PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

MARRIAGE (SAME SEX COUPLES) BILL

Thirteenth Sitting

Tuesday 12 March 2013

(Morning)

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Saturday 16 March 2013

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: Mr Jim Hood, † Mr Gary Streeter

† Andrew, Stuart *(Pudsey)* (Con)
† Bradshaw, Mr Ben *(Exeter)* (Lab)
† Bryant, Chris *(Rhondda)* (Lab)
† Burrowes, Mr David *(Enfield, Southgate)* (Con)
† Doughty, Stephen *(Cardiff South and Penarth)* (Lab/Co-op)
† Ellison, Jane *(Battersea)* (Con)
† Gilbert, Stephen *(St Austell and Newquay)* (LD)
† Grant, Mrs Helen *(Parliamentary Under-Secretary of State for Women and Equalities)*
† Green, Kate *(Stretford and Urmston)* (Lab)
† Kirby, Simon *(Brighton, Kemptown)* (Con)
Kwarteng, Kwasi *(Spelthorne)* (Con)
† Loughton, Tim *(East Worthing and Shoreham)* (Con)
† McDonagh, Siobhain *(Mitcham and Morden)* (Lab)
† McGovern, Alison *(Wirral South)* (Lab)
Reynolds, Jonathan *(Stalybridge and Hyde)* (Lab/Co-op)
† Robertson, Hugh *(Minister of State, Department for Culture, Media and Sport)*
† Shannon, Jim *(Strangford)* (DUP)
† Swayne, Mr Desmond *(Lord Commissioner of Her Majesty's Treasury)*
† Williams, Stephen *(Bristol West)* (LD)

Kate Emms, Alison Groves, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 12 March 2013

[Mr Gary Streeter *in the Chair*]

Marriage (Same Sex Couples) Bill

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MB 107 Helen Belcher
MB 108 Groundlevel Churches UK
MB 109 Alan J. Williams
MB 110 Adrian Tippetts
MB 111 Sarah Noble
MB 112 Nick Turner
MB 113 The Sybils
MB 114 Maranatha Community
MB 115 New Family Social
MB 116 Cornwall's Community Standards Association
MB 117 Rev. Stephen Parratt
MB 118 Dr George Strang—supplementary evidence
MB 119 Kingdom Faith Churches UK
MB 120 Nicholas Townsend
MB 121 Pinchus Anshelm
MB 122 Ralph Manning
MB 123 World Federation of KSIMC
MB 124 Ian Michael LaRivière
MB 125 Mark Jones
MB 126 Vince Llewelyn
MB 127 Celia Macleod
MB 128 Rev. Dr Donald M. MacDonald
MB 129 Basingstoke Community Churches
MB 130 Adrian Nance
MB 131 LGB&T Anglican Coalition
MB 132 Mr Graham Leng
MB 133 LGBT Consortium
MB 134 Lana Murphy
MB 135 Donald Fleming
MB 136 Mircea Trandafir
MB 137 Marriage, Sex and Culture Group, Anglican Mainstream
MB 138 Alliance Defending Freedom

Clause 15

Orders and Regulations

8.55 am

Mr David Burrowes (Enfield, Southgate) (Con): I beg to move amendment 40, in clause 15, page 12, line 11, leave out subsections (2) and (3) and insert—

'(2) The following subordinate legislation may not be made unless a draft of the statutory instrument containing the legislation has been laid before, and approved by resolution of, each House of Parliament—

(a) an order under section 8;

(b) an order under section 14(1) or (2);

(c) an order under paragraph 1 or 2 of Schedule 2;

(d) an order under section 11(5)(c);

(e) an order under paragraph 2 of Schedule 2;

(f) an order under paragraph 24 of Schedule 4.

(2A) Before the Secretary of State makes an order under subsection (2) he must consult such other persons as appear to him to be likely to be affected by his proposals.

(2B) If, following consultation under the provisions in subsection (2A), the Secretary of State proposes to make an order under subsection (2) he must lay before each House of Parliament a document which—

(a) explains his proposals;

(b) sets them out in the form of a draft order; and

(c) gives details of consultation under subsection (2A).

(2C) Where a document relating to proposals is laid before Parliament under subsection (2B), no draft of an order under subsection (2) to give effect to the proposals (with or without modifications) is to be laid before Parliament until after the expiry of the period of 60 days beginning with the day on which the document was laid.

(2D) In calculating the period mentioned in subsection (2C) no account is to be taken of any time during which—

(a) Parliament is dissolved or prorogued; or

(b) either House is adjourned for more than four days.

(2E) In preparing a draft order under subsection (2) the Secretary of State must consider any representations made during the period mentioned in subsection (2C).

(2F) A draft order under subsection (2) which is laid before Parliament must be accompanied by a statement of the Secretary of State giving details of—

(a) any representations considered in accordance with subsection (2E); and

(b) any changes made to the proposals contained in the document laid before Parliament under subsection (2B).'.

Good morning, Mr Streeter, and welcome to day five. The excitement continues right to the final day. Now that we are here, it is appropriate for us to have a new ball, and that new ball is a constitutional one. Amendment 40, which I tabled with my hon. Friend the Member for East Worthing and Shoreham and the hon. Member for Strangford, is a crowd pleaser, and it can perhaps bring together the crowd here in the Committee in a way we have not seen until now.

On our final day, I will encourage members of the Committee to break free from the shackles of being for or against the redefinition of marriage and to break free—we have not quite got there yet—from the shackles of their iPad inbox. Amendment 40 will give them the freedom to act in the best interests of Parliament by supporting effective scrutiny of the Executive. We have a free vote on all the amendments that come before the Committee, and, on this amendment, I particularly urge Committee members to look to that freedom so that we can hold the Executive to account. I appreciate that at least two members of the Committee may take issue with the amendment, but other Members should look at it carefully.

I am grateful to the Clerks in the Public Bill Office for helping to provide this particular new ball and for their careful work in helping to draft the amendment, which borrows the so-called super-affirmative procedure from other legislation and would include it in the Bill. Given that we are redefining marriage for generations to come, in the midst of great anxiety among millions of people and in the teeth of opposition from all the major religious groups, it is at the very least of concern, if not extraordinary, that the Government are ploughing on at such speed. Ministers seem to have taken the advice—I often do, but not always—of our great Mayor of London, Boris Johnson, who encouraged them to whack the Bill through; it is as if we are dealing with a game of

whiff-whaff or ping-pong. *[Interruption.]* Well, a lot of people—even those who agree with the Bill—will think that whacking it through is not the best way of legislating on something of this magnitude.

I think you were in the Chair, Mr Streeter, when we debated clause 11, which highlighted that, at the very least, work is to begin on legislation resulting from the Bill. That legislation has various gaps, and there is certainly work to be done. Under clause 15, the Government want that work to be done through the usual process of secondary legislation. Clause 15 enumerates the clauses that enable the Secretary of State to introduce the relevant statutory instruments. One is clause 8, on the Church in Wales. As Members will recall, we had an important debate about that; indeed, we had some reassurances about Report stage. I urge all those who spoke up on behalf of the Church in Wales to look at how the issue can be dealt with. If it is not dealt with on Report, it will be dealt with through minimum scrutiny of delegated legislation.

There are also clauses 14 and 2. The hon. Member for Strangford spoke well about the important issue of the application of provisions to Northern Ireland. Future legislative provision under schedule 2 will be confined to secondary legislation. There is also clause 11, which I mentioned. The clause raises the issue of the coercion of the wife, which is topical. Vicky Pryce was unable to apply it to her situation; the Government are now seeking to see how it applies to the Bill.

One could carry on looking at the areas the Government need to consider. They have mentioned 8,000 references in statute, many of which have to be dealt with in secondary legislation. Then there is schedule 4 and the debate that not all of us wanted to have about adultery, non-consummation and other areas. Committee members have raised the issue of pensions, and if they are not dealt with to the satisfaction of some Members on Report and at other stages during the passage of the Bill, then we are left with the option of statutory instruments. These are significant issues which need to be dealt with properly and scrutinised and probed effectively, if not by Her Majesty's official Opposition, by the dissenters in the House.

The question is whether it is right to delegate these matters. Amendment 40 seeks to take it a stage further and say that if we are going to introduce secondary legislation, and not have the opportunity properly to scrutinise the measure, or to add provisions to the Bill in Committee and on Report, then at the very least we need to ensure that the way in which we scrutinise secondary legislation is fit for purpose. Some may say—as they have done throughout these five days of Committee sittings—that this is making a fuss about nothing; that I am over-baking my soufflé or over-spinning my ball or whatever; that this is a "live and let live" Bill and we should let them get on with it.

Paul Begala, an adviser to Bill Clinton, once said of Executive orders:

> "Stroke of the pen. Law of the land. Kinda cool".

Perhaps this is a "kinda cool" clause, but it does Parliament no service not to have the highest level of scrutiny for this important legislation. I do not want to quote Paul Begala. I would rather quote *Erskine May*. I know the hon. Member for Rhondda can probably recite this particular bit of *Erskine May*, but I shall do so for the benefit of the Committee:

> "The super-affirmative procedure has been implemented in enactments where an exceptionally high degree of scrutiny is thought appropriate…It provides both Houses with opportunities to comment on proposals for secondary legislation and to recommend amendments before orders for affirmative approval are brought forward in their final form. (It should be noted that the power to amend the order remains with the Minister: the two Houses and their Committees can only recommend changes, not make them.)"

That is not in any way a blocking measure. It does not necessarily seek to get in the way of the momentum of the Executive, but at least it allows us have a proper look at the proposals and make recommendations through the proper Committee to the Government.

As Committee members will see from the amendment, the Minister is obliged by the super-affirmative procedure to give some account of his decision-making process and to consult. That is important, particularly when dealing with these issues, because the procedure has been used in local government legislation, local transport legislation, and, most recently, in the Digital Economy Act 2010. According to a guide for policy officials on legislative reform orders published by the Department for Business and Skills the

> "Super-Affirmative Resolution is used for complex policy changes or ones that could be controversial. It is a two-stage procedure during which there is opportunity to revise the draft LRO. Parliament has 60 days followed by a further period of up to 25 days depending whether changes are needed for scrutiny. The LRO then needs to be approved by each House of Parliament. The LRO then needs to be approved by each House of Parliament...The super-affirmative procedure is the only one that gives the Parliamentary Scrutiny Committees a chance to recommend changes to the LRO. It is therefore the most appropriate procedure for complex and wider-reaching LROs".

The super-affirmative procedure was used in section 17 of the Digital Economy Act to make provision about injunctions preventing access to locations on the internet. It was used to scrutinise the Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2008 and the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2009 among others.

If it was good enough for those somewhat miscellaneous and perhaps not the most controversial of provisions, it must be good enough for one of the most controversial, sensitive and complex issues—redefining marriage—to come before Parliament in recent days and months, if not years. I therefore hope that the Minister will consider the good intent behind the amendment to adopt the super-affirmative procedure and show that there is a real commitment to scrutiny and a understanding of the complexity and sensitivity of the legislation. I also hope that, on the fifth day of Committee consideration, members of the Committee will show their freedom and independence from the Executive and support amendment 40.

