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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

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
Lab Co-op	Labour and Co-operative Party
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 1 February 2019

10 am

Prayers—read by the Lord Bishop of Chelmsford.

Retirement of a Member: Lord Cullen of Whitekirk

Announcement

10.07 am

The Lord Speaker (Lord Fowler) (Non-Aff): My Lords, I should like to notify the House of the retirement, with effect from today, of the noble and learned Lord, Lord Cullen of Whitekirk, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I thank the noble Lord for his valued service.

Organ Donation (Deemed Consent) Bill

Committee

10.08 am

Relevant documents: 43rd and 45th Reports from the Delegated Powers Committee

Clause 1: “Appropriate consent” to adult transplantation activities: England

Amendment 1

Moved by **Lord McColl of Dulwich**

1: Clause 1, page 1, line 22, leave out from beginning of line 22 to end of line 2 on page 2 and insert—

“(6B) The consent of the person concerned is only deemed once a person in a qualifying relationship affirms that the person concerned would not have objected to the activity.”

Lord McColl of Dulwich (Con): My Lords, I will begin by speaking to Amendment 1 and will then follow on to Amendment 3. I should point out that I am recovering from an operation—not a transplant—on my eye, and my vision is not as good as I hope it will be. In doing so, I declare an interest as a former transplant surgeon, and as someone who has a close relative currently awaiting organ donation for a far-reaching transplant operation. I also put on record my sincere thanks to the Minister in another place, who kindly met with me to discuss the issues that I will raise today.

The relationship between the patient and the doctor is very precious, but it only works because of trust. When trust breaks down, as it has in the past in relation to organ donation, the cost can be considerable. We need only think of the experience of Alder Hey to realise that, as we are really concerned about organ donation, we must tread carefully. Lest anyone should

think that all is forgotten, I should tell the House that I received an email just a few days ago from an affected family.

The principal concern that those who work in the field of organ transplantation have about this legislation is its potential to damage trust between doctor and patient in a way that reduces the total pool of potential donors, for the reasons I explained in my speech at Second Reading. To recapitulate briefly, the key concern is that the introduction of deemed consent will reduce, rather than increase, the total pool of donors.

I will explain why. For anyone who is unfamiliar with the world of organ donations and assumes that only those who have signed the organ donor register can be donors, it is easy to see the huge appeal of deemed consent. If 37% of people have signed the donor register, then introducing deemed consent is clearly attractive; even if this provoked 10% of people to opt out, one would still be increasing the total pool of donors from 37% to 90%—a huge boost.

But this is not how organ donation works. At the moment, anyone in England can be an organ donor apart from the 0.7% who have signed an opt-out register. Crucially, you do not need to have signed the organ donor register to be a donor. In fact, as I set out at Second Reading, most organs donated in England in the past five years came from donors who had not signed the organ donor register or the opt-out register. The key to their donation was their family, who made the donation decision for them. Rather than increasing the total pool of donors, the introduction of presumed consent actually threatens to reduce the total pool of potential donors from 99.3% to something more like 90%—a small but not insignificant minority opt-out.

In Wales, over 180,000 people, all of whom were previously potential donors, have now withdrawn from donation. This equates to 6% of the population. All of those potential organs are now lost to the system. If we are to press ahead with this legislation, the imperative must be to do everything we can to minimise the number of people who take offence and withdraw from donation. That objective is at the heart of everything I have to say, and is particularly central to both of my amendments—Amendments 1 and 3. Rising to the challenge of limiting the number of people who opt out necessitates that we seek to understand why the introduction of deemed consent, and specifically the way in which it relates to the role of the family, provokes a significant level of withdrawal from donation, as mentioned a moment ago.

The principal reason why some people take offence is that they perceive deemed or presumed consent as a mechanism in law whereby the state can claim their organs without securing what they would regard as proper consent, and on this basis suggest that the state better represents the views of the deceased than his or her family. Mindful of this, it is important that we do not pass legislation that gives the impression that the state and its laws can better vouch for what the deceased would have wanted, rather than his or her family.

Neither the Welsh legislation nor the accompanying code of practice states that if the family objects because it does not believe that the deceased chose deemed consent, consent will not be deemed. In this context,

[LORD McCOLL OF DULWICH]

these documents assert that the state effectively knows better than the family and, mindful that legal consent has been given, the door remains open for organs to be taken from people who the family believes did not choose to have their consent deemed, and who have signed neither the organ donor register nor the opt-out register. Happily, no doctor has availed themselves of this legal opportunity to transplant organs in the face of family opposition, but there is no statutory guarantee that this will not happen in the future. This is rather risky. It would take only one overzealous doctor to decide to take the organs of someone whose consent has been deemed, against the protestations of the family, for trust in the donation system to break down. It could put back the cause of donation many years.

10.15 am

Mindful of this and of the desire to limit the numbers of people who opt out, I propose through my Amendment 1 that we should provide potential donors with the reassurance that the opinion of their families carries more weight than the state's opinion in the event that they clash. This should be set out both in legislation and in the code of practice. It will make it less likely that people take offence, and less likely that they withdraw and sign the opt-out register. I understand that the Government are keen to avoid divisions, and so am I, so it is not my intention—certainly today—to divide on this issue, but rather to seek reassurances from the Government on the record.

The key part of the Bill that is relevant here is new subsection (6B), introduced by Clause 1(4). At the moment it states:

“The person concerned is to be deemed, for the purposes of subsection (6)(ba), to have consented to the activity unless a person who stood in a qualifying relationship to the person concerned immediately before death provides information that would lead a reasonable person to conclude that the person concerned would not have consented”.

The key consideration here is the word “information” and what we mean by it.

Lord Anderson of Swansea (Lab): The noble Lord, as always, puts his case very well. What is the position if the family is divided?

Lord McColl of Dulwich: My solution is to have transplant nurses, who are key to this whole problem. They are essential in dealing with the family, explaining the situation and getting it to discuss it in a sensible way. But I agree that that would be a problem.

If the Minister is able to assure me that the Government intend that the word “information” should be widely defined so that, for instance, if someone was to say, “I am convinced that my husband was unaware of the deemed consent law and would have opted out had he known; therefore, you should not take his organs”, this would count as valid information and prevent the deeming of consent. This would reassure many people with concerns about the deeming of consent.

In most cases, there would be no means of proving in a court of law that the husband was unaware, so if that is what the wife says, it should be accepted.

If people knew this, they would feel less threatened—that the state was trying to supplant them and their family, and other people and their families—and be less likely to opt out. This approach is entirely consistent with what the Government propose with respect to faith communities. If a Muslim wants to be a donor and carries one of the proposed new faith-specific organ donor cards, it means that they want to donate, but subject to the views of their religion being respected. I simply seek reassurance that people will be assured that the same respect will be afforded to their families and living representatives.

In asking this question, I should stress that I am not asking the Minister to say that no doctor would ever take organs if the family was unhappy. I am of course aware that most doctors would be reluctant to do such a thing. I am asking specifically what the Government intend that the law should mean. I want to establish whether the Government intend that a doctor should, from a purely legal perspective, be able to transplant organs even if the family members provide information, based on what they believe their relative would have wanted, which suggests that consent should not be deemed. If the Minister can confirm that the Government's intention is that “information” should be widely defined—so that if someone were to say, “I am convinced my husband was unaware of the deemed consent law and would have opted out had he known”, this would count as valid information and prevent the deeming of consent—I will withdraw my amendment.

I turn now to Amendment 3, which places a statutory obligation on the Secretary of State to make people in England aware of how deemed consent works, including through an annual advertising campaign. Quite apart from making all existing adults aware, we must remember that every year, about 760,000 people turn 18 years of age in the UK, and all those in England will need to be written to. Then we must be aware of all the people coming into England each year from other jurisdictions. Crucially, the awareness-raising and advertising provision set out in my amendment is made in the existing Welsh legislation but is missing from the Bill. My motivation in moving the amendment is exactly the same as for Amendment 1: I want us to do everything we can to limit the number of people who opt out of donation as a result of the introduction of presumed consent, for all the reasons I have already set out.

The organs of the 182,519 people who have opted out in Wales in response to the deeming of consent are completely lost from the donor system. No one had opted out previously. If Wales loses this number in a context where there is statutory assurance about advertising, thereby making it more likely that a person whose consent has been deemed really has made a donation decision, how much greater will the risk be in England if we do not provide that same assurance? We must do everything possible to limit the number who opt out in England. In order to have a credible system of deemed consent, one has to put in place the requisite infrastructure to make it reasonable to claim that anyone who has signed neither the opt-out nor the opt-in register has made a deliberate, conscious decision to become an organ donor by having their consent deemed.

This depends, critically, on a huge advertising campaign so that it is credible to suggest that the entire adult population will have seen the relevant adverts and taken on board that if they want to donate, they can give effect to that decision by doing nothing, and that if they do not want to donate they must sign the opt-out register. If one does not have a very large advertising campaign, members of the public will work out that the chances are that a significant number of individuals whose consent will be deemed will not actually make a conscious donation decision; they will have simply done nothing, not appreciating that in this context, the absence of an action is considered a decision and authorisation for organ donation. If members of the public who recognise that the law has changed suspect that the state is underinvesting in advertising and therefore cannot credibly suggest that everyone whose consent has been deemed will have decided to have it deemed, they are much more likely to feel that the state is trying to take organs without proper consent. In this context, it is more likely that people will feel like opting out. It is thus critical to reassure the public that there will be a major and ongoing advertising campaign.

On the basis of the current Bill, we are rather vulnerable on this point. In the first instance, unlike the Welsh legislation, it provides no assurance that there will be proper and ongoing investment in advertising by making it a statutory obligation which cannot be changed without an Act of Parliament. If, however, the Government accept my amendment, they will give the people of England the same assurance that has been given to the people of Wales, and that there will be a serious and ongoing advertising campaign about how presumed consent works. This will give credibility to the claim that everyone who has done nothing in respect of organ donation has made a deliberate and conscious donation decision. As a consequence, there would be less scope for people to feel offended and opt out.

In the second instance, this weakness is reflected in the fact that the advertising budget is £18 million over four years. I have two major concerns about this. First, when one allows for the fact that the adult population of England in 2017 was recorded as 43,752,473, that works out at just 41p per person over four years, or 10p per person per year. I am not convinced that this tiny sum treats people's consent with appropriate respect. It does not allow us to conclude that everyone who has not opted out has made a deliberate and conscious decision to opt in. Others are bound to think the same, and this risks significant withdrawal from donation, because there is a greater chance that people will think the system unfair and want no part of it. In this context, one option would be significantly to increase the proposed level of advertising, making people aware that if they do not opt out, they will be treated as if they had consented to donate. To secure a credible arrangement, however, would require a lot more money over a sustained period. In contemplating that, we have to ask whether it is worth it.

10.30 am

That leads me to my second major concern: such money would be far better spent making changes for which there is robust evidence of success. Although

the evidence on the efficacy of deemed consent is profoundly contested—as I said, we know that more than 180,000 potential donors have withdrawn from donation in Wales—the evidence on specialist nurses in organ donation is clear. As NHS Blood and Transplant has shown, where specialist nurses are available to speak to the deceased's family, the family either donate or authorise donation in 68% of cases. Where specialist nurses are absent, the figure is just 27%. That is a huge and incontrovertible difference. I am also mindful that the organ donation and transplant activity report for 2017-18 demonstrated that specialist nurses in organ donation did not approach potential donors in about 10% of cases of potential donation. Finding the money to address this shortfall would constitute a much more responsible, evidence-based way to spend scarce resources efficiently.

Mindful of those considerations, my conclusion is that the people of England should be afforded the same reassurance in our legislation that there will be ongoing funding to make people aware that if they do nothing, they are agreeing to donate. However, I do not think that it makes sense to try to raise the kind of money that would be required to credibly—

Baroness Barran (Con): I wonder whether the noble Lord could be mindful of the time taken for his remarks.

Lord McColl of Dulwich: What is the limit? My apologies.

I return to my basic question and ask whether the Minister can confirm—*[Interruption.]* I am speaking to two amendments; 15 minutes each makes 30 minutes. Can the Minister confirm that the Government intend to define widely the word “information” in proposed new subsection (6B), introduced by Clause 1(4), so that if someone said, “I am convinced that my husband was unaware of the deemed consent law and would have opted out had he known, so you should not take the organs”, this would be regarded as meeting the definition of “information” in the Bill? If the answer is yes, I will happily withdraw the amendment and I will not die in a ditch for my second amendment, but it is entirely reasonable to suggest that the people of England deserve the same statutory assurances on advertising as the people of Wales. I beg to move.

Lord Carlile of Berriew (CB): My Lords, it is always a pleasure to follow the noble Lord, Lord McColl. He has great distinction as a surgeon; I recognise, as I am sure other noble Lords do, both that distinction and the great care he took, perhaps with a little liberality with the rules of the House, in presenting his arguments.

I will be brief. I think that I am one of six former Welsh Members of another place in the House today. At least some of us, perhaps most of those present, were reasonably or very enthusiastic supporters of devolution to Wales. One reason why the law on organ donation has changed in Wales is because devolution has allowed for a much shallower pyramid in the Welsh legislative process. In December 2015, the Welsh Government and the Welsh Assembly changed the system to one of presumed consent. It has worked very well. For me, as a Welsh-born former MP for

[LORD CARLILE OF BERRIEW]

Wales, it is a matter of great pride to be able to say to your Lordships' House, on this occasion at least, "Look up to what has happened in Wales". Indeed, the noble Baroness, Lady Randerson, as a former Welsh Minister, carries some credit for what occurred there.

I offer a few short propositions. First, there is no evidence of sound ethical principles being undermined as a result of the new Welsh legislation. Believe it or not, medical ethics in Wales are at least as good as in England, and patient satisfaction levels are at least as high, if not higher. Secondly, there is clear evidence of a better understanding of organ donation issues among families in Wales. The figures speak for themselves: on 16 November 2018, the Welsh Government announced that the rate of family consent in Wales is now at its highest ever—80.5%. That compares with 66.2% in England, 63.6% in Scotland and 66.7% in Northern Ireland. I suggest that these figures show that understanding of the new organ donation arrangements in Wales among Welsh families and the Welsh public is very high. There is no evidence of any irresponsibility, either legislatively or in the health service, in ensuring that organs are available in Wales.

Finally, I have no particular objection to the ambition of the noble Lord, Lord McColl, that public information levels about the new process of deemed consent for organ donation should be the highest possible. That has happened in Wales, which is why families there understand these issues so much better, as borne out by the figures I just gave. Indeed, can the Minister—who is a she, not a he, by the way—confirm the Government's ambition for public information levels to be at least as high in England and wherever else the Act will apply, which is a matter for later discussion, as in Wales? The Government would be crazy not to undertake a publicity campaign to explain properly something quite fundamental that needs to be explained to the public. Can she also confirm that patients in other parts of the United Kingdom to which this excellent Bill applies will not be at any disadvantage?

Baroness Randerson (LD): My Lords, I want to make it clear that I oppose firmly Amendment 1. I believe that it fatally undermines the concept of deemed consent and ignores the processes that will be put in place if and when the Bill becomes law.

