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DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
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PC	Plaid Cymru
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House of Lords

Tuesday, 1 March 2016

2.30 pm

Prayers—read by the Lord Bishop of Durham.

Retirement of a Member: Lord Browne-Wilkinson

Announcement

2.37 pm

The Lord Speaker (Baroness D'Souza): My Lords, I should like to notify the House of the retirement, with effect from today, of the noble and learned Lord, Lord Browne-Wilkinson, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I should like to thank the noble and learned Lord for his much-valued service to the House.

Insurance Industry: Whiplash

Question

2.37 pm

Asked by ***Lord Hayward***

To ask Her Majesty's Government whether they have any plans to meet representatives of the insurance industry to discuss their treatment of claims for whiplash injuries.

The Minister of State, Ministry of Justice (Lord Faulks) (Con): My Lords, meetings have been held with representatives' groups from both claimant and insurer sectors at both ministerial and official level to discuss the reforms announced in the Chancellor's Autumn Statement. Ministers and officials are continuing to engage with interested stakeholders as work on the detail of the Government's whiplash reform programme develops.

Lord Hayward (Con): When my noble friend next meets representatives of the industry, will he ask them to explain cases such as that of Mr John Elvin of Watford? Mr Elvin was involved in a negligible traffic incident where there was no apparent damage to either vehicle. At the first opportunity, he notified his insurers—esure—that he was subject to what he believed was going to be a false whiplash and damage claim. Despite a series of requests, esure has given no indication that it has investigated this case in any way. Is this not an example of the reason why the industry is known in this country as "the whiplash capital of the world"? It is the consumer who ultimately pays for this cavalier attitude.

Lord Faulks: My noble friend is quite right to draw the House's attention to the very major problem of the significant increase in the number of claims and our large number of claims in comparison with other European countries. One of the reasons that insurers give for settling these claims is that it costs them too much to fight the case. Of course, if our plans to raise the small claims limit to £5,000 come into effect, this will no longer continue to be a valid reason for not contesting claims. Anyone who is notified of what sounds suspiciously like a fraud should not do anything to encourage it. If individuals are invited to take part in such an endeavour, they are potentially committing a criminal offence.

Lord Thomas of Gresford (LD): My Lords, the Minister referred to the court costs. Have the coalition's policies of banning referral fees produced any results? Has the number of frauds gone down? Are there any statistics on that as yet, following the Insurance Act 2015?

Lord Faulks: The Government are attacking this problem on a number of different fronts. Referral fees is one; the LASPO reforms is another; and there is the MedCo portal, which means that all whiplash injuries must go via a neutral evaluation with limited costs. All are contributing to a decrease in the number of whiplash claims, but there are still too many, and we still feel that there is fraud at the root of all this.

Lord Beecham (Lab): My Lords, of course no one would defend fraudulent claims, whether for whiplash or other injuries. However, the raising of the small claims limit to £5,000 will represent a further reduction of access to justice to people and even businesses of modest means with valid claims. Given that the Government claim the insurance industry—in which motor insurers alone receive £15 billion a year in premiums—will save £1 billion from the increased limit, having already saved £7 billion in the last four years, what steps are the Government taking to ensure that any further savings from their latest surrender to the industry's interests will be substantially passed on to policyholders? Or is this to compensate the industry for the insurance tax levy increase, which it will no doubt in any case pass on to policyholders?

Lord Faulks: There is no question of the Government surrendering to the insurance industry, as the noble Lord puts it. The insurers already announced that they will reduce the premiums to insurance companies by £50. We will watch insurance companies very carefully to see whether they translate their promises into action. Of course, as all noble Lords will know, insurance is a highly competitive world. All of us will have been irritated by the invitations to compare the market. Ultimately, the market should prevail.

Lord Walton of Detchant (CB): My Lords, the whiplash phenomenon is thought to occur usually when a vehicle is struck heavily from behind, with the result that the passenger or driver in the vehicle that is hit has a sharp flexion of the neck followed by a sharp hyperextension. If it happens that the individual in question already has disc degeneration in the neck, there is no doubt at all that this may on occasions result in actual damage to the spinal cord with significant physical results. However, in the great majority of so-called whiplash cases, no organic abnormality can be detected. Indeed, there is considerable evidence that some of the claims for whiplash injuries are spurious. Having said that, is it not time yet again for the Government and the medical profession experts in this field to come together to see if they can promulgate some objective means of assessing the significance of these claims?

Lord Faulks: The noble Lord, with his experience as a neurologist, highlights the complicated nature of this injury and the fact that it is not usually detectable on scans. He also made the point about pre-existing degenerative injury. The effort to achieve some sort of consensus among medical experts has been helped by the MedCo portal. It is remarkable how many of the reports now have a more favourable prognosis than used to be the case before it was introduced.

Lord Hunt of Wirral (Con): I declare my interests as set out in the register. Will my noble friend the Minister accept that there is serious concern not only in this House but also in the insurance industry at the way in which we have allowed a situation where 80% of all personal injury claims are said to be whiplash claims? Will he find some way of stopping these cold calls? One of my colleagues just had a cold call from a claims management company calling itself the "Department of Compensation". Will my noble friend please get across to everyone that these people are potentially committing a very serious criminal offence?

Lord Faulks: My noble friend is, of course, absolutely right. The Government are determined to stamp down on this. Legislation is already in place, primarily enforced by the Information Commissioner's Office. The Government have recently consulted on bringing forward secondary legislation to require all direct marketing callers to provide their calling line identification. Individuals can have a Telephone Preference Service installed on their telephones and we are also exploring the possibility of call-blocking devices for vulnerable consumers.

When somebody rings me, as they do from time to time, inviting me to take part in a fraud, I endeavour to extract details from them without revealing the position I hold. Unfortunately, my voice appears to cause them only to put down the phone.

Lord Dubs (Lab): My Lords, will the Minister confirm that the rate of whiplash claims in Britain is 20 times as high as it is in France? Have we something to learn from our friends across the channel?

Lord Faulks: It is surprising that that comparison should take place at this particular time in the political weather. The noble Lord is quite right. Some 9%, or 225,000, of bodily injuries in France were whiplash, but 76%, or 375,000, in the United Kingdom were.

Armed Services: War Crimes

Question

2.46 pm

Asked by ***Lord Naseby***

To ask Her Majesty's Government whether it is their position that the proper law for determining whether British troops have committed war crimes should be the laws of armed conflict, otherwise known as international humanitarian law, rather than the European Convention on Human Rights.

The Minister of State, Ministry of Justice (Lord Faulks): My Lords, international humanitarian law and domestic criminal law are the bodies of law to determine whether British troops have committed war crimes. Our Armed Forces are among the best in the world and operate to the highest standards of discipline. The forthcoming Bill of Rights will protect their ability to do their jobs without being subject to persistent human rights claims.

Lord Naseby (Con): Does the Minister agree that British troops should only be sued for violation of human rights if they have already been convicted of crimes contrary to the laws of armed conflict?

Lord Faulks: All our troops should, of course, be subject to the law: none is above it. However, the question of the Human Rights Act raises rather different matters. There has been a number of claims based on alleged contraventions of the convention and, thus, the Human Rights Act. These have caused considerable —and sometimes unjustified—difficulties for soldiers and the Armed Forces. This is why our forthcoming Bill of Rights will attempt to deal with these persistent human rights claims.

Lord West of Spithead (Lab): My Lords, long-retired members of our military who fought for us in Northern Ireland are open to arrest, bail and investigation for events that happened up to 40 years ago. Is it true that members of the retired military community who believe there is no even-handedness between the treatment of the terrorists who are trying to kill us and the military who are protecting us are raising with the PSNI a raft of incidents—some 40 so far—where members of the IRA and splinter-IRA have killed or maimed uniformed people? How are these cases being taken forward?

Lord Faulks: The noble Lord makes a good point. I am unable to answer his specific query, but the Prime Minister has tasked the National Security Council to produce a comprehensive plan to stamp out this industry of claims, which is causing precisely the sort of difficulties which the noble Lord has highlighted.

Lord Craig of Radley (CB): My Lords, will the Government introduce any form of Crown immunity for operations overseas?

Lord Faulks: The noble and gallant Lord asks an entirely pertinent question. The Prime Minister has asked the Defence and Justice Secretaries to prepare a legislative package to redress the balance. That is clearly one of the matters under consideration, as is derogation from the Human Rights Act. There are a number of other matters which I would rather not go into detail about now, but I can assure the noble and gallant Lord that all these matters will be carefully considered.

Lord Lester of Herne Hill (LD): Is not the Minister in some difficulty in his replies? So long as we remain bound by the European Convention on Human Rights and subject to the jurisdiction of the Strasbourg court, if the Minister and his colleagues introduce a new-fangled Bill of Rights that in any way is incompatible with the convention, it would be futile because the Strasbourg court—if not our own courts—will rule on that

incompatibility. Is it not better, therefore, to answer this Question by indicating that for the sake of our soldiers, sailors and airmen, as well as others, we need the proper law to be both a human rights law and international humanitarian law?

Lord Faulks: I am sure that the noble Lord will not have forgotten the margin of appreciation. Provided our British Bill of Rights respects the European convention but tailors it to suit the particular challenges that the military faces, it is likely that Strasbourg will respect our interpretation. Of course, we will continue to protect human rights under any regime that exists, and also to respect our international humanitarian law obligations.

Lord Vinson (Con): My Lords, is the Minister aware that the French, much earlier on, exempted their armed forces from prosecution under the Human Rights Act, so we would be following an excellent precedent?

Lord Faulks: I am grateful to my noble friend. We are aware of that and it is a matter that shall be taken into consideration.

Baroness Symons of Vernham Dean (Lab): My Lords, the Minister was unable to answer the specific point raised by my noble friend Lord West of Spithead in relation to Ireland. Would he be kind enough to write to him on that?

Lord Faulks: I am happy to do that when I have the relevant information to hand.

Lord Dannatt (CB): My Lords, given that there can be no blanket, technical explanation for these circumstances, is the Minister prepared to give an undertaking that where a soldier, sailor or airman acts in palpable good faith, there will be a presumption by the Government to stand with him and behind him in his defence against any action that might be taken against him?

Lord Faulks: The Government always stand behind our soldiers but to give a blanket undertaking like that would be exceeding my authority. With regard to battlefield immunity, which the noble Lord may be referring to, combat immunity remains part of the common law, although its contours are rather unclear at the moment, particularly in light of the Smith v Ministry of Defence case about the interrelationship of the Human Rights Act and that immunity. These are matters on which the Prime Minister and the Government are profoundly exercised.

Baroness Nicholson of Winterbourne (LD): Will the Minister allow, under the current military law, for some information to be given to the families of the military police who were killed in Karmat Ali, and which they have so far not received. I was in that city the day after the deaths and all the information is readily available. When will the ministry allow it to be released to the families concerned?

Lord Faulks: I will take that request back to the Ministry of Justice and try to have some inquiries made.

Lord Bach (Lab): My Lords, when can we look forward to the draft Bill of Rights and will its timing be affected by the EU referendum?

Lord Faulks: My Lords, we are in the hands of the Prime Minister, who has a number of elections to consider —local elections, elections of the devolved assemblies, and the small matter of the European referendum. Noble Lords may have to wait a little longer, but it will of course be well worth waiting for.

London: Housing Costs

Question

2.53 pm

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what action they are taking to help people on the living wage in London to own their own homes.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, this Government are working closely with the mayor and the GLA on measures to increase supply and boost home ownership for all Londoners. These include London Help to Buy, which provides equity loans of up to 40% of a property's price to homebuyers in the capital, and London shared ownership, which could see Londoners in a borough such as Lewisham buying a home with a deposit of as little as £3,500.

Lord Kennedy of Southwark (Lab): My Lords, first I declare an interest as a councillor of the London Borough of Lewisham. The Minister recently confirmed to me in a Moses Room debate:

"I agree that not everybody will be able to afford a starter home".—[*Official Report*, 22/2/16; col. GC 40.]

There lies the problem. Funds are being diverted into the starter home scheme, for homes which are unaffordable to most people on modest incomes, from other housing schemes. Why does the Minister think it is acceptable that the Government are reducing the options for people on modest incomes and the living wage, who are often at the poorer end of the private rented sector, which will mean that often their dream of owning their own home will remain only a dream?

Baroness Williams of Trafford: My Lords, there are a number of products on offer to first-time buyers, including shared ownership, which might require a deposit of as little as £1,400. There is Rent to Buy and a number of other products should people want home ownership.

Lord Harris of Haringey (Lab): My Lords, three weeks ago today the Minister answered a Question about the £140 million that the Prime Minister had announced for estate renewal. We now understand that that £140 million was payable as a loan—it is seed corn that you have to give back. Was the Minister aware at that time that it was a loan? If she was, why did she not tell the House? If she was not, what is going wrong at the Department for Communities?

Baroness Williams of Trafford: My Lords, the day that I answered the Question on estates regeneration was the day that the panel met for the first time. I was not aware of the actual structure of the fund, but perhaps that is understandable given that the panel had yet to meet when I answered the Question.

Lord Hylton (CB): My Lords, will the Government consider restricting the 20% discount for first-time buyers to present occupants of social housing? That would immediately release a dwelling for rent.

Baroness Williams of Trafford: My Lords, the 20% discount for the starter home is to address a specific need in a specific demographic: first-time buyers under the age of 40, whose ability to purchase a home has declined dramatically over the past few decades. This priority is an attempt to address that.

Lord Tope (LD): My Lords, on 26 October I reminded the Minister that according to Shelter research an annual income of at least £77,000 would be needed to purchase just an average starter home in London, and I asked her what the Government's estimate was of the number of people who were likely to access starter homes in London. She was unable to answer the question then. Would she like to have another go now?

Baroness Williams of Trafford: My Lords, it is very difficult to tell these things until the policy is under way. But the average starter home in London is estimated to be about £318,000; in England, excluding London, it is £145,000. So a joint income of significantly less than that outside London would make a starter home much more affordable. But of course there are things such as the Help to Buy ISA, which will help people save up for their deposit. I am sure that as this policy develops and we get the figures in, I will be able to inform the noble Lord.

Lord McFall of Alcluith (Lab): My Lords, as of December 2015 the Mortgage Advice Bureau stated that the average down payment for a London home is £179,248. How can any young couple, never mind those on the lower living wage, afford such a price?

Baroness Williams of Trafford: My Lords, products such as the Help to Buy ISA and the equity loan that the Government are proposing to raise from 20% to 40% in London should help first-time buyers. But I appreciate that house prices in London are not cheap.

The Lord Bishop of St Albans: My Lords, there is much concern that the focus on starter homes could threaten the provision of alternative housing schemes that are more suitable for those on low incomes, such as shared ownership. Will the Minister assure the House that Her Majesty's Government's emphasis on these starter homes will be in addition to other affordable schemes such as shared ownership rather than replacing them?

Baroness Williams of Trafford: I can certainly assure the right reverend Prelate that the £4.1 billion that the Government are putting into shared-ownership homes, to achieve 175,000, demonstrates their commitment to things other than starter homes.

Baroness Taylor of Bolton (Lab): Is the Minister aware that a Conservative MP has moved back in with his parents because he cannot afford to buy a home anywhere near here? What signal does that give that we should have confidence in the measures that she is talking about?

Baroness Williams of Trafford: My Lords, funnily enough that Conservative MP was at my house on Saturday night, and we were talking about this—

Noble Lords: Oh!

Baroness Williams of Trafford: I assure noble Lords that he is not living with me. When he was standing for election, he did move back in with his parents. I think that he is something like 26 years of age, and we are absolutely committed to providing starter homes for people in that age group.

Lord Campbell-Savours (Lab): My Lords, has the Minister been following the progress of the project being promoted by an organisation called London Citizens, which is developing a site on Mile End Road in London—the former St Clement's mental hospital? It can sell flats at a fraction of the normal price that properties are being sold for in London because of the way that it handles the land value. Might Ministers have a look at that project and see whether any lessons can be learned, particularly while the Housing and Planning Bill is going through the House of Lords?

Baroness Williams of Trafford: I am afraid to tell the noble Lord that I have not heard of the scheme but I would be very interested to hear about it. If he could write to me, I certainly would be interested to have a look at it.

Calais: "Jungle" Camp

Question

3.01 pm

Asked by ***Baroness Sheehan***

To ask Her Majesty's Government what views they have expressed to the government of France about the bulldozing of the south section of the Calais "Jungle" camp.

The Minister of State, Home Office (Lord Bates) (Con): My Lords, the management of migrant camps is the responsibility of the French Government. I understand that the French authorities have increased the capacity in alternative accommodation for vulnerable groups. We are in close touch with the French Government, and the UK has pledged £7.2 million to provide help and facilities for migrants at centres in Calais and elsewhere in France.

Baroness Sheehan (LD): My Lords, having visited the camps in both Calais and Dunkirk, I am more convinced than ever that the protection of children and the protection of refugees are two of the most important pillars of international law. However, the violent images on our TV screens show that the French and British Governments have failed to uphold either

in Calais. Will the Minister urge the Prime Minister to set up the processes necessary to assess the rights of the estimated 300 unaccompanied children in Calais, rather than hide behind the skirts of dysfunctional Dublin III regulations?

Lord Bates: We are certainly aware of the situation, which is very difficult for the French Government. They have tried to deal with it correctly: they have applied to the courts for the right to take the actions they have taken and have provided another 100 welcome centres across France to look after these people. The reality is that no one needs to be in those camps. If they are seeking asylum, they should claim it in France. They will then enter the asylum system, and if they have a claim to family reunion in the UK, that can be dealt with expeditiously. We announced just yesterday that through the exchanges of key personnel, we are increasing interoperability between the two departments to ensure that that happens within two months.

Lord Pearson of Rannoch (UKIP): My Lords, does the noble Lord agree that the Prime Minister was guilty of pathetic scaremongering when he suggested that if we leave the EU, France will allow the refugees through to set up camp in Kent? Would it not be the duty of government to stop them at our border and would those who did get through not simply disperse into our community, which is, after all, where they want to go?

Lord Bates: The Prime Minister is absolutely right to point out that the protection of our borders is inextricably linked to co-operation with our European partners. The migrant crisis shows that very clearly. On the other hand, our relationship with France, particularly over Coquelles, is the result of the Le Touquet treaty, which was negotiated bilaterally between the UK and France. We have similar understandings with Belgium, the Netherlands and, of course, the Republic of Ireland. So both hold true.

The Archbishop of Canterbury: My Lords, while we would all agree that the situation is difficult for the French authorities, I am sure we also feel that it is significantly more difficult for the 300 unaccompanied children. I recently visited the Marsh Academy near Romney Marsh and saw a school and community fostering and caring with the utmost compassion for significant numbers of unaccompanied children. Given that example, does the Minister agree that issues of compassion should easily trump those of administrative efficiency and tidiness, and narrow definitions of family links, and that we should, therefore, take more children very quickly?

Lord Bates: Of course that is true but, on compassion, the Prime Minister said in September that we would bring 1,000 people into the country by Christmas, and so far we have 1,200, half of whom are children. The case in Romney Marsh that the most reverend Primate mentions, is in Kent, which has a particular responsibility in this respect, in terms of the numbers of unaccompanied asylum-seeking children arriving there and needing to be cared for. I was very grateful to the right reverend Prelate the Bishop of Rochester, who undertook to write to other authorities about taking more of these unaccompanied asylum-seeking children, to share the burden that currently falls too heavily on Kent.

Lord Rosser (Lab): A tribunal has recently ruled that the unaccompanied children with a strong claim to be in this country under the Dublin regulations should be able to come to the UK to be in the care of their close family while they make their applications. Do the Government now intend to let some or all of the estimated 150 such unaccompanied children in Calais who have a strong claim to be in this country under the Dublin regulations, also now come to the UK to be in the care of their families while they make their applications?

Lord Bates: The protection of children is paramount in this situation. There should be no child in Calais who is not being encouraged by all authorities to claim asylum there. Once they claim asylum there, they enter the multilateral Dublin agreement, and then their claims can be expedited to ensure that they are reunited with their families—if they have families in the UK—and, if not, more importantly, that they get the protection they need from the dreadful conditions we have seen and heard about.

Lord Brabazon of Tara (Con): My Lords, given the widespread and justifiable concern about the unaccompanied children in these camps, can my noble friend tell the House what age these children are and how they got to the camps unaccompanied in the first place?

Lord Bates: Of the unaccompanied asylum-seeking children arriving in the UK, 61% are aged 16 or over and only 7% are under 14. Another point to bear in mind is where they come from; it may be of interest to the House that they come from Eritrea, Afghanistan and Albania. As for how they get here, a chilling report from Europol estimated that 90% of all people seeking asylum in the European Union have got to Europe by paying criminal gangs.

Housing and Planning Bill

Committee (2nd Day)

3.09 pm

Relevant document: 20th Report from the Delegated Powers Committee

Amendment 24

Moved by ***Earl Cathcart***

24: After Clause 54, insert the following new Clause—

"Requirements relating to tenancy deposits: relevant persons

(1) The Housing Act 2004 is amended as follows.

(2) In section 213 (requirements relating to tenancy deposits)—

(a) in subsection (5) omit "and any relevant person";

(b) in subsection (6) omit "and any relevant person";

(c) in subsection (10) omit all the words after the second "property" to the end of the subsection.

(3) In section 214 (proceedings relating to tenancy deposits), in subsection (1) omit "or any relevant person (as defined by section 213(10))"."

Earl Cathcart (Con): My Lords, the first two amendments are in the name of my noble friend Lord Flight, who, unfortunately, cannot be here today. I should declare that I am a landlord.

My noble friend's Amendment 24 provides that the relevant persons concept be removed, on the grounds that it is confusing and gives little or no protection to tenants. Where someone other than the tenant contributes to or pays in full the deposit for a home, they, as well as the tenant, are required to be given the prescribed information. Such a person is known as the relevant person. Failure to give the prescribed information leads to financial penalties, and the landlord's inability to recover possession of their property should the need arise.

There is little need for this requirement, as the arrangement between the tenant and the relevant person is private, one that the landlord is not required to know about, despite being required to provide the relevant person with information. After all, the contract is between the landlord and the tenant, not some third party. Obviously, if the third party is party to the contract—for example, acting as a guarantor—that third party would and should receive the relevant information as to the whereabouts of a deposit, but not if the third party just helps out with the deposit. Surely that is a private matter between the third party and the tenant. A provision which can be forgotten about easily creates a needless trap for landlords, who are potentially hostage to unscrupulous tenants entering into such an arrangement and then seeking to conceal it from the landlord, who is left in breach of his obligations.

My noble friend's second amendment concerns providing information electronically. Landlords are legally responsible for ensuring that deposits provided for a rented property are kept safe for the duration of the tenancy in an official tenancy deposit scheme. They are obliged to provide the tenant with details of where the deposit has been secured, known as the prescribed information. At present, the prescribed information must be issued to the tenant in paper form. In houses of multiple occupation, this can lead to volumes of paper.

The amendment would enable legal information on the location of deposit money, once secured in an official scheme, to be provided to tenants electronically. This already applies to some other communications, including the *How to Rent* guide, but would be best applied across the board, including to gas safety certificates and tenancy agreements. A recent survey of landlords found that 91% would prefer to send prescribed information to a tenant by email; 92% felt that their tenants would prefer such information to be sent by email and the emails stored; and 95% felt that serving information electronically would make the administration of letting out a property more efficient. We are constantly told that we now live in a paperless society, so it seems archaic to insist that prescribed information should continue to be sent only by paper.

My Amendments 26 and 31 are designed to address a particular issue which some landlords and tenants can face when seeking to reclaim a tenancy deposit held by the custodial tenancy deposit scheme. Under the Housing Act 2004, landlords are required to protect tenancy deposits by either registering the deposit with an insured tenancy deposit scheme or physically transferring the tenancy deposit given by a tenant to a custodial tenancy deposit scheme, which holds the deposit during the tenancy. The Government have included in the Bill a streamlined repossession procedure when a tenant has abandoned the property. This presents an opportunity to amend Schedule 10 to the Housing Act 2004 to similarly streamline the custodial deposit repayment procedure where a tenant or landlord is not contactable at the end of the tenancy.

3.15 pm

The problem that I seek to address can arise at the end of a tenancy when a landlord or tenant seeks to obtain a repayment of the tenancy deposit from the custodial tenancy deposit scheme that holds it. Both the landlord and tenant have to agree on the amount of deposit to be returned for the scheme to release the funds to the relevant parties, failing which the matter can be referred to the dispute process of the scheme or to the courts. However, one of the significant issues which landlords and sometimes tenants face is recovering the deposit from the custodial scheme when the other party is simply not contactable or fails to respond to letters and emails. In these circumstances, a landlord has to go through a lengthy procedure to secure a repayment from the deposit held by the custodial scheme if they have suffered a loss. This involves the landlord drawing up a statutory declaration before a solicitor, setting out what deductions should be made and why the tenant is not contactable and forwarding this to the custodial scheme. It is a long-winded process which leads to delays and additional costs for the party making the statutory declaration.

Interestingly, legislation in Scotland and Northern Ireland approaches this problem in a different way, and my amendment to Schedule 10 to the Housing Act 2004 proposes that we should adopt that process here. In Scotland and Northern Ireland, where a tenant fails to respond to requests from the landlord regarding the deposit repayment, the portion of the deposit requested is paid by the custodial scheme to the landlord once the custodial tenancy deposit scheme is itself satisfied that the tenant has failed to respond. A similar process applies where the tenant says that the landlord is not responding. This means that the deposit is repaid more quickly, without recourse to solicitors and statutory declarations, while ensuring that if the tenant or indeed landlord later reappears, they can seek to recover any disputed deposit through the courts. I am further advised that the proposed process has been working very successfully in both Scotland and Northern Ireland for the last three to four years.

I am advised that the current statutory declaration process is used in over 4,000 cases each month. My amendment will lead to a significant streamlining of the deposit repayment process where parties fail to respond to repayment requests, and will lead to reduction in time, expense and worry for landlords and tenants who need to get the deposit repaid by the custodial scheme. I beg to move.

Lord Best (CB): My Lords, as this is my first intervention in Committee, I draw attention to my various housing and planning interests on the register.

Amendment 33B, to which I am pleased to note that the noble Lord, Lord Kennedy, has added his name, seeks to address, in a modest way, the key issue that arises in this Bill. That issue, for me and I think many others in your Lordships' House, is that the Bill seeks to do good things in increasing the supply of housing and supporting first-time home buyers, but it neglects, indeed disadvantages, those who simply cannot become owner-occupiers. While there is widespread support for the Bill's measures to help more young people to buy, there is also widespread alarm that this is not additional to helping the less affluent but is in place of doing so. We are worried that the options for poorer households are being closed off. Councils and housing associations, as we will be exploring in later amendments, are likely to be doing less for those on average and below-average incomes. Where, then, can these families and single people go?

This amendment seeks to put in place one small but significant opportunity for the Government to assist those who, with all the good will in the world, are not going to be buying a property anytime soon, yet are most unlikely to obtain council or housing association accommodation. It would give the Secretary of State the power to underwrite a national scheme that enables organisations like Crisis—the leading charity in this field—to give private landlords a guarantee against damage, rent arrears et cetera. Where there is a bond guarantee, the landlord does not need the usual month's rent as a deposit. As well as overcoming an insuperable barrier for a tenant with very little money, this approach avoids the administration in collecting, chasing up and returning deposits.

Now that social housing is so hard to come by, this is seldom a possibility for single homeless people since they are unlikely to get classified as in "priority need". Even where the local authorities have a legal duty to find accommodation for homeless households, the majority of councils now look to the private rented sector to discharge that duty. This sector may be far from ideal for many people in terms of security, affordability and quality, but it is now the only answer in so many cases. The problem is that, since private landlords are not charities and are running their businesses, they do not want to take risks so even this avenue is blocked for many applicants.

The latest survey commissioned by Crisis from Sheffield Hallam University shows that 55% of landlords are unwilling to take in anyone in receipt of housing benefit, not least because the local housing allowance does not cover all their rent, and 82% of landlords were unwilling to rent to homeless people. So numbers are growing of people in bed-and-breakfast hotels or hostels, or indeed living on the streets. This is vastly more expensive than finding a place for them in the private rented sector.

With a rent deposit guarantee in their armoury, local PRS access schemes have something concrete to offer private landlords. There are currently over 280 of these schemes, many supported by Crisis with funding from the Department for Communities and Local Government. I should say in passing that the future of this grant aid is now unclear and I hope DCLG is minded to renew it. An evaluation by Sheffield Hallam University found that in four years these PRS access schemes had secured homes for 8,000 people who had been homeless and these tenancies were shown to be sustained in 90% of cases.

Bond guarantees mean these local groups can overcome the huge and understandable reluctance of landlords to take any risks in whom they house. What is needed is watertight government backing which local PRS access schemes can deploy. Only that part of the guarantee which gets called down actually costs any public money. Experience shows that in only about 15 to 20% of cases is the bond called upon at all, and in many of these instances the amount claimed is relatively modest. Compared with the bricks-and-mortar cost of a new home, this government subvention is miniscule and it achieves immediate revenue savings.

This amendment, therefore, paves the way for a national deposit bond guarantee scheme, along with a set of quality standards for the organisations who could draw upon it. As so many doors close on housing for those in the most acute need, this arrangement would give Government the chance to be helpful in a modest but important way. Since it also saves public money into the bargain, I hope the Minister finds it appealing. After all, we will shortly be discussing the very generous guaranteed support for home buyers that to date requires underwriting to the tune of £9.7 billion—hundreds of times more than this guarantee scheme that would enable much poorer people to get a roof over their heads.

Lord Beecham (Lab): My Lords, I congratulate the noble Earl, Lord Cathcart, and the noble Lord, Lord Best, on their practical and sensible amendments, which I hope the Government will accept. In terms of difficulties for people, we are dealing with a sensitive area because their homes are at stake. It is quite reasonable to adopt the proposals that we have just heard outlined in detail, and we support both amendments.

My amendment, Amendment 28, is rather different. It would require the Secretary of State to undertake a review of the tenancy deposit scheme, which was introduced in the Housing Act 2004. One reads from time to time of difficulties experienced by tenants, in particular, although it could also, I suppose, be landlords who have difficulties, in recovering deposits they have paid. Very often, one reads that allegations are made that the tenant has damaged the property and so forth. Given that usually not large sums are at stake, it seems to be the case that some tenants give up the ghost rather than pursue the matter. There is a scheme for dispute resolution, which is operated by the relevant agency without charge. However, it is not binding on both parties to accept the scheme's involvement, so if a landlord, or it could arguably be a tenant, is at the wrong end of a claim, the other party would have to seek redress through the courts. We have already had a reference to the small claims limit this afternoon, and it is probable that most deposits would be within the range of up to £5,000. No legal aid is available and no costs are recoverable on a successful claim. This is going to make it less likely than ever that tenants will exercise their right to recover a deposit which is being wrongfully withheld.

[LORD BEECHAM]

I have only one relatively direct experience of this matter inasmuch as the daughter of a Newcastle City councillor colleague of mine and her two friends were living in accommodation in London and had paid a deposit. Issues arose about to whom the deposit had been paid and so forth. It dragged on for a considerable time. It was clearly necessary for these three young people to get some legal advice—fortunately for them, they were not seeking it from me—but it got a little too much for at least two of the three tenants, and they decided that they would rather move on and forget about it. However, they lost a modest sum of money, by most people's standards, but money they could ill afford to do without.

This amendment is calling only for the Government to review the operation of the scheme. It has now been in existence for 11 or 12 years. I do not know whether it has been reviewed before, but given the pressure on the private rented sector, which has grown considerably with the proportion of private rented properties in the market in the order of, I think, 20%, whereas a few years ago it used to be 9% or 10%, it is a growing area and the issue of deposits potentially becomes a matter of growing concern.

I hope the Minister will indicate the Government's willingness to inquire into this. There are various agencies and interest groups which would no doubt be willing to collaborate. It would be as well to institute such a review at an early stage and then, if necessary, to amend the scheme or amend the 2004 Act, in particular, to see that proper accessible protection can be afforded to those who might be at risk of unscrupulous landlords, in this case, taking advantage of them and relying on them to give up the ghost before seeking redress, which is difficult and potentially expensive to obtain.

3.30 pm

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, I thank my noble friend Lord Cathcart for explaining on behalf of my noble friend Lord Flight the reasons behind Amendments 24 and 25. If enacted, Amendment 24 would remove the requirement for a landlord to notify a "relevant person" that their tenant's deposit has been secured in a Government-authorised tenancy deposit protection scheme.

Section 213 of the Housing Act 2004 defines a relevant person as,

"any person who, in accordance with arrangements made with the tenant, paid the deposit on behalf of the tenant".

This can be a family member but in most cases it is a charity such as Crisis or Shelter, which offers deposit loan schemes to vulnerable people with a history of homelessness, or a local authority, which pays the deposit through housing benefit in cases where tenants are out of work or on a low income.

I welcome proposals which reduce burdens for business and I understand the spirit in which this amendment has been tabled. However, the proposals set out in Amendment 24 have the potential to adversely affect the willingness of a charity or a local authority to pay a deposit on behalf of a tenant. This could lead to vulnerable people or those on low incomes being unable to access the private rented sector, which is something we would want to avoid.

Amendment 25 would allow tenancy deposit protection information to be provided to the tenant by their landlord electronically by email. The Government welcome proposals that seek to reduce burdens on business but in this case primary legislation is not required. The aim of this amendment can be achieved through secondary legislation, using powers in the Electronic Communications Act 2000. I will be happy to look further into the proposals outside this Chamber and consider introducing secondary legislation at a later date. I hope that this explanation will reassure my noble friend and I hope that he will withdraw his amendment.

Amendments 26 and 31, which were tabled by my noble friend Lord Cathcart, seek to reduce the time taken to repay a deposit to a tenant or landlord where either party is absent or unco-operative. I accept that there is a minor cost to a landlord or tenant in arranging for a solicitor or magistrate to witness a statutory declaration, but this process is necessary for the landlord or tenant to prove beyond any doubt that they have attempted to contact the other party and that they have not been able to reach an agreement on the amount claimed from the deposit before it is repaid. The example that the noble Lord, Lord Beecham, gave just before he sat down underlines this. Removing the requirement could leave the process open to abuse, with no independent verification that the other party had been contacted to give their consent. With this explanation, and given that the vast majority of claims are settled without a problem, I hope that the noble Lord will not press his amendments.

Amendment 28, in the names of the noble Lords, Lord Kennedy and Lord Beecham, would require a review of the tenancy deposit scheme. I understand that this amendment has been tabled in order to ensure that tenants are treated fairly at the end of their tenancy, and I know that we can all agree with that aim. My department has a governance role to ensure that the schemes are working well. The performance of the schemes is monitored through monthly key performance indicators, regular governance meetings and information provided by the tenancy deposit scheme users' group, which includes landlord and consumer representatives.

From the overall feedback received, we are satisfied that the alternative dispute resolution system generally works well. Of the 11.5 million deposits which have been protected since the launch of the scheme, less than 2% have gone to adjudication. On average, following adjudication, 27% are awarded to tenants, 17% to landlords or agents, and just over half are split between the two sides.

Looking to the future, we are satisfied that the tenancy deposit protection schemes awarded contracts for new custodial schemes from 1 April this year have the necessary alternative dispute resolution processes in place to ensure that tenants will continue to be treated fairly. This was a key evaluation criterion in our re-procurement exercise carried out last year.

In conclusion, I hope that this explanation will assure noble Lords that tenants' deposits are and will continue to be returned to them fairly and quickly at the end of the tenancy, and I hope that they will not press their amendments.

Finally, I turn to Amendment 33B, tabled by the noble Lords, Lord Best and Lord Kennedy, which gives the Secretary of State powers to underwrite a national tenancy deposit bond guarantee scheme. In 2014-15, 220,000 households were prevented from becoming homeless. Of these, 54% were assisted to remain in their own home and 46% were helped to a new home. Statistics show that in at least 42% of cases households were assisted into private rented sector accommodation. In support of this, many local authorities, housing associations and charities in England already have a rent deposit or bond scheme.

The Government have already funded Crisis to the tune of nearly £14 million to develop a programme to help single homeless people to access the private rented sector. Nearly 9,000 single homeless people have been helped into private rented sector accommodation so far, with a 90% tenancy sustainment rate. This Government's approach is to support a provision of resources to local authorities at a local level. This is because they can then use the funding flexibly to meet local needs. Of course, different areas have particular requirements. To divert scarce funding into a single national approach would not always be the best or most effective use of resources and to specifically underwrite a national scheme may not be the best use of resources.

I hope that this explanation will reassure noble Lords and I hope that they will not press their amendments. But before I sit down I will answer a specific question from the noble Lord, Lord Best, about the DCLG continuing to fund the private rented sector access programme. We have not made any decision on further funding, but from the start of the programme all funded schemes were required to attract funding from other sources and make plans for future sustainability. I will keep the noble Lord updated on this.

Lord Kennedy of Southwark: Before the noble Baroness sits down, I think her response to the national rent deposit guarantee scheme is quite disappointing. Will she say why? She said that a number of authorities have these schemes, but what is the objection to having a national scheme? We are talking about very modest sums of money.

Baroness Williams of Trafford: I think that the noble Lord will accept that the fact that the scheme is currently working very well and that some local authorities may actually decide to underwrite the schemes themselves in certain cases to prevent homelessness is—and we are looking after every single penny—a reason not to do something unless there is evidence to say that we would need to do it.

Baroness Hollis of Heigham (Lab): I am aware that this is Committee stage. How many local authorities have such schemes in place, and what would be the additional cost, in the Minister's estimate, of producing a national scheme?

Baroness Williams of Trafford: May I come back to the noble Baroness on those specific details?

Baroness Hollis of Heigham: Of course, but I would have thought that if the Minister was responding on cost plans, she might have the information.

Baroness Williams of Trafford: That is very true. If the noble Baroness will forgive me, I will come back to her. I may well have those figures in my notes, and, during the course of Committee, I will come back to her.

Lord Beecham: I wish to return to the issue of the deposit scheme. The noble Baroness relies on the apparent success of the alternative dispute resolution scheme. She is right to do so for those who use that scheme, but of course the scheme is, in a sense, optional. Both parties have to agree to use the resolution scheme. If one party does not—and it might well be the landlord—then there is no resolution through that mechanism, so merely quoting the figures which are produced by that scheme does not necessarily reflect the situation in the marketplace. I do not know whether the Minister has or can procure any evidence of the incidence of problems outside the ADR scheme, or what the impact might be of making it not a matter to be agreed between the parties, but something in place for either party without necessarily having to sign up to an agreement. That might be a way of facilitating access to the scheme, usually for tenants, who would otherwise have to deploy other methods, including possibly their own resources. For the reasons I have already given, that will often be difficult.

With respect, while the ADR scheme is very useful, it does not necessarily cover the whole area. My amendment seeks the involvement of the Government in looking at the situation in the remaining area and deciding whether changes need to be made. I hope the noble Baroness will agree to have another look at that aspect of it.

Baroness Williams of Trafford: I will look at it again, but this is covered in *How to Rent*. I certainly know from my own experience, and I declare a past interest in this, that within a certain period from the start of a tenancy—I think it is 28 days—not only does the tenancy deposit scheme have to be set up, but the landlord has to produce the certificate in the house. We talked about an electronic version of it. Alarm bells should ring for a tenant if such a scheme has not been set up and evidence produced of it, but maybe I am not getting the right end of the stick.

Lord Beecham: I understand the difficulties of all this, but I do not think that the noble Baroness quite has the point. You can enter into the scheme but, as I understand it, it requires both parties to agree to the alternative resolution of a problem. If one party—usually the landlord—does not, that way of disposing of the matter does not exist. The question therefore is: what other methods are available and how can the system be improved? One way is to make not just the deposit but use of ADR compulsory where there is a dispute. Perhaps that is worth looking at but, as my amendment suggests, an overview of the whole situation would be a useful start.

Baroness Williams of Trafford: I will go away and explore the points that the noble Lord has made. I will write to him.

Lord Kennedy of Southwark: I will come back briefly to the national deposit scheme. When the noble Baroness writes to my noble friend about the amount of money and the authorities involved in such schemes, will she also say what percentage of tenants are protected by them, and about the thought processes behind how the Government decided not to go for the national scheme? I think she will say that most of it is covered, but what consultation took place to decide not to come forward with a national scheme?

Baroness Williams of Trafford: I am happy to do that.

Earl Cathcart: I think my noble friend has finally sat down. I thank the noble Lord, Lord Beecham, for supporting all the amendments. I only wish that the Minister's response had been the same. Unfortunately, it was rather like a curate's egg—good in parts. I thank her for agreeing to take away the idea of giving the information electronically. However, I am disappointed in her response to the other two amendments I spoke to. I will read what she said and no doubt my noble friend Lord Flight and I may come back to her, but at this stage I beg leave to withdraw the amendment.

Amendment 24 withdrawn.

Amendments 25 to 28 not moved.

Amendment 29

Moved by ***Lord Kennedy of Southwark***

29: After Clause 54, insert the following new Clause—

"Security of tenure

(1) After section 19A of the Housing Act 1988 (assured shorthold tenancies) insert—

"19B Minimum length of certain assured shorthold tenancies

Any assured shorthold tenancy (other than one where the landlord is a private registered provider of social housing) granted on or after 1 April 2018 must be for a fixed term of at least thirty-six months, and it is an implied term of such a tenancy that the tenant may terminate the tenancy by giving two months' written notice to the landlord."

(2) In section 21 of the Housing Act 1988 (recovery of possession on expiry or termination of assured shorthold tenancy), after subsection (4) insert—

"(4ZZA) In the case of a dwelling house in England, no notice under subsection (4) may be given before the end of the period of thirty-six months beginning with the first day of the tenancy.""

Lord Kennedy of Southwark: My Lords, I declare an interest as a councillor in the London Borough of Lewisham. Amendment 29 in my name and that of my noble friend Lord Beecham seeks to amend the Housing Act 1988 to make the minimum length of an assured shorthold tenancy granted on or after 1 April 2018 a fixed period of 36 months. Most assured shorthold tenancies usually last between six and 12 months at present. The contract says how much rent to pay, how long the tenancy lasts and who is responsible for the repairs. The landlord cannot increase the rent during the fixed term of the assured shorthold tenancy unless the contract sets that out. When the tenancy ends and the tenant decides they wish to sign up for a further fixed period the rent can be increased in the new agreement.

Even an assured shorthold tenancy for one year is a relatively short time and this amendment seeks to give tenants a longer period to live in a property, enjoy more security and put down some proper roots. It is a longer period than at present but not excessively long. The private rented sector is increasing all the time, and providing more stability and a longer tenure for tenants must be right. We hear of "generation rent"—people not being able to afford to buy their own home and more people living in properties they have to move round from more regularly. That is not good for them or the wider community. It is not great for landlords either.

3.45 pm

As I said earlier, a greater proportion of people are living in the private rented sector. It is not only single people and couples but also people with children. People with children do not want to move round needlessly and have less certainty about their living arrangements, certainly with things such as their children's schools. I am sure that noble Lords have seen the English housing survey for 2014-15 which showed that over the last 10 years the number of tenants in the private rented sector with dependent children had risen from 30% to 37%. I think that that trend will continue.

The amendment also allows tenants to give two months' notice if they wish to move and leave the property. This is important as it does not hold people to a tenancy when they need more flexibility because their circumstances have changed. At the same time, it gives tenants more security in the length they can rent a particular property, subject to conforming to the other requirements of the contract they agree with the landlord. The rights of the landlord are not affected in any other way by this amendment. I will listen with interest to the Government's response. I beg to move.

The Earl of Lytton (CB): My Lords, I hate to voice a tone of slight dissent from what the noble Lord has introduced because I know where he is coming from. I declare an interest because I am a private rented sector landlord. Some of our assured shorthold tenants had six months or one-year lettings originally and now double-digit years later are still there, with or without dependent children. I think we have seen at least two families grow up and the next generation start to fly the nest. I am very proud of that. The critical point is that there is no bar in letting longer term at present.

There are also many reasons why it is convenient for both parties to rent shorter term. I live in an area that is customarily known as the "Gatwick diamond". It is an area of Sussex and part of Surrey where the great driver is the industrial and commercial activity associated with Gatwick Airport. Many people move in or have temporary secondments to places such as that or indeed may be seconded elsewhere to postings abroad for varying times—six, 12, 18 months and so on. This applies whether they are landlord or tenant. Whether it is job secondment, moving home or being in the process of selling a property somewhere else and moving in, my wife and I have a constant source of applicants for accommodation. There is a need for the short term—it is very important and part of the fluidity of this section of the market.

Another thing I would be slightly fearful of in the noble Lord's amendment is when a buy-to-let situation exists on that sort of mortgage. The deferral of the reversion might have undesirable effects in terms of how the mortgagee would see the risk. A mortgagee, of course, needs to be in a position to lay claim to the property and dispose of it on the open market to redeem the mortgage, and needs to be able to do so at reasonably short notice. That obviously should not be operated to the disadvantage of a contractual tenant under an AST, but if it is deferred for three years, I can see that that might interfere with the way in which a mortgagee could perceive that particular bit of the risk.

The basic premise is a little bit unbalanced as between the parties. I have some sympathy with the noble Lord here, but not every part of the country and not every sector suffer from the issue that I suspect this amendment is trying to address. The private rented sector is important. I like to think that most private sector landlords think as I do, offering a quality product and treating our tenants as decent people, as human beings, as neighbours, as friends and, indeed, seeing their children grow up and taking great pleasure in that.

However, we have been down this road before on creeping security of tenure. Memories are quite long in that respect. I remember that from the 1960s until the 1980s the private rented sector was more or less annihilated in all but name. I would not like to think that the message here is that this is a harbinger of that situation. With the benefit of those thoughts, I suggest that the Committee should not go along with this amendment, although I have some sympathy with the rationale behind it.

Baroness Hollis of Heigham: I very much support my noble friend's amendment, which proposes that any tenancy must be offered for a fixed period of three years. Of course, there may be people who have sold a house and are waiting to buy who need a short tenancy, or there may be students who want it for less than a year—nine months, perhaps—and will then move on. Obviously, no one is saying that any tenant and landlord should be locked into it irrespective. The tenants themselves will be the best judge of how long they are likely to need that tenancy.

As it stands, all the power is with the landlord. I was interested to hear in the speeches opposing this no recognition of the fact that something like a third of all privately rented property is below the decency standard and that if any tenant in that situation asks for repairs, they risk—I am not saying it will happen—losing the right to extend their tenancy. After six months, 12 months, or whenever that tenancy is up for renewal, they can and will be out. As a result, we know, not just from Crisis and Shelter, but from our own environmental health officers in local authorities, how often tenants are afraid to require repairs to be done because if they do, they will lose their home. There is too much of an imbalance of power between the landlord and the tenant, given the legal situation in tenancies, the level of rents and the shortage of supply.

Who is most interested in six-month, short-term tenancies? It is not necessarily the landlord. A good landlord may be delighted to have a long-stay tenant without the risk of voids, the cost of churn and so on. I am sure that there are many such landlords in that situation; I do not doubt that the noble Earl, Lord Lytton, is one such.

Who does have an interest? The letting agencies, of course. Every time there is a new letting after six months, they get a new set of fees. The six-month limited tenancy is gold to the letting agencies. It is desperate news for tenants who might need repairs. There is also a problem in respect of mortgage providers: I understand that only a couple of building societies, one of which is Nationwide, are willing to underwrite buy-to-let where the assured tenancy is likely to last for more than six months. Therefore, everything colludes to prevent a good landlord doing what he might like to do and to prevent tenants having the security of putting down roots in their community. It is not in the interest of a bad landlord who does not want to do repairs; it is not in the interest of the letting agency; it is not in the interest of the mortgage providers. There is, therefore, a complete imbalance of power. I am not speaking about those tenants who, quite rightly, see the rented sector as a temporary tenure on their way through to either a different home in a different part of the country or to a different form of tenure. I am talking about those who are locked into the private rented sector with children who need to go to schools, with GPs' surgeries that they need to get placements in, and who may have a disability in the family and need the support of neighbours who will help them. They should not be at the whim of a bad landlord, a bad letting agency and overly risk-averse mortgage providers for buy-to-let.

This amendment would say that that tenancy must be offered; rogue tenants would be sent on their way, as they should be. It would help good tenants and strengthen the arm of good landlords to provide what is needed, which is homes in which people can put down their roots.

The Earl of Lytton: My Lords, will the noble Baroness comment on the following scenario, which happens very often in the part of the world I inhabit? A family takes a foreign posting; they have a house in the UK and the posting is, perhaps, for a year, which is quite common. During that year, they wish to let the house that they own in the UK. When they come back from that foreign posting, however, they need the house back. In the circumstances that would occur under this amendment, they would not be in a position, as I understand it, to let for a certain period of a year and get their house back. Might I have the noble Baroness's observations on that?

Baroness Hollis of Heigham: My Lords, in that situation I would expect there to be an agreement. Where a landlord is seeking to regain possession for their personal use—as their own home—that, in my understanding, has always been recognised in law as a different situation from someone being a permanent landlord and seeking merely to churn their tenants.

Baroness Gardner of Parkes (Con): My Lords, I am very interested in this subject—noble Lords know my interests as declared—and I am interested in what is being said today. I think the noble Earl, Lord Lytton,

[Baroness Gardner of Parkes]
deals with a market that he clearly understands well, and that is interesting. However, I have had many different comments and reports sent to me by different people. My own personal experience is that, when I offer people two years, they say they do not want that; they do not want to be tied to that and would like only a year. Is the landlord obliged to offer them renewals for three years, even if the person wants it for only a year?

Baroness Hollis of Heigham: My Lords, the proposal is that the landlord should be required to offer it, but that does not in any sense preclude the tenant and the landlord deciding that they want a different tenure.

4 pm

Baroness Gardner of Parkes: All the agreements for letting residential properties in this country are extremely complicated. In Australia, there is just one in New South Wales. I do not know about other states because there is not a federal law. In New South Wales, you just go into the local paper shop and pay $7.50. That is your letting agreement and everyone—big and small, rich and poor—abides by those. There is about an inch and a half in which you could type quite a lot of special agreed clauses but the rest of the format is a basic thing. It is so simple.

The point made by the noble Earl, Lord Lytton, that this amendment is rather overbalanced against the landlord is relevant and important. Are you going to create a different type of tenancy from the assured shorthold? What will you do in cases where the landlord dies and his family is obliged to pay all death duties in advance of getting probate? What will happen under those circumstances? If you must sell the property with a sitting tenant, of course you will not get anything like the full value. Will the Exchequer allow for that and value the property down accordingly, or will it be done on the open-market value of the vacant property? What would be the special provision where the tenant was not paying the rent and that had built up? Would that all be covered by a new type of tenancy agreement? There are so many complexities that we need to look at here, so this is rather badly balanced.

I think the noble Baroness, Lady Hollis, described people as being at the whim of bad landlords. I am sure that anyone who has a bad landlord is pretty unfortunate but there are so many honest, reliable landlords and, likewise, many good tenants who are happy. I know many people who have rented for years and are still in the same property after well over a decade, as was mentioned. There is a difference between that and the fact that the landlord is obliged to offer three years while the tenant can go any time at two months' notice. That seems a bit extreme, one way or the other.

Lord Campbell-Savours (Lab): My Lords, perhaps I can deal with the noble Baroness's comment on what happens in the event that the landlord dies. This is an amendment moved by my colleague on the Front Bench, and if there is a difficulty with it there is no reason at all why the Government cannot come back with an amendment to deal with the thrust of the case laid in the amendments by my Front Bench but which includes a provision for those circumstances. That is what we are here to do: to legislate. These amendments have been proposed but Ministers could take them away and say, "Yes, there is a point here but if we build in a system of exemptions then these particular problems will not arise".

I can also deal with the question of tenants in arrears, which the noble Earl, Lord Lytton, referred to. As I understand it, under Clause 55—in Part 3, which is headed "Recovering abandoned premises"—the Government's position is actually to simplify the whole process of dealing with what happens where,

"the unpaid rent condition is met".

That would cover where people are in arrears and where mortgages are being paid, as I presume that under that provision the landlord would then be entitled to secure possession of his property. That deals with one of the main objections in the contribution of the noble Earl, to which I listened carefully.

Finally, the noble Earl referred to people working at Gatwick Airport who did not necessarily need longer-term tenancies. The amendment says that,

"it is an implied term of such a tenancy that the tenant may terminate the tenancy by giving two months' written notice to the landlord".

The tenant is not locked into the agreement at all. The tenant can pull out of the agreement at a moment's notice simply by saying, "I gave two months' notice to the landlord". What we are doing here is protecting tenants by not locking them in, in the sense that they can pull out. We are protecting landlords—or the Government are protecting them—under the provisions of Clause 55 in terms of arrears. In terms of landlords dying, as I said, that could be dealt with by further consideration by the Government.

However, what we are doing more than anything else is giving people who take on tenancies a sense of security as to where they live. From what I hear from tales brought to me by my sons' friends, who have had different tenancies in London over a period of years, many tenants in London do not know where they are going to be. They do not know whether the landlord will want the property back at the end of 12 months. People are entitled to know that the weight is moving at least a little more in favour of the tenants to give them more rights. We are not granting people long-term security of tenure and indefinite tenancies. We are simply extending it from one to three years to give more balance to the way that tenancies operate in the United Kingdom.

Lord Greaves (LD): My Lords, I want to put this problem in a slightly wider context. The noble Baroness, Lady Hollis, said that the present system of short tenancies was bad for tenants, bad for landlords and bad for housing. It is also bad for the local community. There are areas in the north of England of cheap, mainly terraced, housing and former council estates. The houses are cheap—as I will explain later—the rents are cheap, and keeping them in a decent condition is a constant struggle for owners, for the council and for people living in them. The result of the system is that there is a high churn—that is the technical word—of tenants. Many people live in a house for only a short period. That is clearly linked to the system of tenancies.

More than 10 years ago, I was chair of the governors of the local primary school. One problem the school had was the children who were living in that kind of property. It is a traditional area of working class owner -occupation. Some 50 or 100 years ago, people bought the houses from the mills that they worked for. When I first knew the area, owner-occupation was 80% or more, but private landlords have moved in very significantly and taken over many of the properties: one-third or more in the period I am talking about. Two-thirds of the children in the school spent most of their primary education there. In that respect, it was a very stable school: children went into the nursery or infants at the age of three or four and left at 11 when they went to secondary school. However, one-third of the children turned over every year. Every year, one-third of the children in each class were new and did not stay long enough to settle, to get a proper education and have the stability of being in the same school for some time.

