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OFFICIAL REPORT

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

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House of Lords

Friday 10 June 2016

10 am

Prayers—read by the Lord Bishop of Derby.

Asset Freezing (Compensation) Bill [HL]

Second Reading

10.06 am

Moved by ***Lord Empey***

That the Bill be now read a second time.

Lord Empey (UUP): My Lords, this is the second consecutive year that I have drawn No. 1 in the ballot for Private Members' Bills.

Noble Lords: Oh!

Lord Empey: Fifty-one Members put Bills forward in this year alone, so assuming a similar number did so last year, the odds were very high indeed. So I wish to place on record my thanks to the Legislation Office of the House, and to Nicole Mason in particular, for turning our scribblings into a real Bill in such a short time. I will be trying, if I am spared, for a hat trick next year.

The Bill is not mine alone. It is the brainchild of the all-party support group for the UK victims of Libyan-IRA terrorism—chaired by Romford MP, Andrew Rosindell—of which I am a member. Earlier this year, we decided to pursue our aims by attempting to change the law by introducing a Bill in Parliament. At this point, I want to set the scene for noble Lords as to why the support group exists and why it is campaigning for real change in the attitude of Her Majesty's Government towards the Libyan issue and the environment for the numerous victims of Gaddafi-sponsored terrorism throughout the United Kingdom.

On 23 February this year, a Westminster Hall debate was secured by Poplar and Limehouse MP, Jim Fitzpatrick. It was the nearest date he could get to the 20th anniversary of the London Docklands bombing, in which two people were killed and 39 seriously injured, some of them permanently. Mr Fitzpatrick has long campaigned on behalf of the Docklands Victims Association.

There has been a perception that Gaddafi-sponsored terrorism was primarily a Northern Ireland issue, but I assure noble Lords that this is not the case. Although most victims are located in that part of the United Kingdom, they are far from alone. If we look at the number of GB-based soldiers who were killed or wounded during incidents such as the Hyde Park bombing, the Baltic Exchange bombing and the Docklands bombing, it is clear that people across the UK have a keen interest in these matters. In the past week, we have been reminded of the tragedies that have occurred over the years, such as the Birmingham pub bombing, and it goes to show that victims of IRA terror are located all around the United Kingdom.

One must ask why it is that people have to wait, sometimes for decades, before they get an opportunity for either justice or legitimate compensation. We have witnessed the long struggle of the Hillsborough families, and that tragedy had no terrorist involvement. Is there something peculiar in our judicial system that spawns these long-running campaigns?

During the early 1970s, Gaddafi began to ship weapons to the IRA because he sympathised with their cause. He was also impressed with the 1981 IRA hunger strikes. After the Government of Margaret Thatcher allowed UK bases to be used by US war planes to attack Libya in 1986, Colonel Gaddafi began to hit back at the UK by providing training bases for IRA terrorists and others on his territory. He began to smuggle arms to Ireland on an industrial scale, with, it is believed, four massive shipments of weapons and explosives successfully getting through. Only the last of the five shipments was intercepted, when the "MV Eksund" was boarded by the French navy in the Bay of Biscay on 1 November 1987.

The sheer volume of weaponry that was supplied to the IRA, ranging from rifles, ammunition, RPGs, machine guns and missiles to tonnes of the Czech explosive Semtex, along with loads of cash, meant that at the peak of its campaign the IRA had an oversupply of weapons. However, Semtex was the game-changer for the IRA, as it is hard to detect, has a long shelf life and could detonate homemade explosives to make the threat from terrorists much more credible. There were more victims and fatalities resulting from Semtex than from all the other weapons in the IRA arsenal put together, to say nothing of the physical damage.

I submit that the actions of the Government of Libya from the early 1970s until the 1990s were a clear attack on the integrity of the United Kingdom and that Libya was prosecuting a war by proxy on the British people. In retrospect, I find it chilling that, given the widespread intelligence that we now know was available to our Government of Libyan involvement in supplying weapons to the IRA, no action appears to have been taken to prevent Libya pursuing its proxy war.

The Bill is an attempt to provide Her Majesty's Government with the means to right the wrong that has been done to the many victims of Gaddafi-sponsored terrorism. As the House Library note for this debate states:

> "Clause 1 subsection 1 of the Bill would require that the Treasury must 'take all actions necessary' to prevent the release of particular assets based in the UK (outlined in subsection 3) that have been frozen under European Union Council Regulations, until circumstances described in subsection 5 have been met".

In the debate in Westminster Hall on 23 February this year, responding for the Government, Exchequer Secretary Damian Hinds MP indicated that HMG are bound by both EU Council regulations and UN resolutions, and therefore are unable to help the victims out of the massive £9.5 billion of Libyan Gaddafi assets frozen in London.

I fully understand that the UK has to work along with our partners in the EU and via the UN to ensure that sanctions are implemented and assets seized internationally. New European Council regulations came into force on 18 January this year in view of the

[Lord Empey]
situation in Libya, which repealed EU Regulation 204/2011. Articles 8, 9, 10, 11, 13 and 14 of the regulations deal with derogations that can apply in certain circumstances. Thus the principle is well established that "frozen" does not mean "untouchable". There is also mention of the prospect of a lien or judgment being in force in Article 9. This could be of interest to the victims as well.

My sadness through all this—and I have been writing to various Governments since 2002, when the then MP Mike O'Brien was at the Foreign Office—is at the lack of any sense of urgency on the part of Her Majesty's Government, let alone any burning desire to seek justice and recompense for the victims. Other nations seem to have more fire in their bellies and show a greater determination to see that their citizens get the best deal possible. Why is this?

It is not good enough to hide behind a European Council regulation. What representations have Her Majesty's Government made to our European partners to encourage them to agree to a specific derogation for our victims, even if it is just for humanitarian reasons? Humanitarian issues are referred to in the regulations and Minister Hinds mentioned this in the Westminster Hall debate.

I wrote to the Prime Minister on 30 August 2011 to ask about the frozen Libyan assets being used to pay compensation. The PM replied to me on 15 November in the following terms:

"As I told the House of Commons on 5 September"—

that is, 2011—

"the issue of compensation for UK victims of IRA terrorism will be an important priority for a revitalised relationship between Britain and the new Libyan authorities. I have raised this with NTC chairman Jalil and the new Prime Minister, al-Kib. To take the issue forward, I have asked the Foreign Office to prepare detailed plans for a sustainable and effective partnership with the new Libyan government, which will provide a forum to address all outstanding legacy issues dating from the Gaddafi period and the many victims affected by his actions. Our objective is a comprehensive resolution of these legacy issues. You asked if frozen assets could be used pending a successful negotiation with Libya. I have examined the case closely and concluded that, as the assets belong to the people of Libya, we have no legal basis for withholding Libyan assets once the Libyan entities meet the conditions for unfreezing as set in UN Council Resolution 2009 … We will engage the new Libyan Government on the case for voluntarily setting aside assets as a gesture of good faith and intent while negotiations proceed".

So it is clear that the Prime Minister was very keen at that time to ensure that a resolution to this issue was found. I subsequently went to see his national security adviser, Sir Kim Darroch, in 2013—he is now our ambassador in Washington DC—because the Libyan Government of that time collapsed and the state has become effectively a lawless area ever since.

But that was not what shocked me most. In January 2014, I asked a routine Parliamentary Question—as I have done from time to time—to see how the Libyan issue was going. On 22 January 2014, the noble Baroness, Lady Warsi, who was the Foreign Office Minister at the time, replied in the following terms:

"The Government is not involved in any negotiations with the Libyan government on securing compensation payments for the British victims of Qadhafi sponsored Irish Republican Army (IRA) terrorism".—[*Official Report*, 22/1/14; col. *WA 136*.]

So the Government were effectively saying that, from 2011 to 2014, they were not involved in any negotiations. That illustrates a chaotic approach. On the one hand, the Government were saying, "We're going to pursue this vigorously", while, on the other, they were saying, "We're not actually engaged in any negotiations". This was a dramatic change and the contrast with the Prime Minister's position in 2011 is disturbing.

The question is: will this Parliament and Government tackle the issue seriously and with purpose? If not, why not? As this Bill moves through its stages, every opportunity will be provided for Her Majesty's Government to revise their consideration of the issue. I do not believe that it is enough to say to the victims that Her Majesty's Government will be quite happy if they take out individual legal actions against the Libyans. Some have started down that road with their legal advisers, but that does not absolve the Government of their wider and primary responsibility to protect their citizens, which I believe that successive Governments have singularly failed to do.

With a fledgling Libyan Government beginning to emerge, yet another opportunity arises to resolve these issues. One of any new Government's requests will be for the release of frozen assets. I do not doubt for one moment that the greatest number of victims flowing from the Gaddafi years is to be found among the Libyan people themselves. Nobody can deny that many were tortured and killed by a brutal dictator. Nevertheless, Her Majesty's Government have a responsibility to look after the interests of the people of the United Kingdom, and, with good will, appropriate arrangements can be arrived at. A condition of releasing those assets should be a resolution of the compensation issue for our victims. Now may well be the time. Will the Minister give an undertaking to take this proposal back to his colleagues?

While reluctant to pick out any individual in this campaign, I must put on record my thanks to stalwart campaigner and former Member of the other place Andrew MacKinlay for his contribution to this Bill and the tenacity that he has shown over many years of hard work on behalf of the victims.

Given the circumstances in which we now find ourselves and the new potential opportunities, I hope that the Government will seize the chance to resolve this issue once and for all. The Hillsborough families have been fighting for decades on behalf of the people they lost and it is disturbing that, while other countries such as France, Germany and the United States of America have resolved matters on behalf of their citizens, we, with the largest number of victims, are the only major country that has achieved nothing for our victims. We owe them all a great debt and it is our bounden duty to see that the matter is resolved. I beg to move that this Bill be given a Second Reading.

10.20 am

Lord Brennan (Lab): My Lords, having consulted the Clerk of the Parliaments, I wish to make the following declaration of interests. I have appeared in Northern Ireland against the Real IRA for the families of the Omagh bombing; for a group of plaintiffs in the

United States against Libya in the Gaddafi period; and recently against a Libyan investment agency in respect of sanctions. None of what I am about to say affects this Bill or the content of what I wish to put to the House. In addition, I need to point out that I went to Libya in 2009 with a parliamentary delegation involving, among others, the noble Lord, Lord Bew. We negotiated for a broad reconciliation settlement for Northern Ireland but did not succeed.

I commend the Bill to the House. It is reasonable in its scope, necessary in its objectives and gives Parliament the occasion to exercise one of its ultimate duties—to protect its citizens against terrorism and its consequences.

Let me start with necessity. The noble Lord, Lord Empey, is right that the decision by Libya to supply Semtex to the Provisional IRA and other agencies of the IRA was a contributory factor to the explosions that occurred all over the United Kingdom. In Northern Ireland, in Enniskillen on Remembrance Day 1987, there was absolute carnage, and there have been many more explosions in Northern Ireland since. In London there were explosions at London Bridge, St Mary Axe, the Baltic Exchange, London Docklands and the street outside Harrods. It was terrible. It is not to our advantage historically to say that that has passed. It has not.

Semtex was used by the IRA as the trigger explosive for car bombs. You could load the boot with enough fertiliser to create a major explosion. The evil of supplying Semtex was that it enlarged the area of blast damage. In the first number of metres it blew people apart; in the next number of metres there was thermal damage, which burned people alive; and shrapnel damage from the car itself was spread over several hundred metres. These days the car bomb is more controlled but suicide bombers operate the same technique. They wear a waist belt packed with explosives, nails, bullets and all kinds of projectiles which will be sent out to damage people once they have blown themselves up. This is a constant.

What should we do about it? The United States in 2008 required Libya—capital "R" required—if it wanted to come off the terrorist list, to pay American victims of bombings $1.5 billion or else it would stay on the terrorist list. It was a straightforward, tough negotiation in public and it led to a settlement. Libya was taken off the terrorist list and then resumed its protection under the American sovereign immunity legislation. My case in America, to which I have referred, ended because of that settlement, after which the President issued an executive order terminating all other foreign claims. They were simply stopped. State immunity was returned to Libya and our case died the year after. The presidential order said that negotiations for those citizens from other countries claiming compensation should be left to them or to their Governments to achieve a settlement. That was the message in 2008.

The objectives of the Bill are necessities. Something has to be done. Is it reasonable in its scope? First, unlike America, under our law states do not have immunity. If they kill, injure or destroy property they can be sued or held responsible in our courts, as might occur under this Bill in a negotiation. Secondly, although Gaddafi has gone, under the principle of successor state liability, the state takes on the obligations of the past—otherwise the world would be in chaos. In April 2011, soon after the Libyan civil war started, Mr Jalil, the head of the then National Transitional Council, issued a statement of reconciliation, negotiated by lawyers from England, in which he said that Libya would look favourably in the longer term on a settlement because it was felt to be a national obligation. Since then there has been nothing except the interregnum which the noble Lord, Lord Empey, described. The Government have admitted that they did nothing until 2014, when matters resumed with an investigation by the Northern Ireland Affairs Committee in the other place. This is not your Government or my Government but every Government for the past 15 years.

I shall finish on the question of sanctions and reasonable scope. Sanctions are the product of political negotiation which is then framed in a legal text. It is open to Governments to negotiate what goes into sanctions and what can be taken out in relief, such as is contained in the Bill. The motivation, therefore, is essentially political from now on, not legal. The framework may be put into legal form, but the initiative has to be political.

What should Parliament do? The reason the Americans settled as they did was that Congress said, "If you don't, Libya stays on the terrorist list". Congress forced the settlement on the American side. We can do the same here in a parliamentary way; it is up to us. The Americans have been matched by France and Germany. When a French plane was shot down over Africa, the French simply punished Libya financially and they tried its head of military intelligence in absentia and gave him a jail sentence. After our explosions, nothing of that kind was even contemplated.

Forgive me for being forceful but the people we are here to represent, and represent legislatively, can expect us to act—to adapt the words in the first reading at Prayers this morning,

"from whence cometh my help".

The Bill is short, to the point and effective. The victims of terrorism are the front line in our societies—the conscripted "military" who suffer the injuries. They are not volunteers and they take the consequences. When they do, we should look after them, and this Bill seeks to do that.

10.31 am

Lord Rogan (UUP): My Lords, the primary duties of a Government are to protect the life and liberty of their citizens and to ensure that justice is available to all, without favour. Sadly, the partnership of terror between the Provisional Sinn Fein/IRA and Gaddafi's Libya and the litany of death, destruction and misery which it inflicted on British citizens both in Ireland and on the mainland has exposed a disturbing failure of Government in these duties.

