The Law Commission

(LAW COM. No. 67)

CODIFICATION OF THE LAW OF LANDLORD AND TENANT

REPORT ON OBLIGATIONS OF LANDLORDS AND TENANTS

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.

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THE LAW COMMISSION

Item VIII of the First Programme

OBLIGATIONS OF LANDLORDS AND TENANTS

To the Right Honourable the Lord Elwyn-Jones,

Lord High Chancellor of Great Britain

PART I: THE CONTEXT AND SCOPE OF THIS REPORT

The context of this report within the codification of the law of landlord and tenant

1. This report is submitted in the context of the comprehensive task we undertook under Item VIII, *Codification of the Law of Landlord and Tenant*, in our *First Programme*, where we described the nature of the problem in the following general terms:—

> "The basic law of landlord and tenant, even apart from legislation controlling rents and securing tenure, is unduly complicated, anachronistic in many respects and difficult to ascertain. It is to be found in a very large number of statutes and cases, is largely self-contained and in the Commission's view is suitable for ultimate codification"[1].

2. The progress in this work and the methods by which we are doing it have already been described in our Annual Reports for 1971–1972[2] and 1972–1973[3]. It has always been our intention to make interim reports on aspects of the law which particularly appeared to need reform in the course of codification. This first report, which is based on a working paper, Provisional Proposals relating to Obligations of Landlords and Tenants, issued for consultation in 1967, and the comments made on it[4], deals with the first of the three subjects mentioned in paragraph 14 of our *Seventh Annual Report*, namely the basic obligations which are or should be implied by law in the relationship of landlord and tenant; the other two subjects are covenants against assignment, alterations and change of use, and termination of tenancies.

3. We are grateful for all the help we have received from those who responded to our request for comments on the working paper. We are particularly indebted to The Law Society whose Standing Committee on Land Law and Conveyancing[5] sent us detailed comments at the stage when a draft of this report was submitted to the Society, and to our Landlord and Tenant Working Party for the expert help they have so generously given in the preparation of the working paper and this report.

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[1]Law Com. No. 1 (1965), p. 10.

[2]*Seventh Annual Report* 1971-1972, Law Com. No. 50; (1972) H.C. 35, paras. 11–17. A list of the members of the Landlord and Tenant Working Party is also given in Appendix 2 hereto.

[3]*Eighth Annual Report* 1972–1973, Law Com. No. 58; (1973) H.C. 34, paras. 13–20.

[4]Working Paper No. 8, (April, 1967). A list of those who commented on the paper appears in Appendix 3.

[5]The members of this Committee are listed in Appendix 4.

The scope of the code

4. Today the relationship of landlord and tenant is still basically founded on common law; the references in the standard text books show that the authorities for particular propositions are not infrequently derived from the sixteenth century or even earlier. No attempt has been made to reform the common law basically by statute but, particularly in this century, statutes of general application[6], and even more statutes dealing with special classes of tenancies[7], have made substantial changes in the law. The effect of statutes of this kind is, almost inevitably, piecemeal and they do not effect a generally coördinated improvement of the law; many of the statutes were passed under the pressure of changing social, economic and political demands; some unsatisfactory aspects of the common law are left untouched and still in need of reform. The Landlord and Tenant Code on which we are working will aim at a comprehensive treatment of the principles of the law.

5. It would not be useful at this stage to forecast the precise form of the proposed code. Our ultimate objective is to produce a restatement of the general law regulating the relationship between landlord and tenant in accordance with the following principles:—

(*a*) where the existing law is certain and no change is proposed, to restate it;
(*b*) where the existing law is uncertain, to clarify it;
(*c*) where the existing law appears to be defective, to incorporate appropriate reforms.

Mr. Lionel Blundell, Q.C., in consultation with us, is preparing "propositions" which with their commentaries are providing material on which we are basing our reports and suggested legislative clauses. Mr. Blundell's work, which is expected to cover the whole of the general law of landlord and tenant as opposed to the statutory control of particular tenancies, is well advanced and our own staff have already discussed with him approximately two-thirds of the propositions.

6. How far it is necessary or expedient to re-enact the existing statute law in a general code is a problem that we must solve as the work proceeds. At this stage it is already clear that, except in the context of consolidation, we shall not recommend the repeal and re-enactment of special legislation such as the Rents Acts 1968 and 1974, the Landlord and Tenant Act 1954, the Agricultural Holdings Act 1948 or the Leasehold Reform Act 1967.

The scope of this report

7. This report is the first step towards codification based on the three principles stated above. Under the common law as it stands the obligations implied in a tenancy are minimal and most of them can be displaced by the express provisions of a contract of tenancy. On the part of the landlord there is the implied covenant for quiet enjoyment, which includes an undertaking to give possession at the commencement of the term; the duty not to derogate from his grant; and certain limited obligations[8] about the condition or repair in the case of leases of

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[6] *e.g.*, Law of Property Act 1925, Part V, and Landlord and Tenant Act 1927.

[7] *e.g.*, the Rent Acts, now consolidated in the Rent Act 1968 and since then amended, the Landlord and Tenant Acts 1927 and 1954, the Housing Acts 1957 to 1974, the Agricultural Holdings Act 1948 and the Leasehold Reform Act 1967.

[8] See para. 114 below.

uncompleted houses, houses let furnished and common parts retained by the landlord. On the part of the tenant there is the obligation to pay the rent; the duty to use the premises in a tenant-like manner; and the negative obligations arising from the law of waste. These obligations have been added to and further defined by statute in the particular cases referred to in paragraph 115.

8. The general position is that where a landlord lets property to a tenant for a definite period at a stated rent and no more is said, the only duties implied by law are that the landlord must let the tenant have the property and hold it (so far as it rests with the landlord) throughout the term, and that the tenant must pay the rent, use the property as a reasonable tenant and not damage it.

9. In our view the duties at common law should be expanded and more clearly defined, particularly in relation to repair and maintenance; the distinction between obligations which can be altered or displaced by agreement and those which cannot should be reconsidered and made clear. It is one of the objects of codification to define the essential obligations for which a contract of tenancy has failed to provide.

10. In this report, therefore, we make recommendations to deal with the essential obligations of the kind referred to above. This report includes in Appendix 1 a draft Bill which would give effect to our recommendations.

Classification of obligations

11. In this report the particular obligations recommended are divided for convenience of description into two classes:—

(i) mandatory obligations that cannot be varied or excluded, which in the draft Bill are called overriding covenants;

(ii) obligations that can be varied or excluded by agreement of the parties, which in the draft Bill are called variable covenants.

Some mandatory obligations such as to pay rent and to disclose identity, cannot, by their very nature, be transferred from one party to the other. Most of the obligations which we suggest should be mandatory are, in our opinion, such an essential part of the relationship of landlord and tenant that they should not be subject to exclusion or variation by the parties. The landlord's obligation to repair dwelling-houses let on short tenancies (Clause 10) is recommended as a mandatory obligation because it would re-enact the provisions of sections 32 and 33 of the Housing Act 1961 which are already in the nature of an overriding covenant. The variable obligations will have the effect of making it clear which party has the responsibility. Either the parties will have directed their minds to the question and made a specific arrangement which may or may not alter or redistribute between them the code obligation or, in cases where there is no specific agreement, the code obligation will come into force unaltered, in its statutory form clearly binding either the landlord or the tenant.

12. If, for the special circumstances of a particular tenancy, the provisions of the code are to be varied or excluded, there must be a deliberate decision of both parties. Any departure from the statutory obligations would be an essential term of the contract of tenancy and would have to be specifically included in it. A later agreement to vary the statutory obligations would necessitate the same formalities as any other change in the terms of the tenancy.

13. However, the right to vary or exclude such implied obligations does not lessen their primary effect: if there is no clear agreement, there is an inevitable "fall back" on the code that lays the obligation fairly and squarely on either landlord or tenant.

PART II: BACKGROUND OF THE PROBLEMS

Introductory

14. We have already indicated our views[9] on the desirability of codifying this branch of the law and the scope of the code, and before proceeding to the substance of our recommendations in Part III, we feel it will be helpful to give a short account of previous attempts to improve the law governing the obligations of landlords and tenants and to summarise the present legal position with regard to such obligations.

Steps towards statutory obligations

15. For over a century there has been some statutory control of the condition of houses that are let[10], and since 1925 there has been an implied statutory undertaking that a landlord of a small dwelling will keep it "reasonably fit for human habitation" during the tenancy[11]. However, the first comprehensive statutory terms for a tenancy appeared in the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1948[12] made under section 37 of the Agriculture Act 1947 (now section 6 of the Agricultural Holdings Act 1948), which imposed on landlords and tenants in agricultural lettings specific responsibilities for repair and maintenance[13].

Steps towards a pattern of obligations

16. The Leasehold Committee presided over by Lord Justice Jenkins, which was originally appointed in 1948, suggested in its Final Report[14] that the example of the agricultural regulations should be extended to landlords and tenants of other types of property so as to create a similar code to govern their respective obligations. The Committee's recommendations are set out in a table (facing page 118 of their Report) of covenants that should be implied in lettings at a rack rent, other than furnished lettings, in the absence of agreement to the contrary. In 1953 the Government accepted that recommendation in principle "though the preparation of the code [would] require much expert consideration,

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[9]See paras. 4–10 above.

[10]The earliest Act is the Artisans and Labourers Dwellings Act 1868 which gave local authorities limited powers to require an owner of a dwelling-house to carry out improvements to make it fit for habitation or to demolish it. The Housing of the Working Classes Act 1885, s. 12, implied a condition in any contract "... for letting for habitation by persons of the working classes ... that the house is at the commencement of the holding in all respects reasonably fit for human habitation."

[11]Housing Act 1925, s. 1(1) (now Housing Act 1957, s. 6, in which the word "reasonably" no longer appears).

[12]S.I. 1948 No. 184, now superseded by S.I. 1973 No. 1473.

[13]Where a written agreement substantially modifies the statutory terms there is power under s. 6(2) of the Agricultural Holdings Act 1948 to vary the agreement by arbitration to bring it into conformity with the regulations. Until such variation is made the contract prevails (*Burden v. Hannaford* [1956] 1 Q.B. 142).

[14](1950) Cmd. 7982, paras. 266–273.

and the Government propose[d] to seek appropriate advice before presenting such a code to Parliament"[15]. No further action was taken by the Government but the Jenkins Report has been one of the main foundations on which we have built our own work on this subject.

Obligations: the present position

17. Ideally leases and tenancy agreements should state specifically all the obligations of landlords and tenants. Obligations implied by law on the part of the landlord and the tenant are, as we have already explained in paragraphs 7 and 8, minimal. In the statements of the present law which follow and appear in the relevant places in Part III of this report we examine these implied obligations and, we think, reveal their inadequacy.

Leases or written agreements

18. A well drawn lease or tenancy agreement may be expected to deal effectively with the rights and obligations of both landlord and tenant. The covenants which may be contained in a lease differ widely according to the length of the term and the nature of the premises. Covenants by the tenant will usually include a covenant to pay the rent and a covenant to do repairs, which in long leases may relate to the whole of the property and in short leases will normally exclude liability for external and structural repairs. The latter will probably in fact be undertaken by the landlord, but many leases and tenancy agreements that do not put upon the tenant any liability to do external and structural repairs contain no corresponding specific covenants by the landlord to do such repairs.

19. Other covenants in common use will be covenants to insure (which may be undertaken by the landlord or the tenant and if undertaken by the landlord may impose upon the tenant a liability to reimburse the insurance premium). On the part of the tenant there are often covenants not to assign or underlet, not to make alterations, to use the premises only for a specific purpose or not to use them for specified prohibited purposes. On the part of the landlord a lease will often contain only a covenant for quiet enjoyment.

20. In so far as the rights and obligations of the parties are expressly provided by the written terms of the tenancy agreement or lease, it will usually be possible for the landlord and the tenant to ascertain their position, if necessary with the aid of professional advice. However, written agreements and leases do not provide for every eventuality, and often leave questions to which the general law provides no clear answer.

Informal agreements

21. One of the principal sources of difficulty is that a very large number of tenancy agreements, particularly those relating to dwelling-houses and short tenancies of small premises, are not in writing. A lease for a term not exceeding three years may be made orally, provided it is granted at the best rent reasonably obtainable without taking a premium and takes effect in possession.[16] Moreover, the expression "a term not exceeding three years" includes a periodic

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[15] *Government Policy on Leasehold Property in England and Wales;* (1953) Cmd. 8713, para. 55
[16] Law of Property Act 1925, s. 54(2).

tenancy which will continue until determined by notice, because it is uncertain that such a tenancy will endure for more than three years. Many such tenancies do in fact continue for periods far in excess of three years, but as they do not have to be in writing there is often no document setting out the terms of the tenancy and dealing with such matters as are mentioned in paragraphs 18 and 19 above. In any case such tenancies, if made in writing, need not be under seal and are often prepared informally by the parties themselves without the benefit of professional advice. It is particularly difficult to determine the obligations of the parties when the terms of the tenancy agreement are contained in nothing more formal than letters.

22. In the case of small properties, even where there is some form of written tenancy agreement, it may well be silent except as to the names of the landlord and the tenant, a description of the property, the term of the tenancy, the date of its commencement and the amount of the rent payable. In so far as it contains other details they will not often be of very great value in determining questions as to obligations.

23. Although it is possible for the parties satisfactorily to regulate their relationship themselves, there are often gaps which are not adequately filled by law as it stands, and this applies even when the lease or tenancy agreement is professionally drawn. Where there is no lease or written agreement the provisions of the common law and statute law do not adequately define the rights and obligations of the parties to a tenancy. We think that the aim of law reform in this field should be to fill the gaps which are left by the present law.

Rent books

24. It has been the general practice for tenants who pay their rent in cash, particularly when it is collected at the house, to have rent books. Their primary purpose is to record the payment of rent. They should contain the names of the landlord and the tenant, the rent, and a description of the premises; they may conveniently record other facts in connection with the tenancy, the contract for which is probably not defined by a written tenancy agreement. Although a rent book is not generally a tenancy agreement, it is often a useful record of some of the particulars of a tenancy. Section 1 of the Landlord and Tenant Act 1962 requires a landlord to provide a rent book or other similar document for use in respect of a residence occupied in consideration of a rent payable weekly. Rent books, even since there has been a statutory obligation to provide them in limited circumstances, are not reliable evidence of the terms of a tenancy; the tenant has not necessarily agreed with all that is written in a rent book. There are many tenancies not recorded by written agreements for which rent books are not required. Rent books accordingly provide no substitute for a general code regulating the obligations of landlords and tenants.

PART III: OBLIGATIONS AS RECOMMENDED

(A) GENERAL APPLICATION OF THE OBLIGATIONS

The obligations to be implied covenants

25. In paragraphs 5 and 6 above we have indicated the areas of the law which we plan should be covered by the code as a whole and what should be

excluded. Subject to this, the basic intention is that whenever the relationship between the parties constitutes a tenancy, the obligations that we propose shall apply to the parties and give effect to the three principles referred to in paragraph 5, namely: to restate the law where it is certain, to clarify it where it is uncertain and to reform it where it is defective. The obligations would arise out of covenants implied by statute.

The tenancies to which the obligations are to apply

26. The obligations are intended to apply to tenancies created after the commencement of the Act irrespective of how the tenancy is created. The possibility of applying the new legislation, or part of it, to existing tenancies has been considered but we think that it would be wrong to alter the terms of existing arrangements; such a proposal would be criticised for having a retrospective effect. In cases of periodic tenancies which were allowed to run on without any specific change in their terms, the new obligations ought not to apply for the same reasons. If the terms of a periodic tenancy were altered, the application of the new law would depend on whether or not there were in fact a new tenancy. During any negotiations for a new rent or any change in the terms, the provisions of the new law would be known and consequently could properly apply if the negotiations resulted in a fresh tenancy.

Recommendation: statutory provision proposed applying obligations to tenancies created after the Act

27. *We therefore recommend* that the implied covenants should apply to tenancies created after the commencement of the Act and that there is no need for any transitional provision Clause (1(1)).

Overriding covenants

Recommendation: the statutory provision proposed

28. *We recommend* that overriding covenants should be implied regardless of any provision in the contract of tenancy. Any term of the tenancy should be void to the extent that it excluded or limited the obligations; but this would not prevent a landlord or a tenant from agreeing to accept an obligation more onerous than that of the implied covenant (Clause 2).

Variable covenants

Recommendation: the statutory provision proposed

29. *We recommend* that the landlord and the tenant should be free to exclude or modify variable covenants. This could only result from the express terms of the tenancy; if the implied variable covenant were modified or excluded after the creation of the tenancy, the change would have to be made in the same way as any other alterations in the terms of the tenancy (Clause 3).

(B) REMEDIES

No new remedies proposed in this report

30. Our working paper commented on possible remedies for the breach

of each of the obligations provisionally suggested[17]. In the preparation of this report and during discussion with the Working Party and consultation we have considered what remedies should be provided by a reformed landlord and tenant law. Now that we make this report in this particular form with specific legislative recommendations that all obligations should be statutory implied covenants, we do not think that it is the right place to deal with new remedies. Until our proposals for new and reformed remedies take effect, breach of these new implied covenants would entitle a landlord or tenant to the remedies which the law now provides for breach of a covenant.

(C) OVERRIDING COVENANTS: ALL TENANCIES

POSSESSION AND QUIET ENJOYMENT

Introductory

31. It is an essential element of a tenancy that the tenant has the right to exclusive possession of the premises. The landlord must enable the tenant to take possession when the tenancy begins and must leave him in possession for the duration of the tenancy.

32. It is the landlord's covenant for quiet enjoyment which should protect the tenant's right to uninterrupted possession. We think that the tenant's position under the present law is weaker than it should be. Our recommendations on this particular subject are important reforms and we emphasise that during our consultation and discussions there has been a general demand for better protection of tenants under covenants for quiet enjoyment.

Covenants expressed or implied under the existing law

33. In every tenancy there is an express or implied covenant[18] for quiet enjoyment. Any express covenant excludes the implied covenant for quiet enjoyment[19], and in nearly all formal leases and tenancy agreements it is the terms of an express covenant that define the landlord's obligation.

Express covenants

34. Although there is nothing to prevent an express covenant being in any particular form, it is almost universally qualified so that it extends only to interruption or disturbance by the landlord or any person claiming under or in trust for him. It rarely includes protection against the lawful acts of anyone with a title superior to the landlord's. A common form of the express covenant is:—

> "The tenant . . . shall peaceably hold and enjoy the demised premises during the said term without any interruption by the landlord or any person rightfully claiming under or in trust for him."[20]

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[17]Working Paper No. 8 (1967).

[18]Strictly speaking, when the lease is not under seal the obligation is not a covenant but a corresponding contractual obligation.

[19]*Nokes's Case* (1599) 4 Co. Rep. 80b; *Miller* v. *Emcer Products Ltd.* [1956] Ch. 304.

[20]*The Encyclopaedia of Forms and Precedents*, 4th ed. (1965), Vol. 11, p. 331. (A precedent in *Key and Elphinstone's Precedents in Conveyancing*, 15th ed. (1953), Vol. 1, p. 1038, uses the expression "without any lawful interruption or disturbance". *Cf. Woodfall's Law of Landlord and Tenant*, 27th ed. (1968), Vol. 1, p. 565).

In considering the future and possible reforms we do so primarily in relation to the implied covenant, which is similarly qualified. However, in one important way an express covenant does provide greater protection to a tenant than an implied covenant; normally it is specifically expressed to endure for the term granted by the tenancy; unlike an implied covenant it does not cease with the estate of the landlord.

Implied covenants

35. If there is no express covenant, a covenant for quiet enjoyment is implied from the mere contract of letting in whatever form it is expressed[21]. The implied covenant is substantially similar to the express covenant referred to in the last paragraph, but it may cease before the end of the term purported to be granted[22]. The following paragraphs deal with both implied and express covenants.

The parties by whom interruption gives rise to the landlord's liability

36. The obligation under the covenants for quiet enjoyment is severely limited. It is confined to interruption by the landlord himself and the lawful acts of a limited class of other people. The landlord is responsible to the tenant for the acts of others who, although they interfere with the tenant's possession, are legally entitled to do whatever it is that amounts to interference. The landlord is not responsible for tortious acts of others, against whom the tenant has his own separate rights of action. In this report we are only considering the tenant's right of action against his landlord and not his right of action against a person who interrupts his possession.

37. The obligation is also limited to the lawful acts of people claiming through or under the landlord; it does not extend to lawful acts of anyone with a title better than the landlord's own title. It was originally uncertain whether the implied covenant extended also to interruption or disturbance of the tenant by people having title paramount to that of the landlord, and there were conflicting decisions around the turn of the sixteenth century[23]; but it is now settled that the obligation is limited to the acts of people claiming under the landlord[24].

38. The burden of the covenant for quiet enjoyment runs with the reversion to the land[25] so that it is enforceable against an assignee from the original landlord. However, an implied covenant is only operative during the continuance of the estate of the landlord out of which he was able to give possession to the tenant; unlike express covenants, it ceases with the estate of the landlord and the tenant has no right to a remedy at the very time when he most needs it. A clear example is the case of an under-tenant on a tenancy from year to year who, when dispossessed by the head lessor in the middle of a year's tenancy because his landlord's own lease had expired, had no remedy under an implied covenant for quiet enjoyment[26].

