<http://www.belfasttelegraph.co.uk/opinion/columnists/fionola-meredith/gay-pardons-a-welcome-sign-that-northern-ireland-doesnt-always-have-to-say-no-to-social-change-35205223.html>

Baroness Hamwee

My Lords, four minutes has achieved more than I might have expected. I realise that perhaps, in reading the content of the report fairly quickly, I might not have sufficiently stressed the risks of discrimination with which we were particularly concerned. Having said that, I beg leave to withdraw the amendment.

Amendment 214DA withdrawn.

Clause 140 agreed.

Clauses 141 and 142 agreed.

6.00 pm

Amendment 214E

Moved by

Lord Sharkey

Share this contribution

214E: After Clause 142, insert the following new Clause—

“Posthumous pardons for convictions etc of certain abolished offences

(1) A person who has been convicted of, or cautioned for, an offence specified in subsection (3) and who has died before this section comes into force is pardoned for the offence if two conditions are met.(2) Those conditions are that—(a) the other person involved in the conduct constituting the offence consented to it and was aged 16 or over, and (b) any such conduct at the time this section comes into force would not be an offence under section 71 of the Sexual Offences Act 2003 (sexual activity in a public lavatory).(3) The offences to which subsection (1) applies are—(a) an offence under section 12 of the Sexual Offences Act 1956 (buggery) or under section 13 of that Act (gross indecency between men);(b) an offence under any of the following provisions (which made provision similar to section 12 of the Sexual Offences Act 1956)—(i) 25 Hen. 8 c. 6 (1533) (an Act for the punishment of the vice of buggery);(ii) 2 & 3 Edw. 6 c. 29 (1548) (an Act against sodomy);(iii) 5 Eliz. 1 c. 17 (1562) (an Act for the punishment of the vice of buggery);(iv) section 15 of 9 Geo. 4 c. 31 (1828) (an Act for consolidating and amending the law relating to offences against the person); ​(v) section 61 of the Offences against the Person Act 1861;(c) an offence under section 11 of the Criminal Law Amendment Act 1885 (which made provision similar to section 13 of the Sexual Offences Act 1956).(4) The references in subsection (3) to offences under particular provisions are to be read as including offences under—(a) section 45 of the Naval Discipline Act 1866,(b) section 41 of the Army Act 1881,(c) section 41 of the Air Force Act 1917,(d) section 70 of the Army Act 1955,(e) section 70 of the Air Force Act 1955, or(f) section 42 of the Naval Discipline Act 1957,which are such offences by virtue of the provisions mentioned in subsection (3).(5) The reference in subsection (2)(b) to an offence under section 71 of the Sexual Offences Act 2003 is to be read as including a reference to an offence under section 42 of the Armed Forces Act 2006 which is such an offence by virtue of section 71 of that Act of 2003.(6) The following provisions of section 101 of the Protection of Freedoms Act 2012 apply for the purposes of this section and section (Sections (Posthumous pardons for convictions etc of certain abolished offences) and (Other pardons for convictions etc of certain abolished offences): supplementary))(1) (so far as relating to this section) as they apply for the purposes of Chapter 4 of Part 5 of that Act—(a) in subsection (1), the definitions of “caution”, “conviction”, and “sentence” (and the related definition of “service disciplinary proceedings”);(b) subsections (2) and (5) to (7).”

Lord Sharkey (LD)

Share this contribution

My Lords, I shall also speak to Amendment 214F. Both amendments are in my name and those of the noble Baroness, Lady Williams of Trafford, and the noble Lords, Lord Lexden and Lord Black of Brentwood. These amendments each do one simple thing. Amendment 214E grants posthumous pardons to those men, now deceased, who were convicted under the dreadful Labouchere amendment and other homophobic legislation, for acts that would now not be crimes. Amendment 214F provides that a pardon is granted to those living who were similarly convicted and who have, or will have, obtained a disregard under the Protection of Freedoms Act. I am very glad to say that the Government have said they will support these amendments and I thank the Minister for her help and encouragement.

If these amendments pass, it will be the culmination of a long campaign to put right a historic injustice. Some 65,000 men were convicted under the Labouchere amendment and other anti-gay statutes. Of these, 16,000 are still alive and 49,000 are dead. When we passed the Protection of Freedoms Act in 2012 we made provisions for the living 16,000 to have their convictions disregarded. That is, for all practical purposes, the convictions would no longer have any effect. That was a great step forward. We recognised a terrible injustice and did something to make amends and to put things right. At the time it seemed to me that the 49,000 men convicted but now dead deserved exactly the same treatment. It seemed a straightforward argument. The disregard for the living acknowledged a wrong and offered a partial remedy. Simple justice suggested that we do the same for the dead. We should ​acknowledge the wrong done to them and should provide some comfort to their relatives, their friends and their memory.

I tried, with other noble Lords, notably the noble Lords, Lord Black of Brentwood, Lord Lexden and Lord Faulkner of Worcester, to amend the Protection of Freedoms Act to do exactly that—to extend the disregard posthumously. I tried via the LASPO Bill in March 2012 and via the Criminal Justice and Courts Bill once in July 2014 and again that October. During this process the Government’s position began to shift. The initial and rather blunt refusal to take action became a willingness to discuss and, eventually, a willingness to help. I was encouraged to persevere and to promote a posthumous pardon for Alan Turing. There was a feeling that, if Turing were pardoned, it would be morally impossible not to extend that pardon to all those others similarly convicted but now dead. So it would prove, if these amendments now pass. If they do, we will finally be putting right a cruel and unjust historic wrong—a wrong that has wrecked the lives of thousands of gay men. I urge your Lordships to support these amendments and I beg to move.

Baroness Williams of Trafford

Share this contribution

I intervene on the noble Lord to say that not only do the Government support this amendment, we strongly support it. I thought that might be helpful to the debate in Committee.

Lord Lexden (Con)

Share this contribution

My Lords, it is a pleasure and, indeed, an honour to support the amendments tabled by my noble friend Lord Sharkey. They represent the culmination of work done over several years by my noble friend to secure as much redress as is practicable for victims of grave injustice, including those who are no longer alive—gay men who suffered great wrong simply for giving expression to the love that for far too long dared not speak its name but has thankfully found its full and authentic voice in our times. My noble friend kept the issue before successive Ministers and their officials. It is in part due to the polite but enduring pressure that he applied that commitment to action was included in the Conservative Party manifesto at the last general election. As my noble friend Lady Williams of Trafford has already made clear, these amendments will be accepted by the Government. It is a day of great importance for gay people, a view shared by my noble friend Lord Black of Brentford, who has also put his name to these amendments but has had to leave the Chamber.

