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OFFICIAL REPORT

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Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
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 March 2019

10 am

Prayers—read by the Lord Bishop of Oxford.

Animal Welfare (Service Animals) Bill

Second Reading

10.06 am

Moved by ***Viscount Trenchard***

That the Bill be now read a second time.

Viscount Trenchard (Con): My Lords, it is my great pleasure to have been asked to sponsor the Bill, which was introduced by my right honourable and learned friend Sir Oliver Heald in another place. I pay tribute to him for his commitment and dedication to this excellent cause. He has efficiently and smoothly guided the Bill through its various stages, and it has been heartening to note that it received unqualified support from all sides in another place. I trust that the Bill will be similarly welcomed and supported in your Lordships' House. It is surely reassuring and comforting that there are matters relevant to communities up and down the land and on which we all agree, and that by introducing and passing measures such as this, we can make a positive difference. I hope that this will contribute to improving the public perception of what Parliament does to make laws such as this, which are universally supported by the public.

I was asked by my right honourable and learned friend if I would sponsor the Bill because I live only five miles away from Finn, who resides at Buntingford in Hertfordshire—I think even slightly closer than my right honourable and learned friend. I also declare an interest, in that I serve as president of Sir Oliver's North East Hertfordshire constituency association.

I will briefly apprise your Lordships of the events which motivated those who launched and successfully led the Finn's law campaign. Finn's handler, PC Dave Wardell, who has brought Finn here today to hear your Lordships' deliberation on this matter—they are seated in the Members' Gallery—was engaged in apprehending a robbery suspect in Stevenage. The suspect attempted to escape by climbing over a fence and Finn, directed by PC Wardell, took hold of his lower leg to restrain him. The suspect lunged at Finn with a 10-inch knife, stabbing him in the chest several times. He then turned his attention to PC Wardell. Finn intervened to protect PC Wardell as the blade was aimed at his face. Finn put himself in the way to save the officer, who suffered a hand wound, but the dog then received serious head wounds as well as the chest injuries. PC Wardell believes that Finn saved his life. Other officers arrived and the suspect was apprehended. Finn was badly injured, with his lungs punctured in four places, yet he was licking his handler's hand wound. Finn was taken to a vet, and then to a specialist vet. He underwent a four-hour operation to save his life, and subsequently made a remarkable recovery. After 11 weeks' convalescence, he was able to go back to work with PC Wardell. On his first shift, on 22 December 2016, they arrested a fleeing suspect. Finn is now retired but is still living with PC Wardell, and remains fit and healthy. He is one of the most successful police dogs that Hertfordshire Constabulary has employed. He has won national recognition for his bravery: animal of the year in the IFAW Animal Action awards, Hero Animal of the Year, and the PDSA gold medal, which is known as the animals' George Cross.

When it came to charging the offender, it became clear that there is a problem with the current law. For the assault on the officer it was a straightforward offence of assault occasioning actual bodily harm. However, there were two potential charges for the injuries to the dog: causing unnecessary suffering to an animal under Section 4 of the Animal Welfare Act 2006, or a charge under Section 1 of the Criminal Damage Act 1971. In the event, a charge of criminal damage was brought, but this treated Finn as though he was simply a piece of police property that had been damaged, such as a police radio. The penalty for criminal damage is largely determined by the value of the property that is damaged, and a seven year-old police dog who is close to retirement is not worth much money. So it proved in court, when no separate penalty was imposed on the attacker for the attack on Finn.

The offence under Section 4 of the Animal Welfare Act provides an alternative route, but there are two problems with it. First, the maximum penalty is only six months' imprisonment. Happily, I understand that the Government have committed to increasing that to five years, which has been widely welcomed. I would be grateful if my noble friend the Minister could confirm to your Lordships when winding up that that remains the Government's firm intention. Secondly, there is a difficulty with the application of Section 4(3)(c)(ii) of the Animal Welfare Act, which sets out that various factors must be taken into account in determining whether the inflicting of suffering on an animal can be considered unnecessary. Those factors include the protection of a person or property but currently omit any reference to the role of service animals. Clearly, the role of a service animal is to restrain a suspect or to use its physical presence to support the actions of an officer discharging his or her duty, but there is no reference to that in the Act. There is concern that the provision allows defendants to argue that they are justified in using force against a service animal in self-defence, rendering the force necessary.

The failure of the law to provide an adequate means for an officer to obtain redress for injuries sustained by the service animal with which he works led to a high-profile campaign known as the Finn's law campaign. More than 123,000 people signed an online petition, which resulted in a debate in another place. It also inspired my right honourable friend Sir Oliver Heald to introduce this Bill and, with his customary doggedness, to steer it successfully through all its stages. It is a short Bill and makes only one simple but important change. It amends Section 4 of the 2006 Act to require a court to

[Viscount Trenchard]
disregard the consideration in certain circumstances when assessing whether suffering was unnecessary in the context of causing such suffering to a service animal. Its scope is restricted to service animals working with a constable or a person having the powers of a constable. This means that it applies to police officers and prison custody officers, although it allows the Secretary of State to amend the list of relevant officers by regulation, subject to the affirmative procedure.

Police forces employ both dogs and horses, and the Prison Service employs dogs. According to the International Fund for Animal Welfare, there are currently 1,753 police dogs in the UK. I have recently been advised that the Bill also extends to service animals employed by the police services of the Armed Forces, and would be grateful if the Minister could confirm that that is indeed the case. The Bill draws from the Animal Welfare Act 2002 of Western Australia, which contains a similar provision requiring a court to disregard the right of self-defence in the case of service animals where the animal is under the control of a relevant officer and is being used by that officer in a reasonable way.

I earnestly hope that your Lordships will recognise the importance of making this change, and speedily. As I mentioned, it is my right honourable friend Sir Oliver Heald who has worked with the Finn's law campaign and I pay tribute to him. It is also excellent that the Government decided to support the Bill, and I am grateful to my right honourable friend the Secretary of State and my noble friend the Minister. I also pay tribute to Sarah Dixon and Nicola Skelly of the Finn's law campaign and, of course, to PC Wardell and Finn himself, who looks to me very contented.

The Bill extends to England and Wales because it amends the Animal Welfare Act 2006, which is an England and Wales Act. I understand that the Welsh Assembly has laid a legislative consent Motion to introduce a similar measure. I look forward to hearing from the Minister whether that is indeed the case and about the prospect of a similar measure being introduced in both Scotland and Northern Ireland.

I look forward to hearing your Lordships contributions, to your support, I hope, and to my noble friend's winding-up speech. I beg to move.

10.18 am

Lord Holmes of Richmond (Con): My Lords, it is a pleasure to speak in this debate and I wholeheartedly support the Bill and every word spoken by my noble friend Lord Trenchard.

I am not sure whether I got a different memo this morning: I thought everybody was bringing their dog today. Having had much experience with assistance dogs, it gives me even greater pleasure to speak in this debate on the issue of service animals. I thank my noble friend for introducing the Bill and speaking so eloquently and forcefully to open our Second Reading this morning. I also pay tribute to the Minister, who I know stands four-square behind the legislation's intent. As he used to be my Whip, I am fully aware of just how determined he is when he wants to get you to follow him through the right Lobby.

I also pay tribute to my right honourable friend Sir Oliver Heald. As already stated, it is so much of his work, time and effort that has got us to where we are now, not least with the Bill passing so swiftly through the other place.

At this point, it is right to salute the courage and bravery of all our service men and women in the police, fire and ambulance services—indeed, all our blue-light and first-responder services. They run towards danger to protect us all. As they do so, they are not alone; they are often accompanied in the line of duty by service animals, not least dogs and horses. How can it be that, under the current law, the protection we are all afforded by those service animals is not rightly afforded back to them for their service?

All campaigns need a champion and a story to bring them to life. We could not ask for a better story than that of PC Wardell and Finn. Finn has been the cornerstone of this campaign's success so far, so it is right and proper that he is the "poster pooch". As my noble friend Lord Trenchard set out, PC Wardell's story is harrowing but in no sense unique. The need for this legislative change could not be clearer. If it had not been for Finn, PC Wardell might well not be with us this morning. As a result of Finn's actions, we are delighted to have them both with us today. There could be no greater illustration of the work and dedication of our service animals.

This is a perfect piece of Private Member's legislation. It is clear, concise and simple—and, if passed, it will have a profound effect, affording protection to service animals that does not currently exist. My noble friend set out eloquently the case for this legislation, so I will not detain your Lordships much longer, except to say that I offer this legislation my wholehearted support. I wish my noble friend every success in getting his Bill to pass swiftly and unamended through your Lordships' House. My only question for the Minister is: with the current situation in Northern Ireland, on the passing of this legislation, what can he say about the means of ensuring that the animals serving in the line of duty alongside the PSNI will be protected in the same way as service animals across the rest of the United Kingdom?

I hope that this legislation will unite noble Lords across the House and be passed swiftly to make this change in law. As my noble friend said, how can it be that a service animal is currently seen as a piece of equipment? This simple, effective and clear legislative change will ensure that all service animals are rightly respected for the job they do and the service they afford us, giving them not only dignity and respect but protection under the law—not as a piece of kit but as a professional, trained, loving animal with a head, a heart, a spirit and a soul. It is time for Finn's law.

10.24 am

Lord McNally (LD): My Lords, it is an honour and a privilege to follow the noble Lord, Lord Holmes, who reminded us most eloquently of the case for

the Bill. He is an ever-present reminder of what a well-trained dog can give in service. Of course, I pay tribute also to the noble Viscount, Lord Trenchard, for introducing the Bill and to Sir Oliver Heald for taking it as a 10-minute rule Bill through the Commons to the Floor of our Chamber.

I have only one experience of working closely with a police dog. It was many years ago, when I worked for the Labour Party and went to a conference in Blackpool with the then Prime Minister, Harold Wilson. The police dog assigned to us was a magnificent-looking animal. When out of sight or hearing of the Prime Minister, his handler would show us his party piece. He would say, "Harold Wilson", and the dog would go, "Grrrrr!"—which showed just how well these dogs can be trained.

Of course, this debate has a link to Hertfordshire. I live in St Albans now. A distant relation of PC Wardell wrote to me, saying:

> "I would like to hope that you will speak on our behalf as well as vote when the legislation to protect service animals from injury and death comes before the Lords. Finn, who you must know is an incredibly brave police dog, saved the life of a relative of mine. Dave is his handler and a member of my extended family and would have suffered the same attack had Finn not bravely reacted".

We have heard his story today.

I declare another interest as a former chairman of the Youth Justice Board. One of the most worrying things about this story is that the assailant was 16 years old and carrying a 10-inch hunting knife. That puts into context the wider problem facing law enforcement officers as they deal with modern crime. The noble Viscount, Lord Trenchard, laid out clearly the weaknesses and lacunae in the Animal Welfare Act and the Criminal Damage Act. This Bill puts the animals who serve us in the right order of priorities, in terms of both our concern for their welfare and the role they play in law enforcement. Well-trained horses and dogs are a safer way of dealing with armed and dangerous criminals, as well as crowd control. They are much preferable to the use of stun guns, water cannon, rubber bullets or live ammunition.

These animals are much-loved comrades-in-arms for the police and prison officers who work with them. This Bill gives them their proper status and proportionate protection in respect of the services they provide. For the record, I hope that the Minister will clarify how the legislation will apply to Scotland, Wales and Northern Ireland. We know that progress is being made in Wales, but what is happening in Scotland and Northern Ireland?

I wish this Bill a speedy passage into law. And, since every speaker so far has been quite unashamed in using a well-known cliché, I will finish with one. Every dog has his day; today is Finn's day.

10.28 am

Baroness Brady (Con): My Lords, it is a privilege—as ever—to take part in today's debate. I congratulate my noble friend Lord Trenchard on his sponsorship of this important Bill, and my right honourable friend the Member for North East Hertfordshire in the other place on his leadership on this issue.

Anything that reduces Simon Cowell, that maker and breaker of lives and careers, to tears on national television is surely worthy of debate. When he was confronted with Finn's story on "Britain's Got Talent", that is exactly what happened—indeed, how could it not? As we have heard, Finn the police dog was on duty with PC Dave Wardell when a robber turned on him with a knife. Finn was stabbed in the head and chest with a 10-inch blade. What is extraordinary is that despite his injuries, Finn kept up his defence of his handler and prevented the criminal from inflicting a mortal wound on PC Wardell. Who could fail to be moved by this? A robber was apprehended, an officer survived a near fatal attack, and indeed Finn himself is now happily recovered and here today. I had the great pleasure of meeting him this morning and he is very welcome. He is enjoying a well-earned retirement. What of the criminal? What justice is to be handed out to someone who attacks a canine officer in the line of duty?

This brings us to the heart of the matter today, which is a much-needed update to legislation to ensure that justice is served in such cases as Finn's—that the punishment fits the crime. Currently, it does not. We have heard that existing animal welfare legislation is inadequate on two related counts. The Animal Welfare Act 2006 offers a loophole to criminals who can cite the protection of a person or property as a reason for harming animals. This, in turn, limits any prosecution and sentencing to criminal damage. The Bill will make amends by disregarding this loophole with respect to service animals, provided that the animal was under the control of the relevant officer at the time and was being used to carry out officer duties in a reasonable manner. This means that in the case of police dogs and indeed horses, inflicting harm on them will be more akin to inflicting harm on the officer themselves. That is as it should be.

As Matthew Ellis, the Staffordshire Police and Crime Commissioner has said:

> "Fundamentally I am surprised that despite dogs being a key part of policing— that play such an enormous role in protecting police officers, bringing people to justice and offering reassurance to the public—attacking one attracts the same punishment as kicking in the door panel of a car. That is astonishing".

The most a criminal can get for harming a police dog, however brutally, is six months in prison. This should offend any sense of national justice we have in this House. Indeed, I suspect that it does, given the cross-party support this Bill enjoys, and I am pleased to see that similar legislation is in the works in Wales. I also look forward to the Minister's update on what is happening in the rest of the United Kingdom. If we pass this Bill, that six-month maximum sentence will be increased to five years. Five years certainly feels better to me.

It is too late for Finn's attacker to get his comeuppance, but given that from April 2017 to March 2018 police dogs were deployed in nearly 2,000 incidents, the stakes remain high. We need a deterrent in place now that gives proper sentences for the guilty and that serves justice for those animals put in harm's way to protect their officers and, of course, the general public.

It is of course right that we debate such issues properly and, however emotive the issue may be, ensure that the legislation is robust, fit for purpose and avoids

[Baroness Brady]
any unintended consequences. This Bill does just that. We should take notice that it has passed through the other place unamended and I hope it does likewise here. Although it began its parliamentary journey as a Private Member's Bill, it now enjoys official support from the Government through the Department for Environment, Food and Rural Affairs. However, PC Wardell put it best when he said:

"This campaign and Bill is my way of saying thank you to Finn for saving my life".

I find it hard to argue with that.

10.33 am

Baroness McIntosh of Pickering (Con): My Lords, I congratulate my noble friend Lord Trenchard and my right honourable friend Sir Oliver Heald for bringing forward a very timely Bill. It is also a delight to see PC Wardell and Finn in the Chamber. That gives us an opportunity to thank police officers and their heroic hounds for all the work they do. I welcome the Minister, my noble friend Lord Gardiner, to his position at the end of what has been a particularly busy week for his department in the House of Lords.

This Bill is especially welcome because it will close a loophole, but I would like to press my noble friend on a number of details to ensure that it is not only small and perfectly formed, but that it will cover all current and future circumstances that may arise. What the case of Finn has demonstrated is that while such attacks are not a frequent occurrence, they create a wave of public revulsion and we need to respond to that in a timely way.

I associate myself with the changes that were brought to the Dangerous Dogs Act 1991 in the Anti-social Behaviour, Crime and Policing Act 2014. The Dangerous Dogs Act itself showed that when all parties subscribe to a particular piece of legislation without proper scrutiny, sometimes we have to revisit it. That Act is very much a case in point.

I pay tribute to the work of Defra and the Environment, Food and Rural Affairs Committee, on which I have served. We looked closely at preventing attacks and creating a stronger offence and penalty for attacks on guide dogs and assistance dogs, as has been referred to so eloquently by my noble friend Lord Holmes. I will spare his blushes, but while it is fair to say that my noble friend and the noble Lord, Lord Blunkett, are particularly popular Members of your Lordships' House, they cannot compete with the popularity of Lottie and Barney as their companions.

The Government have committed to introducing legislation to increase the maximum penalty for animal cruelty from six months' to five years' imprisonment. I understand that as recently as 8 February, the Government stated in the other place that they will introduce legislation to this effect when the parliamentary agenda and timetable allow. Is this not that moment? Does the parliamentary timetable on a Friday morning not allow for a small amendment to incorporate that sentence? It would send out shockwaves and give teeth—if you will pardon the expression—to this Bill. Will my noble friend consider whether this is the opportunity to increase the maximum penalty for the offence from three years' imprisonment—under the Animal Welfare Act 2006, as I understand it—to five years? That would complete the work of my noble friend Lord Trenchard and Sir Oliver.

Also, as my noble friend mentioned, can the Minister confirm that all military service dogs will be included, as appropriate? I was MP for the Vale of York for five years, and a number of animals policed the RAF establishment. They do a fantastic job of work, often in the background. Will they be covered by this law? If not, could we amend the Bill, ideally by the Government bringing forward an amendment that we could all support to extend this provision to all military service dogs, as my noble friend suggested.