In some circumstances when people die, medical practitioners have a short window of opportunity to deal with organ donation, and it is simply impossible to get permission from the people who were near and dear to the deceased. Very sadly, some people also die having no one in that category. As it is written, the amendment undermines the principle. If the intention is to write into law that, where possible, family and friends must be consulted about the wishes of the deceased and their own wishes, that would be a different matter. However, as I read it, that is not how Amendment 1 would work.

The noble Lord, Lord Carlile, has been a brief but powerful advocate of the Welsh system. I want to say one or two other things about it. Because we were pioneers on this within the UK, it was very much a matter of taking a belt and braces approach—take no risks. There were years—and I mean years—of

public consultation on this issue and then years were spent preparing the resources to make sure that, when it was implemented, it would be done properly. That is why it took over five years from inception to the time when the system was put into place.

The Government need to publicise and inform. I support the noble Lord's intention in Amendment 3, and I hope the Minister can confirm that the Government would consider incorporating this provision into the Bill—perhaps not in its current wording but in its intention. There would need to be a wide and repeated publicity campaign for the reasons that the noble Lord outlined.

The process of deemed consent will not reduce the pool of donors. Look around the world for the evidence. The top 10 countries in the world for deceased donors per million of population are Spain, Portugal, Belgium, Croatia, the USA, Italy, France, the Czech Republic, Austria and Belarus. Only the USA has an opt-in system; nine out of the 10 do not—there is the evidence. In those countries, in so far as I have been able to look back historically, there has been a great increase in the number of donors following the introduction of an opt-out system. I will not repeat the statistics that the noble Lord, Lord Carlile, has given the House, but the history in Wales is clear. Since 2015, the numbers have increased considerably year on year. Although we in Wales had been lagging behind the rest of the UK in our donor numbers, we are now well ahead.

The rate in Wales of those who choose to opt out is currently 6%. When we held our public consultation, we believed that the rate could be as high as 19%. It is a triumph of the publicity that people have understood it, but an important thread in that publicity was the fact that people were encouraged again and again to talk to their families and make their wishes known, so that due sensitivity could be paid to the wishes of families.

The British Heart Foundation, Kidney Care UK, the BMA and dozens of other organisations deal with this situation day in and day out. They all support this Bill, and I urge noble Lords to do so as well in due course.

Lord O'Shaughnessy (Con): My Lords, I want to make a brief contribution because I was in my noble friend's position at the Second Reading of this Bill. It is important to reflect on the theme of the amendments tabled by my noble friend Lord McColl: they are about trust. He is of course absolutely right that in the course of any changes we make in the future and whatever system we create, we must maintain the trust of British citizens, patients and their families. I agree completely with him in that intention. That is why, as the noble Baroness, Lady Randerson, has just said, I support the intention of having a good campaign, although I do not think that it is the sort of thing which ought to be put into legislation, for the obvious reasons. Indeed, as the noble Lord, Lord Carlile, pointed out, it would be barmy for any Government to undertake this kind of policy change and not pursue that, because to do so would be to fatally undermine the trust that already exists. At the moment, we have a very strong system in England which we intend will only get better.

I am sure my noble friend the Minister will confirm that it has always been our intention to provide a thoroughgoing, lengthy and extensive campaign for every new generation coming through in support of the idea of deemed consent. This policy has been supported by successive Prime Ministers: Gordon Brown supported it, David Cameron had an interest in it and Theresa May has made it a personal commitment. Given the benefits that such an approach yields, as has been demonstrated in Wales and elsewhere, it is inconceivable that any Government would not put the necessary resources into it. Indeed, we have an excellent record on public health campaigns and information campaigns in this country. The intention behind Amendment 3 is right, although I do not think that it is appropriate to put it into primary legislation.

10.45 am

Perhaps I may touch briefly on Amendment 1. My noble friend has talked about the opt-out rate in Wales. He sees that as a potential flaw in the system. However, I see it as a benefit of the scheme because it means that, under a deemed consent system, people are actually able to express a preference not to have their organs donated, which they are unable to express now. That is good because it is about control and agency. Under the system we have now, it must be the case that some people's organs are being donated because their families have agreed even though they would not have agreed. That cannot be right. I used to be sceptical about opt-out systems but the proposal in this legislation, which has been demonstrated to work in Wales, strikes the right balance, giving people power and control while making sure that they can make a positive choice if they are well informed.

The original wording of the clause gets the balance right because it provides an opportunity for family members to give information that could lead a reasonable person to believe that the patient would not have consented to donation. The change that my noble friend seeks to make would put a hard block on any donation where it is not possible to contact a person in a relationship with the deceased person in the immediate hours after death. We must bear in mind that this has to happen within minutes or hours of someone dying in order for organs to be donated. As the noble Baroness, Lady Randerson, has said, that fatally undermines the intention of the Bill, because it would mean that the donation would not happen unless someone could be contacted. As the noble Baroness said, in some circumstances people do not have anyone who can be contacted but they may have been happy to consent. That again is the opposite of personal choice.

While I absolutely understand and respect my noble friend's intentions in his amendment and his very strong desire to make sure that we maintain trust, on which I commend him completely, I do not think that Amendment 1 would have the effect that he is looking for. I believe that it would actually be counterproductive because it would restrict the choices that people had made under a much more informed system. I am sorry that I am not able to give him that support but I join with him in asking for confirmation from my noble friend the Minister that enormous efforts will be made to make sure that discussions with family members

are held, that people are well informed and that there is adequate staffing. Moreover, as is the case now, it should be made clear that if family members object, no donation will go forward. I have never come across anyone in those circumstances whose professional ethics would allow them to proceed, regardless of what the governing primary legislation says.

Baroness Jolly (LD): My Lords, I will be brief, not least because I have a cold and I am not sure how long I can keep going. First, I apologise to the Committee that I was unable to speak on Second Reading.

We know that up to 80% of the public would consent to this selfless act, but unfortunately less than half that number take the necessary steps to do so. My party approved this opt-out campaign in 2002 and it has been put in place in Wales.

What plans does the Minister anticipate being put in place to ensure that this campaign is carried out at least annually? The noble Lord, Lord McColl, was somewhat dubious about the small amount of money that was going to be put into an advertising campaign. All sorts of things might happen, but to do advertising campaigns online using Facebook and things like that will reduce the price hugely, although it is absolutely important that at least one shot—a letter or leaflet—should go to each household. Can the Minister give us some idea of the type of campaign that might be run, but also whose responsibility it would be? Would it be the department or NHS England? The noble Lord, Lord O'Shaughnessy, suggested that it might be Public Health England. I do not know.

As a House, we need to be aware that not everybody is in favour of this idea. One of my colleagues made it absolutely clear to me yesterday that he believes the decision should be his and his alone and that these proposals are illiberal. If the decision is to be made, he believes that it is he who should make it and not the state. Those were his words, not mine. He said the state should not have control of his body after he had died. Would it be possible to carry an opt-out card, which might be a sensible way around this?

My personal view is that having an organ donated is the best gift that those in desperate need of one will ever receive—not just the patient but their family, friends and those who care. We have seen the success of the opt-out system in Wales, so we on these Benches believe it is high time we followed suit in England to prevent people dying for lack of an organ.

Lord Lansley (Con): My Lords, I think I am with the noble Lord, Lord Hunt, and others in having been sceptical of an opt-out system, not least when we came to discuss it at some length—I see the noble Lord, Lord Reid, there—during the passage of the Human Tissue Act back in 2003 or thereabouts. We looked at it at some length. That prompted the pursuit by subsequent Governments, including the coalition Government in which I served, of every available opportunity to try to increase donor rates, not least by improving the system of transplant co-ordination and the supply of specialist transplant nurses.

My first point, to which I hope my noble friend the Minister will respond positively, is that I do not share the view that under this Bill resources for information

[LORD LANSLEY]

and for the transplant system—in particular for an increase in specialist transplant nursing support—are in any sense in competition. We need to do both, and I hope the Minister will be able to confirm that we will seek wherever possible to have exactly that support through transplant nurses. It is really important that we do. I think the noble Baroness, Lady Randerson, was referring to that when she referred to Spain. At the time, we looked in some detail at the Spanish example. Spain said to us that probably the bigger element in its success was not that it was an opt-out system but that it had really effective transplant co-ordination and strong support for families through trained nursing and support staff. That is the most important thing.

However—not to rerun Second Reading, to which I contributed—we have an ethical obligation to secure the maximum availability of organs for those waiting for them, some of whom, sadly, continue not to get access to organs and to die while waiting. We have an ethical conflict, because it is right to say that the state does not own our bodies. We have a right to determine what happens. My noble friend Lord O'Shaughnessy was absolutely correct in pointing out that the Bill offers an opportunity for those who wish to control what happens to their organs and bodies after death to make that explicit.

This brings me to my final point, which is to further thank my noble friend Lord McColl for raising these issues. If we are to go down this path, it is absolutely essential that the families of everyone who may be—sadly after death—a donor must be aware that they had an opportunity to consider this. Whether they took any action is a matter for them. We must be confident that the information, not only in the first instance but subsequently, is such that nobody could reasonably be expected not to have been presented with this as an issue they should consider. The noble Lord, Lord Anderson, asked what happens if the family disagree. They may, but the law is then very clear that the transplant co-ordinator, nurse or whoever must take the decision must do so seeking to determine what the loved one who has died would have thought. The evidence is not: what do you think, as the person in a qualifying relationship? It is: what can you say about what the view would have been of the person who has died and whose organs are potentially to be donated? That is the issue and the judgment that has to be made, and of course that is where the ethical issue really bites. It is not what we might think about our loved ones, but what we know about what they themselves thought about what should happen to their own organs. For those reasons, my noble friend's amendments—I know he will not press them, and I think that is absolutely right—have very helpfully given an opportunity for the Minister to give us reassurance on both those points.

Baroness Thornton (Lab): My Lords, I shall say just a few words. The noble Baroness, Lady Randerson, and the noble Lords, Lord Carlile, Lord O'Shaughnessy and Lord Lansley, have made the arguments extremely well, so there is no need to repeat them. I just make the practical point that if we want this on the statute book it has to be unamended. We can have these discussions—

they are helpful—but that is the truth of the matter. We will all have received a briefing yesterday from Kidney Care UK, which stated that three people die every day waiting for a kidney. That is what we need to bear in mind.

Baroness Manzoor (Con): I was expecting the noble Baroness, Lady Thornton, to talk for a little longer, so I thank her very much.

I thank my noble friend Lord McColl for initiating this discussion on the role of the deceased's loved ones under the proposed new system. This is an important issue that has rightly been the focus of much of the debate in the other place and here. My noble friends Lord McColl and Lord O'Shaughnessy rightly stress the issue of trust. As both my honourable friend the Member for Thurrock and the noble Lord, Lord O'Shaughnessy, have confirmed on a number of occasions, the family will remain at the heart of the new arrangements, as now. I believe this reassurance has also been given in correspondence to my noble friend and has been confirmed by NHS Blood and Transplant's medical director and national clinical lead for organ donation. I am happy to give further clarification on this point.

The legislation sets the framework for consent to organ donation and reflects what we already know—that most people support donation and agree that the decision of the potential donor should be paramount. We have, however, always said that, as now, organs and tissues will not be taken without full consultation with persons in a qualifying relationship—that is, the deceased's close family and friends. There will always be a personal discussion between the specialist nurses for organ donation and the family. This is NHS Blood and Transplant's current policy and will not change under the new system.

In addition to this policy, the Bill as drafted allows for a person in a qualifying relationship to the deceased to provide information about the deceased's wishes on donation of their organs and tissues. This is an important safeguard, to find out what the deceased would have wanted and the best way forward. I remind the House that healthcare professionals have a duty of care not only to the patient but to the family. Specialist nurses for organ donations are highly trained professionals from an intensive care or emergency medicine nursing background. When nurses join NHS Blood and Transplant, they initially receive extensive training over a six-month period. This covers supporting families to make end-of-life care decisions, including on organ donation. A key focus of the training is to enhance their skills in supporting acutely bereaved and grieving families.

11 am

In the light of the practical reality of the application of the Bill and the many medical processes and protocols that have been put in place since the Alder Hey scandal—which I know may still be a concern for some—and given that the Bill already allows the family to provide information if the deceased would not have wanted to donate their organs and tissues, it is not clear what my noble friend's amendments will achieve. I say this to

him very respectfully. He may be concerned that donation will still go ahead if no family or friends are accessible but I can categorically confirm that this will not be the case. As my noble friend will know from his medical training, to enable a safe transplant doctors need someone's medical, social and sexual history. Without such important information about the deceased, it would not be safe to proceed with a transplant and I wish put it on record that donation will not go ahead.

More detailed guidance about the role of the family will be included in the new code of practice, which will be developed by the Human Tissue Authority in formal consultation with stakeholders. This will include case studies and examples so that the public and healthcare professions can be clear that the family will continue to be involved in discussions about donation. The code will be laid before Parliament, so parliamentarians will have the opportunity to consider the guidance for healthcare professionals before the system comes into force if they wish. We expect healthcare professionals to act properly and in accordance with their relevant professional standards and guidance, part of which will be the new code. In addition, as part of the information available to the public about the new system, NHS Blood and Transplant will set out its internal protocol in an easily digestible way so that the public have all the right information and feel reassured.

At Second Reading much reference was made to the letter my honourable friend in the other place, Jackie Doyle-Price, wrote to the Board of Deputies of British Jews, which further explains the role of the family under this proposed system. A copy of this letter was circulated to all noble Lords who spoke at Second Reading and has since been placed in the Libraries of both Houses. The Government are committed to introducing a new code of consent that is practical, ethical and enables the public to maintain trust in the system. The role of the family will be a key aspect of this. No family will be forced to agree to organ donation if they are strongly opposed to it.

One of my noble friend's questions concerned Wales. Wales has seen a steady rise in donor numbers, from 52 in 2012-13 to a high of 74 in 2017-18. In 2017-18 Wales had the highest consent rate in the UK of 70%, compared to England, Scotland and Northern Ireland where consent rates were 66%, 57% and 66% respectively. We need to concern ourselves with the consent rate. A higher consent rate allows a bigger pool of available organs and can therefore lead to more high-quality transplants for patients who need them. Numbers, of course, will fluctuate. The family will continue to be at the heart of the new system; I put that firmly on the record.

The noble Baroness, Lady Randerson, raised the issue of what would happen if someone was not contactable by the NHS. The NHS staff will of course make every effort to identify the next of kin of any patient admitted to hospital in a serious condition. This starts with the ambulance service and can also involve the police. The specialist nurses at NHSBT will undertake further investigations such as contacting the GP, searching the organ donor register and contacting embassies and overseas record departments if the patient is not UK-born.

Lord Hughes of Woodside (Lab): Can the Minister confirm that the carrying of a donor card short-circuits the long process of finding relatives and so on, or is that simply a figment of my imagination?

Baroness Manzoor: My Lords, I will come on to donor cards. I hope that with the enactment of the Bill more people will be able to take proactive action to record their decision on organ and tissue donation and discuss it with their family.

