The Law Commission

(LAW COM. No. 17)

LANDLORD AND TENANT
REPORT ON
THE LANDLORD AND TENANT ACT 1954 PART II

Laid before Parliament by the Lord High Chancellor pursuant to section 3(2) of the Law Commissions Act 1965

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The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law. The Commissioners are—

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LAW COMMISSION

Item VIII

Codification of the Law of Landlord and Tenant

REPORT ON THE LANDLORD AND TENANT ACT 1954 PART II

To the Right Honourable the Lord Gardiner,
the Lord High Chancellor of Great Britain

PART I—INTRODUCTION

1. In the course of our examination of the law of Landlord and Tenant under Item VIII of our First Programme, we have considered a number of points on the operation of Part II of the Landlord and Tenant Act 1954, in respect of which it has been suggested to us that the provisions of the Act are unsatisfactory. Part II gives security of tenure for business and professional tenants by providing for the continuation and renewal of such tenancies subject to certain conditions. It is, therefore, an important piece of legislation which affects a considerable section of the community.[1] On the whole it has worked well, but in the fourteen years that have elapsed since its enactment it has become apparent that in several respects the provisions of the Act have given rise to uncertainty or are likely to cause inconvenience and even injustice. Where this is so, we feel that the relevant provisions should be clarified or amended without delay, pending an overall review of the law relating to leases of business premises. In this Report, therefore, we examine the proposals that have been put to us for clarification and amendment of Part II of the 1954 Act and submit a Draft Bill to give effect to our recommendations. Throughout the Report, references to "the Act" and "the principal Act" are to the Landlord and Tenant Act 1954, and sections cited refer to sections of that Act; clauses cited refer to clauses of the Draft Bill.

2. In February 1967 we published[2] provisional proposals of the Law Commission Working Party on Landlord and Tenant for amendments to the Act in seven major respects. The paper was circulated widely and was given considerable publicity in the legal press; in all, more than 600 copies were sent to government departments, professional bodies, practitioners, local chambers of commerce and legal journals. With few exceptions, the numerous replies[3] we have received express agreement that the changes

[1] See Appendix III for the number of applications for new tenancies lodged in the county courts in the years 1964–67 inclusive.
[2] Published Working Paper No. 7.
[3] See Appendix IV for a list of those who have replied to our Working Paper.

proposed are needed and, subject to points of detail, favour the solutions put forward in that paper. We have, however, been persuaded by some of the comments to modify and add to our original proposals in certain respects.

3. We draw attention here to the five additional proposals that we have considered and adopted. Two of these are intended to meet the need for greater flexibility in permitting temporary lettings which do not attract the provisions of Part II of the Act: they achieve this, first, by extending to six months the period for which such tenancies may be granted and, secondly, by empowering the court on the joint application of the parties to sanction such tenancies for longer periods (paragraphs 32 and 33). Next we recommend that the court should have power to include in the terms of a new tenancy a rent review clause (paragraphs 20 and 21). We also recommend that the court should have power to order the grant of a new tenancy of part of the premises where the landlord opposes the tenant's application on the ground that he intends to demolish or reconstruct the premises (section 30(1)(*f*)) but does not reasonably require possession of the holding to carry out the proposed work (paragraphs 34 and 35). Finally, we propose that where the landlord's grounds of opposition to the grant of a new tenancy are limited to those specified in paragraphs (*e*), (*f*) or (*g*) of section 30(1), the tenant should be entitled to compensation under section 37 on quitting the holding without having to make a formal application to the court for a new tenancy (paragraphs 46 and 47).

4. Some proposals made to us, however, lie outside the scope of this Report, which is confined to the purposes indicated in paragraph 1 above. Thus, we do not think it would be appropriate, as has been suggested to us, to deal in this limited context with the general question of when a notice is "given" or a request "made" (as for example in sections 25(5) and 26(6) of the Act). Similarly, we do not think it would be appropriate at this stage to reconsider the definition of "business" in section 23(2) of the Act, which has been criticised as being too wide. In particular, it has been suggested that it should not be capable of including a "business" such as a tennis club.[4] This question should, we think, await a general examination of the Landlord and Tenant Acts 1927 and 1954 in their application to business premises.

5. Part II of the Act contains detailed provisions for regulating, in the area to which the Act applies, the rights of "the landlord" and "the tenant" respectively. When a business is carried on either by a "one-man" company or by a partnership certain problems can arise, which are illustrated by three recent cases:

(i) In *Tunstall* v. *Steigmann*[5] the landlord wished to oppose her tenant's application for a new tenancy on the ground specified in section 30(1)(*g*), namely that she (the landlord) intended to occupy the holding for the purposes of a business to be carried on by her; but in fact the business was to be carried on by a company of which she owned beneficially the whole of the share capital. The Court

[4] See *Addiscombe Garden Estates Ltd.* v. *Crabbe* [1958] 1 Q.B. 513.
[5] [1962] 2 Q.B. 593.

of Appeal felt bound to adhere strictly to the principle that a limited company is a separate legal entity from its shareholders and held that the landlord could not, therefore, sustain that ground of opposition to the grant of a new tenancy. Danckwerts L.J. concluded his judgment by saying:

> "I reach this result with some reluctance, because it is from a common sense point of view an artificial result (though the conception of a limited company, it must be said, is a legalistic and artificial conception); and also because I have a feeling that if the landlord's business affairs had been suitably arranged, the requirements of the Act might have been satisfied (provided, of course, that any such arrangements were genuine and not a mere sham)."[6]

(ii) In *Sevenarts Ltd.* v. *Busvine*[7] the facts were very similar except that the landlord, Mrs. Busvine, held the head lease of the premises as trustee for the company. This enabled her to rely on section 41(2) of the Act under which references to the landlord in paragraph (*g*) of section 30(1) are to be construed as including references to the beneficiaries under a trust. For this reason—and also, it appears, because it would have regarded any other conclusion as being too technical—the Court of Appeal held that the landlord was entitled to oppose the grant of a new tenancy on the grounds specified in section 30(1)(*g*).

(iii) In *Jacobs* v. *Chaudhuri*[8] the lease was granted to two individuals who carried on business in partnership, but the partnership was later dissolved and one of the partners (Mr. Jacobs) continued to carry on the same business on the premises. In due course the landlord served notice of termination of the tenancy on the joint tenants, and a counter-notice under section 29(2) (stating that he was not willing to give up possession of the property at the date of termination) was given to the landlord by Mr. Jacobs. The retired partner was not willing to join in an application for a new tenancy. It was held that, for the purposes of section 24(1) of the Act, one of two or more joint tenants was not "the tenant" and could not apply for a new tenancy.

6. An appeal is now pending against the Court of Appeal's decision in *Jacobs* v. *Chaudhuri* and it may be that further light will be thrown on this aspect of the Act by the decision of the House of Lords. At this stage, therefore, we make no recommendations on these problems.[9]

7. Another point that has been put to us is that section 40, which imposes duties on landlords and tenants to give certain information to each other, can serve no useful purpose without sanctions to enforce them. One of the main objects of that section was to enable a superior landlord to determine who were the sub-tenants, if any, for the purposes of serving

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[6] *Ibid* at p. 608.
[7] The Estates Gazette (1968), vol. 208, p. 379.
[8] [1968] 2 W.L.R. 1098.
[9] Since preparing our Report we have learned that this appeal has been withdrawn Further consideration will now be given to these questions.

notices ; its provisions will, therefore, be of significantly greater importance if our recommendation D[10] is adopted. We feel, however, that it would be inappropriate to introduce in isolation sanctions in this limited field before our Working Party has considered the general question of notices between landlord and tenant. Consequently, we make no recommendation on this point.

8. At the end of this Report we have appended a Draft Bill[11] to give effect to our recommendations, together with explanatory notes on the draft clauses. We stress here the importance we attach to the form which the necessary amendments should take. Part II of the Act represents a closely-woven piece of legislation and any amendments to it have to be considered most carefully so as not to disturb its interlocking pattern. It is also a statute which affects a wide section of the public and their legal advisers, for whom clarity and ease of access are of paramount importance. Our cardinal aim, therefore, has been to preserve as far as possible the unity of structure of Part II, notwithstanding our proposed amendments, and to make it possible for the principal Act in due course to be reprinted as amended. We think that this will be convenient for practitioners. In Appendix II we set out the relevant sections of the Act incorporating our proposed amendments.[12]

9. Clause 13 of our Draft Bill cannot be incorporated into the earlier Act in this way since its provisions, with one exception, relate exclusively to the amending Act itself and not to the parent Act. The exception is subsection (4) of the clause which provides that clause 11 (extending the period for which a short tenancy may be granted without attracting the provision of Part II of the Act) shall not apply to tenancies granted before the commencement of the amending Act. The fact that the former provisions of the Act on this point may still apply to some tenancies will need to be explained, perhaps by a footnote, in the reprint of the Act as amended.

10. In the next Part of this Report we explain and consider the various proposals that have been made for clarifying and amending the Act. They are treated as far as possible under the main subject headings (lettered A–K) and in the order of the clauses in the Draft Bill. A number of miscellaneous points unrelated to those headings are discussed in paragraphs 50–57. Our recommendations are summarised in Part III.[13]

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[10] See page 19 below.
[11] Appendix I.
[12] See pages 37 to 39.
[13] See pages 19 to 21.

PART II—PROPOSALS FOR AMENDMENTS

A. Improvements to be disregarded in fixing rent

11. In fixing the rent for a new tenancy granted under Part II of the Act on the basis of the open market value the court must, under section 34, disregard certain matters, including improvements carried out by the tenant otherwise than in accordance with the obligations of his tenancy (section 34(*c*)). The object of this provision was presumably to give the tenant the benefit of improvements for which he or his predecessors in title were responsible; but it has recently been held that paragraph (*c*) of section 34 applies only to improvements carried out by the tenant or his predecessors in title during the current tenancy, and not to improvements carried out during earlier tenancies.[14] The result is that improvements carried out by a tenant during his first tenancy will not of themselves cause his rent to be increased in respect of a second tenancy but may result in an increase in the rent payable under a third or subsequent tenancy.

12. Where the tenant has been in occupation of the premises under successive tenancies we see no reason to draw any distinction between improvements carried out during earlier tenancies and those carried out during the current tenancy. Subject to the question of a time-limit, which we shall consider in paragraph 15 below, we think it right in principle that he should be entitled to the benefit of any improvements which satisfy two basic requirements : first, that they were carried out of his own accord (not under an obligation in the tenancy) and, secondly, that, where under the terms of the tenancy the landlord's consent was required, such consent was obtained.

13. Nor does it seem appropriate to distinguish improvements carried out by the tenant himself under an earlier tenancy from those carried out by a predecessor in title under an earlier tenancy. Where the relevant tenancies have been continuous in time and the landlord has not paid compensation for them under Part I of the Landlord and Tenant Act 1927 (because no tenant has quitted the holding at the end of his tenancy) we think that the tenant should be entitled to have improvements disregarded even though carried out by a predecessor in title under a previous tenancy. No hardship would be caused to the landlord by such an extension of the present provisions because the increased letting value is not due to anything which he has done, nor to any expense which he has incurred. The tenant, on the other hand, where he has not carried out improvements himself, is likely to have paid something for them on taking an assignment of the tenancy.

