Vol. 793
No. 187

Wednesday
10 October 2018

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
https://hansard.parliament.uk/lords/2018-10-10

The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

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

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Wednesday 10 October 2018

3 pm

Prayers—read by the Lord Bishop of Newcastle.

Oaths and Affirmations

3.05 pm

Lord Wills made the solemn affirmation, and signed an undertaking to abide by the Code of Conduct.

Infrastructure and Projects Authority

Question

3.06 pm

Asked by ***Lord Berkeley***

To ask Her Majesty's Government what action ministers are expected to take when they receive adverse reports on costs or progress from the Infrastructure and Projects Authority.

Lord Young of Cookham (Con): My Lords, the Infrastructure and Projects Authority provides confidential and independent reviews of major projects being delivered by government departments. While primarily aimed at project leaders, Ministers monitor delivery confidence in projects and intervene where necessary.

Lord Berkeley (Lab): I am very grateful to the Minister for that Answer. Is he aware that the two departments with the biggest spend on the Infrastructure and Projects Authority list are the MoD and Department for Transport, with about £130 billion each? HS2 is by far the biggest project on the Department for Transport's list. In my book, it is coming up to between £50 billion and £100 billion. The IPA's red/amber/green traffic light analysis on HS2 says that for six years it has been amber/red, which means:

"Successful delivery of the project is in doubt, with major risks or issues apparent … Urgent action is needed to address these problems and/or assess whether resolution is feasible".

What have the Government been doing over the last six years with HS2 being at amber/red? Did they talk to the Department for Transport and what was its answer?

Lord Young of Cookham: I am grateful to the noble Lord for trailing his supplementary question in the *House* magazine. To put this into context, the IPA was formed in 2015 to help the Government to deliver critical national infrastructure projects. It does this by commissioning independent reviews, which the noble Lord referred to. It then gives a rating to the relevant projects. Those ratings are taken very seriously, as I said in my initial reply, by the project leaders in the departments and by Ministers, who take action when necessary. After the rating has been allocated to a particular project, the IPA and the relevant department have an ongoing dialogue to ensure that milestones are met and that projects meet their commitments. The noble Lord mentioned £50 billion. That is not a figure that the department recognises. The estimate is roughly half that.

Lord Harris of Haringey (Lab): My Lords, the noble Lord has given a very interesting answer, but he did not address the central question that my noble friend asked: what did Ministers do in response to those red/amber ratings in this case?

Lord Young of Cookham: As I said in my initial reply, the reviews are primarily aimed at the project leaders. They give them advice on how to identify risks and take mitigating action to ensure that those risks are circumvented to ensure that the project hits the relevant milestones. There might be occasions when Ministers have to intervene, for example, if some legislative change is needed or if fresh estimates and more money are required from the Treasury, but for the most part the reviews are aimed not at Ministers but at departmental leaders. As someone who has been a Minister, if I was in charge of a project that had a red tag attached to it by the IPA, I would take a very close interest in its progress and make sure that it was delivered.

Baroness Kramer (LD): My Lords, I suggest to the Minister that if he were in charge of a project and he saw an amber/red, he would find within his department very few resources with the kind of expertise, training and coalface experience to be able to come to grips with these large, complex and high-risk projects. Will he take back to the Government the need to completely relook at resources and staffing against these projects? It is not the standard civil servant, nor the management consultants who are required; it is hard-bitten folk with real experience of the relevant industries, and the Government should start to put that rapidly in place.

Lord Young of Cookham: The noble Baroness raises a very important issue. If she looks at the annual report of the IPA, she will see the action it is taking in order to make sure that the Civil Service has exactly the skills and resources it needs. There is a fast-stream process and it is recruiting graduates and providing leadership programmes in order to ensure that the Civil Service does indeed have the capacity to manage these very large and costly projects.

Lord Lamont of Lerwick (Con): If my noble friend's reply to the noble Lord, Lord Harris, is that this signalling system, whatever it is called, is for the project managers, then the question perhaps ought to be reformulated: what have the project managers been doing while the lights have been flashing?

Lord Young of Cookham: The project managers are frequently asked to appear before the PAC or the NAO in order to answer precisely those questions. If my noble friend looks at the relevant recent reports of the PAC and the NAO, he will see that they,

"recognise the steps it has taken to strengthen project assurance, improve transparency and introduce project leadership training".

More recently, in a recent report on property acquisitions by the Department for Transport in relation to HS2, the NAO noted that positive steps have been taken,

"to develop capability and provide greater assurance on improving project delivery".

No one would be happier than me if civil servants were to answer this question rather than Ministers.

Lord Grocott (Lab): Does the Minister agree that if any management techniques such as red, amber and green flags were available in the 1830s, the London to Birmingham railway would never have been built and there would have been red flags against pretty much everything? Will he ignore the Jeremiahs and get on with the project of building HS2, which is of huge importance to the West Midlands? It is a clear statement of confidence in the future.

Lord Young of Cookham: I say to the noble Lord that I was around 20 years ago during the gestation of HS1 and precisely the same arguments were adduced against that: it was environmentally unsustainable; it was not value for money; there were other, greater priorities. I do not think that anyone in your Lordships' House today would now argue that we should not have gone ahead with HS1. My own view is that in 20 years' time, or whenever HS2 is complete, the same view will be taken of HS2.

Baroness Smith of Basildon (Lab): The Minister will be aware, of course, of the IFG report entitled *What's Wrong with Infrastructure Decision Making?* produced in 2017. I hope he has had the opportunity to look at its recommendations and will explain to the House which of those recommendations the Government have implemented. Also, when he talks about the skills needed by civil servants, will he accept that in these long-term projects the turnover of project managers is far too frequent? There is a stop–start approach, when what is needed, as well as the skills, is that civil servants, or whoever is in charge, should undertake a project from beginning to end so that we can see some continuity.

Lord Young of Cookham: I concur with that observation. There is a strong argument for having continuity of leadership within departments when you have these projects that run over many years. But as I said a few moments ago, the IPA is seeking to address that problem by building up the skills within the Civil Service with a new leadership programme and other initiatives. But I take the point, and I will feed it back to the IPA and the departments, that continuity within project leadership is essential if these projects are to be delivered within budget and on time.

NHS: Staffing

Question

3.14 pm

Asked by ***Lord Clark of Windermere***

To ask Her Majesty's Government what plans they have to ensure that the National Health Service has sufficient staff following Brexit.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, my department is working with Health Education England, NHS England, the royal colleges and others to make sure that the NHS is able to recruit and retain the staff it needs. Furthermore, we are working with NHS and social care employers to make sure that the 167,000 EU nationals working in health and care can access the EU settlement scheme, which will safeguard their rights to live and work in the United Kingdom.

Lord Clark of Windermere (Lab): My Lords, I thank the Minister for his Answer. Earlier this year he pleased the House by announcing that NHS staff who had worked in the NHS for more than five years would be allowed to remain in Britain under the settled case arrangements. Can he advise the House whether, following the Prime Minister's statement on immigration at the Tory party conference, that remains the case?

Lord O'Shaughnessy: Yes, it is absolutely the case that anybody from the EU who is living and working in this country, not just in NHS and social care, before exit day—or December 2020, the end of the withdrawal period—will be able to apply for settled status. Indeed, if they have not lived here for five years, they will be able to apply for what is called pre-settlement status and then apply after five years.

Lord Hylton (CB): Do the Government have evidence of a rapid turnover of psychiatrists on mental health wards? Are many posts held now by locums and is this affecting the continuity of treatment of patients and the review of their cases? How can the situation be improved?

Lord O'Shaughnessy: I hope the noble Lord will forgive me: I do not know the specific details about psychiatrists. I know that we need to recruit more doctors, which is why there has been an increase in the number of medical training places. There are in fact around 12,000 more doctors in the NHS today than in 2010. We do have a challenge in mental health, which is to recruit not just doctors but nurses and other assistants to make sure that we can deal with the mental health cases that are sadly not being dealt with in a timely manner at the moment.

Baroness Jolly (LD): My Lords, staffing shortages predate Brexit and are across all disciplines and professions. Will the Government consider looking north of the border for a solution to nursing shortages? Scotland has decided to increase the student bursary for nurses, whereas English nurses in training now get no bursary at all. Might an investment in England help attract people to the career of nursing, rather than sending the message to student nurses that they are not valued as much as those in Scotland?

Lord O'Shaughnessy: It is absolutely not the case that they are not valued as much as in Scotland. This country has completely different higher education funding arrangements from those in Scotland. We are taking multiple routes to increase the number of nursing staff in the NHS, including increased funding for clinical places, the nursing apprenticeship route, more retention and bringing nurses back into the profession. We are determined to increase nursing numbers.

Lord Forsyth of Drumlean (Con): My Lords, has my noble friend had the opportunity to read the Economic Affairs Committee report, *Treating Students Fairly*,

which shows that by 2050 the write-off on student loans will be £1.2 trillion? Given that most student nurses are not paid sufficiently to be able to repay most of that money, why not write off the loans for graduate nurses at an early stage in their careers and show a commitment to the health service—and actually save the taxpayer a lot of money 30 years from now?

Lord O'Shaughnessy: I am aware of my noble friend's long-standing interest in this area. It is an issue on which we disagree. I happen to think that the changes to the funding of higher education introduced by a Labour Government and continued by the coalition Government provide a fair distribution of benefit and cost to both the taxpayer and those who benefit from higher education.

Baroness Thornton (Lab): The Minister has reassured the House on several occasions that the NHS will survive Brexit and the staffing will not be affected. However, when the Home Office announced plans in June this year to temporarily exclude doctors and nurses from the annual tier 2 visa gap, it meant that 1,500 applications were turned down. That does not seem to be sending the right message to those doctors and nurses from the European Union who are already here. We know that the BMA found that 77% of EEA doctors stated they would consider leaving the United Kingdom if the Brexit agreement did not suit their purposes—and that is actually about making them feel welcome here.

Lord O'Shaughnessy: I completely agree with the noble Baroness that we want to make them feel welcome. I use this opportunity to state again how much those staff are valued and how much we want them to stay here. What we are doing about it practically is making sure that we communicate with employers and provide the EU settlement scheme—indeed, health and social care workers will take part in the pilot, which will happen later this year. We are sending that message and providing that reassurance. I understand that there is anxiety out there, which is why we want to reassure people, but I am reassured by the fact that there are more people from the EU working in the NHS and CCGs today than there were two years ago.

Baroness Watkins of Tavistock (CB): My Lords, can the Minister comment on whether he will consider abolishing the health immigration surcharge, which non-EU nurses must pay to access NHS care? It is stopping people coming to work here.

Lord O'Shaughnessy: The immigration surcharge, which applies to all people coming to work here from outside the EU, is about making sure that there is a fair contribution to the running costs of the NHS. That is a reasonable thing to do—it is what the public would expect us to do—but it is important to ensure that it is done in a fair and reasonable way, which represents the average costs incurred by people coming from outside the EU.

Baroness Corston (Lab): My Lords, the Minister said in response to one of my colleagues on these Benches that there were 12,000 more doctors now in the National Health Service. Can he tell us how many of them work part time?

Lord O'Shaughnessy: I gave the wrong number: there are actually 14,000 more doctors. I am sure that the noble Baroness would welcome that. I do not have the figures on part-time working but we know, for example, that in general practice there is increasing interest in part-time work. That of course means we need to recruit even more people, which is why it is encouraging that this year there are more GPs in training than ever before.

Brexit: EU Commission

Question

3.22 pm

Asked by ***Lord Dykes***

To ask Her Majesty's Government what assessment they have made of the outcome of their last meeting with the European Union Commission to discuss Brexit.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): Following extensive negotiations, the UK and the EU are close to concluding a withdrawal agreement, which sets out the terms of the UK's orderly exit from the European Union. Negotiations are progressing and we remain confident of a deal this autumn.

Lord Dykes (CB): I thank the Minister for that optimistic Answer, but as these ghastly negotiations proceed it is highly likely that the EU will ask the Government to remain in both the customs union and the single market. Are the Government aware of this and preparing the ground for this event?

Lord Callanan: I am not sure whether I would describe the negotiations as ghastly. We think that they are constructive and we are looking to get a deal, but we have made it clear that we will not be remaining in the single market or the customs union.

Lord Kinnock (Lab): My Lords, was it the confidence of the Government, of which the Minister just spoke, that induced them yesterday to advertise for:

"Resilience Advisers: EU Exit Readiness and Response Support to Local Preparedness",

in the event of a no-deal Brexit? Is that intelligent, prudent anticipation on the Government's part or is it anticipation of utter chaos?

Lord Callanan: It is sensible contingency planning by a responsible Government. As I have said on numerous occasions, we do not want no deal. We hope to negotiate a deal and are working hard to do so, but if we are unsuccessful there will be no deal and we need to make the appropriate preparations. That is presumably why we are advertising these posts and why we published our technical notices.

Lord Garel-Jones (Con): Does my noble friend the Minister agree that in the world of grown-up politics, difficult compromises have to be made on both sides

[Lord Garel-Jones]
of the table? Does it not increasingly look as if those compromises are being made and that we may end up with a deal that will be in the interests of the European Union and this country, while not satisfying the extreme views in the world of childish politics?

Lord Callanan: I agree with my noble friend that compromise is necessary, which is what led to our White Paper proposals. The UK's position has evolved and we have put forward a compromise. It is only right and reasonable to expect that the EU compromises in exchange for that.

Lord Kilclooney (CB): My Lords, is it the Government's intention that the common travel area between the Republic of Ireland and the United Kingdom will continue after Brexit? Will Irish people crossing the border into Northern Ireland—the United Kingdom—be required to present a passport?

Lord Callanan: I think I can answer those questions with yes and no.

Lord Newby (LD): My Lords, in the Statement that the Minister repeated yesterday, the Secretary of State for Exiting the EU said:

"On the future relationship, we continue to make progress … although there is still some way to go".—[*Official Report*, 9/10/18; col. 65.]

Does the Minister therefore now expect a draft statement on the future relationship to be available for the Council meeting next week? If not, when does he expect it?

Lord Callanan: I am afraid I am unable to give a precise timescale at the moment. We are negotiating. At this moment our negotiating teams are meeting in Brussels and we are confident of a deal. As soon as we have one that we can share with the noble Lord, I will be sure to let him know.

Baroness Hayter of Kentish Town (Lab): I note that the Minister continues to use the words "implementation period". Will he now admit that after the end of March we will still be in negotiations and it will be a transition period because negotiations will be carrying on and we will not have the sort of deal that simply needs implementing? Does he agree that in future it is about a transition not an implementation period?

Lord Callanan: No I do not agree with the noble Baroness. It is an implementation period. We expect to agree the withdrawal agreement and the future economic partnership in the next few weeks—in the autumn—and the implementation period will be about implementing that deal.

Lord Bridges of Headley (Con): My Lords, on Monday the Prime Minister's official spokesman said that the Government would seek precision in the future framework—that is, the terms of the relationship between the UK and the EU post 2020. Will my noble friend therefore confirm that the Prime Minister will sign an agreement only if it sets out precisely and clearly the exact terms of trade in goods and services that will exist between the UK and the EU post 2020?

Lord Callanan: Of course I agree with the Prime Minister: we are looking for a precise deal and a precise statement of what the future relationship will be.

Lord Grocott (Lab): My Lords, a couple of hours ago I went to a meeting in this House organised by the National Federation of Fishermen's Organisations and the Scottish Fishermen's Federation, at which a paper was handed to everyone which said that Brexit presents a unique opportunity for Britain's fishing industry and that the great advantage would be that UK policy on fisheries would be determined in the UK. That is a splendid idea; I think it is called taking back control and I wonder whether the Minister agrees?

Lord Callanan: As on so many of these matters, the noble Lord speaks great sense, unlike most of the rest of his party. One of the great advantages of Brexit is that we will leave the common fisheries policy, one of the great environmental disasters of our time. We will be an independent coastal nation and we will determine our own fishing policy in future.

Lord Wigley (PC): Will the Minister address a question raised in the press this morning about a danger to do with lambs and sheep being exported to Europe after Brexit, whether it is a hard or a negotiated Brexit? A logjam in the ports or on the ships may mean that sheep and lambs will be held for days on end in inappropriate circumstances. What are the Government doing to address that?

Lord Callanan: There were concerning reports. All live exports to Europe need to have a journey log approved by the Animal and Plant Health Agency. We would not approve a journey log in the unlikely event of disruption at the borders. Animals would instead be kept on farms or be redirected to abattoirs in the UK.

Lord Davies of Stamford (Lab): My Lords, earlier this year, speaking on behalf of the Government, Mr David Davis said that in their negotiations with the EU the Government were committed to obtaining the exact same benefits that we now enjoy as a full member of the single market and the customs union. Does the phrase "exact same benefits" still represent government policy?

Lord Callanan: We are committed to obtaining the best possible deal for the United Kingdom, and we are negotiating hard to achieve that, as any Government should.

