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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

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Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

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House of Lords

Monday 18 April 2016

2.30 pm

Prayers—read by the Lord Bishop of Peterborough.

Airports: London

Question

2.36 pm

Asked by ***Lord Spicer***

To ask Her Majesty's Government when they plan to publish their decision for additional runway capacity at London's airports.

The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon) (Con): My Lords, a number of important decisions on airport capacity were taken by the Government in December last year, including to accept the case for expansion in the south-east. However, as I have said before, we must take the time to get the location decision right. The Government are further considering what will maximise the potential local economic opportunities as well as the best possible measures to mitigate any environmental impacts. This work will conclude by summer 2016.

Lord Spicer (Con): My Lords, is my noble friend aware that there is one scenario being mooted in some quarters that does not involve the expansion of the London system? Remain wins the referendum and, because of the acquis communautaire, the setting up of a state of Europe is hastened, with Berlin as the de facto capital. Berlin would therefore attract aeroplanes from London, and it would deposit them on an airfield it has had for the last five years, which has not had a single aeroplane going through it, at Brandenburg. Problem solved, I hope the Minister may say: it would take the strain off Heathrow and give more business to the Germans. I am very interested to see how that grabs the Minister.

Lord Ahmad of Wimbledon: That might be the basis for a novel, and I suggest that my noble friend share it with our noble friend Lord Dobbs.

Lord Rosser (Lab): My Lords, when the noble Lord, Lord Spicer, asked a similar Question last month, the Minister said that the Government would conclude their further consideration of the environmental impacts of expanding airport capacity in the south-east by the summer, which the Minister later said was often defined as the time when noble Lords enjoy their Recess. Bearing in mind that the Government are in full control of the timetable for making and announcing their decision on this major, contentious issue, does the Minister agree that it would be an act of political cowardice for the Government to announce their decision on airport capacity when Parliament is not sitting or on the day Parliament rises for a recess?

Lord Ahmad of Wimbledon: As I said in my original reply, the work will conclude on the additional matters, including the environmental impacts, by summer 2016. I am not going to be more specific than that at this time.

Lord Trefgarne (Con): My Lords, the future of the new runway is of course important, but what, in the mean time, will my noble friend do about the drones which are so much in the news recently?

Lord Ahmad of Wimbledon: My noble friend is quite right to raise the issue of drones. Indeed, there was an incident only yesterday at Heathrow, which has been fully investigated. The pilots have given their full reports, and the details have been reported by the media. Let me assure my noble friend that there already are stringent procedures regarding the use of drones, but the Government are also working very closely with international and domestic partners, including the CAA and BALPA. We are also working closely with our European partners—including leading on EASA's work in this regard—as to what more can be done in what clearly is an area of expansion.

Baroness Randerson (LD): My Lords, the Airports Commission recommended establishing an independent aviation noise authority to participate in planning and monitoring airport expansion in the south-east. Can the Minister explain to us what steps the Government have taken towards establishing that authority and, if none have been, why not?

Lord Ahmad of Wimbledon: The noble Baroness is right to point out that one of the findings of the Davies commission was the importance of full community engagement, and that remains part and parcel of government thinking and is very much in the mix. However, the final call on that can be made only once we make the final call on the location of expansion in the south-east.

Lord Soley (Lab): I offer the Minister my belated congratulations on his birthday on 3 April and remind him that in the year he was born, I first expressed concern about the future of Heathrow unless we kept up with the management of airports in other countries. Will he do all he can to make sure that he gets the announcement made before the Summer Recess? If this goes on for as long as he has been alive, he will be 96 and I will be 125 when the decision is made.

Lord Ahmad of Wimbledon: I am sure that all noble Lords will wish us both a long, healthy and happy life. The noble Lord is quite right—the Government have made their position clear; the decision is important. [*Laughter.*] Noble Lords may laugh, but the Government have made clear the principle that there is a need for expansion in the south-east, and we are progressing on that basis.

Lord West of Spithead (Lab): My Lords, 219 years ago today, the Spithead mutineers submitted a form to Earl Howe, whose relative sits here today, because they were appalled at a two-year delay in the Government taking action that they had promised. What does the noble Lord think they would make of the multi-year delay we have over this particular decision?

Lord Ahmad of Wimbledon: After consulting my noble friend, the current Earl Howe, I shall come back to the noble Lord on the history behind his question. The serious point behind this is the importance, as we all recognise, of ensuring the UK's competitiveness, which requires expansion of capacity in the south-east, and we are progressing on that decision. As I said, the additional considerations will be concluded by the summer of this year.

Lord Wright of Richmond (CB): The noble Lord has already received belated congratulations on his birthday. Would he join me in wishing the Lord Speaker a happy birthday?

Lord Ahmad of Wimbledon: Indeed, it gives me great pleasure to join the noble Lord in wishing the Lord Speaker, on behalf of the whole House, a very happy birthday. In doing so—I am not sure that I shall get the chance later this week—I wish Her Majesty the Queen a very happy 90th birthday.

Lord Brooke of Alverthorpe (Lab): On the decision that may be taken in the summer on the third runway and Heathrow, is the Minister aware that, for more than a decade, air pollution around Heathrow has been way above acceptable levels and little has been done by any Government? Regardless of the decision, will any steps be taken to try to solve that problem and ease the poisoning that is taking place, particularly of children?

Lord Ahmad of Wimbledon: The noble Lord is right to raise the issue of pollution. That is why the Government are taking full consideration of the Davies Commission's powerful recommendations on mitigating those impacts, so that appropriate consideration is given to ensure that those impacts can be mitigated, whatever the final decision on south-east expansion.

Lord Hayward (Con): Does my noble friend recognise that there are concerns in all parts of this House that the announcement on the runway should not be made close to the recess? On a day when the Chancellor is discussing the economic benefits of staying in the EU, will my noble friend please acknowledge that every single day or week that this decision is delayed is a loss to this country?

Lord Ahmad of Wimbledon: My noble friend makes two very important points. Of course, the Government are listening and hear these concerns. I assure him that the concerns reflected in this Chamber are very much given due consideration by other members of the Government, as well as myself.

Cyclists: Road Traffic Laws

Question

2.45 pm

Asked by ***Baroness Wilcox***

To ask Her Majesty's Government what assessment they have made of the extent to which general road traffic laws are enforced in respect of cyclists.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, the enforcement of cycling offences is an operational matter for chief officers of police. The Government support any action taken by the police to deter and reduce the number of cycling offences.

Baroness Wilcox (Con): I thank my noble and learned friend for that crisp and helpful Answer. Does he agree that, at the very least, signs should be added for visitors who take bicycles in London and elsewhere warning them that it is illegal in Great Britain nationally to cycle on pavements and that they will be fined if they do so?

Lord Keen of Elie: The Santander cycle scheme in London is the responsibility of Transport for London and its terms and conditions specify that users must abide by the *Highway Code*. More particularly, its website, under the section "Driving & cycling safety", states in unequivocal terms: "Don't pavement cycle".

Baroness Wall of New Barnet (Lab): Is the Minister aware of how many cyclists know the traffic laws that they are supposed to be adhering to? I know that my next question will split the House completely according to whether one is an avid cyclist, but a cyclist came right in front of me and hit my car, so what insurance would he have for me to claim against?

Lord Keen of Elie: So far as knowledge of the law is concerned, the Government are committed to spending £50 million over the next four years on the Bikeability scheme, which is training young people in the terms of the *Highway Code* and the law pertaining to cycling. Therefore, we are doing everything we can to ensure that people stay within the law. On the matter of insurance, subject to cyclists having public liability insurance, there would be no obligation for them to be insured.

Lord Robathan (Con): My Lords, I am sure the whole House will agree with my noble friend Lady Wilcox about the need to enforce traffic laws and the importance of cyclists and motorists obeying them. Can my noble and learned friend tell the House how many prosecutions there have been for motorists entering the advanced stop line specifically put to one side for cyclists and for parking in cycle lanes?

Lord Keen of Elie: I do not have the figures for motorists as regards that matter in the context of prosecutions, but I would be content to write to the noble Lord to give him the statistics as and when they are available for the relevant year. The figures for 2014 are complete, but the figures for 2015 will not be available until May this year.

Baroness Jones of Moulsecoomb (GP): My Lords, I am sure the Minister is well aware that the Transport Committee of the House of Commons said last month that it was very concerned about the ever-increasing number of pedal cyclist casualties, which has gone up by 8.3% in the past year. What are the Government doing to reverse that trend?

Lord Keen of Elie: The Government are investing considerable sums, in excess of £100 million, to improve the road network for the use of cyclists and walkers. That is part of our commitment. On the increase in the number of incidents and the number of casualties, that is always to be regretted. However, I think that the noble Baroness should bear in mind that there has been a marked increase in the number of cyclists on the roads in the past years as well, which is not inconsistent with the increase in the number of incidents.

Baroness Barker (LD): My Lords, following the publication of the cycling and walking strategy, will the Minister say whether the Government support a number of cycling and pedestrian organisations which have called for joint training for cyclists and vehicle drivers about each other's experience of using shared space in an organised attempt to promote a greater understanding of how shared spaces on roads can be used safely for the benefit of all?

Lord Keen of Elie: At present the Government's commitment is to the Bikeability programme, which is training young people in the use of cycles and making them aware of the position of motorists as well.

Lord Berkeley (Lab): My Lords—

Baroness McIntosh of Pickering (Con): My Lords, what is the penalty for a breach of the *Highway Code* by way of either pavement cycling or a cyclist going through a red light?

Lord Keen of Elie: There are a variety of offences that may arise in respect of cycling, under both the Highways Act 1835—cycling on the footway—and the Road Traffic Act 1988. A number of steps can be taken, beginning with a warning, followed by a fixed penalty notice of £50, followed by prosecution for a summary offence, which itself would impose a maximum fine of £500. However, under the Road Traffic Act, there are also further, more serious offences such as dangerous cycling, which can attract a fine of up to £2,500.

Lord Berkeley: My Lords, could the Minister confirm that in one sense cyclists are treated unfairly?

Lord Scott of Foscote (CB): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, I am sorry to interrupt, but I want to make the point that it is the turn of the noble Lord, Lord Berkeley. It was actually the turn of the Labour Benches before but I thought it was right that we kept going in order to save time. Let us go to the Labour Benches now, and if we have time we will go to the Cross Benches.

Lord Berkeley: I shall be quick. Could the Minister confirm that PCSOs are able to fine cyclists on the spot for going through stop lines but are unable to fine cars? Is that not unfair on the cyclists?

Lord Keen of Elie: I do not believe it is unfair on cyclists. One has to remember that in the case of the vehicle, registration can be traced. In the case of the cyclists there is no registration, and therefore an on-the-spot fine is more appropriate.

Lord Scott of Foscote: My Lords, I must declare an interest because I cycle regularly in London. The overriding obligation of cyclists in London is to try to ride their bicycle so as to keep it from contact with other vehicles and particularly from contact with pedestrians. If a cyclist does that, the proposition that he should be prosecuted for some breach of one of the many rules of the road seems to be a little overstretched. Still, if that overriding duty is observed, there should not be any problems with cyclists, and the need to prosecute them for minor infringements is clearly not present.

Lord Keen of Elie: With regard to the question that has just been posed to the House, I observe that prosecutions in respect of cycling offences are limited to about 1,000 a year at present.

EU Withdrawal: Tourism and Hospitality Industries

Question

2.52 pm

Asked by ***Lord Lee of Trafford***

To ask Her Majesty's Government what assessment they have made of the effect United Kingdom withdrawal from the European Union would have on the United Kingdom's tourism and hospitality industries.

Lord Lee of Trafford (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper, and declare an interest as chairman of the Association of Leading Visitor Attractions.

The Earl of Courtown (Con): My Lords, in 2014, visitors from the European Union spent a total of £9.6 billion in the UK. France and Germany were the largest markets. Withdrawal would mean putting that important industry at risk. Therefore the UK will be stronger, safer and better off remaining in a reformed EU.

Lord Lee of Trafford: With two-thirds of our overseas visitors coming from the EU and the hospitality sector being manned substantially by EU migrant workers, one understands why tourism and airline chiefs and trade bodies such as UKinbound and the Wine and Spirit Trade Association support us remaining in. Would Brexit not be an absolute disaster and a supreme folly for our tourism and hospitality sectors?

The Earl of Courtown: My Lords, I am aware of the public position of many of the tourist trade bodies. As the noble Lord, Lord Lee, mentioned, UKinbound has come out publicly to support remaining in the EU; 84% of its members believe that staying in the European Union is important for their business.

Lord Pearson of Rannoch (UKIP): My Lords, does the Treasury not estimate that the pound might fall in the early stages of Brexit, which would be helpful to our tourism industry? When our economy inevitably strengthens later, will our elected Government not be able to lower our VAT rates, to the advantage of our tourism and other industries?

The Earl of Courtown: My Lords, as the noble Lord, Lord Pearson of Rannoch, is well aware, the tourist industry is of enormous importance to the United Kingdom. It employs nearly 3 million people and contributed £59.6 billion in economic output in 2013. As the noble Lord, Lord Lee of Trafford, said, nearly two-thirds of our inbound visitors—60%—were from the European Union.

Baroness Wheatcroft (Con): My Lords, Britain's museums and galleries are a major attraction for visitors from overseas—I declare an interest as a trustee of the British Museum—and they benefit from co-operation with equivalents across the EU. Does my noble friend the Minister have a view as to whether that co-operation would continue and thrive were we to stalk away from Europe?

The Earl of Courtown: My noble friend gives her point of view. I am sure that the different venue points that visitors come to in this country work with similar venues inside the European Union. I should say that 52% of EU holiday visitors visit gardens and parks, 49% go to the pub, and 42% visit museums or galleries, so when visitors come to the United Kingdom, a large number of them visit those sorts of attractions.

The Earl of Clancarty (CB): My Lords, does the Minister not agree that continuing EU membership is also important for the arts and cultural industries more generally, not least in permitting artists—indeed, all citizens—to work, travel and study abroad without question, enabling cultural exchange, which is of mutual benefit to all countries?

The Earl of Courtown: My Lords, the noble Earl is well informed on matters of the arts. The actual exchange is very important; visitors come to this country and visit art galleries, and people of all nations of the European Union are enabled to come to this country on tourist visas.

Lord Harrison (Lab): My Lords, given that tourism and hospitality is the quintessential single market industry, could the Government not do more, for instance by reviewing the decision on air passenger duty and the moneys given to VisitEngland and other organisations that help to promote this most dynamic of all industries?

The Earl of Courtown: The noble Lord, Lord Harrison, is quite right about the dynamism of this industry. He also mentioned the VisitEngland programme, which tries to ensure that more people come to visit the United Kingdom and that once they come to the United Kingdom, particularly to the capital, London, they venture outside London to visit attractions all over the United Kingdom.

Baroness Ludford (LD): My Lords, does the Minister agree that EU environmental law on wildlife and habitats protection, clean beaches and clean rivers and so on, as well as EU funding for those purposes, helps to maintain our country and its countryside as green, pleasant and inviting, and that Brexit could undermine all that?

The Earl of Courtown: As far as our green and pleasant land is concerned, I am very happy to live in the Cotswolds, where I have had much to do with the environment over many years. I am sure that the noble Baroness is correct in what she said.

Lord Forsyth of Drumlean (Con): My Lords, does my noble friend not think that the Government are in danger of looking ridiculous by arguing that, if we left the European Union, people from Europe would not want to come to this great country, because they come from every country in the globe?

The Earl of Courtown: My Lords, I respect my noble friend enormously—in fact, I served in his department when I first joined the Front Bench many years ago—but as regards tourism to this country, being part of the European Union certainly makes it easier for people to come and visit here.

Lord Stevenson of Balmacara (Lab): My Lords, this must be the first time since I joined your Lordships' House that we have not used a question about tourism to talk about British Summer Time, which I am not going to do. I was pleased to hear the noble Earl make a positive statement about the upcoming European referendum, and long may he continue to do so. But when he thinks about it, can he also think about the issues that currently affect tourism, including the difficulty that many people have in getting tourist visas, as that would make a huge difference?

The Earl of Courtown: My Lords, the noble Lord is quite correct, and Her Majesty's Government are looking at ways of making tourist visas easier to obtain. As a result of our recent visit to China, visas obtained there will make it easier to visit the United Kingdom.

Smith Commission Principles: Railway Policing

Question

2.59 pm

Asked by ***Lord Faulkner of Worcester***

To ask Her Majesty's Government how they will ensure that the fifth principle contained in the report of the Smith Commission that the package of powers agreed through the Smith Commission process "should not cause detriment to the UK as a whole nor any of its constituent parts" will be complied with when railway policing is devolved.

The Parliamentary Under-Secretary of State, Scotland Office (Lord Dunlop) (Con): My Lords, the Scotland Act devolves responsibility to the Scottish Parliament for the policing of railways in Scotland, and we are working with the Scottish Government to understand their plans. Maintaining high levels of service across the UK is at the forefront of our planning for an efficient and effective transfer of functions. There is absolutely no reason to think that devolution will degrade the level and effectiveness of railway policing.

Lord Faulkner of Worcester (Lab): My Lords, that is all very well but this is a Question about the no-detriment principle in the Smith commission report. The British Transport Police Authority made it clear in its evidence to the Public Audit Committee of the Scottish Parliament that the safety and security of railway policing in England and Wales could be endangered and its costs increased if that force no longer had a role in Scotland. Surely there can be no greater example of a no-detriment principle applying than that one. Particularly bearing in mind what the noble Lord, Lord Dunlop, said at the Report stage of the Scotland Bill when he shared with us the news that the Conservative Party, in its manifesto for the Scottish elections, had decided that the BTP should continue to police the railways in Scotland after those elections, surely he could be a little more forthright in standing up for the no-detriment principle.

Lord Dunlop: My Lords, the noble Lord is absolutely correct that the Scottish Conservative manifesto supports the devolution of BTP functions in Scotland, as do all the parties that signed up to the Smith agreement. The principle of devolution is that the Scottish Government should be held accountable by the people who elect them, and I assure the noble Lord that the Scottish Conservatives and their leader, Ruth Davidson, will be very vigorous indeed in holding the Scottish Government to account for their decisions on the BTP in Scotland. To take the other aspect of the noble Lord's question, if the Scottish Government decide to proceed with plans to integrate BTP functions within Police Scotland, the UK Government will of course work very closely with the Scottish Government to put in place robust operational arrangements to ensure that there is no detriment to any part of the United Kingdom.

Lord McAvoy (Lab): My Lords, at the Report stage of the Scotland Bill the Minister indicated that a senior-level joint programme board to lead and oversee the work to integrate the British Transport Police in Scotland into Police Scotland had been established by the two Governments and that it includes two representatives of the two police authorities. The Minister also indicated that it would report to the UK Parliament about progress and with its implementation proposals. Does the Minister agree that that will give this House the chance to monitor the principle of no detriment?

Lord Dunlop: The noble Lord is absolutely correct. A joint programme board has been established and it includes representatives from the two Governments, the British Transport Police Authority and the Scottish Police Authority. As I said on Report, I am very happy to share with the House the terms of reference of that joint programme board and to do so soon after the Scottish elections have concluded on 5 May. I also renew the commitment to update the House in detail on the implementation plans once the Scottish Government have finalised their operational model, which, although it is in the gift of the Scottish Government, I anticipate will be in the late autumn. That will, I think, give the House the opportunity to monitor progress.

Lord Berkeley (Lab): My Lords, will the Minister respond to the question from my noble friend Lord Faulkner about the BTP's evidence to the Public Audit Committee that if this split happens, regardless of the safety and other implications which we have all spoken about previously, there will be extra costs for the British and Welsh Governments for the British Transport Police activities in those countries? If the Scottish Government implement this, will they compensate England and Wales for the extra costs that will be imposed?

Lord Dunlop: I do not think we can be specific on the costs until we know what the structure will be. However, as I said, in the detailed discussions on the implementation plans the UK Government will work very closely with the Scottish Government to ensure that, whatever arrangements are put in place, they do not cause detriment to the other parts of the UK.

Lord Harris of Haringey (Lab): My Lords, it is of course conceivable in the future that there may be disagreements between the Government here in London and the Scottish Government. Can the Minister give us a guarantee—and, if he can, how can he make such a guarantee—that we are not going to see the spectre of trains pulling up at the border while operatives of the British Transport Police get off and operatives of Police Scotland get on?

Lord Dunlop: There are already collaborative arrangements in place between the BTP and Police Scotland. I think that as we put in place the new arrangements we will be looking to ensure that we build on those collaborative arrangements to ensure that there is a seamless operation of what is a very important service for the whole of the UK.

Lord Faulkner of Worcester: But who, my Lords, is going to decide whether the no-detriment principle applies? Is it going to be the British Parliament or the Scottish Parliament?

Lord Dunlop: As regards this issue, I go back to what my noble friend Lord Empey said. I am not sure whether he is in his place today, but he has great experience of these matters in Northern Ireland. He was absolutely confident that we could put in place effective working arrangements. However, he did caveat that by saying that it would take time to achieve that. It is certainly our view and expectation that it would take two to three years to ensure that there is a proper transfer of these functions.

Lord Wallace of Saltaire (LD): My Lords, is the Minister sure that we should be making a direct comparison with Northern Ireland in this respect? I understand that trains run between England and Scotland but not between England, Scotland and Northern Ireland.

Lord Dunlop: I absolutely take the point that the noble Lord makes.

Housing and Planning Bill

Report (3rd Day)

3.07 pm

Relevant documents: 20th, 21st, 26th and 27th Reports from the Delegated Powers Committee

Clause 78: Mandatory rents for high income local authority tenants

Amendment 72

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

72: Clause 78, page 34, line 25, leave out "must" and insert "may"

Lord Kennedy of Southwark (Lab): My Lords, I first refer all noble Lords to my declaration of interests and further declare that I am an elected councillor in the London Borough of Lewisham.

As I said in Committee, and early on Report, many aspects of the Bill are controversial. As we move on to consider the pay-to-stay proposals, I think it is correct to say that this is one of the most controversial parts of the Bill. It is, in fact, just a revenue-collecting exercise for the Government to fund programmes that they should be funding centrally, which makes it all the more disgraceful. Local authorities will have no discretion over who they deem to be a high-income tenant and then what they should be charged.

I have received numerous emails from worried tenants, and I am sure many other noble Lords have as well. I recall one email from a woman who told me that she and her husband have a combined income in London of £42,000. They pay their rent and their taxes, and their children have grown up and moved away. They cannot afford to go on holidays, but they can afford to go out for the odd meal in a local restaurant. They love their jobs and feel that work in the public sector is rewarding. They were very happy. But then they were shaken by the worry that they will be deemed high-income tenants and their rent will increase dramatically to the levels that they see in the private sector. They just cannot afford to pay those levels of rent and are fearful for their future. That distress has been caused by the Government to tenants who find themselves in this position and is due to their handling of this policy right from the start. While we were assured of tapers and other protections, which I am sure the Minister will point to when she replies to this debate, this is no way to make legislation.

I am also puzzled that the noble Baroness, Lady Williams of Trafford, has often referred in our debates to the figure of £50,000 when talking about higher incomes and higher rents, yet the Government propose a cap of £40,000 in London. That makes me all the more convinced that the amounts of £30,000 and £40,000 have been selected more for the number of tenants who are expected to be caught and the revenue raised rather than because anyone really believes that these levels of household income are in any way high. If that is not the case, I invite the noble Baroness to explain clearly for what reason these levels have been selected other than that the department's own research has illustrated that the largest number of people to be caught have incomes just above the levels proposed by the Government and that this is in fact a tax on council tenants on modest incomes.

I was going to suggest to the House that this is a stealth tax, but there is nothing stealthy about it; it is just a good old smash-and-grab raid. Furthermore, it applies only to earned income, so it is a tax on working as well. It really is unacceptable. My Amendment 72, which is supported by the noble Lord, Lord Kerslake, and the noble Baroness, Lady Bakewell of Hardington Mandeville, would replace "must" with "may", thereby giving local authorities discretion about the levels of rent they would want to charge tenants who found themselves in this difficult situation. It is right to give local authorities this power to decide what is best for their area and I hope the Minister will accept my amendment. I beg to move.

Lord Kerslake (CB): My Lords, I support Amendments 72, 75 and 78 in this group and in doing so declare my interests as chair of Peabody and president of the Local Government Association. The amendments would leave with individual local authorities the decision on whether to increase rents for higher-income tenants, give them the discretion not to implement the change if income was exceeded by the costs and enable them to retain this additional income at local level. This would put them in exactly the same place as the Government now propose for housing associations.

As the Bill has progressed, it has been increasingly clear that the pay-to-stay proposals are a back-door form of taxation. Application of the increased rents is mandatory regardless of local circumstances. Local authorities will collect the money, but the Chancellor gets to keep the income. How else could you describe this other than as a locally collected tax? The argument that we are doing this because of higher-income tenants subsidising those on lower income simply does not add up. We know that, following the un-ring-fencing of the housing revenue account, housing revenue accounts must now be balanced without government grant.

