate supported the admirable measure being introduced by the right reverend Prelate. In future discussions, would she—and just as importantly the right reverend Prelate—at least be prepared to consider that the inclusion of humanist marriage does not damage the Bill but actually enhances it?

Baroness Williams of Trafford: My Lords, the point I am making is that to amend the existing law on marriage to make provision for legally valid humanist ceremonies would involve a huge range of issues.

Baroness Meacher: It is already in law that humanist marriages should be recognised legally—all it needs is a ministerial order. It does not need, in a sense, to be in this Bill. What would be wonderful would be an assurance from the Minister that she will take forward the need—with some urgency, five years on—for a ministerial order and have it done. It does not need any further legislative change.

Baroness Williams of Trafford: What the noble Baroness says is quite helpful, and I am very happy to discuss this matter further. The point I am making today is that this is a very narrowly drawn Bill, and to expand on it in any way would risk the Bill in its passage through your Lordships' House. I am simply pleading with noble Lords to stick to the content of the Bill. We can certainly have discussions about humanist marriages outside the Chamber, but this is the plea I am making. I am not denigrating in any way what noble Lords have said, but the minute we start adding to or amending Bills like this, the more we are in danger of them not securing their way through.

The noble Baroness, Lady Donaghy, asked to see draft regulations before Committee. It is our aim to make a draft of the affirmative regulations available before Committee. The noble Baroness also asked for clarification on the definition of parent. The regulations will prescribe who can be included under the headings for both sets of parents of the couple in the marriage entry. This will enable us to keep pace with societal developments as well as family composition changes.

[Baroness Williams of Trafford]

The noble Baroness, Lady Bakewell, asked if there was an intention to reform marriage law. This Bill simply modernises marriage registration, as I have said, and facilitates changes to the register entry to allow the inclusion of both parents' names. This Bill is not at all intended to include wider marriage reform.

My noble friend Lady Morris of Bolton asked a very valid question about what is put in the entry if you do not know who your parents, particularly your father, might be. There will be provision for both parents to be included in the marriage entry, and the option to leave this blank, as is the case now, I understand.

My noble friend Lady Seccombe asked for assurances that the cost of the marriage certificate will not be raised, as she is concerned that any additional costs and processes will discourage people from marrying. Fees for marriage certificates are set at a cost-recovery basis, using HM Treasury guidance, and are reviewed annually. The provisions of the Bill would not directly lead to an increase in costs.

The noble Baroness, Lady Flather, was, I think, so perfectly content with the Bill that she just thought she would talk about sharia marriages. But I think she knows that the scope of the Bill is narrowly about marriage registration.

Baroness Flather: I just want to say, I do not expect that to be in this Bill—and I have no intention of putting it into this Bill—but I wanted to draw attention to this matter. I would be very grateful if the Minister would allow me to come to talk to her.

Baroness Williams of Trafford: My Lords, anyone can come to talk to me about any issue pertaining to the Home Office—I give that assurance on the Floor of the House. I know what the noble Baroness's intentions are.

My noble friend Lady Seccombe asked for assurances on security, which is a high priority, as she says. The proposed changes will increase the security of marriage records, which is very important. Currently, the requirement for open marriage-register books and for blank certificates to be held in churches and other religious buildings means they can be a target of theft, as we have heard. The solution in this Bill should minimise that public protection risk, as marriage registers are currently held in some 30,000 different religious buildings. The certificates themselves will still be printed on paper with secure features, in the same way as now.

The noble Baroness, Lady Gale, asked for the timetable for the changes to be confirmed. Subject to the successful passage of the Bill, implementation will involve, clearly among other things, affirmative regulations being made, system changes and training and guidance for local registration services and those who solemnise marriages. We will aim to implement these reforms as soon as possible following Royal Assent.

We have had an excellent debate today and I know that noble Lords recognise the importance of taking forward these changes, which will modernise the process of registering marriages.

1.48 pm

The Lord Bishop of St Albans: My Lords, I thank noble Lords for this very helpful debate. I was particularly keen, and grateful, to hear the wide range of concerns from various parts of the House. We have had such a comprehensive response on many of the technical answers to questions that I do not think I need to add to them. I shall just say one or two things very briefly.

I absolutely recognise that there is concern about humanist marriages. I stress, however, that, having taken advice, I have been told again and again that, if we are going to get this very simple but really key win, the more the Bill is amended the less likely it is to get through. I have been approached with many requests to put all sorts of things in it and the advice I keep getting from very experienced Members of your Lordships' House is to keep it absolutely simple. I am also slightly puzzled, as the noble Baroness, Lady Meacher, has conceded that it does not need to be in this Bill, if I understood what she said a few moments ago—perhaps we could talk about it afterwards.

As I said at the beginning, this is an opportunity for us to correct a clear and historic injustice. I have found myself in touch with all sorts of people with whom I do not necessarily get in touch very often. We have had articles in *The Stylist*—can you imagine?—and *Good Housekeeping*, and an online platform for young women called The Pool, which I have never even heard about before, has got involved. Every single one of these people has said, "Please, please can you get this change through?". I simply note the passionate desire for us to get this through. I do not believe it will unless somehow we can find common cause together. I am of course happy to talk to anyone, and when the regulations are published we will look at those in detail.

In the light of those comments, and with thanks to all my noble colleagues, I ask the House to give the Bill a Second Reading.

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

Open Skies Agreement (Membership) Bill [HL]

Second Reading

1.50 pm

Moved by ***Baroness Randerson***

That the Bill be now read a second time.