Personal Independence Payment

Question

3.29 pm

Asked by ***Baroness Thomas of Winchester***

To ask Her Majesty's Government what action they are taking to improve Personal Independence Payment assessments in the light of the number of successful appeals.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): Of the 3.5 million decisions made since the personal independence payment was introduced, 9% of all decisions have been

appealed and 4% of all decisions have been successfully appealed. We are committed to making further improvements to the quality of decision-making and have now deployed 150 presenting officers across PIP and ESA to provide valuable insight into why decisions are overturned at tribunal.

Baroness Thomas of Winchester (LD): I thank the Minister for that reply. Maybe that takes us slightly further on, but she will know that the chairman of Scope, who is appealing his own PIP decision, has drawn our attention to the 71% of successful, but expensive, PIP appeals in the first three months of this year. The figure goes up and up. This tallies with the experience of Muscular Dystrophy UK, which reports a huge increase in PIP cases, with many claimants left in real financial hardship, such are the delays in the system. What practical, concrete steps is the department taking to improve the quality of assessments right now?

Baroness Buscombe: I am pleased to say to the noble Baroness that appeals actually reduced by 9% in the last quarter, April to June of this year. We are doing a great deal to try to ensure that we get the decision right the first time. To that end, we have changed the guidance to ensure that those on the highest awards, with needs that will not change or will deteriorate, get an ongoing award; we have made changes to the PIP assessment guide; we have restructured our decision letters to make them easier to understand; we have introduced mental health champions to support assessors who undergo specific training to emphasise the functional effects of mental health conditions; we have launched a series of videos outlining the claim process in a simple and clear way; and, to help to improve trust in the assessment process, we are considering options to video record PIP assessments. We are designing a live-testing pilot, due to begin later this year. I assure all noble Lords that my honourable friend in another place, the Minister for Disability, is constantly looking at ways to improve.

Lord Clark of Windermere (Lab): My Lords, will all those individuals who were assessed for PIP in the months leading up to the judicial interference be reassessed? Will they be informed that they are going to be reassessed, and will they be informed of the outcome?

Baroness Buscombe: The answer to all those questions is simply yes.

Lord Low of Dalston (CB): My Lords, what the Minister says is all very well but she will be aware of the publicity recently given by the chairman of Scope to inconsistencies that he experienced in his assessment for PIP, with different weightings being given to characteristics that had not changed from one assessment to another. What reassurance about the fairness of the system can the Minister give to people like the chairman of Scope, for whom this is an all too common experience?

Baroness Buscombe: I think it is important not to conflate the appeals figures with assessment or decision-making quality. Having said that, we are constantly looking at how we assess the quality of those decisions. On the appeals themselves, oral evidence, which is critical in determining appeal outcomes at tribunal, often greatly assists in drawing out the right evidence more effectively, as the Social Security Advisory Committee has said. New written evidence provided at the hearing that has not previously been seen by decision-makers can make the difference. Also, tribunals sometimes draw a different conclusion based on the same evidence. However, it is important to add that we are talking about nine different possible awards, and each and every one of those is capable of mandatory appeal. It is not so straightforward when people have such individual and complex needs.

Baroness Couttie (Con): My Lords, the Government are clearly putting forward a number of amendments to try to improve the process and payment of PIP. What are they actually doing to make improvements for mental health patients, who might find the system quite complicated and difficult?

Baroness Buscombe: My Lords, there has been a very strong focus, particularly in recent months, on mental health conditions. PIP has a much better understanding of non-physical conditions such as mental health conditions than existed under DLA. Indeed, overall, 65% of PIP recipients whose main disabling condition is a mental health one are getting the enhanced rate of the daily living component, compared to only 22% of mental health recipients under DLA; and 33% of PIP recipients whose main disabling condition is a mental health one are getting the enhanced rate of the mobility component, compared to only 10% of mental health recipients receiving the higher rate of the DLA mobility component. PIP is showing a greater and more generous focus regarding delivery for those with mental health conditions.

Baroness Sherlock (Lab): My Lords, the Minister seems to think that tribunal decision rates do not reflect quality. If 71% of cases are overturned at tribunal—for example, the figure for JSA is only 36%—something has gone badly wrong. The noble Lord, Lord Low, and the noble Baroness, Lady Thomas of Winchester, mentioned the case of the chairman of Scope, who has Parkinson's and incurable prostate cancer. At two subsequent assessments he was awarded 11 points; you need eight to get PIP. At last March's assessment, he got only two. His Parkinson's is progressive and now very severe, and his prostate cancer is incurable. He has described the experience of navigating this as Kafkaesque, complex and unprofessional. I think any noble Lord who has ever spoken to a single person who has navigated this will recognise that. What are the Government going to do about this?

Baroness Buscombe: My Lords, I absolutely hear what the noble Baroness, Lady Sherlock, is saying. But I think it is really important to stress that we genuinely believe the PIP system is working, and it is a vast improvement on the DLA system. It is not perfect and we are constantly looking to improve it, but it is only right that support is targeted at those disabled people who require the most assistance to lead independent lives, and personal independence payment will achieve that. But key to the benefit is a more objective assessment which allows us accurately and consistently to assess

[Baroness Buscombe]
individual needs. We are focusing more on training the assessors and working with champions to support them, to improve the outcomes right from the start.

NHS: Dangerous Waste and Body Parts Disposal

Statement

3.37 pm

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, with the permission of the House I will repeat a response to an Urgent Question on clinical waste, made yesterday by my honourable friend the Minister of State for Health. The Statement is as follows:

"I would like to update the House on clinical waste disposal. As I set out in the WMS this morning, the Environment Agency notified central government on 31 July of an issue concerning clinical waste disposal. The primary concern was that too much waste was being held in a number of waste storage and treatment sites by a contractor, Healthcare Environment Services, HES. This included waste collected from hospitals and other public services. While this waste was stored securely, it was not being disposed of within the correct regulatory timescales.

The Department of Health and Social Care, the NHS, Defra, the Environment Agency and the Cabinet Office have worked together to resolve these issues. Our priority throughout has been to ensure that proper measures were put in place to enable trusts to continue operating as normal. A major part of these contingency plans concerned contractual discussions with HES and other providers, which were commercially sensitive.

Following the Environment Agency's issuing of a partial suspension to HES's Normanton site, NHS Improvement wrote to HES to raise its concerns. NHSI gave HES an opportunity to set out how it was complying with its legal and contractual obligations; HES failed to provide that assurance. As a result, 15 NHS trusts served contract termination notices on Sunday 7 October. In preparation for this step, we negotiated a new contract with Mitie. As contracts with HES were terminated over the weekend, Mitie stepped in, and from Monday morning provided continuing waste collection and incineration across all these organisations. The Environment Agency is continuing its enforcement action against HES. This includes ensuring that excess waste is cleared from non-compliant sites. The Government are working with the Environment Agency and the NHS to ensure that lessons are learned, and we are reviewing how contracts will be awarded in future.

I have updated the House on this situation today, as new contracts have been signed following the conclusion of this commercially sensitive process. Throughout, our priority has been to ensure that measures are put in place so that the NHS can continue operating as normal. No gap in service provision has been reported, and we are working to ensure that this remains the case".

3.40 pm

Baroness Thornton (Lab): I thank the Minister for that Answer, but at the heart of this rather horrible matter is the issue of contracting out our important NHS services, and a lack of accountability. Does the Minister agree that contracting out and subcontracting any NHS function does not absolve the commissioner of responsibility and the need to monitor and seek assurance that the contract is being delivered according to the contract, which presumably in this case involved proper and legal disposal. So where was the monitoring and the assurance to the commissioner that allowed that to happen? It seems to have failed comprehensively. Does that not suggest that this service, which is so crucial, should be delivered in-house? What we see here is a massive market failure, and indeed a massive regulatory failure.

Secondly, my right honourable friend Yvette Cooper asked in the Commons whether the Minister accepted that,

"it is a basic principle that, when dealing with any kind of public health or environmental health risk or incident, proper, full, factual information is provided to the public and the community",—[*Official Report*, Commons, 9/10/18; col. 37.]

and at the earliest opportunity to Parliament. You do not hide behind a contractual negotiation, so will the Minister tell me where the line lies between the need to inform Parliament of a public health incident and the need to protect commercial confidentiality?

Lord O'Shaughnessy: I can say to the noble Baroness that the NHS contracts out very large numbers of services of all kinds, and indeed has contracted out this kind of service for around 30 years. What we have here is not a market failure but a company that has broken the law, and which is therefore being pursued by the regulatory system that we have in place. That is about making sure that the Environment Agency, in this case—because it is about environmental health—is monitoring, issuing notices and raising issues as they come up, which is precisely what it has done here. But I agree with the noble Baroness that certainly there are lessons to be learned about monitoring, and we are absolutely looking at that as a consequence of this incident.

However, it is very important to state two points. No risk to public health has been established, because of the secure circumstances under which the waste—albeit way too much of it—was being kept, and there was no interruption to the provision of services, so there was no risk to patients or to hospital operations. On providing information at the earliest opportunity, we have done exactly that. As I said, no public health risk has been established, and we came to Parliament on the first day it came back, once the termination notice had been in place with a part suspension.

Baroness Jolly (LD): My Lords, it is clear that this situation has gone on for some considerable time unnoticed, and it also appears that the incinerator network is not able to cope with the volume of waste generated. Will the Minister confirm that the incinerators are single use? When was the contract with HES last reviewed, and how frequent were inspections of sites? What is the timetable for being able to resume a sustainable service across all of England, and might this include new incinerators?

Lord O'Shaughnessy: The noble Baroness makes an important point about incinerator capacity; indeed, that was given as a reason by the company. However, we do not feel that that is a true reflection of incinerator capacity. There are 24 incinerators in the country and 30,000 tonnes of spare capacity which could be used, and we are talking about 900 tonnes of excess stockpiling that HES had taken care of—so we simply do not accept that there was not enough capacity. What there was not was a willingness on the part of HES to pay for that capacity, which is why we are in this situation.

On the frequency of inspections, the Environment Agency has issued a series of notices, and that has escalated over the summer to the situation that we are in now. That is the proper regulatory response. I reiterate the point that there is no established threat to public health or continuity of service, which hopefully answers her last question. From an NHS point of view, neither clinicians nor patients will have noticed any impact on the level of care as a consequence of what I absolutely agree with her is completely unacceptable behaviour by this company.

Baroness McIntosh of Pickering (Con): The Minister mentioned 30,000 tonnes of spare incinerator capacity. Is that for general waste or exclusively for medical waste? Will the Minister encourage the Department for Environment, Food and Rural Affairs to engage with the public on the importance of incineration as a means of disposing effectively of both household and medical waste? We are currently exporting a massive amount of household waste from the city of York and north Yorkshire to Holland, where it is put back in the community as energy from waste. I would like to see more of that occur in this country.

Lord O'Shaughnessy: I thank my noble friend for her question. I will certainly take up the issue of waste disposal in general with my colleagues in Defra who, as she knows, are responsible for it. On the specific question of incineration capacity, Defra calculated that in 2017 there was a total of more than 30,000 tonnes of spare capacity for clinical and hazardous waste incineration. That was across a year, but we know that the NHS has identified more than 2,000 tonnes of incineration capacity this month. So the capacity is there; the point is that it should be used to get rid of the stockpile. As I said, the contracts are now in place to ensure a continued flow of service to NHS trusts.

Lord Hunt of Kings Heath (Lab): My Lords, I do not understand the timescales in this. According to the Statement, the Environment Agency notified the Government on 31 July. Why did it take until October for NHS Improvement to write to the company expressing its concerns? As for reporting to Parliament, we met for two weeks in September. Why did Ministers not come to the House during that period? The Minister seems to be saying that commercial secrecy trumps public accountability.

Lord O'Shaughnessy: I am absolutely not saying that. To go through the timescale, the noble Lord is quite right that 31 July was the escalation from the Environment Agency to Defra, which then contacted the Department of Health and Social Care. Ministers were informed on 8 August, by which point a huge amount of effort had gone in not only to analyse the problem but to put in place contingency plans. A final enforcement notice for the Normanton site was issued by the Environment Agency with a need to comply by 25 September, which fell after the two-week Sitting that we had in September. In the meantime, plans were put in place—the Secretary of State chaired a cross-government meeting—and on 3 October the partial suspension was put in place. That is what triggered the termination of contracts by NHS trusts and their replacement by a new contract with Mitie.

Lord Christopher (Lab): My Lords, I find this an extraordinary situation. Is there nothing in this contract—or, indeed, any government contract, through whatever agency—to impose an obligation on the contractor to advise whoever he should advise that he is not able to complete the work he is contracted to do?

Lord O'Shaughnessy: The noble Lord is quite right. There are, of course, contractual obligations; the point is that those obligations have not been fulfilled. That is one reason why the Environment Agency is now pursuing a criminal investigation against the firm.

Baroness Tonge (Non-Afl): Will the Minister give us some information? Much clinical waste is highly infectious and therefore very dangerous; it needs to be incinerated very quickly. Will he tell us exactly how it is stored and where it is stored, and will he assure us that there is absolutely no danger of very infectious agents escaping into the surroundings?

Lord O'Shaughnessy: The noble Baroness is quite right to highlight this issue. As I said when repeating the Statement, the items that we are talking about are stored securely and I am assured that there is no risk to public health from the stockpiling. Clearly there is a requirement to dispose of them; this is a contractual obligation of the company, which it has not fulfilled. That is why we have entered into this situation.

Lord Harris of Haringey (Lab): My Lords, what lessons has the Department of Health learned from this incident?

Lord O'Shaughnessy: That is an incredibly fair question; I think that the point about monitoring has been raised. We need better visibility of the performance of contractors to fulfil their contractual obligations.

Non-Domestic Rating (Nursery Grounds) Bill

Order of Commitment Discharged

3.49 pm

Moved by ***Lord Bourne of Aberystwyth***

That the order of commitment be discharged.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move a manuscript amendment or

[Lord Bourne of Aberystwyth]
to speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Tenant Fees Bill
Second Reading

3.50 pm

Moved by ***Lord Bourne of Aberystwyth***

That the Bill be now read a second time.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, this Bill takes forward essential measures to promote fairness and affordability in the private lettings market by banning unfair fees charged to tenants and capping tenancy deposits—a significant move by the Government to protect consumers in the private rented sector and a commitment made in the Government's manifesto.

It is a Bill that should be welcomed by all across this House. I echo the sentiments of the other place that it will make the market more transparent and will save tenants, especially young people and families, hundreds of pounds. Government amendments made in the other place reflect the debate there and have ensured that the Bill will firmly deliver on this intention.

The Bill's measures have also been informed by consultation with the sector and through the scrutiny of the Housing, Communities and Local Government Select Committee. In line with the Secretary of State's comments, I extend my thanks to all those who have made invaluable contributions to this process. We can all agree that this engagement has ensured that the Bill will be even more effective in delivering on its promise to protect tenants from unfair charges.

I am pleased that the Bill is now before the House. It is an integral part of the Government's broader reform to create a housing market that works for everyone. I have been moved by the extensive support for banning unfair fees, and I am grateful for the work that the noble Baroness, Lady Grender, has done previously to raise this issue. That is why I am happy that we are taking the decisive action to bring forward this change.

The housing market is changing. The proportion of households living in privately rented homes has doubled over the past 20 years. This accounts for a fifth of all households in England—approximately 4.7 million households. While this has brought new challenges, we have been consistently clear that whether you rent or own your home, you deserve to have a safe, secure and affordable place to call your own. Banning unfair tenant fees and removing rogue operators is another step that the Government are taking to make this happen. It is abundantly clear that tenants need greater protection from such abuse and poor service. To that end, we have given local authorities greater tools to crack down on poor practice in the sector. In April, we introduced banning orders and a database of rogue landlords and agents. We are backing a Bill in the other place which will enable tenants to take their landlords to court if the properties that they rent do not meet minimum standards of fitness for human habitation. We have also committed to mandatory electrical safety checks every five years and are working to bring these regulations into force as soon as possible, subject to parliamentary timetabling.

However, we know that this is only part of the problem. We want to give tenants greater confidence that they can complain about problems with their home without the fear of eviction. In June, we published our new and updated "how to" guides, including for the first time a *How to Let* guide for landlords to help ensure that tenants and landlords alike are aware of their rights and responsibilities.

Today is World Homelessness Day. This offers an important opportunity to consider the insecurity facing some private renters. My department recently consulted on overcoming the barriers to landlords offering longer and more secure tenancies in the private rented sector. That consultation received more than 8,000 responses, which we are currently analysing and will respond to shortly. The volume of responses demonstrates the importance of a good quality and secure rented home, which the Government are committed to delivering.

We also know that we need to make housing more affordable. That is why my department is focused on building many more houses in the places where people want to live. Since 2010, we have delivered 378,000 affordable homes in England, including 273,000 for rent, and I am confident that the Government's ambitious housebuilding programme will deliver the transformations required in the years to come. It is also important that we help people now. That is what the Tenant Fees Bill will help to achieve. It will ensure that tenants will no longer be stung by hidden costs, saving renters an estimated £240 million within the first year alone.