I use the term "higher" here because we are not talking about high income. The proposed thresholds, which we will talk about further in the next group of amendments, are for household incomes—this is the crucial point—of £30,000 outside London and £40,000 inside London. A couple in London, one working as a teaching assistant and another working as a caretaker, will come above the threshold. By no stretch of the imagination can these be seen as highly paid positions.

Jan Sweeney and her husband, who live in north Kensington, fit this description precisely. Jan wrote to me and I had the opportunity to meet her subsequently. When they started out in north Kensington many years ago, it was not a particularly attractive place to live, but they made it their home. They have never claimed benefits and have made a positive contribution to the community. They do not go on expensive holidays or own a car. They are just at the stage where the children have grown up and they have some money available to go out for the odd meal and treat the grandchildren.

3.15 pm

With sky-rocketing house prices in London, there is no prospect of them buying in their area. Equally, market rents in their area are £400 a week. When we come to vote on this, it is worth being aware of the people we are likely to penalise through this policy—people like Jan Sweeney and her husband. The average household income in the UK is around £30,000. In London, it is around £40,000. These thresholds may be high for council tenants, but they are not high in the country as a whole—in fact, they are near the average for this country.

If we look at taxation policy, the threshold for an individual before income tax rates go from 20% to 40%, will, from April 2017, be £45,000. Many people doing ordinary jobs will be deemed under this policy to have high incomes. If the taper—which I will come to later—is 20p in the pound, their effective taxation rate will be at a higher-income rate of 40p in the pound, even though in income tax terms we define them as basic-rate taxpayers. That smallish group of people will be paying a higher rate of tax at £10,000 lower than those to whom income tax applies.

The Government are committed to a taper, which is welcome. We have still to confirm—we may hear this today—what that taper is. The illustrative options were 10p and 20p and I think it is likely to be 20p, as the Minister has signalled. The modelling by the Institute for Fiscal Studies suggests that with a taper of 20%, some 30% of households would have to pay the full market rent, so not a small number will end up paying the full market rent, even on a taper of 20p in the pound.

On the Government's own impact assessment, the number of people affected across both council and housing association tenants is around 350,000 or 7% of the total. But to collect the money from that relatively small number of tenants, local authorities, and indeed housing associations, will have to ask every tenant what their position is in relation to their income. That is a huge administrative burden for what is a relatively small number of council tenants. In every respect, it is an inefficient way of raising tax. More to the point, neither local authorities nor housing associations are geared up to be tax collectors.

The cost of the collection compared with the potential income is disproportionate and in some places—hence the reason for the amendment—we need to take a view that it would be uneconomic to collect it. We have still to establish, even though we are now on Report in the House of Lords, how the information on income will be provided to local authorities by HMRC. We have still to establish how we will deal with changes in household income to keep this policy fair.

All of the above would strongly argue for a voluntary scheme as originally envisaged in the Localism Act. Higher rents could be charged for households who are on genuinely higher salaries—the figure in the Act was £60,000 or above. This is a much smaller number of people, perhaps of the order of up to 34,000. Indeed, thinking about the origins of this policy, Bob Crow was on a salary of £145,000—somewhat different from £30,000 and £40,000. Crucially, if we adopted this voluntary approach, we would learn from a localist model how best to deliver a fair and workable system in such a complex and sensitive area. We will debate the thresholds and the taper in more detail in the next grouping. In the mean time, I urge noble Lords to support the alternative, localist, voluntary approach set out in these amendments.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I shall speak to Amendments 72, 75 and 78, to which I have added my name. I remind the House of my entry in the register of interests as a South Somerset district councillor.

As has been said many times in this Chamber in recent weeks, local authorities know their communities, and their officers know the circumstances of individual families and couples within these communities. It is far better for local authorities to make decisions that affect the lives of those families than for a blanket diktat to come down from the Secretary of State. It is also surely not logical for a local authority to be forced to implement a high-rent policy if the cost of doing so exceeds the additional income raised by the charging of the higher rent. This is not cost effective and everyone can see that that is the case. I echo the comments made by the noble Lords, Lord Kennedy and Lord Kerslake, and will support them if they wish to divide the House.

Lord Horam (Con): My Lords, this is, I am afraid, an idea that probably looks good in the confines of the Treasury or in the rarefied world of special advisers in No. 10. In the real world outside it does not look so good. The noble Lord, Lord Kerslake, mentioned the late Bob Crow. I recognise, as the noble Lord said, that there is a case for saying that people on a higher income or earning over £100,000 should move out of council tenancy and seek a home of their own, thus leaving one for someone on the waiting list. I understand that argument. It is an important one that we should not forget.

However, this is not the greatest problem that we face. In the case of London, for example, where the housing crisis is most acute, 100,000 properties have been bought by secret offshore companies, pushing prices up for ordinary Londoners, who cannot get access in the way that they need to. I also agree with the noble Lord, Lord Kerslake, that this leads to a lot of administration for a small return. He used the word "inefficient"; we should not compromise on efficiency in administration. I believe in smart government, neither large, nor small; it depends on what you need. We should have efficient government and this in principle does not look like that. A lot of bureaucracy will be involved, a lot of mistakes will probably be made and the returns will be quite small. Should the Government be doing something as detailed as this? Should they not leave it to local government? Frankly, this smacks of the sort of thinking that went into the bedroom tax, which I think that many people regret.

While my noble friend Lady Williams has noticeably been listening throughout—I pay tribute to her conscientiousness and her willingness to take arguments on board—there is a case to be made for Amendment 72, which would leave this matter to the local authorities. I agree with the noble Lord, Lord Kerslake, that we need a higher threshold before it kicks in: £60,000 in London and £40,000 outside are a minimum, frankly.

[LORD HORAM]
In many ways I would prefer a higher threshold, but that would be a starting point, which is encapsulated in Amendment 77 in the name of the noble Baroness, Lady Bakewell. I also agree with the proposal in Amendment 75; if the administrative costs outweigh what you raise in revenue, it is senseless to go ahead.

Finally, if we do go ahead with this and raise some money the local authorities should keep it to invest in further council housing. That is essential. It should not go into the pockets of the Treasury, which does not need this small amount and it should not get it. The amendments in this group are both fair and sensible, and it is my experience that what is fair and sensible is usually good politics.

Baroness Hollis of Heigham (Lab): My Lords, I very much welcome these amendments, so ably moved by my noble friend and supported by the noble Lord, Lord Kerslake, and the noble Lord, Lord Horam, whose words I thought were very wise.

I must say that I am baffled by the Government's obsession with council tenants' incomes. For starter homes, buyers can be on £80,000 a year and still get a subsidy of £100,000 or more to climb the housing ladder into a larger property, and no questions are asked about their income; council tenants, meanwhile, go down the housing snake—they face the bedroom tax mentioned by the noble Lord, Lord Horam, if they cannot compress into a smaller home, while other council tenants, with a family income of £30,000 between two of them, are pushed into market rents. After five or eight years, starter home owners may happily leave their homes to trade up; at the selfsame time, council tenants fear that they will lose their homes to an insecure tenancy. It cannot all be about Bob Crow, as the noble Lord, Lord Kerslake, said—can it? Fair it is not; spiteful, as far as council tenants are concerned, I believe it is.

So I have some questions to the Minister that span this and the next group of amendments. The original impact analysis suggests that the increased income from rent under this policy, before taper, would be wiped out every year by the "behavioural impact". In other words, tenants will ensure that they do not pay an extra penny if they can help it, so the Treasury will only gain not from increased rents but from "fiscal drag". That is very speculative. My first question to the Minister, therefore, is: what are the Treasury's revised net figures with a taper of 20%? Less income perhaps? Less evasion, certainly. Perhaps less fiscal drag, also?

Secondly, what is the estimated admin cost to local authorities of assessing the income of separate family members for those half of council tenants who are not on housing benefit? Where will that information come from? Will it come from HMRC? For hundreds of thousands of tenants, will councils draw on data that are 18 months old? In many councils, these data would be handled by private companies, so what of taxpayer confidentiality—or does that not matter for council tenants?

Whenever people's incomes fall, they will, rightly, want their rent to be reduced immediately, although they may be slower to report a pay rise. What will it cost councils to collect data on any such income drop, verify it with HMRC, conjoin family incomes, assess the rent and notify tenants and then collect it? What will it cost to do that all over again for that family, perhaps every month or two, when the job goes, the partner goes, their hours go down or their income, as a self-employed person or someone on commission or on a zero-hour contract, doubles or halves from month to month?

At huge cost, as the noble Lord, Lord Horam, said, local authorities will be endlessly chasing rent arrears for, on the one hand, increased rents or, on the other, for failing to credit for reduced rents. Always, they will be three changes of circumstance behind. With tax credits and with the Child Support Agency, we never caught up—half of all lone parents, I found, had more than a dozen significant changes of circumstance affecting their tax credits or his maintenance every year. That required endless recalculation of tax credits and maintenance, which government never managed to handle. I was there. We were foolish and we got it wrong. We have not learned from it. This is what is so exasperating: look at what has happened with the bedroom tax. I checked this figure over the weekend. So far, some councils have recovered just 30% of the increased rent due because of the cut in housing benefit—30% after a couple of years, with 70% still outstanding and half the affected tenants with hugely increased arrears. That is the legacy. That, as a system, was fairly easy because rent and income in those cases were both fairly stable, unlike this mess. If pay-to-stay rent is not adjusted speedily the tenant will suffer and fall into debt, but if the local authority tries to do so it will be unable to cope. Oh, and the IT providers tell us that the IT will not be ready on time either, but that is a minor consideration.

3.30 pm

Now add a taper. Because this policy is so spiteful—I use that word deliberately—the Government have allowed some inadequate mitigation that softens the edges but hardens and makes more difficult the administrative delivery. A taper is welcome, but an increase in the threshold that takes most of those families on fluctuating incomes out of pay to stay is, in my view, essential. Only that will ease the administrative nightmare about to hit local government; only that will protect work incentives and the wish of so many struggling families to get on and progress. Otherwise, tenants will refuse overtime or not declare it. A modest promotion would be declined as, with NI and tax, they will now lose 52p in every pound, making quite fragile lives and that effort to get on so much harder.

As the noble Lord, Lord Kerslake, said, housing associations have discretion on whether to impose pay to stay at all. If they do they are allowed, as the noble Lord, Lord Horam, said, to keep the rent. Councils have neither option. It is mandatory and the money does not stay with them. They will have the cost, but the money goes to the Treasury. The Government are not even guaranteeing that the costs will be covered. The Minister is keen to talk about the level playing field between housing associations and local authorities on right to buy; she is silent, so far, on the lack of fairness between the tenures of housing associations and local authorities on pay to stay.

This policy is spiteful and unnecessary. It will not bring in much income. I do not see why council tenants, unlike us, are expected to contribute to reducing the deficit in this way—pushed behind, according to the impact analysis. It is not too late to amend the Bill. I hope that the House does so today by supporting the admirable amendments in this group and the group that follows.

Baroness Gardner of Parkes (Con): My Lords, this is a very emotive issue. I recall very clearly being quite upset and thinking it very wrong when I discovered that people earning huge salaries—we all know that Bob Crow was the famous one so much in the public eye—occupied properties that someone in much greater need would have required. Yet I also understood his feelings that it was his home, he had lived there a long time and he wanted to stay. Therefore, a very fair answer seemed to me to pay more. I again declare my interest, which is in the register and as I have done every time before.

Would not the answer to all this administration being discussed be to place the onus on the tenant to state whether their income is above a certain amount? That way the council would be much less restricted by being obliged to do it. Either you make it compulsory with a "must" or you do not bother to enforce it too hard at all but give a penalty if, at later stages, you discover that people have not declared when they should have. The whole thing is extremely difficult, yet the people in the greatest need should occupy these properties.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, the amendments in this group seek to make the policy voluntary for local authorities and to impose restrictions on where the policy should operate. These are basically wrecking amendments and I should be clear up front that we cannot accept a voluntary approach for local authorities. Local authorities can now, if they want, put a voluntary scheme in place, but we are not aware of any that have actually done so, so the policy must remain mandatory.

Within these amendments there may be some room for common ground, particularly around considering the impact on authorities in particular areas. Combined with the reassurances that I have provided on the proposals for the design of the policy through regulations, I hope that this can help us avoid an argument about the nature of the scheme. We are clear that it should be applied consistently by local authorities.

Amendment 72, tabled by the noble Lords, Lord Kennedy and Lord Kerslake, would have the effect of making the policy voluntary for local authorities to operate. As I have explained, we cannot accept this position. Unless there are very good reasons for an authority not operating the Government's policy, with those circumstances set out in regulations, we want a consistently applied policy.

I think that it was the noble Lord, Lord Kennedy, who asked how the figures had been arrived at. The figure of 30,000 represents the top 40% of earners and the figure of 40,000 represents the top 20% of earners.

Lord Kennedy of Southwark: The Minister says "earners", but, of course, these incomes refer to households—the earners earn much less than that.

Baroness Williams of Trafford: The noble Lord is absolutely right; it does represent households. But he asked how the figures were derived and that is how I understand they were derived.

The noble Baroness, Lady Hollis, raised a number of questions about the affirmative regulations that we will bring forward. Introducing a taper will reduce the money coming in. I have just had a note saying that the regulations we will bring forward will provide more detail in due course. The noble Baroness also asked, what is the updated estimate of savings from the policy in light of the taper? Introducing a taper will reduce the money coming in by about half compared to what was set out in the Budget. That is what I can say at this stage.

Amendment 75, tabled by the noble Lords, Lord Kennedy and Lord Kerslake, seeks to allow a local authority discretion to implement the policy where the costs of administering the policy are likely to be greater than the extra rental income raised. It also seeks to allow local authorities to retain the additional revenue raised from increased rental income. I am sympathetic to one half of this amendment and I can give a commitment that we are thinking through the impact of the policy in certain authority areas. I accept that there may be some areas where social rents and market rents are so close that it may not make sense for an authority to operate the policy. We will consider that evidence carefully and consider how to approach this in the regulations. We will not be allowing local authorities to retain any money raised, however. The money has been identified as a contribution to reducing the national deficit and, on that basis, it must come back to government. I reinforce our commitment to allow local authorities to retain reasonable administrative costs.

Government amendment 133 provides for the regulations to be subject to the affirmative resolution procedure, which I am sure will be supported. I do not think that I need to say much more about this. I have given a commitment that the Government are in listening mode and want to take on board the views of noble Lords across a number of areas of detail. The affirmative regulations give us the chance to do this and I welcome the opportunity.

I hope that I have provided some reassurance and highlighted areas where we are thinking carefully about the way forward. Although we cannot accept a voluntary approach, we will work with noble Lords to consider the impact in some local authority areas. On that basis, I commend the government amendment and hope that the noble Lord will withdraw his.

Lord Kennedy of Southwark: Will the noble Baroness clarify one thing? I may be getting confused but I believe that the figures of £30,000 and £40,000 were the earnings figures that have now been applied to households. That seems a very odd and unfair government policy—taking an earnings figure and applying it across the board.

Baroness Williams of Trafford: My Lords, the noble Lord raises a very relevant question. May I write to him?

Lord Kennedy of Southwark: I thank the noble Baroness for that response. However, it highlights the fact that we are still not clear about some issues, even now we are on Report. That has been one of the problems with the Bill from the start. That is not the noble Baroness's fault, but we are still not clear about some things even on the third day on Report. That is the fault of the department and the way it has handled the whole process.

I thank all noble Lords who have spoken in this debate. I agree very much with my noble friend Lady Hollis that the Government appear to be obsessed with council tenants' incomes. As the noble Lord, Lord Kerslake, said, households with these income levels could in no way be described as high-earning. This proposal is just a tax on working council tenants on modest wages. That is very regrettable. I have heard nothing from the noble Baroness today or in Committee to convince me otherwise, although she has tried her best. I find this all very disappointing.

I still do not understand why the noble Baroness has on previous occasions—although she did not do so today—referred to a figure of £50,000 in London but seeks to impose this tax on working council tenants earning £40,000. I think the real reason, as we all know, is that the department has done its figures and realised that it needs to start levying this tax on earnings of £30,000 or £40,000 to get the maximum income. That is what this is all about; it is purely a tax.

I agree very much with what the noble Lord, Lord Horam, said. It was a pleasure to serve with him on the Electoral Commission, on which we both served for many years. I would have hoped that, even if the noble Baroness did not listen to my contribution or those of other noble Lords, she would have listened to that of the noble Lord, Lord Horam. However, clearly she has not done so today. I wish to test the opinion of the House.

3.42 pm

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Amendment 72 agreed.

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3.55 pm

Amendment 73

Moved by ***Lord Best***

73: Clause 78, page 34, line 26, at end insert—

"( ) The regulations must specify that the rent shall not equate to more than 10 pence for each pound of a tenant's income above the minimum income threshold."

Lord Best (CB): My Lords, in moving Amendment 73, I am grateful to my noble friend Lord Kerslake, the noble Lord, Lord Beecham, and the noble Baroness, Lady Bakewell, for adding their support. Amendment 73 continues the debate on pay to stay. It starts with the assumption that the Government are determined to introduce a scheme of this kind to address the issue of very high earners in council housing, such as the case, which has been much quoted today, of Bob Crow on £145,000 per annum. The amendment seeks to moderate the disruption to the lives of ordinary people which this surcharge on the rent could cause.

I note in passing that the extra payment by the tenant is not rent, since it does not relate to the property and the landlord does not receive it. It is a

[Lord Best]
payment that goes to the Exchequer, based on one's income, and that is normally called a tax. Of course, as we explored in the debate on Amendment 75, if the likely receipts from pay to stay are going to be less than, or much the same as, the cost of administering it, it would be a pointless exercise to impose this housing tax. I was pleased to hear the Minister announce a willingness to accept this point in principle. I do not believe that anyone wants vindictively to tax successful council tenants just for the sake of it. In at least some areas, however, where incomes are highest and market rents are way above council rents, the Treasury has clearly seen that pay to stay is a chance to generate some extra revenue for the Government.

In the light of the amendment that we have just passed—if it is accepted by the other place—councils will be able to opt out of this duty to collect this housing tax for the Exchequer. My guess is that unless the arrangement is changed by Amendment 75, so that local authorities can keep the monies that they raise and apply them to housing purposes, virtually all councils will opt out if Amendment 72 survives. This renders my amendment here almost redundant. However, for local authorities that wanted to introduce a pay-to-stay scheme, it would limit the amount to be collected. It would be helpful everywhere, of course, if the other place fails to support the amendment we have passed.

Pay to stay is another manifestation of the Bill's overarching policy of, on the one hand, bolstering home ownership, which is fine, but, on the other hand, diminishing the social housing sector, which is not good. In this instance, the levy on council tenants is not for housing purposes: it is, to quote the Chancellor, to "contribute to deficit reduction". But these austerity measures do not apply to the generous treatment of those who want to buy, be they acquiring starter homes with big discounts or exercising a right to buy with even bigger discounts. For the buyers, there are no reductions in levels of subsidies for those earning more than £30,000, £40,000, £60,000 or £80,000. Amendment 73 would limit the transfer from council tenants to the Exchequer by restricting the levy on those earning more than the threshold, which, we have now been told, will be £31,000 per annum or £40,000 in London.

Amid all the uncertainties as to what this Bill really means, because so many key decisions have been left to subsequent regulations, we have some indications about the detail of pay to stay. It seems very likely, we now know, that the Government, very sensibly, will go for a tapered charge: that is, X pence for every £1 over the threshold, which is clearly much better than a cliff edge over which somebody just over the threshold would see a huge hike, perhaps doubling or even trebling their housing costs.

We also now know that the Government plan to set this taper at 20 pence in the pound. Twenty pence for every pound earned is equivalent to the doubling of basic rate income tax. For those earning £10,000 over the limit, the housing surcharge would cost them another £40 per week on the rent. That sudden imposition out of the blue would be very hard to bear for a couple with a family to support when both earn little more than the national living wage.

4 pm

The amendment before us proposes a limit on the surcharge of 10p in the pound. Frankly, that is tough enough. Government does not want to pitch the figure so high that it creates work disincentives. The couple in, say, Brighton, each earning under £20,000 a year, would need to weigh up whether one of them should stop working one day a week if they would lose 20p in the pound as the rental surcharge on top of income tax and national insurance contributions, along with a day's childcare costs and fares to and from work. At least a levy of 10% of earnings over the line would halve that work disincentive. Telling these households to move out and buy elsewhere may be of little help. Their income may not be secure; a big enough mortgage and a necessary deposit may not be within their reach, even with the Government's generous subsidies for buyers.

I see in this week's *House* magazine that a supporter of the Bill in the other place writes that those who,

"move out will be able to buy their own starter home … In my borough, Croydon, the average starter home flat will cost £180,000. So anyone on a household income of over £40,000 will be able to get the £171,000 mortgage … and will only need a £9,000 deposit. This would be good for them, and good for the person in greater social need who can move into the social housing unit that has been vacated".

Sadly, that does not add up. Before the 20% starter home discount, the £180,000 flat would cost about £212,000. I have had a good look at the Right Move and Zoopla property websites, and I could find only one family-size flat going for that amount among the hundreds of properties for sale in Croydon: a very unprepossessing flat beside the Golden Dragon takeaway, on a high street, at £210,000. The next cheapest sought offers in excess of £245,000—a lot more expensive. Starter homes will be brand new and, I hope, a lot nicer than the properties at the very bottom of that price range. I am very doubtful that anything as cheap as this MP is hoping will be available as a starter home.

There are many more inhibitors to buying for those facing pay-to-stay charges. What if the mortgage companies did not regard either or both the incomes as sufficiently secure? What if finding even a 5% deposit, probably a good deal more than £9,000 cash, is a problem? What if the only starter homes are all sold, in another borough or too far from work, or would mean the children moving schools—and so on? No, moving and buying is not going to work for very many supposedly high-earning council tenants.

I note in parenthesis that if a high earning household vacates a property, it may not, as the Croydon MP expected, be available to someone in greater need, because it may be deemed to be of higher value and have to be sold on the open market, possibly in London to a foreign buyer.

Lord Lansley (Con): I am trying to understand how Amendment 73 is intended to work. I cannot find a reference in the Bill to the minimum income threshold, so I am working on the assumption that the noble Lord believes that it is to be inserted. Is he supporting an amendment for that purpose—and, if so, at what

level? For those who are contemplating the application of a taper, surely the level of the taper must critically depend upon the size of the minimum income threshold to which it relates.

Lord Best: My Lords, since the Minister has announced this and circulated a number of us with the details, I am making the not-very-rash assumption that the threshold will be set at £31,000 and at £40,000 in London, and that the taper—the reduction for those earning £1 more than those numbers—will be at a rate of 20p in the pound. I want to put in the Bill a level of taper lower than the level that the Minister proposed in writing to us.

Lord Lansley: I am grateful to the noble Lord for that explanation, but it does not quite answer the question. As it stands, the amendment refers to the minimum income threshold, but nowhere else in the Bill is there such a thing as a minimum income threshold—merely a power in regulations, which Ministers have told us about, to apply such a threshold. It does not exist in the Bill, so the amendment is not complete. I completely understand the point the noble Lord is making. It suggests that the taper he is looking for should be applied to an income threshold in regulations of the kind that Ministers are suggesting. Is that his position?

Lord Best: That is my position. I would be very happy to withdraw this amendment if the Minister were able to say that in regulations there would be a taper of 10p in the pound so that it did not need to be placed in the Bill.

The reality is that most of those hit by the proposed housing tax on their earnings will indeed have to stay and pay. I contend that it is important that they should not be forced to move. It would not be wise policy to engineer through a punitive pay-to-stay regime that only those on the lowest incomes can occupy council or housing association homes. Council housing traditionally—right back to the homes fit for heroes after the First World War—provided for hard-working families. Today it accommodates, for example, key workers—nurses, teachers, care workers and others—for the benefit of the wider community. Social housing will often help people who start out with problems or low incomes but who settle in and prosper. These households are a vital part of sustaining a strong community.

For several decades those of us involved in social housing have been aware of the need for mixed-income communities—not benefit ghettos, to use a horrid term. Driving out all those who have done well is the very opposite approach to the kind of place-making that addresses the Prime Minister's concerns about deprived estates. Every housing professional will tell you that confining council or housing association estates just to poorer and vulnerable people can stigmatise all those who live there. That approach removes role models of people who are succeeding at work and deprives an estate of people with spending power and of potential community leadership.

In conclusion, pay to stay has proved the most contentious ingredient in the Bill because, unlike the gains for future would-be buyers and the problems for future would-be tenants, it affects hundreds of thousands of existing tenants. If handled insensitively, it will impair work incentives and the living standards of those on pretty moderate incomes who instead really deserve praise for their hard work and success and who help to sustain a mix of incomes on council estates. This amendment accepts the probability of the Government introducing a pay-to-stay surcharge, but, by limiting the levy to 10p in the pound, it minimises the considerable downsides to this policy.

I am not hopeful that the Minister, who has now announced the decision on having a taper of 20p in the pound as the rental surcharge, will today accept the 10p in this amendment. However, I know that she and the Secretary of State have been considering other ways in which a similar outcome—a reduced burden for not very highly paid council tenants from the new levy—can be achieved. My hope is that her response to the amendment will not necessitate a Division today, but I must reserve judgment on that. In the mean time, I beg to move.

