The Law Commission

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LANDLORD AND TENANT

BUSINESS TENANCIES:
A Periodic Review of the Landlord and Tenant Act 1954 Part II

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

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THE LAW COMMISSION

Item 3 of the Fourth Programme: the Law of Landlord and Tenant

BUSINESS TENANCIES:

A Periodic Review of the Landlord and Tenant Act 1954 Part II

To the Right Honourable the Lord Mackay of Clashfern,
Lord High Chancellor of Great Britain

PART I

INTRODUCTION

Background and Scope

1.1 We have reviewed the system of giving security of tenure to the tenants of properties let for business purposes, which is provided by the Landlord and Tenant Act 1954 Part II, and in this Report we recommend reforms to it.

1.2 The object of the Act is to give traders and professional persons a general right to retain their business premises so long as they comply with their obligations as tenants. Landlords are entitled to a full market rent, revised from time to time, and are not unreasonably prevented from regaining possession if they want the property for their own occupation or to redevelop it. Those with interests in business property have daily resort to this legislation, which is generally thought to have worked well on the whole.

1.3 The Law Commission previously recommended changes to the 1954 Act,[1] which were implemented by the Law of Property Act 1969. The 1954 Act is an established part of the commercial property market and the practices of that market develop and change over the years, so it is appropriate for the statutory provisions to be reviewed from time to time to ensure that they are still fulfilling their intended purpose. On this occasion, we have identified some features which experience has shown could benefit from change. The aim of our reform proposals is to improve the working of the Act by amending some of its details while leaving its fundamentals undisturbed; this should increase its usefulness and eliminate unnecessary formalities.

1.4 In 1988 we published a Working Paper[2] in which we highlighted 19 aspects of the legislation which might merit reform. In this, we received most helpful assistance from Mrs Sandi Murdoch, LL.M., Lecturer in Law at the University of Reading, to whom we express our thanks.

1.5 We received a considerable response, mainly from people and organisations who were professionally concerned with commercial property. This was very helpful, and we are most grateful to all of those who offered us their views. The strong representation of practical users of the Act, whether as landlords, tenants or professional advisers, suggests that we can rely on their views with some confidence when seeking to discover how the operation of the legislation could be improved. The replies we received were analysed for us by Sir Wilfrid Bourne, K.C.B., Q.C., who also helped us in the preliminary stages of this project, and we wish to record our gratitude to him.

1.6 In our Working Paper we took the view that on the whole the Act was working well.[3] This agreed with the view of the Parliamentary Under-Secretary of State at the Department of the Environment who in 1985, after reviewing the responses to a Departmental circular inquiring what issues concerning the legislation should be reconsidered, concluded that the balance between landlords and tenants of business premises was being properly maintained.[4] However, we also said that " there are some matters causing concern to the users of the Act which, while they do not go to the heart of the legislation, could be reformed ".[5]

[1] Report on the Landlord and Tenant Act 1954 Part II (1969), Law Com. No. 17.

[2] Part II of the Landlord and Tenant Act 1954, Working Paper No. 111.

[3] Working Paper, para. 1.3.

[4] *Hansard* (H.C.), 20 November 1985, vol. 87, Written Answers, col. 245.

[5] Working Paper, para. 1.5.

1.7 Generally, those who responded to our Working Paper had similar views: they supported the objectives of the Act and believed that it generally worked satisfactorily, although there were details which could usefully be amended. We should record, however, that a small minority argued that the legislation was no longer needed, and that as there was no shortage of commercial property a security of tenure regime imposed by statute was unnecessary.

1.8 We accept the majority view that the Act should be retained, and improved by adjusting its provisions. Our proposals, therefore, concentrate on particular, often technical, detailed areas which need improvement, rather than reconsidering the fundamental justification for, and structure of, this scheme. This makes it inappropriate to give a detailed statement of the whole of the present law on this topic, but in Appendix C we reprint the outline of the Act's provisions from our Working Paper, with minor revisions to take account of later developments.

1.9 Our reform proposals are designed to reinforce the smooth working of this practical piece of legislation, the fundamental principles of which would remain unaltered. In making our recommendations, we have followed a number of general principles:

(a) The overall balance between landlord and tenant is generally regarded as fair and should be maintained. Clearly, almost any single alteration will change that balance, but our recommendations taken as a whole are intended to be broadly neutral.

(b) The renewal procedure is familiar to professional advisers and to major property owners. It should not therefore be changed unless there are clear countervailing advantages.

(c) Although it must always be possible to refer disputes to court, to ensure that those involved can enforce their statutory rights, it should not be necessary to take proceedings as a routine part of the procedure. Recourse to the court should be kept to a minimum to cut out expense and delay for the parties and to reduce unnecessary burdens on the court system.

Arrangement of this Report

1.10 Part II of this Report sets out our reform recommendations. In Part III we identify the areas where we suggest there should be no change. Our recommendations are summarised in Part IV. A draft Bill to implement our reform recommendations, together with Explanatory Notes, appears in Appendix A.

1.11 To help in understanding how the Act would apply if our reform proposals are enacted, Appendix B reproduces the relevant provisions of the 1954 Act in the form in which they would apply after amendment in accordance with our recommendations. It also identifies those of the present provisions which we are recommending should be repealed. This form of schedule, which comprehensively illustrates our proposals, is one which we have used before. We consider that it is particularly helpful in the case of a law reform which involves considerable textual amendment to an existing statute.

1.12 Appendix C of the Report contains the summary of the present law set out in our Working Paper. Appendix D lists the individuals and organisations who responded to our Working Paper.

PART II

RECOMMENDATIONS FOR REFORM

2.1 In this Part we discuss the aspects of the 1954 Act which we consider require reform, and make recommendations for changes to the Act. The matters for consideration are grouped under these broad subject headings: scope of the Act, statutory procedure, renewal terms and compensation.

Scope of the Act

Ownership of Business

2.2 As we explained in the Working Paper, the ownership of the business conducted on the property, or intended to be carried on there, is fundamental to the operation of the Act.[1] The primary intention is to give security of tenure to the tenant who is carrying on his own business on the property let, while giving a right to oppose renewal of the lease to a landlord who intends to occupy it for the purposes of a business owned by him. However, complications arise where a party decides so to organise his affairs that his property and his business are in separate ownership, even though, through shareholdings in companies, they remain under his control and effectively in the beneficial ownership of the same person.

2.3 At present, the Act's provisions extend to embrace these situations of divided ownership in some, but far from all, cases. The lack of consistency in the application of the legislation can be judged by comparing the situations which it covers with those which it does not.

2.4 The cases in which at present the landlord may be different from the person who intends to occupy property, or the tenant different from the person in occupation of it, are:

(a) A landlord can reclaim possession of property on the ground that a company controlled by him will carry on business there;[2]

(b) Where the tenant is a company which is a member of a group of companies, another company in the group may occupy the property and carry on business there, and this satisfies the conditions that the tenant is in occupation for business purposes;[3]

(c) Similarly, a company landlord can oppose the grant of a new tenancy on the ground that the property is required for occupation by another group company to carry on business;[4]

(d) If trustees are tenants, occupation of the property by beneficiaries of the trust, carrying on business there, suffices for the trustees to qualify under the 1954 Act;[5]

(e) Trustee landlords can oppose the grant of a new tenancy on the basis that the property is to be occupied for business purposes by beneficiaries;[6]

(f) On certain conditions, those joint tenants who are carrying on business on the property in partnership enjoy the 1954 Act renewal rights.[7]

2.5 On the other hand, the following cases are not covered by exceptions. Therefore, the basic rule applies, depriving the tenant of the right to renew or the landlord of the right to recover possession:

(a) A company landlord cannot reclaim possession in order to allow its controlling shareholder to trade in the property;

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[1] Working Paper, paras. 3.1.1 *et seq.*

[2] Landlord and Tenant Act 1954, s.30(3).

[3] *Ibid.*, s.42(2).

[4] *Ibid.*, s.42(3).

[5] *Ibid.*, s.41(1).

[6] *Ibid.*, s.41(2).

[7] *Ibid.*, s.41A.

(b) A tenant has no claim to renew his tenancy if it is his company which trades in the premises;[8]

(c) A company tenant has no renewal rights by virtue of the fact that its controlling shareholder carries on business in the property;

(d) The rights of members of a group of companies do not apply where, instead of the companies all being subsidiaries of one holding company, each is controlled by an individual.

2.6 In the Working Paper, we provisionally concluded that some reform of the rules relating to companies was required and that the time had come to introduce a general rule treating companies—whether they are or are not controlled by the landlord or the tenant—as identical to the individuals who control them.[9] A minority of those who responded opposed this conclusion, but some at least of that opposition, in the case of tenants and their companies, was based upon a misunderstanding. There was a fear that new statutory provisions would oblige a landlord to accept a tenant who was not of his choosing and who might not have the appropriate financial standing. That was not the proposal. The suggested "lifting of the corporate veil" would only apply so as to authorise the operation of the statutory procedure in favour of the existing tenant; it would not change the identity of the person entitled to take advantage of the statutory rights. Take the case of an individual who was tenant of property which was occupied for business purposes by a company which he controlled. We did not mean to suggest, as some understood us to have done, that the company would be able to claim a new tenancy. Rather, the occupation by the company would allow its controlling shareholder to renew *his* tenancy, so he would himself remain tenant. Under our proposal it would not be possible to use the procedure to foist upon landlords tenants whom for good reasons they did not want.

2.7 We do not wish to disturb the fundamental principle of the 1954 Act that it is concerned both with property ownership and with occupation for business purposes, whether in the case of the tenant who wishes to renew or the landlord who seeks to resist renewal. However, we consider that people's ability to take advantage of these statutory provisions should not depend on the manner in which they choose to arrange their business affairs. Many factors may influence the decision whether to incorporate a business or whether to vest a property in a company, and there is no need for the effect of the 1954 Act to be other than neutral. Landlords and tenants should be treated alike in this respect. We consider that treating an individual and any company he controls as equivalent, when assessing qualifications for the statutory procedure, would be fair to both parties. *We recommend* that this neutral effect should apply to cases where the landlord or the tenant controls the company in question.

Groups of Companies

2.8 Companies can also, for practical purposes, be associated when both or all are controlled by the same individual, despite the fact that the companies have no connected shareholdings. The Act's definition of a group of companies[10] does not cover such cases, but is confined to the situation where the companies are all, directly or indirectly, owned by a holding company. We consider that more than one company controlled by one individual should be treated in the same way as subsidiaries of the same holding company. *We recommend* that the definition of a group of companies should, for this purpose, be extended accordingly, so that the tenant's statutory right to renew a tenancy will apply where the tenant is a company and the business is carried on by another company, and both are controlled by the same individual.

Tenant's Business

2.9 The 1954 Act at present applies where the tenant occupies the premises let "for the purpose of a business carried on by him".[11] *We recommend* that in future it should apply equally if the business is carried on by a company which the tenant controls or, if the tenant

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[8] *Nozari-Zadeh* v. *Pearl Assurance plc* [1987] 2 E.G.L.R. 91.

[9] Working Paper, paras. 3.1.13–3.1.14.

[10] Landlord and Tenant Act 1954, s.42(1).

[11] *Ibid.*, s.23(1).

is a company, by the person who controls the tenant company. Accordingly, the 1954 Act will apply to the following situations:

(a) The tenant is an individual and the business is carried on by a company which he controls;[12]

(b) The tenant is a company and the individual in control of it carries on the business.

Landlord's Business

2.10 The landlord has a right to oppose the tenant's application for a new tenancy if he intends to occupy the property "for the purposes. . . of a business carried on by him".[13] This ground of opposition already extends to the case where the business is to be carried on by a company controlled by the landlord.[14] *We recommend* that in future it should also apply where the landlord is a company and the business is to be carried on by the individual who controls it, or who controls another company in the group.

2.11 At present, a person who wants to carry on business from a particular property and buys the reversion to an existing tenancy cannot obtain occupation on this ground from the tenant under that tenancy within five years.[15] This limitation needs to apply to cases in which a landlord seeks possession so that a company in which he has a controlling interest may occupy the premises, and *we recommend* accordingly. In addition, to mirror the effect of that provision in relation to the new ground for possession where a company landlord seeks possession so that the individual controlling it may occupy the premises, a parallel limitation will be needed. *We recommend* that in such a case the landlord should not be entitled to use that ground unless, in a case where the tenancy was in existence when the individual assumed control of the company, he has had control for at least five years. This would therefore apply where, instead of acquiring the reversion, someone acquired control of the reversioner company. There would be no additional restriction on that company obtaining possession in order to use the property for its own business; but if the intention was to use it for the controlling shareholder's business, the ground for possession would only be available five years after he took control.

Control of Company

2.12 Consideration needs to be given to the way in which control of a company is defined. At present, the 1954 Act specifies that a person has control of a company in either of two circumstances: either, he is a member of the company and alone can appoint or remove the majority of directors; or, he holds more than half of the equity share capital beneficially.[16] This test effectively reproduces the way in which one company's status as holding company of another as its subsidiary was defined by the Companies Act 1948,[17] which was in force when the 1954 Act was enacted. The 1948 Act provision was re-enacted by the Companies Act 1985.[18] However, the test of control of a subsidiary company by its holding company was changed by the Companies Act 1989. That control is now defined as: first, holding a majority of the voting rights in the subsidiary; or, secondly, being a member of the subsidiary with the right to approve or remove a majority of its board; or, thirdly, being a member of the subsidiary and controlling a majority of the voting rights of it; or, fourthly, controlling a company which itself controls the subsidiary.[19] The new definition has been adopted in the 1954 Act for the purpose of determining which companies are members of a group of companies.[20]

2.13 There seems no good reason why the practice of having a single definition of control of a company whether by an individual or by another company, which the 1954 Act originally adopted, should have been abandoned. Indeed, having a single definition must make the Act easier to understand and to operate. We consider that, for consistency,

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[12] *Christina* v. *Seear* [1985] 2 E.G.L.R. 128; *Nozari-Zadeh* v. *Pearl Assuranc plc* [1987] 2 E.G.L.R. 91.

[13] Landlord and Tenant Act 1954, s.30(1)(g).

[14] *Ibid.*, s.30(3).

[15] *Ibid.*, s.30(2).

[16] Landlord and Tenant Act 1954, s.30(2).

[17] Companies Act 1948, s.154.

[18] Companies Act 1985, s.736, as originally enacted.

[19] Companies Act 1985, s.736, as substituted by Companies Act 1989, s.144. The definition is supplemented by provisions in s.736A.

[20] Landlord and Tenant Act 1954, s.42(1); Companies Act 1989, Sched. 18, para. 3.

the more modern definition introduced in 1989 should apply for 1954 Act purposes not only to the control of one company by another but also to the control of a company by an individual. *We recommend* that the definition of control in the latter case should be amended accordingly. The convenient way to do this is by a direct reference to the Companies Act provision, as if it applied to companies controlled by individuals, because this allows all the subsidiary provisions to apply without their being repeated in the 1954 Act.

Contracting Out

2.14 One of the occasions on which the 1954 Act[21] requires recourse to the courts is when the parties to a lease, or those who propose to become parties to a lease, agree to exclude the tenant's renewal rights. An agreement to contract out must be authorised by the court on the parties' joint application, and has to be contained in or endorsed on the instrument creating the tenancy or such other instrument as the court may specify. A tenancy yet to be granted, to which renewal is not to apply, must be one for a term of years certain.[22]

2.15 The objective of this provision seems clear. In its previous Report, the Commission explained its approach to agreements excluding renewal rights in this way:

> "There are many cases where the landlord would be willing to let on a temporary basis and the tenant would be willing to accept such a tenancy. This may happen, for example, when the landlord has obtained possession and intends to sell, demolish or reconstruct the property but is not ready to do so immediately. He will, however, understandably, be reluctant to effect a temporary letting if he thereby risks having to oppose a tenant's claim for a new tenancy under the Act when the time comes. In many cases, therefore, he may prefer, having got possession, to leave the premises unoccupied. . . .
>
> "We . . . accept that there may be cases where a tenant is willing, for good reasons, to accept a tenancy for more than six months without rights under the Act. We believe that this should be possible, but only where there is the safeguard that the court has sanctioned the agreement in advance".[23]

2.16 In our Working Paper we expressed a number of misgivings about the current provision:

(a) It does not satisfactorily deal with "offer-back clauses". We have decided not to make any recommendations covering this aspect, and discuss the position below.[24]

(b) The distinction which the Act appears to draw between agreements to surrender in advance, which it restricts, and surrenders taking effect immediately, which it does not restrict, is not applied wholly consistently.[25] We provisionally concluded that there should be reform. This question is discussed below.[26]

(c) More fundamentally, we suggested that the procedure under which agreements are authorised by the court does not in practice provide the safeguard which was originally intended. It seemed that few courts examined the bargains made by the parties with much care and a large proportion of applications were approved. We asked for information about present practice and questioned whether the requirement of court approval could not be dispensed with.[27]

Court Applications

2.17 We did not receive a clear reply to our question: on what grounds do about 15 per cent of applications fail?[28] Technical defects in the applications certainly account for some of these failures, but we do not know how many. No other common reason was suggested to us. However, those who expressed views were generally agreed that the process did not

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[21] As amended by the Law of Property Act 1969, s.5.

[22] Landlord and Tenant Act 1954, s.38(4).

[23] Report on the Landlord and Tenant Act 1954 Part II (1969), Law Com. No. 17, paras. 32, 33.

[24] Paras. 3.15–3.19 below.

[25] Working Paper, paras. 3.5.17 *et seq.*

[26] Paras. 2.21–2.23 below.

[27] Working Paper, para. 3.5.15.

[28] Working Paper, para. 3.5.10. The query in the Working Paper was based on the statistics for 1986, when 11,651 applications were filed in the county court. In 1989, the number of applications rose to 24,070. Approval was given in 18,879 cases, an apparent failure rate of over 21 per cent: *Judicial Statistics: Annual Report 1989* (Cm 1154).

afford a real scrutiny of the circumstances, fairness or integrity of applications. We are satisfied that applications to the court to approve agreements that the statutory renewal rights should not apply to leases about to be granted are not an effective filter to prevent the abuse of what is generally assumed to be the landlord's dominant position.

2.18 Some of those who responded to the Working Paper favoured parties having the ability to contract out of the 1954 Act's renewal provisions without restriction. However, we consider that that would fundamentally undermine the statutory scheme. Landlords gain no benefit from the renewal rights and would be tempted to demand contracting out as a matter of routine. Tenants might often concede it without understanding its significance. Some constraint is therefore needed, and the purpose and nature of that constraint must be such as to ensure that the prospective tenant only agrees to contract out if he understands the nature of the statutory rights which he is agreeing to forgo. A court application is not the only, nor necessarily the best, way to achieve that purpose. As it operates at present it is not even an effective way to do so.

2.19 Accordingly, *we recommend* that a new procedure be adopted. This would require the parties to observe specified formalities if they agree that the Act is not to apply. Our objective is to ensure that the parties should be able to opt out of the renewal provisions without unnecessary formality, delay or expense, but would nevertheless only do so after being fully informed of the implications of the step they were about to take.

2.20 The requirements for an agreement to contract out would be that:

(a) The agreement should be contained in or endorsed on the instrument creating the tenancy. Clearly, it is important to ensure that if the tenancy or the reversion changes hands, the new owner should be aware of the existence and purport of any agreement. This requirement ensures that successors in title are properly informed, and will have the chance to obtain the information before the title is vested in them;

(b) A statement in a prescribed form should be endorsed on the instrument creating the tenancy.[29] We envisage that the prescribed contents of the statement would explain, in plain English, the general nature of the tenant's statutory rights and the consequences of his giving them up. The content of the statement would be prescribed by statutory instrument, which has two advantages. First, it will be possible to lay down separate wordings to suit different circumstances. Secondly, it should prove easier to adapt the provisions as circumstances change;

(c) A declaration by the tenant should be endorsed on the instrument which creates the tenancy, saying that he has read and understood the terms of the agreement and the statement. That agreement should be signed by the tenant. By keeping the declaration separate from the tenancy agreement—it would be endorsed on the document rather than incorporated into the text—and by requiring a separate signature, we aim to ensure that the tenant realises that the agreement to contract out is a matter of some importance requiring separate consideration. That should draw his attention to the statement of the tenant's rights and the consequences of relinquishing them.

Surrenders

2.21 Most of those who responded to the Working Paper agreed that the legislation should draw a clear distinction between surrenders of leases, which are unobjectionable, and agreements to surrender them in the future where some control is appropriate. There was general agreement that the conflict or ambiguity in the current provisions of section 24(2)(b), which accepts the validity of a surrender made pursuant to an agreement reached after the tenant has been in occupation for one month, and section 38(1) of the 1954 Act, which invalidates all agreements to surrender unless authorised by the court,[30] should be resolved. *We recommend* that that provision in section 24(2)(b) be repealed. The position will then be clear: all surrenders will be effective,[31] but no agreement for a surrender will be valid unless the requirements for such agreements are complied with.

[29] This requirement would ensure that the contracting out arrangements could not apply to agreements made orally, notwithstanding that a tenancy for a term of up to three years, at the best rent and without taking a fine, can be validly created without a written document: Law of Property Act 1925, s.54(2).

[30] Working Paper, para. 3.5.21.

[31] Landlord and Tenant Act 1954, s.24(2).

2.22 There must be greater concern with agreements to surrender, where two points seem clear. First, an agreement for a future surrender entered into contemporaneously with the grant of the lease is a clear way to evade the renewal rights given by the Act. This should not, therefore, be freely possible. On the other hand, once a tenant is in possession under the terms of a lease which entitle him to renew, he has a strong bargaining position from which to negotiate a surrender and there is no reason to suppose that he will improperly be induced to forgo his statutory rights. Accordingly, on one view any intervention in this second case may well be an unjustified interference, but we consider that other considerations which apply to agreements contracting out of renewal rights in advance of the tenancy being granted—the need to be sure that the parties are fully informed and the need to alert successors in title[32]—also apply here.

2.23 Accordingly, *we recommend* that although no court application should be required to authorise an agreement to surrender a tenancy, an agreement should, in order to be valid, comply with the requirements we have recommended for agreements to contract out in advance.[33]

Statutory Procedure

Notices Requiring Information

2.24 Before the renewal procedure can be started, both the landlord and the tenant need information which they may not necessarily have. A landlord who gives notice to end the lease must give it to the tenant who is occupying the premises for business purposes,[34] and because of sub-letting he may not know who that is. If the tenant makes a request for a new tenancy, it must be served on the "competent landlord",[35] i.e. the most immediate reversioner with a sufficient interest in the property. This may not be his immediate landlord, and he may not know the competent landlord's identity. For this reason, the 1954 Act gives the parties rights to serve notices to obtain the necessary information,[36] but the provision has been criticised because there is no express sanction against the recipient of a notice who does not comply.

2.25 In the Working Paper, we provisionally suggested that damages should be available as an express sanction.[37] This met with approval from those who responded, and it was apparent that the present position is the source of much difficulty.

2.26 It was also clear from the response to consultation that the scope of the provisions requiring information to be given needs examination. Topics which correspondents suggested that we should address were: keeping the information which was given up to date; transmitting information, or the obligation to give it, if either interest in the property changes hands; the amount of information given. Accordingly, *we recommend* that there should be revised provisions, relating to the service of notices requesting information.

2.27 In response to a notice, in a prescribed form, given by a reversioner (whether or not the immediate landlord) and served during the last two years of a lease term, *we recommend* that a tenant should be under a duty within a month to state:

(a) Whether he occupies all or part of the property for a business carried on by him. This is in the same form as the present provision,[38] but it is given an extended meaning by a proposed general provision that statutory references to occupation and business should refer to the other circumstances which we have recommended should be brought within the Act.[39] As the form of the request notice is to be prescribed, we consider that it is important that the way in which it is drafted should ensure that this extended meaning is clear to users;

[32] Para. 2.19 above.

[33] Para. 2.20 above. We envisage that the prescribed form of statement would be different for agreements made before entering into a tenancy and agreements to surrender.

[34] Landlord and Tenant Act 1954, s.23(1).

[35] *Ibid.*, s.44, Sched. 6, para. 1.

[36] *Ibid.*, s.40.

[37] Working Paper, paras. 3.2.36 *et seq.*

[38] Landlord and Tenant Act 1954, s.40(1)(a).

[39] Paras. 2.8–2.9 above; see Appendix A, draft Bill, clause 2(1), new section 23(1A).

(b) Details of any sub-letting. This, again, follows the current provision,[40] but should be extended to include information whether there is an agreement in force that the renewal provisions of the Act should not apply to the sub-tenancy;[41]

(c) Who, to the best of his knowledge and belief, is the reversioner of any part of the property not owned by the person who served the notice. Where there is a split reversion, landlords would have to act in concert,[42] but there are circumstances in which one reversioner might not know the identity of another.

2.28 If the tenant serves notice during the last two years of a lease term, in a prescribed form, on a reversioner or a reversioner's mortgagee, *we recommend* that the recipient should be under a duty within a month to state:

(a) Whether he is the freeholder, or the freeholder's mortgagee, and if not who, to the best of his knowledge and belief, is his immediate landlord and what is the length of his lease. This reproduces the current provisions;[43]

(b) Whether to the best of his knowledge and belief, in the case of a reversioner, the mortgagee is in possession of the premises and if so the mortgagee's name and address. If there is a mortgagee in possession, he is the person with whom the tenant must conduct the renewal procedure;[44]

(c) In the case of a split reversion, who is, to the best of his knowledge and belief, the reversioner of any other part of the property. This new provision would help a tenant who wanted a new tenancy and would have to serve his request on all the landlords.[45]

2.29 There is obviously a problem that information which was perfectly correct when given in response to a statutory notice can later become inaccurate. In most cases, the recipient of information will act upon it, probably by serving a notice or request to end the current tenancy, soon after receiving the notice. Although, therefore, there is a case for trying to ensure that the information is kept up to date, this does not need to be done for any lengthy period. An obligation covering a long period could impose a heavy, and unreasonably onerous, burden. Accordingly, *we recommend* that a party who has given information in response to a statutory notice and who still owns his interest in the property[46] should, for a limited period, be under a duty to notify the original recipient if the replies he first gave need to be revised either because facts have changed or because other information has become available to him. This duty to update should last for six months beginning with the date on which the original notice was served.

2.30 However, we do not consider that that duty to revise information given should continue to bind someone who has parted with his interest in the property, provided the recipient is aware of the position. Assigning the burden of the duty to revise information would require some unjustifiably complicated provisions to cover what is a temporary situation. It seems better to allow the recipient of the information who learns that the other party's interest in the property has changed hands to serve a new notice on the new owner if he so wishes. Accordingly, *we recommend* that the duty to notify changes in the information should come to an end if the person on whom the notice was served transfers his interest and informs the person who served the notice of the transfer and of the name and address of the transferee. If he only transfers his interest in part of the property, the duty would continue in relation to the part retained.

2.31 Where it is the person due to be notified who transfers his interest, there are no grounds for cancelling the effect of the notice. However, if the recipient of the notice is duly informed, it is right that the information should go to the new owner. We therefore recommend that where the recipient of the notice has been notified of the transfer and of the transferee's name and address, the statutory duty to give information should only be

[40] Landlord and Tenant Act 1954, s.40(1)(b).

[41] See paras. 2.19–2.20 above.

[42] Para. 2.43 below.

[43] Landlord and Tenant Act 1954, s.40(2)(a), (b).

[44] *Ibid.*, s.67.

[45] Para. 2.43 below.

[46] If he parts with his interest, his duty would cease provided he gave the other party notice of the change of ownership: para. 2.30 below.

satisfied by informing the transferee. If however no notice has been given, informing either the transferor or the transferee should suffice. The incoming owner should therefore, as a matter of practice, enquire whether his predecessor served a notice requiring information, and whenever appropriate should tell the other party to the lease of the transfer.

2.32 To implement the suggestion that the statutory duties to give information should be supported by an express sanction, *we recommend* that the Act should expressly provide that it be possible to take civil proceedings for breach of statutory duty in respect of any failure to comply with the Act's requirements.

Renewal Procedure

2.33 The statutory renewal procedure falls into two parts, the exchange of notices between the parties and the application to the court. These are the mechanics of Part II of the 1954 Act. There were 19,472 applications to the county court in 1989,[47] and preliminary notices must have been served in many more cases where no proceedings proved necessary.[48] Because the procedure is so widely used it is important that every effort be made to simplify it.

Notices

Landlord's Notice to Terminate

2.34 A landlord may give between six and 12 months' notice to end a tenancy on or after the contractual term date, or the date on which it could have been brought to an end by notice to quit then given by the landlord.[49] The tenant on whom such a notice is served must serve a counternotice saying whether he is willing to give up possession.[50] We make one proposal to vary this procedure. If the notice states that the landlord is not opposed to the grant of a new tenancy, *we recommend* that it should set out the landlord's proposals for the new tenancy: the property to be let, the rent to be payable and the other terms. These are the same particulars as a tenant who seeks a new tenancy must already include in the request which he serves on the landlord.[51] The form of landlord's notice—which is prescribed[52]—will have to be revised to accommodate this recommendation, and no doubt it will be possible to design it so that landlords will not overlook the extra requirements.

Counternotices

2.35 At present, the party who does not initiate the notice procedure, to bring the current tenancy to an end and give the tenant the chance to apply for a renewal, must serve a counternotice. When the landlord serves notice terminating the tenancy, the tenant has two months during which to serve a counternotice whether or not he will be willing to give up possession.[53] If the tenant requests a new tenancy, the landlord has two months to give a counternotice that he will oppose application to renew, stating the grounds.[54] Clearly, those counternotices are different in nature.

2.36 The landlord's counternotice defining any ground of opposition and alerting the tenant to it is needed for two reasons. First, it is helpful and appropriate that any issues between the parties be defined at an early stage. In the other type of case, where the renewal procedure is initiated by the landlord, his original notice has to include the equivalent information.[55] The second reason why the information has to be available before proceedings start is to enable the Act's provisions relating to compensation to operate satisfactorily. Since 1969 a tenant whose landlord states his intention to resist renewal on certain grounds may claim compensation without starting proceedings.[56] The tenant must therefore know what the landlord proposes before the expiry of his time limit for taking

[47] *Judicial Statistics: Annual Report 1989* (Cm 1154).

[48] Orders granting a new tenancy were only made in 4,109 cases, 21 per cent of the number in which proceedings were started: *ibid.*

[49] Landlord and Tenant Act 1954, s.25(1)–(4).

[50] *Ibid.*, s.25(5).

[51] *Ibid.*, s.26(3).

[52] *Ibid.*, ss.25(1), 66(1)–(3).

[53] *Ibid.*, s.25(5).

[54] *Ibid.*, s.26(6).

[55] *Ibid.*, s.25(6).

[56] *Ibid.*, s.37(1), as amended by the Law of Property Act 1969, s.11.

proceedings. In both these ways, the landlord's counternotice plays an integral role in the statutory machinery, and we therefore favour retaining this provision unaltered. That was the provisional conclusion we reached in the Working Paper,[57] and all of those who responded and referred to this point agreed.

