Consumer Rights Bill – Lords' Amendments

Standard Note: SN/HA/7064
Last updated: 18 December 2014
Author: Lorraine Conway
Section Home Affairs Section

This paper is designed to provide background information for Consideration of Lords Amendments of the *Consumer Rights Bill*, as brought from the House of Lords on 9 December 2014. This note, like the Lords Amendments themselves, refers to HL Bill 29, the Bill as first printed for the House of Lords. This note also refers to Explanatory Notes on Lords Amendments produced by the Department for Business Innovation and Skills (BIS) in conjunction with the Department for Communities and Local Government (DCLG) and the Department for Culture, Media and Sport (DCMS).

There were a number of lengthy debates in Grand Committee which paved the way for Opposition amendments tabled during Report Stage, which took place over three days on 19, 24 and 26 November 2014. A number of Opposition amendments were pressed to a vote. In total, there were 9 divisions; of which only one cross bench amendment on the issue of the resale of tickets was agreed resulting in a defeat for the Government. The result was Lords Amendment 12.

There were many Government amendments to the Bill. Specifically, Lords Amendments 1 to 11 and 13 to 78 were tabled in the name of the Minister. They included amendments on:

- how a consumer's right to reject defective goods under the Bill would work where a contract is severable;
- the reasonable costs of returning rejected goods to be borne by the trader;
- the application of a price 'deduction for use' if a defective good is rejected by the consumer;
- contraventions of the code in relation to the regulation of premium rate services;
- the appointment of Competition Appeal Tribunal (CAT) Chairs;
- additional requirements on letting agents who hold client monies;
- the procedure for enforcing the duty on letting agents to display or publish their fees; and
- the list of higher education providers required to join the higher education complaints handling scheme

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1 Summary

The *Consumer Rights Bill* is in three parts and contains eight Schedules. The Bill is designed to set out a framework that consolidates in one place key consumer rights covering contracts for goods, services, digital content and the law relating to unfair terms in consumer contracts. The Bill also introduces easier routes for consumers and small and medium sized enterprises (SMEs) to challenge anti-competitive behaviour through the Competition Appeal Tribunal ('CAT'). In addition, the Bill would:

- consolidate and simplify enforcers' powers as listed in Schedule 5 to investigate potential breaches of consumer law;
- clarify that certain enforcers (Trading Standards) can operate across local authority boundaries;
- give the civil courts and public enforcers greater flexibility to take the most appropriate action for consumers when dealing with breaches or potential breaches of consumer law; and
- impose a duty on letting agent to publish their fees

Currently, 12 separate pieces of legislation cover key consumer rights in the UK, and around 6 pieces of legislation set out the investigatory powers of consumer law enforcers. Whilst offering a high degree of consumer protection, the legislative regime has been criticised for being unnecessarily complex, fragmented and, in places, unclear, in particular where the law has not kept up with technological change.

It should be noted that the draft Bill was subject to pre-legislative scrutiny by the Business Innovation and Skills (BIS) Select Committee, which published a Report on 23 December 2013.[1]

2 The passage of the Bill in the House of Commons

The *Consumer Rights Bill* was introduced into the House of Commons on 23 January 2014 as Bill 161 of 2013-14 and had its Second Reading debate on 28 January 2014. The Public Bill Committee met 15 times over 8 days from 11 February to 13 March 2014. A further session agreed for 13 March 2014 in the programme motion was not used. A number of issues raised during Second Reading were subject to a more detailed scrutiny in Committee. Written evidence was submitted to the Committee from a number of individuals and organisations. Oral evidence was also heard during the Committee's first and second sittings on 11 February 2014. This evidence is available on the Parliament website (see below). The Bill had its Report Stage and Third Reading on 16 June 2014, the Bill was then passed to the House of Lords.

Further background and information about the Bill is provided in Library Research Paper 14/5 (27 January 2014), which was prepared for Commons Second Reading. A report on the Commons Committee Stage of the Bill can be found in Library Research Paper 14/27 (8 May 2014). The Bill page on the Parliament website provides information on the Bill's progress in the House of Commons as well as links to the printings of the Bill and the Explanatory Notes published to accompany it.

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1 House of Commons Business Innovation and Skills Committee, "*Draft Consumer Rights Bill", Sixth Report of Session 2013-14, HC 697, Volume I, II and III*,' 23 December 2013 [online] (accessed 15 December 2014)

3 The passage of the Bill in the House of Lords

The *Consumer Rights Bill* had its First and Second Readings in the House of Lords on 17 June and 1 July 2014 respectively. The Bill spent eight days in Grand Committee from 13 October 2014 to 5 November 2014. The Report Stage of the Bill took place over three days on 19, 24 and 26 November 2014 and Third Reading on 8 December 2014. The Bill has now returned to the House of Common for consideration of Lords' amendments.

The Bill page on the Parliament website provides information on the Bill's progress in the House of Lords.

4 Second Reading in the House of Lords

In introducing the Bill, the Business Minister, Viscount Younger of Leckie, explained that consumer law reforms would bring benefits for both consumers and businesses. He outlined proposals to streamline existing law, making it clearer and more accessible – empowering consumers and stimulating competition and growth.

In the debate that followed Members broadly welcomed the Bill, but raised concerns about enforcement and the absence of any measures covering secondary ticketing or the practice of double-charging by letting or estate agents. Several members spoke about the need for consumers to retain the right to receive bills in paper format without being penalised.

5 Grand Committee

The *Consumer Rights Bill* spent eight days in Grand Committee from 13 October 2014 to 5 November 2014. A number of amendments were tabled in respect of all three parts of the Bill but all Opposition amendments were withdrawn on the basis that votes on amendments do not take place in Grand Committee. A number of Government amendments were agreed (see Lords Amendments below).

There were a number of lengthy debates in Committee which paved the way for Opposition amendments tabled during Report Stage. Of particular note was the debate on whether clause 46 of the Bill (remedy for damage to device or to other digital content) should stand part of the Bill. Lord Stevenson of Balmacara opened the debate by questioning whether clause 46 was as effective as it might be in this area. As drafted, clause 46 offered the possibility of a price reduction if a trader fails to provide, or can neither repair nor replace, digital content if the consumer requires it, or the trader is in breach of the requirement to do so within a reasonable time and without significant inconvenience. Lord Stevenson asked how the provision would deal with free downloads. He also asked a series of questions about the mechanism under which price reductions and replacement costs would be calculated; whether this would be a matter for the courts or would some guidance be issued.[2] Lord Knight of Weymouth pointed out that many digital products now involve co-production whereby users of the product are creating the product. He gave the example of a consumer whose online privacy controls have been caused to fail by the supplier of digital services, impacting on the consumer's reputation. He asked whether consumers could seek recourse under the Bill or would have to go through other legal routes.[3]

In arguing why clause 46 should stand part of the Bill, Baroness Neville-Rolfe said that the clause aimed to clarify that consumers have a right to a remedy for damage to their device or other digital content even in relation to free digital content, if it has been supplied under a contract. She said that the intention of this clause was to engage negligence principles. It

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2 HL Deb 20 October 2014 c208GC

3 HL De 20 October 2014 c208GC

gives consumers rights to a remedy for all contractually provided digital content which causes damage. The remedy would be a repair or an appropriate payment. In response to questions on how one would calculate an appropriate payment for free digital content that causes damage, she said that the remedy would be compensation of an appropriate amount (i.e. proportionate to the damage caused).[4]

Asked by Lord Stevenson whether the right to seek compensation from the trader would ultimately be a matter for the courts,[5] Baroness Neville-Rolfe said that the Government was planning to issue guidance in this area which would be subject to the usual consultation. The hope is that such claims will not reach the courts too often. The Motion that clause 46 should not stand part of the Bill was withdrawn, and the clause was agreed.

6 Divisions during Report Stage

The Bill returned to the main chamber for Report Stage, which took place over three days on 19, 24 and 26 November 2014. A number of Opposition amendments were pressed to a vote. In total, there were 9 divisions; of which only one cross bench amendment on the issue of the resale of tickets was agreed resulting in a defeat for the Government (see Lords Amendment 12 below).

Although only one amendment was agreed on division, there were a number of important and lengthy debates with contributions from many peers, which built on debates that had taken place in Grand Committee. More detailed information is set out below.

6.1 Report Stage day one: 19 November 2014

The first day of the Report Stage of the *Consumer Rights Bill* was on 16 November 2014. There were two votes in the Chamber.

First Division on logbook lenders

The first division was on an amendment moved by Lord Stevenson of Balmacara, to require logbook lenders to obtain a court order before repossessing goods. Speaking to this amendment, Lord Stevenson explained that a logbook loan was a bill of sale securing a loan on a vehicle, the lender retains the vehicle's logbook or vehicle registration certificate (the V54) until the loan with interest is repaid. Quoting recent research, Lord Stevenson said that logbook loans were generally for amounts ranging from £500 to £2,000, typically repaid over a 6-month to 18-month period; with APR variations typically ranging from between 200% and 500%. The legislation governing such loans dates from Victorian times and allows the lender to repossess the debtor's asset—the vehicle—without a court order. Bills of sale are already illegal in Scotland.[6]

In setting the scene, Lord Stevenson said that after reviewing the position in December 2009, the previous Government proposed to ban the use of bills of sale for consumer lending, but, after the election, the coalition Government had decided to rely on a voluntary code of practice. Previously, in Grand Committee, when the Opposition raised the issue, the Government confirmed that the Law Commission had agreed to a request from Treasury Ministers to look at how best to reform bills of sale. However, Lord Stevenson argued that

4 HL Deb 20 October 2014 c209GC
5 HL Deb 20 October 2014 c210GC
6 HL Deb 19 November 2014 cc456-7

this would take time, whereas his amendment would quickly strengthen protections for consumers using logbook loans.[7]

In response, Baroness Neville-Rolfe set out why the Government did not believe that this Bill should be the vehicle for addressing issues in consumer credit and financial services more generally. First, she explained that responsibility for consumer credit regulation, which includes logbook lenders and the associated arrangements, had been transferred from the Office of Fair Trading (OFT) to the Financial Conduct Authority (FCA) on 1 April 2014. As a result she argued that consumers were far better protected under the FCA regime. Specifically, the FCA defines logbook loans as 'higher risk activities', so lenders face closer supervision. They are subject to a range of binding FCA rules, including requirements to provide a pre-contract explanation to borrowers of their rights. The FCA can take enforcement action where its rules are breached; crucially, there is no limit on the fines it can levy. The Minister also explained that a major package of reforms had also been introduced to strengthen regulation of financial services markets via the *Financial Services Act 2012*. It was the Government's view therefore that the *Consumer Rights Bill* was not the place for making amendments to the law on consumer credit.[8] In addition, the Minister confirmed that the Law Commission was acting quickly and had launched its call for evidence last month.[9]

Lord Stevenson argued that the lack of a court order creates a significant imbalance between the consumer and the lender, consumers have fewer rights, and logbook loans will continue to cause severe consumer detriment. He therefore pressed the matter to a vote: the amendment was defeated by a vote of 176 to 244.

