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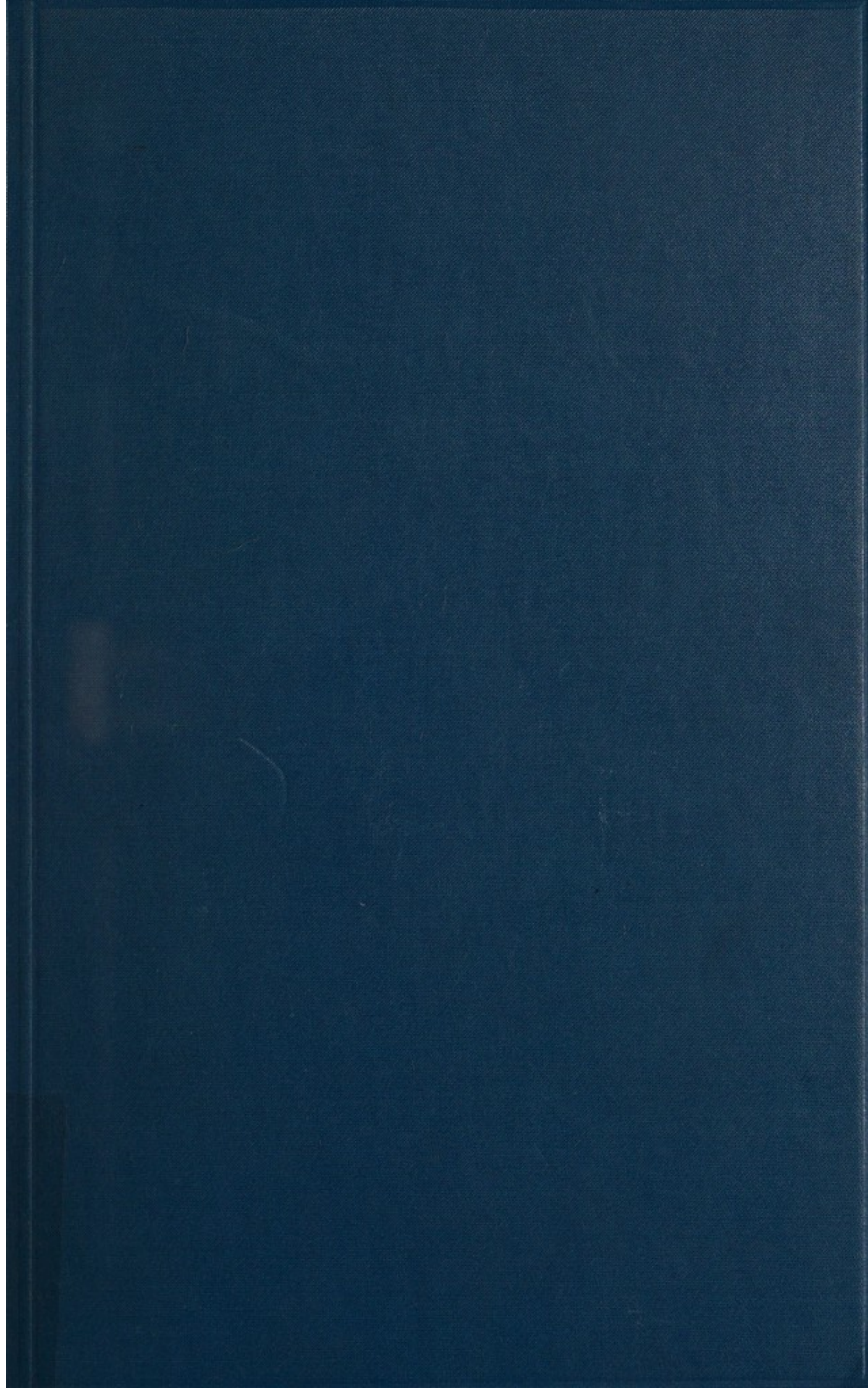
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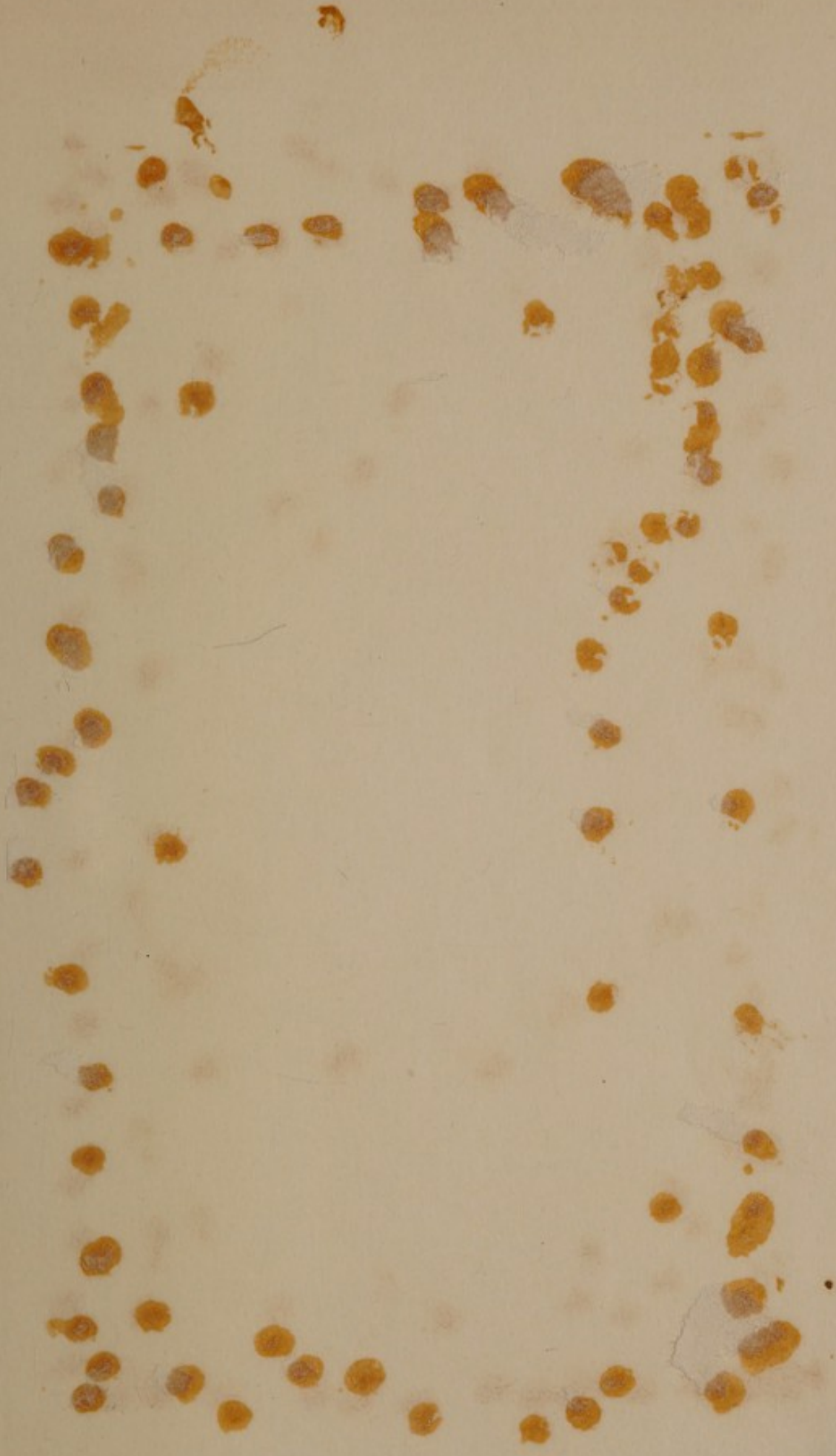