I turn to Amendments 214H to 214L, 235A and 239C in my name. My amendments have two aims. The first is to extend the pardons for iniquitous former offences, now abolished, that will be available to living and deceased persons in England and Wales to their counterparts in Northern Ireland. The second aim is to extend the disregard scheme now in operation in England and Wales to Northern Ireland, where at present it does not exist. The first of the amendments relating to pardons, Amendment 214H, includes provision for legislation that is specific to Northern Ireland. Through this amendment and the two that follow, pardons could be granted in the same manner as in England and Wales.​

Because there is no disregard scheme, the foundation on which pardons will rest in Northern Ireland, Amendment 214L, is vital. It will insert a new clause in the Bill that would make a number of amendments to the Protection of Freedoms Act 2012, changing the scope of Chapter 4 of Part 5. As a result, application could be made to the Secretary of State for Northern Ireland to have a conviction or caution in respect of an abolished offence in Northern Ireland disregarded. Since justice and policing are now transferred matters in Northern Ireland, the responsibility for designing and implementing a disregard scheme would in practice be expected to rest with the Northern Ireland Executive. Exactly how the system would work may need further consideration; it must clearly be fully acceptable in all its details to the Executive.

The impetus for the extension to Northern Ireland of the arrangements proposed in England and Wales has come from Northern Ireland itself. I am merely the spokesman and agent of courageous campaigners for full gay rights in the Province who are working to achieve complete equality with the rest of the UK. No one has done more to create support for the amendments I have put forward than Councillor Jeffrey Dudgeon MBE, who in 1981 paved the way for the decriminalisation of homosexuality in Northern Ireland through a successful case at the European Court of Human Rights.

The five main parties in the Northern Ireland Assembly have all pledged support for the principles embodied in the amendments. I am in the fortunate position of being able to tell your Lordships’ House that yesterday the Minister of Justice in Northern Ireland, Claire Sugden, announced that a legislative consent Motion would shortly be introduced in the Assembly enabling these amendments, after any revision that may be needed, to become law in Northern Ireland.

Lord Cashman (Lab)

Share this contribution

My Lords, I support the amendments from the noble Lord, Lord Lexden, extending the provisions to Northern Ireland, and I shall speak to the amendments in my name. I congratulate the noble Lord on the success he has had with these amendments in relation to the announcement from the Justice Minister Claire Sugden. The noble Lord’s record on seeking to achieve equal rights in Northern Ireland, not least on equal access to marriage, is unblemished and should be celebrated because at its very heart is the concept that we should have equality and access to equal rights across the United Kingdom, not based on where we live.

I will quote from two organisations in Northern Ireland. A Northern Ireland-based LGBT organisation replied to the announcement that the measure would go before the Northern Ireland Assembly by saying:

“This is the first time that the Northern Ireland Assembly has made positive moves in respect of LGB&T legislation and we are hopeful that with cross-party support the pardons will be applicable to convictions made against … men living in Northern Ireland”.

I also join the noble Lord in celebrating the work and success of LGBT people and their allies and NGOs in Northern Ireland. Quite rightly, this is their success; and not the least of them is Councillor Jeff Dudgeon MBE, who has been a pioneer, affecting so positively the lives of so many across the United Kingdom and beyond.​

Before I speak specifically to my two amendments—214S and 214R—I need to pay tribute to the noble Lord, Lord Sharkey, for his exemplary work over the years in pressing the case for equality, even when some have not wanted to listen to the arguments, noble and right though they are. My only difference with him on my amendments are on two major elements. My Amendment 214S differs from the amendment of the noble Lord, Lord Sharkey, and others in two key respects. First, it would grant a pardon to any person convicted of or cautioned for a now abolished offence, providing that they meet certain conditions, regardless of whether they are living or dead.

I disagree with the need to create two different systems for pardoning people in respect of these offences—one for the living and one for the dead. I cannot honestly see the logic of saying to a living person, “You must apply to have your conviction or caution disregarded to be eligible for a pardon,” while at the same time saying, “If you have died, you will get a pardon automatically”. That is not logical, and I am afraid that it appears to confuse the purpose of a pardon and the purpose of the disregard scheme. My amendment makes it abundantly clear that any person, subject to the specified conditions, who suffered a conviction or caution under these offences is pardoned. For those living with an historic conviction or caution, the disregard scheme is available to address any negative consequences caused by a police or other record.

The second way in which my amendment differs from that of the noble Lord, Lord Sharkey, and others, is that it would extend pardons to those convicted or cautioned under Section 32 of the Sexual Offences Act 1956 and its corresponding earlier provisions in the Vagrancy Act 1898. Let me be absolutely clear: this would not grant a pardon to any person convicted or cautioned for soliciting. My amendment makes it clear that anyone convicted or cautioned for any conduct that would now constitute the offence of soliciting under the Sexual Offences Act 2003 would not be pardoned; nor would a pardon extend to a person whose conviction or caution was the result of conduct involving any other person under 16. What my amendment would do is grant pardons for all those persons who were convicted or cautioned for what was once called “importuning for immoral purposes”. The immoral purposes, in many cases, amounted to nothing more, as the Home Office report Setting the Boundaries recognised in 2000, than one man chatting up another man. That report recommended the repeal of the offence, and that was carried through.

On a personal note, I lived through that campaign of hate and fear. I was a 16 year-old gay man when the age of consent was set at 21 and homosexual acts in private were decriminalised. I still had no protection as a young gay man who wanted to exercise his attraction and his love for others. I, too, suffered the threat of coming out of a bar or a pub in places such as Earl’s Court, where a lot of homosexual and bisexual men gathered. We felt safe together, but coming out of such a pub or a club and looking at another man and smiling at him could have possibly got me arrested for soliciting for an immoral purpose.​

6.15 pm

It is important to recognise that Section 32 of the Sexual Offences Act 1956 created a wide offence, used to regulate gay men in ways that we would now rightly find horrifying. Let me give your Lordships two brief examples. The first is from 1979. A man, James Gray, was said to have persistently importuned for an immoral purpose in a public place, contrary to Section 32 of the Sexual Offences Act 1956. The evidence against him was as follows:

“A police officer in plain clothes was waiting in a doorway in the Earl’s Court district of London at about 11.30 pm, when many male homosexuals were congregating outside a public house on the other side of the road, as was frequently so at that place and time of day”.

Mr Gray,

“was sauntering around and smiling at people outside the public house … Then he smiled at the officer, whom he clearly believed was a homosexual and, after a short conversation, invited him back to his nearby flat where, he said, there was whisky and they could both spend the night. Shortly after this the officer revealed his identity”.

Mr Gray was arrested and convicted and the conviction was upheld on appeal.

In a more recent case, someone wrote to me and to their Member of Parliament, Matthew Pennycook. He has been investigating the case of a constituent who experienced a similar situation in 1995, with a plainclothes officer arresting him outside a gay bar under Section 32. It ended with the police persuading him to sign a caution to avoid being dragged into court, despite his protests that he had done nothing wrong. He applied for a disregard and it was rejected because the Protection of Freedoms Act 2012 has no provision to disregard the unjust use of this law against gay and bisexual men. We can close this loophole in the Act if your Lordships support my amendment. That was in 1995, 21 years ago, probably involving a man in his early 20s whose life has now been ruined.