Kate Green (Stretford and Urmston) (Lab): Welcome to the final day of Committee, Mr Streeter. I oppose the amendment tabled by the hon. Member for Enfield, Southgate. I came to the matter with an open mind, and he and I had a little conversation about the amendment yesterday, so I was thinking about what he might argue and what my response might be. Having listened to the argument he made this morning, I am afraid he has not persuaded me of the reason behind what he wants to achieve.

[Kate Green]

I would like to pick up two or three issues that the hon. Gentleman raised. Some of the issues which he suggested might need detailed scrutiny relate to amendments that I tabled, either alone or with my hon. Friends, and which relate, for example, to the Church in Wales, or to the most technically complex part of this Bill, on pension rights. Ministers have assured us that they will come back with detailed proposals on Report. I have absolutely no reason to doubt their good intentions and the assurances that they have given us. When we know the outcome of those discussions and if new amendments are tabled on Report, there will be an opportunity for the whole House to scrutinise and debate these aspects of the Bill. I think that that will afford us the opportunity that we need.

The hon. Gentleman suggested that the super-affirmative procedure is appropriate where there are issues of particular complexity, or where they are particularly controversial. I remind him that the controversy really exists only in the Conservative party. In all other parties, and indeed the country as a whole, there is a pretty strong majority in favour of proceeding with the same-sex marriage provisions in the Bill, so his proposed measure would very much be interpreted as putting unnecessary barriers into the process of getting this legislation to the statute book. I remind him, too, that there was some very good input from the Joint Committee on Human Rights, which I found extremely helpful in relation to the more complex aspects of the Bill.

It is not the case that there has been no scrutiny other than in this Committee; indeed, the complexities of the Bill have been widely debated and considered. With regret—I accept the hon. Gentleman's good intentions; we discussed the amendment yesterday and what he sought to achieve—I do not see the need for this procedure in relation to the Bill. If the hon. Gentleman pushes it to the vote I shall oppose the amendment, and I suggest that other members of the Committee do likewise.

The Minister of State, Department for Culture, Media and Sport (Hugh Robertson): Welcome to day five, Mr Streeter. I thank my hon. Friend the Member for Enfield, Southgate, for tabling amendment 40. As he has very clearly said, it proposes a kind of super-affirmative resolution procedure. That procedure was laid out in the Legislative and Regulatory Reform Act 2006, the purpose of which was to remove or reduce burdens imposed by legislation. We believe that the powers in the Bill simply enable secondary legislation to be made, or to give effect to the fundamental purpose of the Bill which, as everybody knows, is to enable same-sex couples to marry through civil ceremonies, and through religious ceremonies where the religious organisation and the individual minister consent. Crucially, as we all now know, this is on a purely permissive basis.

Against that backdrop, we believe that the Bill makes appropriate provision for the right level of parliamentary scrutiny of secondary legislation. Those cases are set out in clause 15 (2) and (3). The problem, in a sense, with amendment 40 is that a minor consequential amendment to secondary legislation would still be subject to the same detailed process, including formal consultation. However, this is day five. For the first time, I shall use a cricketing analogy: we have now been going longer than a full five-day test match. In an attempt to meet my hon. Friend halfway, the Delegated Powers and Regulatory Reform Committee will look at this piece of legislation. If it considers that the level of scrutiny is incorrect, insubstantial or in any way not appropriate to a piece of legislation of this type, it will make such representations to the Government. I absolutely give him a commitment on the record that we will look at that extremely carefully. Rather than have this particular debate tied up in our looking at it from the procedural end of the telescope and my hon. Friend looking at it from the policy end, it is reasonable to allow that Committee, which is how we normally deal with these matters, to have a look at it, and for me to give him a commitment that if they recommend courses other than the one that we have taken, we will look at that carefully. With that, I urge him to withdraw his amendment.

Mr Burrowes: I appreciate this short debate. The amendment was tabled with good intent—as all my amendments have been, but it is particularly the case with this one. The hon. Member for Stretford and Urmston appeared to swat it away, as if it was just about the examples I raised in my amendments—or indeed her amendments. Far from it: it deals with the fact that we do not know all the consequences in the pieces of legislation that are going to have to be amended to deal with the 8,000 references in statute. Clause 15 is going to come into effect; there will be a large amount of secondary legislation and it is important that we look at the process of scrutiny. We should not deny the fact that there is controversy, and not just on the Conservative side; there are 20 faithful brothers and sisters on the Labour side, as well as Liberal Democrats and others, and perhaps more to come during the passage of this Bill.

Out there in the country, it depends on the question you put to opinion pollsters, but one has to accept that there is controversy. On this side—in the Conservative party and our divisions—that shows how in touch we are with the nation, which is divided on this issue. I want to respond to the Minister's helpful response. On day five—and perhaps it is because of the new ball that has just been bowled that we have managed to gain a concession of some sort from him—such a response is helpful, because the way to deal with the amendment and the issue that it raises, is not to bat it away, given the differences between us and the Executive on policy. It is quite properly an issue of procedure—an issue for Parliament—and it is quite right that the dominant view should be that of the Delegated Powers and Regulatory Reform Committee. I therefore welcome the Minister's assurance that the Government will listen and faithfully take the view of that Committee in relation to this particular issue of scrutiny. On that basis, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 15 ordered to stand part of the Bill.

Clauses 16 to 17 ordered to stand part of the Bill.

Clause 18

SHORT TITLE AND COMMENCEMENT

Question proposed, That the clause stand part of the Bill.

Mr Burrowes *rose—*

The Chair: I call Kevin Pietersen—sorry, David Burrowes.

Tim Loughton (East Worthing and Shoreham) (Con): He is getting weary.

Mr Burrowes: It is wearying. I certainly do not think that I am, in any way, as crowd-pleasing and flamboyant in my stroke play as Kevin Pietersen—but perhaps I am more consistent than him.

I want a very brief debate to understand why the title has changed over the consultation period. It started as an equal civil marriage consultation, and now the Bill is entitled the "Marriage (Same Sex Couples) Bill". The Government's policy intention seems to be all about equality, but perhaps they did not want to still have "equal" in the short title to reflect that, as they have not shown that in name of the Bill. Is it because the Government have accepted that this is not a fully equal marriage Bill? Given that we have already had debates on the issue of adultery, non-consummation, civil partnerships and other issues around equality, did the Government struggle to add that full title to the Bill, and did they want to end up with this short title? Nevertheless, I think it is a title that is relevant and appropriate, given that we are dealing with marriage and the whole definition of that institution.

Hugh Robertson: I do not think that there is a great deal to add, despite the temptations otherwise. The short title of the Bill is what it says on the can. The Bill is about marriage and enabling same-sex couples to get married, and that is what the short title says. It is as simple as that.

Question put and agreed to.

Clause 18 accordingly ordered to stand part of the Bill.

9.15 am

The Chair: We now come to the new clauses and schedules. When a separate decision is to be sought on those that have already been debated, I have noted that down.

New Clause 1

PART 1 OF THE CIVIL PARTNERSHIP ACT 2004

'(1) Part 1 of the Civil Partnership Act 2004 is amended as follows.

(2) In section 1, subsection (1), leave out "of the same sex".'.—*(Tim Loughton.)*

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 1, Noes 12.

Division No. 9]

AYES

Loughton, Tim

NOES

Andrew, Stuart	Grant, Mrs Helen
Bradshaw, rh Mr Ben	Green, Kate
Bryant, Chris	Kirby, Simon
Doughty, Stephen	McGovern, Alison
Ellison, Jane	Robertson, rh Hugh
Gilbert, Stephen	Swayne, rh Mr Desmond

Question accordingly negatived.

New Clause 3

MARRIAGES ACCORDING TO USAGES OF APPROVED ORGANISATIONS

'(1) In the Marriage Act 1949, after section 47, insert the following section—

"47A Marriages according to usages of approved organisations

(1) The Registrar General may by certificate approve organisations to solemnise marriages according to their usages provided that any such organisation—

(a) is a registered charity concerned with advancing or practising a religion or belief, including a non-religious belief;

(b) does not possess or have the use of any registered place of worship; and

(c) appears to the Registrar General to be of good repute.

(2) In the certificate referred to in subsection (1) the Registrar General shall designate an officer of the organisation ("the principal officer") to appoint persons for stated periods of time to act as registering officers on behalf of the organisation, and may impose such conditions as seem to him or her to be desirable relative to the conduct of marriages by the organisation and to the safe custody of marriage register books.

(3) The principal officer shall, within the prescribed time and in the prescribed manner, certify the names and addresses of the persons so appointed to the Registrar General and to the superintendent registrars of the registration districts in which such persons live, together with such other details as the Registrar General shall require.

(4) A marriage shall not be solemnised according to the usages of an approved organisation until duplicate marriage register books have been supplied by the Registrar General under Part IV of this Act to the registering officers appointed to act on behalf of the organisation.

(5) If the Registrar General is not satisfied with respect to any registering officer of the approved organisation that sufficient security exists for the safe custody of marriage register books, he or she may in his or her discretion suspend the appointment of that registering officer.

(6) A marriage to which this section applies shall be solemnised with open doors in the presence of either—

(a) a registrar of the registration district in which the marriage takes place; or

(b) a registering officer appointed under subsection (2) whose name and address have been certified in accordance with subsection (3) and of two witnesses;

and the persons to be married shall make the declarations and use the form of words set out in subsection (3) or (3A) of section 44.

(7) A marriage solemnised according to the usages of an approved organisation shall not be valid unless there is produced to the superintendent registrar, at the time when notice of marriage is given, a certificate signed by the principal officer or a registering officer of the approved organisation that each person giving notice of marriage is a member of the said organisation.

(8) A certificate under subsection (7) shall be for all purposes conclusive evidence that any person to whom it relates is authorised to be married according to the usages of the said organisation and the entry of the marriage in a marriage register book under

Part IV of this Act, or a certified copy thereof made under the said Part IV, shall be conclusive evidence of the production of such a certificate.".

(2) Schedule [Consequential amendments—Marriage according to usages of approved organisations] has effect.'.—*(Stephen Williams.)*

Brought up, and read the First time.

Stephen Williams (Bristol West) (LD): I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss the following:

New schedule 1—*'Consequential amendments—Marriage according to usages of approved organisations—*

The following amendments are made to the Marriage Act 1949—

(1) In section 26 (marriages which may be solemnised on authority of superintendent registrar's certificate) in subsection (1) after paragraph (c) there is inserted—

"(ca) a marriage conducted under the auspices of an approved organisation;".

(2) In section 35 (marriages in registration district in which neither party resides) after "the Society of Friends" there is inserted "or of an approved organisation".

(3) In section 43 (appointment of authorised persons) in subsection (3) after "the Society of Friends" there is inserted "or of an organisation authorised by the Registrar General under section 47A".

(4) In section 50 (person to whom certificate to be delivered), in subsection (1) after paragraph (d) there is inserted—

"(da) if the marriage is to be solemnised according to the usages of an approved organisation, a registering officer of that organisation".

(5) After section 52, the following section is inserted—

"52A Interpretation

In this Part of this Act "approved organisation" has the meaning given to it in section 67.".

(6) In section 53 (persons by whom marriages are to be registered), after paragraph (b) there is inserted—

"(ba) in the case of a marriage solemnised according to the usages of an approved organisation, a registered officer of that organisation;".

(7) In section 54 (provision of marriage register books by Registrar General), in subsection (1) after the words "the Society of Friends," there is inserted "registering officer of every approved organisation".