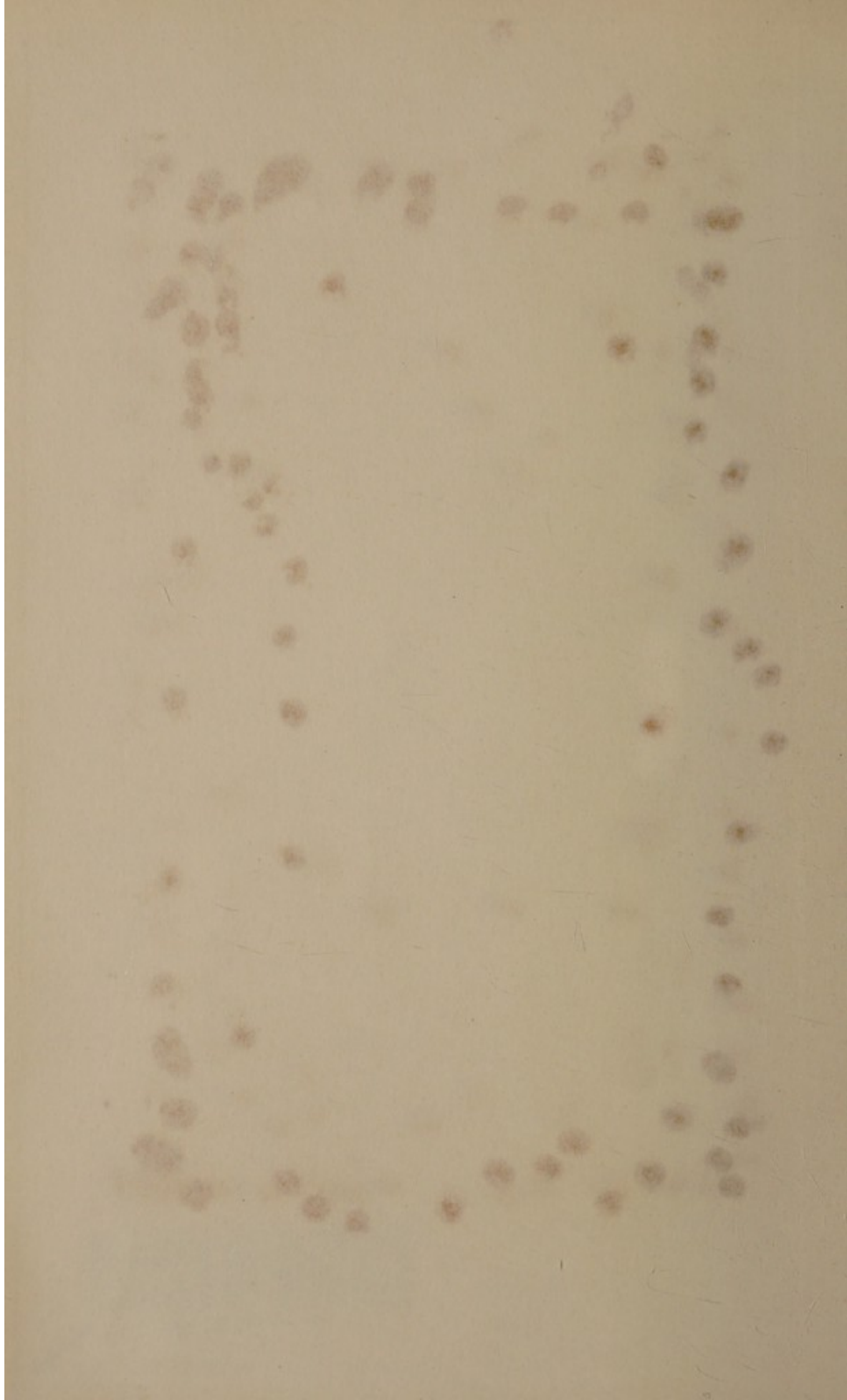
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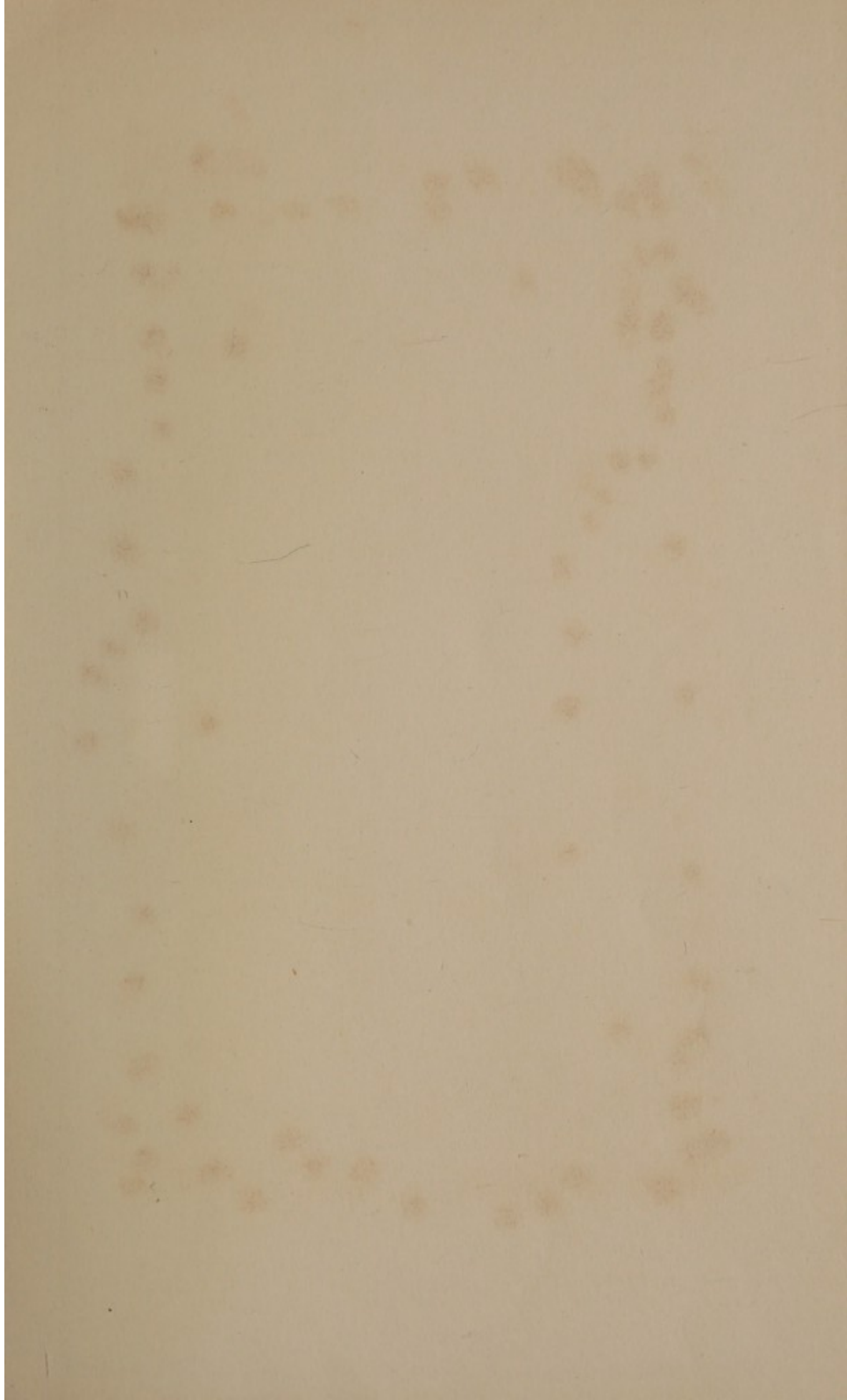




