AN BILLE SRIANTA CIOSA (LEASU), 1966
RENT RESTRICTIONS (AMENDMENT) BILL, 1966

EXPLANATORY MEMORANDUM

Note: For convenience of reference the text of the provisions of the Rent Restrictions Act, 1960, incorporating the amendments proposed to be made in them by this Bill, is set out in the Appendix to this memorandum.

General

1. The main object of the Bill is to encourage the maintenance of the present stock of controlled houses in proper repair with full regard, however, to the need to avoid hardship to sitting tenants. The principal changes proposed in the existing rent controls, contained in the Rent Restrictions Act, 1960, are indicated in the next paragraph, which is followed by a brief outline of the background to this legislation and notes on the individual sections of the Bill.

Main changes proposed

2. It is proposed to relax the present controls in the following respects—

(1) An increase of 15% in present net rents (subject to a minimum of 2/6d. weekly) is being provided for landlords who are liable for repairs and who have, in fact, been doing them (*section 6 (2)*).

(2) The special lawful addition at present allowed for expenditure on exceptional repairs of a more or less capital nature is being replaced by a lawful addition of 10% on expenditure in 1966 or any subsequent year on maintenance in excess of one-fifth of the present net rent (*section 6 (2)*).

(3) Decontrol on the landlord getting vacant possession—now applicable only to houses exceeding £30 valuation (in Dublin) and £25 (elsewhere)—is being extended to all houses and to those self-contained flats which are still controlled (*section 2 (2)* and *(3)*).

(4) Houses exceeding £40 valuation (in Dublin) and £30 (elsewhere) (*section 2 (1)*), are being decontrolled but the tenants decontrolled under this provision will have automatic rights to a twenty-one year lease under Part III of the Landlord and Tenant Act, 1931. Special provision is made to ensure that no tenant so decontrolled can be required to pay a rent under the new lease which would cause him hardship (*section 12 (2)*).

Note: Future unfurnished lettings of *rooms* and *flats* (other than self-contained flats) in decontrolled houses will remain under control but the basis of determining the basic rent of these lettings will (*section 5*) be modified somewhat.

(5) A landlord of not more than six controlled houses, with a combined total valuation not exceeding £60 (£40 outside Dublin) is being enabled to apply to the District Court to have a reasonable rent fixed which takes into account all the circumstances of the case but, in particular, the necessity of avoiding

financial hardship to the tenant and the landlord (*section 4 (1)*). The landlord will be liable for the tenant's costs in the District Court.

The provisions allowing a tenant or the sanitary authority to secure a reduction of rent while premises are in bad repair owing to the default of the landlord are being extended to all controlled dwellings and the maximum reduction of rent which the Court may make is being raised from 20% to 33⅓% (*section 8*). There is also a provision designed to remove the present uncertainties about the incidence of liability for the repair of controlled dwellings let on weekly or monthly tenancies (*section 11*). The assignment, without the landlord's consent, of purely residential dwellings is being prohibited unless it is to a member of the tenant's family (*section 10*).

Background

3. Before the 1960 Act rent control, which involves not only severe restrictions on rents but, as a corollary, almost complete security of tenure for the tenants concerned, applied to virtually all privately-owned unfurnished dwellings built before 1941. Some business premises were also controlled. Most of the controlled property, i.e., that built before 1919, was controlled at rents which were 25% above actual 1914 rents; the houses built between 1919 and 1941 were controlled at the actual 1941 rents. Additions were permitted to those rents for rates (where the landlord paid them) and for any expenditure by the landlord on improvements, structural alterations or exceptional repairs.

4. The 1960 Act, which came into operation on 31st December, 1960, increased controlled rents by 12½% to compensate, to some extent, landlords who are liable for repairs for the increased cost of repairs (in 1950 repair costs were five times the 1914 level and double the 1941 level: between 1950 and 1960 they had increased by 40%). The Act confirmed the existing controls so far as sitting tenants were concerned but removed control from owner-occupied houses, from newly-constructed self-contained flats, from purely business premises and from houses with a rateable valuation exceeding £30 in Dublin (£25 elsewhere) on the landlord getting vacant possession. Post-1960 lettings of *rooms* or *flats* (other than newly-constructed self-contained flats) in the decontrolled houses remain, however, subject to control.

5. Since 1960 the cost of repairs has increased substantially, the necessity for expenditure on maintenance, particularly of the older property, has increased and the net income from controlled property has been further reduced since the passing of the Finance Act, 1963, by the increased incidence of income tax on the income from unfurnished lettings.

Section 1

6. This is the interpretation section and provides that the 1960 Act is to be construed together with the Bill.

Section 2

7. *Subsection (1)* of this section has the effect of decontrolling lettings of *houses* exceeding £40 (in Dublin) and £30 (elsewhere). Tenants decontrolled under this provision are given by *section 12* automatic rights to a new tenancy under the Landlord and Tenant Act, 1931, i.e. to a new lease for a term of at least 21 years at the 'gross rent' (as defined in that Act) less an allowance for improvements made by the tenant or his predecessors in title. Where payment of such a rent would cause hardship to the tenant the Court will, under that section, fix the rent at a level which it is satisfied that, having regard to all the circumstances of the case, the tenant should be required to pay and the duration of the new lease will be ten years, subject to a right to a further renewal at the end of that period on ordinary 1931 Act terms.

8. *Subsections* (*2*) and (*3*) extend decontrol, on the landlord getting vacant possession, to all controlled *houses* and to self-contained flats (the 1960 Act already provides for decontrol on vacant possession of houses with a valuation exceeding £30 (in Dublin) and £25 (elsewhere)). Future unfurnished lettings of *rooms* and *flats* (other than self-contained flats) will remain under control (section 3 (3) of the 1960 Act) notwithstanding that the houses become decontrolled.