Lord Beecham (Lab): My Lords, I support the amendment moved by the noble Lord, Lord Best, and I shall refer to the amendments in this group to which my noble friend Lord Kennedy and I have subscribed. The noble Lord, Lord Best, referred to Zoopla, and I should declare an interest on top of my local authority interests. Recently Zoopla gave an evaluation, not sought by me, for my four-bedroom semi-detached in Newcastle of £5.96 million. On my pointing out that this was somewhat excessive—despite the house having been built by the father of the noble and learned Lord, Lord Woolf, in the 1930s—Zoopla radically reduced the price, such that after a few days I seemed to be more than £5 million less well off than it would have had me and the world believe. Such is the world of estate agency.

These amendments deal with the critical issues of the taper which should apply to the imposition of higher rents, whether by government diktat or the exercise of discretion by housing authorities, and the relevant income thresholds. It is all of six weeks since the Minister wrote to Peers with the Government's response to the six-week consultation initiated in October. The consultation, which contained not a single figure, occupied all of four pages. The response, remarkable for its opacity even by comparison with the abysmal lack of information that has been a feature of virtually every aspect of this Bill, consisted of three pages and no definitive indication of the relevant figures. The Minister's letter accepted the notion of a taper, exemplifying in very broad terms the impact of tapers of 10% and 20%, but, significantly, without specifying the anticipated impact per household or the aggregate cost to the Exchequer. At 1.34 pm today I and, no doubt, a few other noble Lords received an email from the Minister stipulating a 20% threshold, which now results in the threshold figures being £31,000 outside London and £40,000 in London. I do not blame the Minister at all for this belated information, but it is another symptom of the way the Government as a whole conduct their business in general and on this Bill in particular.

[Lord Beecham]

As the Secretary of State reminded my noble friend Lord Kennedy and me last Thursday, this provision stems essentially from the Treasury's determination to save money, not from any substantive housing policy requirements, and is based on the false premise that council rents are subsidised by the taxpayer—a notion that, in all fairness, the Minister disavowed in an Answer to a Written Question from my noble friend Lord Kennedy. Council house rents are not subsidised by the taxpayer. However, as the noble Lord, Lord Best, has indicated, it is a tax, in the same way that the residents of Boston discovered when the tax on tea was imposed in 1776. I do not say that the reaction will entirely match that of that celebrated occasion, but it is a tax and nothing to do with housing as such.

There is a paradox embedded in the Government's approach. If tenants feel unable to pay the higher rents demanded, they may seek private rented accommodation, adding thereby to the pressure on rent levels in that sector—on which, incidentally, the Government propose no action—which could ultimately increase the housing benefit budget and indeed line the pockets of landlords while so doing. In Committee, I cited the case of the son of a family friend whose household income is a little over £40,000 and who would face a large increase in rent if the threshold remained at that level, which it appears it now will. The Minister indicated in her letter that the Government would institute a taper, and of course, we have heard that that is now their intention and what that threshold would be.

4.15 pm

The Delegated Powers and Regulatory Reform Committee's 27th report, while commending the Government's acceptance of the application of the affirmative procedure to the rent regulation regime, expresses surprise that the Minister rejected its other recommendations and remains,

"of the view that there should be more on the face of",

the Bill,

"to define the key expression 'high income'".

It regards as inappropriate the "sub-delegation to guidance" in Clause 78(4) of the determination of rent and the calculation of income under Clause 79(2)(f) because,

"it will elude any form of Parliamentary control".

We now understand that there is to be an affirmative procedure, but as we all know, that is not the same thing as parliamentary control, and it certainly comes much later than the legislative process which creates the situation in the first place.

These are not, of course, trivial matters. London Councils estimated that on the original figures, 28,000 households in the capital would be affected. In Newcastle, the council's estimate is some 500 houses. However, what is the Government's estimate, and on what basis, of the impact of the proposed thresholds and tapers in London and elsewhere on the households affected and the amount to be paid to the Treasury net of any costs incurred by the authorities? I understand that the net figure is likely to be some £230 million, but that does not take account of the costs of administering the scheme—which, of course, will be incurred not by the Government but by local authorities. Can the Minister assure us that this pay-to-stay principle will not be extended to housing association tenants once their legal position in relation to the ONS's concerns about their status and its impact on the definition of "public expenditure" is determined?

How, moreover, is household income to be calculated? Members have raised concerns about the position, for example, of resident family members who have income. The consultation document referred merely to the two highest earning members of the household. They may not, of course, be the tenants; they might be an elderly parent—or, rather, an older parent, because as I understand it we are talking about earned income—or a younger member of the family rather than a tenant with an interest in the property. Moreover, in these days of zero-hours contracts, many with brief periods of employment or fluctuating earnings from employment or self-employment may move above or below the threshold with, I suspect, some rapidity, given the relatively modest amounts involved and the types of trades and jobs which provide variable wages. I am not merely talking about zero-hours contracts, although that would of course be an issue, but generally there is likely to be a fluctuation of income. How are councils supposed to deal with this, and at what cost as regards administration? Is it appropriate for HMRC to be distracted from its belated efforts to tackle tax evasion and avoidance by having to supply information to councils—and perhaps, ultimately, to housing associations—about household income? What will it cost HMRC, stretched as it is by its current responsibilities, to undertake that exercise? Further, what undertakings can the Minister give about reviewing both the taper and the thresholds?

I am pleased that the Government have indicated that they are prepared to accept—I take it that that part of today's discussions remains valid—Amendment 77ZA, a manuscript amendment in my name, under which the household income threshold,

"for the purposes of defining 'high income', is to be increased every three years to reflect any increase in the consumer price index".

I hope the Minister will be able to assure us that the Government will still implement that element, at least, of today's somewhat fraught discussions.

There are many questions about and difficulties with the proposed scheme. I hope your Lordships' House will support the amendments in this group and that the Government will think again. It may be that certain of these issues can be dealt with next week, and if the Government are not in a position to agree on them today, I hope that they can at least give us some assurances. Failing that, this matter will have to go backwards and forwards between the Houses. That would be regrettable. It would prolong uncertainty and, I suspect, not answer the questions that I and others have raised.

Lord Kerslake: My Lords, I rise to speak to my Amendment 76 and to Amendment 73, which I support. I set out my concerns about pay to stay in the debate on the previous grouping, so on this occasion I will

keep my remarks fairly short. I support everything that the noble Lord, Lord Best, said about the taper, so I shall focus particularly on the threshold.

For the reasons that I have already spoken about, these proposals catch not just households on high incomes but those on average incomes. They may be in the higher group in relation to social rented properties but, as households, they cannot in any sense be described as high income in relation to the population as a whole. This is a crucial point. It is not about high-income households in any meaningful sense, so to have any kind of fairness in the system, we need to raise the thresholds from those proposed and keep the taper low. It is not a matter of either/or; both are necessary.

My amendment proposes increasing the thresholds that have just been announced by the Minister by some £9,000. That would make them £40,000 outside London and £50,000 inside London, and the amendment would put those thresholds in the Bill. That was one of the options referred to in the Government's own impact assessment, so it must have been under consideration. It is in fact lower than the previously proposed threshold of £60,000 agreed by the coalition Government. I think that there is a case for the threshold to be at least £60,000 in London, as proposed by the noble Baroness, Lady Bakewell, but, in the spirit of trying to reach a compromise, I have aimed to meet the Government half way on this—hence the recommended thresholds in the amendment.

The effects of raising the thresholds would be twofold. First, it would substantially reduce the number of people caught up in these proposals. There is a clustering of people around the £30,000 to £40,000 income level, so raising the thresholds would reduce the numbers to perhaps as low as 50,000 compared with 350,000. Secondly, it would start at the income level of people, and households in particular, in the top 20% of incomes, not in the top 50%, as is currently proposed, so it would affect people on genuinely high incomes compared with what is proposed now. I think that by any reasonable reckoning having the thresholds at the levels that I propose would be a fairer starting point, and a taper of 10p in the pound would be much fairer. Taking on board these amendments would go a long way to making what I think is a very poor piece of legislation a little fairer and a little more workable.

Baroness Bakewell of Hardington Mandeville: My Lords, I shall speak briefly to Amendment 73 in the names of the noble Lords, Lord Best, Lord Beecham and Lord Kerslake, to which I have added my name. I shall speak also to Amendment 77 in my name and that of my noble friend Lord Foster of Bath.

The pay-to-stay policy has caused widespread concern among hard-working couples and families who are struggling to make ends meet and do not consider themselves to be high earners. It is essential that we give these people some sort of peace of mind that they will be able to afford to pay their rent, continue in their jobs and finish the education of their children. Raising the threshold of the income level at which people start to pay a higher rent to £40,000 outside London and £60,000 inside, at the same time as introducing a taper of 10p in the pound, would go some considerable way towards achieving that. Such a taper would assist couples and families with their budgeting and with planning to work towards paying market rents. In my opinion, 20p in the pound is too harsh. The discrepancy between a high earner for tax purposes and a high earner in terms of paying rent is stark, and the Government need to acknowledge that this is illogical.

Both amendments are crucial to the implementation of the Government's pay-to-stay policy, to ensuring that tenants are given some level of security and that the threat of eviction is not continually hanging over their heads. I agree with the comments that have been made by the previous speakers.

Lord McKenzie of Luton (Lab): My Lords, I declare my interest as a vice-president of the LGA. I want to comment briefly on some of the administrative and practical implications that seem to be emerging from this policy. I support the amendment moved by the noble Lord, Lord Best, in relation to tapers. One of the consequences of having a taper is that the income figure needs to be precise in every respect. It is one thing to have a threshold that people have to get over, but you have to be clear as to how much in excess of that threshold people have to be for the taper to operate fairly. That seems to me to bring into question some fundamental issues. We had a bit more information from the Minister today—a couple more veils were drawn back from how this is going to work. However, there are still some fundamental matters that have not been worked through, or, if they have, they have not been disclosed to us.

The first issue is whether or not what we are talking about will always be an annual assessment of a person's income. Certainly the thresholds have been proposed in terms of annual amounts, but is there any suggestion that these are going to be divvied up into quarterly or weekly amounts so that the assessment would change not only periodically but frequently? If the answer is no, and we are looking at an annual assessment, that can be done only on the basis of a preceding year because until you get to the end of a year it is impossible to know what the yearly income is, particularly when you have fluctuating contracts. My noble friend Lord Beecham touched upon the issue of those who are self-employed. In any particular year, a self-employed person's income is often not determined finally until some time after the end of the year, not during it.

Secondly, we do not know what the final definition of "income" is going to be. We know that certain benefits are going to be excluded, such as DLA and child benefit, and that is to be welcomed. However, what about things like SSP, statutory maternity pay or carer's allowance and a number of other matters? What is to be included? It seems to me that the Government by now ought to have worked that through in some detail.

As to whose income is to be taken into account, again touched upon by my noble friend Lord Beecham, as I understand it the proposal is that if you have joint tenants it can be the income of those joint tenants or the income of their spouses or civil partners, whichever are the highest two. But that comes back to the issue of the period for which you are going to assess, because until you get to the end of a year, you do not know necessarily which are the two highest incomes from

[LORD MCKENZIE OF LUTON]
those four people. Somebody might get a year-end bonus on the last day of the tax year and that person could then become one of the two highest earners—what are you going to do then? Will the rent be recalculated on some basis? It does not make sense. These are fundamental issues about how this is going to work and I think we need greater clarity.

Baroness Lister of Burtersett (Lab): My Lords, I rise to make a few brief points in support of this group of amendments. First, with regard to the threshold, I thank the Minister for her response in her letter of 8 April to my question as to why it had been reduced from that in the voluntary scheme. However, the statement in the letter that the new thresholds are above the average median wage is not an explanation for the reduction, because that was the case already. Similarly, her response to my noble friend Lord Kennedy on the previous group of amendments was no answer to why there has been a change in the thresholds. Given that, according to the FAQs appended to the letter, the Government have no information on how the voluntary scheme has operated, what is the evidence base for changing the threshold? If as the Minister said a moment ago no local authority has chosen to implement the voluntary scheme, that speaks volumes. Nor has there been any public assurance that the thresholds will be reviewed regularly to ensure that they are uprated in line with median wages—although, as my noble friend Lord Beecham referred to that just now, I hope that we are about to be given some illumination on it.

4.30 pm

The new thresholds may be above the median wage—although, as we have heard, we are in many cases talking about two wages—but they still take no account of the costs associated with children and childcare and disability; that is, an income has to be assessed against basic needs if a means test is to be fair. I have yet to hear a justification for this. The issue is not addressed in the equality statement, magicked up on the day we discussed this matter in Committee, nor does that statement mention the potential indirect discriminatory impact on second earners, mainly women, for whom the policy is likely to act as a disincentive to stay in or take up paid work, especially if the taper will be 20% rather than 10% as had been hoped in Committee.

Government Amendment 73A states that,

"regulations may create exceptions for high income tenants of social housing of a specified description".

I am sorry to be dense, but does "specified description" refer to the tenants or to the social housing or both? Either way, can the Minister give us some idea of what those exemptions might be, as she was pressed to do in Committee? In particular, having expressed sympathy on the issue, has she come to a decision on the treatment of disabled people and carers? I thank her for arranging a meeting between officials and Carers UK. She seemed to be thinking along the lines of exempting certain benefits received by disabled people and carers. The letter that we have all received today confirms that disability living allowance will be exempted, but what about carer's allowance and other disability benefits? While exemption would be helpful, as Habinteg has pointed out, these benefits do not necessarily cover all the additional costs associated with disability which can mean that what might appear to be a relatively high income is not that high in relation to needs. Can the Minister address the specific issue I raised in Committee of exemption for disabled people in accessible adapted homes and, on the same logic, victims of domestic violence whose homes have been adapted under the sanctuary scheme?

Finally, the Minister was pressed both in Committee and today by my noble friends Lady Hollis of Heigham and Lord McKenzie of Luton about treatment of fluctuating incomes, which goes way beyond the question of zero-hours contracts. Anyone who has done any work in this area will know that people on lowish to middling earnings have incomes which fluctuate a lot. The issue was raised with me in a recent email from a member of the public, a self-employed actor whose income, a good chunk of which goes to her agent and on expenses, can fluctuate between £8,000 to £10,000 one year and £20,000 the next, and even when working she can be paid months after the job has finished. She cannot understand how her and her partner's joint income will be assessed and is worried. She says, "If I was having a poor year that was assessed on a good year I simply would not have the funds to pay the rent", and asks, "How will it work with varying income and self-employed workers? I would appreciate some solid answers from the Government". Well, wouldn't we all? Hitherto, answers have been as solid as soup. The answer in the FAQs that in the case of redundancy or a family crisis a so-called high-income social tenant could apply for universal credit is no answer to what then happens to the rent. I hope that we can get some clearer answers and assurances today and that we can do something to mitigate what my noble friend Lady Hollis described as a spiteful provision.

Lord Low of Dalston (CB): My Lords, I support Amendments 73 and 76. I am not au fait with all the technicalities of many of the issues in the Bill, but I know that the proposals to raise the rents—as the noble Lord, Lord Best, pointed out, this should more properly be thought of as a tax—of so-called high-income tenants or households has given rise to great anxiety on the part of local authority housing tenants with quite modest incomes who enjoy subsidised rent. It is important that the Government should know that there is real concern about this right around the House.

I have received representations from a council tenant in Camden who currently pays £700 a month who has told me that she faces her rent being raised to £4,000 a month under the provisions of the Bill if they are not modified—a level she would be completely unable to pay. She has recently been widowed and is particularly concerned that if 2015-16 is taken as the base year, three months of her late husband's pension will be taken into account in computing her income, thus artificially inflating the income by reference to which she will be deemed liable to have her rent raised to market levels. That is similar to a point just made by the noble Baroness, Lady Lister.

In briefings as the Bill has passed through the House, the Minister has consistently offered warm words about the Government's concern to find ways

of softening the impact of these provisions in the Bill, but so far they have completely failed to come up with any alleviation and today the taper has been confirmed as 20p in the pound. I therefore strongly support the amendments that would raise the threshold and smooth the taper to more realistic and much fairer levels.

Viscount Hanworth (Lab): My Lords, I shall speak to my Amendments 77A, 77B and 77C to Clauses 82 and 83. These clauses concern the pay-to-stay regime whereby those whose earnings exceed a threshold level would have their council rents increased. It must be clear that, if a penalty is to be faced by a household whose joint income exceeds a threshold level, there will be an incentive to keep their income below that level. If the pay-to-stay policy is to result in significant revenue, sufficient to defray the costs of administering the regime, the income threshold will have to be set at a very low level. In other words, people on very low incomes will be discouraged from attempting to secure higher incomes. It is extraordinary that such an impediment to earning should be posed by a party that claims to support the workers and the strivers of our society. This speaks of an utter carelessness if not of a naked duplicity.

Two of the amendments in this group propose to set a level-of-income threshold significantly higher than the one contemplated by the Government. Another amendment proposes that the penalty should be subject to a taper to increase step by step with the excess or earnings above the threshold level. I strongly support all of those amendments.

My own amendments deal with some further and possibly minor details of the pay-to-stay proposal. In common with so much of this Bill, the clauses in question are enabling provisions that allow the Secretary of State to determine regulations after the passage of the Bill. Clause 82(1) allows the housing authority to remove an extra rent charge that has been imposed on higher earners when the income has fallen back to a level below the threshold. I propose, in Amendment 77A, that in such circumstances the authority "must" reduce the rent. Clause 82(1) also allows the housing authority to remove an extra rent charge that has been imposed as a penalty on a tenant who has failed to provide information or evidence of their income. The clause proposes that the authority "may" remove the charge when information is forthcoming and it has been demonstrated that the tenant's income is below the threshold level. In Amendment 77B I propose that in such circumstances the authority "must" remove the penalty.

In Clause 83, we see a provision for an appeals procedure to which the housing authority "may" have recourse. In Amendment 77C I propose that the provision should be mandatory. I acknowledge that it may be costly to establish an appeals procedure and that in these times of economic stringency there is an incentive to avoid such costs. However, the recourse to justice should not be regarded as an optional extra, affordable only in times of affluence. Such an attitude would threaten the very basis of our civil liberties.

Baroness Hollis of Heigham: My Lords, the reason for the Government's proposals on pay to stay was allegedly to reduce the deficit. I hope the Minister and the House will forgive me if I come back and push the Minister yet again on by how much all this will reduce the deficit. I am still not clear.

If I have got this wrong, I am sure that the Minister will be able to correct me. In the original impact analysis, from before the taper was proposed, page 60 on higher-income tenants, says, taking the year 2019-20, by which time it will have bedded in, two or three years down the line, that the additional rental income is expected to be £0.49 billion, less "behavioural impact"—that is, what tenants do about that—and the cost £0.53 billion. So the behavioural impact is greater than the additional rent income. However, there is additional "fiscal drag", which gives you £0.48 billion. That means that the total additional rental income in 2019-20 is £0.45 billion. So £450 million is the net money allegedly going to the Treasury to reduce the deficit, taking into account just three factors: the rental income, the behavioural effect on tenants and fiscal drag.

When I just asked the Minister—I am grateful for the information—she said she believed that, as a result of the 20% taper, the net effect for the Treasury would be half that figure. That is approximate, but let us say that it is that: £450 million comes down to £225 million in 2019-20. Let us assume that the proposal for indexing by CPI every three years is accepted by the Government, which therefore reduces most of the gain from fiscal drag. Does that £225 million now come down to £150 million, more or less?

However, the elephant in the room has not even been included in that, which is what my noble friend Lord McKenzie and others talked about: the cost to local authorities of administration. That has not been included in these figures. That has also to be deducted before the money goes to the Treasury. What do we expect that figure to be? The noble Baroness, Lady Williams, kindly permitted me to ask the Box for this information. We do not know. We are consulting. We will find out later. Will that be £50 million or £100 million? We know that the local authority administration costs will be huge, we know that they have not been included and we know that they are not in the analysis. How much real money will go to HMT?

We know that the increased rents will be wiped out by behavioural impact. We know that the fiscal drag on which the Government were relying will be modified substantially by any amendment to connect it to CPI, and we know that we have not included the local authority admin costs at all. I stand to be corrected but, on my calculations, this means that the Government will be lucky to clear £100 million a year to the Treasury from these proposals. All this spite, administration, fear, worry, hassle and stigma for £100 million a year to reduce the deficit—this is madness. Perhaps the Minister can confirm my figures.

4.45 pm

Lord Lansley: My Lords, I had not intended to say anything on this, but following the most helpful exchange with the noble Lord, Lord Best, I just want to make two points quickly before we conclude this debate.

First, it seems to me that, within this group of amendments, there appears to be an assumption both that the taper should be low and that the threshold

[LORD LANSLEY]
should be high, but that is an illogical position to take. If the threshold were very high, the taper presumably should be much higher, representing a much greater capacity to pay. To that extent, I urge noble Lords who are thinking about supporting any non-government amendments in this group to think very carefully about how one thinks about this. If one supports a taper, it seems to me that giving the Government discretion to bring in a taper is an appropriate way to do it, because the Government can then balance the threshold with the taper. Otherwise, if one introduces a low taper, it seems to me that one should therefore automatically not support amendments whose purpose is to increase the threshold and to impose a higher threshold.

Secondly, although my knowledge of this is only as good as the figures that I have looked up in the last few minutes, the English housing survey figures from 2013-14 suggest that, including housing benefit, private rented sector tenants were paying on average 43% of their income in rent, whereas local authority housing tenants were paying on average 28% of their income in rent. I do not quite understand where the 10% figure that has been included in Amendment 73 comes from. It is asserted to be fair, but on the face of it the difference in rental costs as a proportion of income between private rented sector tenants and local authority tenants is already significantly larger than that—so where the 10% figure comes from I am not quite sure I understand. In so far as local authority tenants have an income that allows them to pay more, private rented sector tenants might not understand if we were to legislate in such a way as to ensure that local authority tenants paid less of their income in rent, relative to a market rent, than would be the case if they were out in the market having to rent at that level.

Baroness Williams of Trafford: My Lords, I will, if I may, take this opportunity to reiterate our overall position on this policy. I wrote to noble Lords about this earlier this afternoon and I would like to take the opportunity to set out the key points on the Floor of the House. I hope that noble Lords will indulge me, but I will not take interventions at this stage, because I hope that many of the questions will be answered as I make my way through my opening statement.

The policy is about fairness, and our view is that social housing at lower rents should be provided to those households that need it most. Households that decide to remain in social housing but can pay more should be expected to do so. At the same time, the Government are making home ownership more accessible to tenants both of local authorities and of housing associations through the right to buy and shared ownership.

In Committee, I reinforced the Government's commitment to ensuring that the policy is designed fairly and that work always pays. On this basis, I gave three reassurances: first, that we would introduce a taper to ensure that it would always be in the tenant's interest to increase their earnings; secondly, that we would exempt those on housing benefit entirely; and that we would allow local authorities to retain the reasonable costs of administering the scheme.

In Committee, many important points were made. The noble Baroness, Lady Hollis, asked how the policy would work alongside universal credit. The noble Baroness, Lady Lister, spoke eloquently about the importance of ensuring that the policy is applied fairly for social tenants. The noble Lords, Lord Kerslake and Lord Best, both raised concerns about the level of the thresholds and how we mitigate those through our choice of income taper.

We have listened carefully to those arguments and to the views expressed by tenants and local authorities. We agree that people in receipt of certain state benefits should not be caught and that there should be an element of protection for those households on incomes close to the thresholds. Rents should rise by a reasonable amount and protect those work incentives. Following our consideration of the views and arguments, I can outline today much more policy detail that we intend to put into regulations. I hope that that will reassure noble Lords.

First, I can say more about which households will be affected. The policy will affect households with an income of more than £31,000 outside London and £40,000 in London. This would mean that households with two adults each working 35 hours a week on the national living wage would be below the threshold. In addition, I can confirm that no household in receipt of universal credit or housing benefit—this is the point that the noble Baroness, Lady Hollis, made—will be subject to the policy. This makes absolutely clear that this policy is not aimed at households on the lowest incomes, or at those households on incomes above the thresholds in areas of very high market rent that may qualify for these benefits. I hope that this will reassure the noble Baroness in particular about the link with universal credit. It also means that there will be no extra burden on the taxpayer, who would need to fund the increase in housing benefit or in universal credit to cover the rent.

This link to benefits is further reinforced by our proposed definition of "income". I think that the noble Lord, Lord McKenzie, alluded to this. We want to define this as "taxable income". When determining whether a household's income is over the threshold, this means that we will take into account employment earnings, pension income and investment income, but not child benefit, disability living allowance or tax credits. This will protect many families on incomes close to the thresholds. Taken together, these announcements on income thresholds, the exclusion of households on universal credit and the definition of "income" make it absolutely clear that there will be no impact on families on low incomes.