Baroness Randerson (LD): My Lords, I thank noble Lords who have agreed to take part in this debate today. I embark on the Second Reading of this Bill in the absence of a government commitment to emphasise the importance of the United Kingdom's retention of the open skies agreement following EU withdrawal. Open skies is one of a suite of aviation-related issues that the Government need urgently to address. Others include the European Aviation Safety Agency the need for the free movement of skilled staff into and out of mainland Europe and UK border arrangements, with potential delays for both passengers and goods.

Since 1994, any EU airline has been free to fly between any two points in Europe, fuelling the rise of low-cost airlines and drastically reducing prices along existing routes. The UK has been at the forefront of these changes, creating an integrated aviation market with Europe. It is important to emphasise that much of the UK's market access beyond the EU is also dependent upon our EU membership. For instance, our open skies agreement with the USA is simply by virtue of being an EU member. Signed in 2007, the EU-US Air Transport Agreement allows flights from any EU country to any part of the USA. It introduced closer regulatory co-operation and provides equal market access for any EU carrier. In 2011, Norway and Iceland acceded to the agreement too. Indeed, it was the US airlines that first alerted me to the international concern that the UK might end up in a position where our planes cannot fly.

The USA is our biggest trading partner outside the EU, but the EU, and hence the UK, also has similar agreements with a number of other countries, including Canada, Israel, Jordan, Georgia, Moldova and Morocco. At present, the UK has the third-largest aviation network in the world, carrying 144 million passengers and 1 million tonnes of cargo in 2015 alone. It is worth £52 billion annually to our national income.

Aviation is an enabler of economic growth and a creator of jobs. People use airlines to get somewhere, to do something and to transport goods. Without daily flights, the economy would stall and the whole system would freeze. Commercial airlines have revolutionised the way in which we travel and how we view the rest of the world. This is a case of seeing the world not just as a market but as a community. When we emphasise the importance of aviation to business, we need to remember the significance of travel for leisure and to reunite families. Even at Heathrow, our premier business hub, 60% of flights are for leisure and family-and-friends travel.

Open skies agreements between countries eliminate the use of government restrictions on commercial air carrier services, such as controls on capacity and pricing, giving carriers the ability to provide convenient and affordable air services. They give airlines the right to fly across the world. Prior to this, each country enforced control over its territorial boundaries with air, land and sea defences. An aircraft could be apprehended or even shot down if it did not obtain prior consent to fly over an area. I am not anticipating a return to that situation, but that emphasises the importance of these arrangements—and, indeed, how far we have come.

Brexit threatens to throw the industry's intricate arrangement of routes and ownership structures into chaos. The open skies agreement referred to in the Bill comprises two components: the intra-European arrangement between us and other member states and the agreement between the EU and the US. Almost all flights in and out of the UK are governed under one of those agreements. If the Government truly want Britain to be "open for business", the industry needs now to be assured that it will not be disadvantaged by the impact of Brexit.

The low-cost, short-haul sector of the aviation industry, including the airlines Ryanair and easyJet, have repeatedly called on the Government for those assurances. The current agreements have been the catalyst for the successes of budget airlines over the past 20 years. easyJet, for instance, holds an operating licence in the UK but relies on intra-European flights for more than 40% of its revenue, and continues ambitiously to expand its network of routes connecting Europe.

Twice in July last year, the Prime Minister and her Transport Secretary stated in Parliament that they had held discussions with their US counterparts on the issue of open skies, but still no assurances were forthcoming. In this case, there is no fallback position, no safety net, no World Trade Organization rules. This issue will not go away, because aviation agreements stand outside EU rules on membership. On the contrary, it is the issue of greatest urgency, because so much of our economy rests on the shoulders of the aviation industry. If you cannot fly, you cannot trade. It has to be fixed first.

If work is taking place on this just a few hundred metres away in Whitehall, why not set our minds at ease? This week, the Secretary of State gave a speech to airline operators. I know that the Minister was there, as was I. He said that,

"discussions on replacing these arrangements have begun and are progressing well. We will be meeting US officials for a further round of talks in the coming weeks".

I hope that the Minister will share some more detail with us on this today, and place on record exactly the Government's intentions. I would also welcome information on progress in talks with other third countries, such as Canada.

A recent EU Commission document sets out the options for the future. It looks at both the transition phase and the long-term situation and provides options for deal or no deal. It spells out, in technical terms, a picture of the limited rights and muffled voice we will have on issues such as market access and safety if the current arrangements do not continue. Evidence to the EU sub-committee, of which I am a member, even suggested that we might have to fall back on the elderly Bermuda II agreement in the event of no deal.

If the UK is to go it alone successfully, we must seek to retain the aviation rights which we were awarded as a member of the EU. The clock is ticking. Tickets for package holidays are already being sold for spring 2019, on the assumption that a deal will be in place. Airlines sell tickets a year ahead; tour operators up to 18 months ahead. They need the public reassurance that only the Government can provide. The nearer we get to March 2019, the more their customers will want certainty about the product they are buying. If an agreement is not reached, even transitorily, there would obviously be huge economic disruption. These agreements are fundamental to the travel of millions of passengers and the movement of billions of pounds of freight, while keeping the cost of air travel affordable for ordinary people.

My intention is as succinct as the Bill itself: to gain a clear commitment from the Government that the UK's membership of the open skies agreement will be maintained, or that a new agreement on the same terms will be reached prior to Brexit, not just with the US but with the remaining EU states and with other

[Baroness Randerson]
third countries with which we already have agreements. This would ensure the future prosperity of the aviation industry and the country. I beg to move.

