



AN BILLE UM THIARNAI TALUN AGUS TIONONTAI, 1977 **LANDLORD AND TENANT BILL, 1977**

Mar a tionscnaíodh

As initiated

EXPLANATORY MEMORANDUM

I—PURPOSE OF THE BILL

1. The Bill provides for the consolidation with amendments of all the Landlord and Tenant Acts enacted since the foundation of the State.

Those Acts are—

The Landlord and Tenant Act, 1931,

The Landlord and Tenant (Reversionary Leases) Act, 1958,

The Landlord and Tenant (Ground Rents) Act, 1967,

The Landlord and Tenant (Amendment) Act, 1971.

As regards amendments, the Bill gives effect, with some modifications, to recommendations that have been made by the Landlord and Tenant Commission. These recommendations are contained in Reports of the Commission entitled "Report on Occupational Tenancies under the Landlord and Tenant Act, 1931" (Pr. No. 9685) and "Report on Certain Questions arising under the Landlord and Tenant Acts, 1958 and 1967" (Pr. 59). In this Memorandum, these Reports are referred to as the "First Report" and the "Second Report", respectively.

2. The 1971 Act has already enacted into law, with some modifications, some recommendations of the Commission.

3. The Bill also provides for certain changes in the law that do not arise from recommendations of the Commission. Of these, the principal changes are as follows:

(1) Arbitration by county registrars, which was first introduced by the Ground Rents Act of 1967, is being extended to all the matters with which the Bill deals except where the Bill specifically provides otherwise (*section 12 (2) of the Bill and paragraphs 13 and 14 of this Memorandum*). This change affects, amongst other things, the Act of 1971 (*Part V of the Bill*) since under that Act the grant of sporting leases has not been an arbitrable matter.

(2) A provision designed to minimise the expense involved for a person who avails himself of the right to purchase the fee simple of his property is contained in *section 73*.

(3) A provision designed to prevent the creation of future ground rents on dwellinghouses is contained in *section 108*.

4. Explanatory side-notes to the text of the Bill indicate the provisions that are new to the statute law and the existing statutory provisions that are being amended or consolidated. A legend to those side-notes is to be found on page 5 of the Bill.

5. This Memorandum deals in the main with those provisions of the Bill that are new to the statute law.

II—PART I OF THE BILL

PRELIMINARY

6. This Part (*sections 1 to 11*) contains the preliminary provisions and deals with such matters as commencement, definitions, regulations and repeals.

7. *Section 3* is the interpretation section. The definition of "business" is expanded, for the purposes of *Part III* only, by *section 19 (3)*. The term "immediate lessor" is being re-defined so as to mean the owner of the next superior interest in premises that are held by any person, whether under a lease or other contract of tenancy, or otherwise. The terms "lessee" and "lessor" are being re-defined so as to relate not only to leases but also to tenancies that are not in writing provided the premises comprise "tenements" (defined in *section 5 (1)*).

8. *Section 4* provides that a State authority in its capacity as lessor or immediate lessor of any premises will not be bound by the provisions of the Bill. "State authority" is defined in *section 3 (1)*.

9. *Section 5* provides for the following amendments in the law in relation to the expression "tenement", as recommended in paragraph 84 of the First Report:

(1) Henceforth a tenement whether situate in an urban or non-urban area will simply consist of land covered wholly or partly by buildings or of a defined portion of a building (*section 5 (1) (a) (i)* of the Bill and First Report, paragraph 84 (1)).

(2) To come within the definition of "tenement" under the law as it stands, premises must be actually occupied by the person who is the tenant. This condition is not satisfied in cases where, for example, a tenancy is held by an individual who carries on business in the premises through a private limited company and also where a holding company is the tenant while a subsidiary trading company is in occupation of the premises. Another case where this condition is not satisfied is where the Commissioners of Public Works hold as tenants premises which are occupied by another Government service or Department. Consequently, the right to the renewal of a tenancy etc. under the 1931 Act does not apply. The Commission recommended (First Report, paragraph 84 (3), (4) and (5)) that this disability should be removed and the Bill provides accordingly in *section 5 (2), (3) and (4)*.

Section 5 (1) (b) in effect re-enacts the provisions contained in *section 54 (2) (i)* of the Rent Restrictions Act, 1960 and in *section 13 (3) (i)* of the Rent Restrictions (Amendment) Act, 1967. These Rent Act provisions were amendments to the 1931 Act definition of "tenement" and were consequential on the extension to the tenants of newly decontrolled premises of the protection of the landlord and tenant code. The Commission recommended that the definition of a "tenement" should be amended to include the changes that were made by those provisions (First Report, paragraph 84 (6)).

10. *Section 6* re-enacts the substance of *section 3* of the 1931 Act subject to the change that business tenants under housing authorities are being given the right to a new tenancy etc. which they did not have under the 1931 Act (First Report, paragraph 307).

11. *Section 7* re-enacts *section 6* of the 1931 Act. *Section 8* is the usual provision for the making of regulations while *section 9* provides for expenses incurred in the administration of the provisions of the Bill.

12. *Section 10* is the repeals provision. It provides for the repeal of the Landlord and Tenant Acts, 1931 to 1971. It also provides for the repeal of *section 54* of the Rent Restrictions Act, 1960,

section 79 of the Local Government (Planning and Development) Act, 1963 and section 13 of the Rent Restrictions (Amendment) Act, 1967.

III—PART II OF THE BILL

EXERCISE OF JURISDICTION

13. This Part (*sections 12 to 18*) deals with the extension of arbitration by county registrars to cover almost all the matters dealt with in the Bill. Provision is made for an appeal to the Circuit Court against an arbitrator's decision.