Gaddafi's affections for Sinn Fein/IRA were deep rooted and well established. In 1973, the Irish Navy intercepted a vessel, the "Claudia", with some five tonnes of weaponry supplied by Libya and bound for Sinn Fein/IRA. However, there were suspicions that three other shipments plus considerable amounts of cash did get through. More shipments came in the 1980s, spurred by Gaddafi's admiration of Sinn Fein/IRA

[LORD ROGAN]
and his hatred of Britain. It has been argued that these shipments contained enough materiel to equip two infantry battalions. To put that in context, the British Army today has 47 infantry battalions, so the weapons that were sent by Gaddafi could supply 5% of the British infantry. The undetected shipments are alleged to have included heavy machine guns, handguns, rifles, surface-to-air missiles, and most potently and importantly, Semtex. Both the noble Lord, Lord Empey, and the noble Lord, Lord Brennan, mentioned Semtex several times in their speeches and I will continue to do so. Another vessel, the "Eksund", was famously intercepted in 1986 with a cargo that included two tonnes of Semtex, but nevertheless four similar shipments had already made it through.

Even as recently as February of this year dissident republican terrorists were boasting that they have more than a tonne of Semtex plastic explosive that escaped the decommissioning process and could now be used against mainland British targets. Provisional IRA veterans who disagreed with the peace process in Northern Ireland and who have experience of handling Semtex are among those who have access to the secret weapons dumps. They claim to have tested it and confirmed that it is still viable, even though it was smuggled to Ireland via Libya in the 1980s.

Semtex, which is both powerful and easy to conceal, gave new life to Sinn Fein/IRA's terrorist campaign. The atrocities included the Poppy Day bombing at Enniskillen, a bomb at a fun run in Lisburn in 1988 which left six soldiers dead, the Ballygawley bus bombing, the Docklands bomb, the Hyde Park bomb and the Baltic Exchange bomb. It was also a Semtex bomb which murdered Ian Gow in the driveway of his constituency home in 1990.

With such a trail of misery, one would have expected that Her Majesty's Government would strain every sinew and muscle to ensure that those who were injured and those who were left behind to pick up the pieces of their broken lives would be better and well looked after. One would have anticipated that, apart from seeking to prosecute those who had caused such carnage, the Government would be unfailing in their pursuit of Gaddafi, the paymaster and quartermaster of much of Sinn Fein/IRA's terror. However, unfortunately that is not the impression that many victims have been left with.

Our American allies also suffered grievously at the hands of Gaddafi, especially through the Lockerbie bombing with the destruction of Pan Am flight 103, which killed 243 passengers, 16 crew members and 11 civilians on the ground in Scotland. The Americans certainly tried their best, securing £1 billion in compensation from the Libyan regime in 2003. The noble Lord, Lord Brennan, mentioned how the US obtained this compensation to help American citizens. However, one of the distasteful strings attached to the US deal with Libya was that Gaddafi's payout would be a one-off and the regime would have immunity from future terrorism-related law suits. British claims were excluded from the settlement.

Concerns have also been raised that our former Prime Minister, Mr Tony Blair, helped broker this deal between the USA and Libya. One must therefore ask how strongly did Tony Blair, who was then a Middle East peace envoy, represent the interests of his fellow British citizens. It has become hard to get an answer to that question because Mr Blair has not had the time in his diary to attend the Northern Ireland Affairs Committee to address some of these vital points. Seemingly, he has not had too much time either to spend responding to written questions, as the committee has described his evidence as "superficial". What of another British Prime Minister, Mr Gordon Brown? Mr Brown met with Gaddafi in 2009. Naturally enough, victims of Gaddafi's Sinn Fein/IRA-backed terror were keen to hear what the Libyan dictator had to say on the matter when pressed by the Prime Minister. The response was that it would not be "appropriate" to formally raise the issue of compensation with Libya as it was an essential partner in the fight against terrorism.

We now have the manifestly unjust situation whereby the American victims of Sinn Fein/IRA's Harrods bomb have received up to £6 million in compensation while the British victims of the same bomb have received nothing. The UK Government are currently sitting on frozen Libyan assets of £9.5 billion. I would like an assurance from the Minister that Her Majesty's Government are doing everything they can to think creatively and positively about how to help the victims of Sinn Fein/IRA-Libyan terror. I certainly hope that there is some substance to the recent press speculation that the Government are seeking a £300 million slice of those funds.

However, given the length of time taken, some victims believe that there has been a dereliction of duty on the part of their Government, and I have to say that I sympathise with that view. For others time is pressing on and age is exacerbating the consequences of their injuries. Now is the time to act. Failure to do so would be to perpetuate and accentuate an injustice that has been inflicted on too many who have suffered too much already. For that and other reasons, I commend the noble Lord, Lord Empey, for bringing forward this timely Bill.

10.39 am

Lord Davies of Oldham (Lab): My Lords, I, too, commend the noble Lord, Lord Empey, on having the luck to bring in a second Bill in consecutive years. I understand, of course; I have not mastered the skills myself. If I had, I would be informing some of my Back-Benchers of feats equal to his. I hope the House will offer me at least some consolation. On each occasion the noble Lord has been successful, I have had to respond from the Dispatch Box. Last time it was on transport, on airports policy. Only yesterday did it become clear that the Treasury was expected to respond to this Bill. That is why I am addressing the House. If the noble Lord is successful next year, I hope he chooses a subject somewhat distant from those for which I take some responsibility.

Nevertheless, I have encouragement for him in the official response of my party. He mentioned that my honourable friend in the Commons, Jim Fitzpatrick MP, who is also a personal friend—I helped him in the last election, so he owes me a favour or two—raised this issue, because he is very conscious of its importance

and that it is time that progress is made. Of course, we will have to look to the other place in due course for strength of support, which obliges the Government to be more responsive than they have been.

We also look forward to having my noble friend Lord Brennan interested in this issue, as was demonstrated in his splendid speech. On addressing groups outside the House I often comment on the level of expertise that we experience here, as I am sure other noble Lords do. The lawyers are frequently mentioned, because we all value the contribution that many of them make. My noble friend made a speech soon after my arrival in this House and I was very impressed indeed with the way he marshalled the arguments. I am sure that the whole House has been impressed today. Those of us in favour of the Bill are very fortunate to have my noble friend with his expertise, amply demonstrated in his speech, to assist in the arguments.

My party wants to emphasise that it has enormous sympathy with the Bill and that it wants to see progress made. I am conscious of the past delays, some of which were under past Labour Governments. Not much progress has been made subsequent to 2010, so the present Government have to face up to responsibilities. But we all know what the noble Lords, Lord Empey and Lord Rogan, were reminding us of. They illustrated their arguments with those great devastating outrages that affected the British mainland, as well as Northern Ireland, during the period of maximum IRA activity. There was a time, which many noble Lords will recall, when we all found great difficulty getting to Westminster because the threats of action were enough to disrupt our transport system, particularly the Underground. We all know that the country was appalled at the level of activity then. Now it has become clear that the deadly Semtex that was so generally used was so readily available because of links with Gaddafi.

I bear in mind what was said about the progress the Americans have made. Surely we must follow that example. We owe it to the relatives of those killed and those who were injured in past devastating developments. Mercifully, we all rejoice in the fact that the politics of Northern Ireland and the position there is so much more favourable than it was during those terrible times, but we have a duty to respond to a clear and declared need. The Opposition will give every support that they can to the Bill.

10.45 am

Viscount Younger of Leckie (Con): My Lords, I am grateful for the opportunity to contribute and to speak about this important issue. I thank the noble Lord, Lord Empey, for securing not just the number one slot, as others have alluded to, but this debate and for proposing the Bill, and I thank all noble Lords for their contributions.

The Bill seeks to prevent the release of frozen assets in the UK that belong to persons involved in supplying arms used in terrorist attacks in the UK, so that they could be used as compensation for the victims. While I have much sympathy for the noble Lord's intentions, I have some difficulties with the legal implications of the Bill and how it would work in practice. As noble Lords might imagine, I have had considerable discussions with officials. The conclusion is that it is likely that, by using the powers that would be granted by the Bill, the UK would be in breach of its obligations under UN Security Council resolutions, EU sanctions regulations and the European Convention on Human Rights.

The human rights issues relate in particular to the settlements referred to in Clause 1(5). Depending on what is meant by this provision, it could amount to the denial of a fair trial in breach of Article 6 of the ECHR, or a breach of the right to enjoyment of property in Article 1 of Protocol 1 of the ECHR. The person, entity or state whose assets are frozen may be forced to pay extortionate compensation simply to get the asset freeze lifted. They may also then take legal action against the UK to make good their losses.

It is also important to note that various EU and UN sanctions regimes freeze the assets of individuals and entities but give no power to transfer ownership of these assets. Further, these regimes also allow the Treasury to issue licences for the release of frozen assets for specific purposes, such as to meet basic needs or cover reasonable legal expenses of the sanctioned individual, but the Bill would prevent the Treasury doing so. The Bill would also allow the Treasury to release these funds to third parties. Both actions would place the UK in contravention of EU regulations and UN Security Council resolutions. This would leave the UK exposed to infringement proceedings by the European Commission, as well as domestic judicial review proceedings and claims under the Human Rights Act.

I want to be as helpful as I can to the noble Lord, Lord Empey, by going into a little more detail about the derogations, specifically on the circumstances in which the frozen assets can be unfrozen. While sanctions remain in force, access to the frozen assets can be licensed only in accordance with the grounds set out by the UN and the EU. In the UK, as the competent authority for administering sanctions, HM Treasury is responsible for licensing derogations from financial sanctions.

Seven licensing grounds are applicable in the Libya sanctions regime. To summarise, they allow for payments in the following categories: the basic needs of the designated person; the legal fees of the designated person; fees for the routine maintenance of frozen assets; extraordinary expenses of the designated person; satisfaction of judicial or administrative orders enforceable in the EU; humanitarian purposes; and obligations arising under contracts prior to the imposition of sanctions.

It is important to remember that different sanctions regimes will have different derogations. To clarify further, a Treasury licence would not compel the payment to be made but would simply provide that the payment would not be in breach of financial sanctions. In this case, it is the UK Government's view that there are no grounds in the EU regulation and therefore no legal basis that would permit a licence to be issued for the purposes of releasing frozen funds to compensate victims of Gaddafi-sponsored IRA attacks.

However, the Bill also proposes to use the Terrorist Asset-Freezing etc. Act 2010—so-called TAFA—to supplement EU sanctions regimes, although it is unlikely

[Viscount Younger of Leckie]
that this would be possible. Designation under TAFA currently involves strict legal tests, including that the use of the power is necessary to protect members of the public from terrorism. It is difficult to see how this test would be fulfilled where funds have already been frozen under EU sanctions. It is also difficult to see how TAFA would enable compensation to be paid, as TAFA provides no power to transfer ownership of funds.

I understand that the noble Lord has, with good intentions, tabled this Bill to allow Libyan frozen assets to be used to pay compensation to victims of Gaddafi-sponsored IRA attacks both in Northern Ireland and across Great Britain. I completely agree about the importance of taking the correct approach towards compensation for victims of these terrible attacks, but the difficulties with the Bill that I have outlined are relevant to all the sanctions regimes, including the Libya regime. Also, in relation to the Libya regime, the nearly £9.5 billion in frozen Libyan assets in the UK are largely part of sovereign wealth funds and very little belongs to individuals, for whom in any event it would be difficult to establish a direct link to IRA-related terrorism in the UK.

It is right that those whose lives were affected by these senseless attacks should be able to seek redress and compensation. This morning, I have been moved by the comments of the noble Lords, Lord Rogan and Lord Empey, who mentioned a number of atrocities as a reminder for the House—as if the House needed reminding. I was particularly moved by the comments of the noble Lord, Lord Brennan, who outlined in some graphic detail the effects on the victims of these outrages. He stated that the victims were in the front line of terrorism. Of course, he is absolutely right. We will do all we can to facilitate efforts by victims and their families to seek compensation. However, the provisions of the Bill as they stand are not a suitable remedy.

The Government maintain the position that we want to see a fair solution for all victims of terrorism, including attacks perpetrated by the IRA and in particular Gaddafi-sponsored IRA terrorism, but these compensation claims are private matters that are best pursued directly with the Libyan authorities. However, I am aware that the Foreign and Commonwealth Office provides facilitation support to campaign groups when requested through its Libya reconciliation unit and continues to stress to the new Libyan Government of National Accord—the so-called GNA—that legacy issues are a priority for Government. Mr Ellwood, the FCO Minister responsible for Libya, raised the issue of redress with Prime Minister Fayez Sarraj in Tunis last November, and officials reiterated this point during the Foreign Secretary's visit to Tripoli on 18 April—quite recently.

Also, the Northern Ireland Affairs Committee, which is doing great work on legacy issues and championing the cause of victims, is currently looking into government support for UK victims of Gaddafi-sponsored IRA terrorism. I understand that the inquiry is still ongoing. The FCO gave evidence to it in September 2015 and in March 2016. A report will be published in due course. I am keen that the Government continue with these efforts, which I hope give some comfort to the noble Lord, Lord Empey, and to the noble Lord, Lord Rogan, who raised the issue of timing. It is an important issue, but I have outlined the difficulties with the legal implications of the Bill and how it will work in practice, particularly in relation to the Libya sanctions regime.

I finish with an important point that the noble Lord, Lord Empey, raised. He stated that the Governments of the US, France and Germany have had some success in acting on this. I think he was claiming that the UK had not. I do not agree with him on that. I should also point out that the US, French and German Governments' claims were for direct atrocities, of which Lockerbie and the dreadful Berlin discotheque bombings are part. Those were highlighted in UN resolutions, where the responsibility could be assigned to the Libyan state. I should stress to the House that there has been no such UN resolution in relation to the IRA bombings. With that, I thank the noble Lord, Lord Empey, once again for securing this important debate.

10.54 am

Lord Empey: My Lords, I take this opportunity to thank the participants in this debate. First, I thank the noble Lord, Lord Brennan, for his vivid and chilling explanation of the actual effects of Semtex, and his dealing with the stance of the United States in 2008, the successor-state liability principle and of course the fact that Congress forced the settlement. The words of my colleague and noble friend Lord Rogan, with his considerable experience and knowledge of the outworkings of Semtex in our own part of the United Kingdom, and his concern that a certain volume of that material still exists in the hands of dissident terrorists, are also something to be worried about. Of course, his reference to the difference in treatment between victims of the Harrods bombing illustrated why we have this Bill before the House today. I thank the noble Lord, Lord Davies of Oldham, speaking on behalf of Her Majesty's Opposition, for expressing his, as he put it, enormous sympathy with the Bill, his reference to the United States example, and to his friend Jim Fitzpatrick, who, as the noble Lord rightly pointed out, has been in the trenches on this one for many years, and continues to be, and who represents his constituents to the very best of his ability.

I must say that the Minister, on behalf of the Government, shocked me to some extent with his reply. Only we, in this part of Europe let alone anywhere else, could come up with the European Convention on Human Rights as an obstacle in the path of getting funds for the victims. What about the rights of the people who were blown to smithereens? Have we got the world on its head that that is a defence for doing nothing? We are talking here about the state of Libya, the successor to Gaddafi, whenever it emerges from whatever struggles it is having.

