



AN BILLE SRIANTA CIOSA, 1944.

RENT RESTRICTIONS BILL, 1944.

EXPLANATORY MEMORANDUM.

General.

1. The Bill proposes to repeal entirely the existing Rents Acts, the principal of which are the Acts of 1923 and 1926. The provisions of these Acts are being re-enacted with certain amendments, some of a substantive nature and others designed to improve the drafting or to remove anomalies. In addition, entirely new provisions are included for the purpose of enabling poorer classes of tenants to secure their legal rights in a cheap, simple and expeditious way. The Bill incorporates the provisions of Emergency Powers (No. 313) Order, 1944, (S. R. & O., 1944, No. 29) as amended by Emergency Powers (No. 313) Order, 1944 (Amendment) Order, 1945 (S. R. & O., 1945, No. 188). These Orders will be revoked as soon as the Bill becomes law, but the control imposed by the Orders will be continued under the new Act. The Bill is expressed to be temporary: it will expire on the 31st December, 1950, unless previously renewed.

2. The main features of the Bill are:—

- (a) the extension of the Poor Law Valuation limits from £30 in Dublin and £25 elsewhere, to £60 and £40 respectively, so as to bring within the scope of the Bill premises at present controlled under the Emergency Powers Orders (section 3);
- (b) the provisions governing the determination of the "lawful rent" (Chapters 1 and 2 of Part II);
- (c) the special provisions for the relief of tenants of "small premises" (Part III);
- (d) the abolition of the tenant's right in certain cases to recover overpayments of rent made prior to the institution of proceedings for the determination of the basic rent (section 23 (b));
- (e) the limitation on the recovery of overpayments of rent (section 25);
- (f) the repeal with retrospective effect of the proviso to section 2 (1) (b) of the 1923 (section 5 (2));
- (g) the absence of any provisions on the lines of sections 9 and 10 of the 1923 Act restricting the calling in of mortgages or rates of mortgage interest;
- (h) the absence of any provision, such as is contained in section 5 of the 1926 Act, for the decontrol of premises on the landlord obtaining vacant possession.

Restriction of Rents.

3. The Bill as a whole applies to every premises the Poor Law Valuation of which does not exceed, in the county borough of Dublin and the borough of Dún Laoghaire, £60 and, elsewhere, £40 (section 3). Certain exceptions are specified in paragraphs (b) to (h) of subsection (2) of section 3.

4. The scheme of Part II, which deals with the restriction of rents, is to provide for two distinct classifications of controlled premises. Those premises to which Chapter 1 of Part II applies are the premises at present controlled under the Act of 1923 as amended by the Act of 1926. Chapter 2 of Part II applies to all other controlled premises, i.e., premises at present controlled under Emergency Powers (No. 313) Order, 1944, as amended by

Emergency Powers (No. 313) Order, 1944 (Amendment) Order, 1945. Apart from Chapters 1 and 2 of Part II, the provisions of the Bill apply equally to both categories of premises.

5. The main object aimed at in Chapter 1 of Part II is to remedy the unsatisfactory position which has existed under the Act of 1923 by reason of the necessity for the production of evidence as to the rents being paid in 1914 or even before that. In securing this object it is desirable to ensure, as far as possible, that there will be no disturbance of those cases in which standard rents have been fixed by the Courts or in which the parties, without recourse to the Courts, have been able to settle lawful rents between themselves on the basis of known facts relating to 1914 lettings. Accordingly, in Chapter 1 of Part II controlled (1923 Act) premises are divided into two classes, viz. :—

- (i) premises in respect of which there is evidence that the standard rent has been determined by the Court before the enactment of the new Act and also evidence of the amount of the standard rent (section 8 cases), and
- (ii) all other controlled (1923 Act) premises (section 9 cases).

In category (i) cases the "basic rent" is a composite amount made up of the standard rent (which is known) plus the statutory increase of 20 or 25 per cent. thereof, allowed under the 1923 Act according as the premises are a dwelling or business premises.

6. In category (ii) cases the "basic rent" must be determined by the Court and the Court may look for its criterion in making the determination to the basic rents of comparable premises (section 9). At the outset the basic rents of comparable premises will have to be found among category (1) cases but, in the course of time, basic rents will become available for comparison purposes from among category (ii) cases also. The main point is that in neither class of case will it be necessary to produce evidence as to the 1914 or pre-1914 rent.

