The Law Commission and The Scottish Law Commission

(LAW COM. No. 144)
(SCOT. LAW COM. No. 94)

REPORT ON THE CONSOLIDATION OF THE HOUSING ACTS

HOUSING BILL
HOUSING ASSOCIATIONS BILL
LANDLORD AND TENANT BILL

Presented to Parliament by the
Lord High Chancellor and the Lord Advocate
by Command of Her Majesty
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THE LAW COMMISSION AND THE SCOTTISH LAW COMMISSION

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To the Right Honourable the Lord Hailsham of St Marylebone, C.H., Lord High Chancellor of Great Britain, and

the Right Honourable the Lord Cameron of Lochbroom, Q.C., Her Majesty's Advocate.

The main object of the three Bills which are the subject of this Report is to consolidate for England and Wales the whole of the Housing Acts, with the exception of provisions which relate to the subject-matter of the Leasehold Reform Act 1967 (c. 88) or the Rent Act 1977 (c. 42). The provisions relating to housing associations, however, are substantially Great Britain provisions and the Housing Associations Bill accordingly also extends to Scotland.

The following recommendations are made for the purpose of achieving a satisfactory consolidation. Recommendations relating to the Housing Associations Bill which also affect the law of Scotland (Nos. 33, 34(i), 35, 36 and 38(vi)) are recommendations of both Commissions. Otherwise the recommendations are recommendations of the Law Commission alone.

As well as the relevant government departments, the following bodies were consulted in connection with the recommendations. In England and Wales: the Association of District Councils, the Association of County Councils, the Association of Metropolitan Authorities, the Association of London Authorities, the Greater London Council, the Common Council of the City of London, the London Boroughs Association, the New Towns Association, the Building Societies Association, the Chief Registrar of Friendly Societies, the Housing Corporation, the National Federation of Housing Associations, the Charity Commissioners, the Water Authorities Association, the Water Companies Association, the National Association of Almshouses, and the Abbeyfield Society. In Scotland: the Convention of Scottish Local Authorities, the Housing Corporation Scottish Head Office, the Scottish Federation of Housing Associations, the Assistant Registrar of Friendly Societies for Scotland and the Abbeyfield Society for Scotland. Copies of the draft recommendations were also supplied on request to a number of other organisations.

The comments received from those consulted have been taken into account in framing the recommendations. There is no outstanding objection to any of our recommendations.

RALPH GIBSON — *Chairman of the Law Commission*

PETER MAXWELL — *Chairman of the Scottish Law Commission.*

2nd May 1985

ARRANGEMENT OF RECOMMENDATIONS

RECOMMENDATIONS

1. Power to dispose of land held for housing purposes: two missed consequential amendments.

Before 1980 the power to dispose of houses provided by a local authority was separate from the power to dispose of other land held for housing purposes. The former was provided for in section 104 of the Housing Act 1957 (c. 56), the latter in section 105 of that Act.

Section 91 of the Housing Act 1980 (c. 51) substituted a new section 104 conferring a new general power to dispose of any land held for housing purposes and repealed the relevant provisions of the old section 105. No consequential amendments were made of outlying references to the old sections. References to section 104, of course, remained good and references to the old section 105 were translated into references to the new section 104 by section 17(2)(*a*) of the Interpretation Act 1978 (c. 30) (which provides that references to provisions which are repealed and re-enacted, with or without modification, are to be construed as references to the provision as re-enacted).

However, there are two contexts in which more than a simple section reference was involved and failure to make a consequential amendment appears to have produced an anomalous result.

(i) *Section 107 of the Housing Act 1957* (power to contribute to development of land)

The second part of this section provides that the local housing authority may contribute towards the expenses of the development of land "where they sell or lease land under the foregoing provisions of this Part of this Act". This was formerly a reference to the old section 105(1)(*a*) which provided for the sale or leasing of land to a developer on condition that he develop the land as a housing estate in accordance with plans approved by the authority. That is, the power was a power to contribute for housing purposes.

The effect of substituting in section 107 a reference to the new section 104 is apparently to make this power exercisable whatever the nature of the development to be carried out. It seems clear that this result was not intended and we recommend that the provision reproducing section 107 should confine the power to cases where the developer proposes to provide housing. Effect is given to this recommendation in clause 15(2) of the Housing Bill.

(ii) *Section 151 of the Housing Act 1957* (power to enforce covenants)

This section displaces the general rule of equity that a person disposing of property subject to a restrictive covenant can enforce it against a subsequent purchaser only if, at the time of the disposal, he retained other land benefited by the restriction. It enables a local authority who on selling or exchanging land held for housing purposes impose a covenant concerning the land (for instance, preventing it being used for other than residential purposes) to enforce the covenant against subsequent purchasers notwithstanding that general rule.

The references to selling or exchanging reflect the language of the old section 105(1)(*b*). Under the new section 104 "A disposal ... may be effected in any manner". For instance, land could (with the Secretary of State's consent) be conveyed gratuitously subject to a covenant restricting its use. There seems no reason to distinguish such a transaction from one involving a sale for a nominal consideration.

We therefore recommend that the provision reproducing section 151 of the 1957 Act should apply to all disposals within the new power. Effect is given to this recommendation in clause 609 of the Housing Bill.

2. Scope of local authority housing management powers

Local authorities are given a number of general housing management powers in relation to their houses. The statutory provisions in question are—

section 111 of the Housing Act 1957 (c. 56) (general responsibility for local authority's houses),

section 112 of that Act (byelaws for regulation of authority's houses),

section 113 of that Act (conditions to be observed in management of authority's houses),

section 12 of the Prices and Incomes Act 1968 (c. 42) (increase of rent without notice to quit), and

section 93 of the Housing Finance Act 1972 (c. 47) (power to contribute to tenants' removal expenses).

A problem arises from the fact that the houses in relation to which these powers are exercisable are defined in three different ways:

(a) section 111 of the 1957 Act refers to houses provided under Part V of that Act;

(b) section 112 of the 1957 Act refers generally to houses provided by the authority, but in view of the fact that this provision appears in Part V of that Act this may mean no more than provided under that Part;

(c) the other provisions refer to houses within the authority's Housing Revenue Account, as defined in section 12(1) of the Housing Finance Act 1972.

These differences do not appear to reflect any deliberate legislative policy. Indeed, section 93 of the 1972 Act assumes, wrongly, that all houses within the authority's Housing Revenue Account fall within the general management powers conferred by section 111 of the 1957 Act. This needless variation is unsatisfactory. But we do not think the discrepancy can be removed simply by adopting one of the existing definitions.

The definition in sections 111 and 112 of the 1957 Act (houses provided under Part V of that Act) is too narrow, since houses may be held for housing

purposes and yet not have been provided under, or appropriated for the purposes of, that Part. For example, houses acquired under section 12 or 17(2) of the 1957 Act (which enable the local authority to acquire unfit houses for housing use instead of demolishing them) are acquired under Part II of the 1957 Act.

On the other hand, the definition by reference to the Housing Revenue Account is too wide. Some houses are within the account for purely financial purposes: for instance, houses formerly belonging to the authority which have been disposed of, and houses in private ownership for which assistance was given under the Housing (Rural Workers) Act 1926 (c. 56). The authority's housing management powers are clearly inappropriate in these cases. And further classes of house may be brought within the account with the consent of the Secretary of State, in accordance with section 12(1)(*e*) of the 1972 Act. It is unsatisfactory that the exercise of such a power, conferred for accounting purposes, should affect the management of the houses concerned.

Accordingly we recommend that there should be a new common description of the houses in relation to which these housing management powers apply, which should make it clear that the powers are exercisable in relation to all houses held for housing purposes, whether or not they are provided under or appropriated for the purposes of Part II of the Housing Bill (which corresponds to Part V of the 1957 Act). Effect is given to this recommendation in clause 20 of the Housing Bill.

3. Delegation of housing management functions to co-operatives

The relationship is unclear between the proposition in section 111(1) of the Housing Act 1957 (c. 56) that the management of local authority houses "shall be vested in and exercised by the authority" and the provisions of Schedule 20 to the Housing Act 1980 (c. 51) which contemplate agreements for the delegation of the authority's management functions to a co-operative. Schedule 20 to the 1980 Act merely says that *if* such an agreement is made certain consequences follow for the purposes of subsidy. But in order to give the provision effect it must be construed as impliedly cutting down the general proposition in section 111(1) of the 1957 Act.

It seems more satisfactory to state the position plainly by conferring a power on local authorities to enter into agreements of the kind described. We recommend that this should be done. Effect is given to this recommendation in clause 27 of the Housing Bill.

Two further points arise in relation to the power of new town corporations and the Development Board for Rural Wales to enter into such agreements.

There is no corresponding difficulty in relation to their powers since it is clear that the general powers under section 4 of the New Towns Act 1981 (c. 64) and section 4 of the Development of Rural Wales Act 1976 (c. 75) enable them to enter into such agreements. However, it is necessary to distinguish agreements of the kind described in Schedule 20 to the 1980 Act from

other kinds of arrangement because tenants of housing co-operatives within that Schedule are secure tenants, and accordingly have the right to buy, in the same way as if they were tenants of the corporation or Board itself (see sections 28(1) and 50(1) of the Housing Act 1980). The simplest way of identifying such agreements appears to be to confer the specific power on new town corporations and the Development Board for Rural Wales, in the same way as on local authorities, and to refer to agreements made under that power.

The approval of the Secretary of State is required for the making of an agreement by a local authority under Schedule 20 to the 1980 Act. In paragraph 4 of that Schedule it is assumed that the approval of the Secretary of State is required for all descriptions of agreement to which the Schedule applies. This was the case under paragraph 9 of Schedule 1 to the Housing Rents and Subsidies Act 1975 (c. 6), which these provisions replace. But the grammar of paragraph 3 of Schedule 20 does not quite produce this result because the words "made ... with the approval of the Secretary of State" are not repeated in the full-out words at the end which make corresponding provision for new town corporations and the Development Board for Rural Wales. This appears to be a drafting error.

We therefore recommend that a corresponding specific power to enter into agreements with housing co-operatives should be conferred on new town corporations and the Development Board for Rural Wales, and that it should be made clear that the consent of the Secretary of State is required. Effect is given to these recommendations in clause 30(2) of the Housing Bill.

4. The expression "the working classes"

Originally all housing legislation was confined in its operation to working class housing. This appears, for example, from the short titles of the Acts from the Labouring Classes Lodging Houses Act 1851 (c. 34) to the Housing of the Working Classes Act 1903 (c. 44).

Housing legislation continued to refer to the working classes as late as 1935, when the overcrowding provisions which now appear in Part IV of the Housing Act 1957 (c. 56) were enacted. However, in Committee the Minister in charge of the Housing Bill of that year justified the use of the expression solely on grounds of consistency with earlier legislation, acknowledging its imprecision.

In the decade following the end of the Second World War there was severe judicial criticism of the use of the expression in housing statutes. The point was put by Denning J. in *H.E. Green & Sons v. Minister of Health (No. 2)* [1948] 1 K.B. 34 at p. 38, as follows:

> "These words 'working classes' have appeared in a number of Acts for the last hundred years. I have no doubt that in former times it had a meaning which was reasonably well understood. 'Working classes' fifty years ago denoted a class which included men working in the fields or the factories, in the docks or the mines, on the railways or the roads, at a weekly wage. The wages of people of that class were lower than most of

the other members of the community, and they were looked upon as a lower class. That has all now disappeared. The social revolution in the last fifty years has made the words 'working classes' quite inappropriate today. There is no such separate class as the working classes. The bank clerk or the civil servant, the school teacher or the cashier, the tradesman or the clergyman, do not earn wages or salaries higher than the mechanic or the electrician, the fitter or the mineworker, the bricklayer or the dock labourer. Nor is there any distinction between one or the other. No one of them is of a higher or lower class. In my opinion, the word 'working classes' used in the Acts are quite inappropriate to modern social conditions."

Comments to the same effect were made by Morris J. in *Rodwell v. Minister of Health* [1947] K.B. 404 at p. 411 ("As an effort in selectiveness, the phrase 'working classes' appears to me to be neither happy nor precise"); by Romer J. in *Belcher v. Reading Corporation* [1950] Ch. 380 at p. 392 ("It does not appear to me that this description is the prerogative nowadays of any particular section of the British people. The phrase has a far wider and far less certain significance than it used to possess ..."); by Harman J. in *re Sanders' Will Trusts* [1954] Ch. 265 at p. 270 ("... the expression 'working classes' is an anachronism and does not really mean anything in these days ..."); and Birkett L.J. in *Guinness Trust (London Fund) v. Green* [1955] 1 W.L.R. 872 at p. 876.

At the same time Parliament, in section 1 and Schedule I of the Housing Act 1949 (c. 61), removed the references to the working classes in almost all contexts in the housing legislation, thus making the provisions applicable to all housing. We have not been able to ascertain why the phrase was not also removed from the handful of provisions in which it remains. The imprecision of the phrase is equally unsatisfactory in these contexts and we recommend that it should not be carried forward in the consolidation. Rather different considerations apply in each case as to how the provision should be dealt with.