2.02 pm

Lord McNally (LD): My Lords, it is a great pleasure to follow the noble Baroness, Lady Randerson. We recently worked together, with the Minister, on the Space Industry Bill and I am pleased to return to aviation matters. Quite a few years ago, I visited Atlanta in the United States. That city was booming at the time and I met one of the chief architects of its success at City Hall. I asked him what had promoted Atlanta's tremendous resurgence. He confessed that it helped to have the world headquarters of Coca-Cola there, but the really big decision they took was to campaign for, and succeed in, getting Atlanta made one of the United States' airports. He then said something which has always stuck in my mind. Airports are a bit like the railhead in the old west. Wherever the railway came to an end, a town grew up and economic activity took place. That is what airports do today: they are engines of economic growth. The future of our airports and the traffic they can carry is extremely important.

I want to put this debate in context. Some 60 years ago, the late, great Peter Sellers mocked the then Prime Minister, Harold Macmillan, with a speech that consisted completely of meaningless clichés. The most famous of these was,

"this is not the time for vague promises of better things to come",

and then proceeded to give vague promises of better things to come. Today, that is not an amusing piece of satire, but the standard response from Ministers. Perhaps the noble Baroness, Lady Sugg, will forgive me if I take for an example the reply which she gave to a Question from the noble Lord, Lord Razzall, about how we intended to assure equivalent air safety standards with the EU in the event of discontinuation of membership of the European Aviation Authority. She said:

"The Government is considering carefully all the potential implications arising from the UK's exit from the EU, including the implications for continued or discontinued participation in the European Aviation Safety Agency. It is the Government's intention to maintain consistently high standards of aviation safety once we have left the EU. As part of the exit negotiations the Government will discuss with the EU and Member States how best to continue cooperation in the field of aviation safety and standards".

As I say, vague promises of better things to come.

On Monday, Carolyn Fairbairn, director-general of the CBI, called for a greater sense of urgency in the Brexit talks to give clarity to companies that will otherwise need to trigger alternative plans, including moving jobs and investment offshore. Earlier this week, I attended a future technology showcase promoted by Rolls-Royce, where similar pleas for certainty were made.

Earlier this week, the CEO of JP Morgan warned that the lack of certainty and direction threatened jobs in financial services and a similar warning has come from the creative industries sector. We are too near the precipice for vague promises of better things to come to be a response to these cries of distress from almost every sector of industry.

We all know why the Government continue with the meaningless mantra of Brexit means Brexit, because if the Prime Minister ever tries to put flesh on the bone of her Brexit strategy, the choke chain on which she is held by the hard Brexit fundamentalists in her party is quickly yanked, Mr Rees-Mogg is wheeled out and talks of a leadership bid are reactivated. In any kind of rational world, the Government would rush to embrace this Bill as a means of getting ahead of the curve by giving certainty to this very important sector.

The excellent House of Lords Library briefing for this Bill cites IATA that in 2015 the aviation sector contributed £55 billion to the UK's gross domestic product and that it supports nearly 1 million jobs.

When I was a lad, I worked at Blackpool Tower circus. However, I will not tell noble Lords what my job was. The Government's Brexit negotiations look more and more like one of the acts I used to see at the circus where a performer would spin more and more plates on the end of a stick. Keeping the plates spinning is difficult at the best of times, but it becomes almost impossible when parts of the Conservative Party and the Cabinet are quite happy to see them come crashing to the floor.

A successful aviation policy is crucial to Britain's economic future. My noble friend has made a practical suggestion in this Bill, which shows a way forward for this important sector. If we can keep this plate spinning, it will benefit us all.

2.08 pm

Lord Snape (Lab): My Lords, it is a pleasure to follow the noble Lord, Lord McNally, who represented my home town of Stockport for a while. I had no idea that he came straight from the circus before he did so.

I too congratulate the noble Baroness, Lady Randerson, on providing us with the opportunity to discuss these matters. In my view we discuss aviation all too infrequently. This Bill provides us with an opportunity to do so, albeit it is late on a Friday afternoon.

It is easy to forget that 40-odd years ago the aviation world was very different from today. All over the world state-owned airlines operated infrequent and highly priced services. Indeed, sky-high fares and infrequent air services were in those days, to adapt a current slogan, for the few, not the many. It took the Carter Administration in the late 1970s to pass an airline deregulation Act in the United States, from which the rest of the world took their cue. I remember travelling to New York on Laker Airways in 1980 courtesy of a television company as we were filming the Carter/Reagan election battle. I sat next to an elderly lady from Scotland who did not know much about aviation policy but knew that Freddie Laker was the man who had enabled her to fly to see her relatives across continents. Although in 2018 we accept such a thing as a regular occurrence, for her it was new and dramatic.

Over the years there have, of course, been aviation agreements between the United Kingdom and the United States; prior to the open skies agreement there were the two Bermuda agreements, as the noble Baroness, Lady Randerson, reminded us. The open skies agreement

has brought many benefits, but it is tilted—as are many agreements with the United States—towards the United States itself. While the agreement allows any EU airline and any US airline to fly from any point in the EU and in the United States, the agreement allows United States airlines to operate into EU flights, but European airlines are not allowed into United States flights. Indeed, noble Lords will be aware that in the land of the free, foreign companies are not allowed to purchase a controlling stake in any United States airline. As an aside, that is an eminently sensible policy; the fact that over the years this country has seen so many of its strategic industries fall into foreign hands—the hands of people who own no great allegiance to the United Kingdom—is a retrograde step. The United States also has some control over its civil airlines through its Civil Reserve Air Fleet. I am always amused when I hear Americans complain about subsidies to companies like Airbus, for example, when one reflects that much of the United States' aviation strategy over the years has been assisted financially and in other ways by the United States military. Despite the open skies agreement, it would be impossible for any foreign airline to carry military and government personnel in any numbers around the world because of the Fly America Act that the United States adopted some years ago. But as the noble Baroness, Lady Randerson, reminds us, this is not just about the open skies agreement and the United States but about the European Union and the UK.