Section 3

9. This section provides that the basic rent is now to be the actual rent being paid on the date of introduction of the Bill and not (as in the 1960 Act) normally the rent being paid on 31st December, 1960. Under section 7 (3) of the 1960 Act, which is being retained, the amount of the current rates, where the landlord pays them, is to be deducted in calculating the basic rent.

Section 4

10. *Subsection* (*1*) authorises the District Court to review the basic rent of a house which is automatically fixed under section 7 on an application by a landlord who has not more than six houses with a combined valuation not exceeding £60 (in case one at least of them is situate in the Dublin area) or £40 (in any other case). The landlord will be liable for the tenant's costs in the District Court. The rent, if adjusted by the Court, is to be of such amount as the Court considers reasonable having regard to all the circumstances of the case, but, in particular, to the necessity of avoiding financial hardship to the tenant and the landlord. It may not exceed the maximum rent which would be fixed on the renewal of a tenancy under the Landlord and Tenant Act, 1931. This provision applies only where the landlord owned the premises when the Bill was introduced.

11. *Subsection* (*2*) of *section 4* is a re-enactment, with amendments, of section 8 (2) (*b*) (i) of the 1960 Act. That provision was intended to secure that, where a tenant applied for a reduction of the basic rent on the ground that it was unduly high the Court would take into account any amount expended on the improvement, structural alteration or repair of the dwelling by reference to which the landlord had obtained a lawful addition under the Rent Restrictions Act, 1946, and which was therefore properly included in the 1960 Act basic rent. The amendment to this provision is consequential on the shifting of the date by reference to which basic rents are to be determined from 1960 to 1966 and consists of the addition of a reference to lawful additions obtained under the 1960 Act before the enactment of this Bill.

12. *Subsection* (*3*) amends section 8 (3) (*a*) of the 1960 Act. That provision enabled a tenant who was able to establish the exact amount of the 1946 Act lawful rent by reference to a court determination or an arbitration award made before the 1960 Act to have the basic rent fixed under section 7 reduced to that amount: in any other case a tenant, to secure a reduction in a basic rent which he considered to be unduly high, had to show that it was more than 12½% above a reasonable figure. This amendment is also consequential on the shifting of the date by reference to which the basic rent is to be determined. Under it a tenant who can show, by reference to a determination by the Court under the 1960 Act, what the exact lawful rent should have been on the date of introduction of the Bill can have the basic rent fixed under section 7 reduced to that figure, notwithstanding that the excess is within the 12½% margin applicable in other cases.

Section 5

13. This section replaces subsection (2) of section 9 of the 1960 Act, which dealt with the determination of the basic rent of premises which were not let on 31st December, 1960, or within the

previous three years and for which therefore no basic rent was automatically fixed under section 7. Under section 9 the Court, in determining a basic rent, had to have regard to the rents of comparable *controlled* dwellings. This section provides that the Court may now have regard to the rents not only of comparable controlled dwellings but also to those of comparable uncontrolled dwellings. These provisions will now apply in practice only to future lettings of rooms and flats (other than self-contained flats) as future lettings of houses and self-contained flats are being decontrolled (see *subsections* (*2*) and (*3*) of *section 2*). The replacement of subsection (2) of section 9 of the 1960 Act by the provisions of this section necessitates the repeal of the following other provisions of the 1960 Act: section 8 (1) (*b*), section 8 (2) (*b*) (ii) and certain words (see the *Schedule* to the Bill) in section 21 (1) (*c*) (i) (I).

Section 6

14. *Subsection* (*1*) of this section provides that the references to the operative date in section 10 (1) of the 1960 Act are to be construed as references to the date of introduction of this Bill. It is consequential on the shifting to that date of the date by reference to which basic rents are now normally determined (31st December, 1960).

15. *Subsection* (*2*) adds two paragraphs to section 10 (2) of the 1960 Act, which sets out the lawful additions which may be made to the basic rents of controlled dwellings. The first paragraph—*paragraph* (*f*)—authorises a landlord who has spent certain specified sums on maintenance of a controlled dwelling during the period of six years preceding the introduction of the Bill to make a lawful addition of 15% to the basic rent, subject to a minimum of 2/6d. weekly. No increase is proposed for landlords who are not liable for repairs or who, if liable, did not do any repairs within the last six years or did repairs which did not cost more than the specified sums (one-third of the basic rent during the last three years or two-thirds of the basic rent during the last six years).

16. The second additional paragraph—*paragraph* (*g*)—provides for a lawful addition to the basic rent of 10% of any expenditure in 1966 or in any subsequent year in excess of one-fifth of the basic rent on maintenance of the property, whether the expenditure relates to repairs of what might be called a capital nature (such as the provision of a new roof) or ordinary running repairs or replacement of piping and other fixtures. There is no provision at present for the recoupment of substantial expenditure on ordinary maintenance. This paragraph will replace the existing provision (in paragraph (*e*) of section 10 (2) of the 1960 Act) enabling a landlord who incurs expenditure on putting property into a reasonable state of repair to receive a percentage of the expenditure by way of a lawful addition to the basic rent (15% on the first £100 of the expenditure in any pair of years in excess of two-thirds of the basic rent, 8% on the second £100 and 6% on the balance of the excess). The existing rights of tenants to have lawful additions for exceptional repairs disallowed or reduced on the ground that the expenditure was not incurred or was unnecessary or that the repairs were not carried out satisfactorily are being applied to this lawful addition by section 7 of the Bill, which provides further grounds on which the tenant may have the lawful addition disallowed or reduced. The replacement of paragraph (*e*) of section 10 (2) of the 1960 Act by this provision necessitates consequential amendments in section 10 (5) of that Act: these are effected by *subsection* (*3*) of this section, which re-enacts section 10 (5) with the necessary amendments. Section 10 (5) provided that a lawful addition as a result of putting into reasonable repair a house which consisted of two or more dwellings could be apportioned among the dwellings in proportion to their rateable valuation.