Second division on secondary ticketing platforms

The second vote concerned the reselling of event tickets. The Government was defeated after peers backed cross-party calls for tighter laws on ticket touting, led by Conservative peers Lord Moynihan, former chairman of the British Olympic Association, and Baroness Heyhoe Flint, former England women's cricket captain, and by the Liberal Democrat peer Lord Clement-Jones. The result was Lords Amendment 12 (see below).

The issue of secondary ticketing had previously been debated in the House of Lords at Second Reading and, at length, in Grand Committee. On the first day of the Bill's Report Stage a redrafted amendment was tabled which sought to address the reselling of event tickets usually, but not always, for profit by inserting a new clause. In effect, the redrafted amendment was a move to push through the Second House a requirement that sellers on secondary ticketing websites provide four key details to consumers, including:

- their name;
- the location of the ticket;
- booking identification number; and
- whether or not it contravened the terms of the ticket to resell it

In speaking to the amendment, Lord Moynihan referred to the National Fraud Authority's *Annual Fraud Indicator* of 2013. He said that an estimated 2.3 million people were victims of online ticketing fraud during 2012, resulting in losses of £1.5 billion.[10]. He accepted the need for a secondary ticket market; there were often good reasons why a person might need to sell on a ticket. He argued that the amendment would simply impose a requirement on the

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7 *Ibid*
8 HL Deb 19 November 2014 cc457-8
9 *Ibid*
10 HL Deb 19 November 2014 cc471-2

seller to communicate four key facts, which would enable the consumer to check the validity of the ticket:

> This simple, clear amendment is about increasing transparency, it is about improving and reducing regulation and about empowering consumers.[11]

Lord Moynihan argued that professional event organisers, all the sport governing bodies, and the Sport and Recreation Alliance all supported the amendment.[12]

Baroness Heyhoe Flint, who had previously raised the issue at Second Reading and in Grand Committee, argued that the *Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013* were 'ineffective' and led to loopholes that could be exploited by the unscrupulous.[13]

Lord Clement-Jones argued that the amendment was not intended to create a ban on secondary ticketing and would not do so in practice. The amendment was targeted at those who were using the lack of transparency to mislead or defraud consumers. He argued that the 2013 Regulations were too narrow, designed only to catch 'traders', yet no one selling on the secondary market identified themselves as a trader. Finally, he argued that the scale of the problem illustrates the need for far greater transparency in the secondary ticketing world.[14]

The Business Minister, Baroness Neville-Rolfe, opposed the amendment and put forward the Government's proposals for better enforcement of existing laws in a bid to address peers' concerns. She pointed out that fraud was a criminal offence under the *Fraud Act 2006* and ActionFraud was the single national reporting centre for fraud and financially motivated cybercrime. She pointed out that the Government was investing £860 million through the National Cyber Security Programme. She said that the City of London Police would continue to undertake work against ticketing fraud as part of its overall response to the problem of fraud. It would also work in partnership with the 'Get Safe Online' campaign to ensure that advice on staying safe was made available to fans who might be targeted by ticketing scams.

In addition, the Minister highlighted the fact that a substantial body of consumer law was in place to protect consumers, wherever they buy their tickets, and this was backed up by enforcement and sanctions. To illustrate this point, she said that the *Consumer Protection from Unfair Trading Regulations 2008* protect consumers from misleading actions; the *Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013* seek to ensure that buyers get the information they need.

The Minister said that the amendment threatened to push 'underground' people who wanted to resell tickets legitimately.[15] She argued that the best way to protect fans from fraud and breaches of consumer law was to ensure that they have a safe place to buy and sell tickets:

> It would be "Christmas for ticket touts" if government regulations were to push fans away from these safe places. One in four resales takes place outside the venue—the most unsecure and risky place for fans. Almost half of resales take place through online classified ads. These numbers are already too high. We should be nudging

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11 HL Deb 19 November 2014 c494
12 *Ibid*
13 HL Deb 19 November 2014 c475
14 HL Deb 19 November 2014 c478
15 HL Deb 19 November 2014 cc491-2

> consumers away from these fora, not increasing the incentive for them to use the black market.[16]

She accepted that there was an issue around people selling large batches of tickets for a profit and announced that the Government would work in the market to deter those sellers. First, it would ensure that it is clear to those sellers that it is a criminal offence to impersonate a fan to evade consumer law. It would ensure that sellers are aware of the information they must provide to the buyer. Second, it would include in Government guidance on the Bill detail on what constitutes a "trader". The guidance would state that a trader would include people who have a day job but also sell tickets for profit on the side; they therefore have to operate transparently as required in the law.[17] Finally, BIS officials would host, in partnership with DCMS, a round-table meeting in June 2015 to hear stakeholders' views on this issue and ensure that all parties, from the Competition and Markets Authority to the Home Office and police, are involved.

Amendment 13 was pressed to a vote. The Government lost the vote by a majority of 12 (183 votes to 171). The amendment was therefore agreed (see Lords Amendment 12 below).

Significant debate on product recall

It should also be noted that Baroness Hayter moved an amendment on product recall. She argued that when a dangerous fault occurs in an electrical product, there was no adequate mechanism whereby other owners of that same dangerous product could be notified of the need to exchange it. The amendment sought to require manufacturers to inform enforcement authorities about the number of consumers affected and the extent of damage and injury that had been caused. It also sought to impose on the Secretary of State an obligation to publish information on dangerous products.[18]

This amendment was withdrawn following an announcement by Baroness Neville-Rolfe **t**hat the Government would be launching an independent review of the product recall system. The review would consider existing information systems, such as the Trading Standards Institute website for informing consumers about product recalls, and how well these work in practice, as well as looking at the cases and data to which the noble Baroness referred. It would also consider how well the EU's RAPEX rapid alert system for dangerous consumer products covers UK needs and identify any gaps in the coverage that may need to be addressed. Baroness Neville-Rolfe said that once a suitable chair for this review had been appointed, the Government expected it to report back within 12 months.[19]

6.2 *Consumer Rights Bill* Report Stage day two: Monday 24 November

The second day of the Report Stage of the *Consumer Rights Bill* took place on 24 November 2014. In total there were three votes in the chamber.

First division on Schedule 5 Investigatory powers etc

Schedule 5 of the Bill is concerned with the power of trading standards officers to inspect premises; specifically it requires trading standards officers to give 48 hours' written notice in advance of a 'routine' inspection. An agreed Government amendment to the Bill, whilst in the Commons, sought to make it clear that trading standards officers could still enter without forewarning, either where there was suspicion of malpractice or where evidence might be destroyed. Despite this amendment, the Opposition argued that the hands of trading

[16] HL Deb 19 November 2014 c491
[17] HL Deb 19 November 2014 cc492-3
[18] HL Deb 19 November 2014 c502
[19] HL Deb 19 November 2014 c505

standards officers would still be tied.[20] This issue had previously been debated in Grand Committee.[21]

Amendment 31 sought to remove altogether the requirement for trading standards to give 48 hours' written notice. Speaking to this amendment, Baroness Hayter said that this new requirement had been written into the Bill, despite the fact that there were no calls at all for this change from business, and no evidence that officers misuse their current powers.[22] She argued that it made no sense to give notice to traders who are potentially breaking the law.[23] Further, she argued that there would be fewer inspections because trading standards officers would become risk-averse in circumstances where they have to document the evidence of their suspicion of a trader's malpractice, or the likelihood of loss of evidence, particularly in cases where evidence comes anonymously from other retailers.[24]

Baroness Neville-Rolfe said that the Government would give a commitment to review the practical effect of the notice requirement within two years of commencement of this part of the Bill.[25] She said that the Government amendment put forward clearly defines the term "routine inspection" for the purpose of this power of entry, and exemptions are clearly set out in the Bill. She said that the powers and safeguards strike the right balance.[26]

The amendment was pressed to a vote. On division of the House, the amendment was defeated by 22 votes to 194 votes.

Second division on insurance cover for client monies held by lettings agents

Amendment 44, tabled by the Opposition, sought to insert a new clause on insurance cover for money received or held by lettings agents in the course of business. The Government had also tabled amendments 44A, 44B and 44C on the issue of client monies held by letting agents.

Speaking to amendment 44, Baroness Hayter explained that it would require every letting agent holding monies on behalf of a tenant (in respect of advanced rent) or a landlord to be protected in a separate client account. In the event of the letting agent disappearing or going bankrupt, the money would be safe and available to the tenant or the landlord. The amendment would also require letting agents to have appropriate client money protection to safeguard both landlords and tenants, such as client money protection insurance.[27] Baroness Hayter said that the amendment was supported by the National Landlords Association, the Royal Institute of Chartered Surveyors, the British Property Federation, the Association of Managing Agents, the Association of Letting Agents, the Property Ombudsman, Ombudsman Services, Crisis and Shelter. She said it was also recommended by the House of Commons' Communities and Local Government Committee.[28]

The Minister, Baroness Neville-Rolfe, could not agree the amendment; she was concerned that requiring letting agencies to belong to a client money protection scheme would introduce significant costs into this sector, which could have implications for rent levels and the availability of affordable rental properties. In the event of the letting agent's insolvency, the

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20 HL Deb 24 November 2014 cc712-713
21 Lord Best had moved a similar amendment in Grand Committee
22 HL Deb 24 November 2014 cc712-714
23 *Ibid*
24 *Ibid*
25 HL Deb 19 November 2014 c718
26 HL Deb 19 November 2014 cc718-19
27 HL Deb 24 November 2014 cc750-751
28 HL Deb 24 November 2014 cc749-750

Minister argued that client money held in a registered client account agreed in advance with the bank would be protected and returned to the client, rather than used to settle the agent's debts. This was standard business practice and was not expensive. She argued therefore that good agents could protect their client's money without having to join expensive third-party insurance arrangements.