39. So far as the implied covenant is a covenant for the landlord's title it is not a covenant that he is entitled to grant the term he purports to grant, but

[21] *Markham* v. *Paget* [1908] 1 Ch. 697.
[22] *Hill and Redman's Law of Landlord and Tenant*, 15th ed. (1970), p.205.
[23] *Andrew's Case* (1590) 2 Leon. 104; Shep. Touch. at p. 165; *Holder* v. *Taylor* (1614) Hob. 12.
[24] *Jones* v. *Lavington* [1903] 1 K.B. 253.
[25] *Noke* v. *Awder* (1595) Cro. Eliz. 373, 436; *Campbell* v. *Lewis* (1820) 3 B. & Ald. 392.
[26] *Schwartz* v. *Locket* (1889) 61 L.T. 719.

only that he is entitled to grant some term[27]. It does not warrant that the premises are free from restrictive covenants nor that they may be legally used for any purpose, even though let for such use[28]. However, it does include a covenant to put the tenant into possession whether there is a formal lease, an agreement or an oral letting.

The acts which amount to interruption

40. The covenant for quiet enjoyment operates to protect the tenant in the possession and enjoyment of the premises. "The basis of it is that the landlord, by letting the premises, confers on the tenant the right of possession during the term and . . . promises not to interfere with the tenant's exercise and use of the right of possession during the term"[29]. The covenant may be broken even though neither the title to the land nor its possession is affected[30]. The question whether the quiet enjoyment of the premises has been interrupted or not is one of fact[31]. In *Owen* v. *Gadd*[32] Lord Evershed M.R. said "I am prepared to assume that the disturbance, the interruption, must at least be of what is called a direct and physical character." He went on: "It was very early decided that an injunction granted at the suit of a superior landlord to prevent the carrying on of some business or the doing of some act by the sublessee cannot be treated as constituting a breach of covenant for quiet enjoyment . . .." So too a flaw in the title which may decrease the value of the tenant's interest in the property without actually interfering with his use of it would not give rise to a cause of action.

41. However, in *Kenny* v. *Preen*[33], a case in which a landlord threatened to evict an elderly widow from two rooms in a house, the Court of Appeal went very nearly to the stage of accepting that interference by persecution and intimidation was a breach of covenant[34]. Pearson L. J. thought that the landlord's conduct "... would in itself constitute a breach of covenant even if there were no direct physical interference . . . ." But he added, "Secondly, if direct physical interference is a necessary element in the breach of covenant that element can be found in this case. . "[35]. Earlier in his judgement he had referred to ". . .an element of direct physical interference by repeatedly knocking on the door and shouting threats to her. That element of direct physical interference was not trivial but substantial in this case, because it was persisted in and because it has to be seen against the background of threatening letters"[36]. Donovan L. J. added, "It may be that modern conditions of life may call for a review of the requirement that some physical act is an essential element in a breach of the covenant of quiet enjoyment; but in the present case I think the physical element is present"[37].

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[27]*Miller* v. *Emcer Products Ltd.* [1956] Ch. 304, 318.

[28]*Hill* v. *Harris* [1965] 2 Q.B. 601.

[29]*Kenny* v. *Preen* [1963] 1 Q.B. 499, 511, *per* Pearson L. J.

[30]*Sanderson* v. *Mayor etc. of Berwick-upon-Tweed* (1884) 13 Q.B.D. 547, 551, *per* Fry L. J.

[31]*Owen* v. *Gadd* [1956] 2 Q.B. 99, 105, *per* Lord Evershed M. R.

[32]*ibid.*, at p. 106.

[33][1963] 1 Q.B. 499.

[34]The Rent Act 1965, s. 30, makes it a criminal offence to interfere with the peace and comfort of a residential occupier or his household or to withdraw services if the intention is to make him quit the premises or refrain from taking action.

[35][1963] 1 Q.B. 499, 513.

[36]*ibid.*, at p. 511.

[37]*ibid.*, at p. 515.

42. The difference in the facts in *Owen* v. *Gadd*[38] and *Browne* v. *Flower*[39] shows how narrow the margin is between an interference which is a breach of the covenant and one which is not. In *Owen* v. *Gadd* the tenant succeeded; he was tenant of a shop; the landlord erected scaffolding that temporarily obstructed the shop window; there was evidence that the scaffolding poles seriously interfered with the ordinary access of the public to the shop and the shop window. The Court of Appeal upheld the finding of the county court judge that the erection of the scaffolding poles in close proximity to the shop window constituted a breach of the covenant. In *Browne* v. *Flower* the tenants failed in their action; they were tenants of a ground floor flat; a staircase was built from the garden outside their flat, giving access to another flat on the first floor; people using the staircase could see directly into the plaintiffs' flat. Parker J. dismissed the action because it appeared to him that "... to constitute a breach of such a covenant there must be some physical interference with the enjoyment of the demised premises, and that a mere interference with the comfort of persons using the demised premises by the creation of a personal annoyance such as might arise from noise, invasion of privacy, or otherwise is not enough"[40]. The distinction is very narrow. In *Owen* v. *Gadd* the temporary scaffolding substantially interfered with the tenant's business, the purpose for which the shop was let. In *Browne* v. *Flower* the permanent staircase only amounted to an invasion of the privacy of a private dwelling.

Inadequacy of existing covenants for quiet enjoyment

(*a*) Interruption by lawful acts of parties under title paramount

43. The present effect of covenants for quiet enjoyment qualified as they are, invariably when implied and almost invariably when they are expressed, is to provide tenants with little protection and far less than the protection that purchasers have from sellers' covenants for title. A purchaser normally has a right to investigate his seller's title. A tenant has no right at all to investigate his landlord's title unless there is an agreement for the grant of a lease. Even if there is an agreement, the tenant's right under the general law to investigate is entirely inadequate. Unless there is a specific provision, the tenant has no right to investigate his landlord's title if it is freehold, and his only right is to see his landlord's lease and the subsequent title to it if the agreement is for a sub-lease. However, if there is no agreement to grant the sub-lease and the tenant consequently has no right to see his landlord's lease, the tenant nevertheless has constructive notice of that lease[41]. In practice landlords do not normally offer to deduce their titles or to give any kind of covenant of their title to grant the lease, apart from the strictly limited covenant for quiet enjoyment. Many tenancy agreements and leases are entered into without any preliminary contract. It is only in special cases, such as a lease at a ground rent and a payment of a premium or a lease following an agreement by the tenant to build on a site, that the tenant is able to arrange to investigate the landlord's title.

44. The tenant's difficulty is stated in *Woodfall's Law of Landlord and Tenant* as follows:—

"A lessee is a purchaser *pro tanto*, to whom the maxim *caveat emptor*

[38][1956] 2 Q.B. 99.
[39][1911] 1 Ch. 219.
[40]*ibid.*, at p. 228.
[41]*Woodfall's Law of Landlord and Tenant*, 27th ed. (1968), Vol. 1, p. 822.

applies if he does not take advantage of his fair opportunities, notwithstanding that he is not entitled to call for and investigate the lessor's title unless he stipulates to the contrary, and that it is not usual to make such investigation. Therefore, he should, at his peril, be satisfied that the intended lessor has sufficient title to demise for the proposed term, and that his conveyance does not restrict him from permitting the premises to be used for any trade or business intended: or the lessee should (if possible) obtain from the lessor an *unqualified* covenant for quiet enjoyment during the term, without any interruption or disturbance by the lessor, "*or by any other person or persons whomsoever*"; *i.e.*, against all persons having lawful title: or he must take his chance and run all risks as to the lessor's title. Where the lessee is to build upon or otherwise improve the demised premises, or pays a premium for the lease, he should take care either to stipulate for the right to investigate the lessor's title (or at all events to see the conveyance to him): or he should obtain an *unqualified* covenant for quiet enjoyment during the term. The lessor ought not to refuse to enter into such a covenant where no investigation of his title takes place. It is much more reasonable that he, rather than the tenant, should run any risk as to his own title, when he does not allow it to be investigated by or on behalf of the tenant. But it often happens that an intended lessee fears to lose the proposed lease by asking either for an investigation of the lessor's title or for an unqualified covenant for quiet enjoyment; indeed, he generally knows that nothing of the sort would be agreed to"[42].

45. However, we think that proposals to reform the effect of the implied covenant for quiet enjoyment should not dictate what title should be deduced by a landlord or what documents should be available for examination by a tenant. The covenant applies to all tenancies, the majority of which are of a kind which would not justify the trouble and expense of investigating the title even when the tenant is being professionally advised. What reform can do is to put a heavier responsibility on landlords and so encourage them to disclose all that they can of their own titles and consequently avoid the risk of claims under the covenant.

46. The worst defects of the present law arise from the qualification of the covenant that lawful acts by people with rights superior to those of the landlord are not breaches of the covenant. For example, a tenant has no remedy against his landlord in the following circumstances:—

(*a*) The landlord's own title ends and the tenant is evicted.

(*b*) The landlord himself is in breach of a covenant or condition that entitles his superior landlord, or someone else, to possession. The breach of covenant by the landlord might be failure to pay the rent of his own lease, or to obtain a consent to the tenancy.

(*c*) An easement created by the landlord's predecessors is exercised.

(*d*) The tenant is prevented from using the property for the purpose for which he took it by a restriction binding on his landlord.

47. In the situation of example (*a*) in the last paragraph it is a rule of law that, where an under-lease purports to vest in the under-tenant a term as long as or exceeding the remainder of the original term, the under-tenant is an assignee

[42] 27th ed. (1968), Vol. 1, pp. 566–567.

of the term[43]. The result is that the landlord who purports to grant such an under-lease ceases to have any estate in the property; the relationship of landlord and tenant does not exist between him and the person who appears to have been granted a sub-lease; the apparent sub-tenant becomes the direct tenant of the superior landlord and is no more than an assignee, without a covenant for title, from his purported landlord.

48. It is likely that in a later report, dealing with assignments of leases, we shall recommend that this rule of law should be changed so that in such circumstances the under-lease would vest in the under-tenant a term one day shorter than his landlord's own term. However, so long as the law is unchanged, a "tenant" will not have the benefit of an implied covenant for quiet enjoyment when he has been granted a term as long as the landlord's own term.

(*b*) Interference not amounting to interruption

49. The present law limiting what it is that amounts to disturbance is, in our view, less unsatisfactory. Eviction from all or part of the property and physical encroachment such as the exercise of rights under an easement or actually damaging the property, whether by acts of commission or omission, raise no questions. It is where the interference is less direct that difficulties have arisen. In *Browne* v. *Flower*[44] there was no physical intrusion into the demised premises though a physical structure erected outside the premises inconvenienced the tenants; as we have seen, Parker J. dismissed the tenants' action because there was no physical interference with the enjoyment of the premises. In *Owen* v. *Gadd*[45], however, the Court of Appeal, while content to assume that Parker J.'s statement of the law in the earlier case was correct, held that the erection of scaffolding outside the premises was "certainly physical"[46]. As we have said, the question is one of fact in each case. In *Kenny* v. *Preen*[47] Pearson L. J. was prepared to find in the tenant's favour on the basis that the landlord's conduct "seriously interfered with the tenant's proper freedom of action in exercising her right of possession, and tended to deprive her of the full benefit of it, and was an invasion of her rights as tenant to remain in possession undisturbed, and so would in itself constitute a breach of covenant, even if there were no direct physical interference with the tenant's possession and enjoyment"[48]. The signs are that the courts are no longer taking a restrictive view of the meaning of interruption or disturbance, and we believe there is enough flexibility in the law for its future development and expansion to be left to the courts with confidence; there was certainly no pressure on us in our consultation to recommend statutory intervention in this area.

50. Restrictions of the use of the property and flaws in the title to it that do not result in dispossession or physical disturbance have never been treated as breaches of the covenant. We are not proposing any change in cases in which the defect in the title has no further effect than a possible depreciation in the capital value of the tenant's interest in the property. However, it does seem to us that it is unjust that a tenant who is prevented from using the property for the

[43] *Woodfall's Law of Landlord and Tenant*, 27th ed. (1968), Vol. 1, p. 483 and see also p. 810. See *Milmo* v. *Carreras* [1946] K.B. 306.
[44] [1911] 1 Ch. 219; see para. 42 above.
[45] [1956] 2 Q.B. 99; see para. 42 above.
[46] [1956] 2 Q.B. 99, 107, *per* Lord Evershed M.R.
[47] [1963] 1 Q.B. 499; see para. 41 above.
[48] [1963] 1 Q.B. 499, 513. See also Donovan L. J., cited in para. 41 above.

specific purpose for which he took the tenancy should have no right of action. In *Hill* v. *Harris*, when the plaintiff lost in such circumstances, Sellers L. J. described it as " . . . a hard case in its result . . ."[49] In this one respect we do think that the tenant's rights should be extended so that he has a right of action, even when there is nothing in the nature of a physical act in the disturbance.

Proposals to reform covenants for quiet enjoyment

51. We consider that the landlord's obligations should be increased in three ways.

(*a*) A tenant should have a right of action on the enforcement of any restriction that affects the use of the premises for the purpose for which he took the tenancy. This would be an extension of the present liability which is limited to positive physical disturbance and would be contrary to the decision in *Hill* v. *Harris*[50] referred to in paragraphs 39 and 50 above.

(*b*) A landlord's responsibility ought not to be limited to the acts of people who derive their rights from him; it should extend to the lawful acts of anyone, whether the justification for the disturbance depends on a title superior to the landlord's or on a title created out of the landlord's title.

(*c*) A landlord ought not to be able to avoid these obligations by entering into a modified form of express covenant; the implied covenants should be overriding covenants applying to all tenancies; the distinction between implied covenants and the construction given to express covenants should be abolished.

Limitation of landlord's liability under the proposed standard covenants

52. However, if there are to be invariable obligations in all tenancies, there will be circumstances in which there ought also to be implied qualifications. The premises may be let subject to a third person's right of way across them; a superior landlord may have a right to terminate his superior lease on some event happening during the term; some statutory provision may put the landlord, or someone else, under a duty to do something which would disturb the tenant. The implied covenant ought not to extend to disturbance which is authorised by the contract of tenancy itself or by statute.

53. It has been suggested to us that a landlord ought to guarantee absolutely and without qualification to his tenant that he will not be evicted or interrupted. Although we are convinced that the implied covenant should bind every landlord and, prima facie, should protect the tenant against the lawful acts of all people even with rights superior to those of the landlord, we think it would be unreasonable to allow a tenant to sue his landlord for lawful disturbance if, when the tenancy were granted, he had been warned of the possibility or knew of the danger of the disturbance. Consequently, we think that the obligation should not extend to disturbance which was lawful for some reason of which the tenant had notice when the tenancy was granted. This would be a reasonable qualification of the landlord's liability, and it would give the opportunity to the landlord to protect himself against any claim that he could foresee by giving

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[49] [1965] 2 Q.B. 601, 618.
[50] *ibid.*

notice to the tenant before granting the tenancy. It would be a qualification of the present liability under an implied covenant for quiet enjoyment; even a claim for disturbance by someone claiming through, under or in trust for the landord would not succeed if the tenant had notice of the right to disturb his tenancy when he entered into it. When we were considering the extension of the landlord's liability to disturbance by people with title better than the landlord's, it seemed to us right that there should be this defence that the tenant had notice; the reasons for it apply equally to claims by people who derive their rights from the landlord.

54. The last of the qualifications of the landlord's liability under the implied covenant should, in our opinion, be his own ignorance, when he grants the tenancy, of the lawful right of the person entitled to disturb the tenant. We have explained in the last paragraph that we do not think that a landlord ought to guarantee absolutely his tenant's title to uninterrupted possession. If he does disclose everything that he can of his own title and everything that he knows of which might interrupt or disturb the tenant's occupation, we do not think that he should be liable to the tenant for risks he cannot know about. The obligation arises out of a covenant for quiet enjoyment and we are not proposing an absolute covenant for title. This qualification of the landlord's ignorance would result in a clear distinction between a case in which the person disturbing the tenant derived his right from the landlord himself and one in which the right was superior to the landlord's own title. This defence could only exist in the latter case; if the right were derived from the landlord, the landlord could not claim that he did not know of it.

Notice relevant to landlord's liability

55. To give effect to the qualifications suggested in the last two paragraphs, we have had to consider in detail what kind of notice to the tenant should bar his claim and what kind of notice should prevent the landlord from pleading his own ignorance of the lawful right to interrupt or disturb the tenant. Rules about constructive notice have grown out of the practice of deducing and investigating titles to interests in land. Section 198(1) of the Law of Property Act 1925 provides that registration under the Land Charges Act 1925[51] " . . . shall be deemed to constitute actual notice . . . to all persons and for all purposes connected with the land affected. . . ." There are corresponding provisions about notice affecting registered land in the Land Registration Act 1925.

56. As we have explained[52], unless a tenancy is preceded by an agreement to grant the tenancy, the tenant has no right to investigate the landlord's title. Consequently, the tenant may not know the names of previous estate owners against which to search in the register of land charges. Even if there is such an agreement the tenant will not, in the absence of a special provision that the landlord will deduce title to the freehold or to leasehold titles superior to the landlord's own, know the names of successive owners of the freehold or superior leasehold estates. In the absence of specific agreement a tenant will have no right to inspect the register of title to land which is registered under the Land Registration Act 1925. In our opinion, the general rules about constructive and statutory

[51]As re-enacted by the Land Charges Act 1972.
[52]Para. 43 above.

notice ought not to apply to tenants in this context except in the cases in which, by agreement, title is being investigated.

57. If the landlord is a freeholder he will have had the opportunity to investigate the title to his property; but if he is himself a leaseholder he may be in the same difficulty of not knowing in whose names charges may be registered and of not having the right to inspect the registers of superior titles to his property that are registered under the Land Registration Act 1925.

58. Our proposal is that this statutory "actual" notice should not apply for the purposes of these qualifications of the covenant if the charge is registered in the name of someone with an estate superior to that of the person who would be affected by notice, nor to the register of any title kept at the Land Registry other than his own. This would not alter the fact that anyone may have actual notice of what is registered, either by having been shown the document creating the charge or by having made searches or being shown certificates of search, or office copies of entries, that reveal what is registered. The result would be that the freehold landlord would still have statutory "actual" notice of anything registered that affected the property as there would be no estate superior to his own. But a tenant would have no statutory "actual" notice because, on the grant of the tenancy, all estates in the property would be superior to his new leasehold interest.

59. The tenant also needs protection from the rules of constructive notice of documents which he has no right to see. We propose that this should be done by providing that he should not be affected by constructive notice unless there is an agreement by which the landlord expressly contracts to furnish a title. Then the tenant would still have constructive notice of anything arising from a proper investigation of that title.

60. These reforms should have two practical results when they take effect:—

(*a*) In a case of an informal tenancy in which there are unlikely to be any professional precautions, the relatively slight risk of hardship would shift to a considerable degree from the tenant to the landlord; and it is the landlord who would normally be in the better position to anticipate any disturbance.

(*b*) In a case in which a landlord grants a lease that will be of capital value to his tenant, the reforms should encourage the landlord to disclose his title as fully as possible and to invite the tenant to investigate the title. This would be in the interest of the landlord who would have given notice to the tenant of every right of which he knew. Any risk of lawful disturbance after disclosure and investigation of title would be very slight; if there were such a claim based on a lawful right unknown to both the landlord and the tenant then, as now, the tenant would not be able to take action under the covenant against the landlord.

Recommendation: the statutory provisions proposed

61. *We therefore recommend* that in every tenancy there should be an invariable implied covenant that the tenant should have possession when the tenancy commences, whether by occupation or by receipt of the rents and profits

(Clause 4). This is not a recommendation for a reform; it is a restatement of the landlord's obligation to put the tenant into possession[53].

62. *We also recommend* reform of the law in the following respects:—

(*a*) That in every tenancy there should be an invariable implied covenant that the tenant should peacefully hold and enjoy the premises for the purpose of the tenancy without interruption or disturbance by the landlord or by any person lawfully asserting or enforcing a title or right, whether derived from or superior to the title of the landlord (Clause 5(1)). This is a recommendation for radical reform. The covenant would be implied in every tenancy. Subject to the following qualifications a landlord would be responsible for the acts of all people with lawful rights and not only of those deriving title under him. Actionable interruption or disturbance would be extended to cover enforcement of any restriction affecting the use of the premises for the "purpose of the tenancy".

(*b*) That the covenant should not extend to interruption or disturbance—

(i) by the landlord or by anyone else in exercise of any right or the performance of any obligations authorised by the contract of tenancy or by any enactment, or

(ii) by any person other than the landlord in consequence of a "defect in the title of the landlord" of which the landlord had no notice or of which the tenant did have notice at the time of the grant of the tenancy (Clause 5(2)).

(*c*) That "defect in the title of the landlord" should be defined so as to include—

(i) lack of title,

(ii) lack of estate for the whole duration of the term of the tenancy,

(iii) lack of power to grant the tenancy or conditions or restrictions affecting that power,

(iv) liability to forfeiture or re-entry by virtue of a breach of covenant committed before or subsisting at the time of the grant of the tenancy,

(v) any restriction affecting the use of the premises for the purpose of the tenancy, and

(vi) any easement or right over or against the premises (Clause 5 (3)).

(*d*) That "notice" for the purpose of sub-paragraph (*b*) (ii) should be defined so as to exclude constructive and statutory notice in circumstances in which a landlord or tenant could not reasonably be expected to find out what it was of which he had constructive or statutory notice (Clause 5(4)).

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[53]See para. 39 above.

Derogation from grant

Discussion of the problem

63. In our working paper[54] it was suggested that the obligation in a reformed implied covenant for quiet enjoyment should cover not only the obligation under existing covenants for quiet enjoyment but also the duty of a landlord not to derogate from his grant. The duty not derogate from grant arises quite separately from the covenant for quiet enjoyment although in practice there is an overlap. Both causes of action are often pleaded on the same facts. There are cases in which claims on covenants for quiet enjoyment have failed because the landlord's conduct was held not to be a breach of that covenant, but the tenant has succeeded on the landlord's breach of his duty not to derogate from his grant[55].