14. *Section 12* extends to the matters dealt with in the Bill the simplified arbitration procedure that was introduced by the 1967 Ground Rents Act except where the Bill specifically provides otherwise, as in *sections 23 (4)* and *45 (5)*. The 1967 Act provides for the settlement of any disputes or difficulties regarding the purchase of the fee simple or the apportionment of certain ground rents by an arbitration procedure to be operated by county registrars. *Subsection (2)* corresponds to *section 2 (3)* of the 1967 Act. The subsection gives arbitration jurisdiction to a county registrar within whose area all or any part of the premises concerned are situate. The 1967 Act provides (*section 2 (3)*) for arbitration by the county registrar in whose area all or the greater part of the land is situate—see Courts (Supplemental Provisions) Act, 1961, Third Schedule. *Subsection (4)*, which provides for situations where a county registrar is ill or otherwise is unable to act as arbitrator, is new.

15. *Section 18* prescribes the registers of arbitration decisions which a county registrar is to keep. The registers to be kept include those required by *section 21* of the 1967 Ground Rents Act. New registers also are to be kept—*paragraphs (b) to (f) of section 18 (1)*. The registers are to be made available for public inspection and provision is made with regard to inspection and the supply of copies of entries in the registers on payment of prescribed fees.

IV—PART III OF THE BILL

RIGHT TO NEW TENANCY

16. This Part (*sections 19 to 35*) corresponds to those provisions of the Landlord and Tenant Act, 1931, which deal with the grant of new occupational tenancies. The right to a new tenancy is being extended in certain cases.

17. Under Part III of the 1931 Act, the right to a new tenancy accrues only on the termination of the existing tenancy. The Bill provides (*sections 19 and 22*) that, as recommended by the Commission (First Report, paragraph 237), the right to a new tenancy may be established as soon as the necessary conditions are satisfied (which may be before the termination of the existing tenancy). Furthermore, the conditions to be satisfied under the provisions of the 1931 Act are being modified by *section 19* of the Bill as follows:

- (1) The right to a new tenancy is being given to all business tenants of three years' standing regardless of the nature of their existing tenancy, and regardless also of a temporary break in business use during the three years if the arbitrator considers it reasonable to disregard the break (*section 19 (1) (a)*, (2) of the Bill and First Report, paragraph 174 (1), (3)).

(2) *Subsection (3) extends the meaning of "business" in Part III of the Bill to include cultural, charitable, educational, social and sporting services (First Report, paragraph 90).*

(3) The right to a new tenancy is being given to tenants on the basis of continuous occupation for 20 years instead of 30 years as at present. Moreover, the present requirement that there should have been no purchase for valuable consideration during the period is being dropped (*section 19 (1) (b) of the Bill and First Report, paragraph 174 (4)*).

(4) The Bill does not re-enact *section 19 (1) (c) of the 1931 Act* which gives the right to a new tenancy where a tenant, with his predecessors in title, has been in continuous occupation for 15 years and the landlord's reversion in the premises does not exceed three years (*First Report, paragraph 174 (5)*).

18. *Section 20: Tenants of business premises decontrolled by the 1960 Rent Act were by section 54 of that Act given the right to a new tenancy under Part III of the 1931 Landlord and Tenant Act. The Bill provides for the repeal of section 54 of the 1960 Rent Act and this section together with sections 5 (1) (b), 22 and 26 (2) (c) provides for the same right to a new tenancy (First Report, paragraph 325).*

19. *Section 21: Tenants of dwellings decontrolled by the 1967 Rent Act were given by section 13 of that Act the right to a new tenancy on special terms under Part III of the 1931 Landlord and Tenant Act. The Bill provides for the repeal of section 13 of the 1967 Rent Act and by sections 5 (1) (b), 22, 26 (2) (c), 31, 102 (1) (b) (ii) and this section provides for the re-enactment of section 13 (First Report, paragraph 325).*

20. *Section 22 is the operative provision giving the right to a new tenancy under Part III of the Bill. As in the corresponding provision (section 20) of the 1931 Act the right given is a right to a new tenancy beginning on the termination of the existing tenancy.*

21. *Section 23 sets out the restrictions on the right to a new tenancy and corresponds to section 21 and section 22 (1) of the 1931 Act. Section 23 (1) of the Bill provides for the re-enactment of section 21 of the 1931 Act except in the following respect. Section 21 (1) (a) of the 1931 Act excludes a tenant from the right to a new tenancy where his existing tenancy is terminated by ejectment for non-payment of rent. Section 23 (1) (a) (i) of the Bill extends this exclusion to other cases of termination for non-payment of rent, however the ejectment proceedings are framed (First Report, paragraph 123 (1)). Section 23 (2) (a) of the Bill re-enacts the provisions of section 22 (1) of the 1931 Act with the following changes:*

(1) Where a landlord opposes the grant of a new tenancy on the grounds that he proposes to rebuild or that he has a scheme for development, he must have obtained planning permission for the work (*section 23 (2) (a) (i) and (ii) of the Bill and cf. First Report, paragraph 222 (3) (d)*).

(2) A new tenancy may be refused where the landlord is a local authority and will require possession, in circumstances where powers of compulsory acquisition apply, within a period of 5 years after the existing tenancy terminates (*section 23 (2) (a) (iv)*). This is mainly a limitation of the right to obtain a new tenancy etc. being newly given in *section 6* to certain tenants of local authorities.

Section 23 (2) (b) is intended to draw attention to the fact that the provisions for compensation for disturbance that apply in certain cases where a new tenancy is refused are dealt with in Part IX of the Bill. Section 23 (3) re-enacts with consequential amendments the pro-

visions in section 22 (5) of the 1931 Act. Section 23 (4) of the Bill replaces section 22 (2) of the 1931 Act. It provides that where a new tenancy has been refused because of a landlord's rebuilding or development plans and the refusal was obtained by misrepresentation etc. the Court may order the payment of punitive damages to the tenant while under the 1931 Act the landlord is punishable for contempt of Court if he does not carry out his rebuilding or development plans (First Report, paragraphs 197, 212 and 222 (2). See also section 36 of the 1960 Rent Act).