2.37 However, the tenant's counternotice raises different considerations because its purpose is different. All the tenant is required to do is to notify the landlord whether he is content to vacate on the date specified for the tenancy to end. A tenant who says he will be willing to give possession cannot change his mind and later apply to renew the lease.[58] If he gives no notice, he cannot apply to renew.[59] Many of those who responded to the Working Paper, in which we suggested that the counternotice could be dispensed with,[60] emphasised the importance to the landlord of knowing, and knowing as early as possible, whether the tenant intends to vacate or seek a renewal. We would not deny that, but we doubt whether the counternotice adequately fulfils that need.

2.38 Some of the professional advisers responding to the Working Paper confirmed our experience that knowledgeable tenants serve a counternotice, saying that they do not wish to vacate, as soon as they receive the landlord's notice. They do so as a matter of routine, and before they have in fact taken any definite decision. They lose nothing in doing so: the period in which they must apply to the court is not affected and there is no sanction or penalty if they later change their mind and vacate. Indeed, it must be borne in mind that a tenant who seeks to renew but later decides to give up possession can withdraw his renewal application, and even after an order for a renewal he has 14 days in which to apply that the order be revoked.[61]

2.39 Accordingly, a tenant's counternotice saying that he is not willing to give up possession is no real indication to the landlord of what may happen. It does not seem to us appropriate to retain, as a compulsory procedural step, such an inconclusive counternotice. *We therefore recommend* that this requirement be abolished. This will achieve a real, if small, simplification which we believe to be worthwhile.

Split Reversions

2.40 In the Working Paper we raised the problems posed by the cases in which the reversions to distinct parts of the property comprised in a single lease are owned by different landlords.[62] At present, a landlord's notice ending a tenancy must normally relate to the whole of the property which was let,[63] unless, exceptionally, one lease lets two distinct properties and can be construed to operate as a separate lease of each.[64] Clearly the general rule can lead to inconvenience, if not injustice, for landlords. But, on the other hand, to allow a landlord to subdivide the property let may permit him to manipulate the position so that parts are excluded from a renewal to which the Act would otherwise have applied. We suggested that it might be useful in considering this position to distinguish between "voluntary landlords of part"—i.e. those who had arrived in this position by dispositions which they had themselves made—and "involuntary landlords of part", who might be in the position because, say, an intermediate lease had fallen in.

2.41 Those responding to the Working Paper were generally in agreement that there should be some reform. However, it seems that problems are not widespread. Views on the precise reform which should be adopted were divided, and some convincing doubts were cast upon the validity of our distinction between voluntary and involuntary landlords of part.

2.42 In working on the reform provisions, it became clear to us that comprehensive detailed provisions would be very extensive. A split reversion can arise in a number of

[57] Working Paper, para. 3.3.5.
[58] *De Havilland (Antiques) Ltd.* v. *Centrovincial Estates (Mayfair) Ltd.* [1971] Ch. 935.
[59] Landlord and Tenant Act 1954, s.29(2).
[60] Working Paper, para. 3.3.7.
[61] Landlord and Tenant Act 1954, s.36(2).
[62] Working Paper, paras. 3.2.1 *et seq.*
[63] *Dodson Bull Carpet Co. Ltd.* v. *City of London Corporation* [1975] 1 W.L.R. 781.
[64] *Moss* v. *Mobil Oil Co. Ltd.* [1988] 1 E.G.L.R. 71.

ways,[65] and a full examination of them suggests that individual procedures should ideally be prescribed for each. We do not, however, consider that this would be helpful. A proliferation of statutory provisions to cope with a series of relatively rare situations would unduly complicate the Act. As we have said, the pesent procedure is well established and well known to those who need to use it. Where it cannot be simplified, it needs to be maintained so that busy people operating in an important sector of the economy can achieve the practical results they desire with a minimum of trouble.

2.43 We therefore propose to accept the strong view that there should be reform, but that it be kept to a minimum. The approach this involves is to recognise the reality of the situation and to confirm what has been accepted to be the current position although not spelled out in the statute: there may be different landlords for different parts of the property, but as far as the tenant is concerned they are joint owners of the superior interest in the property.[66] They should collectively be entitled to operate the statutory procedure—or to have it operated by their tenant—as it affects the totality of the property.[67] *We recommend accordingly.*

2.44 This confirmation and clarification of the position should reduce the possibility of future dispute and litigation. The approach makes clear that the landords cannot each take separate decisions, which would allow reversioners to manipulate the legislation to the considerable prejudice of tenants. This necessarily means that there is the possibility of an impasse where landlords of different parts of the property cannot agree between themselves on the course to be adopted. However, it was pointed out to us that even in cases in which a landlord seems to be thrust into this position involuntarily, it will usually have been possible, by a proper investigation of title when the lease was granted or the property acquired, for him to foresee the position which might develop.

Timing of Tenant's Request

2.45 We pointed out in the Working Paper that the present provisions of the Act allow the tenant to manipulate the position in such a way that he gains a major and perhaps unwarranted advantage over his landlord.[68] Once the tenant has served a request, the landlord cannot serve notice to end the same lease.[69] Accordingly, if a landlord who wants to end his tenant's lease on the contractual term date leaves serving notice under section 25 until the last moment, the tenant may be able to pre-empt him by serving a request under section 26 giving the maximum 12 months' notice. He thus gains the best part of six months' extra occupation at the current rent.[70]

2.46 The majority of opinions expressed on consultation supported reform. Opinion was divided between support for two of the possible changes we suggested: either making a tenant's request take effect with the minimum delay or, as we provisionally favoured, allowing the recipient landlord to serve a counternotice to require the request he had received to take effect on the first possible date.

2.47 It was always the intention of the Act to give a party up to 12 months to end a tenancy, and that is not objectionable; however, the stratagem aimed solely at manipulating the rent payable[71] does demand reconsideration. Accordingly, the main objective of reform here is to ensure a fair payment of rent while the renewal procedure operates. On further consideration, we have concluded that it is possible to attain that

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[65] e.g., a landlord may dispose of his reversionary interest in part only of the property which he demised; a tenant who holds two properties let by the same landlord under separate leases for different terms may sub-let both properties under a single lease, later the term of one of the head leases expires by effluxion of time; a tenant may hold two properties under separate leases granted by different landlords and then sub-let both properties under a single lease, subsequently the head leases expire by effluxion of time.

[66] " [They] together could constitute ' the landlord ' for the purposes of section 25 . . . since together they are entitled to the entirety of the land comprised in the relevant reversion.": *Nevill Long & Co. (Boards) Ltd.* v. *Firmenich & Co.* (1984) 47 P. & C.R. 59, 66–67, *per* Fox L.J. There appears to have been no reported decision on the question whether a tenant's request for a new tenancy under section 26 would need to be served on all landlords where the reversion has been split.

[67] With one express exception, relating to the payment of compensation for the refusal of renewal: para. 2.84 below.

[68] Working Paper, paras. 3.2.28 *et seq.*, " the pre-emptive strike ".

[69] Landlord and Tenant Act 1954, s.26(4).

[70] Say, a lease term ends on 30 June. The landlord proposes to serve notice on the previous 20 December, ending the lease on 30 June. But, on 18 December the tenant serves a request, naming the following 15 December for the start of the new tenancy. The current lease has been extended from 30 June to 15 December.

[71] Para. 2.45 above.

objective more simply. In particular, flexibility is possible without requiring the service of an additional notice. This is to be achieved by recommendations adjusting the date on which the obligation to pay interim rent starts, which we consider below.[72]

2.48 Adopting this approach still allows the tenant who makes a pre-emptive strike to extend his lease artificially, in a case where he proposes to quit when the current lease ends. We do not consider that it is necessary for us to suggest any change to the present provisions on this ground. We have heard no complaint relating to this effect of the pre-emptive strike, and in the absence of any discontent it seems inappropriate to disturb the established provisions. Furthermore, the general policy of the Act is to encourage the letting of business premises at a proper rent, and the suggested adjustment of the interim rent rules would mean that the tenant's additional period of occupation fell precisely within that aim.

Tenant's Notice to End Continued Fixed-term Tenancy

2.49 A separate procedure is laid down by the Act to bring to an end a fixed-term tenancy which the Act has automatically extended. A tenant who wants to quit may give three months' notice ending on a quarter day.[73] The result is that the period of notice can vary capriciously. For example, a notice given on 25 March cannot end until 29 September, i.e. 188 days, or more than half a year, later; a notice given on 24 September can take effect on 25 December, i.e. after 92 days. Our provisional recommendation was to allow the tenant to give three months' notice to end at any time,[74] so that the period of notice would always be standard. This suggested minor change commanded almost universal support from those who responded. One or two suggested a period longer than three months, but we consider that as this minimum has always been possible, for notices served at the right time of year, there is no reason to make a change. *We therefore recommend* that such a notice should be able to expire on any day, but suggest no further change.

Court Applications

2.50 One cause of considerable disquiet about the procedure for application to the court for a new tenancy is the strict time limit for applications. At present, the tenant must initiate the action, and must apply at least two months but not later than four months after the landlord's notice to terminate the tenancy or the tenant's request for renewal.[75] To apply outside these time limits is fatal to the application, whether it is made too soon[76] or too late. The parties can waive the time limits, but they cannot do so after the tenancy has ended.[77]

2.51 The stringency of the time limit has two effects. First, a large number of court applications are started as a precautionary measure, but later abandoned, presumably in most cases because the parties have agreed terms for a renewal of the lease.[78] Secondly, a number of tenants are deprived of the chance to renew because they or their professional advisers do not take action in time. Some will see this as depriving tenants of their right as a result of a technicality, but it may be negligence rather than inadvertence. In any event, the matter is never considered on its merits.

2.52 There was much sympathy amongst those who responded to the Working Paper with the objective of eliminating the need for unnecessary court applications. This should achieve a worthwhile saving in costs and court resources. The strict time limit was presumably originally imposed to hasten renewal negotiations and some of those who wrote to us were anxious to ensure that no reform should have the effect of lengthening those negotiations. Clearly, the period for agreement is at present in many cases being extended by starting a court action, which is then adjourned.[79] We accept that wilful delay

[72] Para. 2.64 below.

[73] Landlord and Tenant Act 1954, s.27(2). The quarter days are 25 March (Lady Day), 24 June (Mid-summer), 29 September (Michaelmas) and 25 December (Christmas Day).

[74] Working Paper, para. 3.2.34.

[75] Landlord and Tenant Act 1954, s.29(3).

[76] *Kammins Ballrooms Co. Ltd.* v. *Zenith Investments (Torquay) Ltd.* [1971] A.C. 850.

[77] *Meah* v. *Sector Properties Ltd.* [1974] 1 W.L.R. 547.

[78] Para. 2.33 above.

[79] Indeed, a summons may be issued which specifies no return date, but is " for a date and time to be fixed ": *Coates Bros. plc* v. *General Accident Life Assurance Ltd.* [1991] 1 W.L.R. 712.

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is undesirable and nothing in the legislation should encourage it. With this in mind, we consider that the best way to discourage unnecessary delay is to give either party the chance to insist that the matter be taken to the next stage, so that each faces the possibility of the other requiring that progress be made. Accordingly, we shall propose that the landlord should be able to initiate proceedings, either by applying to the court for the renewal of the tenancy or for the termination of the tenancy without any renewal.

2.53 However, although making it possible for either party to apply to the court ensures that neither can unduly delay the renewal procedure, it does not of itself tackle the problem of unnecessary court applications, which is a result of the strict time limit. Our suggestion[80] that the time limits could simply be abolished, albeit with the addition of provisions to allow them to be reimposed once waived or to allow either party to apply to the court, was not favourably received. We accept the view expressed to us that such an arrangement would create an impression of lack of urgency in negotiations. More seriously, further consideration made it clear that there was little prospect of integrating that rule with the existing legislation. This requires that the notice procedure should specify a date on which the current tenancy is to end, and that any renewal application is made before that date. Some flexibility is certainly possible, but it must also be possible to impose a date on which a lease ends. Indeed, if the only way to end a tenancy were to start court proceedings, one set of proceedings which are seen as unnecessary would have been replaced by another.

2.54 Our conclusion is that the familiar structure of a notice or request specifying the date on which the tenancy ends should be retained, but the parties should have power to postpone the date. If court proceedings are needed, they would still have to be taken before the termination date, but that limit would be, where applicable, the date as extended by agreement. Such a provision would still leave a time limit of which a party could fall foul, but in the frequent cases where the parties are content that the negotiations extend over a longer period than the Act now gives them, the statute would no longer impose arbitrary and perhaps impractical constraints. It seems likely that agreement to extend the time limit would become a common early step in cases where negotiations were likely to require more time.

Party to Apply

2.55 To allow either party to apply to the court to order the grant of a new lease and to fix its terms puts them both on an equal footing:[81] each has the ability to bring negotiations to a head. If only tenants could apply to court, landlords might be reluctant to agree to extend the time for application, because they would lose all influence over the procedure; the ability for either party to initiate proceedings gives each equal powers to counter delays by the other, and should generally encourage them to conclude a bargain without making a court application. Accordingly, *we recommend* that either party be able to apply for the renewal of a tenancy under the 1954 Act.

2.56 To allow landlords to initiate proceedings cannot however be an end to the matter. There will be occasions where all that is at issue between the parties is the terms of the tenancy; it may be the landlord who wishes to start proceedings, but their nature will be essentially the same as proceedings which the tenant might initiate. We envisage, in such circumstances, that rules of court would require the landlord to propose terms for the new tenancy in his originating summons or originating application.[82] On the other hand, a landlord may be seeking to resist any renewal, and may wish the court to confirm that his opposition to renewal is conclusive. There must be provisions for this alternative course allowing him to take the initiative. *We therefore recommend* that a landlord should additionally be able to start proceedings simply to terminate a tenancy to which the Act applies, without any renewal. There seems to be no reason why there should not be flexibility, allowing the landlord to change his mind. He would be able, e.g., to apply for the renewal of a tenancy, even though he had stated a ground of opposition in his notice ending the tenancy. We should not want to fetter the chance of agreement by negotiation, in the course of which a landlord might be convinced that he could not sustain his proposed opposition.

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[80] Working Paper, para. 3.3.14.

[81] Para. 2.52 above.

[82] This would follow the present practice for tenants' applications: R.S.C. 0.97, r.6; C.C.R. O.43, r.6.

2.57 It is clearly important that proceedings under this Act should not proliferate and impose an unnecessary burden on the parties and on court resources, and we see three safeguards as being necessary and *we recommend* that they be adopted:

(a) If a landlord is unsuccessful in proceedings brought to establish that the tenant cannot renew his tenancy,[83] it should not be necessary for the tenant to start new proceedings to obtain an order for the grant of a new tenancy. Rather, in those circumstances, the court should order the grant of a new tenancy and settle its terms;

(b) Neither party should be able to bring an action if the other one has started proceedings. Accordingly, a party would be precluded from making a renewal application if the other had already made such an application or if the landlord had applied to terminate the tenancy without renewal. Nor could the landlord apply to terminate the tenancy without renewal if either party had made a renewal application;

(c) The rule preventing concurrent applications would, however, be open to abuse if it were possible for a landlord to start proceedings and immediately discontinue them, so as to preclude the tenant from renewing his tenancy.[84] To prevent any such manoeuvre, *we recommend* that the landlord should not be able to withdraw his application[85] without the tenant's consent.

Time Limits

2.58 The need to make court applications which turn out to have been unnecessary will not, however, disappear while immutable time limits remain. Accordingly, *we recommend* that an application be allowed at any time before the date specified in the landlord's notice or the tenant's request—which would itself extend the period currently allowed—and we propose that the parties should then be able to agree to extend the date by which an application must be made. Some degree of formality is desirable to ensure that it is at all times clear what the position is: when is the final date for starting proceedings, either as the Act originally applied or as extended by the parties, or whether it has passed so that proceedings are no longer possible. Thus, the proposal is not to abandon a firm time limit, but rather to allow a new one to be substituted by agreement between the parties. Further, the date on which the tenant's current lease comes to an end, and any postponement of it, must be certain; the tenancy must continue while renewal proceedings could still be brought, otherwise the tenant might be obliged to quit prematurely, which would mean that he ceased to qualify for a right to renew.

2.59 For these reasons, *we recommend* that:

(a) The parties should be able to agree in writing[86] to extend the period within which any application to the court may be made;

(b) The initial agreement would need to be made after the landlord has served a notice terminating the tenancy under section 25 of the Act or after the tenant has made a request for a new tenancy under section 26, but before the date specified in the notice or request;

(c) Thereafter, the parties should be able to make further agreements to extend the period within which an application may be made. Each agreement would, however, have to be made before the end of the period specified in the immediately preceding agreement;

(d) The tenancy should continue during any extended period specified in an agreement. It will terminate at the end of the period specified in a current agreement unless, before the end of that period, the parties make another agreement extending the time limit or an application is made to the court.[87]

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[83] i.e., he fails to establish his grounds(s) of opposition to the satisfaction of the court.

[84] The tenancy would terminate three months after the withdrawal of the application: Landlord and Tenant Act 1954, s.64(2).

[85] Whether for renewal or for termination of the tenancy without renewal.

[86] Landlord and Tenant Act 1954, s.69(2) will have the effect of requiring writing.

[87] Once an application is made, the tenancy is extended until three months after it has been finally disposed of: Landlord and Tenant Act 1954, s.64(1).

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2.60 It is also necessary to consider whether there should continue to be a time *before* which an application cannot be made,[88] bearing in mind that we have recommended that, where the landlord serves notice to end the tenancy, the tenant should no longer be required to serve a counternotice.[89] There is only one requirement which needs to be met before court action can satisfactorily be started: it must be clear whether the landlord intends to oppose a renewal, and if so on what grounds. Once this condition is satisfied, there is no procedural reason to require that an application be delayed. *We therefore recommend* that after a landlord has given notice, a party should not be required to wait for two months before making an application to the court. On the other hand, we have concluded that the requirement of the landlord's counternotice should be retained.[90] If the tenant serves a request for a new tenancy, the landlord may therefore within two months give a counternotice that he will oppose a renewal and state the grounds of opposition. Until the position is clear proceedings should not be started, but it should only be necessary to wait for the service of the landlord's counternotice or, in the case of renewal proceedings, the expiry of the time allowed for the service of it. Accordingly, *we recommend* that an application to the court within two months of the making of a tenant's request should not be entertained unless the application is made after the landlord has given a counternotice[91] within that period. We doubt whether the removal of the ban on the early commencement of proceedings would, undesirably, provide an encouragement to unnecessary and premature applications to the court. Our recommendations will make it possible to extend the final date for commencing proceedings, so it will be unnecessary to apply to the court purely as a precautionary measure.

Interim Rent

2.61 The power to order the payment of interim rent while an application to renew a tenancy is pending was introduced in 1969.[92] It allows the court, on an application by the landlord, to fix the rent payable under the existing lease from the termination date specified in the landlord's notice or the date before the commencement of the new lease specified in the tenant's request or, if later, the date of the application for interim rent.[93] The amount of the interim rent is what would be ordered on the renewal of the tenancy, but having regard to the rent payable under the terms of the current tenancy and on the basis that the new tenancy is granted from year to year.[94] This generally results in an interim rent which is less than the rent eventually ordered on renewal,[95] but need not do so.[96]

2.62 In the Working Paper, we raised three issues concerning the interim rent provisions:

(a) In those cases where there is no real uncertainty that the tenant will be offered a lease renewal, should the interim rent always be the same as that payable under the new lease, without a discount?[97]

(b) Should the tenant, as well as the landlord, be entitled to apply for an interim rent to be fixed? Are there others who should also be able to make applications?[98]

(c) Is it right that in certain cases where part of the property is sub-let, fixing an interim rent for the whole of it may leave the intermediate tenant out of pocket?[99]

In addition, we need to consider two other points: the date from which any interim rent should run[100] and the procedure for bringing the matter to court.

[88] At present, an application made less than two months after service of the landlord's notice or the tenant's request cannot be entertained by the court: *ibid.*, s.29(3). The parties, but not the court, may waive this time limit: *Kammins Ballroom Co. Ltd.* v. *Zenith Investments (Torquay) Ltd.* [1971] A.C. 850.

[89] Para. 2.39 above.

[90] Para. 2.36 above.

[91] Under Landlord and Tenant Act 1954, s.26(6).

[92] Law of Property Act 1969, s.3(1).

[93] The court has a discretion whether to make the order: *Bloomfield* v. *Ashwright Ltd.* (1984) 47 P. & C.R. 78.

[94] Landlord and Tenant Act 1954, s.24A.

[95] See, e.g., *Charles Follett Ltd.* v. *Cabtell Investments Ltd.* [1987] 2 E.G.L.R. 88.

[96] *Halberstam* v. *Tandalco Corporation NV* [1985] 1 E.G.L.R. 90.

[97] Working Paper, paras. 3.4.6, 3.4.8.

[98] *Ibid.*, paras. 3.4.9 *et seq;* see paras. 3.22-3.24 below.

[99] *Ibid.*, para. 3.4.12.

[100] Which has a bearing on the timing of a tenant's request for a new tenancy: paras. 2.45 *et seq.* above.

Who May Apply

2.63 Only the landlord is at present entitled to apply to the court to fix an interim rent.[101] Clearly, this assumes that the level at which an interim rent would be fixed is always likely to be the same or greater than the contractual rent, so that the tenant would not be interested in making an application. We suggested in the Working Paper that, to demonstrate the evenhandedness of the law, the tenant should also be able to apply even though that amendment might have little practical effect because commercial rents tend to rise.[102] There was very little dissent from this view from those who responded to the Working Paper. It does represent a shift, albeit small, in the balance between landlord and tenant but we consider that, rather than disturbing an equilibrium, it establishes one. Accordingly, *we recommend* that either party should have the right to apply for an interim rent, although a current application by one should preclude the other from applying, to prevent a duplication of proceedings.

Date for Payment

2.64 We propose changes to the date from which interim rent should be payable, which will serve to frustrate the stratagem which can be adopted by tenants to extend their current tenancies at an unjustifiably low rent.[103] Where the renewal procedure is started by the tenant serving a request for a new tenancy, any interim rent should, *we recommend*, be made, subject to the qualification in the next paragraph, to run from the earliest date which could have been specified in the request.[104] This would deprive the tenant of any rental advantage which he might have been seeking by his stratagem, although the date of expiry of the tenancy as a result of the service of the tenant's request would remain unchanged. Also, the principle that no interim rent should vary the contractual rent payable during the original agreed term of the lease would be maintained.

2.65 There is a further consideration to be taken into account, arising from our recommendation that either party should be able to apply for an interim rent,[105] rather than only the landlord having that power as at present. It would be strange if a tenant were able to request a new tenancy from a date, say, 11 months ahead, and yet to claim an interim rent to run from an earlier date. It does not seem appropriate that statute should authorise such inconsistent conduct. Accordingly, *we recommend* that the backdating effect of our new proposal should apply only where it is the landlord who applies for the interim rent.

2.66 If a tenant applies for an interim rent, he would presumably only do so in a case where it was likely that the court would order a rent lower than the contractual one. This could, in the absence of further reform, tempt landlords to adopt the reverse of the tenant's stratagem which we have discussed,[106] so as to prevent an early application for an interim rent. The service of the landlord's notice prevents the tenant making a request for a new tenancy,[107] and, at present, an interim rent cannot be backdated before the date on which the landord's notice ends the tenancy.[108] Accordingly, a notice specifying the latest possible termination date extends the current rent for the maximum period, in the same way as a tenant's request for a new tenancy. The solution to avoid the use of the reverse stratagem seems to be the equivalent to that in the reverse case, and this is our recommendation. It should be possible for the interim rent to date back to the earliest date for ending the tenancy which the landlord could have specified in his notice. Again, however, this should only apply if the tenant makes the application for interim rent and not if it is made by the landlord who specified the termination date.[109]

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[101] Landlord and Tenant Act 1954, s.24A(1).

[102] Nevertheless, the result of periods of static or falling rents illustrated, e.g., by the market trend in 1990–1992, and of "upwards only" rent reviews may sometimes mean a contractual rent which is above what would be the open market figure.

[103] Paras. 2.45–2.48 above.

[104] Landlord and Tenant Act 1954, s.26(2). Say, a lease term ends on 24 June 1993. On 23 December 1992, the landlord serves notice to end it on 22 December 1993. The result of our recommendations would be that if the landlord applied for an interim rent, it would run from 22 December 1993. If the tenant applied, it would run from 24 June 1993.

[105] Para. 2.63 above.

[106] Para. 2.45 above.

[107] Landlord and Tenant Act 1954, s.26(4).

[108] *Ibid.*, s.24A(2).

[109] See para. 2.65 above.

Amount of Interim Rent

2.67 There was no general agreement amongst those who responded to the Working Paper on the assessment of interim rent, although there was no suggestion of reverting to the pre-1969 position where the contractual rent simply continued. There was discontent about the amount of the interim rent, generally centring on its inadequacy from the landlord's point of view, but no consensus on how to proceed.

2.68 It still seems to us that the approach we suggested in the Working Paper provides a fair compromise between landlord and tenant: the interim rent should be raised in those cases in which there is no sustainable case for a discount from the full market figure, but in other cases the rent should be assessed in accordance with the present formula. This not only cuts out the present provision which recognises the instability of the tenant's position during the renewal proceedings, it would also omit the present requirement to "have regard" to the current rent.[110] This has been held to afford the tenant a "cushion" lessening the impact of any rent rise by reducing what would otherwise be payable.[111] This reduction is a benefit to the tenant at the landlord's expense. Provided a current market rent has been established, the contractual period for payment of rent under the current tenancy has expired and the tenant is guaranteed a renewal, the limitation on the landlord's ability to recover a proper rent is hard to justify. For this reason, we consider that in this class of case it should be abandoned.

2.69 We suggested, in the Working Paper, that the interim rent should be at the full market figure if three conditions were fulfilled:

(a) The landlord's notice or the tenant's request related to the whole of the property let by the current lease;[112]

(b) The tenant was in occupation of all the property; and

(c) The landlord stated, in his notice or his counternotice to the tenant's request, that he would not oppose the grant of a new tenancy.[113]

On reconsideration, we would add two more conditions: that the court had ordered the renewal of the tenancy and that the landlord had granted it. In those cases where the tenant withdraws while the case is pending, so that no renewal order is ever made, an interim rent at the full figure is probably not appropriate—because the reason for withdrawal could be a recognition that the tenant could not afford the full modern rent—although it could still be ordered under the legislation as it stands. Also, it seems right to recognise that the Act gives the tenant a right to apply for the renewal order, once made, to be revoked.[114] In such a case, effectively to backdate the new rent as interim rent would be wrong, as it would force upon the tenant a rent which he could not afford and which the Act expressly permits him to escape by vacating the property. Accordingly, the actual grant of the tenancy is an appropriate additional requirement. It would cover two circumstances in which an interim rent at the full market figure would be inappropriate. First, if the power to require revocation is exercised and, secondly, if the parties agree not to act on the order.

2.70 Accordingly, *we recommend* that where there is no realistic prospect of the tenant's not being able to renew, and a new lease is granted to him, the interim rent if ordered[115] should, provided the new tenancy is granted,[116] be equal to the rent payable under that new lease at the start of the term. The reason for specifying that the level of interim rent when renewal is not in doubt should be what is payable *at the commencement* of the new term is that the rent under the new lease can be variable in two cases: either when the lease contains a rent review clause[117] or when a differential rent is ordered.[118] The market rent figure at

[110] Landlord and Tenant Act 1954, s.24A(3).

[111] *English Exporters (London) Ltd.* v. *Eldonwall Ltd.* [1973] Ch. 415.

[112] The renewal proceedings must relate to the whole property, otherwise the new rent will not be calculated by reference to the premises which the tenant is entitled to enjoy until the current tenancy expires.

[113] Working Paper, para. 3.4.8.

[114] Landlord and Tenant Act 1954, s.36(2). The court must revoke the order if the tenant applies for revocation within 14 days of the making of the order.

[115] The present discretion whether to order an interim rent (*Charles Follett Ltd.* v. *Cabtell Investments Ltd.* [1987] 2 E.G.L.R. 88) would remain.

[116] We envisage that rules of court would make the order for interim rent conditional upon the grant of the new tenancy.

[117] Authorised by Landlord and Tenant Act 1954, s.34(3).

[118] e.g., a rent fixed at a low level only until repairs have been carried out, after which it rises: *Fawke* v. *Viscount Chelsea* [1980] Q.B. 441.

the start of the term, rather than at any later date, seems appropriate for a period which will necessarily precede the commencement.

2.71 In other cases, the amount of interim rent should be fixed in accordance with the formula which now applies,[119] with one amendment. In the Working Paper we drew attention to the fact that there are circumstances in which, if part of a property is sub-let, what would otherwise be an appropriate interim rent could be seen as unfair in its impact on the intermediate tenant.[120] The circumstances may vary considerably, and we doubt whether it is possible to devise a single firm rule to cover all cases. The matter is, nevertheless, something which should be taken into account. *We therefore recommend* that, in fixing an interim rent in cases where the full market rent is not appropriate, the court be directed to have regard to the rent payable under any sub-tenancy of any part of the property.

Court Applications

2.72 It was originally contemplated that an application for an interim rent would normally be heard by the court in advance of the hearing to determine the tenant's application to renew a tenancy. Indeed, the Law Commission expressly rejected the suggestion that the rent should be fixed in the substantive proceedings: "retrospective operation of a rent so fixed might cause hardship to a tenant on account of the uncertainty of the sum due until the application is finally disposed of. We see no sufficient reason to depart from the normal rule that rent must be certain and ascertainable when it becomes due."[121]

2.73 Although some applications for interim rent are heard separately, the normal practice which has become established over the years is for interim rents to be fixed at the hearing of the renewal application.[122] Clearly, there would be more separate applications if delaying the decision caused appreciable hardship. Perhaps tenants consider that the inconvenience of uncertainty is outweighed by the cash flow advantages in postponing the date when payment is due. Whatever the reason, this is the established practice. We do not consider that the result is any breach of the rule requiring rent to be certain and ascertainable when due. It is a general principle that a sum which is capable of being made certain is treated as certain. In an analogous case, the principle allows a contractual rent review to have effect to increase the rent from a date earlier than that on which the new sum is determined.[123]

2.74 We consider that there are some advantages, albeit not major ones, in amending the 1954 Act to provide that any interim rent application should be considered at the same time as renewal of the lease. This follows the practice of the commercial property market, and eliminates any uncertainty caused by legislation which seems to imply the contrary. Also, it furthers our policy of reducing the number of applications to the courts, because separate interim rent applications will not be required. Additionally, our proposal that some interim rents should be at the full market figure[124] would result in those rents automatically being determined when the market rent payable under the new lease is decided.

2.75 Accordingly, *we recommend* that:

(a) An application for interim rent should be made and heard in the course of the proceedings, and that rules of court should so provide.[125] At present, there has to be the possibility of separate proceedings[126] because a renewal action can only be

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[119] Landlord and Tenant Act 1954, s.24A(3).

[120] Working Paper, para. 3.4.12.

[121] Report on the Landlord and Tenant Act 1954 Part II (1969), Law Com. No. 17, para. 24.