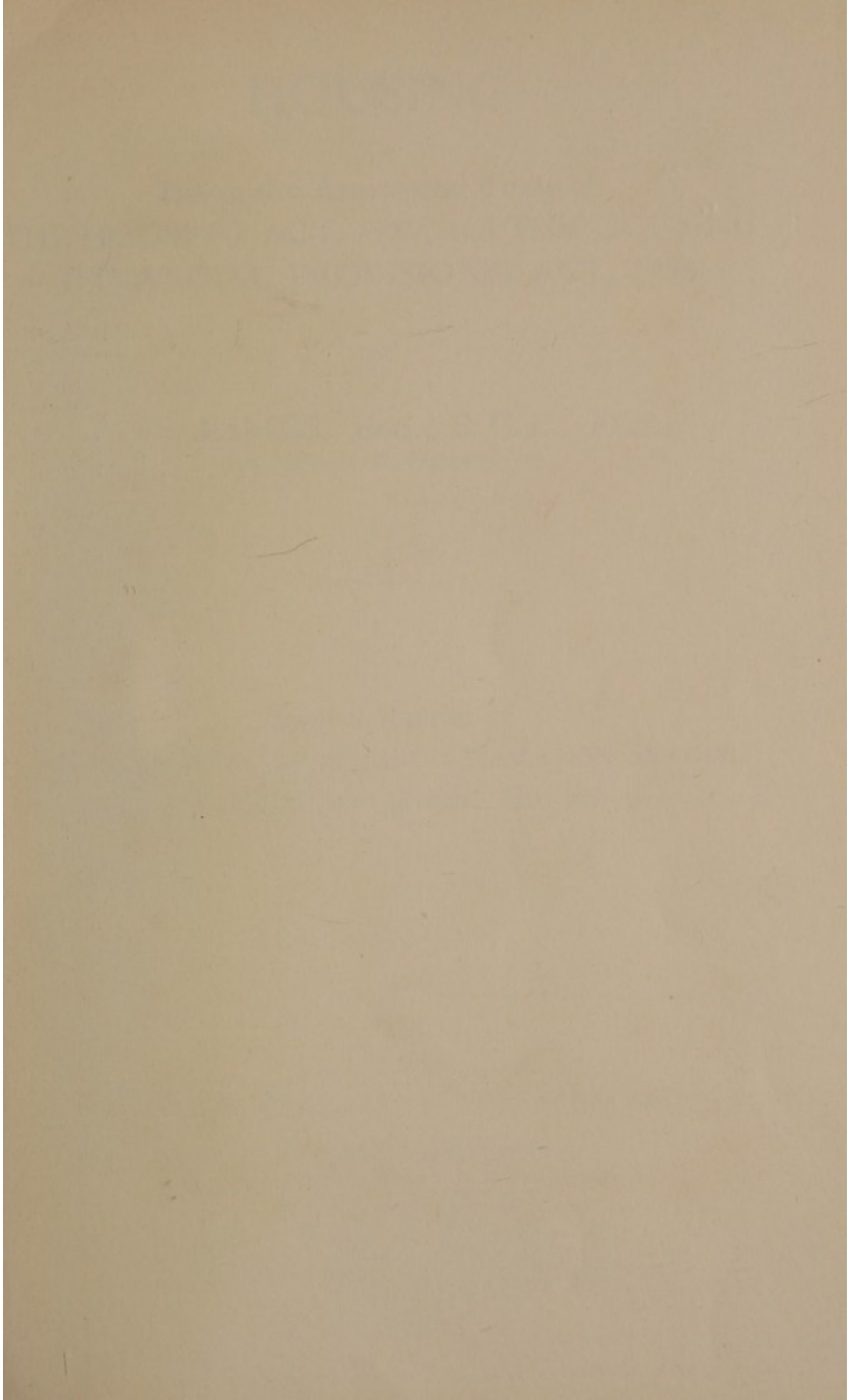
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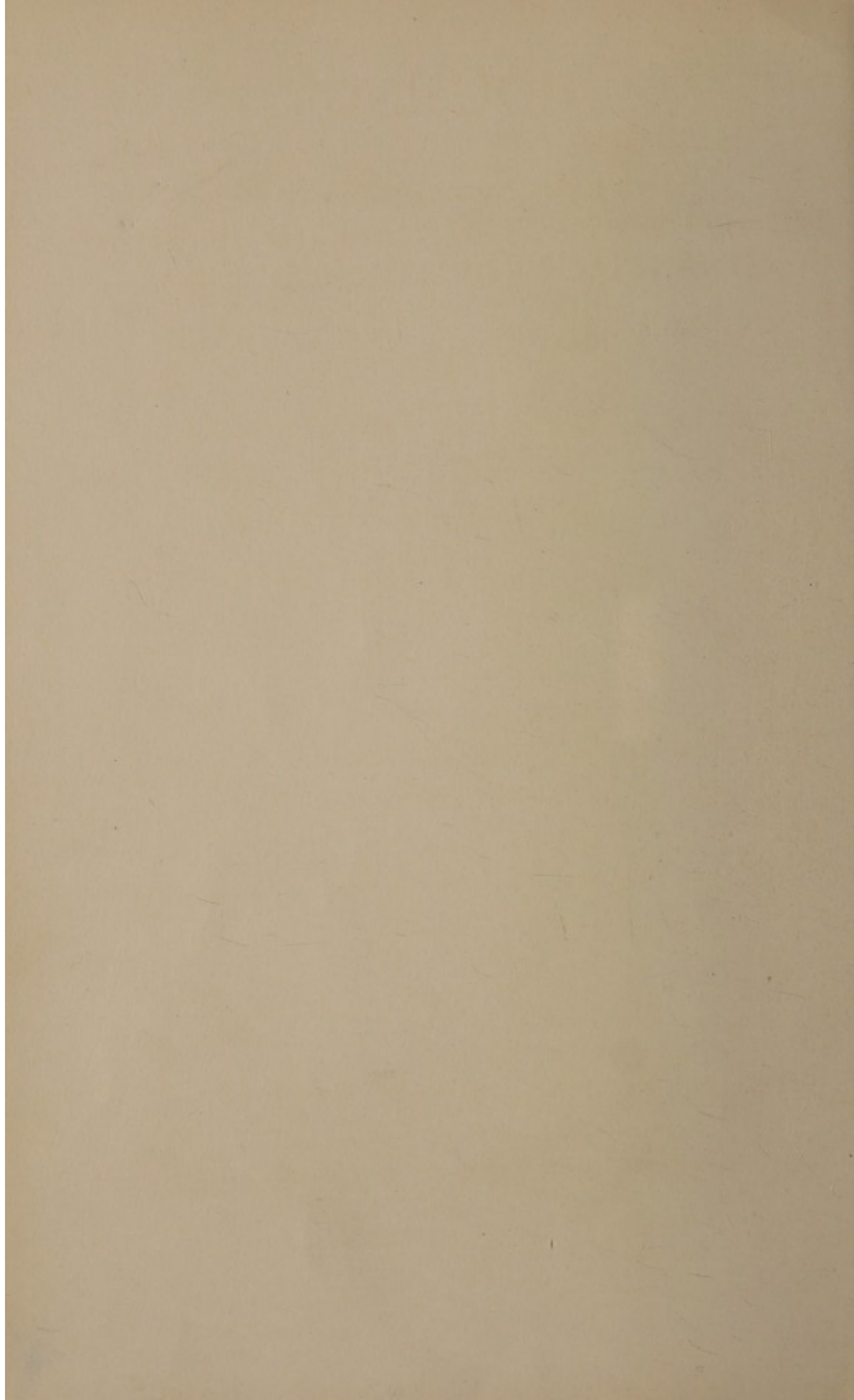












# HOUSING

Being the Annotated Texts of  
THE HOUSING ACT, 1957, and THE HOUSING  
(FINANCIAL PROVISIONS) ACT, 1958

BY

J. D. JAMES, Esq., B.C.L., M.A.

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## PREFACE

This volume contains two statutes, the Housing Act, 1957 (Book I, *post*), and the Housing (Financial Provisions) Act, 1958 (Book II, *post*), with full annotations and cross-references. These two statutes are consolidating Acts, covering the greater part of housing law, and Appendix I, *post*, contains a table indicating where to find the new provisions which replace the old. The Housing (Prescribed Forms) Regulations, 1957, which replace a number of forms used under the former enactments, are printed in Appendix II, *post*. The Act of 1958 is not yet in force at the date of this Preface but comes into operation on 23rd October 1958; for convenience I have written of it as if it were already in force.

Whatever advantages may be claimed for them, consolidating Acts such as these impose a heavy burden on those most often and most closely concerned with the subject. They make it difficult to consult the relevant Ministerial Circulars and Memoranda (such as the Memoranda issued on the Housing Act, 1935) which give explanations of law and policy, and indeed contain administrative directions having the force of law. A similar difficulty arises in connection with certain regulations, and so forth, made under the old law and not replaced. The old Acts must still be referred to in this connection and for a variety of other purposes.