That is just one example. When I first knew it 40 years ago, this was a pretty stable working class community of extended families. People who bought houses there as young couples had their parents living in the next street and their grandparents round the corner or in the sheltered housing just down the road. That has been broken down. There are lots of reasons for that, but the single most important one is the growth of private sector housing at the bottom end of the market. There are some good landlords. In that area, the best ones are those who live in the street and own one or two other properties in it. Other very good landlords are those who were left a house when their parents died, look after it well and live in the same town. However, there are absentee landlords who operate through housing agents. I have had people ringing up from Bognor Regis demanding to know why, as their councillor, I was not doing something about the rotten tenants in their house who had just done a moonlight flit and taken all the copper. I had to explain that I was not their councillor but that I was concerned about the house. But I also had to ask why they put those tenants in. I said, "Well, you know what the street is like. It is like that. We are desperately trying to hang on to the good residents there, but you know what it is like". They said, "No, we have never been there, why should we?". It is that kind of landlord in the private rented sector which is a disaster. That is why I would tend to support this amendment, which is just one of the things that might be done.

Baroness Williams of Trafford: My Lords, Amendment 29, if enacted, would introduce a minimum of three-year tenancies in the private rented sector in England and would mean that landlords would not be able to rely on the notice-only or no-fault ground for possession—known as Section 21—within the first three years of a tenancy. Tenants would be able to end the tenancy by giving, as the noble Lord said, two months' notice at any time.

Let me make it clear that this Government are committed to building a bigger and better private rented sector which provides security and stability for tenants and flexibility for landlords. We have taken action to support the supply and quality of private rented accommodation by resisting unnecessary and unhelpful regulation while cracking down on the worst practices of some rogue landlords.

Our model tenancy agreement, introduced in September 2014, promotes longer tenancies for those landlords and tenants who want to sign up to them, but there is no one-size-fits-all approach to tenancy lengths, as noble Lords have said. Many landlords are looking to rent out a property for the longer term, but there will be some for whom letting a property is a short-term plan and who will need the property back at some point, perhaps for their own family to live in, as the noble Earl, Lord Lytton, said. So, the system does need flexibility.

Although I understand the spirit in which this amendment is tabled, the amendment would be counterproductive. It would overburden the market with restrictive red tape, stifling investment and the supply of rented housing at a time when we most need to encourage it. This would not help landlords or, indeed, tenants.

Let me explain. Before assured shorthold tenancies were introduced in the Housing Act 1988, the private rental market was in decline. Lifetime tenancies and regulated rents meant that being a landlord was simply not commercially viable for many property owners. But since 1988, the private rented sector has grown steadily—growing from just over 9% of the market in 1988 to 19% today. Landlords, and in most cases tenants, welcome the flexibility of the current assured shorthold tenancy regime, which does not lock either party into long-term commitments and promotes mobility.

We must be mindful that recent figures show that tenancy lengths are on average three and a half years. However, without the certainty that landlords can seek repossession when required, many would be reluctant to let their properties.

Baroness Hollis of Heigham: If the landlord were reluctant to let the property, what would then happen? It would go on the market for sale, making it more available to young owner-occupiers, or would-be owner-occupiers. Is that a bad thing given the Government's philosophy?

Baroness Williams of Trafford: It may not go on the market. It may, as I and other noble Lords have said, be for the use of the landlord who owns the property. There are a variety of reasons why a landlord should wish to repossess a property.

The noble Baroness's question on retaliatory eviction is very valid. She will remember that the intention of the Deregulation Act 2015 was to provide tenants with protection from such eviction. Where a tenant has raised a legitimate and verified complaint with the local authority they cannot be evicted using the no-fault Section 21 procedure for six months.

The noble Baroness also talked about buy-to-let mortgages. Mortgage lenders have told us that following the introduction of our model tenancy agreement, with appropriate break clauses, there is no longer any impediment to permitting longer tenancies for their landlord customers. The Nationwide Building Society permits tenancies of up to three years and Barclays for

[Baroness Williams of Trafford]
up to two years. Lloyds, the biggest player in the buy-to-let market, is in full agreement in offering three-year tenancies and plans to implement the policy by the summer of 2016. The Housing Minister wrote to the Council of Mortgage Lenders in January, urging it to encourage those lenders who have not changed their policies to do so, and further discussions will be held.

4.15 pm

The noble Lord, Lord Campbell-Savours, suggested that when the tenant is in arrears the landlord could use the abandonment procedure to regain possession. The abandonment procedure, which is introduced in Part 3 of the Bill, is designed specifically to deal with abandoned properties—which may also be commensurate with not paying rent—but it is not intended as a route to remove a tenant in arrears. It is for a property that has genuinely been abandoned. Where a tenant was in arrears but confirmed that they were still in occupation of the property, you could not use that procedure.

The noble Lords, Lord Campbell-Savours and Lord Greaves, talked about the impact on communities. Recent figures from the *English Housing Survey* for 2013-14 show that tenancy lengths are, on average, three and a half years. According to the *English Housing Survey*, three in four private renters ended their last tenancy because "they wanted to move". Tenants value the flexibility that private renting offers, with the majority of people under 35 saying that they do not want longer tenancies, as my noble friend Lady Gardner of Parkes pointed out.

I believe the current framework strikes the right balance between the rights of landlords and of tenants. I hope that that will encourage the noble Lord to withdraw his amendment.

Lord Kennedy of Southwark: My Lords, I thank all noble Lords for participating in this short debate. I say to the noble Earl, Lord Lytton, that I have great respect for him and his knowledge of this sector but there are landlords in the private rented sector who want a longer period to rent to tenants. My amendment seeks to address that issue by retaining the flexibility that both the landlord and the tenant want. It is only a probing amendment but it highlights an issue for some tenants and landlords; namely, allowing longer assured shorthold tenancies where these are wanted. There are, of course, many excellent private landlords, including, I am sure, all the noble Lords who are landlords. I beg leave to withdraw the amendment.

Amendment 29 withdrawn.

Amendments 30 to 33B not moved.

Clause 55: Recovering abandoned premises

Amendment 34

Moved by ***Lord Kennedy of Southwark***

34: Clause 55, page 25, line 29, at end insert—

"(e) the local housing authority responds to a request by the landlord confirming that they suspect the property to be abandoned."

Lord Kennedy of Southwark: My Lords, at Second Reading I and many other noble Lords expressed reservations about the proposals on abandonment. Creating a fast-track process to reclaim possession of a property that has been abandoned has a number of risks. Taking the courts out of the process leaves the tenant in a potentially very difficult position. What is also odd about this provision is that we have spent the first day and the first part of this second day in Committee talking about rogue landlords and seeking to protect tenants from their unfair and often illegal practices. But this part of the Bill could be seen as a rogue's charter.

It creates a court-free process to get rid of your tenant if you do not like them so that you can get other people in who may pay a few more quid in rent. In 12 weeks the landlord can get possession of their property, after eight weeks of rent arrears and if the tenant has failed to respond to three notices. There do not appear to be any significant problems regarding properties being abandoned. Can the Minister point to the evidence for these proposals being necessary?

Landlords already have powerful rights to regain possession of their property. They can evict tenants through the courts using Section 8 or Section 21 notices and can also use implied surrender in cases of abandonment. Under implied surrender, a landlord may take instant possession of a property without court approval if the action of the tenant clearly implies that they have surrendered the tenancy. We should be clear that genuine cases of abandonment are rare and this is a simple protection for tenants.

Can the noble Baroness also set out how vulnerable tenants will be protected from rogue landlords seeking to make use of these clauses? People can be called away or their circumstances might change. It could take more than eight weeks to get their benefits or other matters sorted out. Vulnerable people in particular may not respond to letters or emails that are sent to them. So although the landlord is not getting any response, it does not mean that the property has been abandoned. The provision allowing tenants to challenge abandonment at the county court after they have been evicted is very weak indeed. Who is going to do that with their possessions on the pavement? Getting a roof over your head will be your overriding concern.

The whole of Clause 55 should go, as tenants seem to have very little protection under it. If the Government are not going to do that, Amendment 34, in my name and that of my noble friend Lord Beecham, would add an additional subsection (e) to the clause, which would require the local authority to respond to a request from the landlord, confirming that it believes the property is abandoned and that the landlord can serve notice on the tenant. This should cause the Government no concern whatever. It would enable the landlord to recover their property if it has been abandoned —in addition to the powers and ways that they have at present, which I have outlined already—but would add a small but significant protection for the tenant.

Amendments 35 and 36, which both come under Clause 57, concern warning notices. Amendment 35 would give the person occupying the property an additional four weeks to respond to the warning notice,

while Amendment 36 increases the maximum period within which the second warning notice can be given from four to eight weeks. The purpose of these amendments is to increase the time available to resolve these matters without the abandonment procedures being invoked and for the tenants to be able to confirm they have not abandoned the property. I beg to move.

Lord Campbell-Savours: My Lords, this is a particularly important amendment, as I read it. I am sorry that I slightly misinterpreted the wording in the legislation on this whole question of abandonment. It seems to me that this provision as it stands is wide open to abuse. Clause 58 has a reinstatement principle, which I suppose is a sort of appeal, but many landlords will believe that this is an open door for them to bring a tenancy to an end by simply asserting the fact that they believe the property to be abandoned.

I cannot see how it is possible to reject the amendment that has been tabled by my noble friend Lord Kennedy of Southwark, which says that the "local housing authority" has to respond,

"to a request by the landlord confirming that they suspect the property to be abandoned".

In other words, the local authority has to give the seal of approval before the landlord can bring the tenancy to an end.

I hope that the Minister will not simply follow what is in her brief, assuming it says, "Reject", but will perhaps put this back to people in her department. It is a perfectly sensible and reasonable amendment. It would provide a checking arrangement to make sure that landlords do not abuse their position and I hope that it will be supported by the House.

Baroness Hollis of Heigham: My Lords, I also support my noble friend's amendment. I understand from briefings from Crisis and other organisations that this is quite a small problem. There are approximately 1.4 million landlords and I think the Government believe that only about 1,750 tenancies are abandoned every year, which is less than 0.5% of private rented households. However, the problem is that there does not seem to be enough security or protection for tenants against greedy or rogue landlords speeding up the process—whether someone is on holiday, is in hospital or has other problems with the landlord and has gone to stay with friends while work that should be done is not being done. There seems to be no way for the local authority—unless the Minister can assure me otherwise—to guarantee that the property has been properly abandoned, rather than it being a case of the rogue landlord using this as a short cut to regain possession. What is needed is an authoritative checking device—for which the local authority, the environmental health officer, the housing officer, or whoever, is best placed—to ensure that the keys have been handed in, the furniture has been removed, the tenant has moved away and the children are no longer there. That is the sort of evidence we want, not the landlord's hope that because the tenant has not been seen for eight weeks—which might be because they are in hospital, or have gone back to a family home elsewhere in the continent for the summer—they can gain speedy possession that is not legitimate.

Baroness Gardner of Parkes: May I ask for some clarification? When I sat as a magistrate, we had a case of a tenant whose landlord stopped taking the rent; it was never collected. After some years he was able to come to the court and get the right to buy the property, because, technically, it was abandoned. At the time this seemed to me quite a complex procedure and I wonder where it fits in—whether the tenant is disadvantaged by this amendment, or the owner of the property. I am not sure what the amendment means.

Baroness Hollis of Heigham: There should, of course, be no problem over landlords repossessing genuinely abandoned property. As I was saying, Crisis estimates that there are 1,750 such cases every year. We want a procedure to ensure that the property has genuinely been abandoned, rather than the process being exploited by rogue landlords to cut corners to regain possession when they should not.

Lord True (Con): My Lords, I declare an interest as leader of a local authority. I have not so far intervened in this Committee and I apologise for the fact that, as we are setting a budget this evening, I will have to abandon the Committee almost as soon as I have arrived.

One of the features of that budget is that we are not going to be setting any new burdens or tasks for the local authority, because we all know the relevant circumstances. I have sympathy for some of the concerns expressed in Committee, and I acknowledge that at present this appears to be a relatively small problem, numerically, although some of the undertone of the conversation suggests that it might be abused and that there will be a lot more of it if this power goes on to the statute book. Local authorities are not investigative bodies; we are not private detectives. I will think about what the noble Lord, Lord Kennedy, has put forward but it slightly worries me that if the local authority is put in the position of being the body certifying, by definition, that people cannot be found, it potentially places, even in a limited number of cases, quite a strain and responsibility on that authority. Later in this part, the authority would become a party to any legal proceedings, because it would be challenged on whether it had given a proper certification. While I understand, therefore, where the noble Lord, and others who have spoken, are coming from, I would want to understand much more clearly what burdens, requirements and responsibilities on local authorities it might lead to if this were to go on the statute book.

Lord Campbell-Savours: I can tell noble Lords what it would lead to. In the event that the rogue landlord manages to get the tenant out for these spurious reasons, the local authority will be picking up the bill, and may end up having to house the people concerned. So it is better at least to have a checking mechanism in place, to ensure that the local authority is not placed in that very difficult position.

Baroness Hollis of Heigham: Doing some quick mental arithmetic, I suspect that we are talking about four to five instances per housing authority per year; compared to the responsibilities of local authorities for fitness standards, inspection of houses in multiple

[Baroness Hollis of Heigham]
occupation, electrical safety and the like, this is trivial. As an ex-local authority person myself, I absolutely understand why the noble Lord is concerned, but we are dealing with a very small number, and probably the same landlords who are already well-known to local authority housing officers or environmental health officers as being too often on the wrong side of the law.

Lord Kennedy of Southwark: I am not a leader of a local authority, but I am a member of one, so I understand the noble Lord's point. I am not a fan of the Bill, but this part has some very good things in it on strengthening protection for private tenants. By this one provision, we are opening the back door for the rogues. Good landlords would not get involved in this, but there are always the few people who see a quick way to pull a stroke, and we seem to be opening the back door for them as we shut all the other doors. That is odd. The amendment may not be right—it is only a probing amendment—but it highlights a real issue.

4.30 pm

Baroness Evans of Bowes Park (Con): I thank all noble Lords for their amendments and contributions to the debate. As the noble Baroness said, the provisions are hugely important to a small number of landlords whose properties are abandoned by tenants who have stopped paying rent. We estimate that 1,750 properties in the private rented sector are abandoned a year at a cost of about £5 million to recover them. The Government want to ensure that the proper processes are in place before an abandoned property can be recovered.

Amendment 34 would require local authorities to certify for landlords in their area when a property has been abandoned. We are not convinced, and would echo the words of my noble friend Lord True, that local authorities, which may not have the resources, are necessarily in a better position to pass judgment on the matter. Such a requirement may also cause delays and hinder hard-working landlords and families from renting out empty accommodation. Amendments 35 and 36 would ensure that the minimum warning period before a landlord can recover an abandoned property was 12 weeks, and that a second warning notice was served at least four weeks and no more than eight weeks after service of the first.

I reassure noble Lords that this is absolutely not about opening a back door to landlords. It is about putting in place a procedure for dealing with abandoned properties that would allow a reputable landlord to recover a property that has been abandoned without the need to obtain a court order. The process includes a number of safeguards to ensure that a landlord can use it only where a tenant has genuinely abandoned a property. As my noble friend Lady Williams said, this is not about rent arrears.

Lord Campbell-Savours: Who will check that the landlord is not acting like a rogue and that the property is actually abandoned?

Baroness Evans of Bowes Park: I will go through the process, which contains checks and balances which will ensure that a tenant has genuinely abandoned the property.

The landlord can recover a property only where warning notices have been served on the tenant, with a copy of the first and second warning notice sent care of any guarantor. The first warning notice could not in practice be served unless there were at least four consecutive weeks' rent unpaid. The second warning notice can be served only when at least eight consecutive weeks' rent is unpaid. It must be given at least two weeks and no more than four weeks after the first warning notice. Each warning notice must state that the landlord believes the premises to have been abandoned, that the tenant or named occupier must respond in writing—which could be by email—before a specified date, which must be at least eight weeks after the first warning notice is given, if the premises have not been abandoned, and that the landlord proposes to bring the tenancy to an end if neither the tenant nor a named occupier responds in writing before that date.

Following service of the second warning notice, where the tenant has failed to respond, the landlord must then put a third and final notice on the door of the property at least five days before the end of the warning period. That notice must state that unless the tenant or the named occupier responds in writing within five days—as I said, that could include email—the landlord will bring the tenancy to an end and repossess the property. The Secretary of State will prescribe the content of the final warning notice. This requirement was added in Committee in the other place to add a further safeguard to the process. Finally, if a tenancy has been brought to an end using the abandonment procedure, where a tenant had a good reason for failing to respond to the warning notices, they may apply to the county court for an order reinstating the tenancy.

I hope from this explanation that it is clear that landlords will continue to have to go through a lengthy and detailed process before they can regard a property as being abandoned. In addition to a requirement that at least eight consecutive weeks' rent remains unpaid, they must serve a series of warning notices on a tenant and, when applicable, any other named occupiers. We believe that it would be an unnecessary burden on local authorities to impose an additional requirement that a local housing authority must also confirm that a property has in its view been abandoned. It may be difficult to determine whether this is the case or not, and requiring it to do so could place it in a difficult position. It would also be likely to introduce further substantial delay into the process of recovering an abandoned property, depriving the landlord of income and a family of the chance to occupy a property sitting empty.

It is already effectively the case that in the Bill the minimum period before a landlord can recover an abandoned property would be 12 weeks, as I have outlined. The clauses are carefully drafted but complex and, subject to Royal Assent, the department will issue guidance to landlords to help them to understand the new process. Amendments 35 and 36 would also replace the current provision in Clause 57, which specifies that a second warning notice must be served at least two weeks and no more than four weeks after service of the first warning notice. We have sought to strike the right balance between ensuring that tenants are given

adequate notice, that the landlord believes that the property may have been abandoned, and to respond if they have not, in fact, abandoned the property, while also ensuring that landlords do not have to wait an unreasonable amount of time before being able to recover the property. Requiring that the second warning notice is served at least four weeks and no more than eight weeks after service of the first warning notice would add further delay and deprive the landlord of an income and another family of the chance to occupy the property when it is sitting empty.

Lord McKenzie of Luton (Lab): This is my first foray into this Bill, and I draw attention to my interests in the register. Clause 57(6) says:

"The first warning notice may be given even if the unpaid rent condition is not yet met".

On what basis can the landlord assume that the unpaid rent condition is eventually going to be met?

Baroness Evans of Bowes Park: The first warning notice would not in practice be able to be served unless four consecutive weeks' rent is unpaid, and the second warning notice may be served only when at least eight consecutive weeks is unpaid. So there are specific timescales for which there is unpaid rent. I am not sure whether that fully answers the question; if it does not, perhaps I can come back to noble Lords.

Lord McKenzie of Luton: I would be grateful if the Minister could do so because, on the face of it, the provision seems odd. The unpaid rent condition has to be met for the abandonment provisions to proceed. Obviously, the concern is that warning notices may come thick and fast without the chance of the tenant to have due consideration. The basis on which that first warning notice can be given if the unpaid rent condition is not met is somewhat bemusing. Could the Minister, if she cannot say more today, write to us on that?

Baroness Evans of Bowes Park: Yes, I am happy to clarify. I have talked about a lot of notices and warnings; perhaps it would be better to put it in writing so that it is clear.

Baroness Hollis of Heigham: Under the provisions for universal credit—it is something that I regret very much, although it is a structure that I very much support—you are not allowed as a social landlord to start alternative payment arrangements in which there is direct payment to the landlord until there is at least six weeks' non-payment of rent. It looks to me as though a private landlord can start possession behaviour faster than a social landlord can seek direct payment of rent to the landlord.

Lord True: My Lords, I do not want to intervene on the Minister, but Clause 56(1)(a) states:

"The unpaid rent condition is met if … at least eight consecutive weeks' rent is unpaid".

I follow what the noble Lord, Lord McKenzie, said. Clause 57(6) states—perhaps officials could note this—that the,

"first warning notice may be given even if the unpaid rent condition is not yet met",

In construing the clause, the landlord could think, "Five or six weeks have gone by and I have not had any rent, so I am going to send out a warning notice without waiting for the eight weeks". That is how I would read the Bill.

Lord Kennedy of Southwark: The Minister explained the process for getting possession of a property believed to have been abandoned but she did not mention vulnerable tenants. Will there be any special provision for vulnerable people? I am worried that those people will not be opening their mail or looking at their emails or engaging in things and all of a sudden they will find themselves on the street.

Baroness Evans of Bowes Park: I set out the overall process but of course we will have to be mindful of people being able to access it. That is why we have put so many checks within the process to ensure that there is an opportunity for the tenant or someone else named as an occupier to respond. The final thing will be a public notice on the property to say what the situation is. We believe that this process as a whole will ensure that tenants are not disadvantaged and, of course, vulnerable tenants are on our mind.

Lord Kennedy of Southwark: The Minister also said that when the tenant of the property believed to have been abandoned has been evicted, they can go to the county court. Will legal aid be available for the county court action?

Baroness Evans of Bowes Park: I will have to get back to the noble Lord. I am afraid I do not have that information.

Lord Kennedy of Southwark: That would be very helpful. In this short debate we have highlighted a few issues with this section of the Bill so can I suggest that it might be welcome if a few noble Lords got together with the Minister to discuss some of them? There are issues which are not clear and could cause problems. The last thing we want is to get something on the statute book that causes everybody confusion.

Lord McKenzie of Luton: I have one further question. If the rent condition is initially not met but then there is a payment which starts the process again, where does that leave the warning notices that have been issued? Will they remain in place for a possible second bout of the application of these provisions?

Baroness Evans of Bowes Park: I am happy to agree to meet with noble Lords interested in this area so perhaps they could list all their questions and we will try to respond to them when we meet in due course.

Lord Beecham: I declare two interests: one is my local government interest which is in the register. In that context I want to reflect briefly on the burdens that might be imposed on local authorities in terms of enforcement and point out that there is such a thing as the new burdens doctrine. Admittedly it is more honoured in the breach than in the observance by the present Administration—the noble Lord, Lord True, is nodding his wry agreement with that—but technically speaking,

[LORD BEECHAM]
if a new burden is imposed and incurs costs then the Government are expected to meet that cost. We are presumably not talking about large sums of money nationally in any event, as I assume that there will not be a huge number of cases, unless the Bill incentivises such procedures.

I also declare a family interest inasmuch as my daughter practises at the Bar, particularly in the field of housing law, both as counsel and as a part-time deputy district judge. My impression is that legal aid would not be available. At the moment it is confined to cases of eviction. I assume that this case would not fall within the definition of eviction. It is effectively the tenant failing to respond to the procedure that is set out here. If I am wrong about that and if legal aid is applicable, it would be as well to have that on the record. If it is not, then I hope that the Minister will not only reply to that effect but consider very carefully and quickly whether legal aid should be extended to cases of this sort, particularly because, as my noble friend has indicated, there may well be vulnerable people who will need help in presenting any kind of case for resuming possession of a property which appeared to be abandoned.

4.45 pm

Baroness Evans of Bowes Park: I believe that the noble Lord is correct about legal aid, but I hope he will permit me to go back and confirm that. In response to the question on what happens when some payment of rent is made, the process starts from scratch and all notices will need to be resent. But as I said, I am very happy to meet noble Lords to discuss some of the detail further.

Lord Campbell-Savours: Before we finish on this amendment, does the Minister understand that very often we are talking about very vulnerable people who simply will not understand this process? We can almost foresee the circumstances in which this is going to go wrong. I wonder whether the Minister will go away and consider the position and how this will affect the vulnerable. It is a very important issue.

Baroness Hollis of Heigham: My Lords, already social housing landlords—housing associations and so on—are beginning to deal with universal credit tenants. I am not confident of my figures, but I understand that something like 60% of them are in arrears and seeking alternative payment arrangements. Social landlords—local authorities or housing associations—are scrupulous in trying to ensure that vulnerable tenants who are finding it difficult to manage their money or whatever are not at risk of losing their home.

I fear that I have no such faith in the interest of private landlords. I am sure that many of them would seek to keep a vulnerable tenant afloat—but they are running a business, they cannot afford not to have rent payments and, as a result, given the changes that are now happening with universal credit for the private sector and the social sector, such tenants, vulnerable tenants in particular, will be more exposed to bad behaviour by landlords seeking a shortcut to rid themselves of an uncomfortable tenant.

Lord True: I do not dissent from what the noble Baroness said, nor from what the noble Lord, Lord Campbell-Savours, said—but, as I read this part of the Bill, it is also designed to address the situation where a bad tenant who does not want to pay their rent disappears and does not want to be found. That is what lies behind my concern about local authorities. If the local authority has to certify that this person has gone—is deliberately not wanting to be found and not answering letters and has actually abandoned the property—it will want to be extremely cautious, particularly if there is a court case potentially pending, or will require very clear regulatory protection before it issues such a certification. So there is a risk if it means that the bad tenant, who is the other side of the question, will not be pursued. These matters clearly need to be discussed and my noble friend on the Front Bench has offered such discussions.

Lord Kennedy of Southwark: I thank all noble Lords who have spoken in this debate and I thank the Minister for agreeing to meet noble Lords from across the House. There are clearly issues here that need addressing. This is about how vulnerable tenants are treated. Another issue is whether they are English speaking; I have just thought of that. There is a question about how people are treated in court when they have no legal aid. Before this gets on the statute book, we need to take a proper, vigorous look at it. If need be, we can seek amendments later on in the process. At this stage, I am happy to beg leave to withdraw the amendment.

Amendment 34 withdrawn.

Debate on whether Clause 55 should stand part of the Bill.

Baroness Grender (LD): My Lords, in the most recent discussion, the noble Lord, Lord Kennedy, suggested that perhaps this section should go. Like his fairy godmother, here I am with that moment. What I am proposing applies to all the clauses relevant to abandonment, and it is that they should go at this point in this discussion.

My reasons are as follows. This is a new and complex change in the law for which there is no need. The impact is on a small percentage of tenancies, so why introduce new legislation? Clauses 8 and 21 already cover this area. This change may be exploited by unscrupulous landlords with vulnerable tenants, especially if it is taken out of the county court process and without any kind of oversight. This goes against the flow of a really good piece of the Bill on rogue landlords. Above all, there is a danger that it will make people homeless.

The section on abandonment of property appears to us to be a sledgehammer to crack a nut. The number of tenancies where abandonment is an issue that would fall within the remit of this legislation is estimated, not by Crisis or Shelter but by the Government's own analysis, to be 1,750 each year out of a total of 4.4 million tenancies. That is a tiny amount, which makes me question why we should introduce a new and deeply complex layer of additional process and legislation.

This therefore appears to be for landlords who are worried that they cannot quickly reclaim a property where it has been abandoned. Their concern seems to

centre on the fixed-term period for a tenancy, which is most commonly six months—a period in which they cannot use a Section 21 notice. If, on the other hand, a property was abandoned outside the fixed-term period, an uncontested Section 21 notice would mean that possession could take place in around three months, which is about the same amount of time as is proposed in the Bill. So it seems that the issue is about getting possession in the fixed-term period.

In the fixed term, the issue that perhaps landlords have is that Section 8, a fault eviction, takes—in the view of some landlords—too long. However, as I have already said, there are very few cases of abandonment and not all of these will be in the fixed term; by the Government's own estimate the number of properties that are abandoned within the fixed term is likely to be very few. If the Government are concerned that their own eviction processes—namely, Sections 8 and 21—are not working, should there not be a complete review of that rather than the addition of this complex layer?

This proposal, which sets a dangerous precedent, takes this outside the court's oversight in any way, so who oversees this? There are already powers for a landlord to take possession when they are convinced that the property is abandoned. For instance, if someone's possessions have been moved out and they have left the keys, the landlord can immediately and legally reclaim the property under something called "implied surrender". But the tenant's actions must clearly indicate that they have abandoned the property. So I would like to hear from the Minister why the current system of implied surrender is not being used in these very rare cases.

Shelter and other organisations deal with vulnerable tenants—and we need to focus on vulnerable tenants with regard to this, since the number of tenancies is so small. First, it opens up the possibility of unintentional evictions, where someone is taken ill or suddenly called away to care for a relative and is unable to respond to notices. If that person pays their rent in cash or their housing payment benefit payment is disrupted, they could easily get into arrears while they are away and could be mistakenly assumed to have abandoned their property.

Secondly, an unscrupulous landlord could use this process to evict a tenant they did not want outside the processes of the court or any kind of oversight. As discussed just now, we are very concerned about Clause 57(6), which states:

"The first warning notice may be given even if the unpaid rent condition is not yet met".

In fact, by our calculations it means that the process could take as little as nine weeks, not 12 weeks. So we worry that notice could start to proceed at a much faster pace. Is there any concern here at all that landlords can use this, frankly, to jump the gun?

We recognise, as a result of objections in the Commons, that a new third warning has been added, which merely specifies that it would be fixed not to the door, as I read it in the Bill—I ask the Minister to correct me if I have got that wrong—but,

"to some conspicuous part of the premises",

which will be specified in regulations at a later date. Let us hope that it will not be a yellow Post-it note on a lamp-post—but how do we know that it will not be? There is no specification at the moment, but how would we know? Above all, who has oversight to prove that that notice was put there, since this is out of the courts? So will the Minister explain how that will be overseen? Who will be the judge of whether the landlord, claiming to have fixed that conspicuous notice, has indeed fixed it?

The main concern is that unscrupulous landlords would be allowed to use the abandonment procedure as a pretence to carry out illegal evictions. Other noble Lords who are familiar with this area are already familiar with some of the things that landlords can do. Let us remind ourselves of some of the illegal things that landlords attempt to do, even under a Section 21 notice. I do not refer to all landlords. There are a lot of very responsible landlords. But some attempt to do things like this.

I will give you a case study with which Shelter provided me. Emma was served with a Section 21 notice. The notice was invalid because it gave only one month's notice. She informed the landlord of the invalid notice. Since then she has experienced harassment from the landlord and his colleagues. The landlord threatened to jump over her fence, force entry, kick the door down and sublet the rooms in her house, even though she had exclusive occupation of the home—all in an attempt to force her to leave before she has to legally. Her windows have been broken and her phone line has been cut from outside. This is the kind of thing that, obviously, will be done by rogue landlords. There are a lot of good things in the legislation, but abandonment opens up a possibility of abuse by people such as this.

The vast majority of landlords, as I have said, are decent and responsible, but there are some who will try to apply this bit of the law to intimidate and evict tenants. By taking evictions outside the court and through unclear legislation, it is not difficult to imagine that an unscrupulous landlord will lie about sending the notices and tenants will become homeless.

Citizens Advice, which has great expertise in dealing with these kinds of vulnerable tenants, is also deeply concerned about this and about the likely costs and implications for local authorities. In contrast to the rest of this Bill, the section on rogue landlords is supported across the parties. It seems a shame to introduce this new, complex and unnecessary addition to the Bill. It has all the hallmarks of something that, frankly, should be submitted to the Red Tape Challenge rather than agreed by this House. The threat remains that it will be used by landlords who are unscrupulous. I asked for reassurances on this issue at Second Reading and I am still seeking them at this stage.

Lord Kerslake (CB): My Lords, I have concerns about this section of the Bill. I am very much taken with the arguments of the noble Baroness, Lady Grender, that this section needs a fundamental rethink and that, in trying to amend it, we risk simply ameliorating what is not a terribly well thought-through part of the Bill. The balance of power between landlords and tenants now is so strongly in favour of the landlord that we should think very carefully about adding a further power to landlords in relation to this issue, or indeed

[Lord Kerslake]
any issue. We should be very persuaded that there is a big enough problem to solve. We have heard quite clearly from many noble Lords that there is not a sufficient issue to be solved—that, in comparison to the scale of the private rented sector, it is a very small issue. I think we risk putting in quite a bad piece of legislation, seeking to tweak it along the way to make it slightly better. We are actually putting in place something that we do not need and that is not likely to be helpful in tackling the issues we are talking about.

I want to make a point on which I declare my interest as president of the Local Government Association. We talked earlier about the burdens on local authorities from the previous amendments. Let me tell you the burden that will come from inappropriate evictions. I think it will be considerably greater in cost, leaving aside the damage to individuals, so it is right to think again about whether these provisions are needed at all.

5 pm

Baroness Bakewell of Hardington Mandeville (LD): My Lords, this is the first time I have spoken in Committee today, so I draw your Lordships' attention to my entry in the register of interests. I support my noble friend Lady Grender, who set out so eloquently our opposition to Clauses 55 to 61. I agree completely with the noble Lord, Lord Kerslake, that this is badly thought-out and not needed.

As has been said, these clauses are designed to solve a problem for which there is already legislation. The Government appear extremely keen to move residents out of housing association and local authority housing into the private sector. This is all well and good if the supply and standard of accommodation on offer is adequate and meets the Government's standards for what is required. However, as I am sure the Government will readily admit, much of this accommodation is in a very poor state of repair, sometimes not secure against the elements and, in extreme cases, not fit for human habitation.

As has already been said, there is a balance to be struck between ensuring that landlords can run their properties as a viable business and the interests of tenants looking for a secure and comfortable home. In 2015, 115,000 people approached Citizens Advice with problems in private rented homes, 2,053 of which were about illegal evictions by landlords in the private rented sector. This represented an increase in inquiries on this specific issue of 32% compared with 2014. This is part of a general upward trend over more than a year. During 2013-14, 111,960 households in England applied to their councils for homelessness assistance—a rise of 26% on 2009-10. On 30 September, 68,560 households were living in temporary accommodation—13% higher than on the same day in 2014, thus producing considerable pressure on local authority homelessness budgets, as we have already heard, with residents often put in temporary accommodation.

The abandonment proposals in the Bill lower the level of proof that landlords will have to meet to claim that their property has been abandoned. The proposal would also legitimise an illegal practice: evicting a tenant without going through a formal court procedure, even when the tenant has not engaged in any conduct that might clearly show that he has abandoned the property. This suggests that, if introduced, it would lead to higher eviction rates and a similar rise in the number of homelessness applications to local authorities, resulting in higher administrative and temporary accommodation costs. Will the Minister say whether this is the Government's intention and what action they are prepared to take to prevent this sorry state of affairs coming to pass?

At a time when the number of households with dependent children living in the private rented sector is increasing, the added financial impact on council budgets is likely to be significant, as it is these households who will have a priority need for housing by the local authority if made homeless. Using the DCLG's findings, Citizens Advice estimates the increased social costs to the public sector of each homelessness application at between £24,000 and £30,000 per year, producing an average of £27,000 per year per family or individual. This is not a good use of taxpayers' money. I cannot believe that this is the Government's intention. I look forward to their response.

Lord Kennedy of Southwark: I am grateful to the noble Baroness, Lady Grender, for proposing that this whole part should be abandoned. I support that suggestion. I will not go through the points I made in the previous debate, but I may have a few points when the Minister responds. The removal of the oversight of the courts, as referred to by the noble Baroness, is of particular concern, and the provision that the third warning notice should be fixed in a "conspicuous" place is very weak and offers very little protection to the vulnerable tenant. The Government have not made the case for these clauses, or that these changes are needed or necessary. The Government need to think again over the procedure and the risks involved, as other noble Lords said in the debate.

Lord McKenzie of Luton: My Lords, I agree with those who say that these provisions should be recast. I want to pick up on the third warning needing to be,

"given by fixing it to some conspicuous part of the premises to which the tenancy relates".

Conspicuous to whom? Is it the tenant, the whole world, the community that passes by the front door? It seems to me that giving notice to somebody by nailing something to their front door is almost medieval. You can imagine that somebody will put the notice up, the mobile phone will come out and a photograph will be taken but half an hour later it could be ripped off and be nowhere in view—certainly nowhere in view of the tenant. It seems an incredibly archaic approach. I think the whole thing should be recast but that particular provision jars immensely.

Baroness Evans of Bowes Park: My Lords, I thank all noble Lords who have contributed to this debate on Part 3 of the Bill. The noble Lord, Lord Kerslake, said that numbers may be small, but these provisions are nevertheless important to good and reputable landlords whose properties are abandoned by tenants who have stopped paying rent. As we have tried to make clear, we want to find a balance between protecting good landlords and good tenants. Presently, when abandonment happens a landlord can go in and change the locks. However, that involves taking a huge risk, since if the

tenant has not abandoned the property the landlord could be liable to prosecution for unlawful eviction and be subject to claims for damages in the civil courts. As a result, many landlords do not take the risk and instead take possession proceedings in the county court.

However, before they are able to commence court action they must bring the tenancy to an end by serving a Section 21 notice giving the tenant two months' notice, and when they have made the application it can be two or three further months before they get a court order enabling them to repossess the property. In the mean time they receive no rental income for a property which is standing empty, and often will still need to meet their mortgage payments. The landlord will also incur costs in taking court proceedings. As I have said, abandonment may not be a widespread problem but it is estimated that it costs landlords around £5 million a year in legal fees, missed rent and time.

When a person surrenders a property they contact their landlord and hand in their keys, but in this instance we are talking about when a person abandons a property and disappears and stops paying rent. It is a different situation. That is why we think the provisions in Part 3 provide for a simpler and cheaper method for recovering property where the former tenant has permanently left owing arrears of rent that have continued to accrue since the first warning notice was given.

I also make clear that any landlord who abuses this process by not giving tenants proper warning and takes repossession of the property knowing that it has not been abandoned will be liable to be prosecuted for unlawful eviction under the Protection from Eviction Act 1977. As we have also tried to make clear, this is not intended as a route to remove a tenant in arrears. This is about abandoned properties. A tenant will also be able to bring a claim for damages through the civil courts where the landlord has not followed the procedure as set out in legislation. The provisions are not a charter for landlords—

Baroness Grender: Have the Government made an estimate of the cost to a tenant? Since there is a cost of £5 million to the landlords—which is the Government's estimate—what is the cost to tenants for pursuing this through the courts?

Baroness Evans of Bowes Park: As I have said, we have heard the strength of feeling in the House on this issue and have agreed that we will meet and have a further opportunity to discuss issues. I will attempt also to ensure we have information on hand in that meeting. I reaffirm that these provisions are not a charter for landlords to carry out a do-it-yourself eviction. That is and will remain unlawful. On the basis of the strength of feeling in the House, we welcome the opportunity to discuss further details with noble Lords. On that basis, I ask that these clauses stand part of the Bill.

Lord Kennedy of Southwark: Can the Minister tell us a little about where the pressure for these changes is coming from? We hear that there is not a big issue and not a problem here. The Government are going to meet us and seem quite determined about this. What is behind all this? Where has it all come from?

Baroness Evans of Bowes Park: As I have explained, the rationale behind this is to attempt to provide balance and fairness for both tenants and landlords.

Lord McKenzie of Luton: Will the Minister help me on one other point, please? On the reference to rent not being paid, or rent being unpaid, what happens if a tenant, in struggling to pay the rent, pays an amount on account? Does that count as the rent being unpaid for a week, or a month? How is that dealt with? The Minister has used the expression that someone has effectively given up on paying the rent. There could be many instances where people are struggling to pay the rent, doing the best that they can, and making partial payments. If that is what they do, would that preclude the operation of these provisions?

Baroness Evans of Bowes Park: Obviously, there will be a dialogue between tenant and landlord, and arrangements between the two may be made. As I said earlier, if some payment of rent is made and if a process had been started, it would have to start again from scratch.

Lord McKenzie of Luton: I understand that if the rent is paid in full you go back to square 1. But if the rent is only partly paid, what is the position? Our concern here, as many people have said, is about unscrupulous landlords who will use these provisions for a perverse effect. If somebody has only part-paid the rent that would give them the opportunity of doing so.

Baroness Evans of Bowes Park: In terms of part-payment of rent, if any rent is being paid, the process would be ended. It is about abandoning a property—no rent being paid. It is not about part-payment.

Lord McKenzie of Luton: So, a pound off the rent would secure the position.

Baroness Evans of Bowes Park: There would be a balanced view on this. As I have tried to set out, where payment is being made, that is not abandonment of a property. As I have said to noble Lords, we are happy to discuss this in further detail to, I hope, allay concerns.

Lord Campbell-Savours: Does this not all point to the need to have someone to check? That might well be a local authority.

Baroness Evans of Bowes Park: As I have said, we believe there is a process that has a number of important elements to it. However, we have heard the strength of feeling in the House and look forward to discussing this in due course.

Clause 55 agreed.

Clause 56 agreed.

Clause 57: Warning notices

Amendments 35 and 36 not moved.

Clause 57 agreed.

Clauses 58 to 61 agreed.

Amendment 36A

Moved by ***Lord Greaves***

36A: After Clause 61, insert the following new Clause—

"Review of effectiveness of empty dwelling management orders etc.

(1) The Secretary of State must, within six months of the passing of this Act, commission a review of the operation and effectiveness of empty dwelling management orders and other provisions for bringing into use domestic properties that have been abandoned by their owners.

(2) A report on the findings of the review must be published and laid before each House of Parliament."

Lord Greaves: My Lords, my purpose in moving this amendment is to raise a significant problem in some parts of the country. I am very aware that the kinds of areas I am talking about are very different from the areas that the Bill seems to be concentrating on—in London and the south-east and perhaps in similar areas. The sort of areas I am talking about are, for example, east Lancashire or west Cumbria, and lots of other places like them around England. It is a different world, but it is important.

The first point that I want to make is that there is not a housing market in this country that is the same everywhere. There are many different housing markets in different places which operate in different ways. The real problem that many of us have is that legislation is almost always on a one-size-fits-all basis and is written by people with what we would see to be a very south-east England viewpoint, although it is not just south-east England. I mention EDMOs—empty dwelling management orders—in this amendment but I want to talk particularly about the "et cetera" bit to mark the problem rather than just EDMOs. I will come to EDMOs towards the end.

5.15 pm

I am talking about areas where the background is of a housing market that is fragile and stagnant. It was identified some 15 years ago now—certainly a long time ago—by the then Deputy Prime Minister, now the noble Lord, Lord Prescott, as a market failure. A scheme was set up by central government for housing market renewal which was targeted at these areas. That was swept away in the early years of the coalition, rightly or wrongly, but we are where we are. There is now no real attempt to look at these areas and implement different policies for the different conditions. We are talking about areas mainly consisting of terraced housing that is 100 or 150 years old, some of it in really good condition now as a result of the efforts that have been made over the years, and some of it in poor condition.

As to my part of the world, the borough of Pendle, the situation is worse in Burnley but the same in Accrington and many similar towns. You can buy a terraced house which is habitable but in not-very-good condition for between £30,000 and £50,000. At least those are the asking prices. I get the sale prices every month and they are usually lower than the asking prices. In good condition in a less-popular area, the prices are £60,000 to £80,000; in more sought-after areas in towns, £80,000 to £100,000. The rest of the housing market, as I will explain further when we talk about starter homes, is depressed as a result of that. There is a real problem of abandoned houses. These are not houses abandoned in the sense of those we discussed in the last group of amendments but houses abandoned by the owners. They are empty—they might be boarded up if there is a decent council—and they might be derelict inside. They might have been stripped out by tenants at some stage in what is known as a "moonlit", or moonlight flit.

I can speak for my borough but I know that this applies to a lot of others as well. A lot is being done about empty homes through a combination of carrots and sticks. Much of what is being done is being done with the help of national government. I will set out the overall position to pinpoint the problem. In my own borough of Pendle, the number of empty houses has been reduced from 2,000 to 1,300 in the last couple of years. Of the 1,300, about a third have been empty for more than two years. I will not say that they are basket cases, but your Lordships will know what I mean.

There are a number of things that can be done and we have certainly done, and that is fine. We have set an empty-homes levy whereby, after two years, we are levying an extra 50% on top of the normal council tax, so they are paying 150% council tax. We have directly intervened in a number of streets using our joint venture company or a housing association, and that has rescued and improved 80 to 90 derelict houses in the last couple of years. Like many councils, we have an empty homes officer working on individual houses and owners. It is intensive and expensive work, but it works by targeting the owners and talking to them. We have a system of loans to the owners of these houses, which started off with the government-sponsored empty homes clusters programme, where we will provide a loan of up to £15,000 per house. That works well, and the repayments go back in the pot for more loans. Many things can be done and different councils will deal with this in different ways. We are down to 3.3% empty houses but they are concentrated in areas, particularly those with a lot of cheap private rented properties.

However, the acute problem is not that but individual houses that have been effectively abandoned by the owners. They are often scruffy, boarded up and stripped out—if not by the previous tenants then by other people nicking all the copper and everything else. These are what we call rotten-tooth houses and they have a disastrous effect on streets whose future is in the balance. Local authorities spend a lot of time and resources trying to save them.

In the past, we used powers of direct intervention, particularly compulsory purchase orders, as a last resort. We used to do perhaps nine or 10 of those a year in our fairly small authority. However, that was powerful because everybody else knew that that was in the wings if they did not sort themselves out. In many cases, that led to voluntary sales to the council. We had a regular, annual programme of improvement for sale. The problem was that the money never stacked up. The cost of acquisition plus the cost of renovation to proper public sector standards was less than you could get in a depressed housing market. Therefore there was a gap.

That gap was filled from the council's housing capital programme, most recently from the housing market renewal funds and the regional housing pot as it was

officially called. Both those have now gone. For councils like ours throughout Lancashire and the north of England, the housing capital programme does not exist any more. Then we went on to back-to-back schemes with housing associations. The council would compulsory purchase, do the work and sell on to the housing association, or perhaps the housing association would do the work. That is now no longer viable and cannot be done so we looked again at EDMOs.

I remember debating EDMOs in this House when they first came in—I think for the Housing Act 2004—and we thought they would be a great thing. They have certainly been around for about 10 years. They were a great hope. What happens is that the council takes over a long-term empty house, repairs it to make it habitable and then lets it to a tenant. The income from the rent is put in a separate account for that house and offset against the cost of the initial renovation plus the continuing cost of repairs and management. However, that does not add up in areas of low rents, particularly if it is only a one-year interim EDMO right at the very beginning, where the owner can reclaim the house and the council loses all the money. After the end of the EDMO period—I think the ordinary period is seven years—the owner gets the house back. It is just given back to them, and if there is a deficit on the account for the house—as there will be—the council carries the can.

So we have a situation where we have rotten-tooth houses which we were, like many councils, brilliant at dealing with, thereby saving streets. However, CPOs and EDMOs do not add up any more, housing associations are not interested any more and the councils have no resources to fill the gap. This is a plea to the Government: please, what can we do to tackle these very real local problems?

Lord Kennedy of Southwark: My Lords, I am very supportive of the amendment moved by the noble Lord, Lord Greaves. Empty homes represent both waste and a missed opportunity. They also leave the property at risk of squatting and subject to vandalism, and there is the blight that brings to the wider community—to which the noble Lord referred.

Empty dwelling management orders are a legal device which enable local authorities to put an unoccupied property back into use as housing, securing its occupation and getting it back into use as a home. The amendment seeks that, within six months of the Bill becoming an Act, a review must be commissioned into their operation and effectiveness. These orders were brought into law with a lot of support but have not proved effective or to be a device that has been used very much in recent years. A review is sensible at this time as it would enable us to identify if there is a problem with them and, if there is, to identify a solution. The second part of the amendment would require a report to be published and placed before Parliament.

Lord Campbell-Savours: The noble Lord, Lord Greaves, referred specifically to properties in the north of England. In my former area of west Cumberland and Lancashire, terraced houses often fetched little more than £30,000 to £50,000 at auction. However, there is another group of properties, in the south, which I sometimes wonder what is happening with. In some of the most expensive parts of London you will see properties that have been effectively abandoned by their owners. It might well be that the local authorities are involved, but sometimes these properties remain empty for years. Only the other day I was looking, on behalf of a relative, at a property near Tooting. In the same street, there was a house which was shown on the internet as being sold at auction, but I understand it had been derelict for several years, despite the existence of EDMOs which were introduced in 2006. One wonders what is happening there. Might the review which the noble Lord, Lord Greaves, is calling for include consideration of what is happening in the more expensive parts of the country to properties which stand abandoned but which would be better brought into use?

Lord Beecham: My Lords, I congratulate the noble Lord, Lord Greaves, on bringing forward this amendment. This is certainly a problematic area. The original legislation in 2004 was very well intentioned in its creation of the capacity for local authorities to make an order to take over the management of empty properties. However, only a trickle of orders have been made since then. In the first four years, only 43 orders were made in the country as a whole; 17 were made in 2014. That is not to say that other actions, short of an order, were not taken, perhaps of the kind described by the noble Lord and by my noble friend Lord Kennedy. Nevertheless, there is a clear issue here. The previous Secretary of State for Communities and Local Government, Eric Pickles, changed the rules in 2012 to require a longer period—up to two years, as opposed to the original six months—after which an order could be started. This might be thought a somewhat perverse approach, given the paucity of cases before that time.

There is clearly a need, and I have experience of that in the ward I represent in Newcastle. About four or five years ago, my attention was drawn to two terraced houses—they are what are called Tyneside flats, with a lower flat and stairs leading up to one over it. They were empty, but they did not look in bad condition and were not creating any hazard in the area. It turned out that they had been like that for several years; it was a long-term problem. I got the council on the case, but the process is extremely protracted and difficult. In this case, it was compounded by arguments about who owned the property. It was not a straightforward question of looking it up at the Land Registry. Even apart from that, it was a very protracted process. Eventually, the council reached the point when—either by making the order but not directly taking over the property, or by coming to an agreement with the owners—the properties could be let.

That was bad enough, but there is another case, not that far away, of a property which is owned by an elderly lady who lives somewhere else. It is in a shocking state and the only thing I have been able to have done about it is to get the hugely overgrown garden cut back and the place tidied up. It has been empty now for many years. I have tried, more than once, to get the council to take proceedings and I think that it is now looking at that. It is in a nice residential street and is a great blot on the landscape—which at least the previous ones were not—and it lets down the whole character of the neighbourhood. I suspect that this is a significant

[LORD BEECHAM]
issue and I hope that the Government will acknowledge that a properly considered view, based on evidence, should be formed.

5.30 pm

There are, of course, other actions available, as we have heard from the noble Lord, Lord Greaves. There are others, too. Oxford, in particular, has taken quite a few initiatives short of this management process. If we are going to have a fallback position—and we must—then it is imperative that we review what is happening and the timescales. Perhaps this should be brought back from a two-year period to a six-month one in order to kick start the process and ensure that, as far as possible, it is less bureaucratic and more likely to be effective than the experience of the last 11 years has demonstrated it to be. I hope the Minister and the Government generally will look sympathetically on this amendment, which, as my noble friend said, we support.

Baroness Evans of Bowes Park: My Lords, this amendment would insert a new clause into the Bill requiring a review of the effectiveness of empty dwelling management orders and other provisions for bringing into use domestic properties left empty by their owners. We welcome noble Lords' interest in seeing properties being brought back into use to increase the housing supply, which is certainly an aim that the Government share, but we do not believe that this amendment is necessary because the range of measures we already have in place to tackle the issue of empty homes is working.

The Government have achieved a year-on-year reduction in long-term empty homes, with the number of homes that stand empty for more than six months now at the lowest level since records began. In London, as highlighted by the noble Lord, Lord Campbell-Savours, empty homes are at an all-time low of 2%.

Lord Campbell-Savours: When the Minister talks about empty homes, does she mean homes on which no council tax is being paid? If council tax is being paid on an empty home, is it defined within those statistics?

Baroness Evans of Bowes Park: That figure relates to unoccupied homes.

As the noble Lord, Lord Greaves, highlighted, local authorities have a range of powers to tackle empty homes. Through the new homes bonus they earn the same financial reward for bringing an empty home back into use as building a new one. As he also mentioned, councils may charge up to 150% council tax for homes left empty for over two years. They can CPO consistently neglected houses, as the noble Lord, Lord Beecham, highlighted, and there are also empty dwelling management orders, which can be used to regain possession of a long-term empty property, which has been empty for at least 2 years.

The Government want to strike a balance between respecting the liberties of responsible home owners and the need to tackle the harm caused to the local area when homes are left empty, as graphically outlined. The threat of issuing an empty dwelling management order is often enough to encourage an owner to bring a property back into use, so the number of orders issued is not necessarily a guide to how effective they are. Of course, local authorities have a range of powers at their disposal when seeking to tackle a property that has fallen into disrepair—for instance, through improvement notices under the Housing Act, or powers under the Building Act 1984 to deal with dangerous buildings. They can also tackle nuisances caused by properties using the Environmental Protection Act.

Our strong record on the economy has helped to create a buoyant housing market. Since 2009, over 880,000 new homes have been built in England and, in addition, owners are bringing more empty homes back into use without the need for government action. We believe that we have introduced a range of measures, which local authorities can use as they best see fit.

Lord Campbell-Savours: Sorry, I am not going to let this question go. Some unoccupied homes have council tax paid on them. There are quite a lot in London, where people who own expensive property leave it abandoned but continue to pay council tax. The question is whether they are included in the figures. I understand that this is a surprise question and I do not expect an immediate response, but I hope that we will be informed of that. If that is an issue—and there are a lot of these properties in London—then surely there should be some kind of report or review in the way that my noble friend and the noble Lord, Lord Greaves, have suggested. It would mean that there is an area of the market which we are not altogether aware of.

Baroness Evans of Bowes Park: The noble Lord makes a valid point. As he has kindly suggested, I will write to him with further details as I do not have the figures to hand. I hope that, in light of what I have said, the noble Lord will agree to withdraw the amendment.

Lord Greaves: My Lords, I am grateful to the Minister, half of whose speech was exactly the one I made in listing some of the powers that local authorities have in order to deal with empty homes and reduce their number. She is exactly right that some of those powers, such as levying council tax on empty homes, have contributed to a substantial reduction.

However, the Minister did not home in on my specific point about the relatively small number of properties which have effectively been abandoned and made derelict. They are the rotten teeth of the terraced streets, which cause immense problems. I am sure noble Lords can imagine the social problems that kids get in, or the effects of broken water pipes on neighbours. These problems are quite apart from the fact that people do not want to live on a street facing an empty property and therefore do not buy property on those streets, which reduces property values. This is a major problem in some parts of the country. The point I was trying to make—I thought I made it fairly well, but perhaps the Minister will read what I said and decide whether she agrees with me—is that the existing powers are no longer sufficient for allowing local authorities to deal with these problems.

The Minister mentioned improvement notices, which I deliberately did not include in order to keep my speech within 10 minutes. They are just the same. A council can make an improvement notice and if the owner does nothing do the work by default. It then has to put a charge on the property. Getting money back from people who have abandoned a property is not an easy thing to do and may well take many years, if it can be done at all. This is another example of a funding gap, where there is a cost to a local authority of using these powers in areas where the level of house prices and rents are low but the cost of the work is about the same as anywhere else in the country. In these areas, the cost of buying, doing work to and managing property is not matched by what the local authority can get in from selling, putting a charge on or renting the property. That is the difference. There is a gap and it is a serious problem, which applies to all of the different means that the Minister mentioned.