[122] Indeed, in some cases in which the parties cannot agree the rent to be paid under the new lease, so that it must be fixed by the court, they do agree in advance that the interim rent will be x per cent of whatever new rent is ordered, so that the court does not have to decide the interim rent.

[123] *C. H. Bailey Ltd.* v. *Memorial Enterprises Ltd.* [1974] 1 W.L.R. 728.

[124] Para. 2.62 above.

[125] We envisage that the rules would permit an application to be made in the originating summons or application for renewal or termination without renewal, in the answer, or at a later stage subject to a limit designed to ensure that the parties have a reasonable chance to consider the issues raised by the application for interim rent before the hearing of the principal application.

[126] R.S.C., O.97, r.9A(1)(b).

started by a tenant and he may have done nothing by the time the landlord wishes to apply for an interim rent. The need for this would disappear once the landlord was also able to make an application to renew or an application that a tenancy should not be renewed;[127]

(b) To avoid duplication, neither party should be able to apply for an interim rent after the other has made an application which has not been withdrawn;

(c) The parties' ability to apply for an interim rent and the court's power to determine an interim rent should not end merely because the main proceedings are withdrawn;[128]

(d) In any case in which an interim rent at the market rate is ordered, but the condition that the new tenancy be granted is not fulfilled, it should be possible for either party to apply to the court to fix an interim rent on the alternative basis. We envisage that an application for re-assessment of the quantum would be by way of continuation of the original proceedings for an interim rent. It would be desirable that the new quantum be determined without delay, as this would then be the only issue outstanding between the parties.[129] We therefore suggest that rules of court should provide only a short period for making the necessary application.

Renewal Terms

Length of term

2.76 The maximum length of the term of the new lease which can be ordered on the renewal of a tenancy is 14 years, in the absence of agreement between the parties.[130] In the Working Paper we listed criticisms of this limit on the court's powers, with a view to reform: a 14-year term might be inappropriately short if the preceding lease had been much longer, it did not conveniently divide into 5- or 3-year periods for rent review purposes and, in fixing the new rent, precise comparables might be difficult to find because 14-year terms were now seldom granted by agreement.[131]

2.77 The views of those who responded to the Working Paper were mixed. Some favoured a minimal change or none at all, a few suggested the maximum term should be reduced and others would prefer it to be increased or wanted the limit removed altogether. Among those who would have no limit, opinion was divided whether guidelines in fixing the term should be provided for the court.

2.78 It seems to us that some limit is appropriate. In cases where the parties are in agreement, their views can be incorporated in the court order even as matters now stand. In other cases, the order is, by definition, imposing on at least one party a term which is not wholly welcome. Any negotiation must be conducted with the court's possible decision in mind. We consider that there is a strong case for imposing some definite limit on the jurisdiction: it helps negotiators to reach a conclusion and should limit the need for recourse to the court. However, the lack of agreement about the direction of major change suggests that the present rule, albeit picking the 14-year limit arbitrarily, has achieved a compromise which is about right.

2.79 Nevertheless, there does seem to be good reason to make the minor change to a maximum of 15 years. A term which is divisible by both five and three into periods of complete years would be convenient for accommodating modern rent review patterns. We do not consider that such a change would significantly alter the balance between the parties, but it does offer the chance to bring the Act into line with modern market practice. *We therefore recommend* that the court's power be extended, allowing a new term to be ordered for up to 15 years.

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[127] As we recommend: para. 2.55 above.

[128] This is the position at the moment: *Artoc Bank Trust Ltd.* v. *Prudential Assurance Co. plc* [1984] 1 W.L.R. 1181; *Michael Kramer & Co.* v. *Airways Pension Fund Trustees Ltd.* (1976) 246 E.G. 911. However, doubt might arise whether those cases still applied once the possibility of an independent application for an interim rent had disappeared, and that doubt should be allayed.

[129] The court would, when first considering the application for an interim rent, already have exercised its discretion whether to order such a rent; see para. 2.61 above.

[130] Landlord and Tenant Act 1954, s.33. By consent, the court can order a longer term: e.g., *Janes (Gowns) Ltd.* v. *Harlow Development Corporation* (1979) 253 E.G. 799 (a 20-year term).

[131] Working Paper, paras. 3.6.2 *et seq.*

Compensation

2.80 There are two distinct types of compensation which we need to consider under this heading, for refusal of renewal and for misrepresentation.

Refusal of Renewal

2.81 A tenant who is refused a new tenancy exclusively on one of three specified statutory grounds, which do not involve fault on the tenant's part,[132] is entitled to compensation from his landlord.[133] The amount of that compensation is calculated by multiplying the rateable value of the premises.[134] The amount payable to a tenant who has been in occupation for at least 14 years[135] is double that payable to a tenant who had been there for a shorter period.[136] Two of our earlier recommendations require amendments to these provisions. The first is the proposed extension of the "intention to occupy for his own use" ground of opposition, to cover use for a business carried on by a company under the landlord's control, or vice versa.[137] Clearly, use of the extended ground of opposition should entitle the tenant to compensation in the same way as that ground now does, and *we recommend accordingly*. Secondly, we have suggested that the landlord who wishes to oppose any renewal by his tenant should be entitled to start an action for an order that the current tenancy end without renewal.[138] Again, to maintain a consistent approach in the legislation, *we recommend* that in any case where the successful grounds of opposition to a renewal application would have merited compensation, the same payment should be due if equivalent grounds successfully support a landlord's action to end the tenancy without renewal or the landlord withdraws his action.

Different Periods of Occupation

2.82 The different levels of compensation, depending on the length of the tenant's occupation, produce an obvious difficulty in a case such as *Edicron Ltd.* v. *William Whiteley Ltd.*[139] There, the tenancy comprised a three-storey building, of which the tenant had occupied one floor for over 14 years and two others for five and a half years. The Court of Appeal decided that the outgoing tenant was entitled to compensation at the higher rate in respect of the whole property, because he had occupied some part of it for over 14 years. The result was that the tenant received greater compensation for the two floors occupied for the shorter period than he would have done had they been let separately. That seems less than just to the landlord, although if a single rate of compensation must apply to the whole property, the reverse decision would have similarly prejudiced the tenant.

2.83 Our Working Paper provisionally suggested that it should be possible to calculate the compensation at different rates for different parts of the property, reflecting the tenant's period of occupation of each.[140] Those who responded agreed that this was a problem worth tackling, and that our suggestion was the appropriate solution to adopt. *We therefore recommend* that the rate of compensation be separately calculated for each part of the property.

Split Reversions

2.84 There is one further matter relating to this compensation with which we must deal. It is an aspect of our recommendation that where the ownership of the reversion to a tenancy has been split the owners of the different parts of the property should, for the purposes of the statutory renewal procedure, together be treated as "the landlord".[141] The result of that recommendation, without more, would be that where the tenant of several landlords, each owning a different part of the property, was entitled to compensation he

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[132] Uneconomic sub-letting, landlord's intention to demolish or reconstruct and landlord's intention to occupy for his own business or residence: Landlord and Tenant Act 1954, s.30(1)(e)–(g).

[133] *Ibid.*, s.37.

[134] Except in the case of premises used for residential purposes.

[135] Or who is the successor to a business carried on there for that period.

[136] The amount of the multiplier to be applied to the rateable value is prescribed by statutory instrument. It has been adjusted from time to time to reflect the effect of inflation and changes in rateable values.

[137] Para. 2.10 above.

[138] Para. 2.56 above.

[139] [1984] 1 W.L.R. 59.

[140] Working Paper, para. 3.6.11.

[141] Para. 2.43 above.

could recover the whole sum from all of them. This is likely to be unfair, as any benefit from obtaining possession would accrue to each of the landlords separately, and in each case would be limited to the value of the part of the property which he owned. For this reason, it seems to us appropriate that the compensation should be calculated separately for each part of the property in which the reversion is owned by a different landlord, and that the sum should be recoverable exclusively from that reversioner. *We recommend accordingly.*

Misrepresentation

2.85 If the court refuses an order for a new tenancy and it later appears that the decision was induced by a misrepresentation or concealment of material facts, the court may order the landlord to pay the tenant compensation for any resulting damage or loss.[142] This provision is quite separate from the compensation discussed above, which for identification we shall call " non-renewal compensation ". The concern we expressed in the Working Paper was that the amendment of the Act in 1969 which aimed at ensuring that a tenant faced with an incontestable refusal to renew would not lose his non-renewal compensation by quitting without applying to the court,[143] was not carried through to this provision.[144] It seems that no compensation would be payable under the Act to a tenant who made no application to the court for a new tenancy because the landlord stated that he would oppose one on the ground, say, that he intended to re-develop the property, and he misrepresented the facts on which he was relying. After the Working Paper had been published, the Court of Appeal confirmed this view, that the current compensation provisions do not apply where no application is made to the court and further that they do not provide any remedy where the tenant is induced to apply for a consent order that the premises be vacated.[145]

2.86 This does not seem to be a situation which frequently arises, but most of our correspondents who addressed the point favoured extending the right to compensation. However, some of those who responded thought there could be problems of proof, and feared that allegations of untruthfulness might be made about the claims in a landlord's notice to terminate a tenancy or his counternotice to a tenant's request for a new tenancy. Although proof may indeed be difficult, we think the latter fears are unfounded. In the *Deeley* case, Gatehouse J. made it clear that the contents of a section 25 notice " simply stated the grounds on which the landlord would rely when the matter came to be heard ". It is well settled that the landlord's intention need only be established as subsisting at the date of the hearing,[146] and indeed can be the intention of the then landlord rather than the person who served the notice.[147]

2.87 We see some merit in extending the right to compensation: it is logical that a remedy for misrepresentation should apply however the victim decides to proceed and if the lack of a remedy without going to court were to be even a slight incentive to start proceedings unnecessarily it is better eliminated. Accordingly, *we recommend* that the provision for compensation for misrepresentation should not only apply where the court is misled into refusing an application to renew a tenancy, but also in cases where the tenant is induced not to apply to the court or to withdraw his application.

Transitional Provisions

2.88 We do not consider that any changes introduced as a result of implementing our recommendations should have direct retrospective effect, and transitional provisions are

[142] Landlord and Tenant Act 1954, s.55.

[143] Law of Property Act 1969, s.11.

[144] Working Paper, paras. 3.6.14 *et seq.*

[145] *Deeley* v. *Maison A.E.L. Ltd.* (1989), unreported (C.A., Nourse L.J. and Gatehouse J.). In the course of his judgment, Gatehouse J. said, " the words in section 55 relating to business tenancies are specific and unequivocal—particularly the phrase ' the court was induced to refuse the grant ' and we feel compelled to hold that, as a matter of plain language, the provisions of the section are not satisfied where the tenant agrees to vacate and the court, by its order, merely records that agreement. Even if that can constitute the ' refusal ' of an order for the grant of a new tenancy, the court is induced into giving it not by the misrepresentation or concealment of material facts but by the agreement between the parties. An inducement of the tenant into making the agreement is not, and cannot be treated as, an inducement of the court into giving the refusal.".

[146] *Betty's Cafes Ltd.* v. *Phillips Furnishing Stores Ltd.* [1959] A.C. 20.

[147] *Morris Marks* v. *British Waterways Board* [1963] 1 W.L.R. 1008.

needed to secure this. *We therefore recommend* that amending legislation should not, after its commencement date, affect:

(a) Anything stemming from the service of a landlord's notice to end a tenancy, or a tenant's request for a new tenancy, served before that date;

(b) An agreement made before that date for the surrender of a tenancy or an agreement to contract out of the statutory provisions authorised by the court before that date;

(c) The consequences of a notice served before that date requiring preliminary information;

(d) The compensation for misrepresentation to which a tenant who quit before that date is entitled.

The Crown

2.89 The business tenancy provisions of the 1954 Act have always applied to the Crown, with certain express modifications.[148] Although we have not carried out any specific consultation on the point, it seems to us appropriate that the modifications which we propose should bind the Crown to the same extent. *We therefore recommend* that any implementing legislation should have that effect. If, as is the case with the draft Bill appended to this Report, implementing legislation takes the form of amendments to the 1954 Act, there will be no need of any express provision referring to the Crown; the existing provision will remain in force and will govern the amendments.

[148] Landlord and Tenant Act 1954, s.56.

PART III

OTHER ISSUES

3.1 In this Part of the Report we discuss those matters, which we considered in our Working Paper or which were raised with us by those who responded to it, on which we have decided not to recommend reforms.

Scope of the Act

Incorporeal Hereditaments

3.2 There is one type of letting for business purposes to which the 1954 Act renewal provisions do not apply because the tenant cannot be said to occupy what is let to him:[1] the case where all that is let is an incorporeal hereditament, for example, a right of way over land.[2] There will be some circumstances in which the renewal of such a lease is just as important to protect the goodwill and future of a business as the renewal of a normal lease of business premises.[3] For that reason, we provisionally concluded in the Working Paper that leases of incorporeal hereditaments should be brought within the scope of the 1954 Act.[4]

3.3 On consultation, opinion was divided on the important preliminary question whether the present position caused real difficulty. Few had any experience of leases of incorporeal hereditaments on their own, although one or two knew of large numbers. Sporting leases,[5] technically leases of profits à prendre, and leases of rights of way for emergency escape routes were among those mentioned. However, whatever the number of such leases, there was certainly no widespread evidence of problems caused by the fact that the 1954 Act did not apply to them.

3.4 We have concluded that a change in the basic scope of the lease renewal scheme is not justified. The present situation does not apparently prejudice businesses conducted on leasehold premises to any significant extent. Any extension of the statutory scheme to incorporeal hereditaments would probably bring in leases not connected with undertakings previously protected by the statute, so that the fundamental balance between property owners and tenants would be shifted. We are not persuaded that there is sufficient reason to make any change, and we therefore do not recommend any reform.

Unauthorised Business

3.5 We drew attention in the Working Paper to the fact that the 1954 Act contains no clear rule stating whether a tenant who conducts a business without his landlord's approval is entitled to the benefit of the 1954 Act.[6] We also pointed out that the distinction between the effect of the *consent* of the landlord or his predecessor in title and the *acquiescence* of the immediate landlord, but not a predecessor, gives landlords at least a theoretical way to frustrate a tenant's claim to renew.[7]

3.6 This again does not seem to have caused any real practical difficulty. From the experience of those who wrote to us, there appear to be few cases of unauthorised business use, and of course landlords will normally have remedies to stop such uses if they wish. Unauthorised use does not appear to be a cause of complaint in relation to the renewal procedure. For this reason, we see no cause to disturb the present familiar provisions. Accordingly, we recommend no change.

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[1] The Act applies "to any tenancy where the property. . . is or includes premises which are occupied by the tenant": Landlord and Tenant Act 1954, s.23(1).

[2] *Land Reclamation Co. Ltd.* v. *Basildon District Council* [1979] 1 W.L.R. 767.

[3] "The use of the road in question by the [tenant] is, and has always been, entirely for business purposes. . . . There is no alternative access to the [tenant's] land readily available": *ibid.*, p.769, *per* Buckley L.J.

[4] Working Paper, para. 3.1.21.

[5] Leases of land for recreational purposes can come within the Act if granted to a club or association: *Addiscombe Garden Estates Ltd.* v. *Crabbe* [1958] 1 Q.B. 513.

[6] Working Paper, paras. 3.1.26 *et seq.*

[7] Landlord and Tenant Act 1954, s.23(4); *Bell* v. *Alfred Franks & Bartlett Co. Ltd.* [1980] 1 W.L.R. 340. "[Acquiescence] may involve no more than a passive attitude, doing nothing at all. It requires as an essential factor that there was knowledge of what was acquiesced in. . . . 'consent' involves something which is of a positive affirmative kind. . .": *ibid.*, at p.346-7, *per* Shaw L.J.

Unauthorised Sub-letting

3.7 A further connected point, not mentioned in the Working Paper, was put to us by several respondents. If business premises are sub-let without the landlord's authority in a case where consent should have been obtained, the sub-tenant nevertheless enjoys statutory rights under the 1954 Act.[8] This, it was suggested, was inappropriate and should be prevented. While we see the force of this point,[9] we have no evidence that it is of widespread concern. To vary the Act to meet the point would significantly change the balance between landlord and tenant, which in the present context we are seeking to avoid.

3.8 The problem, however, seems to be one of limited scope. A landlord whose tenant sub-lets without consent will normally be able to forfeit the head lease, with the result that the sub-tenant's interest would also come to an end. Solicitors with experience of such cases who responded to the Working Paper accepted that forfeiture was a satisfactory sanction for landlords, so far as it went. They suggested that injustice arose if the unauthorised sub-letting only came to the landlord's attention after the expiry of the head lease. There was then no longer a head lease to forfeit, and the landlord was left with the sub-tenant in possession, claiming a statutory renewal.

3.9 We do not consider that a rule precluding a renewal by an unauthorised sub-tenant, without more, would be satisfactory. It must be borne in mind that although a sub-letting may have been unlawful, the head landlord who did not forfeit the head lease might have learned of it but might then have waived his right to forfeit. It would not be appropriate to deprive the sub-tenant of statutory renewal rights in a case where the landlord had had a sanction against the head landlord, but had declined to exercise it. Further, even where a landlord forfeits the head lease, a sub-tenant can claim relief against forfeiture.[10] If a landlord chose to delay action until after the head lease had ended, a tenant should not be deprived of the claim to relief he would have had if the landlord had acted promptly.

3.10 It might be possible to frame provisions which would normally prevent an unlawful sub-tenant from claiming a new tenancy, while at the same time preserving his renewal rights if the landlord had waived the right to forfeiture or the sub-tenant would have been granted relief. However, such legislation would be likely to be complex and we consider that the matter can be better approached in another and simpler way.

3.11 Our respondents made clear that the difficulty for the landlord only arose where he knew nothing of the sub-letting before the head lease came to an end. Provided therefore the landlord is fully informed in good time, there is already appropriate action he can take. We consider that the changes we have recommended to strengthen the provisions for obtaining information before the lease comes to an end, which include obtaining information about sub-letting,[11] should enable all landlords to be in a position to take action to forfeit the head lease where appropriate. Accordingly, we do not recommend further measures.

Tenancies at Will and Licences

3.12 A radical proposal to extend the scope of the 1954 Act was made to us in response to the Working Paper. At present, the grant of a tenancy at will gives no statutory rights to the tenant,[12] and similarly a licensee of business premises has no rights under the Act.[13] The suggestion was that both tenants at will and licensees should have renewal rights. This would prevent tenancies at will being used as a way to avoid the need to apply to the court

[8] *D'Silva* v. *Lister House Development Ltd.* [1971] Ch. 17, where Buckley J. reached this conclusion " with some regret " (pp.33-4).

[9] Although it may be that any wrongdoing is confined to the head tenant, and the innocent sub-tenant may be carrying on a business on the property for which he has built up goodwill which it is normally the policy of the 1954 Act to protect.

[10] Law of Property Act 1925, s.146(4).

[11] Para. 2.27 above.

[12] *Hagee (London) Ltd.* v. *A.B. Erikson and Larson* [1976] Q.B. 209.

[13] *Shell-Mex and B.P. Ltd.* v. *Manchester Garages Ltd.* [1971] 1 W.L.R. 612.

to authorise an agreement excluding the statutory renewal provisions. It would also in practice avoid, at least in this area, having to draw a distinction between a lease and a licence, which has provoked many disputes.

3.13 We do not believe, in the absence of statistical evidence, that either tenancies at will or licences are granted in a significant number of cases simply as a means of avoiding the Act's provisions. There are a number of circumstances in which purely temporary arrangements may suit both parties,[14] and in such cases statutory intervention would be inappropriate and unwelcome. The temporary nature of the interest granted either by a tenancy at will or by a licence is not likely to satisfy someone wanting to occupy business premises for any length of time, and we consider that the difference between such an interest and an ordinary tenancy or lease will be readily apparent, so that a prospective tenant will not enter into such an arrangement inadvertently.

3.14 It would not be appropriate in the course of this project to recommend a major extension of the scope of the Act, particularly when it does not appear to be required to counter avoidance of the statutory provisions or to protect occupiers from being misled. The inclusion of tenancies at will and licences within the Act would clearly have a major effect on the balance between landlord and tenant which we wish to maintain as it is. Further, if our recommendations are implemented, it will no longer be necessary to apply to the court to avoid the renewal provisions,[15] so there will not be the incentive to use tenancies at will or licences as a device for that purpose.

Contracting Out: Offer-back Clauses

3.15 There was general agreement on consultation that the situation left by *Allnatt London Properties Ltd.* v. *Newton*[16] is unsatisfactory. That case concerned an "offer-back clause", i.e. a tenant's covenant to offer to surrender the lease on specified terms as a pre-condition of obtaining the landlord's consent to assign. In those circumstances, the tenant is obliged to make the offer to surrender, but if that offer is accepted there is stalemate. The Court of Appeal held that section 38(1) of the 1954 Act invalidated the agreement reached by the landlord accepting the tenant's offer, but did not go into the further consequences. Accordingly, the tenancy continues, but the tenant cannot assign and the landlord cannot regain possession. We suggested in the Working Paper that "that result is plainly unsatisfactory in practice" and provisionally took the view that the situation should be tackled by reform.[17]

3.16 However, on consultation this was seen as a diminishing problem because parties to leases granted since the decision in that case was publicised have taken other steps to achieve their objectives. The question is, therefore, what if anything should be done about such clauses in older leases. The views expressed to us were divided between those—the majority—who considered that some or all such clauses should be validated, i.e. should operate according to their tenor, and a minority who would have invalidated them.

3.17 We have carefully examined the options available. Both the obvious solutions involve rewriting the parties' bargain, either to favour landlords by validating the agreements or to favour tenants by invalidating the surrender requirements, with a corresponding prejudice to the other parties. Our general aim is to maintain a fair balance between landlords and tenants, and these circumstances do not seem to present any overwhelming case for favouring one side or the other. Another option would be to confer a general discretion on the courts to treat each case separately, giving power to validate agreements or invalidate surrender requirements. This would certainly allow the courts to take account of the fairness of the terms of individual leases. But it has two serious disadvantages. First, a general discretion creates uncertainty, and does not enable firm advice to be given to those involved, at least until some cases have come before the courts and been reported. Secondly, it is contrary to the policy, which is another of the aims of our recommendations, to reduce the number of applications to the court.

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[14] e.g., a temporary letting of retail premises which are due to be demolished, in order to take advantage of a seasonal trade.

[15] Paras. 2.18–2.19 above.

[16] [1984] 1 All E.R. 423.

[17] Working Paper, para. 3.5.27.

3.18 There is another factor, which has become relevant since the publication of our Working Paper in 1988. The Law of Property (Miscellaneous Provisions) Act 1989 requires that any contract for the disposition of an interest in land[18] should be made in writing, incorporating all the terms which the parties have expressly agreed in one document or, where contracts are exchanged, in each.[19] The form of contract envisaged by most clauses of the kind examined in the *Allnatt* case is one created by an offer and acceptance which would not comply with the 1989 Act requirements.[20] We do not consider that it would be appropriate expressly to validate contracts which contravene that new general provision.

3.19 In these circumstances, we have concluded that this is not a problem which should be addressed in amending legislation.

Statutory Procedure

Tenant's Request to Extend Periodic Tenancy

3.20 A periodic tenant cannot at present initiate the procedure to claim a new tenancy by serving a request for a new tenancy, because the procedure is restricted to a tenant holding under a term of years certain of more than one year or under a term of years certain and thereafter from year to year.[21] We provisionally concluded in the Working Paper that the right to initiate the renewal procedure should not be extended to periodic tenants,[22] which was also the view taken in the Commission's earlier Report.[23]

3.21 Extending the right to serve requests did not command much support among those who responded to the Working Paper, and some of those who did favour change would have restricted it to those tenants who had actually been in occupation for some years. In the absence of pressing reasons for a reform, we consider that this aspect of the legislation is best left as it is. The change could open the door unhelpfully to many applications by short-term tenants, and this seems to be a case in which the balance between landlords and tenants struck by the present provisions is generally accepted and should be maintained.

Interim Rent

3.22 In the Working Paper we considered a number of issues relating to applications for interim rent. We pointed out that, as matters now stand, if the whole property is sub-let, the head landlord may be the only person who can apply for an interim rent, but that rent will be payable to the intermediate landlord.

3.23 Sub-letting of business premises is common, a fact confirmed by those who responded on consultation; but they also made it clear that in practice the problems that this causes in relation to interim rents are very few. At present, one landlord[24] and one tenant are parties both to the renewal application and any application for an interim rent. The possible solutions we suggested to the apparent difficulties involved allowing others to become parties to interim rent applications. Respondents did not rule that out, but on reconsideration we ourselves do not consider that the suggestion should be pursued.

3.24 In the Working Paper we wrote, "There is obviously a risk of proliferation of negotiations and court applications".[25] In working out the details of the legislation which would be required, it became obvious to us that substantial changes would also be needed to the familiar structure of the Act. In the light of the information that in practice very few problems arise, we do not consider that we should be justified in proposing reforms involving these disadvantages.

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[18] Which includes an agreement to surrender a lease.

[19] Section 2(1).

[20] Offer-back clauses are materially different from the option which had been exercised and which was examined in *Spiro* v. *Glencrown Properties Ltd.* [1991] Ch. 537, where the resultant contract was held to be valid notwithstanding the terms of the 1989 Act. There, the terms of the option had been set out in an agreement, two parts of which were signed and exchanged. The option only had to be exercised by the purchaser. An offer-back clause purports to impose an obligation on the tenant to offer to surrender the lease, if he voluntarily decides to take a certain course. That offer is then open to acceptance or rejection by the landlord. In the former case, one party is governed by the other's decision, and cannot decide to withdraw. In the latter, each at a different stage in the transaction takes his own decision to proceed.

[21] Landlord and Tenant Act 1954, s.26(1).

[22] Working Paper, para. 3.2.27.

[23] Landlord and Tenant: Report on the Landlord and Tenant Act 1954, Part II (1969), Law Com. No. 17, para. 53.

[24] "The competent landlord": Landlord and Tenant Act 1954, s.44, Sched. 6, para. 1.

[25] Working Paper, para. 3.4.13.

Grounds for Refusal

3.25 The Working Paper only discussed one aspect of the landlord's statutory grounds for opposing a tenant's application for a new tenancy,[26] but a number of those who responded suggested other areas for reform. We did not go further in the Working Paper because we knew of no matters which appeared to demand urgent attention, and because change in this area is difficult to reconcile with the objective of making no fundamental alteration to the balance between landlord and tenant. None of the matters raised on consultation is, in our view, of sufficient urgency to demand immediate attention, and we are therefore not making any recommendations for reform.

Demolition or Reconstruction

3.26 A landlord who intends to demolish or reconstruct the premises[27] can oppose a tenant's application on that ground.[28] It was suggested that this ground of opposition was not wide enough, and should extend to include a landlord's intention to "refurbish". Certainly, in recent years, substantial work has been done on a number of commercial buildings without any demolition or change to the structure. This refurbishment can change a building's use, extend its economic life and materially increase its value. However, to deprive the tenant of a renewal of his lease on this ground would be a major shift in the policy of the Act. It would also be very difficult to distinguish between redecoration, which could hardly be a ground for depriving a tenant of his security of tenure, and the more extensive refurbishment.

Occupation for Own Business

3.27 The tenant cannot renew his lease if the landlord intends to occupy the premises for his own business or as a residence.[29] We have already made recommendations to extend the definition of the business which is to be regarded as the landlord's for this purpose.[30]

3.28 Two other concerns were expressed about this provision by those responding to the Working Paper. First, the landlord should be able to use it if he intended to occupy only part of the premises for his own purposes. This would mirror the provision introduced in 1969 for the recovery of part only of the premises for demolition or reconstruction.[31] There is some attraction in this extension to the landlord's powers, particularly if the tenant were also still able to continue to trade from the remainder of the property, but it is a significant change of policy which would need wide consultation.[32]

3.29 The second point made about this ground for opposition is that it can operate unfairly if the landlord in fact intends to take over the goodwill of the tenant's business. The Act contains a limited safeguard against a landlord who acquires the reversion for this purpose: he cannot use this ground of opposition to renewal for five years after the acquisition.[33] After that, the policy of the Act is clearly that the landlord should be able to retake the property, and, if it is one to which goodwill attaches, he will succeed to that goodwill. That is one situation which the statutory provisions for compensation address,[34] although some think that the basis of compensation should be changed.[35]

Renewal Terms

New Rent

3.30 Although the formula for fixing rent under a new lease granted on renewal[36] was not discussed in our Working Paper, it was raised in response. The Law Society, e.g., considered that the present statutory provisions "appear to suffer from many of the drawbacks of older rent review clauses". They instanced a failure to deal adequately with

[26] Landlord and Tenant Act 1954, s.30(1).

[27] Or, in certain circumstances, part of them: *ibid.*, s.31A.

[28] *Ibid.*, s.30(1)(f).

[29] *Ibid.*, s.30(1)(g).

[30] Para. 2.10 above.

[31] Landlord and Tenant Act 1954, s.31A; Law of Property Act 1969, s.7(1).

[32] One question to be addressed would be the possibility of the landlord, having retaken possession of part of the property, trading from there in competition with the tenant's business conducted from the remainder of it.

[33] Landlord and Tenant Act 1954, s.30(2).

[34] *Ibid.*, s.37.

[35] Paras. 3.34–3.35 below.

[36] Landlord and Tenant Act 1954, s.34.

the consequences of sub-letting, improvements before the lease was granted and work on the property which was required to be carried out by statute.

3.31 Clearly, the rent at which any new lease is to be granted is at the heart of the effect of this legislation. A change in the formula tending to increase that rent would favour landlords and an alteration in the other direction would favour tenants. As the aim of this review is to avoid making any significant variation in the balance between landlords and tenants, we have taken the view that the rent-fixing formula is beyond its scope. We would add, however, that although various matters now commonly dealt with expressly in rent review clauses are not mentioned in the statutory formula, we do not accept that it necessarily follows that their effect on rent is not taken into account, and satisfactorily taken into account, when the formula is applied.

Other Lease Terms

3.32 Another issue which concerned some of those who responded to the Working Paper, although it was not dealt with there, was the effect of the House of Lords decision in *O'May* v. *City of London Real Property Co. Ltd.*[37] As two commentators wrote, "In summary, the party (usually the landlord) seeking a substantial material change in the terms of the tenancy has to discharge a heavy onus of proving the change to be both justified and reasonable. The scales are heavily tipped in favour of retaining the terms of the old lease".[38] The British Property Federation suggested that it had a positively harmful influence. "Our experience suggests that the terms of renewal leases determined by the court frequently diverge from current market practice. This creates a two-tier market and conflicts with the object of the Act (which is to try to reflect market conditions)".