Does this Bill covers police horses? Finn suffered horrendous injuries, but horses have also been injured. Those injuries may not have been fatal or life-threatening, but there is the potential for that. Can we close that loophole as well, before we need to introduce another law after a future tragic incident? Will my noble friend look favourably at bringing forward a government amendment to extend this provision to horses—unless he can confirm that horses are covered? The point is not made clear in his department's Explanatory Notes or in the excellent notes prepared by the House of Lords Library, for which I am grateful. I am sure that we would all support such an amendment.

I conclude by adding my congratulations to my right honourable friend Sir Oliver, whose work is being carried forward today by my noble friend Lord Trenchard. I enthusiastically support the Bill because it recognises the work of heroic hounds such as Finn, and their heroic handlers like PC Wardell.

10.38 am

Lord German (LD): My Lords, I rise briefly to tell noble Lords the story of the campaign run by Redhill Prep School in Haverfordwest in support of this Bill. It is a school in the western part of Wales. This debate gives me an opportunity to offer to all noble Lords a happy St David's Day, especially in a week when our national pride was so enhanced last Saturday.

The Redhill Prep School decided to support and has been campaigning for Finn's law. In so doing, it found a way of using parliamentary procedure to make that happen. As part of its campaign to understand what happens in this Parliament, it is engaging in a Parliament week in May and has invited, through the Lord Speaker's Peers in Schools scheme, one of us to attend. I shall go to the school to talk about this law in particular. I also pay tribute to Sir Oliver and to the noble Viscount, Lord Trenchard, for bringing forward this Bill, which is common sense and understandably a short Bill. It does one thing simply: protect the animals that protect us.

The Peers in Schools scheme has enabled the Redhill Prep School to examine this Bill, as part of the process of understanding how the House of Lords and the House of Commons work. Part of its exercise has been to campaign with its local Members, both of the National Assembly for Wales and the House of Commons. In fact, it campaigned vigorously with the local MP. I would not say it hauled him in, but it invited him in to discuss matters political and then confronted him with this Bill. I was told that the

honourable Member for that part of Wales ended the whole session in tears, not because he had been driven into the ground but by the passion with which these young children had spoken about this law. I pay tribute to them. It is also a message to us all that the Peers in Schools process that the House of Lords has put in train, the Lord Speaker's programme here, does have an effect. It may give us an example of how we can use parliamentary procedure. This is a straightforward, two-clause Bill, which means it is straightforward to understand its purpose. That is helpful, and this is one way we can use Bills of this sort.

In supporting this Bill, I also look forward to understanding the timetable of legislative consent Motions in the National Assembly for Wales. I reassure this House, as I will reassure the children of Redhill Prep School, that the National Assembly for Wales is doing its job properly. I would not want the Members of the National Assembly to be subject to the wrath of these young people by finding themselves delaying the laying of a legislative consent Motion that would bring such a conclusion to this Bill, which we very much hope will become a law very rapidly indeed. I place on record my support for it. I hope that everyone will listen to the children of Redhill Prep School and their support for this Bill, and use it as an exemplar of how we can very well connect young people with the work this House does.

10.42 am

Baroness Jones of Whitchurch (Lab): My Lords, I am grateful to the noble Viscount, Lord Trenchard, for his work in taking over the baton on this Bill from his colleague, Sir Oliver Heald, and for the eloquent way in which he has set out the purpose of this Bill. I am also very pleased that Finn, PC Wardell and the Finn's law campaigners are here to witness what I hope will be a historic day.

In the Commons the Bill received widespread cross-party support, and nothing I will say today will deviate from that approach. I say to the noble Baroness, Lady McIntosh, that I do not think the cross-party support demonstrated here means that the Bill is in any way flawed or will not stand the test of time. I have absolute confidence that we are doing the right thing here.

The Bill represents a small but important change to the Animal Welfare Act. As colleagues have said, it is unthinkable that highly trained service animals such as police dogs and police horses can somehow be written off as property or equipment rather than sentient beings that deserve our protection. It is simply not acceptable that those who cause grievous harm to police dogs in the course of their duty have to be charged with criminal damage rather than animal welfare offences. Even those found guilty of causing unnecessary suffering to an animal have a maximum prison sentence of six months.

The noble Viscount referred to the bravery of police dog Finn, who was badly injured by being stabbed numerous times but still went on to protect his police handler, who was also being attacked. Since this case has been highlighted, numerous other examples of police dog bravery have come to light, and I pay tribute to them all.

We already have a precedent in the Anti-Social Behaviour, Crime and Policing Act 2014. This Act provides for up to three years' imprisonment for those who allow their dogs to attack an assistance dog, redefining it as an aggravated offence. This approach now needs to be applied to those attacking service animals.

When this Bill was debated in the Commons, the then Minister, George Eustice, made it clear that the Government would support the swift passage of the Private Member's Bill through all stages of the Commons and the Lords, and I very much hope the Minister will continue that refrain. But he also knows we need to go much further to strengthen animal welfare legislation. The Animal Welfare Act 2006 was a significant step towards progressing animal rights, but we have to continue to build on that progress.

Our party has always been at the forefront of animal welfare, from the 2006 Act to the landmark banning of hunting in 2004, but we recognise that much more needs to be done. Meanwhile, the Government have been painfully slow to enact any of their promises to the animal welfare organisations. There have, of course, been lots of consultations on potential legislation. While we welcome proper consultation, when those consultations finish the results seem to disappear into a black hole. For example, I recently put down a Written Question to the Minister asking what had happened to the promised Bill to increase the penalties for animal cruelty beyond the current six-month prison sentence limit. The proposal received widespread support during the consultation. In his response, the Minister accepted that the consultation had taken place and said the Government's next steps were published in August last year. He went on to say:

> "Legislation will be introduced as soon as parliamentary time allows".

We have hardly been stretched here recently, and you would have thought the Government could have found some legislative time in the last seven months to bring this Bill forward.

I hope the Minister, in his response, will welcome this Bill and agree to aid its progress. But I also hope he can provide some clear timeline for when the Government intend to address all the other outstanding animal welfare legislation issues, starting with the animal welfare Bill. I look forward to his response.

10.47 am

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, the Government are delighted to be able to support this Bill. I pay tribute to my right honourable and learned friend the Member for North East Hertfordshire in the other place for championing the cause of our much-loved service animals and for bringing forward this important Bill in recognition of the strong feeling and support among the public for Finn's law. As the Minister responsible for animal welfare and health—it was probably in 2017—I remember meeting my right honourable and learned friend as a prelude to this Bill, and I can confirm his commitment and determination to strengthen the law. The word "tenacity" would probably be a more emphatic description

[Lord Gardiner of Kimble]
of his sense of purpose. I also pay tribute to my noble friend Lord Trenchard, who is in charge of this Bill in your Lordships' House. The Government wish my noble friend every success.

The Government have taken a keen interest in this legislation, and therefore the Bill has been considered and scrutinised by parliamentary counsel to ensure that it is legally sound. In addition, the Explanatory Notes in support of the Bill have been prepared by Defra with the consent of my noble friend Lord Trenchard. I can also confirm that it is the Government's view that the Bill is compatible with the Human Rights Act 1998.

I endorse the point made by my noble friend Lord Trenchard that this Bill is small—just two clauses—and its scope very narrow, yet it addresses an important issue in relation to service animals such as Finn. I agree with the noble Lord, Lord German, that there could not be a better example of a distinct Bill with a distinct purpose, and Redhill Prep School in Haverfordwest should see this as an exemplar of Parliament—particularly given the contributions from your Lordships' House this morning—in wholehearted support of what I would describe as a distinct feature of animal welfare legislation.

My noble friend Lord Holmes of Richmond absolutely articulated that service animals undertake exceptional service for the public, which the Government entirely recognise. That takes them into dangerous situations. The highest protection for our service animals needs to be made clear in law, and I agree with my noble friend Lady Brady that we need to have this clarity—hence this Bill. That is why we support the Finn's law campaign and the Bill.

Finn himself is a distinguished example of the bravery of our service animals. As many noble Lords have said, it was a privilege to meet Finn this morning. I think he feels very much at home. I identified that by his keenness to get on House of Lords sofas, which is a distinguishing sign of what an extraordinary animal he is as well as being a service animal. Along with noble Lords, I was shocked about the events that led to Finn's near death in assisting and protecting his handler, PC Dave Wardell, while they sought to apprehend a suspect following a robbery. As my noble friend Lord Trenchard described, despite receiving life-threatening injuries from the attack in October 2016, which involved Finn being stabbed by a 10-inch bladed knife which punctured his lung, Finn made a full recovery. Finn then returned to service some 11 weeks later, and on their first outing together in December 2016 PC Wardell and Finn were able to arrest a fleeing suspect.

It is great news that Finn is now enjoying his well-deserved retirement from a distinguished life of service to the public. But today, as noble Lords have observed, it is important that we also remember all those to whom we owe so much—police officers, fire officers and all in the emergency services across the kingdom—and indeed the bravery of PC Wardell. I was struck by what my noble friend Lord Holmes of Richmond said about running towards danger. Most of us would tend to run away from danger; the brave people who look after us run towards danger, as we saw not only on the Parliamentary Estate but see around the country so often.

With noble Lords' support, when the Bill becomes law, service animals such as Finn will have more protection from callous individuals. That is because the Bill amends the Animal Welfare Act 2006 to make it clear that the ability for someone to claim that they were acting in self-defence when they attack a service animal should be disregarded in such circumstances. No longer will someone be able to inflict pain and suffering on our service animals, such as police dogs like Finn—and having studied the Explanatory Memorandum, it is clear in paragraph 3, "Policy background", that the Bill includes police horses and other animals supporting the Prison Service—and say that they are simply protecting themselves.

In supporting this Bill, we agree with the points articulated by my right honourable and learned friend in the other place that using the offences under Section 4 of the Animal Welfare Act 2006 to prosecute attacks on police and other support animals that cause unnecessary suffering, could be made more difficult due to the fact that the court must consider whether the defendant was acting in fear of harm. Relevant here is the list of considerations at Section 4(3)(c)(ii) for the court to consider if the suffering was caused for,

"a legitimate purpose such as … the purpose of protecting a person, property or other animal".

In other words, the perpetrator of the attack on the service animal could use this provision to claim that they were acting to protect themselves. The Bill before us amends the 2006 Act such that this specific consideration should be disregarded with respect to incidents involving unnecessary suffering inflicted on a service animal supporting officers in the course of their duties.

A number of points were made by noble Lords about the territorial extent. This Bill applies to England and Wales. That is because the Bill amends the Animal Welfare Act 2006, which is an England and Wales Act. The Welsh Government are extremely supportive of the change. I understand that a legislative consent Motion was laid on 17 January and is due to be considered on 5 March, so I hope that the noble Lord, Lord German, will be able to reflect that in his visit to Haverfordwest.

In Northern Ireland, as noble Lords understand, we very much hope that the Assembly will return and government resume in Northern Ireland. As noble Lords will know, Northern Ireland has separate legislation in the Welfare of Animals Act (Northern Ireland) 2011. Therefore, this particular Bill could not be used to amend that piece of legislation. I know that there is enthusiasm within Northern Ireland, but at this time there are no current plans to take forward any necessary changes. Clearly, this is a matter that people in Northern Ireland are conscious of and would be one very good reason that I look forward to the Assembly returning.

The Scottish Government are also very positive about Finn's law and are looking to apply the measure in Scotland to their animal welfare laws. The example of England and Wales is very much understood, and I believe will be followed. It is a case of getting the legislation through in those phases.

I should make it clear to my noble friends Lady McIntosh and Lord Trenchard that parliamentary counsel have studied the Bill in detail and acknowledge that animals used by branches of the military police in England and Wales to apprehend or control people will be covered by this amendment to the 2006 Act. That is because members of the military police in England and Wales will be covered by the definition of constables or persons within new subsection (3B)(b) as,

"a person (other than a constable) who has the powers of a constable or is otherwise employed for police purposes or is engaged to provide services for police purposes".

Noble Lords asked about a second limb of the Finn's law campaign which would see an increase in the maximum penalty for animal cruelty. My noble friends Lady McIntosh and Lady Brady particularly raised that, as did my noble friend Lord Trenchard. Of course, the noble Baroness, Lady Jones, and I are on the same page in our desire to get this done. The Government are clear that we are fully behind—the Secretary of State has been emphatic about this—the wish to increase the maximum penalty from six months' imprisonment to five years' imprisonment. The Government wish to make progress on this as soon as we can. Obviously, I am constantly passing back messages from noble Lords on all sides of the House about our desire to get this matter done. My bona fides are very strong on this. I am fully seized that it is an important part of our work.

I say to my noble friend Lady McIntosh that the reason this Bill has gone through in the way that it has in the other place—and, I hope, will here—is because of its narrowness of scope. It has a precise purpose, which is to amend the Animal Welfare Act 2006 in this particular regard. We all know that it is always tempting to add matters to a Bill, but the experience of many noble Lords in this House is that, the moment you start tinkering with the narrow purpose of a very important Bill, you get into timetabling difficulties, so I say to my noble friend that I understand her bona fides in these matters, but there is a very strong desire that this distinct Bill has a speedy passage through your Lordships' House. It is distinctly to address the terrible time suffered by Finn and PC Wardell. The Bill covers attacks on service animals—horses and dogs—and there is provision for further animals to be considered. I express as strongly as I can that the Government and the department support this Bill because it provides further protection for our service animals, such as Finn.

I very much hope that this Bill promoted by my noble friend Lord Trenchard will be successful in achieving a swift passage through your Lordships' House and will complete all stages to Royal Assent. There surely could not be a more deserving Bill to acknowledge our gratitude to animals such as Finn and the debt we owe them.

11.01 am

Viscount Trenchard: My Lords, I thank all noble Lords who have contributed to this debate and I appreciate their strong support. My noble friend Lord Holmes of Richmond spoke movingly. He is most qualified to speak on this matter. I was very pleased to hear from the noble Lord, Lord McNally, who reminded us that he lives in Hertfordshire. As he said, today is Finn's day. My noble friend Lady Brady pointed out that at present the punishment does not fit the crime, and Finn's law will go a long way to ensure that it does.

My noble friend Lady McIntosh's speech was very interesting. I am delighted to have heard the Minister's reassurance that horses are covered and that he will pass back the strong message to government that this House asks that measures are taken at an early date to increase the maximum penalty to five years.

I thank the noble Lord, Lord German, for his interesting speech illustrating how well both Houses can work together. I was most grateful for the strong support from the noble Baroness, Lady Jones of Whitchurch. It is heartening to have support from all sides of the House.

I appreciate the Minister's very supportive remarks, and I thank the clerks and the officials at Defra for the guidance and support they gave me in preparing for this Bill. I ask your Lordships to give this Bill a Second Reading.

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

Civil Partnerships, Marriages and Deaths (Registration etc) Bill

Report

11.04 am

Relevant documents: 45th and 48th Reports from the Delegated Powers Committee

Amendment 1

Moved by ***Lord Faulkner of Worcester***

1: 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 by regulations made by statutory instrument make such provision as is necessary to amend the Marriage (Same Sex Couples) Act 2013 to enable the Church of England and the Church in Wales to opt in to the provisions of that Act allowing the solemnization of the marriage of a same sex couple.

(2) A statutory instrument containing regulations under subsection (1) may not be made unless it has been laid before, and approved by a resolution of, each House of Parliament.

(3) Subject to subsection (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.

(4) Regulations under subsection (1) may not amend—

(a) section 1(3) of the Marriage (Same Sex Couples) Act 2013,

(b) section 1(4) of that Act, or

(c) section 2(5) or (6) of that Act."

Lord Faulkner of Worcester (Lab): My Lords, Amendment 1 is in my name and that of my noble friend Lord Collins of Highbury. This amendment is similar, but not identical, to the amendment I moved

[Lord Faulkner of Worcester]

in Committee. The changes I have made to it reflect the concerns expressed in that debate by the right reverend Prelate the Bishop of Chelmsford and the briefing note I subsequently received from Church House.

Your Lordships will be aware that under the Marriage (Same Sex Couples) Act 2013 the Church of England and the Church in Wales are subject to what is called the "quadruple lock". The first three elements of that lock apply to all religions, but the fourth states that the common law duty of the Church of England and the Church in Wales to marry parishioners does not apply and that the canon law of the Church of England does not conflict with, and is not overridden by, civil law. So those churches are exempted from the general ability of a religious organisation to opt in to perform same-sex marriages. The Church of England can change those provisions through measures, and the Lord Chancellor can make similar changes in respect of the Church in Wales with its approval. My amendment gives the Secretary of State a duty to make the sort of changes that the Church might otherwise make through measures—or the Lord Chancellor, in the case of Wales—while maintaining the quadruple lock as far as possible.

This amendment differs from the amendment I moved in Committee by virtue of proposed new subsection (4). Paragraph (a) preserves the position of canon law; paragraph (b) preserves the exemption for same-sex marriages from the common law duty of members of the clergy to solemnise the marriages of their parishioners; and paragraph (c) reserves the carve-out from the Equality Act that allows religious organisations or ministers to refuse to conduct a same-sex marriage.