14. We have considered whether the right of a tenant applying for a new tenancy to have the benefit of improvements under section 34(*c*) should be

[14] *In re "Wonderland", Cleethorpes* [1962] Ch. 696 (C.A.): affirmed by the House of Lords under the name *East Coast Amusement Co. Ltd.* v. *British Transport Board* [1965] A.C. 58.

limited to cases where it is shown that there has been no change in the type of business carried on between the date of the improvement and the date of the application. We think, however, that this would be unjustifiable. If an improvement made for the specific purpose of one kind of business does not increase the letting value of the premises for a different kind of business being carried on at the time of the application, there is no beneficial improvement under section 34(*c*) to consider. On the other hand, improvements are commonly of a more general character, so that, although when they were made one kind of business was being carried on, the letting value of the premises may nevertheless be increased even where the premises come to be used for another kind of business. In such a case we think that the change in the nature of the business is irrelevant.

15. It has also been suggested to us that there should be a time-limit after which it should no longer be possible to have the effect of improvements disregarded ; and with this we are inclined to agree. As a matter of valuation practice the effect of improvements on letting value can be disregarded only so long as the amount of the current market rent which is attributable to them, as opposed to other factors, is calculable. With the passage of time this becomes increasingly more difficult, and may eventually be impossible. Moreover, it is often a matter of some difficulty, in respect of works carried out long ago, to establish the basic facts as to who carried out the works and who paid for them. To place some limitation on the tenant's rights in this respect would not, it is said, create any injustice. As a matter of business prudence a tenant will normally have regard to the number of years which his lease has yet to run when he decides to incur the expense of making improvements ; and he will expect to write off the cost over a reasonable period of years.

16. On these grounds we think it right, if improvements carried out under earlier tenancies are to be disregarded, that some time-limit should be imposed. Suggestions as to the length of this limit have varied from straightforward periods of 10, 14 or 21 years, to a variable period such as the remainder of the tenancy under which the improvements are carried out and the next two renewals under the Act. We prefer a fixed period to a variable one and we think that it should be long enough to ensure that in most cases the tenant rather than the landlord should obtain the benefit of the improvements so long as it is of real significance. From this point of view we regard 10 or 14 years as being too short. Any decision on such a matter must appear to be somewhat arbitrary but we think that a period of 21 years would be fair, and this is the time-limit which we recommend.

17. We do not regard it as an objection to our recommendations on this point that they might apply to improvements carried out under tenancies which came to an end before 1st October 1954, when the Act came into force. Even before that date the tenant's position as to improvements was in many cases safeguarded under the Landlord and Tenant Act 1927.

18. We have considered several other points which were raised in connection with section 34. First, it was suggested that where the tenant wishes to have improvements effected the landlord should in all cases have the option to do the work himself and increase the rent accordingly. Secondly,

it was suggested that at the end of the lease the landlord should have an option to pay for any improvements carried out by the tenant during the currency of the lease and to have the rent fixed for the premises as they stand. Each of these suggestions seems to us to upset the basic machinery of the Act in relation to improvements. We should be reluctant to do this, for we believe that in essence the machinery works well. Nor do we think that there is any need to put expressly on the tenant the burden of proving what improvements are to be disregarded, since in determining the market rent the court can only disregard improvements if the relevant conditions of section 34 are satisfied.

19. Our attention has also been drawn to the possible impact of the Land Commission Act 1967 where improvements are carried out by the tenant. Under that Act a project of material development will *prima facie* create a liability to betterment levy under Case C both on the landlord and on the tenant. In theory, therefore, the landlord might have to pay levy in respect of an improvement which will bring him no benefit for many years to come. Section 45(2) of that Act does, however, allow the Land Commission, if it thinks fit, to postpone collection of the levy until such future time as it may determine. It seems that in the case of a reversionary interest this time is likely to be the date when the development value is realised by a sale of that interest or by the lessor obtaining possession.[15] Where realisation of the value is delayed by the operation of the Landlord and Tenant Acts we understand that the period of postponement will be extended accordingly.

B. Determination of a variable rent

20. There appears to be some doubt as to the court's power to include a rent review clause in the terms of a new tenancy. Such a clause was included in the order made by the High Court in *Re 88 High Road, Kilburn,*[16] but it is arguable that the court's duty under section 34 is to fix the actual rent for the whole period of the term granted. The result is that the courts often renew tenancies for short periods only, on account of the continual rise in rents and the consequent hardship that would be caused to the landlord if the rent were to be fixed for a longer period. On the other hand, where the parties agree to the inclusion of a rent review clause, longer terms are sometimes granted.

21. Renewal of the tenancy for a short period will often be unsatisfactory for the tenant, in spite of the fact that he will be protected by the Act, because he is left with uncertainty as to the future and the possible expense of making another application to the court in a few years' time. It is in any case undesirable that the court should be prevented from granting the term that it would otherwise think appropriate because it cannot fix a rent which would be fair to the landlord. To dispel any doubt on the matter we recommend that the court should be given express power, where it thinks fit, to include a rent review clause in the terms of the new tenancy.

[15] See Land Commission Practice Note No. 9, issued in November 1968 and published in e.g., The New Law Journal (vol. 118, p. 1073), The Solicitors' Journal (vol. 112, p. 896) and The Estates Gazette (vol. 208, p. 764).
[16] [1959] 1 All E.R. 527.

C. Rent while tenancy continues by virtue of section 24

22. The scheme of Part II of the Act is to entitle tenants occupying premises for business or professional purposes, upon taking certain procedural steps within given time-limits, to obtain new tenancies as of right unless the landlord can establish one or more specific grounds of opposition. Until the tenant's application is determined by the court, the Act preserves the existing position by continuing the current tenancy. By virtue of section 24 the tenancy is automatically continued upon the same terms, and, therefore, at the same rent, until it is terminated in accordance with the provisions of the Act. If proceedings are commenced under the Act, the tenancy will not terminate until three months after the application is disposed of and any time for appealing and further appealing has expired (section 64). As was pointed out by Harman L.J. in *Espresso Coffee Machine Co. Ltd.* v. *Guardian Assurance Co. Ltd.*[17] there are various methods available to a tenant whereby he can postpone a final order for a considerable time ; and it may well be worth his while to do so if, as is not unusual, the rent reserved under the original tenancy has fallen substantially below the current market value for such premises. In *Re 88 High Road, Kilburn,*[18] for example, the yearly rent fixed for a new tenancy under the Act was £3,000, whereas under the current tenancy it had been only £250. Wynn-Parry J. acknowledged[19] that the Act in this respect produces or is liable to produce injustice to landlords. Such an inducement to cause delay may clearly exist not only when the landlord opposes an application for a new tenancy, even though the tenant knows that the landlord will ultimately succeed, but equally so when the landlord offers to grant a new tenancy. And in the latter case a tenant, who is not prepared to accept a new tenancy at a market rent, may nevertheless play for time by opposing the landlord's proposed terms and then apply to the court under section 36(2) to revoke the order for a new tenancy when it is finally made.

23. We consider that the tenant should not stand to gain financially at the landlord's expense by protracting litigation for as long as possible. To prevent this we propose that the landlord should be entitled, where appropriate, to apply to the Court to determine an interim rent. This should be payable from the date on which the landlord's application for this purpose is made or the date specified in the landlord's notice to terminate the tenancy or in the tenant's request for a new tenancy (whichever is the later) until the current tenancy comes to an end.

24. It has been suggested to us that the rent payable during this interim period should be the market rent and should be fixed by the court in the substantive proceedings so as to be payable retrospectively from the beginning of the period. For two reasons we disagree with this suggestion. First, a " market rent " has no real meaning unless it is related to a tenancy of a definite period, whereas the interim period is necessarily a temporary situation of indeterminate duration. This consideration is of particular importance where the business concerned is of a seasonal nature and the premises,

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17 [1958] 1 W.L.R. 900 at p. 903.
18 [1959] 1 All E.R. 527.
19 *Ibid* at p. 529.

therefore, profitable only during certain times of the year. Secondly, retrospective operation of a rent so fixed might cause hardship to a tenant on account of the uncertainty of the sum due until the application is finally disposed of. We see no sufficient reason to depart from the normal rule that rent must be certain and ascertainable when it becomes due.

25. It is our view that any change in rent should operate only prospectively, and that the market rent should be only one of several factors, including the rent payable under the current tenancy, to be taken into account in arriving at what is a fair rent in the circumstances. A discretion to fix it at an appropriate figure is, we think, the only way of keeping the right balance. It has been suggested that the interim rent should be determined by an arbitrator ; but since, if a new tenancy is ultimately granted, it will be for the court (in the absence of agreement between the parties) to determine the new rent, we think that the court should determine also the fair rent for the interim period. This could be done on an interlocutory application at any time after proceedings have been commenced.

26. We cannot adopt another suggestion which was made to us. This is that a tenant should be prohibited from applying under section 36(2) for an order revoking the order for a new tenancy which has just been made by the court. Our proposals will, we think, reduce considerably any incentive to protract litigation for as long as possible just for the sake of a low rent. There will, therefore, be fewer cases in which a tenant who has no genuine intention of taking up a new tenancy nevertheless makes an application in the knowledge that he can subsequently apply for the order to be revoked. But if the tenant's application is genuine we think it would be unduly harsh to force upon him a tenancy the terms of which, as ultimately determined by the court, were unacceptable ; and indeed there would be no point in doing so if he could not afford to pay the rent.

D. Termination of sub-tenancy by head landlord

27. Section 44(1) defines who is " the landlord " in relation to a tenancy to which Part II of the Act applies: and for the purposes of the Sixth Schedule he is called " the competent landlord ". The scheme of the Act is that where there is a chain of tenancies " the competent landlord " is not necessarily the immediate landlord, but the first landlord up the chain who is either the owner of the fee simple or a tenant whose tenancy will not come to an end within 14 months or less by effluxion of time or by virtue of a notice to quit already given by the landlord (section 44(1)(*b*)). This means that, where an intermediate tenancy has 14 months or less to run, the landlord in relation to that tenancy becomes also " the competent landlord " in relation to a sub-tenancy. He can, therefore, by-pass the tenant and himself terminate the sub-tenancy. However, it has been held that an intermediate tenant cannot be by-passed, irrespective of the length of his contractual term, if he has a business tenancy protected by the Act. Since his tenancy automatically continues until terminated under the Act it is of indeterminate length.[20] Consequently, where the landlord serves a notice to terminate under section 25 upon his protected tenant whose contractual term has

[20] See *Westerbury Property and Investment Co. Ltd.* v. *Carpenter* [1961] 1 W.L.R. 272, and *Bowes-Lyon* v. *Green* [1963] A.C. 420.

14 months or less to run he cannot, in spite of the definition in section 44(1)(*b*), also serve similar notices upon any sub-tenant who is occupying part of the premises. He must rely on the intermediate landlord serving section 25 notices on the sub-tenant. This may give rise to two difficulties. First, by virtue of the provision in the Act as to time, the intermediate landlord may no longer be able to serve the notices in time for the sub-tenancies to terminate simultaneously with his own. Secondly, irrespective of the time factor, the landlord cannot rely on his tenant being able to serve a like notice on the sub-tenants, for the intermediate landlord may not be able to establish the necessary grounds of opposition to the grant of a new tenancy under section 30(1) of the Act, e.g., an intention to demolish or reconstruct the premises.

28. The Act recognises that in certain circumstances a landlord should be able to terminate the tenancies of sub-tenants. It seems to us inconsistent with that policy that the landlord's rights in this respect should be restricted merely because the intermediate tenant is protected by the Act. To avoid this, we consider that the landlord should be able to by-pass an intermediate landlord who himself is a protected tenant, once he has served the latter with a notice to terminate, by serving a similar notice on any sub-tenant or any person further down the chain of tenancies. This should not of course enable him to terminate a sub-tenancy prematurely. Once served, the sub-tenant should be able to contest such a notice. This would protect the sub-tenant against the possibility of losing his right to claim a new tenancy because the intermediate landlord failed to contest the notice which his landlord served on him.