(8) In section 55 (manner of registration of marriages)—

(a) in subsection (1) after the words "the Society of Friends" there is inserted "or of an approved organisation"; and

(b) in subsection (1)(b) after the words "the Society of Friends" there is inserted "or of an approved organisation" and after the words "the said Society" there is inserted "or organisation".

(9) In section 57 (quarterly returns to be made to superintendent registrar), in subsection (1) after the words "the Society of Friends" there is inserted "or of an approved organisation".

(10) In section 59 (custody of register books) after the words "the Society of Friends" there is inserted "or of an approved organisation".

(11) In section 60 (filled register books) in subsection (1), paragraph (b), after the words "registering officer of the Society of Friends" there is inserted "or of an approved organisation"; after the words "members of the Society of Friends" there is inserted "or of the said organisation", and after the words "the said Society" there is inserted "or organisation".

(12) In section 63 (searches in register books) after the words "the Society of Friends" there is inserted "or of an approved organisation".

(13) In section 67 (interpretation of Part IV), there are inserted in the list of definitions the following—

""approved organisation" means an organisation approved by the Registrar General under section 47A of this Act;" and

""registering officer of an approved organisation" means a person whom the principal officer of the said organisation certifies in writing under his or her hand to the Registrar General to be a registering officer in England or Wales of that organisation;";

and in the definition of "superintendent registrar" after paragraph (b) insert—

"(ba) in the case of a marriage registered by a registering officer of an approved organisation, the superintendent registrar of the registration district which is assigned by the Registrar General to that registering officer;".

(14) In section 75 (offences relating to solemnisation of marriages) in subsection (1), paragraph (a), after the words "the Society of Friends" there is inserted "or of an approved organisation"; and in subsection (2), paragraph (a), after the words "the Society of Friends" there is inserted "or of an approved organisation".'.

Amendment 1, in title, line 4, after 'overseas', insert

'to permit the Registrar General to permit certain charitable organisations to solemnise marriages.'.

Stephen Williams: Good morning, Mr Streeter, and all members of the Committee, at what looks as if it is going to be our last sitting—not simply our last day—unless the debate on new clause 3 takes rather longer than I think it should. Depending on what the Minister says in response, I shall not necessarily press the new clause to a Division.

The main purpose of the new clause—I accept that this might not be readily apparent from reading its legalese text—is to facilitate humanist weddings. I put on record my thanks to the British Humanist Association for its considerable help in drafting the new clause and for the advice and background information that it has given. I know that the association has also shared a briefing with members of the Committee.

The British Humanist Association conducts about 600 weddings a year in England and Wales. That is more than the Quakers and the Unitarians, which have often been mentioned in our deliberations. The big difference between the weddings conducted by the association and Quaker and Unitarian weddings—and, indeed, any other weddings—is that they do not have legal force, which means that people who have had a humanist wedding, and have enjoyed their special day together in front of their family and friends, subsequently have to attend the registry office and go through another ceremony to get their marriage registered so that their humanist ceremony can have any legal meaning at all. Alternatively, they leave it at the humanist ceremony, but that means that their marriage does not have legal force. I know people who have had a humanist wedding and regard themselves as married, but who chose not to enter into a civil marriage because they objected to that particular institution, and they currently have no legal protection.

The British Humanist Association has kindly given me various testimonials from people who have been through its wedding ceremonies, and I shall quote one to illustrate the problem:

"Unfortunately, as the law stands, we have to get married again, in a Registry Office, in order for our union to be legally recognised. To us it seems unnecessary to stand in a poky little room, to go through by rote, with someone to whom we have no personal connection, making vows we have already made. Our Humanist ceremony was our real wedding, the registry office will be a mere formality. We would much prefer not to have to do the ceremony a second time. Whilst it does not negate the Humanist ceremony, we feel the second wedding is a bit of a farce".

There are many testimonials along broadly the same lines. The new clause would remove that anomaly for the large number of people who undergo humanist weddings and the perhaps larger number of people who might want to take advantage of a humanist wedding, but are not currently attracted by the existing offer of religious ceremonies or a civil marriage.

As we all know, the current law is essentially based on the place where a marriage can be solemnised—either in a parish church in England or Wales, or a place of worship of another denomination that has registered its premises for the solemnisation of marriage. Civil marriage can be solemnised either in a registry office or in approved places such as hotels and so on. The only exceptions to those provisions are for Jews and Quakers, which we have heard about many times in our deliberations. New clause 3 would create a third exception to allow the Registrar General to appoint people to conduct marriages within an organisation according to their usages—essentially basing another organisation on the same legal footing that already exists for the Quakers and Jews.

New clause 3 would insert new section 47A into the Marriage Act 1949 under which:

"The Registrar General may by certificate approve organisations to solemnise marriages according to their usages provided that any such organisation…(a) is a registered charity concerned with advancing or practising a religion or belief, including a non-religious belief…(b) does not possess or have the use of any registered place of worship; and…(c) appears to the Registrar General to be of good repute."

Although it would be up to the Registrar General, the British Humanist Association seems to me to be of good repute because it has a good existing track record.

The British Humanist Association conducts not only the 600 weddings in England and Wales to which I referred, but 8,000 funerals—a much larger number—and I have been to a humanist funeral recently. Humanist weddings have had legal force over the border in Scotland since 2005, however. In 2011, which is the latest year for which we have data from Scotland, there were 2,486 humanist marriages, which places such marriages third on the list after civil marriage, of which there were 14,083, and marriages by the Church of Scotland, which registered 5,557 marriages. The figure for humanist marriages is notably well ahead of that for the Roman Catholic Church—much in the news today—which celebrated 1,729 marriages, so after only six years, humanist weddings in Scotland had overtaken weddings provided by the rather longer established Roman Catholic Church. There is also precedent from countries with a very comparable history to our own, such as Australia and New Zealand, and from Ontario in Canada. In Ireland, the Dail passed the Civil Registration (Amendment) Act 2012, which provides for marriages that are "secular, ethical and humanist", so there is now an anomaly between Northern Ireland and the Republic.

Mr Burrowes: This is an important debate, but why there is a difference in Scotland? Is it because the focus is on the celebrant rather than the place of worship or the premises? Indeed, I believe that the previous Government wanted to go down that route in 2002.

Stephen Williams: I thank my hon. Friend for his intervention. As we know, the Bill affects only England and Wales. Although we have heard much about Northern Ireland, the Bill does not affect Northern Ireland or Scotland because marriage is a devolved matter. For many centuries, marriage law in Scotland has been prepared on a different basis from the law in England and Wales, but I think my hon. Friend is right to say that more emphasis is placed on who conducts marriages than on where they are conducted.

As I understand it, the 2005 change came about because the Registrar General for Scotland used emergency powers to authorise people temporarily to conduct the equivalent of civil marriages. I also understand that the Scottish Parliament will seek to formalise that procedure when it legislates for same-sex marriages and the general reform of Scottish marriage law. Although humanist weddings in Scotland result from that edict rather than a legislative change, they have full legal force and they have proven to be very popular—and not only with people in Scotland. We have all heard of people eloping to Gretna Green, and some people from England and Wales are choosing to have a humanist marriage in Scotland.

We need a provision for people who do not want to have a state civil marriage or to go through a religious ceremony, but nevertheless hold certain beliefs about their place in society and the conduct of their lives. The British Humanist Association defines humanists broadly as people who trust science rather than religious belief. They do not believe in the supernatural, so they follow scientific beliefs about how the universe was created and the evolution of life on Earth. There is certainly an ethical dimension to how they conduct their lives—through reason, empathy and concern for others. As they believe that our life on Earth is precisely that and there is no after life, they give more meaning to what they do during their lives to bring happiness to themselves and, perhaps more importantly, to others. I guess that means that humanists do not go around establishing chantries, as people used to do to ensure that future generations would pray for their souls.

When I spoke to new clause 1, I said that its purpose was to close the wheel of equality by making civil partnerships open to opposite-sex couples as well as to same-sex couples. New clause 3 would complete the marriage wheel of equality. Although the Committee has been divided on some things, I think that we all agree that marriage is a good institution, and I believe that the institution of marriage should be available to everyone—whether same-sex or opposite-sex couples—who wants it to be solemnised in a particular type of ceremony. As I said about new clause 1, if the law were changed in the way suggested by new clause 3, it would do absolutely no harm to society whatsoever, but it would bring much happiness to many of our fellow citizens.

Chris Bryant (Rhondda) (Lab): It is a great delight to be here for the final countdown.

To pick up on the hon. Gentleman's concluding sentence, if only one could say of the Lib Dems that they will never do any harm to humanity—*[Interruption.]* It is nice to be able to unite the coalition again.

I rise to support the new clause and new schedule because, in the end, I think of myself as a Christian humanist. In fact, I have conducted several humanist funerals.

Tim Loughton: All things to all men.

Chris Bryant: Well, that is the Church of England: all things to all men. I hear the hon. Member the Son of the Archdeacon's chuntering—*[Interruption.]* He is still chuntering, Mr Streeter.

The Chair: Order. It might help if I remind the Committee that sedentary interventions are never helpful.

9.30 am

Chris Bryant: So there.

I conducted one humanist wedding on Wittenham clumps. As the hon. Member for Bristol West rightly says, it had no standing in law—it was merely a congregation of people. The couple felt that it was their moment of marriage, but they had to go to a registry office to perform the legally binding element.

One aspect of this that the hon. Gentleman left out is that a couple who are of different religions or denominations will choose a humanist service for a funeral or the naming of a child, rather than going down the route of one or other of their two denominations. However, the vast majority of humanist weddings occur when both individuals eschew religious views. None the less, there are cases when one partner might be Buddhist with the other from the Church of England or whatever.

When I was conducting funerals as a Church of England vicar, on the five or six occasions I was asked to perform a humanist ceremony, it was nearly always because the family wanted to recognise the views of the person who had died, but were unable to reconcile which religious denomination to support. They seemed to think that an Anglican vicar was more or less the same as a humanist and so that was okay.

I understand why some people might think that the proposal is opening the door to anybody being able to get married and abandoning regulation, but I would say that all the normal provisions that exist in law would still apply to humanist ceremonies: that marriages can take place only between 8 am and 6 pm; that the faces of the people being married must be seen; that there will be witnesses; that there will be a proper registration; and that marrying more than one person is not possible, and all the rest. The provision seems to be a simple extension of the rules that already apply to the Jewish religion, Quakers and other Christian denominations, so it would be odd not to extend them to humanists, and we shall therefore support new clause 3.

Stephen Doughty (Cardiff South and Penarth) (Lab/Co-op): It is pleasure to serve under your chairmanship, Mr Streeter, on the last day of Committee proceedings.

I support the strong and compelling case made by the hon. Member for Bristol West and my hon. Friend the Member for Rhondda. I also commend the British Humanist Association, Labour Humanists and others who have been in touch with many Members about the proposal.

The hon. Member for Bristol West mentioned doubling-up, whereby humanists have to go through a second wedding. Some have referred to it as a procedure, but I think it is a problem. The new clause would be a simple way of addressing that. I have been persuaded by several humanists who have approached me in my constituency. The former Assembly Member for Cardiff South and Penarth, Lorraine Barrett, is a humanist celebrant and has spoken to me on many occasions about her wish for the proposal to be accepted. An increasing number of my constituents choose humanist ceremonies, including funerals and namings, as mentioned by my hon. Friend the Member for Rhondda. Given the increasing numbers of people who wish to take advantage, I feel comfortable supporting the new clause and I am keen to make its provisions available.