I hope that your Lordships, and in particular my good friend the right reverend Prelate the Bishop of Oxford, will agree that this is a modest amendment. It simply says to the Church of England and the Church in Wales that Parliament will not stand in their way when they eventually get round to extending the right to marry in church to same-sex couples.

I also hope that this debate will have another consequence: to send to gay people everywhere the message that our society is loving and inclusive and that there is room for everyone in it. I must tell your Lordships that the main reason I persevered with this amendment was the numerous messages of support I received from the clergy. For example, I received this email from the vicar of St Peter's Church, Hammersmith, the reverend Charles Clapham:

"I am writing as a Vicar in the Church of England to express my thanks to you for your interventions … in the House of Lords debate, and your support for the amendment to remove (in part) legal restrictions on the ability of Anglican clergy to solemnise same-sex marriages.

You will know this is an extremely contentious issue in the Church of England at present. But I hope you will also be aware that there are very large numbers of clergy and lay people who are supportive of equal marriage, and would like to be able to conduct such marriages in our churches. As things stand, these views are not being represented by our current House of Bishops.

The response to the amendment by the Bishop of Chelmsford in the chamber … was, to my mind, disappointing, and (to some extent) misleading. The Bishop made reference, for example, to the current 'Living in Love and Faith' project being undertaken by House of Bishops which is exploring issues of sexuality and gender. But he did not make clear that the parameters of this project are quite restrictive: it is an educational process only, and will not pronounce on the rights or wrongs of gay marriage (as the chair, the Bishop of Coventry has made clear). So this project will not result in the bishops recommending a change in current church practice regarding equal marriage.

My own parish in west London is hardly radical: we are a very ordinary suburban 'middle-of-the-road' Anglican church. But we have a number of LGBT people, some of whom are in civil partnerships or marriages, amongst our most valued parishioners and worshippers. It is a matter of embarrassment (to say the very least) that we are not able to celebrate their relationships formally in church, and a frustration that our bishops are unwilling to represent our views.

So I thank you for your advocacy and support, and do hope you will keep pushing the issue".

Writing on Facebook on 8 February, the Dean of Leicester, the very reverend David Monteith, who entered into a same-sex civil partnership in 2008, said:

"I've had one of those weeks where the reality of being gay in the Church of England came home. I spend a lot of time with many sceptical folks encouraging them to hang in there. I find myself often encouraging others not to be daunted and to believe that one day God's grace might actually be seen abundantly and more consistently in God's church. But there are some weeks when it is difficult to know that deeply realised hope in practice as well as in theory. It gets no easier as a 'senior priest'".

That comment from David Monteith attracted more than 100 supportive messages, such as:

"With much love and prayer David Monteith. Many people are inspired by the fact that you and others in senior posts are willing to be courageous and prophetic at such personal sacrificial cost".

Somebody else said:

"Sorry to read this David. I have found The Scottish Episcopal Church to be a kinder place".

Unfortunately, there are still many examples of negativity in the Church. The Lambeth Conference of bishops is to be held in 2020. The most reverend Primate the Archbishop of Canterbury has invited "every active bishop" in the Anglican Communion, and the conference planning group is to run a joint programme for bishops and their spouses. The Lambeth 2020 website says that this is,

"in recognition of the vital role spouses play across the Anglican Communion and a desire to support them in their ministry"—

but not if they are same-sex spouses. I understand that there are three in the Episcopal Church in North America who have effectively been disinvited.

The reverend canon Simon Butler, who is the vicar of St Mary's, Battersea, and a member of the Church of England's General Synod since 2005, asked an important question in the debate on the Pilling report on human sexuality at the February 2014 synod:

"My question requires a little context and a large amount of honesty. I'm gay; I don't have a vocation to celibacy and at the same time I've always taken my baptismal and ordination vows with serious intent and with a sincere desire to model my life on the example of Christ s*imul justus et peccator*. Those who have selected me, ordained me and licensed me know all this. My parish know it too.

My question is this: at the end of the process of facilitated conversations will the College of Bishops tell me whether there is a place for people like me as priests, deacons and bishops in the Church, rather than persisting in the existing policy that encourages a massive dishonesty so corrosive to the gospel? For my spiritual health, for the flourishing of people like me as ministers of the gospel and for the health of the wider Church I think we will all need to have an answer to that question".

I suspect that we will not get the answer to Simon Butler's question any time soon. However, I hope that, by debating this amendment today, this House will send a message to the Church of England and the Church in Wales—and to the Anglican Communion worldwide—that we in this House, at any rate, think it is time that they moved forward at rather more than the glacial speed we have seen so far. This amendment is intended to help them. I beg to move.

Lord Collins of Highbury (Lab): My Lords, I have added my name to this amendment and very much welcome the introduction by my noble friend, who has set out the issues extremely well. As we heard in Committee, this is about a journey that the Church of England in particular has been on, and there has been some movement. I certainly recall opposition in this House when I was hoping for agreement to civil partnerships going through. That opposition came from the Church of England too, and it delayed my civil partnership by a year, as it happens. However, when we came to the same-sex marriage debate, I welcomed the fact that the most reverend Primate spoke up in favour of civil partnerships. Therefore, there has been movement on the journey and I very much welcome that.

11.15 am

It is not for me to dictate what the Church of England should or should not do. I firmly believe in the right of religious institutions to have religious freedom. It is not my job as a politician to impose restrictions on the Church. Certainly, since the Committee stage of this Bill, I have received emails, some coming from the opposite camp in the Church of England. I did not realise that what I had been through was an abomination but apparently that is what it was, and no doubt that forms part of the debate in the Church of England.

However, that debate in Committee showed me that there is strong support in the Church of England for what we are attempting to do: it is not one-sided. I am aware—and my noble friend has highlighted— that many people are torn between their faith and their identity, and their ability to choose whom they love and care for. In fact, my own husband would have desired a religious ceremony. We have gone through a civil partnership and a same-sex marriage. We have actually done it three times, and I have no doubt that, if the Church of England changes its mind, he will strongly advocate a fourth—any excuse for a party, as they say. I sincerely hope that the Church will move on this issue.

I too have read the Church of England briefing about canon law and about the 1919 Act and the quadruple lock. I remember the debate on the quadruple lock but I do not recall the Church saying, "We can decide ourselves eventually". However, that is another issue. I accept the briefing and I accept the facts—that, if it so wishes, the Church of England can do this. As my noble friend said, this is a facilitating amendment. It says that we should have no part in this decision and that it should be a decision for the Church of England. However, it also says to the world out there that this House has changed—that we are in favour of allowing people to honour and be true to their faith, and also to be true to who they are. That is why this amendment is very important.

I shall do something that I have already done, at Second Reading and in Committee, which is to quote the most reverend Primate. I thought that his words in his book were absolutely right when he talked about the importance of marriage. He went on to say:

> "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".

What are those values that the most reverend Primate talked about? They are the values that we talk about in terms of same-sex marriage. It is the Christian understanding of the core concepts of household and family, including holiness, fidelity, hospitality and love above all, because God is holy, faithful, welcoming and overflowing in love, and any human institution that reflects those virtues also in some way reflects God. When two people have entered into a same-sex marriage, they are reflecting those values.

I hope the Church of England will change its mind.

Baroness Brinton (LD): My Lords, I want to make a brief contribution. I absolutely support the points made by the noble Lords, Lord Faulkner and Lord Collins. I speak as a heterosexual pew member of the Church of England. I echo the comments made in the letters read out by the noble Lord, Lord Faulkner: many of us look forward to the day when same-sex marriage can be solemnised in the Church of England. I am reminded of two friends of mine and my noble friend Lady Barker's who chose to leave the Church of England and have their marriage solemnised in the Unitarian Church. It was a very moving event where God recognised their sincere and solemn relationship.

I completely understand the problems inside the Church of England. I am appalled that there are members of the Church who would write to the noble Lord, Lord Collins, in those terms, describing him and his relationship as an abomination. That is certainly not where the Church comes from at all.

I support the amendment as a facilitator for the moment at which the Church of England and the Church in Wales want to say, "Yes, we will move it". We will be removing one hurdle here in Parliament to make that journey faster and smoother.

Lord Cashman (Lab): My Lords, I am in favour of this amendment. I commend and congratulate my noble friend Lord Faulkner on the passionate way in which he introduced it, referring to the personal experiences of people who have written to him. I equally commend the contribution of my noble friend Lord Collins of Highbury.

I was very fortunate to have a civil partnership with the wonderful Paul Cottingham. Before he died, on one of those chemotherapy afternoons where the head cannot quite come up from the sofa, I was stood behind him doing the ironing—this is an insight into my domestic life—because I find that it clears the mind. I looked at this man who I had spent 31 years of my life with, and who I knew did not really have much

[Lord Cashman]
longer to live. I said to him, "Paul, will you marry me?" Without a moment's hesitation, he looked up and said, "Today's not a good day, sorry. No". But what if the answer had been different? Does it matter to people like me, who are not of religious persuasion or religious belief? It matters because one has to think, "What if that were me?" What if my faith and the roots of my relationships were absolutely within my faith community? What if I were not allowed to participate with the love and support of that community? Would it matter? The answer is yes. And if I would not want to experience that in the celebration of the person I love, how dare I allow another to experience it?

I welcome the changes that have happened in this country. They actually happened in advance of public opinion, which took courage and leadership. It is interesting that all the other religions and faiths do not need the legal protection that the Church of England has been given. As my noble friend referred to, that sends a worrying signal to the worldwide Anglican Communion. It reinforces the concept that it is okay and legitimate to discriminate against people on the grounds of their sexual orientation. We have witnessed enough atrocities across the globe to have evidence of that.

The amendment is simple. It takes on board the concerns of the Church of England and it forces the Church to do nothing. It allows what I would call a free sprint, once it gets over the internal obstacles that it needs to dismount. What would it achieve? As I have said, it would send a signal that discrimination on the grounds of sexual orientation and difference is coming to an end, as is alienation within faith communities.

Research carried out by Stonewall—I refer to my entry in the register of interests as its founding chair—should, if nothing else, accelerate the desire of the Church of England to bring forward change. One-third of lesbian, gay and bisexual people of faith are not open with anyone in their faith community about their sexual orientation. One in four trans people of faith are not open about their gender identity in their faith community. Only two in five LGBT people of faith think that their faith community is welcoming of lesbian, gay and bi people. Lastly, just one in four LGBT people of faith think that their faith community is welcoming of trans people. For no other reason than that, I hope noble Lords will give support to this amendment.

The Lord Bishop of Oxford: My Lords, those were extremely moving speeches. I thank the noble Lords, Lord Faulkner, Lord Collins and Lord Cashman, and the noble Baroness, Lady Brinton, for the contributions they have made in the Chamber today and the moving way in which they have spoken. I thank them for sharing their personal experiences so movingly, and for the important and necessary articulation of the views they have heard within the broader Church of England in favour of movement and inclusion. I deeply regret the language used in writing to the noble Lord, Lord Collins, and others; it has no place in the contemporary Church.

The Church is committed to listening carefully to the wisdom of the nation, to the wisdom in our continued debate in this Chamber and to the voices of LGBTI people at all levels in the life of the church. We are committed in our public statements to the inclusion and welcome of all. I and the Church collectively remain deeply conscious of our imperfections and the journey that we still have to travel. We recognise that discrimination is still experienced; I accept the validity of the Stonewall research just cited, and it distresses me beyond words.

As noble Lords are aware, together with other Churches and faith communities across the world, the Church of England is exploring these issues in depth—and, I accept, at length. My colleague the right reverend Prelate the Bishop of Newcastle chairs our pastoral advisory group, and last week brought a helpful series of pastoral guidelines to the General Synod. My colleague the right reverend Prelate the Bishop of Coventry chairs a process of exploration under the title Living in Love and Faith, which was referred to by noble Lords. Both processes are due to report to the General Synod in 2020. It is true that these proposals will contain resources for reflection. They may not contain recommendations for action but they will be followed by further work, debate and proposals to be tested by the General Synod in due course—as soon as possible, I hope.

Recently, I issued a pastoral letter with my fellow bishops to our own diocese of Oxford under the title, *Clothed with Love*. We are taking pastoral steps in the diocese to encourage greater inclusion and support within the Church's existing guidelines. That letter has been warmly welcomed by many LGBTI clergy and laity, and more widely across the Church by those who want to see further change. It has led to many fruitful conversations. However, it is also a sign of where the Church is, and of the deep views held in good conscience on the issue, that the same letter has dismayed and unsettled some others who fear that the Church will change what is regarded as essential and core doctrine. The correspondence illustrates the need for further deep and respectful dialogue within the Church, and I remain committed to that.

My response to the amendment is that, as a Church, we need more time for deeper reflection and prayer; for listening, recognising the urgency of the situation; for listening to those outside and within the Church; and for developing our responses. I am grateful for the intention behind this amendment and the opportunity to air these issues in this Chamber. Nevertheless, I need to resist the amendment on two grounds, both of which have been referred to.

11.30 am

First, the legal powers already exist to enable the Church of England and the Church in Wales to begin to solemnise same-sex marriages should they choose to do so. That change will be registered through a change in the doctrine of marriage and therefore in canon law. It is important for the overall process that the Church is seen to make its own decisions first, and only then for those decisions to be taken through Parliament.

Secondly, the Church itself must continue its conversation and debate, and reach conclusions through the careful process of listening, exploration and discernment about the right way forward and the right

time for such a move. While I am grateful to the noble Lord for his amendment and deeply grateful for the speeches that have been made, and will gladly commit to passing on to my colleagues all the views expressed here, I hope the Government and the House will resist the amendment, as on previous occasions in this Chamber.

Lord Griffiths of Burry Port (Lab): My Lords, before the right reverend Prelate sits down, I ask for some clarification. Has he heard from those who have spoken that there is no intention or desire to ask the Church of England to proceed in a secondary place in response to this debate? We recognise the hoops you have to go through and the legal difficulties that are encountered. I just heard him say that the Church must make its mind up first; I think everybody here would agree with that. But why take so long? If the Church of England has admitted openly gay people to its ranks as priests, has the ground not already been covered? Are the essential issues not already clear? Has the agonising not already taken place? The next step is not a difficult one.

The Lord Bishop of Oxford: I thank the noble Lord for the question and the invitation to respond. During the time of my ministry, the Church of England has grappled with two other issues: the remarriage of divorcees and the admission of women to different orders of Christian ministry. In both cases, it has taken the Church in its processes a very long time to come to judicious conclusions. That is the way we are. Our decision-making processes are naturally set up to be conservative and to take time to implement serious change after careful thought.

To change canon law, there will need to be significant majorities in favour of such change in the General Synod of the Church of England. Therefore, I anticipate that this debate will continue into the lifetime of the next synod, which begins in 2020. The debate this morning has accurately highlighted the diversity of views across the Church and the significantly shifting diversity of view in favour of change—that is a subjective view. One of the things which impedes that change of view in the life of the Church is a fear lest it be seen to be in any way compelled to make up its mind by external forces, even if that is not the intention of the amendment—I recognise it is not, very clearly. However, that external pressure would itself be a rallying call to those opposed to change.

Lord Elton (Con): My Lords, I interpose briefly on the mechanisms of the Church of England. I hope that when Anglicans read this debate, they will remember that they have a duty to be in contact with their representative on the General Synod. There seems to be a discontinuity between the pew and the synod. That can be remedied only by the Church becoming aware of its own mechanisms of government. That is a complicated process and it has to be slow. If we hasten it, and push the barrow too fast, it will fall apart. The great thing about the Church of England is the width of those it includes. That means that when change is necessary, it percolates; it does not sweep. The Holy Spirit does not suddenly work through all the limbs of the Church at the same time. I hope noble Lords opposite will take in good faith the wishes of those on this side who wish to progress, but to do so in community with their fellows who have not yet changed their minds.

Baroness Barker (LD): My Lords, at earlier stages of this Bill, I informed the House that I was brought up in a religious household. It was a nonconformist household, so in this debate I find myself very firmly on the temporal side of the House, rather than the spiritual side. As the person who spoke in the same-sex marriage debate immediately before the right reverend Prelate, I have long watched the agonies of the spiritual Benches on this issue with some interest.

I thank noble Lords on this side of the House who spoke on this matter. As I said at the previous stage of our debate, the importance of the teachings and statements of the Church go far beyond its own confines. It is true that the stance of the Church causes the greatest hurt to its members and to people of faith, but the harm it does is general and more widespread. I have to say to the right reverend Prelate that statements to the effect that the Church welcomes and includes all ring very hollow when we debate these matters.

That said, I understand that we have to defer to the Church as a body which sits within canon law and exercises its right to proceed in ways which are not subject to the other laws of the land. I watched this debate and I talk to members of the Church of England—to members of very different strands of thought in the Church—and, as an outside observer, I think there are certain elements and traditions of faith in the Church of England that will take considerably longer than others to move forward and progress to join the rest of society in its appreciation and support of gay people.

With that in mind, I wish to ask a technical question of the noble Lord, Lord Faulkner; the right reverend Prelate may also want to comment. When the same-sex marriage legislation went through, I distinctly remember that the provisions made for religions were that the governing body of any religion had to agree, in order for it to recognise and solemnise same-sex marriage. It was then up to individual clerics, congregations and parishes to agree that they would do so. I ask the noble Lord, Lord Faulkner, whether his proposed new clause falls underneath that scheme. In effect, I am asking whether, were his amendment to go on the statute book, it would enable individual churches and parishioners to maintain or change their stance on the subject, as they have done in relation to the ordination of women. Frankly, if we wait for every single member of or church in the Church of England to afford to the rest of us the dignity that we enjoy in the secular world, we will wait far too long. The harm that will be done to our society by people who profess these views will be incalculable.