I picked up a newspaper cutting that I found at home the other day—I am not in the habit of hoarding newspaper cuttings but it was from the day before the general election in 1983, in which I had a personal interest. Without going into the politics that made me keep the newspaper, in the classified section there were some advertisements for holidays abroad. A company called Meridian was advertising what it called the Phone 'n' Fly June Specials from Birmingham Airport. In 1983 it was possible to fly to Tenerife once a week for £118 plus taxes. If my arithmetic is correct, that amounts to £278.40 today, plus taxes. Today one can go on the internet and fly to Tenerife from Birmingham with Jetcost for £68, and you can get a deal through Skyscanner for £42—this is money in real terms, aside from the inflation since then. There was also an advertisement to fly to Malaga, back in those days, at £88. There are currently 12 flights a week between Birmingham and Malaga. Again, that is entirely due to our membership of the EU and the subsequent agreements that have been made to allow us to do that.

The noble Lord, Lord McNally, was quite rude about the Minister before she had even had a chance to open her mouth. He will be aware, as I am, that Ministers in either House are normally sent to answer debates like this on the understanding that they say as little as possible and offend a few people as possible. The coalition was no different when the noble Lord, Lord McNally, was a Minister.

I hope that the Minister recognises that this philosophy that we seem to have about Brexit of "It'll be all right on the night" is a little worn out. If the aviation world is to be reassured about the future after Brexit, she will have to say a bit more than the Department for Transport has said already. I commend the Bill and will support it. I hope that the noble Baroness will take it as far as possible and that the Government will accept its provisions.

2.14 pm

Lord Paddick (LD): My Lords, I too congratulate my noble friend Lady Randerson on securing a Second Reading of her Bill, which I am very pleased to support.

The substance of the Bill seeks to remedy what is—or what appears to me to be—symptomatic of the Government's chaotic approach to Brexit. I have to admit that I am not sure what the origins of that chaos are. Could it be that the Government do not know what they are doing? Could it be that they are keeping their progress on this and many other issues from us? Or is it simply that they are crossing their fingers and hoping for the best? Someone described extracting the UK from the European Union as like trying to remove eggs from a cake.

As my noble friend said, "open skies" is not only a generic term to cover the agreement between the UK and the US that allows flights between any EU and US airport by any EU or US carrier; it is also a term used to cover a suite of agreements between the EU and third-party countries and between member countries within the EU. Not only do these agreements cover authority to fly between airports but they cover other aspects such as environmental and safety issues—for example, airport security—to ensure that air travel is safe.

I am only just beginning to understand the nature and complexity of open skies and the complexity of negotiating replacement agreements. No doubt the Government will say that it is in the interests of all countries that the freedom of airlines to fly into and out of the UK is maintained, but legally that cannot be done. Indeed, passenger safety could be jeopardised if such legally binding agreements were not maintained or replaced.

As with other important issues, such as co-operation on tackling serious and organised crime and terrorism, there is no "do nothing" alternative, as my noble friend Lady Randerson has said. Flights between the UK and all those countries, including our two most important trading partners, all EU countries and the US, as well as many third-party countries where the UK is dependent on EU open skies agreements, would have to be grounded if replacement agreements were not in place and if we were unfortunate enough to leave the EU.

As my noble friend Lord McNally suggested, this Bill is important in highlighting a general problem with exiting the EU. The Government appear to be taking a complacent attitude, based on the premise that replacement agreements for the existing arrangements, which are a result of our EU membership, can easily be replicated. Well, they cannot. If we rely on agreements between third-party countries and the EU, new agreements will have to be made with each of those third-party countries.

Of course, currently—because we are a member of the EU—airlines are forced, sometimes kicking and screaming, to compensate passengers whose flights

[LORD PADDICK]
are delayed or cancelled. Can the Minister say whether the Government will legislate to protect passengers once we have left the EU?

My noble friend Lady Randerson also mentioned border issues following Brexit. Noble Lords will by now be bored with me raising, as I have done on numerous occasions in this Chamber, issues relating to the UK border, particularly at Heathrow Airport. Queues at terminal 4 for non-EEA passengers peaked at two and a half hours in January, but when I ask not what the answer is but what contingency planning the Government have done in relation to EU nationals joining those queues after Brexit, there is no response. Perhaps the Minister can enlighten us today.

There could be legal issues as well. I am not an expert on this matter, unlike my noble friend, but in relation to, for example, the sharing of information and intelligence, there are no examples of sharing some vital intelligence data with non-EU countries which are not part of the European Economic Area or the Schengen agreement. Therefore, I might argue that issues around tackling crime and terrorism also face a cliff edge with no safety net—albeit that I may be mixing my metaphors. Can the Minister advise the House whether the Government have identified any such legal obstacles to renegotiating open skies agreements?

Of course, with airport security and environmental conditions being part of the current open skies agreements, there is a need for an arbitration system in case of a dispute between countries if any are believed to be failing to comply with these conditions. One possible solution would be to retain membership of the European common aviation area, which spans the EU and some non-EU countries and provides unrestricted access. However, this would be subject to the European Court of Justice, which Theresa May has recklessly ruled out post Brexit. Can the Minister tell the House whether the European Court of Justice will play a role in adjudicating in cases of disputes involving the replacement for the existing EU open skies agreements? If not, what body will need to be set up and what will be the additional costs to the UK as a consequence?

Like many of her colleagues, the Minister may say that all these issues are a matter for negotiation and that the negotiations are not at a stage where any of these questions can be asked—yet Ryanair's chief executive officer, Michael O'Leary, said this summer that flights for 2019 will be cancelled for months after the UK leaves the EU unless an agreement can be agreed within a year. The chair of the Airport Operators Association, Ed Anderson, recently told its annual conference that the deadline for the aviation industry is just four months away. That is why this Bill is necessary and why I support it.

