
# The Law Commission

(LAW COM. No. 81)

# RENT BILL

REPORT ON THE CONSOLIDATION OF THE RENT ACT 1968, PARTS III, IV AND VIII OF THE HOUSING FINANCE ACT 1972, THE RENT ACT 1974, SECTIONS 7 TO 10 OF THE HOUSING RENTS AND SUBSIDIES ACT 1975 AND CERTAIN RELATED ENACTMENTS

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**RENT BILL**

# REPORT ON THE CONSOLIDATION OF THE RENT ACT 1968, PARTS III, IV AND VIII OF THE HOUSING FINANCE ACT 1972, THE RENT ACT 1974, SECTIONS 7 TO 10 OF THE HOUSING RENTS AND SUBSIDIES ACT 1975 AND CERTAIN RELATED ENACTMENTS

*To the Right Honourable the Lord Elwyn-Jones,*
*Lord High Chancellor of Great Britain*

The Rent Bill which is the subject of this Report seeks to consolidate the Rent Acts 1968 and 1974 and certain other enactments relating to the control of rents and security of tenure. In order to produce a satisfactory consolidation it is necessary to make a number of recommendations which are set out in the Appendix to this Report. One or two of the amendments proposed in the recommendations could have been authorised under the Consolidation of Enactments (Procedure) Act 1949, but the majority could not.

The authorities in the Isles of Scilly have been consulted in connection with the recommendation about the application of the Bill in the Isles and have agreed to it.

SAMUEL COOKE,
*Chairman of the Law Commission:*

2 *March* 1977.

## APPENDIX

### RECOMMENDATIONS

1. Subsection (2) of section 1 of the Rent Act 1968 provides that any land or premises let together with a dwelling-house shall, unless it consists of agricultural land exceeding two acres in extent, be treated as part of the dwelling-house. The effect of this is to exclude agricultural land from the controls imposed by the Act. For this purpose "agricultural land" is defined in subsection (2) as having the same meaning as in section 26(3)(*a*) of the General Rate Act 1967. Had it been a simple definition the Rent Act would, no doubt, have spelt it out, but unfortunately the definition is so complicated that it would not have been easy, or sensible, to have done so.

The Rating Act 1971 altered the definition of agricultural land in the General Rate Act 1967 by extending it to cover certain buildings used in intensive livestock farming and to land ancillary to such buildings. But the alterations made to the definition were not carried through to the Rent Act 1968 and section 1(2) of that Act has now to be read as referring to the Act of 1967 as originally enacted.

The purpose behind the Rating Act 1971 was to recognise, for rating, that certain types of buildings (for example, broiler-houses) are part of modern methods of agriculture and that land used in connection with those buildings may be just as much agricultural land as are the more traditional forms. We see no reason why the Rent Act 1968 should not also recognise that the concept of agricultural land has altered slightly over the years. It would, we think, accord with the intention behind section 1(2) of that Act to attract the current definition of agricultural land in the Act of 1967 rather than the slightly narrower definition used in that Act as originally enacted.

We recommend that, in order to keep the effect of section 1(2) in line with the original intention (to exclude what can properly be called agricultural land), it should be re-enacted so as to attract the amended definition of agricultural land in section 26 of the Act of 1967. Effect is given to this recommendation in clause 26(2) of the Bill.

2. Section 40 of the Rent Act 1968 provides for the Secretary of State to make schemes for the appointment of rent officers and deputy rent officers. Our recommendations as to how this section should be re-enacted deal with two distinct points.

A. The first concerns subsection (3), which originally provided (amongst other things) that for the purposes of the Local Government Superannuation Act 1937 rent officers and deputy rent officers appointed in pursuance of schemes made under section 40 were to be deemed to be officers in the employment of the local authority for whose area the scheme was made.

The Superannuation Act 1972 repealed the Local Government Superannuation Act 1937 and provided, in its place, that the main local government superannuation scheme was to be contained in regulations made under section 7 of the Act of 1972. The regulation-making power in section 7 is wide enough to allow the regulations to cover rent officers and deputy rent officers by deeming them to be in the employment of a local authority, and this has been done in the current regulations (the Local Government Superannuation Regulations 1974, S.I. 1974/520).

Accordingly, the Act of 1972 amended subsection (3) of section 40 of the Rent Act 1968 so that it only deemed rent officers and deputy rent officers to be local authority employees for the purposes of local Act schemes. Unfortunately it failed to make the necessary consequential amendments in subsection (7).

Subsection (7) of section 40 requires the Secretary of State to reimburse local authorities the amount of any expenditure attributable to that section. As originally enacted, this covered expenditure incurred in paying superannuation contributions under the main local government superannuation scheme embodied in the Act of 1937. A local authority's liability to pay contributions under the Act of 1937 arose because subsection (3) deemed rent officers and deputy rent officers to be local authorities'

employees for the purposes of that Act. Since the amendments made by the Act of 1972, the position has been that a local authority's liability to pay superannuation contributions under the main scheme has arisen directly under the Local Government Superannuation Regulations and not under section 40 at all. Hence subsection (7) no longer obliges the Secretary of State to meet local authorities' superannuation contributions for rent officers and deputy rent officers made under the regulations. The Government have continued to meet this expenditure under cover of the annual Appropriation Acts, but we think that it would be unsatisfactory to consolidate the error made in 1972.