22. Section 26 deals with the notice of intention to claim a new tenancy or compensation in lieu. Such notice is mandatory and must be in the prescribed form (*subsection (1)*). It must be served within the time-limits set out in *subsection (2)*. The notice of claim for a new tenancy may include a claim in the alternative for compensation (*subsection (3)*). The section re-enacts section 24 of the 1931 Act with the following changes as recommended by the Commission (First Report, paragraphs 237 and 325):

(1) In the case of a tenancy terminating by the expiration of a certain period or by some other certain event, a tenant is being permitted to serve a valid notice of claim at any time up to the termination of the tenancy or up to one month after service by the landlord of notice of the termination of the tenancy, whichever is the later: the landlord's notice of termination of the tenancy may be served not earlier than three months before the termination (*section 26 (2) (a)* of the Bill and First Report, paragraph 237 (1)). Under section 24 (2) (b) of the 1931 Act, a tenant may not serve a valid notice of claim later than three months before his tenancy terminates.

(2) Under the present provision (section 24 of the 1931 Act), where the tenancy is one terminating by an uncertain event (e.g. the fall of a life) a tenant is obliged to serve notice of his claim for relief within one month after the happening of the event coming to his notice. Section 26 (2) (b) (ii) eases the obligation on the tenant by providing that the tenant should be enabled to claim relief up to one month after the landlord has served him with notice of the happening of the event.

(3) Section 54 (2) (iv) of the 1960 Rent Act and section 13 (3) (iii) of the 1967 Rent Act made special provision for time limits in connection with the service of the notice of intention to claim a new tenancy etc. by the tenants of dwellings that were decontrolled by those Acts. These special provisions are being re-enacted in section 26 (2) (c) as a matter of consolidation.

23. Section 27 re-enacts section 25 of the 1931 Act with the following changes which are generally in line with the Commission's recommendations (First Report, paragraphs 243 and 245):

(1) It reduces (*subsection (1)*) from two months to one month the time which must elapse between the service of the tenant's notice of intention to claim relief and the tenant's bringing of the matter to arbitration (under the 1931 Act, to the Court).

(2) It enables (*subsection (2)*) the landlord to bring the matter before the arbitrator in a case where it remains unresolved after the lapse of three months and the tenant has not brought it to arbitration.

24. Section 28 re-enacts with one change the substance of the provisions in section 28 of the 1931 Act. These provisions deal with the situation where a landlord wishes to offer a new tenancy instead of meeting the tenant's claim for compensation for improvements. The change mentioned is that a time-limit of one month is now being

imposed on the tenant's option of refusing the new tenancy where a new tenancy is offered to him.

25. Section 29 deals with the terms of the new tenancy where these are fixed by the arbitrator. It provides for the re-enactment of section 29 of the 1931 Act with the following changes:

(1) Unless the tenant desires a shorter term, the new tenancy will be for 35 years. Under the 1931 Act, the term fixed by the Court can be as short as 21 years (or shorter if the tenant so wishes) or as long as 99 years—21 years is the term usually fixed. (First Report, paragraph 254).

(2) Sections 29 (b), 31, 32 and 33 of the 1931 Act are not being re-enacted. All these provisions deal with cases where the reversion of the immediate landlord is shorter than the term of the new tenancy. The Bill provides instead, in section 24 (2), that as many superior landlords as may be necessary should join in the grant of the new tenancy. (First Report, paragraph 295 (1)).

(3) As the 1931 Act already provides, the rent under the new tenancy is to be the difference between the "gross rent" and any allowance for improvements. However, a change is being made in the definition of gross rent (*subsection (5)*). Comparison with the letting values of other tenements for the purpose of determining the gross rent is not being restricted to tenements in the vicinity, as section 29 (b) of the 1931 Act requires, provided the tenements are in a comparable area. (First Report, paragraph 269 (2)).

(4) Where expenditure by the tenant on repairs is made a condition of the new tenancy, the arbitrator is being empowered to require that the money be spent within a specified time and to declare the tenant to have forfeited his right to a new tenancy if he fails to comply (*subsections (7) and (8)* and First Report, paragraph 282 (1)).

(5) The Bill provides that the new tenancy should be subject to such covenants as the parties may agree on or, in default of agreement, as the arbitrator may determine (*subsection (9)* and First Report, paragraph 282 (2)).

26. Section 30 is a new provision which deals with reviews of rent in the case of a tenancy whose terms are fixed by the arbitrator (cf. First Report, paragraph 269 (3)). It provides that either the landlord or the tenant may apply to the arbitrator for a review of the rent not less than seven years after the tenancy commences and at intervals of not less than seven years thereafter (*subsection (1) (a) and (c)*). The section also provides that where the new tenancy commences more than seven years after the arbitrator's award the application for review of the rent may be made on such commencement (*subsection (1) (b)*). *Subsections (2), (3) and (4)* are procedural provisions.

27. Section 31: Subsection (3) of section 13 of the 1967 Rent Act gives tenants decontrolled by the 1967 Rent Act the right to a new tenancy under the Landlord and Tenant Act, 1931. In cases of hardship, the new tenancy may be granted at a specially low rent for a term not exceeding 10 years. The substance of these 1967 Rent Act provisions is being re-enacted in section 31 but *subsection (2)* provides that the rent review provision in section 30 shall not apply in such cases.

28. Section 32 is a new provision which provides that, where a tenancy is terminated e.g. for non-payment of rent (see section 23 (1)) in a case where a new tenancy under Part III has already been granted, the new tenancy shall be void and where it has not yet been granted, the obligation to grant it shall cease.

29. Section 35 corresponds to section 39 of the 1931 Act. It makes provision for the cases where, on the coming into operation of the legislation, a tenancy has already terminated but the tenant is still in occupation. Such a tenant is being given the right to a new tenancy where he satisfies the necessary conditions.

V—PART IV OF THE BILL

REVERSIONARY LEASES

30. Part IV (sections 36 to 55) which deals with the right to a reversionary lease, represents the re-enactment, with amendments, of the Landlord and Tenant (Reversionary Leases) Act, 1958 together with sections 8 and 9 of the Landlord and Tenant (Amendment) Act, 1971. The amendments stem from recommendations contained in the Second Report of the Commission. The right to a reversionary lease under the 1958 Act is confined to "building lessees" and "proprietary lessees". The expressions "building lease" and "proprietary lease" are being dropped. The categories of persons to which those expressions relate will, however, continue to come within the scope of the legislation—although under a simplified classification—and the right to a reversionary lease is also being given to additional classes of persons. The Bill proposes that a person who is to have the right to purchase the fee simple under section 66 should also have the right to a reversionary lease under Part IV of the Bill (section 36 (2) (b) and Second Report, paragraph 84).