64. The duty arises from the principle that a grantor must not derogate from his grant by doing anything which is inconsistent with the purpose for which the grant is made. Having given a thing with one hand, a person is not to take away the means of enjoying it with the other. The principle applies to all grants and is not a special feature of the relationship of landlord and tenant. The duty can apply only when the landlord lets part of his land and retains part. It is complementary to the covenant for quiet enjoyment and to some extent overlaps with that covenant, but there are essential differences. The true distinction between them seems to be that the duty not to derogate is concerned with the use of the retained part, which makes the premises let less fit for the purpose for which they were let; but the covenant for quiet enjoyment is concerned with the enjoyment of the premises and actual interruption or disturbance on them[56].

65. A landlord's duty not to derogate is not in the nature of a landlord's covenant running with the reversion to the land and arising from the terms of the tenancy. It is a particular duty arising from the condition of affairs existing when the tenancy is granted, and it cannot be extended to property acquired by the landlord after the grant of the tenancy. On the other hand it may pass to someone else who acquires part of the original landlord's property that was saddled with the duty.

66. The proposed implied covenants for possession and quiet enjoyment do not serve exactly the same purpose as the duty not to derogate. In our recommendation for reform of the covenant for quiet enjoyment[57] we have included the concept of the enjoyment of the premises for the purpose of the tenancy, which now has some protection under the doctrine that the landlord shall not derogate from his grant but not under the covenant for quiet enjoyment. The law about not derogating from grants applies to all kinds of grants, and we think that it would be wrong to attempt to alter it so far as it affects landlords and tenants alone. We think it should continue to apply to tenancies as a right additional and complementary to tenants' rights under the covenant for quiet enjoyment.

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[54]Working Paper No. 8, (1967), p. 9.
[55]*Grosvenor Hotel Co.* v. *Hamilton* [1894] 2 Q.B. 836.
[56]*Woodfall's Law of Landlord and Tenant*, 27th ed. (1968), Vol. 1, p. 575.
[57]Para. 62 above.

Recommendation: no statutory provision required

67. *We therefore recommend* that the Bill should not affect the law relating to the landlord's duty not to derogate from his grant.

RENT

Discussion of the problem

68. A covenant by the tenant to pay the rent is implied if a rent is reserved by the contract of tenancy. At common law, apart from the relationship of landlord and tenant, a landowner has the right founded on implied contract to recover from any person occupying his land a reasonable sum for use and occupation of the land, unless the circumstances otherwise indicate. Usually, however, a landlord need not rely upon this right because he will be able to enforce an express agreement for the payment of rent. The original common law principle that the rent is something reserved out of the land itself still exists, but rent is now normally thought of as money paid in consideration of the right to occupy the property and is due and recoverable like other contractual debts[58]. Most of the ancient law about the nature of rent is now obsolete and landlords can recover unpaid rent by suing for a debt. The code should make it absolutely clear, without any question, that in every tenancy there is an implied covenant by the tenant to pay any rent reserved. By its nature it is an invariable obligation and must be an overriding covenant. The new provision would not prevent a landlord from taking any other action, as well as suing for the money debt, that he is now entitled to take when rent is not paid.

69. Unless the terms of a tenancy provide for payment of rent in advance, it is normally payable in arrear. However, it is usual to provide for payment of rent in advance in short tenancies. This system is reasonable and is generally accepted without comment. The code should confirm the principle, and make a statutory exception in the case of a periodic tenancy from quarter to quarter or any shorter period. Rent for these short tenancies would be payable in advance at the commencement of each period. These statutory provisions to pay the rent in advance or in arrear would be variable.

Recommendation: the statutory provision proposed

70. *We therefore recommend* that in every tenancy there should be an overriding tenant's covenant to pay any rent or other sums due to the landlord under the tenancy and that, unless otherwise provided by the contract, rent should be payable in advance for quarterly tenancies or tenancies for shorter periods and in arrear in other cases (Clause 6).

RENT BOOKS

No code obligation proposed

71. We have already referred to rent books in paragraph 24 above when reviewing the present situation in tenancies which are not recorded by written

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[58]Holdsworth, *A History of English Law*, 2nd ed. (1937), Vol. VII, p. 262. In *C.H. Bailey* v. *Memorial Enterprises Ltd.* [1974] 1 W.L.R. 728 Lord Denning M.R., said (at p. 732), "It is time to get away from the medieval concept of rent. . . . The time and manner of payment is to be ascertained according to the true construction of the contract, and not by reference to outdated relics of medieval law."

agreements. The working paper[59] suggested that in lettings of dwelling-houses on monthly or shorter tenancies, where the terms of the tenancy were not in writing, the landlord should provide the tenant with a rent book. That would have been an extension of the statutory obligation[60], also referred to in paragraph 24 above, which is limited to any premises occupied as a residence at a rent payable weekly.

72. The Report of the Francis Committee recommended a wider obligation to provide rent books[61]. They suggested that they should be obligatory where the rent was paid at intervals not exceeding two months. The Report revealed two main reasons for the Committee's support of rent books with a wider obligation. One was that they were "... perhaps the most important and effective vehicle for conveying information to tenants about their rights under the Rent Act". The other was that they had been told by the National Citizens' Advice Bureaux Council that a fully paid up rent book was of great value as a general reference for the credit worthiness and trustworthiness of the tenant. The Report also pointed out the difficulty in enforcing the obligation and the lack of any effective sanction to ensure that rent books were provided[62].

73. The Royal Institution of Chartered Surveyors have told us that they feel strongly that rent books, as such, have outlived their usefulness and they give the following reasons for their view. The primary purpose of rent books was to record payments of rent in cash; their subsidiary use to record terms of the tenancy is notoriously unreliable. They are unnecessary when rent is paid by cheque, banker's order or through the banks' "giro" system. If it is necessary to have a written statement of certain essential facts about the tenancy, it does not necessarily follow that it is appropriate to use a rent book for the purpose. Modern methods of mechanised accounting are being hampered by the present statutory requirements about rent books.

74. The Greater London Council now have most of their rents paid through the "giro" system, and we have been told that New Towns, Local Authorities' housing departments and Housing Associations are moving away from door to door rent collecting and that consequently rent books, as such, are becoming less and less necessary.

75. The Landlord and Tenant Act 1962 which imposed the obligation to provide rent books was introduced in Parliament as a private member's Bill. There was no serious objection to it, and it was generally accepted as a socially

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[59]Working Paper No. 8 (1967), p. 11.

[60]Landlord and Tenant Act 1962 as amended by Rent Act 1968 and Rent Book (Forms of Notice) Regulations 1972, S.I. 1972 No. 1827.

[61]*Report of the Committee on the Rent Acts;* (1971) Cmnd. 4609, pp. 216-217; their recommendations as summarised (pp. 226–227) included:—

"The Landlord and Tenant Act 1962 relating to Rent Books should be amended in the following respects:—

(*a*) The provision of a rent book (or similar document) should be made obligatory not only where the rent is payable weekly, but whenever the rent is payable at intervals not exceeding two months (pp. 216–217).

(*b*) The rent book should be supplied to and remain in the custody of the tenant, without prejudice to the right of the landlord to keep a duplicate, and subject to the right of the landlord to call for production of it where necessary, *e.g.*, to make any proper entry therein or amendment thereto (pp. 216–217) . . . ."

[62]*ibid.*, p. 216, "There is evidence that the 1962 Act is widely disregarded in relation to weekly furnished tenancies. The position is rather better in the stress areas of London (36 per cent. without rent books) than in the conurbation as a whole (55 per cent. without rent books)."

desirable control of weekly tenancies of homes. However, it is interesting to see that in the debates on the Bill[63] one of the arguments in favour of it which was used most by several members was that rent books would disclose the landlord's identity. This particular point is covered by our separate recommendation made in paragraph 104 below (Clause 8 of the Bill). It has also been dealt with as a special control by the Government in the Housing Act 1974, referred to in paragraph 91 below.

76. We accept that the statutory obligation of the 1962 Act to provide rent books may be of use, but it is limited in effect and purpose. It was primarily directed for the protection of the tenants of small homes, the class of tenants most vulnerable to bad landlords and the class of tenants for whose benefit the rent control laws are made. If the tenancy is protected by the Rent Act 1968, the Regulations[64] provide that a notice in statutory form must be in the rent book, or other similar document, which informs the tenant of some of his statutory rights.

77. We now think that there should not be any general obligation in the Code about rent books. The existing law and any proposals for its extension have been limited to a particular class of tenancy, namely tenancies of homes for which the rent is payable at short intervals. We think that, if the proposal is a good one, it should be dealt with by the Government department responsible for the Rent and Housing Acts. The most important purpose, in our opinion, served by the statutory obligation to provide a rent book, or similar document, is to give notice to the tenant of his rights under the Rent Act 1968. Although the present obligation applies to all residences for which rent is paid weekly, whether subject to the Rent Act or not[65], it operates mainly in the case of Rent Act tenancies. We recommend that there should be no general obligation for landlords to provide rent books.

78. An alternative possibility would be an obligation, in every case where there is no lease or written tenancy agreement, to provide the tenant with a written statement of certain facts and terms of the tenancy. Such a statement would not be an agreement and would not necessarily have been agreed by the tenant; its value as evidence would be uncertain. The statutory obligation should result in a tenant having notice of his statutory rights. A one-sided statement from the landlord cannot be the right way to define the special terms of a particular tenancy. If we thought it necessary that some terms of every tenancy ought to be recorded in writing, we could only recommend that the terms must be recorded in a written tenancy agreement. It has never been suggested to us that all tenancy agreements should be written and we are certain that there are many circumstances in which tenancies may be created, quite reasonably, by oral agreements. We see no conclusive reason for any general obligation on a landlord to enter into a written agreement or to provide a written statement of the terms of a tenancy.

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[63] *Hansard*, (House of Commons), 23 March 1962, Vol. 656, Cols. 777–809 (Second Reading); 18 May 1962, Vol. 659, Cols. 1779–1784 (Third Reading).

[64] Rent Book (Forms of Notice) Regulations 1972, S.I. 1972 No. 1827.

[65] The Bill was amended in the House of Commons so that it applied to all residences for which a weekly rent is paid, instead of only to Rent Act controlled tenancies of dwelling-houses. (*Hansard*, 18 May 1962, Vol. 659, Cols. 1779–80.)

Introductory

79. Under this general heading we deal with the obligations applicable to all lettings which should fall upon the tenant in order that the premises which the landlord has let to him may be protected during the currency of the tenancy. We think that a tenant should be obliged:—

(*a*) to prevent encroachments,

(*b*) to keep his landlord informed of adverse claims or proceedings that may affect the landlord's interest,

(*c*) to observe all statutory restrictions,

(*d*) not to allow a nuisance, and

(*e*) not to allow the premises to be used for illegal purposes.

80. The Law of Property Act 1925, section 145[66], obliges a tenant to whom is delivered a writ for the recovery of the premises let or to whose knowledge such a writ comes, forthwith to give notice thereof to the landlord and, if he fails to notify the landlord, the tenant is liable to forfeit an amount equal to the value of three years' improved or rack rent of the premises. Apart from this special provision there is no implied obligation on the tenant in the interest of his landlord to protect the property.

81. This single statutory provision mentioned in the last paragraph is by itself entirely inadequate to protect the landlord and we propose that there should be new and comprehensive obligations for a tenant to protect the property. As a corollary to the landlord's implied covenant that the tenant should have quiet enjoyment of the property, we consider it is only right that the tenant should be under an implied obligation to protect the landlord's interest in the property.

Encroachments and adverse claims

82. The tenant ought to take all reasonable steps to prevent encroachments, and to notify the landlord, so that he will have the opportunity to challenge them, of third-party claims of which he might otherwise have no notice. However, the tenant's liability should be limited to claims known to him because, without this limitation, (as has been pointed out to us by The Law Society) the burden placed upon the tenant might be quite unreasonable.

83. We regard the penal provisions of section 145 of the Law of Property Act 1925[67] (the tenant's liability to pay treble rent) as an anomalous remedy of ancient origin which, so far as we know, is never now used and is obsolete. Any new statutory obligation of the tenant should supersede the existing statutory obligation and the penal provisions should be abolished.

Statutory restrictions

84. A covenant to observe any duty relating to the use of the property that is

[66]Replacing s. 209 of the Common Law Procedure Act 1852. See also s. 190 of the County Courts Act 1959.

[67]And of s. 190 of the County Courts Act 1959.

imposed by or under any statute, regulation or order is usually expressly included in a lease. In the absence of an express covenant, however, there is no such implied obligation on the tenant. Statutory control of use is nowadays an important factor in the landlord and tenant relationship and we think that a landlord's interest should be protected by a reasonable obligation by the tenant to comply with such control. In our recommendation in paragraph 169, reflected in Clause 21 of the Bill, we suggest that all outgoings other than occupier's rates should be borne by the landlord. Statutory duties which involve expenditure on the premises should be complied with by the landlord in accordance with the principle of that recommendation, and the implied obligation on a tenant should be limited to not contravening any statutory restriction.

Nuisance and illegal purposes

85. To some extent an obligation not to permit nuisance or to use the premises for illegal purposes overlaps with the tenant's obligation to use the premises in a tenant-like manner[68]. However, that obligation relates only to the care of the premises that are the subject of the tenancy; nuisance and illegal use may affect, and probably they will affect, adjoining premises. The landlord should be protected from liability arising from the tenant allowing any nuisance on the premises or allowing them to be used for any illegal purpose. The creation or continuance by a tenant of a nuisance or an illegal use may well affect the value of the property and adjoining property owned by the landlord.

86. In the formulation proposed, this obligation is limited to nuisance and illegal use. A time-honoured phrase used in leases that contain specific covenants about improper use is "not to use the premises nor allow the same to be used for any illegal or immoral purposes"[69]. We have deliberately excluded any reference to immoral purposes. The test for the breach of the suggested statutory obligation would be the relatively definitive one of whether or not the use were a breach of the law. Whether or not premises are being used for an immoral purpose is a question of opinion; we think that the implied covenant ought not to include a restriction on doing something that is not clearly defined. An example that emphasises this point is the tenancy of a house occupied by a couple who are not married; this could be claimed to be using the premises for an immoral purpose, but we think that most landlords would not expect, in the present social atmosphere, that this should be a breach of the tenant's implied obligation. On the other hand if a tenant permits premises to be used as a brothel it is an offence under the Sexual Offences Act 1956[70] and the landlord could take action on a breach of the new implied covenant quite apart from the statutory criminal offence. The proof of the breach would not depend on anyone's opinion of what amounted to immoral purposes.

87. For similar reasons we have confined the other obligation to "nuisance" and have not used, as an addition, the word "annoyance"[71] that is often added

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[68]Paras. 111 and 139 below.

[69]See, *e.g.*, *The Encyclopaedia of Forms and Precedents*, 4th ed. (1965), Vol. 11, pp. 323, 324.

[70]Sect. 35.

[71]The term "annoyance" was defined by Bowen L. J. in *Tod-Heatley* v. *Benham* (1889) 40 Ch.D. 80 at p. 98: "'Annoyance' is a wider term than nuisance, and if you find a thing which reasonably troubles the mind and pleasure . . . of the ordinary sensible English inhabitants of a house . . . that seems to me to be an annoyance, although it may not appear to amount to physical detriment to comfort."

in specific covenants. By "nuisance" we mean something which would be an actionable nuisance.

88. The implied covenant should take effect in all lettings of all kinds and it should be the minimum obligation that should fall on all tenants whatever kind of tenancy it may be. If a landlord requires a more onerous obligation from a tenant and the tenant agrees, it can be a term of the tenancy. This limited form of obligation would not in any way run contrary to the landlord's right under the Rent Act[72] to possession of a dwelling-house held on a protected or statutory tenancy when a tenant has been " . . . guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the dwelling-house . . . for immoral or illegal purposes." Annoyance gives a landlord a right to claim possession under the Rent Act, but would not be a breach of the suggested implied covenant; immoral purposes give a right under the Rent Act only when the tenant has been convicted of using the house for those purposes which would be a breach of the implied covenant.

Recommendation: the statutory provision proposed

89. *We therefore recommend* that:—

(*a*) an overriding covenant by the tenant should be implied in every tenancy—

(i) to take steps to prevent encroachment,

(ii) to notify the landlord of encroachments, adverse claims, notices and proceedings known to him which may affect the landlord's interest in the premises,

(iii) not to contravene any statutory restriction,

(iv) to prevent any nuisance on the premises,

and

(v) not to allow the premises to be used for any illegal purpose (Clause 7);

(*b*) section 145 of the Law of Property Act 1925 and section 190 of the County Courts Act 1959, which include the obsolete penal provisions, should be repealed except so far as they relate to tenancies created before the commencement of the Act (Clause 26 (*a*)).

DISCLOSURE OF LANDLORD'S IDENTITY

Offences under the Housing Act 1974

90. In 1973 the Lord Chancellor, Lord Hailsham of Saint Marylebone, asked us to advise him of what we expected to include in this report on the particular subject of the duty of a landlord to disclose his identity. On 9 November 1973 we addressed a Note to the Lord Chancellor advising him of our opinion which was, in general, the same as appears in the later paragraphs of this section of this report. The Government decided to legislate, in advance of our report, in order to deal with the special need to prevent landlords of dwellings from concealing their identity. At that time there were demands for very strong

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[72]Rent Act 1968, s.10 and Sch. 3, Pt. I, Case 2.

action and severe penalties to prevent landlords from being inaccessible when they were trying to do everything within their power to obtain vacant possession of dwellings that were let. A Housing and Planning Bill, introduced in Parliament in January 1974, included a provision to deal with this subject, but the Bill fell on the dissolution of Parliament in February 1974.

91. The new Government introduced a Bill which received the Royal Assent on 31 July 1974 as the Housing Act 1974. Since 31 August 1974, under section 121 of the Act, if the tenant of a dwelling makes a written request for his landlord's name and address to any person who demands the rent or who last received it or for the time being acts as the landlord's agent in relation to the tenancy, it is a criminal offence for that person to fail without reasonable excuse to supply the name and address in a written statement within 21 days. Under section 122 of the Act it is a criminal offence if the assignee does not, within two months after the assignment of a landlord's interest in a tenancy of a dwelling, give written notice to the tenant of the assignment and of the name and address of the new landlord. The maximum penalty under both sections is a fine of £200.

92. The detailed provisions of sections 121 and 122 of the Housing Act 1974 followed many of the recommendations in our advice to the Lord Chancellor. However, the object of the sections differs from the objects of our recommendations in this report. The Housing Act is confined to residential tenancies and the sanction to enforce the provision of the information is the penalty for committing a criminal offence. Our recommendations apply to tenancies generally, whatever the premises may be; failure to supply information would be a breach of a landlord's implied covenant, giving the tenant remedies as a tenant for that breach. As the following paragraphs reveal, we think that the general obligation is necessary in addition to the new statutory duty in relation to residential tenancies.

The general duty

93. The existence of this new Act, limited to residential tenancies, does not alter our views on this subject. We think that every tenant should at all times be able to find out who his landlord is. Almost always he knows to whom he should pay the rent; but he also needs to know the name and address of the person whom he can require to perform the landlord's obligations under the terms of the tenancy or implied by law. The tenant who has a reason to communicate with his landlord should not be left in any doubt after there has been a change of landlord.

94. Most leases and tenancy agreements include a covenant that makes it necessary for a tenant to obtain the landlord's consent to a change of tenant, or to give notice of a change to the landlord; it is unusual to find any corresponding covenant to tell a tenant of a change of landlord.

95. The normal practice, when there is a change of landlord, is for the tenant to be told who his new landlord is and to whom the rent should be paid in future; the former landlord's authority for the rent to be paid to the new landlord will usually be produced to the tenant at the same time as he is notified of the change. The new landlord normally gives this notice to the tenant promptly, because it is in his own interest to ensure that he receives the rent. This obviously practical procedure results in tenants being properly informed about almost

all changes of landlords. But where the same rent collector or other agent who received rent on behalf of the former landlord continues to do so on behalf of the new landlord the tenant himself may not be told of the change.

96. The tenant, of course, needs to be protected if, because he has not received any notice of change, he continues to pay rent to his former landlord. He is given that protection by section 151(1) of the Law of Property Act 1925; a tenant, until he actually receives such notice, discharges his liability for rent by paying it to the former landlord.

97. Under the present law, apart from the recent Housing Act 1974, there is no obligation on an outgoing landlord to notify his tenant of a change of landlord, although there is a statutory obligation in particular circumstances to show a landlord's name and address on a rent book. We think that the practice by which a tenant is told of the change when the landlord, for his own reason, gives notice is inadequate. The cases in which such notices do not reach tenants are likely to include the very ones in which tenants most need to know who their landlords are. If a landlord deliberately conceals his identity from the tenant, the tenant knows no more than the identity of the receiver of the rent and is unable to get in touch with his landlord.

98. It is not only on the occasion of a change of landlord that a tenant should have a right to be told the true identity of his landlord. A new tenant may not have been given all the information known to his predecessor. When there is a long interval between changes of landlords a tenant may want to verify names and addresses; indeed names or addresses may have changed without any change of landlord. We think that any reasonable written request from a tenant for information about his landlord's name and address ought to be properly answered.

99. There are nowadays many different reasons for a tenant wanting to know who his landlord is. Two examples are:—

(*a*) repairs for which the landlord is already responsible may need to be done;

(*b*) a tenant of a long lease may want to serve a notice under the provisions of the Leasehold Reform Act 1967.