All I can ask is that the Minister and her colleagues look at this and write to me about how they think it may be solved. I beg leave to withdraw the amendment.

Amendment 36 A withdrawn.

Clause 1: Purpose of this Chapter

Amendment 36B

Moved by ***Lord Tope***

36B: Clause 1, page 1, line 6, after "promote" insert "home ownership and"

Lord Tope (LD): My Lords, in moving this amendment I will also speak to the 11 other amendments standing in my name and that of my noble friend Lady Bakewell of somewhere in Somerset.

We are moving now to Part 1, Chapter 1 and Clauses 1 to 7, and, possibly for the first time, to a part of the Bill that is causing widespread concern. My amendments and the other four in this group, with which I have considerable sympathy, seek to address at least one of those concerns about starter homes. I certainly have no objection to starter homes. As far as I know, neither do many other people, so the issue is not about starter homes as such. In the right circumstances and the right places they can make a useful addition to housing provision for some people.

The concern here is that Chapter 1 of Part 1 refers only to starter homes. The present wording imposes a clear duty on local authorities, as planning authorities, to promote starter homes, with no mention of any other tenures. Councils' ability to choose a mix of home ownership tenures for planning obligations is completely fettered by the Bill as drafted. The concern is that in Section 106 discussions, for example, local authorities are likely to say—or at least to feel—that they have to deliver a certain number of starter homes and therefore that they cannot specify other forms of affordable ownership provision. I am sure we will hear from the Minister that that is not the Government's intention but I fear it is very likely to be the effect.

The purpose of my amendments is to widen the duty on local authorities to promote home ownership schemes, including starter homes. It is about home ownership in that we recognise the priority that this Government give to home ownership. I have considerable sympathy with Amendment 37, which refers to,

"new homes across all tenures",

but these amendments bring in the wider range of home ownership schemes.

As I have said, starter homes provide a useful means but the role of the local authority, as the planning authority, as well as sometimes the housing authority, is to meet all types of housing need, to be in the best position to judge what the local needs are—local needs are the key to this—and what type of tenure, in what volume, places and circumstances, is appropriate to that area. It may well include starter homes but it most certainly will include other types of home ownership and other forms of tenure. Therefore, we are concerned. I think there is widespread concern from the LGA, among others, about the fettering of local authority discretion in this way. I declare my interest as one of the vice-presidents of the LGA. The aim is to allow local authorities to determine for themselves—if I might say so, in the spirit of localism—what is best and most suitable for their areas without having necessarily to feel that they must give priority to any particular form.

I mentioned the LGA. It has indeed said that starter homes will be outside the reach of all people in need of affordable housing in 220 council areas. That is two-thirds of the whole country. Starter homes will not be effective for them. I am sure that other contributors to this debate will want to speak about that.

I have been approached on this subject by a range of organisations but particularly by Future Housing Review, which is supported by the Joseph Rowntree Reform Trust and has a particular interest in shared ownership, which can make a significant contribution to housing need and is indeed one of—not the only one, by a long way—the housing provisions that we are talking about. I was pleased to note that in the Minister's replies to a Question this afternoon she made several references to shared ownership schemes. I hope now that she has been briefed she will be able to expand a little more on that when she replies to this debate.

5.45 pm

I have a few questions on shared ownership, which, as I say, is simply one method of provision of affordable housing in appropriate circumstances. There has been increasing interest in shared ownership as one way in which the housing crisis can be tackled. Back in March 2015, the then Government promised a review of long-term options for ownership, saying that,

"the Government will undertake a Review of shared ownership focusing on possible longer term options for change to report to Ministers in the Summer".

That, of course, was summer 2015—last year. So far as I know, that review has not materialised at all. I wonder if the Minister can tell us what has happened to it. Did the incoming Government make a decision not to go ahead with the review? Did it get buried among all the other things that a new Government have had to do? Is it perhaps now on a slow burner and might it be available for summer 2016? I hope we can be told what has happened to the review and that we will be told it is still ongoing and perhaps now we can give it a nudge to on-go just a little bit faster.

[LORD TOPE]

There is an urgent need to review shared ownership models because the present Homes and Communities Agency model is said to be seriously flawed. The Government have announced very welcome funding of £4.1 billion so that registered providers can increase provision of shared ownership, but a detailed prospectus is still awaited so we still do not know the details of that programme. Again, I wonder if the Minister will be able to tell us when we will get those details.

I think these amendments will lead to a very good and useful debate on one of the concerns here. There are, of course, others, not least the issue of discounts, which we will move to later. But I very much hope that the Government will consider seriously the intention of these amendments and what is said in this debate, and will move towards at least recognising and, I hope, meeting the widespread concerns that the chapter on shared ownership is very much skewing the need, which we all recognise, to meet the housing crisis and to do so by providing a wide range of housing provision. Without these amendments, providers will not be able effectively to deliver a full range of housing ownership tenures. The spending by registered providers of £4.1 billion of funding in the open market to deliver shared ownership schemes will not represent best value and the initiative to increase shared ownership may tend to drive up prices. I beg to move.

Lord Lansley (Con): My Lords, I will speak to Amendment 36B, just moved, and refer to Amendments 47A and 53A in my name. I draw attention in the register of interests to my unremunerated position as chair of the Cambridgeshire Development Forum, which is a group bringing together those people who wish to support development in the area in which I live—an area which exhibits many of the characteristics that are most at the heart of this debate: a very high level of demand for new homes and a relatively high and accelerating price for new homes in and around Cambridge.

By virtue of the order of consideration, we are having this discussion ahead of what I would have preferred, which is a discussion about the definition of a starter home. We will come to that in a later group and I will talk to that later, if I may. If we had the clarification of the definition of a starter home that I am personally seeking—not least in an amendment I have in a later group—the requirement for amendments to Clauses 3 and 5 would fall away. I very much support the Government's intention to promote starter homes and give young people the opportunity to buy their own home. I mean it as simply as that: building new homes with the objective of giving young people an opportunity to own their own home. The question is how we go about that and whether we should have not only a general duty but specific requirements for it. I am in favour of that and support the Government.

However, the definition of starter homes is narrow. In the context of this group of amendments, the issue is that in places such as Cambridge and the surrounding area, where I live, it is extremely difficult for many young people to afford a new home. Across the country generally, we have seen the amounts that young people have to acquire for deposits accelerating—perhaps doubling—in the last decade. We know that to buy a house outright with a mortgage, they are very often looking not only for a substantial deposit but for family help. The Council of Mortgage Lenders suggests that more than half of young people buying their own home now need family help to make that happen. Almost by definition, therefore, it is exceedingly difficult for young people seeking to buy their own home rather than rely on other forms of tenure to succeed in doing so if they do not have family income to support them or, certainly in my area, incomes in excess of some £70,000 for a couple trying to buy a home together. That is one of the reasons why the Government have made it very clear, as they did on Report in the other place, that they,

"strongly support the need for a range of products to improve access to homeownership".—[*Official Report*, Commons, 5/1/16; col. 151.]

I completely support the Government in this. However, the noble Lord, in moving his amendment, was clear that there are other schemes and significant government financial support to promote other means of securing home ownership. We should not dismiss those.

However, the issue in this legislation, especially in Clause 3, is whether a local authority should have a duty to promote the supply of a particular form—a subset as it were—of the homes that young people might aspire to buy, through various routes. We instantly get into difficulty there. The Government are clear, through the structure of Clause 3, that this does not impede the local authority from making its local plan in terms of permission in principle. However, once these local plans are in place and give access to sufficient land for housing need generally in an area, if local authorities, as a consequence of this additional duty, have a preferential or discriminatory duty in favour of planning applications being made available only for certain types of new housing, that will entail an opportunity cost for the provision of other housing. The balance of need in an area may not necessarily correspond with what young people in that area are looking to acquire, especially young people with local connections trying to access what I would regard as starter homes with particular support, if the definition of what a local authority must seek to promote is very narrowly defined and does not enable some of those additional products to be available to them.

That is rather a long-winded way of saying that in Clause 3, the Government are looking for local authorities to have a general duty to promote starter homes. If starter homes are properly defined, I am all for that; if starter homes are narrowly defined, a local authority must have the discretion to pursue other mechanisms for promoting home ownership and to help young people buy their own homes. Amendments 47A and 53A, which I have put down, bear on Clauses 3 and 5 but not on Clause 4, which we are going on to debate. There would be a duty on local authorities to promote starter homes or alternative affordable home ownership products, but that would not prevent the Secretary of State setting a starter home requirement. Local authorities would not be without a degree of specific requirements to meet the Government's manifesto objective. I support the manifesto objective, and want us to achieve it, but starter

homes, which we shall come to debate, are too narrowly defined in the Bill at present in the context of that requirement.

That said, the Government have a manifesto commitment and must, I think, have the right—which Clause 4 would continue to give the Secretary of State—to pursue it by setting specific requirements for local authorities. But the Government should do it in a more permissive context for local authorities, so that they could at the same time recognise that they have to be able to accommodate other schemes, which we all support, through the planning system—for example shared ownership and rent-to-buy schemes. That is why these amendments are there. I hope in a later group to be able to explain a better way of dealing with this, which is for starter homes to be differently defined.

Lord Best: My Lords, Amendments 47B and 53B follow on from the amendment in the name of the noble Lord, Lord Lansley, whose comments I much appreciated, and support the 12 amendments in the name of the noble Lord, Lord Tope. They would change the duty on local planning authorities from that of promoting starter homes exclusively to that of also promoting alternative home ownership schemes, with the added ingredient, in these amendments, that these extra home ownership products should be approved by the Secretary of State. The amendments in my name and the names of the noble Lords, Lord Kerslake, Lord Kennedy, Lord Beecham and Lord Stoneham, provide the opportunity for other—equally if not more desirable—home ownership products to be permitted in place of the one-club approach, the single option of 20% discounted starter homes.

The bright ideas of policy advisers may not always represent the only or the best approach and the starter homes initiative got its star billing without consultation with key practitioners or other politicians. In the event that a more creative, more beneficial route to home ownership already exists—or may be invented in the future—it seems wise for the Secretary of State to allow for alternatives.

My amendments would not help, sadly, the fledgling new sector of build to rent, where institutional investors are putting in long-term money to build decent market rental housing. This amendment is only about alternative home ownership products, and I am concerned that, as the British Property Federation has warned, the gradually evolving institutional rented sector is likely to lose out to its new rival of subsidised starter homes. Build to rent also addresses the demand from younger people who cannot raise sufficient deposits and/or a large enough mortgage. The sector helpfully draws in new resources from pension funds and other institutional investors, and several build-to-rent developers are now offering good-quality and longer-term security than is common in the PRS at large. But this newly emerging sector will not be able to take advantage of the grant of many thousands of pounds going to each first-time buyer of a starter home.

I am sorry these amendments will not be useful to the build-to-rent proponents. However, they seek to recognise the Government's ambition that home ownership should take precedence over renting. Within the open market, this government priority is understandable. By extending the range of home ownership products to embrace schemes that may well prove more desirable than starter homes, these amendments and those in the name of the noble Lord, Lord Lansley, would assist the Government's overarching aim.

6 pm

Shared ownership has been a valuable option for many buyers, as the noble Lord, Lord Tope, has remarked. Despite the impending loss of social housing grant, funding for this tenure has been sustained. It can help people on the lowest rung of the home ownership ladder and reach households for whom the 80% purchase price for starter homes is still too high. Other examples of alternative home ownership models are the rent-to-buy schemes, such as Gentoo housing group's Genie house purchase scheme and the Rentplus product, which enables households to save for a deposit while in a rented home and to buy that property after a set number of years. Such schemes extend home ownership to people whom starter homes cannot reach but who can become home owners when they have saved prudently for a number of years.

The Housing Minister has indicated in the other place strong support for a range of different products to help access to home ownership and, since the starter homes model has many imperfections—as we will explore later in Committee—the Government would regret a one-size-fits-all approach. Indeed it seems odd to endow one particular model with this level of support and enshrine it in legislation. The Government will not regret giving themselves and local planning authorities a bit more flexibility in the promotion of low-cost home ownership. I support these amendments.

Lord Kerslake: My Lords, I add my support to this group of amendments, and I declare an interest as chair of Peabody and president of the Local Government Association.

It is worth recalling that the product—starter homes—had its origins in the coalition Government. It came forward as an interesting idea that would be genuinely additional to other new sources of supply. It would be applicable to what were described as brownfield exception sites—those that had not previously been identified for housing and could therefore be built on with this product. The uplift in values would cover the 20%. It was, therefore, an interesting, innovative idea with some rather ambitious numbers attached to it. In six months—between then and the election—it moved from being an interesting, innovative idea to being the main source of new supply. There is usually an in-between stage—it is called "trying something out first". We have not yet had a property sold as a starter home; we do not yet know in detail what constitutes a starter home. Yet it becomes the centrepiece of this Bill. It makes absolute sense to think about other forms of home ownership and—we will come to this later—to let local authorities have the flexibility to think through the different sorts of tenure that they require.

On Second Reading I was clear that there is only one sustainable route to better access to home ownership: it is to build more houses. There is, ultimately, no other way to sort this problem. In the end, these access products reward a selective group of people who are able to benefit from them. In the case of Help to Buy it

[LORD KERSLAKE]
is an equity contribution, so people are expected to return it, as with shared ownership. In the case of starter homes—as we will discuss later—it is, in effect, a one-off gift to a select number of people. In this group of amendments, therefore, I encourage the Government to think carefully about putting every bit of their focus on starter homes at the start of this Bill, and to accept the very sensible amendments that seek to broaden this section to include other forms of home ownership. We can debate later, under other groupings, whether this product is properly formed in the first place.

Baroness Redfern (Con): My Lords, in speaking to this group of amendments, particularly in reference to home ownership and starter homes, I think it goes without saying that the need to provide enough homes to meet demand is one of today's defining challenges. I therefore welcome initiatives such as the provision of starter homes, the extension of the right to buy to housing association tenants and the continuation of reforms to the planning system undertaken in the previous Parliament. Such measures will enable low-income families to own their own homes and provide stability for their families.

As noble Lords know, the rate of home ownership has been falling since its peak in 2003, despite the aspiration to home ownership remaining very strong. Since spring 2010 nearly 270,000 households have been helped to purchase a home through government-backed schemes, including Help to Buy and the right to buy. However, younger households in particular are now less likely to own their homes than a decade ago. We must therefore ensure that more young people are able to aspire to home ownership. I support the Government's manifesto commitment to build 200,000 starter homes over the course of the Parliament.

Starter homes are essential to increase housing supply and will encourage younger couples who wish to start a family to get on the property ladder and provide security for their future families. To this end, the Bill includes a general duty on English planning authorities and embeds starter homes in the planning system. This will make it easier and faster for planning permission for houses to be granted and make interventions in the local planning process smarter.

However, on this point I hope that the Minister will say how the Government will assist councils in meeting these important duties. The introduction of a much-needed database, and the Government's amendment to have it maintained by the Secretary of State rather than by local authorities—for reasons of clarity and simplicity—will allow greater co-operation between local authorities in tracking banning orders and make monitoring of ongoing trends more centrally focused. This national co-operation will prevent serious or repeat offenders from causing harm and misery to renters and placing them at serious risk from letting properties. There should be no room for such operators in the sector.

This Bill provides extensive scope for the role of local government and new duties that they must act on.

Lord Stoneham of Droxford (LD): My Lords, I am pleased to support my noble friend Lord Tope on these amendments, particularly the provisions that the noble Lords, Lord Best and Lord Kerslake, spoke to. I also have some sympathy for what the noble Lord, Lord Lansley, said about the need to widen the definition of these starter homes so that we look at alternative models of affordable homes that can be approved by the Secretary of State. We will debate later in Committee whether the starter homes initiative will lead to balanced and mixed communities, and the implications of that, about which I have severe doubts. We are also going to discuss the wider issue of the impact on social housing provision, and I declare an interest as chair of Housing & Care 21.

This model of starter homes will not apply to huge areas of the country; people there will not be able to benefit, as the noble Lord, Lord Tope, explained. Although the main aim should be to build more homes, if we genuinely want to increase ownership we must look at more than one size fits all. The Government may find, if they concentrate overly on starter homes—I understand that they are doing that because it is a convenient target to get people moving—that the type of houses we are building in the long term become unsuitable.

There are two aspects of this that are quite an issue. Frankly, too many starter homes in one local market could cause market distortions, both initially, when they are trying to sell these homes, and at the end of the five years, when the purchaser can effectively take advantage of the discount. This concentration of building of starter homes will both put off lenders from lending on those houses in those areas and may well deter developers from developing sufficiently fast, as they would where they were developing more mixed tenures and different forms of owner-occupation. The communities themselves will be very unbalanced.

The amendment is an attempt to achieve greater diversity of products, which may make homes more affordable and achievable, and, by varying the nature of the home ownership, deter what could otherwise lead to quite severe distortions of the market. If we distort the market, we will put off developers and lenders, and end up not building as many homes as we need.

Baroness Royall of Blaisdon (Lab): My Lords, like the noble Lord, Lord Tope, who introduced the lead amendment, I believe that there is enormously wide concern about this aspect of the Bill, and I certainly support this group of amendments.

As we have heard, Chapter 1 refers only to starter homes. The Bill's demand that starter homes should carry the whole focus of housing provision means that localism and local decision-making is absolutely fettered. The fact that absolute priority is given to home ownership and starter homes is wrong. Of course, there is a place for home ownership, and I want everybody who aspires to own their own home to do so, but, whether we like it or not, many people will never be able to own their own home, and some do not wish to.

The noble Baroness, Lady Redfern, who is not in her place, spoke of the need for people to own their own homes to provide their families with stability. Most families would like a roof over their heads to provide them with stability, and that may well mean affordable rents and affordable homes. They do not necessarily have to own them. Like the rural housing

group, I believe that the proposals, with their emphasis on starter homes, will undermine future provision of affordable housing in rural communities.

As we have heard, in many areas, including Cambridgeshire, even starter homes will not be affordable for many people. Shelter tells us that people in only 2% of local authority areas will be able to buy their own homes, even starter homes. In Gloucestershire, where I live, the median income for residents in 2014 was £20,935 per annum. Even with a substantial £20,000 deposit, that would be insufficient to buy a property in most villages, with or without a 20% discount. I understand what median means: for many people who I know, that income is a king's ransom. The living wage is about £14,000 per annum. There are so many people who will simply not be affected by the Bill.

The noble Lord, Lord Lansley, mentioned that, at Report in the other place, the Minister talked about other forms of home ownership, which is encouraging, because other forms of home ownership can help people who cannot afford to buy their homes outright. Perhaps the Minister can tell us whether the Government intend to make it explicit in the Bill that they are in favour of other forms of home ownership, not just starter homes, because they cannot be the be-all and end-all.

The noble Lords, Lord Best and Lord Kerslake, mentioned the history of starter homes, which were a glorious idea devised by people thinking up innovative policies. That is great, we need innovative policies—but as the noble Lord, Lord Kerslake, said, they must be tried out first. A policy which looks good on paper cannot suddenly become the main focus of a Bill; that is entirely wrong. I hope the Government will recognise that more thought needs to be put into the policy.

The concentration of starter homes could indeed distort the market, as others have said, and provide an imbalance in our communities. I simply do not think that the focus on starter homes in the Bill provides the solution that we need to the housing crisis in this country. We will come on to many other things in that area later, but starter homes cannot be the be-all and end-all. They can be one part of the recipe to provide a solution to the current crisis, but they cannot be the only answer.

6.15 pm

Baroness Bakewell of Hardington Mandeville: My Lords, I agree with most of the points made on this first tranche of amendments in this chapter. Although I welcome the Government's aim to increase the supply of starter homes for those currently attempting to get on the first rung of the home ownership ladder, like others, I remain concerned that this policy is seen as the only route to provide a home for those who are in need. Home ownership is something that many residents of the country aspire to but, as has been said, by no means all of them.

Limiting the Bill to starter homes rules out other avenues of home ownership. As your Lordships are aware, there are other products in the marketplace, such as shared ownership, which we have already heard about, and the Help to Buy equity loan scheme run by the Homes and Communities Agency. By promoting starter homes to the exclusion of all other options, the Government are raising the expectation of those under the age limit that they will definitely qualify for a starter home with a hefty discount. This will lead many of them not to explore other options which could assist them to get on the housing ladder.

As the Government have already made clear, there will not be a limitless supply of starter homes. Indeed, supply will be restricted by the resources raised through the sale of high-value council homes—a policy to which we will come later in Committee. This rationing of starter homes is not clear to those whose ambitions have been raised. By concentrating wholly on their starter homes programme, the Government are setting many people up to be bitterly disappointed. Realism dictates that the Government should promote other forms of home ownership simultaneously with their starter homes programme.

We now come to the thorny issue of how these new home buyers will finance their purchase. They may have a deposit, but that does not appear to be a requirement in the Bill. They will receive a discount of "at least 20%" on the purchase price. Presumably, this is the cost of the plot plus the building costs—in other words, the market price for which a developer could expect to sell the property on the open market, outside the Government's starter home programme. The buyer will then need to go out to the market to borrow the remainder of the purchase price of their home, so some of these purchasers will be looking to borrow up to £200,000 outside London and £360,000 in London.

In Clause 2(3), the criteria are very clear as to who these people will be: first-time buyers under the age of 40 who have "other characteristics" to be specified by the Secretary of State—which are not yet decided. The sooner the Secretary of State sets out what these other characteristics may be, the more certainty can be brought to those waiting to buy their first home.

As your Lordships are aware, there are many anecdotal stories about how difficult it is to obtain mortgages from traditional sources, with those who have been in extremely well-paid employment for a long time, looking to move from one property to another, being refused finance on the flimsiest of grounds. We cannot blame the banks or building societies for being reticent to lend when they have had their fingers burnt in recent years. However, if they will not lend to those with a good track record of repaying their mortgages and loans in a timely manner, how on earth will we encourage them to lend to those who have no track record? The very fact that they are first-time buyers means that they will not have had a mortgage in the past. The Government will need to produce an effective scheme which will encourage lenders to participate in a starter homes programme.

I note from the Statement of 19 January that those areas engaged in the pilots will get their administration costs reimbursed only during the six months of the pilot and will be reimbursed for the capital expended once the Bill has received Royal Assent. Given that the consultation is still ongoing on many aspects of this Bill, can the Minister be confident that the Bill will receive Royal Assent in sufficient time to help those

[Baroness Bakewell of Hardington Mandeville] housing associations engaged in the pilot to balance their books? Like others, I look forward to these five pilots being concluded.

Even with the discount supplied, research carried out by Savills on behalf of the Local Government Association—and like others I am a vice-president of the LGA—shows that starter homes would be out of reach of all people in need of affordable housing in 220 council areas, as my noble friend Lord Tope, has said, and out of reach of 90% in a further 80 council areas. The definition of people in need of affordable housing are those who have to spend 30% of their household income in rent or buying a home. Many will be spending a great deal more than 30% on housing. With 92% of council areas out of reach for those needing affordable housing, there are going to be some very disappointed and disaffected residents in the country.

Many in this House and outside are concerned that the starter homes will not necessarily be for the benefit of those originally intended. It is essential that these new starter homes should be the only residence of those who buy them. It would be against the spirit of the Bill if these homes were then rented out to others or sold on at a profit after only five years. I urge the Government to put the condition of the home being the only residence of the owner or owners in the Bill to avoid any doubt and to protect those who truly wish to participate in the scheme to acquire their own home.

The Government's aim is to deliver 100,000 new homes over a five-year period, but that is only scratching the surface of the homes that are needed. A mix of housing is what is needed, including home ownership outside of starter homes. I urge the Minister to accept this amendment in order to achieve the Government's aim.

Lord Horam (Con): My Lords, I do not want to speak for any length of time because in discussing these amendments and the following amendments, which cover largely the same area, I defer to the greater expertise of many other noble Lords, such as the noble Lords, Lord Best, Lord Kerslake and Lord Tope. However, I am struck by one thing as a relative newcomer to housing debates—that is, the extent to which we are proceeding in the dark. I went to a very interesting meeting, which I was grateful to my noble friend Lady Williams for laying on, to discuss technical aspects of the Bill. A number of noble Lords were there, and it was very interesting to clear up some of the definitions, and so forth, as far as we could. What was apparent was that the Government really had not begun to finalise any sort of modelling of the effect of the legislation—not only the financial effect, which is very germane to our discussion, but the social effect and the effects on supply of housing.

I think that we would all agree that one has to think very clearly about housing as it is a complicated situation and an important topic. It is the Government's responsibility to think clearly, and I think we all agree that the issue is really shortage of supply rather than tenure. That is the fundamental point with which we are trying to grapple. Therefore, it behoves the Government not to let issues of tenure, whether in social housing, starter homes or wherever, get in the way of the fundamental point about shortage of supply of whatever kind of housing it may be. In trying to get at what the Government could say about the effect on housing supply and other financial matters, they confessed—and I am grateful for this to the civil servants who were there—that they had not got far enough with their modelling, simply because Ministers had not taken decisions yet. I understand that, too, but we are a long way down the road. We have had 17 Committee sittings in the other place and we are now in Committee here. Some important definitions and considerations have not been finalised and do not look as though they will be finalised for some time, which places the House in a quandary in trying to reach a clear conclusion, whatever point of view you may have.

The only bit of information that I have been able to glean by way of the consequences of this particular set of clauses on starter homes was provided by the Local Government Association. I do not know whether it is accurate or not, but the LGA says that in its present form,

"should 100,000 starter homes"—

and that is an ambitious figure—

"be built through the planning system, between 56,000 and 71,000 social and affordable rented homes would not be built".

In other words, there is a sacrifice, in concentrating on the single issue of starter homes, of social rented homes, which we know are even more needed by even poorer people than those whom we hope will buy these starter homes.

This is the difficulty that we have. Is the figure accurate? Where has it come from? Is it the Government's own figure? I would be interested to hear the Minister comment on this, although I do not necessarily expect her to comment this evening because I have just produced it out of the blue. But that sort of figure, without any further government explanation about what they expect the consequences of this legislation to be, is very worrying. Therefore, I hope that we can go into this as thoroughly as possible—but I fear that, even at the end of a day's debate on this subject, around which there is a great deal of concern and interest on the part of Members, we will not be very much further forward.

I agree with the noble Lord, Lord Kerslake. We are tackling this the wrong way round. The right way round would have been to say, "There is a housing shortage. How do we tackle that and maximise housing supply?" We have three different methods of tackling supply. We have the private sector, housing associations and councils. How do we maximise the output of those three? Let us sit down and discuss that and consult expert opinion. It has happened the other way around. Someone has had a bright idea. I am not against bright ideas, I am all in favour of them, but if they do not go through the necessary and rather boring business of being talked through by people who know what they are talking about, we are liable to end up in the sort of situation we have now. Undoubtedly, this may be a very sensible idea, but we do not really know and we do not have the information to hand to decide on it. Yet this is really rather late in the process, and if we get it wrong we may have adverse effects when the Government are trying to make a favourable effect. So I am concerned from that point of view.

Lord Campbell-Savours: My Lords, that contribution was the key one in our debate, because it raises the issue of the impact of this legislation and how it will affect demand. What is absolutely clear is that many local authorities are expressing profound concern over this concentration on starter homes and a single source of housing supply to the exclusion of other forms of tenure. That is what has come through in the course of this debate—this feeling of concern about concentration on one area.

The noble Lord, Lord Horam, referred specifically to whether this work has been done. It is interesting to note that Bristol has actually done this work. I draw attention to a document sent to me that sets out findings in this area—because I suspect that what Bristol found mirrors a difficulty that we would find throughout the United Kingdom.

6.30 pm

Bristol City Council, working with South Gloucestershire and North Somerset, recently published the wider-Bristol *Strategic Housing Market Assessment.* I understand that this assessment was carried out with this Bill in mind, so clearly it thought that it would be influencing events when these matters were considered by Parliament. The study identified the need for housing in the wider Bristol housing-market area to be 85,000 homes over a 20-year planned period of 2016 to 2036, of which 29,000 would need to be provided as affordable homes. Of these 29,000 affordable homes, 80% would be required as social rented homes or equivalent affordable rented homes to ensure that households with the lowest incomes were able to access housing in their region. That market assessment demonstrated that the remaining 20% would be required as shared-ownership homes. I think that that is the kind of work the noble Lord, Lord Horam, was referring to. Let us look at the demand and then construct the policies to deal with that demand on the basis of the findings of carefully carried-out research.

In order to meet the market assessment guidance in the current National Planning Policy Framework, local planning authorities obviously have to retain discretion for determining the appropriate proportion of low-cost home ownership and starter homes to meet affordable housing needs. This prescriptive approach was seen by Bristol City Council as,

"a new and worrying centralisation of planning policy which presents a significant challenge to local government autonomy"—

in other words, challenging the role of local government with policies being set nationally which do not meet the immediate needs of a particular area.

Bristol's view is that determining the number or proportion of starter homes may conflict with its housing market assessment and risks undermining the National Planning Policy Framework which it has been trying assiduously to pursue. For that reason, the three local authorities commissioned market assessment consultants ORS—an organisation of which I know very little or nothing—to model the housing need and demand for Government-proposed starter homes and to advise on whether the Government were capable of meeting the market assessment's identified affordable housing needs. ORS confirmed that, although there was a demand for starter homes as a first-time buyer product to boost housing growth, such a product was not considered appropriate to address the affordable housing needs identified in the wider Bristol market assessment.

Bristol City Council supports Jeremy Blackburn, head of UK policy at RICS, who commented:

"Ramping up housing supply is positive, but home ownership should not be the only game in town given the amount of private rented accommodation we need. A mix of market and rented housing is required and starter homes should not be seen as the panacea to solving the housing crisis".

We get the feeling in this debate that the Government see starter homes as the panacea to deal with the housing crisis. I, along with many of my colleagues, do not believe that this policy will sort out the problem that exists. We need far more innovative thinking, as the noble Lord, Lord Horam, suggested. We need new packages and new ideas. This is an old idea; it is subsidised housing ownership. It will not resolve the problem and I positively support the amendments moved by the noble Lord, Lord Tope, because they seek to address the issue of defining what is actually required.

Baroness Royall of Blaisdon: My Lords, I hope I will be forgiven for intervening again. The noble Lord, Lord Horam, mentioned a meeting with the Minister which I regret I was not able to attend. He mentioned some modelling which civil servants were doing on the impact of this policy. Will the Minister say when we are likely to receive further information about that modelling and what the recommendations are? As I have expressed in this House before, I think it is invidious if we are asked to proceed with this Bill without seeing some of the key regulations tabled by the Secretary of State. We cannot be expected to make such important policy which is going to affect the lives and well-being of so many of our citizens if we are not able to see the outcome of the modelling and whether or not this Bill is evidence-based in any way.

Lord Horam: Perhaps I can just explain that the Minister was not present at the meeting. She kindly arranged for her civil servants to address technical questions. I asked what modelling had been done on the financial and supply effects of the legislation and the civil servants were kind enough to say that the modelling was not finished because certain decisions had not yet been taken. The definition has not been finalised and therefore they could not give me an answer. I raised the question in the House because I think it is important, as we go through the Bill, that we address these questions if possible.

Baroness Hollis of Heigham: My Lords, what worries me above all is that starter homes are supposed to fly the flag for affordable housing. Behind that is a recognition by the Government that the problem in this country is the lack of affordable housing, which in turn is determined by the lack of new and adequate housebuilding. Starter homes are just one part of a complicated jigsaw that the Government are offering us which all pushes in one direction—away from making social and affordable housing available to people on modest incomes. Later on in the Bill we are going to get the sale of housing association homes through right to buy, which, if council housing sales are anything to go by, will quickly

[Baroness Hollis of Heigham]
be turned into buy-to-lets and then into student housing, and away from housing for young families who need affordable homes in which to bring up their children and live their lives.

Secondly, we are going to see the sale of empty council housing into owner occupation over and beyond local authority RTB in order to fund the discounts on the sale of housing association properties into owner occupation. So we will lose housing association properties and we will probably double the number of local authority housing sales—all away from affordable housing. On top of that we are ensuring that Section 106 land and grants, which have been the source of so much housing association and local authority building, will now become monopolised by starter homes. At the same time we are knocking out shared ownership.

So what is actually happening is that the sole concept of affordable housing, both for the future and with the recycling of existing property, is going to be starter homes—the only game in town. Housing association properties should be sold with discounts into right to buy; local authority RTB will continue; and on top of that empty homes will be sold to fund the discounts for housing association tenants to be able to buy in order to send the stock into buy-to-let in due course. And on top of that, not only can local authorities and housing associations not replace that stock but they will now find—because of the requirements of central government—that their Section 106 land will be available exclusively and solely for starter homes. So for the whole of the next decade, if the Government have their way, the affordable housing programme for those in the greatest need, who have least leverage in the market, whose need is highest, will have just one option, starter homes—which, we are told by Savills, will not benefit 90% of them. I ask the Minister: what on earth do the Government think they are doing?

The Earl of Lytton: My Lords, at the risk of prolonging this very interesting debate, I should say that my employer is a firm of chartered quantity surveyors and one of the things that we do is assist housebuilders. We have a sister company that has just secured a large contract to build houses.

It has become apparent to me as the discussion has gone on, as it was apparent to me at Second Reading, that this Bill has a very small component related to the need to build new houses generally. It just is not there, because all we have is a reference to starter homes and a reference to self-build and custom housebuilding. Those are the only two bits concerned with building new homes of any sort, so there must be a working assumption sitting behind this that somehow, in the big, wide world out there, the general thrust towards new homes will continue and that a proportion of those —on the principle of the affordable housing component under Section 106, the community infrastructure levy or whatever it happens to be—will be devoted to an element of affordability.

The noble Baroness, Lady Hollis, is right in the sense that I can confirm, from speaking to developers, that they are of the view that conventional affordability, in terms of affordable rents, will go into some form of attrition and that starter homes will indeed be the only show in town. That appears to be the belief among housebuilders. I pass no particular judgment in relation to government policy—I have to accept that this is something that they have as a manifesto commitment, and it is up to us to scrutinise the matter and make sure that it is, as far as possible, fit for purpose—but there is no doubt that the starter home will effectively be not affordable in any sort of perpetuity but will be a one-off windfall for the first person who happens to occupy it.

It is very important therefore that the studies to which the noble Baroness, Lady Royall, and other noble Lords referred should be before us. The outcome of those pilot studies should be known so that we can assess this. Otherwise, it seems to me that we are in a very brave new world indeed, in which we know neither the outcome nor, indeed, a great deal of the process that sits behind this. So I have to say that I am with noble Lords who have tabled the amendments in this group in terms of having doubts about this. I have other doubts which I have expressed in meetings which the Minister was kind enough to convene some time ago—although I was not able to attend the most recent one—about the financial viability of how this works and how you retain the substance of the starter home, or social concession, within the system.

6.45 pm

The Select Committee on the National Policy for the Built Environment, of which I was pleased to be a member, was clear in one of its conclusions that the amount of housebuilding by the private sector on its own will not meet the targets that we need to meet if we are in any way to catch up with, let alone satisfy, the household formation taking place at the moment, with all the issues about mobility, the ability to find a home where there is a job and affordability.

As we have sort of inverted the whole process of discussion here, it is a bit difficult not to bring in some of the things that will come in later, and certainly I feel quite strongly about some of these things. I am the parent of two children in their 20s who would, under normal circumstances, probably like to a buy a flat in London—thank you very much—but, on the sort of salaries that they can get even with good university degrees and good jobs, it is just not possible in terms of the price to earnings ratio, if I can call it that, of the average salary compared with the average house price. It is just not going to happen. The only way we can deal with that is not only to expand the number of homes in totality but to have the broadest range of tenures and methods by which people can occupy them. By whatever means, that is the key to this. One of the reasons why some very large players are now moving into the private rented sector and are planning to build new is because they can see that there is going to be a complete deficit on that side of the equation. That trend tells its own story.

I repeat that I am with the concerns behind this group of amendments. We have to do some serious unpicking. If we cannot achieve it at this stage, I ask the Minister whether we can have some of the pilot study feedback for the next stage in the Bill when we really can get to grips with the nitty-gritty and work out whether this is going to work.

Lord Greaves: My Lords, I have three questions for the Minister. They are not particularly related, but they are all part of the starter homes thing. First, I shall pick up what the noble Lord, Lord Horam, said. He caused my eyebrows to rise a little bit when he said that it is all about quantity of housing and not about tenure. I basically disagree with that, but perhaps I am a more ideological politician than the noble Lord.

Lord Stoneham of Droxford: That would not be very difficult.

Lord Greaves: Well, yes, it would not be difficult. Perhaps that is why he was never in the same party as me.

Lord Tope: He came close, though.

Lord Greaves: He came very close. We had our times together.

Then I heard the noble Lord talk about unintended consequences, and it seems to me that this proposal is full of the threat of unintended consequences. I go back to the point I made previously, which was picked up by the noble Lord, Lord Best, that this Bill is trying to fit everybody into the same pot. It is one size fits all, when what we need is a series of different answers to the problems of the housing market in different parts of the country.

When I spoke previously, I said that there are lots of different housing markets—perhaps 100—around the country. The person who first gave me that idea is now in his place and is my noble friend Lord Stunell, who gave us a talk when he was a Minister in the Department for Communities and Local Government in which he kept hammering home the point that you cannot have one rule for everybody. That means that there have to be local mechanisms for finding solutions. The only people who can legitimately do that and set out to find those mechanisms and policies are the elected local authority.

Having said that, I will ask the Minister the following three questions. One relates to the point made by the noble Lord, Lord Horam. In 2001, owner-occupation in this country reached a peak of 69%. By 2011, it had gone down to 64%, and it is now somewhere in the low 60s. I suggest that that is an unintended consequence of a number of different policies. I believe that owner-occupation is the best form of tenure, although there are people for whom it is not appropriate and people who would not want it. I first got involved in politics at the end of the 1950s, joining the Liberal Party when "Ownership for all" was a Liberal slogan. It is still a good slogan, if a little on the extreme side. My question for the Minister is: do the Government have a target of what they think is a reasonable level of owner-occupation in this country? Are they content for the level to continue to slip until it gets down to perhaps 50%, or do they want to boost it again, and if so, how far do they think we can reasonably get the level to?

The second question is totally unrelated to that and is just a question I realised I did not know the answer to. Is a person or a young couple who buy a house which is a starter home, and therefore get the 20% discount on the market price, also entitled to the 20% Help to Buy discount if they qualify for that? That is just a straight question, because if that were the case it would have an interesting impact.

My final question goes back to the kind of area which I know best, which covers a lot of the north of England outside the most rural areas and the big cities—and perhaps some of the big cities, too—as well as a lot of the rest of the country as well. What is a local authority supposed to do if it cannot find anybody who wants to build starter homes? That may seem a ludicrous question in some parts of the country, but it is not a ludicrous question in the part of the country where I live. It is quite possible that local or big housebuilding companies will not want to build any starter homes, for a whole series of reasons.

Lord Beecham: My Lords, this has been a very interesting debate. I have to say that I rather struggled, as, I suspect, other Members of your Lordships' House may have done, with the huge number of amendments in this group and the following group, which are in many ways connected. It has not made preparing for the debate—or, I suspect, replying to the debate, for the Ministers—a very easy job. However, we have heard some extremely interesting contributions, and I hope the Government will listen very carefully to the views not just of members of different political parties but particularly of the Cross-Bench Members, who have brought their experience and independence of mind to bear on these very important problems.

In the first instance, I will speak to Amendment 48, which relates to the provision of starter homes and which relates particularly to Clause 3, under which the Bill lays down:

"An English planning authority must carry out its relevant planning functions with a view to promoting the supply of starter homes in England".

So far, so good. Subsection (2) continues:

"A local planning authority … must have regard to any guidance given by the Secretary of State in carrying out that duty".

Amendment 48 would add to that subsection (2) something of a restriction so that it would continue,

"except where the local authority considers that providing starter homes would prevent other types of affordable housing being built".

In other words, it introduces into the Bill the notions that there has to be a balance between the provision of starter homes and other affordable homes, and that the Secretary of State should not be able simply to prescribe that the one—starter homes—must always prevail over any other considerations. That seems a sensible way forward.

It is interesting to read the policy fact sheet on starter homes published by the department, which lays down the general nature of the Bill. It asks what the Bill hopes to achieve and answers,

"a general duty on English planning authorities to promote the supply of starter homes when carrying out their planning functions".

So far, that is quite acceptable. However, it continues with,

"allowing the Secretary of State to make regulations to create a starter homes requirement, so that English planning authorities may only grant planning permission if the starter homes requirement is met. This will ensure that starter homes are delivered on suitable, reasonably sized sites".

[Lord Beecham]

That is not necessarily a logical conclusion, but the important thing is that it makes an absolute duty, which will ultimately be fleshed out in regulations and which, needless to say, we will not have sight of before the Bill is enacted, if it is enacted in its present form. Moreover, nothing is said either here or in any other area about the salient fact that the requirement will not necessarily be confined to providing such starter homes for residents within the locality. They could come from far away or perhaps from adjoining authorities, but there is no indication that the planning requirement will address the needs of people within the very authority that will have to carry out these proposals.

Interestingly, the fact sheet says that the Government are consulting until 22 February. Admittedly, that is only a week or so ago; given the time we have to consider the Bill, I agree that that is rather a limited period, but we do not know quite when the consultation started. They are consulting,

"on changes to national planning policy to complement these legislative reforms",

which seems somewhat akin to the old *Alice in Wonderland* trope of "Sentence first—verdict afterwards". We do not know what the consultation will produce, but the Government are in any event determined to impose their view. The noble Lord, Lord Horam, who is in some danger of being accused of political recidivism on the basis of his extremely sensible contributions to the debates on the Bill, has indicated, rightly, that we are proceeding in the dark. Of course, we have been stumbling in the dark over many Bills, given the way the Government decide to conduct their business, particularly with reference to pending secondary legislation or regulations. However, the noble Lord is also right to identify that there are no available financial data within the information that is before the Committee or, presumably, that is likely to be before it. These are surely major considerations.

Reference has been made to some of the issues which are clearly of concern, in particular the position on who will be eligible for, and capable of benefiting from, the starter home concept. In particular, we have heard of the Shelter report, which makes it clear that for a majority of people who are not on high wages or without dual salaries, the starter home project will not help them get on the ladder at all; they simply will not be able to afford it.

My noble friend Lady Royall referred to the very small percentage of authorities—I think it was 2% of authorities—in which people on the national living wage would be capable of buying a starter home; even those on average earnings are likely to be able to buy in only 42% of local authorities. That is not a particularly impressive extension of what is meant to be an important right.

7 pm

There is also a question about the Government's consultation, which, as I have indicated, is to be on changes to national planning policy, to complement these legislative reforms. It is a question, therefore, of whether the National Planning Policy Framework is now under review. Perhaps the Minister, in replying, will indicate whether the consultation that is taking place, about which we do not have much information, is intended to replace or reshape the National Planning Policy Framework. If it is, that is a serious matter, and it ought not to be a change that takes place without being properly considered in both Houses, not merely in this House, in the course of considering this Bill. As ever, though, the Government are apparently going ahead with policies, sometimes producing amendments at the last minute in the Commons or occasionally even in your Lordships' House, without any indication of their intentions at a time when legislators can reasonably expect to influence the outcome. I hope that is not the case here, but I rather fear it may be.

The Opposition certainly support almost all the amendments that have come before us this afternoon and agree with many of the comments. The noble Earl, Lord Lytton, in particular, given his professional experience, is somebody to whom the Government should listen. He is a Member with critically relevant experience in this area. Equally, we have heard from very distinguished Members with long associations with the housing movement and local government. The noble Lord, Lord Best, made an interesting point about the potential role of institutional investors. This is something that is new and ought to be encouraged but may, as he implied, be damaged by overconcentration on the particular policy which the Government seem determined to pursue at all costs.

The noble Lord, Lord Stoneham, rightly emphasised that too great a concentration on individual areas is unlikely to be productive. That, again, raises the question of locality.

The thrust of the Government's policy, as we shall no doubt discuss in the next group of amendments, to promote home ownership and to make it possible for people to buy starter homes, is one that we all, I think, endorse. However, the way it is likely to work out, as we have heard and I suspect will hear again in the course of debate on the next group, is extremely problematic. The Opposition support the amendments, and I include in those, as very worthy of consideration, the amendments tabled by the noble Lord, Lord Lansley, who has taken a welcome, pragmatic approach but one that is more akin to the concerns of many of your Lordships about the position than the Government's position as it currently stands. I hope they will listen carefully to him if they have not already had private discussions. I imagine they have, and if they have not, I imagine these will take place after this debate.

There is, however, one debate on which I have a bit of a quibble. That is in relation to Amendments 36B and 37A, moved and spoken to, respectively, by the noble Lord, Lord Tope, and supported by the noble Baroness, Lady Bakewell. I am not sure that what they are saying reflects the legal position that they think it does. What they are proposing, under Amendment 36B, is on the first page of the Bill—indeed, the first line of the Bill—to make clear that the purpose of this chapter is to promote, as they say, "home ownership" as well as the supply of starter homes.

That is reasonable, but they go on, in Amendment 37A, to define "home ownership" by adding to the clause:

"'Home ownership' means the holding of a legal estate by a home owner in a home or in a share of a home".

Then they say,

"'Home owner' means one or more individuals who holds or hold a legal estate".

I am not quite sure whether the noble Lord and the noble Baroness have appreciated that a legal estate is not just a freehold interest. It could be any interest for a term certain. In other words, a leasehold interest for a term certain might be a long leasehold interest. In that event, if it is a 99-year lease, there is no great problem, but, in the amendment, it could be a much shorter period than that for a leasehold interest. For example, a five-year lease, which in law would constitute a legal estate, would not quite be what they contemplate in terms of the impact of that amendment. Perhaps, therefore, they might like to rethink that or, probably better yet, take better legal advice than I am currently offering. I am not absolutely sure of the implications, but they have possibly misunderstood the nature of a legal estate, and that has possibly influenced the amendment.

We are about—after the dinner break business, I suspect—to get further into the heart of this complicated issue. It is one that will concern Members across the Committee because what we do not see is the total housing picture. We are looking at one important new area—home ownership itself is an important area—but we are not considering the totality of housing need, the geography of housing need, or the impact on meeting housing need of one set of provisions as against another. The focus is so narrowly on starter homes in the Bill and in this part of the Bill that we are missing the bigger picture. I say "we"—the Government are missing the bigger picture, and we need to draw their attention to the relationship between the various aspects of housing need and the housing policy that must follow through to get a more balanced Bill as a result of discussions in this House.

I do not think they got very far in the Commons; it is our responsibility, by drawing on the knowledge and experience of Members with a long history of involvement with housing, particularly the housing association movement, to improve it. I hope the Government will listen to the debate and respond constructively to this series of amendments and particularly, perhaps, to the next group.

Baroness Williams of Trafford: My Lords, before I begin my reply on this group of amendments, perhaps I may point out that Amendment 50G has not been spoken to. I am sorry if the noble Lord might have been slightly distracted, but Amendment 48 is in the next group. I am very happy to accommodate and address Amendment 48 now. Do the noble Lord, Lord Tope, and the noble Baroness, Lady Bakewell, wish to speak to Amendment 50G, or shall I just refer to it?

Lord Tope: My Lords, I do not know exactly what is going on, but I recall starting very clearly by saying that I was speaking to all my amendments. In fact, I counted them off. If the Minister would include whatever it was that I must have forgotten to make specific reference to I would be very grateful—otherwise, we could start the debate all over again.

Baroness Williams of Trafford: My Lords, I just tried to do that for completion's sake and to be helpful.

Lord Kerslake: I think that many of us split up our contributions in the expectation that we would consider Amendment 48 in more depth in the next grouping.

Baroness Williams of Trafford: In which case, do noble Lords want a response to it now, or to wait until the next group?

Lord Beecham: Seeing as I have confused everybody—including myself—I think it would be better to deal with Amendment 48 in the next group.

Baroness Williams of Trafford: If that is what noble Lords would like, that is what we will do. I just wanted all noble Lords to be satisfied that, if they wanted to speak to an amendment, they had the opportunity and I was not just running roughshod. If I miss out any contributions from noble Lords, please have a bit of sympathy with me because this has been quite a significant debate.

I thank my noble friend Lord Lansley, the noble Lords, Lord Best and Lord Tope, and the noble Baroness, Lady Bakewell, for the amendments. I support the intention behind them, which is to highlight that other home ownership products as well as starter homes can serve the needs of first-time buyers. I hope that I can refer to that in my comments on funding and on the Bill, but I hope that noble Lords will feel that the amendments are not necessary, as I will explain.

Amendment 46A from the noble Lord, Lord Tope, and the noble Baroness, Lady Bakewell, Amendment 47A from my noble friend Lord Lansley, and Amendment 47B from the noble Lord, Lord Best, all seek to extend the duty to promote starter homes under Clause 3 to other forms of home ownership. Amendment 48D and associated amendments from the noble Lord, Lord Tope, and the noble Baroness, Lady Bakewell, seek to change the starter home requirement under Clause 4 to cover home ownership more broadly.

There was a question from, I think, the noble Baroness, Lady Hollis, about whether everyone aspires to own their own home. There is evidence that the vast majority of people—some 86%—aspire to own their own home. We are determined to extend the opportunity of home ownership to hard-working families by measures aimed at doubling the number of first-time buyers. We believe that shared ownership and other home ownership products have an important role to play as part of the diverse and thriving housing market in helping those who aspire to home ownership but who may be unable to afford it.

Baroness Royall of Blaisdon: My Lords, how does the noble Baroness square that circle? It is great that the Government wish to ensure that everybody who aspires to own their own home can do so, but the figures that the noble Baroness gives do not match the figures that we have quoted around the Chamber on the finances that individuals and families have. Even with the 20% discount it is clear that the vast majority of people in this country are unable to buy the starter homes.

Baroness Williams of Trafford: I was going to come on to that later, but I will deal with it now. Excluding London—I absolutely appreciate that London is a different case—the average price of an affordable home

[Baroness Williams of Trafford]
will be £145,000. A couple on the mean wage in this country, £26,000, would be well able to afford a starter home or an affordable home. The point I am trying to get at—and I appreciate that not everyone is on the mean wage, because by definition there will be a lot of people under it—is that there are other products available, such as shared ownership. Outside London, it is estimated that the deposit required for a shared-ownership home is approximately £1,400, but there may be people unable to access even the shared-ownership home market. We have announced £1.6 billion to put into 100,000 affordable homes for rent. They are examples of what products are available within the various affordability brackets.

7.15 pm

I think the noble Lord, Lord Kerslake, said that we need to build more homes. My noble friend Lord Horam also said that. We do need to build more homes; there is absolutely no doubt about it. This Government have elected to build 1 million more homes by 2021. The spending review announced a doubling of the housing budget of £20 billion to deliver those homes across a mix of different types of tenure. Yes, we are focusing on starter homes because there is a demographic that has been particularly precluded from home ownership—the young buyer—which has gone down from 61% of home ownership back in the 1980s to some 38%. That is why there is such an emphasis on the starter home, but it is not to preclude other types of tenure. In fact, in the spending review noble Lords will see the various funding streams that the Government have put forward to deliver those different types of tenure.

Baroness Hollis of Heigham: We all share the concept of mixed tenures. I built several thousand houses for sale when builders would not and attached 100% mortgages when building societies would not, to give people choice. That is fine. My problem, which the Minister has not so far addressed—maybe she will go on to do so—is that by exclusively emphasising starter homes while reducing affordable rent in the housing association and local authority sectors, those at the bottom will be squeezed out of the opportunities not of buying, but of living in a decent affordable home.

Baroness Williams of Trafford: I get what the noble Baroness says, but for home ownership there are those at the bottom as well. We have to start somewhere. The starter homes will address a demographic that is not being served and has not been for more than 20 years. In terms of the Government putting their money where their mouth is, £20 billion is an awful lot of money over the spending period.

Baroness Hollis of Heigham: All of the Section 106 land on which alternative, affordable rented housing would be built will be monopolised—used exclusively for, effectively—starter homes.

Baroness Williams of Trafford: My Lords, there will be an expectation from the Secretary of State that a certain percentage of housing will be starter homes, but it does not exclude other types of tenure. There will be fundamental disagreement on this, but the emphasis on younger buyers is there because they are the demographic that has been priced out of home ownership for the last 20 years, as I said.

Baroness Hollis of Heigham: My Lords, there are some 9,000 or 10,000 families in Norfolk, waiting patiently on waiting lists for affordable social housing. Why is that demographic not worth thinking about?

Baroness Williams of Trafford: My Lords, the £1.6 billion to build 100,000 affordable rented homes will add to the mix of addressing supply. As noble Lords have said this afternoon, the fundamental issue of the housing market today is lack of supply. All these different types of tenure will add to the supply. I accept that we will disagree, but one cannot—

Lord Greaves: I wonder if I can just tempt the Minister again to say perhaps that in many parts—or even most parts—of the country that is the case? Lack of supply is not the case in areas where the market has collapsed, and we need different policies to solve the problems we have got and provide people with good homes.

Baroness Williams of Trafford: I do not think that the noble Lord is wrong that in certain parts of the country—and I think I know the parts he is referring to—home ownership has declined because people do not want to live there. I think that some of the regeneration and transport policies and some of the policies for the northern powerhouse for rebalancing the economy will contribute to all parts of the country being able to maximise their economic potential and make people want to live there. I give the example of Salford, where MediaCity was built. That area of Salford is a very desirable place to buy.

There are a number of interventions that the Government can make that all add to the mix of a place being an attractive place to live. I have seen where transport investment suddenly has made areas that people did not want to go near—Wythenshawe—into ones where suddenly the house prices have increased dramatically. They are becoming very vibrant places in which to live because of those transport links and investment in the airport. I accept that point. We cannot just take individual government policies and criticise them. We have to take everything in the mix in terms of improving and rebalancing our economy outside the south-east while recognising that the south-east is a fantastic place to live and is the engine of this country in many ways.

Lord Beecham: One of the interventions the Government have made has been to impose a 1% reduction in rents for social housing, which is going to have a significant impact on the capacity of local authorities and the housing association sector to maintain or improve stock or build. That reduction will reflect itself in a reduction in housing benefit to local authority tenants but will not in any way contribute towards meeting housing need.

Baroness Williams of Trafford: My Lords, we have talked a lot this afternoon about tenants and tenants on lower incomes and actually the 1% reduction will help tenants. Housing associations are in a very—

Baroness Hollis of Heigham: Three-quarters of the money saved goes back to the Exchequer; only one-quarter stays with tenants.