I understand and quoted from the articles from the European Union's decision of 18 January and the EU resolutions. I asked in my speech whether we have asked our European colleagues for help with this. Have we just asked them? Have we put forward proposals to amend this or put in another derogation? Have we

gone to the United Nations and asked it for help or put forward proposals? Have any of these people turned us down? That is what we need to find out. We are not asking for anything so why not? Is there a hidden hand somewhere, or a deal in the background that we know nothing about? Why not? Our responsibility is to the people of the United Kingdom first and last. What happens to the rights of individuals named in the United Nations list is not our primary concern. Our primary concern is our own people.

I must say to the Minister, with the greatest respect to him—I have enormous admiration for him—that it is precisely that approach that is the root cause of the failure to make progress on this issue. It is not a private matter between individuals and the Government of Libya. As the noble Lord, Lord Brennan, said, the United Kingdom Government plc should be up front and centre dealing with this matter—and fighting.

Lord Cormack (Con): Will my noble friend enter into early discussions with the Minister to see whether some amendments can be framed that would enable this Bill to be accepted by government?

Lord Empey: I thank the noble Lord for his, as usual, helpful intervention. As a former long-serving chair of the Northern Ireland Select Committee in the other place, he knows the subject well. I have it absolutely clear, and we all know the rules as regards Private Members' Bills. We know what we are doing and we know what it is about. I would be delighted to sit down with the Minister and look at this, and so would all our colleagues in both Houses and in all parties. He knows, as well as I do, that a Member is limited in the amount of help that he or she can obtain for a Private Member's Bill. A few weeks ago, the Legislation Office was crammed with all the other Bills, is very short-staffed and can do only a certain amount. I accept that a lot of the technicalities of the Bill are not perfect. That is why we have a parliamentary process. That is why we go through different stages. I entirely agree with the noble Lord and would be delighted to do what he suggests. We cannot simply leave things as they are. They are totally unacceptable.

If we are talking about human rights, what about the rights of the people who have had to live with the consequences of these actions throughout their lives? The legal niceties about the European Council regulations, or resolution this and resolution that, are secondary: we are dealing with people, individuals and families. Our task is to ensure that they get a fair deal out of all this. We are not asking to plunder the people of Libya. I said earlier that the vast majority of the victims are the Libyan people themselves, and we know that, but we have a specific group of people who have been left to fall down the grating and slip through the cracks on this issue. I appeal to the Minister to go back to his colleagues and revisit some of those issues. Those of us who are behind these proposals would be very happy to sit down with him, or anybody else, and discuss any amendments, or anything we could do, as the noble Lord, Lord Cormack, suggested. We would be delighted to talk to both Front Benches on this issue to see whether we can get a consensus.

Lord McAvoy (Lab): I assure the noble Lord and your Lordships' House that the Labour Opposition would be pleased to fulfil a role in such negotiations.

Lord Empey: I am deeply grateful to the noble Lord, Lord McAvoy, for that very helpful intervention.

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

Register of Arms Brokers Bill [HL]

Second Reading

11.02 am

Moved by ***Baroness Jolly***

That the Bill be now read a second time.

Baroness Jolly (LD): My Lords, responsible and robust arms controls are one of the most crucial ways that we can ensure that the rule of law and the protection of civilians from violence and repression continue to remain a cornerstone of the key principles that hold the international community together. We are committed to the new international Arms Trade Treaty, and we believe it is imperative to tighten our own controls over the arms trade. To that end this Private Member's Bill seeks to amend the Export Control Act 2002 and mandate the Secretary of State to create a register of arms brokers. It would make the registration last three years, insist on a fit-and-proper test for the individual, and take into consideration issues such as a criminal record, past export control violations, company ownership details and tax status.

Who can be a broker? The answer is quite simple: it could be you or it could be me. It could be anyone. I should make it clear that I am sure many brokers and arms companies do an honest job and do it well. They do not abuse the current system. Although this Bill would include them, they were not who we had in mind when it was drafted. Those playing by the rules should not see this as additional red tape. They also have systems that are routinely audited by BIS. They already keep the necessary records and always register with the appropriate authorities, so a register of arms brokers such as that proposed is no more burdensome on them.

From the outset I have to confess that the world of arms brokering was to me a closed book. My understanding came largely from John le Carré's character, Richard Roper, in *The Night Manager*, although those who know about these things tell me that the Nicolas Cage film, "Lord of War" is far nearer the mark. But for a more accessible film, you have only to go to YouTube and look at a Channel 4 "Dispatches" film broadcast over five years ago, entitled "After School Arms Club". To prove the point that indeed anyone could broker arms, a group of schoolchildren set themselves up as arms brokers for the TV programme. They discovered that someone from the UK could broker AK47s from China to Chad. The guns did not touch British soil and all that was needed was a licence granted by the Export Control Organisation based in BIS—no name and no background check.

[BARONESS JOLLY]

The *Consolidated EU and National Arms Export Licensing Criteria* determine what should be considered in granting a licence, and by and large focus on conditions in the country of final destination and in the UK. Consideration is given to the respect that the country of final destination has for human rights and international humanitarian law, local and regional tensions and conflicts, peace and stability, and its behaviour within the international community. The deal should also respect the UK's international obligations, commitments and any sanctions of the UN Security Council or EU. In short, is the transaction proposed appropriate for the country of final destination and its region, and does it meet UK commitments and satisfy our interests?

As an aside, looking at some of the deals, noble Lords might be excused for wondering whether the criteria were satisfied completely in all cases. However, there is no requirement to look at the brokers, the pattern of their deals or whether they were using offshore mechanisms in countries such as Gibraltar or the British Virgin Islands. In fact, some of the companies concerned are clients of Mossack Fonseca. Evidence clearly shows that UK brokers have routinely used such offshore vehicles to hide their most damning activities from scrutiny and detection. Nor is there a check on whether a broker has a prior conviction or has previously violated arms trade rules. In fact, there is no need to know anything about the broker whatsoever.

The Commons Committees on Arms Export Controls has repeatedly called on the Government to introduce a register of arms brokers in addition to the existing licensing system. The previous chair, Sir John Stanley, said that the regulatory system for brokers needs to be tightened up. He said that more should be done to create a "proper exchange of information" between all those involved in the regulation of UK-based traders selling weapons domestically and abroad. In 2009, Sir John was part of a delegation to Kiev advising the Ukrainians about their surplus Soviet weapons. To the delegates' surprise, the Ukrainian Deputy Foreign Minister had some key information regarding the UK. He had a list of UK arms brokers active in Ukraine dealing with the Ukrainian surplus weaponry. This list was handed to Sir John and included end destinations of serious concern such as Libya, Rwanda, Uganda and Sri Lanka. When he passed it to BIS, it appeared to have had no knowledge or sight of the list. The then Foreign Secretary, David Miliband, ordered an investigation which found that eight of the brokers were known to the British authorities and were approved by the Export Control Organisation within BIS. So, who else believes we should have a register?

The UN Arms Trade Treaty recommends a broker register. Furthermore, the Arms Trade Treaty toolkit recommends that prospective brokers could be asked to provide details of: their country of nationality and residence; their ownership of any entity or involvement in any relevant business used to facilitate brokering activities; and the range of conventional weapons that the broker may wish to be involved in brokering. Article 4 of the EU common position on the control of arms brokers recommends a vetting and registration system. Article 5 requires that member states share information on registered brokers, record of brokers and denials of brokers. Article 10 of the UN Arms Trade Treaty requires states to regulate brokering and recommends a system of registration. Article 12 of the EU firearms directive, after its forthcoming review, will require states to verify the professional integrity and abilities of firearms dealers and to ensure that provisions also apply to arms brokers. The UK has chosen to ignore all these requirements for arms brokers.

I have deliberately tried to avoid recent conflicts and recent allegations, concentrating on policy and process, and looking at the criteria for a licence to broker a deal and inaction on the part of successive Governments. I seriously wonder why we resist. I understand the need to reduce red tape but we have set our face against this in an illogical way and, without fail, everyone I speak to is astounded at our inaction in this regard. It would not be ground-breaking; we are doing nothing new. We are not in the vanguard. The US, Australia, Canada and most of the EU states are already there. They operate in a transparent manner, confident in their brokers' records, characters and financial deals. They are able to share intelligence and can feel some confidence that deals will not allow arms to fall into the hands of regimes, organisations or states and cause death and distress, let alone repression or abuse of human rights.

Registration would bring controls on arms brokers from the UK into line with those for a series of related processes, such as the Section 5 firearms registration process—for UK-based gun deals—and national security vetting for contractors working under UK MoD projects. These systems all require a series of background checks, including on past criminal activity and an assessment of the claimant's suitability. It is, therefore, illogical that the individuals wishing to broker thousands of small arms overseas are themselves subject to virtually no eligibility testing.

This is a modest measure. As the noble Lord, Lord Empey, said earlier about his Bill it is not perfect and we acknowledge that. But it would not prove expensive—indeed, it should be self-financing. As a nation, we expect registration of our doctors, our lawyers and even our care workers. Surely the time has now come to add arms brokers to the list. I beg to move.

11.12 am

The Lord Bishop of Derby: My Lords, I rise to support the noble Baroness, Lady Jolly, and to make three simple points about why this such a powerful and necessary case. First, it builds upon existing legislation about licensing and export control, so we have a set of criteria and an assessment process in place so that all companies involved are scrutinised and licensed. We are doing the work that would provide the register. So the principle of identifying and monitoring arms brokers is established.

Secondly, there has been a recommendation from the House of Commons Committees on Arms Export Controls that the Government establish a register of UK arms brokers. So besides having a principle of identifying and licensing brokers, even in our own parliamentary system there has been some expert scrutiny of that principle and a recommendation that it is taken forward to a formal system of registration.

My third point comes from my recent experience of being involved in the crafting and implementation of the Modern Slavery Act, both on the Joint Select Committee and as it now unfolds. In the language of that world, which is analogous, there is the issue of what is called supply-chain transparency: how people trade and make it transparent for the benefit of all concerned, pushing back against temptations towards corruption.

We all know that there is pressure on business for low margins and quick wins. There are fast-moving economic transactions that are blurred by the complexities of crossing the boundaries of different jurisdictions. In all that complexity, there is enormous opportunity for serious crime, which is one of the most powerful economic disturbers and causes of enormous upset on the international stage. We have to have ways of being vigilant in order to identify and challenge corrupt and illegal practice and to create the space for good practice to develop. That requires, I think, public identification and registration of companies so that they can be properly accountable. When you have a registration system—as we are trying to establish with companies about employment and the fight against slavery—it allows people to name, compare and be proud of good practice. Companies can benefit by being part of a registration system and showing that they want to be models of good practice.

I am sure that arms brokers, like many industries in a complex, international world, will be subject to the temptations, pressures and opportunities that serious crime presents. Certainly, with the fight against slavery, we find that the more there can be public identification and accountability of operators, the more chance there is of consolidating good practice, identifying bad practice and pursuing those responsible for it in a proper way. I think that we owe that to our Government and our citizens, and I hope that this Bill will make good progress.

11.15 am

Baroness Smith of Newnham (LD): My Lords, I welcome the Bill brought forward by my noble friend Lady Jolly. The excellent speech with which she introduced it means that very little needs to be added, so I shall keep my remarks relatively short. This is a very important initiative. Indeed, it is rather shocking that we do not already have such a register. The idea of introducing the concept of a fit and proper person test seems entirely appropriate.

In an excellent debate in your Lordships' House yesterday on the relationship between the Executive and Parliament, there was much discussion about the nature of draft legislation going through Parliament in recent years, in particular the fact that draft Bills have shifted from being about 24 clauses in length to 49 clauses. This Bill is admirable in being remarkably brief, with just two clauses. It is very clear and the proposals that it contains reflect a judicious balance between appropriate controls versus undue bureaucracy. A three-year period of registration—rather than, say, a one-year period, which might be too restrictive and overly bureaucratic for arms brokers, or a five-year period, which might not give adequate safeguards—seems to be exactly the right balance. It is relatively light-touch, but it is also hugely important. It would help the United Kingdom to engage internationally in reducing the risks of illicit arms brokering, something that we clearly would not support.

As Amnesty International and Saferworld have argued, there is a risk at present of arms brokers operating under the radar, beyond the knowledge and reach of UK export control enforcement. That is surely something that we should be trying to avoid. This is particularly important at a time when there are so many non-state actors seeking arms and armaments for terrorist and other activities. It is hugely important that we, as the United Kingdom, make greater efforts to ensure that illicit arms brokering cannot occur or, if it does occur, that we act against it.

This is not an attempt to limit the activities of bona fide arms brokers. It is a way of taking responsibility to avoid illicit activity. I am aware that the consultation in 2014 saw defence industries in particular saying that they were concerned about a register and that it might be overly bureaucratic. We should be clear that this Bill does not aim to work against defence industries—bona fide industries should have no problems getting registered—but it should work against those who are working illicitly, often registered with businesses offshore. It would improve the ability to oversee things without being overly bureaucratic.

I hope that the Minister will be able to take this Bill and work with it. I am aware that Governments are very often reluctant to take Private Members' Bills, but as my noble friend and colleague Lady Jolly has been nearly as successful as the noble Lord, Lord Empey, in coming so high in the ballot, I very much hope that Her Majesty's Government will be able to work with this Bill, because, as my noble friend has asked, why have successive Governments resisted an arms-broker register for so long?

11.19 am

Viscount Waverley (CB): My Lords, I, too, thank the noble Baroness for outlining her Bill in the manner in which she did. My only experience in such matters is having specialist friends who have always complained about having a tough time being issued with the necessary licences.

I have come to the conclusion, with regret, that this Bill is not for now. First, there appears to be a consensus in this House that there is generally too much legislation. Should there be issues that require attention, it is preferable to address these through clarification and interpretation of existing legislation. Secondly, the Bill would add further burden to the criminal justice system.

It is my understanding that a UK register of brokers has been on the table for some time but was quietly dropped by the then Secretary of State. While I recognise that the use of agents or brokers is often a legal requirement in many countries in order to reduce corruption—by imposing a barrier between public officials, military and police officers, and the supply chain, whose representatives are perceived as the principal drivers of such practices—the UK industry is already controlled by the ECA, the licensing system and the Bribery Act. In addition, the UK's defence and security

[Viscount Waverley]
industry has undeniable respect worldwide as a driver for innovation, manufacturing excellence and other added values, including reputational.

If the result of the upcoming referendum vote is to remain, would it not be better to co-ordinate this with our European competitors to ensure a level playing field? I listened carefully to what the noble Baroness, Lady Jolly, said about the European-wide arrangements, but I disagree somewhat in that there is a register that has the effect of including the players in it. Therefore, I suggest that we do this in unison with our European Union partners. Conversely, if the outcome is to leave, we will require all the comparative advantages that can be mustered.