31. Sections 36, 37, 38 and 40 set out the persons who are to have the right to a reversionary lease. These are—

- (1) those persons who have the right to a reversionary lease under the 1958 and 1971 Acts i.e. those persons called "building lessees" or "proprietary lessees" under the present law;
- (2) those persons who, in addition to the persons at (1), have the right to purchase the fee simple under the 1967 Act—these comprise certain other lessees and yearly tenants and they are now being given the right to a reversionary lease for the first time;
- (3) certain other classes of lessees who are being given the right to a reversionary lease for the first time (see paragraph 32); and
- (4) certain further classes of persons who under section 66 are, for the first time, being given the right to purchase the fee simple.

32. The new classes of persons coming under (3) in the preceding paragraph are those who do not come under (1) and (2) of that paragraph but who nevertheless fall within the following categories—

- (a) persons with leases for a term of at least 50 years where the yearly rent or greatest rent (see section 39) is less than the rateable valuation at the commencement date of the legislation, provided that the buildings on the land were not erected by the lessor, any superior lessor or any of their predecessors in title—a presumption to the effect that they were not so erected is provided (section 38.2 and Second Report, paragraphs 68 and 120 (2), (5));
- (b) persons with leases for a term of at least 50 years—
 - (i) where the lease was made partly in consideration of a payment other than rent, or of expenditure on the premises (apart from expenditure on decoration) or a combination of such payment and expenditure, provided

- that the payment and/or expenditure was not less than 15 times the yearly rent or greatest rent (*sections 38.7 and 39, Second Report, paragraph 36*), or
- (ii) where the lease requires the lessee to carry out specified works on the premises and it is proved that the reasonable cost of those works—together with any fine or other payment—was not less than 15 times the yearly rent or greatest rent (*section 40 and Second Report, paragraph 44*).

Leases in categories (a) and (b) above, like the leases in every other category, must also satisfy, in accordance with *section 37*, the following conditions (which are also in the present law) in order to attract the right to a reversionary lease—

- (i) that there are permanent buildings on the land and that any land apart from the buildings is subsidiary and ancillary to those buildings;
- (ii) that the buildings on the land are not simply an improvement (as defined in *section 37 (2)*); and
- (iii) that the buildings on the land were not erected in contravention of the lease.

33. *Section 38.5* re-enacts *section 8 (1)* of the 1971 Act (which provides that certain leases given on the expiry before 31st March, 1931 of old building leases should attract the right to a new lease and the right to purchase the fee simple) with some changes of wording to ensure that the rights in question are not excluded in cases where the new lease was not given immediately on the expiry of the old one (cf. *Second Report, paragraph 63 (1)*).

34. *Section 42*, which deals with the rights of lessees under partly-built leases in effect re-enacts *section 6* of the 1958 Act with one change of substance that will enable a lessee to avail himself of the benefit of the provision without having to await the termination of the lease, as he must do under the provisions of the 1958 Act.

35. *Section 43* deals with applications to obtain a reversionary lease. Its provisions are on the lines of corresponding provisions in the 1958 Act except *subsection (3)* which is a new provision. That subsection provides for applications for reversionary leases by persons who hold land otherwise than under a lease. Such applications can arise under the provisions of *section 36 (2) (b)* taken in conjunction with those in *section 66 (3)*.

36. *Section 45* sets out the restrictions on the right to a reversionary lease together with certain consequential provisions. It provides for the re-enactment of the corresponding provisions contained in *sections 11, 12, 15 and 16* of the 1958 Act and in *section 79* of the Local Government (Planning and Development) Act, 1963 with the following changes:

- (1) The refusal of a reversionary lease by a landlord on the grounds that he has rebuilding or development plans will not be upheld by the arbitrator unless the landlord has obtained planning permission for the work (*subsection 2 (b) (i) and (ii)*). This change is in line with a change incorporated in *section 23 (2) (a)* of the Bill—see paragraph 21 of this Memorandum.
- (2) Under *section 15 (3)* of the 1958 Act where a person does not carry out within a reasonable time any intention, agreement etc., on account of which a reversionary lease was refused, such person is guilty of an offence for which a fine of up to £500 may be imposed. This provision is not being re-enacted. Instead, *subsection (5)* provides that, where refusal of a reversionary lease was obtained by mis-

representation or concealment of facts, the Circuit Court may order the person responsible to pay punitive damages (cf. First Report, paragraph 222 (2)).

37. *Section 46* deals with the terms of a reversionary lease where settled by the arbitrator. In such a case the reversionary lease is to be for a term of 99 years. The 99 years is not being expressed to run from the expiration of the previous lease as *section 18 (2)* of the 1958 Act provides. This is because, under the Bill, a reversionary lease may be granted to a person who did not previously hold under a lease. The section also substantially re-enacts those provisions concerning the rent which are contained in *section 18 (3)* of the 1958 Act.

38. *Section 47* re-enacts with one change the provisions concerning that fraction of the "gross rent" which represents the rent to be fixed for a reversionary lease that are contained in *section 18 (4)* of the 1958 Act, as amended by *section 26 (1)* of the 1967 Act. The change is that the rent to be reserved by a reversionary lease should be abated by a special allowance for improvements that may have been carried out by the tenant and is in line with the similar abatement of new occupational rents (cf. *section 29 (4)*).

39. *Section 48* re-enacts the provisions in *section 18 (5)* of the 1958 Act (which relate to the determination of the rent under a reversionary lease) with the following changes:

- (1) Comparison with the letting values of other lands for the purpose of determining the rent is not being restricted to lands in the vicinity, provided the lands are in a comparable area. This change is in line with a similar change relating to occupational tenancies in *section 29 (5)* of the Bill (cf. First Report, paragraph 269 (2)).
- (2) Consequential on the extension of rent control to owner-occupied dwellings by *section 2 (6)* of the 1967 Rent Act, such dwellings are being excluded from the controlled dwellings the rents of which are to be taken into account under *section 48 (3)* in determining the new rent. The rents of such owner-occupied controlled dwellings are not comparable with the rents of ordinary controlled dwellings.