It is fully recognised by the Government that the new system must be well publicised for the changes to have the greatest effect. As part of developing the code of practice, the Human Tissue Authority will propose what information the specialist nurse should consider. The principle, however, will be that such information represents the wishes of the deceased rather than those of the family.

Without wanting to prejudge discussions with the stakeholders in the planned public consultation, we are aware that organ donation in some cases may be against someone's culture, faith or belief, as my noble friend Lord McColl pointed out. It is for this reason that I confirm again that the Government will launch a 12-month communications campaign after the Bill receives Royal Assent. We are working with NHS Blood and Transplant on plans to reach out to as many people as possible. Plans are already in train to write to each household in England; to use different advertising channels, including TV, radio and social media; to promote the campaign in health settings; and, through partners, to engage the media in work to ensure that we reach hard-to-engage groups so that as many people as possible in England are aware of the changes.

My noble friend also raised the question of foreign students. The regulator will work with the Universities and Colleges Admissions Service to raise awareness with them.

We are also keen to work and align our message with the many charities that are already doing great work to promote organ and tissue donation. Key stakeholders are now part of the NHS Blood and Transplant communications advisory group and they are considering how best to do this.

Baroness Randerson: The Minister has given a list of organisations that she will be working with but I have not heard the word "schools". The noble Lord made a good point about young people coming up to the age of 18 needing to be fully informed. Schools are an effective way of passing on information about basic rights in our society.

Baroness Manzoor: I agree. Schools and universities will be included. It is important that the message is carried in those settings and institutions. I have already said that NHSBT will work closely with universities and other organisations to ensure that key messages are available.

On donor cards and short-circuiting the family, there is no name on the card but it is a good starting point to knowing the wishes of the deceased. Efforts will be made to track down the family to determine lifestyle history.

Lord Berkeley (Lab): I may have misheard, but I do not think the Minister answered my noble friend's question about donor cards. If she does not have an answer, will she write to him?

Baroness Manzoor: I thought I had, but if my answer was not clear enough, I will of course write to the noble Lord.

A campaign will take place before the new system is brought into force. The Government fully understand that changing the culture around organ donation requires continuous engagement with the public and that the communications campaign alone will not achieve this.

My noble friend Lord McColl raised the important issue of a zealous doctor taking the organs of one's loved one without consulting the family. I reassure him that it is unlawful to remove organs and tissues for transplantation purposes without appropriate consent as defined in the legislation. The Bill sets out the system of deemed consent, and families will play an important role in establishing the views of the deceased. If organs and tissues are removed without proper consent, an offence is committed. This is clearly set out in the Human Tissue Act 2004.

The noble Baroness, Lady Jolly, asked about opting in and opting out. I understand the point she made about having an opt-out card, and my noble friend also made that suggestion. People do not usually carry the card at the time of donation. That is why it is vital to record a decision on the organ registry, which nurses always check. It will show what the deceased wished.

As set out by my noble friend Lord O'Shaughnessy at the Bill's Second Reading, the Secretary of State will continue to uphold his duty to promote organ and tissue donation, as set out in the National Health Service Act 2006. This duty has been delegated to NHS Blood and Transplant which, after the initial national communications campaign, will promote deemed consent as part of its ongoing awareness-raising activity each year. The Government are planning to spend around £18 million on communicating until 2021-22 and to fund follow-up campaigns after that. The campaigns and the relevant information made available to the public will cover all aspects of how the new arrangements will work, including the role of the family.

My noble friends Lord McColl and Lord Lansley and the noble Baroness, Lady Randerson, spoke about funding the system. We will make sure that the system is funded as it should be. I assure noble Lords that we are working closely with NHS Blood and Transplant on its operational costs, which we will fund.

My noble friend Lord McColl mentioned that specialist nurses do not attend donors in 10% of cases and do not speak to the family. Specialist nurses for organ donation attend to speak to the family whenever they are informed of a potential donor. In a very small number of cases the nurses are not contacted, but this is often because the family has already raised the issue with their doctor and stated that they do not want donation to occur and do not wish to speak to a specialist nurse. NHS Blood and Transplant is working to achieve 100% referral and family approach.

I thank the noble Lord, Lord Carlile, for his support. Our ambition is to reach 80% of the population of England, so we are very ambitious. It is important that

we do this. As I said, the Government intend to spend around £18 million on communications in 2020-21.

I hope that I have given noble Lords enough reassurance. If even one life is saved as a result of this change in culture—and we are looking for a change in culture—it must surely be worth it. I hope that, with the further assurances that I have given my noble friend and have categorically put on record, he will be able to withdraw his amendment.

11.15 am

Lord Hunt of Kings Heath (Lab): I am very grateful to the Minister and, in particular, the noble Lord, Lord McColl, for raising these important issues. He asked for reassurance, and I hope that in a moment he will be able to say that he has received it.

I shall make four quick points. First, I agree with the noble Lord that in the relationship between the patient and the doctor, trust is critical. He mentioned Alder Hey. I was a Minister who had to deal with the Alder Hey situation. It was very different. There was a rogue pathologist, unsupervised by the NHS or the University of Liverpool. Many parents affected had the tragedy of three times having to bury parts of their child's body. That situation has left an indelible mark on anyone who had anything to do with it. But what happened at Alder Hey is very different from transplant services. People in those services are very responsible and operate under a code of practice and the law. While the noble Lord is right to raise that situation—and some of the families who were affected are watching the debate in your Lordships' House today—there is a difference.

Secondly, the Welsh experience is instructive in its success in increasing the rate of donation. As the noble Lord, Lord O'Shaughnessy, said, it allows people to opt out, but the number of those who do so is much smaller than the noble Baroness, Lady Randerson, and her colleagues in Wales thought it would be. That shows that the system is working.

Thirdly, at the heart of the Bill we are encouraging a change in culture, so that we as individuals talk to our families about our intentions. This is why having the card and signing the register are so important, as they are a clear indication to our families that we wish to donate our organs. Nothing in the Bill will move away from the important discussion with the family and from families being listened to in the way that the Minister said.

Finally, on the education campaign, I do not wish away £18 million. It is a good sum to start with, but we will have to see how it goes. If it is apparent that we need more campaigning, I will be the first to knock on the Government's door. We should also remember what the noble Lord, Lord Lansley, said: it is not just the campaign. We need to make sure that our transplant service will be able to meet the increase in donations that we expect to see. That means, first, that we make sure that we have enough of the crucial specialist nurses, who do a fantastic job. We also need to make sure that the transplant service will be able to respond to what I hope will be an increase in the number of donations.

I hope that the noble Lord feels he has received the reassurance he rightly asked for.

Lord McColl of Dulwich: My Lords, I thank all noble Lords who have taken part in this debate. I have been very reassured by the statements that have been made. I was particularly struck by my noble friend Lord Lansley emphasising the role of transport co-ordination nurses. They are the key people, and I believe that the way to get more donations is to have more of these nurses. That would be a really good investment—an investment which we know works. I am very keen on evidence-based medicine and policies, and they are the key. The Minister mentioned, as I did, that 10% of cases are not attended by these nurses, and I think she said that that was due to the fact that people did not want that. I hope that that is the only reason, but I have a suspicion that it is because we do not have enough of them. Perhaps that could be looked into. We need more of them, for certain.

I am very reassured by all the statements that have been made and I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Clause 1 agreed.

Amendment 2

Moved by Lord McColl of Dulwich

2: After Clause 1, insert the following new Clause—

“Five year review of the effectiveness of deemed consent

- (1) The Secretary of State must at least once in every five year period beginning with the day on which this Act is passed lay before Parliament a report which includes analysis and evidence on whether the introduction of deemed consent under section 3 of the Human Tissue Act 2004 has been effective in increasing the number of organ and tissue donations.
- (2) The report under subsection (1) must take into account other developments that may have affected the number of organ and tissue donations.”

Lord McColl of Dulwich: My Lords, Amendment 2 is inspired by Section 2(3) of the Welsh legislation. It requires the Secretary of State at least once every five years to lay before Parliament a report that includes analysis and evidence of whether the introduction of deemed consent under Section 3 of the Human Tissue Act 2004 has been effective in increasing the number of organ and tissue donations.

In the context of knowing, first, that the Organ Donation Taskforce expressed real concerns in its 2008 investigation about presuming consent and, secondly, that, as we have mentioned before, over 180,000 people have opted out of donation in Wales, all having originally been potential donors, it is only right that this kind of commitment to review should be set out in legislation. If the people of Wales deserve the reassurance and protection of a robust statutory assessment then the people of England also deserve it.

My Amendment 2 also requires a review not just of whether the level of organ donation has increased but of whether other factors should be taken into account. When there is talk of any proposed policy to increase donation, we often hear words to the effect of, “Of course, doing X is not the whole answer. It is part of the solution”. That sounds very reasonable but those

of us committed to evidence-based medicine need to ensure that it does not become the basis for failing to assess the distinctive contribution of the policy in question to increasing donation rates.

The point has been made that the Welsh Government invested a huge amount of political capital in deemed consent. They wanted to do something distinctive and for other parts of the UK to follow them, and they could not allow it to fail. In this context, although there has been a huge amount of publicity around presumed consent, it is very interesting that in the same timeframe there has, I understand, been increased investment in critical care beds, specialist nurses in organ donation and advertising promoting donation, as opposed to presumed consent.

We know that if you increase investment in critical care bed capacity, it increases donation. We know that if you increase investment in specialist nurses in organ donation, that increases donation. We know that increased advertising encouraging donation increases donation. We also know that presuming consent always reduces your total pool of potential donors because some people will opt out. As I said earlier, in Wales that number is 182,519 and it has steadily increased since the introduction of deemed consent.

In that context, it is entirely possible that simultaneously we are doing some things that will increase donation and others that will reduce it. It is also entirely possible that if you have three initiatives that push donation in the right direction and one in the wrong direction, the net effect will still be in the right direction. It is entirely possible too that if, for political reasons, you choose to highlight in publicity one of the four options, people might conclude that the highlighted option is the reason for success, when actually quite the opposite applies.

In assessing the efficacy of deemed consent, it will be really important to highlight the other steps that we take alongside presumed consent so that there is an honest attempt to find out whether the downside of deemed consent—the withdrawal of potential donors—is offset by positive changes resulting from deeming consent or whether it is offset only by other, less high-profile initiatives that have nothing to do with deeming consent.

In moving this amendment, I particularly congratulate the Welsh Government on the hard-hitting television campaign they introduced for organ donation in the last two years. What is really striking is that it make no reference to deemed consent. It is basically designed to encourage families to talk about organ donation so that family members are familiar with each other’s donation wishes. It is a great advert that could be run in an informed consent jurisdiction such as England. Although the advert has nothing to do with presumed consent, one would expect it to have made a very positive contribution to donation in Wales in the period since presumed consent was introduced.

In that context, I ask the Minister to acknowledge that there is a real challenge here and to commit to putting in place a really robust assessment process that seeks, with energy and determination, to isolate the distinctive contribution of deemed consent from the contribution of other, less controversial mechanisms

[LORD McCOLL OF DULWICH]
for increasing donation, such as more critical care beds, more specialist nurses in organ donation, more adverts encouraging donation, et cetera. If it transpires in five years' time that the policy lever for maximising donation is not presumed consent, I hope that we will be ready both to move on from it and to focus the resources thereby released on organ donation policies for which there is a robust evidence base.

Lord Hughes of Woodside: Can the noble Lord say precisely whether there is any value nowadays in carrying a donor card or whether that is now obsolete?

Lord McColl of Dulwich: We have always encouraged the carrying of donor cards. We used to keep a whole stack of them in our pockets and hand them out to the patients at Guy's. As for the evidence, I am not sure, but they cannot do any harm and I would certainly encourage people to carry them.

Finally, and keeping in mind the need for review at a more general level, I ask the Minister in passing whether consideration has been given to extending the proposal that Muslims and Jews should be able to carry donation cards that say that they wish to donate but only subject to their faith being respected. On the basis of the views I have encountered, I think that this would provide reassurance to members of other faith communities as well. I beg to move.

Baroness Manzoor: My Lords, I thank my noble friend for introducing this amendment, which relates to a very important issue. Like him, I believe in evidence-based medicine.

The Government have maintained, and have been clear, that a change in the law by itself is unlikely to lead to an increase in the number of organs and tissues available for donation. However, it is an important measure in addressing the tragic death rate due to a lack of organs and tissues available for donation, and we hope that this will be a significant step towards changing the culture regarding organ and tissue donation in England, as I said previously.

I point out to the Committee that NHS Blood and Transplant already has a legal duty to report to the Secretary of State on all its activity and is a world leader in collecting and analysing data on organ donation, retrieval and transplantation. The ongoing data collection encompasses data regarding the registrations on the organ donor register, the number of potential and actual donors, organ retrieval and organ transplantation activity. This data is published in a variety of formats, placed on its website and set out annually in a comprehensive report.

11.30 am

NHS Blood and Transplant will continue with its ongoing data collection and analysis and its annual report on a range of different organ donation statistics. However, I can see the value of an independent evaluation, which my noble friend is seeking, to look at other wider aspects such as how the new system has been implemented and, indeed, whether it is working in practice. I would therefore like to confirm that we

also have plans for a fuller evaluation once the new arrangements are up and running. The evaluation is intended to look at the first 12 months after the new system has been introduced. Officials have started considering this work.

My noble friend asked what the evaluation could cover. He is quite right that will give us a good starting point. As I said, we are keen to look at all aspects—for example, public perceptions, the impact of communication campaigns and how the front line is working—to get a good understanding of how the system is working. I want to reassure my noble friend and other noble Lords that the process will be fully transparent. I am very happy to confirm that the Government will lay the report before Parliament. I hope that my noble friend will be pleased with that commitment.

My noble friend also asked whether there is value in carrying a donor card. Yes, there is value. On the question of Jewish and Muslim cards, NHS Blood and Transplant has worked with faith leaders to improve the cards and include a faith option on the organ donor register. Furthermore, as part of the Bill's post-legislative scrutiny, we will be required to submit a memorandum to the relevant Select Committee, reporting on key elements of the legislation's implementation and operation, three to five years after it receives Royal Assent. I hope this further confirms our intentions.

Given the current duty on NHS Blood and Transplant to report annually, which goes beyond the commitment set out in this amendment, and given the Government's plans to do a formal evaluation after the new arrangements are up and running—which we fully recognise is good practice in policy-making—I hope that my noble friend feels reassured and will withdraw his amendment.

Lord Hunt of Kings Heath: My Lords, I have nothing to add to what the Minister has said, save that robust assessment will be important not only after one year but on a number of occasions. It will be very important to pick up the issue, raised by the noble Lord, Lord McColl, of whether transplant services are keeping pace with the hoped-for increase in donations.

Lord McColl of Dulwich: My Lords, I would like to thank everyone who has taken part in this debate. I am very reassured indeed by what has been said. It might perhaps be appropriate to repeat something that I said at Second Reading, in view of all the commotion and anger about Europe. When I was transplanting kidneys, the French kidneys were always the best. I say that because, when I connected the artery and the vein and took off the clamps, the urethra would immediately start peeing on the table, which was amazing. None of the other kidneys did this. I said, "What is it about these French kidneys?" The reply was, "Oh, it's the wine". I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Amendment 3 not moved.