These costs include unfair letting fees, with tenants facing bills for hundreds of pounds for simple things such as reference checks. We know that such services can be acquired on the market for a small fee, but the Government's 2017 consultation found that tenants have to pay an average of £137 for a reference check. Then they are hit by fees for drawing up a tenancy agreement, for inventory checks and even for just picking up keys for their property. This, I should underline, is all alongside their deposit and the first month's rent up front. It does not stop there. There are fees on renewal, and fees when they leave the property. Tenants often have little choice but to pay excessive and unjustified charges time and time again. They are stripped of their power to negotiate these fees as agents are appointed by landlords, some of whom use tenant fees to subsidise artificially low rates charged to landlords or grossly exaggerate the market value of such services.

We are not just talking about rogue landlords and agents here—we know that well-known high street chains are charging both tenants and landlords for the same services. These charges create a further financial barrier in a system which is stacked against tenants, many of whom are trying to save to buy their own home. It is a problem right across the country. That is why we must intervene to create a level playing field. A ban on unfair fees ensures that whoever contracts the

service—in this case the landlord—pays for that service. This is integral to a fair market and, more plainly, it is common sense. Some agents and landlords already operate successful business models without charging fees to tenants. Under the ban, tenants will be better placed to shop around for a property that fits their budget, safe in the knowledge that the price they see is the price they will pay.

This Bill also protects tenants from paying unreasonably high deposits. We are capping deposits at six weeks' rent. I should stress that this is an upper limit and not a recommendation. We expect landlords to find an appropriate level on a case-by-case basis and we will provide guidance to this effect. There has been no law on the maximum amount of a deposit previously. In Scotland, tenancy deposits are capped at eight weeks' rent and there is no evidence to suggest that deposits have increased to meet this cap. A cap of six weeks' rent offers a balance of greater protection to tenants while giving landlords the flexibility to accept higher risk tenants such as pet owners or those currently living abroad. It also gives landlords adequate financial security. This is vital to maintain investment and supply in the sector. More broadly, we want to ensure that tenancy deposits work for both tenants and landlords. That is why we have recently established a working group within the department looking at the merits of innovative and more affordable approaches to tenancy deposits—such as deposit passporting, where a deposit can be transferred from one tenancy to another. It is anticipated that this will report in the spring of 2019.

Let me be clear: this Bill is not an attack on good agents and landlords. We value the important services they provide. Letting agents who represent good value for money for landlords will continue to thrive because they will no longer be undercut by those who rely on overcharging and double-charging fees to sustain their business. We have also committed to regulation to improve standards in the sector and drive out rogue operators. At the moment, anyone can set themselves up as a property agent regardless of their background, skills or experience. Many agents take a professional approach and sign up to standards of practice through membership of a professional body. But others do not, and a lack of minimum standards has allowed unscrupulous agents to enter the sector—exploiting both tenants and landlords. We are committed to introducing minimum training standards and a code of practice. We are establishing a working group that will be chaired by the noble Lord, Lord Best, and we will provide further details on the membership and terms of reference of this group in the next few days. I will ensure that I write to noble Lords who are participating in the debate and place a copy in the Library.

We are also requiring agents to join a client money protection scheme, and I thank the noble Lord, Lord Palmer—who is not in his place at present—and the noble Baroness, Lady Hayter, for their considerable work in this area. Mandatory client money protection will ensure that each and every agent is providing landlords and tenants with the financial protection that they want and deserve.

The key provisions of the Bill apply to assured shorthold tenancies, tenancies of student accommodation and licences to occupy housing. Clauses 1 and 2 ban landlords and agents from requiring the tenants and licensees of privately rented housing in England, including persons acting on their behalf or guaranteeing their rent, to make any payments in connection with a tenancy. Some key exceptions to the ban, as detailed in Schedule 1, are classed as "permitted payments". These include the payment of rent, a refundable deposit capped at six weeks' rent, and a holding deposit capped at one week's rent. Landlords and agents will also be able to charge a tenant for payments associated with early termination or varying a tenancy where these are requested by the tenant. Other permitted payments include any reasonable costs made in connection with the tenant defaulting on a requirement under the tenancy and payments in respect of utilities, communication services and council tax. In the Bill, the term "in connection with a tenancy" refers to any payments required by the landlord or agent throughout a tenancy. This is an important point. We have ensured that this protection extends to all stages of the lettings process so that tenants are not hit with hidden charges further down the line. We brought forward amendments to this effect in the Commons on Report.

We heard the concerns that the provision permitting landlords and agents to charge a fee in the event of a tenant's default could, as previously drafted, represent a loophole. There was agreement to the principle that it is only right that agents and landlords should not have to foot the bill owing to a fault of the tenant. However, we also want to make sure that such a provision is not abused. The amendments made in the other place will ensure that landlords and agents will now be proactively required to demonstrate through written evidence that their charges are reasonable, such as in the form of receipts and invoices. We firmly believe that this increases the protections for tenants and minimises the risk of abuse.

The legislation also prevents tenants from being required to contract the services of a third party. Again, this has been included in the Bill to ensure that landlords and agents are not able to circumvent the ban by requiring tenants to pay fees by other means. However, we have ensured that tenants are free to contract agents and pay for additional support with setting up a tenancy should they choose to do so, provided that the agent does not also work on behalf of the landlord. This may be the case, for example, where they are relocating or live abroad.

The legislation proposes amendments to the transparency requirements in the Consumer Rights Act 2015 which require an agent to display information about their fees and membership of redress and client money protection schemes prominently in their office and on their website. The Bill will extend these transparency requirements to online property portals, since many tenants use them to find a home. The Bill will require letting agents to display the name of their client money protection scheme rather than simply whether they are a member of such a scheme. These amendments are vital to ensure that existing legislation remains fit for purpose in the context of today's market. We intend to provide separate consumer guidance on

[Lord Bourne of Aberystwyth]
how the ban will affect landlords and tenants. We are currently working with industry groups to get this right and will share a version with the House during the passage of the Bill. As soon as the guidance is available, I will ensure that it is placed in the Library and that noble Lords receive a copy.

The Bill proposes a number of enforcement measures that offer a strong deterrent to irresponsible agents and landlords, and in doing so, protect tenants. We introduced amendments in the Commons to further strengthen the enforcement provisions and ensure that where things go wrong, tenants will have proper access to redress. First and foremost, the Bill places a duty on trading standards authorities to enforce the ban. Trading standards authorities do a good job of enforcing current regulations on letting agents. With their existing local knowledge of the industry, they are the clear choice to enforce the ban on letting fees. District councils will also have the power to enforce the ban, if they choose to do so. We want to encourage joint working across different tiers of local authorities, bringing together local housing authorities' experience of enforcing housing legislation and trading standards' experience of enforcing fair trading.

The Bill makes provision for a lead enforcement authority to provide oversight, guidance and support with the enforcement of requirements on letting agents. This includes the ban on letting fees and related provisions. This approach is one that has worked well in the estate agency sector. The lead enforcement authority will be the Secretary of State or a local trading standards officer who is appointed to the role. The lead enforcement authority will be responsible for issuing guidance to which all local enforcement authorities must have regard when enforcing the legislation. This guidance is still being finalised to reflect ongoing engagement with local authorities and the journey of the Bill through this House. I will share a draft with noble Lords before Committee stage.

Secondly, the Bill makes provision to enable tenants and other relevant people to recover their unlawfully charged fees. The Bill will encourage this as a ban. which is much easier to understand than the existing transparency requirements. In addition, landlords will be prevented from recovering their property via the Section 21 Housing Act 1988 procedure until they have repaid any unlawfully charged fees or unlawfully retained holding deposits. In terms of sanctions, landlords and agents will be liable for a financial penalty or prosecution for each individual breach of the ban that they commit. An initial breach of the fees ban will usually be a civil offence with a financial penalty of up to £5,000. Where a further breach is committed within five years, this will amount to a criminal offence and be liable to a fine. In such a case, local authorities will have discretion whether to prosecute or impose a financial penalty. They may impose a financial penalty of up to £30,000 as an alternative to prosecution and the penalty. We consider that this will act as a serious deterrent to prolific offenders. Local authorities will be able to retain the funds raised through financial penalties, with that money reserved for future local housing enforcement.

We also intend to provide up to £500,000 additional funding in year one of the policy to support implementation and awareness raising. My department engaged with over 160 local authorities at five summer events better to understand their resourcing needs, including how they intend to enforce the Bill, and will use this knowledge to ensure that we make the best use of the additional funding.

These important measures are above all intended to promote fairness. This Government will always stand against injustice. We recognise the need to rebalance the relationship between tenants, landlords and agents. By banning fees for tenants and capping deposits, we are delivering on our commitment to make renting fairer, more transparent and more affordable. It will make a real difference to millions of tenants across the country, especially for young people and families, and to the millions who will call the private rented sector home in the future. I beg to move.

4.07 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, first, I draw the attention of the House to my relevant interest as a vice-president of the Local Government Association. Secondly, I welcome the Bill, which seeks to ban landlords' and letting agents' fees. It is something that the Labour Party has called for repeatedly and it delivers on a pledge that the Government made some time ago. It has taken a while to get this far. The private rented sector is a significant part of our housing tenure and an important part of the housing supply available to people. It has grown significantly and it is right that we should put legislation in place to protect people from unfair fees or practices in the private rented sector.

I rented in the private sector when I was in my 20s, having grown up in a council property with my parents, and I have been an owner-occupier for many years since. My involvement with the private rented sector was relatively short, but for millions of people and millions of families it could be the only type of accommodation they ever know. There are many excellent private landlords and letting agents who do a good job. Like lots of legislation, however, the Bill seeks to deal with unfairness, where the balance is unfairly loaded against the private renter, with fees being charged with little or no evidence of what they are for, of whether they are value for money or of any reasonable basis for how those fees were decided, and fees charged by landlords as well as letting agents.

The Bill seeks to ban landlords' and letting agents' fees, and most other up-front fees, by prohibiting what landlords and their agents can require a tenant to pay. As the noble Lord, Lord Bourne, has told us, the ban covers shorthold tenancies, tenancies of student accommodation and licences. Looking at the list of what can be charged for, I have an immediate concern that the Government have left the back door open and that, despite good intentions, the Bill runs the risk of not achieving all the Government want to achieve. I propose to go through the Bill and highlight those areas where I have concerns, and which I will be raising in Committee and on Report. The noble Lord, Lord Bourne, is someone I have huge respect for, as I do for the noble Lord, Lord Young of Cookham. In

all our dealings, both noble Lords are courteous. I am sure they will listen carefully to the points raised around the House during our deliberations. I hope we will be able to persuade the Government that some areas of the Bill will require amendment. If not, and I am still not convinced by the arguments put forward by the Government, I will divide the House on Report stage a number of times.

Turning to the Bill and the issues that I have concerns about, what can be charged for? As the noble Lord told us, there is obviously rent. The Bill also includes a refundable tenancy deposit, capped at no more than six weeks' rent. It is disappointing that it has been set at six weeks. This runs the risk of becoming the norm. I would prefer it to be set at four weeks, which is the level at which I believe the Prime Minister first indicated it would be set when announcing the policy some years ago. It also includes a refundable holding deposit, capped at no more than one week's rent. I fully accept that a holding deposit should be paid, but this is set far too high. It should be capped at, say, three days' rent or even £50—whichever is higher. At the same time, I would also like the tenant to be provided with a copy of the draft tenancy agreement, so that they can see in writing what they will be asked to sign. They can then raise issues with the landlord and/or the letting agent, while other processes are taking place. It is important for there to be full transparency on the part of the landlord or the letting agent over how they intend to treat a holding deposit, setting out clearly in writing, when the deposit is not returned to the prospective renter, the full reasons for the deposit not being returned. This will enable the renter to be more easily able to challenge the decision if they believe it is unfair.

We then have the ability for certain payments on assignment, novation or variation of a tenancy when requested by the tenant to be capped at £50, or reasonable costs incurred if that is higher. This provision appears open to abuse. How will reasonable costs be determined? What is the protection from the risk that the £50 becomes the minimum figure charged, and that tenants will pay much higher charges? I would appreciate it if the noble Lord could address that in his reply to the debate.

Payments associated with early termination of the tenancy when requested by the tenants, payments in respect of utilities, such as communication services and council tax, and payments in the event of a default of the tenant, such as replacing a lost key or late payment of a fine, are to be limited to the landlord or agent's reasonably incurred costs, which must be evidenced in writing. This is another provision that I fear will be open to abuse. The Bill fails to protect tenants from unscrupulous practices where, in effect, the fees lost by landlords and agents will find their way back, being recouped through this provision. If the noble Lord, Lord Bourne, disagrees with me on this point, can he explain to me how the Bill in its present form guards against that? To guard against it, you have to go further than we have at present and clearly define matters, maybe in secondary legislation, saying what the Government mean and how it will apply. Secondary legislation will give the Government flexibility to amend regulations as necessary and give greater protection to tenants.

I am pleased to see the Bill dealing with enforcement and that for the first year at least some funding has been provided by the Government—although I am not convinced that it is at the right level. Trading standards, like other parts of local government, are under extreme financial pressure. The risk with inadequately funded extra requirements is that it will not be possible for the authority to deliver what is expected of it. I am not convinced that funding this work through fines levied in the future is the right model to develop a system that serves tenants, landlords and letting agents well. Perhaps the Minister can say a little about the thinking behind this when he replies to the debate.

I welcome the proposal to designate a lead enforcement agency. The Local Government Association's suggestion that National Trading Standards should provide this function is well made and should be considered carefully by the Government when they make their final decision. Enforcement functions will be delivered by local weights and measures authorities. The local district council may also enforce provisions in the Bill if it so wishes. Can the Minister explain why the Government decided to construct the enforcement regime in this way? Is there a risk of confusion or duplication, particularly in the context of my earlier remarks about local government resources?

Where a ban is breached, tenants are entitled to a refund of illegal fees. The local authority can impose a financial penalty on the landlord or letting agent of up to £5,000 for a first offence with a further breach resulting in a fine of up to £30,000 or prosecution. In Committee, I will probe whether these fees are set at the right level. The tenant can apply to the First-tier tribunal for the recovery of illegal payments but is not entitled to any compensation. Why can the local authority not be empowered to recover the illegal payments on behalf of the tenant, in addition to imposing a fine, before passing the illegal payment back to the tenant? That would avoid the need to go to a tribunal in the first place and leave the landlord with the option of challenging the decision in the tribunal. It would be a real help to tenants.

Perhaps we should go even further with a compensation payment to the tenant who has been subjected to this abuse. It is not unusual in this country to award compensation to victims, in addition to levying a fine on an offender. If you have been ripped off and made to pay an illegal payment, you are a victim and it is not unreasonable to receive some element of compensation. That is certainly better than leaving the tenant who has been charged an illegal fee to go to the First-tier tribunal to recover the money taken from them illegally.

It is great that there is a provision in the Bill requiring fees to be published on third-party websites. My only question is: how prominently will they have to be displayed? I ask this because I am aware that companies over a certain size are required to have links to their modern slavery statements on their websites, but it is fair to say that they are not always the easiest thing to find. I want an assurance from the Government that there will be some sort of provision to ensure that they are put in a prominent place on the site. I support the provisions on client money protection schemes.

[Lord Kennedy of Southwark]

In conclusion, I look forward to Committee, where I will probe further, with a series of amendments that seek to engage the Government on the issues I have raised. I welcome the Bill. From my remarks, however, noble Lords will see that it can and should be significantly improved for private sector tenants. They are an increasing group of people who deserve regulations and legislation that afford them reasonable protection.

4.18 pm

Baroness Grender (LD): My Lords, as the Minister said, today is World Homeless Day. It therefore seems fitting that we are discussing the Bill. The loss of a private tenancy remains the biggest cause of homelessness. One in six households now rents privately; that includes more than 1 million families with children. It is in that context, looking out for people on low incomes who have no choice but to rent, that we should view this Tenant Fees Bill. I thank the Minister for his kind words, the regular meetings and updates, his ability to listen and the great care he shows for this subject.

I was delighted when the Chancellor announced in the Autumn Budget in 2016, while my Private Member's Bill on this issue was still in progress here, that he would crack down on lettings fees, but I profoundly regret that the delays to this Bill caused by those higher up the Government food chain have resulted in yet more families being put into temporary homes or debt because they could not afford the prohibitive up-front fees. Shelter's most recent survey of private renters showed that the average costs of moving were £1,400.

Our party is fully in support, but in this place it is our duty to ensure that the legislation is right. We will do that. We must ensure that there are no loopholes to be exploited by unscrupulous lettings agencies that have tenants with no choice but to use them. So if there is any fuss from the business managers on the other side of the House because of delays to get this Bill right, they would do well to remember that they hold responsibility for the delay of three years or more from announcement to implementation—that is, three more years of tenants, as the Government found in their own research, being exploited and charged arbitrary amounts, such as a reference check of anything from £30 to £220, or a tenancy renewal costing anything from £35 to £150. Shelter states that over the past five years alone tenants have paid more than £678 million in unfair fees, so when the landlords suggest that the legislation will cost them £82 million, I would look at it in that context.