40. *Section 50* re-enacts *section 18 (7)* of the 1958 Act. The provision in *section 18 (7) (a)* of that Act, which allows of an extension of time, is not re-enacted in *section 50* but a general power to extend time-limits is provided for in *section 118*.

VI—PART V OF THE BILL

SPORTING LEASES

41. The Bill provides (*section 12 (2)*) that arbitration by county registrars should apply to the matters dealt with in this Part (*sections 56 to 65*). Apart from this change, *Part V* of the Bill re-enacts the provisions of *sections 1 to 7* of the Landlord and Tenant (Amendment) Act, 1971. These sections of the 1971 Act confer on outdoor sports clubs the right in certain circumstances to obtain a 99-year lease (a "sporting lease").

VII—PART VI OF THE BILL

PURCHASE OF FEE SIMPLE

42. This Part (*sections 66 to 75*) re-enacts those provisions of the Landlord and Tenant (Ground Rents) Act, 1967 that deal with the right to purchase the fee simple. It also proposes to extend that right to new categories of persons as recommended by the Landlord and Tenant Commission (Second Report, paragraphs 120 (3) and 131) and

to provide, in addition, a new method of exercising the right to purchase the fee simple (*section 73*) that will be administered by county registrars and that is designed to reduce the expense to the purchaser in so far as incidental costs etc. are concerned. *Section 66 (2)* provides that every person who is to have the right to a reversionary lease under *Part IV* of the Bill should also have the right to purchase the fee simple under *Part VI* (Second Report, paragraph 120 (3)). Further changes in the law are provided for in *sections 66 (3), (4) to (7), 70 (2), 75 (3), (5) and (6) of Part VI*—see paragraphs 45, 46 and 48 of this Memorandum.

43. *Sections 66 and 67* set out the persons who are to have the right to purchase the fee simple under the Bill.

44. The following persons are to have the right to purchase the fee simple under *section 66*—

(1) those who already have that right under *section 3* of the 1967 Ground Rents Act (i.e. building and proprietary lessees and certain other lessees and yearly tenants);

(2) those who are being given the right to purchase the fee simple for the first time, namely—

(a) persons to whom it is proposed to give the right to a reversionary lease for the first time—see paragraphs 31 and 32 of this Memorandum and Second Report, paragraph 120 (3); and

(b) certain new classes of yearly tenants—see paragraph 45 of this Memorandum.

45. Under *section 3 (2) (d)* of the 1967 Ground Rents Act the right to purchase the fee simple is given to yearly tenants who, with their predecessors in title, have been in continuous occupation as yearly tenants for at least 25 years where the rent is less than the valuation, provided that they or a previous occupying tenant erected the buildings (*section 3 (4) (b)* of the 1967 Act) and provided the property is a "tenement" as defined in the 1931 Act. The Bill provides, in accordance with the recommendations in paragraph 131 of the Second Report, for the relaxation of these conditions. Firstly, the requirement that the land should have been held under a yearly tenancy during the whole of the period of 25 years is being dropped. Provided the land is held under a yearly tenancy, it will be sufficient (*section 66 (3) (b)* and (*c*)) that it has been continuously held during the preceding 25 years under any one or more of the following tenancies—

- (1) a contract of yearly tenancy;
- (2) a yearly tenancy arising by operation of law or by inference on the expiration of a lease;
- (3) a statutory yearly tenancy implied by holding over rent-controlled property on the expiration of a lease.

The 25 years mentioned above may, in any of the cases at (1), (2) and (3), include any period in which the tenant formerly held the property under a lease.

Secondly, the conditions to be satisfied by yearly tenants to qualify for the right to purchase the fee simple are being further relaxed by the replacement of the requirement that the property must be a "tenement" (*section 3 (2) (d)* of the 1967 Ground Rents Act) by certain other requirements that are set out in *section 66 (3)*. The effect of the proposed changes will be to relax the existing restrictions on the right of yearly tenants to purchase the fee simple as follows:

- (a) A purchasing tenant will no longer be required to be in occupation of the premises.
- (b) It will no longer be necessary to establish in the case of property outside an urban area, that the area of the land does not exceed an acre and that the buildings thereon consist of a "house".

Furthermore, the conditions in regard to the erection of the buildings on the property that are to be satisfied by yearly tenants in order that they may have the right to purchase the fee simple are being varied. Under the present law (section 3 (4) (b) of the 1967 Ground Rents Act) the buildings must have been erected by an occupying lessee or tenant and there is a rebuttable presumption that the buildings were so erected. The corresponding requirement under the Bill (section 66 (3) (e)) is that the buildings were not erected by the landlord or any superior landlord with a rebuttable presumption that the buildings were not so erected. Finally, for the purpose of qualifying for the right to purchase the fee simple, yearly tenants whose land does not satisfy the requirement in section 66 (3) (a) that any unbuilt-on portion of the land is subsidiary and ancillary to the buildings on the land may, alternatively, exercise the right to purchase the fee simple in respect of the permanent buildings and of so much of the land as is subsidiary and ancillary to those buildings (section 66 (4) to (7)).

46. Section 70 provides for the re-enactment of section 6 (1) of the 1967 Ground Rents Act with the addition of a provision (subsection (2)) that entitles an intermediate landlord to obtain an apportionment of the rent payable by him in a case where the fee simple is purchased under Part VI in a part only of the land out of which that rent is payable.