I believe it is right to extend justice to men such as Mr Gray and the constituent I mentioned—living and dead—who have suffered under a law that operated on the presumption that a man asking another man to go on what might now be called a date was immoral. For this reason, my amendment, Amendment 214R, would amend the Protection of Freedoms Act to enable any person with an historic conviction or caution under Section 32 of the Sexual Offences Act 1956 or corresponding earlier legislation to apply to have that conviction or caution disregarded. The same conditions that relate to pardons would have to be met, and I stress again that no disregard would be granted to a person convicted or cautioned for an offence that would now constitute soliciting.

For the avoidance of doubt, my amendments change the approach of the noble Lord, Lord Sharkey, the Government and others in only two respects: pardons granted to the dead shall be granted to the living; and I extend the pardons to those convicted or cautioned under Section 32 of the Sexual Offences Act 1956 and the corresponding earlier provisions in the Vagrancy Act 1898. Nothing more.

If it is good enough for the dead, why is it not good enough for the living? There is no blanket pardon or disregard. A pardon is granted only if certain conditions ​are met, and those conditions ensure that no person would receive a pardon if there was a victim—it is the same for the disregard scheme. Pardons and disregards will only ever apply to people who, if they committed the acts today, would be innocent of any offence.

In closing, I find this deeply personal and germane to how we have treated people for so long in this country based on difference. I have never heard a cogent, logical or coherent case for why we should not adopt the approach I outline: the approach of equality, fairness and justice. Therefore, I ask the Government to right the historic wrongs now. To be dragged unwillingly to do so or to hesitate unnecessarily would be, in the eyes of many, to compound the wrongs already visited on so many.

Earl Attlee

Share this contribution

My Lords, I rise briefly to support the general thrust of these amendments because the underlying legislation and the policy behind it was so fatally flawed. I am just sad that it took me and many others so long to realise that the whole policy was 100% flawed and caused unnecessary problems.

Lord Kennedy of Southwark

Share this contribution

My Lords, this has been an important debate and I am pleased to be able to respond on behalf of the Opposition.

I can support all the amendments in this group as far as they go, although some go further than others. I was particularly pleased to see the amendments of the noble Lord, Lord Lexden, which extends posthumous pardons to Northern Ireland. However, further rights need to be won for LGBT people and women in Northern Ireland, as well as on the mainland. We must return to them at a later date.

I join my noble friend Lord Cashman in paying tribute to the noble Lords, Lord Lexden and Lord Sharkey, for their tireless campaigning. I also pay tribute to my noble friend Lord Cashman for his tireless campaigning to deliver equality for LGBT people. There has been tremendous progress in the past 20 years in particular, and my noble friend has been there, standing up, making the case and challenging prejudice, hate and injustice. We are all grateful to him. The most comprehensive amendments in the group are those in the name of my noble friend and they have my full support. I very much agree with him that granting a pardon to any person convicted of or cautioned for a now-abolished offence, providing they meet certain conditions, and regardless of whether they are living or dead, is the way to proceed. His amendments go further in that they extend pardons to those convicted or cautioned under Section 32 of the Sexual Offences Act 1956 or the Vagrancy Act.

My noble friend made it clear that nothing in his amendments would grant a pardon to any person convicted or cautioned for soliciting. Nor would the amendments grant a pardon to anyone convicted or cautioned in respect of conduct involving a person under the age of 16. My noble friend gave an important illustration of the effect of Section 32 of the Sexual Offences Act 1956, and I agree that it is important to right this wrong for both those who are living and those who are dead. Treat them equally. This is the ​right thing to do. No one would be pardoned for anything that is still an offence. I hope your Lordships’ House will accept my noble friend’s amendments.

Baroness Williams of Trafford

Share this contribution

My Lords, I am pleased to be able, on behalf of the Government, to warmly welcome Amendments 214E, 214F, 214G, 239A and 246, and I congratulate the noble Lord, Lord Sharkey, on bringing them forward, as well as the noble Lord, Lord Cashman, who spoke so movingly.

As the noble Lord, Lord Sharkey, explained, these amendments broadly do two things. First, they confer an automatic pardon on deceased individuals convicted of certain consensual gay sexual offences that would not be offences today. Secondly, they confer a pardon on those persons still living who have a conviction for such an offence that has been disregarded under the terms of the Protection of Freedoms Act 2012. It is important to note that for the pardon to apply, the conduct in question must have been consensual and involved another person aged 16 or over, which is the current age of consent. The conduct must also not involve an offence of sexual activity in a public lavatory, which is still illegal today.

This historic step is momentous in righting wrongs suffered by thousands of gay and bisexual men. It is a tragedy that people were criminalised over a shamefully long time for something that society regards today as normal sexual activity. It is time to right the wrongs of the past and I am pleased to support the noble Lord, Lord Sharkey, in putting forward these amendments.

It is important that we link the pardons for the living to the disregard process so that the necessary checks can be carried out to identify whether the individual in question engaged in activity that constitutes an offence today. Since the disregard scheme under the Protection of Freedoms Act came into force, eight disregard applications that concerned non-consensual activity have been rejected. It is therefore crucial that a pardon for the living should only follow a successful disregard application. This mitigates the risk of individuals claiming to be cleared of offences that are still crimes today. It takes into account and protects the rights of victims and ensures that children and vulnerable people are safeguarded from potential risks. This is extremely important and an objective with which I am sure noble Lords would agree. It is for these reasons that the Government cannot commend to the Committee Amendment 214S in the name of the noble Lord, Lord Cashman.

The amendments in the name of my noble friend Lord Lexden seek to make corresponding provision for Northern Ireland. The Committee will be aware of the established convention that the UK Parliament legislates on devolved matters in Northern Ireland only with the consent of the Northern Ireland Assembly. Subject to observing that convention, the Government are ready to look favourably at amendments at a later stage of the Bill along the lines proposed by my noble friend.

I understand that on Monday of this week, the Ministry of Justice tabled an amendment to a legislative consent Motion before the Northern Ireland Assembly ​seeking its consent to the UK Parliament legislating on this matter. If the proposed legislative consent Motion can make sufficient progress over the next two to three weeks, I would anticipate that the Government will be able to work with my noble friend to come to an agreement before the Bill leaves this House. I should add that the Scottish Government have separately announced their intention to bring forward legislation in the Scottish Parliament.