Lord Kennedy of Southwark (Lab Co-op): My Lords, Amendment 1, moved by my noble friend Lord Faulkner of Worcester and supported by my noble friend Lord Collins of Highbury, seeks to provide the Church of England and the Church in Wales with the ability, if they choose to do so, to opt in to the Bill's provisions when it becomes an Act of Parliament. Nothing in the amendment seeks to compel either Church to do

[Lord Kennedy of Southwark]
anything if they decide they do not want to or they decide they want to take this step at some point in the future. That is the right thing to do, with the state making it possible if the two Churches want to do something. We should not stand in the way of the Church and any decisions it might make in the future.

My noble friends Lord Faulkner of Worcester and Lord Collins of Highbury set out clearly why this amendment should be supported. I fully endorse all their remarks. It is a facilitating amendment and we should put no obstacle in the way so that this change can happen in future.

I have many friends who are gay and I have attended many civil partnerships and marriages. People who love each other wanting to make commitments to each other is something we should all support. The first ever civil partnership I attended was that of my noble friend Lord Cashman when he joined together with Paul. Of course, we were not noble then: it was just Paul and Michael, and Alicia and Roy. It was a lovely, wonderful day. I will never forget it and nor will Alicia. It was a wonderful time and Paul was a wonderful man.

I was brought up a Catholic in a Catholic household. I must admit that I am not a regular churchgoer, but I regard myself as a Catholic. My parents are from the Republic of Ireland, so I come from an Irish Catholic background. I have been hugely impressed with the Church of England in this House. I was always impressed by the Church and the work it did when I was a local councillor in Southwark. I always remember Reverend Shaw who ran St Paul's, but I never met a Church of England bishop until I came into the House of Lords. I knew a few Catholic bishops but I had never met a Church of England bishop. I am hugely impressed by the work that the Bishops do in this House. They bring a breadth of experience and understanding that really helps our work.

I very much hear the right reverend Prelate's comments. I am also impressed at how the Church of England has gone on a journey on a number of issues. In the end, things have moved remarkably quickly. I hope that discussions will take place in the Church at some point and that it can make these decisions, but I accept that that is a matter for the Church. I fully support the amendment and the intent behind it.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): I thank all noble Lords who spoke in the debate, particularly the noble Lords, Lord Faulkner of Worcester and Lord Collins of Highbury, who outlined the various challenges here. As the noble Lord, Lord Collins, articulated, this amendment is in a way a message for the Church. He outlined the progress that the Church of England has made, while the noble Lord, Lord Faulkner, articulated some of its lack of progress. If we were to sum it up, the message is one of leadership and determination. This will be a matter for the Church, but I am very grateful to the right reverend Prelate the Bishop of Oxford for his thoughtful explanation of the current situation.

The noble Lord, Lord Faulkner, also talked about the support the Church has given to this agenda to try to move it forward. My noble friend Lord Elton talked about the message we of the pew can send to the synod in making progress in this area. But clearly, the Government have to resist the amendment. It is probably best for me to go through the Government's position regarding what we can do.

The amendment's aim is to require the Secretary of State, by regulations, to make changes to the Marriage (Same Sex Couples) Act to allow the Church of England and the Church in Wales to opt in to the provisions of that Act, which allow them to solemnise the marriage of a same-sex couple, as noble Lords have said. It requires these regulations to be made through the affirmative procedure and to come into effect within six months of this Bill receiving Royal Assent.

11.45 am

I acknowledge that the noble Lords' intention in trying to ensure that everyone is able to marry in a way and place of their choosing, regardless of their sexual orientation, is an honourable one; being gay does not mean that you do not have any faith. But we have been clear that no religious organisation should be forced to host civil partnerships, unless they choose to. Noble Lords made that quite clear. A number of religious organisations have chosen to opt in or to provide blessings. We hope that more will choose to do so, but it is right that, at this stage, it remains a decision for them.

However, my primary reason for objecting to the noble Lords' amendment is quite simply, as I think the right reverend Prelate the Bishop of Oxford mentioned, that it is unnecessary. The Marriage (Same Sex Couples) Act provides 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 for these bodies to give such consent.

The Act does not include a specific mechanism for the Church of England to opt in in the same way, which I know has caused some to believe that the Government are unnecessarily tying the hands of the Church through this. However, the actual reason, as the right reverend Prelate outlined, is primarily that the Church of England already has the ability to opt in using its own devolved legislative powers. It would be inappropriate for the Secretary of State to legislate on a devolved matter.

I am pleased to hear from the right reverend Prelate that the Church of England is continuing to hold conversations on this important matter. It is absolutely vital, albeit that the pace of change is slow. It is clear that the Church, along with other faith groups, has a vital leadership role to play in influencing society and culture in communities around the world, including the way LGBT people are treated. I have had separate debates on that, as noble Lords will know. I hope the Church will consider the needs and experiences of LGBT people in its communities seriously and with the gravity and sensitivity they deserve. With those words, I hope that the noble Lord, albeit reluctantly, will withdraw his amendment.

Baroness Hodgson of Abinger (Con): My Lords, I think we all recognise that this is a very sensitive issue. One cannot fail to be moved by some of the speeches we have heard, but I am grateful to the Minister and to the right reverend Prelate the Bishop of Oxford for

clarifying the matter at hand. I hope noble Lords feel reassured by the words spoken in the debate and that these matters are being considered carefully by the Church of England and the Church in Wales as part of the ongoing debate about the nature of marriage. I hope the noble Lord feels he can withdraw the amendment so that we do not hamper the excellent progress the Bill is making on some very significant matters.

Lord Faulkner of Worcester: My Lords, I think I can answer the noble Baroness with a reply to that very last point. I gave her my word during the week that I did not intend to divide the House at the end of the debate for the very reason she said. I would not wish to do anything that made it more difficult for the Bill to get through the House of Commons and become law. It is a very good Bill. I congratulate her on the way she has presented it. She sat patiently through a debate that was not directly on the main subject of the Bill, and I accept that. For that reason, I will not divide the House.

I would like to thank all my noble friends and other Members of the House who have spoken, so movingly and strongly, in favour of the principle contained in my amendment. I particularly thank the right reverend Prelate the Bishop of Oxford, whose tone in this debate, I have to say, was different from that of his brother bishop, the right reverend Prelate the Bishop of Chelmsford, who accused me in Committee of being divisive. I do not think I have been divisive, either today or on that occasion. It is important that the House has the chance to say to the Church of England, as the noble Lords, Lord Collins, Lord Cashman and Lord Elton, and the noble Baronesses, Lady Brinton and Lady Barker, have all said, that we want to see more progress from the Church of England in coming to its own decision, not at some point 10 years hence. My noble friend Lord Griffiths pointed out that five years have already passed since the Marriage (Same Sex Couples) Act 2013 was passed.

If this is going to synod next year, I hope that will be the occasion when the House of Bishops takes a lead and wins over other members of the synod. I am not seeking to dictate or force the Church of England and the Church in Wales to do things that they do not want to; I want them to understand just how much support there is for a change of this sort. I particularly appreciate the words of the Minister, with whom I also had a discussion about this Bill during the week. Her message, that the Government support progress, is one I hope the Church will take on board very seriously. The support of my noble friend Lord Kennedy is also very important. I thank everybody who has taken part. The message from this House is clear: it is over to the Church of England to make some progress. I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendment 2

Moved by ***Lord Hayward***

2: 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 12 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 12 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, in rising to move my amendment, I will make reference to a number of different aspects, but it is appropriate on St David's Day to start and follow a theme through my comments. That is on comments made by the noble Lord, Lord Collins, and others in reference to what has changed. Since I last spoke on this amendment four weeks ago, the Welsh beat the English—damn them. I notice at this point the Welsh contingent is moving, although I tried not to offend them and to acknowledge their achievement.

Before I come to my own amendment, I will refer to fears arising from it. First, I refer to my own comments in col. 1308 of *Hansard* on 1 February. I made clear then and have made clear on a number of other occasions:

"I do not want to delay the Bill or lose it at any point".—[*Official Report*, 1/2/19; col. 1308.]

That is the key message I convey to the literally hundreds of people who have written to me in fear of the possibility that they may lose their opportunity for a civil partnership. As far as I am concerned, that is not in question. Actually, gay relationships and gay marriage have gained hundreds of supporters in Northern Ireland, because all the emails I have received have not only been overwhelmingly courteous but have also committed to supporting what I am trying to achieve. From whichever part of the land, they have made that clear.

In saying that and congratulating those who have organised it, I make two observations. One is that there was a fear about what the Conservative Party would do, which is based on an incorrect premise, because what I am asking this House in this amendment is a matter of conscience. People should therefore be allowed a free vote, under the circumstances. That is clear. I have also commented on previous occasions—and I come back to the message of change—that there is a clear indication that attitudes are changing markedly in Northern Ireland. This applies across all sectors of the community, and I believe it will continue. Therefore, the supposition of opposition there is also incorrect.

I say on this in conclusion that I have had some touching comments from the civil partnerships lobby. I will quote from one that clearly exemplifies the

[LORD HAYWARD]
reason for this legislation, as one is tempted to forget the key element. This is a message I had from somebody in Newton Abbot in Devon, close to my birthplace. This female partner says in part of her letter,

"I am always afraid if he"—

her partner—

"is late from work that something may have happened, and the knowledge that I am not his legal next of kin hurts me deeply".

That summarises incredibly well what this legislation, as it stands, is trying to achieve. I wish all those well who will benefit from the Bill. The number of representations I have had leads me to the conclusion that so many people will have the opportunity to celebrate their partnerships that we will kick-start the economy in one go by all the parties to which we might be invited—although I note I was not invited to the celebration of the noble Lord, Lord Cashman; I will feel scorned for ever hereafter.

Regarding my Amendment 2, which relates to Northern Ireland, as I said at the start of my comments, things have changed. I concluded my speech here on 1 February by saying:

"Sooner or later, on behalf of however many people, we have to say enough is enough".—[*Official Report*, 1/2/19; col. 1310.]

I believe that. I believe it sincerely, on behalf of large numbers of people, because things have changed. When we stood here on 1 February, did anyone think that England's cricket captain would turn to a West Indian player and say:

"There's nothing wrong with being gay".

I praise Joe Root for his comments, which meant so much to so many people. That resonated not just with me and the gay community but the whole of this nation. I ask everybody in Northern Ireland to recognise that matters are changing.

I have paid compliments to those who lobbied on civil partnerships. The other thing that has happened since 1 February is Valentine's Day. I pay credit to Patrick Corrigan from Love Equality and Amnesty International and the hundreds of people in Northern Ireland who, on Valentine's Day, indicated that they wish to be in the same position as people in England, Scotland and Wales to celebrate their partnerships by marriage, as soon as possible.

The noble Lord, Lord McCrea, spoke at the last debate. He was very courteous. He came to me and I acknowledged there was a problem with flights. I therefore did not comment on his comments at the time. He said:

"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".—[*Official Report*, 1/2/19; col. 1310.]

I respect people who hold different views from me. I recognise that it is important, in any debate on whatever subject, that we respect people who hold different views. As long as they have been carefully thought through, we must respect every point of view.

But the noble Lord, Lord McCrea, made no reference in his comments to when we might make the change if we go back to a proper devolved Assembly, nor did he indicate what his view would be if that were the position, because the position has changed in Northern Ireland. I made reference previously to the series of votes that had taken place in the Northern Ireland Assembly. Finally, in November 2015, there was a majority, but there was a petition of concern against it. As I indicated in reference to that petition:

"That is quite reasonable, because that is the constitutional practice in Northern Ireland".—[*Official Report*, 1/2/19; col. 1308.]

I respect that, but as the noble Lord, Lord Kilclooney, who is in his seat today, acknowledged in a brief intervention in that debate:

"When … the petition of concern was created, it was intended to be used so that one political party would not impose its will on another … I do not think it was ever considered the means for one community to impose its moral standards on another".—[*Official Report*, 1/2/19; cols. 1313-14.]

That was one Northern Ireland representative speaking with authority. After all is said and done, the noble Lord was deeply and heavily involved in the negotiations for the Belfast agreement.

Noon

I say it is a question of time, and I ask the noble Lord, Lord McCrea, to identify when enough is enough. Brazil was not recognised as an independent nation by the Portuguese for 13 years. Are we to sit here and wait for ever until there is an Assembly? Please can he give an indication of what timescale one is talking about, because people cannot and should not have to go on waiting for ever? Just as the people who are waiting for civil partnerships will benefit from the Bill, those who are waiting for the opportunity to have a marriage in Northern Ireland want to know whether their parents or grandparents will have the opportunity to witness their marriage. They should be able to look forward to that with a degree of certainty at some point.

In my previous contribution, I referred to the possibility of people from St Malachy's and Belfast Inst coming together in a relationship, and possibly getting married. I have yet to be told of such a combination, but it is significant that I have had a person from St Malachy's tell me that they support the Bill. I have had somebody from my own rugby club identify as coming from Inst—a gay guy who wants to have the opportunity to celebrate his marriage. So as far as I am concerned, this is something that one needs to see at some point over the horizon.

I started by commenting that I thought time had moved on—that the times were changing and enough was enough. My own relatives have moved back to Belfast. They are constituents in the most marginal constituency in Northern Ireland, Belfast South. They have moved back to Belfast because they believe that the world is changing, and they are some of the most astonishing advocates of the changing nature of Belfast. In moving my amendment today, I hope that the people who want to see the change can and will have the opportunity to know that they and their families can celebrate what we grant to everybody else across the rest of the United Kingdom. I beg to move.

Lord Collins of Highbury: My Lords, I have added my name to this amendment, and I am extremely grateful to the noble Lord, Lord Hayward, for continuing to push this issue because it is a fundamental one. It is not unrelated to the debate that we had on Amendment 1, because no one disputes the rights of religious people

to determine their own rules and regulations and to determine their view. But freedom of religious belief is also about not imposing on others. That is what this debate is about today.

The debate is also about means. We get stuck into this issue because, at the moment, there are no means to ensure that we treat all our citizens in our United Kingdom in the same way, apart from pushing this sort of legislation. As the noble Lord, Lord Hayward, said, if the majority of people in Northern Ireland so desire to adopt same-sex marriage, at the moment there are no means to do it. The fact of the matter is that there is huge support in Northern Ireland for same-sex marriage. I never thought that I would see the day when a referendum conducted in the Republic of Ireland would result in support for it. In fact, we have seen huge change in communities, and it is about recognising the human rights of individuals. That is what today's debate is about.

Of course, it is not correct for me to say that there are no means for change because this Parliament has the right, as Ministers have said. I heard the noble Lord, Lord McCrea, in Committee, and I recognise that there is an issue about devolved government and devolved powers. In fact, I am sure that everyone in Northern Ireland who has been campaigning for this would rather that they won it in their own communities and their own Assembly. They would rather have that, but as the noble Lord, Lord Hayward, said, they do not know what means will be available to achieve that at the moment. They are asking for our support and encouragement, and I am certainly prepared to give that.

I agree with the noble Lord that no one wants to hinder or harm the Bill in its progress through Parliament. I certainly do not. I have had many emails from people saying that they do not want to lose their hope of civil partnership, because they have been against marriage as an institution but want to protect their legal rights; civil partnership is a means of doing that for the first time. I certainly do not want to stand in their way, but I also know of the frustration and hurt that many people in Northern Ireland feel because they cannot exercise the same right as the rest of us in celebrating a same-sex marriage.

It is about time, and I hope that this amendment will send a clear message: that our debate today is saying that Parliament must act to address this fundamental denial of equality and human rights. Parliament must act and, as the noble Lord, Lord Hayward, said, this is about having a free vote—a vote that we can all support, across all sections of Parliament.

However, I hope that during this debate we will hear the Minister being able to address the question: if not now, when? If it is not now, will she commit, as my party will, to guaranteeing the next earliest opportunity to ensure that everyone in the United Kingdom has the same rights? We want to hear about progress and a timetable, so I support this amendment.

Lord Morrow (DUP): My Lords, perhaps I may make a few brief comments. We have had quite a number of challenges from those who have already spoken on this issue. They recognise, I think, that the Northern Ireland Assembly is the place to decide this matter, and, as a former serving Member of that Assembly, I could not agree more.

We need to keep things in perspective, because it seems to me that a number of debates are contained within one debate today. In our previous debate, about animal welfare, the noble Lord, Lord Gardiner, said that it would be up to the Northern Ireland Assembly to decide these issues. When asked about the position in relation to Northern Ireland, he said that it was a matter for the Northern Ireland Assembly. I wondered then whether the next issue for debate would be a matter for the Northern Ireland Assembly. I will repeat what I have said on other occasions in this House: give us the Assembly or give us direct rule. At the moment, we are in no man's land, and we cannot abide there much longer. Northern Ireland deserves to be governed, just like any other region of the United Kingdom.