Turning to the Government amendments, the Minister said that she appreciated the level of support for action, both in Parliament and externally, and could see benefits in requiring letting agents to publicise whether or not they are a member of a client money protection scheme. The Government therefore proposed to extend the transparency measures already in Part 3, Chapter 2 of the Bill to include such a requirement.[29]

Baroness Neville-Rolfe highlighted the fact that tenants' security deposits were already protected as a result of existing legislation. She said that what was now needed was to raise consumer awareness that, if landlords and tenants want protection for other money held by the agent, they should choose an agent who carries the Government's kitemark, Safe Agent.[30] Membership of that scheme requires agents to belong to a client money protection scheme.

Further, all letting agents are now required to be a member of one of the three Government approved redress schemes; the Minister proposed to further extend the transparency requirement to require letting agencies to declare which redress scheme they are a member of. She said this would make it easier for tenants and landlords to complain about any poor service they receive. She argued that increased transparency would encourage landlords and tenants to choose agents with client money protection, without introducing significant costs into the sector. It was the Government's view that these changes, coupled with existing consumer protection rights, would create the right balance of regulation for the lettings sector. Finally, the Minister agreed to review the Government's new provisions on transparency in a year's time to ensure they have had the desired effect.[31]

In response, Baroness Hayter argued that tenants could not choose the letting agent; they could not shop around, since it was the landlord who chose the letting agent. She reiterated that landlords, tenants and the professional bodies all supported this amendment. She pressed amendment 44 to a vote. The House divided, the amendment was defeated by a vote of 123 to 168.

Government amendments 44A to 44C to clause 81 were concerned with the duty of letting agents to display or publish, with a list of their fees, a statement of whether the agent is a member of a client protection scheme and a separate statement as to which redress scheme they belong to**.** This group of amendments, moved by Baroness Neville-Rolfe, was agreed without division.[32] (See Lords Amendment 26 below.)

Third division on protection of consumer interests in the housing sector

The Opposition tabled a group of amendments on protecting consumer interests in the housing sector. In a nutshell, amendment 44D sought to prohibit fees to tenants. Amendment 44ZA sought to outlaw a contract which allowed agents to charge buyer and seller or indeed both landlord and tenant. Finally, amendment 50E sought to protect tenants against retaliatory eviction—that is, having made a complaint about their landlord, being evicted under a Section 21 notice, which does not require the landlord to give any reason.

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29 HL Deb 24 November 2014 cc751-752
30 HL Deb 24 November 2014 cc751-752
31 HL Deb 24 November 2014 cc752-753
32 HL Deb 24 November 2014 c765

In speaking first to amendments 44D and 44ZA, Baroness Hayter said that the amendments were based on the simple proposition that estate agents should not charge both buyers and sellers for the same service and that letting agents should not charge landlords and tenants for the same thing. She said that this was unethical, not simply being paid twice for the same job but to have a conflict of interest since the seller wants the highest price and the buyer the lowest.[33] In highlighting the fact that in Scotland charges to tenants (other than for rent and deposits) have been illegal since 2012, Baroness Hayter refuted the Government's claim that this had led to increased rents in Scotland.[34] She said that Shelter had commissioned two independent reports which found that landlords in Scotland were no more likely to have increased rents since 2012 than landlords elsewhere in the UK.[35]

In speaking to amendment 50E, Baroness Hayter said that the amendment would help protect tenants against retaliatory eviction—that is, having made a complaint about their landlord, being evicted under a Section 21 notice, which does not require the landlord to give any reason. She said that the Opposition did not seek to outlaw Section 21 altogether but to stop it being used to stop tenants getting necessary repairs done. The amendment would require the Government to issue guidance on how tenants could be protected from such retaliatory evictions.

Responding to the amendments, Baroness Neville-Rolfe said that the Government had already taken the opportunity of this Bill to increase transparency in the lettings market. In addition, a letting agent is already required to be a member of an independent complaints scheme. She argued that now was not the right time to introduce yet further regulation on lettings, which would introduce greater costs into the sector. Instead, the Government has agreed to review these measures a year after introduction.[36] On amendments 44ZA and 44D, the Minister said that she shared the concerns expressed about the practice of charging both parties for a transaction by estate agents and lettings agents, but did not believe that regulation was the right way to tackle this issue. Instead, she argued that greater transparency would encourage competition between agents on fee levels, and ensure that agents with the best-value services prevail in the market.[37] Turning to the possible prohibition of fees to tenants proposed in Amendment 44D, the Minister said that the Government saw this as yet another example of a demand for blanket regulation which would only introduce costs, put off new providers, and ultimately reduce choice for tenants and deter lettings.[38]

In respect of Amendment 50E, the Minister agreed that retaliatory eviction was a problem within the private rented sector. The Government supported the *Tenancies (Reform) Bill*, a Private Member's Bill designed to outlaw retaliatory action, subject to the proviso that safeguards are put in place to ensure that the reforms do not bring in excessive red tape and so make it harder for landlords to evict tenants who should be evicted.[39] She did not think that the amendment would add anything further to the guidance that was already available.

Baroness Hayter pressed the amendment to a vote: on division the amendment was defeated by 113 votes to 156.[40]

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33 HL Deb 24 November 2014 cc755-756
34 HL Deb 24 November 2014 cc756-757
35 *Ibid*
36 HL Deb 24 November 2014 cc759-760
37 *Ibid*
38 *Ibid*
39 HL Deb 24 November 2014 c761
40 HL Deb 24 November 2014 c762

6.3 *Consumer Rights Bill* Report Stage day three: 26 November 2014

The third and final day of the Report Stage of the *Consumer Rights Bill* took place on 26 November 2014. In total, there were four votes in the chamber.

First division: new clause - high cost short-term consumer credit regulations

The first division was on amendment 47, moved by the Lord Bishop of Birmingham, which sought to ban television advertisements for payday loans before the watershed.[41] The issue of the scheduling of payday loan advertising on television was previously raised in Second Reading and in Grand Committee.

In speaking to this amendment, the Bishop of Birmingham said that in recent years there had been a massive increase in the use of payday loans. Commenting on the findings of a report published in September 2014 by the Children's Society on the effect of advertising and telemarketing of payday loans, he highlighted four facts. First, that more than half of children aged 10 to 17 were seeing payday loan advertisements "often" or "all the time". Secondly, a third of teenagers would describe payday loan adverts as fun, tempting or exciting and were significantly more likely than their counterparts to say that they would consider taking out a payday loan in the future. Thirdly, three-quarters of parents supported a ban on payday loan advertisements before the watershed. Finally, parents aged 18 to 24 were twice as likely as those aged 25 to 34 to have taken out a payday loan.[42] He said the amendment was supported both in the House and outside from organisations such as StepChange, the Money Advice Trust and MoneySavingExpert.[43]

Lord Alton of Liverpool (CB), a cosignatory to amendment 47, said that the prevalence of payday loan advertising had increased by more than 20 times from 2009 to 2012, according to Ofcom research published in December 2013.[44] Lord Alton also quoted from "*Playday not Payday"*, a report produced earlier this year by the Children's Society.[45] Lord Alton argued that the amendment would help families and insulate children from the subtle pressure and normalisation of payday loans as an appropriate form of financial management.[46]

Baroness Jolly recognised that there was strong feeling in the House on this matter. In outlining the action that the Government had already taken to protect consumers, she said that under the Financial Conduct Authority's (FCA) new regulatory system the volume of payday loans had fallen by 35% since it took over regulation in April.[47] She added that the FCA had introduced tough new rules for payday loan adverts, including mandatory risk warnings and a requirement to signpost to free debt advice. The Government had also legislated to require the FCA to introduce a cap on the cost of payday loans, to protect consumers from unfair costs.

The Minister said that there were already robust content rules in place to protect children from payday loan advertisements. The Advertising Standards Authority enforces the rules set out in the UK Code of Broadcast Advertising (BCAP), which requires all adverts to be socially responsible and ensures that young people are protected from harm. She argued that the rules specifically prohibit payday loan adverts from encouraging under-18s to either take out a loan or pester others to do so for them. The ASA has powers to ban adverts which do not meet its rules and, she said, had banned 12 inappropriate payday loan adverts since May

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41 HL Deb 26 November 2014 cc890-891
42 *Ibid*
43 *Ibid*
44 HL Deb 26 November 2014 c893
45 *bid*
46 HL Deb 26 November 2014 c894
47 HL Deb 26 November 2014 cc902-903

2014.[48] She said that the Broadcast Committee of Advertising Practice (BCAP) had agreed to a formal request from Treasury ministers to review the appropriateness of its content and scheduling rules in respect of children and ads for payday loans.[49]

Some Lords objected to the Bishop of Birmingham's request for leave to withdraw the amendment, instead the House divided but the amendment was defeated by 216 votes to 200.[50]

Second division: new clause on communications services

The second division was on amendment 49, moved by Lord Clement-Jones, which sought to insert a new clause which would amend Section 3 of the *Communications Act 2003*, requiring Ofcom to promote competition and consumers' interests by introducing a gaining provider led—or GPL—switching regime to the communications market.[51] This amendment was previously debated in Grand Committee.[52] It was intended to be a probing amendment, although it was pressed to a vote.

Speaking to the amendment, Lord Clement-Jones said that the amendment addressed the rights of consumers to switch suppliers. He said the amendment would introduce 'gaining provider-led switching' across the communications sector, which was the Government's own policy, as set out in *Connectivity, Content and Consumers* published in July 2013, and had the support of every party in this House.[53] In addition, Lord Clement-Jones said that legislative change was supported by Ofcom; the amendment would enable Ofcom to address switching issues more quickly and directly.[54] Lord Clement-Jones argued that consumer harm was created by the current complicated regime, which often led providers to operate barriers to switching.[55] Lord Clement-Jones argued that the amendment would bring mobile communications in line with banking and introduce GPL systems across the sector, not only making switching easier for the consumer, but ensuring a more competitive market that works to drive down prices.[56]

Baroness Neville-Rolfe argued that the amendment was not necessary, given Ofcom's existing functions under the *Communications Act 2003*.[57] She said that the Government was fully engaged on this matter with Ofcom. Given that progress, and everything that Ofcom is achieving with its existing powers and the ongoing work to move towards a system of RPL switching across the board, she could not agree to the amendment.[58]

With some Lords objecting to the withdrawal of the amendment, it was pressed to a vote. On division of the House, the amendment was defeated, 226 votes to 171.[59]

Third division: new clause on obligations on suppliers of utilities

The third division was on an amendment which had previously been debated at length in Grand Committee. Amendment 50 sought to insert a new clause on the obligations on suppliers of utilities.[60]