We recommend below (Recommendation No. 38(ii) and (vi)) that some of these provisions should be repealed as no longer of practical utility. The other contexts in which the expression appears are as follows.

(i) *Part IV of the Housing Act 1957* (overcrowding)

This Part dates back to the Housing Act 1935 (c. 40). Its operation is at present restricted by virtue of the definition of "dwelling-house" in section 87 of the Act to "premises used as a separate dwelling by members of the working classes or of a type suitable for such use". The accepted paraphrase of "working classes" in this context, as a result of the Court of Appeal decision in *Guinness Trust (London Fund) v. Green* [1955] 1 W.L.R. 872, is "lower income groups". That seems, if anything, even vaguer.

In fact, there appears to be no satisfactory alternative way of restricting the operation of the overcrowding provisions. On the other hand, to apply those provisions to all housing appears unlikely to have any significant practical effect, or to create extra work for local authorities, because overcrowding (as defined in the Act, by reference to the number and size of rooms) appears unlikely to be found in the dwellings to which the provisions are in theory

extended. Accordingly we recommend that the restriction should simply be omitted. Effect is given to this recommendation in clause 343 of the Housing Bill.

In consequence of this Recommendation, section 101 of the Rent Act 1977 (c. 42) will require amendment. That excludes the protection of Part VII of that Act in the case of working class dwellings which are overcrowded within the meaning of the Housing Act 1957 in such circumstances as to render the occupier guilty of an offence. It originally appeared as section 84 of the 1957 Act, being removed on the consolidation of the Rent Acts in 1968. We recommend that the amendment should secure that the removal of the reference to working class dwellings does not affect the security of tenure of anyone at present entitled to the protection of the Rent Act. Effect is given to this consequential recommendation in Schedule 3 to the Housing (Consequential Provisions) Bill.

(ii) *Section 128 of the Housing Act 1957* (provisions relating to certain trusts for housing purposes)

Section 128 of the 1957 Act deals with two matters:

(a) subsection (1) enables "trustees of any houses for the working classes" to make over the houses or the management of them to the local housing authority;

(b) subsection (2) gives power to the Attorney General, at the instigation of the Secretary of State, to institute or intervene in legal proceedings relating to property to be applied under "any trusts for the provision of houses available for the working classes"; and subsection (3) provides that before settling a scheme for the application of such property the court shall consult with the Secretary of State.

The first of these provisions goes back to section 38 of the Labouring Classes Lodging Houses Act 1851 (c. 34); the second goes back to section 9 of the Housing, Town Planning, etc. Act 1909 (c. 44). They apply in relation to varieties of what is described in more recent legislation as a "housing trust".

The modern definition of "housing trust" is that in section 15(5) of the Rent Act 1977 (c. 42), as substituted by section 74(2) of the Housing Act 1980 (c. 51):

> "a corporation or body of persons which—
>
> (*a*) is required by the terms of its constituent instrument to use the whole of its funds, including any surplus which may arise from its operations, for the purpose of providing housing accommodation, or
>
> (*b*) is required by the terms of its constituent instrument to devote the whole, or substantially the whole, of its funds for charitable purposes and in fact uses the whole, or substantially the whole, of its funds for the purpose of providing housing accommodation".

It is this definition which applies for the purposes of the provisions of the Housing Acts which use the expression "housing trust" (ss. 2 and 99 of the Housing Act 1974 (c. 44); ss. 2, 28 and 42 and Schs. 4 and 4A of the Housing Act 1980).

We recommend that the provisions reproducing section 128 of the 1957 Act should also be expressed to apply to housing trusts as so defined. In view of the fact that this has the effect of extending the ambit of these provisions, we also recommend that it be made clear that, so far as a power to dispose of land is conferred, it is exercisable subject to the general provisions of section 2 of the Housing Act 1974 (c. 44) and section 29 of the Charities Act 1960 (c. 58) which require the consent of the Housing Corporation or the Charity Commissioners in certain cases. Effect is given to this recommendation in clauses 35 and 36 of the Housing Associations Bill.

(iii) *Section 129 of the Housing Act 1957* (power of bodies corporate to sell or let land for housing purposes)

This provision goes back to section 11(2) of the Housing of the Working Classes Act 1885 (c. 72). It gives power to any body corporate to sell, exchange or lease land "for the purpose of the erection of houses for the working classes" notwithstanding that the land could be disposed of more profitably for other purposes. It is an exception to the general rules about the extent to which a company can be philanthropic at its shareholders' expense.

As with the other provisions mentioned above in which housing for the working classes is referred to, there appears to be no satisfactory alternative to substituting a reference to housing generally. This would extend the provision so as to enable a body corporate to dispose of land for housing other than working class housing, notwithstanding that a greater profit might be realised by some other kind of development. The provision does not, however, enable those managing the body corporate to benefit themselves, nor does it affect other obligations of the body corporate, for instance, where the land is held on trust for some particular purpose.

We recommend that the provision be amended accordingly. Effect is given to this recommendation in clause 31 of the Housing Bill.

5. Notice of authority's decision on homelessness and related matters

Section 8 of the Housing (Homeless Persons) Act 1977 (c. 48) requires the local authority to notify an applicant of their decision on a number of matters relevant to his entitlement under that Act. Subsections (8) and (9) provide for service of notice by leaving the notice at the authority's office for collection by or on behalf of the person to whom it is to be given. The practical problem is clear: a homeless person may have no settled address at which he can be reached.

What subsection (8) says, however, is that the notice "shall be treated as having been given to him only if" the method of service specified in subsection

(9) is followed. The intention behind this ambiguous passage appears to be not to make that form of service mandatory in all cases (to the exclusion, for instance, of personal service) but only to exclude the operation of the general statutory provisions (section 7 of the Interpretation Act 1978 (c. 30) and section 233 of the Local Government Act 1972 (c. 70)) which deem service to have been effected in certain cases although the document may not actually have been received by the person to whom it was addressed.

We recommend that the provision should be made clear in this sense and that it should also be made clear that written notice is required, which appears to be implicit in the present provisions. Effect is given to this recommendation in clauses 64(5) and 68(4) of the Housing Bill.

6. Proceedings for possession of dwelling-house let under secure tenancy: a missed consequential amendment

Section 25 of the Housing and Building Control Act 1984 (c. 29) introduced three new grounds on which a court may order possession of a dwelling-house let under a secure tenancy. All three were inserted by textual amendment in Part I of Schedule 4 to the Housing Act 1980 (c. 51). The new grounds were numbered 5A, 5B and 9A.

Section 34(2) of the 1980 Act divides into three categories the grounds on which the court may order possession of a dwelling-house let under a secure tenancy, according to whether the court must be satisfied—

(a) that it is reasonable to make the order, or

(b) that suitable alternative accommodation will be available, or

(c) of both those matters.

The new grounds 5A and 5B fell within the first category without any need for consequential amendment because section 34(2)(*a*) refers to "grounds 1 to 6". The new ground 9A was added to the third category by amendment of section 34(2)(*c*) changing "grounds 10 to 13" to "grounds 9A to 13". Thus all the new grounds are among those on which the court may only order possession if satisfied that it is reasonable to do so.

Section 87(1) of the 1980 Act extends the discretion of the court in proceedings for possession. It is expressed to apply in the case of proceedings brought "on any of the grounds 1 to 6 or 10 to 13". The general intention, as originally enacted, was thus to cover all the grounds on which the court has to be satisfied that it is reasonable to make the order. As mentioned above, the new grounds 5A and 5B fall within this provision automatically. But no amendment was made, corresponding to that in section 34(2)(*c*), to bring in the new ground 9A.

This was clearly an oversight and we recommend that the resulting anomaly should be removed. Effect is given to this recommendation in clause 85 of the Housing Bill.

7. Two further adaptations necessary in consequence of the introduction of the right to be granted a shared ownership lease

The right to be granted a shared ownership lease was introduced by the Housing and Building Control Act 1984 (c. 29). It is a right which arises where a secure tenant is entitled to the right to buy and has claimed to exercise the right but is unable to complete the purchase because the mortgage to which he is entitled is insufficient. The idea of a shared ownership lease under the 1984 Act is that the tenant acquires an initial share of the equity, with a right to acquire further shares as and when he can afford to, but continues to pay rent attributable to the proportion not owned by him.

The provisions of the 1984 Act as to the exercise of the right to be granted a shared ownership lease proceed in large part by applying the provisions of the Housing Act 1980 as to the exercise of the right to buy. As explained above, the right to be granted a shared ownership lease could be regarded as part of the right to buy; but the 1984 Act proceeded in Schedule 11 to make consequential adaptations of the 1980 Act on the opposite assumption, and inserted references to the new right in parallel to the existing right to buy. Two such references were omitted; this was clearly inadvertent.

The provisions requiring further adaptation are section 8(4) of the 1980 Act (liability to repay discount a charge on the premises), and section 24(5) of the 1980 Act (Secretary of State's power to make vesting orders). In each case the reference to the right to buy should include a reference to the right to be granted a shared ownership lease. We recommend that this omission should be supplied. Effect is given to this recommendation in clauses 156 and 165 of the Housing Bill.

8. Proceedings to which section 24D of the Housing Act 1980 applies

Section 24D of the 1980 Act, inserted by section 11 of the Housing and Building Control Act 1984 (c. 29), gives the Secretary of State power to assist tenants involved in proceedings arising out of their claim to exercise the right to buy or to be granted a shared ownership lease, or arising out of any conveyance or grant made in pursuance of such a right.

The general object of the last part of subsection (2) of that section is to confine this to legal proceedings, as opposed to valuation proceedings before the district valuer. However, the reference to "the relevant time" (which is defined by section 3(5) of the 1980 Act to mean the date on which the tenant claims to exercise the right to buy) is not apt in the case of valuation in connection with the acquisition of additional shares under a shared ownership lease, or the duty under such a lease to pay for the outstanding share on disposal. The questions which may arise in those contexts are as to the value of the dwelling-house (or, in some cases, part of it) at a later date: see paragraphs 4(1) and 7(2) of Schedule 3 to the Housing and Building Control Act 1984.

This was clearly an oversight and we recommend that it should be made clear that all valuation proceedings are excluded from the Secretary of State's

power to give assistance. Effect is given to this recommendation in clause 170(1) of the Housing Bill.

9. Jurisdiction of the county court and related matters

Certain inconsistencies have crept into the housing legislation over the years in relation to the jurisdiction of courts and related matters. The following recommendations are made in order to secure consistency in accordance with current legislative policy.

(i) *Which court*

Historically, defective housing was first dealt with as an aspect of statutory nuisance under the Public Health Acts and was thus dealt with by magistrates' courts or, in the case of appeals, Quarter Sessions. Since the emergence of a separate body of housing law, jurisdiction over housing matters has almost invariably been conferred on the county court. This process of development has left anomalies. There remains a small number of provisions conferring jurisdiction on magistrates' courts (or, in one case, on the Crown Court as successor to Quarter Sessions) where other closely related provisions confer jurisdiction on the county court.

We accordingly recommend that proceedings under the following provisions should go to the county court (or in the case of money claims outside the county court limit to the High Court):

section 10(3) and (5) of the Housing Act 1957 (c. 56) (recovery of local authority's expenses in executing works),

section 14(5) of that Act (appeal against order charging premises with owner's expenses in carrying out works),

section 22(3) of that Act (recovery of expenses of local authority in recovering possession of building to be demolished),

section 85(2) of that Act (recovery of expenses of local authority in recovering possession of overcrowded dwelling),

section 12(4) and (6) of the Housing Act 1961 (c. 65) (appeal against order applying management code to house in multiple occupation or against refusal to revoke such an order),

section 14(5) of that Act (appeal against works notice in respect of house in multiple occupation).

Effect is given to this recommendation in clauses 200(5), 229(5), 270(4), 338(3), 371(1) and (4) and 373(1) and paragraphs 2 and 5 of Schedule 11 of the Housing Bill.

(ii) *Venue*

The provisions of the Housing Act 1957, as originally enacted, which conferred jurisdiction on the county court specified the court for the place where the premises in question were situated. This has not been done in

Housing Acts since that date, or in subsequent amendments of the 1957 Act, and does not accord with modern practice which is to leave the question of venue to rules of court.

The County Court Rules (S.I. 1981/1687) provide that proceedings in general (Ord. 4 r. 2) may be brought in the court for the district in which the defendant resides or in which the cause of action arose; however, proceedings for the recovery of land or relating to money charged on land (Ord. 4 r. 3) must be brought in the court for the district in which the land is situated; and appeal proceedings (Ord. 4 r. 9) must be brought in the court for the district in which the decision appealed against was made.

We recommend that the question of venue should, in all cases, be left to be dealt with under the County Court Rules made under section 75 of the County Courts Act 1984 (c. 28).