Secondly, I know that there have been concerns about how much additional rent a household might have to pay. In Committee I said that we would use a taper to ensure that households did not face a very large increase in rent as a result of a small increase in income. I can confirm that we are proposing a taper of 20%. This will mean that for every additional pound someone earns over the income threshold, they will pay an extra 20p towards the rent. In determining the level of the taper we have looked closely at a range of tapers in use, including universal credit, to ensure that

tenants' rents are increased in an affordable way, while maintaining the principle that those who can pay a little more do so. The taper ensures the principle of affordability and of protecting incentives to work.

A household outside London on £32,000 a year will pay less than £4 a week extra and a household in London with a taxable income of £42,500 will pay less than £10 a week. A household outside London with an income of £40,000 would pay around £35 a week. The households that I have just described would be in the top 40% of household income. At a 20% taper level, most high-earning social tenants would pay no more than 20% of their income in rent—much less than the average household in the private rented sector and lower than the 33% of income often used by housing providers as a rule of thumb for what is considered affordable.

Thirdly, I know that noble Lords have been keen to ensure that we implement this policy in a way that does not penalise the parents of adult children who live at home, perhaps while they save to buy their own home. With that in mind, I can now confirm that "household" will be defined as the tenant, any joint tenants and their spouses, partners or civil partners. Within a household, only the incomes of the two highest earners will count. This means that the incomes of non-dependent children will not count unless they are named on the tenancy agreement—and, even then, only if they are one of the two highest earners. I reaffirm at this point that no household in receipt of universal credit or housing benefit will be subject to the policy. As I said earlier, the policy is not aimed at households on the lowest incomes or households on incomes above the thresholds in areas of very high market rents which may qualify for these benefits.

Finally, I can confirm that in the first year local authorities will return the actual amount of money they raise through the policy: the Government will not set a formula. However, we will return to this issue after the first year, when more information is available, to decide on the best approach. I understand that noble Lords are keen to scrutinise the detail of this carefully. As announced in Committee, I have accepted a recommendation from the DPRRC to make the secondary legislation subject to the affirmative regulation procedure. I am sure that this will be welcome news to your Lordships. There will be some further policy questions to address before we debate regulations but I want to take the opportunity to clarify some points of detail which I know the House had concerns about in Committee.

The noble Baroness, Lady Hollis, and the noble Lord, Lord Campbell-Savours, raised some important points about private companies having access to individuals' income data. I assure noble Lords that the data-sharing powers in the Bill will be limited to data shared between HMRC and local authorities and HMRC and housing associations. The Bill contains strict conditions over how that information can be used and there is absolutely nothing here that enables further data-sharing with third parties.

There was some debate about admin costs. It is still the Government's position that local authorities will be able to retain a reasonable amount of admin costs. I know that there was some confusion about this language in the previous debate. It is the Government's intention that the costs should be covered but we are working with local authorities to fully understand the costs they will face in setting up and running the policy. It is important that we do not unfairly reward local authorities which are running inefficient systems. I can also confirm that regulations will not expect local authorities to collect where the administration costs would not be covered by the returns from this policy—a number of noble Lords made this point.

Before I conclude, I want to say something about the approach for housing associations. The decision on whether to operate a policy will be voluntary for housing associations. The Bill contains a requirement that where a housing association wants to operate a voluntary policy it must publish details of that policy and have an appeals mechanism in place. This is not a control but a sensible protection for tenants, but where housing associations operate a policy they can retain any funds raised and use them for investment in new social housing. We will continue to work with housing associations to help them put policies in place where they wish to do so. I hope that the details I have set out, though rather lengthy, demonstrate that the Government have listened to concerns raised by this House. Our proposals strike a balance between the need for fairer rents in the social sector and the need to ensure that the policy is applied fairly to tenants.

I now move on to the amendments. Government Amendment 73A allows us to make exemptions for those households in receipt of housing benefit and universal credit. Our proposed definition of income will ensure that payments from tax credits, child benefit and disability living allowance will not count towards the calculation of income. I hope that this will provide an element of reassurance for those in receipt of these benefits who may be close to the threshold. Of course, noble Lords will spot that this does not mean that everyone receiving disability living allowance, for example, will be outside the scope of the policy. If their income is high, they may be asked to contribute more. I am sure that there will be strong views on this, and I should make it clear that other exemptions could, of course, be made in the regulations. I know that noble Lords have particular concerns about the impact on certain groups of people—for example, the noble Baroness, Lady Lister, spoke eloquently about those with caring responsibilities or those who have suffered at the hands of a partner through domestic violence. We take this very seriously. I welcome further views on this, so that we can take forward further consideration of the evidence in advance of the affirmative regulations.

5 pm

I am grateful to the noble Lord, Lord Best, for his Amendment 73, which seeks to place a 10% taper in the Bill. I share concerns about mitigating the impacts on households close to the threshold and protecting work incentives. The taper level of 20% that we are proposing should be considered not in isolation but alongside our commitment to exempt households in receipt of some of the benefits about which I have spoken today, as well as our definition of income, which will exclude a wide range of other benefits from the calculation. Taking all these factors into account,

[Baroness Williams of Trafford]
my view is that the 20% taper level strikes the right balance between mitigating the impact on households, preserving work-based incentives and ensuring that tenants who can afford to pay more do so. However, I reinforce the practical impact of our taper. At 20%, this will mean that for every £1,000 earned over the threshold, the rent increase will be just under £4 a week. This means the average proportion of income that a tenant would pay in rent would be around 15%. This would still be considerably below the commonly used rule of thumb that a maximum of one-third of income should be spent on housing costs, and far lower than the average PRS equivalents.

Amendment 76, tabled by the noble Lords, Lord Kerslake and Lord Kennedy of Southwark, and Amendment 77, tabled by the noble Lord, Lord Foster, and the noble Baroness, Lady Bakewell, both seek to put higher income thresholds in the Bill. The Government's preferred option of setting the income thresholds at £31,000 and £40,000 respectively represent the starting point at which tenants who earn above average incomes should start to contribute a little more. The taper will be applied to ensure that for every £1,000 someone earns above the threshold, the additional rent would be lower than £4 each week.

Amendment 77ZA, tabled by the noble Lords, Lord Beecham and Lord Kennedy of Southwark, seeks to increase the income threshold every three years to reflect the consumer prices index. I am happy to return to this at Third Reading if we can reach a consensus before then because I share the noble Lords' concerns about mitigating the impacts on households close to the threshold and protecting work incentives both now and in the future. We must have a policy that is fair, but it goes too far to place the amendment in the Bill.

Amendments 77A and 77B have been tabled by the noble Viscount, Lord Hanworth, and I shall speak to both of them together. I assure noble Lords that we will use regulations to set out the circumstances in which rents should be reviewed, both when a household falls below the income thresholds or when income drops by a certain amount. We must have a policy that is fair. There will be obvious circumstances—for example, when someone loses their job. There must be an incentive to declare the correct income under the policy. Our view is that the best way of doing this is for local authorities to be required to raise rents to the maximum available in an area where there is a persistent failure to engage with the policy. However, I want an approach that is fair. We will issue clear guidance to local authorities on the steps they should take to contact tenants before this sanction is applied. If the sanction does have to be applied, then local authorities would be required to reset the rents to the correct level once a subsequent declaration is made. I hope I have provided some reassurance on these points. We can, of course, return to this aspect of the policy once we have the regulations.

The noble Lord, Lord McKenzie, asked, on the point about declarations being made annually, what happens if someone's income changes suddenly or several times in the course of one year. I have asked for clarification on whether this would be similar to the arrangement on tax credits where one is expected to notify the authorities as soon as possible when incomes change. I understand, from a whisper across the Chamber, that this policy would work in a very similar way, but I will write to the noble Lord to clarify it further.

Amendment 77C, tabled by the noble Viscount, Lord Hanworth, seeks to provide protection for the tenant and to ensure that increased rents are subject to an appeals mechanism. We will be putting such a mechanism in place, in regulations. Further work is needed on the role and scope of appeals, but I give a commitment that we will bring forward detail for the debate on the regulations. I would welcome the views of noble Lords on the scope of appeals.

Amendment 78, tabled by the noble Lords, Lord Kennedy and Lord Kerslake, would permit local authorities to retain the increased rental income from this measure, rather than surrender it to the Exchequer. As I have made clear, this policy will make an important contribution to the Government's manifesto commitment to reduce the deficit. I have already given a commitment that local authorities will be able to retain a reasonable amount of the costs of operating the scheme, subject to the conclusion of work with local authorities to determine what an appropriate figure might be.

I have just spotted that the noble Lord, Lord McKenzie, asked about whether the specified description referred to tenants or households. It refers to tenants.

I hope that, with those words, noble Lords will feel able not to press their amendments. I commend the government amendment to the House.

Lord McKenzie of Luton: Before the Minister sits down, I will ask for clarification on two points. She said that anybody on housing benefit would be outwith the policy. What is the position of a tenant just on the cusp of housing benefit at the moment—but not in receipt of it—who, if charged a higher rent, is brought into the housing benefit system? Will that person then be in the system and immediately out? How is that going to work? Does using taxable income not inevitably mean that it has to be based on some "preceding year" basis, with all the complications of changing circumstances arising since?

Baroness Hollis of Heigham: Will the Minister confirm, or say that she still does not know, whether the final net money going to the Treasury after increased rents, the taper, fiscal drag—possibly modified by CPI—and the effect of local authority administrative costs will be nearer to £100 million a year as a contribution to reducing the deficit? Is it, frankly, worth it?

Baroness Williams of Trafford: The noble Baroness might find it helpful to watch this afternoon's proceedings. She put a set of figures to me which mixed up hundreds of thousands with hundreds of millions and it was quite difficult to follow where she was coming from. I do not want it now, but could she reiterate what she asked in writing? I am not trying to be difficult, but I found it quite hard to follow some of the mixing up of hundreds of thousands with hundreds of millions—and, indeed, fractions of billions. So if she would not mind, perhaps she could write to me.

The noble Lord, Lord McKenzie, asked me questions which are quite detailed and technical in parts. He asked me about preceding years—in fact, I will let him intervene, because he probably needs to repeat the question to me.

Lord McKenzie of Luton: My Lords—

Lord Elton (Con): My Lords, the *Companion*, at paragraph 8.137, sets down the Standing Orders for how we conduct these debates. We are on Report, not in Committee.

Baroness Williams of Trafford: I thank my noble friend, but I was very clear that the noble Lord was asking a question of clarification.

Lord McKenzie of Luton: I am grateful to the Minister, and I do not want to prolong our proceedings; we have much to get through. The issue was that if it is based on taxable income, does that not inevitably mean that it will have to be based on a preceding year's income, because you cannot for the year for which you are setting rents possibly know the outcome of people's taxable circumstances in all respects?

Baroness Williams of Trafford: The noble Lord raises a reasonable point, and it is clear across a number of policy areas that it is not always possible to be absolutely accurate on either anticipated income or income in retrospect—but I will write to the noble Lord to clarify exactly what the framework for the policy will look like.

Baroness Bakewell of Hardington Mandeville: My Lords, I am sorry, but I want to raise a point of clarification. I had understood that the pay-to-stay provision was intended to move tenants on social rents towards a market rent, but I thought I heard the Minister say that the Government are moving them towards paying a third of their income in rent. Will she clarify that please?

Baroness Williams of Trafford: What I said was not in order to move them to paying a third of their income in rent; it was quite something else. I can repeat what I said: the households I described are in the top 40% of household income and, at a 20% taper level, most high-earning social tenants will be paying no more than 20% of their income in rent—much less than the average household in the PRS, and lower than the 33% of income often used by housing providers as a rule of thumb for what is considered affordable. I was making the point that we were not doing that.

Lord Beecham: My Lords, the Minister said that we might return to Amendment 77ZA at Third Reading. Is that an undertaking on her part to bring something back on the lines of the amendment?

Baroness Williams of Trafford: The point that I was making was that the noble Lord made a valid point and that, if we can reach some sort of consensus, it may be possible to bring something back at Third Reading.

Lord Best: My Lords, I am grateful to all noble Lords who contributed to this debate. The noble Lord, Lord Beecham, concluded on a point that he made at the beginning: the linking of these numbers to CPI, so that they remain the same in real terms in years to come. That important point remains unresolved, but there is a promise to return to it at Third Reading.

I am grateful to the noble Lord, Lord Kerslake, for his support. As well as the taper, which is the subject of the amendment, he talked about raising the £30,000 or £40,000 threshold, as did the noble Baroness, Lady Bakewell. We may need to return to those points.

The noble Lord, Lord McKenzie of Luton, pointed out some of the many hazards in trying to calculate these sums: finding the two highest earners, updating their earnings from previous years and the rest of it. As a former Minister in this field, he understands the complexities of these things, and we should be warned by him of the problems in administering the arrangements.

The noble Baroness, Lady Lister, talked about the various kinds of benefit that need to be excluded from these calculations. I hope that she was at least in part reassured by the Minister's comments.

The noble Lord, Lord Low, quoted examples from his own experience. The noble Viscount, Lord Hanworth, wanted an appeals procedure, and I hope that he was satisfied that the Minister was able to reassure him that there will be an appeals procedure in this regard.

The noble Baroness, Lady Hollis, wondered whether all this was about was raising £100 million to try to reduce the deficit. The Red Book following the last Budget Statement has a figure, and I think that that figure is £125 million a year, so she is not so far adrift there. We are talking in those sort of terms: £100 million a year, maybe £125 million a year, as the figure that will be produced from this.

5.15 pm

The noble Lord, Lord Lansley, pointed out that in the private rented sector, people pay on average some 43% of their income in rent, whereas in the council sector, it is only 28%, so there is room to increase what people in the council sector pay. However, it may be that the private sector rents are too high, not that the council rents are very much too low.

I am extremely grateful to the Minister for explaining a number of the points that have been worrying us. She explained that there will be a taper, how various benefits will be excluded from the calculation of this, how two people who are earning the national living wage would be within the taper and would therefore be okay—but one does not think of people earning just above the national living wage as being really high earners, and that is what this taper is addressing.

In the consultation paper, the Minister put out two choices: either a taper at 20p or a taper at 10p. Virtually everyone who responded to the consultation thought that 10p was rather better than 20p. It is, of course, extremely disappointing that the Minister now tells us that there is a firm commitment to 20p, not 10p: that is twice as much. She makes the point that it is only a little more to pay in rent for those who are only a bit above the level, but if a couple's earnings are £40,000 instead of £30,000—perhaps each of them earning

[Lord Best]

£5,000 more than that limit—that is a £10,000 gap, which would mean that £2,000 of the extra £10,000, or £40 per week, would have to go on the increase in rent. With a 10p taper, it would be £20 per week instead of £40. In this amendment, I am claiming that £20 per week extra is quite enough for people who are not on very high incomes. They will have a multiplicity of other commitments, and to suddenly be faced with £40 per week rather than £20 per week makes a very significant difference.

I am glad that this will be looked at under the affirmative resolution procedure; that is good news for later. But I am sorry that the Minister, who I know has worked hard to try to get the best arrangements that she possibly can for us, has not succeeded in satisfying me—and, I suspect, others—with this level of taper. I would therefore like to test the opinion of the House.

5.18 pm

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5.31 pm

Amendment 73A

Moved by ***Baroness Williams of Trafford***

73A: Clause 78, page 34, line 33, at end insert—

"( ) The regulations may create exceptions for high income tenants of social housing of a specified description."

Amendment 73A agreed.

Amendments 74 and 75 not moved.

Clause 79: Meaning of "high income" etc

Amendment 76

Moved by ***Lord Kerslake***

76: Clause 79, page 35, line 1, at end insert "which will not be below £50,000 a year per household in London, or £40,000 per household outside London,"

Lord Kerslake: My Lords, I welcome the debate that we have had on this amendment. I believe, though, that the thresholds are still too low and catch too many people on ordinary incomes. I would therefore like to test the opinion of the House.

5.33 pm

Division on Amendment 76

Contents 266; Not-Contents 175.

Amendment 76 agreed.

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5.44 pm

Amendment 77 not moved.

Amendment 77ZA not moved.

Clause 82: Reverting to original rent levels

Amendments 77A and 77B not moved.

Clause 83: Power to change rents and procedure for changing rents

Amendment 77C not moved.

Clause 84: Payment by local authority of increased income to Secretary of State

Amendment 78 not moved.

NHS: New Junior Doctor Contract

Statement

5.45 pm

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, with the leave of the House, I shall repeat as a Statement the response to an Urgent Question given in the other place by my right honourable friend the Secretary of State for Health on junior doctors' contracts. The Statement is as follows.

"Mr Speaker, this House has been updated regularly on all developments relating to the junior doctors' contract, and there has been no change whatever in the Government's position since my statement to the House in February. I refer members to my Statement in *Hansard* on 11 February and to answers to Parliamentary Questions from my ministerial colleagues on 3 March, which set out the position very clearly. Nevertheless, I am happy to reiterate those statements to the honourable lady.

The Government have been concerned for some time about higher mortality rates at weekends in our hospitals, which is one of the reasons why we pledged a seven-day NHS in our manifesto. We have been discussing how to achieve this through contract reform with the BMA for over three years without success. In January, I asked Sir David Dalton, the highly respected chief executive of Salford Royal, to lead the negotiating team for the Government as a final attempt to resolve outstanding issues. He had some success, with agreement reached in 90% of areas.

However, despite having agreed in writing in November to negotiate on Saturday pay, and despite many concessions from the Government on this issue, the BMA went back on that agreement to negotiate, leading Sir David to conclude that,

"there was no realistic prospect of a negotiated outcome".

[Lord Prior of Brampton]
He therefore asked me to end the uncertainty for the service by proceeding with the introduction of a new contract without further delay. That is what I agreed to, and what we will be doing. It will start with foundation year 1s from this August and will proceed with a phased implementation for other trainees as their current contracts expire, through rotation to other NHS organisations. Let me be very clear: it has never been the Government's plan to insist on changes to existing contracts, but only to offer new contracts as people change employer as they progress through training. This is something the Secretary of State with NHS organisations as employers are entitled to do, according even to the BMA's own legal advice.

National Health Service foundation trusts are technically able to determine terms and conditions, including pay, for the staff they employ. However, the reality within the NHS is that we have a long tradition of collective bargaining, so in practice trusts opt to use national contracts. Health Education England has made it clear that a single national approach is essential to safeguard the delivery of medical training, and that implementation of the national contract will be a key criterion in deciding its financial investment in training posts. As the Secretary of State is entitled to do, I have approved the terms of the national contract.

This Government have a mandate from the electorate to introduce a seven-day NHS, and there will be no retreat from reforms that save lives and improve patient care. Modern contracts for trainee doctors are an essential part of that programme, and it is a matter of great regret that obstructive behaviour from the BMA has made it impossible to achieve that through a negotiated outcome".

5.48 pm

Lord Hunt of Kings Heath (Lab): My Lords, I am very grateful to the Minister for repeating the Answer given in the other place, which I have listened very carefully to. It now seems abundantly clear that the Secretary of State does not have the power in law to impose a new contract on junior doctors. The problem is that the Secretary of State's various Statements over the last few months could not be interpreted in any way other than that he thought he had the power and he was going to impose a contract. The significance of this is that the junior doctors took him at his word. The importance of that is that the Junior Doctors Committee of the BMA took the unprecedented decision to escalate industrial action on the back of his apparent decision to impose the new contract when talks collapsed.

The noble Lord, Lord Prior, knows that I have absolutely no argument with the development of fully comprehensive seven-day services in the NHS. However, the tragedy is that the very group of staff on whom so much is now dependent for clinical out-of-hours care—the junior doctors—has become utterly disenchanted with the way this has been handled. We have reached a very serious situation, and I very much fear for the future of the NHS and what is happening. I just say to the noble Lord that surely, even now, the Government need to find a way through. Interestingly, in the response, which has come from Ministers in the other place, there is a recognition of the benefit of collective bargaining. Is it not time to give collective bargaining another go?

Lord Prior of Brampton: My Lords, the noble Lord has raised two substantial points. The first is the difference between introduction and imposition. The fact is that, in the context of the NHS, where there is really only one offer, the difference between introduction and imposition is very small. Technically, it is true that individual employers are responsible for its imposition, but in reality, as the noble Lord will know from all his years in the Department of Health, the Secretary of State has considerable powers in this matter. I do not think the noble Lord would want all trusts to cut their own deals locally—there has to be an actual contract. It is true that when the legislation for foundation trusts was brought forward by the noble Lord's Government a few years ago, they were given the power to negotiate their terms and conditions locally but, with the exceptions of, I think, Southend and possibly Guy's and St Thomas', they have chosen to stick with the national contract.

On the noble Lord's last point about a way through, there are no winners from this dispute. The patients are very clear losers, and it is tragic that we have got to the situation that we have. The threshold for withdrawing emergency cover from hospitals needs to be a lot higher than the one the junior doctors are adopting on this occasion.

Baroness Walmsley (LD): My Lords, this Statement comes at a time when the latest figures for A&E performance are the worst ever—1% lower, we were told last week, than the figure for January, which was the previous worst ever. The staff are very close to exhaustion. Thirty-five per cent of the doctors in this country were born abroad—the highest level in the OECD. With this very long-running dispute, many junior doctors are now saying that they are going to go abroad, and the Government have not told us whether they will increase the number of places for trainee doctors to try to compensate for that. We, and the doctors themselves, really need to know.

I would also like the BMA to tell us what percentage of its members now want to strike, because I think that it has given us old figures. However, if the Government want a seven-day NHS, this is absolutely the wrong time to target the junior doctors. They need to do some proper negotiation and not hold the sword of Damocles over the heads of some of the most important public servants we have.

Lord Prior of Brampton: My Lords, the noble Baroness talks about a proper negotiation. This negotiation has gone on for three years and there have been 75 meetings about this contract. It is hard to know what a proper negotiation is when you have that number of meetings over that period of time. The junior doctors may not recognise this but the Government feel that 73 different concessions were made during that period. In many ways this has gone on for too long, and that is why, when Sir David Dalton got involved towards the end of the contract negotiations, his advice was, "You've got to settle this". We cannot go on and on negotiating and discussing these matters.

On the other point that the noble Baroness raised, the pressure on our emergency services is huge at the moment. She is right that the A&E performance in January was very poor, but it is simply the case that demand on our A&E departments is huge.

Lord Elystan-Morgan (CB): My Lords, is not the reality of the situation that for many months the Secretary of State has used the language of coercion rather than compromise? It is abundantly clear that he never had the statutory authority to impose such a contract of service on the doctors. At what point was he first advised that he had no such authority?

Lord Prior of Brampton: I do not think that the Secretary of State has been under any misapprehension about his powers in this matter. The BMA, on behalf of the junior doctors, is judicially reviewing his powers, but those powers are clearly set out in Section 1 of the 2006 Act. It is our position that he has always had those powers, but we expect that to go to a judicial review on 8 and 9 June.

Lord Myners (CB): My Lords, does the Minister commend the Government's handling of this matter to private sector employers?

Lord Prior of Brampton: I think that all good employers recognise that having the trust and confidence of their staff is fundamental. No employer, government or private, would wish to have the outcome we have in this situation. As I said earlier, there are absolutely no winners from this dispute, and the Government regret as much as anybody that we have come to this particular pass.

Lord Winston (Lab): Does the noble Lord agree—I am sure he does—that the great majority of junior hospital doctors, whatever the situation, are deeply altruistic people and remain so? They see this strike as part of that altruism, as is very clear from talking to them, and I am sure the Minister would agree about that. Does he not feel that one risk is the long-term damage not just to the health service but as regards people who are thinking of coming into the health service in the future? The young people whom I see in universities and even in schools are now asking me, "Should I actually be doing medicine?". Does the noble Lord agree that some kind of compromise at this stage would be better, as it might well save money, rather than cause more anguish and more money to be spent in the long term?

Lord Prior of Brampton: My Lords, I certainly agree that some of the best and finest young people in Britain go into medicine. It is a wonderful vocation—I use the word "vocation" advisedly. We have had three years of trying to come to a compromise and there comes a point in any negotiation when you have to draw stumps, although it is very unfortunate and very sad when that happens. Over that three-year period there were opportunities for both sides to come to an agreement and it is tragic that we did not do so, but I feel that after three years the Secretary of State had little option but to accept the advice of Sir David Dalton.

Baroness Donaghy (Lab): My Lords, as a former chair of ACAS, I admit that I have never heard ACAS say, "We have reached the end of negotiations", although that may be one individual's view. Sometimes negotiations take a very long time and a lot of patience. If these negotiations have been done in the context of 99% of the population thinking that this contract could be imposed and then, all of a sudden, as we have heard this afternoon, it cannot be imposed, I wonder whether that climate has affected the negotiations. Perhaps ACAS can be brought back in to see whether it can bring about a settlement.

Lord Prior of Brampton: The noble Baroness will know that ACAS was involved earlier on in the negotiations, and it was under the auspices of ACAS that Sir David Dalton did his negotiations. I just repeat what I said before: theoretically you can go on with these negotiations in perpetuity. There was a huge desire on the part of the Government to settle this dispute and, as I said, we deeply regret that we were unable to do so.

Lord King of Bridgwater (Con): My Lords, the Statement referred to Sir David Dalton—

Lord Gardiner of Kimble (Con): My Lords, I apologise to my noble friend but we have now gone beyond the 10 minutes allowed for questions.