47. Section 73 provides for a new method whereby ground tenants may purchase the fee simple of their properties without the risk of incurring substantial legal costs in doing so. It is an alternative to the "ordinary" method provided for in the 1967 Act and now provided for in section 70 (1) of the Bill. Section 73 provides that the intending purchaser may apply to the county registrar (subsection (1)), who in his capacity as arbitrator will determine whether the applicant has the right to purchase the fee simple and if so what price he should pay (subsection (2)). The immediate ground landlord is to be notified of the proceedings (subsection (1)). The purchaser will lodge the purchase money with the county registrar together with any expenses and arbitration costs for which he is liable (and costs of appeal, if an appeal has been taken against the arbitrator's decision). The county registrar, on being satisfied that the ground rent has been paid up to date, will then issue a statutory certificate which will operate to vest the fee simple in the purchaser on a specified date free from incumbrances and from any intermediate interests (subsection (3)). In cases where the purchase of the fee simple must be registered in the Land Registry (that is, where the land either is already registered or is in an area where compulsory registration applies) the county registrar will forward the necessary documents to the Land Registry (subsection (5)) and the purchaser will in due course receive a Land Certificate from the Land Registry. Persons whose estates etc. in the land have been extinguished by the operation of the vesting certificate (including the owners of any incumbrances as well as the immediate ground landlord and any superior landlord or landlords) will, so far as they can reasonably be ascertained, be notified by the county registrar (subsection (7)) and may apply for their shares of the purchase money (subsection (8)). Subsection (4) ensures that the vesting certificate is an effective instrument for Land Registry purposes if the land is in an area where, under the Registration of Title Act, 1964, compulsory registration applies. Subsection (6) provides for an amendment of section 72 (1) of the Registration of Title Act, 1964 so as to ensure that in cases where the purchase of the fee simple must be registered in the Land Registry, it will not be necessary to investigate whether certain kinds of covenants affect the lands, that is, those covenants that continue in force, despite the purchase of the fee simple, in accordance with section 88 (2) of the Bill. It is being provided that in such cases those covenants will continue in force even though they do not appear on the register of the Land Registry. Subsection (9) provides that the right to obtain an apportionment of rent under Part VII of the Bill shall apply in cases arising under the section in the same way as, under section 70 (2) of the Bill, that right applies where the fee simple is purchased under the "ordinary" purchase procedure.

48. *Section 75* deals with the determination of the purchase price of a fee simple by arbitration. It provides for the re-enactment of *section 18* of the 1967 Ground Rents Act with the following changes:

- (1) The benefit of the maximum purchase price provision in *section 75 (3)* is being extended to those statutory yearly tenants who, under *section 66 (3) (b)*, are being given the right to purchase the fee simple (*section 75 (3) (b)* and cf. Second Report, paragraph 131).
- (2) *Section 75 (3)* clarifies that the maximum purchase price will be determined in accordance with the terms of issue of the most recent National Loan type security and not in accordance with the current market price of that security.
- (3) *Subsection (5)* deals with the purchase price of the fee simple where a lease is surrendered at some date before the date it would otherwise expire and a new lease is granted at the old rent for the balance of the term of the surrendered lease and thereafter at a modern rent. Under *section 18* of the 1967 Act a lessee in such a case could purchase the fee simple at a maximum purchase price based on the lower rent at any time during the currency of the "old" rent (i.e. up to the termination date of the surrendered lease). If at the time of purchase his old lease would have had less than 25 years to run, he would thus be placed in a more favourable position than lessees generally who could only avail themselves of the maximum purchase price up to the time when their leases had 25 years to run. *Subsection (5)* rectifies the situation by providing that the maximum purchase price provision will not apply where an increased rent is payable under a lease within 25 years of the service of the relevant notice.
- (4) *Subsection (6)* is a new provision. It is designed for cases where the provision in *subsection (3)* for determining a maximum purchase price does not apply because the relevant lease has less than 25 years to run. The proposed new provision will enable a purchase price to be fixed with greater certainty in such cases by relating the price to the number of years that the lease has yet to run.

VIII—PART VII OF THE BILL

APPORTIONMENT OF RENT

49. This Part (*sections 76 to 80*) provides for the re-enactment of *sections 11, 12, 13, 15 and 16* of the Landlord and Tenant (Ground Rents) Act, 1967. *Section 76 (2)* is new in so far as it provides that where a rent is apportioned under any provision of the Bill the apportionment is to be made in accordance with this Part.

IX—PART VIII OF THE BILL

COVENANTS IN LEASES

50. This Part deals with covenants in leases of tenements (*sections 81 to 85*) and with covenants in leases generally (*sections 86 to 88*). It provides for the re-enactment of *sections 55 to 59* of the Landlord and Tenant Act, 1931 and of *sections 27 to 30* of the Landlord and Tenant (Ground Rents) Act, 1967. (See also paragraph 9—definition of "tenement"—of this Memorandum.) *Section 31* of the 1967 Act provides for the continuation, after the purchase of the fee simple, of certain kinds of covenants e.g. covenants affecting the immediate lessor's own amenities. *Section 88* of the Bill re-enacts this provision (*subsection (2)*) with the following changes:

- (1) All other covenants shall cease to have effect where the fee simple is acquired, whether under this legislation or otherwise (*subsection (1)*).

- (2) No new covenants shall be created in the conveyance of the fee simple (*subsection (1)*).
- (3) In any case where the fee simple was acquired since the commencement of the 1967 Act all covenants other than the covenants specified in *subsection (2)* shall be deemed to have ceased to have effect at the date of the acquisition (*subsection (3)*).

X—PART IX OF THE BILL

COMPENSATION

51. *Sections 89 to 101* of this Part, which deal with compensation for improvements, provide for the re-enactment (with the modifications and additions outlined in paragraphs 52 to 58 of this Memorandum) of sections 10 to 18 of the Landlord and Tenant Act, 1931. *Sections 89 to 101* also provide for the re-enactment of those provisions of sections 24, 25 and 36 of the 1931 Act that deal with the same matter. *Sections 102 and 103* provide for the re-enactment and consolidation of the provisions in the present law for compensation for disturbance in certain circumstances where a person is not entitled to a new occupational tenancy under the 1931 Act or is not entitled to a reversionary lease under the 1958 Act or a sports club is not entitled to a sporting lease under the 1971 Act. *Section 104* is a new provision which proposes to permit landlords, in certain circumstances, to terminate occupational tenancies in obsolete buildings. It also provides for compensation for disturbance in such cases—see paragraph 59 of this Memorandum. *Sections 105 to 107* provide for the re-enactment of certain provisions relating to compensation that are contained in sections 36, 37 and 44 of the 1931 Act and in section 16 of the 1958 Act. *Parts III and IV* of the Bill extend the rights to occupational tenancies and reversionary leases to new classes of persons who, as a consequence, may under *Part IX* qualify for compensation for improvements or compensation for disturbance.