Baroness Williams of Trafford: My Lords, could I just make some progress? I may be repeating myself here but the noble Baroness, Lady Royall, asked what other products were reflected in the Bill and, of course, custom and self-build is referred to. It is a small but important part of the market and, culturally in this country, it is a part of the market we have not taken a lot of notice of over the last few years but there is a desire for people to get involved in custom and new build.

I shall go back to talking about housing growth in all tenures. Some of the planning reforms to help builders to get building are included in later parts of the Bill. To help councils build their own homes we have increased borrowing headroom by £222 million for 36 councils and we are continuing and building on our Help to Buy programme to support new housebuilding.

The noble Earl, Lord Lytton, asked whether people could afford to buy. I hope I have partially answered that question by answering the intervention from the noble Baroness, Lady Royall, in terms of affordable house prices outside London.

Lord Campbell-Savours: On that matter the Minister said that a £150,000 house was affordable on an income of £26,000. That was the reply she gave. I was just looking it up on a mortgage calculator. After tax it is about 40% of income.

Baroness Williams of Trafford: My Lords, the example I gave was a couple on a mean wage of £26,000, not one person on £26,000. Four times one wage would be under £150,000. To clarify, I am talking about a couple on £26,000 each. It is the mean wage so I just gave it as an average example, if the noble Lord could accept that in the context in which it was given. It was an average example of an average couple.

The noble Lord, Lord Tope, asked when we will get the details of the review of shared ownership. It was a commitment made by the previous Government. This Government carried out an internal review which resulted in the announcement of 135,000 shared ownership units in the spending review of 2015. The prospectus for the shared ownership programme is due in the spring.

My noble friend Lord Lansley talked about the definition of the starter home. Clause 2 talks about the criterion for a starter home being a new dwelling available to qualifying first-time buyers aged under 40. We will specify more criteria in the regulations. It is sold at a discount of at least 20% of market value. It is sold for less than £250,000 outside London and £450,000 within Greater London. It is subject to sale and letting restrictions to be specified in the regulations and we will consult.

Lord Lansley: I am grateful to my noble friend the Minister but, as I expressly said in my contribution, I am looking forward to debating the definition of a starter home in Clause 2 on a later group.

Baroness Williams of Trafford: That is fine. I just thought I would set that out now. I know we will be talking about it later.

The noble Baroness, Lady Bakewell, talked about Clause 2(3) and the Secretary of State specifying in the regulations further characteristics of first-time buyers. She asked when the characteristics will be agreed. We have taken a power to specify additional criteria in regulations to provide the Government with some flexibility as to who should be eligible and we intend to consult shortly on what criteria should be applied. This forms part of a wider consultation on the aspects of starter home regulations to be introduced later this year.

Starter homes are a new product and, although we have debated the merits and demerits of them being so prominent, we want to ensure that councils are delivering on the key manifesto commitment. The electorate will expect us to deliver on this commitment, and for this reason we want the starter homes clauses to focus on starter home delivery, as I have pointed out.

The noble Lord, Lord Horam, asked about the impact on other forms of housing. We will be consulting on the starter homes requirement under Clause 4 shortly. I want to reassure noble Lords that councils will still be able to seek other forms of home ownership from new development, as I have previously stated, once this requirement is in place. These clauses do not switch off the abilities of councils, as I have pointed out, to secure other forms of alternative home ownership products, just as previously the affordable housing duty did not switch off other housing home ownership products. We expect them to actively support starter homes, but it does not remove their ability to deliver home ownership products, as I have pointed out.

The noble Baroness, Lady Bakewell, asked how people will get mortgages. In January, house prices increased by 2.5% in England and Wales, with annual house price inflation increasing from 6.4% in December to 7.1% recently. The number of mortgage approvals has actually grown by 42% since April 2010. Noble Lords will recall that last week I was asked about the decline in home ownership. Actually, for the first time in seven years, home ownership is in fact increasing, so that probably demonstrates that people are buying and lenders are lending.

The noble Lord, Lord Greaves, asked about the target for owner occupation. As I stated previously, we want to double the number of first-time buyers within this Parliament.

I will now talk to Amendment 50G, on the monitoring arrangements, and why I think it is unnecessary. We need to ensure that the monitoring arrangements reflect the delivery of starter homes for first-time buyers so that there is a transparency about delivery and that first-time buyers are aware of the measures which have been taken at the local level to deliver on supply. Councils already have to report on market and affordable housing supply through their authority monitoring reports, so I do not think that the amendment would serve any useful purpose.

That is also true of Amendments 53A, 53B and 53ZA, which all seek to amend the compliance direction. The compliance direction is only intended to be used

[Baroness Williams of Trafford]
in extremely limited circumstances. To keep its scope narrow by focusing on starter homes provides a clear sanction for the circumstances where the local planning authority is in breach of its starter home duties. We envisage that it would be rarely used but would act as a strong incentive to deliver starter homes in accordance with the provisions in the Bill.

It has been a long debate, and I hope that it has provided—

Baroness Royall of Blaisdon: I am terribly sorry—I know that it is dinner time and people are anxious to move away from this debate—but my frustration in terms of regulation and consultation is mighty. I do not blame the Minister because this is a blight on many Governments. The noble Baroness mentioned twice the consultation that is about to begin on starter homes. Why start the consultation now? We will finish this Bill, I presume, around Easter, by which time we will not have had the results of the consultation and the Government will not have been able to shape their policies in relation to the consultation. Either it is a sham consultation—that does sometimes happen—or, what is the point?

Baroness Williams of Trafford: I understand the frustrations of noble Lords, and I feel a degree of frustration myself. It is not a sham consultation, I can assure the noble Baroness. In terms of regulations generally, I have on numerous occasions elected to provide to the House details on regulations as soon as I could. I hope that the noble Baroness is somewhat reassured by that and that noble Lords will feel free to withdraw their amendments.

The Earl of Listowel (CB): My Lords, I have been listening to this debate with great interest and, in thanking the Minister for her careful reply, I cannot help but think about the comments of the noble Lord, Lord Green, about migration flows into this country. We know that 1 million migrants came into Europe last year. It is a huge pressure on this country and other countries in terms of receiving these migrants. There are problems across the world, in the Horn of Africa, and so on.

I have lived and worked in the East End, and I know that for many poor people the major concern they have about foreigners coming into their country is a shortage of housing. When they perceive that foreigners are taking their homes, they get really upset. In this context, I suppose I want reassurance from the Government that they have thought about how they will cater for all those migrants who are desperate refugees from abroad to ensure that there is sufficient housing for poor families from both this country and abroad and that we do not get into a situation of antagonism between the incomers and the nationals, as it were.

Baroness Williams of Trafford: If there is one thing on which we can all agree in this Chamber, it is the need to supply more housing. We are all united on that. Certainly, Governments projecting forward populations is a crucial part of that.

Lord Tope: My Lords, I am very grateful to all noble Lords who have spoken, and to the Minister who has done her very best to respond to what she rightly described as a very long debate. One feature of the debate was a pretty wide measure of agreement. We may all have our own particular favourites on the nature of housing tenure, but I do not think that any of us believes that any one form of housing tenure is a solution to the problem—manifestly it is not. The concern is that the Bill, with the references to starter homes coming right at the front of it, gives the impression that it is rather more important in the delivery that actually most of us believe there will be.

We would probably have had just as long a debate, but perhaps a slightly different one, if Clause 1 of Chapter 1 of Part 1 of a housing Bill had simply said, "The purpose of this Chapter is to promote the supply of decent homes in England". We may well have had a debate on how to do that, but there would have been even more measure of agreement.

I am grateful to all noble Lords who have spoken. I am grateful to the noble Lord, Lord Beecham, for his free legal advice, and I note the value of that advice. I am grateful to the Minister, as I said, for listening very carefully to the debate. All I hope—I think on behalf of all of us who have spoken and listened to this—is that it is not just that the Minister has listened but that the Government will hear. Undoubtedly, we will return to this subject at the next stage of this Bill when we will be seeking to find an acceptable—acceptable to your Lordships' House—change to the current wording of the Bill. With that, I beg leave to withdraw the amendment.

Amendment 36B withdrawn.

House resumed. Committee to begin again not before 8.36 pm.

European Union: Refugees

Question for Short Debate

7.36 pm

Asked by ***Lord Higgins***

To ask Her Majesty's Government what assessment they have made of the security of the European Union's border; and what discussions they have had with the Governments of other EU member states about the documentation of those individuals they accept as refugees.

Lord Higgins (Con): My Lords, I am very glad to have secured time for this debate. I originally tabled the Question back in November, so it has been a long while coming to fruition. It is also the case that, in the mean time, we have had a huge influx of refugees coming into the European Union and a very large number indeed of economic migrants coming into the European Union.

We have had two very good debates on this subject previously. In the Moses Room on 18 June there was a Private Member's debate, initiated by the noble Lord, Lord Dykes, and there was a debate secured by the noble Lord, Lord Alton, on the Floor of the House on 9 July. But we have not had a full day's debate on what

must surely be one of the most important—one might say traumatic and historic—issues that we are faced with at present. I hope that the usual channels can, therefore, arrange for a debate.

I have pointed out previously that I have a long-standing interest in the subject. I am the sole survivor of a Cabinet Committee which persuaded the Heath Government to allow the refugees from Idi Amin into the country. I have always felt rather proud of that because it was a great success and they have integrated very well. On other issues, I have pointed out that I was concerned about the way in which the British Government in 1939 appropriated the whole of the assets of the Jewish refugees who had arrived here, and it was many years later that I managed to persuade the then Secretary of State, Margaret Beckett, to seek some form of redress. This has been rather reflected in what has happened in Sweden and Switzerland at present, as far as dealing with refugees' assets are concerned.

I start straightaway with a point that I have raised with my noble friend before: it is concerned with the idea of communication. It came up yesterday in relation to the problems of children and, in particular, those children who are refugees and are related to people in this country. The question was asked: how do you communicate both with them and with other members of their family? I have suggested previously that the Government should have a "refugee app" or a website that could provide communication with these groups, because most of them have telephones anyway, particularly the youngsters. This was something to which my noble friend appeared sympathetic before, so I hope that we can go ahead and do something as far as that is concerned.

I strongly believe that the attitude taken by the British Government on these problems—in particular, giving very substantial aid to the countries in the Middle East that are suffering from a refugee problem, and allowing in people from those refugee camps rather than accommodating those who have come illegally into the European Union—is right. But it has meant to some extent that we have been a bit detached from the main thrust of European asylum policy, and therefore, perhaps, have not given the leadership of which the European Union is clearly in desperate need, given the way in which the problems have developed. My right honourable friend the Home Secretary has certainly been participating in these discussions, but—perhaps also because of our referendum question and so on—we might not have been exercising as much influence as we might have done in other circumstances.

The problem is that the basic Dublin agreement, as far as the admission of asylum seekers into the European Union is concerned, has simply not worked. The idea that they would have to register at the first point of entry, which in many cases has turned out to be Greece, has not resulted in a situation where they have been properly documented and their applications properly serviced. So we have therefore seen this extraordinary flow of refugees from the south of Europe towards the north.

In particular, we have seen the matter that we discussed yesterday in relation to Calais. I was interested in a BBC news story today that stated:

"Many migrants fear they will be required to apply and claim asylum in France and then give up hope of coming to the United Kingdom".

There is a very interesting passage in the latest report of the European Commission on this issue. It says in the clearest terms that asylum seekers are not entitled to choose where they will seek asylum. The whole question of exactly which country they wish to be in is creating big problems, particularly as far as economic migrants are concerned.

We are in a very different situation from earlier crises, where we had individual asylum seekers or people in particular groups that were being persecuted. The whole scale of this thing is influenced by the fact that they are simply fleeing from the perils of being in countries that are racked by war.

It is also true to say that the groups that have been coming have, to some extent, been remarkably violent. We have seen the scenes in Calais: that was not previously the case, and it has been true as far as those who are seeking to travel north from Greece are concerned. We have seen very violent scenes indeed, so we have some problems that we have not had to cope with on previous occasions.

I come next to a point that I have raised with my noble friend before: the fact that we have problems relating to people crossing into Europe by sea in traffickers' boats that are very often unseaworthy. We have had a situation where they have been rescued and then landed in Europe. While we must certainly abide by the law of the sea, at the same time I think that this is a real problem, and is quite inconsistent with the view that the Home Secretary has expressed.

I am glad to see, therefore, that there seems to be a significant move on the part of the European Union to protect our borders. That has not been happening up to now. The tendency has been to allow people to come in and then try to sort out the problem. We now see, in essence, as a result of the report of the European Council that just came out on 18 February, that the EU is finally—this gives one some hope for the immediate future—taking the view that the deal with Turkey, which has gradually been established, will enable it to prevent people carrying out the extremely hazardous and very short sea journey, and actually patrol the borders. That has not been happening yet, but the report of the Council's conclusions on migration on 18 February, and a subsequent one a couple of days later, gives one hope that this is indeed a moment when we can see some serious concern to patrol and re-establish the borders.

It is clearly an impossible situation when we have the Schengen agreement on the one hand and porous external borders at the same time. That is something that we cannot live with, and nor can the European Union. It does seem that, at long last, the EU is doing something on this matter. I very much hope that our Government, despite the inhibitions that I mentioned earlier, will encourage it to do so and ensure that serious action is taken to admit genuine asylum seekers—which most certainly should be our policy, not least as far as two of them are concerned—and at the same time distinguish them very clearly from economic migrants. We ought to take a very different line with them and ensure that they do not obtain entry to this country, to some extent at the expense of the genuine asylum seekers. I therefore hope that the Government will be able to take a very positive attitude to the points that I have made.

7.47 pm

Baroness Smith of Newnham (LD): My Lords, I am most grateful to the noble Lord, Lord Higgins, for bringing forward this Question for Short Debate. He mentioned that he tabled it some months ago but it is, nevertheless, extremely timely. I agree with a lot of what he said, which might come as some surprise as we are from opposite sides of the Chamber. However, nobody could fail to be moved by the sight of refugees coming from Syria, Iraq and Libya or the sight of people, including children, drowning in the Mediterranean; nor could anybody fail to be moved, at least intellectually, by the sheer numbers of people who are moving. According to the International Organization for Migration, since the start of the year—in two months—129,455 people have arrived in Europe by sea. Some 418 people have died in the sea in the last two months alone.

It is very easy, from this side of the channel, to realise that there is a problem and to talk about it in very much an intellectual way. These people are coming mostly to Greece and to Italy. If you look at a map you will realise that those who will come to the United Kingdom as their first port of call are very few in number. However, the sheer scale of the refugee flows that are affecting Greece is as nothing compared with what is going on in countries such as Jordan and Lebanon. Western Europe has been remarkably unaffected by refugee flows over recent decades. In many ways, the United Kingdom is one of the least-affected countries.

One of my concerns, already flagged up by the noble Lord, Lord Higgins, is that in many ways the United Kingdom has not demonstrated leadership here. We have not been affected by huge numbers of refugees coming to our borders. We have agreed to take 20,000 Syrians from the camps but we are not on a daily basis accepting coachloads or boatloads of would-be refugees. The lack of leadership and engagement from the United Kingdom is unfortunate.

Perhaps some of that is, as the noble Lord suggested, to do with the fact that the United Kingdom is going through a somewhat existential crisis in our relationship with the European Union. However, perhaps it is more than that. The fact that we are not part of the Schengen area means that in many ways we feel we are protecting our own borders and leave it to other member states to protect their own. However, those borders are porous and there are questions about documents—which comes into the formal Question—and how far those held by people seeking asylum are verifiable. Are they genuine documents? How far is it possible to scrutinise them? That is a hugely important area that affects British security as well as security in the rest of the European Union.

Last week, the Home Secretary talked about the importance of securing European borders but she also made very clear that the United Kingdom still did not see a need to be part of a European coastguard initiative, and that somehow the United Kingdom still feels that we are separate from that. Does the Minister not think that it would be beneficial for the United Kingdom to be more engaged, supporting countries such as Greece to man European borders? Those borders are not simply ones for other countries. They affect the security of the whole continent.

The nature of the Schengen area may be one that we have decided is not for the United Kingdom but there is always the danger that people who come through the European Union from porous borders are not properly documented. They will then be able to come through other channels to the United Kingdom. Are we sure that we are able to scrutinise and filter out everybody who should not be here because they are coming for illegal terrorist purposes? How are we also scrutinising to find out whether people are genuine asylum seekers whom we should welcome, as the noble Lord, Lord Higgins, suggested? How far are we working with European partners to say, "Some of these people should not be coming", even with the very generous opportunities offered by Angela Merkel in Germany who said, "Any Syrian refugees can come"? Many people arrived in Germany legally because they were invited—or at least they appeared to be legal. If they came from countries other than Syria and were not fleeing war they do not have a genuine right to be here. How is that verified?

Does the Minister not think it would be beneficial for the United Kingdom to be part of the European Union? Would it not be beneficial for us to work more closely with our European partners to ensure that we focus on working effectively to facilitate the reception of genuine asylum seekers and to keep out those who should not be here? Would it not be beneficial to the United Kingdom in our role in the European Union to demonstrate solidarity with those countries that suffer from huge migration flows, particularly Greece, by offering to take more people?

7.54 pm

Lord Hannay of Chiswick (CB): My Lords, as we begin a four-month marathon debate on whether Britain should remain a member of the EU, it is good that the noble Lord, Lord Higgins, enables us to discuss, however briefly, another major challenge facing the EU—all the more so since the EU's handling of this problem and the outcome of the migration crisis will profoundly affect this country whether we are inside the European Union or not. The idea that we can just pull up a drawbridge and indulge in some enjoyable schadenfreude at the expense of our European partners is as misguided as when some said we could comfortably sit out the eurozone crisis and economic and financial crisis without them affecting us in the slightest way.

No one could say that the EU has so far covered itself with glory when faced with the migration crisis, even if it was none of its own doing and though it is a kind of backhanded compliment to the stability and prosperity that the EU has brought to our continent. The EU is managing—let us face it—no worse than the United States, faced with a quite different immigration challenge. Mistakes have been made. Too little effort and too few resources have been put into stemming the flood at source in Syria, Iraq, Libya and Afghanistan. Unilateral actions taken by countries such as Hungary and Austria are, whether or not they are in conformity with EU rules, surely in breach of their obligations under the UN refugee convention. A misguided—in my view—attempt to impose mandatory quotas of refugees on the members of Schengen is almost certainly unenforceable. There has been a failure by some member states—Greece and Italy in particular—to fulfil their

obligations under the Dublin convention to document and process new arrivals, separating out genuine refugees and asylum seekers from illegal economic migrants, returning the latter to their countries of origin.

One action I would not criticise is the decision by the German Chancellor, taken after the immigration surge began, to offer asylum to all genuine refugees. I am saddened when I hear that act of humane generosity described as if it triggered the surge in the first place, when in fact the surge was taking place and it was in response to it that she spoke as she did. The Chancellor now faces plenty of domestic criticism, much of it from people with whom no respectable politician in this country would share a platform, so let us not add to it.

Amid all the confusion and tensions, one can see some of the elements of a better overall approach beginning to emerge. An agreement with Turkey to stem the flow of immigrants and clamp down on traffickers is absolutely vital and I believe there is a meeting on that later this week. NATO assistance in patrolling the maritime borders between Greece and Turkey, and those between Libya and Italy, is another element. There is the establishment of processing centres within the countries of first arrival where proper documentation can be carried out and where economic migrants can be separated from genuine refugees and the former returned to their countries of origin. There is much greater help given to countries such as Jordan, Lebanon and Turkey to harbour refugees close to their homes while offering them better health and education services and a chance of employment. Here, our own Government's response has been exemplary. They deserve praise for it, even if I reiterate that our willingness to take in refugees has been, in the words of the most reverend Primate, rather thin.

Clearly, some member states—Greece in particular—and some other countries outside the EU will need substantial help in carrying out these policies. I hope the UK will be generous in providing finance and material support in that respect, and not just sit like Pontius Pilate washing our hands. I say this because, to return to my original theme, we have plenty at stake in all this. We may not be a member of Schengen but if that imaginative border-free system were to collapse irretrievably our own trade with and ability to travel around the European Union would suffer, as would the benefits our citizens enjoy when working or on holiday elsewhere in the EU. It is in our interest that any temporary suspension of Schengen, such as a number of member states have quite reasonably resorted to in the heat of the crisis, should remain just that—temporary. The policies being gradually shaped by the Schengen members should receive our full support, even if we are not going to apply them ourselves in all respects.

If the Minister agrees with that analysis, I hope he will give a little bit more detail about the support the Government might be ready to give when this matter is next discussed at the European level: no doubt when the Prime Minister goes to the next meeting of the European Council in two and a half weeks' time.

8 pm

Lord Smith of Hindhead (Con): My Lords, I thank my noble friend Lord Higgins for initiating this important debate. I will make a few short points and I appreciate that some may echo sentiments already raised by other noble Lords. I intend to concentrate on documentation for refugees coming into the UK. As all sides of the House would agree, the fundamental responsibility of government is to ensure that however a person finds themselves here—as a refugee or otherwise—they do not pose a threat to the safety of any member of the British public. To know who visitors are is key and, therefore, so is documentation.

However, in the case of refugees, we know that documentation is often unintentionally—or, indeed, intentionally—lost. Understandably, many refugees deliberately do not travel with any papers for fear of documents being discovered and of being sent back to their country of origin. For others, documents are simply lost or have been confiscated; and for some, documents are present but counterfeit. How many people try to enter our borders each year without any official paperwork? What measures do the Government have in place to identify genuine refugees in a situation where no official papers are present or where false documents are presented? Furthermore, what measures are being taken to identify people who are misusing the refugee crisis, such as people traffickers or those with criminal or terrorist intentions? For example, have estimations been made of the number of people who may be trafficked each year to the UK under the guise of migration or being refugees, bearing in mind that the perpetrators of this hideous activity, who often travel with those being trafficked, will undoubtedly be taking advantage of the current migration and refugee patterns throughout Europe?

Having a robust plan in place to identify people is especially important in relation to vulnerable travellers, such as children. We know from Home Office figures that over 3,000 unaccompanied children under 18 years of age sought asylum in 2015, about 50 of whom were under 14. How many of those children did not have documents, and how many were travelling with counterfeit identification when they arrived? What is being done to monitor these children and to keep them protected from abuse after they have been granted asylum in the UK?

Great Britain exists to support and protect those who contribute to making it so great. Those who wish to prosper through criminal activity or those who wish to do us harm should never be allowed in. Refugees rely on us, often as a matter of life or death, and we need all the resources possible to be directed to the people who need them most of all. We must therefore ensure that thorough procedures are in place to identify the most vulnerable, as well as those who are misusing the system, so that a clear distinction can be made between the two. I know this is an area that the Government take extremely seriously, and that much work has been done. I therefore look forward to the Minister's remarks.

8.04 pm

The Earl of Sandwich (CB): My Lords, the noble Lord has raised an issue of pressing concern which continues to baffle all of us on both sides of the EU divide. The number of migrants who are up against internal EU barriers is causing distress to all of us: the scenes in the Aegean and on the Greek-Macedonian

[The Earl of Sandwich]
border being among the most critical. As we speak, some 8,000 are still stuck at Idomeni, where the Greek army and the ICRC are doing their best to cope. No one is in doubt that the rules governing external borders need to change: what escapes us is the question of whether they can change and whether the European Council has the muscle to make any changes at all. Of course, the advocates of Brexit say with some glee that this is the end of Europe as we know it. One newspaper even says the EU itself has only a few days to go. More sensible people are determined that the Commission will be forced to find solutions, although inevitably they will have to be partial and specific to each successive crisis.

Schengen is now at risk. A liberal, humanitarian principle that has enabled millions to travel daily between frontiers has been seriously challenged, and may possibly be ended, by mass migration. Humpty Dumpty has had a great fall and who will put him back together again? The Commission is bending over backwards to control the uncontrollable and its website on Schengen makes painful reading—I shall not repeat it. Eurosceptics should renounce any feelings of schadenfreude because they could never have anticipated a crisis on this scale.

Individual states are, legitimately it seems, making their own national decisions. As my noble friend Lord Hannay said, the Commission has legalised the temporary reintroduction of border controls in seven countries, trying to imply that these are only an interim measure: we hope they will be. This means that member states will gradually fall in line with the UK, which has long decided to opt out. We can imagine that the Minister will have no difficulty with the first part of the question. Dublin is fast becoming a shambles and border security is becoming a national concern. What happens next and how will the EU be able to set up alternatives?

The key problem remains the number of Syrians entering Greece by sea. NATO continues to make a modest contribution—we wish it were more—by deterring and returning migrants, but its fleet needs to be increased significantly if it is to help. The real pressure occurs on the borders of all the Balkan states up to Austria, which has decided to take the law into its own hands. The UK should intervene and set an example by supporting those neighbouring states. We have a good record on enlargement, as has been demonstrated in our own EU Select Committee reports, and we are supporting a number of specific aid programmes, such as EULEX in Kosovo, as well as EU-wide projects such as FRONTEX and Europol, which have a well-developed database.

I know that, as the noble Lord, Lord Smith, has reminded us, we are concerned about our own security, but why can we not take more of an initiative on the security of the EU's external border? Will the Government co-operate with the EU action plan on migrant smuggling? As an island, the UK is also a European leader on border control. We have experience at many ports of entry by air, sea and road, and the Home Office or DfID could be exporting knowledge by training more police and immigration officers. Systematic checks against databases are difficult given the current scale of migration and they will be impossible in hotspots without the necessary infrastructure. This is much more than can be provided by UNHCR and the other relief agencies which are having to cope nobly with instant emergencies around that region. Are we providing enough—or any—technological back-up for these operations? Can we be associated with the new European border and coastguard agency? Should we not be belatedly signing up to the 2005 Prüm treaty on data sharing? As my noble friend Lord Hannay said, we are, after all, a member state, whether or not we belong to Schengen.

As the noble Baroness, Lady Smith, said, while our media give a powerful picture of impending crisis, we have yet to see examples of the UK carrying out our own neighbourhood policy as we should. Without in any way supporting greater federal union, I am with those who would like to see the UK much more actively joining the EU decision-making process on migration, not only with processing applications but with accepting more refugees, especially unaccompanied minors and other vulnerable people who are already in Europe—not those in Turkey.

Finally, is the Minister concerned that the new identification measures announced on 18 February by Austria and four neighbouring Balkan states could be in breach of international agreements? Restrictions on the right to receive protection, such as sudden border closures and discrimination in immigration controls, and Austria's imposition of daily quotas are already incompatible with the refugee convention. Receiving refugees is something we are good at, so let us send a message of solidarity to Mrs Merkel and support her in the field and not from the touch line.

8.10 pm

Baroness Ludford (LD): My Lords, I also offer warm thanks to the noble Lord, Lord Higgins, for initiating this vital debate and for his excellent speech. The European Commission has put forward a very comprehensive package of measures on borders and migration. As the Dutch Migration Minister who chaired last week's Justice and Home Affairs Council said:

> "We can solve this crisis if all member states are ready to work together, as well as work with the countries on the Western Balkan route and with Turkey".

Unfortunately, the member states have behaved badly; they have been reactive and disorganised and, at worst, played the blame game. Greece, as well as Germany, has a more than legitimate grievance about not being invited to the meeting that Austria hosted recently. Yesterday we saw terrible scenes of tear gas being fired at migrants on the Macedonian border. The problem is not the lack of available laws, tools or even money—€10 billion has made available from the EU budget so far—but a lack of political will and solidarity. It is obvious that we need to do a number of things, of which the following is a non-exhaustive list of six.

The EU's external border must be strengthened. It is welcome that the Council is urgently examining the Commission's proposal for a European border and coastguard agency, which I assume that the UK cannot be associated with. We must also have effective rescue at sea. FRONTEX operations last year rescued 250,000 people and NATO assistance is also very welcome.

We need a much greater push to put smugglers and traffickers out of business and into jail if at all possible. I believe there are 11,000 suspects on Europol's database. Does the Minister have any data on what has happened to those who have been apprehended? I believe 900 people have been apprehended by FRONTEX working with Europol and Eurojust.

The EU must also ensure that security threats from potential terrorists are combated by stopping them slipping in as migrants. The Council has agreed a common position on the proposal for checks against databases at external borders but, again, as it is a Schengen project, I assume the UK cannot take part. Will the UK use the Interpol database and its access for policing purposes to the Schengen information system to align our practices on Schengen and seek maximum co-operation with the Schengen zone on this checking process?

I note that the Home Secretary said last week, in a Written Statement that she would,

"push for Schengen and non-Schengen states to be able to exchange immigration information".—[*Official Report*, Commons, 24/2/16; col. 11WS]

As the UK does not have access to the immigration side of the Schengen information system, will the Minister explain what such an exchange might consist of?

We must secure safe and legal routes for refugees and asylum seekers to reach Europe. Of course direct resettlement from the region is important, but there must also be opportunities for spontaneous arrivals to come legally in pursuit of a place of safety. We have constructed such barriers with carriers' liability that that is almost impossible.

Those who arrive on our shores must be processed and registered efficiently. Action is at last happening to have so-called hotspots in Italy and Greece up and running, though it is too slow. Decisions on who needs protection must be made promptly so that they can work and integrate as speedily as possible, and those who do not have legitimate claims to stay must be returned. This is essential to preserve the integrity of the refugee system and public support for it.

I recognise that the Government are offering practical assistance to help with the registering and fingerprinting of migrants in Greece and Italy. Will the Minister tell us exactly what our help consists of—for instance, the number of experts that we have loaned?

It is vital that the internal Schengen arrangements be preserved. These benefit UK citizens and businesses, as the noble Lord, Lord Hannay, said, as well as those of other EU countries. The reimposition of internal controls will, as the Commission warned, set back what is already a very slow eurozone recovery through obstructing the single market.

One of the worst features of the current disarray is that who gets through to safety is rather a lottery; it is often young and able-bodied men rather than vulnerable women, children, the elderly, the sick or the disabled. I am of course not saying that those men do not deserve protection—many of them do—but there is a worrying survival of the fittest dimension to it all.

I also appreciate the German Chancellor's unilateral moves last summer, born of despair at the prospect of getting a co-ordinated response. It is none the less true, however, that some confusion was created down the chain, not least in switching the Dublin regulation on and off. Can the Minister give us some clue or prediction about what will happen to the Dublin regulation?

The Home Secretary also said last week that,

"if the EU is to avoid a repeat of last year, we must take decisive action now".—[*Official Report*, Commons, 24/2/16; col. 12WS]

Will the Minister tell us what this Government are proposing to do to make sure that the UK is fully engaged in, committed to and participating in solutions to this migration challenge? We know about and appreciate the resettlement programme and the financial assistance being given to the region, but the UK should take part in and not stand aside from the sharing of responsibility for those who have reached Europe. I say this with full recognition of our aid contributions, the resettlement programme, and the fact that we have a rising population, which some member states do not. We need a strong and effective EU in the matter of migration and security, and any Eurosceptic who thinks a Europe in disarray on this issue is good news for their cause needs to examine both their head and their conscience.

8.16 pm

Lord Rosser (Lab): I, too, thank the noble Lord, Lord Higgins, for securing this debate. Obviously, it is timely in the light of the current situation both on the Macedonian border with Greece and at our end of Europe in Calais and Dunkirk.

In its very recent report on a more effective EU foreign and security strategy, the European Union Committee said:

"Migrant and refugee inflows are likely to remain a long-term challenge for the Union. So far, Member States have not agreed a collective response to this issue at the EU level. The fractious and polarised debates have battered the reputation of the EU and resulted in a muted response to a pressing security and humanitarian crisis. These internal divisions are likely to undermine Member States' ability to achieve unity on foreign policy issues".

The issues covered by this debate are ones that the noble Lord, Lord Higgins, has raised on a number of occasions before. Indeed, he did so last month when he asked in a Written Question whether,

"EU member states within the Schengen area are issuing a standard form of passport or other document to those they accept as asylum seekers or whether individual countries decide on the format to use".

I think that the Answer the noble Lord received was that EU member states were actually issuing,

"a refugee status travel document, in the form set out in the Schedule to the Geneva Convention",

rather than that that was what member states ought to be doing but whether they all were was another matter. Perhaps the Minister could clarify this point in his reply.

The European Council meeting last month stated that the objective of the EU had to be,

"to rapidly stem the flows, protect our external borders, reduce illegal migration and safeguard the integrity of the Schengen area".

With that last point in mind, the European Council said that there was a need to,

"get back to a situation where all Members of the Schengen Area fully apply the Schengen Borders Code and refuse entry at external borders to third-country nationals who do not satisfy the entry

[Lord Rosser]

conditions or who have not made an asylum application despite having had the opportunity to do so".

Reference has already been made in this debate to the intentions of an EU agreement with Turkey.

The European Council expressed the view that,

"with the help of the EU, the setting up and functioning of hotspots",

in front-line member states to ensure effective reception and registration processes was,

"gradually improving as regards identification, registration, fingerprinting and security checks on persons and travel documents",

although much remained to be done. What remained to be done included,

"to fully implement the relocation process, to stem secondary flows of irregular migrants and asylum-seekers and to provide the significant reception facilities needed to accommodate migrants under humane conditions while their situation is being clarified".

The Council reiterated, as the noble Lord, Lord Higgins, said:

"Asylum seekers do not have the right to choose the Member State in which they seek asylum".

According to the third quarterly report for last year from the Frontex Risk Analysis Network, that quarter saw the highest ever reported numbers of illegal border crossings since data collection began in 2007, with the figure being not far short of 620,000. Most illegal border crossings—almost 320,000—were reported on the eastern Mediterranean route, with almost all accounted-for detections being on the eastern Aegean islands. Around 70% of the irregular migrants on this route claimed to be of Syrian nationality, with some 17% saying they were of Afghan nationality.

In the third quarter of 2015, the number of detected undocumented Syrian nationals within the EU, at almost 90,000, more than tripled compared to the previous quarter, and there were significant increases in the number of illegal stayers from Bangladesh, Iran and Iraq. Also during the third quarter of last year, EU member states reported more than 405,000 asylum applications—an almost 150% increase on the same period in 2014. Almost two-thirds submitted their application in the top three countries—Germany, Hungary and Sweden—although apparently most asylum seekers in Hungary absconded to apply for asylum in another country. The figures also showed that Syrians were the top-ranking asylum nationality in the EU Schengen area, with more than 137,000 applications in the third quarter of last year, followed by Afghan, Iraqi and Albanian nationals.

As a result of the increasing number of migrants arriving in the EU, several Schengen member states have introduced or reintroduced temporary border controls at their borders with other Schengen member states. At the end of last year the European Commission proposed establishing a European border and coast guard, with a view to ensuring a strong, shared management of external borders. The Commission also proposed to introduce systematic checks against relevant databases for all people entering or exiting the Schengen area.

The subject matter of this debate refers to an assessment of the security of the European Union's borders. It is clear that the EU's borders are not secure and probably cannot be secure in the face of the large-scale migration arising mainly from the current and continuing conflicts in the Middle East. However, our own borders are not secure either in the sense that we do not have much control over the numbers of people coming to this country. The lack of response from the Government when asked to give even an estimate of the level of net migration for this year and next year is eloquent testimony to that lack of control.

At times there also appears to be a certain lack of enthusiasm on the Government's part for engaging with EU member states, particularly on migration and border control issues. Interestingly, the subject matter of this debate also asks what discussions the Government have had with the Governments of other EU member states about the documentation of those individuals they accept as refugees. Of course, that is a question to which only the Minister can really provide a response. Relevant and appropriate though that question is, and relevant and appropriate though the measures the EU wants to take to try to secure its borders may be, the only real solution to the present situation is to address the causes of the large-scale migration currently taking place—and that will require a mutual determination to do so on the part of the major powers, including the EU, which currently seems to be lacking.

8.24 pm

The Minister of State, Home Office (Lord Bates) (Con): I join other noble Lords in paying tribute to my noble friend Lord Higgins for securing this debate. He may have waited a little time for it come up, but the usual channels, with impeccable timing, have brought it to our attention today. The debate that we have had around these issues has been of great value, and I hope to add to it with some responses to the legitimate questions that have been raised.

The UK Government recognise the importance of this issue and are committed to supporting our European partners to ensure the full and proper management of the EU's external border, reduce the impact of illegal migration and deter people from risking their lives on perilous journeys, as well as to increase security at the border. The noble Baroness, Lady Smith, reminded us of the scale of the human loss. Last year it was 3,771 lives, and she used the figure so far for this year of 418, which may be more up to date than the 410 which I have in the briefing I received this morning. The scale is quite shocking.

It is important to clarify that although the UK is not part of Schengen or a member of FRONTEX, we want to support the operational work of the proposed EU border agency, in the same way that we currently support FRONTEX operations. A number of noble Lords, including the noble Lords, Lord Rosser and Lord Hannay, the noble Baroness, Lady Smith, and my noble friend Lord Smith, asked whether we were standing aside and how we were engaging with our European partners.

If the House will bear with me for 30 seconds, I will just point out that this is of course the dominant issue on the European agenda—in fact on the international agenda—at present. The British Government were represented at the Justice and Home Affairs Council on 25 and 26 January, at an informal strategic committee

on immigration, frontiers and asylum in Europe on 15 and 16 January, and at the European Council on 18 and 19 February. This week, we have the France-UK summit on Thursday. The Prime Minister and the leaders of the French Government, along with the Foreign Secretary and the Home Secretary, will be there in Amiens. Next week, as the noble Lord, Lord Hannay, mentioned, is the EU-Turkey summit, to move that agenda forward. There is the Justice and Home Affairs Council the week after and then the European Council the week after that. At the end of the month, there is the UNHCR meeting on Syrian refugees.

That is not meant to be an exhaustive list, but I read it out to stress that, from my experience of working in the Home Office, my colleagues in the department are actively engaged in this on a daily basis. We totally endorse and accept the points made by the noble Lords, Lord Hannay and Lord Rosser, the noble Baroness, Lady Smith, and indeed my noble friend Lord Higgins himself that there cannot be an ounce of schadenfreude —the term I think the noble Earl, Lord Sandwich, used—about what is happening there. I was reminded as they were talking of the aphorism that if you do not visit your problem neighbourhoods, then your problem neighbourhoods will visit you. That works in a domestic setting and certainly in an international one.

As the noble Lord, Lord Rosser, invited us to say, we are focused not just on what is happening but on dealing with the causes. That was one of the reasons for the Valletta summit between EU and African partners, which set out a significant agenda for action to respond to and tackle the flows from Africa. It was notable that, in response to that, we have I think seen the principal flows in recent months from the central Mediterranean reduce significantly, to 9,000 arrivals in the first two months of this year. The principal route now is through the Aegean, with 120,565 arrivals.

That link with tackling these issues at source in Africa reminds me to pay tribute to the work that my noble friend Lord Higgins did all those years ago in bringing Ugandan Asians to this country. They have made an immense contribution to it, and we are certainly delighted that we have one of them, our noble friend Lord Popat, on this side. We look forward in years to come to perhaps being joined by one of those Syrians who have been offered sanctuary in this country too.

European Union member states are facing unprecedented pressures on their time. That is why the UK is taking a comprehensive approach to the migrant crisis, intervening at every stage of the migrant journey—at source, in transit, at the EU's frontier, at our border and in the UK. We want to help build stability in the countries these migrants come from and we are engaging in the largest-ever humanitarian response to a single crisis. At the Syria conference in London on 4 February—which I left off the list I gave earlier—the Prime Minister announced that the UK will more than double its support in response to the Syria crisis, to over £2.3 billion. That is the kind of generosity that the noble Lord, Lord Hannay, urged us to have.

To help those in need of genuine protection, the UK is expanding its scheme to resettle vulnerable Syrians from the region. We have exceeded our commitment to resettle 1,000 Syrian refugees before Christmas, and expect to resettle up to the full commitment of 20,000 Syrians by 2020.

In relation to the external border, the UK is playing a part in the maritime operations. Royal Navy operations in the Mediterranean have so far saved 12,500 lives and it is currently involved in NATO activities in the Aegean. This is not just a Syrian crisis; many nationalities are trying to come to the EU. As my noble friend Lord Smith urged, the EU needs to be firm with those who do not need protection, pose a security risk or refuse to co-operate with the asylum process.

With regard to the Government's approach to European Commission initiatives, the Government fully support the Commission's hotspots proposal, which aims to address these issues at the border. In our view the hotspots can contribute to better management of the EU's external border by securing the rapid return of those without a legitimate asylum claim. It is important that we do not focus exclusively on facilitating relocation but fulfil this wider security objective. The noble Baroness, Lady Ludford, referred to the fact that these hotspots had taken too long to set up, and we concur with that. At the meetings I have mentioned we always urge our colleagues to work faster, in addition to providing additional support. We have announced £65 million of help for our European colleagues in this situation, a significant proportion of which—£45 million I think—is to go to Greece.

A number of Lords referred to the key issue of organised crime, which is a staggering problem. Europol last week estimated that of those arriving in the European Union in search of asylum 90% had paid a criminal gang to get here. That gives us an idea of the scale of the problem. Since last year, UK law enforcement has disrupted more than 170 organised crime groups involved in organised immigration crime. Since April 2015 immigration enforcement has disrupted 94 organised crime groups involved in organising immigration crime, 12 of which involved people smuggling. The noble Baroness, Lady Ludford, asked for an update on that. These cases are currently being processed through the courts. To give one example, however, one group that was disrupted in December involved 23 people from Sweden, Austria, the UK and Greece, and was responsible for bringing 100 migrants a day into Greece. This group had made an estimated €10 million in the process. These are significant issues.

I can reassure, I hope, the noble Earl, Lord Sandwich, on some of the points he raised about the Prüm issues, which we have opted into. We are working with our colleagues in communicating information about the second-generation Schengen information system, which we are part of, the European arrest warrant framework, which we are part of, Europol, with which we work, and the European criminal record and information service, which is part of that. We want those data to be collected as people arrive in those hotspots, so that the data can be shared with us through the Dublin process. We can then ensure that our borders are secure. That is also a reason why we want to take more people from the region. As my noble friend Lord Smith said, when people come here they have often genuinely lost their documents in their struggle to get here, and sometimes they have chosen to destroy them to avoid their

[Lord Bates]
identification. That poses a particular risk. That is one reason why we want to take more people from the region, because there, through the UNHCR or the International Organisation on Migration, we can identify them, and then we have an additional layer of verification through the Home Office systems before someone qualifies for membership in the Syrian vulnerable persons relocation scheme.

My noble friend Lord Higgins also referred to Turkey. The UK Government have committed £250 million to securing that crucial southern border to the region to tackle that issue. The House will be updated on progress on that.

Time is running out on this debate, but I want to communicate one message. First, the UK Government are absolutely committed to working with our European partners to resolve this issue. This is not a UK problem, it is a European problem—in fact, an international, worldwide humanitarian problem—and we need to work together. That is happening daily. Secondly, we are not being complacent but putting resources behind that through the European Asylum Support Office, hotspots and finance, and bringing people to the UK from the region, to provide that safe alternative route to undertaking the perilous journey that we want them to avoid.

I again thank my noble friend Lord Higgins for securing this debate and all those who contributed.

Lord Higgins: My Lords, the whole House will have benefited from the excellent documentation that the Library has produced. I think it will be of wider interest than just to those who have taken part. I thank all those who spoke for their interesting contributions, particularly my noble friend. I do not doubt that this is a subject to which we will return soon, and I hope that the usual channels can make suitable time available.

Housing and Planning Bill

Committee (2nd Day) (Continued)

8.37 pm

Amendment 37

Moved by ***Lord Kennedy of Southwark***

37: Clause 1, page 1, line 6, after second "of" insert "new homes across all tenures, including"

Lord Kennedy of Southwark (Lab): My Lords, this group of amendments looks at starter homes. The noble Baroness, Lady Williams of Trafford, will be aware that while this is a flagship policy of the Government, considerable reservations have been raised both inside and outside Parliament about the whole scheme. That was very evident in our previous debate.

We are in the midst of a housing crisis and these proposals on their own do not go any way to solving the crisis. They may even make things worse as funding is diverted from other programmes to support this one. That is one of the failures of the Bill; it does not do enough to support other housing tenures. The starter homes product is unaffordable to many people in most areas. At Second Reading, I pointed out that you could need an income of up to £77,000 per annum in London to afford one of these homes.

Although the Minister will not accept the point about the price cap being seen as a price guide, I certainly share the concerns of Mr Nick Hurd, the Conservative Member for Ruislip, Northwood and Pinner, when he drew that conclusion when the other place debated this Bill. The proposals actually make things worse by diverting funding from other schemes and allowing starter homes to replace low-cost rented homes within planning obligations, which will reduce the supply of housing available to those on low or modest incomes. That local authorities are able to grant planning permission only for certain residential developments, as specified requirements relating to starter homes are met, is of considerable concern also. Depending on what the regulations say, this could have a very damaging effect on the supply of other tenures of social and affordable housing.

We heard a lot about localism in the last Parliament, just as we did about the big society, but it has gone the same way and is rarely mentioned from the Government's Dispatch Box these days. My understanding of localism is that it surely must be right for local authorities to be able to utilise their understanding of local housing markets to reach agreements with developers to ensure that planning obligations are met that deliver local housing need as part of a wider duty to ensure that there is a wide range of housing tenures to meet housing needs.

We have heard that there could be a loss of up to 71 affordable homes of every tenure for every 100 starter homes. The Government, of course, talk of working in partnership with local authorities, but the worry is that the Secretary of State will use extensive powers of direction to override any local development documents identified as incompatible with starter home duties. Can the Minister comment on how the Government will work in partnership with local authorities to deliver this policy and also satisfy other housing needs and not just ride roughshod over genuine concerns and a desire to deliver housing tenures that meet identified local housing needs? Also, by exempting starter homes from the community infrastructure levy, the policy reduces the scope of local authorities to secure the necessary contributions towards funding infrastructure.

The first amendment in this group is Amendment 37 in my name and that of my noble friend Lord Beecham. It adds the words,

"new homes across all tenures",

into Clause 1. It is fairly straightforward and takes account of the point that I have made that promoting one particular type of tenure at the expense of other types, regardless of local need, is not a sensible policy. The amendment would put in the Bill a more sensible statement with respect to the starter homes programme and other housing tenures.

Amendment 47 in the name of the noble Baroness, Lady Bakewell of Hardington Mandeville, and other noble Lords, is one that I am very supportive of. It would make clear in the Bill the duty of the local planning authority in relation to starter homes and other tenures. Amendment 48 in my name and that of my noble friend Lord Beecham qualifies the duty of the planning authority to promote starter homes where

that would prevent other types of affordable housing being built. This is important, as the local authority would have a better understanding than the Secretary of State of the local housing need in a particular area.

Amendment 48A would require the local planning authority to take proper account of housing need and viability for particular groups of people—those of pensionable age, below average income and those in need of a statutory duty to house. The amendment proposed by the noble Earl, Lord Listowel, would put in the Bill a requirement for an adequate supply of affordable homes for key workers and families requiring temporary accommodation from the local housing authority. There are other amendments in this group, which will be spoken to by the noble Lords who have tabled them. I am supportive of all the amendments. Their aim is to ensure that proper account is taken of local housing need in considering the building of starter homes. I am sure that this will be an interesting and wide-ranging debate. I beg to move.

Lord Shipley (LD): My Lords, I support Amendment 37, to which my name is attached. I declare at the outset that I am a vice-president of the Local Government Association. I shall also speak to Amendment 47 and, in practice, several others.

The overriding concern in this group of amendments is that the Bill must be about renting as well as home ownership. That is why we have two separate groups—the last group looking at ownership and this one looking at all tenures. The principle is very simple. Renting must still be supported for lower-income households where it is not possible for them to buy their own property. I remind the House that there are some 1.3 million people on social housing waiting lists in this country. So I hope that the Minister will understand and accept that the Bill cannot just be about starter homes for owner occupation but must include social renting.

8.45 pm

I will draw your Lordships' attention to the Government's own impact assessment, which admits that there will be fewer social homes for rent. On page 38 in paragraph 1.1.26 headed "House builders" it states:

> "Starter Homes are required to be sold at a 20% discount. The Government has supported this by removing the Section 106 affordable housing contribution and through not having to make a payment through the Community Infrastructure Levy and other tariff style payments".

There is a direct consequence of that decision. Section 106 currently delivers half of all new affordable homes. It matters to the building of new social rented homes because grant funding for these homes has been reduced, funding for affordable rent ends in 2018, and cuts to social rents limit the ability of local housing bodies to build new homes. So, as my noble friend Lord Tope said at the end of his speech in the conclusion of the previous group, the Bill has to be about all forms of tenure and not just about starter homes.

The reason is that Shelter research has found that starter homes are unaffordable to people on low incomes in 98% of the country and unaffordable to those on middle incomes in 58% of the country. As Shelter says, starter homes clearly serve different markets to social rent, so they should be planned as additional—but if they are to be additional, the resources need to be provided and we cannot simply remove the ability of local housing bodies to build the homes for social rent that are needed.

The Local Government Association and a number of other bodies have produced very similar sets of statistics and the sense of direction in all of them is the same. The million homes by 2020 that the Government talk about very frequently is of course a gross figure and not a net figure and so takes no account of demolitions that may occur in that time—for example, the Prime Minister's initiative on demolishing some estates. So we need to be much clearer about this because, since household formation on the Government's own figures is increasing by 200,000 a year, we are not going to be solving the housing crisis by the end of this Parliament. So I hope that the Minister will take away the comments made on this group and on the previous group and think very deeply about how the problem of affordability for so many people who cannot aspire to a starter home can be achieved.

Shelter has estimated that someone seeking to buy a starter home will need a deposit of £40,000 and an income of £50,000 to afford it, and in London a deposit of £98,000 and a salary of £77,000. These are very large sums of money, and this raises questions about whether the Government have thought through the implications of all the different aspects of this Bill, which seem to be a set of silo initiatives which are not properly joined up at a local level.

That takes me to the crucial point on which the noble Lord, Lord Kennedy of Southwark, finished his contribution. It is that you have to give local authorities greater flexibility than they currently have. Will the Minister look at ways of giving local authorities greater flexibility to deliver other forms of affordable housing alongside starter homes, whether for owner occupation in the form of shared ownership, say, or through additional homes for social rent, particularly in view of the fact that in the comprehensive spending review the Chancellor provided additional funding for housing?

In the previous group, the National Planning Policy Framework was raised. Can we be clear about whether we are in fact changing it without admitting to the fact? The NPPF already requires councils to plan for a mix of housing to reflect local demand, so if it continues to say that, presumably it is accepted that it is the duty of local authorities to develop policies which fit the needs of their area.

There have been several problems with this Bill. I pay tribute to the noble Lord, Lord Horam, for identifying one of them, which is that we simply do not have enough information, partly because so much is being restricted to regulations, so that much cannot be explained, even when we attend the technical briefings. It makes it very hard to know exactly what the Government are planning to do. As we have heard, the problem is about supply. I do not think that the Government are going to solve the problem they have unless they address that problem of supply. I hope that the Minister will think carefully about what has been said, because when we get to Report on this matter we will be addressing it all over again.

Lord Best (CB): My Lords, in the context of this group of amendments I should also declare my interest as a vice-president and the immediate past president of the Local Government Association. I shall speak to Amendments 48A, 48F, 50B and 50D. All these amendments are about the absolute priority being given to 20% discounted starter homes even though such housing may not be addressing, and therefore should not be replacing, the accommodation which an objective assessment by the local authority has demonstrated that an area needs.

As other noble Lords have pointed out, guidance in the National Planning Policy Framework gives local planning authorities the job of preparing a strategic housing market assessment. This is intended to ensure that their local plan is based on clear evidence and will meet the needs for different kinds of housing in a mix that takes on board demographic factors and market trends, is reflected in the size, tenure and range of homes in particular locations and includes the requisite measures for meeting affordable housing need. This NPPF framework, devised after much consultation, replaced a plethora of planning guidance and is not, course, repealed by this Bill. The noble Lords, Lord Beecham and Lord Shipley, wondered whether the NPPF would now be overturned, and the Minister may like to confirm, as I have been reassured, that this planning policy framework remains firmly in place.

This means that there is now a conflict between the NPPF guidance and the new requirement for a proportion of starter homes to be given the highest priority in future local plans. The new stipulation in the Bill cuts right across the NPPF guidance. In effect, it says, "Thank you, local authority, for bringing together all the evidence on local housing need and demand as the Government have asked of you. You are now to set this aside and make way for our new initiative that may or may not meet the objectively assessed housing requirements you have set out. In particular, if the evidence demonstrates a priority need for affordable housing for rent or shared ownership, you should ignore that. Instead, wholly or partially in place of using Section 106 agreements to secure those affordable homes, you should require housebuilders and housing associations to build the 20% discounted starter homes which we in Westminster or Whitehall have decided are the real requirement for your area".

The noble Lord, Lord Greaves, quotes colleagues who said that there are 100 local housing markets, each of which has its own special needs. For one illustration I will follow the noble Lord, Lord Campbell-Savours, in drawing on the excellent example of Bristol City Council to illustrate my point. Bristol, working with South Gloucestershire and North Somerset councils, published its *Wider Bristol HMA Strategic Housing Market Assessment*, which shows the need for 85,000 new homes over the next 20 years. Of these 29,000, about 35% are required for people who will need affordable housing as currently defined, in a ratio of 80% affordable rented and 20% shared ownership. However, government diktat will now stipulate that a large proportion—perhaps 70%, if the figures the noble Lord, Lord Horam, mentioned, are correct—will be replaced in future by the need to build new starter homes. This is the downside of the Bill: the potential loss of desperately needed new homes for people who cannot get a starter home.

Some of those who would have been helped under the current arrangements have incomes high enough to purchase a starter home. These young buyers will be fine. Sadly, however, there are not many of them. Savills, the property agents with the best research skills, has done the sums with the LGA. To quote again what must become the statistic of the day, discounted starter homes will not be affordable to any of those assessed as needing affordable housing in 67% of local authority areas. Therefore, in 220 council areas, none of those who could have benefited under the present system of securing a proportion of affordable rented or shared ownership housing through planning agreements would be helped in the future under the starter homes scheme. Of the remaining 100 or so council areas, in 80 cases less than 10% of those needing affordable housing could be helped by the starter homes initiative—they just could not afford to buy even with the discount. Therefore, starter homes cater only very rarely for the same people as those whom the local authority planned to assist through its published planning authorities. When placing this cuckoo in the nest, displacing the housing needed by those on lower incomes, surely the Government should support councils who have analysed their local housing requirements and markets and yes, include provision for starter homes, but only where that clearly accords with the very varied local demands.