Housing and Planning Bill

Report (3rd Day) (Continued)

6 pm

Amendment 78A

Moved by ***Viscount Younger of Leckie***

78A: After Clause 90, insert the following new Clause—

"Reducing local authority influence over private registered providers

(1) The Secretary of State may by regulations make provision for the purpose of limiting or removing the ability of local authorities to exert influence over private registered providers through—

(a) appointing or removing officers of private registered providers;

(b) exercising or controlling voting rights.

(2) The regulations may in particular—

(a) limit the number of officers that a local authority may appoint;

(b) prohibit a local authority from appointing officers;

(c) confer power on a private registered provider to remove officers appointed by a local authority;

(d) prohibit a local authority from doing things that would result in it obtaining voting rights in a private registered provider;

(e) require a local authority to take steps to reduce or get rid of any voting rights that it has in a private registered provider.

(3) Regulations under this section may override or modify any contractual or other rights (whenever created) or anything in a private registered provider's constitution.

(4) Regulations under this section may—

(a) confer a power to amend the constitution of a private registered provider in consequence of provision made by the regulations;

(b) make provision about the procedure for exercising that power.

(5) In this section—

"appointing", in relation to an officer, includes nominating or otherwise influencing the selection of the officer;

"constitution" includes rules;

"local authority" has the meaning given by section 106 of the Housing Associations Act 1985;

"officer", in relation to a private registered provider, has the meaning given by section 270 of the Housing and Regeneration Act 2008;

"private registered provider" means a private registered provider of social housing."

Viscount Younger of Leckie (Con): My Lords, I think we are all agreed that it is imperative that housing associations have the freedom to continue to deliver our country's much-needed homes. Classification back to the private sector provides them with the ability to access private finance to allow them to continue with their development. These amendments support this aim. Amendments 78A and 133B seek to reduce local authority control over housing associations. The amendments have one aim: to enable the removal of housing associations from the public accounts. As noble Lords will know, the Office for National Statistics took the decision to reclassify housing associations as public bodies, meaning that £64 billion was added to the national debt and the housing association sector was classified as public in the national accounts. Local authority control over housing associations was not one of the reasons why the Office for National Statistics reclassified the sector last year. However, we believe that certain governance arrangements may be seen as public sector control and could jeopardise the reclassification of housing associations.

I would briefly like to set the scene. Housing associations build around 40% of new homes each year and provide 2.7 million homes for around 5 million people, including for our most vulnerable households. Building new homes and helping people meet their aspirations for home ownership cannot be achieved without access to private finance. I shall now turn to the details of these amendments.

Amendment 78A relates to the rights of local authorities to nominate housing association board members and act as shareholders. This could allow local authorities, in a minority of housing associations, to block major constitutional changes. Such arrangements are typical in organisations which hold stock that was previously owned by the local authority. Housing associations' constitutions and the way they are run differ between organisations. Officials in the Department for Communities and Local Government are considering these governance arrangements to assess whether they constitute public sector control. This work is continuing, with the expectation of bringing forward regulations in the autumn. It is for this reason that my noble friend the Minister is seeking secondary powers for the Secretary of State to reduce local authority control over housing associations, where it exists. The final content of these regulations will be informed by the work being undertaken by the Department for Communities and Local Government. Through Amendment 133B, such powers will be subject to the affirmative procedure, so both this House and the other place will have an opportunity to scrutinise the detail of the proposed measures.

These amendments will not impact on the core objectives of housing associations. We are making these changes to ensure that the Office for National Statistics can move housing associations back to the private sector, where they belong. It is vital that housing associations continue to develop much-needed homes and fulfil their social objectives. To do this, access to private finance is essential. If we do not act now by taking this provision, there is a risk that some housing associations will remain on the public balance sheet. I commend these amendments to the House.

Lord Shipley (LD): My Lords, I should repeat my declaration from last week that I am a vice-president of the Local Government Association, because this impacts directly on local government. I welcome Amendment 133B, which confirms that we will have the affirmative procedure so that we can at least talk about the proposals that the Government finally come up with.

I want to be really clear about two things. The first is that the purpose of these amendments is, ultimately, to ensure that we build more social homes for rent than we otherwise would because of the powers of housing associations, particularly in terms of borrowing. Secondly, although local authorities will not have as much control as they do now, nevertheless, there is nothing in the legislation as now proposed that will prevent officers or members of a council joining a housing association board if invited to do so directly in their own capacity. That is my understanding of what is proposed, but I am very keen that the Minister should make it absolutely clear when responding to this group of amendments.

Lord True (Con): My Lords, I very much agree with the points made by the noble Lord, Lord Shipley. Obviously, I welcome what my noble friend said: that there will be a good amount of time given to consider this rather new proposal. I understand the rationale in terms of the audit rules. However, I would like to make three points, one of which the noble Lord, Lord Shipley, has anticipated. It surely cannot be the case that a member of a local authority should be excluded by that from using his or her experience in the service of housing interests—although, clearly, under subsection (1)(b) of the proposed new clause they would not be able to exercise any voting right. Recent legislation dashed local authority members' hopes when they were told that they were not allowed to have pensions any more because they were not employees of local authorities. In those circumstances, clearly they are not employees of the local authority. Therefore, I do not think that that should be used to exclude them from potential membership where that is judged useful by the housing association.

My second point is on the wording, which, again, is relatively new to all of us, and therefore I have not been able to take advice from my office, which I will

when I have time. Subsection (5) of the proposed new clause states that appointing, in relation to an officer,

"includes nominating or otherwise influencing the selection of the officer".

Local authorities that are responsible for housing individuals, and even those authorities that are not directly housing authorities, have a public responsibility to house effectively. In the course of that experience they will accumulate a great deal of knowledge about the local housing market, the capacity of individuals and, in some respects, the record of individuals. That wording—

"otherwise influencing the selection of the officer"—

could exclude the capacity of the local authority to offer advice on whether a person who has been put forward is an appropriate or effective person to carry out these very important functions.

That relates to my final point: accountability. A great deal in the Bill is about putting housing associations on one pedestal and local authorities and others on another. There has to be some recognition that the housing function is an important one for which local authorities have responsibility. I do not happen to think that putting councillors on boards is necessarily the best way of doing it. Indeed, I agreed to the removal of councillors from the board of our own major housing association. However, as we tease out what these proposals mean, particularly where there is a move from the local authority sector to the housing association sector, I hope we will not lose some thought as to the way in which relationships between housing associations and local authorities are sustained, and in which there is an element of mutual accountability between the two. Clearly, if this goes through, that may not be by appointment, but there must be some consideration of that point, in my submission.

Lord Kerslake (CB): My Lords, I shall speak briefly in support of the amendment and in doing so repeat my interests as chair of Peabody and president of the LGA.

I am a passionate advocate of close links between housing associations and local authorities. There is a huge amount of close working that they can and should do together, not just on housing but on issues to do with employment and social care. I also agree with the noble Lord, Lord Shipley, about the need for housing associations to be open to review and scrutiny, and for debate with local authorities about what they are doing in their local area.

As I understand it, this is a very specific issue that relates to the classification of housing associations and how we move from the current—I think, by common consent—unsatisfactory position whereby they are classified as public bodies to one where they return to being classified as private bodies. The issue here is about nomination and therefore the implication of some level of control, rather than participation that might come through the normal routes of filling board membership of housing associations. Therefore, it is not an issue that should in any way prohibit housing associations having local authority members or officials on their boards, but the process by which they become board members would be more in line with those processes for other board members. It is unfortunate that the measure has come this late, but I think that it is an inevitable consequence of the negotiations that are going on with the ONS and it is the direction of travel we need to go in.

Lord Porter of Spalding (Con): My Lords, perhaps I may seek clarification that we are talking only about nominations to boards of RSLs and not nomination rights over where the tenants who occupy their homes come from. All those homes that were transferred under LSVT were transferred on the basis that the host council which decided to transfer would maintain its nomination rights. I appreciate that the noble Lord, Lord Kerslake, is slightly conflicted by having to take an LGA position and an RSL position which are completely opposed to one another on this issue, but sometimes we all have to be Janus-headed.

My concern is not about who sits on the boards, because I think the RSL experiment has failed and I am not sure how many councils would want to be associated with it, but about the loss of nomination rights. Those LSVT units were all taken out of council control; they are not private sector homes—or they were not when they left. The Labour Government who did the transfers assured everybody that they were not being transferred to the private sector. If we are now saying that they are, we must at least honour the agreements under which they transferred. While I will support the Government on this, because it is not an issue I would want to die in a ditch over, I think that it is a lost opportunity. We should take all social housing off the public sector debt book so that we can borrow money against it to provide the homes that we badly need. There are 4 million under-sweated assets out there and we should all be able to do the same thing.

Lord Kennedy of Southwark (Lab): My Lords, I can see where the noble Viscount, Lord Younger, is coming from with these amendments and I agree with virtually all the comments that have been made in this short debate. As the noble Lords, Lord True and Lord Shipley, said, it would be helpful if the Minister could confirm that councillors could be appointed to boards if the board thought that appropriate. If you are appointed to a board, no matter what your position is, your duty is to that board and to ensure that the organisation functions properly.

As the noble Lord, Lord Kerslake, said, it is good if local authorities and housing associations have a good working relationship, but if as part of the scrutiny process a council wanted to engage with a local housing association, that would be welcome.

Viscount Younger of Leckie: My Lords, I thank all noble Lords who have taken part in this very short debate. I particularly appreciate the support of the noble Lord, Lord Kerslake, and interventions from the noble Lords, Lord Porter and Lord True. To reiterate the background to this measure, some local authorities have rights to nominate housing association board members and act as shareholders. This could allow local authorities in a minority of housing associations to block major constitutional changes. Although local authority control was not one of the reasons why the ONS reclassified the housing associations

[Viscount Younger of Leckie]
sector, there is still a risk that this will be identified as a control and delay the reclassification of housing associations.

I reassure the noble Lord, Lord Shipley, that councillors can be appointed to housing associations boards in their own right, provided that they do not speak on behalf of the local authorities. For my noble friend Lord Porter, I say that the clauses refer to nomination rights only. I hope that that reassures him that nothing broader is intended here.

Lord Kennedy of Southwark: Just for absolute clarity, can the Minister confirm that we are talking about nomination rights for directors and not nomination rights relating to tenants, as the noble Lord, Lord Porter, asked?

Viscount Younger of Leckie: Indeed, that is correct.

Amendment 78A agreed.

6.15 pm

Clause 91: Recovery of social housing assistance: successors in title

Amendment 78B

Moved by ***Viscount Younger of Leckie***

78B: Clause 91, page 39, line 36, after "administration" insert "(which, for this purpose, includes housing administration under Chapter 5 of Part 4 of the Housing and Planning Act 2016)"

Viscount Younger of Leckie: My Lords, I shall speak to Amendments 78B to 78YW, tabled in the name of my noble friend the Minister. They amend the housing administration regime, which is intended for use in the extremely unlikely event that a large or complex housing association becomes insolvent.

Let me first reassure noble Lords that a robust regulatory framework is already in place for registered housing associations. The regulator will retain its existing powers to help a housing association in financial difficulty. Housing administration is in addition to existing powers, not a replacement. The regulator's existing powers have meant that there has only ever been one insolvency case in the sector. However, housing associations have become more complex and have significant levels of private debt—about £65 billion in total.

The review of the near insolvency of Cosmopolitan housing association found that the regulator's powers may not be enough if a large, complex housing association gets into financial difficulty. That is why we have brought forward legislation to introduce an administration regime for housing associations.

I have to beg your Lordships' patience as I explain the detail of the amendments. Insolvency law is a technical and complex subject but none the less important. I assure the House that officials have been working with lenders, insolvency practitioners, valuers and housing associations on these amendments. The amendments are necessary to address issues raised by them and to clarify how the regime would work.

Amendments 78C to 78N, 78R to 78YF, 78YU and 78YW concern the two objectives of housing administration and necessary consequential amendments. The first objective is the same as a normal administration process that applies to companies. The second objective, which is expressly subordinate to the first, is to retain the social housing within the regulated sector.

We would like to retain social housing stock in the regulated sector but recognise that, if there is an insolvency, this may not always be possible. While the administrator's primary duty is to the creditors, if this duty can be fulfilled while keeping all or some of the social housing in the regulated sector, that is what the administrator must do.

Amendment 78P introduces a new clause. Sometimes planning obligations under Section 106 of the Town and Country Planning Act 1990 do not apply if a mortgagee enforces security over the land. The proposed new clause puts the housing administrator in the same position as a mortgagee in possession.

Through Amendments 78YG to 78YK, 78YM, 78YN and 78YQ to 78YT—I hope that your Lordships are still following me—the courts cannot allow the winding-up of a housing association without the regulator being notified 28 days in advance. These amendments allow the regulator of social housing to waive this 28-day notice period once they have been notified if they so choose. Waiving the notice period will allow other insolvency procedures to begin more quickly.

Amendment 78YV removes the ability to apply normal administration to a housing association that is a registered society. After consideration with the sector, we decided that this was unnecessary if housing administration was in place. There was also a risk that normal administration could follow housing administration, resulting in lenders not being able to access their security for over two years. Amendments 78YL and 78YP are consequential to Amendment 78YV.

Amendment 78Q sets a time limit of one year on housing administration and sets the parameters for applying for an extension. The appointment period and circumstances for extension are now aligned with normal administration. The Bill did not previously have a time limit. This change provides more certainty for lenders on when they would be able to enforce their security if housing administration fails to resolve the insolvency.

Finally, I am bringing forward Amendment 78B to make it clear that if social housing provided as a result of financial assistance given by the Government is sold by a housing administrator out of the regulated sector, the Homes and Communities Agency cannot recover that assistance from any successor in title. I hope that we never have to use these housing administration provisions and that the housing association sector continues to be financially robust. However, it is prudent that we are prepared for the unlikely event of a large or complex housing association becoming insolvent. I commend these amendments to the House.

Lord Beecham (Lab): My Lords, I do not know whether other noble Lords have been watching it, but there has been a very interesting series on television of a Danish drama called "Follow the Money", which

would be an appropriate title for this group of amendments. That series had the benefit of subtitles and, with all due respect to the Minister, I must say that we could all have done with some subtitles, not necessarily on the day but in the form of a briefing note that could have helped us get our heads around this complicated and arcane topic.

I raise one issue with the noble Viscount. I understand, having been so advised by Shelter, that the Bill originally provided that in the event of insolvency of a housing association the first priority would be to maintain social housing in the sector and secure a transfer to another housing association. The amendments collectively before us make that objective secondary to the interests of the creditors. Therefore, the properties might simply be sold off rather than continue to be held within the social housing sector. Will the noble Viscount indicate whether he or the Government take that as an acceptable position? What would the potential impact be in the event of this crisis emerging with any particular association? Why was it necessary to change the original thrust of the Bill's proposals and downgrade that priority of maintaining the social housing stock in favour of dealing with the needs of the creditors?

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I rise with some trepidation to speak against government Amendment 78P. I heard what the Minister said about hoping that there would be no insolvencies, but the Government appear to be expecting a number of registered providers to become insolvent during this Parliament and for the marketplace to have fewer larger housing providers. That will mean that some of the smaller ones will go to the wall.

On Amendment 78P, the land over which there is a current planning permission belonging to a registered provider that has now become insolvent would be sold on. Presumably, that would be to a developer for it to carry out the extant planning permission. However, the Section 106 planning obligations that the local authority in good faith had attached to the granting of the application, in order to serve both the existing communities around the site and the residents who would move into the proposed dwellings once the site been completed, would be waived. I fear that this is gerrymandering on a large scale and does not serve the communities within the local authority concerned at all well.

Of course, removing the planning obligations means that either the developer gets a bargain or that the housing administrator is able to get a higher price for the land. Either way, the local communities will suffer as no leisure or community facilities will be provided which were the subject of the original planning application. I fear that this is penny-pinching and shabby in the extreme.

Viscount Younger of Leckie: My Lords, I hope that I can provide some reassurance arising from a couple of questions on this short debate, particularly for the noble Lord, Lord Beecham, and the noble Baroness, Lady Bakewell. I will try to encapsulate both questions in the same way because the best way that we can protect social homes is by making sure that the sector is financially strong. That is the basis of what we are aiming to do. To do that, as I said earlier, we need lenders to have confidence in the sector. We have therefore made it clear that, if absolutely necessary, social housing stock can be sold out of the sector by an administrator. This has only ever happened once and is just a matter of last resort. Therefore, the objective to service creditors takes precedence over the objective to keep social homes in the regulated sector.

The amendment responds to creditors' concern that the original drafting risks affecting loan security valuations, potentially increasing the cost of debts. This is technical rather than anything more broadly based. The key point is that we need to maintain lender confidence in the sector. I hope that that gives reassurance.

Amendment 78B agreed.

Clause 92: Housing administration order: providers of social housing in England

Amendments 78C to 78E

Moved by ***Viscount Younger of Leckie***

78C: Clause 92, page 40, line 17, leave out subsection (3)

78D: Clause 92, page 40, line 22, leave out "references in this section" and insert "the reference in subsection (1)(b)"

78E: Clause 92, page 40, line 23, leave out "are references" and insert "is a reference"

Amendments 78C to 78E agreed.

Clause 93: Objective of housing administration

Amendment 78F

Moved by ***Viscount Younger of Leckie***

78F: Clause 93, page 40, line 25, leave out subsections (1) to (8) and insert—

"(1) A housing administrator has two objectives—

(a) Objective 1: normal administration (see section (Objective 1: normal administration)), and

(b) Objective 2: keeping social housing in the regulated sector (see section (Objective 2: keeping social housing in the regulated sector)).

(2) Objective 1 takes priority over Objective 2 (but the housing administrator must, so far as possible, work towards both objectives).

(3) It follows that, in pursuing Objective 2, the housing administrator must not do anything that would result in a worse distribution to creditors than would be the case if the administrator did not need to pursue Objective 2.

(4) A reference in this Chapter to the objectives of a housing administration is to the objectives to be pursued by the housing administrator."

Amendment 78F agreed.

Amendments 78G and 78H

Moved by ***Viscount Younger of Leckie***

78G: After Clause 93, insert the following new Clause—

"Objective 1: normal administration

(1) Objective 1 is to—

(a) rescue the registered provider as a going concern,

(b) achieve a better result for the registered provider's creditors as a whole than would be likely if the registered provider were wound up (without first being in housing administration), or

(c) realise property in order to make a distribution to one or more secured or preferential creditors.

(2) The housing administrator must aim to achieve Objective 1(a) unless the housing administrator thinks—

(a) that it is not reasonably practicable to achieve it, or

(b) that Objective 1(b) would achieve a better result for the registered provider's creditors as a whole.

(3) The housing administrator may aim to achieve Objective 1(c) only if—

(a) the housing administrator thinks that it is not reasonably practicable to achieve Objective 1(a) or (b), and

(b) the housing administrator does not unnecessarily harm the interests of the registered provider's creditors as a whole.

(4) In pursuing Objective 1(a), (b) or (c) the housing administrator must act in the interests of the registered provider's creditors as a whole so far as consistent with that Objective."

78H: After Clause 93, insert the following new Clause—

"Objective 2: keeping social housing in the regulated sector

(1) Objective 2 is to ensure that the registered provider's social housing remains in the regulated housing sector.

(2) For this purpose, social housing remains in the regulated housing sector for so long as it is owned by a private registered provider."

Amendments 78G and 78H agreed.

Clause 95: Powers of court

Amendments 78J and 78K

Moved by ***Viscount Younger of Leckie***

78J: Clause 95, page 42, line 21, leave out "objective" and insert "objectives"

78K: Clause 95, page 42, line 26, leave out "objective" and insert "objectives"

Amendments 78J and 78K agreed.

Clause 96: Housing administrators

Amendments 78L to 78N

Moved by ***Viscount Younger of Leckie***

78L: Clause 96, page 43, line 19, leave out from beginning to "of" in line 21 and insert "The housing administrator of a registered provider must aim to achieve the objectives"

78M: Clause 96, page 43, line 23, leave out subsections (3) and (4)

78N: Clause 96, page 43, line 40, leave out "functions of" and insert "to be carried out by"

Amendments 78L to 78N agreed.

Amendment 78P

Moved by ***Viscount Younger of Leckie***

78P: After Clause 97, insert the following new Clause—

"Housing administrator may sell land free from planning obligations

(1) If the housing administrator of a registered provider disposes of land that is the subject of a planning obligation that contains relevant terms, the relevant terms are not binding on the person to whom the land is disposed of or any successor in title.

(2) In this section—

"disposes of", in relation to land, means sells a freehold or leasehold interest in the land or grants a lease of the land;

"planning obligation" means a planning obligation under section 106 of the Town and Country Planning Act 1990 (whether entered into before or after this section comes into force);

"relevant terms" in relation to a planning obligation, means any restrictions or requirements imposed by the planning obligation that are expressed not to apply in the event that the land is disposed of by a mortgagee."

Amendment 78P agreed.

Schedule 5: Conduct of housing administration: companies

Amendments 78Q to 78YF

Moved by ***Viscount Younger of Leckie***

78Q: Schedule 5, page 117, line 16, leave out "75,"

78R: Schedule 5, page 117, line 34, leave out "objective" and insert "objectives"

78S: Schedule 5, page 118, line 15, leave out "objective" and insert "objectives"

78T: Schedule 5, page 119, line 15, leave out "objective" and insert "objectives"

78U: Schedule 5, page 119, line 18, leave out "objective" and insert "objectives"

78V: Schedule 5, page 119, line 27, leave out "objective" and insert "objectives"

78W: Schedule 5, page 120, line 7, leave out "objective" and insert "objectives"

78X: Schedule 5, page 120, line 35, leave out "objective" and insert "objectives"

78Y: Schedule 5, page 120, line 42, leave out "objective" and insert "objectives"

78YA: Schedule 5, page 120, line 48, at end insert—

"14A_ Paragraph 78 (consent to extension of administrator's term of office) is to have effect as if sub-paragraph (2) were omitted."

78YB: Schedule 5, page 123, line 16, , leave out lines 16 to 18 and insert—

""objectives", in relation to a housing administration, is to be read in accordance with section 93(4) of the Housing and Planning Act 2016;"

78YC: Schedule 5, page 126, line 31, leave out "objective" and insert "objectives"

78YD: Schedule 5, page 126, line 33, leave out "objective" and insert "objectives"

78YE: Schedule 5, page 127, line 4, leave out "objective" and insert "objectives"

78YF: Schedule 5, page 127, line 10, leave out "objective" and insert "objectives"

Amendments 78Q to 78YF agreed.

Clause 98: Winding-up orders

Amendments 78YG and 78YH

Moved by ***Viscount Younger of Leckie***

78YG: Clause 98, page 44, line 36, leave out paragraphs (a) and (b) and insert—

"(a) notice of the petition has been given to the Regulator of Social Housing and a period of at least 28 days has elapsed since that notice was given, or

(b) the Regulator of Social Housing has waived the notice requirement in paragraph (a)."

78YH: Clause 98, page 44, line 44, at end insert—

"( ) The Regulator of Social Housing may waive the notice requirement under subsection (2)(a) only with the consent of the Secretary of State."

Amendments 78YG and 78YH agreed.

Clause 99: Voluntary winding up

Amendments 78YJ and 78YK

Moved by ***Viscount Younger of Leckie***

78YJ: Clause 99, page 45, line 18, leave out paragraphs (a) and (b) and insert—

"(a) notice of the application has been given to the Regulator of Social Housing and a period of at least 28 days has elapsed since that notice was given, or

(b) the Regulator of Social Housing has waived the notice requirement in paragraph (a)."

78YK: Clause 99, page 45, line 26, at end insert—

"( ) The Regulator of Social Housing may waive the notice requirement under subsection (4)(a) only with the consent of the Secretary of State."

Amendments 78YJ and 78YK agreed.

Clause 100: Making of ordinary administration orders

Amendments 78YL to 78YN

Moved by ***Viscount Younger of Leckie***

78YL: Clause 100, page 45, line 34, leave out paragraph (b)

78YM: Clause 100, page 46, line 4, leave out paragraphs (a) and (b) and insert—

"(a) either—

(i) notice of the application has been given to the Regulator of Social Housing and a period of at least 28 days has elapsed since that notice was given, or

(ii) the Regulator of Social Housing has waived the notice requirement in sub-paragraph (i), and"

78YN: Clause 100, page 46, line 16, at end insert—

"( ) The Regulator of Social Housing may waive the notice requirement under subsection (3)(a)(i) only with the consent of the Secretary of State."

Amendments 78YL to 78YN agreed.

Clause 101: Administrator appointments by creditors

Amendments 78YP to 78YR

Moved by ***Viscount Younger of Leckie***

78YP: Clause 101, page 46, line 24, leave out paragraph (b)

78YQ: Clause 101, page 46, line 39, leave out paragraphs (a) and (b) and insert—

"(a) either—

(i) that notice of the appointment has been given to the Regulator of Social Housing, accompanied by a copy of every document in relation to the appointment that is filed or lodged with the court in accordance with paragraph 18 or 29 of Schedule B1 to the Insolvency Act 1986 and that a period of 28 days has elapsed since that notice was given, or

(ii) that the Regulator of Social Housing has waived the notice requirement in sub-paragraph (i),"

78YR: Clause 101, page 47, line 7, at end insert—

"( ) The Regulator of Social Housing may waive the notice requirement under subsection (4)(a)(i) only with the consent of the Secretary of State."