Clause 2 agreed.

Clause 3: Extent, commencement and short title*Amendment 4**Moved by Lord Morrow***4:** Clause 3, page 3, leave out line 5 and insert—

“(1) Sections 1, 2 and 3 extend to England and Wales.

(1A) Sections 2(2), 2(3) and 3 extend also to Northern Ireland.”

Lord Morrow (DUP): My Lords, I will be very brief. I accept that this Bill is primarily about what happens in England, but it includes references to Northern Ireland in Clauses 2 and 3. It is the latter clause that my amendment explores and to which my interest turns.

To give some background to my comments, I should first say that there were discussions about introducing deemed consent in Northern Ireland in 2015-16 but considerable concerns were raised and the Bill did not become law. The Department of Health continues to take its responsibilities seriously to promote organ donation in Northern Ireland, has recently consulted on this topic and, in December, announced a £250,000 programme of co-ordinated activities to increase organ donors across Northern Ireland.

Secondly, health matters continue to be delegated to the Northern Ireland Assembly, which is acknowledged by paragraph 44 of the Explanatory Memorandum accompanying the Bill and paragraph 28(c) in the Government’s memorandum concerning the delegated powers in the Bill. Thirdly, I want to thank the Minister for taking the time this week to discuss my amendment and his officials for being in touch with me regarding it. What they sent to me and what they said was quite reassuring. However, I want to put my comments to the Minister today. To be quite frank, getting them on the record is what I am about.

I return to my concerns about Clause 3 and the purpose of Amendment 4: Clause 3(1) says that the Bill extends to Northern Ireland, which I would expect to mean that all three clauses apply to Northern Ireland. However, the title of Clause 1 is “‘Appropriate consent’ to adult transplantation activities: England”. There thus appears to be something of a contradiction in the Bill, which my amendment seeks to resolve. I recognise that Section 3 of the Human Tissue Act 2004 extends to Northern Ireland, but I want to be very clear that the proposed changes to that section, set out in Clause 1 of this Bill, do not. For the sake of complete clarity, I am proposing an amendment that excludes Clause 1 being extended to Northern Ireland and hope that the noble Lord, Lord Hunt of Kings Heath, who is the sponsor of the Bill in this House, and the Minister, will put on the record that there is no intention of Westminster bringing in deemed consent for organ donation in Northern Ireland.

Baroness Manzoor: My Lords, I thank the noble Lord, Lord Morrow, for raising the issue of territorial extent and its application in this Bill. I clarify that that the Bill does not change the rules of consent in Northern Ireland and introduces deemed consent only in England. The reason Northern Ireland is included in the extent

is because the Bill amends an existing piece of legislation, the Human Tissue Act 2004, which extends to England, Wales and Northern Ireland. While the Bill has been drafted to have a matching extent to that Act, which is the recommended approach when an existing Act is amended, we are changing the law to introduce deemed consent in England only. Deemed consent will not apply to Northern Ireland.

On the second part of the noble Lord’s amendment, the Bill as drafted ensures that organs removed in England under deemed consent can still be stored and used in Northern Ireland as now, even if Northern Ireland does not have deemed consent. This is why Northern Ireland is included in Clause 2(2) and (3). However, for such a provision to have effect in Northern Ireland, there will be a need for a legislative consent Motion from Northern Ireland.

I hope this reassures the noble Lord that we have not undermined policy in Northern Ireland in any way, and reassures the Committee that this amendment is not necessary. I hope the noble Lord will withdraw his amendment.

Lord Hunt of Kings Heath: My Lords, the noble Lord has asked me to confirm the view of the Minister, and I so do.

Lord Morrow: My Lords, I thank the Minister and the noble Lord, Lord Hunt. To put it very succinctly, I am reassured. I beg leave to withdraw the amendment.

*Amendment 4 withdrawn.**Clause 3 agreed.**House resumed.**Bill reported without amendment.***Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill***Committee**11.41 am**Relevant document: 45th Report from the Delegated Powers Committee**Clause 1 agreed.**Amendment 1**Moved by Baroness Hodgson of Abinger***1:** After Clause 1, insert the following new Clause—

“Extension of civil partnership

- (1) The Secretary of State may, by regulations, amend the Civil Partnership Act 2004 so that two persons who are not of the same sex are eligible to form a civil partnership in England and Wales (provided that they would be eligible to do so apart from the question of sex).
- (2) The Secretary of State must exercise that power so that such regulations are in force no later than 31 December 2019.
- (3) The Secretary of State may, by regulations, make any other provision that appears to the Secretary of State to be appropriate in view of the extension of eligibility to form civil partnerships in England and Wales to couples who are not of the same sex.
- (4) Regulations under subsection (3) may, in particular, make provision about—

- (a) parenthood and parental responsibility of parties to a civil partnership;
 - (b) the application by a party to a civil partnership for a gender recognition certificate under the Gender Recognition Act 2004, or the issuing of such a certificate, and the consequences of that application or issuing for the civil partnership;
 - (c) the financial consequences of civil partnership (for example, in relation to pensions or social security);
 - (d) the treatment under the law of England and Wales as civil partnerships of similar relationships formed outside the United Kingdom.
- (5) The Secretary of State may, by regulations, make provision—
- (a) for and in connection with a right to convert a marriage into a civil partnership (including any provision equivalent or similar to that contained in or authorised by section 9 of the Marriage (Same Sex Couples) Act 2013);
 - (b) restricting or bringing to an end—
 - (i) the right to convert a civil partnership into a marriage conferred by section 9(1) or (2) of the Marriage (Same Sex Couples) Act 2013 (including as it applies or would apply by virtue of regulations under this section);
 - (ii) any right conferred under paragraph (a).
- (6) Before making regulations under subsection (5), the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (7) The Secretary of State may, by regulations, make any provision that the Secretary of State considers appropriate in order to protect the ability to act in accordance with religious belief in relation to civil partnership (including the conversion of civil partnership into marriage and vice versa).
- (8) Regulations under subsection (3), (5) or (7) may include provision amending, repealing or revoking primary legislation passed or made before the end of the Session in which this Act is passed.
- (9) In this section—
- (a) reference to forming a civil partnership in England and Wales includes reference to registering as civil partners outside the United Kingdom by virtue of eligibility to do so in England and Wales (in accordance with section 210(2)(b) or 211(2)(b) of the Civil Partnership Act 2004);
 - (b) “primary legislation” means—
 - (i) an Act of Parliament;
 - (ii) an Act or Measure of the National Assembly for Wales;
 - (iii) a Measure of the Church Assembly or of the General Synod of the Church of England.”

Baroness Hodgson of Abinger (Con): My Lords, as I indicated at Second Reading, Amendments 1, 4, 5, 6 and 7, which stand in my name, seek to replace the current Clause 2 and make consequential changes to the drafting of the Bill. In replacing Clause 2, I must highlight that we do not wish to change the intention of the clause. Rather, we want to clarify the power in order to use the Bill to deliver a comprehensive and effective opposite-sex civil partnerships regime.

Following the introduction of same-sex marriage in 2013, we were left with a situation in which same-sex couples could either marry or form a civil partnership but opposite-sex couples could only marry. I outlined at Second Reading the various reasons why a couple may desire to choose a civil partnership over a marriage.

Suffice to say that many people who would like the protections and provisions that a formalised relationship can bring do not feel that marriage is for them.

When Tim Loughton and I introduced this Bill in the other place and in this House respectively, we did so with the intention that it would be used to equalise access to civil partnerships between same-sex and other couples, and thus put right the post-same-sex marriage unfairness to which I have just referred. We were delighted in October last year when the Prime Minister announced that it was now the Government’s intention to extend civil partnerships to opposite-sex couples.

Subsequently, Tim Loughton successfully moved an amendment on Report in the other place that stands as the current Clause 2 of the Bill. The intention of the current Clause 2 is to enable the Secretary of State by regulations to equalise access to civil partnerships between same-sex and opposite-sex couples. We accept that the current clause is not adequately drafted. The Minister outlined her concerns about the drafting during her response on Report, highlighting the fact that the clause would not enable us to deliver a robust opposite-sex civil partnerships regime and the lack of detail in the regulation-making power.

I have been working closely with my noble friend the Minister and Tim Loughton on a more comprehensive approach to the provision, and I am pleased to be able to table Amendments 1, 4, 5, 6 and 7 today, which effectively replace Clause 2.

Subsection (1) of the new clause would enable the Secretary of State to amend by regulation the eligibility criteria of the Civil Partnership Act 2004 in order that two people who are not of the same sex are able to form a civil partnership.

Subsection (2) would establish the date by which the regulations must come into force as 31 December 2019. This would ensure that a comprehensive opposite-sex civil partnerships regime came into force at the earliest opportunity, and certainly before the end of the year. I know the Minister will also be reiterating that, all things being equal, that is the Government’s intention. This will be welcome news to many couples for whom getting a civil partnership is a matter of urgency for various reasons.

11.45 am

The new clause would also provide for other necessary amendments to be made by regulation. Subsection (4) outlines the areas about which the regulations may make particular provision, arising from the fact that the existing regime was designed with same-sex couples in mind. They include: matters relating to parenthood and parental responsibility; the financial consequences of civil partnership, which include pensions and survivor benefits; and the recognition of equivalent opposite-sex civil partnerships entered into overseas as civil partnerships in England and Wales.

Subsection (5) would enable the Secretary of State to make regulations governing conversion rights. These rights may include the right to convert a marriage into an opposite-sex civil partnership. The regulations may also provide for any new right to convert a marriage, or the existing right to convert a civil partnership into a marriage, to be restricted or brought to an end

in future. Noble Lords may wonder why it is necessary for the legislation to stray into this territory; it is because existing civil partnerships can be converted into same-sex marriages. We need the scope to legislate further on conversion in a way that is equitable to different groups.

The question of converting civil partnerships into marriage and perhaps vice versa, will of course be of particular interest and concern to some people, so subsection (6) would require the Secretary of State specifically to consult on this matter before making any regulations on conversion.

Subsection (7) would make provision for regulations protecting the ability to act in accordance with religious belief in relation to matters provided for in regulations under this section. For example, any decision about whether to host an opposite-sex civil partnership on religious premises should remain a decision for an individual religious organisation to take.

Subsection (8) would enable the regulations made under the new clause to amend, repeal or revoke primary legislation. My amendments to Clause 5 would ensure that these and any other regulations made under the new clause would be subject to the affirmative resolution procedure, ensuring that they were debated and scrutinised appropriately in both this House and the other place. Amendments 4, 5 and 6 would make the necessary changes to the supplementary provisions about regulations in Clause 5.

Lastly, Amendment 7 would change the Long Title of the Bill to reflect the fact that Clause 2 no longer relates to the publication of a report on civil partnerships but instead relates to the extension of civil partnerships to opposite-sex couples. This is a missed consequential amendment from the changes on Report in the Commons. The Bill would therefore be correctly titled and reflect the important changes that it needs to make and, we trust, will make.

I apologise to noble Lords for being so croaky. I hope they will add their support to this amendment, which provides for access to civil partnerships to be equalised in a comprehensive and robust way. I beg to move.

Baroness Barker (LD): My Lords, I thank the noble Baroness, Lady Hodgson, for struggling in today; she is clearly not on top form. I thank her very much for the comprehensive way in which she took us through the amendment. Noble Lords know that I not only support her Private Member's Bill but I wish to see it enacted as quickly as possible, because there are a great many couples in this country for whom this is very important legislation.

However, as I have already flagged to the noble Baroness in preparation for today, I have one or two misgivings about aspects of the Bill and her amendment. It is important, however well disposed one is to a piece of legislation, that it is subject to proper scrutiny. It is the noble Baroness's misfortune that her Bill comes in the middle of a slew of government Bills taking Henry VIII powers to realms previously unimagined.

The noble Baroness will have seen the report issued on 29 January from the Delegated Powers and Regulatory Reform Committee, and the Constitution Committee's

report published yesterday. They are both very forthright in their views on the Henry VIII powers in the Bill and the scope for Ministers to make regulations. I am indebted to Mark D'Arcy of the BBC, who described the Constitution Committee of your Lordships' House as a body in which the raising of an eyebrow was considered a severe criticism—by this stage, I think it is pushing chairs through windows. The committee is very sceptical about the scope, extent and reason for the Henry VIII powers in the Bill.

I will come on to the second area when we get to Amendment 3, but I wish simply to address proposed new subsection (3), which would be introduced by Amendment 1, which the noble Baroness just moved. It states:

“The Secretary of State may, by regulations, make any other provision that appears to the Secretary of State to be appropriate in view of the extension of eligibility to form civil partnerships in England and Wales to couples who are not of the same sex”.

That is very widely drawn. I have one particular concern, which I raised on previous occasions.

As the noble Baroness knows, I do not believe it is in any way appropriate for civil partnerships to be extended to siblings. It seems it is possible to read this subsection as enabling siblings—a brother and sister—to form a civil partnership for the reasons the noble Lord, Lord Lexden, has explained concerning property and inheritance. I believe that is very deeply wrong, because I do not believe that a body of legislation devised for consenting adults to form voluntary relationships is in any way appropriate to be applied to relationships that are consanguineous and cannot be broken. That raises the possibility of women, although it could apply to men, coming under pressure in their families to protect family property by forming a civil partnership.

Therefore, it is not just important but necessary that we look again at the drafting of subsection (3). Perhaps the noble Baroness can explain why she believes it to be necessary in the form it is in when she replies. If it is to go ahead, at the very least the Committee would have to be satisfied that it is not the intention that the law will apply to sibling couples and that it cannot be interpreted in that way. That is a very important reassurance, which would have to be made in the strongest of terms for me to consider allowing this to pass. That apart, and in all other respects, the noble Baroness's amendment is helpful, and I would wish to support it.

Lord Cashman (Lab): My Lords, I refer to my interests as recorded in the register. I too will speak to Amendment 1. I thank the noble Baroness, Lady Hodgson, for introducing her amendments. I am particularly concerned by the Delegated Powers and Regulatory Reform Committee's report, and its reference to the Bill conferring,

“no fewer than four Henry VIII powers”.

It also refers to the contribution made by the Minister in our previous debate.

Like the noble Baroness, Lady Barker, I fully welcome the extension of civil partnerships and will do all I can to bring that about, but I am worried. The regulations have the power to do good, but also to undo the good

[LORD CASHMAN]

that has been done. Proposed new subsections (1) and (2) are absolutely right because subsection (2) contains a sunset provision—a time limit on when the Secretary of State might lay regulations. However, I am concerned about proposed new subsection (3), by which the Secretary of State may, by regulations,

“make any other provision that appears to the Secretary of State to be appropriate”.

That is far too widely drawn. If we are to go down that route, I would like a time limit on when they can be implemented. Similarly, proposed new subsection (6) says:

“Before making regulations under subsection (5), the Secretary of State must consult such persons as the Secretary of State considers appropriate”.