We recommend that in re-enacting section 40 of the Rent Act 1968, the Secretary of State's obligation to meet local authorities' expenditure on superannuation benefits for rent officers and deputy rent officers should be reinstated. Effect is given to this recommendation in subsections (6) to (8) of clause 63 of the Bill.

As the effect of this recommendation will (in theory, though not of course in practice) be to increase the Secretary of State's expenditure, a Money Resolution will be required when the Bill reaches the House of Commons.

**B.** For the purposes of rent registration, the country is divided into registration areas and section 40 of the Rent Act 1968 provides for the making of schemes for the appointment of rent officers in each registration area.

When rent registration was first introduced under the Rent Act 1965 it was brought in by stages. In the case of some registration areas it came into force at different times in different parts of the same area. The Act of 1965 provided (in what was later consolidated as section 40(6) of the Rent Act 1968) that separate schemes for the appointment of rent officers could be made for the separate parts of such a registration area.

In the event it proved unnecessary to make separate schemes for those registration areas in which rent registration was brought into force at different times in different parts. Neither section 40(6) nor its predecessor has been used and although it remains a power capable of being used in the future, there is no reason for retaining it. Once the system of registration areas and schemes introduced by the Act of 1965 came into force throughout the country, the purpose for which section 40(6) was designed disappeared.

We therefore recommend that in re-enacting section 40 of the Rent Act 1968, subsection (6) should be omitted. Effect is given to this recommendation in clause 63 of the Bill.

3. Where a rent has been registered for a dwelling-house under Part IV of the Rent Act 1968, the general rule under section 44(3) is that an application for registration of a different rent will not be entertained within three years unless it is made by the landlord and tenant jointly or on the ground that there has been such a change in—

(*a*) the condition of the dwelling-house (including the making of any improvement),

(*b*) the terms of the tenancy,

(*c*) the quantity, quality or condition of any furniture provided for use under the tenancy (deterioration by fair wear and tear excluded), or

(*d*) any other circumstances taken into consideration when the rent was registered or confirmed,

as to make the registered rent no longer a fair rent.

The reference to furniture (paragraph (*c*)) was added by the Rent Act 1974 in consequence of the provision by that Act for the majority of furnished tenancies to be treated as regulated tenancies rather than as furnished lettings falling within Part VI of the Rent Act 1968.

Section 44A, which allows a local authority to apply for registration of a rent for any dwelling-house within their area, was inserted in the Rent Act 1968 by section 39 of the Housing Finance Act 1972. In subsection (4) of section 44A the general rule that no application for a different registered rent may be entertained within three years

is repeated, with the same qualifications as were originally in section 44. Unfortunately, the Rent Act 1974 failed to amend section 44A, as a result of which there is now a discrepancy between the two otherwise parallel provisions.

It is not clear what meaning would now be given to section 44A(4). The final ground given for entertaining an application within the period of three years is that "any other circumstances taken into consideration when the rent was registered or confirmed" have changed. It may be that this is wide enough to cover the condition of furniture which was present in the dwelling-house when the tenancy was first granted, and that the absence of a provision on the lines of section 44(3)(*c*) would not prevent the rent officer entertaining an application on that ground. In our view the effect of the oversight in 1974 is ambiguous but we think that it is clear that had section 44A been considered at the time it would have been amended in the same way as section 44.

We recommend that in re-enacting section 44A(4) a provision on the lines of section 44(3)(*c*) should be incorporated. Effect is given to this recommendation in clause 68 of the Bill.

4. Section 57 of the Rent Act 1968 provides that, for the purpose of determining what increase in the rent limit for a controlled tenancy is permissible after the making of improvements in the dwelling, the amount of any grant received by the landlord is to be deducted in calculating his expenditure on the improvements.

As originally enacted, subsection (2) provided that where improvements are carried out in compliance with an improvement notice under the Housing Act 1964, but no standard grant under section 4 of the House Purchase and Housing Act 1959 is obtained by the landlord, the amount of the standard grant which he could have obtained is to be deducted in calculating his expenditure. Subsection (3) entitles the landlord or the tenant, in such a case, to obtain from the appropriate local authority a written estimate of the amount of the standard grant that would have been made had it been obtained by the landlord. Subsection (4) provides that in any proceedings relating to an increase in the rent limit for a controlled tenancy, in a case where improvements were carried out in compliance with an improvement notice, it is to be assumed (until the contrary is proved) that a standard grant was obtainable for the improvement. Subsection (4) also provides that an estimate under subsection (3) is to be sufficient evidence of what the amount of the standard grant would have been.

Part VII of the Housing Act 1974 introduced a new system of house improvement grants, including intermediate grants (which correspond to, and replace, standard grants under the former system). Subsection (2) of section 57 of the Rent Act 1968 was amended by the Act of 1974 to apply to intermediate grants in addition to standard grants, but the necessary consequential amendments were not made in subsections (3) and (4). As subsections (3) and (4) of section 57 are an important component in making the deduction of a notional grant a workable rule, we think that they ought to be amended to apply to intermediate grants as they apply to the old standard grants.

We recommend that in re-enacting subsections (3) and (4) of section 57 of the Rent Act 1968 references to intermediate grants payable under section 65 of the Housing Act 1974 should be added to the references to standard grants payable under the House Purchase and Housing Act 1959. Effect is given to this recommendation in clause 33 of the Bill.