I turn to Amendment 214R, which is again in the name of the noble Lord, Lord Cashman. The amendment seeks to extend the disregard scheme to include convictions for the soliciting offence in the now-repealed Section 32 of the Sexual Offences Act 1956. Under the current disregard scheme, for the now-repealed offences of buggery and gross indecency between men, it is a relatively straightforward matter to establish whether the relevant statutory conditions are met; namely that the other person involved in the conduct consented and was aged 16 or over, and the conduct would not now constitute the offence of sexual activity in a public lavatory. In contrast, the soliciting offence in Section 32 of the 1956 Act covered a broad range of behaviours and, as such, it is not a straightforward matter to formulate additional conditions to ensure that behaviour which would still constitute an offence today cannot be the subject of a disregard. It is likely that any such conditions would entail more than simply establishing facts—for example, whether the other person was aged 16 or over—and require a shift to making judgments as to whether an activity would be captured by a range of different offences today. This creates some practical challenges in accessing records in sufficient detail to make that judgment.

Lord Cashman

Share this contribution

I have listened with great interest and have two points to make. First, a pardon does not remove a conviction from a record. The criminal activity remains on the record, so any employer making a heightened check can find what the conviction was for. I see no way in which, if we issued a pardon, it would put anyone at risk. Secondly, if there is a victim in any of these cases, and if we have managed to weed it out in the discharge process in relation to gross indecency and buggery, we should have the wit and wherewithal to approach this and find out how to apply exactly the same provisions and the same terms to the immoral purposes Section 32. Will the Minister commit at least to sitting down with me and the likes of Paul Johnson, from the University of York, and Stonewall, who have had great input into this, so that instead of protracting discussion of the problem, we can seek the solution?

Baroness Williams of Trafford

Share this contribution

The noble Lord reminds me of a conversation that we had the other day. I quite happily undertake to meet him, Paul Johnson and other members of Stonewall to discuss this further. I was going on to say that, despite the challenges, I am ready to consider Amendment 214R further ahead of Report.

I conclude by congratulating the noble Lord, Lord Sharkey, but I also signal my happiness at finishing the work started by the coalition Government in recommending a pardon for Alan Turing. As a Mancunian, ​the situation he faced, and the fact that he ultimately took his own life, has saddened me for many years. Legislating in this Bill will speed up the delivery of a similar pardon for the thousands of gay and bisexual men convicted of now-abolished sexual offences. I look forward to the day—perhaps in a little over a month’s time—when this Bill is enacted and these provisions come into force. That will be a day we will all be able to celebrate. I commend the noble Lords’ amendments to the House.

6.30 pm

Lord Sharkey

Share this contribution

My Lords, I thank all those noble Lords who have spoken in favour of Amendments 214E and 214F, and all noble Lords who have spoken in this brief debate. I also want to claim some fellowship as a Mancunian with the Minister. Wigan is only 17 miles from Manchester, and while I was at the University of Manchester as a mathematics undergraduate, I was taught by a man called Robin Gandy who was the only doctoral student that Alan Turing ever had. Robin Gandy was full of stories about Alan Turing and I knew these from a very early age.

In closing, I thank the noble Lords, Lord Lexden, Lord Black of Brentwood and Lord Faulkner of Worcester, who have been supporters of these amendments in their current form and in all their previous forms. It is also appropriate to thank my noble friend Lord McNally and the noble Lords, Lord Bates, Lord Faulks, and their officials for listening to the case we have made and for helping to arrive at a solution.

Amendment 214E agreed.

Amendments 214F and 214G

Moved by

Baroness Williams of Trafford

Share this contribution

214F: After Clause 142, insert the following new Clause—

“Other pardons for convictions etc of certain abolished offences

(1) This section applies to a person who has been convicted of, or cautioned for, an offence mentioned in section 92(1) of the Protection of Freedoms Act 2012 and who is living at the time this section comes into force.(2) If, at the time this section comes into force, the person’s conviction or caution has become a disregarded conviction or caution under Chapter 4 of Part 5 of the Protection of Freedoms Act 2012, the person is pardoned for the offence.(3) If, at any time after this section comes into force, the person’s conviction or caution becomes a disregarded conviction or caution under Chapter 4 of Part 5 of the Protection of Freedoms Act 2012, the person is also pardoned for the offence at that time.(4) Expressions used in this section or section (Sections (Posthumous pardons for convictions etc of certain abolished offences) and (Other pardons for convictions etc of certain abolished offences): supplementary))(1) (so far as relating to this section) and in Chapter 4 of Part 5 of the Protection of Freedoms Act 2012 have the same meaning in this section or (as the case may be) section (Sections (Posthumous pardons for convictions etc of certain abolished offences) and (Other pardons for convictions etc of certain abolished offences): supplementary))(1) as in that Chapter (see section 101 of that Act).”

214G: After Clause 142, insert the following new Clause—

“Sections (Posthumous pardons for convictions etc of certain abolished offences) and (Other pardons for convictions etc of certain abolished offences): supplementary

​(1) A pardon under section (Posthumous pardons for convictions etc of certain abolished offences) or (Other pardons for convictions etc of certain abolished offences) does not—(a) affect any conviction, caution or sentence, or(b) give rise to any right, entitlement or liability.(2) Nothing in this section or in section (Posthumous pardons for convictions etc of certain abolished offences) or (Other pardons for convictions etc of certain abolished offences) affects the prerogative of mercy.”

Amendments 214F and 214G agreed.

Amendment 214H

Tabled by

Lord Lexden

Share this contribution

214H: After Clause 142, insert the following new Clause—

“Posthumous pardons for convictions etc of certain abolished offences: Northern Ireland

(1) A person who has been convicted of, or cautioned for, an offence specified in subsection (3) and who has died before this section comes into force is pardoned for the offence if two conditions are met.(2) Those conditions are that—(a) the other person involved in the conduct constituting the offence consented to it and was aged 16 or over, and(b) any such conduct at the time this section comes into force would not be an offence under section 75 of the Sexual Offences (Northern Ireland) Order 2008 (sexual activity in a public lavatory).(3) The offences to which subsection (1) applies are—(a) an offence under section 11 of the Criminal Law Amendment Act 1885 (gross indecency between men),(b) an offence under section 61 of the Offences against the Person Act 1861 (buggery),(c) an offence under either of the following provisions (which made provision similar to section 61 of the Offences against the Person Act 1861—(i) 10 Cha.1 Sess.2 c.20 (1634) (An Act for the punishment of the vice of Buggery);(ii) section 18 of 10 Geo. 4 c.34 (1829) (An Act for consolidating and amending the Statutes in Ireland relating to Offences against the Person), or(d) an offence under Article 19 of the Criminal Justice (Northern Ireland) Order 2003 (buggery).(4) The references in subsection (3) to offences under particular provisions are to be read as including offences under—(a) section 45 of the Naval Discipline Act 1866,(b) section 41 of the Army Act 1881,(c) section 41 of the Air Force Act 1917,(d) section 70 of the Army Act 1955,(e) section 70 of the Air Force Act 1955, or(f) section 42 of the Naval Discipline Act 1957,which are such offences by virtue of the provisions mentioned in subsection (3).(5) The reference in subsection (2)(b) to an offence under section 75 of the Sexual Offences (Northern Ireland) Order 2008 is to be read as including a reference to an offence under section 42 of the Armed Forces Act 2006 which is such an offence by virtue of section 71 of the Sexual Offences Act 2003 (corresponding offence of “sexual activity in a public lavatory” in England and Wales).(6) The following provisions of section 101 of the Protection of Freedoms Act 2012 apply for the purposes of this section and section (Sections (Posthumous pardons for ​convictions etc of certain abolished offences: Northern Ireland)and (Other pardons for convictions etc of certain abolished offences: Northern Ireland): supplementary)(1) (so far as relating to this section) as they apply for the purposes of Chapter 4 of Part 5 of that Act—(a) in subsection (1), the definitions of “caution”, “conviction”, and “sentence” (and the related definition of “service disciplinary proceedings”);(b) subsections (2) and (5) to (7).”