In considering an amendment I moved earlier today which sought government support for a national scheme to help vulnerable tenants, the Minister said that local authorities were better placed than central government to introduce such schemes. In that case a very modest and inexpensive guaranteed national scheme for tenants was at stake. In the case of starter homes, the national scheme—to be implemented in every locality in the country—is in every way a far more intrusive and expensive arrangement. Where now are the arguments for local discretion?

Different groups are mentioned in each of these amendments, and all of them need to be taken into account before they are set aside to make way for the first-time starter home buyers: those over pension age, those on below-average incomes, and of course, those whom councils have a statutory duty to help because they are homeless. There is also supported, specialist housing and housing for people with disabilities. Each group deserves a lengthy defence, which I do not have the time to set out tonight. However, perhaps I can say something about one of these groups, which will not be helped at all by the starter homes initiative. This is older people, covered by Amendment 50D, for whom retirement housing, housing with care, downsizer homes and other forms of age-exclusive provision can be made. If starter homes were simply to take the place of other groups who are in housing need, this would be among the worst tragedies. Here the cuckoo in the nest is displacing not only the other youngsters but their parents as well.

9 pm

By definition, starter homes are for the under-40s. Many of us are trying to promote quality housebuilding for older people. I declare a special interest as chair of the All-Party Parliamentary Group on Housing and Care for Older People and chair of the Housing Our Ageing Population: Panel for Innovation. Housing is of huge importance to the parallel agendas of health and care with potential large costs to the NHS and to local authority social care budgets if housing is ignored, and with huge savings if suitable housing is made available. We would see reduced accidents in the home, fewer premature winter deaths, less bed-blocking, earlier hospital discharges and fewer readmissions, and postponement or prevention of the need for residential care. Purpose-built retirement and extra-care housing developments, including whole retirement villages and continuing-care retirement communities have so much to contribute, not least in alleviating the miseries of loneliness and isolation.

Housing for older people also helps the younger generation, the people whom those starter homes seek to help, because when we older people downsize to help ourselves, to enjoy somewhere easier to manage, cheaper to heat, without steep steps and outdated facilities —when we help ourselves by rightsizing—we help the next generation in a chain reaction that achieves, on average, more than three other moves. Therefore, Amendment 50D —and I am grateful for the support of the noble Baroness, Lady Andrews, and the noble Lord, Lord Stoneham—calls for an exemption to the requirement to provide starter homes in developments for age-exclusive housing schemes.

This group of amendments gets to the heart of the problems with this Bill. I strongly support all of this long list. All the amendments, in the end, say the same thing to Government: stay with the national planning policy guidance, let local planning authorities determine their local priorities and do not put all your eggs in the starter homes basket.

Lord Young of Cookham (Con): My Lords, I shall seek to redress the balance in this debate by briefly making a contribution in support of the thrust of government policy in Chapter 1. I do not think the Bill is perfect, but I do think what the Government are seeking to do in this chapter is right.

Basically, what we are trying to do is move the dial of housing policy away from renting towards home ownership. We are not moving the dial nearly as far as some noble Lords have suggested, in that there remains a substantial commitment to investment in social housing for rent. I know the Government remain deeply committed to something the noble Lord, Lord Best, mentioned earlier—getting long-term institutional funds into the private rented sector.

I do think it is right to move the dial, which is what we do in Chapter 1. I think there are four reasons for this. First, it is what we said in the manifesto we would do. Secondly, it is what people want. Thirdly, it enables the Government to get more housing for a given amount of public investment. Fourthly, it has the potential to help, not hinder, those who are on the social housing list.

In the manifesto, we could not have been clearer about what we wanted to do. There is a whole chapter entitled "Helping you to buy a home of your own", with a commitment to,

> "build more homes that people can afford, including 200,000 new starter homes … double the number of first-time buyers compared to the last five years – helping one million more people to own their own home".

In delivering that commitment, it is the judgment of the Government that they need primary legislation in order to deliver what they promised. I have heard nothing that contradicts that belief.

Secondly, and perhaps related to the first, it is actually what people want. We heard from my noble friend the Minister that, I think, 86% would prefer to be home owners. The majority of those who are privately renting would like to be home owners. All parties in this House have accepted that it is a legitimate pursuit of public policy to promote home ownership. We all accept the right to buy for council house tenants. There is promotion through the inheritance tax system to promote home ownership. This is another step in the direction, which has been sanctioned by all parties for some time, of promoting home ownership.

Thirdly, it has the potential to provide more houses for a given amount of public money at a time of public expenditure constraint. In the 1980s, we switched resources from the local authorities to the housing associations, because if we let the local authorities borrow it scored against the PSBR, but if we let the housing associations borrow it did not. As a result, there was a substantial increase in output. The nudge of the dial enables more houses to be built for a given amount of public pounds. I was looking at my copy of *Inside Housing*, which has a paragraph headed "HCA confirms tenure change", which says:

> "Chichester Council was originally expecting 30% affordable housing in its Section 106 agreement for the planned 160-home Lower Graylingwell site in Chichester. This has now been changed to 50% Starter Homes, which are considered affordable by government, meaning 80 will be built in place of 48 affordable homes".

I think we all agree that we need to increase the output of housing. One of the consequences of this policy is that that can happen.

Finally, it has the potential to help, not hinder, those on the waiting list. I respectfully disagree with what the noble Lord, Lord Shipley, said, which was that houses for sale and social renting meet two different markets. I do not think that that is the case at all. I think that there is a group in the middle who would like to be home owners but cannot and who are therefore in the social housing queue. This can benefit those for whom there is no alternative but social housing because it removes from the queue those who could afford home ownership with a little bit of help from the Government but who otherwise will remain in the queue, possibly ahead of people in greater need.

My only comment is that I would like to see the starter homes initiative initially targeted on existing social tenants and housing association tenants who, for whatever reason, do not have the right to buy—they might not have been there for 10 years—so that the initiative would enable a social tenancy by moving somebody out. Alternatively, the starter homes initiative

[Lord Young of Cookham]
could be targeted at those on the waiting list so that they are removed from it, enabling others to move ahead.

Although, as I said, the Bill is not perfect—I may have some doubts to express at later stages—it is in the right direction. It is delivering what we said and it deserves support.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I will speak specifically to Amendments 47 and 48C. I will not be anything like as eloquent as the noble Lord, Lord Best, but I will do my best.

I believe that the Government's concentration on starter homes to the exclusion of other tenures is extremely damaging to the housing market and to the aspirations of those looking for a home of any sort. There are those, as we have heard, who will never be able to afford or be eligible for the Government's starter home programme. There are those who struggle to pay market rents, never mind repayments on a mortgage, and those who will be excluded from renting from a private landlord due to the rents being levied. These people are not to be cast aside as though they are of no importance. Each and every one of them deserves the dignity and security of a decent home in which to live and bring up their children.

Crisis has produced a brief that indicates that starter homes, as we have heard, will primarily help couples without children and on average or above-average salaries. Starter homes will be inaccessible to families on or below the national living wage in all but 2% of council areas. There are only six local authority areas where single people on an average wage or less will be able to afford a starter home. By requiring councils to prioritise starter homes for higher earners, the Bill reduces the scope of local authorities to meet the full range of housing requirements that councils have identified through their planning processes. Thus, the housing needs of low-income groups will go unmet and homelessness is likely to increase.

It is essential that local authorities can retain their flexibility to provide a full range of housing tenures and requirements, including social and affordable housing, to meet the needs of their residents. Starter homes do not do this. The Government should accept this and allow councils to make provision to meet the gap in the market that the starter home policy will create. This is essential to a buoyant housing market in the country and to meet the needs of those at the lower end of the income spectrum.

On Amendment 48C, local authorities do not carry out their planning processes and housing functions in the dark. They do not produce a map and, with a blindfold on, attempt to pin the tail on the donkey, as we did when we were children at birthday parties. No, they have detailed information which they have gathered from officers, residents, parish councils, surveys, census figures, voluntary organisations, developers, Age UK, Citizens Advice and so on. All this assists them to build up a picture of what housing is needed and where. They are able to calculate what is viable in which location and what is not.

It is all very well for the Secretary of State to require from on high that a starter home requirement must be met, but if there is no need for starter homes in a particular area but homes of a very different nature, this would seem to be a false requirement. Surely it is for local authorities using the information they have collected through their local planning processes to determine what is needed to prevent homelessness and provide for their residents in any given area. That is what their councillors have been elected to take responsibility for and which they have a burning desire to fulfil. Local authorities must be allowed to do just what it says on the tin—decide locally what is needed for their local communities.

Lord Kerslake (CB): My Lords, I speak in favour of the amendments in this group—in particular Amendment 48C in my name and Amendments 48A and 48F which I have supported. This group of amendments addresses two issues which concern me most about this section of the Bill. The first is that starter homes will come ahead of and instead of affordable rented accommodation. There is no doubt about that in the way this will play out. Secondly, the Government will dictate to a level I have never seen before the proportion of starter homes that are built, down to individual schemes. This is quite extraordinary.

The Bill gives local authorities a duty to promote starter homes. As the noble Lord, Lord Young, said, this is a manifesto policy. I acknowledge and accept that point, but it gives them an absolute duty. It does not say, "Promote starter homes as part of your wider housing plans". Had it said that, we would now be in a different conversation. It simply says, "You will promote starter homes". It does not say anything about any other tenure. So, yes, the manifesto does say that the Government can ask and indeed require local authorities to promote starter homes, but they should be asked to do it in the context of their primary role, which is to assess housing need and provide for it. That is the first point I really care about in this Bill.

The second point, as the noble Lord, Lord Best, has made very clear, is that we have now a well-established process through the NPPF of housing market assessment followed by a local plan and the identification of the necessary land. It is not an easy process. Local authorities go through a lot of heart-searching before they come up with their local plan. Crucially, they think about the local needs in their area before they agree that plan. What we have here is the superimposition of a government view about one tenure or even one product—it is not even a tenure—ahead of other products. It makes much more sense, as the amendment seeks to put forward, that they consider their local plan and have a duty to promote starter homes but that they do it in the context of a plan that they have already developed and are seeking to promote. If starter homes are such a popular and well-regarded product, it would be very surprising if local authorities do not rush to put it in.

I touched earlier on the requirement for starter homes in individual applications. One thing we do know is that we have massively different housing markets in this country. I will say a few words about, and declare my interest in, the London Housing Commission in a minute. Where housing markets can vary literally over two or three miles, never mind between the north and south of the country, having the Secretary of

State judging the proportion of housing that needs to be starter homes in each application before that application is approved is asking for trouble. The one thing that we can be sure of is that he will get the number wrong for some part of the country. He may get it wrong for every part of the country, but he will definitely not get it right everywhere. It is in many ways the worst kind of centralism.

9.15 pm

I will illustrate that with the results of the London Housing Commission, on which we will report on 7 March. Our interim report was published in December. We found that the prices of houses in London were now 50% above the pre-crash levels. In the rest of the country, they were 5% above pre-crash levels. In London, 80% of what is being built at the moment is unaffordable to 80% of Londoners. That is the situation we now face in London. The average house price is more than £500,000, which is 12 times the average salary. In other words, we have an absolute crisis in London. We should ask ourselves the question: do we think starter homes will help address the scale of the challenge that London faces? We know for certain that they will not address the scale of the challenge in areas with poor housing markets. It is imperative that we do not go down the road of imposing a requirement on every single authority about the level of starter homes that they must have.

We touched on the issue of whether they will be a substitute for affordable rented housing. The Minister has spoken of the £1.6 billion going into affordable rented accommodation—affordable rented and shared ownership, I should say. What is not said is that the £1.6 billion is in fact the completion of a programme started under the coalition Government. It is the 2015 to 2018 programme being completed, and the reason it is being carried through is that allocations have been made and money committed. If we look at the programme post-2018, we will see that it drastically falls and remains only for specialist housing. So we must not get any sense of this being a determined policy. It is a consequence of a policy agreed in the previous coalition Government that is being followed through in the current one because allocations have been made.

We should always ask the question in any policy: who gains and who loses? In this policy the people who will gain will be people under 40 who are close to being able to buy a property—maybe actually able to buy a property, because there is no income test on this, but who take advantage of the starter homes scheme. In other words, it will be people at least in the upper half of income and in London in the upper 10% of income. Who loses are the people who are the most desperate in their need for affordable rented accommodation. That is the equation we are being asked to agree in this part of the Bill. When starter homes were genuinely additional, I could see the point of them. When they replace desperately needed affordable rented accommodation, it is wrong, to be frank.

We should look very seriously at these amendments, and the Government should look very seriously at them. This policy will not work across the country and we should leave the decision for these choices where it should properly lie—with individual local authorities.

The Earl of Listowel (CB): My Lords, I have tabled an amendment in this group. I declare my interest as a landlord and a landowner involved in property development, and I very much associate myself with all the amendments in this group. I particularly associate myself with the words of my noble friends Lord Best and Lord Kerslake.

Shortly after I took my seat in 1998, I remember going with a health visitor to see several families in Redbridge in east London. I was shocked and appalled by what I saw at that time. The accommodation that many families were struggling to live in was absolutely appalling, and this was many years ago. The point that may be missing from this debate, and which probably has been made, is that we have a historical deficit of investment in social housing. Some of the things that have been said in support of what the Government are proposing might be all very well but we have a profound historical deficit in social housing. These families are unheard: none—or perhaps one or two—of us politicians come from that background. They are living in houses in multiple occupation and in damp, overcrowded conditions, and they get overlooked. They have been overlooked by the Labour Party and the Conservative Party: all parties will hold up their hands to that. That is a particular problem with what the Government are proposing.

I am grateful to the noble Lord, Lord Kennedy, for supporting my amendment, among the others here. I will give one example of a mother to whom I spoke last week. She has four children. The eldest, I think, has a disability, but the youngest—a two year-old—experienced a haemorrhage while in his mother's womb, and as a result was born with palsied arms and legs. He is blind and has hearing issues and, at two years old, is much smaller than he should be. The 10 year-old brother has ADHD and one other issue. As a consequence, she and her husband are both unable to work now; they are full-time carers for their children. She has been on the housing list for two years. She recently visited a house to look at it and found that there were 27 people higher up the housing list to look at it. She is living in three bedrooms with her husband and four children. From both her front and back doors, there are steps leading up, so as her youngest child grows bigger, it will become more and more difficult for her to enter and exit the house. So many families are like that: they are stuck with inappropriate housing because of the failure of successive Governments to provide sufficient social housing. I thank the Minister for her helpful reply and assurance earlier on.

Turning to my Amendment 48B in this group, its purpose is to ensure that a local authority, in relation to starter homes,

"must also ensure that there is an adequate supply of affordable homes in its area for … key workers; and … families requiring temporary accommodation".

I have not spoken on the Bill yet, but I welcome much of what is in it, particularly with regard to streamlining the planning process—of which I have had experience—and many other areas. However, I am concerned—and the noble Lord, Lord Kerslake, alerted us to this—that in 2018, the Government will invest £2.3 billion in

[The Earl of Listowel]
starter homes, self-build homes and other areas. However, from 2018 the funding for the sort of social housing that I have just described will be declining.

Not so long ago, I visited the University of East London, which is doing some work on the impact of homelessness on families. It highlighted to me that, all across London, the social housing stock is so severely depleted that it would take many, many years to replenish it. I understand the Government's concerns, but the suffering of so many families in such appalling conditions really needs to be given priority.

In 2011, the OECD produced a report that found that a fifth of children in this country were growing up in a family without a father and a quarter of children in the United States were growing up without a father in the family. It predicted that in about 10 or 15 years, we would overtake the United States, and 30 % of our children would be growing up without a father in the family. Of course, living in temporary accommodation has an impact on the mental health of adults in those circumstances, and must have an impact on the parental relationships. I have just given that as one example of why we should be really concerned that so many of our children are growing up in hostels, temporary accommodation or bed and breakfasts. More than 100,000 children in this country are currently growing up in temporary accommodation.

I recently spoke to someone working on the troubled families initiative, a very welcome initiative from the Government. She told me how indignant she felt that she would make a relationship with a hard-to-reach family, begin to do some good work and then that family would be moved on elsewhere because they were living in temporary accommodation. They would very frequently move on.

I am particularly concerned by the growing information about families being moved out of London because of shortages here. Many years ago I visited the Families in Temporary Accommodation project run by John Reacroft at Barnardo's and met many such families. Of the themes that came through, there was particularly that of isolation. So many families had been placed a long way from their community, friends and family. Now we see that families are placed far out of London and their local authority, and may well be moved on once more so become more and more isolated and separated. There are real reasons to be concerned about the increasing numbers of children growing up in temporary accommodation. I hope the Minister can offer some reassurance in her reply that that will be addressed. My other matter was to do with key workers. It is so important for these families that key workers can work close to them. That needs also to be kept much in mind.

The only thing I disagree with in what the noble Lord, Lord Horam, said—if I understood him correctly—is that this is about housing supply rather than varieties of tenure. I strongly disagree with him there. There is a desperate need to increase housing supply within the particular tenure of affordable and social housing. That is a long-neglected area and the Government need to take that issue away and think about it.

Lord Cameron of Dillington (CB): My Lords, I will speak to Amendments 48F and 50B, to which I put my name. I am aware that in this debate we are going over the same ground we covered in the debate before the dinner hour but my excuse is that I will look at it from a largely rural perspective.

I must first declare an interest, for the purposes of the Committee stage of the Bill, in that I am a farmer and landowner. I am also a farmer who donated land to a housing association for the purposes of building affordable homes on an exception site in our village—half for rent and half for shared ownership. I believe that the latter is by far the best way to get people of limited means on to the housing ladder, especially when they can gradually staircase, within their means, up to an 80% maximum—which after all puts them in much the same position as a starter home owner without the distortion to the marketplace involved in the whole starter home programme.

I cannot endorse enough the Government's ambition to build more homes and to help our young people into home ownership. I really hope that the starter homes initiative will provide the long-term beneficial solution that the Government's faith in it deserves. As I said, shared ownership or shared equity is more of a proven route to me and, in my view, more worthy of government support. Thus, I support these two amendments because I worry about the overriding priority the Government are putting on the starter home agenda, as many noble Lords already said. In rural areas, that could mean that the requirement for truly affordable housing—housing for rent, shared ownership and supported housing—will take an inferior place, if any place at all.

The majority of properly affordable homes in rural areas come from commercial sites, usually in or on the edge of market towns, which have a percentage of affordable homes as a result of planning conditions—Section 106 agreements and so on. In my part of the world, this can be as high as between 20% and 35% or even higher, depending on local need and the site involved. You can imagine that a 200-house site, for instance, provides a vital supply of affordable houses. Without wishing to teach my grandmother to suck eggs, I would say that in my experience these planning conditions are usually arrived at as the result of a tripartite agreement between the developer, planners and a rural housing provider or housing association.

Before the Government compelled housing associations to reduce their rent by 12% over four years, the housing associations used to buy these affordable houses at virtually cost price. No one made any profit on these particular plots; the profit for both the landowner and developer came from the commercial housing on the rest of the site. Thus, the houses filled the need as cheaply as possible. Now, with the 12% reduction in rents, the sums do not quite add up for the housing associations, and I know of two examples where they are starting to ask the developer for a discount on these houses, below even the cost price. I have heard of discounts of up to £30,000 per house being asked for, although I have not heard of them being accepted.

9.30 pm

I am not saying that the forced rent reductions are wrong—clearly, the Government were, and are, facing huge pressures on the housing benefit bill—but the tripartite agreements will now almost certainly have to reduce the number of truly affordable homes on rural development sites in order to make the sums add up. I hope that the haggling will be hard, but it is a shame to be losing even a few of our affordable homes. It is a tragedy that the percentage of truly affordable homes, either to rent or for shared equity, will be reduced even more because of the priority to push starter homes.

As has already been said many times, starter homes are of real value to only a very small percentage of the population. I agree with the noble Lord, Lord Kerslake, that there will be a lot of people. Anyone under 40 wanting to buy a new home is bound to want to buy a starter home. Whether they need it, or need the help, is neither here nor there.

Furthermore, starter homes are here today and gone tomorrow. No doubt we will come to that in later amendments. I can see the initial attraction of starter homes to the developer, although I now understand that even developers are concerned about both the long-term effect of these homes on the marketplace and the immediate effect on the sale of their own cheaper homes. Nevertheless, the developers can still make money on them, compared to truly affordable homes.

If, in the tripartite discussions, both the developer and the local planning authority are, by central government diktat, pushing back against truly affordable housing in all its forms, then the housing associations—or, more importantly, their low-paid and potentially homeless clients—will have to shout very loudly to be heard. It would be far better if the local planning authority was on the side of the housing association or, at the very least, had obligations to ensure that they got their fair share.

If we are to prevent increased homelessness in rural areas in the long run, then we really must ensure we maintain a mix of solutions to the long-term problem of affordability. Starter homes may have their place, but when I set out my notes for this contribution, I entitled them, "Deprioritisation". That more or less sums up my message. Starter homes will never replace the importance of a true variety of truly affordable homes.

Lord Campbell-Savours (Lab): My Lords, most of the relevant points have been made and I do not want to repeat what other noble Lords have said, but I have a simple question for the Minister.

Amendment 48A, tabled by the noble Lord, Lord Best, refers to the need to take into account,

"those over pension age, … those on below average incomes, and … those to whom it owes a statutory housing duty".

Amendment 50, tabled by my noble friend Lord Kennedy of Southwark, refers to an exemption requirement for housing for,

"younger people; … older people; … people with special needs; or …people with disabilities",

or where there is a proposal to build,

"a homeless hostel; … refuge accommodation; or … specialist housing".

We have, this evening, repeatedly heard the case that starter homes are to be given priority over everything else. How will those that I have just listed be protected in the new regime which the Government are promoting? In other words, how can we be assured that the groups referred to and embodied in those two amendments will be provided for under a system which gives priority to starter homes? If the Minister can answer that question, she will be able to answer most of the issues raised in this debate.

Lord Stoneham of Droxford (LD): My Lords, we have had a long debate. Though I am reluctant to detain the Committee for too long, I want to speak in favour of these amendments, particularly Amendments 48A, 50B and 50D, to which I put my name. I again draw the Committee's attention to my interest as chair of Housing & Care 21.

We have to ask the Government: are we in this together on housing? The need to build more homes is something we all agree on but I contest the point made by the noble Lord, Lord Young. I accept that a commitment has been made in the Conservative Party manifesto; I respect that, although I do not think it is right and I have some suspicions as to how that figure was snatched out of the ether and arrived at. The question is whether we will build more homes than we would have without this extra policy initiative.

I think the Government have—certainly the Conservative Party has—a problem with social housing and affordable housing for rent. That is why we have had a setback. We had a problem in the early years of the coalition in getting the Government to put more money into social housing investment. It happened only when the Chancellor became worried about the state of the economy, as far as I could see. At that point, we at last saw some initiatives that encouraged the building of social housing.

As has been admitted in this debate, we have now gone backwards. If we were really setting out to build more houses we would be building more for private ownership and more for social housing. We had begun to make progress on that at the end of the coalition Government—not enough, I accept, but we had made some. Frankly, we are now going to hit the buffers because of all the initiatives and impetuses behind starter homes and the promotion of home ownership. As the noble Lord, Lord Kerslake, said, starter homes will be at the expense of other forms of housing, and that will include social housing. The consequence is that we will build fewer houses than if we had really been in this together and planned to increase home ownership while maintaining a balance by being committed to social housing as well. As a consequence, there will be problems in terms of the design of homes and the communities we build, which will be lopsided and unbalanced. Future generations will come to regret that.

It has been made quite clear by the noble Lord, Lord Best, that there are other areas of need which the Government seem to be ignoring. We know that the retired population is increasing and we want to have more rightsizing. What initiatives will the Government use to encourage that process? Only this week, we have seen initiatives from the National Health Service,

[Lord Stoneham of Droxford]
which recognises the importance of housing in health policy. I do not see where the Government will get the extra housing for the retired population.

It remains the case that homelessness is getting worse. I am sad to admit that it increased during the last years of the coalition. Which of these initiatives address that? Local communities should surely be given the flexibility to address some of those problems rather than go down a route that puts all the emphasis on home ownership. The other consequence will be that the people in real need will be driven into the private rented sector, which will compound our problem with the housing benefit bill because we will be paying out more.

I would also like to draw attention to the rural area, which the noble Lord, Lord Cameron, covered in his remarks. I cannot think of a more critical area where community needs have to be very carefully planned and provided for if we are going to have balanced communities which feed into the social life of those communities. We have to give more attention to providing affordable homes to local people—we need to make that distinction. As he says—and this is another argument that we are not actually going to increase the number of homes that are going to be built—I know that landlords in my area will be very reluctant to give up their land at a reduced price if they think that in the future people will have the opportunity to make a profit out of that, rather than what they thought, that these homes were going to be used for local people in perpetuity for their social needs and those of the communities in which they live.

Everybody agrees that there is a problem with supply. If we are going to build more homes that actually meet the demand we have, we need more diversity, mix and balance. As well as helping private ownership, we have to give more attention to social housing. If we do not, we will have all the problems I have mentioned in terms of increasing pressure on homelessness and the encouragement to older people to rightsize being diminished, and therefore we will end up with a worse and unbalanced housing situation, when there was a real opportunity for all of us to be in this together.

Lord Beecham (Lab): My Lords, we are all familiar with the concept of the starter homes project, which the Government launched with a great fanfare. It will, as we are now very familiar with, provide 200,000 affordable homes—I think that is the Government's target—for first-time buyers aged under 40 who will benefit from a discount of 20%, which will not be repayable on a subsequent sale after five years. That is the basic concept.

Of course, the only criterion for obtaining the assistance and the discount to buy these starter homes will be age, not income. In London, for example, this could lead effectively to a handout on resale of more than £100,000 to the buyers of starter homes bought for the capped price of £450,000 after the discount—an untaxed £100,000 gain for the fortunate under-40s who secure a starter home. The Government fund all this with £2.3 billion, which represents just a part, as I mentioned before, of the housing benefit savings from the imposition of the 1% increase on social housing rents. The damage that that does to the social housing stock is, of course, studiously ignored.

Section 106 currently delivers half of all new affordable homes. Shelter describes it as being,

"especially vital to the delivery of new social rented homes, as grant funding for these homes was removed in the last Parliament"—

by, I remind your Lordships, a coalition Government—

"and funding for Affordable Rent ends in 2018".

Of course, in the mean time we will have cuts to social rents, limiting housing associations' ability to build new homes. Shelter research found, as we have heard, that starter homes are unaffordable to people on low incomes in 98% of the country and unaffordable to those on middle incomes in 58% of the country.

The claim is that affordable homes will thereby become available for purchase but clearly affordability is an elastic concept. The coalition Government drove up council rents, deeming an affordable rent in that context to be 80% of private sector rent levels. But given the chronic housing shortage and the boom in buy to let, which dramatically drove up prices and rents in the private sector, that definition of affordability is fundamentally flawed. Affordability must surely relate to what the would-be owner-occupier or tenant can reasonably be expected to pay, having regard to his or her income, not an artificial comparison to the market rate.

Prices, as we know, will be capped at £450,000 in London and £250,000 elsewhere after the 20% discount, representing, in effect, full market prices for these new properties of £562,500 in London and £312,500 elsewhere. However, the Government claim that the average price of starter homes for first-time buyers would, after the discount, be £291,000 in London and £169,000 elsewhere. Even at those levels—which are highly questionable, especially for London—starter homes will not be affordable for a huge number of people. In fact, the Government's figures appear to be based on the average cost of houses bought by first-time buyers, not the average price of new houses, which would be higher.

9.45 pm

I am indebted to Savills for helping me ascertain the figures. Savills explained that the average new home values for the 12 months to November 2015 were £560,000 in London—with the 20% discount, that would give the £450,000 figure—and £260,000 in the rest of England, which, with a discount, would give £210,000. However, these are of course irrelevant, as it looks as though the Government have used the average first-time buyer house prices from the same source. A price of £364,000 in London for the average first-time buyer—not of a new house—with a 20% discount would give £291,000; in the rest of the country, £211,000 for first-time buyers, of all types of houses, would be £169,000 with a 20% discount. In other words the Minister—obviously unwittingly, I suspect—has been quoting figures which do not relate to what we are talking about, which is the cost of newly built houses, which will, as Savills put it, be higher. In fact, the email I received from Savills said:

"This seems an odd choice"—

the choice of the average first-time buyer's purchase—

"as clearly new homes sell for more than second hand homes".

I trust that the Minister will henceforth acknowledge that the figures she has given are not quite accurate.

I am not accusing her of anything except perhaps being supplied by her civil servants with figures based on the wrong comparison.

What is affordable? I hope your Lordships will forgive me for referring to the council that I know best, but in Newcastle, for example, the 5,900 applicants on the council's housing list have average earnings of £20,000, which would be enough to support a mortgage of £70,000, leaving an effectively unbridgeable gap between that and the discounted purchase price of a starter home. Even the national average income of £26,000 would fall short of the amount required to obtain, and sustain, the required mortgage. We must also bear in mind that we have a historically very low level of mortgage interest rates at the moment, which is ultimately bound to go up. Ironically, in passing, we should note that a household income of £30,000 outside London—which could be a couple on the national minimum wage—would invoke the pay-to-stay provision for council housing, were they to be in such houses.

The LGA quotes a report by Savills that starter homes would be out of reach for all people in need of affordable housing in 220 council areas, as we have heard this evening. The definition of starter homes as affordable, which councils will have to promote together with Help to Buy, will, in Savills's view,

"leave a gap in housing provision for those on lower incomes",

while benefiting those in London with incomes of between £45,000 and £90,000 a year.

The Town and Country Planning Association reports that 80% of councils surveyed say that starter homes would not be affordable, while only 7% say the policy would address the need for affordability in their area. It conducted a survey of authorities, 54% of which were Conservative, 27% Labour, 17% no overall control and 2% Liberal Democrat. We have a little over 2% of Liberal Democrats in this Chamber, for reasons which I will not elaborate. The results of the survey were strikingly similar. Of the councils surveyed, 61% thought that the need for affordable homes in their area was "severe". The survey asked whether the Government's proposal to reduce social rents by 1% a year for the next four years had an impact on their plans; 68% said that it did. Councils were asked whether the starter homes policy would address the need for affordable housing in their areas; 85% said no. They were asked whether starter homes should be classified as affordable housing; the answer, from 75% of those councils, was no. Councils were asked whether the proposed extension of right to buy would have an impact on housing available for social rent in their areas; 80% of them said that it would.

There will also be an impact on what councils can achieve under Section 106 planning agreements. The Government's own figures suggest that for every 100 starter homes built, between 56 and 71 affordable council and social rented homes will not be built, as we heard earlier. Over the four-year period of the starter homes scheme this represents a reduction of around 50% compared to the last four years. Savills confirms that the policy will result in fewer homes being built for affordable rent. Savills also questions the impact on shared equity schemes and warns of the risks of reducing the number of new homes built. Savills is an independent commercial organisation with no political interests at all.

Amendment 37, as we have heard, seeks to broaden the objective of the Bill to include the provision of new homes across all tenures, including, but not restricted to, starter homes. The concept of building starter homes as self-contained areas—islands—is rather disturbing. We need balanced communities, with housing of all tenures for different kinds of people. The Minister and I have exchanged views about development in the ward that I represent, which has a mix of new housing for sale and some for rent. That retains the notion of a mixed community. I fear that significant developments of, almost exclusively, starter homes will militate against that kind of community.

Amendment 48 would allow councils not to provide starter homes if it would prevent other types of affordable housing being built on particular sites. Newcastle, and, I suspect, other authorities, has a policy of providing 15% of houses in new developments for affordable rent.

Amendment 49 requires the Secretary of State's restriction of planning permission for residential developments of a specified description to those where the starter homes requirement is met, to be subject to a full assessment of the need for starter homes in that area. We should start from what is actually required before overruling local aspirations and imposing starter homes exclusively. In passing, the continued displacement of local decision-making by regulation and central government fiat is extraordinary, especially when one recalls Conservative opposition to regional housing strategy.

Amendment 50D allows regulations to permit exemption from starter homes provision in build-for-rent schemes, in the important areas of supported housing, schemes with homeless hostels, refugee accommodation and specialist housing. These, I submit, are perfectly reasonable suggestions.

The noble Lord, Lord Young, referred to institutional investors as newcomers to the market, and I welcome their involvement in the private rented sector. However, one is left wondering what the future is for council housing, in the first place, and perhaps also other forms of social housing. There seems to be a view in government that council housing is to be ultimately wound down completely. The market will be left essentially to the private sector, possibly with housing associations—although I fear for their future, too, because I suspect that the voluntary nature of right to buy will be replaced over time by compulsion. We will then be left with an essentially private sector-dominated rented sector.

We need a mixed economy of housing provision. We need good local authority housing, good social housing, good private rented housing and as much affordable owner-occupied housing as can be provided. We are moving away from that mixed economy, and I very much hope that your Lordships' House will encourage the Government to get back on track.

Baroness Royall of Blaisdon (Lab): My Lords, the noble Earl, Lord Listowel, graphically described why we need more social housing in this country. For one thing, it is to help the very poorest in society. I fear

[Baroness Royall of Blaisdon]
that the Bill will do nothing to help those people. The noble Lord, Lord Kerslake, and my noble friend Lord Beecham described how the buying of starter homes will essentially help only those who ultimately could have afforded to buy those homes on the open market anyway. It will merely exacerbate the growing inequality in our society. Until I listened to the noble Lord, Lord Kerslake, that element of growing inequality as a consequence of the Bill had not touched me too much. Now, I am thinking, "Oh my God! It is even more important that we do something about this Bill". It is absurd that a housing Bill could add to the inequalities in this country.

In response to a consultation on proposed changes to the NPPF, the Gloucestershire Rural Housing Partnership said:

"Starter homes is a short-term attempt to implement a corrective measure to the housing market. It is unlikely to be sustainable or affordable for the Government in the long term and may not be attractive for all developers".

It asks:

"Will demand for housebuilders' standard first-time buyers product be negatively affected by starter homes production levels?".

I would say that the promotion of new homes across all tenures would be a much more sustainable policy for the Government, housing associations, local councils, communities, individuals and the country as a whole.

Have the Government considered the impact if starter homes replace affordable housing on a huge number of new sites? There may be no Section 106 affordable rent or shared ownership homes provided by developers in future. Have the Government thought about that? My own housing association says:

"Developers' appetite for starter home delivery remains to be seen, since it goes up against Help to Buy product, and developers like the fact that they can pre-sell affordable homes at a guaranteed price to a housing association, accounting for 30% or 40% of the total number of homes built on the site, giving them certainty of sale, less risk and a good cash flow".

The Bill, as we have heard so many times, will ensure that starter homes come ahead of affordable homes in the provision of housing in future, yet surveys undertaken in Gloucestershire reveal that the majority of need in rural parishes is for affordable rented homes. As so many have said, if we want sustainable communities with shops, schools, pubs, et cetera, we have to have homes where people can live. Often, they cannot afford to buy them, so we have to have good social housing.

In 1980, 24% of rural homes were affordable. That figure is now 8%. That compares with 19% in urban areas—although of course I accept that the situation in London is very difficult, and very different. But I suggest that that difference between urban and rural areas, and the fact that the Government have not really taken that into consideration, demonstrates the fact that this Bill has sadly not been rural-proofed as it should have been, and as every piece of legislation should be.

10 pm

I am very supportive of all the amendments in this group but especially supportive of Amendments 50B and 50D, for all the reasons set out by the noble Lord, Lord Best. Supported housing, housing for older people and housing for people with disabilities is already under threat in many areas as a consequence of financial constraints, and this Bill could well exacerbate the situation. Lack of housing for older people is equivalent in the housing market to bed-blocking in the health service—or one could look at it like that. The excellent report, *Building Better Places*, is rather new, but I assume that the Minister has seen it and will have noted two of its recommendations. The report recommends:

"The Government should reconsider its proposal to include 'starter homes' within the definition of affordable housing. The proposal risks undermining mixed communities and preventing the delivery of genuinely affordable housing for the long term".

It also recommends that the Government should,

"revise its proposal to require starter homes on every reasonably sized development site. Local authorities should retain the discretion to prioritise long-term affordable housing over starter homes in the planning system where appropriate".

That is absolutely spot on. Local authorities and people in local areas know the local housing needs of their communities and, as others have said, one size simply does not fit all. The report is very new, and I am sure that the Minister will say, "Well, of course I have not had a chance to respond to it yet". Undoubtedly there will not be a chance to respond to it before the Bill is finished—but I very much hope that the Government will do everything that they can to respond to it, because many parts of the report are salient to the debates that we are having.

Baroness Hollis of Heigham (Lab): I support this group of amendments, particularly Amendment 48A, so well spoken to by the noble Lord, Lord Best, and supported by my noble friend Lord Beecham, and the noble Lords, Lord Kerslake and Lord Stunell.

A few months back, the Minister took the House very skilfully through the Cities and Local Government Devolution Bill. She was extremely responsive to our concerns about the role of prescription in localism and the degree of powers that should be decentralised. We spoke a common language on this around the House on the need to devolve decision-making to the most local body that was competent to do so. That is what localism means—that is why the anti-Europeans in the Brexit group sign up to quite a lot of that position, I suspect. This amendment emphasises that point. The Minister is saying that the government, Westminster and Whitehall prescription of starter homes should be at the exclusion and displacement of any local understanding, knowledge and experience of the community. That is what the Government are saying.

Take, for example, my county of Norfolk. It is 60 miles across. Norwich has kept its own stock—then there is King's Lynn and Great Yarmouth, as well as dozens and dozens of relatively small villages, going up to small market towns. I am time-expired as chair of a housing association that uniquely built across the whole of Norfolk. If I could have, I needed to build between six and a dozen bungalows in every rural village in Norfolk. I would have had every elderly person queuing around the block to downsize into a bungalow in their village. That would have freed up their family home, their rented housing association home or, possibly in some cases, their rented local authority home, for a young family in Norfolk, in a place that has low wages and is low-skilled, with incomes

often well under £20,000 a year, often dependent on benefits to top them up. They would have been able to move into those homes and stay in their locality.

The result would have been twofold. First, those young families would have sustained the schools, which are declining in numbers, and the public transport, because those families cannot afford a car, or certainly not a second car, if he goes off to work in the old banger. It would have sustained GP surgeries, local shops and post offices. We would have kept rural Norfolk going. Secondly, those young families would have been living close to their elderly relatives. It would have allowed mums to help with the childcare and it would have allowed daughters and sons in turn to keep ageing parents out of long-term residential care by being close to them, neighbourly and supportive. That is the sort of community we have been talking about. What is going to happen? The Government are going to make that impossible.

Starter homes at these prices are irrelevant to all except immigrés, possibly coming into my former university or to a few very well-paid jobs at Norwich Union. The rest have low incomes, low skills and depend on social housing. Yet the housing that could have produced the chain that the noble Lord, Lord Best, talked about with two or three moves is not happening and the result is that villages will dwindle. This will mean young people having to move away from their homes and come into Norwich or move on further still to find jobs and homes. It will remove the support that enables elderly retired people to remain in those communities. As GP surgeries, pharmacies and post offices go into decline and close, they, too, will have to move because there will be no services.

That is what the Government are doing in this Bill and it is the extreme opposite of what the Minister skilfully, rightfully and generously argued on behalf of DCLG during the Cities and Local Government Devolution Bill just a few months ago. Back then she would have been horrified at the notion that local authorities' assessment of the needs for their areas for the elderly, for disabled people, for people on low incomes or for people to whom they owe a statutory duty, and their local knowledge of villages and small market towns across a county that is 60 miles long, should be overridden by people in Westminster and Whitehall, many of whom have not even visited the place. She would have been appalled in the name of the Cities and Local Government Devolution Bill that the next Bill she handled would run completely at odds and rip it up. She has had some brave but fairly futile defence from the noble Lord, Lord Young, but he has been about the only person since 3 pm today to speak in defence of the Government's policy. I hope she takes this back to her department and says that if we are saying one thing about economic development and local determination, we cannot say exactly the opposite for the major part of economic development that is housing development. I hope that, as a result, she will understand just how angry so many of us feel that our communities are likely to be ripped apart by a housing policy which will make it impossible to build and stabilise them.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, I will address a number of amendments together. These are Amendment 37 from the noble Lords, Lord Kennedy, Lord Shipley and Lord Beecham; Amendment 47 from the noble Baronesses, Lady Bakewell and Lady Pinnock, and the noble Lords, Lord Shipley and Lord Greaves; Amendments 48, 49 and 50 from the noble Lords, Lord Kennedy and Lord Beecham; Amendment 48B from the noble Earl, Lord Listowel; Amendment 48A from the noble Lords, Lord Best, Lord Beecham, Lord Kerslake and Lord Stoneham; Amendment 48C from the noble Lords, Lord Kerslake, Lord Best and Lord Kennedy, and the noble Baroness, Lady Bakewell; Amendment 48F from the noble Lords, Lord Best, Lord Cameron, Lord Kerslake and Lord Beecham; Amendment 50B from the noble Lords, Lord Best, Lord Cameron, Lord Beecham and Lord Stoneham; and Amendment 50D from the noble Lords, Lord Best and Lord Stoneham, and the noble Baroness, Lady Andrews.

Together these amendments give me the opportunity to make clear that the Government are committed to increasing housing supply across all tenures. Earlier I stated that repeatedly and I went through the spending commitments of £4.1 billion for 175,000 shared-ownership homes, £1.6 billion for 100,000 affordable rented homes and £8 billion for 400,000 affordable homes, including £2.3 billion for the 200,000 starter homes. Taken together, the spending review will deliver a million new homes by 2021, and starter homes are at the heart of this new ambition for the reasons I have outlined. Home ownership is particularly out of the reach of this group of people. As part of this, we are doubling the investment in housing to more than £20 billion over the next five years to support the largest housing programme by any Government since the 1970s. We will build on our track record for housing delivery. More than 639,000 new homes have been built since April 2010. There are now 887,000 more homes in England than there were in 2009. That is fact, and that is what has been delivered over the past few years. Before noble Lords think that nothing but starter homes will be built, more council homes have been built since 2010 than in the 13 years up to 2010. An important statistic is that the number of new homes in England rose by 25% over the past year, which is the highest annual percentage increase in 28 years. For those who are in any doubt, that shows not only this Government's commitment to building housing but their record over the past few years.

However, we know that we have to do more. These clauses are about something new: a new approach to address the pressing problem of young people and home ownership. There have been slight suggestions that in some places young people might not need to own homes. There has been a huge drop in the number of young people able to access home ownership. The Bill will help deliver our manifesto commitment and will place starter homes at the heart of new developments, which is a welcome addition to our growing package of support for future home owners.

As I said earlier, and as my noble friend Lord Young of Cookham reiterated, 86% of people want to own their own home. As a Government, we should try

[Baroness Williams of Trafford]
to meet that aspiration. We need a radical shift in the way the housing market supports young first-time buyers.

Lord Campbell-Savours: Can I take the Minister back to the previous debate, where we were talking about the cost of mortgages and the price of houses? When she refers to £26,000, what does she actually mean? Some of us cannot really grasp what she is driving at, because when I looked up mortgages with a 20 or 25-year term, it was 40% of a post-tax £26,000 income. I relate that to what the Minister was saying.

Baroness Williams of Trafford: What I said earlier, and I am sorry if I did not articulate it terribly well, was that the average wage in this country is £26,000. For a couple on £26,000 each—

Baroness Hollis of Heigham: Each? First, the Minister emphasised "mean" rather than "median". "Mean" means that three billionaires at the top end pull the figure up, whereas "median" has 50% below that figure. The median is the figure that we use in such debates. The median figure is considerably less than £26,000; it is probably nearer £24,000 for men, and for women it is under £21,000 a year, if they work full-time. The Minister is not offering us a representative figure.

Baroness Williams of Trafford: My Lords, if I take both noble Lords' figures, a median wage of £21,000 and £24,000 respectively, and add them together, that is £50,000 on a combined wage. Sorry—the hour is late—it is £45,000. On a combined salary of £45,000 and quoting £145,000 for a starter home, that would not be out of the median couple's reach.

Lord Campbell-Savours: The Minister is assuming that these households have two people working full-time. That does not follow. In my former constituency, that was certainly not the case.

Baroness Williams of Trafford: I was simply giving an example of an average working couple. There are many households in which both people work.

Lord Campbell-Savours: This whole policy is predicated on the fact that both people are working. All the facts that we are being given all the time are based on two people working full-time.

Baroness Williams of Trafford: My Lords, I was simply giving an example of two people working within a household. It may well be that both people within a household do not work and one person is earning £45,000-plus. I was giving an average example, which I intended to be helpful to the Committee, but clearly I have confused everyone. However, I can write to noble Lords about median and average wages; this was simply trying to take the average couple on an average wage and apply that on a basis which I thought would be helpful to the Committee but which clearly was not terribly helpful.

10.15 pm

Lord Campbell-Savours: So, basically, the point being made is that unless you both work full-time, you will not be able to buy one of these houses.

Baroness Williams of Trafford: No, my Lords, I was simply giving an example of a couple who work and who are on the average wage. Every single case is different; I was simply giving an average scenario. We can make all sorts of different assumptions—for example, about a scenario where one person works in the household and they earn £50,000, and so on—but I was simply giving the example of an average working couple.

Lord Shipley: My Lords, this might help the Minister. I think it is the case that the Government's figures on what is a median income, and therefore the affordability of a starter home, are different from the figures given by a number of the other agencies—for example, Shelter—that are giving evidence to those engaged in this debate. It would be very helpful if the Minister could, before Report, write to noble Lords who have been engaged in this debate with a clear explanation of the figures which the Government are using to sustain their case.

Lord Kerslake: To add to that, it is not good enough simply to look at national averages on this issue. You absolutely need to see the figures broken down by region.

Lord Stunell (LD): When the Minister writes, can she specifically say how many residents in Stockport, which is the borough in which I live, have the two full-time incomes to which she refers? That would be quite a handy ready reckoner for us as regards assessing the information she intends to give us.

Lord Kennedy of Southwark: The noble Lord, Lord Stunell, makes a very good point; for example, would it apply to Norfolk, where my noble friend lives? Whether it is one person or two people, they will not get to the £45,000 she is talking about.

Baroness Williams of Trafford: The noble Lord is absolutely right. We talked about shared ownership earlier on. It may well be the case when one person works and they are on the average or median wage—and by the way, I will write to clarify what might be the art of the possible borough by borough if necessary, which it sounds like I am on the way to doing. Of course, if you look at my borough, it is split down the middle as regards the demographic. I have completely lost my train of thought. It may be that other products such as a shared ownership scheme might be the most appropriate to somebody where the whole household earns the median wage. I was simply trying to illustrate this by an example and I am slightly regretting it now—but I will write to clarify this.

We need a radical shift in the way the housing market supports the young first-time buyer, otherwise we condemn a whole generation to uncertainty and insecurity. As I said earlier, over the last 20 years the proportion of 40 year-olds who own their own home has gone from 61% to 38%.

In specific response to Amendment 37, Clause 1 sets out our position clearly. This consistency of approach is important to ensure our reforms are widely understood, particularly by lenders and developers, and that delivery is maximised. Starter homes are a national priority and all local authorities must play their part in delivery. But as I made clear at Second Reading, and earlier this evening, they are just one part of the package of affordable housing options, and they will increase the choices available to those who wish to own their own home. There is a range of products available, and starter homes will be, rightly, part of that mix. We support the delivery of other tenures. We have funded the delivery of other tenures over this spending review period. But we do not believe that the amendment presented here will serve any useful purpose.

The noble Lords, Lord Shipley, Lord Best and Lord Beecham, talked about the Savills and Shelter reports. We expect starter homes to be an entry-level property valued at below the average first-time buyer price for that local area by its very nature. But Savills and Shelter based their work on average house prices. We have examined the affordability of homes to those currently in the private rented sector. Assuming that those households sought to buy in the lower quartile of the first-time buyer market for new-build housing and moved within regions to areas where they can afford to buy, we found that outside London up to 64% of households currently renting privately would be able to secure a mortgage on a starter home, compared to only 50% who could now buy a similar property priced at full market value. Within London, up to 55% of households currently renting privately will be able to secure a mortgage on a starter home, while only 43% could now buy a similar property priced at full market value. I think that the noble Lord, Lord Campbell-Savours, does not believe me.

The noble Lord, Lord Shipley, made a point about starter homes and increasing housing supply. We are designing our starter-home reforms to increase housing supply and not just to change tenures. We want the planning system to release more lands specifically for starter homes, for instance on underused brownfield land not allocated for housing. This is being supported by our £1.2 billion new starter homes land fund, which seeks to propose more brownfield sites for starter homes.

On Amendment 47, the noble Baronesses, Lady Bakewell and Lady Pinnock, and the noble Lords, Lord Shipley and Lord Greaves, argued—in fact, the noble Baroness, Lady Pinnock, did not speak; I am giving her credit when she is not here. The other noble Lords argued that the duty to support starter homes should extend to other types of affordable housing. Clause 3 expects councils to actively support starter homes as a new product in their housing mix. It does not remove the ability to deliver other affordable housing alongside starter homes. Nor does it remove their local planning policy. I expect that most councils will continue to support delivery of a range of affordable housing and have planned policies to help achieve this.

Councils are very aware of their commitments to meet local housing needs, and they will strive to meet these needs. That plays into the point made by the noble Baroness, Lady Hollis, about support for localism other than the duty to provide for starter homes. The Government completely recognise that local councils will be very keen to support delivery of the range of housing products available according to their local needs.

The Government's record on affordable housing delivery is strong. There were 193,000 affordable homes delivered in England between 2011 and 2015, exceeding the Government's target by 23,000. In addition, councils are in a position to bring forward more land for affordable housing. More council housing has been built since 2010, as I said, than was built in the previous 13 years, and 2014 saw the highest number of council housing starts for 23 years.

Baroness Grender (LD): Does the Minister dispute the figures that the noble Lord, Lord Kerslake, gave, that in 2018 this will dramatically drop? The reason is that these were decisions of the coalition Government, and therefore there is a question mark over the continued commitment to these building levels under this Government.

Baroness Williams of Trafford: My Lords, given that some of the figures I have quoted are over the last year, it is possibly slightly stretching the point to say that it was coalition delivery rather than ours, but I am not going to argue at this hour of the night about who can take the credit for what. We have doubled investment in housing.

Baroness Grender: It is not about credit, but about the drop-off point in 2018 and whether there is a continued commitment to building affordable social housing.

Baroness Williams of Trafford: My Lords, the money is in the Budget. Affordable homes for rent are grant funded. Contrary to what one might think, they will be the first, not the last, to be built out because they are grant funded. They effectively act as pump-priming money for developers to build. I do not agree with that point.

Lord Kennedy of Southwark: I think the point that the noble Lord, Lord Kerslake, made was that this was money agreed in 2015 that covered 2015 to 2018. The noble Baroness said that the money is in the Budget. Is she saying that there is money available for future years? Is that correct, or are we talking about money that will finish in 2018 and we will then decide what will happen post that?

Lord Kerslake: Perhaps I may say a few more words. The way the process works for affordable housing is that there is a bidding process through housing associations, which bid in effect in 2014-15 for the funding for a programme from 2015 to 2018. That is how they bid. What we are seeing now between 2015 and 2018 is essentially the completion of a programme that was bid for and allocated largely prior to the election. If noble Lords look at the numbers for the last Budget—this is all in the public domain—they will see that the grant funding beyond the 2015 to 2018 programme, which effectively was committed, ends,

[LORD KERSLAKE]
or largely ends apart from specialist housing. That was the point I was making. There is no continuation of that policy beyond what was already bid for and largely allocated.

Lord Kennedy of Southwark: I thank the noble Lord. That is a very interesting point. I am sure we will return to it when we consider the rest of the Bill.

Baroness Williams of Trafford: Would the noble Lord like me to respond to that point? I am sorry, I have slightly lost track of who I am responding to. I will carry on and noble Lords can interrupt me if I have not covered something.

It is clear that starter homes are a new product and will provide genuine opportunities for young first-time buyers to gain a secure position on the housing ladder. We want councils to really get behind delivery. For this reason, we want the duty to focus on starter home delivery. We expect this duty on councils to encompass a wide set of activities, such as working with neighbourhood planning groups on starter home delivery and identifying exception sites for starter homes. The Secretary of State will issue guidance setting out what councils should do to meet this, which they must have regard to.

Lord Stunell: May I take the Minister a little further on the point that the noble Lord, Lord Kerslake, made? If there was a defect in the coalition Government's housing policy, which I would be reluctant to concede, it would be that that Government failed in their first year to initiate a programme of social and public housing quickly enough. Will the Minister take back to the department the fear that I believe the noble Lord, Lord Kerslake, and I share, that that mistake is being repeated? No doubt in a period of time the Government will reflect that they need to restart that programme and ensure that it continues beyond 2018. It is a question of learning from experience, which I very much hope this Government and the Minister will be willing to do.

Baroness Williams of Trafford: I will certainly take the noble Lord's point back. Our affordable homes funding is front-loaded, as we want to continue our strong tradition of delivering affordable homes for lower-income families. The noble Lord, Lord Kerslake, will recall that our previous affordable homes programme overdelivered by 23,000, totalling 193,000 affordable homes delivered in England between 2011 and 2015. From 2018 onwards there will be substantial further funding going into the system through receipts from right to buy and the sale of vacant, high-value assets to generate additional homes for every one sold.

10.30 pm

I turn now to Amendment 48. As I have made clear in responses to previous amendments, the Government are committed to investing further in the delivery of affordable houses, and local authorities will still be expected to plan their housing development around the needs of their communities. However, our manifesto was clear that we would build 200,000 starter homes and this is central to our housing ambitions. Clause 4 provides for a starter home requirement to be set for new developments. We will publish details in a technical consultation shortly and will take into consideration all views so that we get this right. We want a degree of flexibility with the requirement to allow for exemptions and viability considerations.

Once in place, local planning authorities will need to apply their plan policies including those on affordable housing in light of the legal starter homes requirement. We expect them to seek other forms of affordable housing, such as social rent, alongside the starter homes requirement where it would be viable to do so. Local planning authorities have the option to release more land for housing to ensure they are delivering as much housing of all tenures as is needed. The amendment would serve to make starter homes an afterthought. It would deprioritise the needs and aspirations of these young people. I hope the noble Lord will recognise the importance of supporting young people into home ownership and withdraw his amendment

Amendments 48A, 48C, 48F, 49 and 50B would all require that the starter homes requirement will apply in a local authority area only once a full assessment of the need for starter homes in that area has been completed. Specific types of housing are referenced, including supported housing and retirement housing. But this clause is about taking action now, as noble Lords have just articulated, and we need to help young people access home ownership due to the increasing challenges they face in getting on to the property ladder.