The hon. Member for Bristol West made a strong point when referring to the situation in Scotland, and, as he said, there is a long list of countries where this option has been made possible: Australia, New Zealand, Ontario in Canada, Norway and others. They have shown the way forward by allowing this for humanists and I think that we should do the same.

I read with great interest a number of the submissions that we received from humanists. I received a particularly strong letter from a humanist celebrant called Hannah Hart—I am sure that she wrote to many others on the Committee. She simply said:

"I honestly consider I have the best job in the world."

Humanists all have in common their desire to mark their commitment with dignity and sincerity. I very much hope that we will be able to afford them that dignity and sincerity by accepting the proposals.

The Parliamentary Under-Secretary of State for Women and Equalities (Mrs Helen Grant): Good morning, Mr Streeter. It is a great pleasure to serve under your chairmanship on this, our last day of Committee proceedings.

New clause 3 would introduce the concept of an approved organisation and make it possible for such organisations to solemnise marriages anywhere open to the public, including outdoors. It would do so by introducing the concept of registering a celebrant who may solemnise marriages, rather than a building in which they may take place. The proposals reflect the concerns of several organisations, notably the British Humanist Association, whose members cannot marry in a legally recognised ceremony according to their beliefs under the current law of England and Wales. The Government have been in discussion with the British Humanist Association and are of course very sympathetic to its situation, but do not believe that the proposed changes are the right way to address those particular concerns. They would result in a significant change to the fundamental structure of marriage law in England and Wales; they go far wider than the scope of the Bill and would change the position for marriages of both same-sex and opposite-sex couples.

Under the new clause, approved organisations would be able to solemnise marriages without registering a building for that purpose. A duty would be placed on the Registrar General to make judgments about which organisations are of good repute. That in itself would be problematic, given the range of organisations that might wish to be approved. There is a further concern about same-sex marriages in particular. As the Committee has discussed at length, the Bill introduces protections for religious organisations and individuals who may not wish to be involved in marriages of same-sex couples for reasons of conscience. Those protections would not apply to approved organisations under the proposals.

Stephen Williams: The Minister said that the Registrar General might find it difficult to decide who is of good repute, which would come under subsection (1)(c) of proposed new section 47A of the Marriage Act 1949. Surely the Registrar General will be protected and have a very good starting point, given that paragraph (a) says that the organisation should be

"a registered charity concerned with advancing or practising a religion or belief, including a non-religious belief".

I was on the Bill Committee for the Charities Act 2006, when we debated at great length what constituted organisations that had an obvious charitable purpose, including professions of religion or belief. Surely any organisation that has met the exacting requirements of the 2006 Act should quite obviously be of good repute.

Mrs Grant: I hear what the hon. Gentleman says. However, a subjective decision would have to be made, which could make the Registrar General particularly vulnerable. That may not be fair in each individual situation.

We would need to consider very carefully, through dialogue with potentially affected organisations, whether they wished for the protections I mentioned. The inability to hold legally valid humanist marriages in England and Wales, including the option of holding marriages outdoors, is one of several issues in our marriage law that merit further consideration. It would not be right, for instance, that humanists should be able to solemnise their marriage in the open air when that option is not available to many others who may also wish to marry in that particular way. The Government believe that such issues must be examined in a careful and co-ordinated manner, rather than for individual aspects to be dealt with in isolation. Any changes need to be considered in relation to the totality of marriage law, and should seek as far as possible to address all provisions that need to be changed, not just one particular issue.

On fairness and having two ceremonies, humanists are not being treated differently from other organisations and religious bodies. For example, Muslims and Hindus, whose places of worship are not registered to conduct marriage, and some Catholic churches that are not registered for marriages, also have to have two separate ceremonies.

Two hon. Members raised issues in relation to Scotland. Scots marriage law is different from marriage law in England and Wales in significant ways. My hon. Friend the Member for Enfield, Southgate asked about the reasons for such differences. I can tell him that they are partly cultural and partly historical.

On the Jewish religion and the Quakers, they have special provisions made for them in marriage legislation. They are not required to register their buildings as a place of worship and they have considerable freedoms that the Government do not want to undermine.

Lastly, I want to put on the record that the British Humanist Association has been very supportive of the same-sex marriage proposals. I had a long conversation with the chief executive, Mr Andrew Copson, and I know that humanists are disappointed not to be able to conduct the ceremonies themselves. However, we will continue to listen, engage and seek views on introducing more widespread reforms in due course. We will, of course, consider amendments to marriage law when an appropriate legislative opportunity arises.

Stephen Williams: Is the Minister saying that the new clause as currently drafted is flawed in some way and that if something better constructed came along on Report the Government would back it? Or is she saying that the Government have no intention of backing it while the Bill progresses through Parliament?

Mrs Grant: No, I am saying that the Bill is not the right vehicle. As the Government have made clear, the Bill has one fundamental purpose: to open up the existing institution of marriage to same-sex couples. It changes marriage law only as far as is necessary to enable same-sex couples to marry. The Bill must not be thrown off its path by attempts to make wider changes to fundamental marriage law in England and Wales. I therefore ask hon. Members to withdraw the amendments.

Stephen Williams: I am disappointed by the Minister's response. Those of us who have been here for some time and who have sat on various Bill Committees are used to Ministers saying that amendments and new clauses are not correctly drafted because a Member has not thought of this or that, although the Government are sympathetic. They recommend that we come back with a better amendment on Report, or to expect the other place to sort it out for us. As an elected Member, I am tired of leaving things to the other place, because we elected representatives should get it right in the first place. In nearly three years, I have never voted against the coalition Government on anything. I am disappointed by what the Minister has said and I think we should test the opinion of the Committee.

9.45 am

Question put, That the clause be read a Second time.

The Committee divided: Ayes 7, Noes 7.

Division No. 10]

AYES

Bradshaw, rh Mr Ben	McDonagh, Siobhain
Bryant, Chris	McGovern, Alison
Doughty, Stephen	
Green, Kate	Williams, Stephen

NOES

Andrew, Stuart	Kirby, Simon
Ellison, Jane	Robertson, rh Hugh
Gilbert, Stephen	
Grant, Mrs Helen	Swayne, rh Mr Desmond

The Chair: That result gives me, as Chair, the casting vote, which is a matter that I take seriously. We did see this coming so, in accordance with precedent, I will leave the Bill unamended and give my vote to the Noes.

Question accordingly negatived.

New Clause 5

CONSCIENTIOUS OBJECTION

'(1) No person shall be under any duty, whether by contract or by statutory or other legal requirement, to conduct a marriage to which he has a conscientious objection.

(2) For the purposes of this section, a "conscientious objection" exists where the refusal to conduct a marriage is only that it concerns a same sex couple, and is based on the person's sincerely held religious or other beliefs.

(3) This section is without prejudice to the duty of a registration authority to ensure that there is a sufficient number of registrars and superintendent registrars for its area to carry out in that area the functions of registrars and superintendents.

(4) In any legal proceedings the burden of proof of conscientious objection shall rest on the person claiming to rely on it.'.—*(Mr Burrowes.)*

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 3, Noes 14.

Division No. 11]

AYES

Burrowes, Mr David	Shannon, Jim
Loughton, Tim	

NOES

Andrew, Stuart	Green, Kate
Bradshaw, rh Mr Ben	Kirby, Simon
Bryant, Chris	McDonagh, Siobhain
Doughty, Stephen	McGovern, Alison
Ellison, Jane	Robertson, rh Hugh
Gilbert, Stephen	Swayne, rh Mr Desmond
Grant, Mrs Helen	Williams, Stephen

Question accordingly negatived.

New Clause 15

SANCTIONS AGAINST CLERGY (PROHIBITION)

'No sanction may be imposed upon or discrimination exercised against any member of the clergy who refuses to conduct a same sex marriage who—

(a) is employed as a member of the armed forces;

(b) is employed as a chaplain in the National Health Service; or

(c) is employed by any other state institution or organisation.'.—*(Tim Loughton.)*

Brought up, and read the First time.

Tim Loughton: I beg to move, That the clause be read a Second time.

What a pleasure it is to have you in charge on this crisp spring morning, Mr Streeter. However, the light is beginning to fail and we are reaching the closing stages of this epic test match. Unless the Clerk produces any more surprises about delayed Divisions, the last man is in.

New clause 15 is actually very important. I am cautiously optimistic that we might get somewhere—*[Interruption.]* Before I have really started my speech, the hon. Member for Rhondda predictably has to get the knife in with yet another example of his complete intolerance of any other view that might be raised in Committee. The new clause is about reasonableness and, hopefully, engendering a bit of common sense in how the measure is interpreted in the interests of fairness and of not penalising people who, in good conscience, express certain views with which the hon. Member for Rhondda may wholly disagree, but which they absolutely have a right to express. The new clause is about protecting liberties and the freedom of the individual to express themselves in a reasonable manner.

One of the first concerns expressed by those objecting to the Bill was about its impact on free speech, especially the free speech of those working for public authorities who would, in the course of their job, have to speak about marriage or carry out a function in relation to marriage. They include teachers, prison chaplains, the police, fire service workers, hospital workers, other local authority workers and military chaplains. If they are not to be put in a situation in which, in the name of equality, they are required either to affirm same-sex marriage and therefore act in violation of their consciences or lose their livelihood, we must surely make it clear that there is space for them, just as there is space for same-sex couples.

These concerns, which are addressed by new clause 15, are very understandable, given the failure to fashion recent equalities legislation so as to ensure that the making of space for one protected characteristic does not jeopardise the best interest of another protected characteristic. Had previous equalities legislation been fashioned in this rather more enlightened and inclusive manner, the likes of Lillian Ladele and Gary McFarlane would both be in their jobs today. They would not have been compelled to sacrifice their employment to protect their religious identity. The Government have not been slow to respond to these concerns. They have been at pains to stress that teachers, chaplains and others will be free to express their objections to same-sex marriage and keep their jobs at the same time, and that those expressing concerns are overreacting.

It is important to consider some of the specific assurances that the Government have already provided. On page 3 of their factsheet on the Bill, they state:

"The Government is committed to freedom of speech and has always been absolutely clear that being able to follow your faith openly is a vital freedom that the Government will protect. Everyone is entitled to express their view about same-sex marriage at work or elsewhere."

"Hear, hear," say I, as do many other fair-minded people. This is very welcome, but how will this freedom be delivered for a chaplain employed by a public authority that is subject to the public sector equality duty and a legal imperative to be seen to do all it can to promote understanding of gay rights? That is not explained. My hon. Friend the Member for Battersea put the Secretary of State for Culture, Media and Sport on the spot on this issue. She said:

"I have one follow-up question on that and a quick question for the Secretary of State for Education. The provision for conscientious objection for people in public services and jobs is something many people wrote in about. Can you give us some idea about that?"