3.33 The purpose of the Act is not exclusively to reflect market conditions; it is certainly also trying to deal fairly between the two parties involved in a lease renewal. Lord Hailsham L.C. explained the position in this way. ". . . I do believe that the court must begin by considering the terms of the current tenancy, that the burden of persuading the court to impose a change in those terms against the will of either party must rest on the party proposing the change, and that the change proposed must, in the circumstances of the case, be fair and reasonable, and should take into account, amongst other things, the comparatively weak negotiating position of a sitting tenant requiring renewal, particularly in conditions of scarcity, and the general purpose of the Act which is to protect the business interests of the tenant so far as they are affected by the approaching termination of the current lease, in particular as regards his security of tenure".[39] Lord Wilberforce added: "there is certainly no intention. . . to freeze, or . . . to 'petrify' the terms of the lease. In some cases, especially where the lease is an old one, many of its terms may be out of date, or unsuitable in relation to the new term to be granted".[40] It seems to us that there is a necessary combination of stability and flexibility, which can only be managed by the courts having the kind of discretion which the Act already gives them. We doubt whether there is at the moment evidence to justify the need to amend the legislation.

Compensation

Basis of Calculation

3.34 The Working Paper alluded to discontents with the basis of compensation for a tenant who was unable to renew his tenancy, but took the view that the topic was beyond the scope of a periodic review.[41] A number of those who responded nevertheless suggested that changes should be made. The suggestions ranged from a link to the current rent, through the value of the business as a going concern, to the cost of disturbance. Alternatively, some accepted that the link with rateable value should be retained, but took the view that instead of two multipliers there should be a sliding scale according to the length of the tenant's occupation. The Council of H.M. Circuit Judges and one individual solicitor felt that the compensation at present was too low; a building society considered that it was too high.

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[37] [1983] 2 A.C. 726.

[38] Fogel and Freedman, *1954 Act—Some Thoughts on Reform* (1985) 275 E.G. 118, 120.

[39] *O'May* v *City of London Real Property Co. Ltd.* [1983] 2 A.C. 726, 740–1.

[40] *Ibid.*, at p.747.

[41] Working Paper, para. 3.6.8.

3.35. This does not seem to be a question of a technical defect in the Act, nor an illustration of its becoming out of date; rather, some people, although by no means all, would prefer to change the basis of this part of the legislation. This demands an examination of the objective which the provision is seeking to achieve and an assessment of the impact on the market of possible changes. We did not consult on these questions. Indeed, we deliberately declined to do so on the basis that any change would alter the balance between landlord and tenant in a way which we were seeking to avoid. This topic is therefore one on which we have made no recommendation for reform.

PART IV

SUMMARY OF RECOMMENDATIONS

4.1 In this Part of the Report, we summarise the recommendations for changes to the Landlord and Tenant Act 1954 which we made in Part II. Where appropriate, we identify the clauses in the draft Landlord and Tenant (Business Tenancies) Bill, printed in Appendix A, which give effect to the particular recommendations.

Scope of the Act

4.2 (1) An individual and any company which he controls should be treated as equivalent for the purposes of the tenancy renewal procedure (para. 2.7).

(2) Companies which are controlled by one individual should be treated for the purposes of Part II of the 1954 Act as members of a group of companies. Accordingly, a tenant which is a company would have a statutory right to renew if the business in the property was carried on by another company, and both were controlled by the same individual (para. 2.8; clause 2(6)–(8)).

(3) The tenant's statutory right to renew a tenancy should apply notwithstanding that—

(a) The property is occupied for business purposes by a company controlled by the individual who is the tenant, or

(b) The individual occupying the property controls the company which is the tenant (para. 2.9; clause 2(1)).

(4) The landlord's right to oppose the renewal of a tenancy should apply notwithstanding that—

(a) The intention is that the property be occupied for business purposes by a company controlled by the individual who is the landlord, or

(b) The individual who is to occupy the property controls the company which is the landlord (para. 2.10; clause 2(2)).

(5) An individual who acquired control of the landlord company within the preceding five years should not be able to oppose the grant of a new tenancy, on the ground of intended occupation, where the tenancy was in existence when he assumed control (para. 2.11; clause 2(4)).

(6) The criteria to determine whether an individual controls a company should be based on those which determine whether one company is the subsidiary of another (para. 2.13; clause 2(9)).

(7) The parties should be able to contract out of the renewal provisions of the Act by an agreement, contained in or endorsed on the instrument creating the tenancy, where there is also endorsed on that instrument:

(a) A statement in a prescribed form, and

(b) A declaration signed by the tenant that he has read and understood the terms of the agreement and the statement (para. 2.19–2.20; clause 8).

(8) The current provision of the Act invalidating a surrender executed pursuant to an agreement made before the tenant has been in occupation for one month (section 24(2)(b)) should be repealed (para. 2.21; clause 11(2), Schedule 2).

Statutory Procedure

4.3 (1) The provisions allowing one party to require the other to give preliminary information should be revised (para. 2.26).

(2) A tenant on whom notice is served during the last two years of the lease term should be under a duty within one month to state:

(a) Whether he occupies all or part of the property for a business carried on by him;

(b) Details of any sub-letting;

(c) The identity of any reversioner known to him (para. 2.27; clause 9).

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(3) A reversioner or a reversioner's mortgagee on whom a tenant serves notice in a prescribed form during the last two years of the lease term should be under a duty to give the following information within one month:

(a) Whether he is the freeholder or the freeholder's mortgagee, or who is his immediate landlord and what is the length of his lease;

(b) The identity of any mortgagee in possession;

(c) The identity of the reversioner of any other part of the property (para. 2.28; clause 9).

(4) For six months after service of a statutory notice, the recipient should be under an obligation to revise any information which he supplies. That duty should end if he transfers his interest and informs the person who served the notice of the transfer and the name and address of the transferee. If the person to be notified transfers his interest and gives notice, the duty to supply information should be satisfied only by giving it to the transferee (para. 2.29–2.31; clause 9, new sections 40(5)(b), 40A).

(5) It should be possible to take civil proceedings for breach of statutory duty in respect of any failure to supply or revise information in response to a statutory notice (para. 2.32; clause 9, new section 40B).

(6) A landlord's notice to terminate a tenancy, which states that the landlord is not opposed to the grant of a new tenancy, should set out the landlord's proposals for the terms of the new tenancy (para. 2.34; clause 1(5)).

(7) After the landlord has served notice to terminate a tenancy, there should no longer be a requirement that the tenant serve a counternotice (para. 2.39).

(8) The Act should expressly state that its references to the "landlord" apply collectively to the owners of relevant interests in different parts of the demised property (para. 2.43; clause 10).

(9) Where a tenancy for a term of years certain has been extended by the Act, it should be possible for a notice to end it, served by a tenant who does not wish to renew it, to take effect on any day, rather than only on a quarter day (para 2.49; clause 4).

(10) Either party should be able to apply to the court for the renewal of a tenancy under the 1954 Act (para 2.55; clause 1(2)).

(11) A landlord should also be able to apply to the court to terminate a tenancy, without any renewal (para 2.56; clause 1(6)).

(12) The following rules should govern proceedings under the Act—

(a) Where a landlord is unsuccessful in proceedings to end a tenancy without renewal, the court should be able to order the grant of a new tenancy and settle its terms;

(b) Neither party should be able to bring an action if the other has started proceedings;

(c) A landlord should not be able to withdraw an application without the tenant's consent (para 2.57; clause 1(6), new section 29(4), (5), (7)).

(13) An application to the court should be allowed at any time before the date specified in the landlord's notice to terminate the tenancy or the tenant's request for a new tenancy (para 2.58; clause 1(6), new section 29A(1), (2)).

(14) The parties should be able to agree in writing to extend the time limit for making an application to the court, on the following basis—

(a) An initial agreement should be made before the date specified in the landlord's notice or the tenant's request;

(b) Any further agreement should be made before the previous agreement expires;

(c) The tenancy should continue during any agreed extended period (para 2.59; clause 1(6), new section 29B)).

(15) If the landlord gives notice, a party should not be required to wait for two months before making an application to the court. But if the tenant serves a request for a new tenancy, an application to the court within two months of the making of the request should not be entertained unless the landlord has already given a counternotice (para 2.60; clause 1(6), new sections 29(2)(b), 29A(3), (4)).

(16) Either party should be able to apply for an interim rent to be fixed (para 2.63; clause 3, new section 24A(1)).

(17) The date for commencement of an interim rent should be:

(a) Where the landlord serves notice to end the lease, the date specified in that notice if the landlord applies for the interim rent, or the first date which could have been specified in it if the landlord applies;

(b) Where the tenant requests a new tenancy, the date specified for the start of the new tenancy if the tenant applies for the interim rent, or the first date which could have been specified if the landlord applies (para 2.64–2.66; clause 3, new section 24B).

(18) If the court exercises its discretion to order an interim rent when the following conditions are satisfied, the amount of that rent should equal the rent initially payable under the new lease. The conditions are that—

(a) The tenant was in occupation of the whole of the demised property when the landlord gave notice or the tenant made his request;

(b) The landlord did not notify the tenant of his intention to oppose the grant of a new tenancy;

(c) The court orders the grant of a new tenancy of the whole of the property comprised in the current lease and the landlord actually grants it (para 2.70; clause 3, new section 24C(1)).

(19) In fixing an interim rent in other cases, the present formula should be amended to direct the court to have regard, in addition, to the rent payable under any sub-tenancy of any part of the property (para 2.71; clause 3, new section 24C(3)(b)).

(20) An application to fix an interim rent—

(a) Should be made and heard in the course of proceedings to renew a lease, or to end it without renewal, and appropriate provision should be made by rules of court;

(b) Should not be made by one party if the other party has already made an application and not withdrawn it;

(c) Should be capable of being made by a party and determined by the court notwithstanding the termination of proceedings to renew the tenancy or to end it without renewal (para 2.75; clause 3, new sections 24A(2)–(5), 24D).

(21) If interim rent is ordered at the full market rate but the condition that the landlord grant a new lease is not fulfilled, it should be open to either party to apply, as part of the original proceedings, to the court to fix an interim rent on the alternative basis. Rules of court should allow only a short period for making the application for re-assessment of the quantum (para 2.75; clause 3, new sections 24C(4), 24D).

(22) The maximum length of the term of a new lease which the court can order should be increased to 15 years (para 2.79; clause 5).

Compensation

4.4 (1) The Act's provisions for compensating a tenant whose tenancy is not renewed should be extended to cover—

(a) Cases where a landlord opposes the grant of a new tenancy on the ground that it is the intention that a company under the landlord's control should occupy the property, or vice versa;

(b) Cases where the landlord starts proceedings to end the tenancy without renewal or withdraws his action (para 2.81; clause 6(1)).

(2) Compensation for each part of the property occupied for a different length of time should be calculated separately (para 2.83; clause 6(2), (3)).

(3) Where there is a split reversion, with different parts of the property owned by separate landlords, each reversioner should be exclusively liable to pay the compensation attributable to his part (para 2.84; clause 6(3), new section 37(3B)).

(4) Compensation for non-renewal of a tenancy as a result of a misrepresentation should be payable where a tenant is induced not to apply to the court or to withdraw his application for renewal (para 2.87; clause 7).

Transitional Provisions

4.5 Amending legislation should not affect procedure resulting from notices served before it comes into effect, agreements to surrender made before that date or agreements authorised by the court before then, nor a tenant's entitlement to compensation for misrepresentation if he quit before that date (para 2.88; clause 12(2)–(5)).

Crown

4.6 Amending legislation should bind the Crown to the same extent as the 1954 Act currently does (para 2.89).

(*Signed*) PETER GIBSON, *Chairman*
TREVOR M. ALDRIDGE
JACK BEATSON
RICHARD BUXTON
BRENDA HOGGETT

MICHAEL COLLON, *Secretary*
30 September 1992

APPENDIX A

Draft

Landlord and Tenant (Business Tenancies) Bill

ARRANGEMENT OF CLAUSES

Clause
1. Application to court by landlord or tenant.
2. Companies and their controlling shareholders.
3. Rent while tenancy continues by virtue of s.24.
4. Tenant to be able to bring fixed term tenancy to an end on any day.
5. Maximum duration of new tenancy - increase from 14 to 15 years.
6. Compensation for refusal of a new tenancy.
7. Compensation for misrepresentation.
8. Agreements excluding ss.24 to 28 of Part II of Act of 1954 or as to surrender of tenancy.
9. Provision of information.
10. Application of Part II where reversion to property comprised in tenancy is divided.
11. Consequential amendments and repeals.
12. Commencement and savings.
13. Citation and extent.

SCHEDULES:

Schedule 1 —Consequential amendments.

Schedule 2 —Enactments repealed.

DRAFT

OF A

BILL

INTITULED

An Act to amend Part II of the Landlord and Tenant Act 1954 and for connected purposes.

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:—

Application to court by landlord or tenant.
1954 c. 56.

1.—(1) The Landlord and Tenant Act 1954 ("the Act of 1954") shall be amended as follows.

(2) In section 24(1), for the words "provisions of section 29 of this Act the tenant under such a tenancy may apply to the court for" there shall be substituted the words "following provisions of this Act either the tenant or the landlord under such a tenancy may apply to the court for an order for the grant of".

(3) The following subsections shall be inserted after subsection (2) of that section—

"(2A) Neither the tenant nor the landlord may make an application under subsection (1) above if the other has made such an application.

(2B) Neither the tenant nor the landlord may make such an application if the landlord has made an application under section 29(2) of this Act.

(2C) The landlord may not withdraw an application under subsection (1) above unless the tenant consents to its withdrawal.".

(4) Subsection (5) of section 25 shall cease to have effect.

(5) The following subsections shall be substituted for subsection (6) of that section—

"(6) A notice under this section shall not have effect unless it states whether the landlord is opposed to the grant of a new tenancy to the tenant.

EXPLANATORY NOTES

Clause 1

1. This clause deals with the procedure for making applications under Part II of the Act for an order for the grant of a new tenancy or for the termination of the current tenancy.

Subsection (2)
2. This subsection implements the recommendation made in paragraph 2.55 of the Report. Landlords as well as tenants will be able to apply under section 24(1) for an order for the grant of a new tenancy. The landlord will, alternatively, be able to apply for the termination of the current tenancy without the grant of a new tenancy under the proposed section 29(2) (see subsection (6) below). For the meaning of 'landlord', see section 44.

Subsection (3)
3. The new subsections (2A), (2B) and (2C) proposed in this subsection implement the recommendations in paragraph 2.57(b) and (c) of the Report. Neither party will be able to make an application for renewal of a tenancy under section 24(1) if the other has already done so, or if the landlord has applied to end the tenancy without renewal under section 29(2); see also paragraph 11 below. A landlord will not be able to make a renewal application and then withdraw it without the tenant's consent, because the effect of withdrawal will be to end the tenancy three months later: section 64(2); see also paragraph 14 below.

Subsection (4)
4. Section 25(5) currently requires the tenant, within two months after the landlord has given notice under section 25, to notify the landlord whether or not, at the date of termination, the tenant will be willing to give up possession of the property comprised in the tenancy. In accordance with the recommendation in paragraph 2.39 of the Report, this subsection provides for the repeal of section 25(5); see also Schedule 2.

Subsection (5)
5. The new sections 25(6) and (7) re-enact the current section 25(6) in a form appropriate to a procedure where either party may apply to the court.

(7) A notice under this section which states that the landlord is opposed to the grant of a new tenancy to the tenant shall not have effect unless it also specifies one or more of the grounds specified in section 30(1) of the Act as the ground or grounds for his opposition.

(8) A notice under this section which states that the landlord is not opposed to the grant of a new tenancy to the tenant shall not have effect unless it sets out the landlord's proposals as to the property to be comprised in the new tenancy (being either the whole or part of the property comprised in the current tenancy), as to the rent to be payable under the new tenancy and as to the other terms of the new tenancy.".

(6) The following shall be substituted for section 29 and the heading immediately preceding it—

"*Applications to court*

Order by court for grant of new tenancy or termination of current tenancy.

29.—(1) Subject to the provisions of this Act, on an application under section 24(1) of this Act the court shall make an order for the grant of a new tenancy comprising such property, at such rent and on such other terms, as are hereinafter provided, and accordingly for the termination of the current tenancy immediately before the commencement of the new tenancy.

(2) Subject to the following provisions of this Act, a landlord may apply to the court for an order for the termination of a tenancy to which this Part of this Act applies without the grant of a new tenancy—

(a) if he has given notice under section 25 of this Act that he is opposed to the grant of a new tenancy to the tenant; or

(b) if the tenant has made a request for a new tenancy in accordance with section 26 of this Act and the landlord has given notice under subsection (6) of that section.

(3) Section 30 of this Act shall have effect as if the references to opposing an application under section 24(1) included references to making an application under subsection (2) above.

(4) The landlord may not make an application under subsection (2) above if either the tenant or the landlord has made an application under section 24(1) of this Act.

(5) Subject to the provisions of this Act, where the landlord makes an application under subsection (2) above—

(a) if he establishes any of the grounds mentioned in section 30(1) of this Act to the satisfaction of the court, the court shall make an order for the termination of the current tenancy without the grant of a new tenancy; and

6. The new section 25(8) implements the recommendation made in paragraph 2.34 of the Report. Currently, the tenant must inform the landlord of his proposals for the terms of the new tenancy if he makes a section 26 request, but the landlord does not have to do likewise when serving a section 25 notice. The new subsection requires the landlord to state his proposed terms if he serves his section 25 notice with the intention of granting a new tenancy.

Subsection (6)
7. This subsection substitutes three new sections for the current section 29.

Proposed section 29
8. The proposed section 29(1) re-enacts the current section 29(1) with some verbal amendments, and makes clear the effect of any order in terminating the current tenancy (see section 64(1)).

9. In accordance with the recommendation made in paragraph 2.56 of the Report, the proposed section 29(2) permits a landlord, who has given notice under section 25 or counternotice under section 26(6), to apply for an order for the termination of the current tenancy without the grant of a new tenancy. Paragraphs (a) and (b) of section 29(2) ensure that the landlord's intention to oppose a renewal and his grounds of opposition will be known before his court application is made. The landlord's notice that he is opposed to the grant of a new tenancy (paragraph (a)) must also state the grounds of opposition: see new section 25(7), inserted by clause 1(5). The landlord will be able to start proceedings immediately after giving such a notice: see paragraph 2.60 of the Report. However, in a case where the tenant has made a request for a new tenancy, the landlord cannot make a court application unless he has given a counternotice under section 26(6): section 29(2)(b). The landlord's counternotice stating that he is opposed to renewal and specifying the grounds of opposition can only be given within two months of the making of the tenant's request.

10. The landlord may, in making such an application, rely on any of the grounds of opposition to a tenant's application to renew set out in section 30: proposed section 29(3). Section 30 is amended by clause 2(2)-(4).

11. The proposed section 29(4) implements the recommendation in paragraph 2.57(b) of the Report: the landlord will not be able to make an application under the new section 29(2) to end a tenancy without renewal if a renewal application under section 24(1) has already been made. This supplements the proposed section 24(2A) and (2B): see paragraph 3 above.

12. The proposed section 29(5) sets out the consequences of a landlord's application to end a tenancy without renewal. If the landlord establishes one of the grounds in section 30(1) for opposing a renewal, an order for termination without renewal will be made: paragraph (a). (This is the equivalent of the result of successful opposition to a renewal application: see section 31(1)). If the application is not successful, a renewal order will be made without a further application: paragraph (b). This implements the recommendation in paragraph 2.57(a) of the Report.

13. Section 29(6) extends to an application to end a tenancy without renewal the present provision in section 31(2), which empowers the court to make a declaration that it would have been satisfied that a ground of opposition was established, had the date for ending the tenancy been up to a year later.

14. The landlord may only withdraw an application to end the tenancy without renewal with the landlord's consent (section 29(7)). Withdrawal of the application will end the tenancy three months later: section 64(2).

(b) if not, it shall make an order such as is mentioned in subsection (1) above.

(6) Section 31(2) of this Act shall have effect as if after the word "court", in the first place where it occurs, there were inserted the words "and where the landlord makes an application under subsection (2) of section 29 of this Act and the case does not fall within subsection (5)(a) of that section".

(7) The landlord may not withdraw an application under subsection (2) above unless the tenant consents to its withdrawal.

Time limits for applications to court.

29A.—(1) Except where an agreement under section 29B below is in force, an application—

(a) by the tenant or the landlord under section 24(1) of this Act; or

(b) by the landlord under section 29(2) of this Act,

shall not be entertained by the court if it is made after the end of the statutory period.

(2) In this section and section 29B of this Act "the statutory period" means a period ending—

(a) where the landlord gave a notice under section 25 of this Act, on the date specified in his notice; and

(b) where the tenant made a request for a new tenancy under section 26 of this Act, immediately before the date specified in his request.

(3) Subject to the following provisions of this Act, where the tenant has made a request for a new tenancy under section 26 of this Act, an application under section 24(1) of this Act shall not be entertained by the court if it is made before the end of the period of two months beginning with the date of the making of the request.

(4) An application under section 24(1) of this Act may be entertained before the end of that period if—

(a) before the end of the period the landlord has given a notice under section 26(6) of this Act; and

(b) the application is made after the giving of that notice.

Agreements extending time limits.

29B.—(1) After the landlord has given a notice under section 25 of this Act or the tenant has made a request for a new tenancy under section 26 of this Act but before the end of the statutory period the landlord and tenant may agree that an application such as is mentioned in section 29A(1) of this Act may be made within a period specified in the

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Proposed sections 29A and 29B

15. These sections implement the recommendations as to time limits for applications made in paragraphs 2.58 to 2.60 of the Report.

16. Section 29A(1) and (2) fix, as the initial time limit for making an application to renew a tenancy under section 24(1) or to end a tenancy without renewal under section 29(2), the date specified in the landlord's notice under section 25 or immediately before the date specified in the tenant's request under section 26, as the case may be. This necessarily allows at least two months more for making an application than at present (section 29(3)).

17. Section 29A(3) and (4) introduce a date before which a renewal application under section 24(1) cannot be made in cases where the procedure was started by a tenant's request. No restriction applies to cases started by a landlord's notice. The earliest date for making an application is two months after the tenant makes the request or when the landlord serves a counternotice under section 26(6) (whichever occurs first). This ensures that if the landlord is going to be able to rely on a ground of opposition, which he must specify in the counternotice (section 30(1)), it will be known before the court application is made.

18. The landlord and the tenant may agree that the period for making an application to court should be extended: section 29B(1)-(4). Any such agreement must be in writing: section 69(2). It must also be made during a period when the parties may still validly make an application to the court: see paragraph 2.59 of the Report.

19. At present, if the tenant does not apply to the court to renew a tenancy which is subject to the 1954 Act, it ends on the date specified in the landlord's notice (section 25(1)) or immediately before the date specified in the tenant's request for the beginning of the new tenancy (section 26(5)), as the case may be. In a case where the time for applying to the court is extended, but no application is made, section 29A(5) brings the tenancy to an end when the period for making an application expires.

agreement which will expire after the end of the statutory period.

(2) The landlord and tenant may from time to time by agreement further extend the period for making such an application.

(3) An agreement under subsection (2) above must be made before the end of the currently agreed period.

(4) Where an agreement under this section is in force, the court may entertain an application such as is mentioned in section 29A(1) of this Act made at any time not later than the end of the currently agreed period.

(5) Where—

(a) such an agreement is in force; and

(b) no such application is made by the landlord or tenant before the end of the currently agreed period,

the current tenancy shall determine at the end of that period.".

(7) In section 31A(1), after the words "30(1) of this Act" there shall be inserted the words "or makes an application under section 29(2) of this Act on that ground".

(8) In section 34(2)(a), for the words "for the new tenancy" there shall be substituted the words "to the court".

Companies and their controlling shareholders.

2.—(1) The following subsection shall be inserted after subsection (1) of section 23 of the Act of 1954 (tenancies to which Part II applies)—

"(1A) Occupation or the carrying on of a business—

(a) by a company in which the tenant has a controlling interest; or

(b) where the tenant is a company, by a person with a controlling interest in the company,

shall be treated for the purposes of this section as equivalent to occupation or, as the case may be, the carrying on of a business by the tenant; and in relation to a tenancy to which this Part of this Act applies by virtue of this subsection references (however expressed) in this Part of this Act to the business of or to use occupation or enjoyment by the tenant shall be construed as including references to the business of or to use occupation or enjoyment by a company falling within paragraph (a) above or a person falling within paragraph (b) above.".

(2) The following paragraphs shall be substituted for subsection (1)(g) of section 30 (opposition by landlord to application for new tenancy)—

"(g) subject to subsection (2) of this section, that on the termination of the current tenancy the landlord intends

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Subsection (7)
20. The modification to the ground of opposition in section 30(1)(f), permitting the tenant to remain in possession of part of the premises when the landlord demolishes or reconstructs the remainder, introduced by section 7(1) of the Law of Property Act 1969, is applied to applications to end a tenancy without renewal by this subsection.

Subsection (8)
21. This subsection adapts the wording of section 34(2)(a) so that it can apply to lease renewals resulting from applications under the new section 29(2) to terminate a lease without renewal, where the landlord fails to establish a ground of opposition.

Clause 2

1. This clause implements the recommendations as to companies and their controlling shareholders made in paragraphs 2.8 to 2.13 of the Report. It extends the ways in which two requirements of the Act can be satisfied: first, to qualify to renew a tenancy, the tenant must occupy the premises for a business carried on by him (section 23(1)); secondly, a landlord has a ground of opposition to the renewal if he establishes that he intends to occupy the property for the purposes, or partly for the purposes, of a business to be carried on by him, or as his residence (section 30(1)(g)).

Subsection (1)
2. This subsection implements the recommendations made in paragraphs 2.8 and 2.9 of the Report. A tenant may satisfy the criteria for renewal by showing that the occupation of the property or carrying on the business there is (in the case of an individual tenant) by a company he controls or (in the case of a company tenant) by a controlling shareholder. Control is defined in section 46(2), inserted by subsection (9) of this clause.

Subsections (2) to (4)
3. These subsections implement the recommendations made in paragraphs 2.10 and 2.11 of the Report.

4. Subsection (2) substitutes a re-draft for the present section 30(1)(g). The landlord's ground for opposing a new tenancy in section 30(1)(g), that he requires the property for his own use, is extended so that an intention that it be occupied for, or partly for, the purpose of a business carried on by a company in which he has a controlling interest establishes it. This remains subject to the 'five-year ownership restriction' imposed by section 30(2).

5. Subsection (2) also introduces a new ground of opposition: section 30(1)(h). A company which is the landlord may oppose the grant of a new tenancy, on the ground that a person with a controlling interest in the landlord company intends to occupy the property for his or the company's business or as his residence. As well as being subject to section 30(2), this is subject to a new restriction in section 30(2A), introduced by subsection (4).

6. The restriction in section 30(2A) applies if the person with the controlling interest in the landlord company acquired that interest during the five years before the end of the tenancy. If the property was, at the date of his acquisition, subject to a tenancy and it has continuously been subject to tenancies subject to the 1954 Act, the ground for opposition cannot be used during the five years. If the property had been vacant during the five years, and a new tenancy was then granted, there would be no restriction on using this new ground of opposition.

to occupy the holding for the purposes, or partly for the purposes, of a business to be carried on in it—

(i) by the landlord; or

(ii) by a company in which the landlord has a controlling interest,

or as his residence;

(h) subject to subsections (2) and (2A) of this section, that the landlord is a company and that on the termination of the current tenancy a person with a controlling interest in the company intends to occupy the holding—

(i) for the purposes, or partly for the purposes, of a business to be carried on in it by him or by the company; or

(ii) as his residence.".

(3) In subsection (2) of that section, after the words "paragraph (g)" there shall be inserted the words "or (h)".

(4) The following subsection shall be inserted after that subsection—

"(2A) The landlord shall not be entitled to oppose an application on the ground specified in paragraph (h) of the last foregoing subsection if the controlling interest was acquired after the beginning of the period of five years which ends with the termination of the current tenancy, and at all times since the acquisition of the controlling interest the holding has been comprised in a tenancy or successive tenancies of the description specified in subsection (1) of section 23 of this Act.".

(5) At the end of section 34(1)(d) (rent under new tenancy of holding comprising licensed premises) there shall be added the words "or, if this Part of the Act applies by virtue of section 23(1A) of this Act—

(i) to a company such as is mentioned in paragraph (a) of that subsection; or

(ii) where the tenant is a company, to a person such as is mentioned in paragraph (b)".

(6) At the end of the first paragraph of subsection (1) of section 42 (groups of companies) there shall be added the words "or the same person has a controlling interest in both".

(7) In subsection (3)(a) of that section, after "that member" there shall be inserted—

"(aa) the reference in paragraph (h) to a controlling interest shall be construed as a reference to a controlling interest in any member of the group;".

(8) Section 46 (interpretation of Part II) shall become section 46(1).

(9) The following subsection shall be added after that subsection—

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7. For the purposes of determining whether a person has a controlling interest in a company, control is defined in section 46(2), inserted by subsection (9) of this clause.

Subsection (5)

8. This subsection applies the recommendation in paragraph 2.7 of the Report to section 34(1)(d) of the Act which requires the court fixing the rent payable under a new tenancy to disregard any increase in value of licensed premises attributable to the licence, the benefit of which belongs to the tenant. This disregard applies to a licence of which the benefit belongs to a company controlled by the tenant or an individual with a controlling interest in the tenant, where the fact that they are carrying on business there enables the tenant to apply for a new tenancy (see subsection (1) of this clause, paragraph 2 above).

Subsections (6) and (7)

9. These subsections implement the recommendation made in paragraph 2.8 of the Report. Section 42 currently ensures that a landlord or a tenant is treated for the purposes of occupation and of carrying on or intending to carry on a business as equivalent to any other member of its group. Two companies are members of a group if one is the subsidiary of the other, or if both are subsidiaries of a third. These subsections ensure that companies will also be group members if they are all controlled by an individual, rather than by another company.

Subsections (8) and (9)

10. The definition of controlling interest in a company in the current section 30(3) has been amended and moved to the definition section (section 46(2)). In the definition section, it can have general effect, which is now necessary for the extended use within the Act of the concept of a controlling shareholder. The new definition of control of a company by an individual is based on the definition of control of one company by another introduced by the Companies Act 1989. This gives effect to the recommendation in paragraph 2.13 of the Report.

"(2) For the purposes of this Part of this Act, a person has a controlling interest in a company if, had he been a company, the other company would have been its subsidiary; and in this Part—

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"company" has the meaning given by section 735 of the Companies Act 1985; and

"subsidiary" has the meaning given by section 736 of that Act.".

Rent while tenancy continues by virtue of s.24.

3. The following sections shall be substituted for section 24A of the Act of 1954—

"Applications for determination of interim rent while tenancy continues.

24A.—(1) Subject to subsection (2) below, if—

(a) the tenant or the landlord under a tenancy to which this Part of this Act applies makes an application under section 24(1) of this Act; or

(b) the landlord makes an application under section 29(2) of this Act,

either of them may make an application to the court to determine a rent which the tenant is to pay while the current tenancy continues by virtue of section 24 of this Act (an "interim rent") and the court may order payment of an interim rent in accordance with section 24C of this Act.

(2) Neither the tenant nor the landlord may make an application under subsection (1) above if the other has made such an application and has not withdrawn it.

(3) An application may be made under subsection (1) above notwithstanding the withdrawal before the making of that application of the application under section 24(1) or 29(2) of this Act.

(4) The court may make a determination on an application under subsection (1) above notwithstanding the withdrawal after the making of that application of the application under section 24(1) or 29(2) of this Act.

Date from which interim rent is payable.