5. Part VIII of the Housing Finance Act 1972 provides a special form of rent control for those housing association tenancies which would be protected tenancies (for the purposes of the Rent Act 1968) but for their exclusion by section 5 of the Act of 1968.

When Part VIII was enacted, furnished tenancies granted by housing associations, along with those of other landlords, were subject to the separate system of rent control contained in Part VI of the Rent Act 1968. Because it was section 2 of the Act of 1968 that prevented furnished tenancies being protected tenancies, rather than section 5, section 81 of the Act of 1972 did not bring them within the system of control in Part VIII. Section 2 of the Rent Act 1968 was amended by the Rent Act of 1974, with the result that the majority of furnished tenancies became protected tenancies, leaving

only a minority to continue subject to the controls on furnished lettings contained in Part VI of the Act of 1968.

Section 88 of the Housing Finance Act 1972 provides that expressions used in Part VIII of that Act have the same meaning as in the Rent Act 1968. So "protected tenancy" in section 81 refers to a protected tenancy within the meaning of the Act of 1968. In expanding the concept of protected tenancies to include most furnished tenancies, the Rent Act 1974 provided (in section 1(1)(*b*)) that in any enactment where "protected tenancy" had the same meaning as in the Rent Act 1968 it was in future to have the expanded meaning given to it by the Act of 1974.

The effect of the Rent Act 1974 is that section 81 of the Housing Finance Act 1972 has now to be read as embracing furnished tenancies which would be protected tenancies but for section 5 of the Act of 1968, as well as unfurnished tenancies. In other words, Part VIII of the Act of 1972 continues to provide a system of rent control for housing association tenancies which runs strictly parallel to the system provided by the Rent Act 1968 for protected tenancies.

Unfortunately, by an oversight in 1974, nothing was done to amend section 70 of the Rent Act 1968. In the case of an ordinary furnished tenancy, subsection (3) of section 70 prevents any conflict between the different systems of rent control by providing in effect that a furnished tenancy is only to be subject to Part VI of the Act of 1968 if it is not subject to the controls applicable to protected tenancies. No such provision is made for housing association tenancies and a furnished letting where the landlord is a housing association to which Part VIII of the Housing Finance Act 1972 applies is subject to two incompatible systems of rent control.

In our view it is clear that the intention behind the scheme introduced in 1972 was that all tenancies of those housing associations which fall within Part VIII were to be controlled by the provisions of that Part, and that the possible operation of Part VI of the Rent Act of 1968 was overlooked in 1974. One aspect of Part VIII, in particular, lends weight to this view. Under those provisions, a housing association which wishes to increase the rent for one of its tenancies can only do so if a rent is registered for the dwelling concerned in accordance with Part VIII; in the absence of a registered rent the rent limit is frozen. In practice, therefore, there is no room for the operation of a separate system of rent control for these tenancies.

We recommend that the overlap between Part VI of the Act of 1968 and Part VIII of the Act of 1972 should be removed in re-enacting those provisions. Effect is given to this recommendation in clause 19(5)(*e*) of the Bill.

6. As originally enacted, Part VI of the Rent Act 1968 contained no reference to rates. The Rent Act 1974 amended sections 74 and 76 by inserting two new subsections (respectively subsections (2A) and (1A)), both of which refer to rates, but did not add a definition of rates to the interpretation section (section 84) for Part VI of the Act of 1968. Elsewhere in the Rent Act 1968 there are definitions of rates for the purposes of particular Parts, for example in sections 38 and 67, but there is no definition for the whole Act.

**A.** We think that there can be no doubt that the courts would construe "rates", in sections 74(2A) and 76(1A) of the Rent Act 1968, as having the same meaning as elsewhere in the Act, but we think that it would remove any cause for argument if a definition were to be added for Part VI.

We recommend, therefore, that in re-enacting Part VI of the Rent Act 1968 a definition of rates, following that in sections 38 and 67, should be added. Effect is given to this recommendation in clause 152 of the Bill.

**B.** There are three other statutory definitions of rates which are incorporated in the consolidation. They come from sections 48 and 88(1)(*a*) of the Housing Finance Act 1972 and paragraph 12 of Schedule 5 to the Counter-Inflation Act 1973. In each case the definition differs from that in sections 38 and 67 of the Rent Act 1968, in not expressly excluding an owner's drainage rate.

It was never the intention that the Rent Acts should make a tenant responsible for an owner's drainage rate and we have no doubt that the courts would not construe the narrower definition, in the Acts of 1972 and 1973, as embracing an owner's drainage rate merely because it is not expressly excluded. However, we think that it would be desirable not to have different definitions in different parts of the consolidation, when no difference in effect is intended.

We recommend that in re-enacting sections 48 and 88(1)(*a*) of the Housing Finance Act 1972 and paragraph 12 of Schedule 5 to the Counter-Inflation Act 1973 the definition of rates should expressly exclude an owner's drainage rate. Effect is given to this recommendation in clause 152 of the Bill.

7. Part VI of the Rent Act 1968 was amended by the Rent Act 1974 to clarify the procedure for registering rents determined by rent tribunals. These amendments, which were effected by adding new subsections to sections 74 and 76 of the Rent Act 1968 (respectively subsections (2A) and (1A)), provided that where rent is exclusive of rates the amount to be noted in the register is to be the rent exclusive of rates; the tenant's obligation to pay rates to the landlord is to be recorded separately in the register.