When landlords also suggest that this will lead to a rise in rent I ask them to consider the following three points. First, there was no evidence of rent rises when the system was changed in Scotland. Secondly, if someone is on such a prohibitively low income that they are driven into debt by arbitrary up-front costs from lettings agents, they would rather spread that payment over a 12-month period than have to pay it up front. Thirdly, there is evidence that lettings agencies have been one of the drivers of pushing up rentals by prompting landlords to do just that.

My hope, as we scrutinise this Bill, is that we keep uppermost in our minds those very families on low incomes. The school cook, the teaching assistant—real examples that I have described when we have previously discussed this issue—are doing the right thing by looking for lower more affordable rent, but cannot afford to move to a cheaper rent and become homeless because of up-front costs.

One of the other guiding principles should be who the customer of the lettings agents is—who can call the shots and shop around for a better deal. It is of course the landlord, as this Bill sets out, and they are the ones who should pay. There are suggestions that this will jeopardise an industry, but I urge anyone making that argument to take a look at a newcomer into the sector that, in a short period, has become the largest lettings agency in England and Wales—OpenRent.co.uk, which supports this Bill. Incidentally, it also charges a flat fee to landlords, so it is entirely possible to grow and thrive in the market without the use of fees from tenants. I spoke to OpenRent today; it has only just conducted a YouGov survey in September, as yet to be published. The general public and tenants are overwhelmingly in support of the Bill and this change at 70% and 81% respectively, but the most compelling part of the survey is that 64% of landlords also support this policy. That begs the question: why are those who represent landlords lobbying against this Bill when most landlords want to do the right thing?

If we accept that the customer of the lettings agency is the landlord, I suggest that we need to examine whether the suggested default fees in the Bill are in danger of being overkill. The changes that the Government made in the other place to tighten the definitions, on the limit on the amount, the planned guidance regarding the type and reasonableness of fees—although we might want to look at whether that needs to be in the legislation rather than in guidance—and the change to introduce a paper trail are welcome, but this part of the Bill remains open to exploitation as a loophole. I question whether these default fees are necessary at all and will want to examine this in Committee.

One of the failures of previous attempts at transparency has been how limited tenants' knowledge can be of their rights in this part of the law, and the law dealing with unscrupulous lettings agencies. If there is clarity in the law that literally no additional fee goes to a lettings agency, it would be much easier to enforce and explain. We already have two current pieces of legislation that I believe cover the default issue. I thank the Minister for our discussions yesterday and for the possibility, at least, of taking a look at this.

First, to deal with keys, security devices and late rent payment fines, I think that everyone involved in this debate would ask the Minister if there are other examples: so far they seem to have been absent from any of the debates that have taken place. What is the list of issues, and what is the estimate for these defaults? In other words, how often will this part of the Bill actually need to be used? If the answer is that the level of likely use of this default is minimal and can be covered by current legislation, then I suggest that this particular section is a sledgehammer to crack a nut.

In the Housing Act 2004 there is a system for deposit protection, and Schedule 10 sets out the role of the deposit protection scheme. This includes arbitration between landlord and tenant: under this law, if a key needs to be replaced, the lettings agency can charge the landlord. The landlord has access to the deposit and can use that money, unless it is disputed by the tenant, in which case arbitration and ultimately the county court can make a judgment. In the most severe cases of rent arrears or damages, the landlord can recover their property under Section 8 of the Housing Act 1988. Does this legislation cover the areas where the Bill has introduced a default fee?

As for the cap on tenancy deposits, I appreciate that the rental sector is a very wide market, covering everyone from people on very low incomes to those with money to burn. I hope that the policy leans towards those who we all know should not be in the private rental sector but in social rents, a problem that cannot be solved immediately. For that reason I will want to look in Committee at getting the security deposit number of weeks down. We should note that the HCLG Select Committee, which did the pre-legislative scrutiny, recommended that it should be five weeks. The suggested six weeks would mean that renters in England will still have to find an average of more than £1,100—or £1,800 in London. Citizens Advice currently estimates that six weeks will help only 8% of renters. Does the Minister agree with that figure?

On the cap on holding deposits, as I discussed with the Minister yesterday I would welcome the extension of the transparency and use of paper trails introduced on Report to the clauses on defaults to be applied to holding deposits too. I would also like to explore the issue raised by Generation Rent that while tenants are prohibited from putting down holding deposits on multiple properties, landlords and agents are not prohibited from taking holding deposits from multiple tenants for the same property. I will also want to look at a reduction in the number of days. Citizens Advice published a survey yesterday showing that more than half of renters surveyed were shown a tenancy agreement only after they had paid a holding deposit or the equivalent. How can they negotiate terms when they are not allowed to look at the paperwork until they have put some money down, whereupon they are too invested to pull out?

The funding of £500,000 for the first year of the legislation is welcome, but I will ask for further detail in Committee of what plans there are to ensure that tenants know that lettings fees have been banned. Of course, I suggest to the Minister that it would be easier to put that message across if they were banned outright and the default loophole not introduced. Tonight, as I bed down on a cardboard box next to my noble friend Lady Suttie to recognise World Homeless Day at a sleep-out organised by Depaul, a charity that supports young homeless people, I will be greatly encouraged that the Bill has finally arrived. It goes some way to preventing people on low incomes from tipping into homelessness and I really look forward to seeing it on the statute book as soon as we have given it the necessary scrutiny and removed some of the loopholes that impact on people who are in the private sector and on low incomes.

4.29 pm

Baroness Hayter of Kentish Town (Lab): My Lords, the Government have been on a very welcome journey with regard to the private rented sector. First, and following pressure in this House, they required all letting agents to belong to an alternative dispute or ombudsman scheme. Then, again following pressure in your Lordships' House, they moved on client money protection. That was followed, as the Minister reported, by compulsory five-yearly electrical checks in rented accommodation, something that we started pushing for in the Consumer Rights Bill. Now, albeit after a delay—but, again, following pressure in this House—they have banned dual fee charging by letting agents; in other words, tenants cannot be charged by an agent which already represents the landlord. Furthermore, I have only just heard—maybe I missed it before—the very welcome announcement of what we are going to put on the broad shoulders of the noble Lord, Lord Best: the requirement on letting agents for training and codes. We now need only the right to a habitable property and we might actually have a really good private rented sector.

The Bill is good in itself. It will save tenants hundreds of pounds just when they are trying to put together the money for a deposit and to move, which alone can cost up to £1,000. Although the average letting agent charge to tenants—in addition to what they have charged the landlord—is £300, one in seven pays up to £500. It is good that the Bill puts an end to that but it is also important for the housing market because any such money extracted unfairly as fees is lost to both the tenant and the landlord, sucking some £240 million a year out of the housing sector. That money could be better used by landlords to improve homes rather than spent by letting agents, which generate no new properties.

I am sad to see ARLA, which represents letting agents, still arguing against the Bill, claiming that it will harm the private rented sector. In fact, it will do the opposite, partly, as I have said, by keeping funds within housing, rather than with agents, but also, vitally, by increasing tenant trust in the private rented sector. David Cox, the chief executive of ARLA, really ought to know that distrust in agents is not just apocryphal. It is based on hard evidence. He should also recognise, as I have long argued to him and his members, that the inherent conflict of interest within tenant fees is unethical and unprofessional. No service provider should have both parties to a transaction as clients. It cannot owe a duty of care to both. Charging both for the same service—letting a property—gives letting agents a dual responsibility which they simply cannot meet. Arguing on behalf of the landlord that rent should go up, or be paid on a certain day, can hardly be done by the same person arguing on behalf of the tenant that until a bathroom is fixed the rent is not due. Who is the client at that point? This is particularly important following the Consumer Rights Act. We have to be clear: who is the consumer in the transaction and therefore who gets the rights contained in that Act?

When we argued for a ban on the fees charged to tenants in your Lordships' House, Ministers claimed that making agents' fees transparent would be sufficient

[Baroness Hayter of Kentish Town]
to drive down prices, as consumers could shop around. We sought at that point to explain that in fact tenants cannot shop around; only landlords can. If a tenant wants a particular property, they have to deal with the agent selected by the landlord and have no negotiating power at all over the fees charged, nor the quality of service provided. They cannot swap agents. So I greatly welcome the Bill and wish it a speedy path on to the statute book for the sake of millions of tenants, about whom we have just heard from the noble Baroness, Lady Grender.

Changes will obviously be needed as the Bill goes through in Committee. But following the very constructive way that Ministers have dealt with us over those earlier issues, we have every confidence that the Government will accept our amendments in Committee, particularly on default fees which, without protection, could be exploited, as the noble Baroness, Lady Grender, has again just noted. There is also the issue of the size of the cap on deposits, as mentioned by the noble Baroness and my noble friend Lord Kennedy.

We will also seek reassurance that proper enforcement will take place, with more meaningful penalties for those who flout the law. As my noble friend Lord Kennedy said, trading standards departments are highly stretched at the moment, with far too few assets, so we will look to the Government to ensure that the penalties due back into the enforcement system will be sufficient to enable action to be taken wherever tenants are being ripped off. Sufficient levels of fines are anyway essential to act as a deterrent to bad behaviour.

I will make one further point about how the Bill demonstrates the value of regulation. I am afraid that I had to watch the coalition Government abolish the National Consumer Council, which took away a source of thoughtful advice on when regulation is necessary to protect consumers. I have also had to witness, whether in relation to Brexit or more generally, the endless mantra from this Government and some of their supporters that red tape or regulation is bad for business. Not only is that not true; it ignores the interest and well-being of consumers who, without appropriate protection, are vulnerable to shoddy goods, rip-off merchants and poor service. I particularly welcome the Bill's acknowledgement that this large group of consumers, who we have heard about, need legal protection to get a fair deal.

I wish the Minister well with the Bill and all strength to his arm in persuading others back at the ranch—or up the food chain, which I think was the term just used—that he be given the freedom to respond positively to the amendments we will table. We will be happy to give him all the credit for the movement that he makes.

4.38 pm

Lord Best (CB): My Lords, I am very pleased to follow the noble Baroness, Lady Hayter, who has done such great work in this field. I declare my interests in lettings and letting agents: my wife and I own rental property, managed by a reputable firm of letting agents; for eight years, until last year, I chaired the council of the Property Ombudsman, which handles complaints about property agents; I am a vice-president of the Chartered Trading Standards Institute, which has enforcement powers for property agents, and of the Local Government Association. I co-chair the Home Office's right to rent consultative panel and have recently been very pleased to accept an invitation from the Minister for Housing and Homelessness, as mentioned by the Minister today, to chair a working group to advise government on the regulation of property agents. In these various capacities, I greatly welcome this Bill and a number of other welcome measures where legislation is needed to catch up with the phenomenon of the extraordinary growth of the private rented sector.

At later stages, we will no doubt consider some of the Bill's finer points of detail—as highlighted by Shelter, Citizens Advice, Generation Rent, the LGA and others—and there may be some modest amendments to the Bill which we can pursue, but in this Second Reading debate I will stick to the big picture and the reasons why this legislation is definitely good news. In the light of some criticism of the Bill in the other place, I want to address two broad questions: first, what exactly is the market failure here? We pay fees for many services and we shop around for the best deal, so what is so different about letting agents charging fees to tenants? Secondly, will a ban on fees overcome the alleged market failure, or could it have unfortunate side-effects?

A spin-off from the astonishing growth of the PRS, which now numbers some 2.3 million landlords, is the growth in the lettings industry. Many firms provide an excellent service to both landlords and tenants, but the rapid expansion of the sector has also meant a proliferation of unregulated new letting agents, often with no qualifications or training. In order to secure a share of the market, agents need to attract local landlords, and a way to do this is by undercutting the fees charged to landlords by rival firms. This may sound like healthy competition and good news for landlords. However, it has changed the basis on which private sector lettings are handled. In order to make their profits, despite cutting fees to landlords, many agents have charged the tenant instead. The trouble is that, unlike landlords, tenants cannot shop around for another agent; they must go through the agent chosen by the landlord if they want to have the house or flat, and then they must pay any extra fees which that agent demands.

We will all have our stories of tenants with no option but to pay rip-off fees to agents alongside big deposits and many weeks' rent in advance. This can lead to tenants borrowing the money needed, incurring expensive credit card debts or, worse, having to go to loan sharks. In securing references, credit checks and right-to-rent checks, a letting agent is acting for the landlord. The agent cannot simultaneously act for the tenant. My intern showed me the list of agent fees for her flat: each of the three sharers had to pay £275 up front to the agent: a total tenant letting fee of £825 for the agent on top of the fees charged by that agent to the landlord. When she moved out and her sister took her place after a few months, the agent required £250 for early termination from her and another £275 from her sister: total fees of £525 for the most minimal input by the agent and not a day's rent lost, but the tenants—the consumers in these circumstances—cannot exercise any choice in the matter.

The problem here goes deeper. If the agent's profits depend on charging fees to incoming tenants, the agent is incentivised to bring in new tenants as often as possible, rather than to encourage the landlord to grant longer tenancies or to renew tenancies. This creates insecurity and disruption to the lives of tenants, who are forced to keep moving around and paying more fees when short, fixed-term tenancies end, and the ending of tenancies is now the most common precursor to homelessness. Yet, while high turnover may be good for agents, it is most unlikely to be in the best interests of landlords. Every changeover costs them money in lost rent, redecorating and so on. Banning the charging of tenant fees, as envisaged by this Bill would, therefore, be helpful for landlords as well as for tenants by removing this trigger for some agents to act against the interests of their landlord clients.

I turn to my second question: could a ban have downsides or untoward consequences? It is said that, if agents can no longer extract fees from tenants, they will have to charge more to landlords, and landlords in turn will then instruct agents to raise rents. I have several responses to that. First, rents are set by the market, not the whim of landlords or agents. The experience in Scotland when a ban on fees was imposed was for rents to rise by no more than in the rest of the UK. Secondly, not all landlords use agents to manage their properties; perhaps only 40% pay for a full management service, so a ban would by no means affect all landlords, and the market for rents is made by the whole sector. Thirdly, some reputable agents charge tenants only nominal fees so they will be able to absorb the loss of these without noticeably increasing their charges to landlords. Fourthly, some landlords will gain financially from greater stability in their lettings once there is no incentive for agents to move tenants on, so they will be better off even if management fees rise. Finally, if rents rise—by £2 per week, for example, according to one guesstimate—it could still be better for tenants since they would be spared the up-front charges that they must currently find, often by borrowing on expensive terms. One other effect of the ban is certainly likely to emerge: a number of the here-today-gone-tomorrow letting agents that have appeared on our high streets are likely to go out of business. Those that make their money mostly from tenant fees will not survive. Frankly, that is no bad thing.

I conclude that the Bill's provisions are very necessary to correct an inherent market failure and that the dangers of untoward, unintended consequences are negligible. When we move to the details of the Bill there may be more to say about enforcement of the legislation, although I know the Ministry of Housing, Communities and Local Government has worked very hard to close loopholes and prevent avoidance and evasion of the new measures. At this stage, I warmly welcome the intent and the content of the Bill. I applaud the noble Baroness, Lady Grender, for first raising the matter in your Lordships' House, and I congratulate the Secretary of State and his housing Ministers on bringing it forward.

4.47 pm

Baroness Gardner of Parkes (Con): My Lords, I declare my interests as listed in the register. I will say at the outset that I shall make a few comments that the noble Earl, Lord Lytton, passed on to me because he was not able to stay for this debate. He is very well informed on this subject, as all noble Lords will be aware.

I think that there has to be an understanding. I strongly support the idea that no agent should be able to charge both sides and make a double killing; that is almost immoral, and it is certainly very much against the tenants if they have to pay twice. But the noble Earl made the point that not all tenants are pleasant, honest or good, and we must not be carried away with the idea that all landlords are bad and all tenants are good. That is not the way that things are. This is about a transaction between adults. These are the points that he was making.

The noble Earl says that there is a huge amount of advice available to renters. Funnily enough, I have not found that myself; I found that the amount of advice for renters is not perhaps as adequate as it could be. The inequalities in bargaining power and opportunities for exploitation are very high in areas of very high value or deprived locations, and they are not necessarily representative of the entire market. Checking out tenant credentials is a repetitive activity and, because of the significant liabilities in relation to some of these, such as the right to rent, they add to the cost, which needs to be met somehow. It is true that references have to be taken up and nationality has to be proved, along with the right to be in the country; quite a lot of things come up with that. I hope the noble Earl will join in at later stages of the Bill because I believe that he has a considerable part to play.