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48 HL Deb 26 November 2014 c904
49 *Ibid*
50 HL Deb 26 November 2014 c906
51 HL Deb 26 November 2014 c916
52 Amendment 103 in Grand Committee
53 HL Deb 26 November 2014 c916
54 *Ibid*
55 HL Deb 26 November 2014 c917
56 *Ibid*
57 *Ibid*
58 HL Deb 26 November 2014 cc917-919
59 HL Deb 26 November 2014 cc917-920

Speaking to this amendment, Baroness Oppenheim-Barnes said the amendment would predominantly help vulnerable elderly people with very limited means, who want to receive a paper bill and receipt. She pointed out that the Consumer Rights Directive also required contractual information to be provided on paper, unless a consumer agrees to receive it by some other durable medium such as email.[61] She did not accept the argument made by the utility companies that it would be too costly for them to provide paper invoices to consumers. She argued that this was a very modest amendment, and that an equivalent measure had been introduced in other countries.[62]

Lord Clarke of Hampstead raised the question of the universal postal service.[63] He had received in correspondence an assurance from the Minister that it was still the Government's intention to maintain the universal service, as agreed in the *Postal Services Act 2011*. He asked the Minister to get Ofcom to bring forward its review of the downstream access arrangements, in order to allow a proper examination of the tariffs charged.[64] He argued that a proper pricing method needed to be introduced and Royal Mail should not have to wait several more months for the review.[65]

The Minister said that the Government could not accept the amendment. There were legal constraints, particularly from European directives, which would prohibit legislation in the manner proposed. She said that the UK has already fully implemented the Consumer Rights Directive in the UK—that process was completed in June 2014. She added that the Directive requires the provision of pre-contractual information on a wide range of matters before the consumer is bound by a contract. However, it does not require bills to be provided to the consumer in paper form.[66]

Although rejecting the amendment, the Minister announced two new developments. First, that the Minister for Consumer Affairs would ask Citizens Advice and Citizens Advice Scotland to develop new guidance on this issue. Second, the Competition and Markets Authority had agreed to follow up its recent work on problem debt by considering further practices or markets that may generate particular problems for consumers with low incomes. She said that if lack of access to paper bills was highlighted as an issue, the Government would look to act further.[67] She also said that the Government would be taking action shortly through the *Small Business, Enterprise and Employment Bill* to make accepting cheques more attractive to business.[68]

The amendment was pressed to a vote. On division of the House, the amendment was defeated by 189 votes to 163.

Fourth division: duty to protect children from digital content

The fourth division was on an amendment which had earlier been debated at length in Grand Committee. Amendment 50D sought to insert into the Bill a new clause which would require internet service providers (ISPs) and mobile phone operators to provide default adult content filtering that could be removed if the service user opts in to adult content, demonstrating, as they must, that they are aged 18 years or over.

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60 HL Deb 26 November 2014 cc923-924
61 HL Deb 26 November 2014 c925
62 *Ibid*
63 HL Deb 26 November 2014 c926
64 *Ibid*
65 *Ibid*
66 *Ibid*
67 HL Deb 26 November 2014 c934
68 *Ibid*

In speaking to this amendment, Baroness Howe of Idlicote[69] said that there were significant problems with the current self-regulatory arrangements.[70] She said that the self-regulatory arrangements failed to cover more than 10% of the home broadband market, leaving a significant number of children outside its scope. She argued that age verification was of pivotal importance; if you introduce a default-on arrangement that is not properly age-verified, the credibility of the whole system would be called into question at the initial set-up phase and in the event of any subsequent attempt to change the settings.[71] She argued that there were no common standards regarding what is and what is not adult content; different companies make those decisions on their own, generating complete inconsistency and uncertainty.[72]

In explaining why the amendment was necessary, Baroness Howe said that there were multiple examples of children committing criminal acts which act out the sadistic, hardcore pornography that they have seen online.[73] She also drew attention to a recent Centre for Public Innovation report which concluded that children were increasingly being exposed to violence online. She argued that a flawed self-regulatory system that misses out hundreds of thousands of children and does not age-verify people before allowing them to opt in to access adult content was not a credible arrangement.[74]

Commenting directly on the amendment, Baroness Jolly said that even if it became law, requiring all ISPs to provide a filtered service, parents would still be able to opt for a filter-free service if they chose to do so. In doing so, they would need to verify their age, but account holders already need to be over 18. It would make no difference. She argued that parents would make the choice at the point of sale, rather than being able, as they can currently, to choose to customise their settings according to family circumstance and context.[75] She also argued that the amendment would place significant burdens on and potentially sound the death knell for the very smallest ISPs, which are in any case business focused— at a time when the Government was seeking to reduce regulation. Furthermore, she argued that parents have told the Government that they want the freedom to make this choice.[76]

The amendment was pressed to a vote. On division of the House amendment 50D was defeated 124 votes to 65.

7 Third Reading

The *Consumer Rights Bill* had its Third Reading on Monday 8 December. Three Government amendments were moved by the Minister, Baroness Neville-Rolfe. The amendments were described as minor and technical in nature, designed to tidy up the Bill.[77] They were all agreed without division (see Lords Amendments below).

However, Lord Stevenson of Balmacara said that the Opposition were expecting to see in the Marshalled List amendments concerning issues that had been raised by Ofcom.[78] Enlarging on this point, he said that Opposition members had understood that such amendments would be tabled, given the meetings arranged by another Government Minister, which were

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69 Baroness Howe of Idlicote had introduced a Private Member's Bill on internet safety in 2012
70 HL Deb 26 November 2014 cc946-948
71 *Ibid*
72 *Ibid*
73 *Ibid*
74 HL Deb 26 November 2014 cc948-949
75 HL Deb 26 November 2014 c959
76 *Ibid*
77 HL Deb 8 December 2014 cc1601-1602
78 HL Deb 8 December 2014 c1602

attended by many Members of the House of Lords, on the subject of provider-led switching and whether or not the Government might support measures to reduce anti-competitive behaviour in relation to the internet.[79]

In response, the Minister gave the following assurance:

> My Lords, I understand that my honourable friend Mr Ed Vaizey is dealing with this issue. I think we have the powers that we need, and we discussed this on a previous occasion. As I say, my right honourable friend is dealing with the issue. We are not in a position to add a provision to the Bill but I assure the noble Lord that the issue is being progressed very keenly.[80]

Lord Clement-Jones confirmed that he had received correspondence from both Baroness Neville-Rolfe and Mr Vaizey, in which they had set out their reasons for not agreeing to the amendments tabled on Report.[81]

Speaking on the Bill as a whole, Baroness Hayter said that it left the House of Lords looking very different from how it arrived.[82] She said that she hoped that the Government would not seek to bring this Bill back by overturning in the Commons the view of the House of Lords on ticket touting.[83] She summarised the new character of the Bill as follows:

> The Government chose in effect to bring forward the introduction of their rules on transparency for letting agents by writing the details in the Bill, and I congratulate them on that. The Ministers with, I am sure, help from their officials, also met – in full or in part – many of the suggestions we made. They agreed in full to no charge on returning goods, to the right for all higher education students to take complaints to the Office of the Independent Adjudicator and to mandatory caller-line identification for marketing calls as a way of tackling nuisance calls. They also largely accepted our amendment over no deduction for use for faulty goods, leaving this measure applying only to cars. Thanks to input from the noble Lord, Lord Best, the Government amended the wording to clarify the fact that trading standards have to give 48 hours' notice only before a routine visit. They also agreed to a review of that in two years' time. Although they could not agree with us that client money protection should be made mandatory, they have required transparency which we hope will drive change in this area. They have also agreed to a review of product recall for dangerous electrical goods and we hope this will improve practice in that area. Furthermore, as a result of the concerns raised in this House about the impact on children of exposure to payday loan ads on television and the calls for a watershed, the body that controls the Code of Broadcast Advertising is to consider whether change is needed to both the content and timing of such advertisements.[84]

Lords Amendment 12 (see below), which was accepted into the Bill at Report Stage, would give consumers more protection from ticket touts. Several peers, including former Sports Minister Lord Moynihan used Third Reading to urge MPs to accept Lords Amendments.[85] Baroness Heyhoe Flint said that the Amendment simply sought to protect "those hard-working fans who spend their hard-earned money on watching sport or entertainment". She

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79 *Ibid*
80 HL Deb 8 December 2014 c1602
81 HL Deb 8 December 2014 c1602
82 HL Deb 8 December 2014 cc1606-7
83 *Ibid*
84 HL Deb 8 December 2014 cc1606-7
85 HL Deb 8 December 2014 c1607

hoped that the Minister would agree with the cross-party feeling behind this amendment that a fair deal should be given to all consumers.[86]

Commenting on the importance of on Lords Amendment 12, Lord Deben said:

> It has shown why this House is here and how changes can be introduced, encouraged and made in a non-partisan manner. It is important that the Government recognise that one major amendment was of precisely that kind. When all those with a direct interest in and knowledge of the sporting world have supported a change, and when every sporting authority has supported that change, it would be well for the Government to recognise that making such changes is precisely what the House of Lords is here for. They should not seek to reverse something in those circumstances, for those circumstances range much further than the simple matter of asking those who sell tickets to be as concerned about their customers as those who sell baked beans are about theirs.[87]

However, Lord Stoneham gave an alternative view. He disputed the idea that this change was necessarily in the interest of consumers, although it may be in the interest of the sporting establishment. He argued that it might actually drive secondary ticketing more into the hands of street touts rather than "the formalised, recognised secondary ticket sellers who give guarantees that the tickets are genuine". [88]

In concluding the debate, the Minister said that the resale of tickets was a complex issue and one where a number of important matters had to be balanced. She said:

> We want British sport to flourish and to protect fans, and we also want the resale market to stay above ground in the interests of consumers and sports goers. That is why, since our debate on Report, I am taking the time to continue with discussions of these issues with my ministerial colleagues.[89]

In response to a question on the Competition Appeals Tribunal (CAT), Baroness Neville-Rolfe said that she would meet with Lord Eccles to discuss how he might input into the forthcoming consultation on the CAT rules.[90]

The Bill has now returned to the House of Commons for consideration of Lords Amendments.

8 Lords Amendments

8.1 Lords Amendments to Part 1: goods, digital content & services contracts

With the exception of Lords Amendment 12, the Government moved the following amendments, all of which were agreed. Lords Amendment 12 was a non-Government amendment concerned with the resale of tickets for sporting, musical or cultural events.