Unfortunately, no provision was made for any method of apportionment of rates. In other parts of the Rent Acts provision is generally made for apportioning rates, or rateable values, where a dwelling house forms part only of a rated hereditament. For example, for Part IV of the Rent Act 1968 (which deals with the registration of rents for regulated tenancies), section 51(2) provides that references to rates include references to such proportion of rates in respect of the hereditament of which the dwelling-house forms part as may be agreed in writing between the landlord and the tenant or determined by the county court. Similar provision is made for Part III of that Act (which deals with rent limits for regulated tenancies) by section 38(2).

In practice, the lack of a provision in Part VI of the Rent Act 1968 for the apportionment of rates creates problems; most rents registered by rent tribunals relate to dwellings which are not separately rated but form part of larger hereditaments. If the landlord and tenant cannot agree what proportion of the rates is attributable to the tenant's dwelling, and therefore payable by the tenant to the landlord, there is at present no procedure for settling the dispute.

We recommend that in re-enacting Part VI of the Rent Act 1968, provision should be made, following that at present made in relation to the registration of rents for regulated tenancies, for the apportionment of rates by agreement between the parties or, failing agreement, by the county court. Effect is given to this recommendation in clause 85 of the Bill.

8. Section 82(2) of the Rent Act 1968 provides that a local authority may appoint one of their officers to exercise powers given to the authority by Part VI of that Act (which relates to furnished lettings). Section 101 of the Local Government Act 1972 now gives every local authority a general power to arrange for the discharge of any of their functions by (among others) an officer of the authority, and it is no longer necessary to have a separate proposition to this effect in the Rent Acts.

We recommend that in re-enacting section 82 of the Rent Act 1968, subsection (2) should be omitted. Effect is given to this recommendation in clause 83 of the Bill.

9. Subsection (8) of section 89 of the Rent Act 1968 empowers local authorities to publish information, for the assistance of persons offering or seeking tenancies, about the operation of that section (which punishes attempts to obtain excessive prices for furniture). The subsection is unnecessary because section 107 of the Rent Act 1968 gives local authorities a general power to publish information about the working of the Rent Acts, and that power is wide enough to cover information about the operation of section 89.

The reason for this duplication is that section 89 originated as a self-contained Private Member's Bill, which became the Landlord and Tenant (Furniture and Fittings) Act 1959.

We recommend that in re-enacting section 89 of the Rent Act 1968, subsection (8) should be omitted. Effect is given to this recommendation in clause 124 of the Bill.

10. Section 5A of the Rent Act 1968, which was added by Schedule 2 to the Rent Act 1974, provides that a tenancy of a dwelling-house granted by a resident landlord (broadly speaking, a landlord who resides in premises which are in the same building as the dwelling-house) will not, in most cases, be a protected tenancy for the purposes of the Act of 1968. Section 102A of the Rent Act 1968, also added by Schedule 2 to the Rent Act 1974, provides that such a tenancy is to be subject to the provisions of Part VI of the Act of 1968 (which relate to furnished lettings) even though the rent does not include a payment in respect of furniture or services.

Section 102A(1) provides that the tenancy is to be treated "for the purposes of Part VI" of the Act of 1968 as a contract to which that Part applies. What is not quite clear is whether it is to be treated as a Part VI contract for other purposes, for example for the provisions of Part II of the Housing Finance Act 1972 about rent rebates and rent allowances.

Part II of the Act of 1972 provides, among other things, that rent rebates and allowances are available in respect of Part VI lettings. Section 26 of that Act defines "Part VI letting" as meaning a contract to which Part VI of the Rent Act 1968 applies. In the case of tenancies falling within section 102A, they will be tenancies (which for this purpose can be taken to be the same as contracts) to which Part VI applies, unless the words "for the purposes of Part VI", in section 102A(1), are read as limiting that section to attracting Part VI of the Rent Act 1968 but no other statutory provisions. In our view the courts would be most unlikely to adopt this construction of section 102A, but we accept that there is some ambiguity. We think it ought to be removed.

We recommend that in re-enacting section 102A of the Rent Act 1968 a tenancy falling within the section should be treated, for all purposes, as a contract to which Part VI of the Rent Act 1968 applies. Effect is given to this recommendation in clause 20 of the Bill.

11. Section 106 of the Rent Act 1968 gives the Lord Chancellor power to make rules for the purpose of giving effect to that Act, but there is no requirement for the rules to be contained in a statutory instrument. The omission of such a requirement seems to have been an error made in the consolidation in 1968.

Section 106 comes, in the main, from section 17 of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920. By virtue of the Rules Publication Act 1893, rules made under section 17 were published as statutory rules (see, for example, the Increase of Rent and Mortgage Interest (Restrictions) Rules 1920, S.R. & O. 1920 1261). When the Act of 1893 was replaced by the Statutory Instruments Act 1948 section 1(2) of the new Act provided that any future exercise of a power to make statutory rules was to be by statutory instrument. So after the Statutory Instruments Act 1946 came into force, section 17 of the Act of 1920 had to be read as giving a power to make rules by statutory instrument.