Many provisions in the Acts of 1957 and 1958 have to be read as including references to things done under the enactments replaced, and some provisions are not intelligible without a knowledge of the previous law. An attempt to meet these difficulties, within reasonable limits, is made in the notes in this volume, particularly in the note "History" to the individual sections and Schedules, in the Table in Appendix I, *post*, and in certain more general explanatory notes (*e.g.*, in the General Note to s. 50 of the Act of 1958, Book II, *post*). The Act of 1958 in particular creates difficulty by repealing a large number of earlier financial provisions, which in effect, however, it preserves by savings for payments to be made thereunder, but which it does not reproduce or replace. So far as reasonably practicable, detailed explanations of the repealed enactments referred to in that Act are given in the notes thereto, *e.g.*, in the notes on the definition of "exchequer payment" in s. 58 (2) thereof (Book II, *post*).

This is not the place to attempt to weigh the disadvantages of consolidating legislation of this kind, *e.g.*, the waste of time involved, and the waste of money when books and stocks of forms, etc., are rendered obsolete. It may however be mentioned that doubt and uncertainty of interpretation are inevitably introduced by changes of wording and arrangement, and the juxtaposition of provisions from different contexts.

In an endeavour to introduce, rather than to summarise, the Act of 1957, that Act is preceded by a General Introduction of four chapters (pp. 1-30, *post*). The first three chapters contain a survey of the origins of housing law, an explanation of the law of compulsory purchase and compensation both generally and also with particular reference to the housing Acts, and an outline of the changes made in the general law of housing since the earlier consolidation effected by the Housing Act, 1936. Chapter 4 lists some thirty Acts which remained in force at 1st September 1957, when the Act of 1957 came into operation, with an indication of how those Acts are affected by the Act of 1958. In fact, as mentioned at p. 24, *post*, only five of those Acts are wholly repealed in the present consolidations, and it may be said that even these cannot now be wholly ignored, with the possible exception of the Housing (Temporary Provisions) Act, 1944. The Act of 1958 is introduced by a short explanation of the present system of exchequer subsidies for new houses and of other matters dealt with by that Act, such as the housing accounts kept by local authorities (see pp. 365 *et seq.*, *post*).

Very detailed notes have been provided where this seemed most necessary, bearing in mind the differing requirements of lawyers, surveyors, local government officers and others who may wish to use this book. Particular attention has been given to those sections and Schedules most commonly employed, or most commonly encountered by those without expert knowledge of housing law; and to those, such as the Second Schedule to the Act of 1957, which are

inherently difficult to understand. A large number of cases concerned with compulsory purchase orders and the like are listed and discussed in the notes to the Fourth Schedule to the Act of 1957 (pp. 344-350, *post*), a suggested form of objection to such an order is given in the notes to the Third Schedule to that Act (at p. 330, *post*), and the law and procedure relating to public inquiries are considered in the notes to s. 181 (1) of that Act (pp. 292-295, *post*). Similarly, the notes on a number of sections dealing with appeals, *e.g.*, on s. 11 of the Act of 1957 (at p. 55, *post*), provide suggested grounds of appeal. Private individuals and their advisers and advocates are sometimes confronted with problems on these matters at short notice, and it is hoped that the above notes and precedents will be of assistance to them. In providing such notes I have tried to follow the example of the late Mr. H. A. Hill in his textbook, *The Complete Law of Housing*. It has been a great advantage to consult that work in the preparation of the present volume and I am not aware of expressing an opinion on any point of substance which departs from the view taken by Mr. Hill.

I am happy to acknowledge the assistance I have received, in the work of editing and annotation, from my friends Mr. D. P. Kerrigan and Mr. F. V. Corfield, M.P., of the Middle Temple, Barristers-at-Law, and others, including Mr. E. Roydhouse, of Gray's Inn, Barrister-at-Law, of the Publishers' Staff, who has given great help in annotating the Housing (Financial Provisions) Act, 1958. In consulting Mr. Hill's book, I have had the advantage of referring also to the 2nd Supplement to the 4th Edition, prepared by Mr. Kerrigan and by Mr. R. G. C. Davison, of Gray's Inn, Barrister-at-Law, and to certain further unpublished notes prepared by Mr. Kerrigan and Mr. H. J. Leonard, of the Inner Temple, Barrister-at-Law. None of those gentlemen, however, is in any way responsible for any errors in this volume.

I am most grateful, too, for the help and co-operation afforded by the publishers and printers.

J. D. JAMES.

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# REFERENCES AND ABBREVIATIONS

## THE ENGLISH AND EMPIRE DIGEST

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*Thew v. South West Africa Co., Ltd.* (1924), 9 Tax Cas. 141; 28 Digest 23, 122.

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*Outram v. Hyde* (1875), 24 W.R. 268; 27 Digest (Repl.), 132, 956.

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*Mills v. Bryce*, [1951] 1 All E.R. 111; 2nd Digest Supp.

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The citations of the reports of cases decided since the beginning of 1936 include a reference to the All England Law Reports, thus:—

*Whyte v. Clancy*, [1936] 2 All E.R. 735.

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Criminal Appeal Act, 1907, s. 6 (5 Halsbury's Statutes (2nd Edn.) 931).

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## BOOK I

# INTRODUCTION TO THE HOUSING ACT, 1957

## CHAPTER 1—ORIGINS OF HOUSING LAW

**Scope of the Act of 1957.** The Housing Act, 1957, is described in its long title, p. 36, *post*, as an Act to consolidate the enactments relating to housing with the exception of certain provisions relating to financial matters. It came into force on 1st September 1957, and does not apply to Scotland or Northern Ireland (s. 193 (2), (3), *post*).

The consolidation effected by the Housing Act, 1957, is by no means complete, for it deals only with what might be called the general law of housing. It replaces most, but not all, of the previous consolidating Act, the Housing Act, 1936 (which it repeals to the extent indicated in the Eleventh Schedule, *post*), and it incorporates many, but not all, of the amendments and additional provisions arising from legislation since 1936, *e.g.*, from the Housing Act, 1949, from certain parts of the Housing Repairs and Rents Act, 1954, and from the Slum Clearance (Compensation) Act, 1956 (see Chapter 3 of this Introduction, p. 13, *post*).

The financial provisions, omitted from this consolidation, have since been consolidated in the Housing (Financial Provisions) Act, 1958 (Book II, *post*), which repeals the remainder of the Act of 1936 and a number of other enactments. There still remain, however, a number of older statutes wholly or partly unrepealed and in force, dealing for the most part with special topics in housing law (see Chapter 4 of this Introduction, p. 24, *post*).

**Relevance of previous law.** A consolidating Act has the disadvantage, among others, that it obscures but cannot destroy the historical origins of the law. Thus s. 2 (1) of the Act of 1957, *post*, cannot be understood without reference to certain repealed provisions of s. 1 of the Housing Repairs and Rents Act, 1954, which are not re-enacted. In ss. 5 (2) and 6 (1), *post*, there are references to dates, 3rd December 1909, 31st July 1923, and 6th July 1957, which can be explained only by reference to earlier Acts. In Part IV, s. 87, *post*, defines "the appointed day" as meaning, in the application of that Part of the Act to any locality, the day appointed as respects that locality "for the purposes of the provisions reproduced" in that Part. This has no meaning until reference is made to s. 68 (repealed) of the Housing Act, 1936, or s. 97 (repealed) of the Housing Act, 1935.

It will be seen that s. 191, *post*, which deals with repeals and savings, preserves the effect of orders, byelaws, regulations, plans, charges, undertakings, notices, approvals, certificates and so forth made or given under the old law before 1st September 1957. The Housing Act (Forms of Orders and Notices) Regulations, 1937 (S.R. & O. 1937 No. 78), as amended, which prescribed forms for the purposes of many of the provisions of the Act of 1936, have, however, already been replaced by new regulations which contain forms with the appropriate references to the sections of the present Act; see the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842), printed in Appendix II, *post*.

For some time at least the practitioner will have to bear in mind both the old provisions and the new. The main inconvenience will be the difficulty of tracing the new provisions which replace the old familiar sections; it is hoped the Table of Repeals and Replacements (Appendix I, *post*) will be of help.