17. *Subsection* (*4*) of *section 6* is designed to ensure that a landlord who has already obtained a special lawful addition for excep-

tional repairs under the existing law shall not be entitled to a further lawful addition on the same expenditure under the provision being made by the new *paragraph* (*g*) proposed to be inserted in section 10 (2) of the 1960 Act by *subsection* (*2*) of this section. *Subsection* (*5*) is a purely consequential amendment of section 21 of the 1960 Act, which deals with the making by a district justice of provisional orders determining basic rents under the special provisions for the relief of tenants of small controlled dwellings in Part III of that Act.

Section 7

18. This section re-enacts, with amendments, subsection (6) of section 13 of the 1960 Act. Subsection (6) enabled the Court, on the application of the tenant, to disallow or reduce any increase which a landlord claimed by reference to expenditure by him on improvements, structural alterations or exceptional repairs if it were satisfied either that the expenditure was not incurred or was unnecessary in whole or in part or that the work in question had not been carried out satisfactorily. These provisions are being re-enacted in *subjaragraphs* (*i*) and (*ii*) of *paragraph* (*a*) of the new subsection. *Subparagraph* (*iii*) provides that, in a case in which the tenant claims that the expenditure was unnecessary in whole or in part, he may show that he has been prejudiced in establishing this by his not having been made aware in sufficient time of the nature of the works proposed. This paragraph replaces section 10 (3) of the 1960 Act which requires the landlord to give 14 days' notice to the tenant of any improvements, structural alterations or exceptional repairs which he proposes to do. *Subparagraph* (*iv*), which is new, enables the tenant to have an increase disallowed or reduced if, at the time of the application, the dwelling is not in good and tenantable repair. *Subparagraph* (*v*) gives a similar power to a tenant where he can show that expenditure by the landlord was rendered necessary by breach of an obligation imposed on the landlord by contract or statute and that the landlord has not, during the three years immediately preceding the year of the expenditure, spent a reasonable sum on the maintenance of the dwelling. In order to give landlords an opportunity to put controlled property in good repair, it is proposed that this provision will not apply except to expenditure incurred on repairs done in 1970 or subsequently. *Paragraph* (*b*) authorises the Court to reduce the increase by an amount not exceeding 25% of the basic rent where it is satisfied that the landlord did not apply for a repair or reconstruction grant towards the expenditure but that it is reasonable to assume that an application therefor would have been granted.

Section 8

19. This section amends section 15 of the 1960 Act, which enables the Court, on the application of the tenant or the sanitary authority, to reduce the rent of certain controlled dwellings when they are in bad repair owing to the default of the landlord. At present the Court can only do this when the controlled dwellings are those to which Chapter I of Part II of the 1946 applies, that is, dwellings which have been under control since 1915; and the maximum reduction of rent which may be made is 20%. This section authorises the Court to make a reduction of up to 33⅓% in the rent in such a case and the *Schedule*, by deleting certain words from subsection (1) of section 15, extends the powers of the Court in this regard to all controlled dwellings.

Section 9

20. This section amends section 29 (1) (*j*) of the 1960 Act. Under that provision the Court, if it considers it reasonable to do so, may make an order for the recovery of possession of a controlled dwelling where possession is required in the interests of good estate management or for the erection of further dwellings

or for the erection or extension of business premises and where the landlord is prepared to pay compensation to the tenant. As paragraph (*j*) stands, the sum to be paid as compensation is to be 'such sum as the Court considers proper, being not less than three years' rent (including rates, whether or not payable by the tenant)'. The amendment proposed by this section is designed to make it clear that the compensation is for the purpose of enabling the tenant, without incurring hardship, to secure appropriate alternative accommodation and that that purpose will be borne in mind by the Court when considering what is the proper sum to award.

Section 10

21. This section prohibits, except with the landlord's written consent, the assignment of a controlled dwelling which is used for purely residential purposes unless the assignment is to a member of the tenant's family *bona fide* residing with him at the time of the assignment or unless the contract of tenancy is in writing and contains a provision authorising assignment without the consent of the landlord. *Subsection* (*3*) of the section provides that assignments in contravention of this prohibition are void. *Subsections* (*4*), (*5*) and (*6*) are consequential provisions. Section 31 (5) of the 1960 Act, mentioned in *subsection* (*4*), defined members of the family for the purposes of succession to a controlled tenancy. Section 56 of the Landlord and Tenant Act, 1931, and section 32 (4) (*b*) of the 1960 Act, mentioned in *subsections* (*5*) and (*6*), provide, respectively, for relief against covenants in leases prohibiting or restricting alienation and for restrictions on the assignment of a statutory tenancy.