When section 17 was re-enacted in section 106 of the Rent Act 1968 the Statutory Instruments Act 1946, which in this context operated only on Acts passed before its commencement, ceased to apply to the rule-making power. Section 106 ought, therefore, to have contained an express provision requiring the rules to be contained in a statutory instrument in order to preserve the position under section 17 of the Act of 1920. In practice rules under section 106 have continued to be treated as statutory instruments and have been published as such (see the Rent (County Court Proceedings) Rules 1970, S.I. 1970/1851).

We recommend that in re-enacting section 106 of the Rent Act 1968 a requirement should be included to the effect that the rules are to be contained in a statutory instrument. Effect is given to this recommendation in clause 142 of the Bill.

12. This paragraph concerns the power of local authorities under section 107 of the Rent Act 1968 to publish, or otherwise make available, information for the assistance of landlords and tenants and others as to their rights and duties under certain enactments.

**A.** Section 107 has been amended on more than one occasion; the enactments now listed in subsection (1), as those to which the power applies, are:—

1. the Landlord and Tenant Act 1962,
2. Part III of the Rent Act 1965,
3. the Rent Act 1968,
4. the Rent Act 1974,
5. Parts III, IV, VIII and section 90 of the Housing Finance Act 1972, and
6. the Rent (Agriculture) Act 1976.

Unfortunately, this list does not embrace all the enactments which are incorporated in the consolidation. It does not cover provisions derived from the Housing Acts 1969 and 1974, the Counter-Inflation Act 1973 or the Housing Rents and Subsidies Act 1975. Although these omissions were clearly accidental, they may have the effect of preventing local authorities giving information under section 107 about some provisions which are an essential part of the statutory scheme of rent control. For example, the phasing rules which provide for increases in recoverable rent to take place in stages spread over a two-year period of delay (clause 55 of the Bill) come from section 7 of the Housing Rents and Subsidies Act 1975. It would, in our view, be both illogical and unworkable to empower local authorities to give information about most, but not all, of the provisions of the consolidation.

We therefore recommend that in re-enacting section 107(1) of the Rent Act 1968, the power to provide information should extend to all the provisions of the consolidation.

**B.** Section 107(1) also refers to enactments which are not incorporated in the consolidation. Among these is Part III of the Rent Act 1965, which is being consolidated, together with section 16 of the Rent Act 1957, in the Protection from Eviction Bill now before Parliament. Section 16 of the Rent Act 1957, which provides for a minimum period for a notice to quit to take effect, is not covered by section 107(1) and it would therefore be necessary, in re-enacting section 107 to exclude clause 5 of the Protection from Eviction Bill (clause 5 being the provision which re-enacts section 16 of the Rent Act 1957). Again, there is no good reason for excluding this one provision of the Protection from Eviction Bill from the power of local authorities to provide information.

We recommend that in re-enacting section 107(1) of the Rent Act 1968, the power to provide information should extend to the whole of the Protection from Eviction Bill.

**C.** Subsection (2) of section 107 enables the functions of an authority under that section to be exercised by a committee of the authority, which may include co-opted members who are not members of the authority. This provision is now unnecessary because Part VI of the Local Government Act 1972 gives local authorities a general power to arrange the discharge of their functions by committees, which may include co-opted members or officers. The only difference, which we do not think would be material in practice, is that not more than one-third of a committee appointed under Part VI of the Act of 1972 may comprise co-opted members, whereas there is no restriction on the proportion of co-opted members in a committee appointed under subsection (2).

We recommend that in the re-enactment of section 107 of the Rent Act 1968 subsection (2) should be omitted. Effect is given to the recommendations made by this paragraph in clause 149 of the Bill.

13. Apart from Part VI of the Rent Act 1968, which by virtue of section 69(4) (as substituted by section 205(4) of the Local Government Act 1972) does not apply in the Isles of Scilly, all the enactments incorporated in the consolidation apply in the Isles. But differences in the way in which these enactments have been made to apply in the Isles would, we think, lead to an unnecessarily complicated clause about the Isles of Scilly if the enactments were to be consolidated as they stand.

The provisions in the consolidation come, in the main, from two distinct streams of legislation—the Rent Acts and the Housing Acts. In general the Housing Acts have applied in the Isles only if made to do so by order of the Secretary of State, while the Rent Acts have applied without the need for any such order. In both cases there is usually a power to modify the Acts concerned in their application in the Isles. The application of the Housing Acts in the Isles is dealt with by section 103 of the Housing Finance Act 1972 (as substituted by Schedule 5 to the Housing Rents and Subsidies Act 1975) and that of the Rent Acts by section 115 of the Rent Act 1968.

Unfortunately there are exceptions to this general rule, with the result that a pure consolidation of the existing provisions would have to maintain the distinction between three separate categories.

(i) Provisions applying in the Isles without the need for any order, but which may be made subject to such exceptions, adaptations and modifications as the Secretary of State may by order direct: these are the provisions of the Rent Act 1968 mentioned in subsection (2) of section 115 of that Act and (by virtue of that subsection) the provisions of the Rent Act 1974.

(ii) Provisions which apply in the Isles without the need for any order but which may not be modified: these include the provisions of the Rent Act 1968 which are not mentioned in subsection (2) of section 115, Parts III, IV and IX (so far as it relates to rents) of the Housing Finance Act 1972 (see section 103(3)(*a*) of that Act), the Schedule to the Fire Precautions Act 1971, section 14 of the Counter-Inflation Act 1973 and sections 7 to 11 of the Housing Rents and Subsidies Act 1975 (see section 17(11) of that Act).