Lord Lexden

Share this contribution

My Lords, I am grateful for the support that has been expressed by—for this purpose—my noble friend Lord Cashman and my noble friend the Minister. I shall not press the amendments, with a view to returning to the matter on Report.

Amendment 214H not moved.

Amendments 214J to 214L not moved.

Amendments 214M to 214P had been withdrawn from the Marshalled List.

Amendment 214Q

Moved by

Lord Paddick

Share this contribution

214Q: After Clause 142, insert the following new Clause—

“Vagrancy Act 1824

In section 8 of the Criminal Attempts Act 1981 (abolition of offence of loitering etc with intent) at end insert—“(2) A person who has been convicted of, or cautioned for, an offence under those provisions is pardoned for the offence.(3) For the purposes of subsection (2) it is irrelevant whether the person has died before subsection (2) comes into force.(4) A pardon under this section does not give rise to any right, entitlement or liability.””

Lord Paddick

Share this contribution

My Lords, with the leave of the House, I cannot let the opportunity go past without congratulating my noble friend Lord Sharkey on what is a phenomenal achievement. I am very grateful to the Government for the support that they have finally given to his amendment.

I turn to another contentious issue. Amendment 214Q stands in my name and that of my noble friend Lady Hamwee. As we have just discussed, with government support my noble friend Lord Sharkey has moved amendments—and we have just passed those amendments—to grant pardons to those convicted of offences that only gay men could commit and that are no longer on the statute book because they were considered discriminatory. These offences are symbolic to the gay community and it is striving to ensure equality in law and in society as a whole.

There is another offence that is symbolic to another minority, which is no longer an offence on the statute book and is considered by many to be another example of what amounts to an historic injustice. Parliament repealed the offence because it was accepted that it was being used in a discriminatory manner by the police; it is the offence of being a suspected person loitering with the intent to commit what was originally an indictable, and later, an arrestable offence. Although ​the term “sus” has recently been more widely used to describe the use of police “stop and search” powers, it was originally confined to the criminal offence of being a suspected person under Section 4 of the Vagrancy Act 1824. The offence required the evidence of two witnesses, usually two police officers patrolling together. The usual evidence was of a suspected person being seen to try three car door handles, in an attempt to steal the car or from it, or the suspect putting his shoulder to the doors of three homes, with the intention of committing burglary.

The difficulty with the offence was the absence in almost every case of any corroboration, either from witnesses other than police officers, or any physical or forensic evidence. Both the police officers and, usually, young black men, who were almost exclusively the target under sus, knew that it was the word of two police officers against a young black man with no other witnesses or evidence or any other corroboration. This allowed unscrupulous police officers to invent evidence against those who had, at least on that occasion, done nothing wrong.

Of course, some will say that a miscarriage of justice did not occur on every occasion of someone being convicted of being a suspected person and, of course, I cannot say that that was the case. However, I can say—I hope that Members of this House agree with this—that thousands of innocent young black men were convicted, which caused huge pain and distress, destroying the trust and confidence between the community and the police.

I was a police officer—a bobby on the beat, a patrol officer—at the height of the use of that aspect of Section 4 of the Vagrancy Act. In 1975 and 1976, the year I joined the Metropolitan Police, more than 40% of those arrested for sus were black people, when at the time black people accounted for only 2% of the population. It was because by the end of the 1970s you were 15 times more likely to be arrested for sus if you were black than if you were white, far more than the disproportionality in stop and search, that in 1980 the Home Affairs Select Committee recommended the repeal of the legislation. It also threatened to introduce a Private Member’s Bill if the Government did not take action, but the Government did.

There was a great deal of concern, even among police officers at the time—me included—over the use of the offence, in that we knew about the claims of the black community that it was used as a tool to oppress black people. If there was evidence of another offence—for example, attempted theft of or from a motor vehicle or attempted burglary—not only were these offences less likely to be open to question but the penalties were more severe. In other words, if there had been substantive evidence, physical or forensic evidence, which in those days would have been simply fingerprints, then the much safer, more acceptable and far less contentious route was to arrest and charge for the substantive offence rather than sus.

My second comment is anecdotal. I was at Highbury Corner Magistrates’ Court with someone I had arrested. The stipendiary magistrate, Toby Springer, would want to hear from the arresting officer in every case except for those of being drunk and incapable. The case just before me was an arrest made by a colleague for whom ​I had respect for his honesty and professionalism. He had arrested someone for sus, and the young black man who had been arrested pleaded guilty to the offence and was fined. Downstairs in the cells, where the young man had to pay his fine before being released, I spoke to my colleague, and I remember this very distinctly. I said to him that he had restored my faith in sus because here was a trusted colleague with someone who had pleaded guilty in court to the offence, so the criticisms made by the black community, at least in some cases of sus, were clearly unjustified. He told me what had happened. He and a colleague had turned a street corner and the person he had arrested looked at the police officers and ran away. The officers ran after the youth and caught him. The youth was given the ultimatum, “Do you want attempted burglary or sus?”. The youth said, “Sus”. Presumably realising that the odds were stacked against him, he then went through the whole process admitting to something that he had never done.

Sus is another example of an offence that should never have been on the statute book, or at least an offence that was designed to deal with soldiers coming home from the Napoleonic wars and making a nuisance of themselves should not still have been on the statute book 150 years later. Not every part of Section 4 of the Vagrancy Act 1824 was repealed by the Criminal Attempts Act 1981, but those other offences are, and should be, a debate for another time.

Bearing in mind how long it has taken my noble friend Lord Sharkey to achieve what he has achieved for the gay community through his long campaign for justice, and in the absence of the equivalent of an Alan Turing figure regularly to hand in the case of sus, I am not expecting instant agreement from the Government. However, I ask the Minister to think carefully about what has been a symbolic offence for the black community. It has created huge pain and distress for decades. To pardon those convicted under this legislation—repealed because of its acknowledged discriminatory application and potential for misuse—would be of immeasurable importance to the black community.