In conclusion, I feel unable to support the Bill, since a public register would also be seen as a security risk. Its effect would probably lack enforcement follow-through and would cause damage to trade competitiveness for no perceptible benefit.

11.23 am

Lord Stoneham of Droxford (LD): My Lords, I am very pleased to join my noble friends Lady Jolly and Lady Smith in advocating support for this Bill. The noble Viscount has just put what I thought was going to be the principal argument of the Government: that licensing is adequate and that they have a complete aversion to needless regulation. I, too, have an aversion to that, but I have to ask: is the problem easing and getting better or is it becoming more complex, more illicit and therefore more dangerous, both in this country and internationally?

I know, having spoken in this Chamber many times with the noble Baroness, Lady Neville-Rolfe, that the Government are prepared, when they think they have a problem, to consider extra regulation. I did not think there was any need at all for the extra regulation that they introduced on trade unions, but they were quite prepared to do it. But this situation seems to be a critical national interest, so we should give it attention.

The Government have to ask themselves the following questions. Will they be open to blame if they have not done all in their power to regulate arms dealing? Is this problem becoming more difficult because of mobile technology such as drones and therefore it is more immediate that we have closer regulation? Do they have absolute confidence in licensing, where the onus is on investigating the country of destination and not giving the scrutiny we think they should be giving to the backgrounds of people involved in these arms deals and their operations, and doing a proper test of fit and proper people?

The Government have to answer four key arguments. First, they have to argue that we do not need these controls and that the problem is not becoming more complex. Secondly, they have to ask themselves: why do we require similar processes in this country when we are talking about the Section 5 firearms registration process for UK-based arms dealers? Why do they require a process of registration for national security vetting for contractors in the MoD? Are we saying that arms brokers internationally should not be aligned with these processes? It is illogical that individuals brokering overseas arms deals are not subject to an eligibility test. Therefore, the Government have to say why that is the case. Are they confident that they have the processes in place to safeguard public and international interests?

Thirdly, all the evidence is that illicit arms dealing is often associated with offshore tax avoidance. With their efforts in that area of tax avoidance and arms dealing, the Government have to ask themselves: would a registration process actually help deal with both problems that the Government should be concerned about?

Fourthly, the Government have to answer the question posed by my noble friend Lady Jolly: why does a registration and licensing system operate in countries such as the USA, Australia, Canada and 18 EU nations? We may have difficulties, as the noble Viscount, Lord Waverley, said, with regard to the exact details of those, but should we be trying to align those processes? It makes sense for us to learn from those processes. The Government have to ask themselves: why are those processes suitable in those countries, and would similar processes not help the exchange of information between these vital nations?

This issue is becoming more complex and illicit, and the Government need to consider action beyond simple licensing to deal with it.

Viscount Waverley: My Lords, if the noble Lord will allow me, there is much in what he said in his last substantive point that I agree with. I apologise to him that my mind wandered just a little at a key time. It is particularly in relation to Section 5, which I heard him refer to, where there is a tough regime where these friends of mine have difficulty in getting the appropriate licences, or at least they have to put their case very firmly through the normal channels.

11.28 am

Lord Judd (Lab): My Lords, I warmly congratulate the noble Baroness, Lady Jolly, on having brought forward this very important Bill. It is not a little Bill; it is a Bill of immense significance. It is good to follow the noble Lord, Lord Stoneham. We all wish him and his family well with the arrival of the new grandchild.

It is always a bit difficult to say this—it seems like boasting or something—but my life experience has totally convinced me of the importance of this issue. When I talk about my life experience, I have until recently been a trustee of Saferworld, I am a one-time chair of International Alert, and of course I worked with Oxfam, VSO and others over quite a number of years.

Significantly, I also look back to my ministerial days, when I had the privilege of serving at defence, overseas development and the Foreign Office. My experience in all those parts of my life convinced me of the significance of the issue with which this Bill is dealing. I do not see how you can have a relevant, effective and convincing foreign and security policy unless your disarmament policy, and your objectives within the context of that policy, are prominent. Furthermore, the arms trade and arms sales must have

priority consideration in that policy. My own view is that, with arms as desperately lethal as they are now and with the degree of instability in the world, we should really only ever export arms to our allies or to close friends that can be trusted, and for a specific purpose. They are not just another product to be exported; they are the means of death and slaughter.

We all know the problems in controlling end use and the rest, when sales take place. The closest monitoring is therefore vital. It is also why the arms trade treaty was so important, as a beginning. I try not to be a cynic in my old age but what I worry about, looking back at my own ministerial days, is that there is always an element of tokenism floating around. We may have great celebrations in the Foreign Office to welcome the arms trade treaty, but does that treaty indicate a real and serious priority commitment in foreign policy to the importance of this work, or is it something to have on paper as our theoretical position, with in practice a minimalist approach to its application? That is why this Bill becomes such an important contribution to the right solution.

It is naive to suppose that arms cause conflict, but when I look back to my Oxfam days, 25 years ago now—it is difficult to imagine that when it is all so vivid—I used to be dismayed by the amount of our work which was affected by conflict. Well over 50% of it in parts of the world was dealing with the consequences or the immediate effects of conflict. How can you talk intelligently about your commitment to development and humanitarian priorities if you do not see this issue as central? But conflict starts in the minds of people; what would be naive is to suppose that arms cause it. They do not. People cause conflict. It is very easy in some situations—one thinks of Rwanda and Burundi in the past—for handmade weapons to be used to terrible effect. The availability of weapons, particularly given their modern potential for destructiveness, is a dangerous element amid all this instability and unpredictability.

Of course, the arms issue becomes as important as ever when we consider the deep political and strategic issues involving Russia, China and the rest. But what is happening on the ground in much of the world, where there is immediate killing and slaughter, is the result of local and regional conflicts in which a small number of people can cause havoc and appalling suffering. That is why it would be unthinkable not to take this Bill seriously and see it as much needed. I congratulate most sincerely the noble Baroness, Lady Jolly, and her supporters on having given us the opportunity to start taking our responsibilities as seriously as we should.

11.35 am

Lord Stevenson of Balmacara (Lab): My Lords, this has been a very good debate and I, like others, congratulate the noble Baroness, Lady Jolly, on coming so high in the ballot that she has been able to introduce this Bill. In private conversation with me before today she mentioned that she was doing this because it was a sort of stick to try to encourage the Government—perhaps she had in mind a herd of cattle, but that would be an unkind thing to say about the Government—towards a solution for which they already have the powers but which they seem reluctant to take forward. In a sense, that was the tone she set with her speech. It was not a speech of high rhetoric or overzealous comment but made a measured and good case which, as I understand it, seeks to seal up a little more securely our procedures in this rather difficult area. All the speeches we have heard so far have been along these lines, with a touch of emotion from my noble friend Lord Judd—but justifiably so from his experiences, which bring us back to the rather important point that the Bill deals with death and destruction, not fluffy toys. We should always have that at the back of our minds as we go forward to consider it.

My concern here is not so much to re-emphasise the well-made points about how the Government appear to be standing out against what is becoming a common approach in the world. That is not only to provide a detailed examination of those companies and individuals who wish to participate in this trade but to do so in the context of a wider understanding of the market, and thus necessarily having a pre-licensing procedure. It is not at all clear to me why the Government have taken their view. I will come back to that point but I also wish to put it in a wider context and will therefore start my remarks with a rather broader take on this issue.

From this side of the House, we accept that developing and maintaining a thriving global trade in goods and services, including defence materiel, is a vital component of modem life and that it underwrites our economic and social benefits. We should be very careful about attacking it. However, the direct impact of the operation of individuals, companies and states has not always worked to protect human rights, nor afforded protection to those affected by acts of commission or omission by those involved in these trades. Increasingly, we hear the argument that respecting human rights is good for business. We are grateful that it is gaining wider acceptance but it is still not the default position. Indeed, it is not uncommon to hear it argued that there can and should be a policy trade-off between business on the one hand and human rights on the other. That is simply not the case.

I accept that the UK now has one of the toughest export regimes in the world, particularly in defence materiel. The previous Labour Government were part of that process. However, the sales of military equipment have always raised moral and ethical issues, as my noble friend Lord Judd mentioned, and recent experiences such as the Arab spring and the fallout from it have pointed out difficulties even with our existing systems. If we are to make progress on this, we not only have to focus on the broader policy context but continue to work with companies to make the case for a respect for human rights in what they do. In preparation for a previous role in the party, while trying to develop a broader context for business and human rights and the relationship with how trade operates, I talked to companies which understand that by involving themselves in human rights, they will help to protect and enhance their brand as well as protect and increase their customer base, as customers are increasingly seeking out ethical companies. It also helps the companies themselves attract and retain good staff, contributing to lower rates of staff turnover and therefore higher productivity,

[Lord Stevenson of Balmacara]
which we desperately need. It reduces risks to operational continuity resulting from conflict inside the company itself, such as strikes or other labour disputes, or with the local community or other parties with which they might wish to trade. That goes under the common term "social licence to operate", which is very important and increasingly so these days. It appeals to institutional investors, including pension funds, which are increasingly taking ethical factors, including human rights, into account when making their investment decisions.

This is a trend which we need to anticipate and work with. Government has a role to provide clear policy statements around this, and where the Government fall down at a particular level, that will interrupt the progress that we are seeing. Companies have told us that they need policy coherence and clear and consistent policy messaging from the Government. Where that consistency is faulty, there are problems.

I have looked at the Government's recent consultation on this, which has already been mentioned. I am very confused about it. It is easy to criticise government consultations: sometimes the methodology is strange, while sometimes it is not so much the methodology but the reporting that is difficult. In this case, it is both the methodology and the response. This was a six-week consultation carried out in April and May 2014. It was not a very large one, as it was admitted in the government response that it would not be.

It admits from the very start—I would be grateful if the Minister could comment on this when she comes to respond—that there were two completely different viewpoints. A group of people from the industry responded—some 70 or so responses were received from industrial companies—who were broadly against any further red tape or burden of regulation. Well, they would be, wouldn't they? A smaller number of respondents—in my view, probably equally vociferous—wanted to make the case that we have heard today, advocating the benefits of a comprehensive registration system based on thorough vetting, eligibility and an assessment criteria in order to act as a preventive measure to guard against undesirable broking activity.

It does not take a very long time to come to the conclusion that where you have a bifurcated response, you are not going to find a consensus, so it is not unreasonable for the Government to respond that it was not possible to find any consensus view. They say that there were,

"no … sufficiently powerful arguments in favour of implementing a comprehensive register",

but they do not give the detail of what those arguments would be. It is a little unfair of a Government to say that they had a vision in mind of a comprehensive response to the question they were asking, but that since it did not come—or nobody actually wrote it out in the terms that they had envisaged it—the argument was not sufficiently convincing. I do not think that that is sufficient for a government response.

The Government go on to say that they have concluded that,

"introducing a register would not be sufficiently beneficial so as to justify additional regulation of legitimate UK businesses".

Again, however, they do not give the details of what would be sufficient.

They then fall back into the problem, which I think we have heard about, that assessing on a case-by-case basis does not give the broader context that other countries and partners of ours seem to feel is necessary and so distances us from them. The Government respond with what I think must be the weakest argument I have ever seen:

"continuing to maintain the status quo of case-by-case licensing assessment is compatible with Article 10 of the Arms Trade Treaty, which requires countries to regulate arms brokering but does not stipulate the means of doing so".

Well, that is great. That is such a terrific tick in the box. It did not stipulate it, therefore we do not have to put it down. The response continues:

"The Government is not convinced that the introduction of a pre-licensing register would substantially enhance the enforcement of brokering controls and that it would place considerable extra burdens on legitimate defence companies".

Well, we did not get those, and we do not know what those extra burdens would be. Indeed, the argument has been made today—which we should listen to—is that, yes, there are additional burdens, but regulation of itself is not bad. Good regulation makes markets fair, opens up issues for consumers and makes our commercial operations better than they would otherwise be. We must be mature about this and not simply have the knee-jerk reaction that regulation must be bad. It is not always bad; it can be very good. The case I have heard today has been utterly convincing that this is a good set of regulations which would be appropriate for this situation. If your Lordships have any doubts at all about why this might be appropriate, they should look at the list of respondents in the government response. There were 78 responses to the call for evidence, and of those, fewer than one-third were prepared even to have their names listed as having submitted evidence to the consultation—which, as I said, was not exactly the most searching examination.

A pre-licensing system seems to me to be a missing link in an otherwise pretty good system, but as we have heard, there are gaps. We would only be moving to the point where other countries have already moved to, and we would be responding to those of us, particularly people such as my noble friend Lord Judd, who feel that the present arrangements, although good, are not reaching out as far as they could do in a way that would make this a more effective system even than it is at present. Good companies should not fear transparency. If they are already supplying in other parts of the world, they are probably already doing this with other Governments. We should not be seduced by the idea that this is somehow an exceptional burden. As I have said, even if it is a burden, we must avoid the knee-jerk reaction of saying that regulation is bad. I wish the Bill well.

11.46 am

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, I thank the noble Baroness, Lady Jolly, for bringing this matter to the attention of the House today. I congratulate her on being number three in the ballot and on her thoughtful opening speech. She and I worked together on my first Bill as a Minister, the

Consumer Rights Bill, and I learned a lot from her. I am also glad to see her so well supported by her fellow Peers today, and to hear in particular from the noble Baroness, Lady Smith of Newnham, whose comments about the principle of legislative brevity I agree with wholeheartedly—although this is in fact a rather wide-ranging Bill, as I will come to explain, with some problems. This is of course an issue which raises emotions, as the noble Lord, Lord Judd, made very clear in his contribution. I am delighted that the noble Viscount, Lord Waverley, is here. He rightly struck a sceptical note about the Bill, which he did from a degree of experience—both his own and that of people he has consulted.

This Government support a responsible defence and security industry that helps meet the legitimate defence needs of other states and contributes to their security and law and order. Such exports are worth some £11.9 billion a year and 600,000 jobs to the UK economy. The reputation for innovation, the "added values" in the words of the noble Viscount, Lord Waverley, and respect for human rights, which the noble Lord, Lord Stevenson, talked about—of course supported by a strong legislative regime that includes the Export Control Act and the Bribery Act—are all very important. We are also committed, as the noble Lord, Lord Stevenson, acknowledged, to better regulation, which means, in my book, regulating only when there is evidence of harm and introducing new regulation that specifically tackles that harm.

The Government agree, as I have said, on the need for comprehensive arms control measures. We take our responsibilities in this area very seriously and operate a robust and transparent control system—as robust as any state's. It includes comprehensive controls on the trafficking and brokering of military goods: that is, controls on activities which facilitate or promote the transfer of military goods between third countries.

These controls have been in place since 2004, under the previous Government, following implementation of the Export Control Act 2002, and were significantly updated in 2009 with the introduction of the Export Control Order 2008, under which we operate. The controls were amended again in April 2014 to fully implement the UK's obligations under the international Arms Trade Treaty.