The Secretary of State replied:

"You are absolutely right to raise the issue of people with strong religious beliefs, whether it is providing services or in the public sector. They have a clear ability to demonstrate their faith at work. Some of the recent rulings from the European Court of Human Rights affirm the Prime Minister's strongly held belief that people should be able to wear a cross at work as long as there are no health and safety reasons why they would not do that. People should be able to profess their faith in an appropriate way in a work setting."—[*Official Report, Marriage (Same Sex Couples) Public Bill Committee,* 12 February 2013; c. 10, Q20.]

That was another welcome declaration of intent, but there is no delivery mechanism. Moving to the world as it is, there was only one favourable European Court of Human Rights ruling, and it had nothing to do with the clash between sexual orientation and religion and belief rights. The two cases that involved such a clash were both lost. Addressing these same rulings, which are so relevant to new clause 15, in its Marriage (Same Sex Couples) Bill myth-busters document, the Government set out the following so-called myth:

"The four recent European Court cases show that people are not free to follow their beliefs at work."

They countered with this reality:

"On the contrary, Ms Eweida won her right to wear a cross at work. These cases were not about same-sex marriage. However, we have always been absolutely clear that being able to follow your faith openly is a vital freedom that we will protect."

As I have just noted, Ms Eweida's case had nothing to do with any clash between sexual orientation and religion and belief rights. The more relevant response is surely that three out of four people lost their cases, and where there was a clash between sexual orientation rights and religion and belief rights—these cases are relevant to our discussions—namely in relation to Lillian Ladele and Gary McFarlane, both cases were lost. The effect of the court's application of our law was that Ladele and McFarlane had either to act in violation of their religious beliefs or to lose their livelihoods, which they did.

Indeed, the myth-busters document gives the distinct impression—one that moves me on to new clause 15—that the Government are trying to avoid the issue, because it does not address the two relevant cases at all, just the two cases regarding the wearing of crosses, which in this instance are completely irrelevant. Having stated that Ms Eweida won, the myth-busters document on marriage, where the presenting concern is the clash between sexual orientation rights and religious rights, with which two of the four cases were concerned, states:

"We believe people should be able to wear discrete religious symbols, provided it doesn't hinder or physically get in the way of their job. In the other cases the Court found that the needs of health and safety and the requirement not to discriminate against customers were relevant considerations, on the facts of those particular cases—it is all about striking a sensible balance, which our legislation does."

The Government seem to be talking about the irrelevant to cover the fact that, on the relevant presenting issue, the court cases provide no reassurances at all. That does not inspire confidence.

The Government's statement on the Adrian Smith case is also relevant to new clause 15. The myth that the Government seek to bust states:

"The Trafford Housing case with Adrian Smith shows that people can be sacked because of their religious beliefs."

The Government's countering "reality" states:

"Adrian Smith actually won his case in the High Court, a judgment which shows that expressing views about this type of issue in a measured and non-offensive manner does not permit an employer to discipline an employee. Any such action by an employer would be unlawful."

I find that attempt at busting myths and speaking truth to be disingenuous to the point of being misleading by failing to acknowledge two key points. First, Mr Smith actually lost his job and was not reinstated as a result of the judgment in his favour. As for the financial and emotional cost, the case has ruined him, and the courts awarded him less than £100 for his trouble. The judge, Mr Justice Briggs, was so outraged at not being able to award what Mr Smith deserved that he publicly expressed his dismay.

Secondly, there is no precedent for people such as chaplains, who are working for a public authority. Those people are specifically covered by new clause 15. As is made plain in the legal opinion of Aidan O'Neill QC, which we have discussed at various points in this Committee, the case was based on a common-law breach of contract claim, and Trafford Housing Trust is not a public authority subject to the public sector duty in section 149 of the Equality Act 2010. What is remarkable about the case, which demonstrates that the employment concerns of many people of faith are not based on unfounded fears, is that it should have been brought even before the law was changed, and that, despite the considerable distress and financial loss caused, Mr Smith was awarded only £100 in compensation.

There is no useful precedent here for the people for whom there is principally concern, namely those working for public authorities. Frankly, it is troubling that the Government are suggesting that the case proves that concerns about employment are misplaced. That does not make people who know better feel remotely reassured by any of the Government's protestations that those subscribing to traditional views of marriage have nothing to fear in the workplace. Hence the need for new clause 15.

It is of concern that our established Church, the Church of England, has felt it necessary to speak out in its briefing on religious freedoms:

"We have continuing anxieties that the Bill as drafted will not offer adequate protection of the religious freedom of Christians (including but not limited to teachers, chaplains or those otherwise involved in public service delivery) who hold the view that marriage can only be between a man and a woman. Whilst some fears about freedom of expression may have been exaggerated, we doubt the ability of the government to make the legislation watertight against challenge in the European courts or against a 'chilling effect' in public discourse. We retain serious doubts about whether the proffered legal protection for churches and faiths from discrimination claims would prove durable. Too much emphasis, we believe, is being placed on the personal assurances of Ministers."

Given in good faith, as I am sure they are, will those assurances stand up to legal challenge?

I think the Church of England's final observation is particularly telling, and the Church is right. We have had repeated personal assurances from Ministers passionately affirming their intent that people should be able to express their views about same-sex marriage and keep their job. I do not doubt the good intent of the Ministers who have expressed those views. However, they have not eloquently explained how that will be delivered in practice; hence the need for new clause 15, which would clearly set out the process under the Bill.

10 am

Let us not forget that Aidan O'Neill QC and John Bowers QC have second-guessed the Government successfully on several occasions. They made it clear that there is no delivery mechanism and that the intention is simply hot air. The views of Professor Julian Rivers, who gave evidence to the Committee, are particularly worth reading on the subject. He stated:

"The word 'compelled' in clauses 2(1) and 2(2) is narrow. It naturally refers to a duty to act coupled with a sanction for failure to do so. But individuals and organisations which have not opted might easily be subject to detriment outside the narrow confines of the provision of same-sex marriage. For example, a minister of religion may have a role as a chaplain in a public institution, and a religious organisation might hire premises from a public body, or might offer public services in partnership with a public body. Such public (or, for that matter) private bodies might take decisions detrimental to the interest of the religious individual or organisation on account of their views of same-sex marriage. For example, if a prison chaplaincy were terminated on grounds of the individual minister's opposition to same-sex marriage, it would be hard to describe him or her as being 'compelled'. This form of detriment is particularly likely in the context of a public employer or landlord, on account of the public sector equality duty, which could be read in such a way as to require public bodies to promote the new view of marriage…It should also be noted that domestic courts have been unwilling to read conscientious objection clauses more broadly than the language naturally suspects…European convention law relating to conscientious objection is sparse, but has recently been expanded by the recognition of a clear right of exemption of pacifist ministers of religion from military service…It is possible that failure to provide full protection for dissenting ministers of religion and religious organisations may not be Convention-compliant."

Before the hon. Member for Rhondda jumps up and refers to me as the son of an archdeacon—the latest inaccuracy—my father was a plain, humble parish rector. At one stage, he was chaplain to the local mayor for that mayor's year in office, so he was performing a function beyond his duty as the parish rector. He might well have also had a role as a chaplain to the local hospital or prison. As it was, he had a regular radio show on Radio Brighton, where he was the local phone-in vicar as well. He performed many functions in his younger years, multi-tasking as vicars are so apt to do.

Having considered the Government's attempted reassurances that are pertinent to new clause 15, the employment experience of those with a conscientious objection to same-sex unions, and the worries of experts, several things are clear. First, there was a huge worry on the part of many of those with a conscientious objection to same-sex marriage who were working for public authorities. Secondly, I am mindful of the two people whose loss of employment the European Court of Human Rights has recently endorsed, and the fact that two people have already lost their jobs because of their views on same-sex marriage, even before it has become law; those worries are certainly not without foundation. People working for public authorities would clearly be foolish not to hold such concerns.

Thirdly, the Government do not intend that anyone should lose their job on account of expressing their sincerely held belief that same-sex marriage is wrong. One of their statements of intent is particularly relevant to new clause 15; the Minister said in a previous sitting:

"Like other people, registrars are of course entitled to hold beliefs about marriage without restriction. They are free to express their views at work, as long as that is not done in an offensive manner and does not affect their ability to do their job.—[*Official Report, Marriage (Same Sex Couples) Public Bill Committee,* 26 February 2013; c. 236.]

He provided no reassurance in that context, as telling a registrar with a conscientious objection to same-sex marriage that he or she can express that at work, while simultaneously compelling them either to act in violation of their faith and officiate at same-sex marriages or to lose their livelihood does not get us anywhere. That is relevant to my new clause because of the case of Rev. Brian Ross, whose story hit the headlines just two weeks ago. He was a police chaplain, but last year, he expressed the view that marriage was an exclusive relationship between a man and a woman, and that he did not agree with plans to define it. He was entirely within the law to hold and express those views in the way that he did, but he was subsequently called in by his superiors, told that he was not acting in accordance with their equality commitments, and relieved of his responsibilities.

Three aspects of the case are particularly striking. First, it is another example of someone losing his or her job because of his or her views about marriage before the law has even been changed, when they merely had the temerity to affirm what is our current law. On this occasion, the employer was a public authority subject to the public sector equality duty. Secondly, Rev. Brian Ross only expressed his personal sincerely held view. Whether we agree with it or not, it was and remains his view. He did not refuse to provide any kind of service, although presumably he would not have agreed to go through with a marriage of a same-sex couple if he had been asked, but he had not been. Thirdly, he did not even express his view at work or in the workplace. On the basis of what the Minister said about registrars being able to express their opposition to same-sex marriage at work, I assume that he strongly takes the view that Rev. Brian Ross should not have been dismissed. I would be interested to hear him answer that specific point.

The simple fact remains that Rev. Brian Ross has been dismissed, and he would still be in work today were it not for the stated intention of introducing same-sex marriage. Of course, it may be that Rev. Brian Ross will take his former employers to court and find some protection in existing legislation. He may not; I do not know. I accept that he lives in Scotland, and will be subject to a different marriage Bill. However, he is not subject to a different equality Act; the Equality Act 2010 is UK-wide. If the Government really are concerned about the place of people in our society who, often for deeply held religious reasons, oppose same-sex marriage, and if they want to create a country where there is space for such people, just as there is space for people who believe in same-sex marriage, what possible reason could there be for doing anything other than accepting the new clause? If the Minister accepts it, the point will be made plainly for all to see in the Bill, and not simply in *Hansard*.

Chris Bryant: I hope that the hon. Gentleman will enlighten the Committee on whether police chaplains are paid, and on whether they are considered in law to be employed.

Tim Loughton: I do not know the answer to that, but I would hazard a guess that they do receive some form of payment, or at least expenses to defray the cost of

carrying out the job. The Minister is better placed than me to know that, and I would be interested to hear his answer. I do not believe, however, that even in the case of honorary positions the law should be interpreted as it was in this case.

Chris Bryant: If the hon. Gentleman does not know whether the person concerned was employed in law, his new clause is completely nugatory, because it would not defend the person he seeks to defend.

Tim Loughton: I am told that Rev. Brian Ross was employed. The Minister can clarify the matter.

Hugh Robertson: I am not sure that I can absolutely clarify the matter, but there are two points worth making. My briefing clearly states that Rev. Brian Ross served as a volunteer chaplain, so I suspect that he is not covered. We are on slightly dangerous ground when we debate the intricacies of this case, because we do not know the full details. Remember that he stepped down voluntarily; he was not sacked by the force. It may be that there was more to it than this one incident. For context, it is worth pointing out that the reverend—great man though I am sure he is—ran a website under the title "CrazyRev", so there may be more to the case.