Lords Amendment 1 (Clause 3)

This Government amendment was moved by Baroness Neville-Rolfe, the Parliamentary Under-Secretary of State, for BIS. She explained that in the House of Commons the Public Bill Committee had heard evidence from Professor Hector MacQueen of the Scottish Law

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86 HL Deb 8 December 2014 cc1607-8
87 HL Deb 8 December 2014 cc1608-9
88 HL Deb 8 December 2014 c1609
89 HL Deb 8 December 2014 cc1609-10
90 *Ibid*

Commission, who had recommended a change to the drafting to improve the references in the Bill to Scottish contracts. The amendment would rephrase clauses 3(3)(e) and 48(3) so as not to use the term 'consideration' to describe a Scottish contract, and so reflect the fact that the term is not a Scots law concept.

According to the Explanatory Notes on Lords Amendments, the intention is to provide clarification without altering the existing policy and effect, that contracts which are gratuitous or not supported by consideration are not covered by Chapter 2 of Part 1 of the Bill on goods contracts. Lords Amendment 21 would make the same clarification for services contracts. Both amendments were agreed.

Lords Amendment 2 (Clause 19)

The aim of Lords Amendment 2 is to ensure consistency of terminology across the Bill. It would replace 'Chapter' with 'Part', so that the explanation of terminology given by clause 19(13), for the purpose of Chapter 2 of Part 1 on goods contracts, would also apply to the rest of Part 1 and thus to Chapter 3 on digital content (see also Amendments 15 and 23 below).

Lords Amendments 3, 5 and 8 (Clause 20)

These very technical Government amendments, were not scrutinised either by the BIS Select Committee or in the Commons' Public Bill Committee. In Grand Committee, the Opposition therefore accepted the Minister's offer to withdraw the amendments and reintroduce them on Report in order to allow them more time for consideration. The amendments were subsequently agreed on the first day of Report.

The Bill sets out key statutory remedies, such as the right of a consumer to reject substandard goods, treat the contract as terminated and get a refund. However, there is also court-developed common law regarding contracts for goods, and the Bill is intended to work alongside much of that. Amendments 3, 5 and 8 would clarify how the rights to reject goods under the Bill work where a contract is 'severable'.

A severable contract is divisible into parts, which are intended to be independent of each other, so different parts of the payment can be assigned to different parts of the trader's performance. For example, a contract for building works where payment is due pro rata for work done, regardless of whether all of the work has been done.[91] A severable contract is quite distinct from a contract in which obligations are entire, where the consumer has to pay only when all the trader's obligations have been fulfilled—for example, a building contract under which the trader must carry out all the work before the consumer has to pay a lump sum. The intention behind the amendments was is to ensure that the consumer's clearer rights in clause 20 of the Bill should not override the common-law position for severable contracts.[92]

The amendments make it clear that, where a contract is severable, the consumer may have the right to reject those faulty goods or they may have the right to terminate the whole contract. That will depend on the nature of the goods and the fault and the details of the contract. In some cases, it will be quite right for a consumer to reject all the goods under a contract, even if it is severable. The existing common law recognises that and the Government amendments are to make it clear that the common law on this applies; the Bill

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91 HL Deb 15 October 2014 c100GC

92 HL Deb 19 November 2014 c464

would not override the distinction between severable and entire contracts, which currently exists in common law.

The Minister emphasised that a contract would not be severable simply because it is described as such but would depend on the genuine agreement and arrangement between the parties in the circumstances.[93] Government guidance to the Bill would cover when a contract is severable and when a consumer might be entitled to terminate the whole contract.

The amendment would not apply in Scotland as the amendment seeks only to prevent the consumer's right to terminate the contract under the Bill from altering the existing common law position. The equivalent provision regarding Scotland in the *Sale of Goods Act 1979* is already consistent with clause 20 of the Bill.

Lords Amendments 4 and 6 (Clauses 20 and 21)

The issue of who should bear the cost of returning rejected goods to the trader was debated at some length in Grand Committee. Baroness Hayter and Lord Stevenson both argued that it should be clear on the face of the Bill that the trader bears responsibility for the return costs.

Government amendments 4 and 6 were agreed on Report. The trader would be responsible for any reasonable costs of the consumer returning rejected goods, except where the consumer returns the goods in person to where they obtained physical possession of them. This would include the trader paying postal costs. This would apply whether or not there is an agreed requirement for the consumer to return rejected goods.

Lords Amendment 7 (Clause 21)

Lords Amendment 7 would update a cross-reference in clause 21(8), to make sure that the requirements in clause 20 relating to how refunds are paid also apply where the consumer only rejects some of the goods. These requirements include the time within which the payment must be made and the form in which the refund must be provided.

Lords Amendments 9 to 11 (Clause 24)

As a result of these Lords amendments, a car salesman would be able to deduct some of the price of a new car when taking back a faulty vehicle in accordance with its second-hand value, but this option would not apply to other faulty goods.[94] The issue of price deduction for use was first raised by the Opposition in Grand Committee. The amendments were subsequently agreed on the first day of the Bill's Report Stage.

Specifically, Lords Amendments 9 to 11 would alter the exemption to the rule in clause 24(10) that prevents a deduction for use from being applied if the consumer exercises the final right to reject within the first six months after receiving the goods. The amendments would establish that this exemption applies only to motor vehicles; that is, they would enable deductions for use to be made in the first six months in relation to motor vehicles only. This would tighten the exemption, which would otherwise potentially apply to all goods in which there is an active business to consumer second-hand market. The amendments would include clarity that vehicles such as mobility scooters are excepted from the definition of motor vehicle for these purposes.

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93 HL Deb 19 November 2014 c464

94 HL Deb 19 November 2014 cc468-9

The amendments would also provide an order making power, subject to the affirmative resolution procedure, to extend the exemption to the six month rule to other types of goods. The power would be exercisable if the inability to apply a deduction for use to those goods in the first six months causes significant detriment to traders.

Lords Amendment 12 (new clause)

This amendment would insert, after clause 32, a new clause on secondary ticketing platforms.

Lords Amendment 12 was a non-Government amendment concerned with the resale of tickets for sporting, musical or cultural events. The issue of secondary ticketing had previously been raised in the Lords at Second Reading and in Grand Committee.The Government was defeated on the first day of Report Stage after peers backed cross-party calls for tighter laws on ticket touting, led by Conservative peers Lord Moynihan, former chairman of the British Olympic Association, and Baroness Heyhoe Flint, former England women's cricket captain, and by the Liberal Democrat peer Lord Clement-Jones. (See above for further information on the relevant division).

Amendment 12 would require sellers on secondary ticketing websites to provide four key details to consumers about the identity of the seller of the ticket, including

- their name;
- their registered address (if an undertaking) and VAT registration number; and
- where relevant, to disclose the fact that they themselves or the event organiser, or someone connected to themselves or the organiser, is the seller

The amendment would also require the seller to provide, and the website to publish, all relevant information about the ticket, including:

- the face value;
- restrictions on the ticket;
- location of the seat where relevant;
- the booking identification or reference number; and
- to state where the ticket is sold in contravention of terms and conditions agreed by the original purchaser

The information required under Lords Amendment 12, would have to be provided prominently and accurately on the site before the buyer made a purchase. In addition, sites would have to immediately remove tickets from sale if informed by the event organisers that the relevant information was inaccurate or incomplete. Information about tickets being sold in contravention of terms and conditions would have to be prominently displayed at every stage of the purchasing process.

Lords Amendment 12 would come into force no later than six months after the Bill is passed.

It should be noted that during Culture Questions in the House of Commons on 27 November 2014, Sharon Hodgson MP called on BIS ministers to accept the amendment in order to put fans first.[95] Philip Davies MP argued that a similar amendment had been proposed - and

[95] HL Deb 27 November 2014 c1055

defeated - during the Bill's passage through the Commons, and said it should be the will of the "elected chamber [that] gets its way".[96]
The Culture Secretary, Sajid Javid, said that the previous Labour Government, this Government and the Select Committee on Culture, Media and Sport had looked at the issue and all had concluded that new legislation was not necessary. Event organisers could seek their own solutions.[97] Although he confirmed that he would consider Lords Amendment 12 and respond to it fully in due course,[98] he maintained that calls for legislation had been misguided.[99] He added that people had rightly raised concerns about the sale of fraudulent or non-existent tickets and about people who provide misleading information, but that was already a criminal act.[100]

The Shadow Minister, Clive Efford, said that the Government had failed to act to protect rugby world cup fans and now the same was happening to cricket fans with Ashes tickets for the Lord's test were already on sale on the secondary ticketing market for £1,500.[101]

Lords Amendments 13 and 14 (Clause 40)

Both Government amendments, agreed on the first day of the Report Stage, were concerned with digital content.

Clause 36 of the Bill provides that following an update to digital content, that digital content must still meet the quality rights: satisfactory quality, fit for a particular purpose and as described. Lords amendment 13 would clarify that an update to digital content that improves existing features or adds new features will not be in breach of clause 36 as long as the digital content continues to match the description and conform to the pre-contractual information provided by the trader.

Amendment 13 was a response to the concerns raised in Grand Committee by Lord Haskel and Lord Clement-Jones that as drafted the provision that digital content should match the description could prevent traders improving digital content or offering flexible products.[102] It was not the Government's intention to fix the digital content to a static point in time. Therefore, the amendment clarifies in the Bill that clause 36 does not prevent traders adding new features or enhancing existing features as long as the original description is still met.[103]

Lords Amendment 14 would update a cross-reference in clause 40(2).

Lords Amendments 15 and 23 (Clauses 42 and 59)

Amendment 15 clarifies that it is not open to the consumer to treat a contract for the supply of digital content as at an end for breach of the quality rights.

This amendment was in response to the view expressed by Professor Hugh Beale, a legal academic, that the Bill required greater clarity on the intention that there should be no right to terminate a contract for the supply of digital content when one or more of the quality rights are breached.

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96 *Ibid*
97 *Ibid*
98 *Ibid*
99 HL Deb 27 November 2014 c1056
100 *Ibid*
101 *Ibid*
102 HL Deb 19 November 2014 cc514-515
103 HL Deb 19 November 2014 cc515-516

Lords Amendment 23 would ensure consistency regarding the gloss on treating contracts as at an end in clause 19(13) across Part 1 of the Bill.

Lords Amendment 16 (Clause 47)

This Government amendment, agreed during Third Reading of the Bill, was described by the Minister as minor and technical in nature, designed to tidy up the Bill.[104]

Amendment 16 would add new clause 37 to the Bill - other pre-contract information included in the contract – to the list of provisions in clause 47(1) from which the trader cannot 'contract out'. It corrects an omission and aligns the clause with clause 31(1) for goods.

Lords Amendments 17 to 20 (Clause 47)

The intention behind the amendments is to allow traders to exclude or restrict their liability for damage to the consumer's device or other digital content to the extent that such a limitation of liability is fair.