That seems wholly wrong. Instead of widening consultation it could limit it. Therefore, I have concerns about that.

I will not detain the Committee much further, but I must refer to proposed new subsection (7). On all of these I look forward to the Minister’s reassurances on the use of such regulations. Excuse me—the noble Baroness, Lady Hodgson, seems to have great powers of projection; her cold seems to be catching. However, he says, taking a very deep breath, the subsection says:

“The Secretary of State may, by regulations, make any provision that the Secretary of State considers appropriate in order to protect the ability to act in accordance with religious belief in relation to civil partnership”.

The making of “any provision” is far too wide. I would like to see that qualified. Perhaps the noble Baroness, Lady Hodgson, could indicate what actions would need to be taken to protect the ability to act in accordance with religious belief, since I remain to be convinced that such a subsection is necessary.

Lord Lexden (Con): My Lords, I say to the noble Baroness, Lady Barker—my friend in many contexts, but not in that of sibling couples and civil partnerships—that I would be pleasantly astonished if my noble friend failed to give her the reassurances she sought. It is clear that the Government have no intention of extending civil partnerships in the way I would wish. I set out at length at Second Reading the unfairness and injustice sibling couples who are committed to each other in strong, stable and platonic associations have endured for far too long because they are denied civil partnerships. I will not repeat the points I made then. I should be very interested to hear what my noble friend has to say, but I do not expect the pleasant surprise I wish for.

I have not tabled amendments to this important Bill that would cause proceedings on it to be extended. I simply say this to the Government, assuming that I am right: committed, platonic sibling couples, some of whom have shared their lives for 50 years and more, look on with astonishment and anger as a political party that ought to value the family units they have created together does nothing to relieve them from the constant anxieties they endure in the absence of joint legal rights.

Baroness D’Souza (CB): My Lords, may I ask a very naive question? I ask the Committee’s forgiveness if this has already been answered. What happens if

there were to be a civil partnership between a brother and sister—let us say the brother and sister are Jill and John—and then Jill meets Jack and decides that she wants to marry him? Can she marry Jack and thereby have a marriage and a civil partnership?

Noon

Baroness Barker: Having sat through debates on all the relevant legislation, I believe it is not possible to be simultaneously in a civil partnership and a marriage. That is not allowed under either of the laws.

Baroness Deech (CB): My Lords, I support the noble Lord, Lord Lexden, because there is unfairness to siblings and I do not go along with the rather emotional arguments that it is somehow inappropriate to extend any form of union to them. There is no solid evidence behind that; it is simply subjective. I hope the Government will treat them fairly one day, if not today.

The Lord Bishop of Chelmsford: My Lords, perhaps I may make a very small but important point. Proposed new Clause 1(7) refers to regulations being made for civil partnerships to be converted, “into marriage and vice versa”.

This would require quite a bit of consultation with the Church of England and, I think, with the Church in Wales.

Lord Brown of Eaton-under-Heywood (CB): My Lords, without in any way wishing to get involved in the difference between, on the one hand, the noble Lord, Lord Lexden, and the noble Baroness, Lady Deech, and, on the other, the noble Baroness, Lady Barker, it seems inconceivable that proposed new subsection (3) could ever be deployed to cure what the noble Lord would regard as the defect in this legislation. I point the Committee to its last few words, under which this regulation-making power applies only, “to couples who are not of the same sex”.

If you are to give effect to sibling couples, it would be bizarre to give it to those who are sibling couples of the same sex but not of other sexes. It is perfectly obvious to me that proposed new subsection (3) could not extend to bringing in this altogether very different category of sibling couples.

Lord Collins of Highbury (Lab): I thank the noble and learned Lord for that explanation, which gives me a bit of reassurance. I hope that the Minister will do the same. The fact is that two committee reports have raised serious concerns about the powers that are being extended or given in the Bill. I make it clear from the outset that we support the passing of the Bill and its objectives. We would not want to do anything to hinder it but, on the other hand, we want the Minister to be clear about the precise nature of these powers—about how they will be used and their scope.

The noble and learned Lord has been clear about proposed new subsection (3). I hope that the Minister and the noble Baroness, Lady Hodgson, will be able to respond clearly in relation to my noble friend’s question about proposed new subsection (7). Precisely what is

its purpose? I suppose the right reverend Prelate alluded to this, in that he referred to the implications for couples who have been married in church. I suppose that is what he is concerned about. There are obviously many people who have married in church and later divorced, then married again—maybe not in a church, but that has extended even to members of the Royal Family and, potentially, a future head of the Church of England. That is not for me to query. However, this really is important because, in scrutinising legislation, we have to be clear about the sort of precedent we are setting.

My own view, expressed partly by the Delegated Powers Committee, is that when the Supreme Court decision was made the Government should have come in with a Bill themselves. Why are we not conducting primary legislation properly and scrutinising it properly? We have here an omnibus Bill to which, as I say, I do not object; we certainly want to see it passed, without delay. People who want civil partnerships should be able to have them as soon as practicable and we will support that. However, it is incumbent on the Minister to answer these very important questions about scope.

The noble Baroness, Lady Hodgson, referred to the conversion period. I have experienced that myself, not least because I converted my civil partnership into a marriage and I wanted clear assurances about the timeframe for that when the 2013 Bill was going through. I got assurances but it still took a bit longer than I thought it would, so I hope the Minister will tell us precisely what the window of opportunity that has been alluded to is. What is the Government's view about this period in which people may be able to convert their marriages into civil partnerships? What timeframe are we looking at and how will people know about this? If there is a window of opportunity that will close, it is really important that the Government communicate that effectively. I hope the Minister and the noble Baroness, Lady Hodgson, will be able to respond to those points.

Lord Berkeley of Knighton (CB): My Lords, I am grateful to my noble and learned friend Lord Brown for his reassurance on the point that was raised. The reason I am grateful is that when I attended and listened to the debate in which the noble Lord, Lord Lexden, made a very moving speech—I would love to see some form of protection for siblings of the kind that he mentioned—I felt that the noble Baroness, Lady Barker, won the day with her comments and reservations. It is reassuring to have this advice from the noble and learned Lord.

Lord Cashman: My Lords, in responding, perhaps the Minister might refer to the Delegated Powers and Regulatory Reform Committee's report, not least, if she has it in front of her, paragraph 27. It deals with the committee having stated that it was,

“puzzled that the Memorandum fails to mention that Ministers already have power to remedy by secondary legislation the ECHR-incompatible provisions in the 2004 Act”.

The Minister might want to refer to that and, equally, to paragraph 31, regarding the concerns raised by that committee and its recommendations.

Lord Collins of Highbury: May I beg permission to intervene quickly? I forgot to mention one point that arose from civil partnerships being converted into same-sex marriages. It is the issue of recognition by jurisdictions in other countries, particularly countries such as France and Germany that do not like the idea of retrospective legislation. Having raised this in the Chamber on a number of occasions, I know that it was a substantial issue. I think it has been resolved in France by a decision of the National Assembly, but can the Minister pick up that point, so that people are properly advised of what all the implications are if they convert?

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I want to take this opportunity to commend my noble friend Lady Hodgson of Abinger, who is quite a trooper when it comes to pressing on regardless. I wish her well and hope that she has good rest over the weekend, having fought the good fight today to bring further equality with civil partnerships for opposite-sex couples.

I fully support my noble friend's amendments. As she said, the Government had some concerns about the drafting of Clause 2, but not the intentions behind it. I am pleased that the drafting of this amendment has been improved in a way that is satisfactory both to the Bill's sponsors and to the Government. I hope that we have arrived at an amendment that works for everyone and is able to deliver a comprehensive and effective opposite-sex civil partnerships regime at the earliest opportunity.

The Government are committed to equality for all, and we were pleased last October to announce our intention to extend civil partnerships to opposite-sex couples. As my noble friend has outlined, the amendments make it possible to equalise access to civil partnerships between same-sex and other couples by amending the eligibility criteria in the Civil Partnership Act 2004 through regulations.

A couple of noble Lords mentioned that the Delegated Powers and Regulatory Reform Committee and the Constitution Committee expressed concerns about the drafting of Clause 2. I hope that our amendments go some way towards alleviating those concerns. The new clause now sets out in much greater detail how we envisage the delegated powers would be exercised, including dealing with issues such as parental responsibility, the effect of a legal change of gender, the financial consequences of a partnership and any conversion entitlements. I take the point made by the noble Baroness, Lady Barker, and the noble Lords, Lord Collins and Lord Cashman, about Henry VIII powers, but I hope that I can satisfy them at least in part. The noble Lord, Lord Cashman, is shaking his head—but perhaps when I have said what I have to say he will be happier.

The powers are needed to give opposite-sex couples equivalent rights and benefits to those enjoyed by same-sex couples. Simply changing the eligibility criteria in the Civil Partnership Act 2004 would not ensure this. Both the noble Baroness, Lady Barker, and the noble Lord, Lord Cashman—and, I think, the noble Lord, Lord Collins—were concerned about subsection (3) and the possibility of extending civil partnerships to siblings. We have no intention of using the subsection

[**BARONESS WILLIAMS OF TRAFFORD**]
to extend civil partnerships to siblings or family members. My noble friend Lord Lexden, who lives in hope that one day we may do so, has clarified that. Subsection (1) makes it clear that the extension of eligibility applies to opposite-sex couples only, as the noble and learned Lord, Lord Brown of Eaton-under-Heywood, said, and, as drafted, would stand in the way of extension to siblings.

The noble Lord, Lord Cashman, asked me about other European countries—I am sorry, it was the noble Lord, Lord Collins. I do not know why I am mixing the two of them up today. Both their names begin with C. They are the dynamic duo.

Lord Cashman: It might help the Minister if she realises that the noble Lord, Lord Cashman, has rather less hair than the noble Lord, Lord Collins.

Baroness Williams of Trafford: I know. I have observed that over time—but I am still mixing the noble Lords up.

I do not know the answer the question about other European countries, so I shall write to the noble Lord before Report and place a copy of the letter in the Library.

Any regulations made in the exercise of all these powers will be subject to affirmative resolution and therefore to parliamentary debate and approval.

The noble Baroness, Lady D’Souza, asked whether one could have a civil partnership and a marriage. It is not possible to marry if you are in a civil partnership: nor is it possible to form a civil partnership if you are already married. However, it is possible to convert a civil partnership into a marriage—but the civil partnership would then end.

12.15 pm

Lord Collins of Highbury: Having gone through the process—I am sure that the noble and learned Lord can correct me—I should clarify that what the 2013 Act provided for was retrospection. One converted one’s civil partnership into marriage. So the date of my marriage is not the date on which I converted but the date on which I entered my civil partnership—hence my question in relation to foreign countries. It had implications, particularly for those people concerned about Brexit who were married to, for example, French citizens—in my case, I happen to be married to a Spaniard. It was about recognition of that marriage being dated from the date of the civil partnership.

Baroness Williams of Trafford: I totally understand that point and I stand corrected on the technicality of what the noble Lord said on that matter—but, as I said, I will write to him on the European question.

The noble Lord, Lord Collins, asked me about conversion and religious protections—about the date et cetera. We are looking closely at a range of policy considerations, including matters relating to conversion and religious protections. We will take decisions on the nature and extent of conversion rights following the consultation to which the amendment commits us.

I will reassure noble Lords that the Government wish to extend civil partnerships to opposite-sex couples as soon as possible and are fully committed to bringing the necessary regulations into force before the end of 2019. It is a challenging timeframe, but, given the need for consultation and further parliamentary debates, it would be impossible to commit to an earlier date.

Baroness McIntosh of Hudnall (Lab): I have been listening to the debate, but I admit that I have not paid close attention the Bill up until this point—so I may have missed something. I believe that the Minister said that the Government have no intention of extending the rights that the Bill will provide to sibling couples. Having listened to the noble and learned Lord, Lord Brown, and to the Minister, I am not clear whether the amendment would prevent any future Government exercising that power. I do not doubt the Minister’s bona fides, nor those of any of her current colleagues, but I am a little concerned about those who might come after.

Baroness Williams of Trafford: As I understand it, the Bill is dedicated to this cohort of people only. The noble and learned Lord, Lord Brown of Eaton-under-Heywood, might wish to correct me.

Lord Brown of Eaton-under-Heywood: Nothing in the Bill prevents the Government or anybody else hereafter seeking to introduce fresh legislation to avail sibling couples. All I am suggesting is that, under the order-making power here conferred by subsection (3), that power is not granted.

Lord Collins of Highbury: It would need secondary legislation.

Baroness Williams of Trafford: Yes.

Lord Lexden: Is my noble friend yet in position to give any details about the consultation exercise announced in October? She will remember that I raised this at Second Reading. Have there been any developments since then?

Baroness Williams of Trafford: I will keep noble Lords apprised of the exact consultation process and the timings thereof in due course. I fully support the amendments.

Amendment 1 agreed.

Amendment 2

Moved by Lord Faulkner of Worcester

2: After Clause 1, insert the following new Clause—

“Removal of exemption for clergy under the Marriage (Same Sex Couples) Act 2013

- (1) The Secretary of State must make regulations to amend the Marriage (Same Sex Couples) Act 2013 to remove the exemption for members of the clergy to solemnize the marriage of a same sex couple.
- (2) Regulations under this section must be in force by the end of the period of 6 months beginning with the day on which this Act is passed.”

Lord Faulkner of Worcester (Lab): My Lords, first, I apologise to the noble Baroness and to the Committee for being unable to speak at Second Reading, although I was present for a large part of the debate. My amendment is very simple and I hope it will be seen by the Committee as an attempt to build on the success of the Marriage (Same Sex Couples) Act 2013, which many of us in this Chamber view as one of the great successes of the coalition Government. The noble Baroness, Lady Stowell, who took it through on behalf of the Government, won huge plaudits at the time for the way she did that and for the way in which she won over some sceptical Members of the House as the Bill went forward. There was, however, a major flaw in that Act. It included what in today's parlance would be called a backstop, but I remember that at the time it was called a "triple lock". This effectively ruled the Church of England out of the Bill's provisions. It continued the ban on same-sex couples marrying in Church of England churches.

I took advice this morning from the Public Bill Office, to which I express my deep gratitude, as to whether it would be possible to propose a simple amendment to the Bill to effectively change that so that, at some point in the future—I look at the right reverend Prelate, because I think that it will be in his hands and the hands of members of the Church of England—there will be an opportunity to say that, because the Marriage (Same Sex Couples) Act has been such an unqualified success and is already allowing thousands of same-sex couples to enjoy the opportunity to be married and live together, it should be possible for the Church of England to follow the lead set by the Anglican Churches in Scotland, the United States, Canada and other countries and permit same-sex couples to marry in church. The amendment provides the opportunity for that debate, and I hope very much that the Committee will look sympathetically on what I am proposing. I beg to move.