2.21 pm

Lord Purvis of Tweed (LD): My Lords, this has inevitably been a short debate. However, my noble friend deserves commendation for securing this Bill in the ballot and bringing it to our attention. It is a massively important issue for the future of our country. Like many Members of your Lordships' House, I am a regular flyer and to that extent I declare an interest: I benefit, as do others, from there being a secure, safe and reliable aviation sector in this country. However, as my noble friend indicated, this does not happen by accident and it is therefore right that we should focus on this vital issue.

After this debate I will to go straight to Heathrow airport to fly home. As a regular flyer from that airport, I will be on a plane which is one of 3,000 air departures from UK airports. I will be in the minority because it will be a domestic flight. As my noble friend indicated, 60% of those flights will be taking off and landing in Europe, and so our relationship with our nearest neighbours within this aviation market and industry is of vital importance. It has the same profile as our relationships for trade and, as my noble friend Lord Paddick indicated, our relationships connected to immigration, intelligence and data are all interlinked.

If I had been a Member of this House 40 years ago and I was travelling home to Edinburgh, the situation would have been radically different. If you visit the air museum at East Fortune outside Edinburgh, you can see the British Airways standby plane, which was always there in case a shuttle flight was full. A traveller would have a rip-off ticket as part of a carnet for the Edinburgh to London shuttle flights—no ID was needed, no booking was necessary: you just turned up with your tear-off slip—and, if the flight was full, the next flight would be put on for that shuttle route. It is inconceivable that we would go back to historical regulation. My noble friend is right that we need to be part of the future, and that is why enhanced clarity is necessary.

I have lived all of my life as a British subject, and now as a European Union citizen, and the growth of air travel is part of a generational trend. When I was born in 1974, there were 400 million air passengers that year in the world. In 2016, there were 3.7 billion. That is why a complex lattice of international commitments and regulations is in place. It is necessary that the United Kingdom is not only part of those after Brexit but continues to play a role in shaping them. That is because, far from Britain having been held back by our membership of the EU and organisations such as the European Aviation Safety Agency, the single European sky initiative and the single market, we have benefited from them and in many respects we have shaped the regulations.

The issue of the European Aviation Safety Agency, which has been referred to in the debate so far, in many respects sums up the dilemma that the Government have placed themselves in and are now inflicting on the country. This is a Community agency with its own legal personality and is governed by European public law. Membership of the European Aviation Safety Agency is not consistent with government policy—it goes against the red line that the Prime Minister has set—but we have heard the Transport Minister say repeatedly to our aviation industry that the UK will continue to come under the aegis of the agency.

If we do not come under the EASA, we have heard from the chief executive of the Civil Aviation Authority, Andrew Haines, about the consequences. He has said that it was his hope that we would remain an active

member of the EASA, because it would impose a massive regulatory burden to separate ourselves from it. He has highlighted the fact that the UK and France already provide two-thirds of the input to aviation regulation—that reflects the leadership role we currently play—and some 90% of the outsourced activity of the agency is carried out by France and the UK. That relationship is fundamental to our ongoing negotiations on trade, and it is inconceivable that any modern trade agreement will not have aviation regulation as a key component, covering both safety and the environment. If the Government have set this red line—when I asked the Minister's colleague, the noble Baroness, Lady Fairhead, about it last week, she said that it would be inconsistent with the red line that the Prime Minister has set—we are putting ourselves in a position where we would be setting back the United Kingdom.

If we take an alternative route like that of Switzerland and its relationship with the single European sky initiative, we see that it has accepted EU aviation law and ECJ jurisdiction. However, Swiss airlines have been granted only seven of the nine possible freedoms of the air. Are we seeking all of the nine freedoms in our new relationship with the European Union while being completely separate from ECJ jurisdiction? I would like to hear from the Minister how that will be at all possible.

I conclude by saying that my noble friends are absolutely correct to look for clarification in this area. We are not seeking to have the book that our negotiating team is using, but we are hoping to be shown the same respect in this Parliament that the European Parliament has in the ongoing negotiations. When the Commission has been set its mandate by the European Council, it will be made public; we seek the same—we want clarity on the single European sky, clarity on the market for aviation and clarity on the EASA, and we need it now. That would be the respectful position for our Parliament, and it would mean that our aviation industry and passengers have the confidence they need in this crucial industry for our economy.

2.27 pm

Baroness Hayter of Kentish Town (Lab): My Lords, I too thank the noble Baroness, Lady Randerson, for this imaginative way of focusing the Government's attention on a vital and urgent issue. Quite simply, if we do not get this right, British carriers may not be able to fly domestically within the EU. As the EU's ad hoc working party on Article 50's internal discussion paper of 16 January states, as a "third country", the,

"UK ceases to be part of fully liberalised EU aviation market".

It is clear that in Brussels, work is moving apace on this, an area of great urgency since there is no fallback WTO position, as we heard from the noble Baroness, Lady Randerson. A decision is therefore critical. Airlines need to know within weeks whether they can continue current routes in 15 months' time. Schedules and slots are decided early, with ticket prices, ticket sales and therefore the prices of package tours following soon after.

I am aware that talks are ongoing and will resume on Tuesday between the UK and US on new bilateral air services arrangements for after our exit or following any transition period. While we know that both sides want to protect current market access between the two countries, we need a reassurance from the Government that this will not come at the expense of our continued close relationship with or membership of the EU's single aviation market—from which UK airlines and passengers have benefited, as we have heard today—along with the related agreements between the EU and third countries beyond the US, which again have benefited our travellers. Our participation in the single aviation market allowed the UK to develop the largest aviation network in Europe and the third largest in the world, providing significant economic benefits through inbound and outbound tourism, our trading links, investment in the infrastructure of airports and access to them, while providing British citizens with a wide variety of destinations.