**Relation with public health law.** It is difficult to state briefly the scope of the general law of housing, the subject matter of the Housing Act, 1957, without some reference to other related statutory codes. The great

public health movement of the nineteenth century brought into being a large number of statutes which, beginning as sanitary Acts, formed the basis of what may now more conveniently be considered as a number of separate branches of the law.

The early legislation of the nineteenth century differed in many ways from the modern statutes. At first there was great diversity in the provisions of local Acts for the improvement of, and provision of sanitation in, particular towns. The Town Improvement Clauses Act, 1847 (19 Halsbury's Statutes (2nd Edn.) 35), marked a stage of legislative development by the provision of standard clauses to be incorporated in special Acts, in much the same way as the familiar Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 890), could be incorporated in Acts providing for compulsory purchase of land. The authorities administering the early Acts were often *ad hoc* bodies of Commissioners.

At a later stage still, a more uniform system of local boards of health and urban and rural sanitary authorities was created. The later public health Acts, such as the Public Health Act, 1875 (19 Halsbury's Statutes (2nd Edn.) 56), were public general statutes, but contained provisions limited to particular districts, such as urban areas, and adoptive sections which could be brought into force by adoption in particular localities.

Central control grew up under the Secretary of State, the Local Government Board, and later the Ministry of Health, and it is now largely exercised by the Ministry of Housing and Local Government. The local authorities dealing with sanitary matters gradually assumed other functions of local government from *ad hoc* officials and bodies. For example, they took over the maintenance of roads from the surveyors appointed under the Highway Act, 1835 (11 Halsbury's Statutes (2nd Edn.) 34). Later Acts, dealing with new subjects such as land use planning under the Town and Country Planning Acts, have conferred new powers on local authorities.

**Present position of related legislation.** From the above beginnings, there have thus arisen:—

(1) *Virtually the whole of the modern law of local government.* Outside London, the principal statute is now the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 353). In London the corresponding statute is the London Government Act, 1939 (15 Halsbury's Statutes (2nd Edn.) 1073). Under the Housing Act, 1957, some types of local authority are "local authorities for the purposes of this Act" (s. 1, *post*), while others, notably the county councils outside London, have certain particular functions or default powers although they are not themselves "housing" authorities. It will be noted that special provisions are made throughout the Act as to the division of responsibility between the London County Council and the metropolitan borough councils.

(2) *Two important government departments.* The Minister of Housing and Local Government, appointed under the Minister of Town and Country Planning Act, 1943 (19 Statutes Supp. 4; 4 Halsbury's Statutes (2nd Edn.) 536), is now "the Minister" referred to in the Housing Act, 1957 (see s. 189 (1), *post*). These functions were transferred in 1951 from the Ministry of Health, that Ministry retaining no functions under the Housing Act, 1936, except that mentioned in s. 67 (see now s. 86 of the Act of 1957 and note thereto, *post*).

(3) *The body of law dealing with public health.* This deals with such matters as sanitation, sewerage, drainage, building byelaws, public baths, common lodging-houses, and infectious diseases. For the most part the law outside London is now to be found in the Public Health Act, 1936 (19 Halsbury's Statutes (2nd Edn.) 302), but many earlier public health Acts remain wholly or partly in operation, particularly those relating to streets. In London the principal statutes are the London Building Act

1930 (15 Halsbury's Statutes (2nd Edn.) 754), and its amending Acts, and the Public Health (London) Act, 1936 (15 Halsbury's Statutes (2nd Edn.) 887). This body of law still retains many marks of its historical evolution; for example, there are still many local Act provisions in force in particular places; some provisions relate only to particular types of locality, or are adoptive; and there is some overlapping with other legislation. The provisions of ss. 91-100 of the Public Health Act, 1936, relating to the abatement of nuisances may to some extent overlap the provisions of Parts II and III of the Housing Act, 1957, *post*, dealing with houses unfit for human habitation (see *Salisbury Corp'n. v. Roles*, [1948] W.N. 412; 92 Sol. Jo. 618; and s. 188, *post*).

(4) *Other branches of the law*, of which housing is one, which are still regarded as part of the law of public health in the widest sense of that term. Thus the Twelfth Edition of *Lumley's Public Health* contains not only the public health Acts, in the narrower sense, but also the statutes on housing, rating, water supply, town and country planning, and many other subjects which concern local authorities. The central authority is in many cases the Ministry of Housing and Local Government, and, in others, the Ministry of Health or other departments, such as the Ministry of Education or of Transport and Civil Aviation, created to deal with particular topics as their importance has increased.

**Early housing Acts.** The earliest housing Acts were prompted by public concern over the living conditions of the working classes, and it is usual to regard two Acts passed in 1851 as marking the origin of this legislation (cf. *Hill's Complete Law of Housing*, 4th Edn., at p. 3). The Common Lodging Houses Act, 1851 (14 & 15 Vict. c. 28), which dealt with the registration, regulation, inspection and cleansing of common lodging houses, was perhaps mainly a sanitary or public health statute; but cf. ss. 36 and 90 of the Housing Act, 1957, *post*. The Labouring Classes Lodging Houses Act, 1851 (14 & 15 Vict. c. 34), empowered the council of any borough or any local board of health or certain other authorities to adopt the provisions of the Act and to erect, purchase or lease lodging houses for the labouring classes; this was the beginning of the power of a local authority under Part V of the Housing Act, 1957, to provide housing accommodation to meet the needs of the district (see ss. 91 *et seq.*, *post*).

Another branch of housing law arose from the Artizans and Labourers Dwellings Act, 1868 (31 & 32 Vict. c. 130), known as Mr. Torrens's Act, with its amending Acts of 1879 (42 & 43 Vict. c. 64) and 1882 (45 & 46 Vict. c. 54). These proceeded on the principle that the responsibility of maintaining his houses in proper condition rested upon the owner; if he failed to keep them fit for human habitation they were to be closed, and if not repaired, demolished. Provisions of this type, though now more complex, are to be found in Part II of the Housing Act, 1957 (see ss. 9-41, *post*).

Sir Richard Cross's Acts, the Artizans and Labourers Dwellings Improvement Acts, 1875 and 1879 (38 & 39 Vict. c. 36 and 42 & 43 Vict. c. 63), introduced the principle of dealing with whole areas where houses were insanitary or the buildings were badly laid out. Provisions dealing with clearance areas and re-development areas are now contained in Part III of the Housing Act, 1957, *post*.

The Housing of the Working Classes Act, 1885 (48 & 49 Vict. c. 72), introduced amendments. The Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), was the first attempt to consolidate the law; it remained the "principal Act" until 1st July 1925. It should perhaps be mentioned that the Act of 1890 applied to the United Kingdom of Great Britain and Ireland; it remained the principal Act in Northern Ireland, as amended, although replaced by the Housing Act, 1925 (15 & 16 Geo. 5 c. 14), in England and Wales, and by the Housing (Scotland) Act, 1925 (15 & 16 Geo. 5 c. 15), in Scotland. A comparison of Parts I, II and III of the Act of 1890 with

Parts III, II and V respectively of Housing Act, 1957, *post*, will reveal the underlying continuity of the law. Part I of the 1890 Act was confined to urban areas; this is still true of re-development areas under the 1957 Act (see s. 55 (1), *post*).

**Housing law from 1890 to 1925.** The oldest housing statute still in force in England and Wales is the Small Dwellings Acquisition Act, 1899 (11 Halsbury's Statutes (2nd Edn.) 382), as amended. Its subject matter may be called a special topic in housing; it empowers local authorities to advance money to enable persons to buy houses, the advance being secured by a form of mortgage. The more general law of housing was amended by Acts in 1900, 1903 and 1909 (all repealed). The last-mentioned Act, the Housing, Town Planning, etc., Act, 1909 (9 Edw. 7 c. 44), was of major importance. Among other things it introduced the first modern legislative attempt to secure proper town planning; Part II of that Act dealt with the preparation of town planning schemes for "land in the course of development or land likely to be used for building purposes". Town planning was separated from housing law on 1st July 1925, with the coming into force of the Town Planning Act, 1925 (15 & 16 Geo. 5 c. 16), and thereafter has grown into an important and distinct branch of the law.