7. Since "lawful additions" are permitted in respect of rates and repairs (see paragraph 8) the "basic rent" must be a net figure; hence the provision in section 9 (3) (b) under which the tenant is deemed, for the purposes of the determination of the "basic rent" by the Court, to be responsible for the rates and for all repairs.

8. The lawful additions that may be made to the "basic rent" in order to arrive at the "lawful rent" are specified in section 11. These cover—

- (i) rates (subsection (2) (a));
- (ii) an allowance in respect of improvements or structural alterations (subsection (2) (b));
- (iii) an allowance in respect of expenditure on repairs due to tenant's neglect, etc. (subsection (2) (c));
- (iv) normal repairs (subsection (2) (d)); and
- (v) in section 8 cases, increases in respect of specified kinds of expenditure incurred before the passing of the Act and provided for in the Act of 1923. (Subsection (2), (e) and (f).)

It may be well to explain the significance of the "critical date" in section 11. In section 8 cases the "basic rent" is simply the standard rent (as determined under the existing Acts prior to the "operative date", i.e., the date of the passing of the Act), plus 20 or 25 per cent. as the case may be. In such cases, therefore, the landlord must be allowed a "lawful addition" in respect of any such expenditure as is mentioned in paragraphs (b) or (c) of subsection (2) of section 11 which is incurred at any time after the operative date. On the other hand, in section 9 cases, the Court determines the "basic rent" with due regard to the condition of

the premises at the time of the application. Any expenditure of the kind mentioned at paragraphs (b) or (c) will be reflected in the condition of the premises and will, therefore, be taken into account by the Court. Consequently, the "critical date" in such a case is the date of the institution of the proceedings and the landlord will be entitled to a "lawful addition" only in respect of expenditure incurred after that date.

9. The "lawful addition" in respect of normal repairs of 1/12th or 1/24th part of the basic rent, according as the landlord is responsible for the whole or part only of the repairs, corresponds with the increase of 10 or 5 per cent. on the standard rent permitted under the existing Acts in respect of repairs.

10. Chapter 2 of Part II applies to premises at present controlled under the Emergency Powers Orders and the provisions in sections 14, 15 and 16 for the restriction of rents are identical with the provisions of Articles 4 and 5 of the 1944 Order as amended by Article 4 of the 1945 Order. Under Chapter 2 the "basic rent" is determined by reference to the levels of rent obtaining in May, 1941. If a premises were actually let on the 7th May, 1941, or within five years before that date, to an occupying tenant on a short-term tenancy, the net rent at which they were so let is the "basic rent" (section 14). If the premises were not so let, the "basic rent" must be determined by the Court (section 16). Section 15 enables the tenant to ask the Court to review the "basic rent" in any case in which the landlord seeks to increase the rent consequent on the full rates becoming payable on the expiry of the "rates remission" period. Section 17 provides for the lawful additions to the "basic rent" in Chapter 2 cases. These are substantially the same as in Chapter 1 except that no addition is allowed in respect of "normal" repairs. For this reason the Court, when determining the basic rent in Chapter 2 cases, must deem the landlord to be responsible for all repairs (section 16 (3) (b)).

Special Provisions for Relief of Tenants of Small Premises.

11. The provisions of Part III of the Bill are entirely new. Their purpose is to provide a quick, cheap and simple means of redress for poorer classes of tenants. These special provisions will operate in the first instance only in the four county boroughs (Dublin, Cork, Limerick and Waterford) and the borough of Dún Laoghaire. Provision is made, however, to enable the Minister for Justice to extend the application of Part III to any other area. Tenants of premises the Poor Law Valuation of which does not exceed £10 will be able to avail themselves of the provisions of Part III. (Section 27.)

12. The scheme of Part III is that the tenant may apply informally to the District Justice to fix a provisional rent. The tenant may make the application in person by attending before the District Court Clerk and furnishing the necessary particulars (section 28). The District Justice will deal with the application outside of Court (section 29). If the Justice makes a provisional Order, he causes copies to be served on the tenant and landlord. The rent fixed under the provisional Order becomes the rent payable as from the next gale day. (Section 30.) The landlord may, within a month, apply to the Court for an Order under section 31. The Court, if satisfied on certain specified points, must revoke the provisional Order. (Section 31 (1) (a).) If the Order is not revoked, the Court fixes the basic rent and makes such further Orders as may be necessary. (Section 31 (1) (b) and (c).)