Having mentioned the advantages to British citizens, I raise the issue of the future of important consumer rights if we fall out of the single aviation market: whether the EU's flight delay regulation 261/2004 will continue to apply once we leave the EU. For example, regarding an EU airline flight from a third country to the UK, or a UK airline flight from a third country to an EU 27 member state, what protection will there be for consumers in any delay? As this issue obviously cannot be covered by the EU withdrawal Bill as it depends on reciprocity, and as we would no longer be a member state for the purposes of the current regulation, we will be highly dependent on the Government negotiating this compensation package, presumably in the withdrawal deal or, more likely, in the subsequent agreement. Alternatively, and definitely preferably, our association with or membership of the single aviation market could perhaps include retention of the EU's flight delay regulation 261/2004. Would the Minister respond in writing, or today if she can, as to whether the Government are already pursuing such a possibility?

Looking more broadly at the value of this industry to our economy, according to the travel trade association ABTA, outbound tourism directly sustains more than 200,000 UK jobs and supports another 170,000 indirectly. While outbound tourism brings significant financial benefit to the destination countries in Europe, it also benefits the Exchequer, with UK travellers spending about £300 on goods and services in preparation for those foreign holidays before they have even taken off. Such outbound tourism is worth about £12 billion a year.

Meanwhile, the aviation industry is worth £52 billion to our national income and it contributes £8 billion in tax a year. It supports about 960,000 jobs, one-third of a million in the sector itself and perhaps another one-third of a million indirectly. Furthermore, UK cargo airlines handle millions of shipments every month —predominantly high-value and time-sensitive parcels —across the globe. These services play a crucial role in maintaining UK businesses' global competitiveness and connectivity with the EU and other international partners. Any disruption to the UK's connectivity would harm the growth of UK businesses globally. Given that UK tourism is worth about €37 billion a year to the EU 27, and that aviation and good air transport links are vital to the continuing success and growth of the UK economy, but also that of our EU

[Baroness Hayter of Kentish Town]
counterparties, we hope the Government will be able to negotiate our continued participation in the single aviation market.

Indeed, what is needed is us being "very modestly apart", as I believe the expression is—though the overnight squabbles between the Chancellor and No. 10, at the behest of Jacob Rees-Mogg, give little confidence that the Government are up to the task of negotiating the price of a second-hand car, let alone the future of our economy. Today's papers are full of the row, with Iain Duncan Smith saying he is pleased that the Chancellor has been contradicted by No 10—did you hear that? He was pleased that our Chancellor of the Exchequer has been contradicted by the Prime Minister. In contrast, another Conservative MP said that the Chancellor was spot on and that the Prime Minister should support her Chancellor and not give in to an unrepresentative, ideologically driven minority. That was a Conservative; it was not even from this side. But seriously, the coverage, attention and energy that go into all this waste the chance to make a clear statement to the EU and more widely on how Britain sees its future after Brexit and on what sort of deal it wants with the EU 27.

The Minister will be well aware of what Airlines UK, which represents the airlines, needs after Brexit: most urgently, a transition phase based on current rules and regulation, open access and full participation of the European Aviation Safety Agency. However, the EU 27 could exclude us from the safety agency because that membership is contingent on accepting the jurisdiction of the ECJ. Without it, there would be increased certification costs for airlines, manufacturers and maintenance companies, while the CAA would have to take responsibility for ensuring that they all adhered to safety rules, raising questions about its capacity—as we have just heard from the noble Lord, Lord Purvis.

Given such urgency, it is vital that aviation is dealt with separately and in advance of the main negotiations with the EU and that priority is given to safeguarding EU, US and international market access for our aviation industry. If it means the Government quietly rubbing out a red line and accepting some ECJ role in aviation, then so be it. Is not the economy rather more important than red meat demanded by Conservative hard Eurosceptics?

The aviation industry will need many things that go well beyond this Bill, particularly being able to employ staff from across Europe and having no further restrictions on borders. We will press these issues on other occasions and in other Bills, but their importance to the Minister's transport portfolio means that I would welcome some reassurance from her that her department's representations to the Home Office and other departments are making clear the importance of such issues.

Aviation is unique within Brexit negotiations. There is no WTO fallback; there is an urgency replicated in few other sectors; it is an industry on which almost every other sector depends; it is important to tourism, and it is of mutual benefit to the UK and the EU 27. It is vital that we reach a comprehensive air transport agreement with the EU that maintains the current level of market access and traffic rights. I look forward to hearing the Minister's reassurance on all the points raised today.

2.38 pm

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, I add my thanks to the noble Baroness, Lady Randerson, for raising the important issue of our future air services relationship with the United States, and I am most grateful to all noble Lords who have participated in this debate. I agree with the noble Lord, Lord Snape, that it is a pleasure to discuss aviation, a sector that is a great UK success story.

We have the largest aviation network in Europe and the third largest globally. Our airlines carry 144 million passengers and more than 1 million tonnes of cargo annually; and as the noble Baroness, Lady Randerson, said, the sector contributes some £52 billion annually to our GDP. It supports almost 1 million jobs in our country and is a key facilitator of exports, carrying goods worth £116 billion between the UK and non-EU countries. It is a reflection of our great trading economy that we have such an extensive global network of air services and we are determined that it will continue after Brexit.