E. Restriction on termination of tenancy by agreement

29. Section 38(1) renders void any agreement between a landlord and a tenant whereby the tenant undertakes to perform any future act which will have the effect of disqualifying him from applying for a new lease.[21] It has been suggested that if there is an agreement whereby the prospective tenant gives the landlord a notice to quit or a notice under section 27 in blank before the tenancy is granted, this section invalidates the agreement but not necessarily the notice given in blank, since only when the tenancy is granted does the relationship of landlord and tenant come into existence.

30. It may be that such devices would be held void under section 38(1), but we consider them so undesirable that the position should be clarified. To avoid any possibility of doubt we think it desirable to provide that a notice shall be ineffective if given by the tenant before he has been in occupation under the tenancy for one month.

31. We do not consider it practical or necessary to deal with what might be called inducements to the tenant to give up possession before the tenancy has or could have been validly terminated (for example by agreement that a market rent shall be payable for the period for which the landlord intends the tenant to occupy the premises and a penal rent thereafter). It seems to us that the line between agreements of this nature and genuine agreements to fix periodic rent increases would be difficult to draw.

21 See *Joseph* v. *Joseph* [1967] 1 Ch. 78 at p. 90.

It also seems probable that resort is had to such devices in order, in effect, to create temporary lettings outside Part II of the Act for longer periods than would be permitted under section 43(3). This leads us to consider two proposals that are aimed at modifying the effect of that subsection.

F. Exclusion of provisions of Part II by authorised agreement and duration of short tenancies excluded from Part II of principal Act

32. Many of those whom we have consulted feel that the Act makes insufficient provision for excluding short-term tenancies from the operation of Part II. There are many cases where the landlord would be willing to let on a temporary basis and a tenant would be willing to accept such a tenancy. This may happen, for example, when the landlord has obtained possession and intends to sell, demolish or reconstruct the property but is not ready to do so immediately. He will, however, understandably, be reluctant to effect a temporary letting if he thereby risks having to oppose a tenant's claim for a new tenancy under the Act when the time comes. In many cases, therefore, he may prefer, having got possession, to leave the premises unoccupied. We agree that section 43(3) does not meet such cases satisfactorily, and we appreciate that our proposal to invalidate notices to terminate given in advance (see paragraph 30 above) would of itself remove a method sometimes used to overcome this difficulty.

33. There appears to be two possible solutions ; first, to extend the period in section 43(3), for which temporary lettings can be made without attracting the rights of renewal under Part II of the Act, to six months ; and secondly, to permit lettings outside the Act for longer periods, provided that they are sanctioned by the court. We feel that the two solutions are not incompatible and that both should be adopted. The permissible period of three months as the maximum for tenancies outside the Act will often be too short to be of practical use. We think it would be reasonable to extend the period to six months. We also accept that there may be cases where a tenant is willing, for good reasons, to accept a tenancy for more than six months without rights under the Act. We believe that this should be possible, but only where there is the safeguard that the court has sanctioned the agreement in advance. This safeguard would be similar to that contained in section 33(6) of the Housing Act 1961 whereby the court can authorise terms in a lease which exclude the repairing obligations normally implied by section 32 of that Act.

G. Grant of a new tenancy in some cases where section 30(1)(*f*) applies

34. We have considered the proposal that the court should, with the agreement of the tenant, be empowered to grant a new tenancy of part of the premises, if the landlord's grounds of opposition under section 30(1)(*f*) relate only to part of the holding. In *Fernandez* v. *Walding*[22], the Court of Appeal recently held that the court had no such power, since the word " holding " in section 30(1)(*f*) cannot be read to mean " part of the holding " and since section 32 expressly provides that an order for the grant of a new tenancy under section 29 can only be made in respect of the " holding ". It was decided that, for the purposes of Part II of the Act, " the holding " means

22 [1968] 2 W.L.R. 583.

that part of the property or premises comprised in the tenancy which the tenant holds and uses for business purposes.

35. We agree that in many cases it would be unreasonable to deprive the tenant of the rest of his holding if the landlord could reasonably carry out the proposed work by obtaining only part of the premises, and that the position of the tenant might be alleviated if he were to be granted a tenancy of the part not required by the landlord. In principle, we see no objection to the court having such a power if the tenant is willing to accept a tenancy of the part of the premises unaffected.

36. Circumstances may also arise where the landlord would not require possession of the whole of the premises—or indeed in some cases of any part of them—if he could have facilities, which are not available to him under the current lease,[23] to enter and do the work of reconstruction. We consider that the landlord should not be entitled to obtain possession of the holding under section 30(1)(*f*) if the tenant is prepared to take a lease either of the whole or of part of the holding on terms which enable the landlord to exercise such rights over the premises comprised in the new lease as are necessary for carrying out the proposed work.

37. We have also considered a proposal that where the court is precluded from granting a new tenancy because the landlord intends to reconstruct the premises (i.e., under section 30(1)(*f*)), the tenant should have an option to take a lease of the new premises when completed. In our opinion, however, this is a matter which properly falls to be dealt with by agreement between the parties. Reconstruction is likely in many cases to involve such changes in the layout of the premises that it would be impossible to identify what should be included in the new tenancy. Moreover, the proposal would introduce an element of uncertainty, which would make it of doubtful value from a business point of view. Few tenants, we imagine, would want rights to a new tenancy left in the air for an indefinite period until such time, if ever, as the new premises were completed.

38. Another proposal was that a tenant should have a remedy if a landlord failed within a specified period (e.g. two years), and without a reasonable explanation, to carry out the intentions which he successfully put forward under section 30(1)(*f*) or (*g*) as grounds of opposition to the grant of a new tenancy. The particular remedy suggested to us is that the court should have power either to grant the former tenant a new tenancy or to award him an additional sum (over and above any compensation that he may already have received under section 37) which should represent the full loss suffered by the tenant by reason of the refusal of a new tenancy. We doubt, however, whether a tenant who had already relinquished possession of his premises would generally be assisted by the possibility that after a considerable lapse of time he might be able to claim a new tenancy. There would be too much uncertainty as to whether he would be able to make such a claim and, if so, whether it would succeed. It will be noticed that the Landlord and Tenant Act 1927 (in providing a remedy for a tenant where a landlord had failed to

[23] For a case in which the current lease made provision for such facilities see *Little Park Service Station Ltd.* v. *Regent Oil Co. Ltd.* [1967] 2 Q.B. 655. In that case it was, therefore, possible to include the relevant terms of the old lease in the new tenancy.

carry out the intentions on the basis of which he had obtained possession)[24] did not give the tenant a right to a new tenancy.

39. The alternative suggestion of awarding full compensation to the tenant where the landlord fails to carry out his intentions seems to us to run counter to the policy of the Act. Section 37 gives the tenant a certain, but limited, right to compensation where he has to give up possession because the landlord has established one of the grounds specified in section 30(1)(*e*), (*f*) or (*g*). Apart from cases of misrepresentation or concealment of material facts (which are dealt with in section 55 of the Act) we do not think it would be justifiable to make a distinction between a tenant whose landlord has carried out his intentions, and who, therefore, is entitled only to compensation under section 37, and the tenant whose landlord for one reason or another has failed to carry out his intentions and who, under the proposal, would receive more generous compensation. We cannot, therefore, adopt this proposal in either of its forms.

H. Power to exclude rights enjoyed with holding

40. Section 32 provides for the designation of the property to be comprised in a new tenancy granted under section 29. Subsection (3) provides that any rights enjoyed in connection with the holding under the current tenancy shall be included in the new tenancy. This is in contrast with the provisions of section 35 which, in general, give the court a discretion to fix the terms of the new tenancy in default of agreement between the parties.

41. " Rights " in section 32(3) presumably means incorporeal rights such as easements and quasi-easements of the kind which pass under section 62 of the Law of Property Act 1925.[25] It is possible that rights granted at the beginning of the current tenancy may no longer be necessary or appropriate when the order for a new tenancy is made. Where this is so the court should, we think, have power to exclude or modify them having regard to all the relevant circumstances. We recommend, therefore, that section 32(3) should be amended so as to give the court a discretion, as under section 35, in determining, in default of agreement between the parties, what " rights " enjoyed under the current tenancy should be included in the new tenancy granted under section 29.

42. It has been pointed out that the exclusion or limitation of rights as proposed above may significantly affect the valuation evidence to be brought by the parties ; and that only if a claim to have such rights limited or excluded were made at an early stage in the proceedings could satisfactory valuation evidence be given on alternative bases without unduly protracting the proceedings. This factor is, we feel, equally important in respect of other terms of the letting. We make no recommendation, however, since this is a procedural matter which might, if necessary, be dealt with by regulations under section 66 governing the form of notices.

24 By section 5(3) (now repealed).

25 See *In re No. 1 Albemarle St.* [1959] Ch. 531 at p. 539, and Woodfall on Landlord and Tenant 27th Ed. §2538.

I. Saving for tenant temporarily out of occupation

43. Where a tenant's application for a new tenancy is refused, his existing tenancy as continued under the Act will end only three months after the final disposal of his application (section 64). Under present-day conditions this is normally too short a time for a tenant to find satisfactory alternative accommodation. In practice, therefore, to guard against the consequences of such a possibility he may well start looking for new premises whilst proceedings for a new tenancy are pending. And if meanwhile he finds suitable new premises, he may be obliged to enter into binding obligations to secure them, and may even start carrying on business there in order to attract to them as much of his goodwill as possible.

44. A tenant who applies for a new tenancy must satisfy the condition that he is occupying the premises concerned for the purpose of his business. Whilst Part II of the Act makes it clear that this condition must be satisfied at the time when the tenant makes his application for a new tenancy, it does not expressly provide for the operation of this condition either during the time when proceedings are pending or at the date when the order for a new tenancy is made. In *Caplan* v. *Caplan No. 1*[26] the House of Lords left these questions open. However, in *Caplan* v. *Caplan No. 2*. Cross J. decided[27] that it was a continuing condition of a tenant's rights to a new tenancy that he should throughout the proceedings and upon their determination continue to occupy the premises for the purpose of his business.

45. We consider that the position should be clarified by specifying what is required to satisfy the condition of occupation. It is unreasonable, we think, to expect a business tenant to wait in effect until the last three months of his current tenancy before he looks for other premises, and unrealistic to suppose that he will necessarily find suitable accommodation in that time. On the other hand, if at the date of the hearing, he has in reality moved his business to new premises, he should not be entitled to a new tenancy which in all probability he would assign immediately. We do not think, however, that it would be appropriate to introduce a subjective test in respect of the tenant's intentions in the event of a new tenancy being granted. Nor do we think it would be a satisfactory solution of the difficulty if, as has been suggested, the current tenancy were to be continued for six months instead of three months after final disposal of the application; for where there is no difficulty in finding new premises, the tenant would normally wish to move as soon as possible, and it would be onerous upon him if the tenancy were continued for another six months. Alternatively, it has been suggested, the court could be given power to extend the period in section 64; but we think it inadvisable to introduce into the provisions of the Act relating to time any element of uncertainty. We consider that the Act should specify what conditions must be satisfied in respect of occupation; and those conditions should be that the tenant is in occupation of the premises for the purpose of his business at the time of the order as well as at the time of the application, the intermediate period being irrelevant.

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26 [1962] 1 W.L.R. 55: see Lord Reid at p. 60 with whom the other Law Lords concurred.
27 [1963] 1 W.L.R. 1247 at p. 1255.