The Housing Act, 1914 (11 Halsbury's Statutes (2nd Edn.) 391), which is still in force, enables dwellings to be provided for employees of Government departments. In 1919, after the Great War, some important changes were made. The Minister of Health was appointed under the Ministry of Health Act, 1919 (4 Halsbury's Statutes (2nd Edn.) 473), and his department took over the functions of the Local Government Board. The Housing, Town Planning, etc., Act, 1919 (11 Halsbury's Statutes (2nd Edn.) 393) (now largely repealed), placed on local authorities the duty to prepare schemes to meet the urgent housing needs of their areas. It widened the powers of acquiring land for housing purposes, and enacted certain special provisions about the measure of compensation for compulsory purchase of land. One special provision was the "reduction factor" applied to some forms of compensation; this was continued by later legislation until 1935. Part III of the Act of 1919 contains one section (s. 49) which remains in force as an amendment of the Small Dwellings Acquisition Act, 1899 (*ubi supra*). Other provisions of the Act of 1919 dealing with financial matters, although formally repealed, were to some extent saved by the Housing, etc., Act, 1923 (11 Halsbury's Statutes (2nd Edn.) 401), another statute dealing mainly with financial matters.

The Housing, Town Planning, etc., Act, 1919, and also the Housing (Additional Powers) Act, 1919 (9 & 10 Geo. 5 c. 99), mark the beginning of the system of Exchequer contributions towards the financial burdens of housing authorities (sometimes called housing "subsidies"). Further financial provisions were made by the Act of 1923 (*ubi supra*), and by the Housing (Financial Provisions) Act, 1924 (11 Halsbury's Statutes (2nd Edn.) 411). This branch of housing law is now largely consolidated by the Housing (Financial Provisions) Act, 1958 (Book II, *post*). Section 184 of the Housing Act, 1957, is, however, derived directly from the Act of 1924.

**Housing law after 1925.** It is not proposed in this chapter to trace in detail the development of housing law after 1925. As already mentioned, the general law of housing was consolidated, in England and Wales, by the Housing Act, 1925 (15 & 16 Geo. 5 c. 14); and land use planning became a separate subject with the Town Planning Act of that year. The general law of housing was amended by the Housing Acts of 1930 and 1935 (11 Halsbury's Statutes (2nd Edn.) 433, 441). It was then consolidated by the Housing Act, 1936 (11 Halsbury's Statutes (2nd Edn.) 444), which formed the principal Act from 1st January 1937 to 31st August 1957. Many of the more important differences between the Acts of 1936 and 1957 are mentioned and explained in Chapter 3 of this Introduction, p. 13, *post*.

Side by side with the general law of housing, whether under the Act of 1925, or the Act of 1936, or now under the Housing Act, 1957, *post*, there have existed other Acts dealing with financial matters and other special topics. Those in force when the Act of 1957 came into operation, on 1st September 1957, are listed for convenience in Chapter 4 of this Introduction, p. 24, *post*. The Housing (Financial Provisions) Act, 1958 (Book II, *post*), which has since been passed, however, replaces the surviving provisions of the Act of 1936, together with financial provisions from other statutes, such as the Housing (Financial and Miscellaneous Provisions) Act, 1946, the Housing Act, 1949, and the Housing Subsidies Act, 1956.

**Purchase of land.** No mention has been made above of the relation of housing law to the law of compulsory purchase and compensation, save in connection with certain amendments in the Housing Acts of 1919. That year also saw the passing of the Acquisition of Land (Assessment of Compensation) Act, 1919 (31 Statutes Supp. 177; 3 Halsbury's Statutes (2nd Edn.) 975), altering the method of assessing compensation for the purchase of land by local and other public authorities, with certain special savings for the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), which were repealed in 1925. Since then this branch of the law has been affected by various town and country planning Acts, by the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 4; 3 Halsbury's Statutes (2nd Edn.) 1064), and by the Lands Tribunal Act, 1949 (61 Statutes Supp. 32; 28 Halsbury's Statutes (2nd Edn.) 317). A number of special provisions remain in the Housing Act, 1957, *post*, and the next chapter of this Introduction attempts to give a brief description of the law of compulsory purchase and compensation as it affects this Act.

## CHAPTER 2—COMPULSORY PURCHASE AND COMPENSATION

### 1. Power and Authority to Purchase

**Early statutory powers.** In the exercise of certain of their powers under the Housing Act, 1957, *post*, local authorities may purchase land, if need be compulsorily. Their powers of purchase, and the law of compensation to be paid when those powers are exercised, are modelled on those provided, in the early nineteenth century, for *quasi*-public undertakings such as the railway, gas and water companies. In the early Acts provision was made for incorporating the promoters of such an undertaking into a company, for arming that company with powers to construct and run the intended railway or gasworks or waterworks, and for enabling the company to buy the necessary land. At a slightly later stage it was found convenient to secure simplicity and uniformity by passing the various "Clauses" Acts of 1845 and 1847.

Thereafter powers could be obtained from Parliament by promoting a Bill for a relatively short Act, which incorporated the various codes of clauses appropriate to the type of undertaking. Thus an Act passed in, say, 1850 to form a company to build a railway would incorporate the Companies Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 277), the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 890), and the Railways Clauses Consolidation Act, 1845 (19 Halsbury's Statutes (2nd Edn.) 590). Each of these "Clauses" Acts referred to the Act with which it was incorporated as "the special Act" (see s. 2 of each of those Acts).

In such a case, the special Act conferred the particular powers of purchase over the lands needed for the undertaking as described in the special Act and delineated in the books deposited when the Bill was brought before Parliament. The Lands Clauses Consolidation Act, 1845, read with the

special Act, regulated the exercise of these powers. It allowed land to be purchased by agreement, even from persons under a disability or with limited ownership (this was before the conveyancing Acts made more general provision by way of powers of sale); it provided for the service of a notice to treat which might lead to a compulsory acquisition; it gave powers of entry; it provided for the assessment of compensation by arbitrators or juries or justices where the parties could not agree; and it made special provision for special circumstances such as the owner being absent or the land being in lease or subject to a mortgage.

**Compulsory purchase orders.** In the latter part of the nineteenth century it became common for Acts of Parliament to confer on undertakers or authorities of a particular description a power of purchase in general terms with reference to land not yet identified but which might at some future time be needed for the undertaking or to enable the authority to carry out its functions. It was then necessary for the intended purchaser of land under such a power to apply that power to particular land which was thought from time to time to be required. In some cases, the intended purchaser could empower itself to take such land by resolving to do so. In most cases further authority was needed, and the Act conferring the power of purchase in general terms showed the way in which such further authorisation was to be obtained. The earlier form of procedure for this purpose was that of the "provisional order", similar in style to the Bill for a special Act, which required the confirmation of Parliament in a very brief confirming Act. Provisions of this type were included in the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), mentioned in Chapter 1 of this Introduction at p. 3, *ante*.

Under the procedure for obtaining a "provisional order" the order was submitted for investigation by a Government department, before it came before Parliament, and the department could hear objections from persons affected. The procedure was cumbersome and expensive because an objection which failed at this stage could be raised again before Parliament. The compulsory purchase order is a later development; under this procedure the requirement of a confirming Act is omitted. In the case of an intended purchase by a local authority, the compulsory purchase order is submitted by the local authority to the appropriate Government department; that department, after hearing any objections, has power to confirm the order. In some special cases, however, particular types of objection can give rise to further proceedings in Parliament; this occurs where the compulsory purchase order is made "subject to special parliamentary procedure" under the Statutory Orders (Special Procedure) Act, 1945 (34 Statutes Supp. 139; 24 Halsbury's Statutes (2nd Edn.) 430).

The purpose and effect of a confirmed compulsory purchase order is to put the intended acquiring authority in the position of the promoters of an undertaking who have obtained their special Act. In the case of intended purchases under the Housing Act, 1957, *post*, the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 890), is incorporated with various exceptions and modifications, and certain provisions (relating to land which may contain minerals) are also borrowed from the Railways Clauses Consolidation Act, 1845 (19 Halsbury's Statutes (2nd Edn.) 590).