Effect is given to this recommendation in clauses 191(1), 267(3), 269(1), 272(5), 278(2), 285(1), 300(2) and 317(1) and in paragraph 6(1) of Schedule 11 of the Housing Bill.

(iii) *Inspection*

Section 38(1) of the Housing Act 1957, which relates to appeals under Part II of the Act (repair, demolition or closing of unfit houses), provides that the County Court Rules "shall make provision for the inspection by the judge of the premises to which the appeal relates in any case in which he considers that inspection is desirable". No such requirement appears in relation to other appeals under the Housing Acts.

This does not give rise to any special provision in the Rules but is subsumed in the general provision (Ord. 21 r. 6) that "the judge by whom any action or matter is heard may inspect any place or thing with respect to which any question arises in the proceedings". We therefore recommend that section 38(1) of the 1957 Act be omitted as unnecessary.

10. The function of filing and recording documents under section 14(4) of the Housing Act 1957

Section 14 of the 1957 Act provides a procedure by which the owner of premises who has carried out works in pursuance of a statutory notice may apply to the local authority to recoup his expenses by charging the property with an annuity of 6 per cent. per annum for 30 years. Subsection (4) provides that copies of the charging order, and of certain supporting documents, "shall . . . be deposited with the clerk of the peace of the county in which the house is situate, and be by him filed and recorded".

The office of clerk of the peace for the county was abolished by the Courts Act 1971 (c. 33) and paragraph 1(2) of Schedule 8 to that Act transferred his functions relating to, inter alia, "the keeping of records other than those relating to judicial business" to the clerk of the local authority for the area to which the matter relates. The definition of "local authority" in paragraph 1(4)

of that Schedule had the effect that the relevant local authority in London was the borough council but outside London was the county council. It would be anomalous if this function rested with the county council after the Local Government Act 1972 (c. 70), since housing is now for all practical purposes the responsibility of district councils. However, it is not clear that section 193(1) of that Act, in providing that the district council should be the local authority for the purposes of the Housing Acts, was effective to transfer this function.

We accordingly recommend that it should be made clear that outside London the function of filing and recording these documents rests with the proper officer of the relevant district council. Effect is given to this recommendation in clauses 200(6) (repair notices) and 229(6) (improvement notices) of the Housing Bill.

11. Charges within section 15(1)(b) of the Housing Act 1957

The general object of section 15(1) of the Housing Act 1957 is to give an owner's charge under section 14 of the Act (charge for expenses in carrying out statutory works) priority over charges created by private transactions but not those created under an Act of Parliament in favour of a public authority. It is not clear that this object is satisfactorily achieved by paragraph (*b*), which refers to:

> "any charge on the premises created or arising under any provision of the Public Health Act 1875, the Public Health Act 1936 . . . or under any provision in any local Act authorising a charge for recovery of expenses incurred by a local authority".

This provision is much wider than might appear. Although it has not been expressly amended in any relevant respect since its original enactment as section 20 of the Housing, Town Planning, etc. Act 1909 (c. 44), its operation has been greatly extended by indirect means. Its immediate operation is in relation to the general provisions of the 1875 and 1936 Acts creating a charge for expenses due to a local authority under the Act: respectively, section 257 and section 291. But it also applies to provisions tracing descent from those provisions—

(a) by express application (e.g. section 7(2) of the Prevention of Damage by Pests Act 1949 (c. 55)),

(b) by construction as one (e.g. the Public Health (Drainage of Trade Premises) Act 1937 (c. 40)).

(c) by the extension of the substantive provisions of the Public Health Acts to other authorities (e.g. section 34 of the New Towns Act 1981 (c. 64)), and

(d) by repeal and re-enactment of provisions of the Public Health Acts (e.g. in the Highways Act 1959 (c. 25), now repealed and consolidated in the Highways Act 1980 (c. 66)).

What is not clear is whether in certain cases later legislation amounts to repeal and re-enactment of provisions of the Public Health Acts referred to.

Instances of doubtful cases are: charges for sewerage contributions under the Public Health Act 1961 (c. 64) and charges under the Water Act 1973 (c. 37).

The point appears if this provision is contrasted with section 1(1)(*a*) of the Local Land Charges Act 1975 (c. 76) which, as amended, describes essentially the same group of charges as follows:

> "any charge acquired . . . by a local authority, water authority or new town corporation under the Public Health Acts 1936 and 1937, the Public Health Act 1961 or the Highways Act 1980 (or any Act repealed by that Act) or the Building Act 1984, or any similar charge acquired by a local authority under any other Act . . . being a charge that is binding on successive owners of the land affected;".

We recommend that the doubts should be removed by adopting this definition for the purposes of section 15(1) of the 1957 Act. Effect is given to this recommendation in clauses 201 (repair notices) and 230 (improvement notices) of the Housing Bill.

12. Notice of proceedings to be given to owner under section 33(1) or 74(5) of the Housing Act 1957

Section 33(1) of the 1957 Act provides that if an owner of premises who is not the person in receipt of the rents and profits gives notice to the local authority of his interest the authority shall give him notice of proceedings taken by them under Part II of that Act (which relates to the repair, demolition or closing of unfit houses). Similar provision is made by section 74(5) of that Act in relation to proceedings under Part III of the Act for the demolition of the house as an obstructive building.

These provisions have every appearance of having been carried forward over the years (a predecessor appears as section 47(1) of the Housing of the Working Classes Act 1890 (c. 70)) whilst the substantive provisions to which they relate have changed out of all recognition. They also pre-date the general power of a local authority to require information about the ownership of premises. The main doubt about their continuing utility arises from the fact that they appear to proceed on the assumption that proceedings will usually be taken against the occupier or immediate landlord. This is true, for instance, of proceedings under the multi-occupation provisions, to which section 33(1) is applied by section 23(2) of the Housing Act 1961 (c. 65). But in their original context it is now generally the case that the owner of the premises affected (or, if there is more than one, all of them) is required to be served with notice under the substantive provision itself: see sections 16(1), 19, 25(1), 26, 28 and 72(1) and (2) of the 1957 Act.

The lack of apparent relevance of these provisions in most contexts where notice is required to be served creates the impression, which we believe to be erroneous, that such an owner is entitled to be given notice of proceedings of which notice is not otherwise required to be given to anyone, even to those directly affected. It seems most unlikely that this was the intention.

The only context in which a useful purpose is served is in relation to repair notices under section 9 of the 1957 Act. Such a notice is given to the "person having control" of the premises; service on other persons having an interest in the premises is discretionary, despite the fact that the procedure may result in the local authority themselves carrying out the repairs so that the expense is a charge on the premises.

We therefore recommend that section 74(5) of the 1957 Act should not be reproduced and that the provision reproducing section 33(1) should be confined to repair notices. Effect is given to this recommendation in clause 202 of the Housing Bill.

13. Premises in respect of which a repair notice may be given

The provisions of Part II of the Housing Act 1957 (repair, demolition or closing of unfit premises) are expressed to apply in relation to "houses". Doubt has been expressed as to the nature of premises in respect of which a repair notice under section 9 of the Act may be served. The question is whether "house" in that provision bears a narrow meaning—"house" as opposed to, say, a flat or a hostel—or a wide meaning covering any permanent structure used as housing accommodation.

The narrower construction is unlikely, having regard to the statutory purpose and the fact that the courts have not in general adopted a technical attitude in this branch of the law. But some support for it can be drawn, by way of negative implication, from—

(i) the fact that section 189(1) of the 1957 Act (the general definition section) expressly provides that in the context of provision of housing accommodation "house" includes any part of a building occupied or intended to be occupied as a separate dwelling; and

(ii) the fact that section 18 of the 1957 Act, which appears to be confined to the group of sections beginning with section 16, specifically provides that action may be taken against, inter alia, "any part of a building which is used or is suitable for use as a dwelling".

We recommend that any doubt should be removed by making corresponding provision in relation to repair notices. Effect is given to this recommendation in clause 205 of the Housing Bill.

14. Uniformity of treatment for cases within the Rent (Agriculture) Act 1976

There is a certain unevenness in the housing legislation in the treatment of premises to which the Rent (Agriculture) Act 1976 (c. 80) applies. That Act gives security of tenure to certain agricultural tenants housed by their employers.

There are significant differences between the 1976 Act and the Rent Act 1977. Those protected by the 1976 Act may in some cases be tenants or former tenants but are in practice more likely to be present or past holders of a licence

to occupy the premises. There is therefore possible justification for not necessarily applying in relation to these cases provisions of the Housing Acts which apply to protected and statutory tenants under the 1977 Act. However, the present unevenness of treatment appears to be accounted for in large part by the failure of the 1976 Act to make all the consequential amendments one might have expected. It may well be that this failure, and similar failures in subsequent legislation to deal with cases within the 1976 Act, occurred because the practical problem is negligible. They do not appear to reflect any considered policy.

(i) *Statutory tenants*

The general scheme of the consequential amendments made by the 1976 Act was to insert parallel references to statutory tenants under that Act whenever a reference was found to a statutory tenant under the Rent Act.

Three provisions in the Housing Acts were not so amended:

paragraph 2(3) of Part I of Schedule 3 to the Housing Act 1957 (statutory tenant not required to be served with certain notices),

section 23(7) of the Housing Act 1961 (c. 65) (meaning of "lessee" in provisions relating to multi-occupation), and

section 125(2) of the Housing Act 1974 (c. 44) (specific performance of landlord's repairing obligations: "tenant" includes statutory tenant).

There seems no reason why these provisions were distinguished from others which were amended. We recommend that the omission be rectified by defining "statutory tenant" generally to include a statutory tenant under either the 1977 or the 1976 Act.

Effect is given to this recommendation in clause 622 of the Housing Bill and clause 37 of the Landlord and Tenant Bill. The provisions mentioned above in relation to which the recommendation has effect are reproduced in clause 398(2) and paragraph 3(3) of Schedule 23 of the Housing Bill and clause 17(2) of the Landlord and Tenant Bill.

(ii) *Other references to the 1976 Act*

There are two other provisions where references to parallel cases under the 1976 Act should have been inserted:

(a) Section 47 of the Housing Act 1974 (c. 44) requires the owners of land in a housing action area to notify the local housing authority of any disposal. There are a number of exceptions. One is where the disposal is a letting on a protected tenancy under the Rent Act 1977. It seems clear that a disposal creating a protected occupancy under the 1976 Act should be similarly excepted.

(b) Schedule 24 to the Housing Act 1980 (c. 51) relates to means of escape from fire in houses in multiple occupation. One of the

remedies open to the local authority is to seek an undertaking that the premises will not be used for human habitation whilst the means of escape from fire are inadequate. Paragaph 9 provides that nothing in the Rent Act 1977 prevents possession being obtained of premises in respect of which such an undertaking is in force. It seems clear again that the parallel case under the 1976 Act should receive parallel treatment.

We recommend that these omissions should be put right. Effect is given to this recommendation in clauses 247(5)(*c*) and 368(6) of the Housing Bill.

15. The word "conviction" in section 47(10) of the Housing Act 1974

Section 47 of the Housing Act 1974 (c. 44) requires landlords of housing accommodation in a housing action area to notify the local authority if they serve a notice to quit or propose to dispose of the land. Failure to give the necessary notification is, by subsection (7), an offence. Subsection (10) goes on to provide that nevertheless a failure does not affect the validity of the notice to quit or disposal, but does so by saying:

"The *conviction* of any person for an offence under subsection (7) shall not affect . . . etc.".

It is, of course, the fact that an offence has been *committed* that gives rise to the potential illegality of the transaction. We recommend that in reproducing this provision a reference to commission of an offence be substituted. Effect is given to this recommendation in clause 249(2) of the Housing Bill.

16. Ancillary provisions relating to closing orders

Part II of the Housing Act 1957 contains a number of provisions authorising the making of a closing order instead of a demolition order in respect of unfit premises which are beyond repair. A closing order is an order prohibiting the use of the premises to which it relates for any purpose not approved by the local housing authority.

Originally the only power to make a closing order was where the premises were part of a building or an underground room: section 18 of the 1957 Act, formerly section 12 of the Housing Act 1936 (c. 51). Later further cases were provided for:

(a) Listed buildings: sections 17(3) and 26 of the 1957 Act, formerly section 3 of the Housing Act 1949 (c. 60).

(b) Houses whose demolition would affect other houses: the proviso to section 17(1) of the 1957 Act, formerly section 10 of the Local Government (Miscellaneous Provisions) Act 1953 (c. 26).

(c) Houses to be put to non-housing use: section 26 of the Housing Act 1961 (c. 65).

Some of the ancillary provisions relating to closing orders do not apply to all descriptions of closing order. This appears to be due to technical failure,

rather than policy. The necessary consequential adaptations were not made when the new descriptions of closing order were brought in.