Lord Cashman: My Lords, I am pleased to add my name to this amendment and I echo the words of my noble friend. It is vital to remember that this change will not compel the Church of England to solemnise same-sex marriage. Instead, it simply means that if the Church were to change its position at any time, as some of us hope it will, and decide to authorise its clergy to solemnise same-sex marriage, it would not have to appeal to Parliament to change the law to allow it to do so. It rightly places this decision in the hands of the religious institution rather than Parliament. I have to reflect at this point that other religions are not so prohibited and are allowed to make their decisions. As a born-again atheist—although one right reverend Prelate informed me that I was not a born-again atheist but probably a "recovering Catholic"—I go to great lengths to defend the rights of religion and belief, because the basis upon which any civilised society is formed is defence of the rights of the other, even if the other is in complete opposition to you.

I have witnessed, in this country and around the world, how religious belief has been used to deny people basic equality—equality of rights, civil rights. I want us to come to a time when that history is far, far behind us. I witness how religion and personal, private

religious belief is still being extended into the public and political domain to deny others basic human rights. I have to ask myself and imagine what would have happened if, instead of my wonderful civil partnership with the late Paul Cottingham, we had wanted to marry in the Church of England. I would have faced discrimination, as people of faith in the so-called LGBT, lesbian, gay, bisexual and trans community, often do, because the views of religious people are used to deny that group and other groups equality, as I said. But what about when those people of faith and of belief are discriminated against and denied their place within their own faith and belief community? It makes no sense to me whatever.

Neither does the use of religious principle, selectively implemented to justify such discrimination, make sense. I remember being mentored, before a television debate, by the late Bishop of Bath and Wells, Jim Thompson. He schooled me rather brilliantly and said, "When they use the Levitical code, remind them how the modern Church has dissociated itself from strands of the Levitical code, particularly in relation to women, people with disabilities, the eating of pork and shellfish et cetera". When we use religious principle selectively, I would argue that we undermine those principles.

Therefore, without wishing to preach—dare an atheist do that?—I look to those progressives within religious institutions, not only in this country but across the world, and the incredible work that they are undertaking within their institutions and within those religious bodies to move forward. We need to do everything to support them. I believe that this amendment goes along that route. It is not about telling them what they should do, but telling the Government that they should remove the obstruction to a religious institution, in this instance the Church of England, if it so decides, going along the route to solemnise same-sex marriage, and thereby welcome into the body of that Church people regardless of whom they wish to love consensually.

Lord Scriven (LD): My Lords, I want to follow the noble Lord, Lord Cashman, because I have experience of this. Let us be clear about the prejudice of not being able to be married in the Church of England. I married just over 16 months ago. I and my husband, like every other couple, went into this with a sense of enjoyment and excitement, wishing to reaffirm our love of 23 years in the eyes not just of society but also, because of David's view on religion, of the Church. We were denied. The law of this country denied us that right. We were not equal in the eyes of the law. So when we talk about same-sex marriage, it is not equal in law at the moment because of the provision concerning the Church. How do you think that makes me feel? We are not talking here about an abstract concept; we are talking about humans. It made me feel, in my country, not equal, not worthy of the Church rejoicing in my love, not worthy of being born in the eyes of God and being seen as equal.

The powerful nature of that prejudice is deep. It has an effect on human individuals beyond just feeling that an institution cannot marry them. It devalues the very love that I, my husband and others have. As the noble Lord, Lord Cashman, said, this amendment does not order the Church to accept me. It puts down

[LORD SCRIVEN]

in legislation the provision that if the Church so decides, as faith evolves—if it understands that the love between me and my husband, that love in all same-sex marriages, is equal to that of any other—it can bring my marriage and others into its arms.

It is for that reason that I ask noble Lords to support this, because it has a profoundly human effect. I hope that the Church welcomes this with open arms, although I understand that for some—not for all—there may be some theological reason why this cannot be done at the moment. As debates go on within the synod and the Church, this amendment gives the provision to do at some later date what other churches have done—to accept me, my husband and other same-sex couples as equal. If not, the prejudice that we have received will continue to be hurtful and enshrined in law.

12.30 pm

Baroness Barker: My Lords, I want to ask a question of the noble Lord, Lord Faulkner of Worcester, who was precise in referring to the Church of England. My understanding is that the same provisions stand for the Church in Wales as well. They were included under the same legislation, so I wanted to make sure that was right.

I will raise one other matter. The default position in the way the same-sex couples legislation was written was to defer always to the wishes of the Church, so much so that the provisions for same-sex marriage state that there must be no religious content whatever in the ceremony. For some of us, that is not a problem; we realise that we are estranged from the Church. For some people, as my noble friend has powerfully said, it is a deeply hurtful thing.

I will give two examples. A friend of mine of the Jewish faith could not have a chuppah—a canopy—or the breaking of a glass, because that is deemed to be a religious ceremony. In his community, it has a religious basis, but is also a cultural practice. Speaking for myself, I was taken aback on the day of my marriage—wonderfully happy it was, after 29 years—to be required to say what music we were going to have, because we were not allowed any music that was deemed to be religious. The effect of this protection for the Church has quite extensive and deeply hurtful ramifications, as my noble friend says. The noble Lord, Lord Faulkner, may not win today, but I thank him for raising again a very deep injustice.

The Lord Bishop of Chelmsford: My Lords, I will first make it clear, lest it be misunderstood, that the Church of England seeks to welcome all people, including LGBTI+ people, including those in civil partnerships and same-sex marriages. The reason we are having this discussion is that there are questions about how this welcome can be expressed, but I deeply regret a situation where anyone, because of their sexuality, feels excluded, alienated or hurt in the way that I know some are.

As I shall go on to explain, the Church of England is at the moment in the middle of a process which is examining how we give expression to this welcome. I hope noble Lords will understand my comments in this context, because I still regret that this amendment has been tabled. It introduces a discordant note into

your Lordships' consideration of a Bill which is otherwise uncontentious and likely to receive clear support. Moreover, an exemption from one piece of legislation can challenge inclusion in another. The Marriage (Same Sex Couples) Act 2013 seeks to strike a balance between the right of individuals to marry a person of the same sex, and the rights of churches and other religious bodies—and of their ministers—to act in a way consistent with their religious beliefs. Nobody is prevented from entering into marriage with a person of the same sex, but no religious body or minister of religion is compelled to solemnise such a marriage.

In its second report on the then Marriage (Same Sex) Couples Bill, the Joint Committee on Human Rights said that religious liberty, as granted under Article 9 of the European Convention on Human Rights is,

“a collective as well as individual right. Religious organisations have the right to determine and administer their”,

doctrinal and,

“own internal religious affairs without interference from the state. The European Court of Human Rights has held that the autonomy of religious organisations is ‘indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 of the Convention affords’”.

The Joint Committee went on to say that the Government have an obligation to protect the rights of religious organisations of freedom of thought, conscience and religion. It concluded that this was a justification for the provisions now contained in the 2013 Act, which provides for religious organisations to decide whether or not to conduct same-sex marriage.

The 2013 Act treats the Church of England and—the noble Baroness is right—the Church in Wales differently from other churches and religious organisations. Nevertheless, as the Government made clear in 2013 and as the Joint Committee on Human Rights accepted, both Churches are free to decide whether to solemnise same-sex marriages. Any such decision would be implemented through the particular legislative processes rather than through the opt-in mechanism provided in the 2013 Act that applies to other religious organisations. However, the Joint Committee concluded that this difference in treatment was justified because of the particular legal position of the Church of England and the Church in Wales—this is the crucial point—whose clergy have a duty under common law to marry parishioners. The 2013 Act accordingly contains specific provision so that the common-law duty of the clergy is not extended to same-sex marriages. As I understand it, that appears to be the main target of the amendment.

I accept—of course I do—that many noble Lords deeply regret the Church of England's current position on the marriage of same-sex couples. However, that position is based on the doctrine of the Church of England set out in canon law—which in turn forms part of the law of England—and in the Book of Common Prayer. However, the Church of England is currently engaged in what is called the Living in Love and Faith project, which is driven by a desire to learn how relationships, marriage and sexuality fit within the bigger picture of humanity, made in the image of God and redeemed by Christ. It is no secret that there are differing, strongly held views within the Church of England on these questions—I am putting it mildly. We recognise that they are vital matters which affect

the well-being of individuals and communities, but we are in the middle of this process and we are waiting to see what will emerge.

Were the Church of England's doctrine that marriage is between one man and one woman to be changed, that could be achieved only by specific ecclesiastical legislation, passed by the General Synod and then by Parliament. This amendment, which I am pleased to hear is not intended to compel the Church—I thank noble Lords for making that point—would not remove the need for that legislative process to happen, so I believe it would only make matters more difficult for the Church, not easier. Even for those within the Church who want to see change, this is not the way to help that. Instead, by requiring the removal of provisions from the 2013 Act, it will put marriage legislation at odds with ecclesiastical law, and it is impossible to know how the courts would resolve that situation. But, more significantly, it would unbalance the 2013 Act so that it ceased to respect the right to freedom of thought, conscience and religion. I therefore hope the noble Lord will not press this amendment.

Lord Cashman: My Lords, before the right reverend Prelate sits down, I would like his reaction to the fact that what is proposed is not at odds with—I forgot the phrase he used—religious law. It does not compel the Church of England to do anything but rather removes the legislative barrier from the Church progressing down the route if it so chooses to solemnise. The right reverend Prelate says that he regrets that we are bringing this amendment forward; I also regret that we have to bring forward an amendment that addresses such basic inequalities in the second decade of the 21st century.

I would welcome the right reverend Prelate's response to some research carried out by the Stonewall Group—I declare an interest as the founding chair and co-founder of Stonewall—which found that:

“A third of lesbian, gay and bisexual people of faith ... aren't open with anyone in the faith community about their sexual orientation ... One in four trans people of faith (25 per cent) aren't open about their gender identity in their faith community ... Only two in five LGBT people of faith ... think their faith community is welcoming of lesbian, gay and bi people”,

and:

“Just one in four LGBT people of faith ... think their faith community is welcoming of trans people”.

Are those levels of perceived hostility and discrimination acceptable, and does the right reverend Prelate agree with me that the Church, by completing its internal discussions on this important issue, could send a very important signal that everyone—people who believe in the same beliefs and the same religion—is welcome within the Church and that there is no prohibition to them being a full and fully partaking member of that community?

The Lord Bishop of Chelmsford: I had sat down, but if I may, I shall respond briefly. I think the noble Lord's question goes rather beyond what is proposed here, but I want him to know that the Church of England works closely with Stonewall to address many of the issues he identified, which I am aware of and very much hope that the Church of England will address. However, I stand by what I said: I do not

believe that the amendment will help in the process that the Church of England is part of, although I understand why it has been proposed.

12.45 pm

Lord Elton (Con): My Lords, I came as a spectator, but I am fascinated by what we are being asked to do. I need to be a little clearer on the mechanics. Not being familiar with the legislation, but listening to the right reverend Prelate and others, it appears to me that if the Act of 2013 did not exist, the clergy would be under a compulsion to marry against their principles. Surely the effect of the amendment, the exemption being removed, would be to place them under compulsion. I ask because it is an important difference whether it would be imposed automatically or whether the Church will have time to adjust to circumstances.

The Lord Bishop of Chelmsford: I was pleased to hear how it was being put forward; that is certainly not how those in the legal department of the Church of England have read it. I do not feel legally qualified to make further comment, but it is clearly a concern within the Church, and I think I am right to say that it would be a concern even for those who would like change, because it would introduce compulsion. That would be very unhelpful, particularly as the Church of England is in the middle of a process of discussion of the issues.

Lord Cashman: My Lords, perhaps I may be able to help the noble Lord, Lord Elton. As it stands, as I said earlier, the Marriage (Same-Sex Couples) Act 2013 does not allow for clergy of the Church of England to solemnise, but it makes provision for other religions, including Quakers and Judaism, to opt in. There is no obligation; there is an opportunity to opt in to solemnise. They are not obliged. If as individuals or a group they do not wish to solemnise, there is no obligation to do so.

Lord Collins of Highbury: My Lords, I have added my name to this amendment and support it wholeheartedly, and I do not believe that we are striking a discordant note. I think the opposite. We are asking a question to which people are seeking an answer. I do not profess for one moment that we necessarily have it right, but it is really important that we have this debate, especially as we are now talking about marriage being dissolved so that people can go into another form of relationship. The nature of relationships is changing, and the state is catching up.

I say from the outset that no politician or parliament should dictate to a religious organisation what it should or should not do. In fact, that is precisely why we tabled the amendment. In the 2013 Act, we had what people have called the triple or quadruple lock. People said that it was unacceptable. The debates on the 2013 Act are fresh in my mind and some of them I found personally difficult, but I recognise that the Church of England in particular has been on a journey, travelling quite fast and, in my opinion, in the right direction. I also remember the debates on the Civil Partnership Act, when the Church of England opposed it. I know that the most reverend Primate has apologised for some of the positions that the Church took when that Act was proposed, referring to those debates.

[LORD COLLINS OF HIGHBURY]

I do not know whether the Church has been issuing information about the amendment but, for the first time in my life, I have received emails from local vicars across the country expressing disquiet—who do I think I am forcing this abominable Act on the Church? As I said, I do not want to force anything on any religious institution, but I recognise that people of faith are gay. That is not restricted to lay people, it embraces everyone.

On Second Reading, I deliberately quoted the most reverend Primate in my speech. I think it is worth repeating because it goes to the heart of the debate on the Bill. I said:

“In his recent book ... the most reverend Primate ... tells us that the Bible’s teaching on marriage is profoundly positive but, he notes, the social reality in modern Britain is radically changed today, with cohabiting, blended, single-parent and same-sex configurations. He continues: ‘If fluidity of relationships is the reality of our society, then this should be our starting point for building values, because all values must connect with where people are and not where other people might like them to be’”.

That is the question for the Church of England. If it does not catch up, people will go somewhere else. My noble friend would certainly welcome many such people, keen for their values to be recognised, into his church. Of course, the most reverend Primate talked about those values. As I said at Second Reading:

“According to the most reverend Primate himself, ‘in Christian understanding, the core concepts of households and family include holiness, fidelity, hospitality and love above all, because God is holy, faithful, welcoming and overflowing in love, and any human institution that reflects these virtues also in some way reflects God’”.—[*Official Report*, 18/1/19; col. 427.]

When we adopt the Bill, I am sure that civil partners will reflect those values; many people in same-sex marriages certainly hold those values, as we have heard. If the Church does not catch up with them, they will go somewhere else.

I recognise that the Church is on a difficult journey because of the strong beliefs referred to by the right reverend Prelate. Clearly, there are divisions there, as there are in our society, but I know that the journey we have been on since the introduction of civil partnership has transformed our society. I remember the debates on the same-sex marriage Bill. People said that it would be a disaster, that society would collapse and that the situation would be terrible. Well, that has not happened. People recognise the value of those relationships in making a much stronger society where we can love in communities.

Instead of setting a discordant note, I hope that asking the question today will help not only the Church of England but other religious institutions to catch up with the reality: people of the same sex can love each other in a very rewarding way.

Baroness Williams of Trafford: My Lords, I thank all noble Lords who contributed to the debate. In particular, I thank the right reverend Prelate the Bishop of Chelmsford for his remarks, which give everyone hope in the context of today’s debate. I recognise the depth of feeling among Members of both Houses and people around Parliament, but I am afraid that I must resist the amendment in the names of the noble Lords, Lord Faulkner of Worcester and Lord Collins of Highbury.