Section 11

22. This section, by implying certain repairing covenants by the landlord of weekly or monthly tenancies of controlled dwellings, is designed to remove uncertainties as to the incidence of liability for the repair of controlled dwellings. It will operate only where the landlord has already acknowledged his liability for repairs by his having received the 12½% increase allowed under the 1960 Act to landlords who are liable for repairs (*subsection* (*1*)). The implied covenants are to keep in repair the structure (including flooring and, in the case of a room or flat, the ceiling) and the exterior of the dwelling and also to maintain in working order the installations for the supply of water, gas and electricity and for sanitation (*subsection* (*2*)). The section will not override any specific repairing obligations of the tenant which have been expressed in writing (*subsection* (*3*)) or impose certain other specified liabilities on the landlord (e.g., to keep in repair or maintain anything which the tenant is entitled to remove from the building)—*subsection* (*4*). *Subsection* (*5*) provides that, in determining the standard of repair required by the landlord's repairing covenant, regard shall be had to the age, condition, character, situation and prospective life of the dwelling. *Subsection* (*6*) implies a covenant by the tenant to allow the landlord or his agent to enter the dwelling for the purpose of viewing its condition and state of repair, and to afford him reasonable facilities for executing any repairs which the landlord is entitled to execute. *Subsection* (*7*) provides that any written covenants by the landlord or tenant to carry out repairs other than those mentioned in *subsection* (*2*) will not be affected. *Subsections* (*8*) and (*9*) are consequential provisions. Paragraphs (*a*) and (*c*) of section 32 (4) of the 1960 Act, referred to in *subsection* (*9*) of this section, imply covenants in statutory tenancies regarding, respectively, the landlord's right of access and his responsibility for certain repairs.

Section 12

23. This section confers on tenants who become decontrolled under *section 3* (*1*) of the Bill—that is, tenants of houses the valuations of which exceed £40 (in Dublin) and £30 (elsewhere)—

automatic rights to a new tenancy under the Landlord and Tenant Act, 1931. The period allowed by section 24 (2) (*a*) of the 1931 Act to claim a new tenancy is being extended in the case of a tenancy which is terminable by notice to quit from one month after service of the notice to six months. The landlord of a decontrolled house which is being held under a statutory tenancy is being obliged to give at least three months' notice of termination of the tenancy and this notice is deemed to be a notice to quit (under section 32 (2) of the 1960 Act a landlord is not required to give any notice to quit to a statutory tenant). If the landlord satisfies the Court that he requires vacant possession for redevelopment purposes it is being provided (*subsection (2) (vi)*) that the compensation for disturbance to be paid to the tenant will be the sum he would obtain as compensation under either the 1931 Act or the 1960 Act, whichever is the greater.

24. Decontrolled tenants will therefore be entitled to a new lease for at least 21 years at the 'gross rent' (as defined in the 1931 Act) less an allowance for improvements made by the tenant or his predecessors in title, provided that the improvements, at the time of the application to the Court, add to the letting value and are suitable to the character of the premises (*subsection (2) (vii) (II)*). Special provision is made for any case where a decontrolled tenant may not be able to afford the new rent (*subsection (2) (vii) (I)*). Where the Court is satisfied that payment of rent on the 1931 basis would cause hardship to the tenant, it will fix the rent at a sum (not below the existing rent) which it is satisfied that, having regard to all the circumstances of the case, the tenant should be required to pay. In such 'hardship' cases the duration of the tenancy will not exceed 10 years, after which the tenant will be entitled to a further renewal on normal 1931 Act terms.

25. *Section 13* is the repeals section and *section 14* contains the short title and collective citation.

26. The *Schedule* sets out the portions of the 1960 Act which are being repealed. The repeals (except that to section 15 (1)) are all consequential on the provisions of the Bill. Subsections (1) and (2) of section 7, which indicate, respectively, the dwellings to which that section applies and the basic rents thereof, are being replaced by new provisions (*section 3* of the Bill). The repeal of certain words in section 8 (1) (*a*) and section 8 (2) (*a*) is consequential on the repeal of section 7 (2). The repeal of section 8 (1) (*b*), 8 (2) (*b*) and of certain words in section 21 (1) (*c*) (i) (I) is consequential on the repeal of subsection (2) of section 9 and the substitution for it of the provisions mentioned in *section 5* of the Bill. The deletion of certain words in section 8 (3) (*b*) (i) and (ii) is consequential on the amendment made by *section 4 (3)* of the Bill. The repealed portions of section 10 are subsection (2) (*b*), which allowed a 12½% increase on the 1960 Act basic rent to landlords who are liable for repairs; subsection (2) (*e*), which allowed a lawful addition for expenditure by landlords in putting premises into a reasonable state of repair; subsection (3), which required landlords to give fourteen days' advance notice of proposed expenditure on improvements, etc. which might result in a lawful addition (this is being replaced by the provision in *section 7* of the Bill that the tenant may secure a disallowance of or reduction in a lawful addition by establishing that he has been prejudiced in establishing that the expenditure was unnecessary by his not having been made aware in sufficient time of the nature of the works proposed); subsection (5), which is being replaced by the new subsection (4A) to be inserted by *section 6 (3)* of the Bill; subsection (6), which provided that the 12½% increase on the 1960 Act basic rent should not apply in certain circumstances; and subsection (7), which applied to cases where portion of the 1960 Act basic rent was attributable to additions under the 1946

Act in respect of expenditure on exceptional repairs during the period of two years ending on 31st December, 1960. Section 13 (6) is being replaced by a new subsection (see *section 7* of the Bill). The deletion of the words ' to which Chapter I of Part II of the Act of 1946 applied ' in subsection (1) of section 15 has the effect of extending the remedies available to a tenant or the sanitary authority against a landlord who fails to keep controlled dwellings in repair to *all* controlled dwellings and not only to those to which Chapter I applied; these were premises which have remained under control since 1915. The remaining repeal (of the words ' paragraph (*b*) of subsection (2) of section 10 and ' in section 39 of the 1960 Act and of the Second Schedule) is consequential on the repeal earlier in the *Schedule* of section 10 (2) (*b*).