We think that the case for our recommendation is strong and that the code would be incomplete if it did not include a provision that enabled all tenants to identify their landlords.

100. In Working Paper No. 8, the original suggestion was that it should be a mandatory obligation of every outgoing landlord, on a change, to tell the tenant the name and address of the new landlord. In consultation different methods of ensuring that tenants could find out the necessary facts about their landlords were suggested and very varied opinions were expressed about possible sanctions to enforce the landlord's obligation.

101. We considered whether there should be any special remedy or penalty for breach of this particular obligation. We also examined the possibility of a tenant being entitled to withhold rent until the landlord fulfilled his obligation, or of the rent being extinguished during the time that the landlord was in default. The Housing Act 1974 has now created criminal offences in particular

circumstances. However, we think that in the code there should not be any such special remedy or sanction for this obligation which, like the other obligations recommended in this report, would take the form of an implied covenant by the landlord.

102. In 1973 social and commercial conditions and pressure in Parliament and the press made it clear that special legislation was needed to deal with this particular problem in tenancies of houses. We thought then that the special reasons to protect house tenants emphasised the need for the distinction which we think should be drawn between provisions of a code, that embraces many different types of tenancies, and of legislation which is needed to control tenancies of particular types.

103. In spite of this trouble with many landlords of homes, the comments that we have received during consultation suggest that, in the great majority of tenancies, there is no difficulty in discovering the identity of the landlord; it is in the landlord's own interest to tell his tenant of changes; if a tenant does not know his landlord's name and address he has no difficulty in discovering it. As we have already said, we are sure that the code would be incomplete if it did not include a general provision that enabled all tenants to identify their landlords. However, we do not think there is any need for a special remedy in support of what would be an implied covenant by the landlord in every tenancy. The Government, in the Housing Act 1974, has dealt with this subject in connection with particular abuses related to tenancies of dwellings, and failure to disclose a landlord's identity is now a crime in special circumstances. We do not think that it would be appropriate in the general code governing every kind of tenancy to include a criminal offence for breach of a particular obligation of this kind.

Recommendation: the statutory provisions proposed

104. *We recommend* that every landlord should be subject to an implied overriding covenant that the tenant will be informed of the landlord's name and address when there is any assignment of the reversion and also in response to a reasonable request by the tenant (Clause 8(1)). *We also recommend that*, in cases in which the landlords are trustees or the property let is part of a composite group of buildings such as a block of flats, the covenant should contain the modifications specified in the draft legislation (Clause 8(2) and (3)).

DISCLOSURE OF TENANT'S IDENTITY

Discussion of the problem

105. We have discussed in the immediately preceding paragraphs the desirability of the landlord's notifying the tenant of any change of landlord. It is no less desirable that a tenant should notify the landlord of any change of tenant. Professionally drawn leases and tenancy agreements almost invariably contain clauses making the landlord's consent a necessary requirement for any change of tenant or providing that the assignee of the lease must notify the landlord that he is the new tenant; these arrangements will usually be sufficient to ensure that the landlord is properly informed about any change of tenant. However, the code should cover all the cases, including informal or oral agreements, where no adequate provision has been made.

106. It was suggested to us by The Law Society that this obligation should arise only on a written request for such information from the landlord. We do not accept this suggestion because we consider it is essential that the landlord should know who, at any time, is his tenant and we think it is right that he should receive this information automatically whenever there is any change of tenant. The landlord should also have the right to be given the information on making a reasonable written request for the same reasons as a landlord should answer the tenant's request. The obligation which we recommend would generally be fulfilled by complying with the terms of a carefully settled tenancy agreement or lease but any additional duty put on a tenant by the implied obligation would be reasonable.

Recommendation: the statutory provision proposed

107. *We recommend* that in every tenancy there should be an implied overriding covenant by the tenant that the landlord will be notified in writing of the name and address of the tenant after any assignment of a tenancy and also in answer to a written request reasonably made by the landlord (Clause 9).

(D) REPAIRING OBLIGATIONS: GENERAL

Introductory

108. It is particularly in relation to repairing obligations[73] that we consider the present law is inadequate. In the absence of express agreement there is in general, apart from statute, no obligation on either the landlord or the tenant to repair the premises, and disputes commonly arise because the obligations are not defined at all in the terms of the letting or are expressed either incompletely or obscurely. The present law provides insufficient protection to either party against failure of the other to carry out the kind of maintenance which fairness and common sense indicate ought to be his responsibility. In this report we deal with the questions of whether the landlord or the tenant should, in different circumstances, be responsible to do repairs, but we do not attempt to define what in detail is involved in the obligation under a covenant to repair; that is a subject which will have to be dealt with in another part of the code. The report is also limited to repairs to the premises themselves and the recommendations do not extend to the repair of chattels or furniture, nor to decoration which is not essentially part of the maintenance of the premises.

109. The code should reduce the area of possible disputes by defining the obligations of the landlord and the tenant to repair the premises when their obligations are not defined by the terms of the tenancy. The obligations that we recommend are not intended to be model forms of covenant for particular tenancies; they are in a form that could be applied to any kind of tenancy and, consequently, they cannot provide the details that must be included in specific terms of a carefully drawn lease for its particular circumstances. This object

[73]The proposals in Working Paper No. 8 with regard to repairing obligations were limited to residential lettings. We have since concluded that the code should also deal with repairing obligations in non-residential lettings. This report therefore includes certain obligations additional to those originally canvassed.

is in contrast to that of the Regulations made under the Agricultural Holdings Act 1948, referred to in paragraphs 15 above and 118 below, which set out in detail the model terms of a tenancy of an agricultural holding.

Tenant's obligations implied by existing law

110. In our *First Programme*[74] we recommended that the law on waste should be examined. This has been done as part of the work and consultation that has led to this report. So far as possible we think that a tenant's obligations under implied covenants, when there are not specific covenants, should cover his obligations for waste; leases and written tenancy agreements generally do include tenant's covenants as onerous as his obligations for waste.

111. Apart from any express term and the law of waste, every tenant is under a duty to use the premises in a tenant-like manner[75]. This is the only liability of a weekly tenant. A tenant for a term of years or from year to year is under an additional implied obligation, which has never been satisfactorily defined, but has been said to include the duty to keep the premises wind and water tight, fair wear and tear excepted[76]. The extent of a tenant's obligation to use the premises in a tenant-like manner was dealt with in *Warren* v. *Keen* by Denning L.J., who said[77]:—

> "Apart from express contract, a tenant owes no duty to the landlord to keep the premises in repair. The only duty of the tenant is to use the premises in a husbandlike, or what is the same thing, a tenant-like manner. . . . But what does 'to use the premises in a tenant-like manner' mean? It can, I think, best be shown by some illustrations. The tenant must take proper care of the place. He must, if he is going away for the winter, turn off the water and empty the boiler. He must clean the chimneys, when necessary, and also the windows. He must mend the electric light when it fuses. He must unstop the sink when it is blocked by his waste. In short, he must do the little jobs about the place which a reasonable tenant would do. In addition, he must, of course, not damage the house, wilfully or negligently; and he must see that his family and guests do not damage it: and if they do, he must repair it. But apart from such things, if the house falls into disrepair through fair wear and tear or lapse of time, or for any reason not caused by him, then the tenant is not liable to repair it."

The tenant in *Warren* v. *Keen* was a weekly tenant, but what Denning L.J., said about the meaning of the implied obligation was in general terms and not confined to weekly tenancies; it applied equally to a tenant for a term of years or from year to year. Our recommendations would clarify the doubt about the possible additional liability of a tenant for more than a weekly period by defining the obligation applicable in all tenancies.

112. Waste is a tort at common law and a tenant's obligation under the law of waste is separate from his contractual obligations under the specific terms of his contract or covenants implied by law. Waste has been defined as:—

> "a spoil or destruction to houses, gardens, trees, or other corporeal

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[74]Law Com. No. 1 (1965), p. 10.
[75]*Marsden* v. *Edward Heyes Ltd.* [1927] 2 K.B.1.
[76]*Warren* v. *Keen* [1954] 1 Q.B. 15.
[77]*ibid.*, at p. 20.

hereditaments, to the injury of the reversion of inheritance, and it has two divisions of great practical importance, voluntary waste and permissive waste."[78]

Voluntary waste is damage caused to land or buildings by a positive act of injury to the reversion. Permissive waste is damage caused by wrongful neglect or omission. A tenant for years is liable for both voluntary and permissive waste, but the distinction between his liability for permissive waste and the implied obligation referred to in the last paragraph is not clear; probably the tenant's implied obligation covers anything that would amount to permissive waste. A tenant from year to year is liable for voluntary waste but his liability for permissive waste is doubtful.

113. This report is not the place to deal in detail with the doctrine of waste. Our recommendations for implied covenants by tenants are intended to include all their obligations, when no specific terms are agreed, including obligations under the law of waste. In modern times the question of a tenant's liability for permissive waste seldom arises, because his liability for failing to repair and maintain is so often covered by the terms of the contract of tenancy and he is also liable under his duty to use the premises in a tenant-like manner. It is our intention that the liability imposed upon a tenant by our recommended implied covenants would be wide enough to cover his liability for waste and to oblige him to make good wilful damage[79].

Landlord's obligations implied by existing law

114. As regards the landlord's present duties at common law to repair the premises, the tenant's position is vulnerable. A landlord who lets premises is not generally under an obligation, implied by common law, to carry out repairs. The landlord's existing common law obligations related to the condition of let premises are no more than the following:—

(*a*) in a tenancy of a furnished dwelling there is an implied warranty by the landlord that the premises are, at the beginning of the tenancy, reasonably fit for immediate occupation[80];

(*b*) in a lease of a dwelling entered into while the house is in the course of erection, there is an implied undertaking that the house shall be fit for human habitation[81];

(*c*) when a landlord retains parts of a building he is under an obligation to take reasonable care that they are not in such a condition as to cause damage to his tenant or to the premises let[82].

Unless the tenancy agreement specifically imposes on the landlord some obligation to repair, the landlord has no other common law obligation but may be subject to the obligations imposed by the statutes referred to in paragraph 115 below. There is no covenant implied by common law that an unfurnished house or flat is fit for habitation or that it is free from dangerous defects[83]. The landlord

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[78] *Woodfall's Law of Landlord and Tenants*, 27th ed. (1968), Vol. 1, p. 680.
[79] Para. 139 below and clause 12 of the Bill.
[80] *Smith* v. *Marrable* (1843) 11 M. & W. 5.
[81] *Perry* v. *Sharon Development Co. Ltd.* [1937] 4 All E.R. 390.
[82] *Dunster* v. *Hollis* [1918] 2 K.B. 795.
[83] The position has, however, been modified by s. 4 of the Defective Premises Act 1972: see para. 116 (*e*) and paras. 128–130 below.

does not in general warrant that the premises are fit for any particular purpose and if the lease is silent about repairs the tenant must take the premises as he finds them.

115. The unsatisfactory situation for the tenant which results from the landlord's immunity from implied obligations to repair is, however, subject to a number of statutory exceptions, for example:—

(*a*) *The Housing Act* 1957, *section* 6, provides that, in any contract made on or after 6 July 1957[84] for letting a house for human habitation at a rent[85] not exceeding £52 (where the house is situated outside Greater London or in an Outer London Borough) or not exceeding £80 (where the house is situated in any other part of Greater London) there shall be implied a condition, notwithstanding any stipulation to the contrary, that the house is at the commencement of the tenancy fit for habitation and an undertaking that it will be so kept by the landlord during the tenancy. In the event of a breach of the implied condition the tenant may recover damages provided that the landlord had notice of the defect and failed to remedy it. Whether the statutory condition has been broken is a question of fact and one not always easy to determine, but the Act[86] further provides that a house shall be deemed to be unfit for human habitation if and only if it is so far defective in respect of one or more of certain conditions that by reason thereof it is not reasonably suitable for occupation[87]. In any event the foregoing condition will not be implied if the letting is for a term of not less than three years upon the terms that the tenant will put the house into a condition reasonably fit for human habitation and if the lease cannot be determined by either party before the expiration of three years.

(*b*) *The Housing Act* 1957, *section* 9, provides that a local authority, which is satisfied that any house is unfit for human habitation, is empowered to require the person having control of the house to execute such works specified by the authority as will, in the authority's opinion, render the house fit for habitation.

Once the local authority has made an order, it may under section 10 of the Act execute works of repair itself if the person having control of the premises, *i.e.*, the person receiving the rack rent, does not comply with the order. If it uses this power, the authority may recover the expense from the owner or occupier by weekly or other instalments and the occupier may deduct from his rent the instalments which he has to pay to the authority.

(*c*) *The Housing Act* 1961, *section* 32, imposes obligations on the landlord if he has let a dwelling-house, whatever its rent or rateable value may be, after 24 October 1961 for a term of less than seven years by subjecting the landlord to the following implied covenants:—

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[84]There are similar provisions relating to lettings made on earlier dates to which lower rent limits are applicable.

[85]Rent, in this context, means the gross rent payable to the landlord without deduction of any rates or other outgoings for which the tenant is liable.

[86]Sect. 4 as amended by s. 71 of the Housing Act 1969.

[87]These conditions are:— (*a*) repair (*b*) stability (*c*) freedom from damp (*d*) internal arrangement (*e*) natural lighting (*f*) ventilation (*g*) water supply (*h*) drainage and sanitary conveniences (*i*) facilities for storage, preparation and cooking of food and for the disposal of waste water.

(i) to keep in repair the structure and exterior of the house (including drains, gutters and exterior pipes); and

(ii) to keep in repair and proper working order the installations in the house:—

(*a*) for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences), and

(*b*) for space heating or heating water.

It is further provided that any express covenant to repair by the tenant shall be of no effect in so far as it relates to the above matters.

These obligations do not require the landlord to re-instate the premises if they are damaged by fire or by tempest, flood or other inevitable accident or to effect repairs necessitated by the tenant's failure to use the premises in a tenant-like manner. The parties cannot contract out of the Act but with their consent the county court may exclude or modify the repairing obligations of the landlord if it is considered reasonable to do so.

(*d*) *The Agricultural Holdings Act* 1948 provides that tenancies of agricultural holdings are controlled by the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973[88] to which we refer in paragraph 118 below.

(*e*) *The Defective Premises Act* 1972 by section 4 modifies the landlord's immunity from the consequences of failing to repair. It replaces section 4 of the Occupiers' Liability Act 1957 with wider ranging provisions. A duty of care to all persons (including the tenant) who might reasonably be expected to be affected is imposed on a landlord for defects in the state of the premises let by him which he has an obligation or right to remedy, and of which he knows or ought to know.

116. Although the Housing Act 1961 and the Regulations for agricultural tenancies do put on the landlord positive obligations to repair, they only affect dwellings let for less than seven years and agricultural premises respectively. Our recommendations are that there should be implied, so far as possible, covenants making it clear in all tenancies what a landlord should do and what a tenant should do.

Special effect of section 32 of Housing Act 1961

117. The provisions of the Housing Act 1961 are already in the nature of what in this report are referred to as overriding covenants. We incorporate these statutory provisions in our recommendations as the only overriding covenant in the obligations to repair. All the other repairing obligations would be variable. The variable implied covenants will take effect when they are not superseded by the specific terms of the tenancy, and we believe our recommendations follow the normal provisions in tenancies that are entered into without unusual circumstances. However, they would impose on the landlord the positive obligation to repair which is often not included in written agreements that include specific covenants by the tenant.

[88] S.I. 1973 No. 1473.

Agricultural holdings

(a) **The Regulations under the Agricultural Holdings Act 1948**

118. The Regulations[89] made under the Agricultural Holdings Act 1948 provide a complete and very detailed code of landlords' and tenants' obligations in tenancies of agricultural holdings. Our recommendations in this report are intended to be of general application, so far as possible, without covering the special provisions for particular kinds of premises. So far as repair and maintenance are concerned the statutory code for agricultural holdings is so complete that there is no need to superimpose the obligations recommended in this report. There cannot be any doubt about the respective responsibilities of agricultural landlords and tenants; the Regulations will always provide the answers if the actual tenancy agreement does not.

(b) **Recommendation: exclusion of agricultural holdings**

119. *Consequently we recommend* that none of the repair and maintenance covenants should apply to tenancies of agricultural holdings (Clause 25).

Standard of repair

(a) **The present position**

120. A general covenant to repair under the present law must be construed to have reference to the condition of the premises at the time when the covenant begins to operate[90]. The covenant implied by the Housing Act 1961 to repair dwellings let on short tenancies is qualified in that regard must be had to the age, character and prospective life of the dwelling-house and its locality[91]. This is the first of two general qualifications of the implied covenants for repair which we propose.

(b) **Recommendation: the statutory provision proposed**

121. *We therefore recommend* that the standard of repair required under the implied covenants should depend upon the same considerations (Clause 24(1)l)

Knowledge of defects

(a) **Discussion of the problem**

122. The other general qualification affects the landlord's obligation to repair. As the law now is, a landlord is not liable under a specific covenant to repair unless he has knowledge of the want of repair[92]. If there is an obligation implied by statute[93] that the landlord should repair, it is, similarly, a condition precedent to the liability of the landlord that he has knowledge of the defect, whether or not the landlord has a right of access to inspect the state of repair of the premises[94].

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[89]Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973 (S.I. 1973 No. 1473).

[90]*Walker* v. *Hatton* (1842) 10 M. & W. 249.

[91]Sect. 32 (3).

[92]*Makin* v. *Watkinson* (1870) L.R. 6 Ex. 25.

[93]*e.g.*, under the Housing Act 1961, s. 32.

[94]*Morgan* v. *Liverpool Corporation* [1927] 2 K.B. 131; *McCarrick* v. *Liverpool Corporation*, [1947] A.C. 219.

123. The necessity for such notice of defect, particularly a latent defect, has recently been reconsidered in *O'Brien* v. *Robinson*[95] and the previous cases were reviewed. Before 1926 it had become well established that the landlord's obligation to start carrying out work did not arise until he had information about the existence of a defect in the premises such as would put a reasonable man upon enquiry as to whether works of repair were needed. But two matters were still in doubt: the first was whether the information relied upon need necessarily have been given to the landlord by the tenant; the second was whether the need for the landlord to have the information applied at all where the defect was latent, that is to say of such a nature that the tenant did not and could not have discovered by reasonable examination that the premises were out of repair.

124. The first doubt was not discussed in *O'Brien* v. *Robinson*; in that case it was accepted that such information as the landlord had relied upon was given to him by the tenant. However, it appears that since the 1920's it has been generally accepted that actual knowledge can take the place of notice. In *Griffin* v. *Pillett*[96] Wright J. held that, if a letter from the tenant could not be relied upon as express notice of non-repair, "... the actual knowledge acquired by the lessor of the non-repair prevent(ed) him on the facts of the case setting up in answer to the lessee's claim the answer that express notice of the actual non-repair was not given to him." We certainly think that actual knowledge of the state of disrepair should be as effective as direct notice given to the landlord by the tenant.

125. *Morgan* v. *Liverpool Corporation*[97] was decided on the basis that the common law rule about notice of defects applied to all defects, latent as well as patent. Atkin L. J. said, "If in fact the tenant is not able to ascertain the defect, there seems to be no reason why the landlord should be exposed to what remains still the same injustice of being required to repair a defect of which he does not know..."[98]. This decision was inconsistent with the decision of the Divisional Court in *Fisher* v. *Walters*[99] which had earlier in the same year held that the common law rule did not apply to latent defects.

126. The House of Lords 21 years later in *McCarrick* v. *Liverpool Corporation*[100] confirmed the correctness of the decision in *Morgan's* case, but the defect in *McCarrick's* case was patent. Lord Simonds drew no distinction between latent and patent defects and said that the decision in *Fisher's* case was inconsistent with higher authority and could not stand[101]. Lord Porter expressed the view that, if latency of the defect had been in issue, *Fisher* v. *Walters* would have required to be carefully scrutinised and he concluded by expressing his agreement with the reasoning and decision of Atkin L. J. in *Morgan's* case which was on the basis that the defect was latent[102].

127. After Lord Diplock had reviewed these cases in *O'Brien* v. *Robinson*[103] he advised that it was not a case in which the House of Lords should overrule

[95][1973] A.C. 912 (See especially Lord Diplock at pp. 928–930).
[96][1926] 1 K.B. 17, 24.
[97][1927] 2 K.B. 131.
[98]*ibid.*, at p. 151.
[99][1926] 2 K.B. 315.
[100][1947] A.C. 219.
[101]*ibid.*, at p. 228.
[102]*ibid.*, at pp. 225 and 226.
[103][1973] A.C. 912, 930.

Morgan's case as expressly approved by the House of Lords in *McCarrick's* case. However, he did think that the law based on the cases on this subject during the last hundred years might easily have developed on different lines.

128. It is necessary to distinguish between two types of case where a breach of a covenant to repair may be in issue. There is first the breach where there is no consequential damage, such as personal injury or damage to property, but simply a failure to carry out the repairing obligation. In such a case there is no real problem of notice;—as soon as the tenant seeks to enforce the covenant against the landlord, the landlord necessarily has notice of the defect. Secondly, there is the breach which does result in consequential damage. In a case which concerned a breach of a covenant to repair of this kind it was suggested that "the reason why the condition that the [landlord] must not be liable unless he has notice is that, since he is out of possession . . . it would be wholly unreasonable, and, indeed, unrealistic, to hold the [landlord] liable for not having effected repairs if he did not know, and could not know, that the repairs needed doing"[104]. Nevertheless it was held that whether the defect existed at the beginning of the tenancy or not, the obligation of the landlord to repair did not come into existence until he had notice[105]. Even if the tenant had succeeded in proving that the defect ought to have been known to the landlord before the tenant took possession, he would have failed in that action without proof that the landlord had actual knowledge of the defect.