The Bill highlights the desirability of a continued relationship with the United States—the noble Baroness is right that air services between the UK and US are of great importance to our economy. Some 20 million passengers a year fly between the two countries for business, tourism and to visit friends and family. That is second only to the number of passengers to Spain, which is our most popular overseas destination. Regular services to and from the US are available on more than 60 different airport pairings and new direct scheduled services start regularly. Air services between the UK and US help support more than £85 billion of trade between the two countries. This dynamic market is a global example of the benefits of competition and choice in air services. Of course, consumers benefit from competitive fares and a breadth of choice and we want this to continue after we have left the European Union.

As the noble Baroness pointed out, the current governing arrangement for UK-US air services is the EU-US Air Transport Agreement, often referred to as the EU-US open skies agreement. This agreement, dating back to 2007, lifted many restrictions that featured in earlier bilateral agreements and has removed all restrictions on direct flights. It also provides for code sharing, allowing, for instance, UK airlines to market services on US partner airline networks using their own flight codes. It is a multilateral agreement between the EU and its member states on one hand, and the United States on the other, with Iceland and Norway having joined the agreement as parties in their own right in 2010. This liberal market access and the competitive environment benefit passengers in terms of choice, connectivity and value for money. Passengers can fly directly to more than 20 US airports from a variety of points in the UK and can connect to virtually anywhere in the US.

A study last year reported savings of more than £200 per passenger compared with ticket prices before the agreement was signed. We aim to preserve this

access after we leave the European Union, ensuring that the aviation industry and, of course, passengers continue to benefit. In preparing to exit the EU we have listened very closely to the aviation industry on both sides of the Atlantic. It has been clear in explaining the need for early certainty about the operating landscape. As has been pointed out in this debate, airlines sell tickets up to a year in advance and decisions on the deployment of capital and other resources also need to be taken well in advance to plan and grow routes. We have two overarching aims for future UK-US air arrangements. The first is to transition the liberal market access arrangements currently available under the EU-US agreement. The second is to provide the industry with the certainty it has asked for as soon as we possibly can.

Having set out the Government's position I turn to the terms of the noble Baroness's Bill. The Bill requires Ministers to,

"have regard to the desirability of continuing to participate"

in the EU-US Air Transport Agreement. As I and other noble Lords have mentioned, Iceland and Norway have both acceded to the terms of the EU-US Air Transport Agreement as states in their own right. I believe that the aim of the Bill is for Ministers to consider the UK acceding to the agreement in the same way. As I said earlier, we recognise that the aviation industry needs early reassurance about the terms under which UK-US air services will operate after we leave the EU. The noble Lord, Lord Paddick, is right to say that to do nothing is not an option. When we leave the EU, the EU-US agreement will no longer be legally operable for us; it would need to be amended to enable our continuing participation. This would require the unanimous agreement of all parties to it—that is, the European Union, each of the 27 other member states, Iceland, Norway and the United States. Such unanimous agreement would, of course, take time.

The Government believe that the quickest, simplest and clearest way to provide the early certainty so needed by the aviation sector is by concluding a new, bilateral arrangement with the US that will apply as soon as the EU-US open skies agreement ceases to apply to the UK. That is exactly what we are working towards. Department for Transport officials have already undertaken three rounds of informal discussions with their US counterparts on our future bilateral arrangements. A further round of discussions will take place with the US in the coming weeks. There is broad consensus on the outcomes we wish to reach. Both sides understand that preservation of the current liberal market access arrangements should be the starting point and that industry needs to be confident about what it can or cannot do in good time. These discussions are going well and I hope that this goes some way towards reassuring noble Lords concerned about our relationship.

I take this opportunity to highlight that the Government do not rule out participation in the EU-US Air Transport Agreement at some point in the future. The UK could apply to become a party to the agreement as a state in our own right if that offered the optimum solution for the circumstances of the time. However, as I say, the consent of all other parties to the agreement would be required and that would take time, so the Government believe that the best option to provide early certainty is a new, bilateral agreement with the United States.

I turn to some questions raised by noble Lords. The noble Baroness, Lady Randerson, raised the issue of third countries. Where market access is currently determined by EU-negotiated arrangements we are working with those countries, including Canada, to ensure that the new, bilateral arrangements will be in place well before we leave the EU. I hope to provide further updates on these soon. Of course, we already have bilateral air services agreements with 111 countries, which will continue as we leave the EU.

The noble Lord, Lord Snape, correctly highlighted many details of the EU-US deal. We do not propose to open these in discussions with the US at the moment. For example, cabotage within the US will not be up for discussion. Our aim is to replicate the current arrangements as they stand, as soon as possible, so as to provide certainty to industry. I quite agree with the noble Lord that we cannot simply say that it will be all right on the night.

Lord Purvis of Tweed: We have partial clarity from the Minister that the UK will seek a bilateral agreement with the United States and then, in due course, there will have to be a bilateral relationship with the European Union. When does the Minister believe that that will be required to be ratified by this Parliament to offer the security for the industry that she says is desperately needed? Can she offer clarity that, in discussions with the United States on this bilateral agreement that the Government seek to intend, part of that agreement will be that UK safety will be regulated by the European Aviation Safety Agency?

Baroness Sugg: I shall come to EASA, but that will not be included in the UK-US bilateral agreement that is being discussed; that will be a separate negotiation and conversation with the European Union. On the timing of ratification, I am afraid that I shall have to get back to the noble Lord, but the aim is that this will be in place well before we leave the European Union, to provide certainty.

The noble Lord, Lord Paddick, and the noble Baroness, Lady Hayter, asked about customer protection. The UK has always been a leader when it comes to providing protection for holidaymakers, and we want that to continue to be the case whether we are inside or outside the European Union. The consumer protections based within the EU will be retained through the European Union (Withdrawal) Bill, so that British consumers will be able to rely on the same rights as they have now after we leave the EU. The absolute aim is to provide consistency with what they currently have.