APPENDIX

Table showing effect of Amendments proposed to be made in the Rent Restrictions Act, 1960

SECTION 3 (Controlled dwelling)

Paragraphs (*a*), (*f*) and (*g*) of subsection (2) of this section and subsection (4) will, with the addition of the italicised words proposed to be inserted by *section 2* of the Bill, read as follows:—

" (2) This Act does not apply to—

(*a*) a dwelling the rateable valuation of which exceeds—

(i) in case the dwelling is situate in the county borough of Dublin or the borough of Dún Laoghaire, sixty pounds (*if the dwelling is not a house*) *or forty pounds* (*if the dwelling is a house*),

(ii) in any other case, forty pounds (*if the dwelling is not a house*) *or thirty pounds* (*if the dwelling is a house*),

. . . . . .

(*f*) a house of which the landlord is, at the commencement of this Act, in possession or thereafter comes into possession and, *save in a case in which there is a coming into possession by the landlord on or after the 8th day of June, 1966,* the rateable valuation whereof exceeds—

(i) in case the house is situate in the county borough of Dublin or the borough of Dún Laoghaire, thirty pounds,

(ii) in any other case, twenty-five pounds,

(*g*) a dwelling which is a separate and self-contained flat forming part of any buildings which, after the commencement of this Act, were reconstructed by way of conversion into two or more separate and self-contained flats, *or which is a separate and self-contained flat of which, the flat having been in existence at such commencement, the landlord is on the 8th day of June, 1966, in possession or thereafter comes into possession.*"

" (4) Where the rateable valuation of a dwelling is increased and thereby the valuation becomes a valuation which exceeds—

(*a*) in case the dwelling is situate in the county borough of Dublin or the borough of Dún Laoghaire, sixty pounds (*if the dwelling is not a house*) *or forty pounds* (*if the dwelling is a house*), or

(*b*) in any other case, forty pounds (*if the dwelling is not a house*) *or thirty pounds* (*if the dwelling is a house*),

this Act shall, notwithstanding paragraph (*a*) of subsection (2) of this section, continue to apply to the dwelling unless and until the landlord comes into possession thereof."

SECTION 7 (Basic rent of certain controlled dwellings)

Subsections (1) and (2) of this section are being repealed (see *Schedule*) and replaced (see *section 3*) by subsections (1A) and (1B). The section will therefore read:—

" 7—(1A) This section applies to a controlled dwelling in respect of which evidence is forthcoming of both of the following facts:

(*a*) that it was on the 8th day of June, 1966 (in this section referred to as the relevant date) held by an occupying tenant thereof under a contract of tenancy not being for more than a term of five years or under a statutory tenancy, and

(*b*) the rent at which it was so held.

(1B) The basic rent of a controlled dwelling to which this section applies shall be the net rent at which it was held on the relevant date.

(3) For the purposes of this section, the net rent at which a controlled dwelling was held on the relevant date shall be taken to be—

(*a*) in case the landlord at the relevant date habitually paid or allowed a deduction or set-off against, or indemnified the tenant in respect of, the rates or any part thereof, the rent payable at that date less the amount of the payment, allowance, deduction, set-off or indemnity (as the case may be);

(*b*) in any other case, the rent payable at that date."

SECTION 8 (Revision of basic rent of controlled dwellings to which section 7 applies)

The *Schedule* repeals the words " not being a dwelling referred to in paragraph (*a*) of subsection (2) of that section," in subsections (1) (*a*) and (2) (*a*), the whole of subsection (1) (*b*) and 2 (*b*), the definition of " dwellings to which this subsection applies " and the words " (within the meaning of the Act of 1946)" occurring twice in subsection (3) (*b*). *Section 4* of the Bill proposes to insert subsection (1A), subsection 2 (*aa*) and the italicised words in subsection (3) (*a*).

The section will therefore read :—

"8.—(1) (*a*) If, on an application to the Court under this subsection by the landlord of a controlled dwelling to which section 7 of this Act applies, the Court is satisfied—

(i) that the basic rent of the dwelling falls short of, by an amount exceeding one-eighth of the basic rent, the rent (in this subsection referred to as the notional rent) which, if the premises were premises to which section 9 of this Act applies, would be determined by the Court as the basic rent thereof, and

(ii) that the amount of the basic rent was affected by special circumstances,

the basic rent of the dwelling shall be determined by the Court and shall be the amount which, in the opinion of the Court, represents the notional rent, and thenceforth the dwelling shall, without prejudice to the previous application thereto of paragraph (*a*) of section 16 of this Act, become a dwelling to which section 9 of this Act applies as if such determination had been made under that section.

(1A) (*a*) If, on an application to the Court under this subsection by the landlord of a controlled dwelling, the Court is satisfied that the dwelling is a dwelling to which this subsection applies and that the basic rent of the dwelling is less than the rent (in this subsection referred to as the notional rent) which, if the dwelling were a dwelling to which section 9 of this Act applies, would be determined by the Court as the basic rent thereof, the basic rent shall be determined by the Court and shall be the amount which, in the opinion of the Court, represents the notional rent and thenceforth the dwelling shall, without prejudice to the previous application thereto of paragraph (*a*) of section 16 of this Act, become a dwelling to which section 9 of this Act applies as if such determination had been made under that section,

(*b*) in determining pursuant to paragraph (*a*) of this sub-

section the notional rent of a dwelling, the following paragraph shall be regarded as being substituted for paragraph (*b*) of section 9 (1A) of this Act:

'(*b*) (i) The said rent shall be a rent of such amount as the Court considers reasonable having regard to all the circumstances of the case, but, in particular, to the necessity of avoiding financial hardship to the tenant and the landlord, and subject to the overriding restriction that it shall not exceed the difference between the gross rent and the allowance for improvements as hereinafter respectively defined.