(iii) Provisions which apply in the Isles only if made to do so by order of the Secretary of State but which may be modified in their application: these include sections 80, 81 and 83 of the Housing Act 1969, Part VIII of the Housing Finance Act 1972 and section 18 of, and Schedule 3 to, the Housing Act 1974.

In practice the position is simple: except for Part VI of the Rent Act 1968 which we have already mentioned as being expressly excluded, all the enactments incorporated in the consolidation apply in the Isles either because they applied from the start or because orders have been made applying them. No modifications have been made under either of the provisions which enable the Secretary of State to make modifications—that is to say section 115 of the Rent Act 1968 and section 103(1)(*b*) of the Housing Finance Act 1972. In our view it would be undesirable to have a complicated clause in the consolidation relating to the application of its provisions in the Isles if the object is to produce such a straightforward result in practice. And it would be a complicated provision not only because the three distinct categories which we have mentioned would have to be retained but in some cases (for example clause 15 which comes partly from the Rent Act 1968 and partly from the Housing Act 1974) the provisions of a particular clause have come from enactments falling within different categories.

In our view it would be sensible for the whole consolidation (apart, of course, from those provisions derived from Part VI of the Rent Act 1968) to apply in the Isles with a general power to make exceptions, adaptations or modifications. The distinction drawn in section 115 of the Rent Act 1968 between those provisions which may be modified in their application in the Isles and those which may not cannot, so far as we are aware, be attributed to any deliberate policy. The distinction seems to derive merely from the fact that before 1965 the Rent Acts contained no power to modify, whereas since 1965 a power to modify has been included. Section 35 of the Rent (Agriculture) Act 1976, for example, gives a general power to modify in the application of the Act to the Isles.

It may be argued that because the power to modify has not been exercised in relation to any of the provisions incorporated in the consolidation, it would be better to remove the power completely rather than to extend it to provisions to which it does not at present apply. We do not think that that would be the right thing to do. It may well be necessary, at some time in the future, to modify some of the provisions of the consolidation, perhaps in relation to local government re-organisation, or it may be

that other reasons for modifications which ought to have been made in the past come to light. In any event we think that it can do no harm to apply the power to modify generally throughout the Bill.

We recommend that in re-enacting the provisions incorporated in the consolidation there should be a simple and consistent approach to their application in the Isles of Scilly. All the provisions of the Bill (except those derived from Part VI of the Rent Act 1968) should apply directly in the Isles but the Secretary of State's power to modify should extend to the whole Bill. Effect is given to this recommendation in clause 153 of the Bill.

14. The system of rent registration, which applies to regulated tenancies by virtue of Part IV of the Rent Act 1968, was applied to those housing association tenancies which fall within Part VIII of the Housing Finance Act 1972 by section 82 of the Act of 1972. Subsequently Part IV of the Act of 1968 was amended by the Rent Act 1974 in two respects, but those amendments were not expressed to be made in Part IV as applied by other enactments. Section 15(3) of the Rent Act 1974 provides only that references to another enactment (*i.e.*, for our purposes references to Part IV of the Act of 1968) are to be taken as references to that enactment as amended by or under any other enactment. So it seems that, in referring to particular provisions of Part IV of the Rent Act 1968, section 82 of the Act of 1972 has to be read as referring to those provisions without the amendments made by the Rent Act 1974.

**A.** Paragraph 9(1) of Schedule 1 to the Rent Act 1974 amended section 46(1) of the Rent Act 1968 to provide that in determining fair rents regard should be had, in cases where furniture is provided for use under the tenancy, to the quantity, quality and condition of the furniture. This was a consequential amendment made necessary by the bringing into regulation under Parts III and IV of the Act of 1968 of the majority of furnished tenancies. As we have mentioned in paragraph 5 of this Appendix, the Act of 1974 also extended the rent controls in Part VIII of the Housing Finance Act 1972 to furnished tenancies. Clearly it is just as necessary, in determining fair rents for housing association furnished tenancies, to have regard to the furniture provided as it is in determining fair rents for the furnished tenancies of other landlords; the amendment made in section 46(1) by the Act of 1974 ought to have been extended to section 46 as applied by the Act of 1972.

We recommend that in re-enacting section 82 of the Housing Finance Act 1972, subsection (2) should attract the amendment made by the Rent Act 1974 in section 46(1) of the Rent Act 1968. Effect is given to this recommendation in clause 87 of the Bill.

**B.** The Rent Act 1974 also amended section 44 of the Rent Act 1968. Section 4(1) of the Act of 1974 added to section 44 a new subsection (3A) which modified the procedure for registering a rent in place of a previously registered rent. The normal rule under Part IV of the Rent Act 1968 is that registration takes effect from the day on which an application for registration of a rent is made to a rent officer, and three years must then elapse before re-registration. The amendment made to section 44 allows an application for re-registration to be made during the last three months of the three-year period, but in such a case section 48(1A) of the Act of 1968 (as added by section 4(2) of the Rent Act 1974) provides that the re-registration is to take effect on the day after the expiry of the three-year period rather than on the date of the application for re-registration.