J. Compensation where no application to court is made

46. We have received a number of comments on the right to compensation under section 37(1), all of which raise the same point. Under that subsection a tenant only becomes entitled to compensation under section 37 where on the making of an application under section 24 the court is precluded by section 30(1)(*e*), (*f*) or (*g*) from making an order for a new tenancy. It is pointed out that tenants may be put to unnecessary trouble and expense in making applications for new tenancies, which they know will be refused, in order simply to enforce their rights to compensation under the Act. Moreover, these rights are often lost through failure to make an application by tenants who are unaware that this is necessary. On the other hand, parties frequently agree in such cases to the payment of compensation without an application being made. This does not appear to give rise to any difficulties, except where the landlord is a company, a local authority or a trustee, in which event such payments might be *ultra vires* or in breach of trust unless they can be justified under a power to compromise claims.

47. We support in principle the proposal, widely urged by those we have consulted, that a tenant should be entitled to compensation under section 37 not only where an application for a new tenancy has been made and refused, but also where a tenant has not made an application.

K. Jurisdiction of county court to make declaration

48. There is considerable doubt as to whether the county court has power to entertain a claim for a declaration in respect of the validity of a notice served under the Act. If in proceedings in the High Court, a tenant wishes to contend that a section 25 notice or a section 26 counter-notice served upon him is bad, the convenient course is for him to claim a declaration that the notice is bad and, in the alternative, an order for the grant of a new tenancy. In the county court it seems that he cannot do so since the county court has no jurisdiction to grant a declaration unless it is ancillary to a claim otherwise within its jurisdiction[28] or unless power is given expressly to grant a declaration without a money claim, e.g., in section 53(1) of the Act and in section 52(1)(*b*) of the County Courts Act 1959. In practice, therefore, a tenant may be forced to commence an application for a new tenancy in the county court, and to take proceedings in the High Court for a declaration as to the validity of a notice under the Act.

49. We consider this to be an anomalous situation, and recommend that the county court should have power to determine all questions existing under Part II of the Act in respect of premises within its jurisdiction, i.e., where the rateable value of the premises does not exceed the limit for the time being in force. At present this is £2,000 (section 63(2) of the Act as amended by section 4 of the County Courts (Jurisdiction) Act 1963).

Miscellaneous Proposals

50. It has been suggested that a purchaser under a binding contract for sale should be brought within the definition of "landlord" to enable him to serve notices under the Act as if he had already completed his purchase

[28] *De Vries* v. *Smallridge* [1928] 1 K.B. 482.

and had become the landlord. It would seem that a purchaser of the reversion who wishes to demolish or reconstruct the premises cannot serve such notices until he has completed his purchase. Similarly it would seem that the vendor cannot oppose a tenant's application on the ground that he intends to demolish or reconstruct the premises as the intention is that of the purchaser and not of the vendor. Thus, it is argued that if by the time he has completed his purchase the new landlord has missed an opportunity to determine the tenancy he might have to wait for a considerable period before he can validly do so, and that this might hold up his proposed development. However, if the purchaser were to be given the right to serve a notice before he had completed his purchase uncertainty and possibly hardship might arise in the event of a failure to complete. Moreover, a purchaser can in many cases arrange for a completion date which will enable him to serve the appropriate notice in time. We, therefore, make no recommendation concerning this suggestion.

51. It has also been suggested that the judgments of the Court of Appeal in *Frish* v. *Barclays Bank Ltd.*[29] leave room for some uncertainty regarding the effect of section 41 of the Act ; and that the court should be given express power to refuse an order for a new tenancy if, having regard to the interest of the beneficiary and all the circumstances, it thinks fit to do so. We are, however, satisfied that under section 41 the court can and, as that case shows, will in practice take into account the nature of the beneficiary's interest ; and we make no recommendation, therefore, on this point.

52. Under section 30(2), a landlord whose interest was purchased or created within the previous five years cannot oppose an application for a new tenancy under section 30(1)(*g*) on the grounds that he wants the premises for his own purposes. The purpose of that provision is clearly to prevent a person from buying premises with a sitting tenant and then, within a short time, obtaining possession for his own use. It was suggested to us that the subsection might also prevent a landlord from recovering possession on the grounds stated in section 30(1)(*g*) at the end of the term of a tenancy which he had himself granted for five years or less. A recent decision has, however, made it clear that section 30(2) does not preclude a landlord from opposing an application for a new tenancy in such circumstances, since it only applies if the current tenancy has existed and has been a business tenancy " at all times " since the landlord's interest was acquired.[30] Another possible doubt on the effect of section 30(2)—as to whether the five-year period would begin to run again in the tenant's favour on a renewal of the landlord's own lease—was settled by the Court of Appeal in *Artemiou* v. *Procopiou.*[31] There it was held that the duration of the landlord's interest in the holding must be calculated from the time when it originally arose by purchase or creation ; and it was immaterial whether his interest during the period had been enjoyed under one lease or under a succession of leases. It seems to us, therefore, that no amendment of section 30(2) is required.

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29 [1955] 2 Q.B. 541.
30 *Northcote Laundry Ltd.* v. *Frederick Donnelly Ltd.* [1968] 1 W.L.R. 562.
31 [1966] 1 Q.B. 878.

53. Unlike a tenant for a term of years certain exceeding one year, or for a term of years certain and thereafter from year to year, a tenant under a short periodic tenancy (such as a weekly or monthly letting) has no right under section 26(1) to request a new tenancy; and it has been suggested that he should have such a right. We can see no merit in this proposal since a periodic tenancy of its nature continues indefinitely until it is terminated. If the landlord serves notice under section 25 to terminate the tenancy, a weekly or monthly tenant has the same right as other tenants under section 24(1)(*a*) to apply for a new tenancy.

54. A number of proposals have been submitted in connection with the provisions of the Act which lay down the time-limits within which each stage of an application must be completed. There are two distinct aspects of this problem. First, the preliminary stage of any proceeding is the service as between landlord and tenant of notices and counter-notices within the rigid time-limits under sections 25 and 26. Failure to act within the specified time will lose the tenant his right to apply for a new tenancy. We consider the timing of the preliminary stages in any application to be of great importance, for upon it depend all the later stages; and any departure from it would, we think, upset the balance and destroy the certainty established by the Act.

55. The next stage normally starts with negotiations based upon the tenant's intention to apply for a new tenancy, which emerges from the notices and counter-notices. Section 29(3), however, often affords too little time for these negotiations to be completed before the time expires for making application to the court. A tenant will in such a case be obliged to go through the formality of instituting proceedings in order simply to preserve his rights, notwithstanding that agreement might virtually have been reached and all that remained to be done was the drafting, approval, engrossment and execution of the lease. In many cases, therefore, an application is made to the court followed by a joint request of the parties to adjourn the proceedings. Proceedings under Part II of the Act may thus be instituted in consequence of legislative compulsion rather than of any real dispute between landlord and tenant. This, it is felt, causes inconvenience and expense rather than injustice, and it has been suggested that by agreement of the parties or, possibly, at the direction of the court it should be possible to extend the time-limits within which an application may be made. We fear, however, that any possibility of extending time at this stage might serve only to lengthen the period of negotiations out of court rather than hasten it, and possibly open the door to delaying tactics. We make, therefore, no recommendation in respect of the time-limits laid down by the Act.

56. Under section 33 the court has, in the absence of agreement between the parties, a discretion in fixing the length of the term under a new tenancy. It has been suggested that the term should be limited to a maximum of three years or the length of the current tenancy, whichever is the longer. We do not think it right to introduce such a limitation. We have no evidence to suggest that the terms granted by the courts are too long; on

the contrary, it would seem that in the eyes of many we have consulted the courts tend to err rather on the side of caution.[32]

57. Section 35 provides that in determining the terms of the new tenancy (other than the terms as to duration and rent) the court is to have regard " to the terms of the current tenancy and to all relevant circumstances ". It has been suggested that whilst " all relevant circumstances " is a very wide formula, the effect in practice of the reference immediately preceding it to " the terms of the current tenancy " is that the courts almost always follow the terms of the old tenancy. It is pointed out that this may not always be the right course to adopt from the standpoint of good estate management. There may, for example, be cases where it would be reasonable for the tenant to be placed under a heavier liability for repairs than under the old lease. We have considered whether section 35 should be re-worded in order to make it more clear than it is at present that the court has power to determine the terms of the new tenancy in accordance with current conditions. We are satisfied, however, that the present formula is already sufficiently wide for this purpose. We think it right that the terms of the current tenancy should be taken into account in determining the terms of the new tenancy and we see no reason to reduce the emphasis which the section places upon them.

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32 See paragraph 20.

PART III—SUMMARY OF RECOMMENDATIONS

A. Improvements to be disregarded in fixing rent

(paragraphs 11–19 above: clause 1 of the Draft Bill)

The effect on rent of any improvements carried out by the tenant or his predecessor in title should be disregarded in fixing the rent for the new tenancy under section 34 of the Act if they were carried out either during the current tenancy or during an earlier tenancy, provided that in the latter case:—

(i) they were carried out not more than 21 years before the application for a new tenancy is made ;

(ii) since the improvements were completed the premises affected by them have at all times been comprised in a " business tenancy " ; and

(iii) no compensation has been paid in respect of the improvements under the Landlord and Tenant Act 1927.

B. Determination of a variable rent

(paragraphs 20 and 21: clause 2)

In fixing the rent for a new tenancy under section 34 of the Act, the court should have power, where it thinks fit, to include a rent review clause in the terms of that tenancy.

C. Rent while tenancy continues by virtue of section 34

(paragraphs 22–26: clause 3)

Where the landlord has served a notice to terminate under section 25 of the Act, or a tenant has made a request for a new tenancy under section 26, the landlord should be entitled to apply to the court to determine a fair rent. This should be payable from the date on which the landlord's application for this purpose is made or the date specified in the landlord's notice or the tenant's request (whichever is the later) until the current tenancy comes to an end.

D. Termination of sub-tenancy by head landlord

(paragraphs 27 and 28: clause 4)

Where the " competent landlord " (within the meaning of paragraph 1 of the Sixth Schedule) has served upon the tenant a notice to terminate under section 25, he should be able to terminate also any sub-tenancy of the whole or any part of the premises in accordance with the terms of that sub-tenancy.

E. Restriction on termination of tenancy by agreement

(paragraphs 29–31: clause 5)

Section 38 (which renders void any agreement purporting either to preclude the tenant from making an application or request under Part II of the Act

or to penalise him for so doing) should be reinforced, so as clearly to invalidate any instrument of surrender or notice to terminate executed or given by the prospective tenant in advance, before the relationship of landlord and tenant came into existence. Any such instrument or notice should be valid only if executed or given when the tenant has been in occupation under the tenancy for one month or more.

F.(1) Exclusion of provisions of Part II by authorised agreement

(paragraphs 32 and 33: clause 6)

The court should have power, on the joint application of the prospective landlord and tenant, to authorise the grant of a tenancy for a term of years certain which will not be subject to the provisions of sections 24–28 of the Act.

F.(2) Duration of short tenancies excluded from Part II of principal Act

(paragraphs 32 and 33: clause 11)

The period of three months laid down by section 43(3) as the maximum term for which a tenancy can be granted without attracting the provisions of Part II should be increased to six months, with consequential increases in the other periods mentioned in that subsection.