**Purchases under the Housing Act, 1957.** It is important to note that the Housing Act, 1957, like many other modern statutes, provides also for purchases by agreement without the need for obtaining powers under a compulsory purchase order. If, for example, under Part V of the Act a local authority wishes to purchase land to build "council houses", the purchase may proceed in any one of three different ways. First, under s. 97 (1), *post*, the authority may acquire land for such a purpose by agreement. Secondly, s. 97 (1) also provides that the authority "may be authorised to purchase

land compulsorily" by the Minister of Housing and Local Government. The procedure for obtaining this authorisation is by the making and confirmation of a compulsory purchase order. Under the Housing Act, 1936, as originally enacted this procedure was regulated by the Housing Act itself, but the standard procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 4; 3 Halsbury's Statutes (2nd Edn.) 1064), was substituted and the 1946 Act procedure is preserved for this purpose by para. 1 (1) of the Seventh Schedule to the present Act, *post*. In relation to such compulsory purchases the Second Schedule to the Act of 1946 incorporates the Lands Clauses Acts with the enactment under which the purchase is authorised (*i.e.*, s. 97 (1) of the Act of 1957), and provides that that enactment and the compulsory purchase order shall together be deemed to be "the special Act". If the compulsory purchase order is confirmed the purchase may, nevertheless, be made by agreement under the provisions of the Lands Clauses Acts as so incorporated. Thirdly, the authority and owner may still not agree on the sale after the confirmation of a compulsory purchase order, in which case the authority, under the order and the incorporated enactments, may take the land compulsorily and the owner may have his compensation assessed.

The first of these three possibilities is found in practice in simple cases, where the owner is willing to sell, or does not think he has any strong grounds for opposing a compulsory purchase order, and where the questions of title and price give no difficulty. The second possibility is met where the owner wishes to object, but is able to reach agreement on price if and when the order is confirmed. It is also used when the land is subject to restrictive covenants although the owner may be willing to sell, as the "special Act" arising from the compulsory purchase order clearly overrides any such restriction.

Under Part II of the Housing Act, 1957, *post*, local authorities have power to purchase unfit houses in certain circumstances. Here again there are powers to purchase by agreement without making a compulsory purchase order, or, either by agreement or compulsorily, after such an order has been confirmed by the Minister. Here also the compulsory purchase order procedure is that of the Acquisition of Land (Authorisation Procedure) Act, 1946, applied in these cases by para. 1 (1) of the First Schedule, *post*. Under Part II, however, there is the peculiarity that the powers of purchase arise only after proceedings in the county court or after the possibility of an appeal to that court; and provision is made for assessing compensation on the basis of "site value", as if the house had been demolished (ss. 12, 29, *post*).

Part III of the Housing Act, 1957, contains powers of purchase in connection with clearance and re-development areas. Here the authorisation procedure is complicated by a number of special considerations, and the Act of 1946, *supra*, has never applied to compulsory purchase orders for these purposes. The procedure is dealt with in the Third and Fourth Schedules, *post*, the Lands Clauses Acts being incorporated by para. 7 of the Third Schedule. Also in Part III there is a little-used provision, which is a sort of compulsory purchase in reverse, whereunder persons interested in an "obstructive building" can offer to sell it to the authority, and the authority are bound to accept the offer (s. 74 (1), *post*).

**Validity of compulsory purchase orders.** Under the procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 4; 3 Halsbury's Statutes (2nd Edn.) 1064), or under the procedure of the Housing Act, 1957, *post*, relating to intended purchases under Part III of that Act, the Minister is usually bound to cause a public local inquiry, or a less formal "hearing", to be held so that objectors may be heard. He has jurisdiction to confirm the order or to decline to do so, and the order may be confirmed with modifications. There are various procedural provisions requiring, for example, the service of notice of the making of the order by the

authority. The power to modify the order is in some respects limited; see, for example, para. 4 of the Third Schedule, *post*. There is a special procedure for challenging the validity of an order after confirmation on the ground (i) that it goes beyond the statutory powers, or (ii) that there has been some procedural error and that this has substantially prejudiced the applicant's interests. This limited remedy is available only within a very short time limit, whether the order was made under this Act or the Act of 1946, and is by way of application to the High Court (R.S.C., Ord. 55B, rr. 71-75). If the procedure was that of the Third Schedule, *post*, para. 4 of the Fourth Schedule, *post*, excludes an appeal beyond the Court of Appeal except with leave of that Court; the corresponding provision of the Act of 1946 was repealed by the Town and Country Planning Act, 1947.

Applications to the High Court are comparatively rare; but over the years there have been a number of cases under the Housing Act, 1936, or earlier housing Acts, or more recently under similar provisions in town and country planning legislation (see the notes to the Fourth Schedule, *post*).

## 2. Assessment of Compensation and Limitation to Existing Use Value

**Assessment of compensation.** The Lands Clauses Acts provided for the assessment of compensation by arbitrators, juries or justices, but said comparatively little about the principles on which the amount of compensation was to be calculated. The short effect of ss. 49, 63 and 68 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 913, 917, 919), was that an owner whose land was taken was entitled to the value which the land had for him (not its value to the acquiring body), including compensation for loss by disturbance, and also compensation for damage sustained by severing the land taken from other lands of the owner. Persons whose lands were not taken might claim for injurious affection of their lands by the execution of the works. An allowance, usually of 10 per cent., was made in practice for the purchase being compulsory.

Compensation for land purchased or taken under the Lands Clauses Acts was, broadly speaking, either agreed between the owner and the acquiring body (with or without the service of notice to treat under s. 18 of the Act of 1845; 3 Halsbury's Statutes (2nd Edn.) 902) or it was assessed. If compensation was assessed before entry was made on the land, the "price" arrived at was regarded as supplying the missing element in the imperfect contract of sale arising from service of notice to treat; the contract thus perfected was enforceable in the courts of equity (see *Fry on Specific Performance*). Alternatively, the acquiring authority, under ss. 85 *et seq.* of the Act of 1845, could in certain circumstances enter on the land before compensation was settled, leaving it to be assessed thereafter; technically this later assessment might be made under s. 68 (which also provided compensation for injurious affection of land of other owners whose lands were not taken), but the measure of compensation was not thereby altered.

Certain short tenancies were not purchased by the acquiring body: the tenants were required to give up possession, subject to compensation, under s. 121 of the Act of 1845 (see the note as to tenants from year to year, etc., p. 12, *post*).

**Compensation under early housing Acts.** The assessment of compensation under the earlier housing Acts had a number of special features. First, the assessment was made by a single arbitrator, appointed by the Government department concerned; see, for example, the Housing of the Working Classes Act, 1890, ss. 20, 21, and 41 and Second Schedule (repealed). Secondly, the additional allowance for the purchase being compulsory was excluded; see *ibid.*, ss. 21 (1) (a), 41 (2) (a). Thirdly, there were special rules

in effect restricting the measure of compensation where premises were overcrowded or insanitary, etc. (cf. the rules in Part III of the Third Schedule, and para. 2 of the Seventh Schedule, to the Housing Act, 1957, *post*). Fourthly, unfit houses could be taken at site value: practically the same basis now applies under ss. 12 (4), 29 (2) and 59 (2) of the Housing Act, 1957, *post*.

Other provisions of the earlier housing Acts required the arbitrator to disregard unnecessary improvements to the premises and interests therein created after a certain date; cf. para. 8 (5) in Part II of the Third Schedule to the Housing Act, 1957, *post*, and the somewhat similar provision in para. 8 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 21; 3 Halsbury's Statutes (2nd Edn.) 1083). Again under the earlier Acts, the arbitrator in certain cases was to determine whether part of the land could be taken without "material damage" to the remainder; cf. para. 8 (4) in Part II of the Third Schedule to the Housing Act, 1957, and the somewhat similar provision in para. 4 of the Second Schedule to the Act of 1946 (where the more usual term "material detriment" is used).

Other modifications of the Lands Clauses Acts were made by the earlier housing Acts with regard, for example, to entry on land before compensation was assessed.