13. In the event of an appeal by the landlord to the Circuit Court, the Circuit Judge may certify that it is proper that the tenant's costs of the appeal (including any costs awarded against him) should be defrayed out of public funds and the amount of such costs must be so defrayed. (Section 31 (3).) If the landlord does not apply to the Court within the specified period of one month, the rent fixed under the provisional Order becomes the basic rent. (Section 32.) The tenant is exempted from the payment of any court fees in any proceedings under Part III. (Section 33.)

Provision is made for the appointment of special Court Valuers to assist the District Justices in the administration of Part III. (Sections 35 and 36.)

Recovery of Excess Payments of Rent.

14. The Bill alters the present law as regards the recoverability of excess payments of rent. In cases coming within paragraph (b) of section 2 (1) of the 1923 Act, provision was made in the proviso to paragraph (b) for what became known as the "interim standard rent". This was regarded as the standard rent pending an application to the court under paragraph (b) to fix the standard rent. The effect of this was that, if the rent which the tenant had been paying exceeded the "interim standard rent" he was entitled, by virtue of the provisions of sections 12 and 15 of the Act, to recover from the landlord the amount of the excess so paid. Sections 9 and 16 of the Bill correspond, more or less, with section 2 (1) (b) of the 1923 Act, but no provision is made in either section for an "interim basic rent". As a corollary to this, section 23 (b) and section 24 of the Bill provide in effect that in section 9 and section 16 cases excess payments of rent will be recoverable by the tenant only in respect of any period beginning on or after the date on which the basic rent is determined by the court. The position as regards recoverability in section 8 and section 14 cases remains the same as it was in cases coming within the scope of section 2 (1) (a) of the 1923 Act, subject to the limitation provided for in section 25 of the Bill. In these latter cases excess payments of rent will be recoverable in respect of any period beginning on or after the operative date (section 23 (a)). So far as premises at present controlled under the Emergency Powers Orders are concerned, the Bill does not make any change, as under the Orders the position in regard to recoverability of excess payments of rent is as is now provided in the Bill. The Bill brings controlled (1923 Act) premises into line with that position.

15. Section 25 of the Bill imposes a limitation of six years on the recovery of overpayments. Under the existing law it has been decided that the tenant can recover up to twenty years' overpayments. The six years' limitation proposed corresponds with the limitation imposed by the Statute of Limitations on the recovery of ordinary civil debts.

Retrospective Repeal of Proviso to section 2 (1) (b) of 1923 Act.

16. The proviso to paragraph (b) of section 2 (1) of the 1923 Act (already referred to in paragraph 14 above) is repealed with retrospective effect. (Section 5 (2).) Efforts have been made and upheld in some of the courts to set up a rent much lower than the normal 1914 occupation rent (such as a ground rent fixed under an old and long lease) as the "interim standard rent" for the purposes of the proviso, thereby establishing a right to recover perhaps in respect of a long period of years, the difference between that low rent and the occupation rent actually paid by the tenant. This was clearly never the intention of the Legislature. The proviso to section 2 (1) (b) is, therefore, being repealed and, since rights under the 1923 Act will subsist and be capable of enforcement after and despite the repeal of that Act by the new Act, it is necessary to make the repeal of the proviso fully retrospective in effect. A saving is provided for any case that may have already been finally adjudicated upon.

Mortgages.

17. The Bill contains no provision on the lines of sections 9 and 10 of the 1923 Act restricting rates of mortgage interest and the calling in of mortgages. These provisions have ceased to be of any practical importance and it is not thought necessary to re-enact them in the Bill.

Decontrol on Vacancies.

18. Under section 5 of the Act of 1926 any controlled premises the Poor Law Valuation of which exceeds £20 become decontrolled if the landlord obtains vacant possession. The Bill makes no corresponding provision.

Roinn Dlí agus Cirt.

Deireadh Fómhair, 1945.