Not only did sus damage relations between the black community and the police, it damaged relationships between the generations in the black community. The first generation of migrants from the Caribbean had great faith in the police and when their sons were arrested they did not believe their tales of the police acting improperly in inventing evidence against them. It drove divisions between generations as well as between police and the subsequent generations. Granting pardons to those convicted of being suspected persons loitering with intent to commit an indictable or arrestable offence would be a huge step forward in healing the pain caused and the damage done to the trust and confidence the black community as a whole had in the police. It would also be a much-needed catalyst to dramatically improve those damaged relations as we work to create safer communities for all. I beg to move.

Lord Kennedy of Southwark

Share this contribution

I have one question for the Minister when she responds to the noble Lord, Lord Paddick. Does she have any idea of the number of people affected by this?

​

Baroness Williams of Trafford

Share this contribution

My Lords, as the noble Lord, Lord Paddick, has explained, Amendment 214Q seeks to confer a pardon on persons living and deceased who were convicted under Section 4 of the Vagrancy Act 1824. The noble Lord has explained that Section 4 was used to persecute young black men and this amendment deals with a separate matter to the one that we have just debated. It is, however, also the case that Section 4 was used to prosecute some gay and bisexual men, so there is a read-across to the earlier debate.

In relation to consensual activity between men over the age of consent, Section 101 of the Protection of Freedoms Act 2012 makes it clear that the disregard scheme covers not only the offences of buggery and gross indecency but attempts to commit such an offence, and an attempt to commit such an offence includes conduct covered by Section 4 of the Vagrancy Act 1824. Someone with such a conviction may also apply for that conviction to be disregarded and, if successful, will also receive a pardon under the terms of the new clauses in the name of the noble Lord, Lord Sharkey.

As to other conduct unrelated to homosexuality, the Government do not believe that it is appropriate to introduce a pardon for those convicted of an offence just because that offence has now been repealed and the behaviour in question is no longer regarded as criminal. Pardoning is exceptional by nature. The persecution of gay and bisexual men through the criminal law was a clear historical wrong that we should undoubtedly right through a pardon. There is a special and compelling moral case to try to redress wrongs done to gay and bisexual men in the context of the Government’s commitment to equality. The amendments from the noble Lord, Lord Sharkey, would, like the pardon for Alan Turing, remove a real and particular stigma that is suffered by the living and still attaches to the recently deceased.

The circumstances the noble Lord has described are quite different and, without looking at the facts of individual cases, it is impossible to know whether the conduct in question would still be an offence today.

In terms of the numbers, I was looking for inspiration but we have no data, I am afraid. On that note, I invite the noble Lord, Lord Paddick, to withdraw his amendment.

Lord Kennedy of Southwark

Does the Minister mean that she has no data here or no data at all?

Baroness Williams of Trafford

Share this contribution

No data at all, my Lords.

6.45 pm

Lord Paddick

Share this contribution

My Lords, from the Minister’s response I do not think she has quite grasped the essence of what this amendment is about or the misuse that has been made of this legislation. The Home Affairs Select Committee put pressure on the Government to repeal that particular part of Section 4 of the Vagrancy Act. It is a very wide piece of legislation, criminalising all sorts of activity, much of which is still on the statute book. This is specifically about being a person suspected ​of loitering with intent to commit an indictable offence, the evidence of which I described when I moved the amendment.

I will of course look very carefully at what the Minister has said but I do not believe that it will give me sufficient grounds not to return to this matter on Report. However, at this stage, I beg leave to withdraw the amendment.

Amendment 214Q withdrawn.

Amendments 214R and 214S not moved.

Clause 143 agreed.

Amendment 215

Moved by

Baroness Chisholm of Owlpen

Share this contribution

215: After Clause 143, insert the following new Clause—“Anonymity of victims of forced marriage: Northern Ireland

(1) After Part 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c.2 (N.I.)) insert—“Part 4APROTECTION OF VICTIMS OF FORCED MARRIAGE24A Anonymity of victims of forced marriageSchedule 3A (anonymity of victims of forces marriage) has effect.”(2) Insert, as Schedule 3A to that Act, the following Schedule—“SCHEDULE 3AANONYMITY OF VICTIMS OF FORCED MARRIAGEProhibition on the identification of victims in publications1\_(1) This paragraph applies where an allegation has been made that an offence of forced marriage has been committed against a person.\_(2) No matter likely to lead members of the public to identify the person, as the person against whom the offence is alleged to have been committed, may be included in any publication during the person’s lifetime.\_(3) In any criminal proceedings before a court, the court may direct that the restriction imposed by sub-paragraph (2) is not to apply (whether at all or to the extent specified in the direction) if the court is satisfied that either of the following conditions is met.\_(4) The first condition is that the conduct of a person’s defence at a trial of an offence of forced marriage would be substantially prejudiced if the direction were not given.\_(5) The second condition is that—(a) the effect of sub-paragraph (2) is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and(b) it is in the public interest to remove or relax the restriction.\_(6) A direction under sub-paragraph (3) does not affect the operation of sub-paragraph (2) at any time before the direction is given.\_(7) In this paragraph, “the court” means a magistrates’ court, a county court or the Crown Court.Penalty for breaching prohibition imposed by paragraph 1(2)2\_(1) If anything is included in a publication in contravention of the prohibition imposed by paragraph 1(2), each of the persons responsible for the publication is guilty of an offence. ​\_(2) A person guilty of an offence under this paragraph is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.\_(3) The persons responsible for a publication are as follows—

Type of publication

Persons responsible

Newspaper or other periodical

Any person who is a proprietor, editor or publisher of the newspaper or periodical.

Relevant programme

Any person who— (a) is a body corporate engaged in providing the programme service in which the programme is included, or (b) has functions in relation to the programme corresponding to those of an editor of a newspaper.

Any other kind of publication

Any person who publishes the publication.