52. Under section 10 (1) of the 1931 Act a tenant who is ejected for non-payment of rent is not entitled to be paid compensation for improvements. The Landlord and Tenant Commission recommend (First Report, paragraph 123 (1)) that a tenant should not be entitled to compensation for improvements where his tenancy is terminated because of non-payment of rent whether the proceedings to recover possession are framed as an ejectment for non-payment of rent, an ejectment for over-holding or on the title based on a forfeiture. *Section 90 (1) (b) (ii)* of the Bill provides accordingly.

53. *Section 92* re-enacts the provisions in section 12 of the 1931 Act regarding improvement notices, improvement consents, improvement undertakings and improvement objections with the following changes:

- (1) Section 12 (1) of the 1931 Act requires that where an improvement notice is served by a tenant it must include in every case plans and a specification as well as an estimate of the cost of the proposed works. *Subsection (1)* simplifies the requirements as to the documentation by specifying that, where planning permission is required, a copy of the planning permission (instead of plans and specifications) must accompany the notice (First Report, paragraph 123 (2) (a)—(c)).
- (2) Under section 12 (2) of the 1931 Act, a landlord on whom an improvement notice is served may, within two months, serve on the tenant an improvement consent, an improvement undertaking or an improvement objection. *Subsection (2)* provides that the time within which any of these notices may be served by the landlord should be one month (First Report, paragraph 123 (3) (a)).

(3) *Subsection (3)* is a new provision, based on a recommendation of the Commission (First Report, paragraph 123 (4) (b)), which limits a landlord's right to object to the making of an improvement by the tenant.

(4) Section 12 (3) of the 1931 Act provides that a landlord on whom an improvement notice has been served must, in certain circumstances, serve the notice or a copy thereof on his immediate superior landlord within one month. The immediate superior landlord may, within two months from the date of service of the improvement notice by the tenant, serve either an improvement consent or an improvement objection. *Subsection (4)* provides that these time-limits should be one week and one month, respectively (First Report, paragraph 123 (2) (d) and 123 (3) (a)).

54. *Section 93 (3)* is new. It provides that, where a landlord executes an improvement to a controlled dwelling (within the meaning of the Rent Acts) which a public authority requires to be made, the increase in rent that the landlord may secure from the tenant in respect of the works shall not exceed the allowance provided for by section 10 (2) (g) of the 1960 Rent Act.

55. *Sections 94* and *95* provide for the re-enactment of sections 14 and 15 of the 1931 Act but reduce to one month the time-limits of two months mentioned in those sections. This change is consequential on the changes in time-limits in *section 92 (2)* and (4)—see paragraph 53 of this Memorandum.

56. *Section 96* provides for the re-enactment of section 16 of the 1931 Act with the following changes:

(1) Consequential on the reduced time-limits for service of an improvement objection that are provided for in *section 92 (2)* and (4) (paragraph 53 of this Memorandum) the period of two months in relation to such an objection mentioned in section 16 (1) of the 1931 Act is being reduced to one month in *subsection (1)*.

(2) Under the provisions of section 16 (2) of the 1931 Act an improvement objection (which may be served by a landlord or a superior landlord on a tenant who serves an improvement notice) is final and it is not lawful for the tenant concerned to make the improvement unless he either holds the tenement under a lease or other contract of tenancy granted for a term of more than five years or for a life or lives or such tenant and his predecessors in title have been in occupation for more than five years. In any of these cases, however, the tenant may, in accordance with section 16 (4) of the 1931 Act, be authorised to make the improvement (with or without modifications) where the Court is satisfied that the improvement—

(a) is of such a character as to be calculated to add to the letting value of the tenement; and

(b) is suitable to the character of the tenement; and

(c) is not calculated to injure the amenity or convenience of the neighbourhood.

Arising out of a recommendation of the Landlord and Tenant Commission (First Report, paragraph 123 (4) (b)) *section 96 (3)* provides that, notwithstanding the landlord's objection, the arbitrator shall authorise the tenant to make the improvement (with or without modifications) except where the tenant holds otherwise than under a lease of which at least five years have yet to run and one of the grounds specified in *section 23 (2) (a)* for the refusal of a new tenancy obtains.

57. *Section 97* is new. It makes it clear that nothing in *Part IX* of the Bill shall authorise the charging, in the case of a controlled dwelling, of a rent exceeding the lawful rent of the dwelling as defined by section 11 of the 1960 Rent Act. Thus where a landlord of a controlled dwelling executes an improvement at his own expense in accordance with the provisions of *section 95* no increase in rent will be allowed which would bring the level of the rent above the lawful rent as defined in the Rent Act provision.

58. *Section 98* concerns restrictions on the right to compensation for improvements. It provides for the re-enactment of section 17 of the 1931 Act with the following changes:

(1) *Section 17 (3)* of the 1931 Act provides that a tenant is not entitled to compensation for an improvement made after the passing of that Act unless he has served an improvement notice, is entitled to execute the improvement under the provisions of the Act and has duly made the improvement. Following a recommendation by the Landlord and Tenant Commission (First Report, paragraph 123 (7)) *section 98 (2)* of the Bill provides that where a tenant has made improvements after the passing of the 1931 Act he will not be entitled to compensation for improvements where an improvement notice (under either section 12 (1) of the 1931 Act or the corresponding provision (*section 92 (1)*) of this Bill) has not been served and the landlord, or where appropriate, a superior landlord can satisfy the arbitrator that—

- (a) he has been prejudiced by non-service of the improvement notice, or
- (b) the improvement is in contravention of any covenant in the tenancy contract, or
- (c) the improvement injures the amenity etc. of the neighbourhood.