I know that everyone is well aware of the interest I have in short-term lettings—holiday lets—and the damage that that is doing to ordinary tenants. Recently the Mayor of London made a statement about the damage that it has done and how the huge loss of rental properties is very much against tenants' interests. People want properties available to rent, and for them to be reasonable to live in and enjoy. I have quoted before about the block in which I have had an interest in properties for many years, with long-term tenants of over five years in one and four years in the other. I am lucky to have them, because we have had all these terrible tenancies, totally illegally. People have been letting on short holiday lets, although that is strictly banned in the leases they have. These people are terrorising others in the block. One particular lady in her 90s is abused all the time. Rotting food is left everywhere around the building.

It is quite incredible that it is so bad now because power has been taken away from local authorities. When I have asked Questions for Written Answer about whether the Government would encourage local authorities to apply to have control in these matters again, the answer has always been a definite no. The Government are just not interested. They should be interested, because if local authorities had a right to register properties, there would be a safer position for lots of people. I do not think that it is fair.

To mention in passing, because it has been a long battle and is another very important point regarding the landlords' situation: you cannot really ask people to abide by a lease for short lets for Airbnb. I spoke to

[Baroness Gardner of Parkes]
the Minister when he was going to have a meeting with Airbnb. He said it told him that it asks people whether they have a right to sublet. But I asked Airbnb the same question, and it told me it does not, although it had said yes to the Minister. What is the truth? Only by some external authority being able to take over, such as local authorities if they were willing, is there going to be anyone checking on these things. At long last, under the right to manage scheme, you can only obtain—what is the word? Reclaiming the property. I am sure that everyone knows the word.

Lord Bourne of Aberystwyth: Repossession.

Baroness Gardner of Parkes: That is it. I hope *Hansard* was able to take that down. You can only do that if you are the head lessee or the freeholder. If you have set up your right to manage, there is a legal link missing which does not authorise you to recover the property for compensation if it has been mishandled. The woman who owns the places that are being let illegally—three or four blocks, one is normally a brothel and the other three are Airbnbs or something similar—has had herself certified under the Mental Health Act, so during that time no one was able to repossess anything.

Now the Court of Protection has appointed someone to take over, and it is all under way. As soon as these people put out the illegal people, they smashed all the windows and external structures in the brothel, which is in the basement, and the other places are being attacked on other floors. This is very disturbing. If you were a tenant living in that flat, you would be very worried about your personal safety, and would think, "Is what I'm paying fair?", for a place that is just being allowed to do whatever it wants because there are no suitable controls.

Again, I make a plea to the Minister that it should be possible for local authorities that wish to do so to be able to return to the short-let licensing which they had in the past. That would protect long-term residents in a block, and the Mayor of London is absolutely right to say that these short lets have reduced the number of properties available in London. It is therefore quite right that people should be checked in all these financial ways. However, I recall clearly when I used to let the basement of the first house I ever lived in and Harold Wilson's Government brought in a complete freezing of rents. That was ineffective, and worked so badly that after a while it had to be removed again. When that happened, everything went through the ceiling overnight. So it is far better to have a housing market that develops in a more normal way and works out for people in a fair way on both sides. I commend the noble Baroness, Lady Grender, for what she has done on this. It is an important but small part of a huge problem that the Government should be allowing local authorities to get on with.

I have one comment about the Written Answer I received the other day. The latest problem is commercial waste. People who come on holiday lets put out rubbish at the end, on any old day they feel like. The Answer I received said that this was commercial waste. If it is commercial, only the council can arrange to collect it—but how can it arrange to collect the rubbish fee if it has no idea who is to pay it, and when that person has vanished? This is a new problem, and apparently it is occurring all over London; waste is building up because it is just thrown out on any old day you happen to leave the place. I have said more than enough; I just wanted to give noble Lords a feeling of my views. I will look to see if there is anywhere I can add a little to the Bill.

4.57 pm

Lord Strasburger (LD): My Lords, returning to the Bill, I start by drawing the House's attention to my declaration of interests in the register, specifically to the fact that I own 11 investment properties, either solely or jointly with my wife, and have done for something like the last 20 years. I also have a shareholding in a small letting agent in Bath. I am therefore in a position perhaps to bring a slightly different perspective to proceedings.

Speaking for myself and for the letting agency, I strive hard to be a caring and ethical landlord, and I have tenants who have been in place for 10 years or more. I insist on the same standards from the agency, Reside Bath. We do not charge landlords and tenants for the same service, and we are positioned very much at the top of the scale for quality of service and integrity. That is the raison d'être of the business. Our mantra is that a happy tenant is a good tenant; it is very much in the interests of the landlord that the tenant is happy and will look after the property. Almost every single unsolicited review of the agency on Google by tenants—there are many—has five stars. I wanted to set the standards a little. I will therefore put the perspective of a reputable part of the letting industry to the House today.

Landlords and letting agencies are relentlessly pilloried in the press and by politicians. They are convenient scapegoats for a broken housing market, caused by there being too few properties, particularly properties for social rent, and big barriers to entry for first-time buyers. The lack of social housing means that a lot of less well-off tenants have been forced into the private sector, where they should not be. They should be properly cared for, with good housing at rents they can afford.

Most agents do a decent job and most landlords are sensible and fair. The private rental market meets an important need for those who do not qualify for social housing, or cannot get it, and those who cannot buy their own homes. I fully accept that there is a minority of rogue landlords and rogue agents. A member of my close family was a victim of such a rogue agency in London not long ago, which indulged in the most appalling and illegal behaviour. I do not stand here defending rogue agents in any way. I favour strong accreditation rules to stamp the rogues out—which this Bill will not do. But it is fair to say that this is a two-way street; there are some awful tenants too, and I have had my share of them.

I would like to defend the six-week deposit. Some tenants who pay monthly are in the habit of not paying their last month's rent. They assume it will be taken out of the deposit. If the deposit was only four weeks, it would not cover the rent; if five weeks, it would cover the rent, but with virtually nothing left to

give the landlord any defence against genuine—I stress genuine—dilapidations to the property, for which the tenant is responsible. Six weeks is a balanced number that is fair to both tenant and landlord.

From the industry side of the fence, the Bill seems to imply that all tenant fees are unfair and exploitative. While the Minister referred to unfair fees, the Bill bans all fees, whether fair or unfair. Most tenant fees recover real costs that agencies incur. I accept that some agents abuse tenants' fees and charge for completely imaginary services and costs. That practice would be better covered by a cap on tenant fees rather than an outright ban.

What will be the consequence of a total ban on fees? The rental marketplace is very mature and efficient; every action leads to a reaction. Things vary in different parts of the country, but landlords mostly pay for the ongoing management of the property and tenant during the tenancy. The tenant fees usually cover the costs incurred at the beginning and end of the tenancy—for example, marketing costs, company viewings, creating the tenancy agreement and end of tenancy negotiations about dilapidations. All this really does cost money, which agents cannot absorb. The agency market is highly competitive and margins are very tight. Agents cannot absorb the loss of revenue caused by a ban on tenant fees, so the costs will be passed on to landlords. I have talked to a lot of agents and they are all planning to do that. Landlords will then try to recover this new cost through higher rents. I accept the argument that rents are to a large extent set by the market, but evidence from the Scottish example is not clear. Depending on who you believe, rents increased by between 0% and 5%, but I accept that it is an art, not a science.

Also, in trying to recover these extra costs, some landlords will try to trim their maintenance costs, and that will have obvious consequences for the quality of accommodation. It is very hard to quantify this but there will definitely be upward pressure on rents and downward pressure on standards. It is worth noting that this is the latest of many assaults on the viability of landlords' business models. Gone are the days when buy to let was a lucrative alternative to saving for your pension. A few years ago, George Osborne mounted a double tax raid on landlords, the last part of which is only just coming into effect. He increased stamp duty on property purchases for landlords and others, and he scrapped—in a phased way; it is just finishing now—the tax relief on interest. That means that landlords pay tax based on revenue, not profit, unlike every other business, and so can end up paying tax even if they make a loss.

Noble Lords could not expect me to stand here and make a speech without mentioning Brexit, which is a factor in this. In the unlikely event that the Government can cobble together some sort of deal that they can get through the House of Commons, there is a risk to the housing market and to the price of houses. The Governor of the Bank of England forecast to the Cabinet that property prices could fall by 30% to 35% after Brexit, and that could mean negative equity and large-scale bankruptcies for landlords. For some landlords, taking over the costs currently covered by tenant fees might be the last of a large number of straws. Some will choose to sell, some will go out of business and new entrants will be deterred. I cannot put a figure on this but there are likely to be fewer landlords, and fewer landlords means few properties to rent, which means higher rents and less choice for tenants.

In summary, the law of unintended consequences applies here and I believe that the Bill misses the real target. Tenants will get a short-term gain but they might incur the long-term pain, currently unquantifiable, of higher rents, less availability and possibly lower property standards. I would have preferred a strict cap on tenant fees and compulsory accreditation of all letting agents at a very high standard.

Having said that, I will go along with the Bill and any Bill that improves the standards of the rental market. I and my letting agency business will make the best of it for all concerned, especially our tenants, and will try to mitigate the downsides.

5.08 pm

Baroness Jenkin of Kennington (Con): My Lords, I declare an interest in that I let rooms in my home in London, motivated mainly by the fact that accommodation in London is very expensive and I think it is unfair of those of us who have extra space not to use it. However, I have never used an agency and hope never to have to do so.

On top of increasing rents, tenants often face an arcane list of fees: administrative fees, credit check fees, tenancy renewal fees, referencing costs—and the list goes on. Therefore, I support the Bill in its intention to make renting fairer, more transparent and perhaps even more affordable for tenants. Getting this right will improve life for millions of people, including many young people from what is sometimes termed Generation Rent.

However, even well-framed legislation can risk unintended consequences, and it is the Bill's potential impact on the home share sector to which I draw your Lordships' attention. Home share is a global movement, but it has for many years remained stubbornly small in the UK. With an investment of more than £2 million from the Big Lottery Fund and the Lloyds Bank Foundation for England and Wales, this has finally started to change. The growing number of small home share agencies in the UK are at a crossroads, with the opportunity to become a major force to reduce loneliness among both older and younger people, as well as to provide affordable housing and a good start in life to young people and others. It is an arrangement which involves housing, but whose primary purpose is to set up a mutually supportive relationship across the generational divide.

Home share is a system whereby someone who needs help or companionship to continue to live independently in their own home is matched with someone who has a housing need and can provide a little support. Householders are often older people who have a few support needs or have become isolated or anxious about living alone. Home sharers are often younger people—students or key public service workers—who cannot afford housing where they work but are happy to provide an agreed low level of help or companionship. One thing which motivates me is finding

[Baroness Jenkin of Kennington]

a resource which meets a need and putting the two together, which is why I am such a fan of home share. Home sharers help out and pay no rent. There is a national network for the UK's home share schemes, supported by the charity, Shared Lives Plus.

Home share is a widely supported concept. A short film produced by the BBC to mark Tracey Crouch's new role as the world's first Minister for Loneliness showed how Florence, 95, and Alexandra, 27, support each other by living together in Florence's home. In the film, Florence talks about the crushing effect of loneliness after the death of her husband, the fear of something happening to her and no one knowing, or of being "bored to tears" and the emptiness in a life which had previously been active. Alexandra also talked about loneliness and said of living with Florence: "I have a new friend and somewhere that is really homely. I can feel safe and not isolated in a big city".

This film has been watched 25 million times on social media. Councils are now investing in home share, with others exploring how to support independent home share organisations to support more older people. Paul Ellis, the cabinet member for adult care and health at Wandsworth Council said:

"This is a common-sense approach that tackled two problems at once in a creative way. Loneliness is a hidden problem in our communities, and as well as providing more homes, this scheme will provide companionship and bring different generations together".

Parliament clearly does not intend to create red tape or financial challenge for such a valuable model, but there is a risk that home share schemes will be captured by the definition of letting agent used in the Bill, because the younger home sharer has a licence to occupy provided by the older person. The home share agency carefully selects older participants who need support, sometimes because they have the very early stages of dementia, but sometimes just because they are isolated and worried about living alone. Younger participants are also carefully selected, and there is time and financial cost to this: the young person is interviewed, references are taken up and an enhanced DBS police check is usually required before they can carry out a support role for a vulnerable older person, which can include shopping and therefore handling money. Home share is comparable to a befriending scheme for older people, where an enhanced DBS check is considered standard. Most schemes need to charge for these services.

Home share is based on a matching process. Both parties are introduced to each other, they then decide whether they are compatible and are supported to draw up an informal home sharing agreement, which outlines the expectations on both sides and usually includes the young person providing about 10 hours a week of practical help and often being in the house for a number of nights. Home share matches typically last about a year, but there is no formal contract stipulating the length of an arrangement, nor enforceable periods of notice. Home share has had a remarkably good safeguarding track record in the decades during which it has existed in the UK, based on careful selection and matching participants, clear expectations and building trusting relationships in which both parties take responsibility for the arrangement's success, rather than resorting to law. Its relational nature makes it feel valuable and fulfilling to its participants, and marks it out from a more formal commercial arrangement. The young person has a licence to occupy their room, and the right which that implies, but they pay no rent to the older person. They usually contribute to the older person's household bills.

One of the strengths of home share is that, unusually among preventive services which councils under the Care Act 2014 have a duty to develop, it does not require ongoing charitable or state funding. It is funded through both participants paying the home share agency to enable that agency to employ co-ordinators who find, recruit, prepare and match participants, and then continue to provide ongoing support and advice for them, stepping in if something goes wrong and also arranging new matches where a match comes to an end, such as when a young person moves on or an older person needs more formal care. Typically, the young person will pay an upfront fee to cover the costs of ascertaining that they will be able to support an older person. Then the older person will pay a monthly fee, with the younger person paying a larger monthly fee; £30 a week for an older person and £40 for a younger person is typical. The older person pays far less than they would for more formal support, and the younger person far less than if they were renting housing in the normal way. Some home share schemes are formally constituted as charities or community interest companies. All in the Shared Lives Plus Homeshare UK network have signed up to work within a good practice framework and continually evaluate themselves against a self-regulatory quality assurance programme, with Shared Lives Plus staff providing support and a community of practice.

Of the 23 home share schemes which are part of the Shared Lives Plus network, six now report that they are financially sustainable through this model, and the number of older people supported has risen from 250 in 2017 to 350 in 2018. In other European countries the figure is already in the thousands, and 17 other countries have home share programmes globally.

If home share schemes are considered to be letting agencies under the definition of the Bill, and if the fees they charge younger people are considered to be banned under its provisions, the home share model as it stands would have to alter in ways its practitioners consider would make it unsustainable. It is considered essential to the model that the younger person does not pay rent. This is not only because the model selects young people who want to support an older person, and older people who want companionship and help, but because it selects young people to give them a start in life, rather than people who want to engage in a commercial boarding arrangement. Often, older people do not have the confidence to let a room commercially. Younger people too report that they would not be able to provide the support an older person requires, especially those with early signs of dementia, without the specialised support of a home share agency.

For the home share sector to continue with its laudable aim of being self-sustaining, rather than reliant on charitable or council funding, the Bill could require the older person to begin charging rent to the younger

person. Furthermore, this rent would then need to be collected in increased fees to the older person by the home share agency. This would be confusing to the older person in particular, and could require them to submit complex information about their income and outgoings to HMRC for taxation purposes, and could impact on their benefits status. This would add to the challenges of the sector's aim of bringing home share to lower-income older people. It would lose its simplicity.

Home share is a no brainer. In the words of Dawn Austwick, Chief Executive of the Big Lottery Fund:

"Homeshare offers a new and sustainable model for people to live more independently and take control of their lives through supporting one another".

I am sure none of us would wish to place barriers to its growth at a time when our health and care systems, and the older people they support, desperately need innovative solutions to the scourge of loneliness and to the shortage of good social support many older people experience. Low-level support and companionship at an early stage can reduce or delay the need for more formal and expensive crisis support later on. Home share clearly does not financially exploit younger people. It provides them with a valuable role, companionship at a time when younger people's loneliness is also in the spotlight, and accommodation at lower cost than the traditional alternatives.

Obviously, it is important not to create any loopholes through which commercial letting agents could jump. However, could not genuine home share programmes be excluded from the provisions of the Bill by virtue of the fact that they act in a way that no commercial letting agents could imitate? In a genuine home share, the "landlord" is paid nothing for accommodation by the tenant or the co-ordinating organisation. No commercial letting agent could operate on the basis that a landlord would be paid nothing by either it or the tenants.

Furthermore, although home share involves accommodation, it is based around the provision of support and companionship, and its charges are primarily for arranging that support for a vulnerable adult safely and effectively. If the younger person ceased to pay the home share agency, they would not lose their accommodation, which is in the gift of the older person and not the home share organisation. Therefore, I would be grateful if the Minister could confirm that fees charged by a home share organisation to set up and facilitate the support provided by the younger person to the older person would not fall foul of the provisions of the Bill, providing it is clear in any agreement between the young person and the home share agency that their accommodation is not contingent on any such fees.