Tim Loughton: There were an awful lot of hypotheticals there.

Hugh Robertson: On every side.

Tim Loughton: Absolutely. There was a submission to the Committee that gave further details about that. On the last point, I would gently say that anybody within the confines of the Committee who has run their own website who, on that, may have published some photographs with titles that they may later regret—*[Interruption.]*

The Chair: Order. The hon. Gentleman has been good up to now. It would helpful for all of us to get back to clause 15 and make some progress.

Tim Loughton: Of course, Mr Streeter. More will come out from this case in the fullness of time, but, for the deliberations of the Committee, it was timely that we faced not a hypothetical "what if", which a lot of the argument on amendments has been about, but a real case of somebody—volunteer or otherwise—who stood down or was compelled to be relieved of his responsibilities. Whatever the intricacies of that specific case, somebody is no longer a chaplain on account of anticipation of the legislation. Many of us believe that that is just a taster of things to come, should the Bill end up being enacted as law, particularly if it lacks the sort of protections that new clause 15 is helpfully intended to introduce. That is what we are discussing now and what I have nearly finished proposing to the Committee—and I have lost my place.

The Chair: You are on the last page.

Tim Loughton: I am very close to the last page. Thank you for putting your comment on the record, Mr Streeter, that you anticipated that I was on my last page. Not quite, but we are getting there. The light is fading fast—for certain members of the Committee it is fading faster than for others.

If the same-sex couples who wish to marry deserve such a provision, the people who otherwise stand to lose from it, those whose loss arises directly from their location in another equally protected characteristic, certainly deserve equal and opposite protections in the Bill. That is what new clause 15 is all about. Failure to make such provisions when the opportunity is so clearly present cannot but give the impression that the interests of one protected set of characteristics are more important than another.

In considering new clause 15, and the need to avoid suggesting that one protected characteristic is more important than another, we must ask: how could fashioning legislation that presents chaplains, and indeed other employers of public authorities who object to same-sex marriage, with the choice of either acting in violation of their faith conscience, which is itself a protected characteristic, or losing their job, be construed as a step forward for equalities? We are in desperate need of some historical perspective that I believe will demonstrate how we have lost our way and why new clause 15 is so important to put us back on route.

In the early 19th century, crudely majoritarian models of democracy were in vogue. In time, however, political thinkers such as de Tocqueville and Mill highlighted the dangers of the tyranny of the majority. Crudely majoritarian models of democracy were then exchanged for more sophisticated, liberal democratic approaches. Those involved fashioning laws out of primary regard for the wishes of the majority, but, at the same time, they asked whether a law had any perverse or unintended consequences for minorities, and that is the base of the safeguards that we are trying to inject into the Bill. Where laws did have that effect, the liberal democratic approach involved the provision of different treatment under the law for those minorities so that they would not be negatively affected.

We have now moved to a place where rather than simply framing laws out of regard for the majority and seeking to protect minorities from any unfortunate side effects, we are actually defining equality legislation from the perspective of minorities and governing the interactions of the majority with them. In making that shift, however, we are in danger of committing the most basic blunder of thinking that just because the legislation in question is equalities legislation, there is no need to ask whether it has perverse or unintended consequences on other minorities from which they should be protected by different treatment under the law.

The truth is that in just the same way that laws designed for the majority can have perverse or unintended consequences for minorities, from which they should be protected by different treatment under the law, so too can a law designed for one minority have a perverse and unintended consequence on another minority, from which it should similarly be protected by different treatment under the law. To fail to subject the development of equalities legislation to that simple liberal principle advanced by new clause 15 is to risk forging crude, unsophisticated majoritarian equalities legislation, a contradiction in terms if ever there was one.

10.15 am

In conclusion, although three small religious groups want to conduct same-sex marriages, religious groups seen in the round are in the main deeply opposed to the legislation. Any attempt on the part of the Government

to champion religious liberty in this country must have regard to the fact that the Government cannot discharge their responsibilities to religious liberty by pretending that the identity of the protected characteristic of religion in England and Wales is anything other than overwhelmingly opposed. If they are therefore to define legislation for one protected characteristic, sexual orientation, which has an extremely damaging implication for another protected characteristic, religious belief, they must protect it through different treatment under the law. That would be the enlightened and progressive impact of new clause 15. Only when we forge legislation in such a way can we have any hope of creating an inclusive and tolerant country where there is space for both the champions of same-sex marriage and those who believe it to be wholly wrong.

If we do not introduce provisions such as new clause 15, our equalities legislation, rather than helping to foster an environment of mutual understanding and space, will only create sticks that can be used to beat other equalities strands. New clause 15 would provide for necessary different treatment under the law for chaplains. It would make it absolutely clear in the Bill that chaplains working for public authorities should not be sacked if they refuse to officiate at same-sex marriages and believe and teach that marriage, properly understood, can only be between a man and a woman.

I hope that is why the Government, in the spirit of understanding and of wanting to ensure that the safeguards in the Bill are effective, have spoken so much about the quadruple lock. If they are absolutely serious about it, as I hope and believe they are, I am optimistic that they will look sympathetically on the new clause and, if they do not take the wording as it stands, at least offer to take it away and see whether some more sophisticated safeguards can be added to the Bill at a later stage, so that we can at last believe that the Government are serious about protecting certain people who, for whatever good, sincere reasons, do not hold with changing the legislation.

Chris Bryant: I hope that that peroration was the last of the hon. Gentleman's perorations in this Committee. We look forward to hearing it all again on Report. He referred to chaplaincy. It is true that a lot of clergy perform multiple roles; when I was a curate, I was also a chaplain in the local hospital. I particularly remember taking round communion every Wednesday morning, but on Christmas morning, when very few people were left in the hospital—anybody who could walk was sent home—I would have to do the 7 o'clock communion service in the chapel, and it would be broadcast throughout the hospital. It was slightly difficult, because there was not a single person who was physically able to be in the chapel with me, so I would have to say the responses to myself: "The Lord be with you." "And also with you." Theologically, that made it an invalid mass, but none the less we had to go through it.

Tim Loughton: Further to the point that the hon. Gentleman made to me earlier, did he perform those duties during his normal working day while he was employed as a priest?

Chris Bryant: To be honest, I am not sure whether there was such a thing as a normal working day. I just referred to 7 o'clock on Christmas morning. The hours that clergy work would probably put most MPs to shame, and MPs work long hours as it is. It was certainly a part of the duties that I was happy to perform, but to be honest, just as for an MP, there is no such thing as a job description. There is nothing that one is personally required to do; there are expectations, and there are instances in which one wants to be able to offer one's time and energy.

The chaplain at the hospital had to be accredited, because the hospital could not just have anybody walking in off the street and saying that they were a cleric and they wanted to take communion round to everyone, or pray with everybody. The post was completely unpaid and voluntary, as is the vast majority of hospital chaplaincy in the country. Many hospitals also have a full-time chaplain, especially if they are large enough, but most district general hospitals do not have a chaplain who is full-time or employed. They only have volunteers who come in on a casual basis.

I used to do the special care baby unit, and I would go round and talk to mums who had just had children and were uncertain whether their children would live. The difficulty in such situations was that I had no idea how welcome I was—I was just walking around in a dog collar—and that is quite a sensitive thing to judge. If a member of the public is innocently lying in a hospital bed, or if they have been in a car crash or have been arrested and they are interacting with the police, a hospital or an ambulance, the last thing they want is an insensitive, intrusive cleric forcing their attentions on them.

The hon. Gentleman mentioned police chaplains, who, as I understand it, are always voluntary and unpaid. Some police forces decide not to have chaplains because their role is somewhat uncertain. When should a police chaplain be summoned? Should they be taken along to a car crash? Imagine a situation in which a homosexual couple has been involved in a car crash, and one of the partners has died. Suddenly, a hospital chaplain turns up who believes that homosexuality is immoral and that all homosexuals are going to hell in a handcart. The surviving partner would not welcome the religious or any other attentions of such a person. They would expect anybody who was brought into that situation by the public services to be neutral, at least, in that regard.

Mr Burrowes: I look forward to the hon. Gentleman speaking to new clause 15—as ever, he is going to extremes—which deals with clergy who refuse to conduct a same-sex marriage, and who express that view. Does the hon. Gentleman take a different view depending on whether such people are volunteers or paid?

Chris Bryant: No. The main difference for me is whether a service is being provided out of taxpayer funding and on behalf of the whole of society. In such cases, people should be required to accept that they cannot refuse to talk to someone who is in a same-sex marriage simply because they refuse to believe in such a marriage.

Tim Loughton: We have heard hyperbole and some extraordinary hypothetical situations, but does the hon. Gentleman seriously think that anybody volunteering—

rather than even being paid—as a hospital chaplain would prowl the wards, come across somebody who has been involved in a road accident in which their same-sex partner was killed and try to give them a moral lecture about their former relationship with their dead partner? Is that a serious contribution to the deliberations of the Committee?

Chris Bryant: If there were no system of accreditation, it is perfectly possible that people would want to volunteer to be a chaplain and, for instance—

Tim Loughton: Pathetic.

Chris Bryant: The hon. Gentleman is chuntering again, and I cannot hear him. If he is going to attack my argument, the least he can do is listen to the reply. There are certainly people who have religious views that they want to impose on other people, who would indeed want to offer their chaplaincy to other people. My point is that where a hospital accredits someone, and allows them to walk around wards in a dog collar and be officially called a chaplain of the hospital, it is incumbent on the organisation to ensure that that person will be sensitive to the needs of the people they are dealing with.

New clause 15 might indeed be accused of hyperbole, but, more importantly, the issue that the hon. Gentleman mentions is entirely met by two facts. First, that each of the categories that he has referred to has not applied to somebody who has been employed in proper terms. Secondly, the provisions he wants to see are already met in clause 2, which makes it absolutely clear that

> "A person may not be compelled…to conduct a relevant marriage…to be present at, carry out, or otherwise participate in, a relevant marriage, or…to consent to a relevant marriage being conducted."

They are not going to be tainted if they do not want to be tainted. That is clear in the Bill. The hon. Gentleman has found a lawyer who has come up with the argument that the word "compelled" is not sufficient—*[Interruption.]* Is the hon. Member for Enfield, Southgate suggesting that he was the lawyer?

Mr Burrowes *indicated dissent.*

Chris Bryant: The point is that to be so abstruse in one's argument about the meaning of the word "compelled" is unhelpful to the debate. Most importantly, the word "compelled" merely reflects all previous legislation governing when a cleric has to or does not have to perform the marriage of a divorcee.

The proposed new clause seems completely unnecessary. It does not meet the requirement that the hon. Member for East Worthing and Shoreham set up, namely to protect one police chaplain, whom he believes to be employed. He is not actually employed and would, therefore, not be caught by his new clause. I believe it is merely a means to make the same argument against the Bill that he has made on several other occasions.