There was allusion to the fact that the petition of concern is the problem. Let me make it very clear: at no time did my party ask for a petition of concern to be inserted into the Belfast agreement. We believe that it is very bad government to have it and we will say that anywhere. However, it is there; ironically, at the last talks neither Sinn Féin nor the SDLP wanted it withdrawn. We believe that there is a much better way to do it.

We have to be very careful. If we start cherry picking—saying that we will do this piece of legislation but we will not do that—where will that take us? We can draw only one conclusion. When this House and the other place start to make legislation relating to Northern Ireland, irrespective of the issue—and this is where we get lost sometimes—the message will go out very clearly that both this House and the other place have given up on devolution.

I have said this before and I think it bears repeating: if devolution returns tomorrow—it is unlikely to be tomorrow, since it is Saturday, but we will take Monday—the first through the door will be my party. We will be at the head of the queue. We did not bring the Northern Ireland Assembly down, but, because of the way the Belfast agreement was constructed, one party can at any time bring the whole thing to a halt.

Let us face the elephant in the room. We were told that Sinn Féin could not continue because of RHI. But there has been a public inquiry into RHI and it will make its findings known within months or perhaps weeks—that fox has been shot. What is now holding it up? Sinn Féin has another list of things that it needs—and you can be sure that, once there is any move to bring back the Assembly, another list will appear to say we cannot have devolution because this has to be done. Remember, this is not the first time that the Northern Ireland Assembly has come to a standstill. Noble Lords will recall that there was another occasion.

Lord Faulkner of Worcester: Can the noble Lord give an assurance that the DUP would not block the equal status of the Irish language if it were part of a devolution settlement and the restoration of the Assembly?

Lord Morrow: That would be equivalent to the DUP asking Sinn Féin to give assurances tomorrow that it will never again bring the Assembly to a standstill.

[LORD MORROW]
We do not know what the circumstances will be. Sinn Féin brought it to a standstill. The last time it did this was on social security issues; then, after a long delay, it caught on that this was a matter that came from London, and so it could not change it.

Lord Kilclooney (CB): Does the noble Lord understand what the phrase, "equal status for the Irish language" means? Because I do not. Less than 1% of the people of Northern Ireland show an interest in the Irish language, so equal with what? More people speak Polish, Chinese or Lithuanian. Irish is very much a minimal language in Northern Ireland.

12.15 pm

Lord Morrow: There are many occasions on which I disagree with the noble Lord, Lord Kilclooney, but this is not one of them. I could not say it better myself. He has put it very eloquently, and he was one of the architects of the Belfast agreement. It is a flawed agreement, I might add, but it is there. It is not the best structure for good government and it is quite confusing. Even those of us who tried to work within it, and those of us who served as Ministers within it, know how restrictive it is and how complicated it can be. Indeed, when you explain to the general public, they throw their hands up and say, "And that is in the name of democracy". They bid you well, give you a pat on the back and say, "Carry on in your own wee world".

Let us be very careful, irrespective of how sincere people might be on any issue. The noble Lord, Lord Hayward, said something that struck me. He said that things are changing in Northern Ireland—and he might be right. I live there and have lived all my life there. In 1973, I went into politics as a local councillor and served for some 40 years—I know I do not look that age, but there you are. I went into the Northern Ireland Assembly, where I served for some 18 years, and I have been in this House for some 12 years. I have some idea of what is happening and of what makes Northern Ireland tick. Today, we say very clearly to this House: give us back the Northern Ireland Assembly and bring every issue that you wish to the table—every issue, even those I might emphatically disagree with.

I finish by saying that I was not one of the signatories to the Belfast agreement, but I had to accept it. When it was put to the people, they voted for it by a very small majority—particularly on the unionist side. As a democrat, I said: the people have spoken and I must listen to them.

Lord McColl of Dulwich (Con): My Lords, when I approach the subject of Northern Ireland, I do so with sensitivity to its troubled history and with an overwhelming conviction that devolution in Northern Ireland is very important. While it is certainly far from perfect, Northern Ireland politics has been greatly enhanced by devolution. Mindful of this fact, the point must be made with respect to the amendment before us today that we cannot start legislating on devolved matters as if we were in a direct rule situation without unsettling and potentially unravelling devolution. If we do so on this matter, a precedent will be set and then there will be pressure to do it in other areas. As the noble Lord, Lord Morrow, said, we cannot cherry pick.

Given the special value of devolution in the history of Northern Ireland, I would not want your Lordships' House to act in a manner that created new pressures that would make the general unravelling of devolution more likely. Of course, I accept that at some point in the future there may have to be a decision to reintroduce direct rule, but we are not there yet and it would be wrong for your Lordships' House to act in a way that does anything to revive direct rule practices, with all the attendant constitutional implications, by way of precedent.

In making this point, I should say that I have spoken to my noble and learned friend Lord Mackay of Clashfern. He regrets that he cannot be here today, but has given me permission to quote him in saying that,

"for so long as a matter is devolved, notwithstanding the current difficulties, it would be quite wrong for your Lordships' House to pass legislation in relation to it".

Mindful of these considerations, while today's debate has served the useful purpose of putting these matters on record, I hope very much that the amendment will be withdrawn.

Baroness Brinton: My Lords, I thank the noble Lord, Lord Hayward, for his amended amendment, which is helpful for the House. It addresses some of the issues raised by the noble Lord, Lord Morrow, in that it covers both the reconstitution of the Assembly as well as what happens if there is not one.

I will make one further point. I completely understand that the Belfast agreement and the devolved Assembly are very important, but there is also an issue here about human rights. It is extraordinary that one community in the United Kingdom cannot have the same human rights that are available in England, Wales and Scotland. In the debate on the previous amendment, the comment was made that it has now been five years since the same-sex marriage Act was passed. Many friends of mine in Northern Ireland recognise that things have certainly moved on, and they completely understand and echo the sensitivities about what is happening in Northern Irish politics at the moment and the deadlock around the reformation of the Assembly. But there are people there who do not have the same basic human rights as other citizens of the United Kingdom. At the very least, this amendment serves to highlight that once again.

Whether or not the amendment is pressed today, I certainly hope that the message can go back to politicians in Northern Ireland, as well as in your Lordships' House, that this is a live issue for people who feel that they are being disadvantaged—worse than that, they cannot profess their love for one another in the way which many others can thankfully now take for granted.

Baroness Thornton (Lab): My Lords, I will speak very briefly in support of the amendment from the noble Lord, Lord Hayward. I feel profoundly frustrated about this issue, a feeling which I think is shared by many in this House. The noble Lord, Lord Morrow, needs to appreciate that there is profound frustration.

I have some questions for the Minister. Is this an issue of human rights? Are human rights a devolved matter? My understanding is that they are not, and

that is the context in which we are having this discussion—that in this United Kingdom, our fellow citizens do not have the same human rights as the rest of us. What are we going to do about that under these circumstances? It seems to me that, even if the noble Lord decides not to push this amendment, having this debate is very important because it is a legitimate way of taking forward the discussion—I am just waiting for the next passing bit of legislation on which we might be able to do the same. My experience after 20 years in this House is that when you do that, you usually get there, because the political will is here in both Houses to resolve this issue.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, I thank the noble Lord, Lord Hayward, for the manner in which brought forward his amendment, and the respect with which he has treated those who have different views on this subject. As I have said before, I respect and do not doubt the sincerity of noble Lords who hold different views from me, but nor do I apologise for the views which I hold with deep conviction.

The noble Baroness, Lady Thornton, talked about profound frustration. I suggest to her that she knows nothing about profound frustration when it comes to Northern Ireland. I have been an elected representative—for 25 years in another place, for 37 and a half years in local government and for 15 in the local Assembly—and I know what it is to represent the people. For each of those posts, I was elected by the people, not chosen or given some honour as I have been for this House.

However, there is certainly a profound frustration when it comes to what is happening in Northern Ireland because, as my noble friend Lord Morrow rightly pointed out, it was one party—Sinn Féin, and Sinn Féin alone—that brought the Assembly down. Many in your Lordships' House seem reticent to condemn or name it for pulling down the Northern Ireland Assembly. Many of these issues could once again be debated in that Assembly, because that is the debating chamber in Northern Ireland under the devolution settlement.

During every debate I have attended that has made reference to the Belfast agreement and to the devolution settlement for Northern Ireland, it has been emphasised and re-emphasised that nothing will be done by this Government or by the Opposition which would undermine that settlement. However, I suggest to noble Lords that these amendments do just that. Whenever this issue was referred to the court, it was acknowledged that it was the prerogative and the responsibility of the Northern Ireland Assembly to debate and decide this issue.

I have been asked a question about when this will be. I say to the noble Lord, Lord Hayward, that, in this conversation with Sinn Féin, perhaps we could ask it when it is going to lift the embargo and allow the Assembly to come back into existence, because it and it alone is stopping that. Again, as my noble friend Lord Morrow said, if the Assembly were to be started on Monday morning, my party would be through the door and take its rightful place there. It is Sinn Féin alone that is blocking the Northern Ireland Assembly from coming in to sit. I cannot in good conscience have any knowledge of when the Assembly will come into existence, because I do not know when Sinn Féin will lift or remove its objection and be willing to come back into it.

Let us be quite honest. There are many very demanding issues that need to be decided. For example, people are dying because things are not happening through the health service, which is happening because Ministers are neglecting their position. Many decisions have not been made because Ministers are not there. But it is Sinn Féin alone that is stopping those Ministers from being there—it needs to be pointed to and shown up for what it is doing. There are many issues that Ministers need to decide on, but the Government have decided that no other Minister will come, that devolution must not be undermined and that direct rule will not take place. At this moment, direct rule is certainly not in the offing, and devolution is the only show in town.

While there is a possibility of the restoration of the Northern Ireland Assembly, I appeal to noble Lords not to close its doors and remove a major plank for the existence of the Assembly in making these issues, as was acknowledged by the court.

Lord Collins of Highbury: May I ask the noble Lord one simple question? If the Assembly comes back, will the DUP support this amendment—or this principle of allowing same-sex marriage?

12.30 pm

Lord McCrea of Magherafelt and Cookstown: I thank the noble Lord for that; it is the very point I was coming to. I said that there was another point in the questions of the noble Lord, Lord Hayward. It is a question not only of when the Assembly will come back but of when the legislation will take place. But that is what devolution is all about: deciding in the Assembly, not the understanding of this House in deciding for the Assembly. That is what the Assembly is all about. It makes the decision; when a matter comes to the floor of the Assembly, it is a decision for the elected representatives of the people of Northern Ireland. It is at election time that the electorate decide who will be their elected representatives. I shall not dictate to this House, but I make no apology for stating that I genuinely believe, with all my heart and deep conviction, that the scriptures of holy truth clearly say that marriage is a covenant entered into by one man and one woman. That is what I believe.

Before this debate, we started with a reading of God's word. After the reading of God's word we prayed and asked God to guide us in our counsel according to His will. "According to His will" are His words. I know that others may suggest that they do not accept that and I accept that that is the reality. However, I also believe with all my heart that God's word gives us authority and declares on the issue of marriage.

In a previous debate, the noble Lord, Lord Kilclooney, referred to the petition of concern. My noble friend Lord Morrow rightly said that it was not my party that brought the petition of concern into existence. However, in response to what was stated in the previous debate, if the petition of concern had been exercised in the Assembly illegally, it would have been overturned.

[Lord McCrea of Magherafelt and Cookstown] But it was not exercised illegally; it was exercised in accordance with the law. Therefore, I have to say that it is for the Northern Ireland Assembly to decide this issue. This House should not cherry pick what it believes should be devolved; that was decided under the devolution settlement. I warn noble Members not to pull the rug away completely and close the door of the Assembly. Many are asking: if these issues are removed from the Assembly and its elected representatives, is there any reason why an Assembly should exist at all?

Lord Cashman: My Lords, I shall speak briefly in this debate and pick up on the point noted by the noble Lord, Lord McColl of Dulwich, who said that one should approach these matters with absolute sensitivity. The noble Lord, Lord Hayward, was right to say that things have changed. Indeed, in the 2015 Assembly elections, out of the 90 Assembly Members elected, 55 declared that they would vote in favour should such a measure on equal marriage come before them. We know that polls can be skewed by the question asked, but a Sky poll in Northern Ireland indicated that 76% of the population of Northern Ireland would be in favour of same-sex marriage.

I speak in a similar vein to how I spoke earlier on the issue. This was highlighted by the noble Baroness, Lady Brinton, and my noble friend Lady Thornton: it is the principle of equality. If we are a union, we are a United Kingdom and all rights should apply equally across that union. I absolutely accept the principle that you cannot devolve equality or human rights and I believe we are talking about a human right. It was suggested that it should be left to the Assembly, but there is no Assembly. And when there is no action, action must be taken to address the inequality. Some have said that one cherry picks. If we look at the issue we are talking about—the right to marry in a same-sex relationship—I do not believe it is a cherry. The concept of all people being treated equally across the United Kingdom is not fruit to be picked from a tree. It is the root and the branch of democracy. It is what keeps us together.

Therefore, this is an extremely sensible amendment. I take on board what the noble Lord, Lord Hayward, said about wanting the Bill to proceed. Like him, I place on record my thanks to Love Equality and Amnesty International, and to all those who have written to me to say that they care about equality for other people in Northern Ireland.

Lord Elton: My Lords, we have been speaking at length about the constitution and we have gone a good deal wider than the terms of the Bill. I want to heighten just one point about devolution. I echo my noble friend Lord McColl and my noble and learned friend Lord Mackay on the need for sensitivity. I think the amendment goes more to the heart of doing harm than is intended. Proposed new subsection (3) states:

"If a Northern Ireland Executive is formed within the period of 12 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".

That is a direct statement that, even if the Assembly returns, direct rule will be exercised on this devolved matter. I am sure my noble friend does not want to make a pugnacious statement, but if he proceeds with this I think he will find that he has engendered more opposition than he deserves.

Baroness Barker: My Lords, I thank the noble Lord, Lord Hayward, for the considered way in which he introduced his amendment. The way that he set out for the House how he has prosecuted his case was telling. In so doing, he has brought together a bunch of people with disparate agendas from very different standpoints to move together for a progressive cause that will have benefits not just for a small part of a community but much more widely. As such, it is fitting that he raised the matter in consideration of the Bill of the noble Baroness, Lady Hodgson of Abinger.

Her Bill comprises three or four very different issues, but a thread that runs throughout it is that it looks at practices and laws—some of which have been in place for hundreds of years—assesses them in relation to our society today, which has progressed in different places at different times for different people, and finds a unifying set of laws that will enable people to move forward and make life better for individuals and our society as a whole. I invite those who observe our proceedings to listen to the contributions of all Members of the House and assess each one against that background. I say this as a Liberal Democrat. I absolutely support devolution but I do not support it as a means to abrogate human rights. That has never been what devolution is about.

I listened carefully to the words of the noble Lords, Lord Morrow and Lord McCrae, and I understand that they try to convey the complex and heartfelt views of their community. However, I say to the noble Lord, Lord Morrow, that if, as he appeared to do, he equates animal welfare with that of human beings, I am afraid he does not help his cause.

I thoroughly respect the noble Lord, Lord Hayward, when he says that he does not wish to jeopardise the progress of the Bill. However, with the noble Lord, Lord Collins, and others, I say to the noble Baroness, Lady Williams of Trafford, that I believe that her Government deserve as much respect as we can give them for trying to get the Northern Ireland Assembly back up and running, in the teeth of widespread opposition from within Northern Ireland, and that we will continue to support the Government in doing that. However, there comes a time when human rights cannot be held hostage any longer. I therefore ask her to work with those of us who seek not to cherry-pick but simply to reinforce the human rights of people who are members of the United Kingdom, and to find a way through on this and other human rights issues in Northern Ireland.

Lord Kilclooney: My Lords, we are debating a subject which is very sensitive in Northern Ireland. The background is that the people of Northern Ireland largely have faith, which is not a common thing in other parts of the United Kingdom. The largest faith is the Roman Catholic Church; the second largest is the Presbyterian Church, which is of Scottish background. Both those Churches—the two largest in Northern Ireland—are opposed to same-sex marriage. On the other hand, in the political scene in the Northern Ireland Assembly, as has been correctly mentioned, a

majority would support same-sex marriage. So there is a division between the two main Churches on the one hand and the politicians on the other.

Why has the issue of same-sex marriage not proceeded? It is because of the petition of concern, which is part of the devolution settlement in Northern Ireland. It is wrong to have à la carte devolution, and it is a nonsense to suggest that this is simply a human rights issue. Marriage is a devolved issue for Northern Ireland, as it is for Scotland. It is not a question of the national Parliament imposing its will on a devolved state, and we must be careful to maintain the right of devolution, which I strongly support—I was involved in the negotiation of the Belfast agreement. The people of Northern Ireland—Catholic and Protestant, unionist and nationalist—must together make their own decisions on internal devolved matters.

It has been said that this has to be decided by the Northern Ireland Assembly when it is reconstituted, and I agree. However, there is the problem of Sinn Féin. I advise noble Lords that the likelihood of there being a devolved Assembly in Northern Ireland is years ahead. There are two reasons for this. First, you could not get agreement in the present circumstances of Brexit, which has caused an even greater division in politics in Northern Ireland. Only yesterday, two fishing boats from Northern Ireland were impounded by the southern Irish authorities, for the first time ever. This has caused great political bitterness overnight in Northern Ireland, and I gather that today the Dublin Government have announced that they will urgently revise the laws of their country so that it does not happen again. That is the kind of thing that is happening in Northern Ireland because of Brexit, and the sooner we get a decision on Brexit, the better—I hope that it will not be extended beyond 29 March, as some people are now suggesting.