(i) *Section 27(5) of the 1957 Act* (exclusion of Rent Act protection)

This provision excludes the Rent Acts (that is, the Rent Act 1977 (c. 42) and the Rent (Agriculture) Act 1976 (c. 80)) and thus enables the landlord to obtain possession of premises which are subject to a closing order. It does not at present apply in relation to closing orders under section 17(3) or 26 of the 1957 Act (listed buildings). An anomaly results because there are no such exceptions to the proposition in section 27(1) of the Act that it is an offence to use premises for human habitation when they are subject to a closing order, and the protection of the Rent Acts rests on the continued occupation of the premises by the tenant. The mistake appears to have been the omission in section 3 of the Housing Act 1949 to attract the provisions of section 156 of the Housing Act 1936.

(ii) *Section 33(2) of the 1957 Act (saving for rights arising from breach of covenant, etc.)*

This provision saves the rights of owners in respect of breaches of covenant in relation to houses against which action is taken under Part II of the 1957 Act. It applies in relation to the owner of a "house", this being the expression used in the original context of this provision in section 48 of the Housing of the Working Classes Act 1890 (c. 70). In the absence of any restrictive context this expression has a very wide meaning. But subsequent provisions now appearing in Part II of the 1957 Act make specific provision for temporary or movable structures (section 16(7)) and parts of buildings (section 18(1)). It seems desirable that the language of the provision reproducing section 33(2) should reflect this.

(iii) *Section 159(b)(iii) of the 1957 Act* (power of entry for survey and examination)

This provision confers a power of entry for the purpose of survey and examination in the case of a house in respect of which a closing order has been made under section 18 of the 1957 Act (part of building or underground room). There seems no good reason why it should be confined to this one description of closing order. The explanation appears to be that its predecessor, section 157(*b*) of the Housing Act 1936, did apply to closing orders generally, but the only closing orders then provided for were under section 12 of that Act which was the predecessor of section 18 of the 1957 Act. When further varieties of closing order were provided for in 1949, 1953 and 1961, this provision was not kept up to date.

(iv) *The proviso to section 162 of the 1957 Act* (power of court to terminate or vary lease)

This section enables the court, on the application of the lessor or lessee, to terminate or vary a lease if a demolition or closing order has been made in respect of the premises. The proviso to subsection (1) of the section excepts

closing orders under section 18 of the 1957 Act (parts of buildings and underground rooms). Originally section 160 of the Housing Act 1936 provided for such applications to be made only where the demolition of the premises had been ordered. The (incorrect) sidenote to section 162 of the 1957 Act still reflects this. The only closing orders then known were under section 12 of the 1936 Act (now section 18 of the 1957 Act). When new varieties of closing order came in as alternatives to demolition it was decided that section 160 of the 1936 Act should apply as in the case of a demolition order. But the occasion never arose for reconsidering the original exclusion of closing orders under section 12 of the Act. The present position is simply anomalous: all these closing orders are made in cases where the premises would be demolished if they were an ordinary house.

We recommend that the resulting anomalies should be removed by applying these provisions equally to all descriptions of closing order. Effect is given to this recommendation in clauses 276, 307, 317 and 319 of the Housing Bill.

17. Overcrowding pre-dating the commencement of the Housing Act 1935

The overcrowding provisions at present in Part IV of the Housing Act 1957 (which are reproduced in Part X of the Housing Bill) come from the Housing Act 1935 (c. 40). That Act was drawn so as not to apply to existing overcrowding. Thus section 78(2) of the 1957 Act provides that an occupier is not guilty of an offence of causing or permitting overcrowding if, broadly speaking, the persons sleeping in the house are persons who were living there on the appointed day (that is, the date on which the Housing Act 1935 came into force in that area) and have thereafter lived there continuously. Similarly the landlord's duty under section 83 of the 1957 Act to notify the local authority of overcrowding does not apply to overcrowding which existed on the appointed day just mentioned.

It is most unlikely, fifty years on, that any of these old cases still exist. These provisions are accordingly not reproduced in the main body of the consolidation, but their effect is saved by the general provision in Schedule 4 to the Housing (Consequential Provisions) Bill preserving the effect of old transitional provisions not specifically reproduced.

This does not change the law, but in consequence we recommend that the obligation under section 81 of the 1957 Act to include in the rent book a summary of, inter alia, the provisions of section 78 of the Act should no longer extend to requiring the tenant to be informed of the exception for overcrowding pre-dating the commencement of the 1935 Act or to be informed of the date on which that Act came into force in his area; see Part I of the Schedule to the Housing (Overcrowding and Miscellaneous Forms) Regulations 1937, S.R.&O. 1937 No. 80. Effect is given to this recommendation in clause 332 of the Housing Bill.

18. Terminology in section 90 of the Housing Act 1957

The provisions of section 90 of the Housing Act 1957 (c. 56) as to overcrowding notices pre-date the main provisions about multi-occupied houses which

come from the Housing Acts of 1961, 1964 and 1969. The juxtaposition of the provisions in Part XI of the Housing Bill reveals minor differences of terminology. These survived the substitution of a new section 90 by section 146 of the Housing Act 1980 (c. 51).

(i) *"Person having control and management"*

Section 90 enables an overcrowding notice to be served on the occupier or "the person having control and management" of the premises. The other multi-occupation provisions define separately the "person having control" and the "person managing". Broadly speaking, the person managing is the person who receives rents from the tenants or lodgers; the person having control is, in effect, the owner—the superior landlord of the whole premises or the freeholder. Clearly, in some cases the same person satisfies both definitions.

In the context of section 90 what matters is who is entitled to permit persons to sleep on the premises. The person "having control", defined as mentioned above, is out of the picture if he is a mere rentier. In terms of the more modern terminology it is the "person managing" who matters.

For the sake of consistency and certainty we recommend that the person to be served with an overcrowding notice should be the "person managing", as defined in the other multi-occupation provisions. Effect is given to this recommendation in clause 358 of the Housing Bill.

(ii) *"Person having an estate or interest"*

This expression is used in section 90 to identify the persons who may apply for the revocation or variation of an overcrowding notice. It is a term of art in the other multi-occupation provisions (see section 23(7) of the Housing Act 1961) where it includes a statutory tenant.

We recommend that the expression should have the same meaning in the provisions relating to overcrowding notices. Effect is given to this recommendation in clause 398 of the Housing Bill.

19. Extension of time limits in relation to orders affecting houses in multiple occupation

In the provisions relating to multi-occupied houses (which are reproduced in Part XI of the Housing Bill) it is generally provided that the time limits for complying with an order, or appealing against it, may be extended with the written agreement of the local housing authority.

Three provisions do not conform with this general policy—

(a) sections 82 and 83(1) of the Housing Act 1964 (c. 44) (appeal against control order or against management scheme for house subject to control order), where there is no provision for an extension of time, and

(b) paragraph 2(2) of Schedule 24 to the Housing Act 1980 (c. 51) (extension of time for complying with notice to provide means of escape from fire), where an extension of time is provided for but is not required to be in writing.

We recommend that these provisions should be brought into line with the others. Effect is given to this recommendation in clauses 366(3) and 384(2) and paragraph 3(1) of Schedule 14 of the Housing Bill.

20. Enforcement of the provisions relating to multi-occupied houses

The following recommendations are made to secure consistency in the provisions relating to the enforcement of the provisions about houses in multiple occupation (Part XI of the Housing Bill).

(i) *Power of entry to ascertain whether offence has been committed*

Section 159 of the Housing Act 1957 (c. 56), which provides for powers of entry, has been applied in relation to multi-occupied houses to authorise entry for the purpose of ascertaining whether an offence has been committed. The effect of section 23(6) of the Housing Act 1961 (c. 65), section 65(4) of the Housing Act 1964 (c. 56) and section 61(5) of the Housing Act 1969 (c. 33) is to achieve this for all but three of the relevant offences. The explanation for the absence of such provision in those cases is in one case the fact that the relevant provision pre-dates the main multi-occupation provisions and in the other two cases, apparently, minor drafting errors.

Section 90 of the 1957 Act (overcrowding notices) is the provision which pre-dates the others. It dates from 1954; the main multi-occupation provisions come from Acts of 1961, 1964 and 1969. The subject-matter of section 90 is virtually identical with that of section 19 of the Housing Act 1961 (which also provides for directions to prevent or reduce overcrowding), in relation to which the power of entry is available.

The power of entry was not expressly attracted in 1969 to the offence under section 64(7) of the Housing Act 1969 of contravention or failure to comply with a registration scheme. The offence in question replaces that in section 22(5) of the Housing Act 1961, so that it might have been thought that the provisions of the Interpretation Act as to repeal and re-enactment would apply. But the new offence does not fall within the wording of section 23(6) of the 1961 Act which applies section 159 of the 1957 Act but refers only to contravention of a regulation or direction. This is a contravention of a provision of a scheme.

A similar point arises on Schedule 24 to the Housing Act 1980 (c. 51) (means of escape from fire) where paragraph 7 creates an offence of using a house in contravention of an undertaking. Paragraph 12 has the effect that the Schedule is to be treated as slotted in in place of section 16 of the 1961 Act, but does not adapt the reference in section 23(6) to contravention of a regulation or direction.

We recommend that the power of entry to ascertain whether an offence has been committed should be available in these cases. Effect is given to this recommendation in clause 395 of the Housing Bill.

(ii) *Entry under warrant*

Section 68 of the Housing Act 1964, (c. 56) and the provisions applying it, provide for entry under the authority of a justice's warrant where there is a power of entry but entry has been refused or an application for admission would defeat the object of the entry. There appear to be two deficiencies in these provisions. They seem unduly narrow in one respect and unduly wide in another.

They seem unduly narrow in that the scope of this additional power ought to correspond with the cases in which a power of entry exists to ascertain whether an offence has been committed. In addition to the cases mentioned above, which at present are not within the provision conferring the power of entry, the provisions lack a reference to enforcement of sections 73 to 91 of the 1964 Act (control orders). This appears to be a technical slip. Those sections are, by virtue of section 91(5) of the 1964 Act and section 28(2) of the 1961 Act, to be construed as one with Part II of the 1961 Act. But this does not quite bring them within section 68(2)(*a*) of the 1964 Act, which does not refer generally to offences under Part II of the 1961 Act but specifically provides for entry under warrant in order to ascertain whether there has been a failure to comply with a notice under section 14, 15 or 16 of the 1961 Act or a contravention of a regulation or direction under Part II of the 1961 Act.

They seem unduly wide in that the division between cases in which advance notice of the intended entry is required and those in which it is not should correspond with the division between entry to determine whether the authority should exercise their powers and entry to ascertain whether an offence has been committed. This is not at present achieved by section 68 of the 1964 Act.

We recommend that the power to authorise entry by warrant should cover the same cases as those covered by the power of entry to ascertain whether an offence has been committed, and that in those cases, but no others, advance notice of the intended entry should not be required. Effect is given to this recommendation in clause 397 of the Housing Bill.

21. Advance by local authority not to exceed value of mortgaged security

The object of section 43(3)(*b*) of the Housing (Financial Provisions) Act 1958 (c. 42) is to ensure that the amount advanced by a local authority under that section, which by paragraph (*a*) must be secured by a mortgage of the land in question, does not exceed the value of the security. It provides that:

> "the value of the principal of the advance shall not exceed, in the case of a house or houses to be acquired, the value of the mortgaged security, and, in any other case, the value which it is estimated the mortgaged security will bear when the construction, conversion, alteration, enlargement, repair or improvement is carried out;".

The language reflects the purposes for which an advance may be made under paragraphs (*a*) to (*d*) of section 43(1). It does not fit an advance under paragraph (*e*), which was added by section 37(2) of the Local Government Act 1974 (c. 7) and relates to refinancing an existing loan.

It does not seem likely that an advance under paragraph (*e*) was intended to be exempt from the general requirement that the security should be sufficient, rather that a small consequential amendment should have been made. We recommend that in reproducing this provision the wording should be modified to cover such an advance. Effect is given to this recommendation in clause 436 of the Housing Bill.

22. Power to postpone payment of interest under homesteading schemes

There is a conflict between section 43(3)(*c*) of the Housing (Financial Provisions) Act 1958 (c. 42), as amended by section 37(4) of the Local Government Act 1974 (c. 7) and section 110(11) and (12) of the Housing Act 1980 (c. 51).

Section 43(3)(*c*) of the 1958 Act says that a local authority mortgage may allow for the postponement of payments of principal but requires interest to be paid throughout the period of the loan. Section 110 of the 1980 Act regulates the rate of interest payable under local authority mortgages. Subsections (11) and (12), however, go rather wider. They relate to homesteading schemes, that is, schemes under which dilapidated houses are acquired, by means of a local authority mortgage, by owner-occupiers who undertake to do up the premises and are not expected to make repayments of principal or interest on their mortgage until the property has been rehabilitated. They provide that nothing in section 110 prevents a local authority from postponing payments of principal and interest in the case of homesteading schemes approved by the Secretary of State. This is a puzzling provision, because section 110 says nothing about repayments of principal and makes provision for what the rate of interest is to be, not as to whether interest is payable at all.

There seems no reason why the position should not be stated positively. We therefore recommend that an express power should be given to enter into homesteading schemes and that the general requirement that interest be paid throughout the period of the loan should be modified accordingly. Effect is given to this recommendation in clauses 436(5) and 441 of the Housing Bill.