Good befriending schemes for older people always involve similar selection processes, interviews and enhanced DBS checks. Does my noble friend agree that home share schemes should also be able to carry out these processes and to pass on the costs of those as they need to, as the processes are required by virtue of the support offered to a vulnerable older person and not in order to arrange the accommodation?

Further, given the issues raised by the Bill for the nascent home share sector, might this not be an opportunity to define "home share" in law? This would help its growth as an invaluable source of support and companionship for older people and avoid any risk of unscrupulous commercial organisations misleading older people. I very much hope it will be possible for this admirable Bill to achieve its purpose without penalising the thousands of older and younger people who could benefit from home share if we create an enabling legislative framework.

5.22 pm

Baroness McDonagh (Lab): My Lords, I welcome the Tenant Fees Bill, as I welcome the Prime Minister's announcement at the Conservative Party conference to lift the cap on housebuilding imposed by the previous Conservative Prime Minister in 2012. However, while welcoming the Bill, having read it, I see that it does not live up to its promise. It feels as though someone who understands the issues wrote the first half of the Bill and somebody else, who does not understand the issues, came along and put in so many exclusions that they negate what the Government are trying to achieve. I am therefore disappointed that, when we come to Committee, we will be in Grand Committee, which reduces our ability to amend—and this Bill needs amendment.

Let me give noble Lords a recent example of what tenants face. I appreciate that the tenants in this example would not be protected by such a Bill, as the actions involved are illegal. Two Sundays ago, the Member of Parliament for the community in which I live—here I declare an interest, as she is also my sister—was canvassing with her team. She received many complaints from local residents about the number of black bags on the streets. They identified the rubbish as coming from a commercial office block. The intrepid canvassers and said MP knocked on the door of the office block only to find that it was full of tenants: each office had a family in it. As there were no cookers in the offices, each office had a hotplate, and the families were using the ladies and gents toilets. These tenants did not have tenancy agreements but licences. I am very nervous about the number of landlords now creating licences, allowing them to subvert a lot of the regulations we are putting in place.

The families in that block were being charged £1,100 per month for each office space, completely unlawfully. But why did they take that accommodation? They took it because they were absolutely desperate. Having heard that story, if noble Lords reread the exclusions in the Bill, would those same tenants be able to argue their case? I understand the point made by the noble Lord, Lord Strasburger. Many hundreds of thousands of landlords in this country are perfectly reasonable and do a good job, and we are talking about hundreds of thousands—one in five people over 65 now own a second property that they rent out. The Bill is about rogue landlords. If you behave well, you have nothing to fear from it.

What sorts of things did I hope to find in the Bill? First, six weeks is too long for a deposit. I ask the Government to think again about that, particularly in London and the south-east. In the community where I live, a property that would house a mum, dad and two children would easily cost a minimum of £2,000 a month. People looking for that housing are largely on

[Baroness McDonagh]
minimum-wage jobs. We are talking about a £3,000 deposit. I ask the Government to consider either reducing that to four weeks or putting a financial cap on the amount that can be charged.

Secondly, I would expect to see normal consumer protection. An example would be a cooling-off period for tenants. There is no provision for that in the Tenant Fees Bill. It is wrong that you have greater protection if you buy a telecommunications package, digital television or washing machine than a home.

When the Minister replies, I would like some clarification on some of these exclusions. Schedule 2(8) to the Bill states:

> "The landlord is reasonably entitled to take into account the difference between the information provided by the tenant and the correct information in deciding whether to grant a tenancy to the tenant".

If the landlord sees that those two pieces of information are different, they do not have to give back the holding deposit. How can the landlord be judge and jury of that?

Lord Young of Cookham (Con): I gently draw the noble Baroness's attention to what the *Companion* says. Any speaker in the gap is expected to be brief and speak for no longer than four minutes.

Baroness McDonagh: I apologise to the Minister. I will finish with those points about exclusion. Each exclusion clause is written in defence of the landlord, not of the tenant. There is no process for tenants to complain.

5.28 pm

Lord Shipley (LD): My Lords, this has been a helpful Second Reading debate. It has identified a number of issues that we will need to explore further in Committee. Indeed, the noble Baroness, Lady McDonagh, despite the limitations of time, has raised a number of issues that would be worthy of spending a little time on in Committee if that were felt by her to be appropriate. I remind the House that I am a vice-president of the Local Government Association.

I refer first to the contribution by the noble Baroness, Lady Jenkin of Kennington, which I found very helpful. One good thing about a Second Reading debate is that it enables us to identify things that may be a problem or an unintended consequence. She talked about the home-share model. I want to raise with the Minister another one that we need to be clearer about. It relates to local authority incentive payments to landlords which prevent homelessness. On the one hand, a landlord may claim that they do not require a payment; on the other hand, any agreement would reflect the fact that a payment was being made. It would appear, under the Bill as it is currently drafted, that that could well be illegal. When the Minister responds about the home-share model, I hope that he might be in a position to respond about local authority incentive payments to landlords which prevent homelessness.

I want to welcome the Bill and to pay tribute to the work of my noble friend Lady Grender who has campaigned for some time on this matter—it is good to see us in the position that we are—and to pay tribute to my noble friend Lord Palmer of Childs Hill and to the noble Baroness, Lady Hayter, for their work on the client money protection scheme. These are all part of a trend to remove rogue landlords and letting agents from the industry. There is no doubt that the Bill will bring transparency, as the Minister said, to the sector; it will provide protections for tenants and it will prevent double charging. It is good to see the proposed ban on letting fees and most other up-front fees paid by tenants, in particular the proposed cap on security deposits, the new duty on trading standards authorities, and the new penalties on any landlord or letting agent who contravenes them. As my noble friend Lord Strasburger reminded us, "most agents do a decent job", and, in the words of the noble Lord, Lord Best, "this Bill will end the 'here today, gone tomorrow' letting agencies". I think we need to pause and repeat that we are dealing here with those who do not abide by the system properly. The vast majority of letting agents and landlords operate in a caring and ethical manner, and represent the reputable part of the lettings industry.

One of the problems that we are dealing with is the impact of 4.7 million households in the private rented sector. The noble Lord, Lord Best, referred to the enormous growth which requires the Government to legislate more and more to keep up with the problems which have arisen as a consequence of that growth. Many people in the private rented sector are having to move more often because of the nature of the tenancies they have currently, and when they do, they are having to pay more than they otherwise would if they had longer tenancies. Of course, as the Minister will know, one of the solutions to this problem is to build more social housing. I am absolutely convinced that the problems we now have in relation to the private rented sector are caused by not having enough social homes for rent. There will be other opportunities for us to debate that in the coming weeks.

The Government are to give £500,000 to assist with setting up costs. I want to concur publicly and absolutely with the Minister's view that this should be self-financing. I think it does need to be. There are other areas, particularly in the treatment of rogue landlords, where local authorities can make themselves cost-neutral in terms of their investment. However, setting this up does require £500,000. It would be helpful if the Minister explained why this figure was selected; it does sound like quite a lot of money. On the other hand, there are an awful lot of local authorities in the country, all of whom will want some of it, I imagine. My suggestion is that there does perhaps need to be sub-regional training and sub-regional structures. The Government need to be very careful about how that money is allocated because I do not think that simply divvying it out to every council would work.

There is a general need for publicity. Presumably, money for that will come out of the £500,000. Perhaps it will, perhaps not, but I think that it will. If so, we need to be careful about ensuring that there is enough publicity for those who need to understand that the law has changed: landlords and letting agents on the one hand and tenants on the other. It needs to be made much clearer to people what their legal rights

and responsibilities are. I am very pleased to hear about the new role of the noble Lord, Lord Best, which will be hugely helpful in this respect. There has been a debate about the cap and the figure of six weeks' rent. That may be right; we will need to explore it in Committee. A five-week figure may be better. I take my noble friend Lord Strasburger's point about the problem with a four-week figure in months with five weeks and we need to look carefully into that.

The issue of default fees is becoming more important. They must not permit agencies to bring in hidden extras that cannot be challenged. When people sign a lease, they need to be clear about what they are committing themselves to. My noble friend Lady Grender asked why such fees are needed at all, which we will need to explore in Committee. Equally, we have had several briefings on the Bill, but I was particularly taken by what was said by Citizens Advice:

"The default fee clause has the potential to fundamentally undermine the Government's aim to end tenant fees and prevent unfair practices … The Government must significantly tighten this clause with a clearer definition of when a default fee is legitimate. Leaving this to non-statutory guidance risks inconsistent outcomes for renters".

That is true. We need to be very careful about that danger.

Will this measure result in higher fees? The evidence I have read from Scotland suggests that it will not, but it may. I was taken by two comments: first, that rents are set by the market, as was said by the noble Lord, Lord Best. That is an important consideration. The second was the comment made by my noble friend Lady Grender that many tenants would prefer to pay monthly if they had to pay a higher sum overall. Again, I hope that we will explore that further in Committee.

I will make two final points. First, it would help enormously if the draft regulations, given their importance, were made available to us prior to Committee stage, which I understand may be on Monday 5 November. I hope that this will not be one of those Bills where the draft regulations appear at or around Third Reading, or occasionally not at all. Our deliberations will be detailed so it would be helpful to have them made available. Secondly, the Minister said something about electrical safety checks; I am trying to recall his words. He rightly identified that this is part of an overall package of improving conditions in the private rental sector. He said that the legislation for electrical safety checks would be forthcoming, the parliamentary timetable permitting. Can he tell the House what might prevent that timetable undertaking something substantial that really matters? Overall, the Bill is welcome and I commend it on our behalf.

5.39 pm

Lord Beecham (Lab): My Lords, I refer to my interests in the register as a vice-president of the Local Government Association and a Newcastle City councillor. The ward I represent has a number of private rented properties, many of which were former council houses that were sold under the right to buy and now have people living in them paying considerably higher rents than would have been the case had they remained council properties.

However, this is a well-intentioned Bill that received broad support in the Commons and has been generally welcomed in this Second Reading debate. I was particularly interested in the contribution of the noble Baroness, Lady Jenkin. It was extremely informative and I have no doubt that she will talk to her ministerial colleague and friend. I hope that the Government will listen and see whether the points she made can be incorporated in the Bill as we proceed.

There are, in any event, a number of issues that need to be addressed or clarified, some of which, in addition to the noble Baroness's point, have been identified today. One critical matter is funding, mentioned just now by the noble Lord, Lord Shipley. The Government's commitment to provide £500,000 in the first year of the new regime to support enforcement activities is, of course, welcome, but the assumption that this will be sufficient to meet all of the costs of the new regime and that it will ultimately be self-financing is somewhat dubious. The responsibility now being imposed on local authorities is within the new burdens doctrine, under which the Government should meet the cost of responsibilities imposed on councils. Therefore, will the Government guarantee to meet the difference between the cost incurred and any sums recovered from landlords or agents?

The Bill bars additional charges to tenants except if they fall within a range of matters, including, for example, a variation of the terms of the tenancy or its renewal, many of which might be very simply achieved. It is unclear what the effect of that would be. Should there not be guidance about the size of such levies in those circumstances? Will the Government review the charging system after a time to ensure that the charges are reasonable? It is welcome that financial penalties might be imposed on landlords or managing agents for certain activities, but why should the failure to return a deposit, for example, not be treated as a criminal matter? The money will, effectively, have been stolen.

There are a number of questions about other provisions in the Bill. It lists a number of payments to landlords that are permitted. They include, oddly, payments to a local authority via the landlord of council tax. Could the Minister explain the rationale for this and for the inclusion of an alternative provision under which the landlord or agent could require the tenant to pay the council tax to the authority? Is it not the tenant's obligation to pay the council tax anyway? There is also a provision that tenants could be required by the landlord or agent to pay for gas, electricity, fuel or water. Would this not be the normal position in any event, although I can understand that there might be difficulty for multiple occupants of a property? Could the Minister explain whether this provision will therefore apply to all tenancies, or is it designed for the situation where more than one tenancy is involved in a particular building? The same question arises relating to the landlord's or agent's requirement of a tenant to pay the BBC television licence or for telephones and the internet.

Paragraph 3 of Schedule 2 requires the holding deposit to be refunded if the parties do not enter into the tenancy agreements,

"for reasons, broadly, under the landlord or agent's control".

[Lord Beecham]

Will the Minister say how "broadly" is to be defined? Paragraph 7 of that schedule touches on the sensitive area of immigration, stipulating that the landlord or agent does not have to refund a holding deposit if a tenant does not have the right to rent property under the Immigration Act, provided that they, the landlord, were unaware of the problem. Given the appalling record of the Home Office in Windrush and other cases, is there not a real risk of injustice in that provision?

Clause 15 allows tenants to apply to the First-tier Tribunal for compensation from the landlord or agent if they have been required to make an improper payment or have been unable to recover a holding deposit that has been unlawfully withheld, but will legal advice and, if a hearing is required, legal aid be available for a tenant of limited means? Or is the provision in Clause 16 that provides that, "An enforcement authority may"—I emphasise "may"—help a tenant, a substitute for legal advice and/or aid? What criteria would be adopted to assist that enforcement authority in a decision as to whether or not to offer such advice and support?

The Bill places significant duties, under Clause 21, on what might be thought to be a somewhat curious choice of organisation, namely local weights and measures authorities, to enforce client money protection schemes. This vests the function in county councils and two-tier areas, in contrast to the unitary areas, where the local authority already has a significant role in housing. What steps do the Government propose to take to ensure the necessary liaison between the different county and district councils? What steps are planned to equip the officers at county and unitary council levels with the necessary skills—or indeed those district councils, as opposed to unitary councils, which may choose to exercise the role?

Clause 22 deals with the lead enforcement authority. Oddly, that title is defined as either,

"the Secretary of State, or … a person whom the Secretary of State has arranged",

which is a curious word,

"to be the lead enforcement authority".

In the latter case, what will be the criteria for an appointee and how will he or she be selected? Will local government have a role in the appointment process? The clause goes on to list a number of things that the Secretary of State may arrange or regulate, though in the latter case the type of secondary legislation is not identified. I assume it will not be in the affirmative mode, but in any event can the Minister say when these are likely to emerge, and whether the Local Government Association will be fully consulted, alongside other relevant bodies representing tenants, landlords and agents?

Clause 23 sets out the duties of the lead enforcement authority. Will the officeholder be required to consult with local authorities about the exercise of his or her duties? Will there be an annual report of the work undertaken and contemplated? In particular, will the duty of the officeholder,

"to keep under review and … advise the Secretary of State about … social and commercial developments in England and elsewhere"—

as the Bill says, somewhat curiously—relating to tenancies, agency work and related activities extend to include local government?

Clause 24 sets out in detail the way the lead enforcement authority is to work, and the relationship between the authority and the relevant local authorities. The key subsections (3), (4) and (5) require the enforcement authority to notify the relevant action it proposes to take. It is not clear whether "the relevant authority" to which notification should be given is the relevant housing authority or, in a two-tier area, the county council which provides the local weights and measures service. Should the housing authority, or the district council in two-tier areas, not at least be notified of the position? After all, they have the ultimate housing responsibilities.

The Local Government Association is concerned about the impact of the provision in Clause 3 that proscribes the payment to a landlord in order to secure a tenancy. This is absolutely legitimate in relation to ordinary lettings, but it has a potentially serious impact on the practice of some councils, as we heard from the noble Lord, Lord Shipley, to make incentive payments to secure the rehousing of homeless people. Councils have a duty, as housing authorities, to help the homeless to be housed, and the recent Homelessness Reduction Act and the homelessness code of guidance in February allow councils to provide support to applicants, financial or otherwise, to access private rented accommodation. The noble Lord identified that point and I hope the Minister can provide some satisfaction. The code explicitly refers to making small grants to property owners to facilitate housing these vulnerable people. I hope the Government will accept this and ensure that the Bill recognises this growing need.

Finally, I raise again the urgent need to facilitate selective licensing as a means of ensuring decent standards of housing and good housing management. There are too many people living in poorly managed properties, often in appalling conditions. This not only affects the residents of those properties but has a damaging effect on those who live either as owner-occupiers or tenants of well-maintained rented homes. I speak with experience of precisely that situation, which exists in the ward I represent and in some other wards in Newcastle. We have some selective licensing schemes but it is a very difficult and prolonged process to ensure that one can be given. The Government have undertaken a review of the issue and I invite the Minister to indicate when this will be concluded and whether, if action is recommended, the Government will look to implement it.

I join most of the noble Lords who have spoken in welcoming the Bill. Certainly, on these Benches we will seek to work with colleagues across the House to look at possible improvements and ensure that the Bill emerges fit for purpose, as undoubtedly the Government would wish.

5.50 pm

Lord Bourne of Aberystwyth: My Lords, we have had a very valuable debate and I am grateful for noble Lords' contributions, which have taken us round the circuit to look at the main provisions of the Bill, possible lacunae in the Bill and, in some cases, things

that are extraneous to the Bill, which I will try to deal with. I will take the contributions in the order they were made and will try to provide answers. If I am unable to—some very technical issues were raised, quite rightly—I will ensure that a write-round letter goes to all Peers who participated in the debate and a copy is left in the Library.