G. Grant of new tenancy in some cases where section 30(1)(*f*) applies

(paragraphs 34–37: clause 7)

Where the landlord intends to carry out demolition, reconstruction or work of construction on the premises, he should not be able to establish the ground of opposition specified in section 30(1)(*f*) if:—

(i) given access and other facilities over the holding, the landlord could reasonably carry out the proposed work, and the tenant agrees to provisions being included in the terms of the new tenancy for such facilities ;

(ii) given possession of part of the holding, the landlord could reasonably carry out the proposed work and the tenant is willing to accept a tenancy of the remainder ; or

(iii) given possession of part of the holding and access and other facilities over the part retained by the tenant, the landlord could reasonably carry out the proposed work, and the tenant is willing to accept a tenancy of the remainder, subject to terms giving such facilities.

Where (ii) or (iii) applies, the court should have power to order a new tenancy of part of the holding, subject, as the case may be, to terms giving the landlord access and other facilities.

H. Power to exclude rights enjoyed with holding

(paragraphs 40 and 41: clause 8)

In order that any change in the circumstances since the grant of the current tenancy affecting the rights enjoyed in connection with the holding may be taken into account on the order for a new tenancy under section 29,

the court should have a discretion under section 32(3) to determine, in default of agreement between the parties, what rights should be included in the terms of the new tenancy.

I. Saving for tenant temporarily out of occupation

(paragraphs 43–45: clause 9)

Provided that the tenant was occupying the premises for the purposes of his business when he made his application for a new tenancy, and is still occupying them for that purpose when the order comes to be made, he should not be precluded from obtaining the new tenancy because he has temporarily ceased to do so during the intervening period.

J. Compensation where no application to court is made

(paragraphs 46 and 47: clause 10)

Where the landlord's notice under section 25 or his counter-notice under section 26(6) states as the grounds of opposition to the grant of a new tenancy one or more of the grounds specified in paragraphs (*e*), (*f*) and (*g*) of section 30(1) (and no other) the tenant should be entitled to compensation in accordance with the provisions of section 37, notwithstanding that no application is made under section 24 for a new tenancy.

K. Jurisdiction of county court to make declaration

(paragraphs 48 and 49: clause 12)

The county court should have power to make a declaration as to any matter arising under Part II of the Act, in respect of premises within the financial limits of its jurisdiction, notwithstanding that no other relief is sought.

(*Signed*) LESLIE SCARMAN, *Chairman.*
L. C. B. GOWER.
NEIL LAWSON.
NORMAN S. MARSH.
ANDREW MARTIN.

J. M. CARTWRIGHT SHARP, *Secretary.*

29th November 1968.

APPENDIX I

Draft Landlord and Tenant Bill

With Explanatory Notes

ARRANGEMENT OF CLAUSES

Provisions as to rent

Clause
1. Improvements to be disregarded in fixing rent.
2. Determination of variable rent.
3. Rent while tenancy continues by virtue of s. 24.

Termination of tenancy and right to new tenancy

4. Termination of sub-tenancy by head landlord.
5. Restriction on termination of tenancy by agreement.
6. Exclusion of provisions of Part II by authorised agreement.
7. Grant of new tenancy in some cases where section 30(1)(*f*) applies.
8. Power to exclude rights enjoyed with holding.
9. Saving for tenant temporarily out of occupation.

Miscellaneous

10. Compensation where no application to court is made.
11. Duration of short tenancies excluded from Part II of principal Act.
12. Jurisdiction of county court to make declaration.

Supplemental

13. Citation, interpretation, commencement, saving and extent.

DRAFT

OF A

BILL

TO

Amend Part II of the Landlord and Tenant Act 1954.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Provisions as to Rent

Improvements to be disregarded in fixing rent.

1.—(1) In section 34 of the principal Act (rent under new tenancy) the following paragraph shall be substituted for paragraph (*c*) (improvements to be disregarded):—

"(*c*) any effect on rent of an improvement to which this paragraph applies"

and the following subsection shall be added (the present section, as amended by the foregoing provision, becoming subsection (1)):—

"(2) Paragraph (*c*) of the foregoing subsection applies to any improvement carried out by a person who at the time it was carried out was the tenant, but only if it was carried out otherwise than in pursuance of an obligation to his immediate landlord, and either it was carried out during the current tenancy or the following conditions are satisfied, that is to say,—

(*a*) that it was completed not more than twenty-one years before the application for the new tenancy was made; and

(*b*) that the holding or any part of it affected by the improvement has at all times since the completion of the improvement been comprised in tenancies of the description specified in section 23(1) of this Act; and

(*c*) that at the termination of each of those tenancies the tenant did not quit."

(2) In section 41(1)(*b*) and section 42(2)(*b*) of the principal Act the words "subsection (1) of" shall be inserted before the words "section 34".

EXPLANATORY NOTES

Clause 1 (Improvements to be disregarded in fixing rent)

This clause gives effect to recommendation A[33] and amends section 34 of the Act. That section provides the basis on which, in default of agreement between the parties, the court is to determine the rent to be paid under a new tenancy granted by order of the court. The rent is to be the "open market" rent, but the effect on rent of four matters specified in paragraphs (*a*) to (*d*) is to be disregarded. Of these four paragraphs, (*c*) relates to improvements carried out either by the tenant or by a predecessor in title of his.

The present paragraph (*c*) contains a short but complete description of the improvements whose effect is to be disregarded. The extension proposed in recommendation A, however, requires a more detailed provision ; and to avoid upsetting the balance of the section a different approach is adopted. The new paragraph (*c*) introduces the subject of improvements but the details are put in a new subsection (2), the present section, as amended, becoming subsection (1).

The new subsection (2) is not in terms limited to improvements done by the tenant or his predecessor in title. The improvements to be disregarded are those carried out of his own accord (not under an obligation of the tenancy) by any person who has been the tenant of the premises

either under the current tenancy (in which case there is no limit of time)

or under a previous tenancy, provided in this case that the improvements were completed not more than 21 years before the date of the application for the new tenancy and the premises have, at all times since then, been comprised in a business tenancy.

Where improvements have been carried out under a previous tenancy it is necessary to ensure that they can be disregarded only if there has been no subsequent break in the chain of tenancies so that the landlord will not lose the rental value of improvements for which a previous tenant has already claimed, or has been in a position to claim, compensation. Section 1 of the Landlord and Tenant Act 1927 enables a tenant to claim such compensation only on quitting the holding at the termination of the tenancy. The requirement of continuous occupation is therefore achieved by conditions (*b*) and (*c*) in the new subsection (2).

The reference in paragraph (*b*) to "any part of [the holding] affected by the improvement" takes into account possible variations over the 21-year period in the property which has formed the subject matter of the business tenancy or tenancies. Thus, the tenant will not be prejudiced merely because at the relevant date "the holding" extends to some part of the premises which has not been included in a business tenancy throughout the necessary period if that part is unaffected by the improvement.

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33 For a summary of the recommendations, lettered A to K inclusive, see Part III of this Report at pages 19 to 21.

Determination of variable rent.

2. At the end of section 34 of the principal Act (rent under new tenancy) there shall be added the following subsection:—

"(3) Where the rent is determined by the court the court may, if it thinks fit, further determine that the terms of the tenancy shall include such provision for varying the rent as may be specified in the determination."

Rent while tenancy continues by virtue of s. 24.

3.—(1) After section 24 of the principal Act there shall be inserted the following section:—

"24A.—(1) The landlord of a tenancy to which this Part of this Act applies may,—

(*a*) if he has given notice under section 25 of this Act to terminate the tenancy; or

(*b*) if the tenant has made a request for a new tenancy in accordance with section 26 of this Act;

Apply to the court to determine a rent which, while the tenancy continues by virtue of section 24 of this Act, would be a fair rent for the property comprised in the tenancy, and the court may determine a rent accordingly.

(2) A rent determined in proceedings under this section shall be deemed to be the rent payable under the tenancy from the date on which the proceedings were commenced or the date specified in the landlord's notice or the tenant's request, whichever is the later.

(3) In determining a rent under this section the court shall have regard to the rent payable under the terms of the tenancy, but otherwise subsections (1) and (2) of section 34 of this Act shall apply to the determination as they would apply to the determination of a rent under that section if a new tenancy from year to year of the whole of the property comprised in the tenancy were granted to the tenant by order of the court."

(2) In section 24(1)(*a*) of the principal Act for the words "the next following section" there shall be substituted the words "section 25 of this Act".

Clause 2 (Determination of a variable rent)

This clause gives effect to recommendation B. It adds to section 34 of the Act a new subsection (3) which specifically empowers the court to include a rent review clause in the terms of a new tenancy which is granted by order of the court under section 29.

Clause 3 (Rent while tenancy continues by virtue of section 24)

This clause gives effect to recommendation C by adding a new section to be numbered 24A.

Subsection (1) of the new section 24A enables the landlord to apply for a fair rent to be determined for the period during which the tenancy continues, and empowers the court to determine the rent accordingly. Subsection (2) makes the rent so determined recoverable as if it were the rent reserved under the current tenancy, and specifies the time from which it shall be payable. This is either the date on which proceedings under this section were commenced or the date specified in the landlord's notice or the tenant's request, whichever is the later. Subsection (3) directs the court, in determining what is a fair rent for the intervening period, to have regard to the rent under the current tenancy but otherwise to determine the rent on the basis provided in section 34, as if a tenancy from year to year were granted by order of the court.

The purpose of this sub-clause is to provide for a " fair " rent, and to remove any incentive for the tenant to prolong the proceedings (possibly with no intention of accepting a new tenancy in the end) so as to continue to occupy the premises for as long as possible at a low rent under the present tenancy. The fact that regard must be had to the rent under the present tenancy and that the fair rent must be fixed as on a yearly tenancy may be expected to produce a lower figure than the full rent which will eventually be fixed for the new tenancy, if any. It is for the landlord to invoke this provision if he thinks fit. Unless the present rent is substantially below the current rental value, it may not benefit him to do so.

Termination of tenancy and right to new tenancy

Termination of sub-tenancy by head landlord.

4. At the end of section 25 of the principal Act there shall be added the following subsection:—

"(7) Where the landlord has given a notice under this section and the tenant's interest in part of the property comprised in the tenancy is an interest in reversion expectant (whether immediately or not) on the termination of another tenancy to which this Part of this Act applies (in this subsection referred to as "the sub-tenancy") the landlord shall be deemed, for the purposes of this Part of this Act other than section 28, to be the landlord in relation also to the sub-tenancy, without prejudice however to the validity of anything done by or in relation to the person who, in relation to the sub-tenancy, is the landlord as defined by section 44 of this Act."

Restriction on termination of tenancy by agreement.

5.—(1) At the end of section 24(2) of the principal Act (which includes notice to quit by the tenant and surrender among the means by which a tenancy to which Part II of that Act applies can be brought to an end) there shall be added the words "unless—

(*a*) in the case of a notice to quit, the notice was given before the tenant had been in occupation in right of the tenancy for one month; or

(*b*) in the case of an instrument of surrender, the instrument was executed before, or was executed in pursuance of an agreement made before, the tenant had been in occupation in right of the tenancy for one month."

(2) Section 27 of the principal Act (termination by tenant of tenancy for fixed term) shall be amended as follows:—

(*a*) at the end of subsection (1) (notice by tenant that he does not desire tenancy to be continued) there shall be added the words "unless the notice is given before the tenant has been in occupation in right of the tenancy for one month"; and

(*b*) in subsection (2) (termination on quarter day by tenant's notice) the words "before or" shall be omitted and at the end of the subsection there shall be added the words "or before that date, but not before the tenant has been in occupation in right of the tenancy for one month".

Clause 4 (Termination of sub-tenancy by head landlord)

This clause gives effect to recommendation D by adding to section 25 (termination of tenancy by the landlord) a further subsection, which becomes subsection (7). The new subsection provides that where the landlord (as defined by section 44) has served a notice to terminate under section 25 upon the tenant he shall, except for the purposes of section 28, be deemed to be the landlord in relation to any sub-tenancy of the premises comprised in the holding.