As noble Lords have said, the amendment seeks to amend the Marriage (Same Sex Couples) Act 2013 to remove the exemption for members of the clergy from solemnising the marriage of same-sex couples. The 2013 Act provided an opt-in system so that same-sex marriages can occur only on religious premises, or under religious rites, where the governing religious body has expressly consented. There is no requirement to give such consent.

We have always been clear that no religious organisation should be forced to marry same-sex couples—I think the noble Lords made that clear—or to host civil partnerships. A number of religious organisations have chosen to opt in by providing blessings and, again, the right reverend Prelate the Bishop of Chelmsford gives us hope when he talks about the process of living in love and faith that the Church of England is currently going through. We hope that more organisations will do that in the future, but it is right that it should remain a decision for them. It is not for the Government to mandate this through regulations.

The noble Lord, Lord Collins of Highbury, raised this issue at Second Reading. He urged the Church of England to permit same-sex couples to have a blessing of their marriage. In response, the right reverend Prelate the Bishop of St Albans said:

“I will resist the temptation to widen the debate beyond the scope of the Bill ... I do so because I want us to focus absolutely on what we are trying to deliver”.—[*Official Report*, 18/1/19; col. 432.]

That is a good message for today but it does not preclude our having other debates on the points made by the noble Lord. I do not, however, believe that they are relevant today. Indeed, the danger is that they will confuse matters if we go beyond the scope of what we are trying to do.

This is a multifaceted Private Member’s Bill and we should keep it as simple as possible. I hope the noble Lord will withdraw his amendment.

Lord Cashman: My Lords, I should like to make two points. First, my name is also attached to the amendment. Secondly, inequality, by its very nature, is multifaceted. We should not back away from the challenge that it presents.

Baroness Williams of Trafford: I apologise to the noble Lord; I completely forgot to mention him.

Baroness Hodgson of Abinger: My Lords, I am grateful to the Minister for clarifying these matters. It only remains for me to say in response to the noble Lords, Lord Faulkner of Worcester, Lord Collins of Highbury and Lord Cashman, that the wider debate about the nature of marriage is going on right across society, particularly in the Church of England, the Church in Wales and in other churches, and it will continue. I am grateful to noble Lords for stating their views, but they are not the focus of the Bill before us, so I hope we can give it the green light and the go-ahead to move forward.

Lord Faulkner of Worcester: My Lords, I am deeply grateful to all noble Lords who have taken part in this debate and to the right reverend Prelate, who clearly

thought a great deal about what he was going to say to us. It has been a remarkable debate. This is the first time since the Marriage (Same Sex Couples) Act 2013 was passed, more than five years ago, that we have had an opportunity to talk about the attitude of the Church of England—and the Church in Wales, as the noble Baroness, Lady Barker, pointed out—to same-sex marriage in church. I make no apology for raising the debate because the fact that the Church is moving—at glacial speed, I am afraid to say—on this issue is because of the climate created in this House towards the whole issue of same-sex relationships. This House set the lead in passing that legislation with such enthusiasm in 2013, and I think there is a genuine move for us to give the Church a little push in the right direction.

Of course, I am aware that the General Synod has to pass its own legislation, but I cannot see the logic in us facilitating that by passing an amendment such as this and then giving the synod the opportunity to come round to thinking about whether it wants to do it. It is not mandatory; rather it is an opportunity for the General Synod to think further.

A lot could be said about the problems that the Church of England has with sexuality, particularly the sexuality of so many of its priests and other representatives. That is not a debate for today but it is something that I know the Church of England will have to come to terms with if it is not to be seen as hypocritical on issues around sexual relationships.

However, for today, and it is for today, if the Committee agrees, I beg leave to withdraw the amendment, but I reserve the right to bring it back on Report.

Amendment 2 withdrawn.

Amendment 3

Moved by Lord Hayward

3: After Clause 1, insert the following new Clause—
“Marriage of same-sex couples in Northern Ireland

- (1) The Secretary of State must make regulations to change the law relating to marriage in Northern Ireland to provide that marriage between same-sex couples is lawful.
- (2) Regulations under this section must be in force within 10 months of this Act being passed, subject to subsections (3), (4), (5) and (6).
- (3) If a Northern Ireland Executive is formed within the period of 6 months beginning with the day on which this Act is passed, a statutory instrument containing regulations under this section must be laid before the Northern Ireland Assembly.
- (4) Regulations contained in a statutory instrument under subsection (3) are subject to negative resolution within the meaning given by section 41(6) of the Interpretation Act (Northern Ireland) 1954.
- (5) If no Northern Ireland Executive is formed by the end of the period of 6 months beginning with the day on which this Act is passed, a statutory instrument containing regulations under this section must be laid before both Houses of Parliament.
- (6) A statutory instrument containing regulations under subsection (5) is subject to annulment in pursuance of a resolution of either House of Parliament.”

Lord Hayward (Con): My Lords, I rise to move Amendment 3 in my name and those of the noble Lords, Lord Collins and Lord Cashman. At the start

of the debate on this Bill, I did not think I would be declaring my religion or anything else, but I will choose to do so as a number of others have. I was brought up a practising Christian, and as a practising Christian I believe in the equality of all people. That is at the core of this amendment. The noble Lord, Lord Collins, the right reverend Prelate the Bishop of Chelmsford and others have referred to changes in social attitudes. It is relevant to this amendment that I make reference to DUP leader Arlene Foster’s extremely welcome move last year to attend an event she previously had not. That indicates that society is moving—a matter to which I will return later. Given the issue covered by the amendment, I should also declare that I am a strong unionist and will remain so. That applies to the whole country, but I am also strongly in favour of devolution.

I pm

First, I will comment on the Bill and the nature of the issues it covers. When I first discussed this with the noble Baroness, Lady Hodgson of Abinger, and Tim Loughton, I indicated that I had every desire that the Bill should pass. I also had every desire that it should be amended in the way I am attempting today. I say that because in March last year I introduced, along with Conor McGinn in the other place, a Private Member’s Bill with the specific aim of introducing same-sex marriage in Northern Ireland. I do not want to delay the Bill or lose it at any point, but I believe this is the ideal opportunity to make progress on a subject that matters to so many people. If I do not do it on this Bill—it has been suggested that I should not—the question is: on what Bill should I do it? My own Private Member’s Bill is at the bottom of queue—quite reasonably, because others put their Bills in first—so you then search for an alternative.

The Government have the opportunity to introduce a Bill on this, as acknowledged by the Secretary of State for Northern Ireland, Karen Bradley. I believe that not only the Government but all political parties in this House and the other should give serious consideration to finding a way to achieve and introduce same-sex marriage in Northern Ireland, whatever that may be, if it is not through this proposed new clause—which I hope it will be. We cannot wait for ever. It is all very well saying that this is not the right Bill, but when will there be a right Bill? The obligation is on all parties in both Houses to give serious consideration to this or another clause.

I now move away from the broad principle of how we do something to the specific issue of devolution. My Private Member’s Bill came on the back of a series of events in Northern Ireland, and it is worth recalling what they were. In November 2015, in the fourth vote, the Assembly passed—by a majority of two—that same-sex marriage should apply in Northern Ireland. It was defeated as a result of a petition of concern. That is quite reasonable, because that is the constitutional practice in Northern Ireland. But we have had no Assembly or Executive in Northern Ireland for two full years now. They fell in January 2017. When I introduced my Private Member’s Bill, we had been without any Assembly or Executive in Northern Ireland for just over a year; it has now been over two years.

[LORD HAYWARD]

We cannot go on for ever saying that we cannot take action and it has to be left in the hands of Northern Ireland. I wish it were in the hands of Northern Ireland. As I just indicated, I am a staunch devolutionist. I believe power should be given to the lowest reasonable level to achieve any effect in government. We are now beyond two years since the Administration in Northern Ireland fell. It is therefore important that we find some way of achieving this.

In answer to my comments at Second Reading, my noble friend observed that it would be for a democratically elected Assembly to decide whether to introduce same-sex marriage. As I have indicated, I wish that were the case but it is not, so it would be worth while, by one means or another, to test the process.

On the proposed new clause introduced by the amendment, when I made a comment at Second Reading about a friend marrying someone from Northern Ireland—I also referred to this last October—they did not have the option of marrying in Northern Ireland; it had to be in this country. However, I did not indicate at Second Reading that the person from Northern Ireland is a former employee of this House. Last week, I was in the Peers' Lobby when I was approached by someone else from Northern Ireland, a female, who said she wished me well with this amendment because she suffered the same problem.

I do not know how many people in Northern Ireland this affects—a few per cent, 1%, it does not matter—but it is clear that it affects some people in the way they want to live their lives. I ask noble Lords, when they next go to a wedding, where great celebrations will be taking place, to remember that in Northern Ireland that may not be possible in the circumstances. Imagine a product of St Malachy's coming out and going to university in Belfast and a boy from Belfast Inst going to the same university. If they form a relationship—there are certainly some here who will recognise the significance of the choice of the two schools—it will be formed across the massive religious divide that we face in Northern Ireland. Then, having crossed one enormous divide, they will not be allowed to get married because both are from Northern Ireland: they will have to come over here. What kind of society do we live in when we say, "Sorry, there are two of you. You were both brought up in Northern Ireland, your families are from Northern Ireland and you were educated in Northern Ireland, but you have to come over here to get married if that is what you want"? That is utterly unacceptable in this day and age.

I have tabled an amendment that provides the opportunity for same-sex marriage in Northern Ireland but, above all, provides a timescale so that if there is an Assembly and an Executive in Northern Ireland in the next few months—we are not saying that we are right—it will give them an opportunity to review that decision. In effect, this proposed new clause gives an opportunity for review—and implementation, I hope—through to the middle of 2020, some three and a half years after the Assembly and the Executive stopped. As has been acknowledged, that would be five years after the original vote in the Northern Ireland Assembly and seven years after the legislation on same-sex marriage in this country.

It is a difficult issue for all of us but, in the circumstances where we do not have the devolved Administration in Northern Ireland, sooner or later, on behalf of however many people, we have to say enough is enough. I beg to move.

Lord McCrea of Magherafelt and Cookstown (DUP):

My Lords, I acknowledge the sensitive nature of the issues we are debating. Over my years as a Christian minister, I have found that gracious words have the power to heal and that unguarded words have the power to hurt. I do not wish to be offensive to anyone by my words, but I want to be honest in the expression of my heartfelt beliefs. I do not doubt the sincerity of others who hold a different view, but respect goes two ways. It must be given not only by those on one side of the argument but also by those on the opposite side of the argument. I trust that those who hold biblical views on marriage are treated with equal respect.

Until recent years, throughout the United Kingdom marriage was recognised to be a lifelong and exclusive union between one man and one woman. It was generally accepted that marriage was instituted by God in the beginning and was God's gift to the whole of society. However, we are faced with a clause which has been commended to the Committee today. I want to draw attention to what I believe is a fundamental consequence to which this Committee needs to give serious consideration.

During the recent debate on leaving the European Union, it was stressed over and over again by Members across the House that the imperative was not to undermine the Belfast agreement and that there were grave dangers in so doing. Indeed, some Members of your Lordships' House warned of the dangers to the hard-won peace in Northern Ireland and of the possibility of a return to violence.

Under the devolution settlement and the Belfast agreement, it is clear that legislating for same-sex marriage in Northern Ireland is the responsibility of the Northern Ireland Assembly. Indeed, the Belfast agreement states:

"The Assembly will exercise full legislative and executive authority ... within the responsibility",

devolved to it. It is acknowledged that, under that arrangement, key decisions are taken on a cross-community basis, which includes the provision for a petition of concern to be brought by a significant minority of Assembly Members—that was a vital ingredient of the Belfast agreement. The devolution settlement was founded on the much-heralded Belfast agreement. Members of this House cannot have it both ways, one moment proclaiming the virtues of the Belfast agreement and strict allegiance to it and the devolution settlement, and the next casting them all aside in the dustbin whenever it suits.

It can rightly be said that, at present, the devolved Government are not meeting in Northern Ireland. That is the fault not of the people of Northern Ireland but of those who pulled it down at their whim for their own political ends. When same-sex marriage was brought to the court, it ruled that it was for the Northern Ireland Assembly, not a judge, to decide social policy. There are those in your Lordships' House who are seeking a way forward to have devolved government

restored, and I must faithfully state to this House that to override the Northern Ireland Assembly on this most sensitive matter could not only hasten the demand for direct rule—and many are now calling for that—but could destroy the restoration of devolved government for a generation. One could rightly ask: what is the use of having devolved government when, at the whim of Westminster, it will decide contentious issues that must be resolved between the peoples of Northern Ireland from the ground up rather than by dictation from the top down? What this amendment proposes is in reality an imposition on the people of Northern Ireland, not devolution. Indeed, this House needs to think long and hard before it rubbishes the hopes of devolution being returned.

Lord Cashman: My Lords, I am pleased to rise in support of the amendment to which I have added my name. I congratulate the noble Lord, Lord Hayward, on his introduction of this amendment. He covered a wide range of issues and principles with which I absolutely agree, not the least being that in a United Kingdom equal rights should apply equally across the entire union and not be administered separately.

It has been asked: what is the use of having a devolved Government? I might argue: what is the use of having a devolved Government when they do not govern? This situation has now been going on for two years and this House has consistently called for it and other issues to be dealt with.

The Belfast agreement has, quite rightly, been referred to. In our debates on—one might say “sadly”—exiting the European Union, I referred to the effect on human rights, not least in relation to the Belfast agreement and the Republic of Ireland. On the Belfast agreement, I was much reassured by Karen Bradley, the Secretary of State for Northern Ireland—you do not often hear Labour politicians saying that—when she confirmed that Parliament remains competent to legislate on this matter. On 20 February 2018, in a Written Answer to Conor McGinn MP, she said:

“In accordance with the Belfast Agreement”,
marriage,

“is a devolved matter which should be addressed in the NI Assembly; but the power of the Westminster Parliament to legislate remains unaffected. If this issue were to be raised in Westminster, the Government’s policy is to allow a free vote on matters of conscience such as equal marriage”.

So there we have it: this would not undermine the Belfast agreement. It is high time that Parliament took action on this matter. We have waited too long.

Is Northern Ireland ready for equal rights in terms of equal marriage? I say by way of slight digression that I warmly refer to the work that I did with the noble Lord, Lord Lexden, on this issue. Indeed, we began to commission a Private Member’s Bill on it from a friend of ours at the University of York, but the noble Lord, Lord Hayward, made a wonderful start ahead of us.

1.15 pm

It is worth reflecting that the most recent Assembly election in March 2017 elected a majority of Members who support equal marriage. At least 55 of the 90 Assembly Members have publicly declared that they would vote to introduce marriage equality. Do the

Northern Ireland public support marriage equality? We all know that in polls the question is often designed to bring about the required answer, but marriage equality has enjoyed clear and growing support among the Northern Ireland public for many years. A Sky Data poll conducted in March 2018 of a representative sample of 1,140 people in Northern Ireland recorded 76% support, with just 18% being opposed. I would like to see a much wider poll conducted.