12.45 pm

The second reason why we cannot get an Assembly overnight in Northern Ireland is Sinn Féin. This is not simply because of reasons such as the Irish language, and so on. As I pointed out earlier in the debate, that is a minimal issue in Northern Ireland. People do not seem to realise that in Northern Ireland, every school can teach Irish if it wants—it is financed to do so, and we even finance the setting up of all-Irish schools where English is not spoken. Every effort is made to facilitate the Irish language in Northern Ireland, yet yesterday we heard that in secondary schools, the number of pupils passing A-level Irish is falling year by year. No, the real reason why we cannot get devolution in the short term in Northern Ireland is not because of the Irish language but because there will be an election in the Republic of Ireland within the next 12 months. One of the main parties in that election will be Sinn Féin, and it does not want to enter into a Northern Ireland Assembly where it would be in our Government, because it would have to make unpopular decisions which might damage its prospects in the Republic of Ireland. I do not foresee devolution being restored in Northern Ireland until after the southern Irish election.

So I say, with regret, that the issue of same-sex marriage will not be decided by the Northern Ireland Assembly in the short term. I feel that one way of resolving the devolution issue would be to address the problem of the petition of concern. However, it would be very wrong for this national Parliament to start imposing some parts of direct rule on Northern Ireland while retaining devolved powers for other matters in Northern Ireland. Some day we may have to decide to have direct rule in Northern Ireland, but I will continue to be of the opinion that devolved powers must be restored to Northern Ireland and decisions made by Catholics and Protestants working together.

Lord Kennedy of Southwark: My Lords, the noble Lord, Lord Hayward, tabled Amendment 2 and my noble friend Lord Collins of Highbury supported it.

To be clear at the outset, I support the amendment. It is disappointing that we find ourselves in this position, but, for me, this is about equality. It is about people in all parts of our United Kingdom enjoying the same rights. As the noble Lord, Lord Hayward, said, it is about people in Northern Ireland having the same rights as their fellow citizens in England, Scotland and Wales. I very much agree with the comment of the noble Baroness, Lady Brinton, that these are matters of human rights and that where we are is a matter of much regret.

One of those rights is that people in Great Britain can get married. It is as simple as that for me. I want to support people enjoying those rights elsewhere in our United Kingdom. This is not me supporting direct rule over devolution. I entirely accept that other people in Northern Ireland, other Members of this House, have a different view to me. I respect their view completely: I acknowledge it and I respect it, but I do not agree with it. I think we have to continue this debate to get solutions to move forward. I speak very much on that basis.

We have an Assembly in Northern Ireland, as we have heard, but it is not meeting. I agree with the noble Lord, Lord Morrow, that the matter should be decided by the Northern Ireland Assembly. We are in complete agreement on that. The Assembly should be meeting to debate, discuss and make decisions. The amendment is intended to address an issue that needs to be resolved. It is providing for this Parliament or the Northern Ireland Assembly, if it is functioning, to consider regulations that would in effect bring the intentions of the amendment into effect.

As I said, I want the Northern Ireland Assembly to be up and functioning to decide these and other matters—we have heard about a number of issues that are not moving forward in Northern Ireland because the Assembly is not sitting. We need to get these issues dealt with very soon. As my noble friend Lord Collins asked: if not now, when? That is the most important thing.

We have strayed into other issues in this debate that are not necessarily part of the amendment, but I thought that I should comment on one or two of them. I entirely accept that it was Sinn Fein, with Martin McGuinness resigning as Deputy First Minister, which collapsed the Assembly. There was the issue of the renewable heat initiative. He asked the First Minister to stand aside and she would not, so he collapsed the Assembly. I entirely accept that and put it on the record.

[Lord Kennedy of Southwark]

On the issue of Gaelic, my mother comes from Connemara and spoke Gaelic when she was a child. She does not speak it any more, but she certainly did. I am always conscious that Gaelic is a language that covers not just the island of Ireland, north and south, but Scotland and parts of France. It is a language in these islands. People speak Breton in parts of Brittany, which is a Gaelic-tongue language. In Scotland, 1.1% of the population speaks Gaelic. In Northern Ireland, 10% of the public claims some knowledge of Gaelic and 6% claims to speak the language. That is higher than in Scotland, although obviously I accept that it is not a majority. I just do not see the issue with the language. In Scotland, there is legislation to protect the language. Welsh is obviously widely spoken in Wales. I think it is about protecting languages that have been spoken on these islands and in other parts of the world. We should protect them. For me, this is a key part of the language issue.

Lord Kilclooney: Does the noble Lord accept that in Northern Ireland, Government after Government since 1921 have financially supported and encouraged the teaching of Irish, the creation of Irish language schools and everything possible to support the Irish language? What problem does the noble Lord see with what is being done about the Irish language in Northern Ireland?

Lord Elton: This really is very wide of the Bill.

Lord Kennedy of Southwark: I accept the point that the noble Lord makes; perhaps we can chat about it outside the Chamber. I accept that this is fairly wide of the Bill. I accept that Irish is spoken in schools, which is why I do not understand why there is such a problem, personally. Anyway, I will leave it there with the other issues, and I look forward to the Minister's response.

Baroness Williams of Trafford: My Lords, I thank everyone who has spoken in what has been quite a wide-ranging debate, and in particular my noble friend Lord Hayward for moving the amendment. I am also grateful for the conversations I have been able to have with him in the past few days on the matter.

The Government are rightly very proud of their role in demanding and defending LGBT rights. We are proud to have introduced same-sex marriage in England and Wales, for which we have legislative competence, and that the Scottish Government followed that lead shortly afterwards. Of course we want Northern Ireland do likewise and legalise same-sex marriage. The Prime Minister shares this view and has said so on a number of occasions.

I commend my noble friend Lord Hayward for his determined commitment on this issue. I know that many people—and the list is clearly growing—in Northern Ireland and further afield greatly appreciate his efforts, as demonstrated by his recognition recently by *PinkNews* as its politician of the year. I also pay tribute to the many others who have campaigned and shared personal and very poignant stories in support of his amendment.

Same-sex marriage is a devolved matter, as noble Lords have said. The proper and best place for it to be addressed is in the Northern Ireland Assembly, by Northern Ireland's elected representatives. The Secretary of State for Northern Ireland's top priority remains to restore the Executive and Assembly at Stormont; this should be the focus. There is a need to rebuild political dialogue and she continues to encourage the parties to come together to work towards restoring devolved government, including in a recent meeting with the five parties to progress this objective.

It is important that any legislation legalising same-sex marriage in Northern Ireland is afforded a level of consultation, debate and scrutiny, using the precedents of the UK and Scottish Governments. Legislation should be developed having taken into account the wide range of views on this issue in Northern Ireland, as well as the various legal requirements. My noble friend Lord Hayward knows that we do not think that this Bill is the right vehicle for extending same-sex marriage to Northern Ireland. We have concerns about the drafting of the amendment, in particular the nature of the duty it would place on the Government.

It is not clear that the amendment would allow for all the legislative changes needed to fully implement a same-sex marriage regime in Northern Ireland equivalent to those in England, Wales and Scotland. For example, the introduction of same-sex marriage in England and Wales necessitated the amendment of more than 50 Acts of Parliament. The Government have heard the growing calls for change, and much progress has been made since my noble friend Lord Hayward introduced his Private Member's Bill in March last year. Parliamentarians have played an important part in continuing to raise the profile of this issue, and I hope that, despite the potential disappointment that some people will feel today, everyone will have listened to the debate and the growing support on all sides of the House.

I will add one very important final point. We support the principle of my noble friend's amendment—that it is right for same-sex marriage to be extended to Northern Ireland by a restored Executive—and we recognise that the ongoing absence of devolved government is having an impact on addressing this issue. We would encourage a restored Executive to progress legislation on this issue as one of the first things that they do. On that note, I hope that my noble friend will be content to withdraw his amendment.

Baroness Hodgson of Abinger: My Lords, I thank the Minister for her remarks on this important issue, and my noble friend Lord Hayward and the noble Lord, Lord Collins, for tabling the amendment. The Minister has expressed her view, and it is clear that this issue cannot be resolved easily through this Bill and at this stage. Frustratingly, we will need to show a little more patience, but I am assured that conversations are ongoing. I know that we all want to see this issue resolved. I too have had a very large postbag on this Bill, and I know that a lot of people are anxious for it to go through without further amendment. In the light of that, I hope that my noble friend will withdraw his amendment so that it does not undermine the progress we are making on the important matters on which the Bill touches.

Lord Hayward: My Lords, this has been a full and very constructive debate. First, I apologise to the noble Baroness, Lady Barker, if I leave the Chamber immediately after my amendment is dealt with—I will return as quickly as possible.

Secondly, somewhat surprisingly, I disagree with the noble Lord, Lord Cashman, and others, who talked about responsibility in relation to gay marriage and equality in Northern Ireland. I do so on the basis that a legal case is coming, which may decide where the responsibility lies. I agree with the noble Lords, Lord Kilclooney, Lord McCrea and Lord Morrow, that it would appear that, under the legislation, responsibility for this matter would fall to the Northern Ireland Assembly if it were sitting. If it did not fall within that remit, this House and the other place should have made that clear when preparing the legislation. So, to some extent, the problem we are in falls to us as legislators in Westminster.

I was particularly pleased by the acknowledgement by the noble Lord, Lord Morrow, that things in Northern Ireland are changing.

Lord Morrow: Maybe.

1 pm

Lord Hayward: Yes, maybe. I would quote another senior Ulsterman who the other day said to me twice that, "It has got to change". There was no caveat. There is an acknowledgement that the position is changing in Northern Ireland.

The problems I face with this amendment have been identified by my noble friend the Minister, who has indicated the difficulties associated with the drafting. I understand the comments of my noble friends Lord McColl and Lord Elton and I certainly hesitate to comment on any legal matter opined on by my noble and learned friend Lord Mackay. I enter into such fields at great risk.

However, the amendment is quite specific. The amendment as I have tabled it, as I identified at the start of my comments, is to make reference to finding a solution at some point, but we have to say at some point that enough is enough. The reason that the timing is there is quite specifically to provide that, if over the next few months there is a different position in relation to government, I will be happy to put the issue back to a Northern Ireland Assembly. I have believed and still believe, on the basis of what the noble Baroness, Lady Brinton, the noble Lord, Lord Cashman, and others have said, that that is a reasonable way through this terribly difficult position.

However, difficulties have been identified by the Minister in relation to the phraseology and structure of the amendment. I thank my noble friend for all the assistance that she and other Ministers have given me over the past few days. We have been working enormously hard, as have her officials, to find a way that does not block the Bill but achieves what I and so many other Members of this House are trying to do, but it just does not work under these circumstances. I say that with enormous regret, because we have come very close—a lot closer than when I first tabled the amendment. I am surprised at the apparent development of a breakage in the logjam, and I am heartened by that fact.

I will be looking, as will other Members of the House, for another vehicle because I believe that the Government have made it clear that they are also looking for one. The comments made by Members from the other political parties also clearly indicate that they too are looking for another vehicle. If we can find it, it is not that far hence.

In conclusion, I understand the points and I greatly respect the position. I desire that there should be an Assembly in Belfast that can take hold of this matter, but we cannot say that it will go on for ever. I have to give due notice that in the future I will be seeking a vehicle that is correctly phrased and covers the full range of legislative requirements. If we do that, I will be pushing the matter to a vote, because I believe that that is what this House would want. Having made those comments in relation to what are sadly the difficulties associated with timetabling, I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Clause 4: Coroners' investigations into still-births

Amendment 3

Moved by ***Baroness Barker***

3: Clause 4, leave out Clause 4

Baroness Barker: My Lords, in moving the amendment I want to return to the issues I talked about at Second Reading and in Committee. The matter is about the involvement of coroners in the investigation of stillbirths. As we acknowledged at earlier stages of the Bill, this is a very difficult and complex subject. I want to preface my remarks with an expression of my deep gratitude to the noble Baroness, Lady Hodgson, and to the Bill team for the discussions they have had with me and the spirit with which they have accepted my probing on this matter.

Like other Members of this House, over the years I have taken part in many discussions about the NHS, litigation and investigation of medical negligence. We know it is a very complicated subject. It is at its most difficult when one tries to find a way for medical professionals to be open about things that have gone wrong—tragically wrong, in circumstances such as these.

When Tim Loughton first came and introduced this Bill to a meeting of Members of your Lordships' House, he was the first to recognise that this was a complex subject. Nevertheless, he felt that women and families who had been in this position needed the additional protection of the involvement of coroners to investigate cases of stillbirth. Since then, I have been indebted to the Royal College of Obstetricians and Gynaecologists for sharing with me its detailed briefings, which have gone to the department in the last couple of years. It is well known in this House, not least because of the work of a number of Members on the Conservative Benches, that in the wake of scandals there has been a great deal of work by the Royal College of Nursing and the Royal College of Midwives to improve practice in this area. Yet there is still more to be done.

Like the noble Lord, Lord Hayward, I will not press these amendments to a vote today; they are here to be a vehicle for this discussion to happen. In moving them, I simply ask a number of questions. The aim of all of them is to ensure that, whatever happens as a

[Baroness Barker]
result of this legislation, the involvement of coroners—the legal process—does not, in ways that may be unintended, get in the way of women and families having fairly swift access to discussions with medical professionals about what has gone wrong in their cases. I firmly believe that, like most victims of medical negligence or poor practice, people do not want money or compensation but to know what happened and to try to stop it happening to somebody else. My efforts in this regard are to try to make sure we do not delay that process.

I make the points that I make in the knowledge that the Royal College of Obstetricians and Gynaecologists has moved a long way, with its Each Baby Counts programme and its involvement in a number of multidisciplinary programmes to try to monitor and improve performance in perinatal deaths.

When this Bill is passed, there will be a consultation, which I hope is widespread, about what exactly the involvement of coroners should be. I simply ask that that consultation include the Royal College of Obstetricians and Gynaecologists and other medical professionals, because only they will be there in future at a delivery to take into account the findings and the learning of what may happen and what may come out of any coroner's inquiry.

Secondly, I ask that there be widespread consultation on the regulations. It was perhaps the misfortune of the noble Baroness, Lady Hodgson, to bring forward yet another Henry VIII power at a time when this House is knee deep in them, and we on this side feel an obligation to challenge them. But again, I want to know that there will be widespread involvement of the health professionals in the consultation on the regulations.

Thirdly, the training of coroners for this new responsibility must involve professionals such as those in the royal colleges who know about medical practice specifically in this area—an area that will be new to coroners.

Finally, will this new scheme be held under review? I hope that I am wrong and I am being unduly pessimistic about it delaying not improving transparency for parents, but if it does, I want to know whether it will be kept under review so that we swiftly begin to learn. I understand from Tim Loughton and the noble Baroness, Lady Hodgson, that it is envisaged that the involvement of coroners will happen in only a small number of cases. Happily, there are very few cases overall, but most of those are resolved within the existing systems of disclosure within hospitals. But it would be helpful to know at this stage roughly what percentage of cases it is expected will involve coroners. We will know from the review whether there has been a shift away from the existing processes within the NHS and a move towards a more legalistic, coroners' procedure.

I want to look at whether the existence of a new process automatically means that there is more use of it. Classically, when the Government set up tribunals for a number of different reasons, they thought that it would lead to a decrease in court cases. In fact, it led to an increase in cases full stop. That is not what is intended with this measure, and I want to keep it under review to make sure that that is not what happens. With those questions, I beg to move.

Baroness Williams of Trafford: I thank the noble Baroness, Lady Barker, for prompting this debate on the provisions contained within the Bill relating to the coronial investigation of stillbirths. I am aware of the reservations which the noble Baroness has in relation to the scope of the power contained within Clause 4(4) of the Bill, but I hope that what I am about to say will reassure her.

The amendment, like the one we debated in Committee, would 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. This power is needed because the provisions for the exercise of coronial powers are limited to very explicit duties which do not provide for coroners to undertake an investigation of a still-born baby.

As I said in Committee, we shall consult on this issue. The consultation will be wide-ranging and will seek views from a number of interested parties, including, as the noble Baroness asked, the Royal College of Obstetricians and Gynaecologists, whose members provide crucial services to all expectant mothers. We recognise that, while there are those who are keen to see this change, there are others who have well-considered reservations, and it is important for us to hear from them.

Clause 4 provides that the Secretary of State will report on the question of coroners investigating stillbirths and, having consulted and produced that report, if the conclusion is that coroners should indeed 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 at Clause 4(5) and Clause 4(6) appropriate to the changes that are in scope. I reassure the noble Baroness that, if the Government decide to proceed with giving coroners powers to investigate stillbirths and draw on the power provided at Clause 4(4), we will publish our regulations before they are laid in Parliament. This additional scrutiny will ensure that robust and well-understood provisions for changing Part 1 of the Coroners and Justice Act 2009 are brought before Parliament. Should we make such change, the Government will also undertake a post-implementation review within two years of its implementation.

1.15 pm

The Bill as it stands provides for the enabling power to expire after five years beginning from the day on which the report is published. This would allow further amendments to the provisions for investigating stillbirths if they are deemed necessary once any new legislation has bedded in.