The effect of this is to enable the landlord in such circumstances to by-pass the tenant, and himself serve notice to terminate any protected sub-tenancy, and to enable the sub-tenant in such a case to exercise the rights of a tenant under the Act, vis-à-vis that landlord, even though he is not his landlord as defined by section 44: but this does not affect the validity of anything which the tenant and sub-tenant may have done in their capacities of "landlord" and "tenant" respectively in relation to the sub-tenancy.

Section 28 is specifically excluded from the operation of clause 4. That section provides in effect that where the landlord and tenant have agreed in writing on the grant to the tenant of a new lease from a future date the current tenancy is to continue until that date but no longer, and the statutory rights under Part II are displaced. Where there is a chain of tenancies, all within the Act (and therefore capable of continuing indefinitely by virtue of section 24), it is not practicable for a head landlord to negotiate such an agreement with a sub-tenant, because he does not know at what date any particular tenancy will come to an end.

Clause 5 (Restriction on termination of tenancy by agreement)

This clause gives effect to recommendation E. It does not modify section 38 directly, but amends those provisions of the Act which relate to notices or instruments whereby the tenant may, in effect, give up his rights under the Act, i.e. instruments of surrender and notices to quit or to terminate the tenancy given by the tenant. Surrenders other than surrenders by instrument are not affected by clause 5.

At present section 24(2) of the Act provides that section 24(1) (continuation of tenancies and grant of new tenancies) shall not prevent the coming to an end of a tenancy by notice to quit given by the tenant, by surrender or forfeiture, or by the forfeiture of a superior tenancy. This clause adds two paragraphs which will qualify that by providing that a notice to quit given by the tenant, or an instrument of surrender, shall be invalid if given or executed before the tenant has been in occupation under the tenancy for one month. In the case of surrenders it is necessary also to invalidate surrenders executed subsequently in pursuance of an agreement made before the tenant has been in occupation for one month. Otherwise the prospective tenant might be persuaded, in order to obtain the tenancy, to sign an agreement in advance under which he was bound to execute a surrender at the landlord's request.

The clause introduces a similar qualification into section 27(1), in relation to notices to quit given by the tenant of a tenancy for a fixed term, and into section 27(2) in relation to tenancies, originally granted for a term of years certain, which are continuing by virtue of section 24 and are terminable on any quarter day by not less than three months' notice.

Exclusion of provisions of Part II by authorised agreement.

6. In subsection (1) of section 38 of the principal Act (restriction on agreements excluding provisions of Part II) after the words " shall be void " there shall be inserted the words " (except as provided by subsection (4) of this section) " and at the end of the section there shall be added the following subsection :—

" (4) The court may, on the joint application of the persons who will be the landlord and the tenant in relation to a tenancy to be granted for a term of years certain which will be a tenancy to which this Part of this Act applies, authorise an agreement excluding in relation to that tenancy the provisions of sections 24 to 28 of this Act ; and an agreement so authorised shall be valid notwithstanding anything in the preceding provisions of this section."

Grant of new tenancy n some cases where section 30(1)(*f*) applies.

7.—(1) After section 31 of the principal Act there shall be inserted the following section:—

" 31A. Where the landlord opposes an application under section 24(1) of this Act on the ground specified in paragraph (*f*) of section 30(1) of this Act the court shall not hold that the landlord could not reasonably carry out the demolition, reconstruction or work of construction intended without obtaining possession of the holding if—

(*a*) the tenant agrees to the inclusion in the terms of the new tenancy of terms giving the landlord access and other facilities for carrying out the work intended and given that access and those facilities, the landlord could reasonably carry out the work without obtaining possession of the holding ; or

(*b*) the tenant is willing to accept a tenancy of part of the holding and either paragraph (*a*) of this section is satisfied with respect to that part or possession of the remainder of the holding would be reasonably sufficient to enable the landlord to carry out the intended work."

(2) In section 32 of the principal Act (property to be comprised in new tenancy) for the words " Subject to the next following subsection " there shall be substituted the words " Subject to the following provisions of this section " ; and after subsection (1) there shall be inserted the following subsection :—

" (1A) Where the court, by virtue of paragraph (*b*) of section 31A of this Act, makes an order under section 29 of this Act for the grant of a new tenancy in a case where the tenant is willing to accept a tenancy of part of the holding, the order shall be an order for the grant of a new tenancy of that part only."

Clause 6 (Exclusion of provisions of Part II by authorised agreement)

This clause gives effect to recommendation F(1) and introduces an exception to the general rule, laid down in section 38(1) of the Act, that any agreement is void which purports either to preclude a tenant from exercising his rights under sections 24–28 of the Act or to penalise him for so doing. This exception applies only to agreements authorised by the court in its discretion, on the joint application of the parties.

Sections 24–28 are those which provide for the continuation and renewal of tenancies to which Part II applies.

Clause 7 (Grant of new tenancy in some cases where section 30(1)(f) applies)

Under sections 30 and 31 where on an application by the tenant for a new tenancy the landlord establishes that he intends to demolish or reconstruct the premises or to carry out substantial work of construction on them and could not reasonably do so without obtaining possession of the holding, an order for the grant of a new tenancy cannot be made. This clause introduces a new section 31A which provides that where the landlord opposes an application by the tenant on the grounds above mentioned the court shall not hold that the landlord could not reasonably carry out the proposed work without obtaining possession of the holding if the tenant is willing to make certain concessions. These are set out in paragraphs (*a*) and (*b*) of the new section 31A.

Paragraph (*b*) provides for cases in which the tenant is willing to accept a new tenancy of part of the holding. At present the court has no power, under section 29, to grant a new tenancy of anything less than the complete holding. A new section 32(1A) is therefore introduced to give the court the necessary power.

Power to exclude rights enjoyed with holding.

8. At the end of section 32(3) of the principal Act (rights to be included in new tenancy) there shall be added the words " except as otherwise agreed between the landlord and the tenant or, in default of such agreement, determined by the court."

Saving for tenant temporarily out of occupation.

9. After section 38 of the principal Act there shall be inserted the following section:—

" 38A. Nothing in this Act shall be taken to prevent the court from making an order for the grant of a new tenancy on an application under section 24(1) of this Act in a case where the tenant ceased to be in occupation after the date of the application but has resumed occupation before the date of the order."

Miscellaneous

Compensation where no application to court is made.

10. In section 37(1) of the principal Act (compensation where court precluded from making an order for new tenancy on any of the grounds specified in paragraphs (*e*), (*f*) and (*g*) of section 30(1)) after the words " of that subsection " there shall be inserted the words " or where (in a case where no application under the said section 24 is made) no other ground is specified in the landlord's notice under section 25 of this Act or, as the case may be under section 26(6) thereof, than those specified in the said paragraphs (*e*), (*f*) and (*g*) ".

Duration of short tenancies excluded from Part II of principal Act.

11. In section 43(3) of the principal Act (exclusion of certain tenancies granted for not more than three months) for the words " three months ", in both places where they occur, there shall be substituted the words " six months " and for the words " six months " (in paragraph (*b*)) the words " twelve months ".

Clause 8 (Power to exclude rights enjoyed with holding)

This clause gives effect to recommendation H by adding at the end of section 32(3) a qualification of the general rule that any rights enjoyed in connection with the holding under the current tenancy shall be included in the new tenancy. Under the clause the question whether any rights enjoyed by the tenant under the current lease should be included in the new lease can be agreed by the parties or, in default of agreement, decided by the court.

Clause 9 (Saving for tenant temporarily out of occupation)

This clause gives effect to recommendation I by inserting a new section, 38A, which removes any doubt about the conditions as to occupation which a tenant must satisfy in order to obtain a new tenancy under section 24(1). The short effect of this is that, although the condition of occupation for business purposes must be satisfied by the tenant both at the date of the application for a new tenancy and at the date of the order, he does not prejudice his application by ceasing to occupy them in that way for a time during the intervening period.

Clause 10 (Compensation where no application to court is made)

This clause gives effect to recommendation J by inserting in section 37(1) an alternative ground on which the tenant may be entitled to compensation on quitting the holding. At present compensation is payable under the section only where the court is precluded from ordering the grant of a new tenancy by reason of any of the grounds specified in paragraphs (*e*), (*f*) and (*g*) of section 30(1), which means that the tenant must have made an unsuccessful application to the court for a new tenancy. The new alternative condition is that the landlord has stated in his notice under section 25 or his counter-notice under section 26(6) no ground of opposition other than those specified in paragraphs (*e*), (*f*) and (*g*) of section 30(1). The result is, therefore, that, where the landlord limits himself to those grounds of opposition, the tenant does not need to apply for a new tenancy in order to be entitled to compensation.

Clause 11 (Duration of short tenancies excluded from Part II of the principal Act)

This clause gives effect to recommendation F(2) and extends the length of the period for which tenancies may be granted without attracting the provisions of Part II of the Act. At present, under section 43(3), Part II does not apply to a tenancy granted for a fixed term not exceeding three months, unless it contains provisions for renewing it or extending it beyond three months. Under this clause those references to three months are altered to six months.

To prevent the provisions of the Act being avoided indefinitely by a succession of short tenancies section 43(3) ensures that, even though a tenancy is granted for a term not exceeding three months, Part II applies if the premises have already been occupied for the purposes of the business carried on by the tenant (whether carried on by him or a predecessor) for a total period exceeding six months. Under the clause this period of six months is increased to twelve months.

It is necessary to provide that clause 11 shall not apply to tenancies granted before the commencement of the amending Act since it is not intended to alter the application of the Act retrospectively by this clause. The necessary provision appears in clause 13(4).

Jurisdiction of county court to make declaration.

12. After section 43 of the principal Act there shall be inserted the following section :—

" 43A. Where the rateable value of the holding is such that the jurisdiction conferred on the court by any other provision of this Part of this Act is, by virtue of section 63 of this Act, exercisable by the county court, the county court shall have jurisdiction (but without prejudice to the jurisdiction of the High Court) to make any declaration as to any matter arising under this Part of this Act, whether or not any other relief is sought in the proceedings."

Supplemental

Citation, interpretation, commencement, saving and extent.

13.—(1) This Act may be cited as the Landlord and Tenant Act 1968, and this Act and the Landlord and Tenant Act 1954 may be cited together as the Landlord and Tenant Acts 1954 and 1968.

(2) In this Act " the principal Act " means the Landlord and Tenant Act 1954.

(3) This Act shall come into force at the expiration of the period of three months beginning with the date on which this Act is passed.

(4) Section 11 of this Act does not apply to tenancies granted before the commencement of this Act.

(5) This Act does not extend to Scotland or to Northern Ireland.

Clause 12 (Jurisdiction of county court to make declaration)

This clause gives effect to recommendation K. A new section 43A is introduced to give the county court power, in cases which fall within the financial limits of its jurisdiction, to make a declaration as to any matter arising under Part II, although no other relief is claimed.

Clause 13 (Citation, interpretation, commencement, saving and extent)

The significance of subsection (4) is referred to in the note on clause 11 above.

APPENDIX II

LANDLORD AND TENANT ACT 1954 PART II

AMENDMENTS AND ADDITIONS

to be effected by the Draft Bill

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NOTE

1. Words to be added by the Draft Bill are indicated in bold type.

2. Words to be substituted by the Draft Bill are shown in square brackets and bold type. A footnote shows in each case the words which are to be replaced.