(ii) The gross rent shall be the rent which in the opinion of the Court a willing tenant not already in occupation would give and a willing landlord would take for the dwelling, in each case on the basis of vacant possession being given, and in such circumstances that the supply of similar dwellings is sufficient to meet the demand and the competition therefor is normal and having regard to the other terms of the tenancy and to the letting values of dwellings of a similar character to and situate in the vicinity of the dwelling, but without regard to any goodwill which may exist in respect of the dwelling.

(iii) The allowance in respect of improvements shall be such proportion of the gross rent as is, in the opinion of the Court, attributable to improvements made by the tenant or his predecessors in title (whether before or after the commencement of this Act or of the Rent Restrictions (Amendment) Act, 1966) which, at the time of the application under this subsection, add to the letting value and are suitable to the character of the dwelling.

(iv) In the foregoing sub-paragraph—

" improvements " means any additions or alterations to the buildings comprised in the dwelling and includes any structures erected on the site of the dwelling or land together with which the dwelling is let which are ancillary or subsidary to the said buildings and also includes the installation in the dwelling of conduits for the supply of water, gas or electricity, but does not include work consisting only of repairing, painting and decorating, or any of them,

" predecessors in title " means and includes all previous tenants of the dwelling under the same tenancy as the tenant or any tenancy of which such tenancy is or is deemed to be a continuation or renewal.'

(*c*) In this subsection ' dwelling to which this subsection applies ' means a controlled dwelling—

(i) which is a house,

(ii) to which section 7 of this Act applies, and

(iii) in the case of which the landlord at the time of the application under this subsection was the landlord on the 8th day of June, 1966, and has been the landlord continuously from that day,

except that where, on the 8th day of June, 1966, two or more controlled dwellings which are houses and to which section 7 of this Act applies had the same landlord and either they are seven or more in number or the total of their rateable valuations exceeds (in case one at least of them is situate in the county borough of Dublin or the borough of Dún Laoghaire) sixty pounds or (in any other case) forty pounds, none of them shall be a controlled dwelling to which this subsection applies.

(*d*) The Court may, if it so thinks proper, deal privately with the whole or any part of an application under this subsection.

(*e*) Every application under this subsection shall, notwithstanding section 50 of this Act, be made to the District Court, and the landlord shall be liable for the tenant's costs in that Court.

(2) (*a*) If, on an application to the Court under this subsection by the tenant of a controlled dwelling to which section 7 of this Act applies, the Court is satisfied that the basic rent of the dwelling exceeds, by an amount exceeding one-eighth of the basic rent, the rent (in this subsection referred to as the notional rent) which, if the dwelling were a dwelling to which section 9 of this Act applies, would be determined by the Court as the basic rent thereof, the basic rent of the dwelling shall be determined by the Court and shall be the amount which, in the opinion of the Court, represents the notional rent, and thenceforth the dwelling shall, without prejudice to the previous application thereto of paragraph (*a*) of section 16 of this Act, become a dwelling to which section 9 of this Act applies as if such determination had been made under that section.

(*aa*) In determining pursuant to paragraph (*a*) of this subsection the notional rent of a dwelling, the Court shall have regard to any amount expended on the improvement, structural alteration or repair of the dwelling which is an amount by reference to which a lawful addition within the meaning of the Act of 1946 has been obtained or by reference to which a lawful addition within the meaning of this Act has been obtained before the passing of the Rent Restrictions (Amendment) Act, 1966.

(3) (*a*) If, on an application to the Court under this subsection by the tenant of a controlled dwelling, the Court is satisfied that the dwelling is a dwelling to which this subsection applies (*that is to say, a controlled dwelling to which section 7 of this Act applies with respect to which there was a determination under section 9 of this Act before the relevant date and which was held by the tenant on the relevant date at a rent in excess of the lawful rent at that date*) and that the basic rent of the dwelling exceeds the notional rent, the basic rent of the dwelling shall be determined by the Court and shall be the amount which, in the opinion of the Court, represents the notional rent, and thenceforth the dwelling shall, without prejudice to the previous application thereto of paragraph (*a*) of section 16 of this Act, become a dwelling to which section 9 of this Act applies as if such determination had been made under that section.

(*b*) In this subsection—

" the notional rent " means, in relation to a dwelling,—

(i) in case, at the relevant date, the landlord habitually paid or allowed a deduction or set-off against, or indemnified the tenant in respect of, the rates or any part thereof, the lawful rent at that date less the amount of the payment, allowance, deduction, set-off or indemnity (as the case may be),

(ii) in any other case, the lawful rent at the relevant date,

" the relevant date " has the same meaning as that expression has in section 7 of this Act ".

SECTION 9 (Basic rent of controlled dwellings to which section 7 does not apply)

Subsection (2) is being repealed (see *Schedule*) and replaced by the provisions referred to in *section 5* of the Bill. The section will therefore read :—

" 9—(1) This section applies to every controlled dwelling other than controlled dwellings to which section 7 of this Act applies.

(1A) (*a*) The basic rent of a controlled dwelling to which this section applies shall be determined by the Court.

(*b*) The said rent shall be a rent of such amount as the Court considers reasonable having regard as far as possible to the rents of dwellings which are comparable in regard to location, accommodation, amenities, state of repair and rateable valuation.

(*c*) In the foregoing paragraph ' rents ', in relation to controlled dwellings, refers to basic rents.

(3) For the purpose of the determination by the Court of the basic rent under this section, the tenant shall be deemed to be responsible for the rates."

SECTION 10 (Lawful additions to basic rent)

Subsections (2) (*b*) and (*e*), (3), (5), (6) and (7) are being repealed (see *Schedule*). Section 6 of the Bill construes the references to ' operative date ' in subsection (1) as references to 8th June, 1966, adds paragraphs (*f*) and (*g*) to subsection (2), and inserts subsection (4A) after subsection (4).