23. Applications for improvement grants, etc. by persons proposing to acquire an owner's interest

As originally enacted, section 57(3) of the Housing Act 1974 (c. 44) provided that an application for a grant under Part VII of that Act (improvement grant, intermediate grant, special grant or repairs grant) should not be *entertained* unless the applicant held, broadly speaking, an owner's interest—either the freehold or at least a five year lease of the premises concerned.

Two amendments were made by the Housing Act 1980 (c. 51). They conflict. Section 106 of the 1980 Act provided that grant applications could also be

made by tenants. Section 106(2) provided that the local authority could refuse to entertain a tenant's application unless a certificate of availability for letting was given by a "qualified person". It is in connection with the definition of "qualified person" that the difficulty arises. That expression is defined in section 106(3) as a person from whom the authority could have *entertained* an application apart from that section. This assumes the existence of the provision in section 57(3) in its original form. However, section 57(3) was amended by paragraph 1 of Schedule 12 to the 1980 Act, as a result of which it no longer defines a class of persons from whom applications may be *entertained.* It is now a restriction on the *approval* of applications. This makes a nonsense of section 106(3).

We recommend that the link between the two provisions should be restored by providing that an application may be *entertained* if made by a person who does not have an owner's interest but proposes to acquire one, but is not to be *approved* until he has acquired it. Effect is given to this recommendation in clause 463 of the Housing Bill.

24. The works for which an intermediate or special grant may be given

There appear to be two other technical errors in the amendments made to Part VII of the Housing Act 1974 (c. 44) by the Housing Act 1980 (c. 51). These make it unclear what works of repair and replacement are covered in addition to the works for which intermediate grants and special grants are primarily given.

(i) *Intermediate grants*

It is clear from section 68(1)(*a*) of the 1974 Act that an intermediate grant, which is primarily intended to provide standard amenities which are lacking, also covers some works of repair or replacement. What is more, section 67(3), as substituted by paragraph 10(2) of Schedule 12 to the 1980 Act, provides for the variation of an application which claims grant for works of repair or replacement going beyond those required to put the dwelling into reasonable repair. What is not clear is how such works come within the scope of the grant in the first place.

The scheme of Part VII of the 1974 Act is that works of repair and replacement are brought in by means of the second part of the definition of "improvement" in section 84:

> "any reference to works required for the . . . improvement of a dwelling (whether generally or in any particular respect) includes a reference to any works of repair or replacement needed . . . for the purpose of enabling the dwelling to which the improvement relates to attain the relevant standard".

The expression "relevant standard" is also defined in that section. As originally enacted it referred, in relation to an intermediate grant, to "the full standard or the reduced standard referred to in section 66 above". One of the results of the 1980 amendments is to relax that standard by requiring (in a

substituted section 66) only that the dwelling be fit for human habitation when the works are completed; even that may now be dispensed with by the local housing authority. But instead of amending the definition of "relevant standard" the 1980 Act repealed the relevant paragraph, thus severing the link between the definition of "improvement" and the standard now required to be attained.

We recommend that it should be made clear that the works for which an intermediate grant may be given include works of repair or replacement necessary in order to put the premises in a state of reasonable repair. Effect is given to this recommendation in clause 474(2) of the Housing Bill.

(ii) *Special grants*

A similar point arises in relation to special grants. These are grants for works on houses in multiple occupation to provide standard amenities or means of escape from fire.

Works of repair or replacement were not originally covered by special grants (see section 70(2) of the 1974 Act as originally enacted). They are now covered (see section 70(1)(*c*) of the 1974 Act, as substituted by paragraph 18(1) of Schedule 12 to the 1980 Act). But although the 1980 Act consequentially added a reference to special grants to the definition of "relevant standard" in section 84 of the 1974 Act, it failed to amend the second half of the definition of "improvement" which is in terms of "dwellings", an expression defined by section 129(1) of the 1974 Act to mean separate dwellings.

We recommend that it should be made clear that the works for which a special grant may be given include works of repair or replacement required to put the multi-occupied house in a state of reasonable repair. Effect is given to this recommendation in clause 483 of the Housing Bill.

25. Power to enter and determine short tenancies of land acquired or appropriated for housing purposes

A local authority who have acquired or appropriated land for the purposes of Part III or V of the Housing Act 1957 (c. 56) (slum clearance or the provision of housing) subject to the interest of the person in possession of the land may enter and take possession on not less than 14 days' notice. This power is given by sections 62 and 101 of the 1957 Act.

Section 101 was applied, by paragraph 11 of Schedule 8 to the Housing Act 1969 (c. 33), to land acquired for the purposes of Part II of that Act, which relates to general improvement areas. It was not applied by the Housing Act 1974 (c. 44) in relation to land acquired for the purposes of housing action areas. This is anomalous, but no doubt of little practical importance because most of the things a local authority can do under the provisions relating to housing action areas it can equally well do under Part V of the 1957 Act.

We recommend that the anomaly be removed by applying this provision in relation to land acquired or appropriated for the purposes of the provisions

relating to housing action areas. Effect is given to this recommendation in clause 584 of the Housing Bill.

26. Compulsory purchase compensation

There are three matters relating to the assessment of compensation on compulsory purchase which are dealt with by provisions in the Housing Act 1957 which differ only in minor respects from general provisions in the Land Compensation Act 1961 (c. 33) and the Acquisition of Land Act 1981 (c. 67). The existence of these separate provisions in the 1957 Act appears to be a historical survival.

(i) *Things done with a view to obtaining increased compensation*

Paragraph 8(5) of Schedule 3 to the 1957 Act provides:

> "The tribunal shall not take into account any building erected or any improvement or alteration made or any interest in land created after the date on which notice of the order having been made is published in accordance with the provisions of this Schedule if, in the opinion of the tribunal, the erection of the building or the making of the improvement or alteration or the creation of the interest was not reasonably necessary and was carried out with a view to obtaining or increasing compensation."

The corresponding general provision is section 4(2) of the Acquisition of Land Act 1981 (c. 67):

> "The Lands Tribunal shall not take into account any interest in land, or any enhancement of the value of any interest in land, by reason of any building erected, work done or improvement or alteration made, whether on the land purchased or on any other land with which the claimant is, or was at the time of the erection, doing or making of the building, works, improvement or alteration, directly or indirectly concerned, if the Lands Tribunal is satisfied that the creation of the interest, the erection of the building, the doing of the work, the making of the improvement or the alteration, as the case may be, was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation."

It is anomalous that the more antique form in Schedule 3 to the 1957 Act (which is slightly narrower) should apply in relation to compulsory purchase under Part III of the 1957 Act (slum clearance) whilst the more modern form applies to all other compulsory purchases under that Act and subsequent Housing Acts.

We therefore recommend that section 4 of the Acquisition of Land Act 1981 should also apply in that case. Effect is given to this recommendation in clause 598 of the Housing Bill.

(ii) *Enhanced value due to illegal user*

Identical provisions appear in paragraph 1 of Part III of Schedule 3 and paragraph 2(2) of Schedule 7 to the 1957 Act, as follows:

"If the tribunal by whom compensation is to be assessed are satisfied with respect to any premises that the rental thereof was enhanced by reason of their being used for illegal purposes, or being overcrowded within the meaning of Part IV of this Act, the compensation shall, so far as it is based on rental, be based on the rental which would have been obtainable if the premises were occupied for legal purposes and were not so overcrowded."

This does not appear to differ significantly from Rule (4) in section 5 of the Land Compensation Act 1961 (c. 33):

"Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the occupants of the premises or to the public health, the amount of that increase shall not be taken into account."

This Rule in fact applies in relation to compulsory purchase under the 1957 Act, except so far as the 1957 Act contains inconsistent provision, so that the specific provisions appears to serve no useful purpose. We accordingly recommend that they should not be reproduced in the consolidation.

(iii) *Increased value of other land in the same ownership*

Identical provisions appear in paragraph 4 of Part III of Schedule 3 and paragraph 2(5) of Schedule 7 to the 1957 Act, as follows:

"The tribunal shall have regard to and make allowance in respect of any increased value which, in their opinion, will be given to other premises of the same owner by the demolition by the local authority of the buildings."

The same point is more comprehensively dealt with by section 6 of the Land Compensation Act 1961, which again already applies in relation to compulsory purchase under the 1957 Act. We again recommend that the specific provisions should not be reproduced in the consolidation.

This will also have the effect of correcting an omission in section 7 of the Land Compensation Act 1961 which refers to paragraph 4 of Part III of Schedule 3 to the 1957 Act as being a provision corresponding to section 6 of the 1961 Act, but omits to refer to the identical provision in paragraph 2(5) of Schedule 7 to the 1957 Act.

27. Ancillary provisions of general application

There are a number of provisions towards the end of the 1957 Act which apply generally for the purposes of that Act but which have not been uniformly applied by subsequent Housing Acts. They are:

section 149(1) (duty of local authority to have regard to environmental considerations);

section 151 (enforcement of covenants restricting use of land);

section 178 (power to prescribe forms, etc.);

section 179 (power to dispense with advertisements, etc.);

section 181(1) (local inquiries); and

section 187 (provisions relating to The Common Council of the City of London).

In order to reproduce the present effect of these provisions it would be necessary to list the provisions of the consolidation deriving from the 1957 Act and the provisions directed to be construed as one with it (namely, Part II of the Housing Act 1961, Parts II and IV of the Housing Act 1964, Part IV of the Housing Act 1969 and Schedule 24 to the Housing Act 1980). This would produce an unsatisfactory assortment of provisions.

The alternative is to apply these provisions generally. This appears more satisfactory since the provisions are either inherently general in character (ss. 149(1), 151 and 187) or merely confer powers (ss. 178, 179 and 181(1)). We recommend that they should apply generally for the purposes of the Housing Bill and that the provisions reproducing section 187 of the 1957 Act should also apply generally for the purpose of the Housing Associations Bill. Effect is given to this recommendation in clauses 607, 609, 614 to 616 and 618 of the Housing Bill.

28. Liability of directors and others in case of offence by body corporate

Most of the offences in Housing Acts since 1961 have the benefit of the common form provision expressly imposing liability on the officers of a body corporate where the body commits an offence. For example, in paragraph 9 of Schedule 4 to the Housing and Building Control Act 1984 (c. 29) (offences in relation to service charges):

> "(2) Where an offence under this paragraph which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of an offence and liable to be proceeded against and punished accordingly.
>
> (3) Where the affairs of a body corporate are managed by its members, sub-paragraph (2) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate."

The absence of such a provision in relation to the offences in the Housing Act 1957 is due to the fact that the Act reproduced legislation, much of it from the 1930s, dating from a time before such provisions were regularly included.

There is no difference between the kinds of offence involved. For instance, such provision is made in relation to a landlord's failure to specify his name and address in the rentbook under section 4 of the Landlord and Tenant Act

1962 (c. 50), but not in relation to his failure under section 81(1) of the 1957 Act to specify there the permitted number of persons for the purposes of the overcrowding provisions. Again, in relation to multi-occupied houses, such provision is made in relation to contravention of a direction under section 19 of the Housing Act 1961 (c. 65) limiting the number of persons who may occupy a house but not in relation to contravention of an overcrowding notice under section 90 of the 1957 Act.

It is anomalous that in some cases express provision is made for the liability of the responsible officers of the body corporation whilst in other cases they must be proceeded against under the general criminal law as accomplices of the body corporate. Whilst in most cases those liable under the common form provision will also be accomplices under the general law, this is not necessarily so—in particular, where the common form provision imposes liability for neglect of duty.

We recommend that the modern common form provision should apply in relation to all the offences in the consolidation, except where there is specific provision dealing with the matter in some other way (as there is in the offences relating to the management of housing associations). Effect is given to this recommendation in clause 613 of the Housing Bill and clause 33 of the Landlord and Tenant Bill.

29. Application of housing legislation to the Isles of Scilly

Some of the legislation reproduced in the consolidation applies directly to the Isles of Scilly as to other parts of England and Wales. Some applies by virtue of orders made under powers enabling exceptions, adaptations and modifications to be made.

Part IX of the Public Health Act 1936 (c. 49) (common lodging houses) applies by virtue of the Isles of Scilly (Functions) Order (S.I. 1979/72) made under section 265 of the Local Government Act 1972 (c. 70). The Housing Acts 1957 to 1975 (with the exception of section 11 of the 1975 Act which applies directly) apply by virtue of orders under section 103 of the Housing Finance Act 1972 (c. 47), as substituted by paragraph 7(1) of Schedule 5 to the 1975 Act. The relevant orders are the Isles of Scilly (Housing) Order 1972 (S.I. 1972/1204) and the Isles of Scilly (Housing) Order 1975 (S.I. 1975/512). Since 1975 Housing Acts have simply applied to the Isles as to the rest of England and Wales, by defining "local authority" and other similar expressions to include the Council of the Isles or by virtue of amending provisions which already extend.