3. Words to be omitted by the Draft Bill, in section 27(2), are replaced thus . . . in the text and are shown in a footnote.

Continuation of tenancies to which Part II applies and grant of new tenancies.

24.—(1) A tenancy to which this Part of this Act applies shall not come to an end unless terminated in accordance with the provisions of this Part of this Act; and, subject to the provisions of section twenty-nine of this Act, the tenant under such a tenancy may apply to the court for a new tenancy—

(*a*) if the landlord has given notice under [**section 25 of this Act**][1] to terminate the tenancy, or

(*b*) if the tenant has made a request for a new tenancy in accordance with section twenty-six of this Act.

(2) The last foregoing subsection shall not prevent the coming to an end of a tenancy by notice to quit given by the tenant, by surrender or forfeiture, or by the forfeiture of a superior tenancy, **unless—**

(*a*) **in the case of a notice to quit, the notice was given before the tenant had been in occupation in right of the tenancy for one month; or**

(*b*) **in the case of an instrument of surrender, the instrument was executed before, or was executed in pursuance of an agreement made before, the tenant had been in occupation in right of the tenancy for one month.**

(3) Notwithstanding anything in subsection (1) of this section,

(*a*) where a tenancy to which this Part of this Act applies ceases to be such a tenancy, it shall not come to an end by reason only of the cesser, but if it was granted for a term of years certain and has been continued by subsection (1) of this section then (without prejudice to the termination thereof in accordance with any terms of the tenancy) it may be terminated by not less than three nor more than six months' notice in writing given by the landlord to the tenant;

(*b*) where, at a time when a tenancy is not one to which this Part of this Act applies, the landlord gives notice to quit, the operation of the notice shall not be affected by reason that the tenancy becomes one to which this Part of this Act applies after the giving of the notice.

Rent while tenancy continues by virtue of s. 24.

24A.—(1) The landlord of a tenancy to which this Part of this Act applies may,—

(*a*) if he has given notice under section 25 of this Act to terminate the tenancy; or

(*b*) if the tenant has made a request for a new tenancy in accordance with section 26 of this Act;

apply to the court to determine a rent which, while the tenancy continues by virtue of section 24 of this Act, would be a fair rent

[1] At present " the next following section ".

for the property comprised in the tenancy, and the court may determine a rent accordingly.

(2) A rent determined in proceedings under this section shall be deemed to be the rent payable under the tenancy from the date on which the proceedings were commenced or the date specified in the landlord's notice or the tenant's request, whichever is the later.

(3) In determining a rent under this section the court shall have regard to the rent payable under the terms of the tenancy, but otherwise subsections (1) and (2) of section 34 of this Act shall apply to the determination as they would apply to the determination of a rent under that section if a new tenancy from year to year of the whole of the property comprised in the tenancy were granted to the tenant by order of the court.

Termination of tenancy by the landlord.

25.—(1) The landlord may terminate a tenancy to which this Part of this Act applies by a notice given to the tenant in the prescribed form specifying the date at which the tenancy is to come to an end (hereinafter referred to as " the date of termination "):

Provided that this subsection has effect subject to the provisions of Part IV of this Act as to the interim continuation of tenancies pending the disposal of applications to the court.

(2) Subject to the provisions of the next following subsection, a notice under this section shall not have effect unless it is given not more than twelve nor less than six months before the date of termination specified therein.

(3) In the case of a tenancy which apart from this Act could have been brought to an end by notice to quit given by the landlord—

(*a*) the date of termination specified in a notice under this section shall not be earlier than the earliest date on which apart from this Part of this Act the tenancy could have been brought to an end by notice to quit given by the landlord on the date of the giving of the notice under this section ; and

(*b*) where apart from this Part of this Act more than six months' notice to quit would have been required to bring the tenancy to an end, the last foregoing subsection shall have effect with the substitution for twelve months of a period six months longer than the length of notice to quit which would have been required as aforesaid.

(4) In the case of any other tenancy, a notice under this section shall not specify a date of termination earlier than the date on

which apart from this Part of this Act the tenancy would have come to an end by effluxion of time.

(5) A notice under this section shall not have effect unless it requires the tenant, within two months after the giving of the notice, to notify the landlord in writing whether or not, at the date of termination, the tenant will be willing to give up possession of the property comprised in the tenancy.

(6) A notice under this section shall not have effect unless it states whether the landlord would oppose an application to the court under this Part of this Act for the grant of a new tenancy and, if so, also states on which of the grounds mentioned in section thirty of this Act he would do so.

(7) Where the landlord has given a notice under this section and the tenant's interest in part of the property comprised in the tenancy is an interest in reversion expectant (whether immediately or not) on the termination of another tenancy to which this Part of this Act applies (in this subsection referred to as "the sub-tenancy") the landlord shall be deemed, for the purposes of this Part of this Act other than section 28, to be the landlord in relation also to the sub-tenancy, without prejudice however to the validity of anything done by or in relation to the person who, in relation to the sub-tenancy, is the landlord as defined by section 44 of this Act.

Termination by tenant of tenancy for fixed term.

27.—(1) Where the tenant under a tenancy to which this Part of this Act applies, being a tenancy granted for a term of years certain, gives to the immediate landlord, not later than three months before the date on which apart from this Act the tenancy would come to an end by effluxion of time, a notice in writing that the tenant does not desire the tenancy to be continued, section twenty-four of this Act shall not have effect in relation to the tenancy, **unless the notice is given before the tenant has been in occupation in right of the tenancy for one month.**

(2) A tenancy granted for a term of years certain which is continuing by virtue of section twenty-four of this Act may be brought to an end on any quarter day by not less than three months' notice in writing given by the tenant to the immediate landlord, whether the notice is given . . .[2] after the date on which apart from this Act the tenancy would have come to an end **or before that date, but not before the tenant has been in occupation in right of the tenancy for one month.**

[2] The words " before or " to be omitted by clause 5(2)(*b*).

Grant of new tenancy in some cases where section 30(1)(*f*) applies.

31A. Where the landlord opposes an application under section 24(1) of this Act on the ground specified in paragraph (*f*) of section 30(1) of this Act the court shall not hold that the landlord could not reasonably carry out the demolition, reconstruction or work of construction intended without obtaining possession of the holding if—

(*a*) the tenant agrees to the inclusion in the terms of the new tenancy of terms giving the landlord access and other facilities for carrying out the work intended and, given that access and those facilities, the landlord could reasonably carry out the work without obtaining possession of the holding ; or

(*b*) the tenant is willing to accept a tenancy of part of the holding and either paragraph (*a*) of this section is satisfied with respect to that part or possession of the remainder of the holding would be reasonably sufficient to enable the landlord to carry out the intended work.

Property to be comprised in new tenancy.

32.—(1) **[Subject to the following provisions of this section],**[3] an order under section twenty-nine of this Act for the grant of a new tenancy shall be an order for the grant of a new tenancy of the holding ; and in the absence of agreement between the landlord and the tenant as to the property which constitutes the holding the court shall in the order designate that property by reference to the circumstances existing at the date of the order.

(1A) Where the court, by virtue of paragraph (*b*) of section 31A of this Act, makes an order under section 29 of this Act for the grant of a new tenancy in a case where the tenant is willing to accept a tenancy of part of the holding, the order shall be an order for the grant of a new tenancy of that part only.

(2) The foregoing provisions of this section shall not apply in a case where the property comprised in the current tenancy includes other property besides the holding and the landlord requires any new tenancy ordered to be granted under section twenty-nine of this Act to be a tenancy of the whole of the property comprised in the current tenancy; but in any such case—

(*a*) any order under the said section twenty-nine for the grant of a new tenancy shall be an order for the grant of a new tenancy of the whole of the property comprised in the current tenancy, and

(*b*) references in the following provisions of this Part of this Act to the holding shall be construed as references to the whole of that property.

[3] At present " Subject to the next following subsection ".

(3) Where the current tenancy includes rights enjoyed by the tenant in connection with the holding, those rights shall be included in a tenancy ordered to be granted under section twenty-nine of this Act **except as otherwise agreed between the landlord and the tenant or, in default of such agreement, determined by the court.**

Rent under new tenancy.

34.—(1) The rent payable under a tenancy granted by order of the court under this Part of this Act shall be such as may be agreed between the landlord and the tenant or as, in default of such agreement, may be determined by the court to be that at which, having regard to the terms of the tenancy (other than those relating to rent), the holding might reasonably be expected to be let in the open market by a willing lessor, there being disregarded—

(*a*) any effect on rent of the fact that the tenant has or his predecessors in title have been in occupation of the holding,

(*b*) any goodwill attached to the holding by reason of the carrying on thereat of the business of the tenant (whether by him or by a predecessor of his in that business),

[(*c*) any effect on rent of an improvement to which this paragraph applies,][4]

(*d*) in the case of a holding comprising licensed premises, any addition to its value attributable to the licence, if it appears to the court that having regard to the terms of the current tenancy and any other relevant circumstances the benefit of the licence belongs to the tenant.

(2) Paragraph (*c*) of the foregoing subsection applies to any improvement carried out by a person who at the time it was carried out was the tenant, but only if it was carried out otherwise than in pursuance of an obligation to his immediate landlord, and either it was carried out during the current tenancy or the following conditions are satisfied, that is to say,—

(*a*) that it was completed not more than twenty-one years before the application for the new tenancy was made ; and

(*b*) that the holding or any part of it affected by the improvement has at all times since the completion of the improvement been comprised in tenancies of the description specified in section 23(1) of this Act ; and

(*c*) that at the termination of each of those tenancies the tenant did not quit.

(3) Where the rent is determined by the court the court may, if it thinks fit, further determine that the terms of the tenancy shall include such provision for varying the rent as may be specified in the determination.

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[4] At present " (*c*) any effect on rent of any improvement carried out by the tenant or a predecessor in title of his otherwise than in pursuance of an obligation to his immediate landlord ".

Compensation where order for new tenancy precluded on certain grounds.

37.—(1) Where on the making of an application under section twenty-four of this Act the court is precluded (whether by subsection (1) or subsection (2) of section thirty-one of this Act) from making an order for the grant of a new tenancy by reason of any of the grounds specified in paragraphs (*e*), (*f*) and (*g*) of subsection (1) of section thirty of this Act and not of any grounds specified in any other paragraph of that subsection **or where (in a case where no application under the said section 24 is made) no other ground is specified in the landlord's notice under section 25 of this Act or, as the case may be, under section 26(6) thereof, than those specified in the said paragraphs (e), (f) and (g),** then, subject to the provisions of this Act, the tenant shall be entitled on quitting the holding to recover from the landlord by way of compensation an amount determined in accordance with the following provisions of this section.

(2) The said amount shall be as follows, that is to say,—

(*a*) where the conditions specified in the next following subsection are satisfied it shall be twice the rateable value of the holding,

(*b*) in any other case it shall be the rateable value of the holding.

(3) The said conditions are—

(*a*) that, during the whole of the fourteen years immediately preceding the termination of the current tenancy, premises being or comprised in the holding have been occupied for the purposes of a business carried on by the occupier or for those and other purposes ;

(*b*) that, if during those fourteen years there was a change in the occupier of the premises, the person who was the occupier immediately after the change was the successor to the business carried on by the person who was the occupier immediately before the change.

(4) Where the court is precluded from making an order for the grant of a new tenancy under this Part of this Act in the circumstances mentioned in subsection (1) of this section, the court shall on the application of the tenant certify that fact.