129. The overall liability of landlords for personal injury and damage to property resulting from defects in property was, however, examined in our *Report on Civil Liability of Vendors and Lessors for Defective Premises*[106]. The result of our recommendations in that report was the Defective Premises Act 1972 which came into force on 1 January 1974, after the House of Lords had heard the appeal in *O'Brien* v. *Robinson*[107]. By section 4(1) of the Act a landlord who is under an obligation to a tenant to repair premises owes to all persons who might reasonably be expected to be affected by defects in the state of the premises a duty to take such care as is reasonable in all the circumstances to see that they are reasonably safe from personal injury or from damage to their property. By section 4(2) this duty is owed if the landlord knows (whether as the result of being notified by the tenant or otherwise) or if he ought in all the circumstances to have known of the defect. This last phrase—"he ought in all the circumstances to have known"—is a wider condition than the notice or actual knowledge which is a condition of a landlord's liability under a covenant to repair. This right to sue a landlord in tort under section 4 of the Defective Premises Act 1972, which is available to a tenant as well as to other people who are injured or whose property is damaged, now provides a remedy against the landlord in most cases in which damages occur as a result of a defect in the repair of premises for which the landlord is responsible. A plaintiff under the Act does not have to prove that the landlord had actual notice of the defect; it is sufficient to prove that he ought in all the circumstances to have known of it.

130. We have considered whether the same condition about notice ought also to apply in an action for breach of the landlord's covenant to repair, where

[104]*Uniproducts (Manchester) Ltd.* v. *Rose Furnishers Ltd.* [1956] 1 All E.R. 146 *per* Glyn-Jones J. at p. 148 referring to *Murphy* v. *Hurly* [1922] 1 A.C. 369.
[105]*ibid.*, at p. 149.
[106]Law Com. No. 40 (1970) H.C. 184.
[107][1973] A.C. 912.

damage has resulted from the breach. We think that, if actions on a covenant to repair and under the Defective Premises Act 1972 were in this respect put on the same footing, there would be incidental results which might be undesirable. We are concerned with a situation in which the landlord is under a covenant to repair and there is a defect in the premises, resulting in damage to property or personal injury, where the defect was not known but ought to have been known to the landlord. If the tenant were able in these circumstances to sue the landlord on the covenant to repair, the landlord would not be able to claim a reduction in damages by reason of any contributory negligence on the part of the tenant; on the other hand, if the tenant could only sue in tort under the Defective Premises Act 1972 he would be liable to suffer a reduction in damages for any contributory negligence on his part. In this type of case we think the latter is the more satisfactory result. Furthermore, in the envisaged situation, if the tenant is held liable in tort to a third party who suffers damage or personal injury, and the landlord is liable under the Act to that third party, this will make him a joint tortfeasor with the tenant and the damage or injury suffered by the third party could be equitably divided between the landlord and tenant; if the landlord is to be also liable to the tenant under the covenant to repair, the covenant will provide an indemnity to the tenant in respect of his liability to the third party, without regard to his share of the blame. Without prejudice to the provisions concerning notice as it affects liability under the Act, we think therefore that the law governing notice in respect of liability under a landlord's covenant to repair should remain unchanged.

(*b*) Recommendation: the statutory provision proposed

131. *We therefore recommend* that any obligation of a landlord to repair that is implied by the Bill should be conditional on his having actual knowledge, from notice given by the tenant or from any other source, of the defect (Clause 24(2)).

Distribution of repairing obligations between landlords and tenants

(*a*) Obligations to depend on the length of the term

132. We consider that the repairing obligations should be determined in relation to the length of the letting and the nature of the premises. We base our recommendations on the following different classes:—

(*a*) all residential lettings for less than 7 years;

(*b*) furnished residential lettings up to 20 years;

(*c*) all other lettings up to 20 years (including unfurnished residential lettings for 7 years or more);

(*d*) all lettings whether residential or not for over 20 years.

We also consider that the distribution of the liability between landlords and tenants that we recommend is in general accord with custom prevailing in modern tenancies which are not affected by unusual circumstances. But once more we emphasise that the landlord's covenants to repair which would be implied by the Bill are often omitted from written agreements and leases; the documents may not contain any covenant to do repairs which it is well known will not be done by the tenant and are expected to be done by the landlord.

133. We have chosen these periods of 7 and 20 years for the following reasons:—

(*a*) It is clear that it is usually inappropriate for a tenant to be made

responsible for repairing the building in lettings for not more than 7 years. "Less than 7 years" is the period specified in the Housing Act 1961 which results in the covenant by a lessor to repair being implied under section 32 of that Act. It is obviously convenient that the period referred to in the obligations in the code should be the same as the existing statutory period[108].

(*b*) The decision to change the obligation at 20 years is in a sense an arbitrary one. We have been told by practitioners that they attach no special significance to the traditional term of 21 years, when considering the terms of a lease affecting such things as the amount of rent and the detailed responsibility for repair and maintenance. However, the period of 21 years may be of vital significance for other reasons, such as the effect of statutes[109]. It appears to have been the general practice, where there were no special circumstances, for tenants to be expected to take full responsibility for repairs if they had terms of 21 years or more. Surveyors told us that the modern tendency is for terms and, even more so, for rent review periods to be calculated in 5 and 10 year periods rather than 7, 14 and 21 years. In proposing new statutory obligations we think there is some merit in the new obligations being related to the simple period of 20 years as distinct from the historical period of 21 years.

Consequently we recommend particular repairing obligations in the form described in the following paragraphs.

(*b*) Ascertaining the length of the term in special cases

134. If there are to be different obligations for lettings for terms "of less than 7 years", "not exceeding 20 years" and "of more than 20 years", there must be no doubt about the length of a term for this purpose. We think there should be specific provisions in the Bill for ascertaining the term for the purpose of these implied covenants for repair and maintenance. A lease might be expressed to be for a term of 21 years from a date earlier than the actual grant of the lease; if the 21 year term was due to expire in less than 20 years from when it actually took effect, we consider that it should not, for the purpose of these covenants, be a term "of more than 20 years"[110]; for these purposes the term should be calculated from the date when the tenant was actually granted his interest in the property to the date when the term expires. However long a periodic tenancy may continue, the length of the term should be determined by the period for which the tenant had security of tenure by the terms of the tenancy at the time it was granted. If the landlord has the right to end a term, then for the purposes of these covenants the term should be no longer than the shortest period to which the landlord can confine the term. Correspondingly, if the tenant has the right to extend the term, and the landlord cannot shorten it, then the period of the extension should be added to the initial term.

(*c*) Recommendation: statutory rules for ascertaining the length of the term

135. *We therefore recommend* that, in order to ascertain the length of terms

[108]Sect. 32 of the Housing Act 1961, as qualified by s. 33(3) does not apply to all residential lettings for less than 7 years. Clause 11(1) (2) and (3) of the Bill would re-enact the provisions of this subsection. However, for clarity of explanation in this report it is convenient to adopt the straightforward classification of lettings "for less than 7 years."

[109]*e.g.*, Leasehold Reform Act 1967, s. 3(1).

[110]See *Cadogan (Earl)* v. *Guinness* [1936] Ch. 515.

for the purposes of the implied covenants to repair:—

(*a*) if a tenancy is granted for a term beginning from a date before the actual grant, the length of the term should be calculated from the date when it was actually granted;

(*b*) if the landlord has the right to end the tenancy, it should be assumed that his right will be exercised as soon as available; and

(*c*) if the tenant has the right to renew the tenancy for any period then, subject to his landlord's right to end the term, that period should be added to the original term (Clause 22).

(E) SPECIFIC REPAIRING OBLIGATIONS

Introductory

136. All the obligations to repair and maintain premises which we propose would be variable covenants with the single exception of the first covenant referred to in paragraph 137, *i.e.*, a landlord's obligations to repair and maintain a dwelling let on a short tenancy which, under existing statute law, are imposed in such a way that the parties cannot themselves vary them. These obligations would be continued as overriding covenants and we propose to consolidate the provisions in our Bill.

OVERRIDING LANDLORD'S COVENANT

Short tenancies of dwelling-houses

(*a*) **The present position**

137. Normally the responsibility to repair dwelling-houses let on short tenancies has been borne by the landlord, although there was not often a specific covenant by a landlord. Now there is the statutory obligation under section 32 of the Housing Act 1961 which is in the nature of an overriding covenant.

(*b*) **Recommendation: the statutory provision proposed**

138. *We recommend* that the section should be re-enacted as part of a single system of implied repairing covenants covering all tenancies. This would be an overriding covenant by the landlord to repair the structure and exterior of a dwelling let for a term of less than 7 years. The detailed description of the installations to be kept in repair and proper working order would be the same as in the Housing Act 1961 (Clause 10). The covenant would apply, as the Housing Act provision does, to all dwellings regardless of size, rent or rateable value. The existing provisions of section 33 should also be re-enacted (Clause 11). In particular we draw attention to the provision which now enables the county court to make an order excluding or modifying the provisions. Under our proposals this would not alter the nature of the overriding covenant so that it became a variable one. The county court with the consent of the parties would be able to vary the covenants, but the parties themselves could not do so. The landlord's responsibility is limited to the structure and exterior of the dwelling-house and the installations in it; the tenant's liability is defined in Clauses 7 and 12. In this particular case neither party would be under an implied statutory covenant to repair what is not the structure, exterior or specified installations and what is not the tenant's responsibility. This is the present

position under the provisions of the Housing Act 1961 with the result that it leaves the only gap that is not filled by our recommendations which in all other cases impose a positive obligation on the landlord or the tenant for every possible repair to the premises.

VARIABLE COVENANTS

Care of premises by tenant

Recommendation: the statutory provision proposed

139. *We recommend* that, to cover the present implied obligation of tenants and to include what would now be grounds for an action in tort for waste, in every tenancy there should be a variable covenant by the tenant to take proper care of the demised premises as a good tenant, to make good wilful damage and not to make alterations to the detriment of the interest of the landlord (Clause 12). It is intended that the landlord should have the right to sue in contract on the implied covenant, so that it should not be necessary for him to sue for waste[111].

Landlord's repairs: lettings of furnished dwelling up to 20 years

(*a*) Discussion of the problem

140. We consider that the circumstances in which a furnished—as opposed to an unfurnished—dwelling is let generally justify a different distribution of the responsibility for repairs and we think that in any but unusually long leases landlords are normally responsible for all repairs of houses let furnished. The warranty now implied by common law is that furnished dwellings are fit for human habitation at the beginning of the tenancy[112]. Any implied statutory covenant should cover the existing obligation and any doubt about the length of furnished tenancies to which it applies would be clarified by specifically applying it to all furnished tenancies for not more than 20 years. If the letting is for less than 7 years the overriding covenant by the landlord, which is limited to repairs to the structure and exterior of the premises and particular installations, re-enacted on the recommendation in paragraph 138 above, would also apply whatever the other terms of the furnished letting might be.

(*b*) Recommendation: the statutory provision proposed

141. *We therefore recommend* that, in every tenancy of a furnished dwelling for a term not exceeding 20 years there should be an implied, but variable, covenant by the landlord to keep the entirety of the premises in repair (Clause 13). The tenant, as in all other tenancies, would remain under the obligation recommended in paragraph 139 above.

142. *We also recommend* that, in the most unusual circumstances of a lease of a furnished house for over 20 years, the tenant's implied obligation should be the same as in a tenancy of an unfurnished house. It is most unlikely that such a tenancy would exist without a full agreement or lease and we think that a tenant in such circumstances need have no more protection than a tenant of another kind of property held for over 20 years.

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[111]See paras. 110–113 above.
[112]See para. 114 above.

Landlord's and tenant's repairs: all other lettings up to 20 years

Recommendation: the statutory provision proposed

143. *We recommend* that, subject to the special recommendations for lettings of dwellings for less than 7 years and of furnished dwellings for up to 20 years, in every other tenancy for a term not exceeding 20 years the landlord shall be responsible for the repair of the structure and exterior of the premises, and the tenant for all other parts of the premises. Unlike the two special recommendations, this recommendation is not confined to dwellings and would apply to short lettings and furnished lettings of premises that are not dwellings. These would be covenants that could be varied by agreement between the landlord and tenant. The recommendation in this paragraph is dealt with by Clause 14.

Tenant's repairs: lettings over 20 years

(*a*) Discussion of the problem

144. The tenancies that are not already dealt with by the recommendations in the preceding paragraphs are all lettings over 20 years, whether they be of dwellings or not, furnished or unfurnished. Leases for 21 years and longer rarely leave any obligations on the landlord and are normally "full repairing leases" with specific covenants by the tenant to do all repairs.

(*b*) Recommendation: the statutory provision proposed

145. *We therefore recommend* that, in these long lettings in the absence of express agreement, the entire responsibility for repairs of the premises should be imposed on the tenant, even if, as we mentioned in paragraph 140 above, the premises are furnished dwellings (Clause 15).

Qualification of repairing covenants

(*a*) Discussion of the problem

146. In the Housing Act 1961 the landlord's obligation to repair is qualified by a provision[113] relieving him from any liability for—

(*a*) work that is the tenant's liability under his duty to use the premises in a tenant-like manner,

(*b*) rebuilding the premises after destruction, or

(*c*) repairing anything that the tenant is entitled to remove.

We consider that corresponding qualifications should be applied to all the repairing covenants that would be implied as a result of our recommendations. Rebuilding after destruction and repairing tenant's fittings and fixtures should no more be a tenant's obligation under his covenant to repair than a landlord's. To complement the first qualification it should be made clear that a tenant's obligation under the recommended implied covenants to repair should not overlap a landlord's obligations to repair the structure and common parts when the tenancy is of part only of a building.

(*b*) Recommendation: the statutory provision proposed

147. *We recommend* that all the repairing covenants by the landlord and the tenant that would be implied as a result of the recommendations in paragraphs 138, 141, 143, 145 and 149 (Clauses 10, 13, 14, 15 and 16 of the Bill) should be qualified on the lines of section 32(2) of the Housing Act 1961 (Clause 23).

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[113] Sect. 32(2).

Landlord's obligations: tenancies of parts of buildings

(a) **Discussion of the problem**

148. In our working paper[114] we suggested that, in all lettings comprising parts of buildings, the landlord should be under an obligation to maintain common services, common parts of the building and the means of access. It was also suggested that, as the use of these services and the parts of the building that were not part of premises let exclusively to a tenant were essential to the enjoyment of the premises, the landlord should be under an invariable obligation. The landlord is now subject to the limited obligation implied by common law to maintain parts of a building retained by him, but that is not an invariable obligation[115]. The Working Party agreed that in most cases the satisfactory practical solution would be for the maintenance of the common parts and services of a building in multiple occupation to be the liability of the landlord. We have, however, been convinced by the strong views put to us by those consulted on the working paper that to make this an invariable obligation on the landlord would produce an undesirably inflexible position and could be unworkable in practice. The main reasons given for making this a variable obligation are as follows:—

(a) the concept of making this a mandatory obligation upon a landlord could not, in practice, work in the context of sub-leases of parts of buildings;

(b) properties may be occupied by several tenants and it may prove convenient, cheap and practical for the tenants to look after the common parts of the premises by agreement with the landlord who may, for good reasons, be unable to do so himself;

(c) there are many examples of small properties let to only two or three tenants, where the landlord lets to one of such tenants the parts of the building that are used in common on the understanding that that tenant will maintain those parts for the benefit of all;

(d) there are cases where both the landlord and tenant are content that the common parts need not be maintained by either party. This may be an unusual situation, but if this were a variable obligation the responsibility for the common parts could be expressly excluded.

(b) **Recommendation: the statutory provision proposed**

149. *We therefore recommend* that there should be a landlord's variable covenant to repair the structure and exterior of the building, to keep in good order and condition any part of the building or curtilage that the tenant is entitled to use and to ensure that any facilities to be provided by the landlord are maintained (Clause 16).

150. The obligation is not intended to prevent the landlord making a charge for services[116] that he provides; but if there were no specific provision for such a charge, the services and maintenance would have to be provided on payment of the rent alone. As this would be a variable covenant it would not prevent an

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[114]Working Paper No. 8 (1967) p. 12.

[115]See para. 114 above.

[116]The Housing Finance Act 1972, by ss. 90 and 91 and s. 91A (added by the Housing Act 1974), controls some service charges for flats.

agreement by which the landlord and tenant both divested themselves of responsibility for repairs, maintenance and services by setting up a maintenance company for the purpose. This is an increasingly common method of dealing with this problem in blocks of flats.

Maintenance by landlord of means of access

(*a*) Discussion of the problem

151. Under the present law a tenant who has access to his premises over land in the possession or control of the landlord has no right to require the landlord to maintain the route or means of access. This is a necessary provision when the premises let are not a part of a building and the obligation included in the recommendation in paragraph 149 above would not be implied.

(*b*) Recommendation: the statutory provision proposed

152. *We therefore recommend* that in such circumstances the landlord should be under a variable obligation to keep the route or means of access safe and fit for use (Clause 17).

Maintenance by landlord of support and shelter

(*a*) Discussion of the problem

153. In every tenancy of a building or part of a building which enjoys support or shelter from any other part of the building or from other buildings, it is important that someone should be responsible for maintaining the support or shelter. Normally the supporting and sheltering part of a building will belong to or be under the control of the landlord. An obligation could only be extended to other buildings if the landlord himself had the right to support or shelter for the benefit of the premises. In normal circumstances it would be the landlord who would maintain the supporting or sheltering building and unless there is some other specific agreement, we think that this obligation should fall on the landlord. The implied covenant should be limited to premises in the possession or control of the landlord and to premises from which the landlord has the right of support or shelter for the benefit of the premises that were the subject of the tenancy. It should not extend to making good loss of support or shelter that was the fault of the tenant or a sub-tenant.

154. In a formal lease a landlord should grant to a tenant express rights to enjoy support and shelter, and he should covenant to repair the structure that supports and shelters the premises let. However, if there are no such specific obligations, the rights implied by law do not provide sufficient protection to the tenant. A tenant may enjoy a right such as an easement of support, and the law will readily imply the grant of such easements as may be necessary to give effect to the common intention of the parties with reference to the manner or purpose in and for which the land granted is to be used[117]. However, such a right of support implied on the grant of part of a building does not impose a positive obligation on the owner of the servient tenement to repair his supporting building; he may let it fall into decay; what he is not entitled to do is to remove the support without providing an equivalent[118]. Although part of a

[117] *Pwllbach Colliery Co. Ltd.* v. *Woodman* [1915] A.C. 634, 646.

[118] *Bond* v. *Nottingham Corporation* [1940] Ch. 429 *per* Sir Wilfrid Greene M.R. at pp. 438 and 439.

building may be entitled to an easement of support, the law does not recognise any corresponding easement of shelter[119]. The need of such shelter is recognised by the Public Health Act 1961: section 29 authorises local authorities to require a person undertaking the demolition of a building to protect adjacent buildings in various ways including weatherproofing exposed buildings. The London Building Acts 1930 to 1939 contain detailed provisions for both support and shelter in particular circumstances.

155. Working Paper No. 36 on Appurtenant Rights, which we published in 1971, exposed the shortcomings of the present law and suggested that there should be general statutory obligations attaching to property in multiple occupation and to adjoining buildings dependent on one another. If in the future there are reforms as a result of our proposals put forward for discussion by that working paper, the tenant's situation would be improved.

156. However, the law of implied rights to easements, the statutory provisions which we have referred to and our own proposals for reform of the law on appurtenant rights all apply to property generally and not particularly to the relationship of landlord and tenant. A tenant can reasonably expect that there should be more definite obligations for support and shelter from his landlord than from other neighbouring owners or occupiers and that there should be implied obligations on a landlord who has not entered into specific covenants for support and shelter in his lease or tenancy agreement.

(*b*) Recommendation: the statutory provision proposed

157. *We therefore recommend* that in any tenancy of premises that enjoy support or shelter there should be an implied variable covenant by the landlord to maintain the support or shelter, qualified as suggested in paragraph 153 (Clause 18).

(F) OTHER VARIABLE COVENANTS

Entry and inspection

(*a*) Discussion of the problem

158. A landlord needs the right to inspect the premises to enable him to deal with repairs that are his responsibility and to ascertain whether they are properly done when they are the tenant's responsibility.

159. Under the existing law a tenant is under an obligation to permit the landlord to enter and view the state of repair of the premises in cases where the landlord is entitled to repair them under an express covenant[120] or under an implied covenant[121].

160. The landlord also has a statutory right to enter and view the premises in certain other cases such as those provided for by section 17 of the Agricultural Holdings Act 1948, section 10 of the Landlord and Tenant Act 1927, section 6(3) of the Housing Act 1957, and section 32(4) of the Housing Act 1961.

161. In cases where the duty to repair falls upon the tenant and not upon the landlord, the landlord has no right to enter the property, however good

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[119] *Phipps* v. *Pears* [1965] 1 Q.B. 76.
[120] *Saner* v. *Bilton* (1878) 7 Ch.D. 815.
[121] *Mint* v. *Good* [1951] 1 K.B. 517.

his practical reasons, unless rights are granted by statute or by specific agreement. He has given the tenant the right of exclusive occupation and any right of entry must be reserved to the landlord. Clearly, a landlord should always be entitled to inspect premises to ensure that the tenant is complying with his obligations to look after the premises. It is almost as important as his right to enter to inspect when he himself has the right or obligation to repair.