The problem arising from this inconsistency of treatment was considered in connection with the consolidation of the Rent Acts in 1977. The solution adopted was to dispense with the need for an order to extend provisions to the Isles of Scilly but to preserve and generalise the power to make exceptions, adaptations and modifications; see Law Commission Recommendation No. 13 in Cmnd 6751 and section 153 of the Rent Act 1977 (c. 42).

We recommend that the same general solution be adopted here. Effect is given to this recommendation in clause 620 of the Housing Bill, clause 103 of the Housing Associations Bill and clause 35 of the Landlord and Tenant Bill.

30. Harmonisation of provisions for recovery of the local authority's expenses in carrying out works

There are three sets of parallel provisions about the recovery by a local authority of the expenses incurred by them in carrying out works themselves on the default of the person on whom a works notice has been served. They are:

sections 10 and 11 of the Housing Act 1957 (c. 56), relating to repair notices (these provisions date back to 1930);

section 18 of the Housing Act 1961 (c. 65) and section 64 of the Housing Act 1964 (c. 56), relating to notices in respect of houses in multiple occupation; and

section 94 of the Housing Act 1974 (c. 44), relating to improvement notices.

The substantive discrepancies between the three sets of provisions are very small. We recommend that there should be a single set of provisions applicable in all these cases and that the discrepancies should be dealt with as follows.

(i) *Costs recoverable under an order of the court*

Section 18(3) of the 1961 Act and section 94(1) of the 1974 Act both exclude from the procedure expenses recoverable under an order of the court on an appeal, that is the legal costs of the appeal. This is no doubt because other equally effective means of enforcement are available. There is no such provision in section 10(3) of the 1957 Act.

We recommend that the exclusion should apply generally. Effect is given to this recommendation in paragraph 2(4) of Schedule 11 to the Housing Bill.

(ii) *Service of copies of demand*

The service of a demand for the expenses is only expressly required by section 94(2) of the 1974 Act, but it is implicit in section 10 of the 1957 Act and section 18 of the 1961 Act where it is referred to as having happened. Section 64(2) of the 1964 Act and section 94(2) of the 1974 Act require service of a copy of the demand on other persons interested in the property. The omission of this requirement in the 1957 Act procedure is a defect, since the sum demanded is a charge on all estates and interests in the premises.

We recommend that the requirement should apply generally to serve copies of the demand on every person known to the authority to be owners, lessees or mortgagees of the premises. Effect is given to this recommendation in paragraph 3(2) of Schedule 11 to the Housing Bill.

(iii) *Order for payment by instalments*

Section 10(5) of the 1957 Act provides that the local authority may by order declare that the expenses, with interest, are recoverable by weekly or other instalments over a period of up to thirty years. No such provision appears in the other Acts.

We are informed that this provision is found useful and in the interests of consistency we recommend that it should also apply to the recovery of expenses under section 64 of the 1964 Act and section 94 of the 1974 Act. Effect is given to this recommendation in paragraph 5 of Schedule 11 to the Housing Bill.

(iv) *Right of appeal*

Section 94(5) of the 1974 Act says that the persons who may appeal are those served with the demand or a copy; section 64(2) of the 1964 Act, after referring to service of the demand and providing for the service of copies goes on to say that "any person" may appeal, but in context this must mean the persons just referred to; the 1957 Act does not at present provide for the service of copies (we recommend above that this be remedied) and section 11(1) provides that "any person aggrieved" may appeal.

We recommend that the persons having a right of appeal against a demand be defined by reference to whether they were required to be served with the demand or a copy. Effect is given to this recommendation in paragraph 6(1) of Schedule 11 to the Housing Bill.

(v) *When the demand becomes operative*

Section 64(4) of the 1964 Act and section 94(6) of the 1974 Act both defer the operation of a demand against which an appeal is made until after the "final determination of the appeal". This appears to postpone the operation of the demand not only during the first appeal to the county court but whilst any further appeal proceedings are on foot, to the Court of Appeal or the House of Lords.

Section 37 of the 1957 Act, on the other hand, only postpones the operation of a demand or order until the termination of proceedings in the Court of Appeal. This is no doubt because section 38(2) of that Act, as originally enacted, prevented any further appeal. When that restriction was removed in 1961 no consequential amendment was made of section 37.

We recommend that the reference should be in all cases to the final determination of the appeal. Effect is given to this recommendation in paragraph 6(3) of Schedule 11 to the Housing Bill.

(vi) *When the charge takes effect*

The 1957 Act does not state expressly when the charge on the premises securing the local authority's expenses and interest takes effect and it provides that a receiver may be appointed at any time after the expiration of one month

from the service of the demand. This is inconsistent with the provisions postponing the operation of the demand if it is appealed against. The 1961 Act as originally enacted was similar, but it was amended in 1964 to remove the inconsistency. No such inconsistency appears in the 1974 Act.

We recommend that the charge should in all cases not take effect until the demand becomes operative and that the period after which a receiver may be appointed should run from the same date. Effect is given to this recommendation in paragraph 7(2) and (4) of Schedule 11 to the Housing Bill.

31. Persons to be served with notice of confirmation of certain orders

There is an inconsistency between the beginning of Schedule 4 to the Housing Act 1957 (c. 56), which provides for the procedure after the confirmation of certain orders, and the antecedent procedures in Part I of Schedule 3 to that Act (compulsory purchase orders) and Schedule 10 to the Housing Act 1974 (c. 44) (rehabilitation orders).

Paragraph 1 of Schedule 4 says that notice of the confirmation of the order must be served on "every person who, having given notice to [the Secretary of State] of his objection to the order, appeared at the public local inquiry in support of his objection". There may have been no local inquiry. The Secretary of State may instead afford objectors a hearing before an appointed person (paragraph 3(3) of Schedule 3 to the 1957 Act; paragraph 8(2) of Schedule 10 to the 1974 Act). An objector who is heard by an appointed person has an equal right to be told of the order's confirmation.

We therefore recommend that the duty to serve notice of the confirmation of the order should extend to those persons. Effect is given to this recommendation in paragraph 12 of Schedule 12, and paragraph 6 of Schedule 23, to the Housing Bill.

32. Power to exclude insolvent persons from management of housing association: meaning of insolvent

Section 20(2)(*a*) of the Housing Act 1974 (c. 44) provides for the removal of a committee member or trustee of a housing association if:

> "he is a bankrupt or, in Scotland, is insolvent within the meaning of paragraph 9(2) of Schedule 3 to the Conveyancing and Feudal Reform (Scotland) Act 1970...".

The English version "is a bankrupt" presumably means "has been adjudged bankrupt".

The definition in the Scottish Act of 1970, however, is as follows:

> "...the proprietor shall be taken to be insolvent if—
>
> (*a*) he has become notour bankrupt, or he has executed a trust deed for behoof of, or has made a composition contract or arrangement with, his creditors;

(*b*) he has died and a judicial factor has been appointed under section 163 of the Bankruptcy (Scotland) Act 1913 to divide his insolvent estate among his creditors, or an order has been made for the administration of his estate according to the law of bankruptcy under section 130 of the Bankruptcy Act 1914, or by virtue of an order of the court his estate is being administered in accordance with the rules set out in Part I of Schedule 1 to the Administration of Estates Act 1925;

(*c*) where the proprietor is a company, a winding-up order has been made with respect to it, or a resolution for voluntary winding-up (other than a members' voluntary winding-up) has been passed with respect to it, or a receiver or manager of its undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debenture secured by a floating charge, of any property of the company comprised in or subject to the charge."

We think that the English and Scottish provisions should refer, as far as possible, to the corresponding events in the two legal systems. Paragraphs (*b*) and (*c*) of the definition in the Scottish Act of 1970 (insolvent estates and winding up of companies) do not appear to be relevant in the present context and are accordingly not reproduced. We recommend that the English definition should be brought into line with paragraph (*a*) of the Scottish definition by the addition of a reference to a person who has made an arrangement with his creditors. Effect is given to this recommendation in clause 16(1) of the Housing Associations Bill.

33. Power to supply furniture to housing association tenants: a missed consequential amendment

Section 122 of the Housing Act 1957 (c. 56) and section 156(2) of the Housing (Scotland) Act 1966 (c. 49) give local authorities power to sell, or supply under a hire-purchase agreement, furniture to occupants of houses provided by a housing association under arrangements with the authority. This is parallel to the authorities' powers under section 94 of the 1957 Act and section 140 of the 1966 Act to supply furniture to their own tenants. The latter provisions were amended by the Consumer Credit Act 1974 (c. 37) so as to refer to hire-purchase or conditional sale agreements within the meaning of that Act. The former provisions were overlooked, so that they still refer to earlier Acts now repealed.

We recommend that corresponding amendments should be made. Effect is given to this recommendation in clause 61(2) of the Housing Associations Bill.

34. Functions of the Secretary of State

There are two respects in which certain of the older provisions of the Housing Acts do not conform to current legislative practice as regards the allocation and discharge of Ministerial functions. The practice is not to make statutory provision for matters which are normally dealt with administratively.

(i) *Particular Secretaries of State*

Since 1970 the practice has been, in the Housing Acts as elsewhere, to confer functions on "the Secretary of State", without specifying any particular Secretary of State. There are exceptions, for instance where title to property is involved, but none which appear relevant to the functions under the provisions reproduced in the consolidation.

By virtue of the constitutional doctrine of the unity of the Secretary of State, a function which is thus conferred may legally be exercised by any Secretary of State. In practice it is settled as a matter of administrative arrangement which Secretary of State is to act in relation to particular matters or particular areas.

Functions under Housing Acts dating from before 1970 have in virtually all cases since been transferred to "the Secretary of State" by transfer of functions orders (principally by S.I. 1970/1681, transferring the functions of the former Minister of Housing and Local Government). But some still rest with particular Secretaries of State or are expressed to be exercisable by particular Secretaries of State jointly.

It seems to us that the correct way to reconcile in the consolidation the divergent pre-1970 and post-1970 practice is to follow the current practice. If the functions at present exercisable by particular Secretaries of State were to be repealed and re-enacted in an ordinary Bill of this session, they would simply be conferred on "the Secretary of State". We therefore recommend that, in accordance with current practice, all Secretary of State functions under provisions reproduced in the consolidation should be expressed to be exercisable by "the Secretary of State".

As a result of subsequent repeals, there appear to be only two provisions capable of being affected by this recommendation. One of them, section 138(3) of the Housing Act 1957 (joint issue of housing bonds) we recommend below should be repealed entirely for other reasons; see Recommendation No. 37(v). The other is section 1(2) of the Housing Act 1964 (power to give directions to the Housing Corporation) which is reproduced in clause 76 of the Housing Associations Bill.

(ii) *Arrangements with other government departments* (section 182 of the Housing Act 1957)

Section 182 of the 1957 Act provides:

> "The Minister may make arrangements with any other Government Department for the exercise and performance by that Department of any of his powers and duties under this Act which in his opinion could be more conveniently so exercised and performed, and in that case that Department and the officers thereof shall have the same powers and duties as are by this Act conferred on the Minister and his officers."

This provision goes back to section 34 of the Housing, Town Planning, etc. Act 1919 (c. 25) which related to the functions of the Local Government

Board under the Housing Acts. It appears to serve no useful purpose today. For the reasons explained above there is no scope for its operation in relation to departments headed by a Secretary of State.

We therefore recommend that this provision should not be reproduced in the consolidation.

35. Scope of Housing Corporation's power to provide an advisory service

The power of the Housing Corporation to provide an advisory service appears in section 7 of the Housing Act 1964 (c. 56). That section uses the obsolete expression "housing society".

The main functions of the Housing Corporation were originally, under Part I of the 1964 Act, exercisable in relation to "housing societies". That expression covered only certain kinds of "housing association", namely societies registered under the Industrial and Provident Societies Act which did not trade for profit and whose objects were restricted to those housing purposes specified in section 1(7) and (8) of the 1964 Act. Part I of the 1964 Act was largely superseded by Parts I to III of the Housing Act 1974 (c. 44), and neither the 1974 Act nor any subsequent Act has used the expression "housing society". However, no amendment was made of section 7 of the 1964 Act, which still reads:

> "The Corporation may provide an advisory service for the purpose of advising housing societies, housing associations which are not housing societies, and persons who are forming housing societies or are interested in the possibility of doing so, on legal, architectural and other technical matters, and may make charges for the service."

The first branch of the section presents no difficulty because every housing society is a housing association and the references to housing societies can simply be omitted. We recommend that the second branch—advising persons proposing to form an association—should similarly apply in relation to any housing association. Effect is given to this recommendation in clause 77 of the Housing Associations Bill.

36. Loans under section 2 of the Housing Act 1964 and related matters

Section 2 of the Housing Act 1964 (c. 56) gave the Housing Corporation power to lend to housing societies. It was amended by section 77(2) of the Housing Finance Act 1972 (c. 47) so as to enable loans to be made to any description of housing association.