Mr Burrowes: Unsurprisingly, I rise to speak in favour of new clause 15. I appreciate what I heard from the hon. Member for Rhondda, as many of his arguments support the importance of the proposed new clause. He put forward extreme examples that would send a chill through the freedom of expression of those who are reasonably expressing a view on the issue. Clergy who refuse to conduct a same-sex marriage would no doubt express that view in a blog, in the pulpit and out and about on their rounds. It is on their behalf that the proposed new clause has been tabled, to ensure that, beyond these hallowed walls, there are not people who say that someone has nasty views about homosexuality that that individual does not in fact have, and try to argue that we should apply some equality duty and prevent their freedom to speak. The hon. Gentleman's arguments follow through to the same conclusion, leading to a limiting of freedom of speech.

I would rather listen to the Secretary of State and the Minister, who said that it is on the tin, it is the name, it is the Marriage Bill. We have got the Ronseal deal—the 100% guarantee from the Secretary of State that there will not be an encroachment on religious liberty. New clause 15 seeks to ensure that that guarantee is what it says, that there will not be an encroachment. It is about encroachment on religious liberty. The Minister has insisted that there should be protection for those who do not agree with the new redefined view of marriage, and that their liberties will be ensured.

New clause 15 is not just about clause 2 of the Bill and the issue of opting in or out and what happens within the hallowed walls of religious premises. It also about what happens in the workplace, which can involve chaplains. There are already problems even before the Bill is enacted. We have heard the examples of Adrian Smith, Gary McFarlane, Lillian Ladele and now we can add to that list Rev Brian Ross. He is added not just because he has been plucked out of a *Daily Mail* or *Argus* headline. Before that he made a submission to this Committee. I am sure all Members of the Committee have read all the submissions and treated them as faithfully as evidence as that of the oral witnesses. That is all he did. He did not seek to curry any favour or make great play of it. However, the media got hold of the story on the back of that submission. He wrote to all Members asking them to take his plight seriously. I did not know he had a blog called "CrazyRev". I am not sure if the Minister has a blog called "Robertson's Rant", but even if it is called that, he may well make some serious points in it, whatever he calls it. We should not just dismiss it out of hand. I certainly do not believe that the Minister wants to dismiss completely an important submission to the Committee. He will have his views on any blog, but he should take that submission to the Committee seriously.

10.30 am

Hugh Robertson: The more serious point is the one before that. This particular gentleman was—as has already been said—a volunteer chaplain. We have his side of the story, but not the full police explanation. I would caution my hon. Friend in the nicest possible way about drawing too many general conclusions from a case where we do not have the full details from both sides in front of the Committee.

Mr Burrowes: I am grateful to the Minister for his caution and warnings. This new clause 15 deals with employment and I will stick to the new clause. We hear comments that there is a rule for one and a rule for

[Mr Burrowes]

another in terms of employment and volunteers. Maybe we will get to the point where volunteers with certain views are not welcome in our fine hospitals. These hospitals, prisons and other places were founded because of Christians. You will see inscriptions saying that these good Christian folk actually set them up. It would be interesting to see what our forefathers and mothers would think, after their voluntary effort to raise money and support the building of those hospitals and other places, when we say that we will look at whether people are employed to see whether their liberty is protected.

Stephen Gilbert (St Austell and Newquay) (LD): Notwithstanding what my hon. Friend has said about the history of some of our public services, does he accept that they are today maintained by taxation on all people in our country, straight, gay or bisexual, and all ethnicities too?

Mr Burrowes: I accept that. It is important that we protect liberty and all taxpayers would want us to do that. Part of that is to protect religious belief and a subset of that is a belief about marriage. Indeed, through the passage of this Bill the Minister has said there is that protection; so it is about seeing how far it goes and whether it goes beyond the walls of church buildings and religious premises.

In support of new clause 15 is the submission of the Rev. Brian Ross to this Committee. The Minister adds cautions and warnings, but it says:

> "Just before the summer, a particular senior officer in one of the divisions read my personal blog and objected to my expressed support for traditional marriage, as it was claimed it went against the force's equality and diversity policies. I was summoned to a meeting, the end result of which has been that my services have been dispensed with".

At the end of that letter to the Committee, he draws attention to the fact that, as has been said, that has happened before any legislation has even been placed on the statute book. We have a comment from Strathclyde Police, which responded by confirming that Mr Ross could not express his views on marriage in public. A spokesman said:

> "Whilst the force wholly respects the Rev Ross's and, indeed any employees'"—

that is interesting—

> "any employees' personally held political and religious beliefs, such views cannot be expressed publicly if representing the force, as it is by law an apolitical organisation with firmly embedded policies which embrace diversity and equality".

My hon. Friend the Member for St Austell and Newquay and others may say that when something is taxpayer-funded, it has to fully embrace equality and diversity. Strathclyde police and any other police force may say that Mr Ross and any other employee can have personally held views but not express them in any way in a public forum when representing the force or another public service, and that because that service acts on behalf of taxpayers, it should not express any support for traditional marriage. Is that the view we have?

Hugh Robertson: I would really like to move on from this, because we do not have all the details here. For a sense of balance, it is worth reading out the other half of the quotation from Strathclyde police. With all due respect, the hon. Gentleman merely read out the most antagonistic part. A spokesman for Strathclyde police said last night that Mr Ross was not removed. It said:

> "A number of parameters were set which would allow him to remain in position. These included adhering to an appropriate dress code and methods of conducting his chaplaincy and finally, compliance with the force's equality and diversity policies."

It is very clear from the position of Strathclyde police that there was more to this than simply one incident. But we are in dangerous ground if we try draw too many general conclusions from one particular case.

Mr Burrowes *rose—*

The Chair: Order. It might help for me to say that, rather than trying the case of Rev. Brian Ross, let us go back to new clause 15.

Mr Burrowes: I am grateful and I will move on. The issue is not just about Rev. Brian Ross. Indeed, it is about those who are, indeed, working for the Army. We have not dealt with the armed services chaplains. It is not just the police. Some chaplains are employed in large NHS hospitals. The Government are trying to say that they do not want to encroach on religious liberty. We cannot be satisfied simply with saying that we have given a whole lot of locks for the marriage ceremony without properly recognising that these members of the clergy and others go beyond their religious premises. They go into places of employment—public sector places—and they will not be able to keep their views in Church. Their views go with them and will be expressed by them.

It is impossible—unless this is what we want to do—to seek to put religion in its place and say, "Yes you can have your religious liberty as long as it does not encroach on mine. You can have your liberty as long as it just takes place in the walls of religious premises." That is not good enough and it is not the way it works. Going back to the foundation of these public services, it is not that way that this country has historically reaped the benefit of Christians and others expressing their faith in a very practical, meaningful and long-lasting way. Indeed, that is why we have the tradition of Christian, and, now, multi-faith chaplains, who perform a very important duty and service. We need to recognise that this is important as a matter of principle.

I commend to the Committee another submission, MB 97, from the solicitor-advocate Sam Webster. This has also come up with new examples, which will probably come up during the passage of the Bill, that go beyond these particular chaplains to teachers who have got into difficulties for refusing to advance a positive view of same-sex marriage. Although they concern teachers rather than chaplains, they illustrate the heart of the problem that new clause 15 addresses. It is quite clear, for example, that those teachers were not refusing to acknowledge the existence of same-sex marriage and they were not trying to be unpleasant or make comments about homosexual people. The Secretary of State, Lord Pannick and others have assured us that people in this territory supposedly have nothing to worry about. However, we are already hearing examples that show that they are wrong. One primary teacher was told that calmly expressing her personal view was against the law and she was

demoted. She has not had the appetite to pursue a court claim. A secondary school teacher was asked to teach about marriage and homosexuality and she also got into problems. I will not go any further with that and I ask the Committee to read MB 97, which sets out the circumstances.

Duties are imposed on public authorities on behalf of the taxpayers, as has already been said. Under section 149(1)(b) of the Equality Act 2010, there is an obligation to

"advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it".

Sexual orientation is a protected characteristic and the Minister has made that very clear. There are chaplains who are employed—and there are also those who are volunteers, whom we can include in the debate as well—who will not endorse the new definition of marriage. The Government need to be crystal clear that those people are fully protected and that they will be on their side if they have to step down, even voluntarily without any formal dismissal. However, some may be dismissed down the line as a result of the application of an equality and diversity policy.

We need to ensure that we do not say to volunteers with a traditional view on marriage that they are not welcome and that they have no place in a hospital or that there is no room for them in a prison, in the Army or in another public institution or organisation. Whether they are volunteers or employed, the example that I have given is not what is so relevant; the issue is the principle at its heart. We need to recognise that they need protection. Aidan O'Neill QC advised that, under section 149, NHS managers would have proper grounds for justifying their actions, even if the chaplain was preaching inside his own church outside work time, and that there was a real problem there. The Government need to ensure there is the proper protection for clergy working in state institutions. New clause 15 is an excellent way for the Government, on this final day of the Committee, where we have already seen some concession, to show that they want to ensure that this 100% guarantee against encroachment on religious liberty really means what they say it does.

Jim Shannon (Strangford) (DUP): I thank my hon. Friends the Member for Enfield, Southgate and the Member for East Worthing and Shoreham, and it is a pleasure to follow both of them in this room today. I declare an interest, particularly in the British Army and the role of the chaplains. Some members of the Committee may be aware that I have served in the Army over 14 and a half years. Therefore, I have had the opportunity to meet those who have the role of chaplain, and to see the important role that they play, especially in the conflict zone where the soldiers' attention is focused on what could happen to them just around the corner.

In the 1970s, a long time ago, I served in the Ulster Defence Regiment for three years, and also served in the Royal Artillery of the Territorial Army for 11 and a half years. I never did anything very exciting in the Territorial Army; I drove a 4-tonnne lorry, but somebody had to take supplies to the front, and that was the way it was done. The importance of that was that you had a chance to interact with soldiers in uniform on the front line and behind the supply line as well. I have also had the opportunity to be a member of the armed forces parliamentary scheme, which gives us all who are interested and to members—perhaps hon. Members here have had the opportunity to serve in that; I would recommend it strongly—an opportunity to gain first-hand experience of the armed forces.

During this long period of time, I met a large number of Army chaplains, and formed good friendships with them. I have met some of the chaplains in Afghanistan, on two occasions, and I have met them at home as well. Whenever you see the role that they play, a very important role for the soldier—it is good to know that they are there. I have been struck by how crucial their role and presence is for the morale and welfare of the armed troops. That is why on new clause 15, I am pleased to speak on the armed forces chaplains and their importance. I hope that in his response at the end, the Minister will be able to give us some assurance and perhaps a review of that because I feel it is a critically important issue.

Chaplains whom I have met have all had clear fundamental views that clearly suggest—from those that I have spoken to—that the definition of marriage is one man and one woman. That is what they say, and this will affect them in their role in the Army, Royal Air Force or the Royal Navy. For centuries, Army chaplains have ministered to soldiers, got alongside them in the trenches, on the front line, in the hospitals or wherever they may be, in times of war and in times of peace. They have been committed to serve whether the British soldier was to be found. Wherever there is a British soldier, you will find a chaplain not too far away, who will be there to give support, whatever the personal cost may be to them. That is still the case today.