I understand that housing markets and needs differ across the country but the aspiration to own a new home does not. Every first-time buyer under the age of 40 should have the same opportunity to buy a starter home. I do not expect that there is a single local authority in the country where no one wants a starter home. Indeed, the 69,000 people who have chosen to register on the Home Builders Federation website for information on starter homes are drawn from all over the county—Manchester, Bristol, Birmingham and many small rural communities.

Amendments 50 and 50D seek to amend Clause 4 to exempt various types of sites from the requirement to provide starter homes, particularly where specialist housing is being provided for and in age-restricted schemes. Specialist housing is a vital part of meeting housing need. The noble Lords, Lord Campbell-Savours and Lord Stoneham, challenged me on how to protect these groups. Over the spending review there will be £400 million for 8,000 affordable specialist homes for elderly and vulnerable people and those with disabilities.

I have just realised that I have possibly missed out an amendment—yes, Amendment 48B from the noble Earl, Lord Listowel. He talked about families requiring temporary accommodation and accommodation for key workers. There are a range of tenures available which could accommodate key workers, and councils can promote affordable housing schemes for key workers if that is a particular need in that area. Furthermore, under the Homelessness Act 2002 all local housing authorities must have in place a homelessness strategy setting out the local authority's plans for the prevention of homelessness. In developing the strategy the local

housing authority must work with all relevant agencies in the local area. Housing needs are already considered carefully at the local level and I do not think the amendment is necessary.

I want to answer the point made by the noble Lord, Lord Cameron, about building starter homes when more affordable housing is needed in rural areas. We are consulting on planning reforms to allow starter homes on rural exception sites to help villages thrive. That includes an option to retain local connection tests on these sites.

I think that that is probably it. I hope that at this very late hour, with that set of explanations, noble Lords will feel free not to press their amendments.

Lord Kennedy of Southwark: My Lords, I thank all noble Lords who have spoken in this debate today. The noble Lord, Lord Shipley, made some very important points about us all being in policy silos. That has been demonstrated by the discussions we have had in the debate this evening.

The noble Lord, Lord Best, and others, talked about the NPPF guidance, the starter home obligations and the resultant conflict which needs to be addressed very seriously by the Government. There is clearly a conflict and that cannot be right, and it will not be sustainable. The noble Lord, Lord Young of Cookham, referred to what is happening in Chichester. I had a look at the article he referred to. It went on to say that from 30% affordable housing it moved to 50% starter homes, no affordable housing, no nomination rights and no local connections—not all good news, I suggest.

The noble Lord, Lord Kerslake, spoke about the overriding nature of the starter-home proposals in relation to other housing tenures and how this will replace much-needed social rented housing. There are real issues there about what will happen in future years, as we heard earlier. The noble Earl, Lord Listowel, talked about people living in poor housing accommodation. I must say that that reminded me of my parents' excitement when they got the letter from Southwark Council saying that we were going to be rehoused. I was about nine years old and we lived in some quite poor, damp, unsuitable property. We moved to a clean, warm, dry, safe—and, I must say, large—council flat. I am the eldest of four children. I had my own bedroom and no longer had to share with my brother. We were both delighted and the lives of the whole family improved just by moving to that new property.

The noble Lord, Lord Stoneham of Droxford, raised the important point about rising homelessness and also the increasing housing benefit bill with more homes being in the private rented sector. My noble friend Lady Royall of Blaisdon highlighted the importance of good social housing as part of a proper mix and the particular challenge in rural areas, as did the noble Lord, Lord Cameron of Dillington. My noble friend Lady Hollis of Heigham set out with her usual skill how a successful local policy on housing, properly planned and delivered, can have enormous benefits and deliver the stable communities and economic benefits that we all want to see.

This has been an interesting and useful debate, and I hope that the Minister can take back to the department our deep concern at these proposals. I hope that she will reflect fully on this debate but also on the other debates we have had today. With that, I beg leave to withdraw the amendment.

Lord Beecham: My Lords, I wonder, having regard to other affordable issues such as affordable transport for members of the staff, whether it might be possible just to refer over the next two minutes to some information from Savills which may be relevant to our further discussions. I gather that a penny or two has dropped with the Minister.

In one of its many contributions to the debate, Savills said that as it currently stands, the biggest concern is that the starter homes policy could distort a new-home sale market without significantly increasing the number of new homes delivered overall. It explained that there was a risk that starter homes could cannibalise help-to-buy sales as well as existing open-market sales aimed at first-time buyers. Furthermore, Savills states that the classification of starter homes as a form of affordable housing under planning rules, and the duty on local authorities to promote the supply of starter homes, is likely to result in fewer homes being delivered for what is currently classified as an affordable tenure. It therefore expects to see fewer homes delivered for affordable rent.

Given the lack of detail released, it is not clear what the interaction would be between shared ownership and starter homes. Perhaps as we go forward into subsequent debates about this proposal, the Minister could give a clear indication of the detail behind these schemes. It appears that there is a clear overlap between parts of the market likely to be served by Help to Buy, starter homes and shared ownership, particularly in London. We have not heard anything as yet about Help to Buy, and the relationship of this new scheme to that and the possible impact on Help to Buy. There seems to be some thinking that the two might merge. That is a matter that perhaps the Minister might consider, either in writing or in subsequent debate.

Lord Kennedy of Southwark: I thank my noble friend. I was getting a bit nervous there; I thought he was going to intervene on me, but we are a good double act. Having said that, I think it has been a very good debate this evening. I hope that the Minister will look at this issue very carefully because it will almost certainly come back on Report. I beg leave to withdraw the amendment.

Amendment 37 withdrawn.

Amendment 37A not moved.

Clause 1 agreed.

House resumed.

House adjourned at 10.41 pm.

Grand Committee

Tuesday 1 March 2016

Armed Forces Bill

Committee (1st Day)

3.30 pm

The Deputy Chairman of Committees (Baroness Stedman-Scott) (Con): My Lords, welcome to the Grand Committee. If there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division Bell rings and resume after 10 minutes.

Clauses 1 to 5 agreed.

Amendment 1

Moved by ***Lord Thomas of Gresford***

1: After Clause 5, insert the following new Clause—

"Membership of the Court Martial

(1) Section 155 of the Armed Forces Act 2006 (constitution of the Court Martial) is amended as follows.

(2) In subsection (3)(b), leave out from "rest" to end of line and insert "may be drawn from all ranks who are qualified for membership and not ineligible under section 157."

(3) In subsection (4) at end insert "which may, in particular, provide that the persons specified in subsection (1)(b) be drawn from each and every branch of the armed services.""

Lord Thomas of Gresford (LD): My Lords, I start by reminding your Lordships that at Second Reading I expressed my concern about the reputational damage that might be done to the forces' disciplinary service by the possibility of future cases attracting the sort of adverse publicity that has occurred in the past. When we dealt with the 2006 Act we sorted out many of the problems that then existed, and the system was completely changed so as to reflect decisions made in the European Court of Human Rights about fair trial. I had no concerns about Sections 1 to 39 of the Act, which dealt with what I regard as disciplinary offences—indeed, "discipline" and "offences" are headings in Part 1 of the Armed Forces Act 2006. They might be offences such as assisting an enemy, mutiny, desertion, insubordination, neglect of duty, offences against service justice, hazarding of ships and so on. To my mind, those things were satisfactorily dealt with at that time.

However, Section 42 of the Act was concerned with criminal conduct. Repeating provisions in earlier service disciplinary Acts, it effectively made an ordinary criminal offence part of the service discipline system, so that:

"A person subject to service law, or a civilian subject to service discipline, commits an offence … if he does any act that … is punishable by the law of England and Wales; or … if done in England or Wales, would be so punishable".

In other words, the whole corpus of the criminal law that is used in our ordinary criminal courts was imported into the service disciplinary system.

At that time, I moved certain amendments having regard to Section 42 which I hoped would mirror the proceedings that happen in the Crown Courts of this country when such criminal offences come before those courts. I do not apologise for repeating some of those amendments today.

We were concerned particularly about justice between state, the prosecution and the defendant, but there is another element in it which I think was of less significance at that time than it is now; that is, the position of victims. We have seen such adverse publicity—including, for example, the Sergeant Blackman case—which is damaging to the service disciplinary procedures. It is very often proceedings or publicity that is sought by the victims of various offences.

I want to take a step back to look at the police and the banks in this context. As an example, PC Harwood was prosecuted for manslaughter in the Old Bailey for the death of Ian Tomlinson, the person whom he struck in a demonstration in the City of London in 2009. If that prosecution had been carried out by senior officers in the police and they made the decision that he was not guilty of the manslaughter offence—as he was found by an ordinary jury in the Old Bailey—I am sure that there would have been very great public concern. Had the officers who were concerned with the death of Jean Charles de Menezes in 2005 been prosecuted before a panel of senior police officers, there would have been a public outcry.

Some years ago under the Labour Government we were concerned with attacks upon the jury system. There was a strong call at that time for there to be special juries consisting of City people—accountants, bankers—who would understand the workings of the City in a way which an ordinary jury, it was argued, could not possibly comprehend. That was before the 2008 crash. Bankers have become rather less popular than they were in those days. One can imagine the public outcry that would have followed if bankers had been asked to determine the guilt or innocence, the honesty or dishonesty, of one of their own kind.

I know that there are differences, but I use the police and bankers to illustrate public perceptions of justice that is carried out by the services. I do not agree that there is injustice, but I suggest that there is a lack of confidence among the public and victims regarding the way that their concerns may be treated in the military court martial system. I declare an interest as the chairman of the Association of Military Court Advocates. I have had experience of serious murder cases and so on in the services and I have every confidence in the judges and those who appear in those court martial courts. However, I am concerned about public perception.

There are two ways in which one can approach this. One can say, let us change the system so as to make it closer to the Crown Court. Or one can say, take the serious offences away from the court martial system altogether. I am following both as alternatives in the amendments I am putting forward. I am now speaking to Amendments 1, 2 and 3 and draw your Lordships' attention to them.

The first amendment would widen the pool of those who can sit on the panel that decides guilt or innocence in a court martial. Instead of having officers and perhaps one warrant officer—the most senior of the other ranks—sitting on a court martial as at

[Lord Thomas of Gresford]
present, it should be open to all ranks. There are those who are used to looking at the forces as a family with a familial feeling towards its members and who feel that officers are responsible for their men, as they know them and they know the circumstances, and that they should be the people who decide and so on. I know that that is the system but there is nothing particularly revolutionary about having all ranks sitting on courts martial. Although there are criticisms of the American system of courts martial, voiced in particular by my opposite number in the United States and the national military justice organisation that he heads, nevertheless in 1952 it was decided that other ranks could sit on courts martial where a defendant asked for that.

It seems to me that the time has come to widen to other ranks the people who can appear in courts martial, so Amendment 2 says:

"A person is qualified for membership of the Court Martial if he or she is a serving member of the armed forces and is subject to service law".

It does not have to be an officer or a warrant officer; people can be drawn from a wider pool. It is my view that that would give rather more public confidence in the system of courts martial than the top-down system that we have at the moment, and have always had, of officers and the warrant officer sitting in judgment.

Noble Lords will see that Amendment 3 deals with another aspect. Whereas in the ordinary courts of this country where we have a jury sitting, guilt is established either by the unanimous verdict of the jury or by a majority consisting of no less than 10:2 or, if the jury has dropped to 11 members, 9:2, the system in the Armed Forces is, and always has been, that it is determined by a simple majority. Therefore, if five sit on the panel, a person can be found guilty by 3:2, and, if seven sit, it can be 4:3. The way in which the panel votes is never made public. It is never said that this is a majority verdict; a simple majority verdict is returned. Consequently, in Amendment 3 I suggest that we should change the system and that, where there are not fewer than seven members of the court, five should agree on the finding, and, where there are five members of the court, four should agree on the finding.

I repeat that the current position is that the judge advocate has no vote. If the finding is one of guilt, the president should state in open court the numbers who agreed and dissented from the finding and the panel should have time, as does an ordinary jury, to consider reaching a unanimous verdict before coming to its conclusion. At the moment, it is theoretically possible for the panel to retire and for a verdict by a simple majority to be passed immediately, with the panel returning to court and delivering the verdict. If the verdict is one of guilt, the defendant does not know that there were those who did not accept the finding.

New subsection (5) proposed under proposed new subsection (2) in Amendment 3 is also important. Currently, the panel with the judge advocate taking a part determines the sentence, but we have got to a situation where sentencing is so complex that I suggest that the judge advocate alone should pass the sentence—there are so many options and precedents that it should not be decided by the panel—after consultation with the members of the court martial.

3.45 pm

I shall return to the basic theme that I am putting forward. I know that there are those in senior command who feel that, in some way, there is interference with the line of command by taking the judicial system outside. Well, that has already been done: it happened in 2006. There is now an independent Director of Service Prosecutions. There is a Judge Advocate-General and there are judge-advocates, who are not serving members of the military. We apply in courts martial more or less the rules of court, as are determined in the Crown Court, so it has moved a long way from its original set-up. I think that it should move that little bit further in order to give the public more confidence in the findings that it makes. I beg to move.

Amendment 1A (to Amendment 1)

Moved by ***Earl Attlee***

1A: After Clause 5, after subsection (1) insert—

"( ) For subsection 1(b) substitute—

"(b) 12 other persons ("lay members")."

( ) For subsection 2(a) substitute—

"(a) 12 lay members; or"."

Earl Attlee (Con): My Lords, I remind the Committee that I still have an interest as I will be commissioned until October, when I have to retire.

At Second Reading, the noble Lord, Lord Thomas of Gresford, suggested that we needed to look at the composition and operation of the court martial. The Minister said that it would be a big change to alter these arrangements. However, that is why we have a quinquennial review. The MoD can quite easily change the court martial rules but bigger changes are a matter for us in Parliament.

One of the problems we have with some of the suggestions from the noble Lord, Lord Thomas of Gresford, is that we have very little idea of how either a civil jury or a court martial board works because research is illegal, except for certain criminal investigations. Therefore, the Minister cannot prove that the system is as good as we can make it, and the noble Lord, Lord Thomas of Gresford, cannot show that it is defective—we do not know how the system operates. The difficulty is particularly relevant to the noble Lord's amendment on majority verdicts. The Committee needs to remember that the board of a court martial is not a jury; it is composed of officers and warrant officers superior in rank to the defendant. My Amendment 11 proposes to permit closely controlled research into how the board works. I envisage that this would take place soon after all normal appeal rights had been exhausted or were time-expired. Members of the board would not be told in advance that they would be contributing to the research, and there would have to be numerous other protections.

In Amendment 1, the noble Lord, Lord Thomas, proposes that the board of a court martial be composed of "all ranks". Presumably, if the amended is accepted, court martial boards would provide that members must be at least one rank superior to the accused. Interestingly, I do not have a problem with his proposal,

provided that the noble Lord recognises that he is moving away from a very select panel who have already been chosen as officers and warrant officers on the basis of a whole range of qualities that other ranks do not necessarily possess. If he wants to do that, I think we will need a military jury of 12. They will still understand the military context, which is surely the reason we have a military court martial, and the increased number I am suggesting would make up for any reduction in intellectual horsepower. I would suggest that on average a military jury could be of better quality and more suited to these cases than a civilian one, and therefore an all-ranks military jury could be just as reliable as a civil jury.

However, there are some snags. I suspect that the noble Lord feels that an all-ranks board would be more forgiving and understanding. I am not convinced. For instance, I fear that an all-ranks board could be swayed by the accused appearing to be a rotten soldier when military jury members are sure that they are not. The officers on the board of a court martial would put that to one side and study it with much more intellectual rigour. I suspect that the noble Lord would still have some officers on the board or the jury, but I cannot really envisage a junior NCO asking searching questions to test an officer's position on a case, even though a large proportion would undoubtedly be able to do so. A warrant officer certainly would, which is why we already have them on the board.

Finally I turn to the noble Lord's amendment concerning who determines the sentence. If we went for a military jury of 12, this would be merely a consequential change. Again, I suspect that the noble Lord, Lord Thomas, believes that the judge advocate would be more lenient. I have to tell the Committee that I have heard, although I should not have, that on one occasion the board of a court martial in Germany dealing with an assault case regretted not being able to consider a not-guilty verdict because the accused pleaded guilty. Nevertheless, the judge advocate was recommending quite severe penalties which the board had to resist strongly. In any case, complex though the matters are, the judge advocate tells the members of the board of the court martial what their options are. The sentence is internally reviewed and the case can then be taken to the court martial appeals court, so it is not clear to me what can go wrong.

Lastly, I do not have a view on the noble Lord's suggestions about which offences should be triable only in a civilian court.

Lord Tunnicliffe (Lab): My Lords, the first two groups for debate today discuss the generality of military law. The first group relates to how an individual is found guilty and sentenced, while the second group deals with the extent and scope of the body of military law. I make the point because I take a very different view about the extent to which we should consider changing the two groups, and hence these groups of amendments. We will come on to debate the second group, but I approach the first group from the point of view of the rights of the citizen who, as a member of the Armed Forces, has become the accused. I find the arguments put forward by the noble Lord, Lord Thomas of Gresford, persuasive. With that individual having committed an offence and gone into a process which is now so analogous to that of a civil court, I find quite strong the idea that the individual should have the right to a trial that is analogous to that in a civil court.

The amendments before us would, first, create more of a jury of the individual's peers and, secondly, produce a voting system that is much closer to that of a Crown Court, which seeks unanimity. The proposals put by the noble Lord, Lord Thomas, are close to unanimity in their form. The reforms the noble Lord is suggesting would mean that the rights of the individual who has been accused would become increasingly similar to those of a normal civilian in a criminal case. Since 2006 we have developed the three bodies of law, brought them together and introduced civilian best practice—there is probably a better way of putting that, but it is essentially what we have done—so I find this next step very attractive.

As an alternative or as a supplement, the noble Earl, Lord Attlee, has suggested a minimum number of 12 on the board. That is an interesting suggestion which again is in step towards achieving similarity, and I would guess that he has suggested the figure on the basis that while such a revolutionary change might not appeal to the Government, there is also the idea of an inquiry to see how courts martial work to see if that could be a step towards reform.

Clearly, and I have sat on that side, these amendments will not work and there will be something wrong with them. However, that is irrelevant. What matters is: should we make steps in this direction using this quinquennial Act? We do it only every five years and I would find unconvincing the argument that it is not appropriate. I am putting a burden on the Government, today and perhaps in subsequent meetings and in writing, to argue the case for why we should not move in the general direction of these amendments and make the whole process for the defendant more analogous to that of a civil court.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, I am very conscious of the close interest taken by the noble Lord, Lord Thomas of Gresford, and my noble friend Lord Attlee, as well as by the noble Lord, Lord Tunnicliffe, in the operation of the court martial and I welcome the opportunity to discuss these matters today. The first amendment of the noble Lord, Lord Thomas, would amend Section 155 of the Armed Forces Act 2006, which makes provision with respect to the constitution of the court martial. It provides that only officers or warrant officers may be lay members of the court martial. As the noble Lord explained, Amendment 1 would change this; it would also provide that court martial rules may provide that lay members must,

"be drawn from each and every branch of the armed services".

The noble Lord's next amendment, Amendment 2, would insert a new Section 155A into the 2006 Act. The effect of proposed new Section 155A would be to allow serving personnel of any rank to be lay members.

The court martial consists of a judge advocate and between three and seven lay members. Lay members of a court martial, who are also referred to as the panel or the board, have a role in relation to findings

[Earl Howe]
on a charge and sentencing. The lay members for any proceedings are specified by or on behalf of the court administration officer. Only commissioned officers and warrant officers may be lay members. Amendments 1 and 2 would change this, as I have said, by allowing members of the Armed Forces of any rank to be lay members.

It will not surprise the Committee to hear that I am resistant to the proposals that the noble Lord, Lord Thomas, has put forward. The first point I wish to make in response is that the existing rules governing lay membership of the court martial result from the fact that the court martial is part of an overall system of justice and discipline. Those rules recognise the importance of experience of command and the exercise of service discipline at a sufficiently high level to enable lay members to assess the actions of those who appear before them in the court martial in the appropriate command and disciplinary context. The role of a lay member in the court martial differs from that of a juror in a Crown Court trial. In the Crown Court, the jury's role is limited to findings of fact: sentencing is a matter solely for the judge. In the court martial, the lay members and the judge advocate vote on the sentence. In considering sentencing, they must have regard to the maintenance of discipline, so must have a strong understanding of what things affect discipline and what things do not.

All service courts have to apply the statutory principles set out in the Armed Forces Act 2006 as to the purpose of sentencing. These are closely based on the civilian sentencing principles but include, in addition, "the maintenance of discipline" and the reduction of "service offences"—that is, both service discipline offences, such as looting or absence without leave, and criminal offences.

These principles reflect four special aspects related to the service justice system. The first is the existence of disciplinary offences unknown to the general criminal law, such as absence without leave. The second is the fact that the military context of an offence may be relevant to sentencing—for example, an assault against a superior or an inferior may make an offence more serious, and then there is the well-known naval concern about the effect on morale and discipline of mess-deck theft.

4 pm

The third aspect is that even if the offence is not committed in a service context, the sentence imposed may be justified by reference to the fact that the offender is in the Armed Forces—for example, a drugs offence may be seen as more serious if committed by a member of the Armed Forces because of the services' policy on drugs and the fact that members of the Armed Forces are well aware of this. The fourth is that the Armed Forces Act 2006 provides for certain penalties that require an assessment of whether they are appropriate from a broadly disciplinary point of view; service detention and dismissal are the main ones. It is for these reasons that there is a direct involvement of the lay members in sentencing.

There is a risk that more junior members of the Armed Forces may lack experience of command and of the exercise of service discipline at a sufficiently high level to enable lay members who assess the actions of those who appear before them in the court martial in the appropriate command and disciplinary context. The second point to make is that the existing rules also seek to guarantee the independence and impartiality of those members, to ensure that each member may act in accordance with conscience. I suggest that the presence on a court martial board of lay members of considerably more junior rank than the accused or other board members may put that at risk. That is also why provision is made in court martial rules so that the president of the board must always be of superior rank to every person to whom the proceedings relate.

Lord West of Spithead (Lab): My Lords, if I may interject, I have been a president of a court martial board, I have sat on a court martial board and indeed I have been court-martialled, which most people here probably have not. What I wanted to say was that I agree completely with what the Minister has been saying, and it is really important. You could answer the question with the discipline aspect. The knowledge of what instils discipline, and what is important for it, is one of the crucial aspects of this, which makes it different from a case of someone being accused of murder, for example. So much is to do with the application of discipline.

Earl Howe: The noble Lord, as so often, has hit the nail right on the head. What he said encapsulates much of what I have been saying, and I am grateful to him.

Amendment 1 would enable court martial rules to provide that members must be drawn from each and every branch of the armed services. The current law allows for the appointment of members of any of the three services to a court martial panel. Before the 2006 Act, when each of the three services had its own separate system of service discipline, the panel almost always consisted of members of the same service as the accused. The current practice is to appoint lay members, the majority of whom come from the same service as the accused, but this is not set down in law. There is therefore nothing in law to prevent lay members in any particular case being drawn from any branch of the armed services, so I suggest it would not be necessary to amend legislation to achieve the effect required.

The composition of the panel was considered by the House of Commons Select Committee during the passage of the Bill that became the 2006 Act. General Sir Mike Jackson said to the committee at the time:

> "For me the default setting would be that the soldier … on the face of it will be more comfortable being tried by members of his own Service".

The committee considered that where a mixed panel of lay members was appointed, the senior lay member and the majority of members should come from the same service as the accused.

The noble Lord's Amendment 3, on court martial findings and sentence, would change the law governing decisions of the court martial on findings of guilt or innocence, and sentence. The court martial system allows conviction or acquittal by a simple majority of

the lay members of the court martial, with no need for a retrial in the event of a lack of unanimity or a qualified majority.

The judge advocate does not vote on findings of guilt or innocence. In the case of an equality of votes on the finding, the court must acquit the defendant. The lay members are directed, if at all possible, to reach a unanimous verdict, and to decide by a majority only if they cannot all agree. That provides a considerable safeguard against the lay members moving too easily to a majority decision. As the noble Lord, Lord Thomas, indicated, this is a long-established process: the service discipline Acts of the 1950s, which preceded the Armed Forces Act 2006, also provided for majority decisions at court martial. The great advantage of reaching a decision by majority is that it avoids a "hung jury": there is no need for a retrial in the event of a lack of unanimity or a qualified majority.

The Crown Court process is that unanimity or—with the judge's permission—a qualified majority is required for any verdict: guilty or not guilty. If unanimity—or a qualified majority—is not achieved, there is a "hung jury", and this produces a retrial, not an acquittal. Importantly, under the existing court martial process, the accused may be convicted by a simple majority, but he or she may also be acquitted by a simple majority. In the Crown Court, most of a jury may wish to acquit an accused but cannot achieve the necessary unanimity or qualified majority, yet the accused may be retried by a new jury, who may convict.

The court martial process also has the advantage that it allows a decision to be made without it being apparent whether the verdict is unanimous or by majority. As the panel must keep its voting secret and is not required to seek the court's permission for a majority decision, there are no lingering doubts outside the court about whether an acquittal was correct. It is for these reasons that proposals for unanimous or qualified majority verdicts in the court martial have up to now been rejected.

My noble friend Lord Attlee suggested that we could not show that the current system is satisfactory. The Government have been successful in establishing both in the European Court of Human Rights and in the civilian courts that the court martial system is in principle safe, independent and impartial. The current system for majority verdicts has been considered twice by the Court Martial Appeal Court in the last five years and was on both occasions held to be fair and safe. The Court Martial Appeal Court, which is made up of the same judges as sit in the civilian Court of Appeal, has held that there is no ground for deciding that a verdict by a simple majority of the lay members of a court martial is inherently unfair or unsafe. They noted, among other points, that the overwhelming majority of criminal trials in England and Wales are decided in magistrates' courts and the process of simple majority verdicts is long established in those courts.

The issue of majority verdicts was raised by Sergeant Blackman—as was referred to by the noble Lord, Lord Thomas—in his appeal against conviction in 2014. He argued that it was discriminatory to apply trial by the court martial rather than trial by jury in the Crown Court because the court martial offered less protection to the accused than jury trial. The Court Martial Appeal Court again held that trial by the court martial on the basis of a simple majority was not unsafe or unfair; moreover it was not discriminatory.

I should add that Amendment 3 would make very different provision in the service system from that in the criminal justice system if it is the noble Lord's intention that there must be a panel of at least five lay members in all cases in the court martial, even in cases equivalent to those which may be tried in the civilian system by a single magistrate or three lay magistrates, who may make decisions by simple majority. That difference in provision would in one respect be magnified yet further by the amendment tabled by my noble friend Lord Attlee to increase the size of the panel of lay members on court martial cases to 12.

Amendment 3 would also expose the deliberations of the lay members of the court martial. Proposed new subsection (3) would require the president of the lay members to state in open court the number of panel members dissenting where the majority finding is that the defendant is guilty. One important safeguard of the independence of the lay members of a court martial is the confidentiality of their deliberations. The question whether court martial verdicts are unanimous or by majority is not asked or investigated at all. This safeguard is in place to produce a fair trial process. For this reason, the Armed Forces Act 2006 makes provision about offences relating to members of the court martial and their deliberations. It contains provisions which mirror those in the Criminal Justice and Courts Act 2015 which apply to jurors in the Crown Court. Under these provisions, it is an offence for a person intentionally to disclose information about statements made, opinions expressed, arguments advanced or votes cast by members of the court martial for proceedings in the course of their deliberations. It is also an offence to solicit or obtain such information. This is subject to exceptions but these are very limited. For example, the offence is not committed where information is disclosed for the purposes of an investigation into whether an offence of contempt of court has been committed by, or in relation to, a lay member.

In the Government's view, the confidentiality of the deliberations of lay members should not be compromised unless there is a compelling case for doing so, such as for the purposes of an investigation into whether an offence of contempt of court has been committed. We are not convinced that there is a compelling case for requiring voting figures to be disclosed.

The effect of the proposed new subsection (4) would appear to be to expose whether conviction or acquittal was unanimous or by majority. In our view, it should never be known that a defendant has been acquitted by a majority decision. Consistent with the position which applies with jury verdicts in the Crown Court, we think that it would be wrong in principle for any request to be made of the lay members which identifies an acquittal by a majority where the defendant is acquitted. The acquitted defendant should not be exposed to public ignominy consequent on the recording of the fact that one or more lay members was convinced of his or her guilt. The same arguments may be made

[Earl Howe]
in response to my noble friend Lord Attlee's Amendment 11, which would make provision for academic research into the workings of the board of lay members in court martial cases. We are not, therefore, convinced that there is a compelling case for compromising the confidentiality of the deliberations of lay members by allowing research of the kind proposed by this amendment.

Returning to Amendment 3, another effect of this amendment would be to change the role of the lay members in court martial trials. In response to Amendments 1 and 2, I explained how the role of a lay member in the court martial differs from that of a juror in a Crown Court trial. In the Crown Court, the jury's role is limited to findings of fact and sentencing is a matter solely for the judge; in the court martial, the lay members and the judge advocate vote on the sentence. In the case of an equality of votes on the sentence, the judge advocate has a casting vote. The judge advocate advises the lay members on the appropriate sentencing guidelines for the offence.

Proposed new subsection (5) in Amendment 3 would change this by making the determination of sentence a matter for the judge advocate alone, although he or she would be required to consult the lay members. We would see that change as an erosion of an important difference between the civilian criminal justice system and the service justice system. The military context and service experience should be considered during sentencing as well as in findings of guilt or innocence. I submit that the input from the board members on sentencing is thus very important.

As I explained earlier, the existing provisions governing sentencing reflect the fact that the court martial is part of an overall system of justice and discipline. I spoke of how all service courts must apply statutory principles set out in the Armed Forces Act 2006 as to the purpose of sentencing. These include "the maintenance of discipline" and "the reduction of service offences". These principles reflect special aspects relating to the service justice system, which explains why there is direct involvement of the panel in sentencing, and I remind noble Lords of those factors that I listed earlier.

4.15 pm

At the same time, the judge advocate has a power to give directions and rulings on the law. This ensures that the law on sentences—for example, where a sentence is mandatory and what the maximum sentence is—is laid down by the judge advocate. Moreover, the judge advocate has not only a vote on sentence but also a casting vote. He will also, from his knowledge of the civilian courts and law and practice, be able to influence the views of the lay members more generally.

There is no evidence that sentencing in the court martial is wayward. During the passage of the Bill that became the Armed Forces Act 2006, Sir Jock Stirrup, as he then was, stated:

"If, in considering sentencing, one is having regard to the maintenance of discipline, one has to understand what that means, what things affect discipline and what things do not. So it seems to me the military involvement in sentencing is absolutely fundamental to the effectiveness of a military justice system".

The House of Commons Select Committee on that Bill concluded that it considered it,

"essential that the lay members of the court martial panel are involved in sentencing in order to provide Service context to those deliberations".

The Government continue to believe that the involvement of the lay members when it comes to sentencing should go beyond mere consultation with the judge advocate: they should continue to vote on sentence.

In conclusion, I am sorry that my answer has been rather lengthy, but I hope that what I have said has been helpful. The Government have not been persuaded that the existing court martial system needs to be changed or that an alternative system would represent an improvement on what currently exists. On that basis, I express the hope that the noble Lord will, perhaps at least for now, agree not to press his amendments.

Earl Attlee: My Lords, I am grateful to the Minister for the response to my Amendment 1A. On the point about maintaining discipline, I am not convinced that that would be a problem, especially if the other ranks were no lower than full corporal or equivalent, because they would have a stake in the maintenance of discipline as well. After all, a civilian jury is handling the same problem: they want to discipline other members of society for things that they have done wrong. Therefore, I do not find the maintenance of discipline—

Lord West of Spithead: It is very different from civil society. The whole structure of discipline within the military is, I am afraid, very different. That surely is one of the key points: it is people who really understand discipline, how it is applied and have knowledge of it over many years who are actually making judgments, because most of the cases relate to that disciplinary structure. I know that other amendments are looking at whether courts martial should cover other things, which might be another issue. However, in terms of discipline, civil society is very different from military society.

Earl Attlee: My Lords, I absolutely agree with the noble Lord—I almost said the noble and gallant Lord; he is noble and gallant, but not technically. My slight worry about the amendment proposed by the noble Lord, Lord Thomas, is that a full corporal would be less understanding and perhaps take a much tougher view than an officer. I am not convinced that the noble Lord is wrong on the argument of the maintenance of discipline, but I will leave the main attack to the noble Lord, Lord Thomas of Gresford, because he is far more capable than I am. I beg leave to withdraw my amendment.

Amendment 1A (to Amendment 1) withdrawn.

Lord Thomas of Gresford: My Lords, I am most grateful to the Minister for his lengthy and very careful response to what I have put forward. I was very amused to learn that rules had been passed that court martial panels may be drawn from across the services.

When I proposed that precise amendment to what became the 2006 Act, I was seized by three noble and gallant Lords in the corridor, one of whom said that I should be shot for making such a suggestion.

Lord West of Spithead: I am not technically noble and gallant.

Lord Thomas of Gresford: I am sure that the noble Lord, Lord West, would have added a keel-hauling or something of that nature.

I am grateful to the noble Lord, Lord Tunnicliffe, for his support for my amendments. No doubt we will have some fruitful discussion on a way forward. I agree with the noble Earl, Lord Attlee, that an investigation into how court martial panels deliberate would be apposite; it is a good suggestion. There are all sorts of problems around it, and if the public do not have confidence in the court martial system, which is what I believe and the thrust of what I am saying—that although I personally have confidence, the public do not—such an investigation would in one way or the other be very good.

However, the noble Earl may have misread my amendments. I am not looking for leniency. I have no reason to suppose that court martial panels that consisted of other ranks would be more lenient; I rather agree with him that they could well be tougher. What such panels would be is more understanding. They would appreciate things more. I know that the Armed Forces regard themselves as a family and I concede to what the noble Lord, Lord West, has said, but there is a gap in understanding between the other ranks and the officers of what motivates people. That is where an extended panel would be useful, helpful and more just. It is not about leniency at all. The noble Earl should not think that I am a particularly lenient person. I have sat as a judge and prosecuted many times, and leniency is certainly not a part of that.

I tend towards the thrust of the noble Earl's comments, supported by the noble Lord, Lord West, that it is all about discipline. The fact is that if anyone is convicted at court martial of a serious offence, he is out and he loses his pension rights. It is not a question of discipline for a serious offence. As I indicated at the beginning, I have no objection to the court martial system in relation to Sections 1 to 39 of the 2006 Act, which cover mutiny, absence without leave, desertion and issues of that sort. But where I think the court martial system lacks public confidence is when it deals with other criminal offences which are normally dealt with in the Crown Court. The maintenance of discipline is not particularly apposite, in my experience. People who are convicted of serious offences, as I have said, are thrown out.

Many of the Minister's remarks were addressed to the issue of sentencing. I do not believe that the sentences of the courts martial are particularly wayward, as we have a very good system of judge advocates who assist them in their deliberations. But the noble Earl will know that the current Judge Advocate-General has argued many times—as he did in 2006 before a committee of the House of Commons—that sentencing should be a matter for a professional judge, as judge advocates are, and not left to a panel of officers for whom it may well be their very first meeting with the criminal law in any context. They are not experts. They are appointed to a court martial board—perhaps the noble Lord, Lord West, has more experience of courts martial than most people, from all points of view—but most who sit on a panel do it perhaps once or twice. The president of the court is a more permanent official, of course, but a judge advocate is a professional judge who goes on training course after training course, sits in the Crown Court when not sitting as a judge advocate and has the fullest experience of sentencing and what is appropriate in a particular case. I do not suggest that he should sentence when uninformed himself, nor does the Judge Advocate-General, but that he should consult the members of the panel, listen to their views and take into account the maintenance of discipline, if that is what is required in the case.

Earl Attlee: My Lords, I am not quite sure why the panel should go outside the guidance of the judge advocate. For me, the noble Lord, Lord Thomas, has not produced a convincing case why it should do that. Why would it not adhere to the advice of the judge advocate because, as the noble Lord told the Committee, it is very good advice?

Lord Thomas of Gresford: I am not going to recount anecdotes but it is not necessary for the panel to follow the advice of the judge advocate who is sitting in a particular case if it chooses not to do so. Very often when a person is found guilty, the sentence may not be obvious. It may be a choice between various courses such as imprisonment, a sentence that does not involve imprisonment, or sometimes whether someone should go back to Colchester for retraining—a disciplinary approach—so there are different possibilities.

Earl Attlee: My Lords, surely the choice between prison and detention—in other words, "soldier on"—is a purely military one, which means that the officers on the panel are best placed to make that judgment of whether they can keep the serviceman in. In fact, some who go off for a period of detention turn out to be very good servicemen later on, as I am sure the noble Lord recognises. This is a purely military decision.

Lord Thomas of Gresford: I am not suggesting that the judge advocate should act entirely without the advice given to him by the panel. But where should the responsibility lie? That is the issue. I do not think that responsibility for sentencing—a highly complex and professional job for which people train for years, first as barristers or solicitors and then as judges—should be in the hands of people who have in all probability never been in a criminal court in their lives. Suddenly, they are faced with a particular problem and may have all sorts of views about it. Nor should it be thought that intellect and intelligence rest only with the officer class, as the noble Earl suggested. That is not necessarily so. Sitting on issues of fact, a panel composed across ranks would come to a better and safer conclusion which is more acceptable to the public. We cannot go on having demonstrations outside this House by present

[Lord Thomas of Gresford]
and retired members of the Armed Forces against the verdicts and findings of courts martial. You do not see that happening with Crown Courts but you see it with courts martial, and that cannot continue. I am concerned about the reputational damage to the services that such scenes show.

I will read all the detail of the Minister's speech and come back to him about it but one or two points arose. For example, he stressed that a simple majority means that there is no need for a retrial. That may not be a very good thing. It may be that if a significant proportion of a panel hearing a case are not satisfied with the guilt of the defendant, there should be a retrial. The case should be put before the court and heard again. Retrials happen, not all that often, when juries are unable to reach a verdict in the Crown Court. They do not follow as of law; it is a question of the discretion of the prosecutor. I have stopped prosecutions after a jury had disagreed. "There is no need for a retrial" is not a mantra which sits very well with the Ministry of Defence.

4.30 pm

I also noted that the Minister said, "It is wrong, if a person is acquitted, that he should know that some people thought he was guilty", but of course in the Crown Court if a person is acquitted on a majority verdict that is not announced in court. An acquittal is an acquittal. It would not be necessary to announce it in a court martial. Only when there is a conviction in the Crown Court is the fact that it was a majority verdict announced. As I say, I shall certainly be reading the Minister's speech in some detail. I hope to discuss the matter further with him and with the noble Lord, Lord Tunnicliffe, and the noble Earl, Lord Attlee. For the moment, I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendments 2 and 3 not moved.

Amendment 4

Moved by ***Lord Thomas of Gresford***

4: After Clause 5, insert the following new Clause—

"Restrictions on trial by Courts Martial

(1) Section 50 of the Armed Forces Act 2006 (jurisdiction of the Court Martial) is amended as follows.

(2) In subsection (1) at end insert "save for—

(a) murder;

(b) manslaughter;

(c) any offence under the Sexual Offences Act 2003;

(d) any offence where the courts of any part of the United Kingdom have extra-territorial jurisdiction to try, determine or punish that offence committed abroad.""

Lord Thomas of Gresford: In moving this amendment, I will couple it with consideration of Amendments 15 and 16.

Perhaps I may go first to Amendment 15, which seeks to extend extraterritorial jurisdiction in sexual offences. Since 2006, the problem concerning sexual offences has come very much more to the fore in this country and elsewhere. Some 18 months ago, I gave evidence to a committee set up by the Department of Defense in Washington where precisely this issue was being considered. My purpose there was to outline the system of court martial in this country, specifically in dealing with sexual offences. I and the Director of Service Prosecutions, and one or two other experts in the field, gave evidence about the British system. The following day, no fewer than 24 generals and above—I am not quite sure what the term is—were giving evidence to that committee. They were headed by the chief of the general staff of the United States. Unsurprisingly, the committee came out in favour of the generals and not in favour of the British system of court martial.

Sexual offences are a matter where there is not, at the moment, extraterritorial jurisdiction. Amendment 15 has been tabled simply to give to the ordinary courts in this country—the Crown Courts—the jurisdiction, if my Amendment 4 were accepted, to deal with sexual offences in this country. It has no other purpose, so the important amendment is Amendment 4.

Prior to the 2006 Act, courts martial in this country had no jurisdiction to try cases of murder or manslaughter within the United Kingdom. Courts martial could try such cases if they were sitting abroad but not in this country. One of the amendments to the system made in 2006 was to give courts martial sitting in this country jurisdiction over murder and manslaughter.

The four types of offences that I have set out in subsection (2) of the new clause proposed in Amendment 4 are the most serious in the calendar. Murder and manslaughter are obvious. The offences under the Sexual Offences Act to which I have referred—I quoted specific clauses from the Sexual Offences Act 2003—are given extraterritorial jurisdiction by my Amendment 15 so that they can come before the courts of this country under Amendment 4.

Subsection (2)(d) of the proposed new clause deals with war crimes—torture and matters of that sort—where there is existing extraterritorial jurisdiction. I have been involved in a number of murder cases that have occurred abroad, in Iraq and Germany, and to my mind they have been unsatisfactory. I do not quibble with the results but I find it unsatisfactory that those trials should be by court martial. We are dealing with the most serious of cases—those that cause the greatest problems for the public—where public perception is either, if a person is acquitted, that he would be acquitted by fellow members of the armed services or, if he is convicted, that the officers have convicted him for murder whereas a British jury would not have done so. That is the thrust of the campaign about Sergeant Blackman, but there have been other cases where similar feelings have been expressed by the public.

I think that we have come to the end of trying these cases by courts martial. If a murder happens abroad—in Afghanistan, Iraq or Germany—the case is brought back to this country. Cases have not been brought back from Germany because we have been in Germany but we are retreating from there. Our Armed Forces are pulling back in November, so we can forget about that. The case of Martin, to which I referred at Second

Reading, is a case in point. The 17 year-old son of a soldier—not a soldier but the son of a soldier—was brought back to this country, kept in Colchester prison and returned to be tried for murder in Germany by a court martial. Although the House of Lords Judicial Committee could not interfere as an abuse of process, as I said in my Second Reading speech, the European Court of Human Rights said that the trial was not fair. We cannot have that.

Let me go back a little. Courts martial abroad could try cases of murder and manslaughter because of the difficulty of travel. Back in the 19th century, if troops were deployed abroad, it would be quite impossible to hold somebody for trial by the civil courts here until such time as the forces returned to this country. Consequently, courts martial were necessary for trying murder and manslaughter abroad rather than having local courts do it, where the ability of the defendant to understand what was going on—never mind the quality of the justice proffered—was always an issue. That is not the case now. The practice is to bring them home and to try people accused in Iraq of murder, as in the case of Baha Mousa, which was tried in Bulford, or the case of the paratroopers who were tried at Colchester, or the Bread Basket case, which was tried in this country. The practice in serious cases is to bring people back. Where we are dealing with sexual offences, which are extremely delicate and difficult, and today attract sentences of up to 35 years, those too should be in the ordinary civil courts of this country before an ordinary jury.

I do not accept that an ordinary jury trying a military case is incapable of understanding the ethos, aura or context in which a particular offence has been committed. Juries every day may be trying a person for murder in a context with which they are completely unfamiliar. Whether it is an incident in the back streets of Birmingham or a fraud involving the City, juries cope. It is the duty of the prosecution in the case so to clarify the issues and the context that a jury is fully aware of the significance of the evidence that is put before it.

Things have changed. Juries can be really quite different. Not so long ago in Southwark Crown Court, for example, it turned out that a member of the jury was the sister of a High Court judge and of a Member of this House, and her father had been a Home Secretary. We did not know this; it just slipped out at the end of the case. Juries are an amazing cross-section of people who represent people and who each contribute to the decision that is taken. I have every confidence in Crown Court juries. Serious cases should be brought back and tried here. That is the purpose of my amendments.

However, Amendment 16 is different, as it is an alternative. If my submissions to the Committee are not acceptable to the Government, they ought to consider my Amendment 16 as an alternative. This is where a person who is alleged to have committed a service offence when on active service in operational circumstances can elect to be tried in the ordinary courts of this country. What is the purpose of that? The main purpose—really the only purpose—is that people and the media cannot criticise a Crown Court jury or, if the person has decided that he wishes to be tried by court martial but has been given the chance of a trial by the Crown Court, the system cannot be criticised for failing that individual and giving him the justice that he seeks. Amendment 16 contains an alternative approach that an accused person could elect to be tried in a civilian court. That would remove much of the sting of the criticism, which, as the Committee has heard, is my concern.

4.45 pm

Lord Hope of Craighead (CB): My Lords, I would add a word to what the noble Lord, Lord Thomas of Gresford, has said, mainly because he mentioned my name at Second Reading. I am afraid that this is one of two judgments for which I was responsible. He has been kind enough to say that this judgment is not subject to criticism on the grounds on which it was made. He summarised it quite accurately as the case of a civilian, a 17 year-old boy in Germany who was, I think, the son of a serviceman, and because of that was subject to military discipline in Germany. The noble Lord has narrated exactly the circumstances whereby the civilian spent time in Colchester. I think that he was sent back for trial by court martial in Germany.

My point—and the Minister may already have this in mind—is that one is dealing with a crime committed in another country. In the case of Germany, there is a very active and much-respected criminal justice system. The Germans might well have wanted to assert themselves, as this was a crime committed on their territory. However, under arrangements which we had in place, it was possible for us to say that this was a military matter which could be dealt with under our court martial system. The Germans were prepared to concede jurisdiction to the system which we had under military law.

I suspect that the situation is quite different in Iraq. I do not know what the criminal justice system is like there, but I have no doubt that we would insist that we bring people home. We do not have the same problem of maintaining a diplomatic dialogue there, which we certainly would have with the Germans if this amendment were to be carried. We must be rather cautious with this amendment in considering the various jurisdictions in which offences may be committed abroad. We would need be absolutely sure that these jurisdictions were prepared to concede jurisdiction to us under the extraterritorial system, when they could perfectly well assert their own right to try a case before their own civilian courts.

I dare say that the Minister has this carefully in mind but it seemed, recalling as best I can the circumstances of Martin, that that was part of the background. Of course I cannot take anything away from or add anything to the judgment which I wrote, but I think that it is proper to say that when I first saw the case I was taken aback by the fact that this boy was going to be tried by a court martial. It seemed to be a rather extraordinary thing to happen. However, having studied the legislation and been informed about the background, in the end I was satisfied that it was proper that the court martial should be allowed to

[Lord Hope of Craighead]
proceed. There is this additional element to the issue, which I do not think that the noble Lord touched on in his address but which I respectfully suggest we should bear in mind in considering whether the line that he is urging us to take is a sound one.

Lord Thomas of Gresford: Does the noble and learned Lord agree that Martin could have been tried in this country and that it was not just an arrangement between the German authorities and the British military authorities that caused his trial to be in Germany? I think that it was a decision of the Attorney-General.

Lord Hope of Craighead: Of course we had extraterritorial jurisdiction, but the fact that the crime was committed in Germany was an important factor in deciding the proper course for bringing the case before a tribunal to try the boy for the offence. One has to be careful about the local jurisdiction; I seek to emphasise that point.

Lord West of Spithead: My Lords, I have considerable sympathy for Amendment 4, which stems from my view that I see the composition of the board of courts martial as much more to do with discipline and military things. Clearly with some of these very serious crimes, jurisdiction is very important. I am not clear how that could be clarified to make sure that things do not slip through the net because of it. However, the other aspect is perception. The noble Lord, Lord Thomas of Gresford, talked about public perceptions of courts martial. I think that there is also the perception of the military about the way in which they are put on trial. If we went down this route mitigation would have to be very clearly put, particularly when in what one might loosely call a war zone where there has been fighting and nation building, because the circumstances in which something like the Baha Mousa case happens are different from the normal civilian understanding. We would have to be absolutely certain that we were able to get that sort of proper mitigation into the civil court. However, I have great sympathy with Amendment 4, because some of these things should not generally be tried by court martial nowadays.

Lord Tunnicliffe: My Lords, as I said earlier, I see this debate as being in two parts, of which this is the second part. The development of service law in this country has been going on for several hundred years and we have seen important movements in the past 10 years with the 2006 Act and now with these proposals. I am unsympathetic to what the noble Lord, Lord Thomas of Gresford, proposes in this area, because it goes too deep into the body of military law. There is presumably an argument that you do not need military law on any offence that is covered by an equivalent piece of civil law, but we are not there yet in the minds of either the public or the military. We are on a journey and I think that we are at the right place in that journey, so to carve these offences out of the scope of military law at this point would be wrong. I shall read with great care the speeches that have been made and listen with great care to the Minister's response. We will ponder on those views but, as a generality, the scope of military law is probably right at this time. I repeat that we should address the courts martial system to make the judgment process analogous but leave the scope substantially as it is.

Earl Howe: My Lords, these further amendments address other aspects of the service justice system about which the noble Lord, Lord Thomas, is exercised. I agree that it is right that this Committee should engage in close and careful scrutiny and assure ourselves of the rationale that underpins the system.

Amendment 4 would limit the jurisdiction of the court martial. It would prevent the court martial from trying certain offences: murder; manslaughter; the wide range of sexual offences under the Sexual Offences Act 2003; and any offence committed overseas that a civilian criminal court in the United Kingdom has jurisdiction to try.

The noble Lord, Lord Thomas, explained that his intention with Amendment 15 is to extend the jurisdiction of civilian criminal courts in England and Wales by giving them jurisdiction to try members of the Armed Forces and civilians subject to service discipline for acts overseas that, had they been committed here, would have constituted sexual offences under the Sexual Offences Act 2003. The Committee may be aware that service courts are able to exercise jurisdiction in respect of acts overseas. Section 42 of the Armed Forces Act 2006 provides that a member of the Armed Forces is guilty of an offence under service law if they do an act outside the United Kingdom that would constitute an offence under the law of England and Wales were it done here.

Amendment 16 would give members of the Armed Forces accused of committing certain crimes overseas a right to elect whether to be tried by the court martial or by a civilian criminal court. The crimes in question are those that the civilian criminal courts may try even if the events in question took place overseas. Those offences include murder and, although the noble Lord explained that this was an alternative to his previous proposal, would also include sexual offences if Amendment 15 were accepted as well.

I note one point in passing. Amendment 16 does not appear to propose that members of the Armed Forces should have a right to elect civilian criminal trial in respect of conduct in the United Kingdom or in respect of conduct overseas other than on active service in operational circumstances, yet it is not immediately apparent why such cases should be treated differently.

The noble Lord, Lord Thomas, may not be too surprised to hear that the Government do not support these amendments, which imply that there are problems with the court martial system. Yet the service justice system has been scrutinised by the UK courts and by Strasbourg, and has been held to be compliant with the European Convention on Human Rights for both investigations and prosecutions within the UK and abroad, where the civilian police do not have jurisdiction.

As regards the implication about the competence of the service police and prosecutors, the service police are trained and able to carry out investigations into the most serious offences, with members of the Special

Investigations Branch having to pass the serious crime investigation course before being selected for that unit. In addition, selected members of the service police attend a range of specialist and advanced detective training at either the Defence College of Policing and Guarding or externally, with the College of Policing or training providers accredited by the college.

At the Service Prosecuting Authority, prosecutors are trained to effectively prosecute serious cases. For example, prosecution of serious sexual offences requires attendance on the CPS rape and serious sexual offences specialist training course, and the SPA ensures that decisions on charging in such cases are taken only by prosecutors who have completed that training. The Government believe that the service justice system is capable of dealing with the most serious of offences and should be able to continue to do so. In the case of offences which both the civilian criminal courts and service courts have jurisdiction to try, it is recognised that it is necessary for prosecutors to consider in each case whether the offence is more appropriately tried in the civilian criminal courts or in a service court. This applies not only to offences committed overseas in respect of which the civilian criminal courts have jurisdiction but to offences committed in the United Kingdom.

The existing protocol between service and civilian prosecutors recognises that some cases are more appropriately dealt with in the service system and some more appropriately in the civilian system, particularly those with civilian victims. The principles of the protocol were approved by the Attorney-General for England and Wales, and by the Ministry of Justice. The protocol recognises that any offence can be dealt with by the service authorities. The main principle in deciding who acts is whether the offence has any civilian context, especially a civilian victim. The protocol therefore provides that cases with a civilian context are dealt with by the civilian criminal justice system. However, where a case has a service context, it is important that the service justice system—which is specifically constructed to deal with that unique service dimension—is able to manage the case in question. But were we to create a right to elect of the kind contained in Amendment 16, I submit that it could undermine the service justice system, as an accused could make an election which would see the types of cases which civilian and service prosecutors currently consider should be dealt with in the service system—because of their service context—instead having to be dealt with by the civilian criminal courts.

The noble Lord, Lord West, referred to the importance of mitigation in certain cases. Partly for that reason but also for others, many cases which concern conduct outside the UK will have a service context such that both service and civilian prosecutors would consider that they would be more appropriately tried in the service system. That is significant because of the key point that I made on the previous group of amendments: court martial is part of an overall system of justice and discipline, and the existing provisions governing sentencing in the court martial reflect this.

As I mentioned earlier, all service courts have to apply statutory principles set out in the Armed Forces Act 2006 as to the purpose of sentencing. These are closely based on the civilian sentencing principles but include, in addition, "the maintenance of discipline" and the reduction of "service offences". These principles reflect special aspects related to the service justice system, including those factors that I touched on earlier and shall repeat: first, in service courts the military context of an offence may be relevant to sentencing, and I mentioned an assault against a superior or an inferior; secondly, in service courts a heavier sentence may be justified by reference to the fact that the offender is in the Armed Forces, and I mentioned a drugs offence in that context; and, thirdly, certain penalties are available only to service courts, requiring an assessment of whether they are appropriate from a broadly disciplinary point of view—for example, service detention or dismissal. Allowing a case with a purely service context to be dealt with in the civilian system on the election of an accused therefore risks undermining the system of justice and discipline in the Armed Forces.

5 pm

The other side of the coin, perhaps equally problematic—indeed, I would say objectionable—is that a right to elect could mean that an accused could make an election that would see a case which civilian and service prosecutors currently consider should be dealt with in the civilian system instead being dealt with by the court martial. Furthermore, a right to elect could also open up the possibility of co-accused making different elections, resulting in split trials in different systems.