(*b*) Recommendation: the statutory provision proposed

162. *We recommend* that there should be an implied tenant's covenant permitting the landlord and those authorised by him to enter the premises to inspect and repair (Clause 19). The landlord's right could only be exercised at reasonable times and on reasonable notice. This would not be an invariable obligation. Although we do not think that a landlord and tenant will ever want to arrange specifically that a landlord should have no right to enter for these purposes, there is no need for the terms of the covenant to be inflexible. They might want, in special circumstances, to limit inspections to times which, in normal circumstances, might not be reasonable. The generality of the implied covenant ought not to prevail over any special terms which the parties incorporate in an agreed form of covenant.

Making good after work or inspection

Recommendation: the statutory provision proposed

163. *Finally, we recommend* that, as a last step in these obligations of a landlord to repair and of a tenant to permit his landlord to enter, there should be an implied landlord's covenant to make good any damage to the premises resulting from the work or inspection (Clause 20). This will also be a variable covenant. It may suit a tenant to agree with his landlord to take over this responsibility when, for example, the tenant is himself doing work on the premises at the same time as the landlord.

Outgoings

(*a*) Discussion of the problem

164. By "outgoings" we mean rates and taxes and other payments, whether recurrent or not, imposed by law on premises and also the cost of doing improvements or other works at the premises that are required by law. It is not suggested that the respective legal liabilities of landlords and tenants need any radical reform; nearly all outgoings are payable under some statutory authority. However, these payments are of such importance to those who own and occupy property that we are quite certain that any codification of landlord and tenant law should include some provision about the incidence of the liability.

165. Most of the existing law about payment of outgoings deals with the rights of the authority entitled to the money or entrusted with the responsibility of ensuring that the work is done; it does not necessarily deal with the relationship between landlords and tenants. We think that it should be as clear as possible, as between a landlord and tenant, who should pay outgoings when the specific terms of the tenancy or the law governing the liability for the outgoings is not clear.

166. The first principle of general rates is that it is the occupier of property

who is liable to be assessed for rates[122]. There is nothing to prevent a landlord and a tenant agreeing that the landlord shall pay rates; it is normal in tenancies of small houses for tenants to pay an "inclusive" rent, that is including the rates that are paid by landlords out of the "inclusive" rent. The General Rate Act 1967 contains provisions[123] which enable rating authorities to rate owners, instead of occupiers, of classes of property of low rateable value. Nevertheless, in general, rates are payable to rating authorities by occupiers. The same is true of water rates[124] and occupiers' drainage rates[125]. Landlords are liable only when there are specific agreements with their tenants or when there are statutory provisions. In other cases tenants are normally liable to the rating authorities.

167. Most other outgoings are probably paid for the benefit of the premises as such, and not for services provided to the occupiers; they will often be in the nature of capital investment in the premises. It has become the general custom for leases and tenancy agreements, except for short tenancies of modest premises, to include tenants' covenants to pay all outgoings. If there is such an obligation in the documents the tenant knows his liability, but he cannot anticipate what outgoings may become payable in the future, and he may find himself paying money more for the benefit of his landlord than for himself. This is probably the reason why there is a tendency for modern statutes to place some obligations upon the owner, notwithstanding any contract to the contrary. We have studied the provisions of statutes[126] that impose the liability for outgoings on owners, or apportion it between owners and occupiers. Some quite clearly override contracts made between landlords and tenants; others give discretion to the courts or tribunals that should result in specific agreements and implied general obligations being taken into account when the discretion is being exercised.

168. It appears to us that the law imposing such outgoings does, in most cases, put the liability specifically on an owner or an occupier, or make provision for apportionment between them. However, there may be gaps, and future legislation may not always make the necessary provision. We think that the position should be made clear, as between the landlord and tenant, and that when there is no other provision the landlord should pay outgoings and be under an obligation to the tenant to do so.

(*b*) Recommendation: the statutory provision proposed

169. *We recommend* that there should be implied variable covenants:—

(*a*) on the tenant to bear the general rate, the water rate and any occupiers' drainage rate, and

(*b*) on the landlord to bear all other outgoings.

There is one exception from (*b*) which should be transferred to the tenant: that is any outgoing payable in consequence of the use of the premises by the tenant for a particular purpose (Clause 21).

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[122] General Rate Act 1967, s. 16.
[123] Ss. 55 ff.
[124] Water Act 1945, s. 38.
[125] Land Drainage Act 1930, s. 24(2).
[126] Examples are set out in Appendix 5.

PART IV: APPLICATION TO THE CROWN

Application clause to be added after consultation

170. We consider that our recommendations in this report, and generally in our work in codifying landlord and tenant law, should apply to the Crown as landlord and as tenant. We have discussed this informally with the Treasury Solicitor and the Department of the Environment but have not at this stage included a Crown application clause in the draft Bill in Appendix 1. Such a clause should be added after full consultation, before the introduction of legislation resulting from our recommendation.

(*Signed*) SAMUEL COOKE, *Chairman.*
CLAUD BICKNELL.
AUBREY L. DIAMOND.
DEREK HODGSON.
NORMAN S. MARSH.

J. M. CARTWRIGHT SHARP, *Secretary.*

8 *April* 1975.

APPENDIX 1

Draft Landlord and Tenant (Implied Covenants) Bill

ARRANGEMENT OF CLAUSES

Preliminary

Clause
1. Application, interpretation and extent.
2. Overriding covenants.
3. Variable covenants.

Overriding covenants: all tenancies

4. Possession.
5. Quiet enjoyment.
6. Rent.
7. Protection of premises.
8. Disclosure of landlord's identity.
9. Disclosure of tenant's identity.

Overriding covenant: short residential tenancies

10. Repairs under short tenancy of dwelling-house.
11. Application of section 10 and supplementary provisions.

Variable covenants for use, repair and maintenance

12. Care of premises by tenant.
13. Landlord's repairs: furnished lettings up to 20 years.
14. Landlord's and tenant's repairs: lettings up to 20 years.
15. Tenant's repairs: lettings over 20 years.
16. Landlord's obligations: tenancies of parts of buildings.
17. Maintenance by landlord of means of access.
18. Maintenance by landlord of support and shelter.

Other variable covenants

19. Entry and inspection.
20. Making good.
21. Outgoings.

General provisions as to covenants for repair etc.

22. Ascertainment of term of tenancy.
23. General qualifications.
24. Standard of repair and notice of disrepair.
25. Exclusion of agricultural holdings.

Supplemental

26. Repeals.
27. Short title and commencement.

DRAFT

OF A

BILL

TO

CODIFY certain obligations implied by the law of England in the relationship between landlord and tenant, and enact additional standard obligations to be so implied.

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:—

Preliminary

Application, interpretation, and extent.

1.—(1) The following provisions of this Act apply to tenancies created after the commencement of this Act and replace, in such tenancies, any covenant or obligation of the same nature which would otherwise be implied by the common law on the part of the landlord or the tenant.

(2) In this Act "tenancy" means a lease, under-lease and any other tenancy (but not a mortgage); "contract of tenancy" means a deed instrument or transaction effective at law or in equity to create a tenancy, and includes any agreement collateral to any such deed, instrument or transaction; and "structure and exterior" includes drains, gutters and external pipes.

(3) This Act extends to England and Wales only.

EXPLANATORY NOTES

Clause 1

1. *Subsection* (1). The provisions of the Act will apply only to tenancies created after its commencement.

2. The covenants implied by the Bill will replace in all such tenancies any covenant or obligation of the same nature which would otherwise have been implied by the common law on the part of a landlord or a tenant. Such covenants and obligations are referred to in paragraphs 7 and 8 of the report.

3. *Subsection* (2) defines "tenancy" and "contract of tenancy". It also provides that the expression "structure and exterior" includes drains, gutters and external pipes. At a later stage it is intended to include in the code a comprehensive definition of "structure and exterior" and to include provisions as to what parts of a building will, in the absence of express provision, be included in the demise of part only of a building.

4. *Subsection* (3). The Act will not extend to Scotland or to Northern Ireland.

Overriding covenants.

2. A covenant directed by this Act to be implied as an overriding covenant has effect notwithstanding any provision of the contract of tenancy; and any term of that contract is void in so far as it purports—

(*a*) to exclude or limit the obligation of the landlord or tenant, as the case may, under the covenant (whether expressly or by imposing a more limited obligation on the same party or an obligation on the other party or otherwise by implication); or

(*b*) to authorise any forfeiture or impose on the tenant or landlord any penalty or disability in the event of his enforcing or relying on the covenant, or any obligation to reimburse the cost of complying with it.

EXPLANATORY NOTES

Clause 2

This clause (with Clause 3) gives effect to the distinction drawn in paragraph 11 of the report between mandatory obligations and other implied obligations. The former are described in the Bill as "overriding covenants". They differ from the covenants implied by the common law as it now stands in that they are not to be displaced by express provision to the contrary in the contract of tenancy nor by more restricted covenants relating to the same subject matter (paragraph (*a*)). The clause is designed also to ensure against indirect methods of escaping from the burden of the covenant (paragraph (*b*)). An existing statutory precedent to the same effect is to be found in section 32(1) of the Housing Act 1961.

The covenants to which this clause applies are those of the landlord under Clauses 4, 5, 8 and 10 and those of the tenant under Clauses 6(1), 7 and 9.

Variable covenants

3. A covenant directed by this Act to be implied as a variable covenant may be excluded or modified by express provision in the contract of tenancy, or by necessary implication from any such express provision (including in particular any express covenant by either party relating to the same subject-matter).

EXPLANATORY NOTES

Clause 3

See note on Clause 2 above. The covenants implied by the Bill other than those creating mandatory obligations are described as "variable covenants". These may be excluded or modified in the same way as the covenants now implied by the common law.

The covenants to which this clause applies are:—

(*a*) those of the landlord under Clauses 13, 14(*a*), 16, 17, 18, 20 and 21(1)(*b*);

(*b*) those of the tenant under Clauses 12, 14(*b*), 15, 19 and 21(1)(*a*).

Overriding covenants: all tenancies

Possession.

4.—(1) In every tenancy there is implied, as an overriding covenant, a covenant by the landlord that the tenant shall have possession on the day on which the tenancy commences or such other day as may be specified in the contract of tenancy.

(2) In this section "possession" means vacant possession or, as the case may require, receipt of rents and profits.

EXPLANATORY NOTES

Clause 4

1. This clause implements the recommendation in paragraph 61 of the report.

2. *Subsection* (1). This subsection imports into every tenancy an overriding covenant by the landlord to give the tenant possession on the appropriate day. This is merely a re-statement of the existing law which requires a landlord to put the tenant into possession.

3. Where a formal lease is entered into, the term may be expressed to commence:–

(*a*) on a specified day before the actual grant; or

(*b*) on the day of the actual grant; or

(*c*) on a specified day after the actual grant.

4. In the cases mentioned in paragraphs 3(*b*) and 3(*c*) above the day of the actual grant or the specfied day after the actual grant, as the case may be, will be the day on which the tenant must be allowed to take possession. In the case mentioned in paragraph 3(*a*) above the tenant must be allowed to take possession on the day of the actual grant.

5. *Subsection* (1) relates both to a "tenancy" and to a "contract of tenancy" which expressions are defined in Clause 1(2). Parties may enter into an agreement to grant a tenancy at a future date. Such an agreement may provide that buildings are to be erected or that the prospective tenant is to investigate and satisfy himself as to his prospective landlord's title before the tenancy is actually granted. Further there may be a variety of other terms to be fulfilled before the tenancy is actually granted.

6. Until the agreement is fulfilled by the grant of the tenancy or becomes presently enforceable in equity, there is no tenancy. The covenant does not operate at this stage. If and when the agreement is fulfilled or becomes enforceable, there is a legal or equitable tenancy in which the covenant is implied, and the lease (or as the case may be the original enforceable agreement) is the contract of tenancy which determines the date on which the tenant is entitled to possession.

7. *Subsection* (2). This subsection defines "possession" and its effect is that under subsection (1) the tenant must be allowed to have vacant possession on the appropriate day of the premises or any part of them of which the parties have agreed that vacant possession shall be given. In cases where there is no such agreement the tenant is entitled to receive the rents.

Quiet enjoyment.

5.—(1) In every tenancy there is implied, as an overriding covenant, a covenant by the landlord that the tenant shall peacefully hold and enjoy the demised premises for the purposes of the tenancy during the term expressed to be granted without interruption by the landlord or by any person lawfully asserting or enforcing a title or right (whether derived from or superior to the title of the landlord) to or in respect of the premises.

(2) This covenant does not extend to interruption—

(*a*) by the landlord or any other person in the exercise of any right or the performance of any obligation conferred or imposed on him by the contract of tenancy or by or under any enactment;

(*b*) by any person other than the landlord in consequence of a defect in the title of the landlord of which the tenant had notice, or of which the landlord had not notice, at the time of the grant of the tenancy.

EXPLANATORY NOTES

Clause 5

1. This clause implements the recommendations in paragraph 62 of the report.

2. *Subsection* (1) imports into every tenancy an overriding covenant by the landlord that the tenant shall peacefully hold and enjoy the demised premises for the purposes of the tenancy during the term expressed to be granted without interruption by the landlord or by any person lawfully asserting or enforcing a title or right to or in respect of the premises.

3. This covenant replaces the covenant for quiet enjoyment at present implied in tenancies by the common law but, as it is an overriding covenant, it will not be displaced by any express covenant with a more limited effect; the landlord cannot exclude or limit his obligation under this covenant.

4. The covenant differs from the existing common law covenant in that it extends to interruption not only by the landlord and those deriving title under him but also by any person whose title to or right in respect of the premises is superior to the title of the landlord.

5. *Subsection* (2) (*a*) provides that the covenant implied by subsection (1) is not to extend to interruption by the landlord or any other person in the exercise of any right or the performance of any obligation conferred or imposed on him by the contract of tenancy or by or under any enactment.

6. Accordingly, subsection (1) will not extend to interruption by the landlord or any other person if they enter the premises to carry out repairs or other works to the premises or to adjoining property which under any express or implied term of the tenancy they have a right or obligation to carry out. Nor will subsection (1) extend to disturbance caused by inspection of the property under the provisions of Clause 19. Furthermore disturbance caused by the carrying out of obligations imposed by statute (for example, work necessary to render a dwelling-house fit for human habitation under section 9 of the Housing Act 1957 or the construction of means of escape in case of fire under the Fire Precautions Act 1971) will not be a breach of the covenant in subsection (1).

7. Dispossession of the tenant in consequence of the exercise by any competent authority of powers of compulsory purchase will not be a breach of the covenant implied by subsection (1); the tenant would be entitled to compensation if his interest is purchased by such authority.

8. *Subsection* (2) (*b*) provides that the covenant implied by subsection (1) does not extend to interruption by persons other than the landlord in consequence of a defect in the title of the landlord of which the tenant had notice or of which the landlord had not notice at the time of the grant of the tenancy. "Notice" is defined in subsection (4) and is referred to in the succeeding paragraphs.

(3) In this section "interruption" includes dispossession and disturbance and also, in relation to the use of the premises for the purpose of the tenancy, the enforcement of any restriction affecting that use; "purpose of the tenancy" means any purpose specified as such in the contract of tenancy or known to the landlord at the time of the grant as that for which the tenancy is taken by the tenant and where two or more purposes are so specified or known includes any of them; and "defect in the title of the landlord" includes—

(*a*) lack of any title to the demised premises;

(*b*) lack of an estate or interest in those premises sufficient in duration (in any event) to support the tenancy for the whole of its term;

(*c*) lack of power to grant the tenancy, or any condition or restriction affecting the power to grant it;

(*d*) any liability to forfeiture or re-entry by virtue of a breach of covenant or condition committed before or subsisting at the time of the grant of the tenancy;

(*e*) any restriction affecting the use of the demised premises for the purpose of the tenancy; and

(*f*) any easement or right over or against those premises.

Clause 5 (*continued*)

9. *Subsection* (3) defines the key expressions used in the clause.

"Interruption" includes dispossession and disturbance and also, in relation to the use of the premises for the purpose of the tenancy, the enforcement of any restriction affecting that use.

"Purpose of the tenancy" means any purpose specified as such in the contract of tenancy or known to the landlord at the time of the grant as that for which the tenancy is taken by the tenant and where two or more purposes are so specified or known includes any of them.

"Defect in the title" of the landlord includes the matters mentioned in subsection (3) (*a*) to (*f*).

10. Examples of lack of any title to the demised premises under paragraph (*a*) include: total absence of title of any kind vested in the landlord; inadequate title, such as mere potential rights of the landlord in the course of acquisition under the Limitation Act 1939; or defective title as where an unauthorised purchase of the property has taken place by the landlord or by his predecessor in title from trustees of which he or his predecessor was one.

11. Lack of an estate or interest sufficient in duration under paragraph (*b*) includes circumstances such as those where a landlord who holds a fourteen year lease determinable by his landlord at the end of the seventh year grants an underlease for ten years or where a landlord holding a tenancy from quarter to quarter grants an underlease for seven years.

12. Lack of power or any condition or restriction affecting the power to grant the tenancy under paragraph (*c*) will exist where there is a provision in any mortgage by the landlord (whether freeholder or leaseholder) excluding the exercise by the landlord of the statutory power to grant leases without the consent of the mortgagee or where the landlord is himself a lessee and his lease contains an absolute covenant prohibiting underletting or a qualified covenant permitting underletting only with the superior landlord's consent.

13. Liability to forfeiture or re-entry by breach of covenant or condition committed before or subsisting at the time of the grant of the tenancy under paragraph (*d*) will arise in cases where the landlord is himself a lessee and has committed some breach of or failed to observe any convenant in his own lease such as omission to pay rent, to comply with repairing covenants or to observe restrictions affecting the use of parts of property comprised in the headlease and not in the underlease.

14. Any restriction affecting the use of the demised premises under paragraph (*e*) includes a case where the premises (whether the landlord's interest is leasehold or freehold) are affected by enforceable covenants which prohibit the use of the premises for the purpose of the tenancy as defined in subsection (3).

15. Paragraph (*f*) will include cases where the demised premises are affected by an easement such as a right of way across the premises or where any adjoining building enjoys an easement of light which could be enforced so as to prevent the tenant from erecting buildings on the demised premises.

16. The existence of a right of a third party to dispossess the tenant, to enforce a covenant affecting the use of the property for the purpose of the tenancy, or to make use of an easement affecting the property, will not of itself entitle the tenant to enforce the implied covenant even though the value of the tenant's interest in the property may be diminished by the existence of defects of title of this kind. There must be an actual interruption as defined in subsection (3). However, if the tenant vacates the property because he could not resist a claim for possession or ceases to use the property for any of the purposes of the tenancy because he could not successfully resist proceedings for an injunction this will constitute an interruption.

Clause 5 (*continued*)

17. The effect of the covenant may be illustrated by reference to the examples of defects of title given in paragraphs 10 to 15 above. Unless at the time of the grant the relevant facts were known to the tenant (or unknown to the landlord) the tenant will be entitled to enforce the covenant if:—

(i) the tenant is dispossessed by the lawful owner of the reversion or by a superior landlord in consequence of the expiration or determination of the landlord's own tenancy or by a superior landlord or a mortgagee upon whom the tenant's interest is not binding;

(ii) the tenant is dispossessed by reason of the forfeiture of the landlord's lease in consequence of a breach of covenant or condition committed by the landlord before or subsisting at the time of the grant of the tenancy;

(iii) a restriction prohibiting the use of the premises for the purpose of the tenancy is enforced; or

(iv) any easement over the premises is exercised by the owner of the dominant tenement.

18. Any breach of covenant or condition by the tenant's landlord in the landlord's own lease which occurs after the grant of the tenant's tenancy and results in interruption of the tenant will entitle him to enforce the covenant. No question of notice to the tenant at the time of the tenancy arises under subsection (2) (*b*) in cases of this kind.

19. A landlord may protect himself from liability under the covenant by giving his tenant notice of any "defects" in the landlord's own title of which the landlord is aware. For this purpose the landlord ought, at the time of the grant of the tenancy, to tell the tenant of or expressly agree with him before the grant of the tenancy to furnish such title as will enable the tenant to discover:—

(i) any lack of title to the premises known to the landlord;

(ii) the term of the landlord's lease if shorter than or determinable during the term to be granted to the tenant;

(iii) any requirement known to the landlord for the consent of any mortgagee or superior landlord to the grant of the tenancy;

(iv) any restrictions known to the landlord prohibiting the use of the premises for the purpose of the tenancy;

(v) any easements known to the landlord which affect the premises; or

(vi) any other "defect" in the landlord's title which is known to the landlord.

(4) In this section "notice" means actual or constructive notice, except that for the purposes of the covenant—

(*a*) a person is not affected with notice by virtue of section 198 of the Law of Property Act 1925 (though he may have notice apart from that section) of any matter or thing registered or treated as registered under the Land Charges Act 1972 in the name of an estate owner of any estate superior to his own;

(*b*) a person is not affected with notice by virtue of the Land Registration Act 1925 (though he may have notice apart from that Act) of any incumbrance, entry or other matter appearing on any register kept under that Act, other than the register relating to his own title;

(*c*) a tenant is not affected with constructive notice of any matter or thing of which he might have obtained actual notice by investigation of his landlord's title unless the tenancy is granted pursuant to an agreement under which the landlord expressly contracts to furnish that title.

Clause 5 (*continued*)

20. *Subsection* (4) defines "notice" for the purposes of subsection (2) (*b*). For these purposes notice means actual or constructive notice, but, under paragraphs (*a*) and (*b*), neither the landlord nor the tenant will be affected with statutory "actual notice" by virtue of the Law of Property Act 1925 or the Land Registration Act 1925 of anything registered as a land charge in the name of any owner of an estate superior to his own, or of any entry in any register of title superior to his own, although they may have actual or constructive notice in some other way. By virtue of paragraph (*c*) a tenant will not be affected with constructive notice of defects in a landlord's title except in such title as the landlord expressly contracts with the tenant to furnish.