Amendments 78YP to 78YR agreed.

Clause 102: Enforcement of security

Amendments 78YS and 78YT

Moved by ***Viscount Younger of Leckie***

78YS: Clause 102, page 47, line 21, leave out paragraphs (a) and (b) and insert—

"(a) notice of the intention to do so has been given to the Regulator of Social Housing and a period of at least 28 days has elapsed since the notice was given, or

(b) the Regulator of Social Housing has waived the notice requirement in paragraph (a)."

78YT: Clause 102, page 47, line 27, at end insert—

"( ) The Regulator of Social Housing may waive the notice requirement under subsection (2)(a) only with the consent of the Secretary of State."

Amendments 78YS and 78YT agreed.

Clause 103: Grants and loans where housing administration order is made

Amendment 78YU

Moved by ***Viscount Younger of Leckie***

78YU: Clause 103, page 47, line 33, leave out "objective" and insert "objectives"

Amendment 78YU agreed.

Clause 109: Registered societies: ordinary administration procedure etc

Amendment 78YV

Moved by ***Viscount Younger of Leckie***

78YV: Clause 109, leave out Clause 109

Amendment 78YV agreed.

Clause 111: Interpretation of Chapter

Amendment 78YW

Moved by ***Viscount Younger of Leckie***

78YW: Clause 111, page 51, leave out lines 12 and 13 and insert—

""objectives of the housing administration" means the objectives in section 93(4);"

Amendment 78YW agreed.

Clause 113: Secure tenancies etc: phasing out of tenancies for life

Amendment 79

Moved by ***Lord Kerslake (CB)***

79: Clause 113, leave out Clause 113

Lord Kerslake (CB): My Lords, the purpose of this amendment is to remove from the Bill the provision for mandatory fixed-term tenancies. I understand that later on in this debate we will get a constructive and helpful response from Ministers that I hope will go some considerable way to addressing the concerns I have about this issue. I am extremely grateful for that: it is another example of a Minister listening and responding to the issues we have raised.

Nevertheless, it is worth explaining why the amendment is so important and what it goes to the heart of. It effectively addresses the issue of whether we see council properties as genuine homes or as houses or even a temporary welfare provision, because that is the direction of travel that this policy takes us in. In the previous debate about the so-called pay-to-stay provisions, I used an example and I will use another to illustrate my point. This one is a little closer to home and involves my wife.

My wife lived until the age of five in rented rooms. It is important to say "rented rooms" because they were not a house or a flat. They were rooms in a house. There were two rooms to be precise. One was the living room and the other was the bedroom, which she shared with her parents. The other facilities—the bathroom, kitchen and so forth—were all shared. At the age of five, she moved into a three-bedroom council property. She still remembers that move, less because of the personal impact on her—she was too young to know—and more because of the incredible excitement of her parents. For the first time they had a permanent dwelling that met their needs. She lived in Nottingham. Why was it possible for her to move into that home? The answer is that this was 1962 and Nottingham had embarked on a massive council property construction programme. Her family was one of the lucky ones who moved into that property.

6.30 pm

Would they have felt the same way about that move if what they had been offered instead was a five-year fixed-term tenancy? They might of course have heard reassuring noises, as the Minister mentioned in Committee, that perhaps it would be okay and it would almost certainly be possible to roll over the tenancy; but would they have felt as if it was their home? The answer is pretty clear. They would not. Their response and reaction to that move would have been entirely different.

That is essentially what we are doing through the provisions in the Bill, unless they are changed. We know now that the problems are if anything more acute than when my wife was moving, rather than less, but we are saying to people who have typically been in a temporary and inadequate property for the best part of their lives that we are now moving them into another temporary or insecure property. We are moving into a world in which people's ability to stay in their property is driven by whether the state, in this case the Government, deems them to be deserving of continuing with that property. That is not a home.

That is one personal example. What does the evidence tell us so far about the impact of secure tenancy? Of course, in a sense, we do not need to guess what the impact is—we already have voluntary arrangements in place. Some 13% of new lets are on fixed-term tenancies. I am indebted to Shelter for drawing to my attention a piece of academic research on this issue, undertaken by Professor Suzanne Fitzpatrick and Dr Beth Watts of Heriot-Watt University. This work has been done as part of a consortium involving local authorities and universities across the country under the heading "Welfare Conditionality". The research finds that those early adopters are becoming increasingly disillusioned with the effect of this policy. They are finding, certainly, that some tenants are unaware that they are on a fixed-term tenancy, but far more are deeply anxious about the uncertainty that comes with that, and that the more dependent they are, the more anxious they are.

Can we conceive of a situation in which families with school-age children might be forced to move out of their property when the children are at school? The noble Lord, Lord Bassam, spoke very eloquently about this issue, which goes to the heart of the ambition we all have to create stable, successful communities. Such communities need stable tenants; without them, investment in the community is unlikely, because of uncertainty about the future.

This provision is neither necessary nor appropriate. The early evidence from local authorities that have tried it is that it simply does not work, and they are moving back from it. I recognise that there is a government ambition to make changes here, and I look forward to hearing what the Minister has to say.

Baroness Lister of Burtersett (Lab): My Lords, I rise to speak to Amendment 80ZB in my name and that of the right reverend Prelate the Bishop of St Albans, for whose support I am grateful, although I know he is unable to be in his place today. I do so in the context of my opposition to Clause 113 and Schedule 7, which is partly for the reasons so eloquently stated by the noble Lord, Lord Kerslake. I have argued before that this measure will destroy the security that is so important to families with children, disabled people and carers, people with mental health problems and those who have experienced homelessness. Ministers constantly tell us that this is what this Government are all about.

The amendment would exempt those who give up an old-style secure tenancy because of domestic violence. The great majority of these will be women. Incidentally, I still have not received an equality impact assessment for this clause, despite a further request. I will not repeat the full case. In Committee, the Minister said that she fully appreciated the intention behind this amendment. She promised that:

> "In developing the regulations that determine when a local authority may grant existing lifetime tenants a further lifetime tenancy when they move home, we will give very careful consideration to whether this should include those who are moving home to escape violence or intimidation of any kind".—[*Official Report*, 14/3/16; col.1715.]

Welcome as that was, I want to press the Minister on two points. I am grateful to the noble Baroness, Lady Williams of Trafford, for the constructive meeting we had on this issue.

First, I hope that the Minister is now in a position to tell us whether the Government will include this group in the regulations. What possible argument could there be against excluding women who might otherwise be trapped in domestic violence and abuse, thereby undermining the Government's welcome strategy to tackle violence against women and girls, when research already shows that insecure housing can have a devastating impact on women and children in this situation? I emphasise that such regulation should not cover just victims of domestic violence who move home but also situations where a joint tenancy is ended and a new sole tenancy granted in the name of the victim.

Secondly, as I argued in Committee, it is not sufficient to give local authorities a permissive power, because the experience of their treatment of women who flee domestic violence suggests that they cannot always be trusted to use it when they should do so. Since Committee, a further study by Solace Women's Aid found that over two-fifths of those presenting to local authority housing services reported that they found them unhelpful. Many described housing officers as unsympathetic, uninterested and disbelieving. There was considerable inconsistency in how they were rehoused. It is not good enough to put a discretionary power in the hands of officials who too often do not appear to understand domestic violence. If a domestic violence victim contemplating giving up a secure tenancy does not know whether a local authority will grant her a new secure tenancy, she could decide that the uncertainty and risk associated with doing so is just too great. If it is not possible to leave out the offending clauses entirely, at the very least women in this situation should be given the certainty that a clear right to a further lifetime tenancy would provide. Anything less risks undermining the Government's commitment to tackling violence against women and girls.

The Lord Bishop of Peterborough: My Lords, my brother bishop, the right reverend Prelate the Bishop of St Albans, as we have heard, is unable to be here. He has asked me to speak to Amendment 80ZB and I very gladly do so.

It is so important not only for women who may have been abused but for their children, who may have often witnessed abuse or been similarly abused, that they should have security. This is about children's well-being and their development into stable and secure adults. Under the current proposal, if a woman who is being abused leaves the home, she will lose the secure tenancy. Unless discretion is brought in under regulations, the only option will be an unsecured tenancy, which is the worst thing possible for the children as well as the mother.

It seems completely self-evident that it should be written in that there should be no discretion, and that women who have to leave their home for reasons of violence against them or their children should be allowed to move to another secure tenancy.

Lord Shipley: My Lords, I shall first speak to Amendment 80ZB, although my name is not attached to it, in the names of the noble Baroness, Lady Lister of Burtersett, and the right reverend Prelate the Bishop of St Albans, as I think this is an extremely important issue. I cannot believe the Government intend that a woman who lost a tenancy as a consequence of domestic violence should not be able to have that renewed as a secure tenancy, and I hope very much that the Minister will be able to put our minds at rest on the matter.

On Amendment 79, to which my name is attached, when the Minister responds to the debate, I hope she will define for us again what the problem is that the Government are trying to solve because, for the life of me, I find it very difficult to understand. For one thing, there is existing legislation in the Localism Act, which we debated in your Lordships' House only a few years ago, and I am not clear why the provisions in that Act are not sufficient in this case.

For me, this is about community cohesion. It is about enabling those who are in social rented accommodation to stay in their homes and build a sense of community in their area. I worry that, if the Government got their way with the Bill as it is currently worded, we would simply end up with a large number of short-term tenancies. I do not believe that five years is enough. I can understand that a local authority might want the flexibility to have a minimum of two years, but it seems to me that the amendments that we considered in Committee, and that we are now considering on Report, would help us to improve the Government's recommendations in the Bill. I, for one, would prefer 10 years, with the right of the local authority, which exists anyway in the Bill, to renew a tenancy as a secure tenancy.

This whole proposal shows signs of being rushed. The problem that the Government are seeking to solve is ill-defined, if defined at all; it is all about encouraging more tenants to buy their own homes. That takes us right back to the purpose of the Bill and the 200,000 starter homes. The problem, as we have identified repeatedly in our consideration of the Bill, is that many tenants are not in a position to buy their own home, even with a 20% discount on the cost of a starter home. They will therefore need to rent.

There is nothing worse, surely, for neighbourhoods and communities than to end up with people in uncertainty, worry and stress, and with children in school not quite knowing whether they will have to move a long way away, where they may be unable to continue in the local school that they have come to know. In terms of people living near where they work, travel patterns are established when people have longer-term tenancies.

Longer-term tenancies enable people to have confidence about the area that they live in, and to feel that the house or flat that they live in is actually a home. We should use that word "home" much more than we do. We talk about tenancies, houses and flats and so on, when this is about people's homes. It is about places where families live, where children are brought up and where people are based who can then secure employment.

This Bill should be an improvement on the Localism Act and the legislation that is already in place. As I

[LORD SHIPLEY]
understand it, the Government have indicated that they want this amendment on secure tenancies, because not enough tenants have moved into owner-occupation and not enough local authorities have been giving fixed-term tenancies to their tenants. In the end, this should be a matter for local authorities to address. I am very much looking forward to hearing what the noble Lord, Lord Kerslake, referred to—we are going to hear some good news, apparently, about secure tenancies. I very much hope that we do and that it will be satisfactory because, as things stand, this is a very bad proposal.

6.45 pm

Lord Campbell-Savours (Lab): My Lords, may I ask the Minister a question, if she will listen to what I am saying? Perhaps those with the Minister could indicate to her that I am asking a question. Can we be told why this proposal was brought before Parliament only on the last day in Committee? That is what happened, as I understand it. Members in the House of Commons were not given any notice of this. Why was it introduced on the last day in Committee? Was some pressure being exerted by some group? Was it always in the Government's mind to introduce such a measure? Was it pressure from local authorities? Where did the pressure come from?

Lord Young of Cookham (Con): My Lords, I shall make a brief intervention in support of the policy of bringing to an end lifetime tenancies. I recognise the powerful points that have been made on behalf of those who suffer from domestic violence, and I hope the Minister will listen carefully to those representations.

It is just worth making the point that this is a prospective policy; it would not apply to existing tenants. I say that because one of the letters I got from a residents' association in London implied that this was in some way retrospective, taking away security that people have.

The point is that one needs a balance between, on the one hand, those who currently enjoy lifetime tenancies and, on the other, those who are on the waiting list. Throughout this debate, one criticism that has been made of the Government is that we are not building enough secure accommodation for rent for those in housing need, for whom social housing for rent is the only answer. For someone on the waiting list, there are two factors that are of relevance: one is the rate of new build of social housing, and the other is the rate of re-letting. When I last looked at the figures, the number of re-lets each year was 400,000—roughly two-thirds from housing associations, and roughly one-third local authority—whereas the number of new homes built for rent was 50,000. In other words, the re-let market is eight times more important for those on the waiting list—those in housing need—than new build.

The reason why I support ending lifetime tenancies and bringing in fixed-term tenancies is that it promotes a conversation between the local authority and the tenant that may be of interest not only to those on the waiting list but to the current local authority tenant. That conversation will bring to the tenant's attention a range of options that he or she might not previously have considered. One reason why I have consistently supported the transfer of the discount scheme is to enable those currently in social housing to move out and free up such homes. A re-let secures an immediate solution for someone on the waiting list at a fraction of the cost of new build and within a fraction of the time.

That is why I think that one must look at both sides of the coin: the expectations of those who currently enjoy good social housing and those on the waiting list, who are looking for some movement in social housing to solve their problems. If, at the end of the conversation, there is clearly no other option that is acceptable to the tenant, then of course the tenancy should be renewed—I do not think any local authority will abuse the powers given to it—but it will have promoted a conversation and enabled a range of options to be presented to the tenants, which may increase the number of re-lets, which may in turn help those on the waiting list. That is why I think the time is due for the introduction of such a policy.

Lord O'Shaughnessy (Con): My Lords, I associate myself with the comments made by my noble friend Lord Young in support of the Government's policy. We have heard many powerful personal stories, including from the noble Lord, Lord Kerslake, about people who currently benefit from lifetime tenancies. As my noble friend has explained, in a way that exemplifies an issue that we need to keep front of mind here, which is what economists would call an insider-outsider problem. In practical terms, that means that we have a tendency to undervalue the benefits of a policy to those who are not yet benefiting from it, compared with those who already have a benefit. Quite simply, those who already have a benefit are identifiable—they can write letters. Those who may yet benefit are not in that position. We tend to hear from them less and, as a consequence, we have an unbalanced view of the benefit of a given policy.

This is incredibly important when we think about how it impacts on the welfare state and our ability to support the neediest. I have a personal story—or at least a neighbourhood story—to share about a local housing association tenant, an elderly lady, who lived next door to us and who died. Her flat was inherited by a single working son. Five doors down in temporary accommodation, families crammed into tiny flats did not have a chance to move into that vacated flat because it was passed on to a relative. No one wants to reduce the housing support that anyone benefits from, but is that really a fair distribution of the limited resources that we have at our disposal?

The principle we need to consider is how best to use the funds and assets of the state when we still have a large deficit. We are not in a position not to consider these things. We need to bear in mind that whenever we water down provisions in the Bill, whether through taper thresholds or time limits, the effect is to ask less well-off taxpayers to subsidise those who, in this case, are not in as much need of public financial support. That, in my view, is not progressive. Indeed, it is the opposite. When considering how to vote, I urge your Lordships to consider those who are unable to access a

social home, who are subsidising social housing through their taxes but are not benefiting from it. These people—the neediest—must surely be given a better chance of accessing a social home. That is what these amendments would prevent.

Lord Porter of Spalding: My Lords, I had no intention of speaking at this point because I have an amendment in the next group, but we need to stop perpetuating this myth that social housing is subsidised by the taxpayer. Well-prepared, well-delivered social housing is a financial benefit for this country. All the money we have mortgaged in those properties is about a third of its total value. If we are truly progressive we should be looking at how we sweat the asset that we already have tied up in there. There is no need for the Treasury to put fresh money into it. We just need to utilise the existing stock in a way that maximises its benefit for the whole country. That said, I will sit down now, as I am waiting to speak later.

Lord Beecham: I congratulate my worthy successor as chairman of the Local Government Association on disabusing his colleague of the notion I referred to—that the taxpayer is funding council housing and subsidising people who should not be subsidised. It is simply not true, and I am very glad that the noble Lord, Lord Porter, made that point.

I and all on our Benches support the amendments in the names of the noble Lord, Lord Kerslake, and of my noble friend Lady Lister. I also endorse the comments of the noble Lord, Lord Shipley. He made the valuable point that we talk too much of "houses", or, as I think Churchill once described them, "units of accommodation"—not, he thought, an appropriate phrase—but we ought to regard them as homes. In that context I remind the noble Lord, and other noble Lords, that homes with a spare room are also homes. They, of course, are subject to the bedroom tax. We do not want to reopen that debate, but it is analogous, really, to the way in which the Government look at social housing.

The Bill's provisions about secure tenancies—in effect turning them into insecure tenancies—say a great deal about the Government's professions of localism and their attitude to council housing. As other noble Lords said, councils were given the power by the previous Government to allocate properties on the basis of a two-year to five-year tenancy. I shall come back to some findings on that in due course, but they currently have that choice.

We take a diametrically opposite view from the Government, who simply replace the decision-making of local authorities by imposing their own solution. Local authorities should be free to determine their policies in this and other areas, subject to a requirement to provide, where relevant, at the least a basic level of service and entitlement, whatever the service may be. The Government approach the issue from the other end: councils should do only what the Government condescend to allow them to do. When it is convenient for the Government to pass the buck—as, for example, in the case of abolishing the council tax support scheme—they will do so, but when councils do not wish to subscribe to the Government's distaste for the provision of council housing they have to conform.

Heriot-Watt University recently published an interesting study under the somewhat daunting title *Welfare Conditionality—Sanctions, Support and Behaviour Change*, dealing with the issue of fixed-term tenancies as provided by Clause 113 of the Bill. These have, as we have heard, been an option for local councils since the Localism Act 2011—a misleading title if ever there was one. Now they are to be compulsory, subject to the possibility of extension, on any future tenancy. The report avers that, taken together with pay to stay, the Government's vision is one of,

"catering … for the very poorest on a temporary basis".

Many councils that adopted the concept of two-year to five-year lets are regarded as being "disillusioned about their merits", not least with regard to,

"the scope for using them to generate additional social lettings in high demand areas",

and there is scepticism about the use of the mechanism to promote social mobility or positive tenant conduct. There is a suggestion that behaviour policy lay partly behind the scheme, so you would reward people by allowing them to stay in the property beyond two to five years if their behaviour was appropriate.

The latter point has been a factor in the promotion of the concept, but one for which there is little evidential support, the Heriot-Watt report says. Several academic authorities are quoted, on the other hand, as supporting the view that security of tenure has been an essential element of social housing. Yet this is already threatened by the total benefit cap for families with more than two children, who could find even social housing rents unaffordable. In any case, some two-thirds of all social housing, council and housing association properties are offered with a probationary period, but only 13% of new general-needs lettings were made on a fixed term basis in 2014-15. Interestingly, the advice from the Department for Communities and Local Government was originally to let for five years, with a two-year term as an exceptional alternative. Indeed, most local authorities that have taken advantage of that option have let for three to five years—the latter in effect now becoming the maximum, rather than the minimum, term under the Bill's provisions.

Even where housing associations adopted the option, the report discovers growing disillusionment—especially where, as in high-demand areas like London, shortage of housing makes finding alternative accommodation exceedingly difficult—while the costs of managing the process were becoming disproportionately high. Those costs, of course, have to be met from within the housing revenue account and therefore by tenants in general. Conversely, there are areas of lower demand where it simply makes no sense to make people move on. Of course, the impact on householders and on communities can be considerable. Why should tenants invest in their homes if they have only limited tenure? Where, given the shrinking availability of affordable social housing to rent, are they supposed to go? If to the private rented sector, at what cost to them or the taxpayer if housing benefit has to be paid to cover the higher rents? Does not such pressure also feed through to ever-rising house prices?

[LORD BEECHAM]

The amendments in this group seek to minimise the damage to what has been a key contributor to the well-being of individuals, families and communities, namely the provision of decent, affordable, secure homes—as legitimate a part of overall housing provision as owner-occupation. Of course, as many other countries, not least in Europe, demonstrate, we have among the highest rates of home ownership of any country in Europe. Choice should not be confined to those who can afford—with or without generous subsidies, in the case of starter homes—to buy, but should be available to those who cannot afford it or who do not wish to buy. They are not second-class citizens. The Government should recognise that in the provisions they make in the context of tenancies in the social housing sector.

7 pm

Baroness Evans of Bowes Park (Con): My Lords, before I turn to the amendments in the name of my noble friend Lady Williams it may be helpful if I say a few words about why we are making the changes to secure tenancies. I apologise at the outset if that means my remarks may be slightly on the long side.

The provisions in the Bill will ensure that social housing is focused on those who really need it, for as long as they need it, and that tenants are provided with more appropriate tenancies as their needs change over time. Local authorities will be able to get the best use out of their homes, so that more households are able to access social housing and so that social tenants who aspire to own their own home are supported into home ownership where they can be. We listened carefully to the debate in Committee and, indeed, now on Report, and recognise the strength of feeling on this issue, so I am happy to be able to say that as a result we are prepared to give an undertaking that we will bring forward amendments at Third Reading to extend the maximum tenancy period to 10 years in certain circumstances and to enable local authorities to give longer tenancies to cover the time that children are at school. I am also able to give a commitment that we will meet the concerns raised by the noble Baroness, Lady Lister, about domestic violence, through regulations. I will return to these later in these remarks, as well as in remarks on the next group.

Amendments 79A, 80AA, 81ZB, 81ZC, 81ZD and 81ZE are technical amendments which are intended to help local authorities implement the provisions in Schedules 7 and 8. Amendment 79A ensures that local authority landlords will be able to terminate a new fixed-term tenancy on the statutory fault grounds during the fixed term without the need to take additional action to forfeit the tenancy. Very briefly, forfeiture is the method by which tenancies may be brought to an end by a landlord following the tenant's breach of a tenancy condition. The Housing Act 1985 provides routes for local authorities to recover possession from tenants with fixed-term and lifetime tenancies.

Lifetime tenancies can be brought to an end on grounds specified in the legislation; however, there has been some debate about the effect of the legislation in relation to ending a fixed-term tenancy during the term. In particular, commentators differ in their views about whether landlords have to use both the forfeiture process and the statutory method of bringing the tenancy to an end. This issue was highlighted by the Opposition in the other place during debate on the provisions in the Bill. Until now the issue has been mainly academic, as most local authority tenancies are granted on a lifetime basis. However, as we move to fixed-term tenancies in future the issue is likely to gain in significance and we therefore want to put the matter beyond doubt. We do not think that there is any justification for landlords to have to go through a two-stage process to bring a fixed-term tenancy to an end during the fixed term. It would be unduly complicated and onerous.

The amendment will therefore ensure that landlords can terminate the tenancy during the fixed term by obtaining an order of the court for possession of the dwelling house on one of the grounds set out in the legislation and executing that order. We expect that local authorities will usually set out the statutory grounds on which they can seek possession in their tenancy agreements. However, this provision makes it clear that it is not essential for a landlord to rely on the statutory grounds when seeking possession. These changes apply only to new fixed-term tenancies granted once the Bill comes into force.

Amendments 80AA, 81ZB, 81ZC and 81ZE enable local authorities to continue to include provision for forfeiture to cover the situation where a tenancy is no longer secure—for example, where the tenant is no longer using it as their main home—and the statutory possession grounds would not be available. Under the normal rules of succession, the successor takes on the tenancy of the deceased, including any outstanding possession order attached to that tenancy. Amendment 81ZD ensures that this will continue to be the case where someone other than a spouse or partner qualifies to succeed and is granted a five-year fixed-term tenancy under the provisions in the Bill. These are technical amendments which are intended to clarify and simplify the existing legislation and make fixed-term tenancies work more effectively for local authorities. I therefore hope that noble Lords will accept them.

Amendment 81ZA introduces a new clause to deal with mutual exchange, whereby one social tenant swaps with another. It responds to a point raised by the noble Lord, Lord Best, in Committee about the position of social tenants who exchange. We want to ensure that social tenants continue to be able to move within the social rented sector, including when they move through mutual exchange. To ensure that the introduction of flexible tenancies did not act as a barrier to mobility, the Localism Act introduced a provision which enabled lifetime tenants of local authorities and private registered providers to maintain their security of tenure when swapping homes with tenants with fixed-term tenancies. It did this by giving tenants a power to insist that the prospective landlord must grant them a further lifetime tenancy where they consent to the swap.