24B.—(1) From the appropriate date the interim rent determined on an application under section 24A(1) of this Act shall be the rent payable under the tenancy.

(2) If—

(a) the landlord makes an application under section 24A(1) of this Act in a case where he has given a notice under section 25 of this Act; or

(b) the tenant makes an application under section 24A(1) of this Act in a case where he has made a request for a new tenancy under section 26,

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Clause 3

1. This clause makes alterations to the procedure for determining, on an application being made to the court, an interim rent for the tenant to pay while the tenancy continues by virtue of the Act. It gives effect to the recommendations made in paragraphs 2.63 to 2.75 of the Report. The current section 24A is replaced by the new sections 24A, 24B and 24C.

Proposed section 24A(1)

2. Currently the landlord but not the tenant may make an application for the determination of an interim rent. In accordance with the recommendation in paragraph 2.63, this subsection permits either party to apply. Such an application may be made either when an application has been made to renew the tenancy under section 24(1) or to end it without renewal under section 29(2).

3. The court retains the discretion it has at present whether or not to make an order for payment of interim rent.

Proposed section 24A(2) to (5)

4. These subsections implement the recommendations made in paragraph 2.75 of the Report. Rules of court will determine when an application may be made (new section 24D), but neither party will be able to make an application for the determination of an interim rent if the other has already done so and not withdrawn it. Although applications for the determination of interim rent should be heard at the same time as applications to renew or terminate the tenancy without renewal, the parties will be able to apply for interim rent to be determined, and the court will be able to determine an interim rent, even if the renewal or termination application has been withdrawn.

Proposed section 24B

5. This proposed section determines the starting date for the interim rent payment period and replaces the current section 24A(2), under which interim rent is payable from the date on which the interim rent proceedings were commenced or the date specified in the landlord's notice or the tenant's request, whichever is the later. In accordance with the recommendations in paragraphs 2.64 and 2.65 of the Report, the date from which interim rent will be payable under the proposed section 24B will depend on which party served the section 25 notice or section 26 request, and on which party made the interim rent application. If the party who served the section 25 notice or section 26 request also makes the interim rent application, then the date from which interim rent is payable will be the termination date specified in the section 25 notice or section 26 request. If, however, the party seeking the determination of an interim rent is not the party who served the section 25 notice or section 26 request, then the date will be the earliest date which the other party *could have* specified in their section 25 notice or section 26 request. This is intended to deter a party from seeking to prolong a current tenancy merely to have the advantage of continuing to pay rent at the current rate.

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the appropriate date is the date specified in the landlord's notice or, as the case may be, the tenant's request.

(3) If—

(a) the landlord makes an application under section 24A(1) of this Act in a case where he has not given a notice under section 25 of this Act; or

(b) the tenant makes an application under section 24A(1) of this Act in a case where he has not made a request for a new tenancy under section 26,

the appropriate date is the earliest date that could have been specified in the landlord's notice or, as the case may be, the tenant's request.

Amount of interim rent.

24C—(1) If in a case where—

(a) the landlord gave a notice under section 25 of this Act at a time when the tenant was in occupation of the whole of the property comprised in the current tenancy for purposes such as are mentioned in section 23(1) of this Act and stated in the notice that he was not opposed to the grant of a new tenancy; or

(b) the tenant made a request for a new tenancy under section 26 of this Act at a time when he was in occupation of the whole of that property for such purposes and the landlord did not give notice under subsection (6) of that section that he would oppose an application to the court for the grant of such a tenancy,

the court makes an order for grant of a new tenancy of the whole of the property comprised in the current tenancy and the landlord grants such a new tenancy, the rent payable under section 34 of this Act at the commencement of the new tenancy shall also be the interim rent.

(2) The interim rent in a case not falling within subsection (1) above is the rent which it is reasonable for the tenant to pay while the current tenancy continues by virtue of section 24 of this Act.

(3) In determining an interim rent in a case not falling within subsection (1) above the court shall have regard—

(a) to the rent payable under the terms of the current tenancy; and

(b) to the rent payable under any sub-tenancy of part of the property comprised in the current tenancy,

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Proposed section 24C

6. This section gives effect to the recommendations in paragraphs 2.70 and 2.71 of the Report. If the court exercises its discretion to order an interim rent under section 24(A)(1), the quantum will be determined in accordance with subsections (1) to (3) of section 24C.

7. The formula for determining the amount of any interim rent ordered under the current section 24A requires the court to take into account factors relating to the tenant's lack of security of tenure and the amount of the current rent, which generally results in the interim rent being fixed at a discount from the market rent. Subsection (1) of section 24C gives effect to the recommendation in paragraph 2.70 of the Report by providing a new formula for determining interim rent in certain cases.

8. In a case where—

(a) the tenant was in occupation of the whole of the property comprised in the current lease when he made his request under section 26 or the landlord served notice under section 25;

(b) the landlord's notice under section 25 or his counternotice under section 26(6) stated that he was not opposed to the grant of a new tenancy or he gave no counternotice;

(c) the court has made an order for the grant of a new tenancy; and

(d) the tenancy has actually been granted;

the interim rent specified will be equal to the rent initially payable under the new tenancy: section 24C(1). Paragraph 2.75(a) of the Report envisages that rules of court will provide that an application for interim rent be heard in the course of the proceedings on the application to renew the tenancy (under section 24(1)) or to terminate it without renewal (under section 29(2)). As one of the conditions for the full interim rent under section 24C(1) is that the landlord should have actually granted the new tenancy, the order for payment of that rent will be conditional upon the grant.

9. If an interim rent is ordered on that basis, but no new lease is granted, either because the order for the grant of the new lease is revoked under section 36(2) or the parties agree not to act on that order, that rent will not be payable. As recommended in paragraph 2.75(d) of the Report, in such a case subsection (4) permits either party to apply to the court to re-assess the quantum of interim rent in accordance with the alternative formula in subsections (2) and (3): see paragraphs 10 and 11 below. Subsection (4) makes it clear that a further application under section 24A(1) will not be required. The court, having decided on the original application that an interim rent should be payable, will not be required to exercise its general discretion (under section 24A(1)) once again as to whether or not to order an interim rent at all. The only matter for the court's determination would be the new quantum.

10. For cases not covered by paragraph 8 above, and applications under paragraph 9 above, the formula to fix the interim rent is set out in the proposed subsections (2) and (3). With one exception, this reproduces the formula in the current section 24A(1) and (3).

11. The addition to the formula as recommended at paragraph 2.71 of the Report, is the requirement that the court have regard to the rent payable under any sub-tenancy of part of the property comprised in the current tenancy.

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

(4) If the court—

(a) has ordered payment of interim rent in accordance with subsection (1) above; but

(b) either—

(i) it subsequently revokes under section 36(2) of this Act the order for the grant of a new tenancy; or

(ii) the landlord and tenant agree not to act on the order,

the court on the application of the landlord or the tenant shall determine a new interim rent in accordance with subsections (2) and (3) above without a further application under section 24A(1) of this Act.

Rules of court about determination of interim rent.

24D. Rules of court may make provision as to the time at which an application under section 24A(1) or 24C(4) of this Act may be made.".

Tenant to be able to bring fixed term tenancy to an end on any day.

4. The word "quarter" shall be omitted from section 27(2) of the Act of 1954.

Maximum duration of new tenancy - increase from 14 to 15 years.

5. In section 33 of the Act of 1954 for the word "fourteen" there shall be substituted the word "fifteen".

Compensation for refusal of a new tenancy.

6.—(1) The following subsections shall be substituted for subsection (1) of section 37 of the Act of 1954—

"(1) Subject to the provisions of this Act, in a case specified in subsections (1A), (1B) or (1C) below (a "compensation case") the tenant shall be entitled on quitting the holding to recover from the landlord by way of compensation an amount determined in accordance with this section.

(1A) The first compensation case is where on the making of an application by the tenant under section 24(1) of this Act the court is precluded (whether by subsection (1) or subsection (2) of section 31 of this Act) from making an order for the grant of a new tenancy by reason of any of the grounds specified in paragraphs (e), (f), (g) and (h) of section 30(1) of this Act (the "compensation grounds") and not of any grounds specified in

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Proposed section 24D

12. The rules envisaged are mentioned at paragraph 2.75(a) and (d) of the Report.

Clause 4

This clause implements the recommendation made in paragraph 2.49 of the Report. A tenant who wishes to terminate a fixed term tenancy which is continuing beyond its term date under the statutory provisions will, as now (section 27(2)), have to give three months' notice to the landlord. But this notice will be able to take effect on any day, rather than the three months ending on a quarter day.

Clause 5

This clause implements the recommendation made in paragraph 2.79 of the Report. The maximum length of a term which the court will be empowered to grant in the absence of written agreement between the parties will be increased from fourteen years to fifteen.

Clause 6

1. This clause deals with compensation for the tenant in certain cases where his tenancy is not renewed. It gives effect to the recommendations made in paragraphs 2.81, 2.83 and 2.84 of the Report.

Subsection (1)

2. The proposed subsections 37(1) to (1C) largely re-enact the existing subsection 37(1), giving a right to compensation where the landlord opposes a renewal of the current tenancy only on grounds not involving the tenant's fault or the offer of alternative accommodation. The right is extended to cover opposition on the extended grounds comprised in clause 2(2) and applications to end the current tenancy without renewal (clause 1(6), section 29(2)).

any other paragraph of that subsection.

(1B) The second compensation case is where on the making of an application under section 29(2) of this Act the court is precluded (whether by section 29(5)(a) or section 31(2) of this Act) from making an order for the grant of a new tenancy by reason of any of the compensation grounds and not of any other grounds specified in section 30(1) of this Act.

(1C) The third compensation case is where—

(a) the landlord's notice under section 25 of this Act or, as the case may be, under section 26(6) of this Act, states his opposition to the grant of a new tenancy on any of the compensation grounds and not on any other grounds specified in section 30(1) of this Act; and

(b) either—

(i) no application is made by the tenant under section 24(1) of this Act or by the landlord under section 29(2); or

(ii) such an application is made but is subsequently withdrawn.".

(2) In section 37(2)—

(a) for the words "The said amount" there shall be substituted the words "Compensation under this section";

(b) in paragraph (a), after the word "satisfied" there shall be inserted the words "in relation to the whole of the holding"; and

(c) in paragraph (b), after the word "case" there shall be inserted the words ", except where subsection (3A) of this section applies,".

(3) The following subsections shall be inserted after section 37(3)—

"(3A) If the conditions specified in subsection (3) of this section are satisfied in relation to part of the holding but not in relation to the other part, the amount of compensation shall be the aggregate of sums calculated separately as compensation in respect of each part, and accordingly, for the purpose of calculating compensation in respect of a part any reference in this section to the holding except the first reference in subsection (5C) below shall be construed as a reference to that part.

(3B) Where section 44(1A) of this Act applies, the compensation shall be determined separately for each part and compensation determined for any part shall be recoverable only from the person with an interest in that part which falls within that subsection.".

(4) in subsection 37(4), for the words "the circumstances mentioned in subsection (1) of this section" there shall be substituted the words "a compensation case".

EXPLANATORY NOTES

Subsections (2) and (3)

3. These subsections implement the recommendations made in paragraphs 2.83 and 2.84. Under section 37(2), a higher rate of compensation is payable if the premises have been occupied continuously for the purposes of a business conducted by the tenant and by previous occupiers for the previous fourteen years. Currently, if part of the premises has been occupied for less than 14 years and part for more, compensation at the higher rate is payable for all of it (*Edicron Ltd.* v. *William Whiteley Ltd.* [1984] 1 W.L.R. 59). Under the new section 37(3A), where different parts of the tenancy have been occupied for different lengths of time, the compensation payable in respect of each part will be separately calculated at the appropriate rate.

4. In cases where the reversion to the property is divided with separate parts in different ownership, compensation in respect of each part will only be recoverable from the person who is the landlord of that part: new section 37(3B).

Compensation for misrepresentation.

7. The following section shall be inserted after section 37 of the Act of 1954—

"Compensation for possession obtained by misrepresentation - tenancies to which Part II applies.

37A.—(1) Where the court makes an order for the termination of the current tenancy but does not make an order for the grant of a new tenancy, and it is subsequently made to appear to the court that the order was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the tenant such sum as appears sufficient as compensation for damage or loss sustained by the tenant as the result of the order.

(2) Where-

(a) the tenant has quit the holding—

(i) after making but withdrawing an application under section 24(1) of this Act; or

(ii) without making such an application; and

(b) it is made to appear to the court that he did so by reason of misrepresentation or the concealment of material facts,

the court may order the landlord to pay to the tenant such sum as appears sufficient as compensation for damage or loss sustained by the tenant as the result of quitting the holding.".

Agreements excluding ss.24 to 28 of Part II of Act of 1954 or as to surrender of tenancy.

8.—(1) In subsection (1) of section 38 of the Act of 1954 for the words "(except as provided by subsection (4) of this section)" there shall be substituted the words "unless it is made under subsection (4) or (5) of this section and, if it is an agreement to which section 38A of this Act applies, in accordance with regulations under that section".

(2) The following subsections shall be substituted for subsection (4) of that section—

"(4) The persons who will be the landlord and the tenant in relation to a tenancy to be granted for a term of years certain which will be a tenancy to which this Part of this Act applies may agree that the provisions of sections 24 to 28 of this Act shall be excluded in relation to that tenancy.

(5) The persons who are the landlord and the tenant in relation to a tenancy to which this Part of this Act applies may agree that the tenancy shall be surrendered on such date or in such circumstances as may be specified in the agreement and on such terms (if any) as may be so specified.

(6) Subject to section 38A of this Act, an agreement under subsection (4) or (5) of this section shall be valid notwithstanding anything in the preceding provisions of this section.".

(3) The following section shall be inserted after that section—

EXPLANATORY NOTES

Clause 7

1. The new section 37A, inserted by this clause, deals with compensation for the tenant for loss of his renewal rights as a result of misrepresentation or the concealment of material facts by the landlord. Compensation is currently available under section 55 in cases where the court is induced not to grant a new tenancy. The new section 37A reproduces the substance of section 55 in relation to tenancies to which Part II of the Act applies (subsection (1)), and gives effect to the recommendation in paragraph 2.87 of the Report that compensation should also be available in cases where the tenant is induced not to apply to the court or to withdraw his application (subsection (2)).

2. Section 55 is to be repealed: see Schedule 2. Residential tenancies to which Part I of this Act applies, which are currently within section 55, are to be covered by a new section 14A (see Schedule 1, paragraph 2).

Clause 8

1. This clause deals with agreements between landlord and tenant to exclude a tenancy from the renewal provisions of the Act and with agreements between proposed landlord and proposed tenant to surrender the tenancy, and it implements the recommendations made in paragraphs 2.19 and 2.20 of the Report. It will no longer be necessary for such agreements to be approved by the court, but to be valid they will have to comply with the formalities specified in the proposed section 38A.

"Agreements under s.38 - supplementary

38A.—(1) An agreement under section 38 of this Act to which this section applies shall be void unless—

(a) it is contained in or endorsed upon the instrument creating the tenancy;

(b) there are endorsed upon that instrument—

(i) a statement explaining the effect of the agreement; and

(ii) a declaration signed by the tenant that he has read and understood the terms of the agreement and the statement.

(2) This section applies—

(a) to any agreement under subsection (4) of section 38 of this Act; and

(b) to an agreement under subsection (5) of that section made before the tenant has been in occupation in right of the tenancy for more than one month.

(3) The Lord Chancellor shall by regulations made by statutory instrument prescribe the form and content—

(a) of statements under sub-paragraph (i) of subsection (1)(b) above; and

(b) of declarations under sub-paragraph (ii) of that paragraph.

(4) Regulations under this section may make different provision for different cases.

(5) Any statutory instrument under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.".

Provision of information.

9. The following sections shall be substituted for section 40 of the Act of 1954—

"Duties of tenants and landlords of business premises to give information to each other.

40.—(1) Where any person having an interest in any business premises, being an interest in reversion expectant (whether immediately or not) on a tenancy of those premises, has served on the tenant, not more than two years before the date on which apart from this Act his tenancy would come to an end by effluxion of time or could be brought to an end by notice to quit given by the landlord, a notice in the prescribed form requiring him to do so, it shall be the duty of the tenant to give the appropriate person in writing information as to the matters specified in subsection (2) below.

(2) The matters mentioned in subsection (1) above are—

(a) whether he occupies the premises or any part of them wholly or partly for the purposes of

EXPLANATORY NOTES

Proposed section 38A

2. The requirements for a valid agreement are:

   (a) it is to be in writing (section 69(2));

   (b) it is to be endorsed on the instrument creating the tenancy. This is intended to ensure that it comes to the attention of the successors in title of the parties to the agreement;

   (c) a statement in prescribed form is endorsed on the instrument. It is envisaged that the statement will explain the significance of the agreement. It is endorsed on the instrument, rather than contained within it, to give it prominence;

   (d) a declaration in a prescribed form, signed by the tenant, is endorsed on the instrument. This is to ensure that the statement of the significance of the agreement has come to his attention.

Clause 9

1. This clause substitutes three new sections for the present section 40, which permits the parties to serve notices on each other requiring information to enable them to start proceedings under the Act. It implements the changes recommended in paragraphs 2.27 to 2.32 of the Report. These changes will increase the amount of information for which the parties may ask (proposed subsections 40(2) and (4)), impose a duty to inform the enquirer of any changes (subsection 40(5)), provide for cases where parties transfer their interests to others (section 40A), and allow breach of the duty to be the subject of civil proceedings for breach of statutory duty (section 40B).

Proposed sections 40(1) to (4)

2. These subsections re-enact the terms of the current section 40, adding —

   (a) a duty on a tenant (i) to state whether an agreement excludes the statutory renewal provisions in relation to any sub-tenancy (subsection (2)(b)(vi)) and (ii) to the best of his knowledge and belief, to identify any other owner of any part of the reversion (subsection (2)(c)); and

   (b) a duty on a landlord or reversioner's mortgagee to identify, to the best of his knowledge and belief, the owner of the reversion in any other part of the property (subsection (4)(c)).

a business carried on by him;

(b) whether his tenancy has effect subject to any sub-tenancy on which his tenancy is immediately expectant and, if so-

(i) what premises are comprised in the sub-tenancy;

(ii) for what term it has effect (or, if it is terminable by notice, by what notice it can be terminated);

(iii) what is the rent payable under it;

(iv) who is the sub-tenant;

(v) (to the best of his knowledge and belief) whether the sub-tenant is in occupation of the premises or of part of the premises comprised in the sub-tenancy and, if not, what is the sub-tenant's address;

(vi) whether an agreement is in force excluding in relation to the sub-tenancy the provisions of sections 24 to 28 of this Act; and

(c) (to the best of his knowledge and belief) the name and address of any other person who owns an interest in reversion in any part of the demised premises.

(3) Where, not more than two years before the date on which apart from this Act his tenancy would come to an end by effluxion of time or could be brought to an end by notice to quit given by the landlord, the tenant of any business premises, being a tenant under such a tenancy as is mentioned in section 26(1) of this Act, has served on a reversioner or a reversioner's mortgagee in possession a notice in the prescribed form requiring him to do so, it shall be the duty of that person to give the appropriate person in writing information as to the matters specified in subsection (4) below.

(4) The matters mentioned in subsection (3) above are—

(a) whether he is the owner of the fee simple in respect of the premises or any part of them or the mortgagee in possession of such an owner and, if not,

(b) (to the best of his knowledge and belief)-

(i) the name and address of the person who is his or, as the case may be, his mortgagor's immediate landlord in respect of those premises or of the part in respect of which he or his mortgagor is not the owner in fee simple; and

(ii) for what term his or his mortgagor's tenancy has effect and what is the earliest date (if any) at which that tenancy is terminable by notice to quit given by the landlord;

and also (to the best of his knowledge and belief)—

(c) the name and address of any person who owns an interest in reversion in any part of the demised premises other than that part an interest in reversion to which he himself owns; and

(d) if he is a reversioner, whether there is a mortgagee in possession of his interest in the premises and, if so, what is the name and address of the mortgagee.

(5) A duty imposed on a person by this section is a duty—

(a) to give the information within the period of one month beginning with the date of service of the notice; and

(b) if information as to any matter which has been given in pursuance of the notice ceases to be correct within the period of six months beginning with the date of service of the notice, to give the appropriate person correct information as to that matter.

(6) Except as provided by section 40A of this Act, the appropriate person for the purposes of this section is the person who served the notice under this subsection (1) or (3) above.

(7) In this section—

"business premises" means premises used wholly or partly for the purposes of a business;

"mortgagee in possession" includes a receiver appointed by the mortgagee or by the court who is in receipt of the rents and profits, and "his mortgagor" shall be construed accordingly;

"reversioner" means any person having an interest in the premises, being an interest in reversion expectant (whether immediately or not) on the tenancy;

"reversioner's mortgagee in possession" means any person being a mortgagee in possession in respect of such an interest; and

"sub-tenant" includes a person retaining possession of any premises by virtue of the Rent (Agriculture) Act 1976 or the Rent Act 1977 after the coming to an end of a sub-tenancy, and "sub-tenancy" includes a right

1976 c.80

1977 c.42

EXPLANATORY NOTES

Proposed sections 40(5)-(6)

3. Information required by a notice must (as now) be given within one month of the service of the notice. It must be corrected during the period of six months from that date, as recommended in paragraph 2.29 of the Report.

so to retain possession.

Duties under s.40 in transfer cases.

40A.—(1) If a person on whom a notice under section 40(1) or (3) of this Act has been served has transferred his interest in the premises or any part of them to some other person and gives the appropriate person notice in writing—

(a) of his having transferred his interest; and

(b) of the name and address of the person to whom he transferred it,

on giving the notice he ceases in relation to the premises or (as the case may be) to that part to be under the duty imposed by section 40 of this Act.

(2) If—

(a) the person who served the notice under section 40(1) or (3) of this Act ("the transferor") has transferred his interest in the premises to some other person ("the transferee"); and

(b) the transferor or the transferee has given the person required to give the information notice in writing—

(i) of the transfer; and

(ii) of the transferee's name and address,

the appropriate person for the purposes of section 40 of this Act is the transferee.

(3) If—

(a) a transfer such as is mentioned in paragraph (a) of subsection (2) above has taken place; but

(b) neither the transferor nor the transferee has given a notice such as is mentioned in paragraph (b) of that subsection,

the duty imposed by section 40 of this Act may be performed by giving the information either to the transferor or to the transferee.

Proceedings for breach of duty to give information.

40B. A claim that a person has broken the duty imposed by section 40 of this Act may be made the subject of civil proceedings for breach of statutory duty.".

Application of Part II where reversion to property comprised in tenancy is divided.

10.—(1) In section 44 of the Act of 1954—

(a) in subsection (1), for the words "the next following subsection," there shall be substituted the words "subsections (1A) and (2) below,"; and

(b) the following subsection shall be inserted after that subsection—

"(1A) The reference in subsection (1) above to a person who is the owner of an interest such as is mentioned in that subsection is to be construed, where

EXPLANATORY NOTES

Proposed section 40A
4. This section deals with cases where one of the parties transfers his interest in the property after a notice has been served.

5. If the person on whom notice has been served transfers his interest and notifies the person serving the notice of that fact and of the new owner's name and address, the duty to give the information in respect of any part of the property transferred ceases (subsection (1)). A fresh notice can be served on the transferee.

6. If the person serving the notice transfers his interest, the recipient's obligation becomes one to give the information to the transferee if either the transferor or the transferee gives the recipient notice of the transfer and the transferee's name and address (subsection (2)). If notice of the transfer is not given, the duty to supply information is performed by giving it either to the transferor or the transferee.

Proposed section 40B
7. The sanction for not performing the duty to supply or correct information can be proceedings for breach of statutory duty. The current provisions impose no express sanction.

Clause 10

This clause implements the recommendation in paragraph 2.43 of the Report. Where the reversion in the property subject to the tenancy has been divided between different owners, then, for the purposes of Part II of the Act, it will be clear that 'the landlord' means all of the owners of parts of the reversion collectively. Accordingly, in such cases, notices would have to be served by or on, and proceedings taken by and against, all the landlords. See also section 37(3B) proposed in clause 6(3).

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different persons own such interests in different parts of the property, as a reference to all those persons collectively.".

(2) In section 35, after the word "thereunder)" there shall be inserted the words ", including, where different persons own interests which for the time being fulfil the conditions specified in section 44(1) of this Act in different parts of it, terms as to the apportionment of the rent,".

Consequential amendments and repeals.

11.—(1) Schedule 1 to this Act, which contains amendments consequential on the provisions of this Act, shall have effect.

(2) The enactments specified in Schedule 2 to this Act are repealed to the extent mentioned in the third column of that Schedule.

Commencement and savings.

12.—(1) This Act shall come into force on such day as the Lord Chancellor may by order made by statutory instrument appoint.

(2) Where, before this Act came into force—

(a) the landlord gave the tenant notice under section 25 of the Act of 1954; or

(b) the tenant made a request for a new tenancy in accordance with section 26,

nothing in this Act has effect in relation to the notice or request or anything done in consequence of it.

(3) Nothing in this Act has effect in relation—

(a) to an agreement—

(i) for the surrender of a tenancy which was made before this Act came into force and which fell within section 24(2)(b) of the Act of 1954; or

(ii) which was authorised by the court under section 38(4) before this Act came into force; or

(b) to a notice under section 27(2) which was given by the tenant to the immediate landlord before this Act came into force.

(4) Section 7 above does not have effect where the tenant quitted the holding before this Act came into force.

(5) Nothing in section 9 above applies to a notice under section 40 of the Act of 1954 served before this Act came into force.

Citation and extent.

13.—(1) This Act may be cited as the Landlord and Tenant (Business Tenancies) Act 1992.

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

EXPLANATORY NOTES

Clause 12

This clause includes transitional provisions in relation to agreements made and notices served before the commencement of the Bill. In accordance with the recommendations in paragraph 2.88 of the Report, no such agreements or notices, or any proceedings which follow them, are to be affected by the amendments made by the Bill.

SCHEDULES

Section 11.

SCHEDULE 1

CONSEQUENTIAL AMENDMENTS

The Act of 1954

1. The Act of 1954 shall be amended as follows.

2. The following section shall be inserted after section 14—

"Compensation for possession obtained by misrepresentation - tenancies to which section 1 applies.

14A. Where an order is made for possession of the property comprised in a tenancy to which section 1 of this Act applies and it is subsequently made to appear to the court that the order was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the tenant such a sum as appears sufficient as compensation for damage or loss sustained by the tenant as the result of the order.".

3. In section 26(1), for the words "tenancy under which he holds for the time being (hereinafter referred to as "the current tenancy")" there shall be substituted the words "current tenancy".

4. The following definition shall be substituted for the definition of "current tenancy" in section 46—

""current tenancy" means the tenancy under which the tenant holds for the time being;".

5. The following definition shall be inserted after the definition of "the holding" in that section—

""interim rent" has the meaning assigned to it by subsection (1) of section 24A of this Act;".

6. In sections 57(3)(a) and 58(1)(a)—

(a) for the words "subsections (5) and" there shall be substituted the word "subsection"; and

(b) after the word "under", in the second place where it occurs, there shall be inserted the words "subsection (1) of".

7. In section 59(1), after "(3)" there shall be inserted the words "to (3B)".

8. In section 64(1)(b), for the words "the said Part II" there shall be substituted the words "under section 24(1) or 29(2) of this Act".

Leasehold Reform Act 1967

1967 c.88.

9. Schedule 3 to the Leasehold Reform Act 1967 shall be amended as follows.

10. The following sub-paragraphs shall be substituted for sub-paragraph (1) of paragraph 2—

EXPLANATORY NOTES

Schedule 1

Paragraph 2
The insertion of section 14A in Part I of the Act is consequential on the repeal of section 55: Schedule 2. See also the notes on clause 7.

Paragraphs 9-13
The amendments to the Leasehold Reform Act 1967 and to the Local Government and Housing Act 1989 made in these paragraphs are consequential on the recommendations made in the Report in relation to applications and time limits under the 1954 Act.

SCH. 1

"(1) Subject to sub-paragraphs (1A) and (1B) below, a claim to acquire the freehold or an extended lease of any property shall be of no effect if made more than two months after a landlord's notice terminating the tenancy of that property has been given under section 4 or 25 of the Landlord and Tenant Act 1954 (whether or not that notice has effect to terminate the tenancy).

(1A) If the tenant—

(a) less than two months after a landlord's notice terminating the tenancy has been given under section 25 of the Landlord and Tenant Act 1954 (whether or not that notice has effect to terminate the tenancy) applies to the court under section 24(1) of that Act for an order for the grant of a new tenancy; and

(b) subsequently makes a claim to acquire the freehold or an extended lease of the property,

that claim shall be of no effect.

(1B) Neither sub-paragraph (1) nor sub-paragraph (1A) above applies where the landlord gives his written consent to a claim being made after the end of the two months mentioned in those sub-paragraphs.

(1C) Where a tenant, having given notice of a desire to have the freehold, gives after the end of those two months a further notice under section 9(3) of this Act of his inability or unwillingness to acquire the house and the premises at the price he must pay, he may with the notice under section 9(3) give a notice of his desire to have an extended lease (if he then has a right thereto).".

11. The following paragraph shall be inserted after that paragraph—

"2A.—(1) If—

(a) the landlord commences proceedings under Part II of the Landlord and Tenant Act 1954; and

(b) the tenant subsequently makes a claim to acquire the freehold or an extended lease of the property; and

(c) paragraph 2 above does not render the claim of no effect,

no further steps shall be taken in those proceedings otherwise than for their dismissal and for the making of any consequential order.

(2) Section 64 of the Landlord and Tenant Act 1954 shall have no effect in a case to which sub-paragraph (1) above applies.".

12. The following sub-paragraph shall be inserted after paragraph 10(2)—

"(2A). If the landlord's notice is under section 25 of the Landlord and Tenant Act 1954, sub-paragraph (2) above shall have effect in relation to it as if in paragraph (b), after the word "operate" there were inserted the words "and no further

SCH. 1

proceedings may be taken by him under Part II of the Landlord and Tenant Act 1954".

Local Government and Housing Act 1989

1989 c.42.

13. In paragraph 4(1)(c) of Schedule 7 to the Local Government and Housing Act 1989, for the words "within the period referred to in section 29(3) for the making of an application under section 24(1)," there shall be substituted the words "not less than two nor more than four months after the giving of the landlord's notice under section 25 or, as the case may be, after the making of the tenant's request for the new tenancy,".

Section 11.

SCHEDULE 2

ENACTMENTS REPEALED

Chapter	Short title	Extent of repeal
2 & 3 Eliz. 2 c.56	Landlord and Tenant Act 1954.	Section 24(2)(b) and the word "or" immediately preceding it. Section 25(5). In section 27(2), the word "quarter". Section 30(3). In section 42(1), the second paragraph. Section 55. In section 67, the words "(2) or".
1967 c.88.	Leasehold Reform Act 1967.	In Schedule 3, paragraph 2(4)(b) and the word "and" immediately preceding it.
1969 c.59	Law of Property Act 1969	Section 6.
1989 c.40.	Companies Act 1989.	In Schedule 18, paragraph 3.