Specifically, Lords amendments 17, 18 and 20 would have two effects:

- The first effect would be to remove from clause 47 the bar on excluding or restricting liability arising under clause 46 (remedy for damage to device or to other digital content).

- The second effect would be to clarify that any exclusions or restrictions of a trader's liability under clause 46 would be subject to clause 62 (requirement for contract terms and notices to be fair).

On a technical note, the amendment also corrects an error in a cross-reference in clause 47. It clarifies that the cross-reference in subsection (2)(a) of clause 47 is to subsection 1.

During the debate on the Bill's digital content provisions in Grand Committee, Lord Clement-Jones raised a number of concerns about the complex environment in which digital content works and the difficulty for the industry in ensuring that its digital content will work seamlessly in all possible configurations on a user's device and will not have any unintended effects elsewhere on the device. In speaking to these amendments, Baroness Jolly said that the Government was satisfied that the remedies provided in the Bill for faulty digital content were proportionate and appropriate. They provide that if digital content is faulty, the consumer will be entitled to a repair, an update or a replacement, or if that is not possible, some or all of their money back.[105]

In addition, under clause 46 statutory liability could extend beyond the price paid for the digital content, covering where the digital content damages the consumer's device or other digital content. This clause was drafted to reflect negligence principles and to clarify that consumers have a right to compensation, even for free digital content, when it causes damage and the consumer can show that the trader failed to use reasonable care and skill to prevent the damage occurring.

The amendments would allow a trader to exclude or restrict their liability for damage to the consumer's device or other digital content to the extent that it would be fair under Part 2 of

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[104] HL Deb 8 December 2014 cc1601-1602
[105] HL Deb 19 November 2014 cc516-17

the Bill. This seeks to maintain the approach taken to this clause of reflecting negligence principles and bring it even closer to the current position on limits to liability.[106]

Lords Amendment 21 (Clause 48)

This amendment relates to Lords Amendment 1 above.

Lords Amendment 21 would rephrase clause 48(3), which relates to Scotland, to remove reference to "consideration" as this is not a Scots law concept. The intention behind the amendment is to provide clarification, without altering the existing policy and effect, that contracts which are gratuitous or not supported by consideration are not covered by Chapter 4 of Part 1 of the Bill on services contracts. Lords Amendment 1 would make the same clarification for goods contracts.

Lords Amendment 22 (Clause 48)

In a nutshell, clause 48(5) provides a power to exclude, by order, a specified service from the application of a provision of Chapter 4 of Part 1 of the Bill.

Lords Amendment 22 would provide that the power in clause 48(5) can be used to provide that an exclusion from a provision of the Chapter only applies to a service in certain circumstances specified in the order. The intention is to give additional flexibility as to the subject matter of an order under clause 48(5) by enabling a more precise or limited exercise of the power where appropriate.

Speaking on behalf of the Opposition, Baroness Hayter of Kentish Town said the amendment would enable the Government to cherry-pick provisions in the Bill so that they would not affect a particular service.[107] In making this point, she said that the Legal Services Consumer Panel and the Financial Services Consumer Panel were both slightly worried that the enabling power would provide the opportunity to carve out some legal services from being covered by the Bill.[108]

In response, Baroness Neville-Rolfe said that it was not the Government's intention that this power should be used regularly.[109] It was designed to accommodate certain services where it would not be appropriate to apply all or some of the provisions of the Bill. She said that it was the Government's intention to consider each case on its merits and any decision would be on a case-by-case basis; in particular, the Government, would want to consider the costs and benefits to both businesses and consumers. The Minister sought to reassure Members that any use of the power would be subject to parliamentary scrutiny, as an order made under it would be subject to the affirmative resolution procedure.[110]

8.2 Lords Amendments to Part 3: Miscellaneous and general

Lords Amendment 24 (new clause)

This Government amendment was agreed on the second day of Report Stage of the Bill. It would insert a new clause (after clause 79) on contraventions of the code on regulating premium rate services.

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[106] HL Deb 19 November 2014 cc517
[107] HL Deb 22 October 2014 c216GC
[108] HL Deb 22 October 2014 c216GC
[109] *Ibid*
[110] *Ibid*

Lords Amendment 24 would amend sections 120, 121 and 123 of the *Communications Act 2003* in relation to the regulation of premium rate services. It would clarify that the maximum penalty (currently £250,000) applies per contravention of:

- an approved code;
- directions given in accordance with such a code; or
- an order under section 122 of the *Communications Act 2003*

Further, the amendment would provide that the provisions about enforcement that may be made by an approved code may include provision that, where there has been more than one contravention of the code or directions given in accordance with it, either:

- a single penalty (which does not exceed the maximum penalty) may be imposed in respect of all those contraventions, or

- separate penalties (each of which does not exceed the maximum penalty) may be imposed on the person in respect of each of those contraventions;

- according to whether the person imposing the penalty determines that a single penalty or separate penalties are appropriate and proportionate to those contraventions

In addition, it would provide that Ofcom, when exercising its powers to enforce conditions under section 120 of the *Communications Act 2003*, can, where it has issued a notification relating to more than one contravention of an approved code, directions given in accordance with such a code or an order under section 122, either impose one penalty to cover all those contraventions together, or a separate penalty for each contravention. It would be for Ofcom to determine whether a single penalty or separate penalties would be appropriate and proportionate to the particular contraventions.

Speaking to this amendment, Baroness Jolly said that premium rate services are added-value services, products or content that consumers can purchase by charging the cost to their phone bill or mobile pre-pay account.[111] She said that while these services can, and do, offer enjoyment, convenience and speed of access to users, they also demonstrate certain characteristics which have the potential to give rise to harm, in the absence of effective regulation.[112] For this reason, she argued that it was important that companies comply with the rules set out by the regulator's code of practice, which serves to ensure consumers are treated fairly and not misled or taken advantage of.[113]

In setting out the current position, the Minister explained that PhonepayPlus regulates the market for premium rate services, and its code of practice, having been approved by Ofcom, sets out the regulatory framework for the industry, outlining the rules and required standards for every company involved in providing premium rate services to UK consumers. By way of an example, she said that a person or company providing premium rate services must be up front about the services they offer, and how much they cost, before users make any purchases. They must also treat consumers fairly and resolve complaints quickly.[114]

Under the *Communications Act 2003*, PhonepayPlus can impose a penalty in respect of breaches of the code. The amendment is intended to make it absolutely clear that where it is appropriate and proportionate, the maximum fine available to the regulator is for each

[111] HL Deb 24 November 2014 cc728-9
[112] *Ibid*
[113] *Ibid*
[114] *Ibid*

provision of the code that has been breached. Therefore, in the event of a company making two serious contraventions of the code, the regulator could impose a fine of up to £500,000, if that is deemed appropriate and proportionate.[115]

The Minister said that by clarifying the regulator's fining powers, the amendment was an important tool in ensuring the continued existence of a sufficient deterrent to non-compliant behaviour by companies or people providing premium rate services.[116]

Lords Amendment 25 (new clause)

This Government amendment was agreed on Third Reading of the Bill. It would insert a new clause (after clause 80) on the appointment of judges to the Competition Appeal Tribunal (CAT).

The amendment was in response to earlier amendments moved by Lord Hope of Craighead and Lord Mackay of Drumadoon during the second day of Report, at the request of the Lord President in Scotland and the Lord Justice of England and Wales.[117] Both Lords sought to remove a potential barrier to judges sitting in the Court of Session or the Northern Ireland High Court, from sitting as chairs in the Competition Appeal Tribunal (CAT). The Government shared those concerns.[118] The intention behind the amendment was to make it easier for judges from Scotland and Northern Ireland to be able to sit in the Tribunal.

Pursuant to Amendment 25, the Judicial Appointments Commission would no longer be required to recommend the appointment of judges as CAT chairs to the Lord Chancellor. Instead, the Lord Chief Justice of England and Wales, the Lord President of the Court of Session and the Lord Chief Justice for Northern Ireland would be able to nominate any suitably qualified individual who is already a judge sitting in the relevant court to be deployed as a CAT chair. This would include the Court of Session and the High Court in Northern Ireland. The amendment also provides that nominations in England and Wales may be from any division of the High Court, rather than restricted to the Chancery Division as at present. The aim is to ensure that CAT chairs are drawn from the widest possible pool of expertise.

As part of the move to a nomination process, the current eight year limit on CAT Chair appointments would no longer apply. Instead, judges would be eligible to be deployed to sit as CAT chairs until they retire or resign from their existing judicial office; if at any time they cease to sit in their judicial office, they would also cease to be a CAT chairman.[119]

In speaking to the amendment, the Minister explained that these changes would apply only to those who are full-time salaried judicial officeholders. Fee-paid CAT chairmen – private practitioners who want to hold a part-time judicial office for the first-time or to add another part-time judicial office to their portfolio – would continue to be recruited through the Judicial Appointment Commission selection process and be subject to an eight-year term of appointment.[120] The Minister said that the intention behind the amendment, was to ensure that judges from all the UK's jurisdictions were able to be deployed to sit in the CAT.[121]

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115 *Ibid*
116 Ibid
117 HL Deb 8 December 2014 c1604
118 *Ibid*
119 HL Deb 8 December 2014 c1604
120 HL Deb 8 December 2014 c1604
121 *Ibid*

Lord Hope of Craighead welcomed the amendment,[122] but Viscount Eccles drew attention to Schedule 8 and the widening of CAT responsibilities.[123] He argued that a number of safeguards promised after the House of Commons Committee reported on the Bill, had mostly disappeared.[124] Specifically, despite a House of Commons suggestion that the Secretary of State should be subject to affirmative resolution when it came to the rules of the tribunal, the Secretary of State would instead be subject to a negative instrument only.[125]

However, Baroness Hayter of Kentish Town said that the official Opposition welcomed Schedule 8. It would enable action to be taken where a company has broken competition law and a consumer has been 'ripped off'.[126]

Lords Amendment 26 (Clause 81)

During the second day of the Bill's Report Stage on 24 November 2014, the Opposition had tabled an amendment[127] to insert a new clause into the Bill which would have required every letting agent holding monies on behalf of a tenant (in respect of advanced rent) or a landlord to be protected in a separate client account. The new clause would also have required letting agents to have appropriate client money protection to safeguard both landlords and tenants, such as client money protection insurance.[128] This amendment was pressed to a vote but was defeated by 168 votes to 123 (see section 6 above). However, the Government took the opportunity to table its own amendments which were agreed without division.