I thank our partners who have helped in framing the legislation and discussing relevant issues. Again, I thank the noble Baroness, Lady Grender, for her role and—she should take a double bow here, really—in relation to Shelter, which has been valuable; I also thank Generation Rent, Citizens Advice and of course the LGA, which is close on much of the detail of this, as your Lordships would expect. I will try to pick that up as I go along.

First, I thank the noble Lord, Lord Kennedy, for his general support. I agree that—it was a recurring theme—most landlords and agents act appropriately and we are dealing with the exception. That does not make it any less important but it is vital that we indicate that the issues that need looking at are in relation to only a minority. The noble Lord raised issues about the level of deposit, which I appreciate is something we will want to look at ahead of Committee. I am happy to give a commitment to look at the issues that were raised. Comments were made by at least one Member about Committee stage being in Grand Committee. I understand from speaking to my Whips and Whips in other parties that it is not unusual for Committee stage to be taken in Grand Committee because votes in Committee are very rare; it would be more unusual, certainly, on Report. That is the point. This was done through the usual channels, as noble Lords will appreciate.

The noble Lord, Lord Kennedy, asked about the novation provisions in Schedule 1. Again, only reasonable costs can be covered in relation to that. That is true also in relation to the cost of default fees. As I said, that was added as an amendment in the other place. I appreciate from comments made by noble Lords that we will want to look at that ahead of Committee to see how we can improve it. The noble Lord also raised the interaction between district councils and trading standards, which is the relevant authority that has been designated. Regulations can be made, I believe, by the Secretary of State under Clause 7, which governs that issue.

The noble Lord, Lord Kennedy, asked about compensation in relation to recovery of a deposit that is improperly held. I think that would be unusual. This is somebody suing for a debt. If there is a loss that emanates from the lease under normal contractual principles, either the tenant or the landlord would be able to sue for that compensation. Compensation is only in relation to a loss. If it is a matter under the lease, that should be subject to normal contractual principles. The noble Lord asked, quite rightly, about transparency and for that to be given a prominent role in relation to the naming of the agent. I can confirm that the legislation requires this to be prominently displayed. This is something that we would want as well, so I thank him for raising that.

I thank also the noble Baroness, Lady Grender, for her supportive comments and for her work on this. I share with her the view that there is no evidence of rent increases in Scotland, where this is operational, being any different from the rest of the country. So far as one can see, they are broadly in line. I also share with her the need to keep the beneficiaries of the Bill much in mind. I agree that openrent.co.uk is a successful business model, which is worth looking at. It is also notable that most landlords support the legislation, which is reassuring. We will no doubt return to the issue of default fees.

The intention here, as I think all Peers appreciate, is to cover situations where something is taken up by the agency on behalf of a tenant: the key is the classic example and in normal circumstances, that would be paid for once the receipt is given. Nevertheless, there may be such cases and I do not want to damage a possible situation by outlawing them totally and then finding that that disturbs a perfectly good relationship, where it may be easier for the agent to recover it if the tenant is working away from home and unable to do that sort of thing. Let us come back to that ahead of Committee. I think we all want the same things; it is about ensuring that we have that.

The noble Baroness, Lady Grender, also asked about the percentage of deposits being reduced—I think that was the relevant phrase—and the evidence that the citizens advice bureaux brought forward. The figure we have from our impact assessment is of 14% of deposits being reduced rather than the CABs' 8%, so we differ on that.

I also thank the noble Baroness, Lady Hayter, for the role that she has played in this general area. She talked about £240 million being taken out of the housing market overall. Of course, a lot of that will be in the reduction of charges paid for by tenants so it will be desirable to that extent. I understand her point but it is not as if this is not doing some good when it clearly is. I agree with her on one very telling phrase: one cannot owe a duty of care to two parties in a contractual relationship such as this. That point was well made and, while we do not always agree on everything, I certainly agree with her on the value of regulated markets. I do not need convincing of this and, as she rightly said, I am low down in the food chain so any support I can be given on that is certainly warmly welcomed by me. I thank her very much for her contribution.

The noble Lord, Lord Best, in declaring his interests, demonstrated why, when you want something doing, you ask a busy man or woman. I am very grateful that he is taking on the role that I outlined in the letter sent to Peers. It is welcome in relation to training for letting agents and generally ensuring that they are up to standard. I repeat: the majority are doing a good job. In his useful contribution, the noble Lord looked at the nature of the problem that we face and the possibility of side-effects. Again, I share the view that he put forward, which was also put forward by the noble Baroness, Lady Grender. I do not foresee side-effects—other than good ones, as it were.

My noble friend Lady Gardner of Parkes then made a contribution and I thank her for her general warm welcome for the legislation and her comments on it. I appreciate that she has particular issues in relation to short-term lettings. Many of these matters,

[Lord Bourne of Aberystwyth]
if they are against the lease, should be taken up by the landlord. It sounded as if some other issues she referred to should certainly be taken up by the landlord. If, for example, there is a brothel, local authorities certainly have the power to act. No doubt we will continue the discussion on these issues.

The noble Lord, Lord Strasburger, perhaps came to it from a different direction with his experience in this area. I do not need telling that he is an ethical landlord; I am sure he is and I agree that a happy tenant is a good tenant—hence in many ways this legislation, which I am sure will help. But he is right to talk of the need to appreciate that we are trying to strike a balance between the interests of the landlord and the tenant regarding the deposit. That is something to focus on. I appreciate that there is a tendency to say that this is a particular problem for London and the south-east but the rents and the value of property are of course higher there, so in so far as we are trying to strike that balance, we need to do so throughout the country. The question is therefore about trying to get that right.

I thank my noble friend Lady Jenkin for highlighting the problem of home share and Shared Lives. I agree with her. We are aware of this issue and are engaging with Shared Lives to see how we can move forward on this. She underlined how important home share is and the great value of the work. That is something we should support in seeking to combat loneliness. That is happening on a global basis and is something we should applaud. She is right that it covers licensees. This point was also raised by the noble Baroness, Lady McDonagh. The Tenant Fees Bill applies not just to tenancies but to licences and student accommodation as well.

I shall flash forward to the point made by the noble Lord, Lord Beecham, about student accommodation. It may be the answer to some of those points about shared utilities, TV licences and so on. We will double check that and cover it in the letter, but I suspect that that may be the answer. We are trying to cover the relatively small percentage of incidents where this happens. Noble Lords will appreciate that starting off with an outright ban, which I think is the right thing, and making exceptions means that we would have to have a pretty exhaustive list of exceptions. So I will pick up those points in the write-round letter.

I thank the noble Baroness, Lady McDonagh, for her generally warm welcome for the legislation. I think I have dealt with the points on the Grand Committee and licences. I agree that there are issues to look at on the holding deposit, although the key point there is that there are only certain grounds on which it can be retained by the letting agent. We just need to nail that down. We can try to do that ahead of Committee, but I think that I will be able to give the reassurance sought that it is a very limited set of circumstances.

I once again thank the noble Lord, Lord Shipley, for his broad support and I agree with his comments and his point on bringing forward local authority incentive payments for preventing homelessness. That point was echoed by the noble Lord, Lord Beecham. We are aware of the issue and we are seeking to bring forward an amendment that we think is probably necessary to allow that. I hope that we can keep in touch on that issue.

The noble Lord, Lord Shipley, referred to the growth of the private rented sector. That is true. It presents fresh challenges, hence the increased need for this legislation. I thank him for his support on the general point about self-financing with the fines paying the costs of setting up this system. There is a set-up cost. I have been asked to justify it. I do not have the figures to hand so I will do that in a write-round letter. I take the point that we have to look closely to make sure that that is what is happening.

The noble Lord, Lord Beecham, asked what will happen if there is a shortfall. There may be a shortfall in one year and an excess in the next year, and we would not be claiming back the excess. I think he will appreciate that there has to be some sort of smoothing mechanism; you could not look at one year in isolation. I will look at that point and pick it up in the write-round letter. It will be a long letter. I am sure noble Lords will appreciate that it will be better than a short letter that does not cover the many points that have been raised.

On electrical safety checks, the noble Lord, Lord Shipley, asked about "when parliamentary time permits". That is a saving provision. Any Government, including even the coalition Government, will always say that. The intention is to bring this forward as quickly as possible. If I can give more information on that I will certainly do so.

There were many detailed points from the noble Lord, Lord Beecham, who also has a lawyer's eye. I do not have the answer to many of the points that he raised but I will certainly make sure that they are covered in the letter, and I am grateful for his acquiescence on that point.

This has been a very valuable debate. As noble Lords will know, I am very keen to take this forward as far as we can on a consensual basis, because I think we all want to kick in the same direction and achieve the same things—but there is work to be done on that. With that, I beg to move that the Bill be read a second time.

Bill read a second time and committed to a Grand Committee.

Armed Forces (Terms of Service) (Amendments Relating to Flexible Working) Regulations 2018

Motion to Approve

6.05 pm

Moved by ***Earl Howe***

That the draft Regulations laid before the House on 18 July be approved.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, the instrument that we are considering today will make consequential changes to the terms of service regulations for regular personnel in the Royal Navy, Royal Marines, Army and Royal Air Force. The changes are necessary to enable defence to operate

and manage part-time service and restricted separation service, described collectively as "flexible service", from 1 April 2019.

As noble Lords will recall, in February this year, the Armed Forces (Flexible Working) Act 2018 became law. In the informative and productive debates that we held in the lead-up to Royal Assent, it became clear that there was a genuine desire to understand how flexible service will operate legally, fairly and efficiently for our people and their families, who will benefit from these new opportunities, and for the chain of command, who will manage them while continuing to deliver operational capability. Indeed, I recall that when we were debating the flexible working Bill some noble Lords used the phrase "the devil will be in the detail". The Government have acknowledged the desire to scrutinise the fine detail that will enable flexible service to operate. Accordingly, today we are introducing an important piece of secondary legislation that provides that detail.

We have worked with the Armed Forces to ensure that while the changes introduced by the instrument will usher in new, modern opportunities for our people, they are at the same time balanced with the need to protect the Armed Forces' ability to deliver operational capability. This, we are clear, must be our red line. I hope this and the debate that follows will assure noble Lords that the MoD has appropriately balanced the overriding need to maintain the operational capability of our Armed Forces with the need to support those who deliver it, and their families, with opportunities to take flexible service.

I draw the House's attention to some of the main content of the instrument. It enables regular service personnel to serve on a part-time basis. It also enables them to restrict the number of days for which they can be required to serve away from their home base—up to 35 days in any 12-month period. The instrument sets out the overall time limits for periods of flexible service and the flexible service application process, which has been designed to be fair and efficient. It enables service personnel to apply voluntarily for flexible service and empowers the service to consider applications. However, it does not guarantee that an application will always be successful. In addition, the instrument outlines the actions required by each party during the application process. Importantly, the process is designed to ensure that service personnel cannot have flexible service terms imposed on them.

There may be occasions when, a flexible service arrangement having been agreed, circumstances require changes to be made to the arrangement, either permanently or for a specific period. We have therefore set out the conditions under which a flexible service arrangement may be varied, suspended or terminated. In the interests of national security, we conclude that in extremis it is essential for the services to be able to recall personnel back to their full-time duties immediately, either as a permanent termination of the flexible service arrangement or a temporary suspension of it. However, this will only be used sparingly, and only where a 90 days' notice period would have an unacceptable impact. Individuals will also be able to terminate their arrangement with 90 days' notice, or to apply to suspend or vary it.

We want to give service personnel as much certainty as possible over any flexible service arrangement that they enter into. Otherwise they will not apply, if they feel an arrangement is likely to be cancelled without warning or explanation. However, we are very clear that this must be balanced with service need above all else. We recognise that service personnel may not always get the outcome they had hoped for when applying for flexible service; therefore, we judge it right and fair that we make provision for an appeals process in the instrument. However, the scope of any appeal will be limited to requesting that the appeals authority reconsider the decision that the serviceperson is unhappy with. Service personnel will be limited to one appeal against a decision. Outside of this process they will retain their normal access to the Service Complaints system.

As noble Lords will note, the working detail beneath the main headlines that I have outlined ensures that we achieve our main policy aim effectively and fairly—that is, to give our people access to new, modern, flexible service opportunities, but at the same time recognising that maintaining operational effectiveness is paramount.

My Lords, the House's approval of this legislation will be a key step in the journey towards the introduction of flexible service on 1 April 2019. As well as the primary purpose of making changes to the Armed Forces terms of service regulations, it will also enable the finalisation of some other important related activities. These include, first, the amendment of subordinate Armed Forces regulations; secondly, the publication of a suite of policy guidance material for those who may consider applying for flexible service and those who will administer it; and thirdly, our ongoing comprehensive communications campaign, which will promote and explain flexible service but also manage expectations and not over-sell it.

All this activity, together with other consequential changes to Armed Forces pension scheme and compensation scheme legislation, and the changes we need to make to our IT systems to enable flexible service to operate, are firmly on track for delivery in time for launch on 1 April 2019.

To conclude, noble Lords have already demonstrated their overwhelming support for the concept of flexible service. Today we can crystallise that support by approving the detail that will make flexible service a welcome reality for our Armed Forces, who continue to serve us with distinction around the world, often in challenging circumstances. I beg to move.

Earl Attlee (Con): My Lords, with his usual skill and clarity my noble friend the Minister has made more or less the same points that were made when we debated this matter during consideration of the primary legislation. I am entirely happy with his Motion. What I do not understand is why noble Lords opposite, and your Lordships' Delegated Powers and Regulatory Reform Committee, sought the affirmative procedure for this very minor matter. Noble Lords should be aware that Ministers have the power to make much more significant changes to the terms and conditions of service than these very minor flexibilities. I hope the Opposition Front Bench have some substantive points or questions that are relevant to the regulations.

6.15 pm

Lord Craig of Radley (CB): My Lords, I welcome the detail with which the noble Earl, Lord Howe, has gone into this, particularly the assurance that no individual will be required to undertake part-time service. That is a most important assurance, and I was glad to hear it from the noble Earl's lips. He mentioned pensions and the abatement of pay. This seems but one part of a story, and each individual who will contemplate it must have the whole picture before he or she is able to make any decision about whether it is worth applying for. I therefore hope that in mentioning the pensions as coming forward, the noble Earl will be able to explain exactly when that is to be available; presumably it must be in the near future.

My only other point may be going into the detail, but perhaps I need a bit of education on the difference between the territorial extent of an application and the territorial application of it. It seems that, for example, in this and in the next regulation there are differences in how this is handled. Perhaps, in replying either to this or to the later debate the noble Earl, Lord Howe, will be able to explain the difference between those two things, because I for one do not quite follow it.

Baroness Smith of Newnham (LD): My Lords, it seems a long time ago that we debated the Armed Forces (Flexible Working) Act, partly because it was introduced into your Lordships' House before it went to the House of Commons. I went back to my files and noted that I had talked about the devils in the detail, although I did not come up with that idea first; several Members of your Lordships' House had talked about that. In particular, the noble and gallant Lord, Lord Walker of Aldringham, said that,

"the devil is going to be in the detail of the regulations drawn up to operate the system".—[*Official Report*, 11/7/17; col. 1187.]

It would be fair to say that while on balance your Lordships' House was supportive of the ambitions of flexible working, some concerns were articulated across the House—I suspect even by the noble Earl, Lord Attlee. In particular, the noble Lord, Lord Dannatt, raised one of the concerns that has just been raised by the noble and gallant Lord, Lord Craig of Radley, about whether flexible working would be imposed rather than chosen voluntarily. While it may appear this evening to the noble Earl, Lord Attlee, that somehow this is a simple Act and that these regulations look straightforward, the reason for wanting them to come through the affirmative procedure was precisely because there were concerns that the devil could be in the detail. There were slight suspicions that the regulations would lead to a situation where flexible working could be required of people in circumstances where perhaps the Regular Forces seem overmanned—that might seem unlikely, but that was the sort of concern raised by the noble Lord, Lord Dannatt—which was why we thought this needed to come through the affirmative procedure.

The regulations as we see them look straightforward, although I am delighted to see that the Explanatory Memorandum is rather clearer and in ordinary English, for those of us who are not used to reading legislation regularly. I hope that the advice that will be given to service men and women will be even clearer than what we see in the Explanatory Memorandum. The rules look slightly opaque, and to put them into some sort of citizen's English—even if it includes lots of three-letter acronyms that are much more familiar to the RAF or the Royal Navy than perhaps to the rest of us—would ensure that the information given to service men and women will make them want to look at using these provisions, and would be welcome.

The regulations look straightforward and very much in line with what the Minister outlined to us at various stages during the passage of the flexible working Act. That is perhaps not surprising, because, as the noble Earl, Lord Attlee, said, essentially we expect the Minister to listen and to respond. But we do not always know whether Secretaries of State or Chancellors of the Exchequer will manage to do likewise. While it is important that these regulations are discussed this evening, I do not see a reason to do anything other than affirm their progress.