EXPLANATORY NOTES

Schedule 2

The Act of 1954

Section 24(2)(b)

This subsection is repealed in order to give effect to the recommendation in paragraph 2.21 of the Report: it will be clear that surrenders will be effective at any time. Agreements to surrender will, however, be subject to the formal requirements imposed by section 38A: see clause 8.

Section 25(5)

See clause 1(4), discussed above.

'Quarter' in section 27(2)

See clause 4, discussed above.

Section 30(3)

See clause 2(8) and (9), discussed above.

Section 42(1), second paragraph

See clause 2(9).

Section 55

See clause 7, discussed above.

Leasehold Reform Act 1967
This repeal is consequential on the amendments to the 1967 Act made by paragraphs 9-12 of Schedule 1.

Law of Property Act 1969, section 6
Section 6 of the 1969 Act inserted section 30(3) of the 1954 Act, which is repealed by this Schedule.

Companies Act 1989, Schedule 18, paragraph 3
See clause 2(9).

Appendix B

The Landlord and Tenant Act 1954 as amended by the Landlord and Tenant (Business Tenancies) Bill[1]

PART I

SECURITY OF TENURE FOR RESIDENTIAL TENANTS

Provisions as to possession on termination of long tenancy

Compensation for possession obtained by misrepresentation—tenancies to which section 1 applies.

14A. Where an order is made for possession of the property comprised in a tenancy to which section 1 of this Act applies and it is subsequently made to appear to the court that the order was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the tenant such a sum as appears sufficient as compensation for damage or loss sustained by the tenant as the result of the order.[2]

PART II

SECURITY OF TENURE FOR BUSINESS, PROFESSIONAL AND OTHER TENANTS

Tenancies to which Part II applies

Tenancies to which Part II applies.

23.—(1) Subject to the provisions of this Act, this Part of this Act applies to any tenancy where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes.

(1A) Occupation or the carrying on of a business—

(a) by a company in which the tenant has a controlling interest; or

(b) where the tenant is a company, by a person with a controlling interest in the company,

shall be treated for the purposes of this section as equivalent to occupation or, as the case may be, the carrying on of a business by the tenant; and in relation to a tenancy to which this part of this Act applies by virtue of this subsection references (however expressed) in this Part of this Act to the business of or to use occupation or enjoyment by the tenant shall be construed as including references to the business of or to use occupation or enjoyment by a company falling within paragraph (a) above or a person falling within paragraph (b) above.[3]

(2) In this Part of this Act the expression "business" includes a trade, profession or employment and includes any activity carried on by a body of persons, whether corporate or unincorporate.

(3) In the following provisions of this Part of this Act the expression "the holding", in relation to a tenancy to which this Part of this Act applies, means the property comprised in the tenancy, there being excluded any

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1. Inserted or substituted words are in bold type, words omitted are struck out.

2. Inserted by para. 2 of Schedule 1.

3. Inserted by clause 2(1).

part thereof which is occupied neither by the tenant nor by a person employed by the tenant and so employed for the purposes of a business by reason of which the tenancy is one to which this Part of this Act applies.

(4) Where the tenant is carrying on a business, in all or any part of the property comprised in a tenancy, in breach of a prohibition (however expressed) of use for business purposes which subsists under the terms of the tenancy and extends to the whole of that property, this Part of this Act shall not apply to the tenancy unless the immediate landlord or his predecessor in title has consented to the breach or the immediate landlord has acquiesced therein.

In this subsection the reference to a prohibition of use for business purposes does not include a prohibition of use for the purposes of a specified business, or of use for purposes of any but a specified business, but save as aforesaid includes a prohibition of use for the purposes of some one or more only of the classes of business specified in the definition of that expression in subsection (2) of this section.

Continuation and renewal of tenancies

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

24.—(1) A tenancy to which this Part of this Act applies shall not come to an end unless terminated in accordance with the provisions of this Part of this Act; and, subject to the ~~provisions of section 29 of this Act, the tenant under such a tenancy may apply to the court for~~ **following provisions of this Act either the tenant or the landlord under such a tenancy may apply to the court for an order for the grant of**[4] a new tenancy—

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

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

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

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

~~(b) in the case of an instrument of surrender, the instrument was executed before, or was executed in pursuance of an agreement made before the tenant had been in occupation in right of the tenancy for one month~~.[5]

(2A) Neither the tenant nor the landlord may make an application under subsection (1) above if the other has made such an application.

(2B) Neither the tenant nor the landlord may make such an application if the landlord has made an application under section 29(2) of this Act.

(2C) The landlord may not withdraw an application under subsection (1) above unless the tenant consents to its withdrawal.[6]

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

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

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4. Substituted by clause 1(2).

5. Repealed by Schedule 2.

6. Inserted by clause 1(3).

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

~~*Rent while tenancy continues by virtue of s. 24.*~~

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

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

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

~~apply to the court to determine a rent which it would be reasonable for the tenant to pay while the tenancy continues by virtue of section 24 of this Act, and the court may determine a rent accordingly.~~

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

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

Applications for determination of interim rent.

24A.—(1) Subject to subsection (2) below, if—

(a) the tenant or the landlord under a tenancy to which this Part of this Act applies makes an application under section 24(1) of this Act; or

(b) the landlord makes an application under section 29(2) of this Act,

either of them may make an application to the court to determine a rent which the tenant is to pay while the current tenancy continues by virtue of section 24 of this Act (an "interim rent") and the court may order payment of an interim rent in accordance with section 24C of this Act.

(2) Neither the tenant nor the landlord may make an application under subsection (1) above if the other has made such an application and has not withdrawn it.

(3) An application may be made under subsection (1) above notwithstanding the withdrawal before the making of that application of the application under section 24(1) or 29(2) of this Act.

(4) The court may make a determination on an application under subsection (1) above notwithstanding the withdrawal after the making of that application of the application under section 24(1) or 29(2) of this Act.

Date from which interim rent is payable.

24B.—(1) From the appropriate date the interim rent determined on an application under section 24A(1) of this Act shall be the rent payable under the tenancy.

(2) If—

(a) the landlord makes an application under section 24A(1) of this Act in a case where he has given a notice under section 25 of this Act; or

(b) the tenant makes an application under section 24A(1) of this Act in a case where he has made a request for a new tenancy under section 26,

the appropriate date is the date specified in the landlord's notice or, as the case may be, the tenant's request.

(3) If—

(a) the landlord makes an application under section 24A(1) of this Act in a case where he has not given a notice under section 25 of this Act; or

(b) the tenant makes an application under section 24A(1) of this Act in a case where he has not made a request for a new tenancy under section 26,

the appropriate date is the earliest date that could have been specified in the landlord's notice or, as the case may be, the tenant's request.

Amount of interim rent.

24C.—(1) If in a case where—

(a) the landlord gave a notice under section 25 of this Act at a time when the tenant was in occupation of the whole of the property comprised in the current tenancy for purposes such as are mentioned in section 23(1) of this Act and stated in the notice that he was not opposed to the grant of a new tenancy; or

(b) the tenant made a request for a new tenancy under section 26 of this Act at a time when he was in occupation of the whole of that property for such purposes and the landlord did not give notice under subsection (6) of that section that he would oppose an application to the court for the grant of such a tenancy,

the court makes an order for grant of a new tenancy of the whole of the property comprised in the current tenancy and the landlord grants such a new tenancy, the rent payable under section 34 of this Act at the commencement of the new tenancy shall also be the interim rent.

(2) The interim rent in a case not falling within subsection (1) above is the rent which it is reasonable for the tenant to pay while the current tenancy continues by virtue of section 24 of this Act.

(3) In determining an interim rent in a case not falling within subsection (1) above the court shall have regard—

(a) to the rent payable under the terms of the current tenancy; and

(b) to the rent payable under any sub-tenancy of part of the property comprised in the current tenancy,

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

(4) If the court—

(a) has ordered payment of interim rent in accordance with subsection (1) above; but

(b) either—

(i) it subsequently revokes under section 36(2) of this Act the order for the grant of a new tenancy; or

(ii) the landlord and tenant agree not to act on the order,

the court on the application of the landlord or the tenant shall determine a new interim rent in accordance with subsections (2) and (3) above without a further application under section 24A(1) of this Act.

Rules of court about determination of interim rent.

24D. Rules of court may make provision as to the time at which an application under section 24A(1) or 24C(4) of this Act may be made.[7]

Termination of tenancy by the landlord.

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

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

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

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

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

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

(4) In the case of any other tenancy, a notice under this section shall not specify a date of termination earlier than the date on which apart from this Part of this Act the tenancy would have come to an end by effluxion of time.

~~(5) A notice under this section shall not have effect unless it requires the tenant, within two months after the giving of the notice, to notify the landlord in writing whether or not, at the date of termination, the tenant will be willing to give up possession of the property comprised in the tenancy.~~[8]

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

(6) A notice under this section shall not have effect unless it states whether the landlord is opposed to the grant of a new tenancy to the tenant.

(7) A notice under this section which states that the landlord is opposed to the grant of a new tenancy to the tenant shall not have effect unless it also specifies one or more of the grounds specified in section 30(1) of the Act as the ground or grounds for his opposition.

(8) A notice under this section which states that the landlord is not opposed to the grant of a new tenancy to the tenant shall not have effect unless it sets out the landlord's proposals as to the property to be comprised in the new tenancy (being either the whole or part of the property comprised in the current

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[7] Substituted by clause 3.

[8] Repealed by clause 1(4) and by Schedule 2.

tenancy), as to the rent to be payable under the new tenancy and as to the other terms of the new tenancy.[9]

Tenant's request for a new tenancy.

26. (1) A tenant's request for a new tenancy may be made where the ~~tenancy under which he holds for the time being (hereinafter referred to as "the current tenancy")~~ **current tenancy**[10] is a tenancy granted for a term of years certain exceeding one year, whether or not continued by section twenty-four of this Act, or granted for a term of years certain and thereafter from year to year.

(2) A tenant's request for a new tenancy shall be for a tenancy beginning with such date, not more than twelve nor less than six months after the making of the request, as may be specified therein:

Provided that the said date shall not be earlier than the date on which apart from this Act the current tenancy would come to an end by effluxion of time or could be brought to an end by notice to quit given by the tenant.

(3) A tenant's request for a new tenancy shall not have effect unless it is made by notice in the prescribed form given to the landlord and sets out the tenant's proposals as to the property to be comprised in the new tenancy (being either the whole or part of the property comprised in the current tenancy), as to the rent to be payable under the new tenancy and as to the other terms of the new tenancy.

(4) A tenant's request for a new tenancy shall not be made if the landlord has already given notice under the last foregoing section to terminate the current tenancy, or if the tenant has already given notice to quit or notice under the next following section; and no such notice shall be given by the landlord or the tenant after the making by the tenant of a request for a new tenancy.

(5) Where the tenant makes a request for a new tenancy in accordance with the foregoing provisions of this section, the current tenancy shall, subject to the provisions of subsection (2) of section thirty-six of this Act and the provisions of Part IV of this Act as to the interim continuation of tenancies, terminate immediately before the date specified in the request for the beginning of the new tenancy.

(6) Within two months of the making of a tenant's request for a new tenancy the landlord may give notice to the tenant that he will oppose an application to the court for the grant of a new tenancy, and any such notice shall state on which of the grounds mentioned in section thirty of this Act the landlord will oppose the application.

Termination by tenant of tenancy for fixed term.

27.—(1) Where the tenant under a tenancy to which this Part of this Act applies, being a tenancy granted for a term of years certain, gives to the immediate landlord, not later than three months before the date on which apart from this Act the tenancy would come to an end by effluxion of time, a notice in writing that the tenant does not desire the tenancy to be continued, section 24 of this Act shall not have effect in relation to the tenancy, unless the notice is given before the tenant has been in occupation in right of the tenancy for one month.

(2) A tenancy granted for a term of years certain which is continuing by virtue of section 24 of this Act may be brought to an end on any ~~quarter~~[11] day by not less than three months' notice in writing given by the tenant to the immediate landlord, whether the notice is given after the date on which apart from this Act the tenancy would have come to an end or before that date, but not before the tenant has been in occupation in right of the tenancy for one month.

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[9] Substituted by clause 1(5).

[10] Substituted by para. 3 of Schedule 1.

[11] Repealed by clause 4 and by Schedule 2.

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Renewal of tenancies by agreement.

28. Where the landlord and tenant agree for the grant to the tenant of a future tenancy of the holding, or of the holding with other land, on terms and from a date specified in the agreement, the current tenancy shall continue until that date but no longer, and shall not be a tenancy to which this Part of this Act applies.

~~*Application to court for new tenancies*~~

~~**Order by court for grant of a new tenancy.**~~

~~29.—(1) Subject to the provisions of this Act, on an application under subsection (1) of section twenty four of this Act for a new tenancy the court shall make an order for the grant of a tenancy comprising such property, at such rent and on such other terms as are hereinafter provided.~~

~~(2) Where such an application is made in consequence of a notice given by the landlord under section twenty five of this Act, it shall not be entertained unless the tenant has duly notified the landlord that he will not be willing at the date of termination to give up possession of the property comprised in the tenancy.~~

~~(3) No application under subsection (1) of section twenty four of this Act shall be entertained unless it is made not less than two nor more than four months after the giving of the landlord's notice under section twenty five of this Act or, as the case may be, after the making of the tenant's request for a new tenancy.~~

Applications to court

Order by court for grant of new tenancy or termination of current tenancy.

29.—(1) Subject to the provisions of this Act, on an application under section 24(1) of this Act the court shall make an order for the grant of a new tenancy comprising such property, at such rent and on such other terms, as are hereinafter provided, and accordingly for the termination of the current tenancy immediately before the commencement of the new tenancy.

(2) Subject to the following provisions of this Act, a landlord may apply to the court for an order for the termination of a tenancy to which this Part of this Act applies without the grant of a new tenancy—

(a) if he has given notice under section 25 of this Act that he is opposed to the grant of a new tenancy to the tenant; or

(b) if the tenant has made a request for a new tenancy in accordance with section 26 of this Act and the landlord has given notice under subsection (6) of that section.

(3) Section 30 of this Act shall have effect as if the references to opposing an application under section 24(1) included references to making an application under subsection (2) above.

(4) The landlord may not make an application under subsection (2) above if either the tenant or the landlord has made an application under section 24(1) of this Act.

(5) Subject to the provisions of this Act, where the landlord makes an application under subsection (2) above—

(a) if he establishes any of the grounds mentioned in section 30(1) of this Act to the satisfaction of the court, the court shall make an order for the termination of the current tenancy without the grant of a new tenancy; and

(b) if not, it shall make an order such as is mentioned in subsection (1) above.

(6) Section 31(2) of this Act shall have effect as if after the word "court", in the first place where it occurs, there were inserted the words "and where the landlord makes an application under subsection (2) of section 29 of this Act and the case does not fall within subsection (5)(a) of that section".

(7) The landlord may not withdraw an application under subsection (2) above unless the tenant consents to its withdrawal.

Time limits for applications to court.

29A.—(1) Except where an agreement under section 29B below is in force, an application—

(a) by the tenant or the landlord under section 24(1) of this Act; or

(b) by the landlord under section 29(2) of this Act,

shall not be entertained by the court if it is made after the end of the statutory period.

(2) In this section and section 29B of this Act "the statutory period" means a period ending—

(a) where the landlord gave a notice under section 25 of this Act, on the date specified in his notice; and

(b) where the tenant made a request for a new tenancy under section 26 of this Act, immediately before the date specified in his request.

(3) Subject to the following provisions of this Act, where the tenant has made a request for a new tenancy under section 26 of this Act, an application under section 24(1) of this Act shall not be entertained by the court if it is made before the end of the period of two months beginning with the date of the making of the request.

(4) An application under section 24(1) of this Act may be entertained before the end of that period if—

(a) before the end of the period the landlord has given a notice under section 26(6) of this Act; and

(b) the application is made after the giving of that notice.

Agreements extending time limits.

29B.—(1) After the landlord has given a notice under section 25 of this Act or the tenant has made a request for a new tenancy under section 26 of this Act but before the end of the statutory period the landlord and tenant may agree that an application such as is mentioned in section 29A(1) of this Act may be made within a period specified in the agreement which will expire after the end of the statutory period.

(2) The landlord and tenant may from time to time by agreement further extend the period for making such an application.

(3) An agreement under subsection (2) above must be made before the end of the currently agreed period.

(4) Where an agreement under this section is in force, the court may entertain an application such as is mentioned in section 29A(1) of this Act made at any time not later than the end of the currently agreed period.

(5) Where—

(a) such an agreement is in force; and

(b) no such application is made by the landlord or tenant before the end of the currently agreed period,

the current tenancy shall determine at the end of that period.[12]

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[12] Substituted by clause 1(6).

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Opposition by landlord to application for new tenancy.

30.—(1) The grounds on which a landlord may oppose an application under subsection (1) of section 24 of this Act are such of the following grounds as may be stated in the landlord's notice under section 25 of this Act or, as the case may be, under subsection (6) of section 26 thereof, that is to say:—

(a) where under the current tenancy the tenant has any obligations as respects the repair and maintenance of the holding, that the tenant ought not to be granted a new tenancy in view of the state of repair of the holding, being a state resulting from the tenant's failure to comply with the said obligations;

(b) that the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent which has become due;

(c) that the tenant ought not to be granted a new tenancy in view of other substantial breaches by him of his obligations under the current tenancy, or for any other reason connected with the tenant's use or management of the holding;

(d) that the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, that the terms on which the alternative accommodation is available are reasonable having regard to the terms of the current tenancy and to all other relevant circumstances, and that the accommodation and the time at which it will be available are suitable for the tenant's requirements (including the requirement to preserve goodwill) having regard to the nature and class of his business and to the situation and extent of, and facilities afforded by, the holding;

(e) where the current tenancy was created by the sub-letting of part only of the property comprised in a superior tenancy and the landlord is the owner of an interest in reversion expectant on the termination of that superior tenancy, that the aggregate of the rents reasonably obtainable on separate lettings of the holding and the remainder of that property would be substantially less than the rent reasonably obtainable on a letting of that property as a whole, that on the termination of the current tenancy the landlord requires possession of the holding for the purpose of letting or otherwise disposing of the said property as a whole, and that in view thereof the tenant ought not to be granted a new tenancy;

(f) that on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding;

~~(g) subject as hereinafter provided, that on the termination of the current tenancy the landlord intends to occupy the holding for the purposes, or partly for the purposes, of a business to be carried on by him therein, or as his residence.~~

(g) subject to subsection (2) of this section, that on the termination of the current tenancy the landlord intends to occupy the holding for the purposes, or partly for the purposes, of a business to be carried on in it—

(i) by the landlord; or

(ii) by a company in which the landlord has a controlling interest,

or as his residence;

(h) subject to subsections (2) and (2A) of this section, that the landlord is a company and that on the termination of the current tenancy a person with a controlling interest in the company intends to occupy the holding—

(i) for the purposes, or partly for the purposes, of a business to be carried on in it by him or by the company; or

(ii) as his residence.[13]

(2) The landlord shall not be entitled to oppose an application on the ground specified in paragraph (g) **or (h)**[14] of the last foregoing subsection if the interest of the landlord, or an interest which has merged in that interest and but for the merger would be the interest of the landlord, was purchased or created after the beginning of the period of five years which ends with the termination of the current tenancy, and at all times since the purchase or creation thereof the holding has been comprised in a tenancy or successive tenancies of the description specified in subsection (1) of section 23 of this Act.

(2A) The landlord shall not be entitled to oppose an application on the ground specified in paragraph (h) of the last foregoing subsection if the controlling interest was acquired after the beginning of the period of five years which ends with the termination of the current tenancy, and at all times since the acquisition of the controlling interest the holding has been comprised in a tenancy or successive tenancies of the description specified in subsection (1) of section 23 of this Act.[15]

~~(3) Where the landlord has a controlling interest in a company any business to be carried on by the company shall be treated for the purposes of subsection (1)(g) of this section as a business to be carried on by him.~~

~~For the purposes of this subsection, a person has a controlling interest in a company if and only if either—~~

~~(a) he is a member of it and able, without the consent of any other person, to appoint or remove the holders of at least a majority of the directorships; or~~

~~(b) he holds more than one half of its equity share capital, there being disregarded any shares held by him in a fiduciary capacity or as nominee for another person;~~

~~and in this subsection "company" and "share" have the meanings assigned to them by section 735(1) and 744 of the Companies Act 1985 and "equity share capital" the meaning assigned to it by section 744 of that Act.~~[16]

Dismissal of application for new tenancy where landlord successfully opposes.

31.—(1) If the landlord opposes an application under subsection (1) of section twenty-four of this Act on grounds on which he is entitled to oppose it in accordance with the last foregoing section and establishes any of those grounds to the satisfaction of the court, the court shall not make an order for the grant of a new tenancy.

(2) Where in a case not falling within the last foregoing subsection the landlord opposes an application under the said subsection (1) on one or more of the grounds specified in paragraphs (d), (e) and (f) of subsection (1) of the last foregoing section but establishes none of those grounds to the satisfaction of the court, then if the court would have been satisfied of any of those grounds if the date of termination specified in the landlord's notice or, as the case may be, the date specified in the tenant's request for a new tenancy as the date from which the new tenancy is to begin, had been such later date as the court may determine, being a date not more than one year later than the date so specified,—

(a) the court shall make a declaration to that effect, stating of which of the said grounds the court would have been satisfied as aforesaid and specifying the date determined by the court as aforesaid, but shall not make an order for the grant of a new tenancy;

(b) if, within fourteen days after the making of the declaration, the tenant so requires the court shall make an order substituting the said date for the date specified in the said landlord's notice or tenant's request, and thereupon that notice or request shall have effect accordingly.

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13. Substituted by clause 2(2).

14. Inserted by clause 2(3).

15. Inserted by clause 2(4).

16. Repealed by Schedule 2.

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

31A.—(1) Where the landlord opposes an application under section 24(1) of this Act on the ground specified in paragraph (f) of section 30(1) of this Act **or makes an application under section 29(2) of this Act on that ground**[17] the court shall not hold that the landlord could not reasonably carry out the demolition, reconstruction or work of construction intended without obtaining possession of the holding if—

(a) the tenant agrees to the inclusion in the terms of the new tenancy of terms giving the landlord access and other facilities for carrying out the work intended and, given that access and those facilities, the landlord could reasonably carry out the work without obtaining possession of the holding and without interfering to a substantial extent or for a substantial time with the use of the holding for the purposes of the business carried on by the tenant; or

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

(2) For the purposes of subsection (1)(b) of this section a part of a holding shall be deemed to be an economically separate part if, and only if, the aggregate of the rents which, after the completion of the intended work, would be reasonably obtainable on separate lettings of that part and the remainder of the premises affected by or resulting from the work would not be substantially less than the rent which would then be reasonably obtainable on a letting of those premises as a whole.

Property to be comprised in new tenancy.

32.—(1) Subject to the following provisions of this section, an order under section 29 of this Act for the grant of a new tenancy shall be an order for the grant of a new tenancy of the holding; and in the absence of agreement between the landlord and the tenant as to the property which constitutes the holding the court shall in the order designate that property by reference to the circumstances existing at the date of the order.

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

(2) The foregoing provisions of this section shall not apply in a case where the property comprised in the current tenancy includes other property besides the holding and the landlord requires any new tenancy ordered to be granted under section 29 of this Act to be a tenancy of the whole of the property comprised in the current tenancy; but in any such case—

(a) any order under the said section 29 for the grant of a new tenancy shall be an order for the grant of a new tenancy of the whole of the property comprised in the current tenancy, and

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

(3) Where the current tenancy includes rights enjoyed by the tenant in connection with the holding, those rights shall be included in a tenancy ordered to be granted under section 29 of this Act, except as otherwise agreed between the landlord and the tenant or, in default of such agreement, determined by the court.

Duration of new tenancy.

33. Where on an application under this Part of this Act the court makes an order for the grant of a new tenancy, the new tenancy shall be such tenancy as may be agreed between the landlord and the tenant, or, in default of such an agreement, shall be such a tenancy as may be determined by the court to be reasonable in all

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17. Inserted by clause 1(7).

the circumstances, being, if it is a tenancy for a term of years certain, a tenancy for a term not exceeding ~~fourteen~~ **fifteen**[18] years, and shall begin on the coming to an end of the current tenancy.

Rent under new tenancy.

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

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

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

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

(d) in the case of a holding comprising licensed premises, any addition to its value attributable to the licence, if it appears to the court that having regard to the terms of the current tenancy and any other relevant circumstances the benefit of the licence belongs to the tenant **or, if this Part of this Act applies by virtue of section 23(1A) of this Act—**

(i) to a company such as is mentioned in paragraph (a) of that subsection; or

(ii) where the tenant is a company, to a person such as is mentioned in paragraph (b).[19]

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

(a) that it was completed not more than twenty-one years before the application ~~for the new tenancy~~ **to the court**[20] was made; and

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

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

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

Other terms of new tenancy.

35. The terms of a tenancy granted by order of the court under this Part of this Act (other than terms as to the duration thereof and as to the rent payable thereunder), **including, where different persons own interests which for the time being fulfil the conditions specified in section 44(1) of this Act in different parts of it, terms as to the apportionment of the rent,**[21] shall be such as may be agreed between the landlord and the tenant or as, in default of such agreement, may be determined by the court; and in determining those terms the court shall have regard to the terms of the current tenancy and to all relevant circumstances.

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18. Substituted by clause 5.

19. Inserted by clause 2(5).

20. Substituted by clause 1(8).

21. Inserted by clause 10(2).

Carrying out of order for new tenancy.

36.—(1) Where under this Part of this Act the court makes an order for the grant of a new tenancy, then, unless the order is revoked under the next following subsection or the landlord and the tenant agree not to act upon the order, the landlord shall be bound to execute or make in favour of the tenant, and the tenant shall be bound to accept, a lease or agreement for a tenancy of the holding embodying the terms agreed between the landlord and the tenant or determined by the court in accordance with the foregoing provisions of this Part of this Act; and where the landlord executes or makes such a lease or agreement the tenant shall be bound, if so required by the landlord, to execute a counterpart or duplicate thereof.

(2) If the tenant, within fourteen days after the making of an order under this Part of this Act for the grant of a new tenancy, applies to the court for the revocation of the order the court shall revoke the order; and where the order is so revoked, then, if it is so agreed between the landlord and the tenant or determined by the court, the current tenancy shall continue, beyond the date at which it would have come to an end apart from this subsection, for such period as may be so agreed or determined to be necessary to afford to the landlord a reasonable opportunity for reletting or otherwise disposing of the premises which would have been comprised in the new tenancy; and while the current tenancy continues by virtue of this subsection it shall not be a tenancy to which this Part of this Act applies.

(3) Where an order is revoked under the last foregoing subsection any provision thereof as to payment of costs shall not cease to have effect by reason only of the revocation; but the court may, if it thinks fit, revoke or vary any such provision or, where no costs have been awarded in the proceedings for the revoked order, award such costs.

(4) A lease executed or agreement made under this section, in a case where the interest of the lessor is subject to a mortgage, shall be deemed to be one authorised by section ninety-nine of the Law of Property Act 1925 (which confers certain powers of leasing on mortgagors in possession), and subsection (13) of that section (which allows those powers to be restricted or excluded by agreement) shall not have effect in relation to such a lease or agreement.

Compensation where order for new tenancy precluded on certain grounds.

~~37.—(1) Where on the making of an application under section 24 of this Act the court is precluded (whether by subsection (1) or subsection (2) of section 31 of this Act) from making an order for the grant of a new tenancy by reason of any of the grounds specified in paragraphs (e), (f) and (g) of subsection (1) of section 30 of this Act and not of any grounds specified in any other paragraph of that subsection, or where no other ground is specified in the landlord's notice under section 25 of this Act or, as the case may be, under section 26(6) thereof, than those specified in the said paragraphs (e), (f) and (g) and either no application under the said section 24 is made or such an application is withdrawn, then, subject to the provisions of this Act, the tenant shall be entitled on quitting the holding to recover from the landlord by way of compensation an amount determined in accordance with the following provisions of this section.~~

37.-(1) Subject to the provisions of this Act, in a case specified in subsections (1A), (1B) or (1C) below (a "compensation case") the tenant shall be entitled on quitting the holding to recover from the landlord by way of compensation an amount determined in accordance with this section.

(1A) The first compensation case is where on the making of an application by the tenant under section 24(1) of this Act the court is precluded (whether by subsection (1) or subsection (2) of section 31 of this Act) from making an order for the grant of a new tenancy by reason of any of the grounds specified in paragraphs (e), (f), (g) and (h) of section 30(1) of this Act ("the compensation grounds") and not of any grounds specified in any other paragraph of that subsection.

(1B) The second compensation case is where on the making of an application under section 29(2) of this Act the court is precluded (whether by section 29(5)(a) or section 31(2) of this Act) from making an order for the grant of a new tenancy by reason of any of the compensation grounds and not of any other grounds specified in section 30(1) of this Act.

(1C) The third compensation case is where—

(a) the landlord's notice under section 25 of this Act or, as the case may be, under section 26(6) of this Act, states his opposition to the grant of a new tenancy on any of the compensation grounds and not on any other grounds specified in section 30(1) of this Act; and

(b) either—

(i) no application is made by the tenant under section 24(1) of this Act or by the landlord under section 29(2); or

(ii) such an application is made but is subsequently withdrawn.[22]

(2) Subject to subsections (5A) to (5E) of this section ~~the said amount~~ **compensation under this section**[23] shall be as follows, that is to say,—

(a) where the conditions specified in the next following subsection are satisfied **in relation to the whole of the holding**[24] it shall be the product of the appropriate multiplier and twice the rateable value of the holding,

(b) in any other case, **except where subsection (3A) of this section applies,**[25] it shall be the product of the appropriate multiplier and the rateable value of the holding.

(3) The said conditions are—

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

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

(3A) If the conditions specified in subsection (3) of this section are satisfied in relation to part of the holding but not in relation to the other part, the amount of compensation shall be the aggregate of sums calculated separately as compensation in respect of each part, and accordingly, for the purpose of calculating compensation in respect of a part any reference in this section to the holding except the first reference in subsection (5C) below shall be construed as a reference to that part.

(3B) Where section 44(1A) of this Act applies, the compensation shall be determined separately for each part and compensation determined for any part shall be recoverable only from the person with an interest in that part which falls within that subsection.[26]

(4) Where the court is precluded from making an order for the grant of a new tenancy under this Part of this Act in ~~the circumstances mentioned in subsection (1) of this section~~ **a compensation case,**[27] the court shall on the application of the tenant certify that fact.

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

(a) where in the valuation list in force at the date on which the landlord's notice under section 25 or, as the case may be, subsection (6) of section 26 of this Act is given a value is then shown as the annual

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22. Substituted by clause 6(1).