Under our controls, a person in the UK may carry out an arms-brokering activity only if they have been granted a licence to do so by the Secretary of State for Business, Innovation and Skills. These controls apply to UK persons wherever in the world they are located—an important provision. Every licence application is individually assessed against the consolidated EU and national arms export licensing criteria. The criteria provide a robust risk assessment process that takes account of all available information, drawing on advice from the Foreign and Commonwealth Office and the Ministry of Defence. A licence would not be granted if there was a clear risk that the goods might be used for internal repression, would provoke or prolong conflict or be used aggressively against another country. We also take into account the risk that the goods might be diverted to undesirable end-users, including terrorists.

Any person who is subject to these controls and who carries out a brokering activity without a licence may be subject to criminal prosecution with a maximum penalty of 10 years' imprisonment. These controls are rigorously enforced and the UK remains one of the few countries worldwide to have successfully prosecuted individuals for breach of arms-brokering controls.

The right reverend Prelate the Bishop of Derby, whose intervention was extremely thoughtful, asked about transparency. The UK publishes details of all export and trade licences granted, refused or revoked. These are published annually and quarterly. Publishing names may have commercial sensitivity issues, but there is a degree of transparency there which I regard as very important.

The noble Baroness, Lady Jolly, referenced the Committees on Arms Export Controls, which call for a register. The Government conducted a wide review of export control legislation in 2007, as I said, and concluded that a register would not justify the burdens on business at that stage. Then in 2014, as the noble Lord, Lord Stevenson, explained at some length, the Government considered the case for a pre-licensing register of brokers along the lines we are discussing today. A comprehensive call for evidence was conducted which considered whether there was a need further to regulate brokering activities within the legitimate defence industry and prevent illicit activity The consultation exercise sought evidence from all interested parties, including businesses, individuals and civil society groups, on the benefits and costs of introducing a register. As has been said, we received a total of 78 responses.

The Government's response was published in July 2015. As the noble Lord, Lord Stevenson, said, there were two viewpoints. That there was no consensus is a fair conclusion to draw from that exercise, and we did not feel that there were sufficiently powerful arguments in favour of a register to justify the additional burdens that would be imposed on legitimate businesses.

I have already gone through some of the arguments made, so perhaps I may turn to the Bill. Any register of arms brokers, as proposed by the noble Baroness, would be in addition to the existing controls that I have described in some detail for the benefit of noble Lords. In considering the case for such a wide-ranging register, we would need to consider a range of factors. These include not only the extent to which a register might improve enforcement of existing controls but the impact on legitimate trade.

A key concern with a register is that it would do little or nothing to prevent the activities of unscrupulous brokers who operate outside existing brokering controls. Anyone who is currently prepared to broker without a licence is highly unlikely to be concerned about applying to be listed on a register. Such a list would represent a list of legitimate brokers and its creation would contribute little to dealing with those who seek to evade the controls. Where we have evidence of existing illegal brokering, we investigate and take appropriate enforcement action, including in the most serious cases, referring the case to the Crown Prosecution Service for criminal prosecution.

If someone was brokering without being registered—and therefore, by definition, without being licensed—we would need the same level of evidence to take action against them as we do now. The existence of a register would not improve our ability to enforce the controls,

[Baroness Neville-Rolfe]
nor would it significantly aid intelligence-gathering. The UK already shares information internationally where licence applications have been refused.

We would also need to set out a list of criteria against which applicants for admission to a register would have to be assessed. We do not believe that the proposed concentration on tax status and criminal history would be as helpful as may be suggested, given the likely range of licence applicants—from individual applicants and small businesses to large corporates—including ancillary services such as transport, insurance and finance industries: a very wide net.

Another problem is that there is no correlation between tax status, criminal history and the potential end-use or end-user of the goods in question. Concentration on these aspects could serve to distract from the two main aspects on which strategic licensing controls are based: the nature of the goods and the nature of the end-use. We would also need to devote resources to making any such assessments, and to setting up fair processes and perhaps an appeal process for those refused registration. There would of course be an administrative burden on legitimate businesses in submitting an application and undergoing such an assessment.

We could reject an application to be added to a register only if there were sufficient grounds to do so, and any such decision could be open to legal challenge by the unsuccessful applicant. This raises further questions about how a register would operate which would need careful consideration.

The noble Lord, Lord Stevenson, talked about registration in other countries. It is of course true that a number of states operate a register. However, these registration models are introduced on the basis of different national legislation and in a business and regulatory environment structured differently from the UK, so we do not see a direct comparison with the system here, where the Arms Trade Treaty is key—and is a key part of UK foreign policy, to respond to a point made by the noble Lord, Lord Judd.

Taking the United States as one example, I say that any person wishing to engage in the brokering of defence articles or services must register with the US Department of State and pay a registration fee. However, this is effectively in place of a detailed licensing system of the kind we have, and I do not think that that is the intention here.

Maintaining the status quo in terms of the UK's existing case-by-case licensing procedures is, as has been said, compatible with Article 10 of the Arms Trade Treaty, which requires countries to regulate arms brokering but does not state exactly the means of doing so.

We believe that our system is strong and covers the ground we need to cover.

The noble Baroness, Lady Jolly, also referred to Section 5 registration requirements for the holders of firearms licences. A Section 5 registration is a stand-alone regulatory obligation that serves a useful purpose. However, the Bill would impact on export licensing by imposing an extra regulatory burden on legitimate trade that would, as I said, do nothing to prevent the activities of unscrupulous brokers.

I should probably end there but, wherever noble Lords come from, one reason not to support the Bill is that, as the noble Lord, Lord Stevenson, made clear in his intervention, a register could be introduced under existing powers in primary and secondary legislation. There is no need to amend the Export Control Act 2002 to allow a register to be introduced.

In summary, the Bill could lead to a disproportionate impact on a surprisingly wide range of industries and businesses, introduce powers that we do not believe are needed, and could entail administrative costs and problems. We prefer, as I think I have made clear, to base our approach on a system of licensing controls which takes account of relevant risks by means of a thorough pre-licensing assessment. We believe that our current system is sufficiently robust and that we have the legislative powers to take further action if the situation changes.

11.59 am

Baroness Jolly: I thank the Minister for her reply, which I shall come to in a moment, and other noble Lords for their contributions to this excellent and important debate. I should not finish without thanking the Library for producing its briefing and Amnesty International and Saferworld for theirs, as well as expressing my gratitude for the support—in a sense—of the Minister and her officials, who found time in a busy schedule to meet me, and to all those who have given me encouragement.

The right reverend Prelate the Bishop of Derby, whom I thank for his support, talked about the Modern Slavery Act and the parallels there, which was really quite interesting. He talked about supply chain transparency, which is very much what the Bill is calling for. With modern slavery and arms-broking, when things are done illegally, you have the opportunity for crime, but also for people to make very big money. That is one of the issues here. He also mentioned good practice. One thing that we would call for is for training for arms brokers in various instances, so good practice can be exemplified.

My noble friend Lady Smith of Newnham talked about a fit and proper person. We should not really baulk at fit and proper people. FTSE boards are now called upon to have fit and proper people sit on them, and you cannot be a charity trustee without being deemed fit and proper. Arms brokers should not be excluded from that.

The noble Viscount, Lord Waverley, made some interesting points about his colleagues and friends being given a tough time. I hope that it was not too tough, but these are serious things that are being considered. Questioning needs to be done and, if they were given a tough time in getting their licence, I would not apologise for that—I would say that was absolutely appropriate. Not all British brokers are whiter than white.

There was the government consultation, to which both the noble Viscount and the noble Lord, Lord Stevenson of Balmacara, referred. It was published, or put up on the website, with no announcement that it was there—it just suddenly appeared; then, all of a sudden, the whole thing was dropped. So the consultation

was started under the coalition, and the new Government caused the whole thing to disappear. Perhaps the noble Lord and I are not too far apart and, if this Bill is to proceed, we might share some thoughts over a cup of coffee.

My noble friend Lord Stoneham of Droxford gave the Minister four pointers. She might reflect and have a look at *Hansard* with her officials afterwards to see whether they might be applied.

I give many thanks, too, to the noble Lord, Lord Judd, who has given me a lot of support. I really value having on my side a renowned and doughty campaigner—but, not only that, an experienced and expert parliamentarian. He flagged up the relationship between foreign policy and the arms trade. That is really critical; the arms trade and brokering arrangements have to reflect the Government. The eight criteria go some way towards that but, when one looks at some of the deals that have been made, one questions how those criteria have been met. It looks as if they might have been shoe-horned. He talked also of transparency, and we do need that in this trade; we do not need muddy waters.

The noble Lord, Lord Stevenson of Balmacara, talked about a conversation that he and I had in advance—and I must be careful next time when I talk to him before going into a debate on a Bill. I do not recollect talking about cattle, but there we go. I might have used the expression, "a stick". He talked about death and destruction, and at the end of the day that is what these deals can produce—not fluffy toys. I am not a pacifist; there are times when arms are absolutely appropriate, but they have to be absolutely appropriate, and we must not forget that people have human rights. Very often, arms—not just weaponry but other things that come under the list—seriously infringe people's human rights, and abuse them. We need trade, but we need legal trade deals, and it is important that that is the case. We need to be absolutely clear that the people undertaking these deals are the sort of people who we feel should be doing it.

Human rights should be good for business. On Monday afternoon, I am meeting ADS, which fully understands the need for human rights—it is up for this and understands this. But there are a few unscrupulous brokers, for whom the concentration is not on the human rights but on the money; we are not talking about hundreds but about tens of people, and maybe fewer.

I have been used to calling the Minister my noble friend, and we are still friends—and I come to her response. The noble Viscount, Lord Waverley, made the point about drafting Bills; it is for experts, and we are not experts in drafting. That is not our area of expertise but, with the assistance of officials, I am sure that we can come up with fit and proper amendments in Committee.

We need to talk about evidence of harm, which I deliberately talked about only from a policy perspective. I have seen a catalogue of harm, which I could have brought before the House if I had chosen to. I chose not to, partly because of time and partly because I did not want to get muddled or muddied, but I can give noble Lords chapter and verse. I am sure that the Minister will have seen some of it as well.

The Minister outlined the eight criteria, but I question some of the decisions that must have been made. I would like an opportunity to talk to people who make decisions based on those criteria, and how they fit in. The committee recommendations to which she referred went back to 2007. The Commons arms committee has more recently been much more vociferous on this matter.

It is sometimes up to a Government to make a decision. The Minister made the point that there was no huge enthusiasm for this particular measure or move in the consultation, but it is up to a Government to make decisions that people will sometimes not be happy with. We make decisions because it is the right thing to do. I think that this is the occasion. In talking about small numbers, the Minister in a sense made my argument; there is no need for huge numbers—it is the right thing to do, so please do it. I would be grateful if she could meet me afterwards, perhaps with the Minister, Anna Soubry.

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

Renters' Rights Bill [HL]

Second Reading

12.08 pm

Moved by ***Baroness Grender***

That the Bill be now read a second time.

Baroness Grender (LD): My Lords, the natural consequence of the chronic lack of social housing and the prohibitive cost of buying a home means that we now have a growing number of people who live in the private rented sector. Sometimes it would appear that this ever-growing customer base—almost one in five of the population, one-third of them families with children—have more consumer rights when they buy a white good, such as a fridge, than they do when they rent the home to put the fridge in. That cannot be right. The Bill aims to address that current imbalance. The rising demand for rented homes is pushing up costs and allowing some landlords and letting agents to take advantage of tenants who have relatively little power to object to high prices or poor conditions, or to make choices about which letting agent to use.

The law needs to change to make renting cheaper, safer and more secure for tenants. The Bill will reduce the costs of moving for renters by banning letting agents charging fees to tenants, a practice already outlawed in Scotland. The Bill will also make renting safer through mandatory electrical checks and give tenants greater protections against rogue landlords. The Government have helped tenants by introducing legislation on rogue landlords in the Housing and Planning Act 2016, but they stopped short of giving real power to tenants through information so that tenants know who those rogue landlords are. Under Clause 1, tenants would have access to that information. This change would put transparency and choice into the hands of the consumer, the customer, the tenant. A landlord can require a tenant to provide a reference,

[Baroness Grender]
yet tenants are unable to apply the same principle to their landlord. If the list of employers who flout national minimum wage legislation can be made public, why cannot rogue landlords be made public, too?

In Clause 3, we return to an issue debated during the passage of the Housing and Planning Bill, which is that electrical safety checks should be compulsory. Clause 4 would prevent a rogue landlord obtaining an HMO licence. The points covered by Clauses 1, 3 and 4 were recently debated during the passage of the Housing and Planning Bill, and my noble friends Lord Foster and Lord Palmer will elaborate on them. I shall concentrate the rest of my remarks on Clause 2, which aims to end letting fees for tenants.

The cost of living for private renters has reached crisis point. Renting is the most expensive form of housing to live in, and with rising rents and increasing demand, renters are trapped, with limited choice. Tenancies are increasingly very short—often of only six months or perhaps 12—so renters often lack security and, as we all know, they constantly have the imminent threat of a rent rise hanging over their heads.

Unlike people in the owner-occupied market, one in four renters moved home in 2013-14. Just under a third of renters have moved three times or more in the past five years, and just under a quarter of them in London. Each time they move, the up-front costs are often the greatest barrier of all. In London, the median amount that renters must pay before moving is £1,500, and in many cases the cost is several thousand pounds. It goes up disproportionately for those on low incomes, who are viewed as a higher risk and so may be required to provide several months' rent in advance. Indeed, of those who rent on a very low budget, a third have to borrow or use a loan to pay up-front fees and, disgracefully, 17% have to cut down on heating and food to cover the up-front cost of moving.

Costs vary from agent to agent and range from £40 to £780, with the average cost just under £400 per move. Many of those charges seem completely arbitrary. A credit check, for example, costs about £25 today, but some agencies charge a tenant £150 or more to carry one out. Marta, a lady who contacted the Debrief's Make Renting Fair campaign, had asked to sign a three-year tenancy agreement. The agent said, "Fine, but you'll have to pay three times the fee": that was three times £360 just to re-sign. I spoke to a young woman this week who is in a two-bedroom flat. She is the main tenant and happily paid £150 for an inventory check and other things at the start of her tenancy, but every time her flatmate changes, the new tenant is charged a £150 for an inventory check which, of course, never happens—what a rip off!

Citizens Advice, which in the past year has seen 80,000 people with a problem in the private rented sector, has seen an 8% increase in complaints about letting agents. One tenant described a fee of £180 to renew a tenancy agreement that is staying exactly the same, except for a change of dates. It requires a simple printing or photocopying job, and it is the renters who go into the office and sign the form, but they are charged almost £200 for it.