The noble Lord, Lord Purvis, raised EASA. We are working closely with industry on this and, of course, we are very aware of all its views and what is needed for the sector. Again, we desire a speedy agreement on this. We are representing those views very clearly in our conversation with the EU, and will continue to keep the sector updated as negotiations progress. There is

[Baroness Sugg]
a precedent for non-EU states to be part of EASA; Switzerland and Norway are, for example. We continue to examine the possibility and suitability of such an arrangement.

On the CJEU, the Government have been clear that the UK will no longer be subject to direct CJEU jurisdiction after we have left the EU. There are models—

Baroness Hayter of Kentish Town: Given that that is not quite the case, in that EU citizens will have some access to the ECJ for eight years, perhaps the Minister could accept that it has not been completely ruled out, as much as it had before.

Baroness Sugg: In the case of EASA and the CJEU, there is an example where non-EU countries are able to participate in EASA without the direct jurisdiction of the CJEU. It is a co-operative arrangement, and that is exactly what we are looking to replicate.

The noble Baroness, Lady Hayter, and others mentioned the Commission paper. I have seen the presentation, which looks like an opening position from the Commission, drafted with its own interpretation of the UK position. It is clearly designed to be thought provoking and to ensure that member states focus on aviation issues. The paper sets out a number of options but also makes it clear that, in the unlikely event of a no deal, there will be contingency measures to ensure traffic rights and safety. As many noble Lords acknowledged, we have no WTO fallback on aviation, so it is encouraging that aviation is one of only two sectors that have been considered by the Commission in such close detail. We are pleased that the EU considers aviation to be such a priority—we feel that, too—and we look forward to conversations progressing.

I agree with many points raised by noble Lords this afternoon. We all want to continue open and liberal access to our skies after we leave the European Union, and we have all explained why this access is so important. I hope that I have provided some assurance that that is exactly what we are working towards—although I imagine that the noble Lord, Lord McNally, would categorise it as vague promises of better things to come. I apologise if that is the case. We will ensure that we keep your Lordships updated as negotiations progress. I also confirm that I was in no way offended by the noble Lord reading back my own words to me—but I am very interested to know what his job was in the circus.

The noble Baroness, Lady Randerson, has helped to highlight the importance of the UK-US air services relationship and the vitality of the current market. This relationship and vitality are things that we intend to preserve and to build on. However, the Government believe that the Bill is not necessary. It requires us to do something that we are already doing: to have regard to the desirability of continuing to participate in the EU-US Air Transport Agreement. We do not believe that we need another law on the statute book in this respect.

2.50 pm

Baroness Randerson: My Lords, I thank all noble Lords who have spoken in this debate. My noble friend Lord McNally, in his inimitable manner, evoked Peter Sellers. I certainly cannot apply what I am about to say to everyone who has spoken today, but I remember Peter Sellers and I also remember that in those days—prior to the open skies agreement—we had restrictive ownership and a very limited concept of international travel. It is difficult to imagine those days if you did not live through them. The noble Lord, Lord Snape, emphasised with his quotation about the price of travel to Tenerife exactly how prices have benefited consumers in between. We now take for granted a simple, cheap and straightforward system of international flights. It has transformed not just our holidays but the way in which we live.

My noble friend Lord Paddick talked about the Government's chaotic approach. Every time I feel myself being reassured by soothing words from the Government, up pops the Foreign Secretary or one of his allies—a "friend" or "close acquaintance" of the Foreign Secretary—to remind us that the Government do not agree with themselves about where we are going on this issue, let alone agree with the EU or those of us in opposition parties. So, despite good intentions, aviation could easily be the victim of a problem at the last minute.

My noble friend Lord Purvis charted the phenomenal growth of the aviation market and pointed out that membership of EASA crosses the Government's own red line. With the outline that the Minister has given of the Government's intentions on EASA, at the very best we will go from a leading role to a walk-on part, and that is very regrettable.

The noble Baroness, Lady Hayter, emphasised the urgency of the problem very effectively. There is of course a huge issue with consumer rights and legislation from the EU on delays, which gives consumers rights that people take for granted now. The Minister answered with some detail, which I will read with great care. She is always helpful within the scope of what she is allowed to say on the Government's position on these negotiations. But I say to her that representatives of the industry first talked to me about the urgency in late 2016, and that I raised it first here at that time. Minister, the urgency has become very urgent.

We appreciate the importance of continued agreements and the Government's efforts to devise ways round this but the Minister has emphasised how long it would take, or how difficult it would be, to get agreement across 27 countries and other partners. That says a lot about the complexity of the Government's situation and how easily things could fall apart. I will comment briefly that the Commission's paper is actually technical. It is not a rhetorical paper but a technical paper. The deals I refer to in the Bill are particularly beneficial to areas outside London. If we were forced to fall back on the Bermuda agreements of 1946 and 1977—which is another world in aviation terms—we would have to accept a restricted number of airlines and flights into London only.

There are probably ways around this issue, but I am still not convinced that the Government have the key to finding them. They face so many pressing issues on the Brexit process that there is a real danger that one of the eggs will be dropped, and I do not want it to be

aviation. It is a hugely important industry across Britain. We should aim to be part of the European common aviation area. Whatever happens, we need to remain as close as possible to the current situation. Whatever caused people to vote for Brexit, they certainly did not vote for more expensive flights or more restrictive rules on travel, so it is essential that the Government take the lead and develop a sense of true urgency. I ask the House to give this Bill a Second Reading.

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

House adjourned at 2.57 pm.