23. Substituted by clause 6(2)(a).

24. Inserted by clause 6(2)(b).

25. Inserted by clause 6(2)(c).

26. Inserted by clause 6(3).

27. Substituted by clause 6(4).

value (as hereinafter defined) of the holding, the rateable value of the holding shall be taken to be that value;

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

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

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

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

(5A) If part of the holding is domestic property, as defined in section 66 of the Local Government Finance Act 1988,—

(a) the domestic property shall be disregarded in determining the rateable value of the holding under subsection (5) of this section; and

(b) if, on the date specified in subsection (5)(a) of this section, the tenant occupied the whole or any part of the domestic property, the amount of compensation to which he is entitled under subsection (1) of this section shall be increased by the addition of a sum equal to his reasonable expenses in removing from the domestic property.

(5B) Any question as to the amount of the sum referred to in paragraph (b) of subsection (5A) of this section shall be determined by agreement between the landlord and the tenant or, in default of agreement, by the court.

(5C) If the whole of the holding is domestic property, as defined in section 66 of the Local Government Finance Act 1988, for the purposes of subsection (2) of this section the rateable value of the holding shall be taken to be an amount equal to the rent at which it is estimated the holding might reasonably be expected to let from year to year if the tenant undertook to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the holding in a state to command that rent.

(5D) The following provisions shall have effect as regards a determination of an amount mentioned in subsection (5C) of this section—

(a) the date by reference to which such a determination is to be made is the date on which the landlord's notice under section 25 or, as the case may be, subsection (6) of section 26 of this Act is given;

(b) any dispute arising, whether in proceedings before the court or otherwise, as to such a determination shall be referred to the Commissioners of Inland Revenue for decision by a valuation officer;

(c) an appeal shall lie to the Lands Tribunal from such a decision but, subject to that, such a decision shall be final.

(5E) Any deduction made under paragraph 2A of Schedule 6 to the Local Government Finance Act 1988 (deduction from valuation of hereditaments used for breeding horses etc.) shall be disregarded, to the extent that it relates to the holding, in determining the rateable value of the holding under subsection (5) of this section.

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

(7) In this section—

the reference to the termination of the current tenancy is a reference to the date of termination specified in the landlord's notice under section 25 of this Act or, as the case may be, the date specified in the tenant's request for a new tenancy as the date from which the new tenancy is to begin;

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

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

(8) In subsection (2) of this section "the appropriate multiplier" means such multiplier as the Secretary of State may by order made by statutory instrument prescribe and different multipliers may be so prescribed in relation to different cases.

(9) A statutory instrument containing an order under subsection (8) of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Compensation for possession obtained by misrepresentation — tenancies to which Part II applies.

37A.—(1) Where the court makes an order for the termination of the current tenancy but does not make an order for the grant of a new tenancy, and it is subsequently made to appear to the court that the order was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the tenant such sum as appears sufficient as compensation for damage or loss sustained by the tenant as the result of the order.

(2) Where—

(a) the tenant has quit the holding—

(i) after making but withdrawing an application under section 24(1) of this Act; or

(ii) without making such an application; and

(b) it is made to appear to the court that he did so by reason of misrepresentation or the concealment of material facts,

the court may order the landlord to pay to the tenant such sum as appears sufficient as compensation for damage or loss sustained by the tenant as the result of quitting the holding.[28]

Restrictions on agreements excluding provisions of Part II.

38.—(1) Any agreement relating to a tenancy to which this Part of this Act applies (whether contained in the instrument creating the tenancy or not) shall be void ~~(except as provided by subsection (4) of this section)~~ **unless it is made under subsection (4) or (5) of this section and, if it is an agreement to which section 38A of this Act applies, in accordance with regulations under that section**[29] in so far as it purports to preclude the tenant from making an application or request under this Part of this Act or provides for the termination or the surrender of the tenancy in the event of his making such an application or request or for the imposition of any penalty or disability on the tenant in that event.

(2) Where -

(a) during the whole of the five years immediately preceding the date on which the tenant under a tenancy to which this Part of this Act applies is to quit the holding, premises being or comprised in the

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28. Inserted by clause 7.

29. Substituted by clause 8(1).

holding have been occupied for the purposes of a business carried on by the occupier or for those and other purposes, and

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

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

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

~~(4) The court may—~~

~~(a) on the joint application of the persons who will be the landlord and the tenant in relation to a tenancy to be granted for a term of years certain which will be a tenancy to which this Part of this Act applies, authorise an agreement excluding in relation to that tenancy the provisions of sections 24 to 28 of this Act; and~~

~~(b) on the joint application of the persons who are the landlord and the tenant in relation to a tenancy to which this Part of this Act applies, authorise an agreement for the surrender of the tenancy on such date or in such circumstances as may be specified in the agreement and on such terms (if any) as may be specified;~~

~~if the agreement is contained in or endorsed on the instrument creating the tenancy or such other instrument as the court may specify; and an agreement contained in or endorsed on an instrument in pursuance of an authorisation given under this subsection shall be valid notwithstanding anything in the preceding provisions of this section.~~

(4) The persons who will be the landlord and the tenant in relation to a tenancy to be granted for a term of years certain which will be a tenancy to which this Part of this Act applies may agree that the provisions of sections 24 to 28 of this Act shall be excluded in relation to that tenancy.

(5) The persons who are the landlord and the tenant in relation to a tenancy to which this Part of this Act applies may agree that the tenancy shall be surrendered on such date or in such circumstances as may be specified in the agreement and on such terms (if any) as may be so specified.

(6) Subject to section 38A of this Act, an agreement under subsection (4) or (5) of this section shall be valid notwithstanding anything in the preceding provisions of this section.[30]

Agreements under s. 38—supplementary.

38A.—(1) An agreement under section 38 of this Act to which this section applies shall be void unless—

(a) it is contained in or endorsed upon the instrument creating the tenancy;

(b) there are endorsed upon that instrument—

(i) a statement explaining the effect of the agreement; and

(ii) a declaration signed by the tenant that he has read and understood the terms of the agreement and the statement.

(2) This section applies—

[30] Substituted by clause 8(2).

(a) to any agreement under subsection (4) of section 38 of this Act; and

(b) to an agreement under subsection (5) of that section made before the tenant has been in occupation in right of the tenancy for more than one month.

(3) The Lord Chancellor shall by regulations made by statutory instrument prescribe the form and content—

(a) of statements under sub-paragraph (i) of subsection (1)(b) above; and

(b) of declarations under sub-paragraph (ii) of that paragraph.

(4) Regulations under this section may make different provision for different cases.

(5) Any statutory instrument under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.[31]

General and supplementary provisions

Saving for compulsory acquisitions.

39.—(1) *[Repealed]*

(2) If the amount of the compensation which would have been payable under section thirty-seven of this Act if the tenancy had come to an end in circumstances giving rise to compensation under that section and the date at which the acquiring authority obtained possession had been the termination of the current tenancy exceeds the amount of the compensation payable under section 121 of the Lands Clauses Consolidation Act 1845 or section 20 of the Compulsory Purchase Act 1965 in the case of a tenancy to which this Part of this Act applies, that compensation shall be increased by the amount of the excess.

(3) Nothing in section twenty-four of this Act shall affect the operation of the said section one hundred and twenty-one.

~~*Duty of tenants and landlords of business premises to give information to each other.*~~

~~40.—(1) Where any person having an interest in any business premises, being an interest in reversion expectant (whether immediately or not) on a tenancy of those premises, serves on the tenant a notice in the prescribed form requiring him to do so, it shall be the duty of the tenant to notify that person in writing within one month of the service of the notice—~~

~~(a) whether he occupies the premises or any part thereof wholly or partly for the purposes of a business carried on by him, and~~

~~(b) whether his tenancy has effect subject to any sub-tenancy on which his tenancy is immediately expectant and, if so, what premises are comprised in the sub-tenancy, for what term it has effect (or, if it is terminable by notice, by what notice it can be terminated), what is the rent payable thereunder, who is the sub-tenant, and (to the best of his knowledge and belief) whether the sub-tenant is in occupation of the premises or of part of the premises comprised in the sub-tenancy and, if not, what is the sub-tenant's address.~~

~~(2) Where the tenant of any business premises, being a tenant under such a tenancy as is mentioned in subsection (1) of section twenty-six of this Act, serves on any of the persons mentioned in the next following subsection a notice in the prescribed form requiring him to do so, it shall be the duty of that person to notify the tenant in writing within one month after the service of the notice—~~

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[31] Inserted by clause 8(3).

~~(a) whether he is the owner of the fee simple in respect of those premises or any part thereof or the mortgagee in possession of such an owner and, if not,~~

~~(b) (to the best of his knowledge and belief) the name and address of the person who is his or, as the case may be, his mortgagor's immediate landlord in respect of those premises or of the part in respect of which he or his mortgagor is not the owner in fee simple, for what term his or his mortgagor's tenancy thereof has effect and what is the earliest date (if any) at which that tenancy is terminable by notice to quit given by the landlord.~~

~~(3) The persons referred to in the last foregoing subsection are, in relation to the tenant of any business premises,—~~

~~(a) any person having an interest in the premises, being an interest in reversion expectant (whether immediately or not) on the tenant's, and~~

~~(b) any person being a mortgagee in possession in respect of such an interest in reversion as is mentioned in paragraph (a) of this subsection;~~

~~and the information which any such person as is mentioned in paragraph (a) of this subsection is required to give under the last foregoing subsection shall include information whether there is a mortgagee in possession of his interest in the premises and, if so, what is the name and address of the mortgagee.~~

~~(4) The foregoing provisions of this section shall not apply to a notice served by or on the tenant more than two years before the date on which apart from this Act his tenancy would come to an end by effluxion of time or could be brought to an end by notice to quit given by the landlord.~~

~~(5) In this section—~~

~~the expression "business premises" means premises used wholly or partly for the purposes of a business;~~

~~the expression "mortgagee in possession" includes a receiver appointed by the mortgagee or by the court who is in receipt of the rents and profits, and the expression "his mortgagor" shall be construed accordingly;~~

~~the expression "sub tenant" includes a person retaining possession of any premises by virtue of the Rent Act 1977 after the coming to an end of a sub tenancy, and the expression "sub tenancy" includes a right so to retain possession.~~

Duties of tenants and landlords of business premises to give information to each other.

40.—(1) Where any person having an interest in any business premises, being an interest in reversion expectant (whether immediately or not) on a tenancy of those premises, has served on the tenant, not more than two years before the date on which apart from this Act his tenancy would come to an end by effluxion of time or could be brought to an end by notice to quit given by the landlord, a notice in the prescribed form requiring him to do so, it shall be the duty of the tenant to give the appropriate person in writing information as to the matters specified in subsection (2) below.

(2) The matters mentioned in subsection (1) above are—

(a) whether he occupies the premises or any part of them wholly or partly for the purposes of a business carried on by him;

(b) whether his tenancy has effect subject to any sub-tenancy on which his tenancy is immediately expectant and, if so—

(i) what premises are comprised in the sub-tenancy;

(ii) for what term it has effect (or, if it is terminable by notice, by what notice it can be terminated);

(iii) what is the rent payable under it;

(iv) who is the sub-tenant;

(v) (to the best of his knowledge and belief) whether the sub-tenant is in occupation of the premises or of part of the premises comprised in the sub-tenancy and, if not, what is the sub-tenant's address;

(vi)whether an agreement is in force excluding in relation to the sub-tenancy the provisions of sections 24 to 28 of this Act; and

(c) (to the best of his knowledge and belief) the name and address of any other person who owns an interest in reversion in any part of the demised premises.

(3) Where, not more than two years before the date on which apart from this Act his tenancy would come to an end by effluxion of time or could be brought to an end by notice to quit given by the landlord, the tenant of any business premises, being a tenant under such a tenancy as is mentioned in section 26(1) of this Act, has served on a reversioner or a reversioner's mortgagee in possession a notice in the prescribed form requiring him to do so, it shall be the duty of that person to give the appropriate person in writing information as to the matters specified in subsection (4) below.

(4) The matters mentioned in subsection (3) above are—

(a) whether he is the owner of the fee simple in respect of the premises or any part of them or the mortgagee in possession of such an owner and, if not,

(b) (to the best of his knowledge and belief)—

(i) the name and address of the person who is his or, as the case may be, his mortgagor's immediate landlord in respect of those premises or of the part in respect of which he or his mortgagor is not the owner in fee simple; and

(ii) for what term his or his mortgagor's tenancy has effect and what is the earliest date (if any) at which that tenancy is terminable by notice to quit given by the landlord;

and also (to the best of his knowledge and belief)—

(c) the name and address of any person who owns an interest in reversion in any part of the demised premises other than that part an interest in reversion to which he himself owns; and

(d) if he is a reversioner, whether there is a mortgagee in possession of his interest in the premises and, if so, what is the name and address of the mortgagee.

(5) A duty imposed on a person by this section is a duty—

(a) to give the information within the period of one month beginning with the date of service of the notice; and

(b) if information as to any matter which has been given in pursuance of the notice ceases to be correct within the period of six months beginning with the date of service of the notice, to give the appropriate person correct information as to that matter.

(6) Except as provided by section 40A of this Act, the appropriate person for the purposes of this section is the person who served the notice under this subsection (1) or (3) above.

(7) In this section—

"business premises" means premises used wholly or partly for the purposes of a business;

"mortgagee in possession" includes a receiver appointed by the mortgagee or by the court who is in receipt of the rents and profits, and "his mortgagor" shall be construed accordingly;

"reversioner" means any person having an interest in the premises, being an interest in reversion expectant (whether immediately or not) on the tenancy;

"reversioner's mortgagee in possession" means any person being a mortgagee in possession in respect of such an interest;

"sub-tenant" includes a person retaining possession of any premises by virtue of the Rent (Agriculture) Act 1976 or the Rent Act 1977 after the coming to an end of a sub-tenancy, and "sub-tenancy" includes a right so to retain possession.

Duties under s. 40 in transfer cases.

40A.—(1) If a person on whom a notice under section 40(1) or (3) of this Act has been served has transferred his interest in the premises or any part of them to some other person and gives the appropriate person notice in writing—

(a) of his having transferred his interest; and

(b) of the name and address of the person to whom he transferred it,

on giving the notice he ceases in relation to the premises or (as the case may be) to that part to be under the duty imposed by section 40 of this Act.

(2) If—

(a) the person who served the notice under section 40(1) or (3) of this Act ("the transferor") has transferred his interest in the premises to some other person ("the transferee"); and

(b) the transferor or the transferee has given the person required to give the information notice in writing—

(i) of the transfer; and

(ii) of the transferee's name and address,

the appropriate person for the purposes of section 40 of this Act is the transferee.

(3) If—

(a) a transfer such as is mentioned in paragraph (a) of subsection (2) above has taken place; but

(b) neither the transferor nor the transferee has given a notice such as is mentioned in paragraph (b) of that subsection,

the duty imposed by section 40 of this Act may be performed by giving the information either to the transferor or to the transferee.

Proceedings for breach of duty to give information

40B. A claim that a person has broken the duty imposed by section 40 of this Act may be made the subject of civil proceedings for breach of statutory duty.[32]

Trusts.

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

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

[32] Substituted by clause 9.

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

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

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

Partnerships.

41A.—(1) The following provisions of this section shall apply where—

(a) a tenancy is held jointly by two or more persons (in this section referred to as the joint tenants); and

(b) the property comprised in the tenancy is or includes premises occupied for the purposes of a business; and

(c) the business (or some other business) was at some time during the existence of the tenancy carried on in partnership by all the persons who were then the joint tenants or by those and other persons and the joint tenants' interest in the premises was then partnership property; and

(d) the business is carried on (whether alone or in partnership with other persons) by one or some only of the joint tenants and no part of the property comprised in the tenancy is occupied, in right of the tenancy, for the purposes of a business carried on (whether alone or in partnership with other persons) by the other or others.

(2) In the following provisions of this section those of the joint tenants who for the time being carry on the business are referred to as the business tenants and the others as the other joint tenants.

(3) Any notice given by the business tenants which, had it been given by all the joint tenants, would have been—

(a) a tenant's request for a new tenancy made in accordance with section 26 of this Act; or

(b) a notice under subsection (1) or subsection (2) of section 27 of this Act;

shall be treated as such if it states that it is given by virtue of this section and sets out the facts by virtue of which the persons giving it are the business tenants; and references in those sections and in section 24A of this Act to the tenant shall be construed accordingly.

(4) A notice given by the landlord to the business tenants which, had it been given to all the joint tenants, would have been a notice under section 25 of this Act shall be treated as such a notice, and references in that section to the tenant shall be construed accordingly.

(5) An application under section 24(1) of this Act for a new tenancy may, instead of being made by all the joint tenants, be made by the business tenants alone; and where it is so made—

(a) this Part of this Act shall have effect, in relation to it, as if the references therein to the tenant included references to the business tenants alone; and

(b) the business tenants shall be liable, to the exclusion of the other joint tenants, for the payment of rent and the discharge of any other obligation under the current tenancy for any rental period beginning after the date specified in the landlord's notice under section 25 of this Act or, as the case may be, beginning on or after the date specified in their request for a new tenancy.

(6) Where the court makes an order under section 29(1) of this Act for the grant of a new tenancy on an application made by the business tenants it may order the grant to be made to them or to them jointly with the persons carrying on the business in partnership with them, and may order the grant to be made subject to the

satisfaction, within a time specified by the order, of such conditions as to guarantors, sureties or otherwise as appear to the court equitable, having regard to the omission of the other joint tenants from the persons who will be the tenants under the new tenancy.

(7) The business tenants shall be entitled to recover any amount payable by way of compensation under section 37 or section 59 of this Act.

Groups of companies.

42.—(1) For the purposes of this section two bodies corporate shall be taken to be members of a group if and only if one is a subsidiary of the other or both are subsidiaries of a third body corporate **or the same person has a controlling interest in both.**[33]

~~In this subsection "subsidiary" has the meaning given by section 736 of the Companies Act 1985.~~[34]

(2) Where a tenancy is held by a member of a group, occupation by another member of the group, and the carrying on of a business by another member of the group, shall be treated for the purposes of section 23 of this Act as equivalent to occupation or the carrying on of a business by the member of the group holding the tenancy; and in relation to a tenancy to which this Part of this Act applies by virtue of the foregoing provisions of this subsection -

(a) references (however expressed) in this Part of this Act and in the Ninth Schedule to this Act to the business of or to use occupation or enjoyment by the tenant shall be construed as including references to the business of or to use occupation or enjoyment by the said other member;

(b) the reference in paragraph (d) of subsection (1) of section 34 of this Act to the tenant shall be construed as including the said other member; and

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

(3) Where the landlord's interest is held by a member of a group -

(a) the reference in paragraph (g) of subsection (1) of section 30 of this Act to intended occupation by the landlord for the purposes of a business to be carried on by him shall be construed as including intended occupation by any member of the group for the purposes of a business to be carried on by that member;

(aa) the reference in paragraph (h) to a controlling interest shall be construed as a reference to a controlling interest in any member of the group;[35] and

(b) the reference in subsection (2) of that section to the purchase or creation of any interest shall be construed as a reference to a purchase from or creation by a person other than a member of the group.

Tenancies excluded from Part II.

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

(a) to a tenancy of an agricultural holding or a tenancy which would be a tenancy of an agricultural holding if subsection (3) of section 2 of the Agricultural Holdings Act 1986 did not have effect or, in a case where approval was given under subsection (1) of that section, if that approval had not been given;

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

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33. Inserted by clause 2(6).

34. Repealed by Schedule 2.

35. Inserted by clause 2(7).

(c) *[Repealed]*

(d) *[Repealed]*

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

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

(3) This Part of this Act does not apply to a tenancy granted for a term certain not exceeding six months unless -

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

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

Jurisdiction of county court to make declaration.

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

Meaning of "the landlord" in Part II, and provisions as to mesne landlords, etc.

44.—(1) Subject to ~~the next following subsection~~ **subsections (1A) and (2) below,**[36] in this Part of this Act the expression "the landlord", in relation to a tenancy (in this section referred to as "the relevant tenancy"), means the person (whether or not he is the immediate landlord) who is the owner of that interest in the property comprised in the relevant tenancy which for the time being fulfils the following conditions, that is to say—

(a) that it is an interest in reversion expectant (whether immediately or not) on the termination of the relevant tenancy, and

(b) that it is either the fee simple or a tenancy which will not come to an end within fourteen months by effluxion of time and, if it is such a tenancy, that no notice has been given by virtue of which it will come to an end within fourteen months or any further time by which it may be continued under section 36(2) or section 64 of this Act,

and is not itself in reversion expectant (whether immediately or not) on an interest which fulfils those conditions.

(1A) The reference in subsection (1) above to a person who is the owner of an interest such as is mentioned in that subsection is to be construed, where different persons own such interests in different parts of the property, as a reference to all those persons collectively.[37]

(2) References in this Part of this Act to a notice to quit given by the landlord are references to a notice to quit given by the immediate landlord.

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[36] Substituted by clause 10(1)(a).

[37] Inserted by clause 10(1)(b).

(3) The provisions of the Sixth Schedule to this Act shall have effect for the application of this Part of this Act to cases where the immediate landlord of the tenant is not the owner of the fee simple in respect of the holding.

Interpretation of Part II.

46.—(1)[38] In this Part of this Act:—

"business" has the meaning assigned to it by subsection (2) of section twenty-three of this Act;

~~"current tenancy" has the meaning assigned to it by subsection (1) of section twenty six of this Act;~~

"current tenancy" means the tenancy under which the tenant holds for the time being;[39]

"date of termination" has the meaning assigned to it by subsection (1) of section twenty-five of this Act;

subject to the provisions of section thirty-two of this Act, "the holding" has the meaning assigned to it by subsection (3) of section twenty-three of this Act;

"interim rent" has the meaning assigned to it by subsection (1) of section 24A of this Act;[40]

"mining lease" has the same meaning as in the Landlord and Tenant Act 1927.

(2) For the purposes of this Part of this Act, a person has a controlling interest in a company if, had he been a company, the other company would have been its subsidiary; and in this Part—

"company" has the meaning given by section 735 of the Companies Act 1985; and

"subsidiary" has the meaning given by section 736 of that Act.[41]

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Part IV

Miscellaneous And Supplementary

* * * * *

~~*Compensation for possession obtained by misrepresentation.*~~

~~**55.**—(1) Where under Part I of this Act an order is made for possession of the property comprised in a tenancy, or under Part II of this Act the court refuses on order for the grant of a new tenancy, and it is subsequently made to appear to the court that the order was obtained, or the court induced to refuse the grant, by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the tenant such sum as appears sufficient as compensation for damage or loss sustained by the tenant as the result of the order or refusal.~~

~~(2) In this section the expression "the landlord" means the person applying for possession or opposing an application for the grant of a new tenancy, and the expression "the tenant" means the person against whom the order for possession was made or to whom the grant of a new tenancy was refused.~~[42]

Application to Crown.

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38. Renumbered by clause 2(8).

39. Substituted by paragraph 4 of Schedule 1.

40. Inserted by paragraph 5 of Schedule 1.

41. Inserted by clause 2(9).

42. Repealed by Schedule 2.

56.-(1) Subject to the provisions of this and the four next following sections, Part II of this Act shall apply where there is an interest belonging to Her Majesty in right of the Crown or the Duchy of Lancaster or belonging to the Duchy of Cornwall, or belonging to a Government department or held on behalf of Her Majesty for the purposes of a Government department, in like manner as if that interest were an interest not so belonging or held.

(2) The provisions of the Eighth Schedule to this Act shall have effect as respects the application of Part II of this Act to cases where the interest of the landlord belongs to Her Majesty in right of the Crown or the Duchy of Lancaster or to the Duchy of Cornwall.

(3) Where a tenancy is held by or on behalf of a Government department and the property comprised therein is or includes premises occupied for any purposes of a Government department, the tenancy shall be one to which Part II of this Act applies; and for the purposes of any provision of the said Part II or the Ninth Schedule to this Act which is applicable only if either or both of the following conditions are satisfied, that is to say-

(a) that any premises have during any period been occupied for the purposes of the tenant's business;

(b) that on any change of occupier of any premises the new occupier succeeded to the business of the former occupier,

the said conditions shall be deemed to be satisfied respectively, in relation to such a tenancy, if during that period or, as the case may be, immediately before and immediately after the change, the premises were occupied for the purposes of a Government department.

(4) The last foregoing subsection shall apply in relation to any premises provided by a Government department without any rent being payable to the department therefore as if the premises were occupied for the purposes of a Government department.

(5) The provisions of Parts III or IV of this Act amending any other enactment which binds the Crown or applies to land belonging to Her Majesty in right of the Crown or the Duchy of Lancaster, or land belonging to the Duchy of Cornwall, or to land belonging to any Government department, shall bind the Crown or apply to such land.

(6) Section fifty-three and fifty-four of this Act shall apply where the interest of the landlord, or any other interest in the land in question, belongs to Her Majesty in right of the Crown or the Duchy of Lancaster or to the Duchy of Cornwall, or belongs to a Government department or is held on behalf of Her Majesty for the purposes of a Government department, in like manner as if that interest were an interest not so belonging or held.

(7) Part I of this Act shall apply where-

(a) there is an interest belonging to Her Majesty in right of the Crown and that interest is under the management of the Crown Estate Commissioners; or

(b) there is an interest belonging to Her Majesty in right of the Duchy of Lancaster or belonging to the Duchy of Cornwall;

as if it were an interest not so belonging.

Modification on grounds of public interest of rights under Part II.

57.—(1) Where the interest of the landlord or any superior landlord in the property comprised in any tenancy belongs to or is held for the purposes of a Government department or is held by a local authority, statutory undertakers or a development corporation, The Minister or Board in charge of any Government department may certify that it is requisite for the purposes of the first-mentioned department, or, as the case may be, of the authority, undertakers or corporation, that the use or occupation of the property or a part thereof shall be changed by a specified date.

(2) A certificate under the last foregoing subsection shall not be given unless the owner of the interest belonging or held as mentioned in the last foregoing subsection has given to the tenant a notice stating-

(a) that the question of the giving of such a certificate is under consideration by the Minister or Board specified in the notice,

and

(b) that if within twenty-one days of the giving of the notice the tenant makes to that Minister or Board representations in writing with respect to that question, they will be considered before the question is determined,

and if the tenant makes any such representations within the said twenty-one days the Minister or Board shall consider them before determining whether to give the certificate.

(3) Where a certificate has been given under subsection (1) of this section in

relation to any tenancy, then,—

(a) if a notice given under subsection (1) of section twenty-five of this Act specifies as the date of termination a date not earlier than the date specified in the certificate and contains a copy of the certificate ~~subsections (5) and~~ **subsection**[43] (6) of that section shall not apply to the notice and no application for a new tenancy shall be made by the tenant under **subsection (1) of**[44] section twenty-four of this Act;

(b) if such a notice specifies an earlier date as the date of termination and contains a copy of the certificate, then if the court makes an order under Part II of this Act for the grant of a new tenancy the new tenancy shall be for a term expiring not later than the date specified in the certificate and shall not be a tenancy to which Part II of this Act applies.

(4) Where a tenant makes a request for a new tenancy under section twenty-six of this Act, and the interest of the landlord or any superior landlord in the property comprised in the current tenancy belongs or is held as mentioned in subsection (1) of this section, the following provisions shall have effect:-

(a) if a certificate has been given under the said subsection (1) in relation to the current tenancy,and within two months after the making of the request the landlord gives notice to the tenant that the certificate has been given and the notice contains a copy of the certificate, then,-

(i) if the date specified in the certificate is not later than that specified in the tenant's request for a new tenancy, the tenant shall not make an application under section twenty-four of this Act for the grant of a new tenancy;

(ii) if, in any other case, the court makes an order under Part II of this Act for the grant of a new tenancy the new tenancy shall be for a term expiring not later than the date specified in the certificate and shall not be a tenancy to which Part II of this Act applies;

(b) if no such certificate has been given but notice under subsection (2) of this section has been given before the making of the request or within two months thereafter, the request shall not have effect, without prejudice however to the making of a new request when the Minister or Board has determined whether to give a certificate.

(5) Where application is made to the court under Part II of this Act for the grant of a new tenancy and the landlord's interest in the property comprised in the tenancy belongs or is held as mentioned in subsection (1) of this section, the Minister or Board in charge of any Government department may certify that it is necessary in the public interest that if the landlord makes an application in that behalf the court shall determine as a term of the new tenancy that it shall be terminable by six months' notice to quit given by the landlord.

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43. Substituted by paragraph 6(a) of Schedule 1.

44. Inserted by paragraph 6(b) of Schedule 1.

Subsection (2) of this section shall apply in relation to a certificate under this subsection, and if notice under the said subsection (2) has been given to the tenant-

(a) the court shall not determine the application for the grant of a new tenancy until the Minister or Board has determined whether to give a certificate,

(b) if a certificate is given, the court shall on the application of the landlord determine as a term of the new tenancy that it shall be terminable as aforesaid, and section twenty-five of this Act shall apply accordingly.

(6) The foregoing provisions of this section shall apply to an interest held by a Regional Health Authority, Area Health Authority District Health Authority or special health authority, as they apply to an interest held by a local authority but with the substitution, for the reference to the purposes of the authority, of a reference to the purposes of the National Health Service Act 1977.

(7) Where the interest of the landlord or any superior landlord in the property comprised in any tenancy belongs to the National Trust the Secretary of state may certify that it is requisite, for the purpose of securing that the property will as from a specified date be used or occupied in a manner better suited to the nature thereof, that the use or occupation of the property should be changed; and subsections (2) to (4) of this section shall apply in relation to certificates under this subsection, and to cases where the interest of the landlord or any superior landlord belongs to the National Trust, as those subsections apply in relation to certificates under subsection (1) of this section and to cases where the interest of the landlord or any superior landlord belongs or is held as mentioned in that subsection.

(8) In this and the next following section the expression "Government department" does not include the Crown Estate Commissioners and the expression "landlord" has the same meaning as in Part II of this Act; and in the last foregoing subsection the expression "National Trust" means the National Trust for Places of Historic Interest or Natural Beauty.

Termination on special grounds of tenancies to which Part II applies.

58.—(1) Where the landlord's interest in the property comprised in any tenancy belongs to or is held for the purposes of a Government department, and the Minister or Board in charge of any Government department certifies that for reasons of national security it is necessary that the use or occupation of the property should be discontinued or changed, then—

(a) if the landlord gives notice under subsection (1) of section twenty-five of this Act containing a copy of the certificate, ~~subsections (5) and~~ **subsection**[45] (6) of that section shall not apply to the notice and no application for a new tenancy shall be made by the tenant under **subsection (1) of**[46] section twenty-four of this Act;

(b) if (whether before or after the giving of the certificate) the tenant makes a request for a new tenancy under section twenty-six of this Act, and within two months after the making of the request the landlord gives notice to the tenant that the certificate has been given and the notice contains a copy of the certificate,-

(i) the tenant shall not make an application under section twenty-four of this Act for the grant of a new tenancy, and

(i) if the notice specifies as the date on which the tenancy is to terminate a date earlier than that specified in the tenant's request as the date on which the new tenancy is to begin but neither earlier than six months from the giving of the notice nor earlier than the earliest date at which apart from this Act the tenancy would come to an end

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45. Substituted by paragraph 6(a) of Schedule 1.

46. Inserted by paragraph 6(b) of Schedule 1.

or could be brought to an end, the tenancy shall terminate on the date specified in the notice instead of that specified in the request.