Finally, the powers provided for in Clause 4(4) are intended to allow 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 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 noble Lords' consent whenever they amend the Coroners and Justice Act 2009.

I hope that, in view of the reassurances I have provided, the noble Baroness accepts that the Government will consult widely before they make any decision to provide for coroners to investigate stillbirths and that, having done so, they will put to the public any legislative proposals before bringing regulations to this House and the other place for approval. I hope that, with those reassurances, the noble Baroness will feel able to withdraw her amendment.

Baroness Hodgson of Abinger: My Lords, I, too, thank the noble Baroness, Lady Barker, for prompting further debate on the provision in the Bill relating to coronial investigation of stillbirths. She knows that this is an issue that has touched me personally, and I much appreciate the thoughtful way she has approached this. I know that the noble Baroness is keen to see this Bill make its way on to the statute book, but she has some well-considered reservations about the merits of the proposal that coroners should investigate stillbirths and about how the powers in Clause 4(4) will be exercised. I hope that she is reassured that the Government have listened and have responded to her concerns.

I thank everyone who has taken part in the Report stage of the Bill today. I much appreciate their thoughtful input and attention to the Bill.

Baroness Barker: My Lords, I thank the Minister for the statements she made from the Dispatch Box. She has gone a long way towards dealing with my concerns. I also thank the noble Baroness, Lady Hodgson, for understanding my motivation. I will act as they wish.

At this stage, I think I may be so bold as to offer on behalf of several noble Lords around the Chamber the deepest thanks to the noble Baroness, Lady Hodgson of Abinger, not only for bringing this Bill but for being a trooper when we all feared that she was so ill that she was not going to make it here—but she would not be defeated.

In many different ways, this has been one of those Private Members' Bills that does the very best we can do in our Parliament, which is to pay a great deal of attention to a number of issues which are of great importance to a small number of people. This House, by its example, has shown just how wrong Sir Christopher Chope can be in another place. It is entirely possible to do good and right things in Private Members' Bills. I sincerely hope that one lesson that might come out of this for another place is that it should look at changing its procedures to make Private Members' Bills far less vulnerable to unwarranted attack.

I thank the noble Baroness, Lady Hodgson, and congratulate her on having this Bill under her name on the statute book.

Amendment 3 withdrawn.

Clause 5: Supplementary provision about regulations

Amendment 4 not moved.

Anonymity (Arrested Persons) Bill [HL]

Second Reading

1.20 pm

Moved by ***Lord Paddick***

That the Bill be now read a second time.

Lord Paddick (LD): My Lords, before I start, I pay tribute to the Minister, the noble Baroness, Lady Williams of Trafford, for her stamina and agility, this being the third Bill this week that she has fronted on behalf of the Government.

There has recently been a series of cases where historic sexual offence allegations have received extensive coverage in the media but have not led to any charges, ruining reputations. Although these have involved high-profile individuals, other cases have ruined the reputations of ordinary people locally when criminal allegations have been made public, even when the Crown Prosecution Service has taken no further action. The Bill would make it unlawful for the identity of a person arrested to be published unless and until either they were charged with or summonsed for an offence, or a judge agreed that it was in the interests of justice or in the public interest to do so or that it was required in order to comply with human rights. It would apply to all criminal offences and not just those of a sexual nature.

This is a very limited Bill, covering only those people arrested by the police, but being arrested by the police lends credence to allegations. Members of the public, encouraged by the press and the media, form the impression that there is no smoke without fire if the police go as far as arresting an individual. There is a wider debate to be had about whether a police raid on someone's home, for example, creates a similar presumption of guilt in the minds of the public, but that is for another day. In the same way that the laws of sub judice apply only after charge or summons, this legislation applies only after someone has been arrested.

Similarly, the Bill would not cover allegations of a sexual nature made after someone's death. Although the impact of such allegations can be devastating for the family of the deceased, impacting in a similar way to allegations resulting in someone being arrested by the police, they are outside the scope of this Bill. However, we have to face the reality—that, in the eyes of the public, people are no longer considered to be innocent until proven guilty by a court.

I am very grateful to Anna Soubry, Member of Parliament for Broxtowe, for allowing me to use her Bill, which she introduced as a Private Member's Bill in the other place in June 2010. I am also very grateful to Nicole Winchester for her excellent House of Lords Library briefing on the Bill, which I will rely on heavily in my comments to the House today. The only exception that I take to the briefing is that Ms Winchester says that the Bill is similar to that put forward by Anna Soubry in 2010. In fact, it is exactly the same.

In essence, it comes down to this. The College of Policing guidance about naming people on arrest says:

> "Police will not name those arrested, or suspected of a crime, save in exceptional circumstances where there is a legitimate … purpose to do so".

[Lord Paddick]
However, the press and the media will name those arrested or suspected of crime. They are not bound by the College of Policing guidance, and recent high-profile cases prove that the legislative framework is not sufficient.

Clause 1 would prohibit the publication or broadcast of the name, address and any still or moving picture of an arrested person if such information could lead members of the public to identify the individual as the person suspected of committing the offence in question. Subsection (2) sets out that these restrictions would remain in place unless and until the individual was charged with the offence for which they were arrested.

Clause 2 proposes that a Crown Court judge would have the power to direct that the reporting restrictions set out in Clause 1 would not apply in individual cases, either in their entirety or in relation to specified matters and time periods only. Under the clause, this direction could be made by a judge where it is required to comply with the Human Rights Act 1998, in the interests of justice or otherwise in the public interest. With regard to what is considered in the interests of justice, Clause 2(2) provides a non-exhaustive list of examples where it may be pertinent for a judge to make such a direction.

Lord Campbell-Savours (Lab): I am just trying to be helpful. Clause 2(1)(b) says,

"in the interests of justice",

but Clause 2(2)(a) says,

"it may lead to additional complainants coming forward".

Is that not the problem at the moment? Does this legislation deal with that central problem?

Lord Paddick: My Lords, the way that this legislation deals with that issue is that a Crown Court judge would have to make that decision. It is no longer left to the discretion of the police or indeed the media that those details should be placed into the public domain. As the noble Lord has said, examples are where it may lead to additional complainants coming forward, where it could lead to information that assists the investigation, or where it could lead to information that assists the arrested person.

Clause 2(3) sets out who would be able to apply for such a direction from the judge or ask for it to be reviewed. That includes the court itself, the person who has been arrested, a chief constable, a prosecuting authority or any other person who is considered by the judge to have sufficient interest. Clause 2(4) would mean that if a joint application was made by the arrested person and the chief constable or prosecuting authority, the court would have to make the direction.

Clause 3 would it make it a summary offence to contravene the reporting restrictions set out in Clause 1. It also sets out the different methods of reporting and who would be responsible for any offences. For example, in the case of a newspaper the proprietor, editor and publisher would be responsible. For a broadcaster, any body corporate engaged in providing the service in which the programme was included, and any person with functions corresponding to those of an editor of a newspaper, would be liable. In addition, Clause 3(2) states that the Director of Public Prosecutions or the director of the Serious Fraud Office would need to give consent for proceedings under Clause 3 to begin.

Clause 4 sets out a defence that would be available to those who breach Clause 1, stating that if those charged under Clause 3 were not aware, and neither suspected nor had reason to suspect that the publication or programme in question was of or included the prohibited matter in question, they would not be able to be prosecuted under the Bill.

Clause 5 outlines that the penalties available would be a prison term not exceeding six months, a fine not exceeding the statutory maximum, or both. If an offence is committed by a body corporate, Clause 6 would apply. The clause sets out that if the offence is proved to have been committed with the consent or connivance of a senior officer of the body corporate, or a person purporting to act in such a capacity, then both that individual and the body corporate would be guilty of the offence and liable to be proceeded against. Clauses 7, 8 and 9 relate to interpretation, the making of orders and miscellaneous matters such as territorial extent, with the Bill applying to England and Wales only.

It is claimed that not publicising the names of arrested people would go against the principles of open justice. The Bill deals with that argument by allowing the accused, his lawyer, the police or anyone else with an interest in the case to make application to a Crown Court judge to lift anonymity. The John Worboys case is often cited as an example of where police released information that resulted in 85 further victims coming forward. In cases such as Worboys, where it appears likely that there may be further victims, a court could give permission for the details to be released.

Another aspect of open justice is to counter arbitrary actions by the state. Once someone has been arrested, save in exceptional circumstances, they have the right to have a friend or relative informed and be represented by a lawyer. The increased chances of people being effectively kidnapped by the state and disappearing as a result of the Bill still remain diminishingly small.

It should also be noted that anonymity is protected only until the point of charge. Once the Crown Prosecution Service or the police have decided to charge someone, or to issue a summons for them to appear before a court, the right to anonymity ceases in the interests of open justice. The court process, the heart of an open justice system, would remain open.

There are already exemptions to open justice—for example, where the details of the victim of an allegation of a sexual offence cannot be published or broadcast. There have been cases where alleged victims have engaged in consensual sexual activity but have subsequently claimed that they did not consent, and it is only when their identity became known that this pattern of behaviour has come to light. It is acknowledged even here that there are risks, but they are necessary and proportionate.

In the overwhelming majority of cases, sexual offence victim anonymity is necessary and effective, not because College of Policing guidelines prohibit the naming of sexual offence victims but because it is a criminal offence to identify the victim. Similar arguments apply

to pre-charge anonymity: there may, in a limited number of cases, be a risk, but overall the effect of pre-charge anonymity is only positive.

Some would like anonymity to go further, until the person is convicted, particularly in sexual offence cases because of the stigma attached to such allegations, but we have resisted such calls in the interests of open and transparent justice. The difference between publication of the details of the accused at arrest and at charge is significant. In order to justify an arrest, the police have to have only reasonable cause to suspect that an offence is being, may have been or may be about to be committed—a very low bar. Before someone is charged with an offence, however, the Crown Prosecution Service must be convinced that there is more than a 50% chance of conviction and that it is in the public interest to prosecute the individual. While individuals remain innocent in the eyes of the law until convicted, pre-charge anonymity provides a balance between the rights of the individual and the right to free speech and open justice.

The devastating impact of being wrongly accused and having this information published and broadcast usually involves high-profile individuals, such as Lord Brittan, Paul Gambaccini and Sir Cliff Richard. In the latter case, Cliff Richard pursued a privacy action against the BBC and South Yorkshire Police, but this required over £1 million in up-front costs that would have been forfeited if the case had been lost, a course rarely open to those of limited means.

This type of "trial by media" can also apply to previously unknown individuals, such as Christopher Jefferies, who was falsely accused of murdering Joanna Yeates in 2010. I have also been told of a local garage owner whose business was ruined over false allegations that he was turning back the odometers of the cars he was selling, and of the suicide of a local teacher who was wrongly accused of a sexual offence. This Bill is not about protecting the famous but protecting all those falsely accused.

Despite the efforts of the police and the Government to prevent this, despite all the furore over Operation Yewtree and Operation Midland, and the Leveson inquiry, it is still happening. In December, a couple arrested over the drone chaos at Gatwick Airport had their identities published in the press and broadcast by the media. They said they felt completely violated. The couple were arrested but later released without charge. They said their privacy and identity had been completely exposed after being named in the media and having had their home searched. They said:

"We are deeply distressed, as are our family and friends, and we are currently receiving medical care. The way we were initially perceived was disgusting".

The current situation can be summed up by the words of Sir Richard Henriques, a former Justice of the High Court in England and Wales, in *An Independent Review of the Metropolitan Police Service's Handling of Non-recent Sexual Offence Investigations Alleged against Persons of Public Prominence*. I quote:

"I consider it most unlikely that a Government will protect the anonymity of suspects pre-charge. To do so would enrage the popular press whose circulation would suffer. Present arrangements, however, have caused the most dreadful unhappiness and distress to numerous suspects, their families, friends and supporters. Those consequences were avoidable by protecting anonymity. Nobody is safe from false accusation and damaging exposure under present arrangements. A reputation built on a lifetime of public service or popular entertainment can be extinguished in an instant. I sincerely believe that statutory protection of anonymity pre-charge is essential in a fair system".

He does not say that statutory protection pre-charge is unnecessary, but that the Government are unlikely to protect the anonymity of suspects pre-charge because it would enrage the popular press. Now is the chance for the Government to prove Sir Richard Henriques wrong. I beg to move.

1.35 pm

Lord Campbell-Savours: My Lords, I will speak very briefly in the gap. After that excellent contribution by my noble friend, it would be churlish of me not to welcome this legislation, which will clearly improve the current position.

I go back to my concern. As I understand it, the way this will work is that the judge will decide, on the basis of representations, which could include that publication,

"may lead to additional complainants coming forward",

which the police might argue might assist in the investigation of the offence. But in those circumstances, the judge might well be convinced that that is the case and that an investigation would be helped. I am uneasy about that because it might well be that a lot of strong arguments will be put that the judge finds convincing that in principle then undermine the thrust of the legislation.

My noble friend referred to the destruction of reputation, which I was going to raise, but there is no need for me to repeat what he said. He named the individuals, and there are many more, who had their reputations destroyed internationally as a result of the way the law works at the moment. But I want to turn to how IICSA operates. While it is not covered precisely by the legislation, although we might have the opportunity to amend it if it were to go into Committee, I am appalled by the way the inquiry is being run. I ask a very simple question that is essentially about anonymity. How can it be just for IICSA to allow accusers, behind the cloak of anonymity, to accuse people who are the highest and the lowest in the land, if that is the term, of sexual abuse when those accused are dead and cannot reply—where there is no defence at all? That is happening in the Janner case.

There are two injustices involved in these kinds of cases: first, the lack of anonymity, which people should have if they are to be referred to; and, secondly, the fact that there is no right of defence as there is no one there to defend. These accusations will end up in the public domain, because IICSA has made it quite clear that the press has access to its inquiries and it can simply print or publish what it wishes.

What is happening in IICSA today is one of the great injustices of our time. This over-remunerated operation, which I understand will cost some £100 million —when the truth finally comes out on its expenses I think people will be shocked—is far overreaching the responsibility set when the original remit was established by the Prime Minister. It should be reviewed as a

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matter of urgency. Underlying any decision about how it operates should be the principle that people are entitled to be treated justly and fairly, and to be sure that their reputations, when they die, are treated equally.

1.38 pm

Lord Marks of Henley-on-Thames (LD): My Lords, I start by congratulating my noble friend Lord Paddick on the excellent way he opened the debate on the Bill so lucidly and eloquently. He has, of course, campaigned for this change for some time. Indeed, we tabled an amendment to the Policing and Crime Bill in 2016, seeking pre-charge anonymity. On that occasion we withdrew it, but I am very pleased to see that my noble friend is taking it forward to legislation.

I am supposed to be winding up this debate on behalf of the Liberal Democrats. Since my noble friend Lord Paddick was to be the only one speaking before me, I was pleased that the noble Lord, Lord Campbell-Savours, spoke in the gap, so that I would have some winding-up to do, as well as supporting my noble friend.

I welcome the Bill. It is right that it does not stop with sexual offences but talks about criminal offences in general, because a wide injustice occurs as a result of unfair exposure to publicity of people who are innocent. We all know the high-profile cases—my noble friend mentioned Lord Brittan, Paul Gambaccini and Sir Cliff Richard—and we know of many others. Some are not exactly high-profile and are just pursuing anonymous lives, but there are many who are half way up the system, who cannot afford to take proceedings, who do not have the influence to complain, but who are exposed, if they are arrested falsely then released, to damage to their reputation in their communities that can be long-lasting.

My noble friend, and the briefing, reminded us of the couple who were arrested for flying drones at Gatwick. They were, I suggest, mercilessly and falsely hounded by the press in a, frankly, unforgivable way, but the press thought it made a good story and there was the background that many people had lost their holidays and been caused severe disruption by what had happened. The result, when they were photographed, their names and pictures were published, their house was searched and they were held in custody for some time, was that they felt completely violated. It is also possible they were exposed to danger from the less scrupulous of those who had been seriously affected. The problem for their reputation is that people do not follow the details as closely as they might. They will be forever known by the question: "Oh, weren't they the ones who had the drones at Gatwick?". That kind of innuendo and misinformed spread of rumour trashes reputations unjustly.

My noble friend rightly talked about balance, and it is a question of balance. It is balancing the right of the public to be informed—the so-called right to know—against the right to personal and family privacy. He was also fundamentally right to mention the presumption of innocence. That is a presumption in our law that is at the root of our liberties, and yet the exposure to our reputations being trashed by the media strikes at the heart of the value of the presumption of innocence. Too many are convicted and have their lives ruined not by processes of law but by gross and intrusive publicity, often to be released without charge or simply not charged, but to find that they are nevertheless convicted at the bar of public opinion.

The internet and social media make the position far worse. It has been a few years now, but many of your Lordships will remember the film "Notting Hill", and Hugh Grant tries to reassure Julia Roberts when his house is surrounded by press photographers and television cameramen. He says to her, "Don't worry: today's newspapers are tomorrow's fish-and-chip wrappings", and she says, "No, everything I do, every time I am seen in public in future, the pictures they've taken today will be taken out, hauled out, and put in the newspapers". That effect may be dramatic for film stars, and her character was a successful film star, but it is also dramatic for anybody who takes any part in public life. I suggest there is a danger that people are avoiding public life because of the danger of too much publicity. The Bill is a small step on the way to combating that evil.