\_(4) Proceedings for an offence under this paragraph may not be instituted except by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.Offence under paragraph 2: defences3\_(1) This paragraph applies where a person (“the defendant”) is charged with an offence under paragraph 2 as a result of the inclusion of any matter in a publication.\_(2) It is a defence for the defendant to prove that, at the time of the alleged offence, the defendant was not aware, and did not suspect or have reason to suspect, that—(a) the publication included the matter in question, or(b) the allegation in question had been made.\_(3) It is a defence for the defendant to prove that the publication in which the matter appeared was one in respect of which the victim had given written consent to the appearance of matter of that description.\_(4) The defence in sub-paragraph (3) is not available if—(a) the victim was under the age of 16 at the time when his or her consent was given, or(b) a person interfered unreasonably with the peace and comfort of the victim with a view to obtaining his or her consent.\_(5) In this paragraph, “the victim” means the person against whom the offence of forced marriage in question is alleged to have been committed.Special rules for providers of information society services4\_(1) Paragraph 2 applies to a domestic service provider who, in the course of providing information society services, publishes prohibited matter in an EEA state other than the United Kingdom (as well as to a person, of any description, who publishes prohibited matter in Northern Ireland).\_(2) Proceedings for an offence under paragraph 2, as it applies to a domestic service provider by virtue of sub-paragraph (1), may be taken at any place in Northern Ireland.\_(3) Nothing in this paragraph affects the operation of any of paragraphs 6 to 8.5\_(1) Proceedings for an offence under paragraph 2 may not be taken against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is met.\_(2) The derogation condition is that taking proceedings—(a) is necessary for the purposes of the public interest objective, ​(b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and(c) is proportionate to that objective.\_(3) “The public interest objective” means the pursuit of public policy.6\_(1) A service provider does not commit an offence under paragraph 2 by providing access to a communication network or by transmitting, in a communication network, information provided by a recipient of the service, if the service provider does not—(a) initiate the transmission,(b) select the recipient of the transmission, or(c) select or modify the information contained in the transmission.\_(2) For the purposes of sub-paragraph (1)—(a) providing access to a communication network, and(b) transmitting information in a communication network,include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.\_(3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission.7\_(1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service for transmission in a communication network if the first and second conditions are met.\_(2) The first condition is that the storage of the information—(a) is automatic, intermediate and temporary, and(b) is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request.\_(3) The second condition is that the service provider—(a) does not modify the information,(b) complies with any conditions attached to having access to the information, and(c) if sub-paragraph (4) applies, promptly removes the information or disables access to it.\_(4) This sub-paragraph applies if the service provider obtains actual knowledge that—(a) the information at the initial source of the transmission has been removed from the network,(b) access to it has been disabled, or(c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.8\_(1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service if—(a) the service provider has no actual knowledge when the information was provided that it was, or contained, a prohibited publication, or(b) on obtaining actual knowledge that the information was, or contained, a prohibited publication, the service provider promptly removed the information or disabled access to it.\_(2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.Interpretation9\_(1) In this Schedule— ​“domestic service provider” means a service provider established in England and Wales, Scotland or Northern Ireland;“the E-Commerce Directive” means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce);“information society services”—(a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and(b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;“non-UK service provider” means a service provider established in an EEA state other than the United Kingdom;“offence of forced marriage” means an offence under section 16 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c.2 (N.I.));“programme service” has the same meaning as in the Broadcasting Act 1990 (see section 201(1) of that Act);“prohibited material” means any material the publication of which contravenes paragraph 1(2);“publication” includes any speech, writing, relevant programme or other communication (in whatever form) which is addressed to, or is accessible by, the public at large or any section of the public;“recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;“relevant programme” means a programme included in a programme service;“service provider” means a person providing an information society service.\_(2) For the purposes of the definition of “publication” in sub-paragraph (1)—(a) an indictment or other document prepared for use in particular legal proceedings is not to be taken as coming within the definition;(b) every relevant programme is to be taken as addressed to the public at large or to a section of the public.\_(3) For the purposes of the definitions of “domestic service provider” and “non-UK service provider” in sub-paragraph (1)—(a) a service provider is established in a particular part of the United Kingdom, or in a particular EEA state, if the service provider—(i) effectively pursues an economic activity using a fixed establishment in that part of the United Kingdom, or that EEA state, for an indefinite period, and(ii) is a national of an EEA state or a company or firm mentioned in Article 54 of the Treaty on the Functioning of the European Union; ​(b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;(c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider’s activities relating to that service.””

Baroness Chisholm of Owlpen

My Lords, Clause 143 provides for lifelong anonymity for all alleged or proven victims of forced marriage in England and Wales, from the point of investigation onwards. At the request of the Minister of Justice in Northern Ireland, Amendments 215, 237 and 241 now extend this protection to cover victims in Northern Ireland.

We know that forced marriage can be hidden, and this measure will help to ensure that victims have the confidence to come forward so that they get the support they need and so that perpetrators are brought to justice. The protection mirrors the anonymity we introduced last year for victims of female genital mutilation. It will mean that the anonymity of victims of forced marriage can be protected from the time an allegation is made and that the publication or broadcast of any information likely to result in their being identified to the public is prohibited. Breach of the prohibition will be an offence punishable by a level 5—that is, £5,000—fine.

I will respond to Amendment 219CA once the Committee has had the opportunity to hear from my noble friend Lady Berridge. For now, I beg to move.

Baroness Berridge

My Lords, I rise to speak to Amendment 219CA. This lengthy amendment, which at the outset I accept will need recrafting on Report, seeks to deal with a simple problem that has cropped up in our law. It has done so accidentally, I think, but if not sorted out it will cause injustice. Although it is late, a short description of the law and the problem is necessary by way of background.

Successive Governments have sought to tackle forced marriage, beginning with the Forced Marriage (Civil Protection) Act 2007 and with further criminalisation in the Anti-social Behaviour, Crime and Policing Act 2014. To make these remedies effective, the law incorporated—for the first time, I believe—a definition of marriage that included marriages that were not at that time valid under UK law. I quote from the Crown Prosecution Service guidelines on the definition of “marriage”. It states that,

“‘marriage’ means any religious or civil ceremony … recognised by the customs of the parties to it, or the laws of any country in which it is carried out, as constituting a binding agreement, whether or not it would be legally binding according to the law of England and Wales”.

So a relationship that UK law does not currently define as marriage can now, for very good reason, count in our criminal courts and some of our civil courts, for forced marriage purposes, as a marriage. However, this leaves a gap.

A party to a forced marriage that is not valid under UK law cannot use that conviction as evidence of the marriage in the family courts to gain financial remedies. ​If you have entered into a marriage under duress—a forced marriage that is valid under UK law—that can be the subject of a crime or a civil protection order. You can then, because it is valid under UK law, go to the family courts and say, “I was forced into this marriage under duress”. It is then voidable and it can be annulled. This opens the door to financial relief and the distribution of the matrimonial property.

If under duress in our law you are forced into a religious marriage, it is valid for the purposes of our law in the criminal courts for a criminal offence under the civil protection forced marriage regime, but you are not then entitled to then take that conviction to the Family Court to obtain matrimonial remedy. This is a very different situation from the marriages valid under UK law, as I have outlined, for which you can get an annulment or, of course, a divorce. So if our law has accepted this small number of relationships as marriage for the purpose of the law on forced marriage, why can they not be used for other purposes, such as gaining financial remedy? Not allowing them to be used in this way is a real injustice to those victims of forced marriage who come forward to the Crown Courts but are left with the doors of the Family Courts shut to them in terms of matrimonial property.

I am not seeking for the law to see this small number of relationships as marriages for all purposes or to foist on a person who, even after there is a conviction for forced marriage, wishes it to be viewed for all other purposes as the religious marriage it was but under duress. Surely, however, that person, in a forced marriage under duress that was a religious marriage, should have a choice—leave it as a religious marriage or take the conviction and be allowed to claim financial remedy under the Matrimonial Courts Act and other such remedies as he or she may on occasion need.