In conclusion, I strongly contend that the service justice system is capable of dealing effectively with the most serious offences and should be able to continue to do so. It is therefore not appropriate to limit the jurisdiction of the court martial, nor is it necessary to extend the jurisdiction of civilian criminal courts to allow them to deal with actions of service personnel overseas in respect of which only service courts currently have jurisdiction.

We do not consider it necessary or appropriate to allow service personnel to elect to be tried in the civilian criminal courts rather than a court martial, including in cases with a clear service context—cases that both civilian and service prosecutors may agree would be more appropriately dealt with in a court martial. Nor do we consider it appropriate to allow service personnel to elect to be tried in a court martial rather than in the civilian courts, including in cases with a clear civilian context—cases which both civilian and service prosecutors may agree would be more appropriately dealt with in the civilian criminal courts.

I hope that, without my having to labour those points too much, the noble Lord will feel able to consider what I said between now and Report and, in the mean time, agree to withdraw his amendment.

Lord Thomas of Gresford: I am most grateful again to the Minister for his careful outline of the Government's position. I shall take up one point about the right to elect. At the moment, as I recollect, a serving soldier has the right to opt for trial by court martial as opposed to being dealt with by his CO—I have some

[Lord Thomas of Gresford]
support from my rear on that proposition—so the concept of opting for one mode of trial rather than another is already in the service discipline system.

The Minister referred to the limited scope of Amendment 16. It is confined—I checked the wording myself a moment ago—to,

"a person subject to service law",

committing an offence or alleged to have done so,

"when on active service in operational circumstances".

It would not cover the situation of a soldier who committed an offence who was not in such circumstances. For example, I do not think that that description would apply to anyone who is currently serving in Germany.

Having mentioned Germany, I refer to the contribution of the noble and learned Lord, Lord Hope, to say that yes, there have been agreements on jurisdiction where the Army is abroad, but they are coming back. The situation is quite different. We will not have all the substrata of support and so on in Germany that we have now. I imagine that these agreements will come to an end—is it November of this year when the forces are returning from Germany?—so I suggest that is not a point against the proposition that I am putting forward. So far as the other matters are concerned, they again require me to read what the Minister has said and before I do that, I beg leave to withdraw the amendment.

Amendment 4 withdrawn.

Clauses 6 to 13 agreed.

Schedule agreed.

Clause 14 agreed.

Amendment 5

Moved by ***Lord Touhig***

5: After Clause 14, insert the following new Clause—

"Requirement to publish statistics on sexual assault and rape

(1) Each service police force must collect and publish annually anonymised statistics on the number of allegations of sexual assault and rape made by and against members of the armed forces.

(2) The Director of Service Prosecutions must collect and publish annually anonymised statistics on the number of cases involving allegations of sexual assault and rape made by and against members of the armed forces, including but not necessarily limited to—

(a) the number of cases referred from the service police forces;

(b) how many of these cases were prosecuted; and

(c) how many convictions were secured."

Lord Touhig (Lab): My Lords, at Second Reading I raised the Government's intention to allow women to serve in front-line roles. I believe that the Government's announcement was an expression of support for the wider equalities agenda but we will debate that issue later in Committee. At this stage, I would say only that if we are serious about equality then we must have equality in the Armed Forces, too. Part of that equality agenda must surely be accepting that we have a responsibility to provide the women who serve, or who may be thinking of serving, in our Armed Forces with the sort of information that this amendment would afford them. No woman—or man for that matter—joining our Armed Forces should have any doubt that sexual misbehaviour of any kind will be punished.

Not a day goes by when cases of sexual assault and rape are not reported in the media. Whether here or abroad, our daily news digest reports on horrors of this nature. But all too often cases go unreported and the victims—mainly women, but not exclusively so—have nowhere to turn to help release themselves from the pain, horror and suffering that they have endured. Because of the system of military discipline, routine and command structures that necessarily exists in the Armed Forces, there is a special need to be vigilant here when seeking to prevent such gross and horrible acts. We cannot bury our heads in the sand and shrug our shoulders as if nothing can be done. When confronted with such a major issue, how often have each of us heard it said: "It's gone on for ever and there's nothing to be done about it"?

Such a view of sexual assault, sexual harassment and even worse is not atypical when set in the context of many large organisations, whether military or civilian, but we in the Committee have a chance to do something about that now. Thankfully, we are more alert as a society and not starting from scratch now. It would not be proper to say much here relating to what happened years back at Deepcut. However, I am not alone here in having read some of the recent press reports of evidence given at the inquest into the death of Private Cheryl James and being horrified by what I read. If we can in humility set that aside for the moment, it is right to do so. But the plain truth is that rape and sexual assault are a worry in the Armed Forces today, as was highlighted in the Ministry of Defence's *Sexual Harassment Report 2015*.

Sexual harassment in the Armed Forces is an issue, particularly for servicewomen. Our amendment, which I am delighted to see has the support of the noble Baroness, Lady Jolly, would, if accepted, require the Government to publish statistics on sexual assault and rape in the Armed Forces. The best weapon to use against those who commit such acts is the glare of publicity, which can be brought about only by transparency.

I am grateful to the Minister and his officials for meeting my noble friend Lord Tunnicliffe and me to discuss this matter. We welcome the explanation that he and his officials afforded us but we were not convinced that his department is doing enough. We were not convinced that the present data on sexual harassment in the Armed Forces are reliable or being comprehensively collected. More than that, when civilian police investigate allegations of sexual harassment and rape, they are not required to record whether the alleged victim or perpetrator is a serving member of the Armed Forces, yet that is crucial to putting in place within the forces a mechanism to prevent such acts. I shall give an example.

We know that alcoholic excess is a major factor in domestic abuse and wife-beating. How do we know that? We know due to the simple expedient of recording the fact that a person involved in making such an

assault was under the influence of drink. It is often said—is it not?—"If it's not broken, don't mend it". That is common sense, but to get there in the first place we have to realise that something is broken. How can we combat this problem in the Armed Forces if we do not know how widespread it is? To know that, we need to keep records and publish data. Having read the *Hansard* covering the debate on this matter in the other place, I am not convinced that the Government took this issue seriously enough. I have no doubt that that will not happen in this place.

During Committee, the Minister, Mr Lancaster, confirmed that the Service Police Crime Bureau kept records of rape and sexual assault cases that had been made known to it, but how are they made public? Initially, the Minister seemed content that it was being done in response to Parliamentary Questions and freedom of information requests, with the information being subsequently uploaded to the Ministry of Defence online publications system. That is simply not good enough, and that is the reason for this amendment. In truth, I must be fair to Mr Lancaster, who said:

"Let me be clear that I want to explore how we can be more proactive in releasing this information".—[*Official Report*, Commons, 16/12/15; col. 1622.]

Those words were spoken on 16 December last year, so the Government have had time to explore how to be more proactive in releasing this information. I certainly look forward to the noble Earl's reply.

There are twin objectives behind Amendment 6. The first is to ensure that no unnecessary barrier is in place to deny a complainant justice and the second is to protect the good name of our Armed Forces. It is no easy task for a person in authority to deal with allegations of rape and serious sexual assault. More than that, dealing with allegations of rape and serious sexual assault requires a level of expertise—in truth, an expertise that is gained only by dealing with such complaints on a regular basis. Most commanding officers do not have to deal with such matters, and their lack of knowledge and expertise might affect their decisions. In the event that a commanding officer did not appropriately investigate allegations, damage could be done to the reputation of the Armed Forces.

A system needs to be in place that respects the chain of command within the Armed Forces but is also robust and in line with what individuals expect in civilian life. I do not think that the Government see a need for this amendment. Their line is that victims of sexual assault can bypass their commanding officer and go straight to the police, should they wish. However, there are issues with this approach. It is factually true that service men and women are trained from day one to respect the institutions of the Armed Forces, including the chain of command, and this very structure could deter victims of sexual assault from going straight to the civilian police to obtain an investigation. Our Amendment 6 would help to resolve this. In the mean time, I beg to move Amendment 5.

5.15 pm

Baroness Gould of Potternewton (Lab): My Lords, I support Amendments 5 and 6, which are designed to clarify and reduce levels of rape and sexual assault in the Armed Forces. Fundamentally, I believe that the rights of service men and women are just as deserving of protection as civilians, for whose rights I have campaigned for many years. It is essential that independence and fairness for our troops are at the heart of the military justice system, but the reality is far from that aspiration, and I hope that I will be able to illustrate that.

I repeat the words said only eight months ago by General Sir Nick Carter, Chief of the General Staff, that the Army has,

"an overly sexualised culture in which inappropriate behaviour is deemed acceptable".

Those words illustrate the problem that many women and men in the Army face. Those words are appreciated, however, as is General Sir Nick Carter's campaign against rape, with a display of hard-hitting posters that are imaginative, and with messages that are bold, and ensure that all service personnel understand the concept of consent. However, the evidence shows that over the years there has been little improvement, perhaps because the current position in both recording the evidence and the determination of rape and sexual assault is clearly flawed. That situation would be improved by the implementation of both these amendments.

The response to a freedom of information request two years ago showed that in the previous three years military personnel had made more than 200 allegations of rape and other sexual offences against their colleagues. Seventy-five allegations of rape and 150 of sexual assault were made to the Military Police between 2011 and 2013. There were 25 rape allegations in 2013, 24 in 2012 and 26 in 2011—consistent figures throughout. Five servicemen were convicted of rape and 22 of sexual assault. But even getting such information may not be possible in the future if the Government abolish the FoI process, which they seem to be seeking to do.

The 2015 Ministry of Defence report on sexual harassment gives much more detail. It says that women had received unwanted comments about their appearance, body or sexual activities, unwelcome sexual gestures, had been subject to attempts to touch them, and that 10% of the women interviewed had received a request for a sexual relationship. But how accurate are those figures? There are clearly questions about the comprehensiveness and reliability of the data collected, as my noble friend Lord Touhig said. For instance, allegations of sexual assault can be investigated by a commanding officer, the relevant service police force or a local police force. Home Office authorities are not required to record whether an alleged victim or perpetrator of a sexual assault is a serving member of the Armed Forces. This means that the Armed Forces do not possess even basic evidence about the extent of sexual assault or rape within the services. Civilian police forces have to collect and collate such evidence in a consistent and orderly way, so why does this not apply to the military? Without a central register published annually, it is impossible to follow trends and patterns and determine whether improvements are being made. I fail to understand why this proposal might be rejected, not least as the Minister in the Commons said that the system needs to be more robust, as has been said. It would be interesting to know what actions have been taken since that statement was made to set the process going to achieve the aim of making it more robust.

[Baroness Gould of Potternewton]

On Amendment 6, a commanding officer has broad discretion to decide whether to investigate allegations of sexual assault or whether to refer them to the relevant police force. The commanding officer has to refer cases in line with the offences listed in the Sexual Offences Act 2003 but, strangely, that legislation explicitly excludes for referral sexual assault, voyeurism and sexual activity in a public lavatory. This means that, if notified of an allegation of sexual assault, a commanding officer is not necessarily required to refer the matter to the police.

Sexual assault covers a wide breadth of sexual acts, some of which may seem less serious to the commanding officer but not necessarily so to the victim, and which, if ignored, may develop into a more serious situation. Commanding officers in the Armed Forces are men and women of skill, professionalism and integrity but that does not mean that they have the same levels of specialist investigatory skills as those who have the necessary professional expertise. It is important that those who investigate, prosecute and manage these processes are professionally trained and have the skills to deal with complex cases and, very often, emotional situations.

Relevant to both the data and the process is the number of victims who do not come forward because they do not wish to be investigated by their commanding officer. Evidence shows that they are discouraged from making a formal written complaint, or that they are told they will be treated better in return for a sexual relationship. One in 10 women who had upsetting experiences indicated that they did not report it because they particularly did not want to report it to their specific commanding officers, having been told by others that it would have an effect on their careers or they could be subjected to negative treatment. That is not a very good background against which to encourage women to take these cases forward.

Finally, I refer to a case that gives an example of the hidden culture in the Armed Forces and illustrates so clearly to me why Amendment 6 is necessary. I have concentrated so far on sexual assaults against women, but Ministry of Defence data following another FoI request reveal that male rape is common in the UK Army. In 2013, three rapes and 22 sexual assaults were carried out against men in the UK military forces. Since then, there have been a further 25 assaults, but these figures relate only to information gathered by the Military Police, meaning that the real numbers could be much higher. The ministry could not say whether anyone had been prosecuted for the assaults disclosed in the latest data.

All this evidence proves what has been known for a very long time: that there is a deep-seated culture, as described by General Sir Carter. Surely it is time that the Government legislate to show that they are genuinely concerned to improve what is a truly dreadful situation. Perhaps the Minister can give an explanation for why the Government have been so reluctant to do so in the past. I hope he will not take the same view today.

Lord West of Spithead: My Lords, I strongly support Amendment 5. In the late 1980s, I was dragged from my destroyer by the First Sea Lord and tasked with doing a study into whether women should serve on the front line at sea. Being an ambitious officer, I went to see the First Sea Lord and asked him what result he wanted from that study—but he told me that I was to do a proper study. I spent six months doing it, and I learned a great deal. At the end of it, I concluded that women could serve in all jobs at sea, that there was no reason why they could not do that on the front line and that it was in the interests of the Navy. I thought that that would ruin my career—my wife said that I could run a well woman clinic if things went really wrong—but in fact it did not affect my career that badly.

What I failed to understand was the level of sexual predation that might result from this. I did talk with other navies around the world but I have say that I did not talk to the Army; it was all naval. I have been really quite shocked by the level of sexual predation which one is aware of now. It is necessary to expose what is happening to make it clear to people that things have to change. It is only by laying down the cases that have happened that this will be thrown into the public eye and the eye of the military, and then action can be taken. I am not so convinced by Amendment 6, but Amendment 5 makes a lot of sense.

Earl Attlee: My Lords, I am grateful to the noble Lord, Lord Touhig, for moving this amendment, which concerns a very serious and important issue. He mentioned Deepcut. I urge all Members of the Committee to get the Blake report on Deepcut, which was commissioned by the last Government, as we may have forgotten the background.

I am not convinced by the new clause proposed in Amendment 5, and I hope that the Minister shares that position. However, I would like to ask the Minister about service police records. We are all aware that there will be serial offenders who are posted from unit to unit. I would even dare to suggest that if a commanding officer knows that someone is "a bit dodgy" for one reason or another, they might rather get rid of them, and so send them off to another unit. Then, that same serviceperson becomes a problem in another unit. If the service police were carefully recording complaints against a serviceman—unit 1 gets a complaint; unit 2 gets a complaint—while it may be only slightly inappropriate conduct, there would be a record so that if something serious happens, and the serviceman already has a record of minor offences, you can be pretty sure that there is a problem. If someone has been serving for 15 years and there is not the slightest suggestion of a problem, you might take a slightly different view. My issue is this: are the service police recording every single complaint against a serviceman? I can assure the Committee that I have seen this in the reserves where we had a problem with a junior officer and it turned out that he had had a problem in another unit as well.

Members of the Committee have suggested that the Armed Forces have a problem. I do not deny that there is a problem, but my question for the Minister is this. Is it a bigger problem in the Armed Forces than it is in the civilian world, such as in industry, for instance?

Lord West of Spithead: I am sorry, but surely that has nothing to do with it. We have to get it right within the Armed Forces, have we not? It is only by exposing

it that this can be dealt with. When I did my study, I was shocked at the level of this sort of thing going on in banks. I visited banks and large retail outlets and I was absolutely appalled and shocked by it. I must have been naive being stuck at sea. You might think that sailors are not naive, but my goodness me, it was quite a shock. Surely we have to look at what is right within the military.

Earl Attlee: Once again I absolutely agree with the noble Lord that we have to address our problems and deal with them vigorously. I want just to suggest that we ought to be able to compare how the Armed Forces do with the rest of industry. Although we have a problem that we want to and should deal with, the statistics may not actually be as bad as we think they are. We need to compare. That is not a reason for not doing anything about the problem; far from it.

Amendment 6 seeks to take the matter out of the hands of the commanding officer. I agree with this proposal, although I am at variance with the noble Lord, Lord West, on it. These matters are extremely difficult to determine in terms of what has been going on. As he suggested, commanding officers are not well equipped to deal with them. You might think that someone is a really good person, but then you are disappointed to find out that they are possibly offending in this way, so I do not have a problem with this proposal. I inherited a case of sexual assault and it was exceptionally difficult for me to deal with. I did not have to determine the matter, but I had to manage the aftermath. I heard the two sides of the argument and I was ill equipped to determine it. The Minister should consider Amendment 6 very carefully.

Baroness Gould of Potternewton: My Lords, the noble Earl, Lord Attlee, has made me think about two other instances that perhaps I should refer to. One is the fact that we are not talking about and cannot relate in any way to industry. People in the forces live in a closed environment. I shall give an example which has been made public. One woman was sent to an island with 27 men, and that woman was raped constantly on that island. What kind of situation is that? This has nothing to do with working in a bank or anywhere else; it is a completely different environment.

I am also reminded of the fact that the MoD has said that some 20 soldiers who are still serving in the Army are on the sex offenders register, and in each case they have been sent to a different unit, which reflects the point made earlier about people being transferred from one unit to another. That in itself seems an absolute disgrace. The department has also stated that a number of unknown people are in the Army who have been convicted but who are not on the sex offenders register, so they cannot be identified. This is not a good situation for men or women in the Armed Forces to have to put up with.

5.30 pm

Earl Attlee: My Lords, the noble Baroness's final point really follows on from what I was saying about the records of dodgy servicemen.

Baroness Jolly (LD): My Lords, my first point was going to be the one that the noble Baroness, Lady Gould of Potternewton, has just made. It is not helpful to compare with other sectors. All our Armed Forces pretty much live cheek by jowl with each other. That is not the case elsewhere: if you work in a bank, you go home at five and come back in at nine. It might tell you something but it is not hugely helpful.

I am happy to support Amendments 5 and 6. There are absolutely no circumstances where either rape or sexual assault are acceptable—we have heard talk today about many high-profile cases that are now in the public domain so I shall not go any further there—and we know that at the very highest level the service chiefs would agree with that statement. Last summer the MoD launched the "Don't Kid Yourself" campaign, so there is acknowledgement and awareness. However, the real commitment at the top has to be to changing attitudes as well as behaviour, which will take time. It takes evidence to check progress and offer confidence.

The point was made that it is not only women who can be victims, and there is possibly a different reaction to men who have been the victims of sexual assault or rape from the reaction to women in the same circumstances. In the service environment, men might feel shame in a slightly different way from the way that women might feel it, and that needs to be factored in as well. A parent would need reassurance that their son or daughter was joining an organisation committed to the eradication of sex offences. Recruits and serving members of the Armed Forces need that reassurance too.

I turn to Amendment 6. To make all feel confident—and I think this amendment is about confidence—there should be no discretion for a CO to refer this to the relevant police force. They should not handle it themselves. Sexual assault is a crime, as is rape, and if there is any doubt it is far better for this to be investigated by the police, who have the experience, rather than a CO, who does not. It has been said to me that COs have been sent on training to do this. I wonder, were I or noble Lords' sons or daughters to be raped, would we want the case to be investigated by someone who had done some training a year or so before but had not seen a case in the intervening time? We need someone investigating these cases who has not only training but experience and sensitivity. These are very sensitive issues, and the noble Earl, Lord Attlee, made that point as he was explaining his personal experience.

To keep records and publish statistics annually on these cases would enable the Government, the public and members of the Armed Forces to measure progress. It would not be just another task to do; it would enable us to measure progress and to highlight any areas of concern. The Minister in the other place, Mark Lancaster, said during the passage of the Bill:

> "I am determined to make the data that we publish robust, consistent and accessible. To that end, I am actively considering how best to publish the data as an official statistic".—[*Official Report*, Commons, 16/12/15; col. 1623.]

Has the Minister's honourable friend finished his considerations yet? What format might he use?

Lord Thomas of Gresford: My Lords, I am moved to join in this debate by the recitation by the noble Baroness, Lady Gould, of the figures for the past few

[Lord Thomas of Gresford]
years, which amount to hundreds. I should tell the Committee that in the investigation I was involved with in Washington in America, to the best of my recollection it was estimated that 32,000 sexual offences were committed in the United States armed forces, regarding which there were 5,000 complaints and prosecutions brought in the hundreds, with convictions a lower figure. It was a matter of very high political concern. There is a campaign regarding this by Senator Gillibrand, the junior senator for New York, assisted by Mr Ted Cruz, who has achieved some notoriety lately. So there are a Democrat and an ultra-right-winger and others all involved in dealing with this dreadful problem that they are facing. The issue really is the role of the CO in sexual offences, the very issue that Amendment 6 raises. I strongly urge it upon the Minister that sexual offences should be taken out of the purview of the CO altogether.

Earl Howe: My Lords, I understand the concerns which underlie these amendments. However, the case that I shall put to the Committee will show that I am not convinced that it is necessary or appropriate to make changes. The first amendment in this group would create a legal obligation to publish data about allegations of sexual offences. It would impose an obligation which, it is worth saying, is not currently imposed on other civilian authorities, although they do publish such information on a regular basis.

It may be helpful if I briefly set out the existing arrangements within the service justice system for the collection and publication of crime statistics. The Service Police Crime Bureau records, for all three services, allegations of rape and sexual assault that are made to the service police. That information is released regularly in response to Parliamentary Questions and freedom of information requests. In the case of the latter, the information is uploaded to the MoD's online publication scheme where it can be freely accessed. Noble Lords have said that they do not regard that in itself as sufficient, but let me continue as there is more to say on this.

The noble Baroness, Lady Gould, said that the system of recording offences needs to be made more robust. In an effort to improve our recording of crime, the Service Police Crime Bureau has been liaising with the Home Office police forces to analyse their crime-recording practices and rules. I am pleased to say that, as a result, the bureau is to establish a post of crime registrar, similar to that found in Home Office police forces, with a remit to scrutinise and audit the recording of crimes on the service police investigation management system. That will undoubtedly improve the accuracy and consistency of the information and, in due course, lead to the production of useful management information about patterns and trends. I very much agree with the argument that it is highly desirable to have an accurate picture of the extent of sexual offending.

My noble friend Lord Attlee asked whether the service police are recording every case referred to them. I will reflect on that issue but, in doing so, I suggest that we need to bear in mind that an unproven complaint should not blight a person's career. This is a very sensitive issue and it is one on which I suggest that we must be very careful.

Earl Attlee: My Lords, I am not suggesting putting the information anywhere on the service record—in the Army Personnel Centre for instance. I am suggesting that the service police, once that they have had an allegation against a particular serviceman, should keep a file on that serviceman so that if they get a second complaint in a different location, that will have a bearing on the credibility of that second complaint.

Baroness Gould of Potternewton: The noble Earl has talked about the question of allegation, which is always a problem. Would he be prepared to say that a comprehensive list should be produced of the number of proven cases within the Armed Forces?

Earl Howe: I shall address both points. I shall certainly factor in the last point that my noble friend made about the need to have, where this occurs, a record of a pattern of behaviour to guide the authorities if need be.

In answer to the noble Baroness, Lady Gould, the Service Prosecuting Authority records, for each year, the number of cases referred to it, the number of cases in which charges are preferred and the number of cases where a conviction is secured. The Military Court Service publishes on the internet, on a regular basis, details of every case heard at courts martial, including offences, outcomes and punishments. Therefore, the Ministry of Defence already collects and publishes a range of information about sexual offending within the Armed Forces.

However, I do not want to sound in the least complacent on this. As my honourable friend Mr Lancaster made clear in another place, we recognise that we could improve on what we are currently doing. The MoD is now working to ensure that the necessary policies and procedures can be put in place so that the finished product meets the necessary standards of an official statistic. It is a question of ensuring that any statistics that are published can be relied upon to present a true and consistent picture.

Amendment 5 would impose a legal obligation to publish data about allegations of sexual offences. I am more than a little concerned about that because of the point that I made earlier about unfounded allegations but also because no such obligation is imposed on civilian authorities. One has to ask why the military context should be any different.

Amendment 6 would remove from commanding officers any discretion as to whether to report to the service police allegations of the sexual offences to which the amendment relates. Those offences are sexual assault, exposure, voyeurism and sexual activity in a public lavatory. The amendment would mean that the commanding officer was required, by law, to report to the service police every allegation which would indicate to a reasonable person that one of these offences may have been committed. This obligation would apply regardless of the wishes of the victim.

I do not think that this amendment is necessary and I shall explain why. Commanding officers are under a statutory duty under the Armed Forces Act 2006 to ensure that allegations of any offences, including those covered by the amendment, are handled appropriately.

The commanding officer's duties in this respect are crystal clear. If a commanding officer becomes aware of an allegation or circumstances which would indicate to a reasonable person that any service offence may have been committed by someone under his command, he must ensure that it is investigated "appropriately". The commanding officer must therefore report an allegation to the service police if this would be appropriate.

However, if a commanding officer becomes aware of an allegation or circumstances which would indicate to a reasonable person that a Schedule 2 offence had or may have been committed, he must report this to the service police. Schedule 2 offences are those inherently serious offences listed in Schedule 2 to the Armed Forces Act 2006. Almost all offences under Part 1 of the Sexual Offences Act 2003 are Schedule 2 offences, including rape, assault by penetration and a large number of other serious sexual offences. This amendment would make sexual assault, exposure, voyeurism and sexual activity in a public lavatory Schedule 2 offences. A commanding officer would therefore have no discretion as to whether to report allegations to the service police.

In considering this issue, it is important to remember that before a commanding officer takes command he has training to teach him how to exercise his powers under the Armed Forces Act 2006, and he has access to legal advice 24 hours a day, seven days a week.

I should also mention that comprehensive guidance on handling serious offences, including sexual offences, has been issued to commanding officers, as has a comprehensive guide for victims of such offences. It is also important to note that there is a specific requirement in the *Manual of Service Law* that a commanding officer is to take legal advice where the offences covered by this amendment are alleged. The manual makes specific mention of these offences in the section on deciding how to investigate. It also states that there is to be a presumption that the commanding officer should normally ensure that allegations of such offences are reported to the service police.

5.45 pm

I have explained in some detail the role of the commanding officer in these cases but I should remind the Committee that the service police can and do act on their own initiative, even if a commanding officer does not think it appropriate to report a case to them—for example, where they are approached by a victim or a witness, where they come across the offence while patrolling, or where the civilian police have been involved and pass the case to the service police.

In the case of sexual assault, it will rarely be appropriate for the commanding officer not to refer an allegation to the service police. However, the offence of sexual assault is so wide that, in my view, it is right for the commanding officer to have some discretion and to encourage victims to come forward, rather than discourage them, as I fear this amendment would do. I also consider it right for the commanding officer to have some discretion as to whether the discharge of his or her duty—to ensure that allegations of offences of exposure, voyeurism and sexual activity in a public lavatory are investigated "appropriately"—requires that such allegations are reported to the service police.

Unlike some noble Lords, I do not think that it is inappropriate to ignore comparisons with other forms of employment. Most other organisations and employers have much wider discretion as to whether to report allegations to the police, and I am not convinced that the Armed Forces should be a special case in that regard.

The picture painted by some noble Lords is that we do not have any kind of robust framework but, in the light of what I have just said, I believe that a robust framework already exists and that it is not necessary to impose upon commanding officers a statutory duty to refer to the service police each and every allegation of sexual assault and the other offences covered by this amendment. Under the amendment, that would apply regardless of what any victim might want, which in some cases is a relevant consideration.

In summary, I do not believe that it is necessary for the Bill to be amended and I hope that the noble Lord will agree to reflect on what I have said and, for now, to withdraw his amendment.

Viscount Slim (CB): Perhaps I may remind your Lordships that when we were in a committee trying to put all three manuals of service law into one manual, many of us were worried that we were removing the power of the commanding officer in a number of instances. We were all thankful that the noble and gallant Lord, Lord Craig, sat in on just about every sitting of the committee. We saw the demeaning of a commanding officer taking place in some of the discussions.

There is no doubt that there is a certain wish among many politicians to civilianise the military, and I have been worried about that in one or two things that have been said today. If you do not think that a commanding officer is doing his job properly, then, as the Minister said, you lay more and more on him so that he does do his job properly. I myself dealt with a case where I was very perturbed by what was happening. I merely picked up the telephone and asked the special investigation services and the Military Police to be in my office at 10 o'clock the next morning, and the whole thing was sorted out.

I ask noble Lords to be very careful before more powers are taken away and the position of the commanding officer is demeaned. I put it that a commanding officer can do his job, and if the military do not think he is doing it properly, certain things that the noble Earl has described can be put in place.

Earl Attlee: My Lords, legally everyone has a commanding officer; someone somewhere is the commanding officer. The Minister said that commanding officers are given training. I agree that they are given a significant amount of training and that they have a significant amount of experience. The problem is that the powers of a commanding officer can be delegated to someone who has not had that training. Their commanding officer might be only a major and might be deployed to a desert island. That has happened to me. When I deployed on Operation TELIC, my commanding officer was the commanding officer of 1 UK Armoured Division and Signal Regiment.

[Earl Attlee]
I never met him; I did not know him from Adam. I would suggest that many soldiers do not know their commanding officers from Adam because they normally deal with their officer commanding.

The Committee needs to understand the difficulties faced by a junior serviceman. In these situations they are often making a complaint about someone who is their immediate superior, and perhaps even in their chain of command. They might rustle up the courage to make a complaint, but when they find themselves being interviewed by the company sergeant major, who they might in any case have an issue with for other reasons, they may quickly withdraw the allegation even though it is well founded. I have to say that I am not absolutely convinced by the Minister's response and we shall need to return to this issue at a later stage.

Lord Touhig: My Lords, we have had a good short debate and I am grateful to all noble Lords who have taken part, but I have to say to the noble Earl, Lord Howe, that I am so disappointed with his response. My noble friend Lady Gould spoke from a lifetime of experience of campaigning on matters of this kind, and some of the statistics that she afforded us are staggering. She mentioned that 20 soldiers are on the sex offenders register. Is that uploaded on to the MoD website, in which the noble Earl seems to put a great deal of faith? I do not know, so perhaps he can enlighten us.

My noble friend Lord West of Spithead spoke with the authority of experience as someone who has faced up to this, not quite realising what a big problem it is, and learned a great deal. He said that we have to change, and that is coming from someone who has served his country heroically and has taken great responsibility for the people under his command. He believes that we really do need to do something about this.

I could not improve on the remarks just made by the noble Earl, Lord Attlee. There will be inhibitions and people will not take things forward because of all sorts of consequences that they might face, so it simply is not good enough. In his earlier remarks he also asked the Minister whether the service police are recording all complaints. I hope that he will be able to tell us at some stage whether that is the case. The noble Baroness, Lady Jolly, was spot on. Parents need to be reassured. Later in Committee we will be considering issues affecting youngsters under the age of 18 joining the Armed Forces.

Earl Howe: Perhaps I may answer one question raised by the noble Lord. I can assure him that being put on the sex offenders register is something that is published by the Military Court Service. The data are out there.

Lord Touhig: I appreciate that, and am grateful to the Minister for clarifying it. However, he spoke earlier about all this information being uploaded to the MoD's website, and my point is whether or not that is on there.

The noble Baroness, Lady Jolly, talked about the training of officers, but that is not an answer. Many of us have been involved in training, in all our walks of life, but practical experience shows that you need exposure to deal with problems like this, and the evidence suggests that commanding officers do not have that kind of experience and so are not always the right people. The noble Lord, Lord Thomas of Gresford, said that the United States is looking at this matter, so it is not just something peculiar to our country.

The Minister said that he was not convinced that these amendments were necessary, saying that their provisions do not exist in a civilian context. However, I think we all agree that the Armed Forces is not like any civilian organisation. When you join the British Armed Forces, you are joining an organisation in which you might put your life on the line—it is not like joining Tesco or Barclays Bank. The circumstances and living arrangements are different: they do not go home at 5 pm; they live as a community. We cannot really compare the two.

The Minister also said that some progress had been made and that there is to be a crime registrar. Is this another bureaucrat? How much will it cost? Why not just publish the information? If it is there, why not report it? If the information is being uploaded to the MoD's website, why not put it in a report? It seems to me that this is another way of pushing things aside and not really facing up to the difficulties. We have a duty of care for the people who serve in our Armed Forces, and I am sure we all recognise that.

The Minister said that he had certain doubts about removing the CO's ability not to progress a complaint. I think that there are real problems here. I am sorry that the noble Viscount, Lord Slim, feels that this might be perceived to be an attack on the chain of command. That is not the case at all: we have to respect the fact that we need a thorough and well-organised chain of command. However, if you are a "victim", you are not in a position, as the noble Viscount was able to do, to call somebody in and get the CO sorted out because he has decided that he is not going to progress a particular complaint. There is going to be real disappointment that the Government do not feel able to publish the information that they are collecting. If it is on the website, why not produce it as a report? At the very least, I had hoped that the Minister would have said that although there are deficiencies in these amendments, the Government will go away and see whether they can come forward with their own amendment, having worked with people on all sides to make a better job if it, rather than just shutting it down. I shall not press the amendments, but I tell noble Lords that we will come back to them.

Amendment 5 withdrawn.

Amendment 6 not moved.

Amendment 7

Moved by ***Lord Touhig***

7: After Clause 14, insert the following new Clause—

"Requirement to publish statistics on employment discrimination against reservists

(1) Each Commanding Officer must collect statistics on how many reservists have reported employment discrimination in the workplace as a result of being part of the reserve forces.

(2) The Ministry of Defence must collect and publish annually anonymised statistics on the number of complaints regarding employment discrimination received from reservists who have been discriminated against as a result of their service as a reservist."

Lord Touhig: My Lords, we owe a debt to our Reserve Forces that is too great to measure. Despite what many have said, they fill a real gap in our military personnel at this time. Only on Thursday of last week, during a Question Time exchange with the Minister in the House, we were right to point out that Britain's Reserve Forces bring skills to our military that, for whatever reason, are lacking at the minute. However, I do not propose to reopen that debate at this time. It would be less than honest for any of us not to recognise that, as a result of the Future Force 2020 programme, reservists are being recruited to meet targets in troop numbers as a result of a reduction in the number of Regular Forces. Again, this is not the place to open up that debate.

My concern, and the reason for this amendment, is a genuine worry at the sometimes adverse impact that serving in the Reserve Forces has on an individual's main employment situation. Without the full support and co-operation of Britain's employers, companies large and small, our entire reserve programme would not exist. Employment protection for reservists was a matter touched on during the passage of the Defence Reform Act 2014. The then Defence Secretary, Mr Hammond, responded to concerns about changes to the structure of the Reserve Forces. At that time, he gave assurances that employment discrimination against reservists is an issue that the Government take extremely seriously and that if the Government felt that further action was needed to tackle employment discrimination against reservists, they would come forward with measures in this Bill. Nothing has materialised. However, whether employment discrimination is not a problem or whether the necessary information does not exist properly, we need to examine the issue.

My starting point is the need to gather facts in order to understand the problem, to measure its extent and, lastly, if thought appropriate, to put in place mechanisms to solve it. Our amendment aspires to nothing more ambitious than making a modest start by requiring commanding officers to collect and publish statistics on employment discrimination against reservists. It is the right thing to do because we, the British people, are the employers of the reservists as much as their employers in their main civilian life. We have a duty to care and ensure that their commitment—and, yes, all too often, their sacrifices—do not lead them to painful disadvantages in civilian life and with their employment.

6 pm

Commanding officers would be required to collect statistics on how many reservists had reported employment discrimination in the workplace as a result of being part of the Reserve Forces. Following that, the MoD would be required to collect and publish annually anonymised statistics on the number of complaints regarding employment discrimination received by reservists.

Obviously this is a probing amendment set down in order to give the Committee and the Government the opportunity to consider this matter, but I believe that it is in the spirit of the Armed Forces covenant for us to do so. I hope that the Minister will be prepared to consider including the essence of our amendment as a subject to be included in the annual covenant report.

I am sure I am not alone in having received a letter from the Minister only a week or so ago asking for help in promoting the covenant among employers. He included a helpful little book on key facts, setting out what the Government have done for reservists. All that we are doing with this amendment is giving the Government and the covenant a chance to do a little more for reservists. In response to the Minister's letter, I promise to do my part, and I am sure that many other noble Lords here will do the same. All that I ask for in return, on this St David's Day, is what we Welsh would call chwarae teg, which, for those not familiar with the language of heaven, in English simply means fair play. I beg to move.

Earl Attlee: My Lords, I am grateful to the noble Lord for moving his amendment. I have to apologise to the Committee for not tabling a suitable amendment to raise this issue but what I have to say is related. In about 2011, I took out a mortgage on a house. Between me and my wife, we had the necessary financial resources to do it and it was not a problem. However, I wanted to take out term insurance—life insurance—so that if for any reason I passed away the mortgage would be paid off. The chances of my dying suddenly at that age were quite small, but I had to admit to the insurance company that I was still in the TA. That resulted in the premiums being unaffordable, and I did not take out that term insurance. The only reason why I did not take it out was because when I said I was in the TA, the premiums became unaffordable. Will the Minister write to me and tell me what the Government are doing about that situation, and whether it still obtains?

Lord Empey (UUP): My Lords, I accept that this is a probing amendment. I think everyone would be of the view that discrimination should not take place against members of the Reserve Forces, but there have been examples where clearly it has, and we have just been given another.

In Northern Ireland we have substantial law on discrimination on religious or political grounds. Not that long ago, the identification of people as a member of the Armed Forces was sufficient to result in their being targeted and in many cases, unfortunately, assassinated. The Minister may not have the material at his disposal now but perhaps he might reflect and consult his colleagues in the Government on the implications of the publication of such material. It could result in the identification of units whose members had a particular religious or political persuasion.

[Lord Empey]

So I support the principle, which I think is quite right, but I imagine that there could be some local nuances where the Reserve Forces are concerned. The Minister might care to consult with colleagues on that, since how the information might be acquired and handled may require slightly different treatment in Great Britain from that required in Northern Ireland.

Baroness Jolly: My Lords, I am happy to support the amendment. Future Reserves 2020 relies upon a significant build-up of our Reserve Forces, and at a pace. Employers and reservists have both rights and responsibilities. I am sure that noble Lords would agree that a wise would-be reservist would talk their plans through with their employer, but they need not. The first the employer could hear about them is the receipt of a letter from the MoD. Similarly this can happen at the change of a job. When you apply for a job you are not under any obligation to tell your would-be employer that you are a reservist, which probably chimes with the point just made by the noble Lord, Lord Empey. It is therefore really important that there should be no discrimination. Noble Lords might wonder whether an employer would feel anxious and somewhat disappointed about the lack of confidence that the employee has in him that he has not been told, but clearly there are many reasons here. Also, what employees do in their own time is very much their own business.

There are ways around this on a temporary basis. A reservist employee can ask for a waiver from the MoD lasting a year not to tell the employer, but that aside, there is evidence of discrimination by employers. There is no protection against such discrimination in employment in the normal course of events. This probing amendment seeks to draw out from the Minister the various issues around how this might be handled and ask whether we are aware of the scale of the problem. But as with Amendment 5, recording and publishing the information gives the Government and indeed the public the opportunity to measure progress year on year and creates a fairer environment for reservists in which they are to work.

Earl Howe: My Lords, I am most grateful to the noble Lord for raising this issue and I understand entirely why he felt it appropriate to do so. Nevertheless, I am not convinced at the moment that it is necessary or appropriate to set out a requirement in the Armed Forces Bill for commanding officers to collect and for the Ministry of Defence to publish the kinds of data that he has referred to.

We fully recognise and value the contribution of reservists and the need to ensure that their interests are properly protected. Part of that is making sure that their reserve service does not negatively affect their employment prospects. I completely accept that principle. But that is precisely why there is protection in place to ensure that reservists are not dismissed as a result of any duties or liabilities that they have to undertake; for example, as a result of being mobilised. This protection is provided by the Reserve Forces (Safeguard of Employment) Act 1985, Section 1 of which gives a reservist who is called out for reserve service the right to apply to his or her former employer to be reinstated after they return from mobilised service. In addition, Section 17 of the 1985 Act makes it a criminal offence for an employer to dismiss an employee solely or mainly by reason of any duties or liabilities that may arise as a result of being called out.

Further, Section 48 of the Defence Reform Act 2014 amended the Employment Rights Act 1996 to remove the current two-year qualifying period for claims of unfair dismissal where the reason for dismissal is or is primarily because the individual is a reservist. However, we are not aware of any cases having been brought as a result of this change. In addition, as proposed in the *Reserves in the Future Force 2020: Valuable and Valued* White Paper, we have established a website that allows reservists to alert the Ministry of Defence if they believe that they have been disadvantaged in employment as a result of their reserve service. These cases are of course investigated if the complainant agrees. There have been only 13 contacts from reservists since we established the website in July 2013. Those are the facts as they currently stand.

The amendment proposed by the noble Lord seeks to place a legal duty on commanding officers to collect statistics on how many reservists have reported employment discrimination on account of their reserve service and for the Ministry of Defence to collect and publish statistics on the number of complaints regarding discrimination. There are more than 300 reserve units in the UK. Given the very low incidence of reported complaints, I submit that a requirement of that kind would be disproportionate and burdensome.

However, there is another difficulty with the proposed amendment—it may be unnecessary for me to point this out, but I hope that noble Lords will forgive me for doing so. It refers to "discrimination" in the context of employment, but it is important to be clear that, despite the protections that I have referred to for reservists in the civilian workplace, being a reservist is not a "protected" characteristic under the Equality Act 2010, unlike characteristics such as age, disability, race, religion or belief, sex or sexual orientation. I would like to make a further point. It does not follow that an allegation of discrimination means that an individual has been discriminated against. One need only think of a simple example, such as someone who says that they have not been promoted because of their reservist status and that that needs investigation. Clearly when an allegation like that is made, it is quite a complex situation. While on the face of it the amendment appears simple, I suggest that there are significant difficulties below the surface.

Our approach, which I hope that noble Lords will agree with, is to develop open relationships with employers and to encourage and support reservists in their individual relationships with their employers. We encourage reservists to raise employer issues with their chain of command and to resolve issues through the improved relationship management process that we have put in place. I would like to think that those processes have borne fruit, in the light of the very small number of contacts with the website that I referred to earlier. Good relationships with employers are absolutely central to the Government's programme for the Reserve Forces,

but I believe that our resources in this area are better spent in strengthening these relationships than in creating and fuelling a reporting process.

The improved relationship with employers is increasingly evident from the number signing the Armed Forces covenant and the very strong examples of those employers up and down the country who have been recognised for their support to our Armed Forces. The issue raised by my noble friend Lord Attlee is slightly different, as I am sure he recognises, and I undertake to write to him about it.

I hope that the Committee will understand why I cannot support the proposal that the Bill should be amended. For that reason I hope that the noble Lord will agree to withdraw the amendment.

Earl Attlee: My Lords, when the noble Lord, Lord Touhig, moved his amendment, he said that it was a probing amendment. However, I support the general position and tone of my noble friend's response. He mentioned the Reserve Forces (Safeguard of Employment) Act. I must say that post-Operation TELIC, the MoD's support for reservists who found themselves in difficulties was absolutely pathetic. Reservists were on their own. I used to fondly think that if I found myself in difficulty I would have the big bad main-building MoD on my side. The reality was that reservists got no support from the Ministry of Defence at all. They had the protection of the legislation, but they had to fight the case on their own. Whereas if the MoD had rung up to say, "This is the Ministry of Defence, why aren't you re-engaging the reservists?", it would have saved an awful lot of difficulty. But the MoD was, frankly, pathetic. It is not the Minister's fault, but that is what happened after TELIC.

Earl Howe: Was that on an employment issue specifically?

Earl Attlee: My Lords, it was on the ability of all reservists to get their jobs back. It was not well handled by the MoD at the time. Let us just hope that we do not have to mobilise large numbers of reservists. We should remember that a lot of them had not volunteered to be mobilised, so it was not what they expected.

Lord Empey: My Lords, in the event of the noble Lord, Lord Touhig, bringing back an amendment at a later stage, I wonder whether the Minister would agree to consult his colleagues in the Northern Ireland Office on the specific issue that I raised.

6.15 pm

Earl Howe: I apologise for not addressing that issue and of course I shall be more than happy to do so.

Lord Touhig: My Lords, I thank all noble Lords who took part in this debate. The noble Earl, Lord Attlee, raised an issue which, as the Minister said, was not quite in line with the intentions behind the amendment. Nevertheless, it shows a degree of discrimination because somebody served in the Reserve Forces, and that is something that we need to be put right.

The noble Earl's second intervention was rather eye-opening. I do not know whether the Minister can come back at some stage and give us some more information about what went wrong at that time, but it is certainly a failure when people come back from an operation like that to find that they do not get help and support to return to their full-time employment.

The noble Lord, Lord Empey, made a very important point in his second intervention, and it is one that the amendment does not really consider. The Minister's response would be very helpful should we return to this matter at a later stage.

The noble Baroness, Lady Jolly, made the point that there is endless discrimination against reservists. Surely, where we discover this, it is our job to try to do something about it. That is why we are here. What are we here for if not to right a wrong? Is that not what Parliament is supposed to be about?

I am sorry that the Minister is not convinced about the merits of the amendment. He said that there is a website and that only 13 people have contacted it, but is it not possible for the Government to include something in the annual covenant report on this matter to highlight it? It may well be that 13 is the top number and that the problem is not as great as perhaps people fear, but under the surface, below the radar, there may be many more such cases, and if we highlight the matter then we will at least get to know. If we do not open this up and get some transparency, we will not know to what extent the problem exists or whether it does not exist.

Reservists are certainly facing difficulties, and I am full of admiration for companies and employers. Some of them are very small scale—I met them when I was a Minister—employing just two or three people, but they are prepared to co-operate and help, allowing their staff to serve in the Reserve Forces. I have nothing but admiration and respect for them. However, if there are difficulties, surely it is our job to do something about them, and perhaps the Minister will reflect a little more before we reach Report. For now, I beg leave to withdraw the amendment.

Amendment 7 withdrawn.

Amendment 8

Moved by ***Lord Touhig***

8: After Clause 14, insert the following new Clause—

"Mental health provision and compensation

(1) Part 3 of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 is amended as follows.

(2) After article 28 insert—

"28A Special provision for sufferers of mental health conditions

(1) In the event of a diagnosis of a mental health condition that has been caused by serving in the armed forces, an immediate lump sum payment shall be made, as defined in article 17 (amount of lump sum and supplementary award).

(2) Upon commencement of treatment of a mental health condition that has been caused by serving in the armed forces, retrospective payment of the determined compensation shall be made, dated back to the date on which the diagnosis was made.""

Lord Touhig: My Lords, Amendment 8 has widespread support across the House, as evidenced by the names attached to it.

The amendment stems from a discussion that I had recently with representatives of the BMA who raised concerns about the way that those with mental health problems are often overlooked when it comes to receiving proper recognition and compensation for the illness that they are enduring as a result of serving in our Armed Forces and reserves. I am sure I am not alone in knowing someone—a friend or a family member—who suffers with mental health problems. I often think that our lifestyles and the pace at which we live today contribute to our difficulties in this regard. I have no medical or scientific basis for holding that view; rather, it comes from what I observe in society as a whole.

None of us needs a medical or scientific background to know that mental illness can take a number of forms and can often be hard to diagnose, especially if the person concerned will not recognise the existence of the problem in the first place. I have come across cases like that and, again, I am sure I am not alone in that.

I was motivated to encourage colleagues to support this amendment by the case of a reservist with a medical background who waited eight years for a diagnosis, having endured PTSD after serving in several theatres of conflict in our Reserve Forces. I learned that there are many others in the same situation who find that mental health problems adversely impact their ability to work at the expected level, inevitably reducing their income and thus their family life. For those serving in our forces and reserves, the problem is serious indeed. Having waited a great length of time for a diagnosis, there would appear to be no opportunity of gaining immediate financial assistance. Contrast this with those having served in our Armed Forces who suffer a physical injury: they can claim up to £60,000 if their injuries are set at level 8 or more. However, mental health is classified below this level. Once diagnosed with a mental health problem, it can typically take 18 months to two years before it is clear whether treatment will lead to a complete or partial recovery and the level of residual deficit, if any. I understand that for a claim for financial compensation to succeed, the permanent level of disability must first be assessed. This adds a further lengthy period of time when the claimant who has served in our Armed Forces or reserves has to live on decreased earnings, in many cases supporting a family. The situation is made worse if the person concerned requires a period of sick leave.

Treating the men and women of our Armed Forces in this way does no honour to us as a Parliament or as a nation; all the more so now that we have the Armed Forces covenant in place. In the foreword to this year's covenant report, the Defence Secretary, Mr Fallon, writes:

> "In return for this loyalty and commitment, we have a duty to ensure that our Servicemen and women are treated fairly".

This amendment gives us the opportunity to see that, as a country, we live up to that well-expressed and noble aspiration. We can make it more than an aspiration; we can make it a reality. If agreed, this amendment would provide for an immediate payment upon diagnosis and a retrospective payment upon commencement of treatment, backdated to the date of the diagnosis. I hope that the Government will feel able to respond positively to this amendment. In addition, I also fully support the amendment in this group in the name of the noble Baroness, Lady Jolly. I beg to move.

Baroness Jolly: My Lords, I shall speak to Amendments 8 and 14. For reasons that will become apparent, I will talk about my amendment first and then Amendment 8. The whole thing hinges on the Armed Forces covenant. Noble Lords will know that at some stage during our lifetime, one in four of us will have a mental health issue. This is pretty much mirrored in members of the Armed Forces. Today, I want to talk about serving members of the Armed Forces and reservists while they are deployed. I am not going to talk about veterans. Veterans receive their health services from the NHS, whereas serving members and deployed reservists receive their health services from the medical system within the Armed Forces. The covenant is all about ensuring that someone in the Armed Forces is not at any disadvantage to those who are outside. I do not know whether when he saw this amendment the Minister raised his eyebrows and thought, "Oh no, not again", because during the passage of the Health and Social Care Act 2012, a great deal of time and energy was spent debating the issue of parity of esteem. This amendment is to ensure that health issues are treated in exactly the same way—clearly not in terms of diagnosis or treatment but in general expectation—regardless of whether they are physical or mental. I thank the noble Lord, Lord Touhig, for his support on this.

I put it to the Committee that if a sailor, aircraft person or soldier tears their hamstring, they visit their unit doctor or medical centre. They are then referred for treatment, may be given painkillers and are strapped up. Physio will be part of the treatment and, when it is mended, in due course they will return to work. If the injury is serious, they may have to leave the service and continue with treatment outside. Physically, they will clearly be strapped up, so people can see what is going on and their colleagues and chain of command will support them in their journey back to work. A physical injury is something with which we are all comfortable and which we understand. It can be seen: there is no problem. If the issue is anxiety, depression or even worse, the story should be similar, but that is not always the case. The services have done a huge amount of work to reduce the stigma associated with these conditions, but, as in civvy street, it has not always been successful.

Within the NHS, there has to be a great move towards parity of esteem for physical and mental health. What might that look like? It might look like waiting times being much the same for a hamstring injury as for a conversation with a psychiatrist or a psychologist about one's mental health. It should also be about the uptake of services, which should be much the same for physical health as for mental health. Therefore, I propose that the Armed Forces covenant report should include an assessment of the aspects

that I have outlined. As with Amendments 5 and 7, the collection of information and its publication enables progress to be measured.

Amendment 8 follows on from Amendment 14 in that compensation should apply equally to both physical and mental health conditions and therefore I support both of the amendments.

Lord Empey: My Lords, I welcome the fact that this debate is taking place. Mental health has moved up the national agenda very substantially in the last few years. However, I think we all agree that at local level it is still the Cinderella service. In putting things into law, we have to be careful that there is the back-up on the ground to deliver them. I believe it will be many years before we have sufficient capability in the National Health Service to deliver the very worthy objectives contained in these amendments.

Noble Lords who have supported constituents in bringing benefits claims involving, for example, carer's allowance and other benefits before tribunals know that you could draw a blank from the tribunal members when it came to post-traumatic stress. They had no capability of understanding the circumstances which an individual could be in. I am reminded of the early days of the discussions on mesothelioma and asbestosis, when you had to prove that the individual contracted the disease with a specific employer. The law was subsequently changed. Forty years can pass before post-traumatic stress materialises. I saw this with somebody with whom I worked very closely, and it took almost 40 years. Tying it down to a specific incident will be challenging.

In the context of the military covenant and Amendment 14, mentioned by the noble Baroness, Lady Jolly, promises have been made and we have advanced very substantially. If ever there was an issue that needed to be addressed, this is it; and I believe that that is entirely possible. However, I am not convinced that we as a nation have yet acquired the capability on the ground to deal with these things. We do not wish to raise expectations only to have them dashed. Anyone who knows their local area knows that mental health is a huge issue, and my area is no different. We still have large numbers of young men who, sadly, commit suicide. There are people in the military and ex-service personnel who we know have a tendency to have a higher involvement with the criminal justice system. Others have difficulty with employment or with accommodation. There are also addiction issues. There are a range of things that on the face of it are linked to their commitment to the Armed Forces.

When people have been in conflict we see the obvious physical injuries and, as the noble Baroness, Lady Jolly, said, there is a pathway for how those are treated, but very often there is no parallel process for the mental health implications. I think that these amendments are well worth debating and considering. I just wonder whether the Minister agrees that, in framing anything to put into the legislation and into the military covenant, we should be mindful that we must be able to deliver it before we create the expectation that it is going to be there, only to have that subsequently dashed.

6.30 pm

Earl Attlee: My Lords, I agree with everything that the noble Lords have said. I believe that Her Majesty's Armed Forces have been engaged in combat operations, as opposed to peacekeeping operations, for far too long. You can tolerate a certain amount of that, but when a difficult combat operation goes on for years and years it is bound to cause very serious mental problems among our servicemen. Like many noble Lords, I think that this is going to bite us very hard in the future.

Lord Empey: Does the noble Earl agree that we in the UK have a reasonably well documented example of that? Among members of the Royal Ulster Constabulary, who were effectively in a combat situation both in work and at home for many years, after the Troubles there was a substantial rise in the number of mental health issues that were presented. I am sure that the department would have those statistics available, and there might be some interesting things there.

Lord Thomas of Gresford: My Lords, I would like to say something about attitudes towards mental health. I remember in the 1970s appearing on behalf of a person who had been blown up rescuing a pilot from a plane in the Western Desert during the war some 30 years before. It was extremely difficult in those days to persuade the ministry—the War Department, I think it was—that he was entitled to a war pension. We succeeded in the Divisional Court, but in the next election when I was a candidate he stood up and told the people there that if they voted for anyone, it should not be that Liberal candidate as he had problems.