We all accept that letting agents have some genuine costs in moving tenants into a property, but the appropriate payer of these costs is the landlord, not the tenant. It is the landlord who is the client, and most of the fees charged to tenants would be costs landlords would expect already to be covered in the amount they pay the agent. It is the landlord who can choose which agents they use and which is the most competitive agent in the marketplace. The tenant is choosing where to live, what the rent is and whether they can afford the deposit. They have no ability to pick and choose which letting agency they will use. Let us take the example of Jess, a client of Citizens Advice. She found a property that she wanted to rent in her local area, and the letting agent requested £600 to run credit checks and get references—let me remind the House that a credit check costs about £25—which was non-refundable if the landlord did not accept her as a renter. I am sure she would have loved to choose which letting agent she used, but she was not in a position to do that.

These agents are charging both landlords and tenants because they can get away with it. That needs to end, and that is what the Bill does. Imagine if this model were applied in a different market, say, to employment agencies. A company would ask the employment agency to find it a temp. On this model, the temp would be charged a fee as well as the company employing him or her. It just does not make sense.

Fees for tenants have already been successfully banned in Scotland following legislation in 1984, which was clarified in 2012. Research into its impact commissioned by Shelter shows that it has had only minimal side-effects for letting agents, landlords and renters, and the sector remains healthy. Only 17% of letting agents increased fees to landlords, and only 24% reported a small negative effect on their business. Not one agency manager interviewed said it had a large negative impact on their business, while 17% said they considered the change to be positive for their business. Research by Shelter suggests that even if the charges are passed on to landlords, in Scotland this has not led to an increase in rental charges. However, for the sake of argument, let us say it did. Instead of an up-front, prohibitive cost of £1,500 to move, that amount would be absorbed into a weekly or monthly rental sum. There would be no up-front charges, and those on housing benefit would have the possibility of the amount being absorbed into the monthly or weekly rent. Dorrington Residential, one of London's largest residential landlords, works only with letting agencies which agree not to charge renters any fees. In its words:

> "Dorrington is able to run a successful residential investment business and give renters a fair deal by avoiding unnecessary charges, and we can't see why other landlords—and the Government—do not follow suit".

There is a clear case for the Government to take action in support of renters and end these fees once and for all.

We have debated many aspects of the housing crisis in this Chamber, and I recognise many faces from those debates. There are many things that are difficult to solve, but this is a simple thing that is very easy to solve. Today on the green opposite Parliament I met a group of young renters. The work that Generation Rent has done to stand up for renters' rights and the

Debrief's Make Renting Fair campaign have provided a strong voice on these issues. There are more than 250,000 signatures on their Change.org petition. They support this Bill. This is a broken market where the consumer has little or no power, but it is a growing market and one the Government should serve well, like any other. Transparency has been tried, but evidence suggests that it is not enough as little has changed. We should ban these fees, clarify that the landlord pays the fee and make it a fairer marketplace for those who rent. I beg to move.

12.19 pm

Baroness Gardner of Parkes (Con): My Lords, I declare my interests as set out in the register. Since the 1960s, when I had tenants in the self-contained basement of a large house in which I then lived, I have usually been a small landlord. The ideal situation is to have landlords and tenants who have good relations, and neither feels cheated or treated unfairly. Sadly, there are too many instances where that is not the case, and ill will arises and tensions can build up. The aim of the Bill is to set out clearly the position of each party so that each knows and respects the other's rights. There should be no suggestion of exploitation on either side.

The purpose of the Bill is good but there are many aspects that need detailed thought, and possibly even piloting, to avoid potentially disastrous unintended consequences. The noble Baroness, Lady Grender, talked about making rents cheaper. Although I have not prepared anything in my speech about that, it is unrealistic to think that anything in this world comes down. Stabilising rents and making them fair value for money is the more important feature.

I mention unintended consequences because I recall clearly, at the time when I was letting my basement, the rent freeze that was introduced by the Labour Government in the 1960s. As landlords' costs rose, restrictions could not be sustained. When the limitation was removed, rents rose dramatically, making things much more difficult for renters, who were faced with a sudden jump in living costs, whereas otherwise the costs would have just gradually increased over that time.

I have read the Bill carefully, along with the excellent briefings from the Library and Shelter. I have a number of points that I wish to place on record for further consideration. Clause 1 could be helpful. We need to have some idea of the cost to the local authority, as all local authorities are hard-pushed for funds at present. What type of information is kept on a database, and is such information open to anyone? If so, what is the cost of that?

Clause 2 lists charges that may not be made. I am concerned about this clause and wonder if the full implications of such changes have been considered. The noble Baroness referred in her speech to an inventory that never happened. Of course, it is scandalous to charge for something that never happened but, on the other hand, why did it not happen and whose fault was that? She also mentioned double-charging, to which I am 100% opposed. It has to be clearly decided who is responsible for a cost, and people need to know that in advance. She quoted £600 being charged for credit checks. I have never encountered that, so it must be that the type of agent she is quoting is a bit slippery. I understood that all letting agents now have to be registered with the Association of Residential Letting Agents, so I do not understand why these cases are not being reported to ARLA, which should be able to check with its members and see why these claims are being made and whether they are justified.

There are costs associated with the creation of any tenancy, and they have to be funded in some way. The law now obliges landlords to carry out checks on any prospective tenant to see whether they are legally entitled to be in the UK. Some have said in the past that landlords are now being asked to act as immigration officers, and there is quite a degree of resentment at that. It can be a time-consuming process. Recently, when I had a tenancy available, I had as many as five would-be tenants who failed to meet the necessary requirements. To have to do this check for tenant after tenant can be quite expensive.

An inventory check is essential for any tenant, so that they have a basis on which to determine any change or damage to the property at the end of the tenancy. It protects both tenant and landlord. It means that the situation is being independently assessed and people are not just arguing one against the other about how things were when they moved in.

To me, an exit fee, which has been mentioned, is a bad phrase, but I am not entirely sure what it means in this context. I associate it with a fee charged to people leaving retirement housing schemes. I know it is being phased out by many major providers of retirement homes, which in fact are trying to persuade all the rest to phase out exit fees.

I return to my earlier point. If these expenses have to be funded and the tenant is not asked to meet the cost, it will have to be met from somewhere. Without doubt, that will result in it being included in the rent element. Sometimes it will be a once-only payment for a tenancy but, in Clause 2, which amends the Landlord and Tenant Act 1985, there is mention of,

"a tenancy extension or renewal fee",

which would apply on each renewal. I have not come across that myself, but I am interested to learn that it might exist and I take the noble Baroness's word for it. However, has she considered that if the inventory cost for the landlord is built into the rent, then on every rent renewal the tenant is going to pay an increase on whatever that inventory cost was, whereas if they had paid their inventory bill separately it would not be included in anything that was going to have an increase in the renewal after the first year and every successive year? I am not good at maths, but I am not sure that that quite adds up.

Whatever the terms of a tenancy agreement, it is available for the tenants to negotiate before signing up. It is important that the Government keep up to date the advice that they provide for prospective tenants. I was pleased that during the recent Housing and Planning Act debates, the noble Baroness, Lady Miller, was able to confirm that a correction had been made just at the time when we were all asking for it, and included on the website of information and advice for renters.

[Baroness Gardner of Parkes]

The loss of the leasehold valuation tribunals has resulted in a much more costly and difficult situation for both tenants and landlords. This change, under Statutory Instrument 1036, came into force on 1 July 2013. Sadly, I was the only person to speak against that instrument, which could not be amended. Whereas in the past tenants could easily bring their problems to the leasehold valuation tribunal without fear of higher costs, which had a normal maximum of £500, now, the minimum fee to apply to the property chamber of the First-tier Tribunal, to which you now have to apply, is £500. The leasehold valuation tribunals had extensive powers covering the determination of the price to be paid by tenants if they were compulsorily acquiring either a freehold or a lease extension; the determination of whether a service charge was payable; granting dispensations to landlords from compliance with statutory consultation regarding service charges; on a tenant's application, preventing the landlord treating the costs of proceedings as relevant costs—that is, adding them to the tenant's service charge; determining the appointment of managers, and so on. They played a lot of roles, and they were readily available for ordinary people. I believe that the re-creation now of some easily accessible and financially possible body to deal with renters' problems is necessary to make this Private Member's Bill workable for most tenants and landlords. To push all these matters into the hands of the legal profession is not good; it will certainly be very costly and will probably reduce the effectiveness of the Bill.

Clause 2 contains a list that is unclear, in that it says:

"A letting agent may not charge".

I agree that there should be no double charging, as I have said, but what is a chargeable expense to the tenant is as agreed in the terms of the letting agreement. Such agreements are amazingly complicated. For any letting I receive 10 or more pages of small print covering a huge range of items, prepared by a solicitor specialising in property matters. That is in contrast to the system in Australia, where I still have my flat that I let, and one person has occupied it for many years now. A tenancy agreement out there is something that you buy from the local paper shop. The last price that I recall was 7 Australian dollars and 50 cents, although I am not up to date with the current pricing. However, the terms are as considered necessary for the legal letting of any property, and are easily understood by most people. If a large legal bill does not have to be paid for preparing a special agreement, that reduces the landlord's costs and therefore helps to reduce the tenant's costs. On what is about the size of an A4 double-fold of printed terms, a two-inch white space is left for any special condition agreed by both parties. Why can we not have something equivalent to that system? It would mean that renters would be in no doubt about the terms of their tenancy.

Meanwhile, it is in the interests of all good landlords and good tenants to co-exist and ensure that properties are maintained in a good condition, with occupancy providing a fair tenancy for both parties. I hope that the Bill will help and I support it.

12.30 pm

Lord Palmer of Childs Hill (LD): My Lords, I thank my noble friend Lady Grender for producing this Bill and allowing us to have this debate, which furthers all the things that we dealt with during the passage of the Housing and Planning Bill. I support the Bill and draw attention to my interests in the parliamentary register.

I would like to link this Bill to our debates and decisions during our recent consideration of the Housing and Planning Bill. One of the successes of that Bill was the decision to include a power to require property agents to join client money protection schemes. I remind noble Lords that a manuscript amendment was agreed with Ministers to require a property agent to be a member of such a scheme, thus protecting tenants and landlords from an agent not keeping safe the rent paid or the repairs money received and held by the agent. It was an enabling amendment, so it said:

"The Secretary of State may by regulations require".

As I said during the debate on that amendment, I would have preferred "must" rather than "may". However, I am confident that we will get there, subject to the successful conclusion of the review to be conducted by the noble Baroness, Lady Hayter, who has not been able to be present today, myself and others. Similarly, my noble friend Lord Tope put forward an enabling amendment on electrical safety checks containing the word "may" rather than "must".

With the Bill before us today, we try to tackle further the rights of renters. How can there be any doubt that anyone seeking a tenancy should have access to a database of rogue landlords? If necessary, it could be a database where one enters the name of the landlord or agent and there is a response as to whether the person or company is on the "Danger: beware" list. Why should that be made secret and not be available to tenants? Of course, as another noble friend pointed out at Second Reading of the housing Bill, we have to clarify the definition of "rogue", which could mean many things.

I turn to the part of the Bill concerning letting fees for tenants. As my noble friend Lady Grender said, often tenants are not affluent but it is hoped that they can meet the monthly rent. They may also have to put up a deposit, which should now be covered by ombudsman schemes. They may be required to put up rent in advance, which is what we seek to protect, as detailed in the Housing and Planning Act. However, the question that this Bill raises is whether the often impecunious prospective tenant should also be asked to pay up front—I shall list them again, although the noble Baroness, Lady Gardner, set them out clearly—a registration fee, an administration fee, an inventory fee, a reference check fee, a tenancy renewal fee and a so-called exit fee. Why should these fees be paid by the tenant and not the landlord, or—this was not mentioned by the noble Baroness, Lady Gardner—be subsumed into the fees or commission received by the letting agent?

At the moment, the consumer law position on fees is that they should be transparent, fair and not excessive and that they must be proportional to the work undertaken. I think it is fair to say that a letting agent

will take a commission from a landlord, so why are these additional fees necessary? Why should a tenant pay a fee to register, or pay an admin fee to the agent, who in reality acts for the landlord? There is an argument for a fee being charged for an inventory check—I have some sympathy with the comments that have just been made—which would then contractually give the tenant ownership of the inventory list. If it is done for the tenant rather than just for the landlord, there is therefore a contractual arrangement. Perhaps that could be explored further in Committee. A modest reference check fee could also be appropriate, but who should pay this—the landlord or the prospective tenant? Fees have been banned in Scotland. Shelter says that there is no evidence that this has increased rents, although it has to be said that the suggestion worries some in the industry in England.

I return to the subject of electrical safety, which I mentioned in my opening remarks. On 3 June, my honourable friend Tom Brake in the other place asked the Secretary of State for Communities and Local Government,

"when he plans to bring forward regulations on the testing of electrical installations in rental properties".

Yesterday we on these Benches gave the Minister notice of the following question, and when he sums up we would like to hear what progress has been made. Electrical Safety First received a letter from the noble Baroness, Lady Williams, explaining the Government's amendment just after the Bill received Royal Assent. That encouraged the organisation to continue correspondence with the DCLG at an official level. Since then, however, it has had no response to its queries on the state of play concerning the regulations or to its offer to help draft them. It is asking two things: first, when the work on the regulations will start—a reasonable request—and, secondly, what the Government now think about mandatory checks, given the "may" not "must" issue, to which I have already referred.

Electrical Safety First has decided to push ahead with drafting its own regulations on this and will present them to DCLG. The Scottish model for this has been law since December of last year and this matter should not just be put—if noble Lords will excuse the expression—on the back burner.

I trust that the Minister will agree that no one, regardless of age, income or where they live, should be put at risk of electrical faults in their home. There is also concern that amendments made during the passage of the Housing and Planning Bill to include electrical safety checks are to be introduced through regulations. Will any regulations that are brought forward make electrical safety checks mandatory every five years or thereabouts? Very often a tenant believes that because checks are mandatory for gas, electrical checks are also mandatory, but they are not.

My noble friend quite rightly ended, according to the protocols of this House, with the words "I beg to move". When considering the Bill, noble Lords need to know that renters more often "beg to stay"—they cannot afford to move. I support the Bill.

12.37 pm

The Lord Bishop of Derby: My Lords, I too wish to offer some thoughts about the importance of the issues raised by the Bill and the sense of direction in which it seeks to travel.

First, I note the point made by the noble Lord, Lord Palmer, regarding a definition of so-called "rogue" landlords. The Housing and Planning Act has introduced a database of rogue landlords and property agents, which is to be made available to local authorities so that they can check for compliance, but there is a question over whether tenants should have access to that kind of information.

I recognise that there may be some reluctance by the Government to demonise landlords who may be on a register for relatively minor issues, and it might be important to consider some kind of two-tier system so that anonymity is lost at the point of conviction. If a landlord were convicted of a serious banning order offence, for instance, it would seem very proper that any would-be tenant should know that that was part of the hinterland, whereas if there had been a fine for a more minor offence, that might not require to be so readily available in the public domain. We could think imaginatively about the degree of seriousness of malpractice and making very serious malpractice available as a matter of right to would-be tenants.