The section will now read :—

10—(1) In this section " the critical date " means—

(*a*) In the case of a controlled dwelling to which section 7 of this Act applies, the 8th day of June, 1966,

(*b*) in the case of a controlled dwelling to which section 9 of this Act applies :—

(i) in case it has become such a dwelling by virtue of section 8 of this Act, the 8th day of June, 1966, and

(ii) in any other case, the date of the institution of the proceedings in which the basic rent of the dwelling is determined.

(2) For the purposes of this Act and subject to the subsequent provisions of this section, the sum mentioned in any paragraph of this subsection shall, in the case set out in that paragraph, be a lawful addition to the basic rent of a controlled dwelling:

(*a*) in case the landlord of the dwelling pays or allows a deduction or set-off against, or indemnifies the tenant in respect of, the rates or any part thereof, a sum equal to the amount for the time being of the payment, deduction, set-off or indemnity (as the case may be);

(*c*) in case the landlord, on or after the critical date, expends any amount (excluding any amount expended on decoration or repairs) on the improvement or structural alteration of the dwelling, a sum equal to eight per cent. per annum of that amount;

(*d*) in case the landlord, on or after the critical date, expends any amount on repairs to the dwelling which are wholly or mainly rendered necessary because of acts of waste by, or the neglect or default of, the tenant or

any person residing with him or any of his lodgers or subtenants, a sum equal to eight per cent. per annum of that amount;

(*f*) in case the landlord—

(i) during the period of three years ending on the 8th day of June, 1966, expended a sum exceeding one-third of the basic rent, or

(ii) during the period of six years ending on that date, expended a sum exceeding two-thirds of that rent,

on maintenance of the dwelling (including painting and the keeping in repair and proper working order of the installations for the supply of water, gas and electricity and for sanitation), a sum (subject to a minimum of two shillings and sixpence per week or its equivalent) equal to fifteen per cent. of the basic rent;

(*g*) in case the landlord, during the year 1966 or any subsequent year, expends an amount exceeding one-fifth of the basic rent on putting the dwelling into a reasonable state of repair or on its maintenance (including painting and the keeping in repair and proper working order of the installations for the supply of water, gas and electricity and for sanitation), a sum equal to ten per cent. of the excess.

(4) Where—

(*a*) a house consists of two or more controlled dwellings and the landlord of the dwellings expends—

(i) an amount (excluding any amount expended on decoration or repairs) on the improvement or structural alteration of the house, or

(ii) an amount on repairs to the house which are wholly or mainly rendered necessary because of acts of waste by, or the neglect or default of, any of the tenants or any person residing with any of the tenants or any of the lodgers or subtenants of any of the tenants, and

(*b*) all the controlled dwellings benefit directly or indirectly from the improvement, alteration or repairs,

the amount shall, for the purposes of subsection (2) of this section, be taken as apportioned among the dwellings in proportion to their respective rateable valuations.

(4A) Where—

(*a*) a house consists of two or more controlled dwellings and the landlord of the dwellings expends an amount in excess of one-fifth of the aggregate of the basic rents of the dwellings on putting the house into a reasonable state of repair or on its maintenance (including painting and the keeping in repair and proper working order of the installations for the supply of water, gas and electricity and for sanitation), and

(*b*) all the controlled dwellings benefit directly or indirectly from the repairs or maintenance,

the following provisions shall have effect for the purposes of subsection (2) of this section :

(i) a calculation shall be made in accordance with the provisions of paragraph (*g*) of that subsection of the sum which would be the lawful addition if the house were a dwelling having a basic rent equal to the aggregate of the basic rents of the dwellings,

(ii) that sum shall be apportioned among the dwellings in proportion to their respective rateable valuations,

(iii) the said paragraph (*g*) shall be taken as having provided, as respects each dwelling, for the sum apportioned to it on the apportionment (and no other sum) being a lawful addition to its basic rent.

(8) For the purposes of subsection (2) of this section, the amount of any grant under the Housing (Financial and Miscellaneous Provisions) Acts, 1932 to 1958, as amended or extended by any subsequent enactment, shall not be reckoned as part of any amount expended on any improvement, structural alteration or repairs to which that subsection applies.

(9) In the application of this Chapter to a small dwelling, within the meaning of the Local Government (Rates on Small Dwellings) Act, 1928, the following provisions shall have effect:

(*a*) the word "rates" in paragraph (*a*) of subsection (2) of this section shall not include a rate made by virtue of the last mentioned Act on the owner of the small dwelling, and

(*b*) the amount by which the rent of the small dwelling is increased by virtue of section 6 of the last-mentioned Act shall be taken into account as a lawful addition in calculating the lawful rent of the small dwelling."

SECTION 13 (Determination of rent to be paid by tenants)

Subsection (6) of this section is being repealed (see *Schedule*) and replaced (*section 7* of the Bill) by subsection (5A) which will read:

"(5A) At any time after the expiry of a notice under paragraph (*b*) of subsection (1) or under subsection (2) of this section increasing the rent of any controlled dwelling by an amount consisting of or including any sum in respect of the matters mentioned in paragraph (*c*), (*d*) or (*g*) of subsection (2) of section 10 of this Act—

(*a*) the Court may, on the application of the tenant, if satisfied either—

(i) that the expenditure (in so far as it is applicable to any of the said matters) in respect of which the notice was served was not incurred or was unnecessary in whole or in part,

(ii) that the improvements, structural alterations, repairs or maintenance have not been carried out satisfactorily,