Lord Tunnicliffe (Lab): My Lords, we will, of course, support these regulations. I fear the noble Earl, Lord Attlee, has in many ways the wrong challenge. The requirement that these be subject to an affirmative order has an effect that one comes across again and again in complex organisations: the knowledge that something will be scrutinised at the highest level produces very high-quality work. One of the key factors noticeable in these regulations—I take them together with the notes for the service personnel who will use them—is that virtually every question left unanswered in the primary legislation has been answered in them. Therefore, I welcome and support them. I have only one question related directly to the regulations, which is about the reporting procedure: will the frequency of their use be reported in the public domain, and if so, where?

The problem of being a Minister in your Lordships' House is that nobody is here to enforce the rules. Accordingly, I looked at the Explanatory Memorandum to see if I could find something to say. I noted that one reason for these rules was to improve recruitment and retention in the Armed Forces. Essentially, it was an important piece of morale-boosting, which this Government certainly need. Total outflow from the Armed Forces has exceeded intake every year since 2011. I looked into this a little bit further; the way to find out what morale is like in the Armed Forces is to go to the regular Armed Forces continuous attitude survey. It is a brilliant document in terms of information—and a deeply depressing one for anybody who reads it. I will quote one or two statistics from it: satisfaction with pay has gone from 52% in 2010 to 31% now; satisfaction with service life in general has decreased—among both officers and other ranks—from its peak of 61% in 2009 to 41% now.

Dissatisfaction has been particularly acute in the Royal Marines. Members of this House have fought a little battle to keep ships retained for the use of the Royal Marines, yet we find that service morale among officers—that is, ratings for high morale—has gone from 64% two years ago to 23%; for other ranks, it has gone from 32% two years ago to a staggeringly low 9% now. I would defend the right of the Minister not to respond to this, but I hope he will rise to the

occasion and give us some indication of how this crisis is being addressed. I put it to him that one of the reasons is leadership—I am not talking about people in uniform; I am talking about the politicians. SDSR 2015, which was published on 23 November 2015, promised annual reviews. That was a good thing, as I think it has emerged that the SDSR was underfunded.

The Government met their commitment and, roughly a year after that publication, they produced an annual review—the first annual report. The second annual report should have been published on 23 November 2017 but it was overtaken by, of all things, a review by the Cabinet Office. There must have been some squabbling because that metamorphosed into something called the Modernising Defence Programme. We were told that its main points would be published by the time of the NATO summit of 2018, and indeed we got a letter from the noble Earl. As ever, it read brilliantly the first time—these letters are always well drafted—but the second time you read it through you realised that it said absolutely nothing. There was not a single concrete piece of action in it.

If the noble Earl wants to rise to the occasion, I hope he will say when we will see real progress on the review and when the Armed Forces will recognise that they have a serious morale problem, with a programme to address it directly. Although I have served in the VR, I am not a military man in the sense that I have not served full time or been presented with any hostile forces, but I have talked to a lot of people who have. My summary of what they have said to me is: if you want effective forces, you have to have leadership, equipment, training and morale. These are not additives; they are multiplicities, and if any of them is at a low level, that affects all of them and you have wasted your money. We are not at all happy with the equipment area or the training area, and now we are not at all happy with the morale area, and I hope that the Minister will be generous enough to provide some answers.

Earl Howe: My Lords, I am grateful to all noble Lords who have spoken in response to the introduction that I gave. Beginning with my noble friend Lord Attlee, whom I thank for his supportive comments, I think it is fair to say that Ministers felt duty-bound to respond to the recommendation of the Delegated Powers Committee to make these regulations affirmative. One reason that the committee felt as it did was that there would be a great deal of significant detail and that would really matter in the way that the arrangements were rolled out. I hope that, in common with the noble Baroness, Lady Smith, noble Lords will feel that, having read the statutory instrument, the devil is absent from the detail. Indeed, I hope that the Archangel Gabriel has exercised an influence on it, not least in the way it is expressed, which, as the noble Baroness helpfully said, is designed to be as clear as possible.

Perhaps I may turn to the questions put to me by the noble Lord, Lord Tunnicliffe. First, on whether and to what extent we will publish the statistics relating to take-up after the scheme is launched, initially and going forward we will capture this type of data on our internal systems for analysis purposes and make adjustments where necessary. We do not plan to report publicly on the numbers who take up flexible service in the early years following the launch of these new opportunities. As we have said previously, a more valuable measure of the effectiveness of flexible service will be the long-term effect on recruitment and retention. That is the principal aim of these new policies.

The numbers who initially take up these opportunities will be modest. I have no doubt that they will grow over time but I think they will grow slowly. We envisage that it is unlikely that they will account for more than 1% of individuals—approximately 1,400—so we want to avoid undue focus on numbers for numbers' sake. We feel that regular collating of external reporting information on such a small cohort would not be particularly beneficial. Having said that, we have pledged to report on the introduction of flexible service in the Armed Forces covenant annual report. If in future we have meaningful data on take-up, we will include it. We will of course provide information in the normal way in response to external ad hoc requests.

6.30 pm

The noble Lord referred to the results of the continuous attitude survey and the importance of maintaining morale in the Armed Forces. I can do no other than agree with him on the importance of high morale. I hope that he will agree that one of the most negative influences on morale in the Armed Forces, or for that matter any organisation, is uncertainty. Defence has embarked on large-scale change programmes in the past few years. The department recognises that honest and clear communication of intentions and future direction is important to reduce uncertainty during large-scale change, and continues working to create an environment in which individuals feel that their contribution is welcomed, valued and rewarded. The reasons for the drop in morale are likely to be multifaceted and will vary from individual to individual, but work is under way to develop a deeper understanding of what underlies the statistics. Initiatives to address morale are being taken forward by the single services in close consultation with the Ministry of Defence. We recognise that perceptions of low morale by personnel at the unit and service level need to be better understood and considered in context with other research to inform the future direction of policy.

The noble Lord referred in particular to the Royal Marines. Although the Royal Marines continue to enjoy the highest levels of morale across the UK's Armed Forces, this year's AFCAS responses indicate a serious fall in self morale, unit morale and service morale. AFCAS data is one source of valuable feedback among many available to the chain of command and, in certain areas, the AFCAS results this year on Royal Marines morale reflect wider feedback received. Again, the reasons for the drop in morale are likely to be multifaceted, but I can tell him that initiatives to address it are being taken forward by the Royal Marines in concert with the wider naval service, alongside the other services and in close consultation with the Ministry of Defence.

The noble Lord referred briefly to the Modernising Defence Programme. We are currently in a period of focused analysis and cross-government discussion

[Earl Howe]
working towards more detailed conclusions, which I know are eagerly anticipated. We hope to share those conclusions later this autumn. It is probably stating the obvious, but it is still worth stating that the time we are taking over the Modernising Defence Programme is undoubtedly time well spent. Our adversaries would no doubt prefer us to take the wrong decisions in haste rather than the right decisions after a full and rigorous process.

I am sorry that the noble Lord did not find the Ministerial Statement published on 19 July to be informative. It was certainly intended to be so, not least in underscoring the programme's direction of travel, but more particularly in giving a sense of the various areas of special focus. I shall not repeat those in detail, but we have made good progress on the programme since the beginning of the year, in particular reviewing our existing capability plans, much of which remain right. We have begun to shape new approaches to key policies and have identified some investment priorities, including everything which goes with them, including training. We have developed a blueprint for a major programme of top-down transformative reform to defence itself. Perhaps if the noble Lord feels inclined to reread the Statement, he will take heart from the fact that we are not resiling from any of the aims and objectives that we set out at the beginning; indeed, we are firming up on those imperatives.

I turn to the questions put to me by the noble and gallant Lord, Lord Craig, about the effect of these flexible service arrangements on pay and pensions, and about when that information will be available to personnel. The information about the impact on pay and pensions will be available to personnel before they can apply—the latest estimate that I have on that is December this year. We have run a communications campaign throughout 2017-18, which is naturally intensifying as we approach implementation next year. As we finalise the detailed policy, we will be producing the guidance that I referred to earlier. We will be issuing it to our commanders and our people, and we will certainly make sure that the effect on pay and pensions, and all the other aspects that will naturally be of concern to personnel who are thinking of taking up flexible service, are clearly set out for their benefit before they apply.

The noble and gallant Lord also asked me about the territorial extent of the regulations. These regulations form law in the UK, in the Isle of Man and in the British Overseas Territories—except Gibraltar—and that law will apply to service personnel wherever they are in the world. I hope that I have answered the questions put to me; if I have not, I will certainly write. In closing, I thank all noble Lords for their supportive comments and I beg to move.

Lord Craig of Radley: Will the pensions and pay abatement regulations be put before Parliament or will they just be handled internally? In order to avoid any delay, perhaps the noble Earl would like to write to me?

Earl Howe: My understanding is that they will not be put before Parliament, and that they will be administrative arrangements and not the subject of regulations. If I am wrong about that, I will certainly correct myself in a letter.

Motion agreed.

Armed Forces (Specified Aviation and Marine Functions) Regulations 2018

Motion to Approve

6.38 pm

Moved by ***Earl Howe***

That the draft Regulations laid before the House on 24 July be approved.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, the background to this statutory instrument is as follows. At the moment, a commanding officer can require a person to take an alcohol or drug test if the commanding officer has reasonable cause to believe that they are committing a service offence by performing a safety-critical duty while over a set alcohol limit, or impaired by drugs or alcohol. A commanding officer has similar powers if they believe that a civilian subject to service discipline has committed similar offences under legislation relating to safety in shipping and civil aviation. This power and the linked offences help deter or detect the misuse of alcohol or drugs by those performing safety-critical duties, and so help prevent accidents. However, these powers are aimed at gathering evidence for a possible prosecution, hence the need for a commanding officer to have "reasonable cause to believe" that an offence has been committed.

When an accident happens, it may be important to determine whether anyone involved had been misusing alcohol or drugs, even if the commanding officer does not have any immediate cause to believe that an offence has been committed. Section 2 of the Armed Forces Act 2016 amends the Armed Forces Act 2006 to allow a commanding officer to also require a member of the Armed Forces, or a civilian subject to service discipline, to co-operate with a preliminary test for drugs or alcohol after an accident. Importantly, in these circumstances a person may be tested without the need for suspicion that an offence has been committed. This gives commanding officers the power to test those who performed aviation or marine functions relating to an aircraft or ship involved in an accident. They also apply to anyone who performed a safety-critical function connected to any serious accident. "Serious" in this context means an accident which resulted in or created a risk of death or serious injury to any person, serious damage to any property or serious environmental harm. This will improve our investigations of such accidents.

It is important that accidents in the military environment are investigated thoroughly with a view to contributory factors being identified and appropriate punitive or remedial action being taken. The test will be carried out by the service police, and the results of a preliminary test can be used in support of criminal and non-criminal investigations. The tests will mainly

support service inquiries, but they may be used in any type of investigation arising from an aviation or marine accident or any other serious accident. The relevant aviation and marine functions must be specified by regulations made under the amendments in the 2006 Act. The safety-critical functions are already set out in the existing offences and powers that I mentioned.

The draft regulations we are considering today specify these aviation and marine functions and are based largely on existing safety-critical duties relating to aviation or shipping. The duties specified in the regulations reflect the wide range of duties undertaken in a military environment that are linked to aircraft or ships: for instance, maintenance; acting as crew on an aircraft or ship; loading and unloading fuel, cargo and weapons; and conducting hazardous operations such as parachuting or diving. The duties specified in regulations include similar functions carried out by civilians subject to service discipline. This would include, for example, any civilian working on an aircraft or ship overseas.

In the event of an accident, a commanding officer may require a person to co-operate with preliminary testing if he or she was carrying out, or had carried out, a specified function at the time of—or in some situations before—the accident. As I said, the testing will be carried out by the service police. It will be an offence for an individual without reasonable excuse to fail to provide a sample when required to do so. Reasonable excuse could include, for example, a medical condition that prevented a person from providing a breath sample.

We hope, of course, that serious accidents will not happen and that there will be no need to apply these regulations. But the very nature of military activity is, by necessity, dangerous, and our people are exposed frequently to risk. It is important that, in the event of a serious accident, we uncover whether alcohol or drugs may have contributed to the cause of an accident to enable appropriate corrective action to be taken. I beg to move.

Baroness Smith of Newnham (LD): My Lords, I was nominated to speak from the Front Bench this evening and have very little to say on this matter. The regulations seem to be admirably sensible and not overly draconian. In civilian life, if there were an accident in a similar situation, one would expect to be breathalysed. Therefore, we on these Benches have nothing to add.

6.45 pm

Lord Tunnicliffe (Lab): My Lords, the Armed Forces have come a long way on this issue of alcohol and drugs. The railway industry faced this challenge some 20 years ago and the position that the Armed Forces have reached is very similar. I sense that there is an ongoing significant challenge in the military. I do not have statistical data but if one wanders through Google and looks at the events there was certainly the tragic event of the submarine that highlighted these cultural problems.

The Minister's speech tonight was a great deal better than the EM, because I think that I understand the regulations now. It seems to me that this statutory instrument is virtually identical to another one that covered the suspected offence side of it, and this is really just a matter of writing it across—I do not know whether there are any detailed differences.

The regulations essentially state that if one is doing any of these activities one must have alcohol levels below the specified limits. That leaves me with one question, which we wrestled with in the railway industry but is a good deal more acute in the military. That is a situation where an individual is not performing one of these activities—the most obvious example is the captain of a ship—because he is not the officer on watch. He is actually in his bunk asleep after an interesting night out. His subordinate drives the thing into another ship. There is instantly an incident, at which point, presumably, the captain would take command. There must be parallel situations in the Army, and perhaps, although less likely, in the Air Force. Are we clear about our expectations of these individuals who are on duty but not actively performing a task? Do we expect them at all times to maintain their lifestyles so that they are below the appropriate limits?

Earl Howe: My Lords, I am grateful to the noble Baroness and the noble Lord for their comments and I am glad that they are supportive of these regulations, which I hope they will agree are fairly uncontroversial in their content.

The particular question that the noble Lord, Lord Tunnicliffe, posed, is an interesting one. It is one that I have discussed with my officials. The short answer is that it would very much depend on the circumstances of the situation as to whether the captain of a ship would be tested for drugs or alcohol after a particular accident took place and he or she were away from the bridge when the accident occurred. The key point, however, is that the powers commit a commanding officer to order a test if he or she has reasonable cause to believe that a person was carrying out a safety-critical function or duty at the time of the accident or had carried out a safety-critical function or duty before the accident.

In the example that the noble Lord suggested, the captain will still have command of the ship and he or she may have given orders for the control or navigation of the ship before repairing to their cabin—let us imagine that situation. It would largely depend on the circumstances of that order and whether the person to whom the order was given was a fit and responsible person and in a fit condition to accept the responsibility. However, I can imagine a situation where a captain was away from the bridge following an accident and was not, so to speak, in the line of fire when it came to taking a drug or alcohol test, but where a commanding officer might feel that it was prudent for the captain to take such a test. It would be very much back to the test that I have just articulated if a commanding officer has reasonable cause to believe that any given individual was involved in a safety-critical function.

Lord Tunnicliffe: I will explain my point just a little more. I am concerned not so much about the test as about what the Navy's expectation is of a commanding officer. It seems to me that there is an implication that

[Lord Tunnicliffe]
he should, in all circumstances, maintain a lifestyle whereby he is under the limit. Certainly in my organisation—fortunately, we did not have the same commanding officer situation—we did have a level of management where we ran a roster to make sure that we always had a sober general manager to handle any situation. The noble Lord probably cannot answer now, but I would have thought that there was an implied moral obligation that the senior person at sea, the captain, should maintain a situation below these limits.

Earl Howe: The noble Lord is absolutely right. He will see that in the regulations officers may be tested—they are one of the groups of people who can test. The alcohol limits for prescribed safety-critical duties have been set at two levels, higher and lower. The limits will not be amended by these changes. The majority of safety-critical duties correspond to the higher alcohol level for testing of breath, blood or urine; the lower levels apply to safety-critical duties that require a heightened speed of reaction in an emergency situation, such as aviation or carrying a loaded weapon.

I would not dissent from the noble Lord's statement. He is absolutely right that the captain of a ship, to take that example, bears responsibility for the safety of the ship and its crew in all circumstances, which is why we have seen captains—on rare occasions—court-martialled for an accident that has occurred, even though the captain has sometimes not personally been on board the ship. I come back again to the point I made at the beginning: it would depend on the judgment of the person investigating the accident immediately after the event as to who was tested or not.

I hope that is helpful. If I can amplify those comments in a letter in any way, I shall certainly do so. In the meantime, I beg to move.

Motion agreed.

House adjourned at 6.53 pm.

Volume 793
No. 187

Wednesday
10 October 2018

CONTENTS

Wednesday 10 October 2018