Nothing I can say focuses the attention of the ordinary soldier as much as the thought that tomorrow they could be injured, or perhaps killed, as a result of their role. The chaplains have provided—and continue to provide—spiritual leadership, moral guidance and pastoral support to all soldiers irrespective of the soldier's religion or beliefs. In many cases, they also minister to the families of military personnel, as well civilians working for the military. The role of the chaplain is important for the soldier on the front line, but also for his family back home. When I was in Afghanistan and had the chance to be alongside soldiers, I saw that the chaplains' role was not only with the soldiers there, but also with the families back home. Even though they were thousands of miles away, they were able to give the support and encouragement that was needed. During the great war and the second world war, various army chaplains became synonymous with the bringing of comfort, care and compassion to those caught up in the bloodiness of war. I say all that because, under the current proposals, there is the serious danger that many chaplains will be punished and perhaps dismissed from their post due to their opposition to same-sex marriage.

10.45 am

Stephen Gilbert: Does the hon. Gentleman accept that we have had straight members of the armed forces serving alongside lesbian and gay members for some time now? It is exactly because they may all need the guidance of a chaplain that it is important that we maintain an equality duty. Do we not have a duty to those gay members of our armed forces, too?

Jim Shannon: I wish to put forward the views of the chaplaincy, which has been requested of me. The chaplain plays a special role and even more so in the event of an injury or death on the front line, which causes trauma, where help may need to be administered to everyone. We are here to discuss the issue of the redefinition of marriage, so we have to consider such matters and how chaplains will be affected. Whether hon. Members accept that point of view is irrespective of the fact that it must expressed .

As my hon. Friend the Member for East Worthing and Shoreham says, people should be able to articulate their views on the subject of same-sex unions without living in fear of punishment or being sacked. That is a real concern for chaplains in the services, and it is why we seek assurances on, and perhaps the reconsideration of, this issue from the Minister. Clergy who simply hold to the long-standing definition of marriage, which is the one that accords with their religious beliefs and convictions, should not face fear of punishment or being dismissed from their job.

In the summary of his legal opinion on the implications for freedom of conscience and religious liberty arising from the redefinition of marriage in England and Wales, Aidan O'Neill QC asserts that NHS and Army chaplains who argue for traditional marriage in sermons in church on Sunday could find themselves in trouble for expressing the same views in their workplace on Monday. That is a difficult situation, and nothing in the Bill prevents it. Mr O'Neill also outlines the example of a Church of England clergyman who is both the vicar of a parish and the chaplain at an NHS hospital. The clergyman conducts a wedding in his church, during which he preaches a sermon and speaks about how the New Testament teaching about Christ and the Church is mirrored in the relationship between a man and a woman in marriage. In passing, the clergyman states that that is why marriage can be recognised only as the union of a man and a woman. The law of marriage has recently been amended in England and Wales to allow those of the same sex to marry one another, although the traditional definition of marriage still operates within the Church of England and Church in Wales. The NHS hospital learns about the chaplain's publicly stated view and the hospital terminates his services as a chaplain, stating that it is against the hospital's diversity policy and that the public sector equality duty requires that the hospital management tackle prejudice and promote understanding of homosexual rights.

Mr O'Neill goes on to argue that the hospital would have justifiable reasons to dismiss the chaplain. He says that while it may be claimed that a dismissal in the circumstances outlined in the aforementioned scenario violated the individual's right to freedom of thought, conscience and religion under article 9 and/or freedom of expression under article 10 of the European convention on human rights, it would be open to any tribunal to conclude that the decision to dismiss was within the band of reasonable responses for an employer. Will the Minister give the Government's position on that issue?

Furthermore, Mr O'Neill says that the dismissal could be seen as proportionate and not procedurally unfair, because it was done in accordance with the law to achieve a legitimate aim in a manner which is necessary in a democratic society. He concludes that the employer's chances of successfully defending any action for unfair dismissal or breach of convention rights would only be heightened if there were a change in the law allowing for marriage between two people of the same sex.

New clause 15, as articulated by my hon. Friend the Member for East Worthing and Shoreham and other hon. Members, tries to address those major concerns. All the concerns that we have expressed have been raised sincerely, honestly and truthfully on behalf of the people we represent, to articulate their viewpoint to the Committee.

This is an issue is of crucial importance. It provides protection for the countless numbers of Army chaplains, NHS chaplains, and other clergy employed by state organisations or institutions, who do not feel able to endorse the definition of marriage that the Government propose. The Minister needs to give further consideration to these matters. As my hon. Friend indicated, the Government should consider in particular the position of chaplains in the armed forces, and how the matter would affect them.

In conclusion, as parliamentarians, we have a duty to protect fundamental religious liberties in Committee and in Parliament. Under the current terms of the Bill, such liberties are in danger. People's livelihoods are also in danger. This is a deeply serious matter. I urge the Government to support new clause 15, and to give the issue the review and the consideration that it deserves.

Stephen Gilbert: I had not intended to speak, but I want to put a few thoughts on the record. To my hon. Friends the Member for East Worthing and Shoreham and the Member for Enfield, Southgate, who have tabled the new clause, I say that we should not forget that gay and lesbian people pay for our public services. Gay and lesbian people use our public services, and gay and lesbian people work in our public services. Very brave gay and lesbian people serve in our armed forces, and our very dedicated gay and lesbian doctors and nurses work in our NHS hospitals. My hon. Friends seem to be saying that for some people in those organisations who have relationships with their colleagues and with those to whom they provide a public service, it should be okay to be able to set out the view that certain lifestyles are wrong.

I put it to my hon. Friends and the hon. Member for Strangford that the Bill already provides the correct balance. It allows those people who want to move forward into a gay marriage to do so, and those religious organisations that choose to offer gay marriage will be able to deliver that. Nobody is compelled to have a gay marriage, and no religious organisation is forced to carry out a gay marriage.

We have been round this debate about how public servants in our schools can present their own particular viewpoint. The law is clear that there are protections that allow them to do so, but at the same time make sure that people are aware of the full range of options that are open to them. We must not lose sight of the fact that we are here as a Parliament to provide public services for everybody, and that includes those people in our community who are homosexual.

Hugh Robertson: Probably to everybody's relief, this may be the last time I have to speak, with a fair wind and good fortune.

Chris Bryant: Until Report.

Hugh Robertson: Yes—I meant in Committee. On behalf of the whole Committee, I thank you, Mr Streeter, and Mr Hood for chairing our deliberations, and I thank the Clerks who have helped us through this. On an entirely parochial basis, I place on the record my thanks to my Bill team, who have done an enormous amount of work to bring this legislation before us today.

I am entirely in sympathy with the view that a minister of religion is entitled to act in accordance with his or her beliefs regarding same-sex marriage, and to do so without being disadvantaged by his or her employer. As we have discussed, clause 2 plainly states that someone "may not be compelled" to conduct a marriage of a same-sex couple. It would clearly be a compulsion to threaten someone with disciplinary action or to take other action against them if they refused to do so. I am absolutely happy to place that on the record.

Furthermore, as I have made clear in earlier debates, the Equality Act 2010 makes it unlawful for an employer to discriminate against somebody because of their religion or belief. If a chaplain was punished or treated less favourably than another employee because of his or her particular belief about the nature of marriage, that would be unlawful discrimination because of religion or belief under the Equality Act, and he or she would be able to bring proceedings against his or her employer. Again, I am happy to place that on the record. There is a particular problem with the new clause as drafted, as it uses the undefined "discrimination", which is done in such a way as to divorce it from the carefully structured provisions of the Equality Act, so there is a danger of simply creating confusion.

It is Tuesday morning and we are getting towards the close, however, so I am keen to end the Committee on a happy note. I thank the hon. Member for Strangford for his remarks about Army chaplains and for his service in the Ulster Defence Regiment. To reassure hon. Members, we continue to give careful thought to the position of ministers of religion employed by secular organisations. We are absolutely clear, as we have said many times, that a minister must not be forced to conduct a same-sex marriage. It must be clear that refusing to marry same-sex couples is not unlawful sexual orientation discrimination under the Equality Act, but we are looking carefully at whether protections can be strengthened for chaplains who are employed by other than religious organisations and who do not wish to marry same-sex couples. In order to be helpful, therefore, I am happy to give the Committee a commitment that we will take the matter away and look at it carefully. If we are convinced of the case for strengthening that position and for extra protections to give people more confidence, I will do so on Report.

I reiterate my thanks to you, Mr Streeter, and to Mr Hood, to the Clerks and to my Bill team. With that, I ask my hon. Friend the Member for East Worthing and Shoreham to withdraw the new clause.

Tim Loughton: As this appears to be the last issue that we will debate, Mr Streeter, I echo the Minister's thanks to you and to Mr Hood for your completely discreet and objective chairing of the Committee, notwithstanding the odd comment from a sedentary position, and to the Clerks, who have furnished us so well with an awful lot of material that has come in from members of the public and outside bodies, enabling us to complete our deliberations after full and considered scrutiny of the measures within the time allotted.

We have had a lively debate. Clearly, there are strong differences of view on the principle of the Bill, with strong views on both sides. The purpose of the Committee, as with all Committees but particularly so in this Committee, has been for the assurances and safeguards that the Government have been at pains to stress are important to the Bill to be teased out and defined, more closely perhaps than in other measures that polarise views but are less controversial.

The most recent contribution of the Minister was refreshing and welcome, in contrast to his opposite number: even before some of us had started our speeches, the hon. Member for Rhondda weighed in, with that hallmark of intransigence and intolerance which I am afraid he has displayed throughout the Committee, to say: "You are wrong." We are not wrong on the new clause, because it is born of the genuine fears of people whose livelihoods would be affected if the measure were interpreted differently from how I absolutely agree that the Government want it to be interpreted. We have sought to give examples of how that could happen and cited some examples where it might already be happening. The Bill, however, has not yet been enacted and the proof of the pudding will be when the measure becomes law, if it does.

At times in Committee, I felt that two Banquo's ghosts were informing our proceedings. They are often alluded to, perhaps more by the hon. Member for Rhondda than by me. One is my father, a retired vicar of senior years to whom I pay tribute for informing this Committee. Incidentally, he does not agree with the Bill, but then he also has some slightly odd views about ordaining women priests and bishops, with which I do not agree. The other Banquo's ghost is the former persona of the hon. Member for Rhondda as a vicar in his own right. When and why he decided to give that up and move to the less moral high ground of becoming a Member of Parliament, we do not know. Some interesting people have informed our deliberations.

11 am

Above all, the new clause, which was informed by the concerns of Army chaplains, tries to ensure that people can go on doing jobs to which they are dedicated and that require them to hold sincere beliefs based on their faith. We expect men and women of faith to hold their views sincerely in order to use their position to influence, guide and support their parishioners and congregations. The new clause tries to give assurances that are absolutely in character with the quadruple lock that the Government have said so much about, which provides safeguards in the Bill.

Perhaps we should have tried some of our other amendments on a Tuesday morning, as the new clause appears to have found the Minister in a more favourable mood. Whatever the reason, I was greatly heartened when he ended his response to the new clause by saying "however". He has offered, in the spirit of tolerance, the recognition that there are serious concerns about how the Bill may be enacted and what unintended consequences it might have in certain cases. I was heartened

by his preparedness to take it away and see whether the Government can add something to the Bill, which will go a long way towards giving the assurances sought in the new clause.

I fully acknowledge, as I said in my opening comments, that the wording may be defective. Without the support of parliamentary draftsmen, it is often difficult to fashion amendments that would tolerate scrutiny within legislation. On the basis of what the Minister said, I am grateful. On that final note of accord in the Committee, I therefore beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

Bill to be reported, without amendment.

11.3 am

Committee rose.