(5) For the purposes of subsection (2) of this section the rateable value of the holding shall be determined as follows:—

(*a*) where in the valuation list in force at the date on which the landlord's notice under section twenty-five or, as the case may be, subsection (6) of section twenty-six of this Act is given a value is then shown as the annual value (as hereinafter defined) of the holding, the rateable value of the holding shall be taken to be that value ;

(*b*) where no such value is so shown with respect to the holding but such a value or such values is or are so shown with respect to premises comprised in or comprising the holding or part of it, the rateable value of the holding shall be taken to be such value as is found by a proper apportionment or aggregation of the value or values so shown ;

(*c*) where the rateable value of the holding cannot be ascertained in accordance with the foregoing paragraphs of this subsection, it shall be taken to be the value which, apart from any exemption from assessment to rates, would on a proper assessment be the value to be entered in the said valuation list as the annual value of the holding;

and any dispute arising, whether in proceedings before the court or otherwise, as to the determination for those purposes of the rateable value of the holding shall be referred to the Commissioners of Inland Revenue for decision by a valuation officer.

An appeal shall lie to the Lands Tribunal from any decision of a valuation officer under this subsection, but subject thereto any such decision shall be final.

(6) The Commissioners of Inland Revenue may by statutory instrument make rules prescribing the procedure in connection with references under this section.

(7) In this section—

the reference to the termination of the current tenancy is a reference to the date of termination specified in the landlord's notice under section twenty-five of this Act or, as the case may be, the date specified in the tenant's request for a new tenancy as the date from which the new tenancy is to begin ;

the expression " annual value " means rateable value except that where the rateable value differs from the net annual value the said expression means net annual value;

the expression " valuation officer " means any officer of the Commissioners of Inland Revenue for the time being authorised by a certificate of the Commissioners to act in relation to a valuation list.

Restriction on agreements excluding provisions of Part II.

38.—(1) Any agreement relating to a tenancy to which this Part of this Act applies (whether contained in the instrument creating the tenancy or not) shall be void (**except as provided by subsection (4) of this section**) in so far as it purports to preclude the tenant from making an application or request under this Part of this Act or provides for the termination or the surrender of the tenancy in the

event of his making such an application or request or for the imposition of any penalty or disability on the tenant in that event.

(2) Where—

(*a*) during the whole of the five years immediately preceding the date on which the tenant under a tenancy to which this Part of this Act applies is to quit the holding, premises being or comprised in the holding have been occupied for the purposes of a business carried on by the occupier or for those and other purposes, and

(*b*) if during those five years there was a change in the occupier of the premises, the person who was the occupier immediately after the change was the successor to the business carried on by the person who was the occupier immediately before the change,

any agreement (whether contained in the instrument creating the tenancy or not and whether made before or after the termination of that tenancy) which purports to exclude or reduce compensation under the last foregoing section shall to that extent be void, so however that this subsection shall not affect any agreement as to the amount of any such compensation which is made after the right to compensation has accrued.

(3) In a case not falling within the last foregoing subsection the right to compensation conferred by the last foregoing section may be excluded or modified by agreement.

(4) The court may, on the joint application of the persons who will be the landlord and the tenant in relation to a tenancy to be granted for a term of years certain which will be a tenancy to which this Part of this Act applies, authorise an agreement excluding in relation to that tenancy the provisions of sections 24 to 28 of this Act; and an agreement so authorised shall be valid notwithstanding anything in the preceding provisions of this section.

Saving for tenant temporarily out of occupation.

38A. Nothing in this Act shall be taken to prevent the court from making an order for the grant of a new tenancy on an application under section 24(1) of this Act in a case where the tenant ceased to be in occupation after the date of the application but has resumed occupation before the date of the order.

41.—(1) Where a tenancy is held on trust, occupation by all or any of the beneficiaries under the trust, and the carrying on of a business by all or any of the beneficiaries, shall be treated for the purposes of section twenty-three of this Act as equivalent to occupation or the carrying on of a business by the tenant; and in relation to a tenancy to which this Part of this Act applies by virtue of the foregoing provisions of this subsection— Trusts.

(*a*) references (however expressed) in this Part of this Act and in the Ninth Schedule to this Act to the business of, or to carrying on of business, use, occupation or enjoyment by, the tenant shall be construed as including references to the business of, or to carrying on of business, use, occupation or enjoyment by, the beneficiaries or beneficiary;

(*b*) the reference in paragraph (*d*) of **subsection (1) of** section thirty-four of this Act to the tenant shall be construed as including the beneficiaries or beneficiary; and

(*c*) a change in the persons of the trustees shall not be treated as a change in the person of the tenant.

(2) Where the landlord's interest is held on trust the references in paragraph (*g*) of subsection (1) of section thirty of this Act to the landlord shall be construed as including references to the beneficiaries under the trust or any of them; but, except in the case of a trust arising under a will or on the intestacy of any person, the reference in subsection (2) of that section to the creation of the interest therein mentioned shall be construed as including the creation of the trust.

42.—(1) For the purposes of this section two bodies corporate shall be taken to be members of a group if and only if one is a subsidiary of the other or both are subsidiaries of a third body corporate. Groups of companies.

In this subsection " subsidiary " has the same meaning as is assigned to it for the purposes of the Companies Act, 1948, by section one hundred and fifty-four of that Act.

(2) Where a tenancy is held by a member of a group, occupation by another member of the group, and the carrying on of a business by another member of the group, shall be treated for the purposes of section twenty-three of this Act as equivalent to occupation or the carrying on of a business by the member of the group holding the tenancy; and in relation to a tenancy to which this Part of this Act applies by virtue of the foregoing provisions of this subsection—

(*a*) references (however expressed) in this Part of this Act and in the Ninth Schedule to this Act to the business of or to

use occupation or enjoyment by the tenant shall be construed as including references to the business of or to use occupation or enjoyment by the said other member;

(*b*) the reference in paragraph (*d*) of **subsection (1) of** section thirty-four of this Act to the tenant shall be construed as including the said other member; and

(*c*) an assignment of the tenancy from one member of the group to another shall not be treated as a change in the person of the tenant.

(3) Where the landlord's interest is held by a member of a group the reference in paragraph (*g*) of subsection (1) of section thirty of this Act to intended occupation by the landlord for the purposes of a business to be carried on by him shall be construed as including intended occupation by any member of the group for the purposes of a business to be carried on by that member.

Tenancies excluded from Part II.

43.—(1) This Part of this Act does not apply—

(*a*) to a tenancy of an agricultural holding [or a tenancy which would be a tenancy of an agricultural holding if the proviso to subsection (1) of section two of the Agricultural Holdings Act, 1948, did not have effect or, in a case where the approval of the Minister of Agriculture, Fisheries and Food was given as mentioned in the said subsection (1), if that approval had not been given];[5]

(*b*) to a tenancy created by a mining lease;

[(*c*) to a tenancy which is excluded from this Part of this Act by section 9(3) of the Rent Act 1968; or][6]

[(*d*) to a tenancy of premises licensed for the sale of intoxicating liquor for consumption on the premises, other than—

(i) premises which are structurally adapted to be used, and are bona fide used, for a business which comprises one or both of the following, namely, the reception of guests and travellers desiring to sleep on the premises and the carrying on of a restaurant, being a business a substantial proportion of which consists of transactions other than the sale of intoxicating liquor;

(ii) premises adapted to be used, and bona fide used, only for one or more of the following purposes, namely, for judicial or public administrative purposes, or as a theatre or place of public or private entertainment, or as public gardens or picture galleries, or for exhibitions, or

5 Added (retrospectively) by the Agriculture Act 1958, s. 8(1), Sch. I, Part I, para. 29.
6 Substituted by the Rent Act 1968, s. 117(2), Sch. 15.

for any similar purpose to which the holding of the licence is merely ancillary;

(iii) premises adapted to be used, and bona fide used, as refreshment rooms at a railway station.][7]

(2) This Part of this Act does not apply to a tenancy granted by reason that the tenant was the holder of an office, appointment or employment from the grantor thereof and continuing only so long as the tenant holds the office, appointment or employment, or terminable by the grantor on the tenant's ceasing to hold it, or coming to an end at a time fixed by reference to the time at which the tenant ceases to hold it:

Provided that this subsection shall not have effect in relation to a tenancy granted after the commencement of this Act unless the tenancy was granted by an instrument in writing which expressed the purpose for which the tenancy was granted.

(3) This Part of this Act does not apply to a tenancy granted for a term certain not exceeding **six** months[8] unless—

(*a*) the tenancy contains provision for renewing the term or for extending it beyond **six** months[8] from its beginning; or

(*b*) the tenant has been in occupation for a period which, together with any period during which any predecessor in the carrying on of the business carried on by the tenant was in occupation, exceeds **twelve** months.[9]

Jurisdiction of county court to make declaration.

43A. Where the rateable value of the holding is such that the jurisdiction conferred on the court by any other provision of this Part of this Act is, by virtue of section 63 of this Act, exercisable by the county court, the county court shall have jurisdiction (but without prejudice to the jurisdiction of the High Court) to make any declaration as to any matter arising under this part of this Act, whether or not any other relief is sought in the proceedings.

[7] Substituted by the Finance Act 1959, s. 2(6), Sch. 2, para. 5.
[8] In the case of tenancies granted before the Draft Bill comes into force this period will be, as at present, three months: see clause 13(4).
[9] In the case of tenancies granted before the Draft Bill comes into force this period will be, as at present, six months: see clause 13(4).

COUNTY COURTS

Proceedings under the Landlord and Tenant Act 1954 Part II

Nature of Proceedings	1964	1965	1966	1967
Section 24 (new business tenancies):—				
Pending at commencement of year	1,866	2,267	2,027	2,149
Applications filed	2,563	2,955	3,962	4,258
Pending at end of year	2,267	2,027	2,149	2,245
Orders made:—				
Granting new tenancy	269	284	301	353
Refusing new tenancy or making a declaration under section 31(1):—				
On grounds (*e*), (*f*) or (*g*) of section 30	78	63	128	52
On any other grounds	14	60	34	26
Orders granting new tenancy revoked under section 36(2)	—	1	5	3
Proceedings in which Assessors were appointed under section 63	—	1	—	1

(Extracted from Civil Judicial Statistics)

APPENDIX IV

Those who have replied to our Working Paper

Association of British Chambers of Commerce.
Association of Land & Property Owners.
Association of Law Teachers.
Association of Local Authority Valuers & Estate Surveyors.
Association of Municipal Corporations.
Barnsley & District Chamber of Commerce.
Messrs. Bird & Bird, solicitors.
Board of Trade.
Building Societies Association.
Burton upon Trent & South Derbyshire Chamber of Commerce.
Chartered Land Societies Committee.
Church Commissioners.
College of Estate Management.
Crown Estate Office.
Duchy of Cornwall.
Duchy of Lancaster.
General Council of the Bar.
Haldane Society.
Holborn Law Society.
Mr. J. L. Hopps, solicitor.
Incorporated Society of Auctioneers & Landed Property Agents.
Institute of Legal Executives.
The Law Society.
Leeds Chamber of Commerce.
London Chamber of Commerce.
Lord Lloyd of Hampstead.
Luton, Dunstable and District Chamber of Commerce.
Manchester Chamber of Commerce.
Ministry of Defence.
Ministry of Housing and Local Government.
Ministry of Public Building & Works.
National Chamber of Trade.
National Federation of Housing Societies.
Preston & District Chamber of Commerce.
Property Owners Protection Association Ltd.

Mr. R. Purnell (Town Clerk, Deal).
Royal Institute of British Architects.
Mr. S. W. G. Sims, solicitor.
Slough and District Chamber of Commerce.
Mr. J. H. Snaith, solicitor.
Society of Public Teachers of Law.
Treasury Solicitor.

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