I have a second thought about Clause 2 and the issue of so-called letting fees. It seems to me that the major point, as stressed by the noble Baroness, Lady Grender, is that, very often, we are talking about extremely vulnerable people in vulnerable situations with very limited resources. It is a matter of balance between recognising the legitimate costs of letting agencies and needing to charge for that, and not subjecting people to unpredictable and often unaffordable fees.

I also read the report on the Scottish system and the fact that the withdrawal of fees there does not seem to have raised rents, according to Shelter's research. However, if there is a case for a fee, it would help the folk involved if it was a fixed fee of a modest nature, rather than a fee that seems to go up and down. Two weeks ago, one of my colleagues in the diocese where I work wanted to secure a property and was asked to pay £380 just to be able to go and view it. As the noble Baroness, Lady Grender, said, the variety of fees is unacceptable. The Government should look at what has happened in Scotland and perhaps consider not allowing that particular fee. And, if it is allowed, it needs to be controllable, predictable and modest.

My third point is about the clause that deals with mandatory electrical safety checks, which the noble Lord, Lord Palmer, has just mentioned. It seems strange to those of us who are not experts that gas checks are mandatory but electrical safety checks are not. Currently, there are about 70 deaths a year involving electricity and only 18 involving gas. Therefore, the risk is equally, if not more, substantial. If there is a proper case for mandatory gas checks, I hope that the "may" will go in the direction of "must". We are very concerned with proper standards of health and safety, and electricity is a potentially very dangerous factor in homes if it is

[The Lord Bishop of Derby]
not checked and operated with care. A tenant who is paying rent is entitled in their contract to a proper system of mandatory checks and standards.

The proposals in the Bill are very worthwhile and I endorse them warmly. I hope that the Government will look very seriously at the rights of a tenant to know whether a prospective landlord has had a serious conviction and to have a predictable and low letting fee—or perhaps the Scottish system could be looked at. The Government must take very seriously the dangers of electricity and I hope that we can pursue making that check mandatory.

12.43 pm

Lord Foster of Bath (LD): My Lords, like others who have spoken, I am delighted to support my noble friend's Renters' Rights Bill. It builds on the work done by Liberal Democrats and others during the coalition to improve renters' rights. Measures at that time included protections for renters against "revenge evictions", so that landlords could not simply evict a tenant because, for instance, they had asked for an electrical safety check to be carried out. Also introduced was a new model tenancy agreement giving tenants a much clearer guide to what should be included in a rental contract. There was also the £1 billion investment in the Build to Rent fund to provide equity finance for purpose-built private rented accommodation. After all, we all acknowledge that, if we want to reduce rents, the very best thing that we can do is have more properties made available. The measures also included £4.1 million to tackle rogue landlords and £2.6 million to tackle "beds in sheds". They also introduced something that I thought was very important at the time: new requirements on the energy efficiency standards of private rented accommodation.

That work started to address one of the issues raised in my noble friend's Bill, which the right reverend Prelate and others referred to: fees. At that time, transparency regulations were brought in for letting agent fees requiring agents to publish their fees on their website and in their main offices so that consumers had an opportunity to complain and seek compensation if agents' fees were not transparent and they were hit by an unexpected fee.

All these actions were a very good start in giving more rights to renters. I am the first to acknowledge that further improvements have come, not least in relation to rogue landlords, in the Housing and Planning Act, which we recently debated in your Lordships' House. However, more can be done, and my noble friend's Bill is a move to achieve just that.

As I said, the Housing and Planning Act has made further improvements in relation to rogue landlords. However, as my noble friend Lady Grender said in her opening remarks, it stops short of giving real powers to renters. That is why, during the passage of the Bill, my noble friends and I argued that the register of rogue landlords should be available to potential renters so that they can identify rogue landlords and letting agents and protect themselves from taking on a new tenancy with a landlord, or through an agency, who, based on past actions, may well cause them problems.

After all—this relates to the questions asked by the right reverend Prelate—it is worth remembering that people who are on that register have already been identified by local authorities as either banned, convicted of housing offences or issued with two civil penalties relating to housing, which are all quite serious reasons to be on the register. These are the very people whom renters need to know about to avoid choosing them and being caused significant misery by them in the future.

Clause 1 empowers renters so that they are better equipped to identify rogues and limit the risk of being exploited. The noble Baroness, Lady Gardner of Parkes, asked the obvious question: what is this going to cost and who is going to pay for it? I remind her that during the passage of the Housing and Planning Bill we agreed to the establishment of a database. I assume—the Minister will perhaps confirm it—that the cost of this will be covered by government funding to local councils through the new burdens principle, so the only additional cost would be the modest one of making the register available to rather more people than is currently planned. I do not think that a significant cost would accrue from that.

There are other very good reasons why the measure should be welcomed. First, the ability of a tenant to discover more about a landlord or letting agent's history would serve as a deterrent to those who attempt to operate with low standards. Secondly, as my noble friend pointed out, it would right an imbalance, because at present a landlord can obtain a lot of information about a potential tenant and whether to accept them, but the reverse simply does not apply—a prospective tenant cannot get the information about a landlord. Clause 1 would balance the situation.

Clause 3 on electrical safety checks is also important, as is Clause 4, which prevents rogue landlords gaining a house-in-multiple-occupation licence, but I believe that Clause 2 is by far and away the most important. As we have heard, this measure has already been accepted in Scotland, where the charging of fees to tenants by letting agents has been outlawed, and we should do the same in England.

I mentioned earlier the requirement that letting agents publish information—the transparency rule that has already come in. When that measure was introduced in 2015, Liberal Democrats argued with Conservative colleagues in the coalition that we should go further, but the Conservatives argued—and they put a good case—that all we needed was transparency and "the market" would then sort out the problem of sky-high fees. Yet, to date, that "transparency" has not brought about any significant change. My noble friend Lady Grender has already given many examples of rip-off fees being charged. I was particularly taken with the example that she referred to, since it came from near my old constituency of Bath. It was of Cherie, who said, "Just moved into a rented property near Bath. Paid £300 just for a credit check. Ridiculous. You can do a credit check yourself for just £20 online". There is huge variation in fees around the country and within different localities, which demonstrates just how arbitrary

they are. There is not the predictability that the right reverend Prelate referred to, and people simply do not know.

A further point, which has not yet been referred to, is that it appears that the requirements of existing legislation are simply not being adhered to anyway. Some excellent work is being done by the Association of Residential Letting Agents, which constantly reminds its members of the importance of the transparency law. It has even gone so far as to provide some helpful templates for agents to use to make the process easy, yet all the research that has been carried out by various groups indicates that in many cases agents are simply not abiding by the law.

Last October, a campaign group in Brighton and Hove found that 80% of letting agents in its area were in breach of the law, as were 35 agencies in Tower Hamlets. The organisation Generation Rent, which has researched 720 agency websites, has found that 96 have no fees published and that 240 do not list, as they should, which redress scheme they belong to. A *Guardian* reporter recently looked at highly-respected letting agencies and found that, even where fees appear somewhere, they are often buried within websites and do not meet the requirement of being prominently displayed. I would be interested to hear from the Minister what action the Government are taking in light of the fact that many agencies are not even abiding by the transparency requirements of the 2015 legislation.

More importantly, it is increasingly clear that, because so few properties are available to renters, even if all the data were made clear and transparent, renters would not have much choice. They could not do anything with the data. We simply have a supply-and-demand problem; there is no choice, so very often renters are forced to take the hit of those exorbitant fees, whether they like it or not, simply so that they can have a roof over their head. The market will not fix it, so the Government have to do so. I do not believe, as the then Housing Minister, Kris Hopkins, said in 2015, that the measure would be a gimmick leading to rocketing prices and rocketing rents. As my noble friend said, the evidence in Scotland is clear; even though fees have been abolished, there has been no huge hike in rents. Like my noble friend and others, I accept that there are some legitimate, limited costs—for example, the check-in inventory, which is very important because it gives protection to both landlord and tenant—but it is quite clear that if those costs were added in small amounts to the monthly rent, it would not lead to a huge increase in the rent and for many would be far better than taking a huge hit at a time when they are most vulnerable and trying to get a roof over their head.

This is a small but important Bill that will build on work already done. It will further improve the rights of tenants, and I hope that it will have the support of your Lordships' House.

12.54 pm

Lord Kennedy of Southwark (Lab): My Lords, I refer the House to my registered interests and declare that I am an elected councillor of the London Borough of Lewisham.

I join other noble Lords in congratulating the noble Baroness, Lady Grender, on securing her Private Member's Bill so high up in the ballot. It is an excellent Bill which these Benches fully support. We wish it well as it begins its journey through this House.

The issues in the Bill will be familiar to noble Lords. They occupied a considerable amount of time when we debated the Housing and Planning Act in the last Session. During those discussions we were unable to persuade the Government of the merits of all the areas covered by the Bill and it is fortunate that we can return to them so soon.

The first part of the Bill seeks to give private renters access to the database of rogue landlords and property agents. It is a welcome provision but the Government have resisted it. The database contains a list of people identified by the local authorities as either banned, convicted of housing offences or issued with two civil penalties relating to housing. Local authorities can access the database and use it to more effectively monitor those at risk of breaking the law. By allowing prospective tenants access to the database, they can check if the landlord from whom they are considering renting is on the list. The landlords would know that prospective tenants could check to see if they were on the list, and that could serve as a deterrent. It could also help drive up standards as landlords would not want to be on the list in the first place. It is disappointing that the Government have not accepted this, but with this Bill they have the opportunity to look at the matter again.

The next section of the Bill seeks to end certain fees that letting agents charge tenants. These fees add hundreds of pounds to the cost of moving home and they are not fair. As we have heard, the tenant is the customer of the landlord and pays rent, while the landlord is the letting agent's customer and pays various fees. To seek to levy further charges on the tenant as well is not fair. The fees that tenants are charged are listed in the Bill. Moving home is expensive and these unnecessary charges can add hundreds of pounds to the bill at the start when tenants do not have much money.

The third part of the Bill strengthens the Housing and Planning Act. Progress was made on the question of mandatory electrical safety checks, and that is welcome, but this Bill strengthens the measures further through the replacement of the word "may" with "must" and makes the checks mandatory every five years. When we last discussed these matters the Government said that they were going to introduce these checks and I hope that the noble Viscount will confirm that today. Given that expressed intention, it is surprising that the Government have been so resistant to having the word "must" in the Housing and Planning Act.

Privately rented homes and those built before 1919 are more likely to have a higher risk of fire. The figures are stark: 350,000 people injured through contact with electricity, around 70 people killed and approximately 20,000 house fires every year; and there are around 300 injuries and approximately 18 deaths each year from carbon monoxide poisoning, gas leaks, fires and explosions. The evidence is there for all to see. There is

[Lord Kennedy of Southwark]
support from a range of organisations and we need to make clear that this important safety check has to be carried out.

The final provision relates to houses in multiple occupation. It prevents a landlord from being granted an HMO licence if they are on the database of rogue landlords. Tenants who live in houses of multiple occupation are often some the most vulnerable people and the Government should support this measure to prevent rogue landlords from getting a licence to operate in such premises. This, again, was resisted when it was suggested during the passage of the Housing and Planning Act. I do not understand the Government's resistance to this measure. Perhaps the noble Viscount will explain the reason for it when he responds to the debate.

This Bill is most welcome. It has the full support of noble Lords on these Benches and we wish it every success in its passage through your Lordships' House.

12.58 pm

Viscount Younger of Leckie (Con): My Lords, I thank the noble Baroness, Lady Grender, for setting out the purpose of her Bill about the rights of renters. I know she is concerned about this issue and I congratulate her on bringing the Bill before this House.

The noble Baroness may not be surprised to hear that the Government have some reservations about the Bill, some of which have been raised already by noble Lords, and I would like to explain these for the benefit of the House. I have listened carefully to the debate. Of course, many of these issues were discussed at some length during the passage of the Housing and Planning Act, as the noble Lord, Lord Kennedy, has stated. I welcome the opportunity to debate these issues further and offer clarification where I am able to do so, and of course to answer a number of questions that have been raised.

The Housing and Planning Act 2016, recently before this House, introduces a strong package of measures that will enable local authorities to do more to improve standards in the sector and ensure that rogue landlords are forced to either improve or leave the sector. Measures include establishing a database of rogue landlords and property agents, for the first time introducing banning orders for the most prolific offenders, as well as enabling powers on electrical safety and client money protection.

The Bill before us contains five clauses, although for the sake of avoiding too much bureaucracy I shall leave out the fifth clause on the Short Title at the end. The first clause provides for tenants to have access to the database of rogue landlords and property agents. As the Government explained when introducing provisions for the database in the Housing and Planning Act, the purpose of the database is to allow local authorities to use the information to protect tenants, targeting enforcement action and promoting compliance. Giving tenants or potential tenants access to the database might be fine if the purpose of the database was to blacklist landlords and drive them out of business. However, that is not the purpose of the database. Where a landlord should not be in business, the local authority should apply for a banning order.

The proposed database is primarily for the purpose of ensuring that those landlords and property agents who have committed banning order offences can be monitored by local authorities to ensure future compliance with the law. It also ensures that where necessary those authorities can target enforcement against them. The database will help local authorities to drive up standards in their areas and ensure that those landlords entered on to it raise their game, so that their properties are safe and well managed for the benefit of tenants.

My noble friend Lady Evans, who is not in her place today, made a good analogy during the Report stage of the Housing and Planning Act that I should like to use. Rather similar to penalty points on a driving licence, a person will remain on the database for a specified period—a minimum of two years. Also like someone who has incurred penalty points, continuing to breach the law may result in a ban. While it is important that people who commit banning order offences should be liable to be monitored through their entry on to the database, this does not mean that the public at large should have a right to know about those offences, especially if they are not so serious as to warrant the local authority immediately seeking a banning order. Again there is an analogy with driving offences because there is no right for the public at large to know whether a person has received penalty points on their licence. The information on the database will relate to criminal records and is highly sensitive. Releasing this information to tenants or prospective tenants could jeopardise individuals' rights to privacy and cause unnecessary anguish. I have heard noble Lords' strength of feeling about this, but it is right that a tribunal should consider the evidence and decide whether a ban is appropriate. A tribunal will look at the seriousness of the offence, which can vary considerably, as noble Lords will be aware, as well as evidence of the likelihood of reoffending. This is the appropriate route for a ban, not effectively blacklisting landlords by publicising their convictions.

I move on to Clause 2, to which most of the comments of the noble Baroness, Lady Grender, were addressed. This concerns banning letting agent fees. The Government are clear that the vast majority of letting agents provide a good service to tenants and landlords and that most fees charged reflect genuine business costs. I note that the noble Baroness did acknowledge this briefly in her comments. I do not believe that a blanket ban on letting agent fees is the answer to tackling the small minority of rogue letting agents who exploit their customers by imposing inflated fees for their service. However, I did listen carefully because several examples were highlighted by the noble Baroness. It is true that there are such examples around and I do not want to dismiss them.