21. The effect of subsection (4) (*a*) and (*b*), for the purposes of the covenant, is as follows:—

Unregistered land

22. (*a*) A landlord who is the owner of a freehold or leasehold estate in unregistered land will be deemed to have notice by virtue of section 198 of the Law of Property Act 1925 of land charges registered in his own name or in the names of any previous owners of that freehold or leasehold estate.

(*b*) A headlessee will not be deemed to have notice by virtue of section 198 by reason only of the registration of a land charge in the name of any estate owner of the freeehold.

(*c*) An underlessee will not be deemed to have notice by virtue of section 198 by reason only of the registration of a land charge in the name of any estate owner of the freehold or of any superior leasehold interest.

Registered land

23. If the title to land is registered under the Land Registration Act 1925 a person, whether landlord or tenant, will have notice of any incumbrance, entry of other matter appearing on the register relating to his own title. He will, however, for the purposes of the covenant, have no notice merely by virtue of the Land Registration Act 1925 of any incumbrance entry or other matter appearing on any register relating to any superior title, for example, the registered title of his landlord (whether freehold or leasehold) or the title of any superior landlords (whether freehold or leasehold).

24. The provisions discussed in paragraphs 22 and 23 are designed to prevent any person, whether landlord or tenant, from being deemed to be affected, for the purposes of the covenant, with notice of matters which he cannot discover. When a person is not able to search in the land charges register against the owners of the freehold or any superior leasehold interest because he does not know their names he will not be deemed, merely by registration, to have notice of land charges registered in such names. Similarly if a person, whether landlord or tenant, is not able to inspect the registers of title of the owner of the freehold or of any superior leasehold interest he will not be deemed to have notice of matters appearing in those registers.

25. Under subsection (4) (*c*) a tenant will not, for the purposes of the covenant, be affected with constructive notice of anything of which he might have obtained actual notice by investigation of his landlord's title unless the tenancy is granted pursuant to an agreement under which the landlord expressly contracts to furnish that title.

Rent.

6.—(1) In every tenancy there is implied, as an overriding covenant, a covenant by the tenant to pay any rent or other sums due from him to the landlord under the tenancy.

(2) Unless otherwise provided by the contract of tenancy, any rent payable thereunder is due—

(*a*) In the case of a periodic tenancy from quarter to quarter or for any shorter periods, in advance at the commencement of each period;

(*b*) in any other case, in arrear at the end of the period in respect of which it is payable.

EXPLANATORY NOTES

Clause 6

1. This clause implements the recommendation in paragraph 70 of the report.

2. *Subsection* (1). In every case where, under a tenancy granted after the commencement of the Act, there is any provision however expressed for the payment by the tenant of any rent or other sums to the landlord the subsection imports into the tenancy an overriding covenant by the tenant to pay such rent or other sums to the landlord. The existence of an overriding covenant in no way prevents the creation of rent free tenancies. The purpose of the clause is to put it beyond doubt that where rent or other sums are payable by the tenant to the landlord they are payable under covenant and can in every case be recovered by the landlord as a contractual debt.

3. *Subsection* (2). This contains a new general provision applicable to tenancies granted at a rent after the commencement of the Act. Unless otherwise provided by the contract, rent will be payable in advance under periodic tenancies from quarter to quarter or shorter periods and in arrear in other cases.

Protection of premises.

7.—(1) In every tenancy there are implied, as overriding covenants, covenants by the tenant—

(*a*) to take all reasonable steps to prevent encroachment on the demised premises;

(*b*) to notify the landlord forthwith of any such encroachment, of any adverse claim to the premises, and of any notice or proceeding known to him (whether addressed to or taken against him or not) which may affect the landlord's interest in the premises;

(*c*) not to contravene any restriction imposed by or under any enactment with respect to the use of the premises;

(*d*) not to do or allow to be done on the premises anything which constitutes a nuisance;

(*e*) not to use the premises or cause or allow the premises to be used, for any illegal purpose.

(2) For the purpose of paragraphs (*d*) and (*e*) of subsection (1), a person allows to be done anything which he has the right to prevent if he does not take reasonable steps to enforce that right.

EXPLANATORY NOTES

Clause 7

1. *Subsection* (1). This clause implements the recommendations in paragraph 89 of the report and imports into every tenancy the overriding covenants by the tenant set out in paragraphs (*a*) to (*e*) of the clause.

2. *Paragraph* (*a*). The tenant must take all reasonable steps to prevent encroachment on the demised premises. What are reasonable steps will depend upon the circumstances.

3. *Paragraph* (*b*). The tenant's obligation to notify the landlord forthwith of any notice or proceeding known to the tenant which may affect the landlord's interest in the premises will replace the provisions of section 145 of the Law of Property Act 1925 and section 190 of the County Courts Act 1959. These sections, which require every tenant to whom there is delivered or who knows of any writ or summons for the recovery of land demised to or held by him, will be repealed by Clause 26 except as regards tenancies created before the commencement of the Act. The liability of a tenant to forfeit an amount equal to the value of three years' improved or rack rent will be abolished as discussed in paragraph 83 of the report. However, where appropriate, damages will be recoverable by the landlord for a breach by the tenant of the covenant in paragraph (*b*).

4. *Paragraphs* (*c*), (*d*) and (*e*). The tenant's obligations under these paragraphs are discussed in paragraphs 84 to 88 of the report.

Disclosure of landlord's identity.

8.—(1) In every tenancy there is implied, as an overriding covenant, a covenant by the landlord that the tenant will be notified in writing of the name and address of the person in whom the reversion is for the time being vested—

(*a*) within two months after any assignment of the reversion (otherwise than by way of mortgage), or on or before the next occasion on which rent is payable under the tenancy after such an assignment, whichever is the later;

(*b*) within two months after receipt of a written request for the information reasonably made by the tenant at any time (which request may be addressed to the person who last demanded or received rent under the tenancy, or any other person for the time being acting as agent for the landlord in relation to the tenancy).

(2) In any notice to be given under paragraph (*a*) of the covenant implied by this section, the trustees of a trust may be described collectively as such, and as of the address from which the affairs of the trust are conducted; and no such notice is required of an assignment effected solely for the purpose or in consequence of a change in the trustees of any trust.

EXPLANATORY NOTES

Clause 8

1. This clause implements the recommendation in paragraph 104 of the report, the aim of which is to ensure that the tenant can ascertain the identity of the landlord for the time being.

2. *Subsection* (1) (*a*) imports into every tenancy an implied overriding covenant by the landlord that, whenever there is an assignment of the landlord's reversion, the tenant will be notified in writing of the name and address of the new owner of the reversion. The notification must be given within two months after the assignment or on or before the rent day next after the assignment, whichever is the later.

3. *Subsection* (1) (*b*) imports into every tenancy a further implied overriding covenant by the landlord whereby he undertakes that the tenant will be notified in writing, if he makes the appropriate request, of the name and address of the owner for the time being of the reversion. This obligation is in addition to and not in substitution for the obligation under subsection (1) (*a*).

4. The tenant's request for the information will most probably be made to the person to whom the rent is paid. That person may well be the landlord himself and, if not, will know or be able to find out who the present landlord is. In cases where no rent is payable (or rent is in fact not being paid) the request may be made to the person who last demanded or received rent or any person known to the tenant to be acting as the agent of the landlord.

5. Even if the necessary notification has been given under subsection (1) (*a*) circumstances may arise in which the tenant cannot identify his landlord. The tenant may have mislaid the information in the original notification. If there have been several changes of tenant, the notifications may not have been passed on to the present tenant. Even if there has been no change of landlord there may have been a change in his address.

6. The tenant's request under subsection 1 (*b*) must be "reasonably made" thus relieving a landlord from having to reply to unnecessary requests. The test of reasonableness is intended to produce the result that once the landlord has given the information to his tenant he need not supply the identical information in response to any subsequent request by the same tenant unless the tenant can give an adequate reason for asking for it again.

7. *Subsection* (2) provides that, where the landlord is a body of trustees, such trustees need not be named individually in any notice of assignment and may be be described by reference to the trust, but the address from which the affairs of the trust are conducted must also be given.

8. There is no obligation to give notice under subsection (1) (*a*) of the retirement or appointment of a trustee. However, if a specific request for information is made pursuant to subsection (1) (*b*), the names of the trustees and their addresses must be notified.

(3) In the case of a tenancy of premises consisting of part only of a building or of premises comprised in any composite group of buildings, the notice to be given under the said paragraph (*a*) is duly given if the information is displayed for a reasonable period by a notice posted within the building or group of buildings in a position likely to be seen by the tenant in the ordinary course of use of the premises.

(4) In this section "address", in relation to any person, means the place where he lives or the place where he carries on business, or in the case of a company its registered office; "assignment" includes any conveyance; "mortgage" has the same meaning as in the Law of Property Act 1925; and "the reversion" means the estate which, but for the tenancy, would carry the right to immediate possession of the demised premises, disregarding any mortgage.

Clause 8 (*continued*)

9. *Subsection* (3) makes it unnecessary for the landlord to give written notice under subsection (1)(*a*) to each individual tenant where there are several tenants of part only of a building or a group of buildings. In such cases it will be sufficient if a notice containing the requisite information is displayed for a reasonable period within the building or group of buildings in a position likely to be seen by the tenant in the ordinary course of use of the premises. However, even if such a notice is displayed, individual notification must be given to any tenant who makes a reasonable request for the information under subsection (1) (*b*).

10. *Subsection* (4) defines the key expressions used in the clause.
"Address" means the place where a person lives or carries on business, or in the case of a company its registered office.
"Assignment" includes any conveyance.
"Mortgage" has the same meaning as in the Law of Property Act 1925 (see section 205 (1) (xvi)).

11. "Assignment" excludes devolution by operation of law on the death of the landlord whether testate or intestate. The relevant "assignment" takes place when the property is sold (or vested by assent in a beneficiary) by the personal representatives. Meanwhile the devolution does not affect the right of the tenant to obtain the current information under subsection (1)(*b*).

12. The reversion referred to in subsection (1) is the immediate reversion, *i.e.*, the estate which apart from the tenancy would give the right to immediate possession of the premises. Thus, if the landlord grants a concurrent lease of the premises subject to the tenancy, the proprietor of that lease becomes the person entitled to the reversion. The tenant must be notified of the concurrent lease but not, for example, of a subsequent sale of the original landlord's remaining interest.

13. Mortgages and charges are disregarded for the purpose of ascertaining the title to the reversion. Accordingly if the landlord's reversion is mortgaged or charged:—

(i) the tenant does not have to be notified of the transaction under the covenant in subsection (1) (*a*);

(ii) if the tenant asks under subsection (1)(*b*) for the name and address of the person in whom the reversion is vested, the particulars to be given are those of the mortgagor or chargor, not the mortgagee or chargee.

14. It is only the mortgage or charge itself which is to be disregarded. If the landlord's interest, having been mortgaged or charged, is disposed of by sale by the mortgagee or extinguished by foreclosure, any such transaction must be notified as a relevant assignment. The purchaser or the mortgagee or chargee, as the case may be, then becomes the owner of the reversion for all purposes including the disclosure of his identity to the tenant.

15. The obligations of landlords generally under the covenant implied by clause 8 will be similar to those which have been enacted, in the case of tenancies of dwellings, by sections 121 and 122 of the Housing Act 1974. The relations between the two codes are discussed in paragraphs 92 to 103 of the report.

Disclosure of tenant's identity.

9.—(1) In every tenancy there is implied, as an overriding covenant, a covenant by the tenant that the landlord will be notified in writing of the name and address of the person in whom the tenancy is for the time being vested—

(*a*) within two months after any assignment of the tenancy (otherwise than by mortgage or sub-demise);

(*b*) within two months after receipt of a written request for the information reasonably made by the landlord at any time (which request may be addressed to the person who last paid rent under the tenancy or any other person for the time being acting as agent for the tenant in relation to the tenancy).

(2) In this section "address", "assignment" and "mortgage" have the same meaning as in section 8; and subsection (2) of that section applies to notices under paragraph (*a*) of the covenant implied by this section.

(3) Any notice to be given to the landlord pursuant to the covenant implied by this section is duly given if given to a person who receives rent on his behalf.

EXPLANATORY NOTES

Clause 9

1. This clause implements the recommendation in paragraph 107 of the report, the aim of which is to ensure that the landlord can ascertain the identity of the tenant for the time being.

2. *Subsection* (1)(*a*) imports into every tenancy an implied overriding covenant by the tenant that, whenever there is an assignment of the tenancy, the landlord will be notified in writing of the name and address of the new tenant. The notification must be given within two months after the assignment.

3. *Subsection* (1) (*b*) imports into every tenancy a further implied overriding covenant by the tenant whereby he undertakes that the landlord will be notified in writing, if he makes the appropriate request, of the name and address of the tenant for the time being. This obligation is in addition to and not in substitution for the obligation under subsection (1)(*a*).

4. The landlord's request for the information will most probably be made to the person who last paid the rent. That person may well be the tenant himself and if he is not he will know or be able to find out who the present tenant is. However, the request may be made to any other person for the time being acting as agent for the tenant, who will also know or be able to obtain the necessary particulars.

5. Even if the necessary notification has been given under subsection (1)(*a*), circumstances may arise in which the landlord cannot identify his tenant. The landlord may have mislaid the information in the original notification. If there have been several changes of landlord, the notification may not have been passed on to the present landlord. Whilst in many cases the tenant himself will be in occupation of the property, there will be many cases also where sub-lettings have taken place so that the person in occupation is a sub-tenant and not a tenant of the landlord who is making the request. Even if there is no change of tenant, a tenant who is not in occupation may have changed his address.

6. The landlord's request under subsection (1) (*b*) must be "reasonably made" thus relieving a tenant from having to reply to unnecessary requests. The test of reasonableness is intended to produce the result that once the tenant has given the information to his landlord he need not supply the identical information in response to any subsequent request by the same landlord unless the landlord can show that it is reasonable for him to make the request.

7. See paragraphs 7, 8, 10, 11, 13 and 14 of the notes on Clause 8.

8. Sub-lettings by the tenant are to be disregarded. Accordingly, under clause 9 the tenant does not have to notify the landlord of any sub-letting.

9. *Subsection* (3) enables the tenant's obligation to the landlord to be fulfilled if he gives the requisite information to a person who receives the rent on the landlord's behalf.

Overriding covenant: short residential tenancies

Repairs under short tenancy of dwelling-house.

10.—(1) In any tenancy of a dwelling-house for a term of less than seven years there are implied, as overriding covenants, covenants by the landlord—

(*a*) to keep in repair the structure and exterior of the dwelling-house;

(*b*) to keep in repair and in proper working order—

(i) the installations in the dwelling-house for the supply of water, gas and electricity, and for sanitation (including basins, sinks, baths and sanitary conveniences but not, except as aforesaid, fixtures, fittings or appliances for making use of the supply of water, gas or electricity); and

(ii) the installations in the dwelling-house for space heating or heating water.

(2) In this section and in section 11 "tenancy of a dwelling-house" means a tenancy under which a building or part of a building is let wholly or mainly as a private dwelling; and "the dwelling-house" means that building or part of a building.

Application of section 10 and supplementary provisions.

11.—(1) Section 10 does not apply to a new tenancy of a dwelling-house granted in succession to another tenancy of the dwelling-house if the other tenancy is not one to which that section applies and, in the case of a tenancy granted before the date of the commencement of this Act, would not have been such a tenancy if granted after that date.

(2) Section 10 does not apply to a new tenancy of a dwelling-house granted in succession to another tenancy of the dwelling-house if the new tenancy is a tenancy to which Part II of the Landlord and Tenant Act 1954 applies and the other tenancy either is such a tenancy or would be such a tenancy but for section 28 of that Act.

(3) For the purposes of this section a new tenancy of a dwelling-house is granted in succession to another tenancy if granted to a person who, at or immediately before the grant of the new tenancy, is the tenant under another tenancy of the dwelling-house, or to a person who was the tenant under another tenancy of the dwelling-house which terminated at some time before the grant of the new tenancy and who, between the termination of that other tenancy and the grant of the new tenancy, was continuously in possession of the dwelling-house or the rents or profits thereof.

EXPLANATORY NOTES

Clauses 10 *and* 11

1. These two clauses implement the recommendation in paragraph 138 of the report.

2. They re-enact, with minor variations, sections 32 and 33 of the Housing Act 1961 which imposed on the landlord certain repairing obligations where there is a letting for less than seven years of a building or part of a building let wholly or mainly as a private dwelling.

3. Effect is given to the re-enactment of sections 32 and 33 of the 1961 Act by the combined operation of the provisions of Clause 10, the supplementary provisions of Clause 11 and the other relevant provisions found elsewhere in the Bill *viz:*—

(*a*) Clause 1(1) under which the provisions of Clauses 10 and 11 will apply only to tenancies created after the commencement of the Act;

(*b*) Clause 1(2) which defines "tenancy" and "structure and exterior";

(*c*) Clause 19(1) which imports a variable covenant by the tenant to permit the landlord to enter the demised premises to inspect them and to carry out repairs;

(*d*) Clause 22 which contains provision for ascertaining the term of a tenancy;

(*e*) Clause 23 which qualifies the extent of a landlord's repairing obligations;

(*f*) Clause 24 which deals with standards of repair and notice to the landlord of disrepair;

(*g*) Clause 25 which excludes agricultural holdings.

(4) Notwithstanding section 2, the county court may, by order made with the consent of the parties concerned, authorise the inclusion in a contract of tenancy of provisions excluding or modifying in relation to the tenancy the provisions of section 10 with respect to the repairing obligations of the parties if it appears to the court, having regard to the other terms and conditions of the tenancy and to all the circumstances of the case, that it is reasonable to do so; and any provisions so authorised shall have effect accordingly.

(5) The county court shall have jurisdiction to make a declaration that section 10 applies, or does not apply, to a tenancy, whatever the net annual value of the property in question and notwithstanding that the applicant for the declaration does not seek any relief other than the declaration.

Clauses 10 *and* 11 *(continued)*

4. Clause 1(2) provides that "structure and exterior" includes "drains, gutters and external pipes" in conformity with section 33(1)(*a*) of the 1961 Act. Under the Act the question of what is "structure and exterior" is one of fact. See *Brown* v. *Liverpool Corporation* (1969) 3 All E.R. 1345 and *Hopwood* v. *Cannock Chase District Council* [1975] 1 W.L.R. 373.

5. See note on Clause 1 as to a future comprehensive definition of "structure and exterior".

Variable covenants for use, repair and maintenance

Care of premises by tenant.

12. In every tenancy there are implied, as variable covenants, covenants by the tenant—

(*a*) to take proper care of the demised premises as a good tenant;

(*b*) to make good any damage to the premises wilfully done or caused to the premises by the tenant, by any sub-tenant of his or by any other person lawfully living in or visiting the premises;

(*c*) not to carry out any alterations or other works of which the actual or probable result is to destroy or alter the character of the premises or any part of the premises to the detriment of the interest of the landlord therein.

EXPLANATORY NOTES

Clause 12

See paragraphs 111 to 113 of the report and the recommendation in paragraph 139. This clause imports into every tenancy implied variable covenants by the tenant in the terms set out in paragraphs (*a*), (*b*) and (*c*) of the clause.

Landlord's repairs: furnished lettings up to 20 years.

13.—(1) In any tenancy of a building or part of a building let with furniture for use wholly or mainly as a private dwelling, being a tenancy for a term not exceeding twenty years, there are implied a warranty by the landlord that the premises are fit for human habitation at the commencement of the tenancy and, as a variable covenant, a covenant by him to keep the entirety of the premises in repair.

(2) Section 3 applies to the warranty implied by this section as it applies to the covenant.

EXPLANATORY NOTES

Clause 13

1. This clause implements the recommendations in paragraphs 141 and 142 of the report.

2. It imports into every tenancy of a private dwelling let with furniture for a term not exceeding twenty years a warranty by the landlord (which may be excluded or modified by the parties in the same way as a variable covenant) that the premises are fit for human habitation at the commencement of the tenancy and a variable covenant by the landlord to keep the entirety of the premises in repair.

3. The provision as to fitness for human habitation codifies the warranty at present implied at common law where there is a letting of a private dwelling with furniture.

4. The length of the term is to be calculated in accordance with the provisions of Clause 22.

5. There are general provisions in Clause 23(1) which qualify the landlord's repairing obligations under Clause 13 and provisions in Clause 24 as to the standard of repair and as to notice to the landlord of want of repair. The effect of these provisions is set out in the notes on Clauses 23 and 24.

Landlord's and tenant's repairs: lettings up to 20 years.

14. In any tenancy for a term not exceeding twenty years, not being a tenancy to which section 10 or section 13 applies, there are implied, as variable covenants,—

(*a*) a covenant by the landlord to keep in repair the structure and exterior of the premises;

(*b*) a covenant by the tenant to keep in repair all other parts of the premises.

EXPLANATORY NOTES

Clause 14

1. This clause implements the recommendations in paragraph 143 of the report.

2. It imports into every tenancy for a term not exceeding twenty years (not being a tenancy of a dwelling-house to which either Clause 10 or Clause 13 applies) variable covenants by:—

(*a*) the landlord to keep in repair the structure and exterior of the premises;

(*b*) the tenant to keep in repair all other parts of the premises.

3. See note on Clause 1 as to a future comprehensive definition of "structure and exterior".

4. The length of the term is to be calculated in accordance with the provisions of Clause 22.

5. There are general provisions in Clause 23(1) and (2) which qualify the repairing obligations of the landlord and the tenant respectively under Clause 14 and provisions in Clause 24 as to the standard of repair and as to notice to the landlord of want of repair. The effect of these provisions is set out in the notes on Clauses 23 and 24.