Amendment 81ZA amends the provision in the Localism Act so that it applies to new local authority fixed-term tenants as well. However, with 1.2 million households on the waiting list, we do not think that it is sensible to guarantee that lifetime tenants should always be given another lifetime tenancy when they

swap. Accordingly, the new clause provides that in future local authority and private registered provider landlords will have discretion to grant lifetime tenants a further lifetime tenancy where they swap. We will specify the circumstances in which local authorities may exercise this discretion. This will be similar to the position for lifetime local authority tenants who seek to transfer to another local authority home in future, where local authorities will have a limited discretion to offer another lifetime tenancy. We have already taken a power to regulate to specify the circumstances in which local authorities may continue to offer lifetime tenancies. We will ensure that these regulations cover the situation in which tenants swap as well as where they transfer.

The Localism Act gave protection only to tenants who had a lifetime tenancy before the Act came into force; that is, before 1 April 2012. We do not think there is any justification for retaining the inconsistency of approaches and are therefore proposing that the new provisions will apply to all lifetime tenancies whenever they were granted. The existing law will continue to apply where an application to swap has been made at the time the Bill comes into force. Amendment 80ZA makes a minor consequential amendment to Schedule 7 to allow local authorities to continue to grant lifetime tenancies where lifetime tenants mutually exchange.

Amendments 79 and 80B would remove altogether the provisions in the Bill that restrict the use of lifetime tenancies. While I appreciate the strength of feeling on this issue and I have spoken about some amendments the Government are willing to bring forward, I cannot accept these amendments. The provisions in the Bill deliver on a commitment in last year's summer Budget to limit the use of lifetime tenancies in social housing. The noble Lord, Lord Campbell-Savours, asked why these were not included from the outset. As I have just said, we made clear in the July Budget our intention to review the tenancies and since it is a complex area we needed to make sure that we got it absolutely right before introducing the amendments. We are clear that continuing to grant tenancies with lifetime security to households which may have only a short-term need is not a good use of scarce social housing; it is not fair to tenants who are forced to remain in unsuitable or overcrowded housing and not fair to the hundreds of thousands of households on waiting lists and in housing need.

We know that there is a need for more housing across the country and are already taking steps to provide it, but it is imperative that we also make efficient use of the existing stock. By requiring councils to grant fixed-term tenancies with regular review points, we will ensure that more households are able to access social housing, that those who continue to need social housing are provided with appropriate housing as their needs change over time and that social tenants who aspire to own their own home are supported into home ownership where this is viable for them. In Committee we gave a commitment to provide guidance to councils to assist them in implementing these changes. This will make it clear that where a tenant's circumstances are broadly unchanged we expect that landlords will normally grant a further tenancy in the same home.

Amendment 80ZB would ensure that where a tenant had to give up their lifetime tenancy as a result of domestic violence they would be granted a further lifetime tenancy in their new home. I thank the noble Baroness, Lady Lister, for raising this important point again and, of course, for her commitment to protecting victims of domestic abuse. The Bill already includes provisions to ensure that lifetime tenants can be granted a further lifetime tenancy in certain circumstances and we will specify that in regulations. I am happy to give a commitment now that we will ensure that the regulations include those who need to move or have fled their homes to escape domestic violence. We look forward to working with the noble Baroness on how we can do this most effectively.

Baroness Lister of Burtersett: May I seek clarification? I made an important distinction between having a permissive power and making it clear in the regulations that those affected by domestic violence will be exempted. Will the Minister clarify that this will be the latter and not simply a permissive power, because that is not going to be enough?

Baroness Evans of Bowes Park: Yes, I can clarify that. I fear that I will have to find out what has happened on the equality statement and come back to the noble Baroness as soon as possible. I apologise—I know that she has raised it constantly. I fear I do not have any further news for her but I hope that what I have said previously makes up a bit for that.

Amendments 81 and 81A would undo the changes we are making to succession. It would mean that there would continue to be a distinction between the succession rights of tenancies granted before and after 1 April 2012. Family members of tenants granted their tenancy before that date would continue to have an automatic right to succeed to a social home, while family members of tenants granted their tenancy after that date would be entitled to succeed only at the landlord's discretion. We believe that it does not make sense to retain this distinction simply on the basis of the date the tenancy was granted. That is why we are bringing the succession rights of secure tenancies granted before April 2012 in line with those granted after that date. These amendments would also mean that family members who might have no need for social housing were able to succeed to a lifetime tenancy. Again, we do not believe that this can be right when there are so many in need on council waiting lists, and when all new tenants in future will receive only a fixed-term tenancy.

The provisions will deliver a consistent approach across all council tenancies. They will put common-law partners on an equal footing with married couples and civil partners who will retain their entitlement to succeed to a lifetime tenancy, and will ensure that councils have the flexibility to provide additional succession rights not just to family members but to people such as those who have given up their own home to care for the tenant over a number of years. Where councils decide to grant additional succession rights, if the deceased had a lifetime tenancy, the successor will be given a five-year tenancy. In line with other tenants, there will then be a review at the end of the five years.

[Baroness Evans of Bowes Park]
However, as I also said, if circumstances have not changed, we anticipate the local authority extending the tenancy further.

The changes we are making to the succession rules strike the best balance between protection for tenants and their families, and flexibility for landlords to make the most efficient use of their stock for the whole community. Taken together, these amendments would seriously weaken the ability of local authorities effectively to manage their housing stock. I need to be clear that, should Clauses 113 and 114 and Schedules 7 and 8 not stand part, the other place will be certain to overturn this decision. With this in mind—and, I hope, with the commitment I have given in relation to Amendment 80ZB and the further discussion we will have on the next group of amendments—I ask that the amendment be withdrawn.

Lord Shipley: Will the Minister clarify what she said at the beginning of her reply—that local authorities would be enabled to issue 10-year tenancies in certain circumstances? Can she tell the House more about what circumstances will be explained at Third Reading—because the Government's intention is to come back to this at Third Reading—in relation to adding 10-year tenancies to the Bill? Will the "certain circumstances" also be included in the Bill? In other words, will they be explained in detail at Third Reading, or is it the Government's intention simply to add them to regulations? Will the affirmative or the negative procedure be used in relation to those regulations? This is an extremely important issue for many of us. The affirmative procedure should be used in respect of regulations. It would also help us to be told what the Government mean by "in certain circumstances".

Baroness Evans of Bowes Park: We will discuss this issue in more detail on the next group of amendments. However, we have shown the direction of travel we intend to take. We intend to have further discussions and to provide more information at Third Reading.

7.15 pm

Lord Kerslake: My Lords, like the noble Lord, Lord Shipley, I would like to understand what "in certain circumstances" might mean. I look forward to that conversation between now and Third Reading. That said, I am grateful for the movement that has been made.

I am also grateful for noble Lords' contributions to this debate. The noble Baroness, Lady Lister, spoke powerfully about domestic violence issues, which must be at the front of our minds. The noble Lord, Lord Shipley, spoke—as I did—about the importance of seeing this as an issue about people's homes, not simply housing units. That is at the core of this debate. The noble Lord, Lord Young, spoke about re-lets. I entirely agree about the importance of increasing re-lets but disagree about the method. My personal view is that the way to increase re-lets is to increase the supply of new social rented properties and ensure that we have a positive offer to make to those who might want to downsize their property, not by coercing them and creating greater uncertainty. The noble Lord, Lord O'Shaughnessy, spoke about the so-called insider/outsider problem and the voice of those inside in a social rented property being less than those outside aspiring to get a social rented property. Anybody who has worked in a local authority or been a councillor has no doubt about the voice of the outsiders—those who are homeless—as it is with them every single day of the week. Finally, the noble Lord, Lord Beecham, spoke about the research. I commend this research to every Member of this House because it gives a very clear understanding of the practical impact of this policy, which creates uncertainty and not value in the way that was originally envisaged.

I am grateful that we have seen movement on this issue and look forward to the conversations between now and Third Reading. I beg leave to withdraw the amendment.

Amendment 79 withdrawn.

Amendment 79A

Moved by ***Baroness Williams of Trafford***

79A: After Clause 113, insert the following new Clause—

"Termination of fixed-term secure tenancies without need to forfeit

(1) The Housing Act 1985 is amended as follows.

(2) In section 82 (security of tenure)—

(a) before subsection (1) insert—

"(A1) A fixed-term secure tenancy of a dwelling-house in England that is granted on or after the day on which paragraph 4 of Schedule 7 to the Housing and Planning Act 2016 comes fully into force cannot be brought to an end by the landlord except by—

(a) obtaining—

(i) an order of the court for the possession of the dwelling-house, and

(ii) the execution of the order, or

(b) obtaining a demotion order under section 82A.

(A2) A secure tenancy can be brought to an end by the landlord as mentioned in subsection (A1)(a) whether or not the tenancy contains terms for it to be brought to an end."

(b) in subsection (1)(b), for "but" substitute ", other than one to which subsection (A1) applies, that is";

(c) in subsection (2), after "subsection" insert "(A1)(a) or".

(3) In section 83 (proceedings for possession), in subsection (A1), for "82(1A)" substitute "82(A1) or (1A)"."

Amendment 79A agreed.

Schedule 7: Secure tenancies etc: phasing out of tenancies for life

Amendment 80

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

80: Schedule 7, page 129, line 29, leave out from beginning to end of line 35 and insert—

"81A Granting of secure tenancies

A local housing authority may grant a secure tenancy of a dwelling-house in England for a fixed term that is—

(a) at least 2 years, and

(b) up to and including 10 years."

Lord Kennedy of Southwark: My Lords, I intend to speak fairly briefly to this amendment. I heard what the noble Baroness, Lady Evans of Bowes Park, said in respect of the previous group of amendments. Therefore, I will not press this amendment to a vote at this stage and will wait to see what amendment is brought forward before I decide whether I need to bring anything back at Third Reading.

The noble Lord, Lord O'Shaughnessy, who is about to leave the Chamber, referred to taxpayer subsidies. He is completely wrong about that. This issue was raised in a previous debate in your Lordships' House on 14 March, following which I tabled a Question to the noble Baroness, Lady Williams of Trafford. I received a response on 24 March, which confirmed that the assertion was not correct. I will happily send the noble Lord a copy of the response from the noble Baroness. I will now proceed to move my amendment as I know that other noble Lords want to speak to their amendments and hear the Minister's response. I beg to move.

Lord Watson of Invergowrie (Lab): My Lords, if I appear to be somewhat of an interloper in these considerations, having not spoken on this Bill previously, it is probably because that is precisely what I am—but I do want to say a few words in relation to Amendment 80A, to which my name is attached.

I listened carefully to what the noble Baroness, Lady Evans, said in the last few minutes, and even took some notes. I think that she said—I hope that I am not quoting her inaccurately—that longer tenancies to cover the time that children are at school will form part of the amendments to emerge from the Government at Third Reading. That is very welcome. But I would like to reinforce some of the points that I hope the noble Baroness, Lady Evans, who also has responsibility for education, might want to bear in mind as the amendment is being framed.

On 24 March the Department for Education issued a press release relating to research into absences from school at key stage 2, which is seven to 11, and key stage 4, which is 14 to 16. The press release was in the name of the Schools Minister, Mr Gibb. He said that,

"missing school for even a day can mean a child is less likely to achieve good grades, which can have a damaging effect on their life chances".

I think that that is widely accepted—but how much more disruptive must it then be to have to change school entirely, probably to leave the area in which the family has made its home and re-establish life, friendships and study in a new school in an unfamiliar area?

That means building new friendships and relationships. For children growing up, having friends is so important for sharing ideas and experiences. This is particularly true for those at key stage 4—a time when discussions take place on aspects of exams which could be crucial for their life chances. Lacking those support mechanisms would represent a disruption to school life which would be unnecessary but for the current provisions of the Bill.

The noble Baroness, Lady Evans, will also be aware that the Department for Education is currently undertaking a somewhat controversial consultation on schools funding. One of the questions in the consultation document is:

"Do you agree that we should not include a factor for mobility?"

It might seem strange to some noble Lords that it should even be suggested that mobility is not an issue in terms of funding. However, the National Association of Head Teachers, which is effectively the union for school leaders, is unequivocal in its answer to that question and states:

"No. Pupil mobility is an enormous challenge for some schools, with some of our members reporting in-year mobility of over 50% due to general mobility in an area with high levels of migration or a seasonal workforce. Coping with this and ensuring that those children benefit from their education for the time they are in school and that other children's education is not disrupted requires enormous effort and investment from schools and this has to be supported by additional funding".

That view reinforces the results of research carried out by the Royal Society of Arts in 2013, published in a report entitled *Between the Cracks*. That publication, too, was clear about the disruptive nature for children of having to leave a school, particularly where it happens in-year and they cannot access high-performing schools which are, almost inevitably, full to capacity. So I would like the Government to bear in mind those issues when they are framing their amendment.

Finally, on the day when parents have been finding out if they have got the primary school of their choice for their children, it is surely incumbent on Ministers to ensure that children are given every chance to succeed at school, and not to insert obstacles to learning. I await with interest—and indeed with optimism—the government amendment on this issue and look forward to returning to it at Third Reading.

Lord Porter of Spalding: My Lords, I will speak in favour of Amendment 80AZB in my name and against the amendment in the name of the noble Lord, Lord Watson. Under his amendment, councils "must" do something. From an LGA perspective, we "may" be able to do things. Local government likes that; "must" is a bad thing unless somebody else gives us a big cheque for it.

I thank the Minister for accepting the arguments made by local government and by noble Lords earlier in this debate, and the Secretary of State for listening to our comments about excluding families with children from having to go for a fixed term. Personally, I am not bothered about five to 10 years. When you are talking about children, any fixed period is a waste of time. I will give noble Lords a quick run through. The average family in this country has 2.2 children. When people first get a council house they would have to have a child—or certainly be expecting one—because that is how rationed the supply is nowadays. The vast majority of new tenancies are only given to people with children. When that child is five they will go to primary school: there is no council leader in the country who is going to end that tenancy then, at five years.

[Lord Porter of Spalding]

When that child becomes 10 or 11 and starts secondary school, again, no council leader is going to evict the family from that property, providing the parents are behaving themselves. That will carry on for another five years—maybe seven if they go into the sixth form. So that is 18 years, at which point the 2.2 children are starting to have their impact, so that is probably 25 to 30 years. If we are seriously thinking that that family could occupy that property for 30 years on a short-term tenancy, why would we want them looking over their shoulder for 30 years? They are not going to invest in the property, the garden or the community. Clearly, that is not in the interests of the family, the neighbours, the taxpayer or anybody else. So I am seriously pleased that the Government have decided to look at the family situation and that they have committed to looking at other types of exclusions, without naming them. I am happy and hopeful that "others" might mean some more sensible people.

We are trying to address a serious problem: we have not got enough homes. I understand why the Government are doing this. There is a limited supply and there needs to be the ability to determine, on a case-by-case basis, that the right people have the right properties. But the only way that we are really going to fix this is by building more affordable social homes. For the last 40 years, successive Governments have failed to do what we all know is the right thing to do: we need to build more homes. This will not, I am afraid, add to the build. It might add to the supply at the edges for a few people, but it will not tackle the 1.2 million people on the waiting list—and it will certainly not be done at the expense of families.

Baroness Bakewell of Hardington Mandeville: My Lords I rise to support this group of amendments and, in particular, Amendments 80A and 80AZB. While I accept that it is the Government's policy now to bring an end to secure tenancies, there are, as other noble Lords have said, several groups of people for whom the cutting short of a tenancy would have an extremely detrimental effect. As the noble Lord, Lord Porter, said, children in full-time education are extremely disadvantaged if they have to move schools unnecessarily frequently. Such moves are particularly damaging at what is known as the critical stage of education—years 10 and 11, when they are preparing for their GCSEs. When I was the lead on education for Somerset County Council, we always tried to ensure that looked-after children, in particular, were able to attend the same school during years 10 and 11, regardless of what changes there may have been to their individual care arrangements.

Children and young people will normally get only one chance at GCSEs and it is up to the rest of us to ensure that they are able to make the most of that chance and to not inhibit their progress with rules and regulations outside their control. There seems little difference between the wording of the amendments in the names of the noble Lord, Lord Bassam, and the noble Lord, Lord Porter—just the replacing of "must" with "may".

Those in receipt of disability living allowance or personal independence payments are in another section of the community that needs security and protection, especially if their accommodation has previously been adapted to suit their individual needs. It would seem that the noble Lord, Lord Porter, has information about what exceptions the Minister is prepared to grant, but if they are not forthcoming—

Lord Porter of Spalding: I have absolutely no knowledge about what the Minister is or is not going to do, but I live in hope. We have got this far and it has got better. We have a little way to go yet: let us keep our fingers crossed.

Baroness Bakewell of Hardington Mandeville: If, having lived in hope, the noble Lord, Lord Porter, is disappointed and wishes to test the opinion of the House, I will support him.

Lord O'Shaughnessy: My Lords, I was not intending to get involved in this debate but the noble Lord, Lord Kennedy, spotted me slinking out. Having been singled out, I will respond briefly. Unfortunately my notes have been whisked away, but my point was that there is a certain set of assets—council and social homes—and we all think the number of them should be increased. But we have to think about the distribution of those assets to the most needy households. That is a reasonable principle on which to found a welfare state. If a tenant is about to leave after a short tenancy they are, by definition, in less need than somebody who is on a waiting list.

Secondly, I checked the question asked by the noble Lord, Lord Kennedy, and the response to it stated:

"Local authorities do not receive subsidy from the Exchequer".

That is a very important distinction. The new houses are being funded not by a grant from the Exchequer but by revenue from other council and social homes, coming via local authorities. I consider this to be public money. So again it is a question about the distribution of public money and how the asset that has been created is used for the benefit of the neediest.

Lord Kennedy of Southwark: We may need to carry this on outside the Chamber. That is not a taxpayer subsidy: the money is coming from local authorities.

Baroness Evans of Bowes Park: My Lords, I thank the noble Lords, Lord Bassam, Lord Beecham, Lord Kennedy, Lord Watson and Lord Kerslake, and my noble friend Lord Porter, for their amendments. Turning first to Amendment 80, it would ensure that new fixed-term tenancies may have a longer term of 10 years in all cases.

As I said, we listened carefully in Committee, and I have found this further discussion at Report useful. A household's circumstances can change considerably in 10 years, which is why the Government remain convinced that a maximum of five years should be the norm for most fixed-term tenancies. Indeed, 70% of flexible tenancies currently given by local authorities are five years in length. However, we recognise that there may well be situations in which longer-term tenancies are appropriate for tenants who have particular needs—which is why, as I said, we will bring forward an amendment at Third Reading to enable local authorities to grant longer-term tenancies of up to 10 years in certain circumstances. In answer to the question of the noble

Lord, Lord Shipley, in the previous debate, I can say that this will include people with disabilities. We will be looking at other categories, and they will be in regulations which will be subject to the affirmative procedure, so there will be an opportunity to discuss the matter further, and we will of course have ongoing discussions in the run-up to Third Reading.

7.30 pm

Amendment 80A aims to ensure that a fixed-term tenancy would cover the length of time for which a child is in full-time education. We appreciate the motivation behind this amendment. I absolutely agree with the noble Lord that it is important that children are brought up in a stable environment, and I agree that frequent moves can be disruptive to a child's education, and of course we do not want that. As I said, we have listened to this debate and previous debates, so we are happy to give an undertaking to bring forward an amendment at Third Reading to give local authorities power to grant extended tenancies that cover the period for which a child or children are in full-time school education.

Amendment 80AZA would guarantee a lifetime tenancy in certain circumstances, including to people over pension age, where a property is or is designed to be adapted for a disabled person, and to tenants moving as a result of the removal of the spare-room subsidy. It is important that suitable accommodation is available for disabled people and that we make the best use of accommodation that is readily adaptable for people with access needs. Older people as well as disabled people have needs that change over time. Ensuring that tenancies are reviewed periodically will mean that landlords can consider carefully tenants' continuing housing needs and move them to more suitable accommodation where appropriate. But as I said, we have listened to concerns and will introduce an amendment to allow councils to grant tenancies of up to 10 years in certain circumstances, which will ensure that they are able to provide greater stability for those with longer-term needs. As I said, we will ensure that that includes people with disabilities.

As for those affected by the removal of the spare-room subsidy, the Bill gives local authorities discretion to offer tenants a further lifetime tenancy in limited circumstances, and we have already made it clear that that would include cases where tenants need to move to smaller accommodation.

Finally, Amendment 80AZB would have a similar effect to Amendments 80A and 80AZA, allowing local authorities to grant longer tenancies where children are in school, and a lifetime tenancy to parents or carers of those in receipt of disability living allowance or personal independence payment. I hope that the commitment I have already given will reassure my noble friend and that we can work with him to ensure that he not only has hope, but sees some of the things that he wants.

With that, I ask noble Lords not to press their amendments.

Lord Beecham: I am grateful to the Minister. As she will know, we have the last day of Report on Monday and Third Reading is on Wednesday, which gives us very little time to consider amendments that the Government may table. They may be perfectly adequate —one lives in hope, if not expectation—but they may not, and we and other Members may want to table amendments for Third Reading, so we really need to know what the Government are doing by Monday at the latest, because no amendments can be tabled after Tuesday. If we can have an assurance about the timing, that will be very helpful.

Baroness Evans of Bowes Park: My Lords, we are acutely aware of the timing issues, so yes, I give that assurance. I fear that it may mean that we will be working more closely together over the coming days than we have been already.

Lord Kennedy of Southwark: We have had a wonderful time, have we not? I thank everyone who has spoken in this short debate. I am hopeful about what we will see from the Government in the next few days; we can all agree that next week, we get to Third Reading. With that, I beg leave to withdraw the amendment.

Amendment 80 withdrawn.

Amendment 80ZA

Moved by ***Viscount Younger of Leckie***

80ZA: Schedule 7, page 130, line 8, at end insert ", or

(c) if required to do so by section 158(9B) of the Localism Act 2011 (which relates to transfer requests made before section (Secure and assured tenancies: transfer of tenancy) of the Housing and Planning Act 2016 comes into force)."

Amendment 80ZA agreed.

Amendments 80ZB to 80AZB not moved.

Amendment 80AA

Moved by ***Viscount Younger of Leckie***

80AA: Schedule 7, page 135, line 3, leave out from "(4)" to end of line 4

Amendment 80AA agreed.

Amendment 80B not moved.

Clause 114: Succession to secure tenancies and related tenancies

Amendment 81 not moved.

Amendment 81ZA

Moved by ***Viscount Younger of Leckie***

81ZA: After Clause 114, insert the following new Clause—

"Secure and assured tenancies: transfer of tenancy

(1) The Localism Act 2011 is amended as follows.

(2) In section 158 of the Localism Act 2011 (secure and assured tenancies: transfer of tenancy)—

(a) in subsection (3)(a), for "not a flexible tenancy" substitute "an old-style secure tenancy";

(b) in subsection (4)(a), for "is a flexible tenancy" substitute "is not an old-style secure tenancy";

(c) omit subsection (6);

(d) in subsection (7), for "fifth" substitute "fourth";

(e) for subsections (8) and (9) substitute—

"(8) The new tenancy is to be granted on whatever terms the landlord determines.

(9) A landlord must, on request by a relevant tenant, inform the tenant of the terms on which a new tenancy will be granted to that tenant.

(9A) Subsection (9B) applies in a case where—

(a) the request was made before section (Secure and assured tenancies: transfer of tenancy) of the Housing and Planning Act 2016 came into force, and

(b) one or more of the landlords had not yet complied with the request when that section came into force.

(9B) In that case any new tenancy granted in pursuance of this section to a relevant tenant whose existing tenancy is an old-style secure tenancy, or an assured tenancy that is not an assured shorthold tenancy, must be—

(a) an old-style secure tenancy, or

(b) an assured tenancy that is not an assured shorthold tenancy,

according to the landlord's capacity to grant a tenancy of either kind."

(3) In section 159 (interpretation of section 158 etc), in subsection (6), omit paragraph (b)."

Amendment 81ZA agreed.

Schedule 8: Succession to secure tenancies and related tenancies

Amendments 81ZB to 81ZE

Moved by ***Viscount Younger of Leckie***

81ZB: Schedule 8, page 143, line 31, after "tenancy" insert "("the old tenancy")"

81ZC: Schedule 8, page 143, line 39, leave out from "years" to end of line 40

81ZD: Schedule 8, page 143, line 40, at end insert—

"(2C) Where a possession order was in force in relation to the old tenancy—

(a) the possession order is to be treated, so far as possible, as if it applied in relation to the new tenancy, and

(b) any other court orders made in connection with the possession order are also to be treated, so far as possible, as if they applied in relation to the new tenancy.

(2D) In subsection (2C) "possession order" means an order for possession of the dwelling house."

81ZE: Schedule 8, page 146, line 14, leave out from "years" to end of line 15

Amendments 81ZB to 81ZE agreed.

Amendment 81A not moved.

Amendment 82

Moved by ***Viscount Younger of Leckie***

82: Before Clause 115, insert the following new Clause—

"Electrical safety standards for properties let by private landlords

(1) The Secretary of State may by regulations impose duties on a private landlord of residential premises in England for the purposes of ensuring that electrical safety standards are met during any period when the premises are occupied under a tenancy.

(2) "Electrical safety standards" means standards specified in, or determined in accordance with, the regulations in relation to—

(a) the installations in the premises for the supply of electricity, or

(b) electrical fixtures, fittings or appliances provided by the landlord.