Lords Amendment 26 would insert after clause 81 of the Bill, new provisions which would impose additional requirements on letting agents in relation to homes in England. Specifically, if an agent holds money on behalf of their clients as part of their letting agent or property management work then, as well as publicising their fees,[129] the agent must publish a statement which states whether or not that agent is a member of a client money protection scheme.

The *Redress Scheme for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014,*[130] made membership of a Government approved redress scheme for dealing with complaints a legal requirement for letting agents with effect from 1 October 2014.[131] Lords Amendment 26 would further require agents to publish, as part of their fee list, which redress scheme they are a member of.[132] Letting agents would be able to publish additional statements along with the list of fees and to provide any explanation or clarification as long as they also publish a complete list of fees and the two additional statements.

Directly related to Lords Amendment 26 are Lords Amendments 28 and 29 below.

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122 HL Deb 8 December 2014 c1604
123 HL Deb 8 December 2014 c1605
124 *Ibid*
125 *Ibid*
126 HL Deb 8 December 2014 c1606
127 Amendment 44
128 HL Deb 24 November 2014 cc750-751
129 See Part 3 Chapter 3 of the Bill
130 SI 2014/2359
131 This Order was made under the *Enterprise and Regulatory Reform Act 2013*
132 The *Redress Schemes for Lettings Agency Work and Property Management Work (Approval and Designation of Schemes) (England) Order 2013* (SI 2013/3192) sets out the criteria and process for approving redress schemes. On 15 April 2014 the Government announced that it had approved three compulsory redress schemes: The Property Ombudsman; Ombudsman Services Property; and The Property Redress Scheme

Lords Amendments 27, 30 to 37 (Clauses 81 to 84)

These Lords Amendments are technical in nature. They would all extend the duty to publicise letting agents' fees so that it applied in Wales as well as England. As housing is a devolved issue, it would be necessary to replace references to "Secretary of State" with "appropriate national authority" (see Lords Amendment 40) and to leave out references to the duty applying in England.

Lords Amendment 28 (Clause 81)

Lords Amendment 28 would enable the Secretary of State (or, if Lords Amendment 27 were agreed to, the appropriate national authority) to specify by regulations other ways in which a letting agent must publicise the statements on client money protection and which redress scheme they have joined.

Lords Amendment 29 (Clause 81)

Lords Amendment 29 would provide definitions of a client money protection scheme and a redress scheme. A client money protection scheme is defined as a scheme which enables a client on whose behalf a letting agent holds money to be compensated by that scheme if all or part of that money is not repaid in circumstances where the scheme applies.

A redress scheme means a scheme which has been approved by the Secretary of State by order under section 83 or 84 of the *Enterprise and Regulatory Reform Act 2013.*

Lords Amendment 38 (new clause)

To put this Lords amendment into context, during the Bill's House of Commons Report Stage on 16 June 2014, the Government added a new clause which would require letting agents to *publish a full tariff of their fees – both on their websites and prominently in their offices.*[133] Failure to comply with this requirement would lead to a fine. The new provisions are contained in Chapter 3 of Part 3 to the Bill. The Government intends to review the requirement for greater transparency over fees after 12 months of operation "to confirm it is delivering the expected benefits, and review whether any further steps are needed."[134] Lords Amendment 38 would insert a new clause into the Bill (after Clause 84), concerned with the enforcement of this new duty on letting agents.

Specifically, Lords Amendment 38 would place a duty on every local weights and measures authority in England and Wales (i.e. Trading Standards officers) to enforce in its area the requirement for letting agents to publicise their fees and, where applicable, the additional requirements which would be imposed by Lords Amendment 26 (i.e. a requirement to publish a statement on whether or not the agent is a member of a client money protection scheme and which redress scheme they are a member of). It would replace the need for secondary legislation by making the duty explicit in the primary legislation.

A local weights and measures authority in England would be required to have regard to any guidance issued by the Secretary of State about how letting agents should comply with the duty to publicise their fees and, where applicable, the additional requirements which would be imposed by Lords Amendment 26, and on how the authority should carry out its enforcement duties. Similarly a local weights and measures authority in Wales would be

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[133] HC Deb 16 June 2014 cc873-878

[134] See separate Library Standard Note on 'The regulation of private sector letting and managing agents (England)", (SN/SP/6000) dated 15 October 2014

required to have regard to any guidance issued by the Welsh Ministers about how letting agents should comply with the duty to publicise their fees and on how the authority should carry out its enforcement duties.

The amendment would enable local weights and measures authorities who, on the balance of probabilities, are satisfied that a letting agent has breached the requirement, to impose a financial penalty on the agent in respect of that breach. The amendment would provide that local weights and measures authorities may fine letting agents in breach of the requirement up to £5,000. When imposing a fine, authorities must follow the process described in the new Schedule which would be inserted by Lords Amendment 77 (see below).

The amendment would provide that while it is the duty of local weights and measures authorities to enforce the requirement in their area, they may also impose a penalty in respect of a breach which occurs in England and Wales but outside that authority's area. However, an agent may only be fined once in respect of the same breach.

Both the Secretary of State and the Welsh Ministers would have the power to make secondary legislation which amends the enforcement provisions and make the necessary consequential amendments for England and Wales respectively.

Lords Amendment 39 (Clause 85)

Lords Amendment 39 would remove the existing clause 85 which would be in effect replaced in its entirety by Lords Amendment 38.

Lords Amendment 40 (Clause 86)

Lords Amendment 40 would define the term "the appropriate national authority". This is a new term which would be introduced because the duty for letting agents to publicise their fees would be extended to cover Wales as well as England.

In relation to England, the appropriate national authority would mean the Secretary of State while in relation to Wales it would mean the Welsh Ministers.

Lords Amendments 41, 42, 43 and 44 (Clause 86)

As explained in the Explanatory Notes, these Lords Amendments would add certain Welsh social housing providers to the list of exemptions from the requirement to publicise fees. These are registered social landlords and fully mutual housing associations. Landlords who are private registered providers of social housing are already exempt.

Lords Amendment 43 would define a fully mutual housing association by reference to the *Housing Associations Act 1985*. Lords Amendment 44 would define a registered social landlord by reference to the *Housing Act 1996*.

Lords Amendments 45 and 46 (Clause 86)

Lords Amendments 45 and 46 are purely technical in nature, and would be required because the duty to publicise fees would be extended to cover Wales as well as England.

Lords Amendment 45 would remove the limitation to a county council in England when defining local authority to ensure that county councils in Wales are included. Lords Amendment 46 would add county borough councils to the definition of local authority as these are a relevant type of Welsh council. Clause 84(3) excludes things done by local authorities from the definition of letting agency work for the purposes of Chapter 3 of Part 3.

Lords Amendments 47, 48 and 49 (Clause 86)

Lords Amendments 47, 48 and 49 are technical in nature, and would alter the procedural provisions applying to regulation-making powers in Chapter 3 of Part 3 to reflect the new powers that would be added by Lords Amendment 38 and the fact that the provisions in the Chapter would be applied to Wales by other Lords Amendments.

Lords Amendment 47 would apply the affirmative procedure to regulations amending the enforcement provisions. Lords Amendments 48 and 49 would apply the negative procedure to other regulations made by the Welsh Ministers (as well as the Secretary of State) under the Chapter.

Lords Amendment 50 (new clause)

This amendment would insert a new clause (after Clause 86) which would expand the list of higher education providers which are required to join the higher education complaints handling scheme.

The backdrop to this amendment was the 2011 Higher Education White Paper[135] in which the Government set out its intention to require that all higher education students receiving public support should have access to external dispute resolution. This was part of a wider package of measures aimed at developing a new regulatory framework across higher education that required legislation to implement it. When the *Consumer Rights Bill* was debated in Grand Committee, Baroness Hayter had set out a case for ensuring that higher education students receiving public support should have access to the dispute resolution scheme set up under the provisions of the *Higher Education Act 2004* and run by the Office of the Independent Adjudicator for Higher Education (the OIA).

In response, the Government tabled its own amendment for the second day of the Report Stage.[136] Specifically, Lords Amendment 50 would expand the list of higher education providers which are required to join the higher education complaints handling scheme (operated by the OIA). All those providers delivering courses which are specifically or automatically designated to receive student support funding in England and Wales, and providers with degree awarding powers, would be required to join. In practical terms, it would mean that full and part-time higher education students in receipt of student support and studying at alternative providers and further education colleges in England and Wales would be able to bring a complaint to the OIA.[137]

Lords Amendments 51 and 52 (Clause 87)

Lords Amendments 51 and 52 are technical. They would ensure that any modifications to primary legislation made under the power conferred by clause 87(1) were subject to the affirmative procedure.

These amendments would give effect to a recommendation of the Delegated Powers and Regulatory Reform Committee in its Third Report of Session 2014-15, published on 11 July 2014.[138]

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[135] Department of Business, Innovation and Skills (BIS), "*Students at the heart of the system*", CM 8122, June 2011 (online) (accessed 16 December 2014)

[136] HL Deb 24 November 2014 cc765-766

[137] *Ibid*

[138] "Delegated Powers and Regulatory Reform Committee – Third Report of Session 2014-15", [online] (accessed 16 December 2014)

Lords Amendment 53 (Clause 88)

Lords Amendment 53 would ensure that the Welsh Ministers, and not the Secretary of State, could make transitional, transitory and saving provision in connection with the coming into force in relation to Wales of Chapters 3 and 3A of Part 3 of the Bill (Duty of letting agents to publicise fees and student complaints scheme).

Lords Amendment 54 (Clause 90)

This was another technical amendment. It is designed to ensure that the requirement for letting agents to publicise their fees extends to England and Wales only.

The amendment also ensures, where applicable, that the additional requirements which would be imposed by Lords Amendment 26 (i.e. the requirement for letting agents to publish a statement on whether or not they are a member of a client money protection scheme and to state which redress scheme they are a member of) extends only to England and Wales.

Lords Amendments 55 and 56 (Clause 91)

Lords Amendments 55 and 56 are technical amendments which would bring certain statutory instrument-making powers into force on Royal Assent. Lords Amendment 56 would also provide a power for Welsh Ministers to bring into force Chapters 3 and 3A of Part 3 of the Bill (Duty of letting agents to publicise fees and student complaints scheme) in relation to Wales, as these Chapters are only applicable to England and Wales.

8.3 Lords Amendments to the Schedules

Lords Amendment 57 (Schedule 3)

This Government amendment was recommended by the Delegated Powers and Regulatory Reform Committee in its report on the Bill. Lords Amendment 57 would ensure that an order to amend the list of regulators under paragraph 8 of Schedule 3 (enforcement of the law on unfair contract terms and notices) would be subject to the affirmative resolution procedure.