Lord Craig of Radley (CB): My Lords, I support the thrust of this probing amendment. Clearly there are enormous differences between trying to deal with people who are still in the services and may be suffering from mental illness and those who have become veterans and, maybe many years later, develop or show symptoms of mental illness. How does that get related to their time in service? There are a number of other practical points that I think have been very well made. I would like to put on the record that I am for this in principle but I can see that there are many difficulties. No doubt the Minister will have a chance to tell us about them.

Baroness Tyler of Enfield (LD): My Lords, I add my support for Amendment 14 and apologise for my very croaky voice. I do not normally engage in these discussions, but I have a very strong interest in mental health. As other noble Lords have said, with so much focus on mental health now, it really has gone up the agenda. We have had a succession of extremely important reports, most recently the mental health task force report. Parity of esteem between mental health and physical health runs right the way through that report and all the thinking behind it. If we accept that report—certainly in the debates that I have recently taken part in on this subject, the Government have shown their strong support for the reports and the principles behind them, and that is welcome—it is absolutely vital that parity of esteem between physical

[Baroness Tyler of Enfield]
and mental health is applied equally to members of our Armed Forces, who do the very difficult jobs that they are asked to take on, as it is to the rest of the civilian population. I simply add my support.

Earl Howe: My Lords, I hope that it will not surprise noble Lords to hear that I fully share the sense of importance that they attach to mental health and parity of esteem in the way that mental and physical health are treated by our health services. Both these amendments seek to address provision for the care and support of members of the Armed Forces who suffer from mental health conditions while in service. This is something that we take very seriously, as I will go on to explain.

Taking first the issue of compensation for those who suffer from mental health conditions, I should explain that the Armed Forces Compensation Scheme already makes awards for injuries and disorders predominantly caused by service, including mental health conditions. The scheme is tariff based and aims to make full and final awards as early as possible so that individuals can have financial security and focus on getting on with life and living. Claims can be made while in service or when an individual has left.

The AFCS tariff has nine tables of categories of injury relevant to military service, and these include mental health disorders. While the scheme does have time limits for claims, there is also a provision for the delayed onset of mental disorders. The Ministry of Defence recognises that owing to stigma and perceived impact on career, people may delay seeking help. The practical effect of this is that if a person who left the Armed Forces some time ago is diagnosed with a mental disorder as a result of his or her service and makes a claim under the AFCS, a compensation award will be paid as soon as the claim is accepted.

Noble Lords may recall that, having been asked to review the AFCS, including the associated tariffs, the noble and gallant Lord, Lord Boyce, made his recommendations in February 2010. As a result, the Ministry of Defence increased the maximum lump sum award for mental illness from £48,875 to £140,000. This was to accurately reflect the impact of the most serious mental health conditions. In addition to the lump sum, those with the most serious conditions with likely adverse functional effects on civilian employability receive a tax-free guaranteed income payment for life on discharge from the services or from the date on which the claim is accepted. A lump sum of £140,000 attracts a GIP based on 75% of military salary with enhancements for service length, age, rank and lost promotions.

Another of the noble and gallant Lord's recommendations led to the Independent Medical Expert Group, a non-departmental public body, being established. It advises Ministers on the scientific and medical aspects of the scheme. The noble and gallant Lord, Lord Boyce, identified mental health as an area requiring further investigation. The subsequent IMEG review involved a literature search and discussions with civilian and military experts, as well as with veterans' organisations. The findings were published in its second report on 17 May 2013. The conclusions and recommendations on diagnosis, causation, assessment of disorder severity and the use of interim awards were accepted and subsequently incorporated into the scheme.

The second amendment in this group would create a specific obligation on the Government to have particular regard in their annual report on the covenant to,

"parity of esteem between mental and physical healthcare".

As I have said previously, the Government are committed to meeting the healthcare needs of the Armed Forces community. For this reason, the Armed Forces Act 2011 already requires the Secretary of State to include in his annual Armed Forces covenant report to Parliament the effects of membership, or former membership, of the Armed Forces on service people in the field of healthcare under the covenant.

I was grateful for the remarks of the noble Lord, Lord Empey, and I agree with his general point about managing expectations. However, I agree with him only up to a point in this context because I think that the healthcare which we provide to our armed services personnel, both at home and when deployed on operations, is now truly world-class. Last year the principles of the covenant were enshrined into the *NHS Constitution for England*. That gives a commitment to ensuring that those in the Armed Forces, reservists, their families and veterans are not disadvantaged in accessing health services in the area where they reside. Indeed, we have made several improvements, including: the provision of some £6 million a year to support the provision of enhanced prosthetic devices and services for veterans who have lost a limb as a result of service; the launch of the hearWELL programme to look at hearing loss among the service community; and the allocation of £10 million to address service-related hearing issues among veterans. I know that these are related to physical injuries; nevertheless, I hope that they show the appropriate intent.

With increasing awareness of the issues, we have taken steps to meet the mental health needs of our Armed Forces community. On this specifically, we now have a network of 16 departments of community mental health across the UK, providing out-patient care to the service community. When in-patient care is necessary, it is provided in eight dedicated psychiatric units. Additionally, the Armed Forces covenant gives a commitment that veterans should be able to access mental health professionals who have an understanding of Armed Forces culture, while NHS England is currently completing an audit of veterans mental services, put in place following the *Fighting Fit* report by my honourable friend Dr Andrew Murrison MP in 2010.

I can therefore assure the noble Baroness that the Government are committed to meeting the health needs of the service community, that we will continue to report on the provision of healthcare in the Armed Forces covenant annual report, and that our work to address mental health needs will be an integral part of that report. However, the principles of the covenant are to ensure that the Armed Forces community are treated fairly in comparison to the civilian population. Parity of esteem is there to ensure that all health services treat mental health with the same importance as physical health, and it applies to everyone accessing

NHS services, not just the Armed Forces community. For this reason, it does not need to be legislated for under the covenant.

Given our clear commitment to support those who suffer from mental health conditions and the tangible steps we are taking to do so, I ask that the noble Lord and the noble Baroness withdraw or do not move their amendments—hopefully, reassured.

Lord Touhig: My Lords, the Minister rightly makes a very important point about the commitment that we as a country have made to helping people with mental health problems. The work being done for those who have served in our Armed Forces is first class. We have had some very good contributions to this short debate. The noble Baroness, Lady Jolly, made a powerful case on Amendment 14 and I am sure that she is disappointed that the Minister does not feel it necessary to include it in the covenant report. He says that he shares our sense of the importance of this issue but the point of my amendments, which have attracted widespread support, is that people who have served in our Armed Forces and have a mental health problem receive no compensation or financial support at all until after diagnosis. That can take five years; in the case that I raised, it was eight years. That is a time when people are trying to support their families. Sometimes they cannot work properly, so this can cause all sorts of financial difficulty.

Before we reach Report, can the Minister provide the Committee with statistics showing whether this is a widespread problem and how many years people have to wait before they get a diagnosis? As I say, my information suggests that in many cases they wait for at least five years. If you are in financial difficulties and cannot get back to work, that is pretty devastating for someone who has served in the British Armed Forces, especially in the reserves. I hope that the Minister will feel able to do that at the very least. Whether we return to this on Report is another matter, but the information would be helpful because then we would know the extent of the problem and whether there is a need for us to press further for the Government to act. With that, I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

6.45 pm

Amendment 9

Moved by ***Lord Mackay of Clashfern***

9: After Clause 14, insert the following new Clause—

"Limited disapplication of the Human Rights Act 1998

The provisions of the Human Rights Act 1998 shall not apply to any member of the armed forces engaged in military operations outside the United Kingdom, with the exception of those rights protected by the Geneva Conventions of 1949."

Lord Mackay of Clashfern (Con): My Lords, this amendment seeks to explore the result of a case known as Smith and others v Ministry of Defence, which has provoked a good deal of concern among those experienced in the military and in service. I feel that it is right to try to deal with it in the course of this Bill. It is therefore necessary for me to explain as quickly as I can what the judgment entails. There was a fairly sharp difference of opinion within the Supreme Court about the rule that should apply.

It was a case before seven judges concerning claims arising out of the deaths of three young men and the suffering by two other young men of serious injuries while serving in the British Army in Iraq. The claims related to the training given to the soldiers before their engagement with the enemy, the provision of suitable equipment and the selection made of available equipment for a particular operation. They fell into two groups. The first, the Challenger claim, was the result of a "friendly fire" incident that occurred during combat when Iraq was being invaded by the coalition forces in 2003. The second was the result of a series of attacks using roadside bombs on personnel travelling in Snatch Land Rovers in 2005 and 2006 when combat was over and had been replaced by a period of military occupation. The British forces were assisting the civil power in Iraq, which at the time had an interim Government.

It is very important to understand that, at least in substance, the claims were not against those involved in the operations. The report of the Supreme Court concerns a stage in the proceedings when the question was whether the pleadings disclosed a case that should proceed to a full trial of the facts. The claims concerned the European Convention on Human Rights and the common law of England. Article 1 provides that:

"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention".

All the judges of the court agreed unanimously that the jurisdiction of the United Kingdom extends to securing the protection of Article 2 of the convention to members of the Armed Forces when they are serving outside the territory of the United Kingdom. That was an important point because, until then, there had been a general feeling that jurisdiction depended on the territorial extent of the state in question.

Article 2.1 was brought into play by that unanimous decision. It provides that:

"Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law".

After detailed consideration of the relevant decisions of the European Court of Human Rights, the noble and learned Lord, Lord Hope of Craighead, summed up the position in this way:

"The guidance which I would draw from the Court's jurisprudence in this area is that the court must avoid imposing positive obligations on the state in connection with the planning for and conduct of military operations in situations of armed conflict which are unrealistic or disproportionate. But it must give effect to those obligations where it would be reasonable to expect the individual to be afforded the protection of the article. It will be easy to find that allegations are beyond the reach of article 2 if the decisions that were or ought to have been taken about training, procurement or the conduct of operations were at a high level of command and closely linked to the exercise of political judgment and issues of policy".

That is a reflection of a line of authority that indicates that, for example, the chief constable of a police force does not have a specific duty enforceable in the law of

[Lord Mackay of Clashfern]

negligence in respect of individual members of the public in his area. The noble and learned Lord went on:

"So too if they relate to things done or not done when those who might be thought to be responsible for avoiding the risk of death or injury to others were actively engaged in direct contact with the enemy".

That is the important point to think about in relation to the decision—that it did not impute any liability to those who were directly or actively engaged in direct contact with the enemy. He continued:

"But finding whether there is room for claims to be brought in the middle ground"—

that is, between the two—

"so that the wide margin of appreciation which must be given to the authorities or to those actively engaged in armed conflict is fully recognised without depriving the article of content, is much more difficult. No hard and fast rules can be laid down. It will require the exercise of judgment. This can only be done in the light of the facts of each case".

That is one result of the analysis in the case of Smith.

I should mention that the convention is modified by a protocol which provides for a modification of convention obligations where a member of the convention is threatened by war. However, this was deemed by the noble and learned Lord, Lord Hope, to have no application to the circumstances that he was considering, as the operations in Iraq were not the result of a threat of war against the United Kingdom. It is interesting to consider whether the United Kingdom can engage in war against Iraq when Iraq is not at war with the United Kingdom.

The other basis of the claim was a duty of care laid upon the body responsible for the safety of the soldiers by the common law of England. This is a consideration completely separate from the Human Rights Act. As an exception to the general application of that duty, the courts have developed the concept of "combat immunity". The noble and learned Lord, Lord Hope, used as a formulation of this concept a statement by Mr Justice Dixon in an Australian case. He said:

"To concede that any civil liability can rest upon a member of the armed forces for supposedly negligent acts or omissions in the course of an actual engagement with the enemy is opposed alike to reason and to policy. But the principle cannot be limited to the presence of the enemy or to occasions when contact with the enemy has been established. Warfare perhaps never did admit of such a distinction, but now it would be quite absurd. The development of the speed of ships and the range of guns were enough to show it to be an impracticable refinement, but it has been put out of question by the bomber, the submarine and the floating mine. The principle must extend to all active operations against the enemy".

In discussing this subsequent development, the noble and learned Lord, Lord Hope, pointed out that, being an immunity, it has to be strictly construed. He concluded on both grounds that an application of these views to the case before the court required a close consideration of the facts and that it should proceed to a full trial. With that conclusion, three of his colleagues agreed, but Lord Carnwath, who was in the minority on the claims in the first group, agreed with the other four that the claims in the second group should go to trial—that is, where it was no longer a combat situation but a peacekeeping situation.

The minority judgment was first given by Lord Mance. He disagreed for a reason which he stated thus as far as the common law basis of the claim was concerned:

"I consider that the Challenger claims, which are only in common law negligence, should be struck out in their entirety on the basis that the state owes no such duty of care as alleged with regard to the provision of technology, equipment or training to avoid death or injury in the course of an active military operation".

Again, that is a reflection of the principle that I mentioned in relation to, for example, the police. On the human rights basis, Lord Mance said:

"In my opinion therefore this Court should proceed on the basis that the policy considerations which guide its domestic law in the present area of national interest will find an echo in Strasbourg, and not invade a field which would involve, in the context of claims for civil compensation, extensive and highly sensitive review with the benefit of hindsight the United Kingdom's country's policies, strategy and tactics relating to the deployment and use of its armed forces in combat. The United Kingdom's performance of its investigatory and procedural duties under article 2 is not in doubt"—

and he mentions a few inquiries, including the Chilcot inquiry, lamenting that it was rather late, although that was in 2013. He concludes:

"The issue with which this judgment is concerned is whether deaths and (at common law) injuries in combat fall to be investigated in the civil courts, at whatever level in the armed forces, Whitehall or the government responsibility for them is suggested to arise. The answer I would give is, no".

Lord Carnwath agreed to a large extent with Lord Mance, but he took the view that as some of the claims related to what amounted to peacekeeping operations, a joint approach did not apply.

That is a short analysis of the judgment and the issues involved. As I said, my amendment is simply phrased to allow this matter to be considered. I suggest that it is for your Lordships to consider what should be done in the light of this judgment, which is an important one with strong differences of opinion echoed at the highest level in our legal system.

One possibility is to do nothing and just leave the issue as unresolved. It has been resolved by a majority of the Supreme Court and that would stand, but due to the fact that there is such a sharp difference of opinion I thought that it was worth finding out whether your Lordships would consider legislation on this point. I suggest that the first option for legislation is to provide that no action for negligence will be available when injury or death occurs in combat or in military peacekeeping operations to the personnel involved in those operations. That is the minority judgment—that if the injury occurs in the course of a military operation, combat or peacekeeping, there should be no claim in negligence. The second is that it would apply only in combat operations and that, if it were a peacekeeping operation, a claim would arise.

The major option, if one goes along with the judgment of the noble and learned Lord, Lord Hope, and those who agreed with him, would be that no action for negligence will be available when injury or death occurs in combat or military peacekeeping operations against anyone involved in these operations but it will be available against others if that is realistic and proportionate. That seems to me to be what is said about the Human Rights Act. Again, the question would be whether that applies only in combat operations or whether peacekeeping operations are also included.

7 pm

If your Lordships are of the view that legislation on either of these bases is something that should be considered, it is right to remember the view put forward by the noble and learned Lord, Lord Hope, and Lord Mance that the Human Rights Act and the human rights convention involve, to a degree, what has been referred to as the margin of appreciation. That allows a state to mould to some extent the way in which it performs obligations under the convention. Therefore, if legislation was produced in the United Kingdom jurisdiction along the lines that I have just set out, it would be at least eminently arguable that that was within the margin of appreciation on Article 2. While not expressly setting aside the convention or the Act, it would mean that the Act did not apply in its ordinary sense to the operations in question.

These are the matters for consideration. So far as I am concerned, the only thing that I would like to say about these is that they have no impact on the compensation for either the people injured or the relatives of those who have been killed in such operations. Compensation is a separate matter. This is an issue of compensation, but it is separate from the basic right to compensation in other provisions, which I have not had occasion to set out in detail.

In seeking to put this before your Lordships, I point out that this is in a sense a unique tribunal. We have distinguished military Members with considerable experience at the highest level of the Armed Forces of the Crown, as well as judges who have taken part in these discussions and decisions. Surely this must be a good place in which to try to reach a wise conclusion.

Lord Thomas of Gresford: Before he finishes, may I ask the noble Lord about claims against the Armed Forces? For example, Iraqi claims have been brought forward that rely, to some extent, on the Human Rights Act. What is the impact of his amendment on that?

Lord Mackay of Clashfern: This applies only to the injury or death of those serving in the military on behalf of the British Crown. As the noble Lord, Lord Campbell, pointed out to me just before we came in, operations nowadays may not be on behalf of only the British Crown. They may be carried out, for example, in combination with the Americans, the French or some other nation. That is a further complication which did not arise in the case of Smith. The same principles could possibly apply in that situation. However, it does not deal at all with actions against, for example, Iraqis or any other people among whom our Armed Forces might be serving. The jurisdiction applies, in this particular case, to the injury or death of those serving. There would be implications of other kinds, not dealt with in Smith, so far as people who are not members of the Armed Forces are affected by actions of the Armed Forces.

Lord Craig of Radley: My Lords, it was a privilege to put my name to the amendment of the noble and learned Lord, Lord Mackay. I have looked upon it very much as a probing amendment to give the Government an opportunity to indicate how their thinking is going. We have a problem with the Human Rights Act and Armed Forces legislation. Indeed, when the Human Rights Act was debated here in 1998 I drew attention to the potential problems that might arise. My concerns were dismissed then by the noble and learned Lord, the Lord Chancellor. I quote what he said then:

> "I urge your Lordships to be of the view that the convention is a flexible instrument. It poses no threat to the effectiveness of the Armed Forces".—[*Official Report*, 5/2/98; col. 768.]

Whatever flexibilities the noble and learned Lord had in mind, they have I fear proved to be valueless and ephemeral. Cases against the MoD and individual service personnel affecting our forces on operations overseas have proliferated. Some were settled out of court. Others made the prolonged and tortuous passage up through the courts, with the MoD appealing a couple to the Supreme Court in 2013. The Committee has had a good exposition of what happened in the Supreme Court. It was a thorough and nuanced finding but there was a 4/3 split and they did not really resolve the issue.

Later that year, in a debate led very admirably by the noble Lord, Lord Faulks, I suggested that the Armed Forces Bill before the Committee today would be a suitable vehicle for legislating to ease the problems faced by the MoD and the Armed Forces on operational activity overseas. So, as I made quite clear at Second Reading, I was dismayed to find that no attempt has been made to tackle the problem in this Bill. The Government have had the better part of three years since the Supreme Court judgment to consider what form legislation should take. I have pointed out in debates on this issue that it was not going to go away —it had legs—and that it would be a failure of political leadership not to tackle it.

In recent weeks, the much-heralded Bill of Rights has been mentioned as shortly to be published. Indeed the noble Lord, Lord Faulks, indicated as much in his response to the second Oral Question this afternoon. I thought that the noble Lord also confirmed that it will incorporate legislation to help to resolve the problems created for the Armed Forces by the incompatible legislation that affects them. If so, I very much hope that whatever detailed form the legislation takes, it will introduce further amendment to this Armed Forces Bill when it is enacted. It would be preferable to contain any new legislation within the principal Armed Forces Act, rather than once again having two separate pieces of legislation about the behavioural discipline of the Armed Forces. Indeed, in the debates on the then Human Rights Bill in 1998, I suggested that while the Armed Forces were of course a public body, it was acceptable that they were, and indeed should be, treated separately in legislation. I suggested that any aspects of human rights that were to apply to the Armed Forces should be incorporated into that Armed Forces legislation. If this approach had been adopted then, we might not be facing the present difficulties.

The comments of the noble Lord, Lord Faulks, on the second Oral Question this afternoon seemed to imply that the clauses affecting the Armed Forces were already drafted. If so, surely the Bill before the Committee this afternoon could be an appropriate vehicle for

[Lord Craig of Radley]
getting this legislation enacted, particularly if the Bill of Rights is to be delayed, and may, as a whole, have some considerable difficulty in reaching the statute book. Has this been considered? If so, can we expect government amendments to this Bill on Report?

Lord West of Spithead: My Lords, I thank the noble and learned Lord, Lord Mackay of Clashfern, for laying out so clearly exactly where this stands, although I have to say that the result does not leave things particularly clear for a number of reasons which he has explained. I will not reiterate what I said in my speech at Second Reading, where I went into the detail of this complex issue, but suffice it to say that the decision by the Supreme Court in the case of Smith and others v Ministry of Defence has, without doubt, raised the spectre of military personnel who take a decision in the heat of action being taken to court to face a claim under the Human Rights Act. As I say, it has raised that spectre. That is clearly wrong and I do not believe that it is what was intended. Indeed, mention has been made of how the case is not against those involved, but the result is that the spectre has arisen. I feel very strongly about this. I have been in action and have taken decisions that resulted in men dying. I believe that I took the right decisions, but it would be wrong for one then to have to go through the courts to explain all of that.

Of course these issues are highly complex, and that is part of the problem. The cases that were being considered looked at a number of different scenarios concerning things like the definition of combat operations, peacekeeping operations within Iraq, the issue of procurement, issues around the tanks and Snatch Land Rovers operating in a different context and being hit by IEDs. The sheer complexity has caused part of the problem. It has been said that some of these matters need to be investigated by the civil courts. That has dragged in the possibility of people fully in action being taken to the courts later for decisions they took, which I do not believe should be looked at in civilian courts. They should be covered by combat immunity.

I shall reiterate what I said before. It is a nonsense that one can use human rights legislation to drag military leaders through the courts for decisions made in war because, in combat, men and women kill and are killed on a regular basis fighting for their country. One has to wonder what exactly the right to life is when you are fighting. You have to make people stand up and do things where you know they are likely to be killed. I have done that. What is the right to life in those circumstances? It is very difficult, and I do not believe that the judgment was making that point, but that could be the result of what has been done.

As has been said, this is a probing amendment. I love it because it is nice and simple. Being a simple sailor, I love a simple amendment, but the complexity is far too great and I know that the noble and learned Lord, Lord Mackay, appreciates that. He has tabled it to probe the Government and find out. We need to know how the Government are going to take this forward. How will we clarify and resolve this position, because it really does need to be resolved? There is certainly concern in the military about this, and it spreads far and wide. There is also, I have to say, concern at times about fighting to win if you feel that some sort of legislative action is going to be taken against you. It would be a dreadful thing if our Armed Forces were to feel constrained.

What I would say to the noble Earl is this: we need an answer as to how this is going to be taken forward. Will it be done in the context of this Bill, as was mentioned by the noble and gallant Lord, Lord Craig of Radley, or will we do it in other legislation that is going through? How can we take it forward, because I do not believe that it can be left as it is? There is too much uncertainty. I know that it was not what the judgment aimed to do, but the uncertainty is there, and that is wrong. We have to clarify this.

Lord Hope of Craighead: My Lords—

Lord Thomas of Gresford: I would be grateful if I could speak first because the noble and learned Lord might wish to comment on what I say. I do not think the issue is the liability of the military commander in the field directing operations. As I recall, the cases were about the provision of equipment which would have prevented the firing of one tank upon another—the "friendly fire" that caused the injuries—and, in the other, the use of Snatch Land Rovers in a situation where it was unsafe to use vehicles of that type. The Ministry of Defence, which really must promote something like this, should not get away with the provision of inadequate equipment of one sort or another. You would not expect a soldier to go into action in Arctic conditions wearing a tropical uniform that had been provided to him. It is a question of procurement, not of the decisions that are taken in the field.

I seem to recall the noble Lord, Lord West, saying at Second Reading that when you are in the field you have to get on with it and do what you can with what you have got. The fact that you have to do so does not mean to say that those who have provided you with inadequate equipment—who fail to give a steel helmet to a Tommy in the trenches, for example—should escape all liability or blame for what occurs by amendments to the Human Rights Act in this way.

7.15 pm

Lord West of Spithead: My fear is that this judgment has opened up the spectre of things to be investigated by the civil courts. That is why this comes into train, although I know that they were aiming at high-level procurement.

I have to say as an aside that to start with in a war you always have to fight with the equipment you have got. Almost inevitably, certainly in the two wars that I have been in, the equipment that we had at the time was not what I would have used in that situation, but we had to get on with it. I bloody well—sorry, I knew that the equipment was not up to that task. I knew, for example, that I had put my ship in a position where my anti-aircraft capability would not work, but I was destroying an airfield and supporting Special Forces operations so I had to be there. Still, I knew jolly well that if there were heavy air attacks I would suffer;

indeed there were, and I was sunk. I am concerned that something could happen in a court where someone says, "Why did West do that when he knew jolly well that the equipment was not up to it?", and that is wrong. That is the point that I am making: there could be an unintended consequence. That is what I am nervous about.

Lord Hope of Craighead: My Lords—

Lord Tunnicliffe: I wonder if the noble and learned Lord, Lord Hope, would let me speak before him because I intend to quote him at some length and he can correct any mistakes I make. I make it clear that the Opposition would not support this amendment as set out. I am not talking about little technicalities about wording; I am talking about an erosion of the Human Rights Act. We believe that that is a proper and admirable piece of legislation and that its retention is important. No doubt this will be the basis of a major battle between the parties in the weeks to come when the legislation is published.

I turn to the specific area of the judgment. Before Second Reading, I had not heard of Smith and others v Ministry of Defence. I googled it, thinking, "This will give me the information", only to discover that the judgment was 72 pages and 188 paragraphs long. At the very moment when I had a sense of doom, I noticed that it had been given by the noble and learned Lord, Lord Hope, whose office is some 50 metres from mine, so I tried to save myself some effort by going to see him, and I thank him for the briefing he gave me.

I looked through the 72 pages to get a wider flavour of the judgment. I will concentrate solely on the Challenger 2 event. The Snatch Land Rover issue is complicated by the fact that it was not formally a combat situation but a peacekeeping one, so while it is important to the debate, it is capable of being part a much wider debate. In my view, however, the tone of the judgment on the Challenger 2 event is straightforward. The noble and learned Lord, Lord Mackay, has already quoted paragraph 76 of the judgment, but if the Committee will forgive me I shall quote a few more paragraphs. Paragraph 82 states:

"The Challenger claims proceed on the basis that there is no common law liability for negligence in respect of acts or omissions on the part of those who are actually engaged in armed combat".

That is a pretty flat statement. It continues:

"So it has not been suggested that Lt Pinkstone or anyone else in the Black Watch battle group was negligent. Nor, as his decision to fire was taken during combat, would it have been appropriate to do so. The Challenger claimants concentrate instead on an alleged failure to ensure that the claimants' tank and the tanks of the battle group that fired on it were properly equipped with technology and equipment that would have prevented the incident, and an alleged failure to ensure that soldiers were provided with adequate recognition training before they were deployed and also in theatre. Their case is founded entirely on failings in training and procurement".

Its final sentence says that:

"The Ellis claim at common law also raises issues about procurement".

If we delve further into the document, we get what is in a sense the substance of the ruling. Paragraph 95 says that:

"The same point can be made about the time when the failures are alleged to have taken place in the Challenger claimants' case. At the stage when men are being trained, whether pre-deployment or in theatre, or decisions are being made about the fitting of equipment to tanks or other fighting vehicles, there is time to think things through, to plan and to exercise judgment. These activities are sufficiently far removed from the pressures and risks of active operations against the enemy for it to not to be unreasonable to expect a duty of care to be exercised, so long as the standard of care that is imposed has regard to the nature of these activities and to their circumstances. For this reason I would hold that the Challenger claims are not within the scope of the doctrine"—

that is, combat immunity—

"that they should not be struck out on this ground and that the MOD should not be permitted, in the case of these claims, to maintain this argument".

Its argument was to rule that it should be struck out through the doctrine of combat immunity.

The tone of the whole judgment is summed up in paragraph 100 where the noble and learned Lord, Lord Hope, says:

"The sad fact is that, while members of the armed forces on active service can be given some measure of protection against death and injury, the nature of the job they do means that this can never be complete. They deserve our respect because they are willing to face these risks in the national interest, and the law will always attach importance to the protection of life and physical safety. But it is of paramount importance that the work that the armed services do in the national interest should not be impeded by having to prepare for or conduct active operations against the enemy under the threat of litigation if things … go wrong. The court must be especially careful, in their case, to have regard to the public interest, to the unpredictable nature of armed conflict and to the inevitable risks that it gives rise to when it is striking the balance as to what is fair, just and reasonable".

In other words, over and over again in the findings as I read them—as an amateur and not as a general, although I was made acting pilot officer, and having never been a lawyer, although I was a great employer of lawyers—the noble and learned Lord seems to go out of his way to express that this is not about combat. It is about when it is reasonable and practical to do so that the MoD has a duty of care.

I come back to my question. Where is the harm in sustaining the Human Rights Act as it has been used in this case, and what are the implications? The implications are that it says that simply because the process eventually leads to combat, the Ministry of Defence cannot use the doctrine of combat immunity to avoid its duty of care. Where it is reasonable to exercise its duty of care, it has a duty to do that.

Also in my career, I worked for the Ministry of Defence as a non-executive director of defence and equipment support. As such, I was asked to look into the safety of equipment in the MoD, and I have to say that it was variable. In some areas it did not meet the highest civil standard. I do not mean silly standards; I mean the general duty that you have in civil law to reduce risk to as low as is reasonably practicable. Civil law does not say that you cannot do dangerous things and no one is suggesting that the military should not, but where you have an opportunity to reduce risk, you have a duty to take it. That cannot be an unreasonable duty. My reading of the judgment is that that is where the duty remains: where it is practicable it should be exercised, but where it is impractical, specifically in combat, then a court should not regard it.

[LORD TUNNICLIFFE]

The area of harm that does exist is what in other circumstances people would call the chill factor. The Health and Safety at Work Act has been around for so long now that most industries that are subject to it, whatever you read in the press, are mature enough to live with it. However, there are still things like the presumption of guilt—the chill factor that will stop executives from doing their job. In fact people get over it and get used to it, but if it is influencing in combat the decisions that soldiers, sailors and airmen are making, then that is wrong. That is a challenge for the MoD, not a challenge to change the law but in its training, in its teaching of the doctrine and in ensuring that the people who are making decisions fully understand that this ruling does not relate to combat and that they should continue to make their combat decisions as they have been taught to, within the rules of what I loosely call the Geneva convention, and get on with the job.

We will not support this amendment. If it comes up on Report we will oppose it, or in trying to dilute the Human Rights Act, we will oppose it.

Lord West of Spithead: Just before my noble friend sits down, I would like to get clarification. Is he saying that combat immunity trumps the Human Rights Act? In a European Court judgment on human rights, combat immunity will trump it—is that what is being said? That does not appear to be the case, which is one of the worries that I have with what is going on. The French and another nation, for example, have both taken their military out of that and said that they are not liable to the Human Rights Act in action. However, my noble friend seems to be saying that combat immunity trumps the Act, so this is not a problem that we should be discussing. Is that correct?

Lord Tunnicliffe: One of the reasons why I spoke when I did was so that there could be a summing-up of the law by the noble and learned Lord, Lord Hope. My understanding of the judgment is that there is no question that the Human Rights Act applies to military personnel when they are serving overseas. It was a unanimous decision of the court and all seven judges agreed that it was true. What they then asked was, "What does the Human Rights Act require?". People really should read the Human Rights Act. It is about three or four pages long and is a brilliant document. It refers to the European Convention on Human Rights, which is also well worth every person in our legislature having a read of. The Act is an extremely balanced document, virtually every provision of which expects you to behave reasonably.

What the court said, and I précis, is that the duty in the Human Rights Act to have care for those you are responsible for—the right to life—has to be interpreted reasonably, and the doctrine of the common law right of combat immunity holds good in a combat situation. Where there is proper opportunity to consider actions that may reduce risk then you have a duty of care to consider those actions, but not in combat and in the heat of battle.

Lord West of Spithead: My noble friend's exposition explains exactly my concerns about what is going on because it is not at all clear. That is why we need this in order to have the issue clarified. What my noble friend has said has actually left me totally confused as a military commander, so we need to have this clarified. That is why I believe that this is important.

7.30 pm

Lord Tunnicliffe: I can see why my noble friend was made an admiral and I only an acting pilot officer.

Lord Hope of Craighead: My Lords, I wonder whether I could say a word. First, I apologise for the fact that due to other business I was not able to hear the speech and analysis of the noble and learned Lord, Lord Mackay of Clashfern, although he did show me in advance the paper from which much of his speech was drawn. I also expressed my regret to the Minister, the noble Earl, Lord Howe, that I have other business to attend to and might not be able to be here all the time.

I should like to say a few words because I feel a heavy weight of responsibility on my shoulders; I had the responsibility of writing the judgment. It covered an enormous amount of ground. I was not responsible for all the paragraphs because other people wrote as well. The starting point of the analysis was what to make of developments in the European court in Strasbourg, which has been expanding the jurisdiction in a way that I do not think judges in this country entirely welcome. It has always been understood that the European convention applies to our embassies abroad; that is accepted and has never been in doubt.

Gradually the thinking has developed so that, for example, when in Iraq the military set up a detention centre, bringing local people in to be detained and examined there, they had the protection of the human rights convention—the right not to be tortured, the right to life and so on—because we had control over what happens within the detention centres that we set up. What is different about the law which we were trying to analyse and explain is the extension of that jurisdiction, as I think the noble and learned Lord, Lord Mackay, explained, to members of the Armed Forces serving outside the territory—not just outside the territory of the signatories to the European convention itself but outside the territory over which they have control. We are now contemplating Article 2 applying to areas where the Army are not in control of events but nevertheless have some duty, apparently, or have the protection under Article 2. That applies both ways. The amendment by the noble and learned Lord, Lord Mackay, could in fact be read as applying to the need to be protected under Article 2 as well as the right to immunity from challenge under it for things done to other people.

What I was attempting to do, having secured the agreement of all my colleagues on my analysis, was that we had to recognise that Article 2 applied outside the territory, so we had to explain what that meant. It was not an easy task. One of the problems in trying to get across to people like the noble Lord, Lord West, and others was that we were not dealing with a case that put in front of us the kind of situation that he was faced with. They did not bring a case against the commander in the tank or anyone who was actually on the ground that they were in some way subject to

criticism under Article 2 or subject to a claim for negligence at common law. I rather wish they had, because we would certainly have struck it out. We would have made it absolutely plain that people in that position, the heat of battle, are not to be exposed to criticism or to litigation because of things done in those circumstances. Decisions have to be taken for all sorts of reasons and it is quite impossible for a court to analyse them as to whether they were properly taken.

All I could do in my judgment—the noble Lord, Lord Tunnicliffe, has been very generous to me by setting out the various paragraphs in which I tried to do it—was to make it as plain as I could that there is an area that the courts will not go into. I did not secure the agreement of my colleagues on what to do about the cases in front of us. There was a four to three majority in favour of allowing the Challenger cases to go to trial to find out more about the facts before a decision was taken, and there was a five to two majority about the Snatch Land Rover cases that they should go to trial as well. There can be different views about this. The advantage of more facts was in fairness to the families that what was actually going on was absolutely clear before a final decision was taken. However, I made it as clear as I could that those who were taking the cases to trial should not think they were going to succeed. They had to get over the hurdles, which I explained in the various parts of my judgments. What the result of these cases will be, I simply do not know.

I cannot add to my judgment; that is not a position that a judge can ever enjoy. My judgment has to speak for itself. All I can say is that I would not change any of the words that I see when I read it over and over again. It is a difficult problem because one has to balance the need for the military to conduct operations without impediment, whether in wartime or peacetime, with, at the same time, the interests of the servicemen and their families. The noble Lords, Lord Thomas of Gresford and Lord Tunnicliffe, both illustrated the other side of the balance. I am not suggesting that legislation should not be resorted to, if the Government think that they can improve on what I attempted to say in Smith. Lord Bingham of Cornhill, one of the greatest judges that we have had in recent times, used to say that the law is made not by scoring boundaries by sixes but that you develop the law in singles. In a way, Smith was an attempt to face up to a problem and explain under modern circumstances what could be made of it. I do not claim that we achieved perfection by any means. I am deeply sorry that it has caused such alarm among senior members of the military for reasons that I certainly did not intend. I cannot do anything about that, except to apologise to them and hope they understand what I was trying to say.

The task that the Minister faces is the very difficult one of trying to analyse exactly how to express in legislation the need for protection of the individuals serving in our interest and, at the same time, giving freedom to those who have to take the decisions not to be impeded in a way that would defeat our national interest.

There is only one other point I wish to make, which I think the noble and learned Lord, Lord Mackay, hinted at in his speech. Any legislation will have to stand up to scrutiny under the European convention itself. It has to be compatible with the convention rights. However, I think that the noble and learned Lord was pointing out the direction in which the Government could go by saying that there is a margin of appreciation, which gives quite a latitude to the Government in deciding how to frame legislation. In a way, I was trying to explain in paragraph 76 that and how the margin of appreciation might lie. Not everyone agreed with me, and perhaps the Minister can improve on what I was trying to say.

Before I sit down, I repeat my apology to the senior officers in the military who think that that are being in some way targeted by what I said. That was certainly not my intention and I did the very best I could to make it clear that they were not to be open to that kind of criticism.

Lord West of Spithead: I certainly do not have the view that that was the aim of the judgment by the noble and learned Lord. However, because he was not able to make a judgment on a case of someone involved in action, this spectre has appeared. It is unfortunate that a judgment was not able to be made. Therefore, there is the spectre of something being done. I generally do not like legislation, but there is merit in trying to achieve something in legislation. I have read the whole judgment and had a nice chat with the noble and learned Lord at lunchtime about the issue—that is one of the great joys of being in this lovely building. I quite understand it, but that is my worry.

Lord Hope of Craighead: I am very grateful to the noble Lord. One cannot invent cases. The trouble with the courts is that you simply have to take what you are given. That is the real problem, which I think the noble Lord correctly identified.

Lord Thomas of Gresford: Does the noble and learned Lord think that a way forward—

Baroness Wilcox (Con): Surely we must hear another voice.

Lord Brown of Eaton-under-Heywood (CB): My Lords, the judgment in Smith, although 72 pages long, deals with one aspect only of the several problems that face the military as a result of the application of human rights, as opposed to international humanitarian law, to our Armed Forces serving abroad. It is important to recognise that Smith deals only with claims by our own soldiery regarding deaths and serious injuries against the ministry, not against individual officers. This amendment, and this is important, deals with only one aspect of Smith: the human rights claims brought by our armed services, not negligence claims.

The fact of the matter is that even if this amendment is put in place, it leaves the negligence capability—the ability of the soldiers to claim negligence against the military—still open to them. So questions of compensation and of blame are still open to be litigated. As I made plain on Second Reading, I would deal with the compensation claims as well, but not in such a way as to deprive the injured soldiers or the relatives of the deceased soldiers of any money. Instead, without their

[Lord Brown of Eaton-under-Heywood]
needing to establish liability and negligence, I would increase their entitlement beyond that under the pension scheme by giving them the equivalent of common law damages and getting rid of all the litigation. It is the litigation and the risk of litigation arising out of these cases that inhibits our military capabilities, puts people on the defensive and does all the things that worry the senior military personnel.

This is a minor point—and I speak with diffidence—but I would not draft the provision in the way that this particular proposal is drafted. It seems to me that it goes too wide. What is required to deal with the human rights aspect of Smith is to embargo claims under Articles 2 and possibly 3 of the convention on the part of our armed services. We could have some formulation along the lines that members of the armed services engaged in military operations outside the UK should not be entitled to claim by reference to Article 2, or Articles 2 and 3, of the European convention. As presently drafted, it disapplies the entire Act and, as my noble and learned friend Lord Hope rightly says, there are undoubtedly aspects of the Human Rights Act which plainly would apply. For example, take a court martial of one of these personnel serving abroad: one would presumably want to apply Article 6 of the convention to their case. It is not that which we are concerned to deal with; it is only the claims aspect.

Similarly, there is nothing in this amendment or in Smith which deals with the very real problems that have been caused to other aspects of our armed services abroad, such as claims by foreign combatants and civilians, claims that Strasbourg dealt with in cases such as al-Skeini, and cases concerning the detention of foreign suspects, as in the case of al-Jedda.

I believe that it is quite possible to introduce this limited disapplication of a right to rely on Articles 2 and 3 consistently with our human rights obligations. In other words, I think that there is a very powerful argument for saying that the majority in the Supreme Court in Smith did not actually need under the convention to go as far as to accept that Article 2 and Article 3 liability could arise on the part of the UK in respect of any of these claims.

On Second Reading, I mentioned, as did others, the publication *Clearing the Fog of Law*, which is compulsory reading for anyone who takes a serious interest in the problems caused by applying human rights law to our Armed Forces abroad. It deals with this narrow question raised by Smith at pages 43 to 45. I will not quote from it at length, but it is written by Tom Tugendhat, a retired colonel who is now a Member of Parliament, and two distinguished legal academics, one from Cambridge and one from Oxford. They state:

"It is strongly arguable that the UK Supreme Court misconstrued Article 2 of",

the convention,

"imposing more extensive obligations than the European Court of Human Rights would mandate. Legislative reversal of Smith … is the only practical way that the outer boundary of Article 2 of",

the convention,

"can be tested before the ultimate interpreter of the Convention in Strasbourg".

7.45 pm

To quote just a little more, they continue:

"The majority's decision—that Article 2 of"

the convention,

"applies (or might apply) to the claims in Smith … is anyway dubious. Lord Hope, for the majority, admitted that there was no direct Strasbourg authority on Article 2's application to a state's own troops during conflict. It is therefore odd that the Supreme Court nonetheless upheld the claim. The point cannot be authoritatively settled by the European Court of Human Rights unless Parliament legislates to reverse the Supreme Court's interpretation of Article 2 of",

the convention. There is then a quotation from what is in fact a judgment that I gave in an earlier Supreme Court decision in another case called Smith, against the Oxfordshire coroner. But as I say, those two or three pages really should be read.

Lord Thomas of Gresford: I was going to put this question to the noble and learned Lord, Lord Hope, but does the noble and learned Lord, Lord Brown, consider that a way forward might be to attempt legislatively to put the boundaries of combat immunity forward?

Lord Brown of Eaton-under-Heywood: I am glad to have been asked that question because it gives me the opportunity of saying this. Combat immunity is not of relevance here in respect of the convention claims. It is highly relevant, and was the answer sought to be advanced by the ministry, to the negligence claims. What was held, as my noble and learned friend said, by not four but five members of the court was that it did not extend to the peacekeeping mission that was relevant to the negligence claims.

I would not deal with the negligence part of the claims by extending the scope of combat immunity. I would deal with those parts, as I said at Second Reading, by legislating under Section 2(2) of the Crown Proceedings (Armed Forces) Act which enables one, in effect, to disapply tort law in respect of our Armed Forces. However, I would give them the compensation that the noble Lord, Lord Tunnicliffe, is understandably intent that they should have by making sure that they do not lose out by getting less under the pension scheme than they would if there were successful common law claims. I would give them the money on a no-fault liability basis because they have incurred these ghastly injuries serving the national interest in combat abroad.

However, I regard that as having nothing whatever to do with the limited scope of this amendment, which is simply to disapply the relevant part of the convention to that aspect of these claims. It would disapply Articles 2 and 3 so that, if necessary, it could be tested in Strasbourg whether the majority in the court in Smith needed to go as far as they did in saying that Article 2 applied. As the noble and learned Lord, Lord Mackay, said, I believe that the court would say that the margin of appreciation here allows us not to apply Articles 2 and 3 in this sensitive situation where Armed Forces are serving in combat abroad.

Earl Attlee: My Lords, I strongly support my noble and learned friend and his noble and gallant supporters. I have deployed on two military operations, in addition to aid operations. One was peacekeeping and one was

war-fighting but for our purposes there was no difference because a peacekeeping operation can deteriorate into a war-fighting or combat operation.

On both operations I willingly put my life, limb and security at the disposal of Her Majesty. "Her Majesty" might sound an old-fashioned term but to me it is all-encompassing. It means the nation, its citizens, the Government, the CDS—who at the time was the noble and gallant Lord, Lord Boyce—and the chain of command.

In return, the nation regards such service as highly commendable. If I did not come back or I was badly injured, it would be jolly hard luck. Statistically, it was actually unlikely. Whenever you deploy on military operations, it is a sad fact that it is not likely that everyone is going to come back intact, and you have to accept that if you are prepared to authorise military action. Obviously, my family would mourn my demise, but what I would not have wanted is the chain of command and the staff wasting their time on inquiries or litigation about my bad luck when they are trying to prosecute a campaign and to secure the absolute minimum number of casualties overall. I suspect that all of the cause célèbre cases that I have read about have been either misreported or misleadingly reported in order to make a good story. In some cases, I know this to be the case because at the relevant time I was in the headquarters handling the issue. If noble Lords want to be briefed privately on that, I am quite willing to do so.

It seems to me that there are several difficulties with involving the legal system when there appears to be a failure in an operation, the planning of it, the resourcing of it or the training for it. The first issue I am certain about because I have seen it myself. Sadly, in a few cases the deceased or those around him or her are the authors of their own misfortune. Sometimes, there is a failure to adhere to the training. I have read news reports where I have had to conclude that for one reason or another the training was not adhered to. Obviously, the MoD is not going to use any of these defences against a claim or misleading news report. We would be shocked if it did so, and I think that some Members of the Committee are a little bit shocked that I am taking this line.

The second issue is that there may be a very good technical reason why some equipment is not used. There could be intelligence to suggest that it is not a good idea. For instance, the capability could have been compromised in some way or using that equipment might be of benefit to opponents. There might be a military judgment to be made about which technology or capability is the highest priority to deploy to theatre. The Committee needs to recognise that in an operation logistic capacity is neither infinite nor perfect.

In about May or June 2003, I was running around in Basra province in southern Iraq in a soft-skin Land Rover. I was heavily armed with a Browning 9 millimetre pistol. My body armour was somewhere in the back of the Land Rover and I am reasonably confident that my driver had his SA80 rifle. It was a benign environment and I did not need protected mobility. But then the situation changed for reasons that the useless Chilcot inquiry may eventually tell us. Following tours had to adopt a much higher state of readiness and needed better equipment, and this was not anticipatable.

The final difficulty is morale. It does not improve morale anywhere in defence to have to endure all this completely unfair and inaccurate criticism. For instance, imagine that you are an expert in the DSTL and read a report suggesting that the very clever equipment you are developing and deploying is in some way inadequate. I have made this point before and I will make it again. I think that trying to pin responsibility for an individual fatality arising from Operation TELIC 1 against the then Labour defence Ministers is outrageous. There may well be questions about the legality, necessity, grand strategy and post-conflict planning of TELIC 1. However, the operation was militarily brilliant. We are one of the few nations in the world that could have undertaken it at all. Most nations cannot even get close to what we can do. We deployed a division out of theatre. We helped to get a regime to collapse at the cost of a mercifully low number of casualties, tragic though they were. The reality of military operations is that one never has all the training or equipment that one would desire or that could be made available in time. What you need is far better training and equipment than your opponent has, and that is exactly what happened on Operation TELIC 1. Noble Lords should make no mistake: in a deployed headquarters every fatality hurts like hell. I know; I have been there.

My final point is that there is a perverse inverse law that the level of scrutiny attached to each fatality on an operation is inversely proportionate to the number of fatalities taken. Proof of this is that if we had taken 1,000 fatalities on Operation TELIC 1, would anyone be worried about the ones who are currently a cause célèbre? I think that the Committee knows the answer.

Earl Howe: My Lords, I am extremely grateful to my noble and learned friend Lord Mackay for having given the Committee the opportunity to examine the set of issues that are of fundamental importance for our Armed Forces and indeed for the Government. As my noble and learned friend explained, the amendment would end the application of the Human Rights Act 1998 to service personnel engaged in military operations outside the United Kingdom. I have very great sympathy with the intention behind the amendment. Recent legal developments have raised justifiable fears in many quarters that service personnel could be unwilling in future to take the rapid and high-risk decisions essential for operational effectiveness, due to the fear of litigation. The Government fully believe that international humanitarian law, as embodied in the Geneva conventions, should have primacy over human rights law in the field of armed conflict. Addressing that issue was a manifesto commitment for this Government.

None the less, for reasons that I shall explain, I cannot invite the Committee to press this amendment. The Government are concerned about and determined to address the risks arising from developments in international human rights law, which have the potential to impose ever greater constraints on the ability of the Armed Forces and the MoD to operate effectively while defending the UK and its interests. As pledged in my party's manifesto, the Government are absolutely committed to replacing the Human Rights Act, and will be consulting in due course on our proposals for a Bill of Rights. It is only right that that consultation

[Earl Howe]
should include the important question of how the Bill of Rights should apply outside the UK, and will ensure that all aspects of the change are properly and fully considered, not least its implications for the rights of our own Armed Forces, which would be affected by this measure. So I suggest that it is in the broader context of a Bill of Rights that these important issues are best considered. We are working closely with the Ministry of Justice as it develops its proposals.

I was very grateful to the noble and learned Lord, Lord Brown of Eaton-under-Heywood, for his intervention. When we speak about combat immunity, there are two issues that need to be distinguished, as he made clear. There are negligence claims and common law, where service personnel believe that the MoD or the Government have put them at undue risk—for example, due to decisions on procurements—and then there are human rights claims under the Human Rights Act or the ECHR, which are claims against the MoD brought either by service personnel in respect of injury or death or by civilians.

On the first of those categories, the negligence claims, I was grateful for the comments of the noble Lord, Lord West. We are concerned that the Smith judgment has left the position on liability for events on the battlefield unclear. That is why we are considering legislation to bring about the necessary clarity. The noble Lord, Lord Tunnicliffe, asked me what harm could result from the Smith case. My response is that, as my noble and learned friend explained, in the Smith case—with no disrespect to the noble and learned Lord, Lord Hope—there were such strong differences of opinion between members of the Supreme Court that it is reasonable for thought to be given to legislating.

We recognise that there is a concern about UK court decisions eroding the doctrine of combat immunity, which prevents legal claims being brought against the Government for negligence in the course of duty in armed conflict. However, my noble and learned friend Lord Mackay has indicated that his amendment would make provision only with respect to the second category that I mentioned, injury or death of members of the Armed Forces. It would not deal at all with claims brought against the MoD under human rights law in respect of the actions of members of the Armed Forces—for example, by Iraqi nationals. The Government are concerned about both classes of case, and our ongoing work relates to both.

I should make clear that my noble and learned friend's amendment relates to human rights claims and those claims brought under the ECHR. We are concerned about both types of case and are examining them in the context of our work on the Bill of Rights.

The noble and gallant Lord, Lord Craig, asked, in effect, why we could not legislate more speedily, perhaps through this Bill. I am as keen to make speed with this as he is but, alas, we are not quite yet ready. There are a number of areas that we are looking into, including examining different areas of legislation where changes could be made and what more we could do to support our Armed Forces personnel and their families. Work is under way, and we will be announcing further detail in due course.

I am most grateful to my noble and learned friend for raising this important issue today. It has been a truly excellent debate. I am confident that when we come to introduce our proposals for the Bill of Rights, we will address effectively the problem that is rightly of concern to him, and we will do so in the context of a much needed and thorough overhaul of our domestic human rights law. On that basis, I hope that my noble and learned friend will agree to withdraw his amendment.

Lord Mackay of Clashfern: My Lords, it was never my intention to press this amendment. It was simply intended to raise these issues, which are extremely complicated. For example, in the case of Smith, Lord Mance pointed out that it is alleged that the major under whose command the firing tank was operating was told of the situation, and that there was a question in relation to the Snatch claims about whether the commander on the ground had chosen the particular vehicle that was involved in the incident. Although there is no question of anyone who was serving being involved in the claim against him, there is difficulty in finding out whether or not there has been a breach—for example, in relation to procurement or supply. You have to investigate the facts on the ground and the decisions of the commanders.

Perhaps I may take the example that the noble Lord, Lord West, gave of his own situation in the Falklands. My understanding is that, if there were a claim in relation to that by someone who had been severely injured and if the application of these principles that are being adumbrated came into play, the question of whether, for example, the anti-aircraft provision on the ship was adequate might have depended on where it was thought the ship would have gone. As I understand it, the difficulty was that when the ship got very closely inshore, the anti-aircraft provision was not adequate. If the ministry were being sued for failure to provide better anti-aircraft equipment—I am thinking of this as a possible scenario—there might be a question as to whether, in the circumstances of the engagement, the commander of the ship was required to go to a place where the anti-aircraft guns would not work properly or whether he could have operated effectively somewhere else. I do not imagine for a minute—

Lord West of Spithead: Perhaps I may interject for a moment. I could not possibly have gone anywhere else. I just want to make that clear.

Lord Mackay of Clashfern: That is the question.

Lord Tunnicliffe: Surely the judgment given by the noble and learned Lord, Lord Hope, makes that absolutely clear. The issue of the operational decisions in combat could not, in the view of the Supreme Court, be prayed in aid of negligence. The issue is those decisions not taken in a combat environment.

Lord Mackay of Clashfern: I entirely agree. The noble and learned Lord, Lord Hope, made that as clear as he could. However, as Lord Mance pointed out, the problem is that, while that is the principle, it is quite difficult to apply in practice. If you are trying to

sue the ministry, the question may be whether what happened on the ground followed what from the ministry had done. The Snatch case is the easiest one, in a way. I used the case of the noble Lord, Lord West, only because he mentioned it himself, but the Snatch case is perhaps the best example of where it is possible to say that the ministry provided the right equipment but the right vehicle was not picked. There are three vehicles waiting and you pick one. It is not the right one; the other two are somewhat different. I am not suggesting for a minute that the people who made the choice could be sued for negligence, but the question of whether or not the claim against the higher authority is made out may depend on the investigation of these things. That is what the noble and learned Lord, Lord Mance, was talking about.

As I said, I never intended to press this amendment at a later stage; I simply tabled it to raise the issues and to see what can be done. My approach would be that we should see what we want the final situation to be. We should forget what the human rights convention has to say. We should look at what we want and consider legislation. We should believe that if it is suitable legislation it will be covered by the margin of appreciation and that the human rights convention, which of course we cannot alter ourselves, will not be affected in any way. With great respect, as a result of all this debate, that is the approach that I would commend.

I am sorry that we have gone beyond the time when we were supposed to finish, but I regard myself as not completely responsible for that because things depend on what went before. I beg leave to withdraw my amendment and I do not propose to raise it on Report.

Amendment 9 withdrawn.

Earl Howe: My Lords, this may be a convenient, if not welcome, moment for the Committee to adjourn.

Committee adjourned at 8.09 pm.

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