I echo the point made by my noble friend that this is about arrest rather than charge. Anonymity is to be extended by the Bill not to those who have been charged but to those who have been arrested. He made the very valid point about the difference between the test that the police have to apply when they arrest somebody, which is no real proof of guilt, nothing that gives rise to major suspicion, and the test that the Crown Prosecution Service or the police have to meet before somebody is charged.

What are the arguments against? They are twofold. First, there is the argument that people will not come forward. My noble friend mentioned the Warboys case, but it is often used in cases of domestic and sexual violence, in particular. I wonder whether that is true. Unlike the noble Lord, Lord Campbell-Savours, perhaps, I believe that the exceptions to reporting restrictions contained in Clause 2 provide that balance. I do not see difficulty about the interests of justice or the public interest: those are the general principles that would be applied by a judge in the Crown Court hearing such an application. Reasons given for lifting restrictions include that,

"it may lead to additional complainants coming forward … it may lead to information that assists the investigation of the offence … it may lead to information that assists the arrested person; or … the conduct of the arrested person's defence at trial is likely to be substantially prejudiced if the direction is not given".

Those are reasons that may well, in particular cases, justify the lifting of the anonymity restriction.

We have to trust the judges. They know the principles they are supposed to apply and they are given a key, in what is not an exhaustive list, to the circumstances that might justify this. In my view, those factors strike a reasonable balance between the interests of publicity and of justice.

Lord Campbell-Savours: I am sorry to press the noble Lord, who is an eminent lawyer, but I go back to,

"it may lead to additional complainants coming forward".

Is that not the case in almost all rape cases?

Lord Marks of Henley-on-Thames: No, I think it is not. I do think that there are many cases involving defendants or suspects in cases of sexual abuse, grooming and so forth, where the publicity may well lead to other complainants coming forward. Where there is a reasonable prospect of that, it seems to me right that a judge should have the power to raise the issue of anonymity. That is the point. I also believe that people who might not otherwise come forward, because they are frightened and deterred by what has happened to them from raising something publicly, gain courage from the fact that there is publicity about particular defendants or suspects. If they realise that a suspect is under suspicion for offences against 20, 30 or 40 other people, they are encouraged, in the public interest and the interest of their community, to come forward and make a complaint where otherwise they might not have done so. It seems to me that a judge is entitled to weigh up those features of the case and to come to a just conclusion.

It is also important that subsection (3) is well-balanced, because it allows the person arrested to say, "No, I do not want anonymity" for any reason. It allows both the chief constable, on behalf of the police force, and the prosecuting authority to make an application. Of course, the "any other person who has an interest" provision might be subject to financial constraints, because it is a big step to go to the Crown Court and people have to be able to do it—but the police and the person arrested may well decide to make that application if they think that it is important.

I also draw attention to subsection (4), which allows for consent applications. If there is a consent application and the arrested person and the chief constable or the prosecuting authority agrees, the direction shall be made—the judges say, "If they all agree, you can do it". That, it seems to me, preserves the right to choose of people arrested, in a way that is quite important. So I believe that the Bill does strike that important balance.

The second argument deployed against this Bill is the idea that it will end open justice. In a sense, it is of course a restriction on the public's right to know who has been arrested—but it is not a restriction on the right to know that somebody has been arrested. The restriction is limited to the revelation of that person's identity, or information that would lead that person to be identified. Again, I believe that this is a balanced approach.

It is only a question of open justice before anybody is charged. When you balance justice to the uncharged suspect against justice to the public—often in this case the public as purchasers of prurient newspapers or listeners to television programmes that are trying to improve their ratings, which we have seen so many times—it is important to have regard to both sides.

My noble friend pointed out that the police are bound by the guidance of the College of Policing, which protects innocent suspects in the vast majority of cases: their identity is to be released only if there are exceptional reasons for doing so. He mentioned sex cases, where victims get lifetime anonymity. That is a question for another day; sometimes one thinks that it may need consideration, but on balance I agree with him that lifelong anonymity for victims of sexual offences is better than excessive and unwarranted exposure.

These are difficult questions; they always are. In my judgment they are questions that need addressing with statute because society as a whole has got the balance wrong. The Henriques paper talked about the balance and the need for statute in the light of his investigation of particularly serious cases. These cases are far more widespread. At the moment there is excessive and unwarranted exposure of people who are arrested but not charged, which leads to cases of very serious injustice. I fully support the Bill and invite the House to give it a Second Reading.

1.52 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, with his Private Member's Bill the noble Lord, Lord Paddick, brings before the House a very important issue that has in recent years come much more to the forefront of public debate.

The experiences of those accused but not charged of sexual offences, or charged but subsequently acquitted, has exposed the intensity of media scrutiny for alleged sexual offences. That leads to damage to private lives, reputations and the very important right to be presumed innocent, which we should all cherish. Complainants in sexual offence cases are, as we have heard, assured of lifetime anonymity. There is no protection available to defendants. As noble Lords will know, the principle of anonymity in sexual offences was introduced in the Heilbron report of 1975, which proposed lifetime anonymity for complainants.

We have talked in this debate about the many cases of public figures, from various different walks of life, being under intense public scrutiny. The damage and devastation that can be caused to private life by media scrutiny has been starkly set out. We have heard of prominent cases, including those of Sir Cliff Richard and Paul Gambaccini, but, as we have also heard, this is an issue for those not in the public eye—ordinary citizens who find themselves accused of certain matters. We should all be concerned that, if people are accused, they should be thought of as innocent until proven guilty. However, I very much accept the point that unfortunately, weeks, months and years later, people will say, "That's the person who did this". People see it in the media and they just believe it.

I also recognise, however, that publishing a defendant's identity, and the response to it, has encouraged victims to come forward in some cases. I think I am right to suggest that people came forward in the cases of Stuart Hall and Rolf Harris, which, in the end, enabled those two men to be brought to justice for their crimes.

Noble Lords may not remember but there was also the SNP MSP Bill Walker, who was convicted of domestic abuse. He was elected to the Scottish Parliament in 2011, convicted in 2013, went to prison and had to resign his seat. Again, as a result of the initial publicity, many other people came forward. I think his first wife told the court that she had to wear concealer to cover a black eye on their wedding day. It was appalling. When one person came forward in that case, so did a number of other women with whom he had been involved, so it was important.

If these cases did not receive a lot of publicity, that would not happen. Publicity causes other victims to come forward. Noble Lords have mentioned the

[Lord Kennedy of Southwark]
Worboys case. I think 85 victims came forward when his identity became known. Again, that was very important—the scale of the man's crimes was brought into perspective.

Even when someone is not officially publicly identified, there is now the whole issue of the internet. It is a kind of Wild West, and we have often debated how we will control it. I know that the Government's White Paper on internet safety is coming out shortly, but it is a huge issue. Even when things cannot be reported, stories fly around the internet, and how we will deal with that is an issue.

I have concerns, however, about how information is released. I mentioned Cliff Richard previously. I think I am right in recalling that there was a BBC helicopter flying outside his house. That is totally outrageous. Somebody somewhere—I assume from the police—told the BBC, "We're going to raid this celebrity's house and you might want to come along", and the BBC said, "This is so big that we'll get a helicopter up there". That is totally unacceptable.

There are issues that we need to reflect on further, including how this should be handled in the future. Some publicity is useful, as I outlined earlier, but these matters need to be handled properly. The noble Lord, Lord Paddick, mentioned the College of Policing guidelines. He will know them much better than I do, but it is a question of the police—these are operational matters—and the media acting responsibly. Clearly that has not always been the case, so these things should be properly codified and agreed.

Lord Marks of Henley-on-Thames: The noble Lord talked about the Cliff Richard case and he is right: it was a BBC helicopter. As we have heard, Cliff Richard was able to bring a case, at great expense, and he secured an award. However, even with that course of action, does one not feel that many people now have at the back of their minds the idea that there is something wrong about Cliff Richard? His reputation has suffered even though he was able to bring proceedings. The vast majority of people do not have the opportunity to bring proceedings. It is all very well to say that the press should behave responsibly—of course the media should behave responsibly. But does the noble Lord not agree that there is no way of codifying that without us in Parliament doing it for them?

Lord Kennedy of Southwark: I was going to come on to that point. Essentially, my next point is that I agree entirely that unfortunately, in the court of public opinion, people's reputations are often trashed and damaged. That is one reason why it is so regrettable that we will not move on to the second phase of the Leveson inquiry, which was going to look at some of the issues here. The Government have decided that they do not want to do that. I accept the point that people can be damaged very much by these issues.

In conclusion, I assume that because of where we are in the parliamentary cycle, the Bill will not make much more progress. However, it has highlighted an important issue: the situation is not right at the present time. I cannot see the Bill progressing much further, but I hope the Minister will be able to respond to the general points raised in the debate.

2 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I congratulate the noble Lord, Lord Paddick, on introducing the Bill, which is on an important topic. I thank him for congratulating me on this being my third Bill this week but of course the noble Lord, and the noble Lord, Lord Kennedy, are also on every Bill I am on. We have had a bit of a marathon week but we are all still smiling, which is the important thing.

The nub of the debate today has been about the balance between press freedom and personal privacy, which is important. The Government are committed to protecting the freedom of the press and recognise that a vibrant and free press plays such a valuable role in our cultural and democratic life. How lucky we are to have our free press. We want to make sure that it continues, with high journalistic standards and with work absolutely in the public interest.

Of course, the right to freedom of expression is not absolute and must be appropriately balanced against the right to privacy. As enshrined in Article 8 of the European Convention on Human Rights, everyone has the right to respect for their private and family life, their home and their correspondence. Any interference with this right must be in accordance with law and necessary in a democratic society and, as such, must be adequately protected. The courts have had to develop privacy law in accordance with Article 8, resulting in the development of the tort of misuse of private information. Information will be considered private where a person has a reasonable expectation of privacy in relation to it, which is a fact-sensitive assessment. Article 10 of the convention, which covers freedom of expression, is often relied on in defence of a privacy claim, resulting in the need for the balancing of Article 8 rights against the Article 10 rights.

The Data Protection Act 2018 puts in place a framework for the protection of data that either identifies or is capable of identifying living people. Within this framework, the privacy rights of individuals are balanced against the legitimate needs of public and private sector organisations to make use of such data, including publishing it. The Act provides the rules by which the processing of personal data for legitimate purposes can take place, and "processing" includes the disclosure or sharing of personal data. To be compatible with the Act's requirements it must be shown, among other things, that the living individual to whom the disclosure relates has consented to the disclosure, or alternatively, that there is a lawful basis that it is necessary to disclose the data for. The Act and the GDPR set out what those lawful bases are, including the public interest.

Publishing the names of suspects and others who stand accused of wrongdoing is not of itself unlawful unless found to be in contempt of court. Private law actions, however, can be brought against those who disclose such information, based on the right to privacy.

In considering the balance we are trying to achieve, we must remember that there are times when, as the noble Lord, Lord Pannick, said, in a comment almost identical to that made today by the noble Lord, Lord Marks,

"publicity can lead others to come forward with supporting evidence that helps to make the case against the person who is

rightly accused. Sometimes this is evidence that the person accused has treated them in the same way. They have not previously come forward because they are fearful that no one would take them seriously. It is only hearing that an allegation is being taken seriously that gives them the confidence to come forward".—[*Official Report*, 16/11/16; col. 1454.]

That is an important comment, which the noble Lord, Lord Marks, reflected today. More recently, the #MeToo movement has been a living testament to this.

I see that the Bill in the name of the noble Lord, Lord Paddick, would not necessarily prevent disclosure in these circumstances. It is focused on a specific period—that between arrest and charge—and it allows for restrictions to be lifted in exceptional circumstances.

In this way, it mirrors the framework within which the police operate. The circumstances in which suspects' names may be released to the media by the police are set out in the authorised professional practice guidance on media relations issued by the College of Policing, as the noble Lord, Lord Paddick, said. It makes clear that the police will not name those arrested or suspected of a crime save in exceptional circumstances where there is a legitimate policing purpose to do so. A legitimate policing purpose may include circumstances such as threat to life.

Lord Marks of Henley-on-Thames: I am sorry to interrupt the Minister. She mentioned exceptional circumstances, which is of course right about the police guidance, but this exception is not an exceptional circumstance. This is when the Crown Court judge thinks it is appropriate to make the order in the interests of justice and for other reasons. There is no bar of exceptional circumstances. It is for the judge to weigh up the consideration either way and make a decision.

Baroness Williams of Trafford: I completely acknowledge that point. I am just trying to give the context of everything that has been discussed in the debate.

The rationale for naming an arrested person before charge should be authorised by a chief officer and the Crown Prosecution Service should be consulted. Noble Lords, particularly the noble Lord, Lord Paddick, will know that in May 2018, the College of Policing updated this guidance to make clear that it also applies where allegations are made against deceased persons.

The Bill would replace this administrative system with a requirement for the chief constable to apply to a Crown Court judge for a direction that reporting restrictions be lifted. This risks adding potentially dangerous delay in fast-moving investigations as well as placing additional burdens on our courts.

It is not clear that this is necessary. On the contrary, the existing arrangements for the police seem to strike a sensible balance. To test whether these changes have had the desired effect, the previous Home Secretary asked Her Majesty's Chief Inspector of Constabulary and Fire & Rescue Services to carry out a short, targeted review of police adherence to the guidance on media relations, looking in particular at pre-charge anonymity. The inspectorate is undertaking a scoping study this financial year to consider where inspection activity might best be focused.

I recognise, of course, that the guidance on the police releasing suspects' names does not address the separate concern about the media publishing suspects' names, which the media may find from other sources, but the media has its own framework for guiding its behaviour. Ofcom's broadcasting code places detailed requirements on broadcasters to ensure that news, in whatever form, is reported with due accuracy and presented with due impartiality. Robust powers are available to enforce adherence to the code. Statutory sanctions include levelling a fine and, in serious cases, revoking a broadcaster's licence to broadcast.

For the press, there now exists a strengthened, independent, self-regulatory system. The majority of traditional publishers—including 95% of national newspapers by circulation—are members of IPSO. A small number of publishers have joined Impress, while others, including the *Financial Times* and the *Guardian*, have chosen to stay outside either self-regulator with their own detailed self-regulatory arrangements.

IPSO's editors' code puts in place robust requirements of accuracy and privacy.

Lord Kennedy of Southwark: I think I am correct in saying that IPSO does not meet the standards set by the regulator.

Baroness Williams of Trafford: The noble Lord may be correct but I will confirm that in writing.

Lord Kennedy of Southwark: I think the Minister is correct, but my point is that I do not see how it can be a robust regulator if it does not meet the standards set by the regulator.

Baroness Williams of Trafford: I thank the noble Lord for that point. IPSO requires that any significant inaccuracy or misleading statement be corrected promptly and with due prominence—that is important—and, where appropriate, an apology published. If an individual is unhappy with their treatment by the press, the availability of a compulsory low-cost arbitration service from both IPSO and Impress, which can be used for privacy actions against member publications, can provide easier recourse to justice than going through the courts. The noble Lord, Lord Marks, talked about the Cliff Richard case. Of course, following that, the BBC asked the Government to consider the merits of conducting the review I just talked about to see whether any further action is needed in this area.

I conclude by saying that the Government have considered the Bill carefully and are sympathetic to its aims. There are precedents for placing restrictions on the freedom of the press to report the identities of, for example, victims of sexual offences, but restricting press freedom is a serious matter and we are not yet persuaded that legislating in this instance would be a necessary or proportionate response to the perceived problem. It would certainly be premature to take action ahead of the HMICFRS review, which I hope will enhance our understanding of policing practice in this area. We recognise the importance of debating these issues and we will keep the position under review.

2.11 pm

Lord Paddick: My Lords, I am conscious of the time but I want to address some of the comments made. The noble Lord, Lord Campbell-Savours, is

[Lord Paddick]
rightly concerned about the police going on fishing expeditions by publicising the fact that they are investigating or have arrested somebody. There is a difference between investigating a case where the Crown Prosecution Service feels that there is insufficient evidence to bring charges and a case where there is sufficient evidence. Of course, once a person has been charged, there is no limit on the amount of publicity that can be given to the case so that other individuals can come forward. Therefore, the number of cases where a judge would grant a lifting of anonymity would be a lot smaller than the noble Lord thinks.

I thank my noble friend Lord Marks of Henley-on-Thames for his support. As he said, it is a question of balance. The important legal principle of a presumption of innocence is in jeopardy; the Bill attempts to restore it in a limited way. On the point made by the noble Lord, Lord Kennedy of Southwark, publicity may be helpful in some cases. The Bill allows for that to happen.

The Minister emphasised the police's role in all this, saying that it would be premature to take action until after the review from Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services on how the revised College of Policing guidelines were working. However, I remind her of the Gatwick case, to which noble Lords have referred. The police did not reveal the identity of the individuals they arrested. Neighbours told the press that a home was being raided, so the press identified the individuals either by talking to their neighbours or by examining the electoral roll. They then published the details and vilified the individuals, blaming them for the disruption to those people caught up in the chaos—wrongly. That points to the need for this legislation, as opposed to a review of the College of Policing guidance. Having said that, I ask the House to give the Bill a Second Reading.

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

House adjourned at 2.14 pm.