While landlords and letting agents are free to set their own charges, under existing consumer protection legislation they are prohibited from setting unfair terms or fees. The noble Lord, Lord Palmer of Childs Hill, went into more detail on this, for which I am grateful. However, we have gone further through the Consumer Rights Act 2015 by requiring letting agents to publicise a full tariff of their fees, and by saying whether or not they are a member of a client money protection scheme and of which redress scheme they

are a member. These details must be displayed prominently in their offices and on their websites, and for the first time a fine of up to £5,000 has been introduced for agents who fail to do this.

I have taken note of the comments raised by the noble Baroness, Lady Grender, and the noble Lord, Lord Foster, and in particular by the right reverend Prelate the Bishop of Derby, all of whom alluded to the experience in Scotland. As mentioned, the Scottish Government clarified rent laws a little while ago in 2012, banning any letting agents' fees beyond rent and a refundable deposit. I believe this was raised by the right reverend Prelate, but the research conducted by Shelter since this clarification suggests that only 18% of letting agency managers believe that the enforcement or penalty measures for non-compliance were robust enough. In August 2015, Shelter Scotland reported that around 1,500 people have tried to reclaim nearly £250,000 since the law was clarified. Its research suggests that around 10% of letting agencies do not comply with the ban. We should take note of that. The right reverend Prelate suggested that the fee should be predictable and ideally moderate. I acknowledge that. He also suggested the possibility of a fixed fee and the House should take note of that. My overall conclusion, however, is that the Scottish experience may not be a panacea for the way forward.

The Government want to strengthen the hand of consumers to tackle the minority of agents who offer a poor service and engage in unacceptable practices. Since 1 October 2014, it has been a legal requirement for letting and managing agents in England to belong to one of the three government-approved redress schemes, which offer a clear route for landlords and tenants to pursue complaints, to weed out the so-called cowboys who give agents a bad name, and, of course, to drive up standards, which we all want.

Banning letting agent fees would not make renting any cheaper for tenants. Tenants would still end up paying, but through higher rents. That is why the Government believe that ensuring full transparency is the best approach, by requiring letting agents to publicise a full tariff of their fees, giving consumers the information that they want and supporting the majority of reputable letting agents. Such transparency will help to deter double charging by letting agents—my noble friend Lady Gardner alluded to this issue—and enable tenants and landlords to shop around, encouraging agents to offer competitive fees. I also took note of the comments made by my noble friend Lady Gardner about the Australian experience. If I read her correctly, this is the opportunity for consumers to go and buy a generic agreement in an Australian post office. I thought the costs rather high, but my maths might be bad in trying to convert Australian dollars to the UK. I hope my noble friend will forgive me. However, and this might help answer the question raised by the noble Lord, Lord Foster, we still believe that it is too early to say how successful these measures are. They need time to bed in and the Government have committed to reviewing the impact of letting agent fee transparency later this year.

Clause 3 is an important clause on electrical safety. After listening to the strength of support from the sector, and in this House during the passage of the Housing and Planning Act, the Government now have an enabling power to allow and enforce requirements to protect private sector tenants from electrical hazards in the home. I remind noble Lords that this is secondary legislation subject to the affirmative procedure. This is a very important issue and the Government are committed to ensuring that private sector tenants are protected. However, it is also a highly technical area and we need more time to explore appropriate options with the relevant experts in the sector to test the most effective approach. We plan to conclude further research as soon as possible, but we must ensure we take sufficient time to work with the sector so that any requirements are properly assessed. However, we are mindful of the need to ensure any requirements are beneficial and strike that important balance between protecting tenants and not overburdening the sector.

I took note of the comments raised by the noble Lord, Lord Palmer of Childs Hill, and I thank the noble Baroness, Lady Grender, for writing to me on electrical safety in advance of the debate. I reassure the House that officials have spoken to Electrical Safety First, following a letter written by my noble friend Lady Williams of Trafford. We will be in touch in due course. In other words, there is something happening, but we want to involve industry experts in ensuring detailed options. Electrical Safety First is one of the key stakeholders we will involve.

Before I address some questions that were raised, I turn to Clause 4 on the licensing of houses in multiple occupancy, so-called HMOs. Local authorities fully consider the past behaviour of landlords and agents who apply for a licence for an HMO. A local authority is already required to have regard to a range of factors when deciding whether to grant a licence under the Housing Act 2004. These include: whether the applicant has committed any offence involving fraud or other dishonesty, violence or drugs, or certain serious sexual offences; whether they have practised unlawful discrimination; or whether they have contravened any provision of the law relating to housing or of landlord and tenant law. These factors would be likely to include all the offences leading to inclusion in the database.

The database will be a key source of information for local authorities when taking decisions on whether to grant a licence. These safeguards are important as it is clearly essential that the local authority can be confident that a licence is granted only to a landlord or agent who is a fit and proper person to operate a house in multiple occupancy, or a property subject to selective licensing, and will not pose a risk to the health and safety of their tenants, many of whom may be vulnerable. That issue was raised earlier in the debate. It is right that local authorities use the information on the database and other evidence to take a decision that reflects all the individual circumstances, rather than requiring a blanket ban. A blanket ban might have unintended consequences. For instance, it could mean that local authorities include landlords on the database for a shorter period, reducing its longer-term effectiveness.

Focusing on that issue of vulnerable tenants, the noble Baroness, Lady Grender, may like to note—this is not any form of complacency on our part; it is just a

[Viscount Younger of Leckie]
fact to present to her—that 82% of private renters are satisfied in their accommodation and 78% of private renters moving in the last three years ended their tenancies due to their wish to move, not for any other particular reason. Clearly there is more to do but that is just of interest.

The noble Lord, Lord Palmer of Childs Hill, raised briefly the issue of the definition of a rogue landlord. Anticipating that this question might crop up, I reverted to *Hansard* because my noble friend Lady Williams was asked this as a Written Question. I can only repeat what she said, which to me sounds quite plausible. She said:

"The term 'rogue landlord' is widely understood in the lettings industry to describe a landlord who knowingly flouts their obligations by renting out unsafe and substandard accommodation to tenants, many of whom may be vulnerable".

That is not the definition but it is a definition, and I hope it can be built upon.

The noble Lord also asked what we think about mandatory electrical safety checks, which comes to the core of Clause 3. Any regulations introduced must balance protecting tenants with not overburdening the sector. That is why we are taking time to explore the appropriate options with experts in the sector. It would not be appropriate to pre-empt the results of our planned further research. That takes account of what the noble Lord said earlier on whether electrical checks should take place every five years. Maybe that should be four or three, but these issues take time to work through. We realise that we should expedite this as soon as we can. He also asked when the work on introducing regulations would start. We are already making arrangements to set up a working group to explore the appropriate options with experts in the sector. That group is expected to meet later this summer.

My noble friend Lady Gardner of Parkes and the noble Lord, Lord Foster, asked about the cost of the database. Local authorities will be able to keep charges for civil penalties and use them for housing-related purposes. We are working with the stakeholders to develop this database on that basis. We have said that we will keep this under review. We will keep in touch with the noble Lord, Lord Foster, on that particular point.

The noble Lord also raised the issue of letting agent transparency, some of which I perhaps covered earlier, and the fact that the fees legislation is simply not working, as he put it rather succinctly. The regulations are enforced by local authorities, which are able to recoup fines from successful prosecutions and can use them to carry out their housing functions. We think this acts as an incentive to enforce the regulations. The maximum fine is set, as I said earlier, at £5,000.

I hope that I have covered all, or nearly all, the questions that were raised. If not, I will be very happy to write to noble Lords. In closing, I applaud the principles behind the Bill. I have much appreciated discussing these matters further so soon after the passage of the Housing and Planning Act. However, as noble Lords will expect, I express my reservations given the measures recently passed by this House during the passage of that Act. We need to allow time for many of these measures to bed in and take effect.

1.14 pm

Baroness Grender: My Lords, I thank all noble Lords who have participated in this debate, particularly the Minister. This Second Reading on the Bill occupies the third slot on a Friday and I much appreciate his contribution. I greatly admire the noble Baroness, Lady Gardner of Parkes, who is a champion of leaseholder rights, and I wish her more power to her elbow as she continues to seek clarification on the mess here. Australia sounds very interesting in that respect. I quite agree with her that this issue needs considered thought and piloting, although I believe that we have a very strong pilot. Scotland has always been reluctant to pilot certain things for the United Kingdom, but there has been a highly effective pilot in this case. I will come back to that.

The noble Baroness also raised the issue of rent. I do not want us to go too far down a cul-de-sac on this. She is right that rents may not come down, but the overall cost of renting will. I emphasise again that the biggest point I want to convey to the Government is the financial shock at the beginning of a tenancy, which is almost unaffordable for a lot of people. As I said earlier, the poorest 17% have to decide whether to eat or heat their premises after paying some of these exorbitant and, I believe, still very arbitrary, sums.

I turn to the ability to complain about an inventory that is not forthcoming and the ability to shop around to avoid slippery letting agents. I can shop around for a landlord and for the area where I am going to live. I can shop around for the rent and the deposit. However, the letting agent is imposed on me, because that is the landlord's decision. The arbitrary sums they may charge are also imposed on me. The Property Ombudsman may fulfil many of the roles to which the noble Baroness referred, but complaints in this area have gone up substantially. That may be a sign of its success as an organisation, but it is also a sign that people are making complaints. Surveys by organisations such as Citizens Advice reveal that a lot of people do not know that they have that opportunity to complain. We are all familiar with that conundrum in public policy. I thank the noble Baroness for her support for the Bill. We can tease out and examine some of these areas. I completely agree, for example, that an inventory is a really important document that enables a landlord to check what remains in a property when a tenant moves out. However, it is perfectly possible for the letting agent to charge the landlord for that.

I thank the noble Lord, Lord Palmer, the noble Lord, Lord Tope, who is now in his place, and the noble Baroness, Lady Hayter, for their continued resilience in campaigning on the deposits issue and on electrical safety checks. We think that the little word "must" would be a very good thing to include. The Minister said that the DCLG has now contacted Electrical Safety First. I will work on an assumption that that took place in the last 24 hours, unless he indicates otherwise. He nods assent, so I assume that is correct. It is good that this debate has generated that kind of involvement, because there has been a very clear promise to work with Electrical Safety First. That body is very keen to get shifting and to help out in this area, so that is good news.

I thank the right reverend Prelate the Bishop of Derby for his comments. Like him, I have heard stories about landlords everywhere charging people £380 for the pleasure of viewing a property, with the implication that they may or may not take that person on as a tenant. We are not plucking these arbitrary sums out of the air—they actually exist. If anything, the sums are arbitrary on the part of these letting agencies, which think that they can get away with this.

He has also asked whether we can explore the impact with regard to rogue landlords—a definition, by the way, that I never want to debate again. I was here for the original debate; I thought that it was ridiculous and I do not want to participate in any debate of that nature. For me, they are rogue landlords and I completely agree with everything that the Minister at the time said. I am very clear on that; let us never debate it again. But we do need to explore this and Committee stage is the perfect opportunity to do so.

I thank my noble friend Lord Foster for describing some of the achievements that were made under the previous Government; revenge evictions were an excellent example. I have a friend who made a complaint about her landlord and was then taken down a very nasty route. This is an incredibly important issue. You are so powerless in that situation; if you are on a very low income, you cannot shop around and you cannot make a choice, yet you have a landlord who is making your life almost impossible—and, for my friend, that was with two young schoolchildren who needed to be near their school. I am delighted that revenge evictions are now outlawed.

Regarding the transparency issue, I refer to some research done by Citizens Advice. It asked some of these questions, now that we do have transparency and are trying to go down that route. The vast majority of agents, even when asked, do not supply financial information. It is correct that complaints should be made about that and there is a simple, straightforward way to deal with this. I have already described a very large, residential private sector landlord who said that they employ only letting agencies which do not charge a fee to tenants. As a private sector, residential landlord, they expect to pay a fee and they expect it to be transparent. They can negotiate, shop around and make a decision about which reputable letting agents to use. The tenant has no power and no choice in that matter—that is the most important principle that I would like to convey. Given that there are 4.4 million—and increasing—customers in this market, it is also the particular area that I think the Government would do well to take another look at to see whether there is potential for change. I thank the noble Lord, Lord Kennedy, for his support in all these areas. I share his surprise that a little word such as "must" is not included regarding electoral checks. This is an excellent opportunity, with a very small four-clause Bill, to look at some of these issues, especially on landlords and letting agents.

With regard to what the Minister said about signing up and the database, I hope that in Committee we will be able to explore in more detail how a database could be accessed. It does not mean that you know where a person lives, who their children are or any of that kind of detail, but you might know that there is a traffic light scoring for that person and, at the moment, they have a red light. It might be as simple as that. The friend of mine who had very substantial issues with her landlord cannot for the life of her understand why it is not possible to get a reference check on a landlord, given the experience that she went through. As I said before—I do not think that there was a response on this—if it is possible that employers who flout the national minimum wage legislation can be included on an open register, it must be possible to explore this for landlords.

On Clause 2, regarding what was said about transparency, in the Citizens Advice survey, 81% of agents' offices are not publishing full information about their fees. I agree—we could all go to the Property Ombudsman and make a complaint about every single one of these examples. But there is a very simple solution: no letting agent fees to tenants and the costs absorbed by landlords.

Why was there no impact in Scotland? Why was there no substantial increase in rents? Why was there no substantial problem with the letting agency industry, which, by the way, is an entirely uncredited and unqualified industry, and pretty much unregulated? It is the difference between £25 and £150. It is thin air. Will it have an impact on letting agencies? At the moment it costs them only £25 to do a credit check and they charge £150 for it. No, because it is such a mark-up. That explains why in Scotland, according to the research from Shelter, there has been no hike in rents, no reduction in the letting agency sector and no increased costs to landlords as a result of this. The difference seems to be because the sum is so arbitrary.

I know that there was some talk about fixed costs. My understanding, having read up in this area, is that under trading standards that is a little bit complicated. Again, I am happy to explore that but I think in a free market and under trading standards fixed costs in this area might go against some of the other things that the Government may hold dear. It would be worth making sure that we are clear in that area.

In conclusion, this is a very simple single principle that I am pushing here with regard to the letting agents. It is perfectly possible to do. The impact is minimal, if not non-existent, where it has been done before in Scotland. It is worth very serious consideration by this House. There is very little that we can do about some of the more significant housing issues but this is something that with a very small change in legislation we can implement and make a massive change. As I said at the outset, the substantial up-front costs of moving for people who have very limited resources are what we need to focus on when we are considering this Bill.

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

House adjourned at 1.27 pm.

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