The purpose of this change was to improve the machinery for re-registering rents, without in any way altering the amount of rent actually recoverable from the tenant. In view of the inevitable delay between an application for re-registration and the registration of the new rent it was thought sensible to allow the landlord to initiate the procedure for re-registration before the expiry of the three-year period. We think that this facility ought to be available to housing associations under Part VIII of the Act of 1972; the fact that it is not is due solely to the unintentional failure in 1974 to carry the amendment to section 44 through into Part VIII.

We recommend that in re-enacting section 82 of the Housing Finance Act 1972, subsection (2) should attract the amendment made by the Rent Act 1974 in section 44 of the Rent Act 1968. Effect is given to this recommendation in clause 87 of the Bill.

**C.** If our recommendation **B** in this paragraph is accepted, it will be necessary to apply to Part VIII of the Housing Finance Act 1972 a provision, on the lines of section 48(1A) of the Rent Act 1968, to the effect that where an application for re-registration is made before the end of the period of three years from the previous registration the new registered rent is not to take effect until the day after the expiry of that period. Without such a provision section 82(3) of the Act of 1972, which provides that for the purposes of Part VIII registration is to take effect on the date of registration, might enable a housing association to have an effective re-registration before the end of the three-year period.

We recommend that in re-enacting section 82 of the Housing Finance Act 1972, provision should be made for preventing a re-registration of rent taking effect before the expiry of the three-year period. Effect is given to this recommendation in clause 87 of the Bill.

**D.** We understand that a number of housing associations have had rents re-registered in response to applications made before the expiry of the three-year period, in reliance on section 44(3A) of the Rent Act 1968. (See recommendation **B** above.) If our recommendations in this paragraph are accepted it will make it clear that applications made in reliance on section 44(3A) were wrongly entertained. As we have already suggested that the failure to attract section 44(3A) for the purposes of Part VIII of the Act of 1972 was an oversight, we think that it would be appropriate to save the effect of registrations which have already been made on the assumption that section 44(3A) did apply. To vitiate such registrations would have a damaging effect on those housing associations which have, in good faith, been relying on their effectiveness.

We recommend that if our recommendation **B** in this paragraph is accepted provision should be made in the consolidation to treat registrations made under Part VIII of the Housing Finance Act 1972 on the assumption that section 44(3A) of the Rent Act 1968 applied to cases falling within Part VIII as valid. Effect is given to this recommendation in the savings made by Schedule 24 to the Bill.

15. Section 14 of the Counter-Inflation Act 1973 brought certain tenancies with high rateable values within the control of the Rent Act 1968, for the first time. Paragraph 7 of Schedule 5 to the Act of 1973 contained transitional provisions applying to tenancies which would have become regulated tenancies for the purposes of the Rent Act 1968, by virtue of section 14, had they not come to an end before the coming into force of that section. Sub-paragraph (4) of paragraph 7 provided that a tenant who retained possession of a dwelling-house to which paragraph 7 applied, after the passing of the Act of 1973, was to be deemed to have done so under a statutory tenancy arising on the termination of the tenancy which had come to an end.

Sub-paragraph (4) ought to have deemed the tenant to have retained possession under a statutory tenancy arising on the termination of a protected tenancy which was a regulated tenancy. The tenancy which came to an end before the passing of the Act of 1973 was, of course, never a regulated tenancy, but for the provisions of the Rent Act 1968 relating to statutory tenancies to be successfully attracted it is necessary to treat it as if it had been.

Schedule 1 to the Rent Act 1968 determines who is to be treated as a statutory tenant by succession to the original tenant of a dwelling-house. For the purposes of Schedule 1 the original tenant is taken to be the person who, immediately before his death, was a protected tenant of the dwelling-house or the statutory tenant of it by virtue of his previous protected tenancy. A statutory tenant is, in other words, only treated as the original tenant for the purposes of Schedule 1 if his previous tenancy was a protected tenancy. A tenancy to which paragraph 7(4) applies would have been a regulated tenancy if it had continued in force but in fact never was one, and so was never a protected tenancy. If we are right in thinking that a person who became a statutory tenant by virtue of paragraph 7(4) can never be the original tenant for the purposes of Schedule 1, then no one can take over his statutory tenancy as a statutory tenant by succession.

The purpose behind paragraph 7 of Schedule 5 to the Counter-Inflation Act 1973 was clearly to provide tenants who remained in possession after the passing of the Act with the same protection as that afforded to statutory tenants by the Rent Act 1968. The failure to attract the provisions of Schedule 1 to the Act of 1968 can only have been unintended and we think that it ought to be corrected.

We recommend that in re-enacting paragraph 7(4) of Schedule 5 to the Counter-Inflation Act 1973 the tenant's statutory tenancy should be deemed to have arisen on the termination of a protected tenancy which was a regulated tenancy. Effect is given to this recommendation in Schedule 24 to the Bill.

16. Section 7 of, and Schedule 2 to, the Housing Rents and Subsidies Act 1975 contain the general rules for phasing increases of rents under regulated tenancies. The scheme is devised primarily in terms of statutory tenancies, Schedule 2 being drafted solely in terms of statutory tenancies, but section 7(1)(*b*) adapts it to contractual tenancies by confining increases under contractual tenancies to those which would have been recoverable for comparable periods of statutory tenancies.