Section 2 was replaced for all practical purposes by the new lending powers in section 9 of the Housing Act 1974 (c. 44). That Act provided for its repeal, and the transitional provisions (in paragraphs 1 and 2 of Schedule 14) assumed that it would be repealed when the new lending power came into force (on "the operative date", 1st April 1975). This was not in fact done; section 2 has not yet been repealed.

Paragraph 10 of Schedule 13 to the 1974 Act provided for the amendment of section 5 of the 1964 Act on the same assumption. That section enabled the Housing Corporation to prepare a scheme for taking over the operations of a housing society which had got into difficulties. That power became unnecessary after the 1974 Act so far as registered housing associations were concerned. The amendment, which has not been brought into force, would have had the effect of preserving it only in relation to unregistered associations which had received loans under section 2 of the 1964 Act "before the operative date".

We recommend—

(i) that section 2 of the 1964 Act should now be repealed, as intended by the 1974 Act, so far as the power to make loans is concerned;

(ii) that the power to give directions under subsection (3) of that section (directions as to disposal of land) should be preserved in relation to associations to whom loans under that section are still outstanding; and

(iii) that the power to make schemes under section 5 of the 1964 Act should be exercisable in relation to such associations and not in any other case.

Effect is given to items (ii) and (iii) of this recommendation in Schedule 7 to the Housing Associations Bill.

37. Repeal of provisions in reliance on the Local Government Act 1972

The Local Government Act 1972 (c. 70) contains a number of general provisions which cover the same or very similar ground to specific provisions in the housing legislation.

Parliament did not, however, in the 1972 Act determine to what extent specific provisions in particular areas were worth preserving. They were simply preserved if they were at all different. The general approach of the 1972 Act appears, for example, from section 131(1)(*b*) which provides, in relation to land transactions:

> "Nothing in the foregoing provisions of this Part or in Part VIII below ... shall affect, or empower a local authority to act otherwise than in accordance with, any provision contained in, or in any instrument made under, any of the enactments specified in subsection (2) below and relating to any dealing in land by a local authority or the application of capital money arising from any such dealing."

Among the enactments listed in subsection (2) are "the Housing Acts 1957 to 1971".

Our view is that, on consolidation, in the interests of simplicity and of clearing away statutory provisions of doubtful utility, the general provisions of the Local Government Act should be relied on where possible and that specific provisions, as here in the housing legislation, should be reproduced

only so far as they represent a significant modification of the policy of the corresponding general provision and have continued to be used since the 1972 Act came into force.

The provisions referred to below are those which it appears possible to dispense with on this basis.

(i) *Section 47 of the Housing Act 1957, so far as relating to the power to appropriate or dispose of land* (treatment of land acquired for clearance)

Section 47 of the 1957 Act requires a local authority who have acquired land for clearance to—

(a) demolish the buildings and put the land to use by appropriating it for some purpose for which they might have acquired the land, or

(b) sell or let the land subject to a condition that the buildings on it shall be demolished.

Subsection (1)(*a*) of section 47 confers an ad hoc power of appropriation which is expressed to be subject to Ministerial consent and to "the like restrictions as are contained in section 163 of the Local Government Act 1933".

Both these restrictions fall to be translated in the light of subsequent legislation. The reference to Ministerial consent is in effect removed by section 23 of the Town and Country Planning Act 1959 (c. 53), as amended by the Local Government, Planning and Land Act 1980 (c. 65) Sch. 23 para. 3. And the reference to section 163 of the 1933 Act is translated by section 17(2)(*a*) of the Interpretation Act 1978 (c. 30) (references to enactments repealed and re-enacted) to a reference to section 122 of the Local Government Act 1972 (general power of local authorities to appropriate land), which would apply if there were no special provision made.

The remainder of section 47 confers ad hoc powers to sell, lease or exchange the land, subject to the requirement of Ministerial consent if the consideration is less than the best that could reasonably be obtained. Section 123 of the Local Government Act 1972, as amended by the Local Government, Planning and Land Act 1980 Sch. 23 para. 14, would produce the same effect except that it authorises the disposal of land "in any manner".

We therefore recommend that the specific powers of appropriation and disposal in section 47 of the 1957 be dispensed with in reliance on the general powers in sections 122 and 123 of the Local Government Act 1972.

(ii) *Section 82 of the Housing Act 1957* (power to provide information about rights and duties of landlords and tenants under overcrowding provisions)

Section 82 of the 1957 Act provides:

> "The local authority shall have power to publish information for the assistance of landlords and occupiers of dwelling-houses as to their rights and duties under the provision of this Part of this Act relating to overcrowding and as to the enforcement thereof."

This provision is only permissive, unlike for example section 41 of the Housing Act 1974 (c. 44) which *requires* local authorities to publish certain information about housing action areas declared by them. It appears to add nothing to the general power of a local authority under section 111(1) of the Local Government Act 1972 to "do any thing ... which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions". The local housing authority is under a duty to enforce the overcrowding provisions of Part IV of the Housing Act 1957.

(iii) *Section 111(2) of the Housing Act 1957, so far as relates to officers of the authority* (power to inspect local authority houses)

Section 111(2) of the 1957 provides that a local authority's houses shall at all times be open to inspection by the authority "or by any officer duly authorised by them". The words quoted appear to be unnecessary in view of section 101 of the Local Government Act 1972 which provides that a local authority may arrange for the discharge of their functions by, amongst others, "an officer of the authority".

(iv) *Section 112(3) of the Housing Act 1957* (confirming authority for byelaws)

Section 112(3) provides that the Secretary of State is to be the confirming authority for byelaws made by a local authority under that section. Exactly the same result would follow under section 236(11) of the Local Government Act 1972 if this provision were omitted.

(v) *Sections 137, 138 and 140 and Schedule 8 of the Housing Act 1957* (borrowing for housing purposes)

General provision for local authority borrowing is made by Schedule 13 to the Local Government Act 1972. Certain provisions of that Schedule appear to render unnecessary the following provisions of the Housing Act 1957.

Section 137 of the 1957 Act provides for borrowing to finance housing operations carried out by an authority outside their own area. The approval of the Secretary of State is required, and in certain cases must be given by provisional order subject to confirmation by Parliament. Paragraph 1(*b*) of Schedule 13 to the Local Government Act 1972, which authorises borrowing for any purpose or class of purpose approved by the Secretary of State, covers borrowing for these purposes.

Section 138 and Schedule 8 of the 1957 Act relate to local housing bonds. There is a general power to issue bonds under paragraph 2(1)(*d*) of Schedule 13 to the Local Government Act 1972.

Section 140 of the 1957 Act confers power on county councils to lend to district councils for housing purposes, subject to such conditions as the Secretary of State may impose. The subject-matter of this provision appears to be entirely covered by paragraph 13(1) of Schedule 13 to the Local Government Act 1972 which provides that a local authority may lend to another local authority "such sums as that other authority may require for any purpose for

which that other authority are authorised to borrow money under this Act or any other enactment".

(vi) *Section 154 of the Housing Act 1957* (joint action by local authorities)

This provision enables the Secretary of State to make provision by order for joint action by local authorities for any of the purposes of the 1957 Act. General provision is made by section 101(5) of the Local Government Act 1972 (c. 70) for the joint discharge by two or more local authorities of any of their functions.

(vii) *Sections 166 to 169 of the Housing Act 1957* (authentication and service of certain documents)

Sections 166 to 169 of the Housing Act 1957 provide for—

Section 166—the authentication of orders and notices proceeding from a local authority;

Section 167—the authentication of certificates given by a local authority;

Section 168—the service of documents on a local authority; and

Section 169—the service of documents on other persons.

The corresponding provisions of the Local Government Act 1972 are section 234 as regards authentication of documents, sections 231(1) as regards service of documents on a local authority and section 233 as regards service of documents by a local authority. The only practical difference appears to be that section 166(2) requires certain orders, in particular demolition orders and most closing orders, to be given under the seal of the authority. It seems unlikely that this additional formality adds significantly to the protection afforded to the individual affected.

Similar considerations apply in relation to sections 284 and 285 of the Public Health Act 1936 (c. 49) so far as those provisions apply for the purposes of the provisions reproduced in Part XII of the Housing Bill (common lodging houses).

(viii) *Section 35(2) of the Housing Act 1969 (c.33)* (restriction on disposal of land at an undervalue)

Section 35(2) of the 1969 Act, as amended by paragraph 4 of Schedule 13 to the Housing Act 1980 (c. 51), provides that where land is vested in a local authority for the purposes of the provisions of the 1969 Act relating to general improvement areas, the authority shall not, without the consent of the Secretary of State, dispose of it for less than the best price, consideration or rent that can reasonably be obtained. This appears to achieve exactly the same result as section 123(2) of the Local Government Act 1972.

38. Other repeals

We recommend that the following provisions, although not spent or empty of legal effect, should be repealed without re-enactment on the ground that they are, for the reasons explained below, either obsolete or no longer of practical utility or their repeal is otherwise desirable for the purpose of achieving a satisfactory consolidation.

(i) *The Small Dwellings Acquisition Acts 1899 to 1923* (advances for acquisition of dwellings of value less than £5,000)

The power to make advances under the Small Dwellings Acquisition Act 1899 (c. 44) is limited by reference to the value of the house proposed to be acquired. This limit stands at £5,000. It has not been raised since 1949.

This power to make advances has been replaced for all practical purposes by the general powers of local authorities to advance money on mortgage which were originally conferred by section 4 of the Housing Act 1949 (c. 61) and are now to be found in section 43 of the Housing (Financial Provisions) Act 1958 (c. 42). This general power is reproduced in clause 435 of the Housing Bill.

It seems clear that the power to make advances under the 1899 Act is no longer of practical utility, although certain provisions of that Act (reproduced in Schedule 19 to the Housing Bill) are still operative in relation to past advances.

(ii) *The Housing Act 1914 (c. 31)* (power to make arrangements with public utility societies for provision of housing for government employees)

This Act was an emergency measure passed in August 1914 to deal with a shortage of housing for workers at the Government dockyard at Rosyth. It provides in general terms for the making of arrangements with public utility societies (what would now be called housing associations) for the erection of housing for government employees.

We are informed by the Property Services Agency that these powers, which appear to add nothing to the Crown's common law powers, would not now be used.

(iii) *Section 2 of the Housing Act 1957 (c. 56)* (proposals for the exercise of functions under Parts II and III of that Act)

Section 2 of the 1957 Act reproduces so much of section 1 of the Housing Repairs and Rents Act 1954 (c. 53) as was not spent in 1957. That section was aimed at prodding local authorities into exercising their slum clearance powers. It obliged local authorities to submit proposals for action within three months of the passing of the 1954 Act and went on to provide that the authorities should have regard to the approved proposals in discharging their functions under what are now Parts II and III of the 1957 Act (unfit houses and slum

clearance). It also provided that modifying proposals could be brought forward from time to time, and had to be if the Minister so directed.

Such approved proposals were no doubt still of some importance in 1957 but appear to be of no practical significance now.

(iv) *The proviso to section 49 of the Housing Act 1957* (certain land not to be included in clearance area)

This provision prevents a local authority from including in a clearance area land acquired under local legislation in circumstances such that the rehousing obligations in Schedule 9 to the 1957 Act (or corresponding earlier legislation) arose. That Schedule, reproducing provisions going back to the Housing of the Working Classes Act 1903 (c. 39), formerly required undertakers who proposed to acquire land comprising more than 30 dwellings to make rehousing arrangements to the satisfaction of the Minister. The Schedule was repealed by the Land Compensation Act 1973 (c. 26), of which section 39 now makes more comprehensive provision.

The original significance of the proviso, which dates from 1935, appears to have been that these rehousing obligations were more stringent than those owed to persons displaced from a clearance area. So that it would have been open to a local authority to reduce their rehousing obligations by including the dwellings concerned in a clearance area. This point does not now arise because section 39 of the Land Compensation Act 1973 imposes the same duty on the local authority to rehouse in any case where land is acquired by an authority under compulsory powers.

Although the original mischief has gone, the proviso still has effect because it attacked the mischief not by saying that the inclusion of the land in a clearance area did not affect the rehousing of those displaced but by saying that it should not be included at all. This proposition now serves no useful purpose.

(v) *Section 103 of the Housing Act 1957* (power to acquire water rights)

This section, which gives a local authority power to acquire water rights for the purpose of supplying houses provided by it, should have been repealed by the Water Act 1973 (c. 37). It goes back to section 14 of the Housing, Town Planning, etc. Act 1919 (c. 35) and has not been substantively amended since it was first passed. In 1919, and until 1973, local authorities had water supply functions under the Public Health Acts, latterly under Part IV of the Public Health Act 1936 (c. 49). This section makes no sense after the repeal of those provisions in 1973.