How can this amendment help? I believe that it is beautifully worded. It provides for an extension of the right to marry to same-sex couples in Northern Ireland. It provides a reasonable time period after the Bill becomes law for the possibility that a new Northern Ireland Executive will be formed and that the Assembly might then wish to take a different approach, respecting devolution. In the absence of that eventuality, it provides time for the Government to make the necessary regulatory changes. I believe that the amendment strikes an appropriate balance between the role of the Assembly to legislate if it is re-established and the responsibility of legislators at Westminster to ensure that equality is implemented if it is not done by the devolved Government.

I have nothing more to say other than to thank Stonewall for its support and briefing, as well as Love Equality of Northern Ireland, which has done incredible and ground-breaking work on this very important issue.

Lord Scriven: My Lords, I find this very difficult because two issues close to my heart are at the epicentre of the amendment. The two issues are about devolution. I am a devolutionist to my fingertips. I support devolution: the concept that people should be able to make decisions close to where they live and work, and to be authors of their own destiny. It is in my political DNA. I support it; I like it. But devolution in itself does not mean that I am not part of a bigger union or a bigger ecostructure, whether in respect of country or region.

I understand that, at times, I have to make decisions within a certain context. That does not mean that I want to whip this decision away from the politicians and communities of Northern Ireland. I would like them to make that decision. But the second issue for me is that I believe fundamentally in human rights and equality. I find it absolutely amazing, when the whole argument about Europe has come down to the backstop and being in one United Kingdom, that my brothers and sisters in part of the United Kingdom are denied the same rights as me. That is why I am struggling with this. I say to the noble Lord, Lord McCrea, that I respect what he says. This is done with respect. I fundamentally disagree with where he is on this issue, but I respect his desire to make that decision. However, there is a fundamental flaw—

Baroness Goldie (Con): I am so sorry to interrupt. The noble Lords, Lord Morrow and Lord McCrea, would like to apologise to the Chamber: they have to leave for a flight to Northern Ireland; they are sorry for their departure. I apologise to the noble Lord, Lord Scriven.

Lord Scriven: At least the noble Lord, Lord McCrea, heard that I respect his view even though I disagree with it. I wish him speed for his flight. I will be brief.

[LORD SCRIVEN]

I have a desire for equality, and for him to make the decision; I am pulled in both directions. But his argument is fundamentally flawed, because the devolved Assembly is not working. The amendment is very clear. It gives the Assembly the right to make the decision within six months of the legislation being laid out; it does not take that right away. But, if that legislative body cannot come together, then it is quite right that this House should make the decision to give equality on same-sex marriage to all people in every part of the United Kingdom. If this amendment is passed, it does not say that we are taking this right away. It puts pressure back on the politicians of Northern Ireland to come together and make a decision on marriage equality in their part of the United Kingdom.

Baroness Thornton (Lab): I would like very briefly to say how much I support the amendment in the names of the noble Lord, Lord Hayward, and my two noble friends. I led from the Labour Front Benches on the equal marriage Bill, and one of the proudest legislative moments of my life was when we put it on the statute book. It is not often that we legislate to create happiness but that is definitely what we did on those days five years ago. It is grieving that my relatives in Ireland and Northern Ireland do not have the same access and right to marry that we have here in England. This is a human rights issue. I absolutely recognise the frustration that the noble Lord, Lord Hayward, expresses about getting this through. The Government know that political will can be brought to bear on many issues: with political will and the support of the different parties we can do pretty much what we desire to do. This is one of those issues where we need to make progress.

Lord Lexden: My Lords, I shall be very brief. The case for change has been powerfully outlined by my noble friend Lord Hayward, and endorsed by my very great friend on this issue, the noble Lord, Lord Hayward. This is a day of muddle and confusion. I mean the noble Lord, Lord Cashman. How could I make such a fundamental mistake? I align myself with their comments and repeat what has been a theme of so many comments: this could be the moment when the Government associate themselves firmly with the proposition, which many have been waiting a long time to see adopted, that human rights must extend fully and consistently throughout the length and breadth of our land. Was that not the noble aim of the Human Rights Act 1998?

Lord Cashman: My Lords, if noble Lords will allow me, there is a wonderful song, which I think is from “Cabaret”, called “Mr Cellophane”. I feel like the noble Lord, Lord Cellophane—“they look right through you”. It was remiss of me in my contribution not to specifically mention the professor the noble Lord, Lord Lexden, and I worked with on trying to bring forward a Bill on this very subject. It was of course Professor Paul Johnson of the University of York.

Lord Kilclooney (CB): My Lords, the Northern Ireland Assembly approved same-sex marriage but it was rejected by the procedures of the Northern Ireland Assembly by a petition of concern. When we drew up

the Belfast agreement and the petition of concern was created, it was intended to be used so that one political party would not impose its will on another on issues such as economics, social policy or constitutional politics. I do not think it was ever considered the means for one community to impose its moral standards on another. The basic problem here is that the petition of concern has been used to negative the decision of the Assembly. What needs to be addressed is whether the petition of concern should be amended to ensure that it is not used by any religious minority to impose its will on others.

Lord Collins of Highbury: My Lords, I will be brief. I welcome those last comments because the noble Lord, Lord Hayward, has today offered us a way forward that addresses the issue of devolution and the role of the Assembly. The journey that everyone has been on, which I referred to earlier, has also been taken by the DUP. I am sorry that the noble Lord, Lord McCrea, is no longer here; when I used to visit Northern Ireland on many occasions as a trade union official, I would never have dreamed that I would see the DUP leadership on a Gay Pride march, but we have seen that. We have seen them engage with the LGBT community. So I am not pessimistic. This is a really good way to show the people of Northern Ireland that we want them to have equal rights, and this is a clear way of doing so without affecting devolution.

Baroness Williams of Trafford: My Lords, I thank noble Lords who have spoken in this debate on the amendment in the name of the noble Lords, Lord Hayward, Lord Collins and Lord Cashman. I have considerable sympathy with their arguments, as they will all know—I spoke to my noble friend yesterday—but I am afraid I cannot support the proposed new clause.

The amendment seeks to change the law of Northern Ireland to extend same-sex marriage to couples there within 10 months of the Act receiving Royal Assent. Equality, civil partnerships and marriage are all devolved matters, so it is for the relevant Administration in Northern Ireland to legislate to make any necessary changes to the law relating to civil partnerships and marriages, but I note with considerable interest the words of the noble Lord, Lord Kilclooney, on the matter of the petition of concern. That gives me hope that things might be resolved there in future. However, at this point in time, Northern Ireland has chosen not to extend marriage to same-sex couples. While noble Lords might disagree with that position, it is clearly a matter for the Administration in Northern Ireland. The Government have made very clear that same-sex marriage is a devolved issue and the Assembly is the proper place for such legislation to be considered.

The fact that there is not currently a functioning Government in Northern Ireland does not alter the principle that it is for the devolved Administration to legislate on such matters, although I note the comments of the noble Lord, Lord Cashman. I appreciate that this situation is not ideal and understand noble Lords’ desire to make progress on this very important issue. Restoring the Executive remains a key priority for the Government, which will allow the Northern Ireland Assembly to take important decisions on issues pertaining

to the people of Northern Ireland. I hope that, in light of what I have said, my noble friend feels able to withdraw the amendment.

1.30 pm

Baroness Hodgson of Abinger: My Lords, I thank the Minister for her remarks on this important issue, and the noble Lords, Lord Hayward, Lord Collins and Lord Cashman, for tabling the amendment. The Minister has given her view and we can have a separate debate on what happens about making law in Northern Ireland in the absence of the Assembly. However, I ask that the amendment not be pressed to a vote. It might cause difficulties with the Bill's progress and the realisation of its very important aims.

Lord Hayward: My Lords, in the light of the comments that I have heard, I indicate that I intend to withdraw my amendment, but I also intend to pursue it further on Report. I believe for a number of reasons, including the clarifications and comments from the likes of the noble Baroness, Lady Thornton, the noble Lord, Lord Kilclooney, and others, that this is an issue that has found its time. Therefore, this Chamber and the other place need to find a solution. As the noble Baroness, Lady Thornton, so aptly put it, if the amendment were in the Bill, I am absolutely clear, as I think the vast majority of people in this Chamber are, that both Houses would find a way to pass it. I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Clause 2 disagreed.

Clause 3 agreed.

Clause 4: Coroners' investigations into still-births

Amendment 3A

Moved by Baroness Barker

3A: Clause 4, page 3, line 37, leave out subsection (4)

Baroness Barker: My Lords, I intend to be as brief as possible, not least because I wish that the noble Baroness, Lady Hodgson, will not have to continue to be as amazing in her stamina as she has been so far. I direct the Committee to an issue of considerable concern. Clause 3 deals with registration of pregnancy loss. It asks for there to be a report into whether it should be possible for those who have suffered pregnancy loss before 24 weeks to have that registered. I will not go back into the arguments put so eloquently by my noble friends Lady Benjamin and Lady Brinton.

Similarly, Clause 4(1) asks for a report to be conducted by the Secretary of State into the involvement of coroners in the investigation of stillbirths. We know from Second Reading that this is similarly a very important and sensitive issue. However, the problem is that the rest of Clause 4, in particular subsection (4), confers on the Secretary of State quite wide-ranging powers to bring about regulations in the light of that report.

My contention is simply this: I understand the sensitivity and importance of the issue, but I do not think that Members of this House or of another place

have yet been able to understand the very deep and serious issues on both sides of the argument. Obstetricians and gynaecologists have some fears that the involvement of coroners may impact on their professional practice and their ability to talk openly with patients, for whom this is a very sad reality. Equally, on the other side there are those who believe that the current system is wrong and that coroners should be involved. I take no view on that; I simply think that Parliament should be able to consider the case in much more detail.

It is therefore wrong at this stage to go ahead with these wide-ranging Henry VIII powers. Today, all that I ask is that the noble Baroness, Lady Hodgson, might undertake to talk with some of us between now and Third Reading, to see whether we can find a way to deal with something which we all agree is important, so as not to jeopardise her Bill.

Lord Collins of Highbury: The Delegated Powers Committee made a clear recommendation, and the reasons for it were clearly set out. I totally agree with the noble Baroness, Lady Barker, that this is not about saying that Parliament should not do these things but just, "Let's wait for the evidence and then act". We have the opportunity to act, so I am minded to support the noble Baroness.

Baroness Williams of Trafford: I thank the noble Baroness for bringing forward her amendment, but I am afraid that I am not able to support it. Amendment 3A seeks to remove from the Bill an important provision that will allow for the extension to parents of stillborn babies the same transparent and independent investigation into their loss that is granted to the parents of a newborn baby whose life ends soon after birth. The power is needed because the provisions for the exercise of coronial powers are limited to very explicit duties. There is no provision for coroners to undertake investigations beyond this. A stillborn baby, having not lived independently of its mother, is out of scope of the investigatory duties of the coroner.

We will consult on this issue. It is our intention that, if we conclude at the end of the consultation that it is right for stillbirths to be investigated by coroners, their duty to determine who has died—and how, when and where that death occurred—will be extended to apply to specified stillbirths. Should that be where the consultation takes us, we will want to learn lessons from investigations into stillbirths, just as we do at the moment in child and adult deaths where, under certain circumstances, the coroner will produce a prevention of future deaths report.

Coroners' powers to investigate a stillbirth would mirror those relating to other deaths, with powers to compel witnesses and require the production of documents and order medical examinations of the stillborn baby. The powers provided for in Clause 4(4) are intended to allow for the existing framework for coronial investigations to be extended to include the investigation of stillbirths. The existing provisions were thoroughly scrutinised when the Coroners and Justice Bill, now an Act, was debated in this House and another place. In exercising this power, the Lord Chancellor will be required to lay any regulations before your Lordships' House for consent when the regulations amend primary legislation.

[BARONESS WILLIAMS OF TRAFFORD]

Clause 4 provides that the Secretary of State will report on the question of coroners investigating stillbirths. But, having consulted and produced that report, if the conclusion is that coroners should investigate stillbirths, the Government should then move forward in a timely way. Clause 4(4) provides the mechanism to do that, with the safeguards provided in subsections (5) and (6) appropriate to the changes that are in scope. The power is rightly limited by Clause 4(6), a sunset provision which sees the power fall away if it is not used within five years of the Secretary of State publishing his report.

Reforms to the way that health providers review stillbirths have been evolving, with significant developments under way. This period provides the flexibility needed should the final legislative proposals need to reflect these developments, while providing for the Government to act quickly if the report finds that this is what is needed.

I am sure that it was not the noble Baroness's intention, but to amend the Bill to leave out Clause 4(4) without also leaving out Clause 4(5) and (6) and without further amendments to Clause 5(2) and (3)—which also reference the power provided through Clause 4(4)—would leave Clause 4 not in a coherent state, if I might put it like that. I am sure that my noble friend Lady Hodgson will agree to meet the noble Baroness in due course, but I hope that at this stage she will withdraw her amendment.

Baroness Hodgson of Abinger: I thank the Committee for putting up with my very croaky voice today. I hope that I have not spread any of my germs around too much. I thank the Minister for clarifying how the enabling power in Clause 4(4) would be used.

Baroness Barker: My Lords, I thank the noble Baronesses. I take the Minister's point that the drafting of the amendment is not correct, but I share the concerns set out in the report of the Delegated Powers and Regulatory Reform Committee that some pretty wide-ranging powers are conferred on the Secretary of State. There is an inconsistency between asking for a report under Clause 3 and then similarly asking for a report but also conferring these powers under Clause 4. I do not want to delay the matter. I simply wish that we should pass legislation which deals correctly with what is a very difficult and sensitive matter. In my long time in the House, I have been involved in a number of discussions about NHS liability and the best way to ensure that patients get what they most want: to know why something happened and, if possible, to stop it

happening to anybody else. That concern is not fully addressed by the provision. At this stage, I beg leave to withdraw the amendment, and I reserve the right to come back to the matter at a later stage.

Amendment 3A withdrawn.

Clause 4 agreed.

Clause 5: Supplementary provision about regulations

Amendments 4 to 6

Moved by Baroness Hodgson of Abinger

4: Clause 5, page 4, line 19, at end insert—

“(1A) The Secretary of State may by regulations make provision in consequence of regulations under section (Extension of civil partnership).”

5: Clause 5, page 4, line 22, after “(1)” insert “, (1A)”

6: Clause 5, page 4, line 32, leave out from beginning to “may” in line 33 and insert—

“(a) regulations under section (Extension of civil partnership), or

(b) regulations under any other section of this Act that amend, repeal or revoke any provision of primary legislation.”

Amendments 4 to 6 agreed.

Clause 5, as amended, agreed.

Clause 6 agreed.

In the Title

Amendment 7

Moved by Baroness Hodgson of Abinger

7: In the Title, line 1, leave out “a report on civil partnerships” and insert “the extension of civil partnerships to couples not of the same sex”

Amendment 7 agreed.

Title, as amended, agreed.

House resumed.

Bill reported with amendments.

House adjourned at 1.43 pm.

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