(iii) that, in a case in which the tenant claims that the expenditure (in so far as it is applicable to any of the said matters) in respect of which the notice was served was unnecessary in whole or in part, the tenant has been prejudiced in establishing this by his not having been made aware in sufficient time of the nature of the works proposed,

(iv) that, at the time of the application, the dwelling is not in good and tenantable repair, or

(v) that, in a case in which the acquisition by the landlord of the dwelling was before the 1st day of January, 1970, the amount consists of or includes any sum expended in the year 1970 or any subsequent year in respect of repairs rendered necessary by breach of an obligation imposed on the landlord by contract or statute and the landlord has not, during the three years immediately preceding the year of such expenditure, expended a reasonable sum on the maintenance of the dwelling,

disallow or reduce the increase accordingly, as from such date (whether before the date of the application or otherwise) as the Court thinks fit, and

(*b*) the Court may, on the application of the tenant, if satisfied that the landlord did not apply for a grant under the Housing (Financial and Miscellaneous Provisions) Acts, 1932 to 1962, in respect of the improvements, structural alterations or repairs but that it is reasonable to assume that an application therefor would have been granted, reduce the increase by an amount not exceeding twenty-five per cent of the basic rent, as from such date (whether before the date of the application or otherwise) as the Court thinks fit."

SECTION 15 (Reduction of rent owing to default of landlord in keeping controlled dwelling in repair)

Subsection (1) is being amended by the deletion (see *Schedule*) of the words " to which Chapter I of Part II of the Act of 1946 applied " after " controlled dwelling ". In subsection (2), " twenty per cent " has been replaced by " thirty-three and one-third per cent." and, in subsection (4) (*b*), " eighty per cent." by " sixty-six and two-thirds per cent." (*section 8*).

The section will now read :—

" 15.—(1) The tenant or the sanitary authority may at any time apply to the Court on notice to the landlord for an order reducing the rent of any controlled dwelling on the ground that the dwelling is not in all respects in good and tenantable repair.

(2) Where any application is made under this section, the Court, on being satisfied that the dwelling is not in all respects in good and tenantable repair and on being further satisfied that the condition of the dwelling is wholly or mainly due to the failure of the landlord to carry out such repairs as he is by virtue of any covenant, agreement, or otherwise by operation of law (including this Act) bound to carry out, may order that the rent to be paid for the dwelling be reduced by such amount, not exceeding thirty-three and one-third per cent, of the lawful rent, as the Courts thinks proper.

(3) For the purposes of this section, a certificate of the sanitary authority that the controlled dwelling to which the application relates is not in all respects in good and tenantable repair shall be *prima facie* evidence of the facts so certified.

(4) Where an order is made under subsection (2) of this section, the following provisions shall have effect:

(*a*) the order shall remain in force unless and until the Court, on the application of the landlord, being satisfied that all repairs, the neglect to carry out which was the ground for the making of the order, have been carried out, makes an order terminating the reduction;

(*b*) if, on any such application by the landlord, the Court refuses to make an order terminating the reduction and is satisfied that such repairs have wholly or mainly been rendered necessary by the persistent neglect or default of the landlord, the Court may, notwithstanding anything contained in this Act, order that the said reduced rent, or such other amount, not being less than sixty-six and two-thirds per cent. of the lawful rent, as the Court shall determine, shall be and continue to be the rent to be paid for the dwelling for such time as the Court thinks proper.

(5) On any application to a sanitary authority for a certificate for the purposes of this section, a fee of five shillings shall be payable, but, where that fee has been paid by the tenant, the Court may order that he shall be entitled to deduct it from any subsequent payment of rent.

(6) In this section the expression " sanitary authority " means the sanitary authority under the Local Government (Sanitary Services) Acts, 1878 to 1952."

SECTION 21 (Making of provisional orders)

Subsection (1) (*c*) (i) (I) is being amended (see *Schedule*) by the deletion of the words " if '(being dwellings to which Chapter I of Part II of the Act of 1946 applied) ' were contained in subsection (2) of the said section 9 after ' controlled dwellings ' " after ' would '. It will now read :—

" (I) that the dwelling is a small controlled dwelling to which section 7 of this Act applies and the basic rent does not exceed, by an amount exceeding one-eighth of the basic rent, the rent which, if the dwelling were a dwelling to which section 9 of this Act applies, would be determined by the Court as the basic rent thereof, or "

Subsection (1) (*e*) has been amended by the addition of the italicised words (*section 6* (*5*)) and will now read :—

" (*e*) in case—

(i) the District Justice is not satisfied that he has jurisdiction to make a provisional order, or

(ii) the landlord has claimed an addition in respect of moneys alleged to have been expended on improvements, structural alterations or repairs *or on maintenance* and the District Justice is not satisfied that the landlord's claim should be allowed without formal evidence and without giving the tenant an opportunity to contest the claim,

the District Justice shall hear the application in open court and, for that purpose, shall cause the application to be listed for hearing, shall fix a date for the hearing and shall cause the landlord and tenant (who shall be entitled to appear and be represented at the hearing) to be notified accordingly;"

SECTION 29 (Restrictions on landlord's right to possession of controlled dwelling)

Subsection (1) (*j*) of this section is being amended (*section 9*) by the addition of the italicised words and will now read :—

" (*j*) possession of the dwelling is required in the interests of good estate management or for the erection of further dwellings or for the erection or extension of premises used for any business, trade or profession and the landlord is prepared to pay by way of compensation to the tenant such sum, *for the purpose of enabling the tenant, without incurring hardship, to secure appropriate alternative accommodation,* as the Court considers proper, being not less than three years' rent (including rates, whether or not payable by the tenant), or "

An Roinn Dlí agus Cirt,
Meitheamh, 1966

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