(vi) *Section 127 of the Housing Act 1957 and parts of section 47 of the Housing (Financial Provisions) Act 1958 (c. 42) and section 24 of the Housing (Financial Provisions) (Scotland) Act 1968 (c. 31)* (powers of companies and associations in relation to providing houses and borrowing)

All these provisions go back to the Labouring Classes Dwellings Act 1866 (c. 28). The main object of that Act was to enable the Public Works Loan Commissioners to make loans for housing purposes to all local authorities and not merely to councils, Boards and Commissioners acting under the Labouring Classes Lodging Houses Act 1851 (c. 34). That aspect of the matter is no longer dealt with in the housing legislation. Loans to local authorities for housing purposes are now covered by the general provision in paragraph 1 of Schedule 4 to the National Loans Act 1968 (c. 13) enabling the Commissioners to lend to a local authority for any purpose for which the authority have power to borrow.

The 1866 Act also enabled the Public Works Loan Commissioners to make loans for housing purposes to the descriptions of companies, associations and individuals now set out in section 47(2) of the 1958 Act:

"(*a*) any railway company or dock or harbour company,

(*b*) any housing association,

(*c*) any company, society or association (not being a housing association) established for the purposes of constructing or improving, or of facilitating or encouraging the construction or improvement of, houses for the working classes, or for trading or manufacturing purposes, in the course of whose business, or in the discharge of whose duties, persons of the working classes are employed, and

(*d*) any person entitled to any land for an estate in fee simple absolute in possession, or for any term of years absolute whereof not less than fifty years for the time being remain unexpired."

The reason for the distinction between paragraphs (*b*) and (*c*) is that there are further special provisions relating to housing associations. The relevant provisions as they apply to housing associations are reproduced in clauses 67 and 68 of the Housing Associations Bill. As regards other descriptions of borrower, paragraph (*d*) in effect swallows up the rest because the loan must be secured by a mortgage of the lands in question which must be held for an estate of the kind specified in paragraph (*d*). Clause 451 of the Housing Bill is drawn on this basis, following section 52 of the Housing (Financial Provisions) (Scotland) Act 1968 (c. 31), and therefore does not specifically reproduce paragraphs (*a*) and (*c*).

The 1866 Act also went on, in order to facilitate the taking up of loans and the construction of houses, to provide that companies and associations to which loans might be made but which did not already have power to borrow for the purpose, or did not have power to provide housing for their employees, should have such power. These provisions, as they apply in England and Wales, now appear in section 127 of the 1957 Act and section 47(4) of the 1958 Act. The provisions in Scotland corresponding to section 127 were repealed in 1949, but section 24(3) of the Housing (Financial Provisions) (Scotland) Act 1968 remains which corresponds to section 47(4) of the English Act of 1958. The 1866 Act further provided that companies and associations which were not already bodies corporate were to have quasi-corporate status for the purpose of holding land under that Act. This provision survives for

England and Wales as section 47(8) of the 1958 Act. The corresponding Scottish provision has been repealed.

These provisions pre-date the modern Companies Acts and reflect social and legal conditions long past. There is no difficulty these days in adopting an appropriate form of legal organisation with sufficient powers to hold land, borrow money and put up houses. It appears to us that the correct course in consolidating these provisions is to carry forward only so much as fits modern conditions, subject to savings for the powers of existing bodies.

Accordingly we recommend the repeal of—

(i) the whole of section 127 of the 1957 Act.

(ii) section 47(4) of the 1958 Act and section 24(3) of the Scottish Act of 1968 (borrowing powers); and

(iii) section 47(8) of the 1958 Act (quasi-corporate status).

The related savings appear in paragraphs 5(1) and (2) of Schedule 4 to the Housing (Consequential Provisions) Bill.

(vii) *Section 130 of the Housing Act 1957* (power to supply water on favourable terms)

This section provides that a person having the management of a waterworks, reservoir, well, spring or other stream of water may furnish a supply for houses provided under Part V of the 1957 Act either without charge or on such other favourable terms as he thinks fit. This provision goes back to section 39 of the Labouring Classes Lodging Houses Act 1851 (c. 34). It originally applied to gasworks as well as waterworks, but those references were repealed by the Gas Act 1972 (c. 60).

In the middle of the last century water undertakers invariably had power by their special Act to charge water rates. There was nothing in the Waterworks Clauses Act 1847 (c. 17) expressly to prevent a supply of water free or on favourable terms, but the scheme of that Act clearly assumed an equality of treatment between ratepayers. It was this implied obligation which was originally displaced by this provision.

Water supply is now the responsibility of water authorities under the Water Act 1973 (c. 37) who may discharge their responsibilities directly or through arrangements with statutory water companies. One might have expected that the 1973 Act would have at least amended the archaic language of section 130. In fact the 1973 Act made no consequential amendments or repeals in the Housing Acts, despite rendering some of their provisions inoperable (for instance section 103 of the Housing Act 1957 and section 96(3) of the Housing Act 1964). What the 1973 Act did provide was—

(a) as regards charges by water authorities, that they should not show undue preference to any class of persons; s. 30(5); and

(b) as regards statutory water companies, that their charges could be regulated by the arrangements with the relevant water authority; s. 12(3)(*c*).

The relationship between these provisions and section 130 is entirely unclear. It seems likely that if section 130 had been brought to the attention of Parliament in 1973 it would have been expressly repealed. We recommend that the doubt be resolved by omitting the section.

(viii) *Section 180(1) of the Housing Act 1957* (provisions as to Ministerial orders)

Section 180(1) of the Housing Act 1957 provides:

> "All orders made by the Minister in pursuance of this Act shall be binding and conclusive in respect of the matters to which they relate, and shall be published in such manner as the Minister may direct."

This proposition originates in section 85(2) of the Housing of the Working Classes Act 1890 (c. 70) which applied, amongst other provisions, section 295 of the Public Health Act 1875 (c. 55) to orders under the 1890 Act.

It is not clear what the first half of the proposition now amounts to. Whatever it means, it does not exclude judicial review of Ministerial orders. So far as it casts doubt on the power to vary or revoke orders, it is unhelpful.

The second half of the proposition appears to be unnecessary. The modern practice is to direct that orders which ought to be published should be made by statutory instrument, thus making them subject to the publication provisions of the Statutory Instruments Act 1946 (c. 36). Such provision is in fact made for all orders under the Housing Acts which one would expect to be published.

(ix) *Section 188 of the Housing Act 1957* (powers to Act to be cumulative)

Section 188 of the 1957 Act provides:

> "All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by an Act of Parliament, law or custom, and such other powers may be exercised in the same manner as if this Act had not passed, and nothing in this Act shall exempt any person from any penalty to which he would have been subject if this Act had not passed:
>
> Provided that a local authority shall not, by reason of any local Act relating to a place within their jurisdiction, be exempted from the performance of any duty or obligation to which such authority are subject under this Act."

This provision goes back to section 91 of the Housing of the Working Classes Act 1890 (c. 70), which is in identical terms. Such provisions were common form in public health legislation (see, for instance, section 341 of the Public Health Act 1875 (c. 55)) and appear to have been primarily

directed at the question of the relationship between the public general Act and local legislation in the same field.

There is now relatively little local legislation in the housing field and its relationship with the relevant public general Acts can perfectly well be resolved by the ordinary processes of statutory construction.

Similar considerations apply in relation to s. 328 of the Public Health Act 1936 (c. 49) so far as that applies for the purposes of the provisions reproduced in Part XII of the Housing Bill (common lodging houses).

(x) *Paragraph 2 of Schedule 1 to the Housing Act 1957* (substituted service of certain notices in connection with compulsory purchase)

Paragraph 2 of Schedule 1 to the Housing Act 1957 (c. 56) provides that notices relating to compulsory purchase under Part II of the 1957 Act (individual unfit houses) may be served by delivery to a person on the premises or by affixing the notice or a copy to some conspicuous part of the premises.

There is a corresponding provision in section 6(4) of the Acquisition of Land Act 1981 (c. 67), formerly paragraph 19(4) of the Acquisition of Land (Authorisation Procedure) Act 1946 (c. 49), which applies in relation to compulsory purchase under the 1957 Act, so that paragraph 2 of Schedule 1 is only of significance in so far as it confers additional powers.

Until 1980 it conferred substantial additional powers, because the corresponding provision in the 1946 Act did not apply to notices served by local authorities, only those served by Ministers. That provision was then amended by paragraph 1(*d*) of Schedule 23 to the Local Government, Planning and Land Act 1980 (c. 65) so as to extend it to other acquiring authorities but to exclude its operation when the person to be served was a local authority or the National Trust. The provision appears in this form as section 6(4) of the 1981 Act.

The effect of paragraph 2 of Schedule 1 to the 1957 Act is thus now marginal. It remains wider than section 6(4) of the 1981 Act in two respects—

(a) it does not require the authority to make reasonable inquiries before effecting service in the manner specified, and

(b) it permits service in the manner specified even where the person to be served is a local authority or the National Trust.

This appears to be simply anomalous. There is no reason why notices in connection with compulsory purchase under Part II of the 1957 Act should be served in any different manner than that authorised by section 6(4) of the 1981 Act. The paragraph should have been repealed in 1980.

(xi) *Sections 58(3) and 88 of the Housing Act 1969* (power to amend local Acts)

These two provisions provide for the amendment of local Acts in consequence of provisions of the 1969 Act.

The second half of section 58(3) gives a power to make textual amendments of local Acts containing the definition of "house in multiple occupation" which is superseded by section 58(1). Section 58(1) already amends those Acts in the same sense non-textually.

Section 88 confers power to amend any provision of a local Act which "is inconsistent with or has become unnecessary in consequence of" any provision of Part II (general improvement areas) or section 64 (control provisions in schemes for the registration of multi-occupied houses).

Neither of these powers has been exercised. In our view such powers are intended to be exercised within a reasonable period of the enactment of the relevant public general Act. It is not easy to reproduce the power in section 58(3) to make "similar amendments" to those in Schedule 8 to the Act when those amendments have themselves been superseded (as they will be by the consolidation). And it is unclear, having regard to the subsequent amendments of Part II of the 1969 Act by the Acts of 1974 and 1980, what the power now amounts to in section 88 to repeal or amend inconsistent local provisions.

A lapse of 15 years without exercise appears sufficient to conclude that the powers are unnecessary.

(xii) *Section 102 of the Housing Finance Act 1972 (c. 47)* (power to amend provisions of 1972 Act in consequence of local government changes)

This provision confers power by regulations to modify the provisions of the Housing Finance Act 1972 in the event of a change of local authorities or local authority areas or a transfer of local authority functions or property. It was primarily aimed at coping with the effects on the system of rents and subsidies provided for by that Act of the local government reorganisation then impending.

The power was exercised in relation to the reorganisation under the Local Government Act 1972 (c. 70) (S.I. 1974/472, 1974/594 and 1975/290). It is unclear whether it added anything to the general power under section 254 of that Act. The resulting regulations purported to be made under both powers.

It was also exercised to make provision in relation to pre-1982 rent rebates on the transfer of GLC housing stock under section 23(3) of the London Government Act 1963 (c. 33); see, for instance, S.I. 1982/303 providing that a tenant of a transferred dwelling had the benefit of any more favourable terms of the transferring authority's rent rebate scheme for twelve months after the transfer.

There is now very little left of the Housing Finance Act 1972: in effect only the provisions relating to the Housing Revenue Account and slum clearance

subsidy. There seems no point in preserving a power to modify those surviving provisions of the 1972 Act when any further local government changes of the kind envisaged by section 102 will inevitably have effects across the whole field of housing legislation.

(xiii) *Paragraphs 22 and 23 of Schedule 1 to the Housing Rents and Subsidies Act 1975* (the North Eastern Housing Association)

There are a number of references in the Housing Acts to "any housing association for the time-being specified in an order under section 80 of the Housing Finance Act 1972". Such associations are, broadly speaking, subject to the same provisions as local authorities and registered housing associations. Section 80 has been repealed but orders made under it remain in force by virtue of paragraphs 22 and 23 of Schedule 1 to the Housing Rents and Subsidies Act 1975 (c. 6).

There was ever only one such association, the North Eastern Housing Association. There is no longer, since 1975, any power to specify others.

The North Eastern Housing Association was a Companies Act company set up in 1935 to provide housing in areas of high unemployment in the North East, where local authorities lacked the resources to meet local housing needs. It was a unique body and between 1972 and 1980 was subject to a special housing subsidy system.

In 1980 it converted itself into an industrial and provident society in pursuance of section 53 of the Industrial and Provident Societies Act 1965 (c. 12) and became, under the name "The North Housing Association" a registered housing association. Since then its affairs appear to have been conducted on the basis that it is simply a registered housing association and not subject to the special rules applicable under the orders made under section 80 of the 1972 Act.

It is not clear whether, legally, the change of constitution and name in 1980 did result in a change of the identity of the association, so as to render the orders spent. But we understand that it is now agreed, by the North Housing Association and the Secretary of State, that the orders should be revoked, so as to remove any doubt about the present legal status of the association.

This is achieved by repealing paragraphs 22 and 23 of Schedule 1 to the 1975 Act, on which the continuance of the orders depends, and omitting the references elsewhere to associations specified in such orders.

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