(2) Where the landlord's interest in the property comprised in any tenancy belongs to or is held for the purposes of a Government department, nothing in this Act shall invalidate an agreement to the effect-

(a) that on the giving of such a certificate as is mentioned in the last foregoing subsection the tenancy may be terminated by notice to quit given by the landlord of such length as may be specified in the agreement, if the notice contains a copy of the certificate; and

(b) that after the giving of such a notice containing such a copy the tenancy shall not be one to which Part II of this Act applies.

(3) Where the landlord's interest in the property comprised in any tenancy is held by statutory undertakers, nothing in this Act shall invalidate an agreement to the effect-

(a) that where the Minister or Board in charge of a Government department certifies that possession of the property comprised in the tenancy or a part thereof is urgently required for carrying out repairs (whether on that property or elsewhere) which are needed for the proper operation of the landlord's undertaking, the tenancy may be terminated by notice to quit given by the landlord of such length as may be specified in the agreement, if the notice contains a copy of the certificate; and

(b) that after the giving of such a notice containing such a copy, the tenancy shall not be one to which Part II of this Act applies.

(4) Where the court makes an order under Part II of this Act for the grant of a new tenancy and the Minister or Board in charge of any Government department certifies that the public interest requires the tenancy to be subject to such a term as is mentioned in paragraph (a) or (b) of this subsection, as the case may be, then-

(a) if the landlord's interest in the property comprised in the tenancy belongs to or is held for the purposes of a Government department, the court shall on the application of the landlord determine as a term of the new tenancy that such an agreement as is mentioned in subsection (2) of this section and specifying such length of notice as is mentioned in the certificate shall be embodied in the new tenancy;

(b) if the landlord's interest in that property is held by statutory undertakers, the court shall on the application of the landlord determine as a term of the new tenancy that such an agreement as is mentioned in subsection (3) of this section and specifying such length of notice as is mentioned in the certificate shall be embodied in the new tenancy.

Compensation for exercise of powers under ss. 57 and 58.

59.—(1) Where by virtue of any certificate given for the purposes of either of the two last foregoing sections or, subject to subsections (1A) or (1B) below, sections 60A or 60B below the tenant is precluded from obtaining an order for the grant of a new tenancy, or of a new tenancy for a term expiring later than a specified date, the tenant shall be entitled on quitting the premises to recover from the owner of the interest by virtue of which the certificate was given an amount by way of compensation, and subsections (2), (3) **to (3B)**[47] and (5) to (7) of section thirty-seven of this Act shall with the necessary modifications apply for the purposes of ascertaining the amount.

(1A) No compensation shall be recoverable under subsection (1) above where the certificate was given under section 60A below and either-

(a) the premises vested in the Welsh Development Agency under Section 7 (property of Welsh Industrial Estates Corporation) or 8 (land held under Local Employment Act 1972) of the Welsh Development Agency Act 1975, or

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[47] Inserted by paragraph 7 of Schedule 1.

(b) the tenant was not tenant of the premises when the said Agency acquired the interest by virtue of which the certificate was given.

(1B) No compensation shall be recoverable under subsection (1) above where the certificate was given under section 60B below and either-

(a) the premises are premises which-

(i) were vested in the Welsh Development Agency by section 8 of the Welsh Development Agency Act 1975 or were acquired by the Agency when no tenancy subsisted in the premises; and

(ii) vested in the Development Board for Rural Wales under section 24 of the Development of Rural Wales Act 1976; or

(b) the tenant was not the tenant of the premises when the Board acquired the interest by virtue of which the certificate was given.

(2) Subsections (2) and (3) of section thirty-eight of this Act shall apply to compensation under this section as they apply to compensation under section thirty-seven of this Act.

Special provisions as to premises provided under the Distribution of Industry Acts 1945 and 1950, etc.

60.-(1) Where the property comprised in a tenancy consists of premises of which the Secretary of State or the English Industrial Estates Corporation is the landlord, being premises situated in a locality which is either-

(a) a development area...; or

(b) an intermediate area...;

and the Secretary of State certifies that it is necessary or expedient for achieving the purpose mentioned in section 2(1) of the said Act of 1972 that the use or occupation of the property should be changed, paragraphs *(a)* and *(b)* of subsection (1) of section fifty-eight of this Act shall apply as they apply where such a certificate is given as is mentioned in that subsection.

(2) Where the court makes an order under Part II of this Act for the grant of a new tenancy of any such premises as aforesaid, and the Secretary of State certifies that it is necessary or expedient as aforesaid that the tenancy should be subject to a term, specified in the certificate, prohibiting or restricting the tenant from assigning the tenancy or sub-letting, charging or parting with possession of the premises or any part thereof or changing the use of the premises or any part thereof, the court shall determine that the terms of the tenancy shall include the terms specified in the certificate.

(3) In this section "development area" and "intermediate area" mean an area for the time being specified as a development area or, as the case may be, as an intermediate area by an order made, or having effect as if made, under section 1 of the Industrial Development Act 1982."

Welsh Development Agency premises.

60A.-(1) Where the property comprised in a tenancy consists of premises of which the Welsh Development Agency is the landlord, and the Secretary of State certifies that it is necessary or expedient, for the purpose of providing employment appropriate to the needs of the area in which the premises are situated, that the use or occupation of the property should be changed, paragraphs *(a)* and *(b)* of section 58(1) above shall apply as they apply where such a certificate is given as is mentioned in that subsection.

(2) Where the court makes an order under Part II of this Act for the grant of a new tenancy of any such premises as aforesaid, and the Secretary of State certifies that it is necessary or expedient as aforesaid that the tenancy should be subject to a term, specified in the certificate, prohibiting or restricting the tenant from assigning the tenancy or subletting, charging or parting with possession of the premises or any part of the

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premises or changing the use of the premises or any part of the premises, the court shall determine that the terms of the tenancy shall include the terms specified in the certificate.

Development Board for Rural Wales premises

60B.- (1) Where the property comprised in the tenancy consists of premises of which the Development Board for Rural Wales is the landlord, and the Secretary of State certifies that it is necessary or expedient, for the purpose of providing employment appropriate to the needs of the area in which the premises are situated, that the use or occupation of the property should be changed, paragraphs *(a)* and *(b)* of section 58(1) above shall apply as they apply where such a certificate is given as is mentioned in that subsection.

(2) Where the court makes an order under Part II of this Act for the grant of a new tenancy of any such premises as aforesaid, and the Secretary of State certifies that it is necessary or expedient as aforesaid that the tenancy should be subject to a term, specified in the certificate, prohibiting or restricting the tenant from assigning the tenancy or sub-letting, charging or parting with possession of the premises or any part of the premises or changing the use of the premises or any part of the premises, the court shall determine that the terms of the tenancy shall included the terms specified in the certificate.

61, 62 *[Repealed]*

Jurisdiction of court for purposes of Parts I and II and of Part I of the Landlord and Tenant Act 1927.

63.- (1) Any jurisdiction conferred on the court by any provision of Part I of this Act shall be exercised by the county court.

(2) Any jurisdiction conferred on the court by any provision of Part II of this Act or conferred on the tribunal by Part I of the Landlord and Tenant Act 1927, shall, subject to the provisions of this section, be exercised,-

by the High Court or a county court.

(3) *[Repealed]*

(4) The following provisions shall have effect as respects transfer of proceedings from or to the High Court or the county court, that is to say-

(a) where an application is made to the one but by virtue of an Order under section 1 of the Courts and Legal Services Act 1990 cannot be entertained except by the other, the application shall not be treated as improperly made but any proceedings thereon shall be transferred to the other court;

(b) any proceedings under the provisions of Part II of this Act or of Part I of the Landlord and Tenant Act 1927, which are pending before one of those courts may by order of that court made on the application of any person interested be transferred to the other court, if it appears to the court making the order that it is desirable that the proceedings and any proceedings before the other court should both be entertained by the other court.

(5) In any proceedings where in accordance with the foregoing provisions of this section the county court exercises jurisdiction the powers of the judge of summoning one or more assessors under subsection (1) of section 91 of the County Courts Act 1959, may be exercised notwithstanding that no application is made in that behalf by any party to the proceedings.

(6) Where in any such proceedings an assessor is summoned by a judge under the said subsection (1),-

(a) he may, if so directed by the judge, inspect the land to which the proceedings relate without the judge and report to the judge in writing thereon;

(b) the judge may on consideration of the report and any observations of the parties thereon give such judgment or make such order in the proceedings as may be just;

(c) the remuneration of the assessor shall be at such rate as may be determined by the Lord Chancellor with the approval of the Treasury and shall be defrayed out of moneys provided by Parliament.

(7) In this section the expression "the holding"-

(a) in relation to proceedings under Part II of this Act, has the meaning assigned to it by subsection (3) of section twenty-three of this Act,

(b) in relation to proceedings under Part I of the Landlord and Tenant Act 1927, has the same meaning as in the said Part I.

(8) *[Repealed]*

(9) Nothing in this section shall prejudice the operation of section 41 of the County Courts Act 1984 (which relates to the removal into the High Court of proceedings commenced in a county court).

(10) *[Repealed]*

Interim continuation of tenancies pending determination by court.

64.—(1) In any case where—

(a) a notice to terminate a tenancy has been given under Part I or Part II of this Act or a request for a new tenancy has been made under Part II thereof, and

(b) an application to the court has been made under the said Part I or ~~the said Part II~~ **under section 24(1) or 29(2) of this Act,**[48] as the case may be, and

(c) apart from this section the effect of the notice or request would be to terminate the tenancy before the expiration of the period of three months beginning with the date on which the application is finally disposed of,

the effect of the notice or request shall be to terminate the tenancy at the expiration of the said period of three months and not at any other time.

(2) The reference in paragraph (c) of subsection (1) of this section to the date on which an application is finally disposed of shall be construed as a reference to the earliest date by which the proceedings on the application (including any proceedings on or in consequence of an appeal) have been determined and any time for appealing or further appealing has expired, except that if the application is withdrawn or any appeal is abandoned the reference shall be construed as a reference to the date of the withdrawal or abandonment.

Provisions as to reversions.

65.-(1) Where by virtue of any provision of this Act a tenancy (in this subsection referred to as "the inferior tenancy") is continued for a period such as to extend to or beyond the end of the term of a superior tenancy, the superior tenancy shall, for the purposes of this Act and of any other enactment and of any rule of law, be deemed so long as it subsists to be an interest in reversion expectant upon the termination of the inferior tenancy and, if there is no intermediate tenancy, to be the interest in reversion immediately expectant upon the termination thereof.

(2) In the case of a tenancy continuing by virtue of any provision of this Act after the coming to an end of the interest in reversion immediately expectant upon the termination thereof, subsection (1) of section one hundred and thirty-nine of the Law of Property Act 1925 (which relates to the effect of the extinguishment of a reversion) shall apply as if references in the said subsection (1) to the surrender or merger of the reversion included references to the coming to an end of the reversion for any reason other than surrender or merger.

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[48] Substituted by paragraph 8 of Schedule 1.

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(3) Where by virtue of any provision of this Act a tenancy (in this subsection referred to as "the continuing tenancy") is continued beyond the beginning of a reversionary tenancy which was granted (whether before or after the commencement of this Act) so as to begin on or after the date on which apart from this Act the continuing tenancy would have come to an end, the reversionary tenancy shall have effect as if it had been granted subject to the continuing tenancy.

(4) Where by virtue of any provision of this Act a tenancy (in this subsection referred to as "the new tenancy") is granted for a period beginning on the same date as a reversionary tenancy or for a period such as to extend beyond the beginning of the term of a reversionary tenancy, whether the reversionary tenancy in question was granted before or after the commencement of this Act, the reversionary tenancy shall have effect as if it had been granted subject to the new tenancy.

Provisions as to notices.

66.-(1) Any from of notice required by this Act to be prescribed shall be prescribed by regulations made by the Lord Chancellor by statutory instrument.

(2) Where the form of a notice to be served on persons of any description is to be prescribed for any of the purposes of this Act, the form to be prescribed shall include such an explanation of the relevant provisions of this Act as appears to the Lord Chancellor requisite for informing persons of that description of their rights and obligations under those provisions.

(3) Different forms of notice may be prescribed for the purposes of the operation of any provision of this Act in relation to different cases.

(4) Section twenty-three of the Landlord and Tenant Act 1927 (which relates to the service of notices) shall apply for the purposes of this Act.

(5) Any statutory instrument under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Provisions as to mortgagees in possession.

67. Anything authorised or required by the provisions of this Act, other than subsection ~~(2) or~~[49] (3) of section forty, to be done at any time by, to or with the landlord, or a landlord of a specified description, shall, if at that time the interest of the landlord in question is subject to a mortgage and the mortgagee is in possession or a receiver appointed by the mortgagee or by the court is in receipt of the rents and profits, be deemed to be authorised or required to be done by, to or with the mortgagee instead of that landlord.

68.-(1) *[Repealed]*

(2) The transitional provisions set out in the Ninth Schedule to this Act shall have effect.

Interpretation.

69.—(1) In this Act the following expressions have the meanings hereby assigned to them respectively, that is to say:—

"agricultural holding" has the same meaning as in the Agricultural Holdings Act 1986;

"development corporation" has the same meaning as in the New Towns Act 1981;

"local authority" has the same meaning as in the Town and Country Planning Act 1947 except that it includes the Broads Authority a joint authority established by Part IV of the Local Government Act 1985;

"mortgage" includes a charge or lien and "mortgagor" and "mortgagee" shall be construed accordingly;

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[49] Repealed by Schedule 2.

"notice to quit" means a notice to terminate a tenancy (whether a periodical tenancy or a tenancy for a term of years certain) given in accordance with the provisions (whether express or implied) of that tenancy;

"repairs" includes any work of maintenance, decoration or restoration, and references to repairing, to keeping or yielding up in repair and to state of repair shall be construed accordingly;

"statutory undertakers" has the same meaning as in the Town and Country Planning Act 1971, except that it includes British Coal Corporation;

"tenancy" means a tenancy created either immediately or derivatively out of the freehold, whether by a lease or underlease, by an agreement for a lease or underlease or by a tenancy agreement or in pursuance of any enactment (including this Act), but does not include a mortgage term or any interest arising in favour of a mortgagor by his attorning tenant to his mortgagee, and references to the granting of a tenancy and to demised property shall be construed accordingly;

"terms", in relation to a tenancy, includes conditions.

(2) References in this Act to an agreement between the landlord and the tenant (except in section seventeen and subsections (1) and (2) of section thirty-eight thereof) shall be construed as references to an agreement in writing between them.

(3) References in this Act to an action for any relief shall be construed as including references to a claim for that relief by way of counterclaim in any proceedings.

APPENDIX C

Outline of Part II of the Landlord and Tenant Act 1954

Introduction

1. The main thrust of Part II of the Landlord and Tenant Act 1954 is to ensure that a business tenant's existing lease is continued until terminated in accordance with the Act. Where such a termination occurs, the tenant is normally given the right to apply for a new tenancy,[1] provided he complies with the Act's procedures. This application can only be resisted if the landlord is able to establish one of seven statutory grounds of opposition. In the absence of a successful opposition, a tenant is entitled to a new lease. The terms of this new lease will either be as agreed by the parties, or as determined by the court in accordance with the principles laid down in the Act (in particular, that the rent under the new lease will be at the current market level). Unless the landlord succeeds in opposing the grant of a new tenancy on any of the grounds which involve default by the tenant or the offer of suitable alternative accommodation, the tenant who fails to obtain a new tenancy is entitled to receive compensation for disturbance.

Tenancies within the Act

2. The Act applies[2] to all tenancies[3] where the property[4] comprised therein is occupied[5] by the tenant for business purposes. It is not necessary for the tenant to occupy the whole of the premises in order to qualify for protection, nor does he need to use the premises exclusively for business purposes. Thus premises used for mixed purposes[6] are within the 1954 Act.

3. The Act defines "business"[7] extremely widely, going as far as to include "any activity"[8] provided only that this is carried on by a body of persons rather than by an individual. Thus the Act covers leases of premises which go well beyond the popular conception of "commercial" use.

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1. The tenant may in certain circumstances be prevented from applying for a new tenancy where the landlord is one of a number of specified public bodies or on grounds of national security: ss. 57, 58, 60A and 60B.

2. Section 23(1).

3. Certain types of tenancy are specifically excluded from the Act (see para. 4 below) and it is possible to exclude the Act by agreement authorised by the court: see para. 26 below. The Act does not apply to licences. Furthermore, it has been held that tenancies at will, whether arising by implication of law or created expressly, do not fall within the ambit of the Act: *Wheeler* v. *Mercer* [1957] A.C. 416; *Hagee (London) Ltd.* v. *A.B. Erikson and Larson* [1976] Q.B. 209.

4. This must constitute "premises" which are capable of physical occupation; hence leases of incorporeal hereditaments do not qualify for protection: *Land Reclamation Co.* v. *Basildon Council* [1979] 1 W.L.R. 767.

5. It is an essential prerequisite of statutory protection that the tenant is either in physical occupation (whether personally or through an agent) of at least part of the premises, or is exercising sufficient "control" over the premises to be regarded as in occupation for the purposes of the Act: *Lee-Verhulst Investments* v. *Harwood Trust* [1973] Q.B. 204. A tenant who has sublet the whole of the premises and is who is thus acting as a landlord passively receiving rents is not within the Act's protection.

6. This can cover two rather different situations. First, where part of the premises is used for business purposes and a distinct part for, say, residential use (as in a shop with flat above). Second, where the overall use of the premises is for a purpose which includes a significant business use, e.g. where a business is run from home: see *Cheryl Investments Ltd.* v. *Saldanha* [1978] 1 W.L.R. 1329.

7. Section 23 defines "business" as including "a trade, profession or employment and includes any activity carried on by a body of persons whether corporate or unincorporate."

8. In *Hillil Property & Investment* v. *Naraine Pharmacy* (1979) 39 P. & C.R. 67 it was held that although this term covers "something which is not strictly a trade, a profession or an employment, nevertheless to be an 'activity' for this purpose it must be something which is correlative to the conceptions involved in those words."

4. The following types of tenancy are specifically excluded from the Act:[9]

(a) agricultural holdings;[10]

(b) mining leases;[11]

(c) service tenancies;[12]

(d) tenancies granted for a term of six months or less.[13]

Also excluded from the Act are leases which have been extended under section 14 of the Leasehold Reform Act 1967.[14]

The Scheme of Protection

5. The fundamental aim of the Act is to confer on business tenants security of tenure without otherwise protecting them from market forces. The cornerstone of this policy is section 24 which provides that a tenancy to which the Act applies "shall not come to an end unless terminated in accordance with the provisions of this Part of this Act". Thus, a business tenant will enjoy the benefit of a continuation tenancy, at the existing level of rent, unless his lease has been brought to an end in an approved manner.

Termination of the tenancy

6. The tenant can, unilaterally, bring his current lease to an end in any of the following ways:

(a) by the service of a request for a new tenancy under section 26 ("section 26 request");

(b) by the service of a notice to quit, provided this is not served before the tenant has been in occupation, under the lease, for a period of one month;[15]

(c) where the lease is for a fixed term, either by written notice served at least three months before the contractual term date,[16] or, where the tenancy has already been continued by virtue of section 24, on any quarter day, by three months written notice.[17] In either case, such a notice cannot be given before the tenant has been in

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9. Tenancies of on-licensed premises were formerly excluded from the Act by section 43(1)(d). This provision has been repealed by the Landlord and Tenant (Licensed Premises) Act 1990. All tenancies of on-licensed premises have been within the scope of the Act since 11 July 1992.

10. Section 43(1)(a).

11. Section 43(1)(b).

12. Section 43(2).

13. Section 43(3); this exclusion does not apply if the tenancy includes a right to renew or extend beyond a six month term. Further, it does not apply if the tenant, or a predecessor in the business, has been in occupation for a period which exceeds twelve months.

14. Leasehold Reform Act 1967, s. 16(1)(c).

15. Section 24(2)(a).

16. Section 27(1).

17. Section 27(2).

occupation for at least one month, nor can it take effect before the expiry of the fixed term;

(d) by failing to give a counternotice indicating unwillingness to give up possession, within two months of being served with a notice by the landlord under section 25[18] ("section 25 notice");

(e) by serving a counternotice to a section 25 notice, indicating a willingness to give up possession;[19]

(f) by failing to apply to court for a new tenancy between two and four months after either being served with a section 25 notice, or serving a section 26 request;[20]

(g) by withdrawing an application for a new tenancy.[21]

7. The Landlord can bring the current tenancy to an end in any of the following ways:

(a) by the service of a section 25 notice to terminate the tenancy;

(b) by forfeiture;[22]

(c) where a tenancy has been continued under section 24, but has then ceased to be one to which the Act applies, by the service of between three and six months notice in writing.[23]

8. The parties can agree that the current tenancy will come to an end in either of the following ways:

(a) by entering into an agreement for a new tenancy;[24]

(b) by a surrender of the existing tenancy, providing the surrender was not entered into until after the tenant has been in occupation for at least one month.[25]

The renewal procedure

9. A tenant cannot apply to court for a new tenancy[26] unless either:[27]

(a) the landlord has served a notice to terminate under section 25; or

(b) the tenant has requested a new tenancy by serving notice under section 26.

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18. Section 29(2).

19. Section 29(2).

20. Section 29(3).

21. In this case the current tenancy will terminate three months after the date of withdrawal: s. 64(2).

22. Section 24(2).

23. Section 24(3)(a).

24. Section 28.

25. Section 24(2)(b).

26. Section 24(1).

27. The two forms of notices are mutually exclusive: section 26(4).

Section 25 notices

10. Given that most business tenants do not wish to quit their premises and that they are, generally, favoured by a continuation tenancy at the existing rental level, it is normally the landlord who seeks to terminate the current tenancy by serving a section 25 notice. The service of such a notice does not necessarily indicate that the landlord wishes the tenant to leave the premises; more often than not it is the means by which the landlord is triggering the statutory renewal process so that the tenant will then occupy under a new lease at a market rent.

11. The landlord must give between twelve and six months notice, expiring on or after the contractual term date. The notice must take the statutorily prescribed form and the landlord, if he wishes to oppose the grant of a new tenancy, must state the grounds of opposition on which he may seek to rely.

12. A tenant who wishes to apply for a new lease must, within two months of being served with a section 25 notice, notify his landlord in writing of his unwillingness to give up possession. A failure to serve a counternotice will lose the tenant any right to apply for a new tenancy and his existing tenancy will come to an end on the date specified in the section 25 notice.

Section 26 requests

13. Although a tenant normally benefits from the continuation, under section 24, of his existing tenancy, there are occasions where he may wish to initiate the Act's renewal procedures.[28] He can do this by serving on his landlord a request[29] for a new tenancy. The request must be in the statutorily prescribed form and must specify the commencement date for the new tenancy which can be at any time between twelve and six months after the request, providing only that the specified date must not be earlier than the contractual date for termination.[30] The request must set out the tenant's proposals as to the terms (including the rent) of the new lease.[31]

14. A landlord who wishes to oppose any application for a new tenancy must, within two months, serve a counternotice[32] on the tenant stating the grounds of opposition on which he may choose to rely. A failure to do so will mean that the landlord loses any right to oppose.[33]

Applications to court

15. Although the vast majority of new leases under the 1954 Act come into being as a result of the agreement of the parties, the tenant, if he is to preserve his statutory right to a new tenancy, must make an application to the court between two and four months after the service of either a section 25

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28. Not all tenants whose leases are protected by the Act are entitled to serve a section 26 request. In order to be so entitled a tenant must have been granted either a lease for a fixed term exceeding one year, or a lease for a fixed term and thereafter from year to year: s. 26(1). A tenant who cannot serve a section 26 request can, nevertheless, apply for a new tenancy in response to his landlord's section 25 notice.

29. The tenant cannot make a request if the landlord has already served a section 25 notice (s. 26(4)) or if he has previously served either a notice to quit or a section 27 notice.

30. Section 26(2).

31. Section 26(3).

32. Section 26(6).

33. Section 30(1).

notice or a section 26 request.[34] A failure to comply with this requirement will lose the tenant his renewal rights under the Act. In practice, it is usual for an application to be made and any hearing to adjourned indefinitely while the parties negotiate.

16. Once the tenant has protected his right to renew by lodging and serving an application, the parties are free to negotiate. Such negotiations, especially if unsuccessful (so that a resort to court is necessary), may well continue beyond the date specified for the termination of the current tenancy in the section 25 notice or the section 26 request. To accommodate both lengthy negotiations and litigation delays, the Act[35] provides that, once an application has been made, the current tenancy is continued until three months after the application is finally disposed of.[36] Should the tenant either withdraw his application or abandon his appeal, the three month period is calculated from the date of withdrawal or abandonment. Where the parties negotiate a new tenancy, the commencement date of that tenancy, and, therefore, the termination date of the existing tenancy, will be as agreed.

Interim rent

17. Clearly, in a rising market any continuation of the current tenancy beyond its contractual term date is likely to disadvantage the landlord, who will only be receiving rent at the existing level. The Act therefore provides that, once either a section 25 notice or section 26 request has been served, a landlord can apply for the payment of interim rent.[37] This rent, which is normally at a figure somewhere between the existing rent and the rent under the new tenancy, is payable from either the date specified in the landlord's section 25 notice or the tenant's section 26 request, or from the date on which the landlord applied for interim rent (whichever is the later) until the end of the continued tenancy.

Opposing the grant of a new tenancy

18. The Act permits a landlord to oppose the grant of a new tenancy on one or more of seven statutory grounds, provided only that any ground on which he seeks to rely has been stipulated in either the section 25 notice or in a counternotice to a section 26 request.[38] These grounds are:

(a) breach of the tenant's repairing obligations;

(b) persistent delay in paying the rent;

(c) substantial breaches of the tenant's other obligations, or any other reason connected with the tenant's use or management of the holding;

(d) the provision of suitable alternative accommodation;

(e) where the current tenancy is a subletting of part only of the property comprised in a head lease and the reversioner of that head lease can demonstrate that the property could, more economically, be let as a whole;

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34. Section 29(1).

35. Section 64.

36. Thus any appeal, or period during which an appeal may be lodged, must be added on.

37. Section 24A.

38. Section 30(1). The right to renew may also be excluded in certain cases involving public rights and national security: sections 57, 58.

(f) that the landlord intends to demolish, re-construct or carry out substantial works of construction;[39]

(g) that the landlord intends to occupy the premises for the purposes of a business carried on by himself (or a company which he controls) or as his residence. This ground is not available to a landlord who has purchased his interest in the property within the preceding five years, if throughout that time the property has been let on a tenancy or tenancies to which the Act applies.

19. Where the landlord is relying on grounds (a) to (c) or (e), he must not only prove the ground, but must also persuade the court that the tenant "ought to be granted" a new tenancy. If the landlord establishes any of the other three grounds of opposition, the court has no residual discretion.

20. The tenant is entitled to compensation[40] for disturbance in three situations:[41]

(1) where the court refuses to grant a new tenancy on grounds (e), (f) or (g);

(2) where these are the only grounds specified by the landlord and the tenant either does not make, or withdraws, his application for a new tenancy;

(3) where the tenant is precluded from obtaining a new tenancy by the exercise of rights available in certain cases involving public interest or national security.

The grant of a new tenancy

21. In the absence of a successful opposition by the landlord and provided the Act's procedures have been complied with, the court is empowered to order the grant of a new tenancy.[42] This tenancy will be either on such terms as the parties have agreed, or on terms determined by the court in accordance with the principles laid down in sections 32 to 35.

22. Following the making of such an order, the tenant has fourteen days in which to decline the tenancy. If he does so decide then the court is bound to revoke the order, although it can order that the current tenancy which will give the landlord a reasonable opportunity to re-let. Otherwise, the landlord is obliged to grant, and the tenant is obliged to take the tenancy so ordered.

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39. The landlord must also show that he cannot carry out the proposed work without obtaining possession of the premises. In this context "possession" means legal, and not merely physical, possession: *Heath* v. *Drown* [1973] A.C. 498; see also s. 31A and *Cerex Jewels Ltd.* v. *Peachey Properties Corporation plc* [1986] 2 E.G.L.R. 65 (C.A.).

40. In respect of business property, the landlord must pay the tenant the rateable value, or twice the rateable value if the tenant and any predecessor in the business has been in occupation for at least fourteen years: Landlord and Tenant Act 1954 (Appropriate Multiplier) Order (S.I. 1990, No. 363). For domestic property, the compensation is equal to the tenant's reasonable renewal expenses (1954 Act, s.37(5A), as amended by Local Government and Housing Act 1989). Before the de-rating of non-domestic property under the Local Government Finance Act 1988, the level of compensation was three or six times, respectively. In certain transitional cases, tenants may opt for the rateable value used to be that of 31 March 1990, in which case the multiplier will be eight or sixteen times. In 1980, the Secretary of State was given power to prescribe the appropriate multiplier (1954 Act, s. 37, as amended by the Local Government, Planning and Land Act 1980). It has since been adjusted three times, in 1981, 1984 and 1990.

41. Sections 37, 59.

42. Section 29(1).

The terms of the new tenancy

23. In the absence of agreement between the parties, the court will determine the terms of the new tenancy. Various provisions in the new Act govern the property to be comprised in the new tenancy, its duration, the rent, and any other terms.

24. Briefly, the tenant is only entitled as of right to a new tenancy of the "holding", i.e., those parts of the demised premises which he actually occupies.[43] The court can only impose a term of up to fourteen years,[44] although the parties can agree a longer term and this can be included in the order. The rent under the new tenancy is that which could be obtained in the open market, disregarding the tenant's occupation, goodwill, certain tenant's improvements and, where the premises are licensed, the effect of any licence belonging to the tenant.[45] Any other terms of the new lease will, in default of agreement, be determined by the court, having regard to those contained in the existing lease and to all relevant circumstances.[46]

Contracting out

25. Originally, the Act[47] contained a blanket prohibition on any agreement which purported to exclude the tenant's rights under the Act, or to bring the tenancy to an end should the tenant try to exercise his rights under the Act, or to penalise the tenant for exercising his rights under the Act.

26. Following the recommendations of the Law Commission,[48] a new subsection was added to section 38 by the Law of Property Act 1969. This[49] allows the parties to a business lease to make a joint application to court seeking approval of a grant of a fixed term tenancy to which the Act will not apply. In practice, provided both parties are in receipt of proper legal advice, it is highly unlikely that a court will withhold its approval.[50]

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43. Sections 32 and 23(3).

44. Section 33.

45. Section 34.

46. Section 35. The burden is on the party proposing the change to show that it is fair and reasonable in the circumstances: *O'May* v. *City of London Real Property Co. Ltd.* [1983] 2 A.C. 726.

47. Section 38.

48. Report on Landlord and Tenant Act 1954 Part II (1969) Law Com. No. 17.

49. Section 38(4).

50. See *Hagee (London) Ltd.* v. *A.B. Erikson and Larson* [1976] Q.B. 209, 215.

APPENDIX D

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Association of County Councils
Association of District and County Court Registrars
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Bidwells, chartered surveyors
Blyth Valley Borough Council
British Airways Pensions
British Legal Association
British Property Federation
British Railways Board
Mr M.R. Calder, chartered surveyor
The Chancery Bar Association
Church Commissioners
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