(2) *Section 17 (4)* of the 1931 Act provides that a landlord is not entitled to compensation (from his superior landlord) for an improvement made after the passing of that Act unless the tenant's improvement notice (or a copy of it) was served by him on his superior landlord in accordance with the Act. As recommended by the Commission (First Report, paragraph 123 (2) (e)) the Bill provides in *section 98 (3)* for the relaxation of this provision so that where a landlord does not serve an improvement notice or a copy thereof on his superior landlord he will, when claiming compensation from such superior landlord, be in the same position as a tenant who makes improvements without serving notice.

(3) *Section 17 (1) and (6)* of the 1931 Act, which are largely spent, are not being re-enacted. As a result, tenants and landlords (if there are any by this time) who do not at present qualify for compensation in respect of improvements carried out during the period from January, 1907, to the passing of the 1931 Act because of failure to serve notice may qualify for compensation where their tenancies terminate after the passing of the legislation.

59. *Section 104* is new. It provides that a landlord should, in certain circumstances, be enabled to obtain an order terminating an occupational tenancy in obsolete buildings before the lease or contract of tenancy expires. In such a case, compensation is payable to the tenant. It gives effect, with some modifications, to recommendations made by the Landlord and Tenant Commission (First Report, paragraph 222 (3) to (5)). The provision differs from the Commission's recommendations in the following respects:

(1) The Commission recommend that the provision should be restricted to cases where the tenancy has more than three

years to run. *Section 104* provides accordingly but it also restricts the provision to cases where a tenancy has not more than twenty-five years to run.

(2) The Commission recommend that the provision should apply where a building is beyond repair or where a building cannot be profitably used without being reconstructed. *Subsection (2)* provides accordingly and also provides that, in the alternative, it will apply where the building is situate in an obsolete area, as defined in the Local Government (Planning and Development) Act, 1963. In every case, as the Commission recommend, the landlord is required to have a development scheme for which planning permission has been granted. In regard to such schemes of development the Commission recommend that social, economic and educational amenities should be considered. The subsection does not specifically mention these considerations since they are necessarily taken into account in connection with the grant of planning permission.

(3) *Subsection (4)* provides for a period of one year during which the tenant may continue in occupation after the date of the order terminating the tenancy or payment of compensation, whichever is the later. A period of 3 years was recommended by the Commission.

XI—PART X OF THE BILL

MISCELLANEOUS

60. This Part (*sections 108 to 122*) provides for the consolidation (with the modifications outlined in paragraphs 62 and 63 of this Memorandum) of a number of miscellaneous provisions in the Landlord and Tenant Acts, 1931 to 1971 and includes new provisions in *sections 108 and 110*. *Section 108* prohibits the creation of future ground rents in the case of ordinary dwellinghouses. *Section 110* deals with the survival, on the death of a claimant, of rights claimed by him under the legislation.

61. *Section 108*: The prohibition on the creation of future ground rents for which this section provides is restricted to ordinary dwellinghouses, that is to permanent buildings constructed for use as a dwelling, whether or not for use also in part for other purposes, other than a self-contained flat in buildings divided into two or more such flats (*subsections (1) and (2)*). The prohibition will operate by rendering void any lease of such a dwellinghouse (other than a renewed lease) made after the Bill has come into operation that would be a ground lease under the provisions of the Bill—a lease, that is to say, of such a kind as would give the lessee the right under *Part VI* of the Bill to purchase the fee simple (*subsection (2)*). Renewals of existing ground leases are being excluded from the prohibition (*subsection (3)*). If a lease of land only, or of land with buildings other than an ordinary dwellinghouse, were to become a lease to which the proposed prohibition would apply by reason of the construction or alternation of buildings, that lease will thereupon be rendered void (*subsection (4)*).

62. *Section 111* provides for the re-enactment, with certain drafting changes, of sections 20 and 21 of the Landlord and Tenant (Reversionary Leases) Act, 1958. These sections provide for the continuation of building and proprietary leases in cases where the immediate lessor's interest is terminated before its normal expiration and where, in consequence, but for these provisions in the 1958 Act, such leases would themselves be terminated. The provisions ensure that building and proprietary lessees remain undisturbed even where their lessor's interest is terminated and that their rights of renewal etc. are preserved. *Section 111* also extends the same pro-

visions to almost all tenancies to which the Bill applies, including occupational tenancies under *Part III*. The only exception (*subsection (3)*) concerns certain sporting leases and its effect is to ensure that termination of such a lease because the land is not being used for outdoor sport will not protect any party who has taken a sub-lease. In so far as occupational tenancies are concerned, *section 111* replaces section 34 of the 1931 Act but gives an occupational tenant the right to continue as the direct tenant of the person who previously had been his superior landlord instead of the right to a new tenancy given in the 1931 Act provision.

63. *Section 113 (1)* of the Bill prohibits contracting out of the provisions of the Bill. This subsection is a consolidation of section 42 of the 1931 Act with section 33 (1) of the 1967 Ground Rents Act. Whereas the 1967 Act provision prohibits attempts to contract out of the provisions of the 1967 Act made after the commencement of that Act, *subsection (1)* of *section 113* of the Bill, like the 1931 Act provision, prohibits contracting out no matter when the attempt to contract out is made.

XII—SCHEDULE TO THE BILL

ENACTMENTS REPEALED

64. The Schedule lists the repeals proposed by *section 10*. These are the Landlord and Tenant Acts, 1931 to 1971 as well as certain provisions in the Rent Restrictions Acts and the Local Government (Planning and Development) Act, 1963. The re-enactment of the Rent Acts provisions is provided for in *sections 5 (1) (b), 20, 21, 26 (2) (c), 31 and 102 (1) (b) (ii)* of the Bill. The re-enactment of section 79 of the 1963 Planning Act is provided for in *section 3 (1)*—definition of “business”—*sections 23 (2) (a) (iii) and 45 (3)*. *Subsections (2) to (4)* are transitional provisions and provide for pending proceedings under the repealed enactments.

*An Roinn Dlí agus Cirt,
Eanáir, 1977.*