(3) The duties imposed on the landlord may include duties to ensure that a qualified person has checked that the electrical safety standards are met.

(4) The regulations may make provision about—

(a) how and when checks are carried out;

(b) who is qualified to carry out checks.

(5) The regulations may require the landlord—

(a) to obtain a certificate from the qualified person confirming that electrical safety standards are met, and

(b) to give a copy of a certificate to the tenant, or a prospective tenant, or any other person specified in the regulations.

(6) In this section—

"premises" includes land, buildings, moveable structures, vehicles and vessels;

"private landlord" means a landlord who is not within section 80(1) of the Housing Act 1985 (the landlord condition for secure tenancies);

"residential premises" means premises all or part of which comprise a dwelling;

"tenancy" includes a licence to occupy (and "landlord" is to be read accordingly)."

Amendments 83 to 91 (to Amendment 82) not moved.

Amendment 82 agreed.

Amendment 92

Moved by ***Viscount Younger of Leckie***

92: Before Clause 115, insert the following new Clause—

"Electrical safety standards: enforcement

(1) Regulations under section (Electrical safety standards for properties let by private landlords) may provide for covenants to be implied into a tenancy.

(2) Regulations under that section—

(a) may make provision about the enforcement of a duty imposed by the regulations;

(b) may confer functions on a local housing authority in England.

(3) The provision that may be made about enforcement includes provision—

(a) requiring a landlord who fails to comply with a duty imposed by the regulations to pay a financial penalty (or more than one penalty in the event of a continuing failure);

(b) conferring power on a local housing authority to arrange for a person to enter on the premises, with the consent of the tenant, to remedy any failure by the landlord to comply with a duty imposed by the regulations.

(4) The provision that may be made in reliance on subsection (3)(a) includes provision—

(a) about the procedure to be followed in imposing penalties;

(b) about the amount of penalties;

(c) conferring rights of appeal against penalties;

(d) for the enforcement of penalties;

(e) about the application of sums paid by way of penalties (and such provision may permit or require the payment of sums into the Consolidated Fund).

(5) The provision that may be made in reliance on (3)(b) includes provision—

(a) about procedural matters;

(b) enabling a local housing authority to recover from the landlord any costs incurred by it in remedying the failure;

(c) about the application of costs recovered (and such provision may permit or require the payment of sums into the Consolidated Fund).

(6) In this section "local housing authority" has the meaning given by section 1 of the Housing Act 1985."

Amendment 92 agreed.

Amendment 93 had been withdrawn from the Marshalled List.

Clause 115: Assessment of accommodation needs

Amendment 93A

Moved by ***Lord Beecham***

93A: Clause 115, page 53, line 11, at end insert—

"(c) separate plots on which gypsies, travellers and travelling showpeople can have both residential accommodation and space for the storage of equipment"

Lord Beecham: My Lords, I move the amendment, which is in my name and that of the right reverend Prelate the Bishop of St Albans, the noble Baroness, Lady Bakewell of Hardington Mandeville, and my noble friend Lady Whitaker, and shall speak to Amendment 94, in the names of my noble friend Lady Whitaker and the noble Baroness, Lady Bakewell.

The amendments, which were discussed in Committee, are designed to make explicit reference to the housing and other needs of the Gypsy and Traveller communities. The Housing Act 2004 required housing authorities to assess the accommodation needs of Gypsies and Travellers and allowed the Secretary of State to provide guidance on how this duty has to be carried out. That was effected in 2007.

The Bill dispenses with that requirement on what I can only regard as the specious grounds that it is unnecessary in the light of the fact that housing authorities are under a general duty to consider housing needs and that the Government are consulting on guidance to local authorities in relation to Gypsies and Travellers. As I pointed out in Committee, however, the 2004 Act provision was promoted because it was apparent that the requirement of the earlier Housing Act 1985 on councils to consider the housing needs in their district with respect to the provision of further housing accommodation was not being implemented for this exceptional community. In reality, in too many areas, no provision was being made at all, or some of it was patently inadequate. I cited at the time the views of the Planning Officers Society, which believes that the change will provide an excuse for reluctant authorities not to make provision.

Concerns were also expressed by the All-Party Parliamentary Group for Gypsy, Travellers and Roma, the Catholic Association for Racial Justice, the chairman of the GLA Housing Committee, and the eminent QC Mark Willers, and important observations were made by the EHRC. The latter observed that the rate of homelessness in the community was as much as 20% and that the provision in the Bill might well be in breach of Article 8 of the convention, Articles 4.2, 5 and 27 of the European Framework Convention for the Protection of National Minorities, and Article 2 of the International Covenant on Civil and Political Rights. It pointed out that the useless impact assessment in this Bill—the adjective is mine, not the commission's—failed to deal with the equality impact, despite this actually being required by Section 149 of the Equality Act.

Deep concerns were expressed in Committee by the right reverend Prelate the Bishop of Southwark and the noble Baronesses, Lady Whitaker and Lady Young of Old Scone, and the noble Lord, Lord Stunell. The noble Lord, Lord Younger, who is to reply tonight, sought to allay these profound misgivings in Candide-like fashion, but it is impossible to conclude that the Government—if not the Minister personally, and I acquit the Minister personally—have not been motivated by the desire to mollify those who simply do not want provision to be made for this small and vulnerable community.

Replying to a letter from the Chair of the GLA Housing Committee protesting about the proposed change, the noble Baroness, Lady Williams, stated that,

"the clause seeks to remove the perception that, because Gypsies and Travellers have specific mention in legislation, they somehow receive more favourable treatment",

that the Government want councils to assess the needs of communities as a whole and that,

"Gypsies and Travellers are not separate members of our communities".

With all due respect to the noble Baroness, who is happily not in her place at this moment, this is simply disingenuous. They are groups with special needs that have too often been ignored, hence the 2005 Act. The Bill's provision is a sop to those who do not wish to recognise these special circumstances.

In Committee, I referred to an organisation called Planning Direct, which actually boasted of its success rate of 100% in preventing the development of Gypsy and Traveller sites for parish councils. It is that approach that the Bill will be interpreted as implicitly supporting, whatever emollient words Ministers might utter. How much better it would be if they endorsed the positive and, as it turns out, cost-effective policies of councils such as Leeds, which take their responsibilities under the 2005 Act seriously, to the benefit not only of the Gypsy and Traveller communities but of society as a whole.

It really is important that the Government acknowledge that it is necessary to cater for the needs of these communities. Simply assuming that they will be catered for by merging them into the general provisions of the Housing Act does not meet the circumstances of the case. Too often, there is hostility at local level to such provision, which has to be sensitively sited and developed—I quite understand that—but, frankly, what the Government are doing here is going to make it more difficult for the needs of this group to be met

[LORD BEECHAM]
and easier for people to object to it. It will provide cover for a rather unpleasant streak in our social and political life, and I hope the Government will think again.

7.45 pm

Baroness Bakewell of Hardington Mandeville: My Lords, I will also speak to Amendment 94. I support wholeheartedly the comments of the noble Lord, Lord Beecham. In Committee, we had a very positive and informative debate on the need to provide for the accommodation needs of people whose lifestyles, culture and ethos are of a nomadic nature. It is unfortunately the case that Gypsies, in particular, suffer prejudice and abuse on a scale that would be simply unacceptable if directed towards any other section of our communities.

Different sections of the travelling communities have their own ethos, values and beliefs, which make it difficult, and often impossible, for them to live together in harmony on the same site. This makes it imperative for there to be separate sites for each group. We are now seeing sites where second-generation Gypsies are living and where great pride is taken in the appearance of the site. These sites are their homes, from which they can access health services and education, a luxury that continual moving on hinders. In the past, Gypsies and others travelled to access employment, often associated with agriculture and horticulture. That traditional employment is no longer available in the same quantities, requiring more permanent sites from which to access employment of a different nature. This does not mean that they are moving away from a nomadic lifestyle and should be forced into bricks and mortar, which does not meet their ethnic or cultural needs. Often the homeless—non-Gypsies—are reported as being accommodated by some local authorities in caravans on Gypsy sites. This is regrettable and a breach of planning conditions that stipulate that the site is for those of Roma Gypsy origin only.

The Welsh Assembly has grasped the nettle of site provision by requiring local authorities to demonstrate that they have made adequate provision for a five-year supply of new sites. It is possible to provide sites at no cost to the public purse, as is the case in South Somerset. Gypsies and travelling show people make minimal use of social services, as they look after their own. It is their culture to take care of their elderly themselves.

I turn now to the issue of the storage of equipment on sites. This is something of a red rag to a bull on Gypsy sites. Equipment is not stored on each of our local authority family pitches, as this would be a breach of fire regulations and needs to be kept separate. Travelling show people do, however, by the very nature of their business, need more space for the storage of equipment. South Somerset District Council is ahead of the curve in meeting the needs of Gypsies and Travellers in their local plan. If Gypsies and Travellers have the money to provide their own sites, why should they be on local authority sites? Most Gypsy families are local to their areas and travel within a 25-mile radius, but they will move on if forced to. Priority should be given for local connections to the area, in our case Somerset. This has not led to an influx of Travellers.

The public prefer allocations of smaller sites, as this prevents large numbers in one area. In Committee, we heard eloquently from the noble Lord, Lord Lansley, of the problems a large site caused near him. Small sites prevent the settled community from feeling dominated by large concentrations. There is a whole host of brownfield areas around the country where a small corner could adequately accommodate Gypsy and Traveller sites. MOD redundant airfields are ideal, as the hard standing is already there. More imagination is needed in dealing with the needs of Gypsies, Travellers and travelling showmen. I support these amendments and look forward to the Minister's response.

Baroness Whitaker (Lab): My Lords, I added my name to Amendments 93A and 94, powerfully advocated by my noble friend Lord Beecham and the noble Baroness, Lady Bakewell of Hardington Mandeville. I added it on the clear basis that, unless Gypsies and Travellers—words which, by the way, should begin with capital letters, as recognised ethnic categories—are explicitly cited in the statute, along with travelling show people, local authorities will simply ignore their specific needs and airbrush them out of their reckonings, as they have done for so long. I will not rehearse the arguments made so powerfully in Committee, which were not really addressed in their nub and gist by the Government. Far from simplifying the law if the reference is omitted, as the noble Viscount, Lord Younger, said, in Committee, it will make it less precise and more open to fudge. It would be still better, of course, if this repeal were not in the Bill, which is what every single member of the Gypsy, Traveller and travelling show people communities to whom I have spoken thinks.

If the Government cling to their ideological insistence that equality is served only by flattening out difference, my noble friend's amendments would relax the framework by proposing a planning policy rather than a statutory definition. There will still be a need, of course, to improve the Government's definition of Gypsies and Travellers in this planning policy guidance so that those who have been forced to give up their traditional nomadic way of life through the absence of sites are not excluded. I hope that the Minister can give us some comfort on this. I urge him to accept the amendment and avoid the prospect of further judicial review.

Lord Lansley (Con): My Lords, I shall contribute briefly to this short debate. I spoke in Committee to support the Government's Clause 115, and I shall not repeat all of that, but it remains true—I am convinced of this by reference to local circumstances that I know well—that local authorities will continue to undertake an objective assessment of need for their Gypsy and Traveller communities and do so on the basis of that need and provision for that need and a five-year supply in a way that will genuinely respond to that need while giving greater reassurance to all the community that all their housing needs will be assessed on a similar objective basis. However, what we are looking at now is an amendment to require local authorities to look at very specific characteristics of sites that have to be accommodated. Obviously, that relates to caravans and houseboats, but it seems to me that there is an issue relating particularly to travelling show people,

whom I know well and whom we accommodated close to where I live, in one of their more important sites. It is a difficulty with finding sites that can accommodate a community of people who have to have both residential accommodation and the capacity to store substantial equipment. That is particularly important for travelling show people.

Could my noble friend Lord Younger, in responding to the debate, say between now and Third Reading, if he cannot accept this amendment—and I can see why he might not—whether he will at least think about whether there is are specific characteristics that could be specified in the same way in the legislation, as they are for any member of the community who requires a site for caravans or houseboats on inland waterways?

Lord Stunell (LD): My Lords, I support the amendment and support the words of my noble friend Lady Bakewell and the noble Lord, Lord Beecham. For two years, I was a Minister in the department with the responsibility for Gypsy policy. At that time, I paid a visit to South Somerset to look at some of the provision there, and I very much endorse what my noble friend Lady Bakewell said about how that council has addressed the issue. It is worth recalling, as I said in Committee, that a large majority of Gypsy and Traveller families are given—or have got, since given is perhaps not the right word—suitable accommodation on sites and in locations acceptable to communities. As the noble Lord, Lord Lansley, said, in many cases local authorities around the country have accepted the need to do that and have done it willingly and effectively. But we also heard evidence in Committee—and I certainly saw evidence as a Minister—that many local communities and some local councils will do whatever they need to do to avoid facing up to their responsibilities in this respect. As a recent incident on the rugby field has shown, there is still natural, casual racism in speaking about and to Gypsies and Travellers. That certainly has an impact at the community level on the way in which policy is applied.

It is a serious backward step to have this clause in the Bill at all, but I hope that the Government can support these amendments or something of a like nature. The noble Lord, Lord Beecham, described the clause as a sop to those who might wish to have discriminatory policy for the public provision of housing sites. I think that it is worse than a sop—I think that it is a gift to those who want to pursue a discriminatory housing policy. It was a very powerful lever that the national policy framework required Gypsy and Traveller provision to be part of the five-year strategic housing plan that local authorities bring forward. Gently to correct my noble friend Lady Bakewell, the Welsh Assembly has indeed got hold of this issue and insisted on a five-year supply being built in, but it is already the law in England that housing authorities should do that, and Clause 115 actually takes that provision out. So I would very much like your Lordships to give consent to anything that we can do to rescue that, and I very much hope that the Government respond.

I finish by saying that there is trouble with Gypsies; it is overwhelmingly caused, when it arises, by Gypsies who have inadequate housing and cannot find a place to stay. Therefore, they do what they can informally, often in a very disruptive way for local communities. The solution is not to chase them around the country but to provide them with the sites that they need in places that are appropriate so that they can live in harmony with the fixed or settled community, so we can have what we all want—a harmonious relationship between all the groups in England.

Lord Berkeley of Knighton (CB): My Lords, I very much take on board the point made by the noble Lord, Lord Lansley, about showmen and the storage of their equipment—and we heard that from the other side of the House, too. I would like to elaborate on one very important point. I am sure that the Government wish to diminish prejudice and friction between communities, Travellers and show people. Where there are no sites provided—and I have had some experience of that in mid-Wales—the community will tend to feel forced to go on to inappropriate bits of public land, and on to private land. It is very much more difficult for individuals and private landlords to enforce the law and control what happens. It is easier for a public authority to do so. For that reason, they must not usurp their responsibilities but must actually answer them.

Viscount Younger of Leckie: My Lords, I have found it helpful to have a further discussion on this matter, now that we are at Report. I listened carefully to the debate in Committee as well. All Members of this House are, I am sure, supportive of ensuring that the accommodation needs of Gypsy and Traveller communities are properly considered by local authorities. I have made it clear that this clause does not remove that duty. Local authorities will still consider the needs of these communities, and guidance has been provided to that effect.

I begin with the amendments, tabled by the noble Lord, Lord Beecham. I welcome the intentions of ensuring that Gypsies, Travellers and travelling show people have their needs considered, but I hope I can provide sound assurances that this clause does not remove that duty to do so. The clause makes clear that the needs of those persons who reside in or resort to the area, with respect to the provision of caravan sites and moorings for houseboats, are considered as part of the review of housing needs. This would include all those who are assessed at present and potentially those who simply choose to live in a caravan, irrespective of their cultural traditions or whether they have ever had a nomadic habit of life.

8 pm

We recognise that for many, but for travelling show people in particular, this assessment needs to include consideration of not only residential accommodation but space for the storage of equipment. That is why we have published draft guidance that makes this explicit. Furthermore, *Planning Policy for Traveller Sites* sets out that local planning authorities should have regard to the need of travelling show people for mixed-use yards to allow residential accommodation and space for the storage of equipment.

While we do not consider these amendments necessary, even on Report we are in listening mode. We will ensure that the concerns raised are considered when

[Viscount Younger of Leckie]
finalising the guidance and that the specific needs of travelling show people for storage space continue to be clearly reflected. I hope I have reassured the noble Baroness, Lady Bakewell, the noble Lord, Lord Stunell, and my noble friend Lord Lansley to some extent, although probably not fully.

The definition in *Planning Policy for Traveller Sites* relates to the provision of sites and is relevant for those seeking planning permission for Traveller sites. It is based on proof of nomadism and ensures that planning provision relates to specific land-use requirements. The duty in the Housing Act is about assessing the housing and accommodation needs of all the community and those who resort to it, including those with or without an existing nomadic way of life and those who wish to resort to caravan and houseboat dwelling. We would not wish to align the housing definition with the planning definition as it would limit the scope of the assessment to those who proved an existing nomadic lifestyle.

Noble Lords and others have quite rightly raised concerns about human rights, and we are ever mindful of our obligations under domestic and international law with regard to the treatment of protected groups. I shall say a little more in a second about this. Before proposing this clause, Ministers gave very careful consideration to their public sector equality duties and to the need to ensure that local authorities understand their duty to assess the needs of those living in houseboats and caravans. This includes those with protected characteristics, such as Romany Gypsies and Irish Travellers, for whom it is recognised that caravan dwelling is a cultural part of their identity. We have therefore published draft guidance explaining how the needs of such groups should be considered under this revised legislation. The department is engaging with relevant stakeholders, who have been provided with a copy of the draft guidance, and officials will hold a liaison group meeting with them in June. The draft guidance has also been circulated to all local planning authorities through a chief planner letter. We want local authorities to assess the needs of everyone in their communities, and our clause emphasises that Gypsies and Travellers are not separate members of our communities. Local housing authorities will be able to consider how best to assess that need.

I shall answer some queries raised. The noble Baroness, Lady Whitaker, stated that local authorities will ignore the needs of Gypsies and Travellers or are minded to do so. Under the public sector equality duty, local authorities are required to ensure that their local plans address the needs for all types of housing and the needs of different groups in the community, including the groups that we have been discussing.

The noble Lord, Lord Beecham, said that the equality impact assessment failed to deal with equality impacts.

Baroness Whitaker: Can the Minister say what the shortfall is in local authorities' assessment of the housing needs of Gypsies and Travellers?

Viscount Younger of Leckie: I will write to the noble Baroness to answer that question fully.

Lord Stunell: I thank the Minister for that response, but will he take it a little further? The ease with which it is possible to avoid provision for Gypsies and Travellers in an area is greater than for the fixed community simply because their existence is denied. A travelling community which happens to be somewhere else at the time never has provision made, and Gypsies never quite seem to be where the surveyors are doing their work. Will the Minister answer that question?

Lord Porter of Spalding: Surely the noble Lord knows that that is not the case. He used to be in the department where surveys of the needs of Gypsies and Travellers are done. Surely the settled community is the one that will have less provision. We have just heard that there are 1.25 million people on the registered social housing waiting list. There will not be that many Gypsies and Travellers waiting for a pitch.

Viscount Younger of Leckie: I believe I answered the question earlier by saying that there is an obligation to look at the needs of all the population including, particularly, those of Gypsies and caravan and houseboat dwellers. If local authorities are failing in their duty fully to assess—I am sure there are very few—the law is in place for redress to take place.

I was attempting to answer a question raised by the noble Lord, Lord Beecham, who said that the equality impact assessment failed to deal with the equality impact. The decision to introduce the clause was made with due regard to the Equality Act 2010. There is a requirement for local authorities to assess the needs of everyone, including those with protected characteristics. As I said earlier, this clause does not change that.

The noble Baroness, Lady Bakewell, raised the experience in Wales, where there is a legal duty to provide sites. We do not believe that this is necessary because our planning policy for Traveller sites is clear. Local planning authorities should identify and annually update a supply of sites to provide five years' worth against locally set targets. I hope that also answers more fully the question from the noble Lord, Lord Stunell.

Finally, the noble Baroness, Lady Bakewell, asked whether the clause contravenes legal obligations on equalities. I may have addressed this through answering the question from the noble Lord, Lord Beecham, but the decision to introduce the clause was made with due regard to the matters set out in the Equality Act. I hope that, with these explanations and assurances, the noble Lord will withdraw his amendment.

Lord Beecham: My Lords, I listened with interest to the noble Viscount. It seems to me that the Government are adopting a Janus-like posture, wanting to give one impression to the community affected and another to the general community. I do not find that particularly palatable. We would be sending the wrong message if we simply accepted the Government's position, and I wish to test the opinion of the House.

8.07 pm

Division on Amendment 93A

Contents 89; Not-Contents 167.

Amendment 93A disagreed.

Division No. 4

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8.18 pm

Amendment 94 not moved.

Amendment 95 had been withdrawn from the Marshalled List.

Amendment 95A not moved.

Clause 117: Financial penalty as alternative to prosecution under the Housing Act 2004

Amendment 95B

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

95B: Clause 117, page 54, line 37, leave out "as an alternative" and insert "in addition"

Lord Kennedy of Southwark: My Lords, Amendment 95B in my name and that of my noble friend Lord Beecham proposes to leave out the words "as an alternative" and add "in addition" to the list of the breaches in Schedule 9 to the Bill. Our reason for tabling this amendment is that the offences here do not justify being downgraded, and if left unamended the effect of the schedule would be just that: they would be downgraded. It would be helpful for me in deciding whether I should divide the House if the noble Viscount could explain very clearly why he believes that these offences should be downgraded and left to a fine by the local authority. I cannot see how that will benefit anyone, or that leaving the courts out of this process would be a good thing. I beg to move.

Viscount Younger of Leckie: My Lords, as I have said in earlier Committee and Report debates, the measures in Part 5 mark the Government's commitment to tackle rogue landlords and agents as well as poor practice and standards in the private rented sector. The amendments I shall move in the next group respond to issues raised in Committee when we debated Part 2 and were debated last week, and they clarify issues that were of concern to your Lordships.

Before then, however, Amendment 95B, tabled by the noble Lords, Lord Beecham and Lord Kennedy, would allow the local authority to pursue both a civil penalty and a criminal conviction for the same housing offence. The Bill as drafted provides local housing authorities with a choice on whether they want to go down the civil penalty or prosecution route depending on the seriousness of the offence and the circumstances surrounding it.

It would be disproportionate to use both regimes in relation to the same conduct. In some less serious cases, such as a first offence involving a relatively minor breach of housing legislation or when a landlord has recognised that they need to improve and have taken steps to do so, a local authority may prefer to use the civil penalty route, but for the real rogues that operate in the sector, which we have discussed at length, prosecution will still be important as that can ultimately lead to a banning order.

We will be issuing guidance for local authorities on the workings of this and the Secretary of State will of course be able to use the database of rogue landlords and agents to get a picture of how local authorities are using their powers. I hope that, with this explanation, the noble Lord will feel able to withdraw the amendment.

Lord Kennedy of Southwark: I thank the Minister for his response. As I said, generally the provisions in respect of the private rented sector are quite good in the Bill, with one or two exceptions; the exceptions have come with the Government's desire to take the courts out of these processes. I have not been at all satisfied or persuaded by the comments from the Minister, so I would like to test the opinion of the House.

8.22 pm

Division on Amendment 95B

Contents 64; Not-Contents 159.

Amendment 95B disagreed.

Division No. 5

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Grender, B.
Hain, L.
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Berridge, B.
Borwick, L.
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Younger of Leckie, V.

8.30 pm

Schedule 9: Financial penalty as alternative to prosecution under Housing Act 2004

Amendment 96

Moved by ***Viscount Younger of Leckie***

96: Schedule 9, page 148, line 12, after "satisfied" insert ", beyond reasonable doubt,"

Viscount Younger of Leckie: My Lords, I now turn to Amendments 96 and 97, which have been tabled in response to issues raised by noble Lords during the course of debate. These confirm that the local housing authority will need to apply the criminal standard of proof to any action taken against a landlord or agent. Amendment 96 addresses concerns raised by the Delegated Powers and Regulatory Reform Committee about banning order offences, which were echoed and reinforced in Committee. Amendment 97 deals with appeals to the First-tier Tribunal against financial penalties.

A local housing authority which intends to impose a financial penalty must serve a notice of intent setting out both the reason for imposing the penalty and the amount of the penalty. The reasons must reflect that the local housing authority is satisfied beyond reasonable doubt that the offence complained of has been committed. The department will be issuing guidance to local housing authorities on financial penalties, including the circumstances in which a local authority should consider imposing such a penalty. I beg to move.

Lord Kennedy of Southwark: My Lords, we discussed these matters in Committee and, as the Minister said, they were raised by the Delegated Powers Committee as well. These are very sensible amendments and we support them.

Amendment 96 agreed.

Amendment 97

Moved by ***Viscount Younger of Leckie***

97: Schedule 9, page 150, line 27, at end insert—

"( ) An appeal under this paragraph—

(a) is to be a re-hearing of the local housing authority's decision, but

(b) may be determined having regard to matters of which the authority was unaware."

Amendment 97 agreed.

Consideration on Report adjourned.

House adjourned at 8.36 pm.

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