Before coming to the reasons for thinking that section 7 and Schedule 2 ought to be altered before being re-enacted in the consolidation, it will be necessary to explain the procedure for increasing rents under statutory tenancies; it is in that context that the defect with which we are concerned arises.

In order to increase the rent under a regulated tenancy which is a statutory tenancy, the landlord must serve a notice of increase under section 22(2)(*b*) of the Rent Act 1968. A notice of increase may only increase the rent payable under the tenancy to the amount of the rent limit imposed by section 22. If no rent is registered for the dwelling-house the rent limit is the amount of rent recoverable for the last contractual period; if a rent is registered it is the amount of the registered rent. So for a statutory tenancy the landlord can, in effect, only increase the rent recoverable from the tenant by registering, or re-registering, a rent.

Where a notice of increase is served under section 22(2)(*b*) in consequence of the registration, or re-registration, of a rent which is higher than the previous rent limit, the notice may specify the date from which it is to take effect. That date may be up to four weeks earlier than the date on which the notice is served, providing that it is not earlier than the date on which the rent was registered. (Section 22(3) provides that no notice of increase may be made to take effect before the date of registration.)

**A.** When the phasing rules in the Housing Rents and Subsidies Act 1975 were drafted the view taken was that a notice of increase served under section 22(2)(*b*) of the Rent Act 1968 had to specify, as the date from which it was to take effect, a date which coincided with the beginning of a rental period. As the effective date for the notice could never be earlier than the date of registration (because of section 22(3)) it was assumed that increases could only become payable in respect of rental periods beginning with or after the date of registration. The period of delay for the phasing rules begins with the date of registration and it was clearly thought to be necessary for those rules to bite only on rental periods beginning during the period of delay—*i.e.*, after the date of registration.

But a recent case has shown that the assumption that a notice of increase can only take effect from the beginning of a rental period was wrong. In *Avenue Properties (St. John's Wood) Ltd.* v. *Aisinzon* [1976] 2 All E.R. 177, the Court of Appeal held that a notice of increase served under section 22(2)(*b*) of the Rent Act 1968 and expressed to take effect from a date in the middle of a rental period was valid.

Since this decision it has been unclear how the phasing rules in the Housing Rents and Subsidies Act 1975 operate in relation to such a notice of increase. Take a case where a rent is registered on a date which falls in the middle of a rental period of the tenancy concerned. The landlord serves a notice of increase specifying the date of registration (back beyond which he cannot go) as the date on which the increase is to take effect. The rental period in the middle of which the increased rent becomes recoverable by the landlord will have begun before the date of registration and therefore before the period of delay (which begins on the date of registration). As

section 7(1)(*a*) of the Act of 1975 bites only on rental periods which begin in the period of delay, the phasing rules appear not to operate on the increase in rent for the rental period which is already under way when the period of delay begins.

In our view this defect ought to be corrected. There are comparable phasing rules in the Rent (Agriculture) Act 1976 (in Schedule 5) and there account has been taken of the *Avenue Properties* case. The phasing rules under that Act are made to bite on any period of the tenancy which falls within the period of delay. We think that a similar approach ought to be adopted for the consolidation.

We recommend that in re-enacting section 7(1)(*a*) of, and Schedule 2 to, the Housing Rents and Subsidies Act 1975, the phasing rules should be made to bite on any part of a rental period which falls within the period of delay. Effect is given to this recommendation in clause 55(1)(*a*) of the Bill and in Schedule 8.

**B.** In the case of a contractual tenancy there is no requirement that the rent may be increased only by service of a notice of increase. If the effect of the Rent Acts has been to prevent a landlord from recovering the full contractual rent, then as soon as the restriction is removed, or partially removed, the higher recoverable rent (which may be the full contractual rent or a new registered rent which is still below the contractual rent) is immediately payable by the tenant. In practice, an increase in the recoverable rent under a contractual tenancy is unlikely to coincide with the start of a rental period if the increase is attributable to a re-registration of the rent. This is because the date from which registration takes effect is linked with the date on which the application for registration was made rather than with the rental period under the tenancy.

In other words, in the case of a contractual tenancy the period of delay under Schedule 2 to the Act of 1975 is also likely to begin some way through a rental period. Although it arises from different reasons, the problem is the same as that which section 7(1)(*a*) of the Act of 1975 causes in relation to statutory tenancies. We think that it would be desirable to bring paragraphs (*a*) and (*b*) of section 7(1) into line, so far as they relate to a period of delay beginning during a rental period.

We recommend that in re-enacting section 7(1)(*b*) of the Housing Rents Subsidies Act 1975 the phasing rules should be made to bite on any part of a rental period which falls within the period of delay. Effect is given to this recommendation in clause 55(1)(*b*) of the Bill.

**C.** The phasing rules in the Housing Rents and Subsidies Act 1975 are modelled on those in Schedule 6 to the Housing Finance Act 1972, which require increases in rent which are attributable to the conversion of controlled tenancies into regulated tenancies under Part III of that Act to be phased. The same arguments apply to Schedule 6 as apply to section 7 of, and Schedule 2 to, the Act of 1975 and we think that similar alterations should be made in re-enacting Schedule 6.

We recommend that in re-enacting Schedule 6 to the Housing Finance Act 1972 similar provision should be made in relation to periods of delay beginning during rental periods as is made under our recommendations A and B in this paragraph. Effect is given to this recommendation in Schedule 9 to the Bill.

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