6. However, it should be specially noted that where a tenancy is one of premises consisting of part only of a building there is a special qualification in Clause 23(2) (*a*) the effect of which is that the tenant will not, in the absence of express provisions, be liable under the covenant in Clause 14(*b*) for any of the matters mentioned in Clause 16 even though the landlord's liability for such matters is modified or excluded by agreement between the parties.

Tenant's repairs: lettings over 20 years.

15. In any tenancy for a term of more than twenty years there is implied, as a variable covenant, a covenant by the tenant to keep the entirety of the premises in repair.

EXPLANATORY NOTES

Clause 15

1. This clause implements the recommendation in paragraph 145 of the report.

2. It imports into every tenancy (including tenancies of premises let with furniture) for a term of more than twenty years a variable covenant by the tenant to keep the entirety of the premises in repair.

3. The length of the term is to be calculated in accordance with the provisions of Clause 22.

4. There are general provisions in Clause 23(2) which qualify the tenant's repairing obligations under Clause 15 and provisions in Clause 24(1) as to the standard of repair. The effect of these provisions is set out in the notes on Clauses 23 and 24.

5. Paragraph 6 of the note on Clause 14 also applies in relation to Clause 15.

Landlord's obligations: tenancies of parts of buildings.

16.—(1) In any tenancy (for whatever term) of premises consisting of part only of a building there is implied, as a variable covenant, a covenant by the landlord to keep in repair the structure and exterior of the building.

(2) Where the tenant under any such tenancy is entitled, whether in common with others or not, to the use for access or other purposes of other parts of the building or its curtilage, or to any facilities to be provided by the landlord, there are also implied, as variable covenants, covenants by the landlord—

(*a*) to keep in good order and condition any part of the building or curtilage which the tenant is entitled to use as aforesaid, and in the case of any part which the tenant is entitled to use for access to ensure that (according to its nature) it is adequately lit and safe to use;

(*b*) to ensure, so far as practicable, that any facilities to which the tenant is entitled as aforesaid are continued at the proper level and that any installations for the provision of those facilities are safe to use and adequately perform their function.

(3) In this section "facilities" includes lighting, heating, hot water, lifts, attendance and services; and the extent of the duty of the landlord under the covenants implied by subsection (2) is to be ascertained by reference to the order and condition of the relevant part of the building or curtilage, or, as the case may be, the level of the facilities provided, at the commencement of the tenancy.

EXPLANATORY NOTES

Clause 16

1. This clause implements the recommendation in paragraph 149 of the report.

2. *Subsection* (1) imports into every tenancy consisting of part only of a building a variable covenant by the landlord to keep in repair the structure and exterior of the building.

3. See note on Clause 1 as to a future comprehensive definition of "structure and exterior".

4. There are general provisions in Clause 23(1) which qualify the landlord's repairing obligations under Clause 16 and provisions in Clause 24(1) as to the standard of repair. The effect of these provisions is set out in the notes on Clauses 23 and 24.

5. *Subsection* (2) deals with the case where, under a tenancy of part of a building, a tenant is entitled to use any other parts of the building or its curtilage. It imports into every such tenancy variable covenants by the landlord to observe the following obligations:—

Under paragraph (a)—

(i) to keep in good order and condition any parts of the building or its curtilage which the tenant is entitled to use for purposes other than access to his own premises, for example, lavatories, bathrooms, laundry rooms and car parking spaces;

(ii) to ensure that any part of the building or curtilage which the tenant is entitled to use for access to his own premises is adequately lit and safe to use, for example, the forecourt, entrance hall, passage and staircases.

Under paragraph (b) to ensure, so far as practicable, that any facilities provided by the landlord to which the tenant is entitled are continued at the proper level and that any installations for the provision of those facilities are safe to use and adequately perform their function.

6. *Subsection* (3) defines "facilities" but not comprehensively. The installations for the use of such facilities may serve only the common parts of the building but they may also serve premises let to individual tenants.

7. *Subsection* (3) also limits the extent of the landlord's duty under the covenants implied by subsection (2) by reference to the order and condition of the relevant part of the building or curtilage or the level of the facilities provided at the commencement of the tenancy.

Maintenance by landlord of means of access.

17. Where under any tenancy the tenant is entitled to use for all or any of the purposes of the tenancy a route or means of access to the demised premises over land in the possession or control of the landlord, not being one to which the covenant implied by section 16(2)(*a*) applies, there is implied in the tenancy, as a variable covenant, a covenant by the landlord to keep that route or means of access safe and fit for use for those purposes.

Clause 17

This clause implements the recommendation in paragraph 152 of the report. It imports into every tenancy a variable covenant by the landlord as to the maintenance of any route or means of access to the demised premises over land in the possession or control of the landlord which the tenant is entitled to use for all or any of the purposes of the tenancy not being a route or means of access to which the covenant implied by section 16(2)(*b*) applies.

Maintenance by landlord of support and shelter.

18.—(1) In any tenancy (for whatever term) of a building or part of a building which enjoys support or shelter—

(*a*) in the case of a part of a building, by any other part of that building;

(*b*) in any case, by any adjacent or neighbouring building or other premises,

there is implied, as a variable covenant, a covenant by the landlord for the maintenance throughout the term of the support or shelter enjoyed as aforesaid at the commencement of the tenancy or support or shelter substantially equivalent thereto.

(2) The covenant implied by this section applies only to support or shelter by premises in the possession or control of the landlord or by which he has the right to support or shelter for the benefit of the demised premises, and in the latter case applies only to the extent of that right.

(3) The covenant implied by this section does not require the landlord to carry out any repairs or re-instatement to make good a loss of support or shelter occasioned by any act or default of the tenant or any sub-tenant of the demised premises.

EXPLANATORY NOTES

Clause 18

1. This clause implements the recommendation in paragraph 157 of the report. The existing obligations as to support and shelter are discussed in paragraph 154 of the report.

2. *Subsection* (1). This subsection imports into every tenancy of a building or part of a building which enjoys support or shelter a variable covenant by the landlord for the maintenance throughout the term of support and shelter as enjoyed by that building or part thereof at the commencement of the tenancy or substantially equivalent support or shelter.

3. *Subsections* (2) *and* (3). The landlord's obligation under the covenant in subsection (1) is limited in the manner defined in these subsections.

Other variable covenants

Entry and inspection.

19.—(1) In every tenancy under which the landlord is authorised or required (whether by express provision in the contract of tenancy or by covenants implied by this Act) to carry out works of repair, improvement or alteration of the demised premises, or of any building of which those premises form part, there is implied, as a variable covenant, a covenant by the tenant to permit the landlord, and persons authorised by him for the purpose, to enter the premises at reasonable times and upon reasonable notice in order to inspect them and carry out any such works.

(2) In any tenancy under which the tenant is required (whether by express provision in the contract of tenancy or by covenants implied by this Act) to carry out any repairs of the demised premises, there is implied, as a variable covenant, a covenant by the tenant to permit the landlord, and persons authorised by him for the purpose, to enter the premises at reasonable times and upon reasonable notice in order to inspect their state of repair.

EXPLANATORY NOTES

Clause 19

This clause implements the recommendations in paragraph 162 of the report.

Making good.

20. In every tenancy under which the landlord is authorised or required (whether by covenants implied by this Act or otherwise) to carry out works of repair, improvement or alteration of the demised premises, or of any building of which those premises form part, there is implied, as a variable covenant, a covenant by the landlord to make good any damage to the premises or property therein which may be occasioned by or in the course of carrying out the works or inspecting the premises for the purpose.

EXPLANATORY NOTES

Clause 20

This clause implements the recommendations in paragraph 163 of the report.

Outgoings.

21.—(1) In every tenancy the following covenants are implied, as variable covenants,—

(*a*) a covenant by the tenant to bear the general rate, the water rate, any occupier's drainage rate and any other outgoings falling on the premises in consequence of their use by the tenant for a particular purpose;

(*b*) a covenant by the landlord to bear all other outgoings in respect of the premises.

(2) In these covenants "outgoings" include taxes, duties, levies, assessments and charges (whether recurrent or not) imposed by or under an enactment on or in respect of the demised premises, and the cost of carrying out on or for the purposes of those premises improvements or other works required by or under any enactment; and the covenants apply to outgoings so imposed after the commencement of the tenancy.

(3) These covenants do not affect any enactment providing for the recovery of particular outgoings against occupiers or persons having specified interests in the premises, nor (except so far as material to the exercise of jurisdiction thereunder) any enactment providing for the apportionment of the burden of such outgoings as between such occupiers or persons.

EXPLANATORY NOTES

Clause 21

1. *Subsection* (1)(*a*) of this clause implements the recommendation in paragraph 169 of the report the purpose of which is to import into every tenancy a variable covenant by the tenant to bear the general rate, water rate, any occupier's drainage rate and any other outgoings falling on the premises in consequence of their use by the tenant for a particular purpose. *Subsection* (1)(*b*) imports into every tenancy a variable covenant by the landlord to bear all other outgoings in respect of the premises.

2. "Outgoings" are widely defined in *subsection* (2).

3. *Subsection* (3) makes these implied covenants subject to any enactment (such as those referred to in Appendix 5) which contain special provisions providing for the recovery of particular outgoings or for the apportionment of the burden of such outgoings.

General provisions as to covenants for repair etc.

Ascertainment of term of tenancy.

22. The following provisions apply for ascertaining the term of a tenancy for the purposes of sections 10 to 15, namely:—

(*a*) if a tenancy is granted for a term part of which falls before the grant, that part is left out of account and the tenancy treated as for a term commencing with the grant;

(*b*) if the landlord has a right to terminate the tenancy, it is assumed that that right will be exercised as soon as available;

(*c*) subject to (*b*) above, if the tenant has an option to renew the tenancy for any period, that period is added to the original term.

EXPLANATORY NOTES

Clause 22

1. The repairing obligations implied by Clauses 10 and 13 depend both upon the nature of the premises and the length of the term. The repairing obligations implied by Clauses 14 and 15 depend only upon the length of the term. The reasons for distributing the repairing obligations between landlords and tenants in the manner shown in Clauses 10, 13, 14 and 15 are set out in paragraphs 132 and 133 of the report.

2. Paragraph 134 of the report discusses certain problems which can arise in ascertaining the length of the term.

3. The provisions of Clause 22 give effect to the rules recommended in paragraph 135 of the report.

General qualifications.

23.—(1) The covenants by the landlord implied by sections 10, 13, 14 and 16 do not require the landlord—

(*a*) to carry out works or repairs for which the tenant is liable by virtue of covenants on his part implied by section 12 or would be so liable apart from any exclusion or modification of those covenants;

(*b*) to keep in repair or maintain anything which the tenant is entitled to remove from the premises;

(*c*) to rebuild or re-instate the premises in the case of destruction or damage by fire, or by tempest, flood or other inevitable accident.

(2) The covenants by the tenant implied by sections 14 and 15 do not require the tenant—

(*a*) to carry out works or repairs for which the landlord is liable by virtue of covenants on his part implied by section 16 or would be so liable apart from any exclusion or modification of those covenants;

(*b*) to keep in repair or maintain anything which the tenant is entitled to remove from the premises;

(*c*) to rebuild or re-instate the premises in the case of destruction or damage by fire, or by tempest, flood or other inevitable accident.

EXPLANATORY NOTES

Clause 23

1. This clause qualifies and limits the liability of the landlord and tenant under the covenants implied by Clauses 10, 13, 14, 15 and 16.

2. Qualifications are contained in Clauses 23(1)(*b*) and (*c*) and 23(2)(*b*) and (*c*) which provide that under the landlord's repairing covenants implied by Clauses 10, 13, 14 and 16 and under the tenant's repairing covenants implied by Clauses 14 and 15 neither the landlord nor the tenant, as the case may be, is required:—

(*a*) to keep in repair or maintain anything which the tenant is entitled to remove from the premises, *i.e.*, tenant's fixtures, trade or ornamental fixtures, fixtures which there is a customary right to remove or fixtures which the parties have expressly stipulated that the tenant shall be entitled to remove;

(*b*) to rebuild or re-instate the premises in the case of destruction or damage by fire, tempest, flood or other inevitable accident.

3. Under Clause 23(1)(*a*) the landlord's obligations under Clauses 10, 13, 14 and 16 do not include any of the tenant's obligations under Clause 12 whether or not Clause 12 is varied or excluded.

4. Clause 23(2)(*a*) has the effect that where the premises let consist of part only of a building a tenant's obligations under Clauses 14 and 15 do not include any of the landlord's obligations under Clause 16 whether or not Clause 16 is varied or excluded.

Standard of repair and notice of disrepair.

24.—(1) In determining the standard of repair required by any of the covenants implied by sections 10 to 16 regard is to be had to the age, character and prospective life of the premises and the locality in which they are situated.

(2) Any obligation of the landlord to carry out works pursuant to any of the covenants implied by sections 10 to 14 is conditional upon his having actual knowledge (whether from notice given by the tenant or from any other source) of the circumstances calling for those works.

EXPLANATORY NOTES

Clause 24

1. This clause implements the recommendation in paragraph 121 of the report.

2. In *subsection* (1) the provisions (for determining the standard of repair) as to "age, character . . . and the locality" adopt the test laid down in *Proudfoot* v. *Hart* (1890) 25 Q.B.D. 42 and are similar to the provisions to be found in different contexts in the Landlord and Tenant Act 1954 section 9(2) and the Rent Act 1968 section 46.

The provision as to "prospective life" is an additional consideration derived from the Housing Act 1961, section 32(3).

3. *Subsection* (2) gives effect in relation to the landlord's covenants implied by sections 10 to 14 to the general rule of law that a landlord's contractual obligation to do repairs is conditional upon his having actual knowledge of the circumstances calling for such repairs.

4. However, this general rule does not apply to a covenant by a landlord to repair any part of premises which are retained by him in his own control: in such cases no knowledge or notice of disrepair is required before the landlord's obligations arise.

Subsection (2) accordingly does not apply to the covenants implied by Clauses 16 and 17 as these relate to the repair of premises retained by the landlord in his own control.

Exclusion of agricultural holdings.

25. The provisions of sections 10 to 18 do not apply to a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1948.

Clause 25

1. This clause implements the recommendation in paragraph 119 of the report to the effect that the provisions of sections 10 to 18 do not apply to a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1948.

2. The Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973 (S.I. 1973 No. 1473) contain comprehensive provisions as to the rights and liabilities of landlords and tenants of agricultural holdings with regard to the maintenance and repair of the "fixed equipment" of a holding which includes farmhouses, cottages, farm buildings and many other items.

3. The Agricultural Holdings Act 1948 section 1(1) defines an agricultural holding as "the aggregate of the agricultural land comprised in a contract of tenancy, not being a contract under which the said land is let to a tenant during his continuance in any office, appointment or employment held under the landlord" and by section 94(1) "contract of tenancy" means "a letting of land for a term of years or from year to year". But by section 1(2) "agricultural land" means "land which is so used for the purposes of a trade or business . . ." and, while a building can be an agricultural holding (*Blackmore* v. *Butler* [1954] 2 Q.B. 171), the words, "so used for the purposes of a trade or business", would exclude a sub-tenancy of a farmhouse sublet as a private residence. The covenants in Clauses 10, 13, 14 or 15 would therefore be implied in the sub-tenancy depending upon the length of that sub-tenancy.

Supplemental

Repeals.

26. The following enactments are repealed except so far as they relate to tenancies created before the commencement of this Act, namely:—

(*a*) section 145 of the Law of Property Act 1925;

(*b*) section 190 of the County Courts Act 1959;

(*c*) sections 32 and 33 of the Housing Act 1961.

EXPLANATORY NOTES

Clause 26

1. The repeals effected by paragraphs (*a*) and (*b*) are consequential upon the provisions of Clause 7(1)(*b*). See the note on Clause 7(1)(*b*).

2. The repeals effected by paragraph (*c*) are consequential upon the provisions of Clauses 10 and 11 which will apply to tenancies created after the commencement of the Act and replace sections 32 and 33 of the Housing Act 1961 as regards such tenancies.

Short title and commencement.

27.—(1) This Act may be cited as the Landlord and Tenant (Implied Covenants) Act 1975.

(2) This Act shall come into force on 1st January .

EXPLANATORY NOTES

Clause 27

There are always many tenancies in course of negotiation. Accordingly it is most desirable that the parties and their advisers should have sufficient time to acquaint themselves with the provisions of the Act. It is therefore suggested that the Act should not come into force until at least six months after it has received the Royal Assent.

APPENDIX 2

Members of the Law Commission Landlord and Tenant Working Party

Members	Body
Mr. Neil Lawson, Q.C. (*a*) Mr. Claud Bicknell, O.B.E. Mr. A. Stapleton Cotton (*b*)	The Law Commission
Mr. M. J. Albery, Q.C. (*c*)	The Institute (of conveyancers)
Mr. L. A. Blundell, Q.C. (*d*) Mr. V. G. Wellings, Q.C. Mr. R. H. Bernstein, D.F.C., Q.C. Mr. J. T. Plume Mr. C. B. Priday	The General Council of the Bar
Mr. E. F. George Mr. C. M. R. Peecock (*e*) Mr. C. F. Wegg-Prosser	The Law Society
Mr. M. R. Dunnett, F.R.I.C.S. Mr. P. S. Edgson, F.R.I.C.S. Mr. W. N. D. Lang, F.R.I.C.S.	The Royal Institution of Chartered Surveyors
Mr. E. A. K. Ridley, C.B. (*f*) Mr. G. A. Sifton	Treasury Solicitor's Department
Mr. G. E. Gammie	Department of the Environment
Mr. D. S. Gordon	Lord Chancellor's Office

Secretaries: Mr. John Churchill
Mr. H. D. Brown

(*a*) The Hon. Mr. Justice Lawson (as he now is) ceased to be a Law Commissioner in April 1971 on his appointment to the High Court Bench and was succeeded as Chairman of the Working Party by Mr. Bicknell.

(*b*) Mr. Stapleton Cotton ceased to be a member of the Working Party in July 1970, when he resigned from his appointment as Special Consultant to the Law Commission.

(*c*) Mr. Albery resigned his membership of the Working Party in September 1972.

(*d*) Mr. Blundell resigned his membership of the Working Party in November 1970 on assuming special duties in connection with the preparation of the Landlord and Tenant Code. His vacancy has been filled by Mr. Priday.

(*e*) Mr. Peecock died in 1974.

(*f*) Mr. Ridley retired in 1969 and his vacancy has been filled by Mr. Sifton.

APPENDIX 3

List of those who commented on Working Paper No. 8

Association of Local Authority Valuers and Estate Surveyors
Association of Land and Property Owners
Association of Municipal Corporations
Board of Trade
Building Societies' Association
Chartered Land Societies' Committee
Church Commissioners—The Official Solicitor
College of Estate Management
Crown Estate Office
Duchy of Lancaster Office
Fair Rent Association
Haldane Society
Ministry of Agriculture, Fisheries and Food
Ministry of Defence
Ministry of Housing and Local Government
National Chamber of Trade
National Federation of Property Owners
Office of the Parliamentary Draftsmen: Northern Ireland
Property Owners' Protection Association
Treasury Solicitor's Department

Mr. David Ainger—Barrister
Mr. Ashley Bramall—Barrister
Mr. Bryan W. Cross—Solicitor
Mr. Keith Davies—University of Southampton
Professor P. G. FitzGerald—Universities of Kent and Toronto
Professor J. F. Garner—University of Nottingham
Professor M. J. Goodman—University of Manchester
Professor J. A. Hornby—University of Bristol
Mr. John F. S. Knight—Solicitor
Professor Lord Lloyd of Hampstead—University College, London
Mr. D. Macintyre—University of Cambridge
Mr. Gerson Newman—Barrister
Mr. A. Prichard—University of Nottingham
Mr. Alec Samuels—University of Southampton

APPENDIX 4

The Law Society's Standing Committee on Land Law and Conveyancing

Mr. C. M. R. Peecock (Slough) (*Chairman*)

Mr. J. E. Adams (Bristol)

Mr. J. D. Bolton (Hertford)

Mr. P. J. Chalk (Exeter)

Mr. G. A. Dodsworth (London)

Mr. R. A. Donell (London)

Dr. J. Gilchrist Smith (Middlesbrough)

Mr. J. R. S. Grimwood-Taylor (Derby)

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Mr. G. B. Marsh (Liverpool)

Mr. J. A. Stancer (Leamington Spa)

Mr. F. W. Towns (Manchester)

Mr. P. Rowley (London)

Secretary to the Standing Committee: Miss E. J. Sander

APPENDIX 5

Examples of Statutes which allocate or apportion outgoings

Title of Act	*Subject Matter*
Land Drainage Act 1930	Owners' and Occupiers' Drainage Rate.
Tithe Act 1936 as amended by Finance Act 1962	Tithe Redemption Annuity.
Public Health Act 1936	Provision for escape in case of fire.
London Building Acts (Amendment) Act 1939	Means of escape in case of fire. Dangerous and neglected structures.
Coast Protection Act 1949	Charges for work carried out by Coast Protection Authority.
Housing Act 1957	Expenses incurred in making a dwelling-house fit for human habitation pursuant to the requirements of a local authority.
Highways Act 1959	Road Charges.
Factories Act 1961	Wide range of statutory obligations.
Office Shops and Railway Premises Act 1963	Wide range of statutory obligations.
Licensing Act 1964	Charge payable to Compensation Authority.
Housing Act 1964	Improvement of dwellings.
General Rate Act 1967	General Rate.

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