In effect, the amendment would change the parliamentary procedure used from the negative to the affirmative resolution procedure. The Government agreed with the Committee that now that the list of enforcers was in primary rather than secondary legislation, this was a significant power because it could be used to add to or amend the list of enforcers who could take action against unfair terms, as set out in Part 2. As such, the higher level of parliamentary scrutiny and the opportunity for debate that the affirmative procedure provides was more appropriate.[139]

Lords Amendments 58 and 59 (Schedule 5)

As a result of Lords Amendment 38 local weights and measures authorities in England and Wales (i.e. Trading Standards officers) would be under a specific duty to enforce Chapter 3 of Part 3 of the Bill (duty of letting agents to publicise fees etc). This would enable that duty to be listed in paragraph 10 of Schedule 5.

Lords Amendment 58 would add that duty to paragraph 10 and Lords Amendment 59 would make a consequential change to remove the reference to Chapter 3 of Part 3 from paragraph 11 of Schedule 5. This would preserve the position whereby the investigatory powers in the Schedule can be used to enforce the duty on letting agents to publicise their fees and, where applicable, the additional requirements which would be imposed by Lords Amendment 26.

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[139] HL Deb 29 October 2014 c468GC

Lords Amendments 60 to 68 (Schedule 5)

These technical amendments, moved by the Minister, Baroness Neville-Rolfe, on the second day of Report Stage were all agreed.

Lords Amendments 60 to 68 would amend paragraph 23 of Schedule 5 which covers when a power to enter premises without a warrant can be exercised and the circumstances in which two working days' written notice must be given by consumer law enforcers. The intention with these amendments is to clarify that notice need only be given for "routine inspections" and to make any necessary consequential amendments. "Routine inspection" would be defined as any use of the power other than where the exemptions in sub-paragraph (5)(b) to (e) of paragraph 23 apply. Also notice would not have to be given for a "routine inspection" where notice has been waived by the occupier.

Lords Amendment 69 (Schedule 6)

Lords Amendment 69 would retain some provisions originally considered to be obsolete. The provisions concerned insert provisions into the *Criminal Justice and Police Act 2001* which are amended by Schedule 6.

Lords Amendments 70, 71, 74 and 75 (Schedule 8)

These Lords Amendments deal with private actions in competition law.

Lords Amendments 70 and 71 would alter the power to amend the specified body that receives unclaimed damages in collective proceedings for breaches of competition law, so that only a charity can be the prescribed body. Lords Amendment 74 would correct a cross-reference to ensure that the affirmative resolution procedure applies to this power.

The provisions in the Bill regarding private actions in competition law allow for consumers and small and medium-sized enterprises (SMEs) to group together to take a case under the collective redress mechanism. There are also supporting provisions, dealing with the situation where an underlying claimant may appeal against a representative being authorised. As currently drafted, regardless of the outcome of the appeal, the representative is liable for all costs incurred. The current drafting provides insufficient flexibility for the Competition Appeal Tribunal, as there may be instances where it is not appropriate for the representative to be liable for all the costs, for example where an underlying claimant commences an appeal which is not upheld. Lords Amendment 75 would therefore allow the Competition Appeal Tribunal to allocate costs in certain types of appeal cases.

Speaking to these amendments as a whole, the Minister said that the Government wished to encourage consumers to seek redress for breaches of competition law, but that consumers would require someone to represent them. Accordingly, the Government wished to encourage representatives—including those who act on a pro bono or charitable basis—and therefore the Bill provides that the CAT may sometimes award costs to a representative who acted on such a basis. The Government has argued that if the opportunity for unclaimed damages to go to representatives who act on a pro bono basis is restricted, there could be negative consequences for the consumer.[140] However, Lords Amendments 70 and 71 would ensure that the body to receive unclaimed damages is a charity.

Lords Amendment 75 would allow the Competition Appeal Tribunal to allocate costs in certain types of appeal cases. According to the Government, this has two benefits: first, it

[140] HL Deb 3 November 2014 c589GC

aligns the costs with the wider "loser pays" principle that exists in domestic law; and, secondly, it should deter vexatious applications.[141]

Lords Amendments 72 and 73 (schedule 8)

Both amendments were agreed on the second day of the Bill's Report Stage.

Lords Amendments 72 and 73 would allow the Competition and Markets Authority (CMA) to approve an outline redress scheme submitted by a business, when a business offers to settle an investigation. The CMA would also have a power to withdraw its approval if the scheme did not comply with any conditions imposed. This would be a change to the process in order to achieve the original policy intent.

In speaking to these amendments, the Minister, Baroness Neville-Rolfe, explained that the current private actions regime was not delivering the redress to consumers or SMEs that the Government would like. The intention behind Schedule 8 of the Bill is to reform the existing regime. The Minister said that as part of those reforms, the Government recognised that some businesses may want to offer redress voluntarily, so the Bill provides for the CMA to approve redress schemes.[142] In explaining the Government's position, the Minister said:

> It is imperative that, for the business to make use of redress schemes, we strike the right balance in incentivising business and providing redress to consumers. This amendment allows for the CMA to approve an outline of a redress scheme when the CMA finds a breach of competition law. That removes the requirement for a business to submit a complete scheme at that time. That change is being made to prevent businesses being deterred from putting forward a scheme at an early stage. Businesses are concerned about disclosing information while still under investigation and the costs of setting up a scheme which may ultimately not be approved by the CMA.
>
> If the CMA approves the outline redress scheme, it will be able to impose a deadline by which the business must have complied with conditions necessary to set up the full scheme. Once the full scheme has been created, the amendment allows the CMA to withdraw its approval of the scheme if it has not complied with the conditions. It also enables a revised scheme to be considered.[143]

Lords Amendment 76 (Schedule 8)

Lords Amendment 76 would amend a cross-reference in paragraph 37 of Schedule 8 which was not revised following the introduction in Public Bill Committee of new section 47C(6) in paragraph 6 of Schedule 8. Paragraph 37 refers to 47C(7) which, after the addition of new section 47C(6), should read 47C(8).

Lords Amendment 77 (new Schedule)

Lords Amendment 77 would insert a new Schedule into the Bill (after Schedule 8) detailing the process for enforcement of the duty of letting agents to publicise their fees and financial penalties. This new Schedule would also apply, where applicable, to the additional requirements which would be imposed by Lords Amendment 26 (i.e. a requirement on letting agents to publish a statement on whether or not they are a member of a client money protection scheme and a requirement to state which redress scheme they are a member of).

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[141] *Ibid*

[142] HL Deb 24 November 2014 c748

[143] *Ibid*

It is the Government's intention for the requirement for letting agents to publicise their fees to come into effect in both England and Wales as soon as possible to ensure that tenants have some certainty over the payments they have to make. The intention behind these Lords Amendments is to put the enforcement details into the Bill rather than subsequently using secondary legislation.

In brief, the enforcement process outlined in his new Schedule to the Bill is as follows:

Notice of Intent

- Enforcement authorities (i.e. Trading Standards officers) would be required, within six months of having sufficient evidence that a breach of the duty has occurred or longer if the breach continues, to serve a notice on the agent that they propose to impose a financial penalty.

- The Schedule would require this notice of intent to include the amount of the proposed financial penalty, the reasons for imposing the penalty and information about how the agent can make representations about the proposal to impose a financial penalty.

Right to make representations

- The Schedule would provide that the letting agent may, within 28 days from the day after the service of the notice of intent, make written representations to the enforcement authority about the proposal to impose a financial penalty.

Final notice

- The Schedule would require that, at the end of the 28 day period, the enforcement authority must decide whether or not to impose the financial penalty and the level of any penalty it decides to impose. If the authority decides to impose a penalty it must serve a final notice on the agent imposing that penalty. The final notice would have to require the penalty to be paid within the period of 28 days starting with the day after the day on which the notice was sent.

- The Schedule would require that the final notice must also include the amount of the financial penalty, the reasons for imposing the penalty, information on how to pay the penalty, how long the agent has to pay the penalty, information about how the agent can appeal the decision and the consequences if the agent does not pay within the specified time period.

Withdrawal or amendment of notice

- The Schedule would provide that, at any time throughout this process, the enforcement authority may write to the agent on whom they have served a notice and either withdraw the notice of intent or final notice or reduce the amount specified to be paid in a notice of intent or final notice.

Appeals

- The Schedule would require that a letting agent who has been served a final notice by an English enforcement authority may appeal to the First-tier Tribunal. A letting agent served by a Welsh enforcement authority may appeal within 28 days (starting

with the day after the day on which the final notice was sent) to the residential property tribunal. The grounds for appeal would be that:

- the decision to impose a financial penalty was based on an error of fact;
- the decision was wrong in law;
- the amount of the financial penalty is unreasonable; or
- the decision was unreasonable for any other reason

- Letting agents appealing to the First-tier Tribunal would have to comply with the requirements published by the Tribunal including any time constraints.

- The Schedule would provide that if an agent has appealed, the final notice is suspended until the appeal is finally determined or withdrawn. Both the First-tier Tribunal and the residential property tribunal may quash, confirm or vary the final notice. When varying the final notice the financial penalty could not exceed £5,000.

  Recovery of financial penalty

- If an agent who has been served a final notice fails to pay all or some of the penalty which they are liable for, the enforcement authority who imposed the penalty may recover the money on the order of a court as if it were payable under a court order. When applying to the court for a court order a certificate which is signed by the chief finance officer of the local weights and measure authority which imposed the penalty and states the amount due has not been received by a date specified in the certificate would be conclusive evidence of that fact.

- A local weights and measures authority (i.e. Trading Standards officers) may retain and use the proceeds of a financial penalty for the purposes of any of its functions including functions which are not regarded as functions of a local weights and measure authority as such.

As already mentioned (see Lords Amendment 38 above), authorities will be able to fine agents who fail to publicise their fees up to £5,000 for each office and website. However, letting agents will be able to appeal to a tribunal. During Grand Committee, Baroness Jolly said that the Government recognised that enforcing the requirements for agents to publicise their fees would entail a new burden for local authorities, so it would make additional funding available for this. She added that authorities would be able to retain the fine, potentially enabling the proceeds from agents who are opaque on their fees to be used to tackle other rogue agents, thus continually driving up standards in the industry.[144]

8.4 Lords Amendments to the Title

Lords amendment 78

Lords Amendment 78 would simply update the long title of the Bill to include the Competition Appeal Tribunal as a consequence of Lords amendment 25.

[144] HL Deb 29 October 2014 c475GC