Many of those who have spoken to me on this issue are practising barristers and solicitors. There are many women who, some practitioners believe, do not come forward after years in a forced marriage that is valid only as a religious marriage under our law, as they know that our law leaves them without means to claim matrimonial property. They know they risk the only recourse being welfare benefits, particularly if their children are now adults and they have no claim for maintenance based on caring for the children. Their view is that many of these women would come forward to the Crown Court but are reluctant to do so because they do not want to leave themselves financially vulnerable and unable to access financial remedies. We have an anomaly created by the entry of a different definition of marriage into our law.

Surely it would be just for these people and for the taxpayer to allow someone who is the victim of a forced marriage of this nature to claim, if they wish, the matrimonial property as well. By analogy, we do not retry domestic violence convictions in our Family Courts after the Crown Courts convict a husband or wife. The conviction is accepted as evidence and used by the Family Courts. Why can a forced marriage conviction not also be used in such a simple procedural way to unlock the discretion to redistribute the property and bring justice and consistency in this regard across all our courts—civil, family and criminal?​

I hope that my noble friend the Minister might have time to meet with the interested groups who are concerned about this problem in our law. I raised this matter at the time with the anti-social behaviour Bill, and it has come back because there are concerns around the gap we have left for victims of forced marriages that are religious marriages which are not fully accepted under our law. The amendment is a pre-emptive strike to try to avoid this injustice happening and potentially encourage a larger number of women to come forward because they will not risk their property rights, and they will be able to claim the matrimonial property as well as get a conviction in the Crown Court. I beg to move.

Lord Kennedy of Southwark

Share this contribution

My Lords, as the noble Baroness, Lady Chisholm, told the Committee, this clause confers lifelong anonymity on the victims of forced marriage in England and Wales. The first amendment, in the name of the noble Baroness, Lady Williams of Trafford, extends that provision to cover Northern Ireland as well. I understand that this is at the request of the Justice Department in Northern Ireland. That is welcome, and we on these Benches support these amendments. Amendment 215 is the main amendment, while Amendments 237 and 241 are consequential and would bring the provision into effect.

Amendment 219CA is in the name of the noble Baroness, Lady Berridge. She makes a powerful case to right an injustice that leaves the victim unable to seek redress. That is not right, and the Government should come forward to correct this. I will be interested to hear what the Minister will say in her response to this amendment. She made a persuasive argument; I hope that we will get a positive response from the noble Baroness, Lady Chisholm, and that the Government can deal with it, either now or on Report.

Baroness Hamwee

Share this contribution

My Lords, we on these Benches very much support the noble Baroness’s amendment. She has obviously been working at this for some time—I see from her face that she has—and her explanation is clear and obviously based on the experiences of which she is aware. So we give her our support.

Baroness Chisholm of Owlpen

Share this contribution

I am grateful to my noble friend Baroness Berridge for explaining the purpose of her amendment. The Government are mindful that forced religious marriage may be a deliberate attempt to avoid financial consequences in the event of the break-up of the marriage. The existing position is that the financial orders provided for in the Matrimonial Causes Act 1973 are available only where a marriage is capable of legal recognition in England and Wales and where it is being brought to an end—or where judicial separation is ordered. However, where a marriage is not capable of legal recognition, parties have the same recourse to the court as unmarried cohabiting couples on the breakdown of the relationship. This applies to the division of any property and to financial provision for any children the couple have.

For those in a marriage that has no legal validity, the pressure from families and communities to stay together is no less strong because of the fact that the marriage has no legal consequences. It does not make ​it any easier for an individual to escape an abusive relationship, and we share my noble friend’s concern that it leaves women in particular vulnerable to hardship when the relationship breaks up, since there is no recourse to the court for the financial orders available to divorcing couples. The Government take this issue very seriously, and it is central to the independent sharia law review launched by the current Prime Minister in May this year. The Government will wish to consider the issue further in light of the findings from the review.

None the less, the law governing marriage, divorce and matrimonial property is complex, nuanced and finely balanced, reflecting as it does the wide range of personal circumstances in which people find themselves. The amendment would introduce a disparity with unmarried cohabitants and with those who are in unregistered marriages that are not forced. There is no evidence at this stage that the amendment—

Lord Harris of Haringey

Share this contribution

I understand the point the Minister is making about consent, difficult precedents, cohabitation and so on. But we are talking about a specific circumstance here, which is about coercion. These are not proper arrangements, because somebody has been forced into marriage against their will. That is the context we are talking about. We are not talking about a sort of touchy-feely cohabitation relationship which then breaks down, but about somebody who has been forced into an arrangement of this sort, which is totally inappropriate and wrong in law.

Baroness Chisholm of Owlpen

Share this contribution

I was not suggesting that, just that there are difficulties—other reasons why it could be more difficult to bring in. That is not to say that we are not keen to look further at this issue. However, because we want to consider the findings of the sharia law review, I ask my noble friend to withdraw her amendment so that we have a chance to do that.

Lord Kennedy of Southwark

Share this contribution

What is the timescale for the review that the Minister mentioned?

Baroness Chisholm of Owlpen

Share this contribution

That is up to the review and we do not know yet.

Baroness Berridge

Share this contribution

I am grateful for the support from noble Lords. The first point I want to make is that the disparity has been created by the law. A different definition of marriage was introduced into the civil protection order in order to deal with a real problem. My complaint is not that that should not have happened but that it created the disparity of treatment that my noble friend outlined because it was introduced without all of the consequences being thought through.

The law is about forced marriage—we did not call it “forced cohabitation”. In addition, it does not cover every arrangement that people are forced into: the CPS definition that I outlined says that you have to fall into a religious arrangement that is a binding agreement. By calling the arrangement “forced marriage” we gave those people coming to the criminal courts—at great risk—the expectation that their arrangement ​would, for that purpose, be treated in our law as a marriage. But we did not go on and fulfil our obligations to ensure that they were safeguarded financially and received the anonymity that they need to come forward. I am grateful that my noble friend has said that we will consider this further and I hope that there will be a meeting with interested parties.

I also want to state that I am very disappointed with this debate. I specifically did not put this into the sharia review, because it is about religious marriages. The law does not say that coercion and force come under that umbrella but suddenly we have entered that realm. This is about religious marriages, and I have come across instances of these issues in all kinds of ​religious settings. We need to be incredibly careful, on a day like today when British Muslims are upset by the news, about putting something that is about legal rights, technicalities and procedure under that banner. I was so careful to ensure that this could not be badged like this and I am disappointed that that is what has happened and that it has not been considered along with other issues. This is much wider than that. I beg leave to withdraw the amendment.

Amendment 215 agreed.

House resumed.

House adjourned at 7.03 pm

Column 1192

Column 1193

Column 1194

Column 1195

Column 1196

Column 1197

Column 1198

Column 1199

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Column 1278

Column 1279

Column 1280

Column 1281

Column 1282

Column 1283

Column 1284