**Acquisition of Land (Assessment of Compensation) Act, 1919.** This Act (31 Statutes Supp. 177; 3 Halsbury's Statutes (2nd Edn.) 975) created a panel of official arbitrators, who were persons with special knowledge of valuation. Questions of disputed compensation for land acquired compulsorily by a Government department or local or public authority were to be referred to a member of this panel. This jurisdiction together with other powers conferred on the official arbitrators was transferred on 1st January 1950, in England and Wales, to the Lands Tribunal set up under the Lands Tribunal Act, 1949 (61 Statutes Supp. 32; 28 Halsbury's Statutes (2nd Edn.) 317).

The Act of 1919 applied to purchases under the housing Acts, with certain special savings (see s. 7 as originally enacted; 31 Statutes Supp. 182). By s. 2, the Act of 1919 introduced general rules for assessing the amount of compensation, some of which were similar to those already in operation under the housing Acts; for example, r. (1) excluded the customary allowance for the purchase being compulsory. Certain words at the end of s. 2 were repealed by the Lands Tribunal Act, 1949, but the rules in that section still apply to the Tribunal. The special savings in the Act of 1919 preserved the other provisions about compensation in the earlier housing Acts briefly mentioned above. The Housing Act, 1925, repealed those saving words but re-enacted the substance of these special provisions, applying the Act of 1919 subject thereto (cf. s. 59 (1) of the Housing Act, 1957, *post*, and other provisions such as para. 8 in Part II of the Third Schedule thereto, *post*).

**Effect of planning Acts.** The planning and control of land use under town and country planning legislation has an important effect on land values, particularly where land has potentiality for development; and conversely land value problems have had their effect on the shaping and attempted execution of planning policy. The interrelation of these problems has led to the inclusion, in Town and Country Planning Acts, of provisions altering the general law of compensation for compulsory purchase.

The Town and Country Planning Act, 1944 (28 Statutes Supp. 20; 25 Halsbury's Statutes (2nd Edn.) 391), contained provisions, now repealed, for the assessment of compensation at 1939 prices. That Act also contained important powers of purchase for development or re-development, somewhat similar to the powers of urban housing authorities in re-development areas

under the Housing Acts (see now ss. 55 *et seq.*, *post*), and powers of dealing with land so acquired. These planning powers are now either contained in slightly altered form in the Town and Country Planning Act, 1947 (48 Statutes Supp. 22; 25 Halsbury's Statutes (2nd Edn.) 489), or in the amended portions of the Act of 1944 which remain in force as set out in the Eleventh Schedule to the later Act (48 Statutes Supp. 249). Among those provisions is one enabling a purchasing authority under the planning Act to buy certain unfit houses at site value as under the Housing Act.

**Existing use and development values.** It was the policy of the Act of 1947, as originally enacted, to "nationalise" the potential or development value, or the major part of it, of all land in private ownership. The effect of Parts III, V, VI and VII of that Act was briefly to leave the owner with the value of his land in its existing state, and for its existing use, together with the tolerance of certain development specified in the Third Schedule to that Act (48 Statutes Supp. 214; 25 Halsbury's Statutes (2nd Edn.) 644), and regarded for valuation purposes as within the existing use. Development beyond the Third Schedule limits was subject to development charge under Part VII, which, however, is generally speaking not applicable to development begun after 17th November 1953. By Part V of the Act of 1947 compulsory purchase prices, except in special cases, were limited to existing use value including the Third Schedule tolerance; see *ibid.*, s. 51 (48 Statutes Supp. 106; 3 Halsbury's Statutes (2nd Edn.) 1090). Claims for loss of development value, based on the depreciation of land values caused by that Act, were established under Part VI thereof (48 Statutes Supp. 115; 25 Halsbury's Statutes (2nd Edn.) 560). It should perhaps be mentioned that the limitation of compensation to existing use value is expressed to apply only when the purchase is made in pursuance of a notice to treat.

The Town and Country Planning Act, 1953 (78 Statutes Supp. 133; 33 Halsbury's Statutes (2nd Edn.) 856), was an interim provision pending the coming into operation of the new financial provisions in the Town and Country Planning Act, 1954 (89 Statutes Supp. 1; 34 Halsbury's Statutes (2nd Edn.) 911). The general effect of the Act of 1954 on compulsory purchase prices is that compensation is still in general limited to existing use value under Part V of the Act of 1947. The Part VI claims under that Act, however, have been used to create "unexpended balances of established development value" attaching to the land in respect of which such claims were established; and, in general, additional compensation is payable on compulsory purchase by reference to these unexpended balances. The basis of existing use value is altered by amendments to the Third Schedule to the Act of 1947, which bring within the Schedule development carried out before notice to treat is served. Where development value has actually been realised in this way the unexpended balance is correspondingly reduced under the Act of 1954; see *ibid.*, s. 18 (4) (89 Statutes Supp. 60; 34 Halsbury's Statutes (2nd Edn.) 939).

The relation between the special compensation provisions of the housing Acts and the general amendments to the law of compensation made by the above-mentioned planning Acts has never been entirely clear. The view that compensation is liable to be reduced under the limits imposed by both sets of legislation is supported by certain incidental provisions of the Housing Act, 1957, *post*. These provisions are reproduced from the Slum Clearance (Compensation) Act, 1956 (97 Statutes Supp. 18; 36 Halsbury's Statutes (2nd Edn.) 392), partially repealed by s. 191 (1) and the Eleventh Schedule, *post*, and re-enacted in the Act of 1957 so far as it relates to purchases thereunder. Thus, in the Second Schedule, Part II, para. 7 (2), *post*, the definition of "compensation" contains a reference to ss. 31 and 35 of the Town and Country Planning Act, 1954 (89 Statutes Supp. 101, 111; 34 Halsbury's Statutes (2nd Edn.) 76, 81), which assumes that compensation under the housing Acts is also limited, by Part V of the Town and Country Planning

Act, 1947, to the existing use basis. This assumption has commonly been made in practice, although on a strict interpretation of the statutes the contrary view was arguable.

### 3. Site Value and other Particular Provisions

**Site value, etc., under the Housing Act.** There are two main special provisions about the measure of compensation under the Housing Act, 1957, *post*, which can conveniently be termed "site value compensation" and "compensation subject to the Schedule rules". These are derived from provisions of the earlier Acts, as already briefly mentioned.

Site value is payable, by virtue of ss. 12 (4), 29 (2) and 59 (2), *post*, in the following cases under Parts II and III of the Act: (i) where the county court has allowed an appeal against a "repairs" notice on the ground that the house cannot be made fit at reasonable expense, and the authority then purchase the house to carry out the works specified in their notice (s. 12); (ii) where the authority have determined to purchase an unfit house which is, or can be rendered, capable of providing accommodation which is adequate for the time being (ss. 17, 29); (iii) where land in a clearance area, under Part III, is purchased, with an exception here in favour of buildings included only for reasons of "bad arrangement" and containing no unfit dwelling accommodation (s. 59 (2)); and (iv) where in connection with a re-development area a house is purchased as being unfit and incapable of being rendered fit at reasonable expense (ss. 57 (3), 59 (2), (3)). Compensation in these cases is to be the value of the site, at the time the valuation is made, as a site cleared of buildings and available for re-development in accordance with the local building byelaws. As mentioned above, the planning Acts would also seem to apply, so that the prospect of re-development beyond the limits of existing use value cannot normally be considered.

Other purchases under the Housing Act, 1957, are subject to the special rules in the Schedules, which restrict the measure of compensation where the rent of premises is enhanced by overcrowding, or where there is some measure of disrepair, etc. For purchases under Part III, other than those mentioned above where site value is appropriate, the rules are now set out in the Third Schedule (see s. 59 (4), and Third Schedule, Part III, *post*; and s. 74 (1) relating to "obstructive buildings" which the authority are compelled to purchase). Where land is purchased under Part V, relating to the provision of housing to meet the needs of the district, s. 97 (1) applies the Seventh Schedule, *post*, para. 2 of which contains the same rules, so far as relevant to that Part of the Act. (In the Housing Act, 1936, the Fourth Schedule (now repealed) contained these rules for the purposes of both Part III and Part V of that Act; practitioners should note that the new arrangement has involved some renumbering of the rules.)

**Other special provisions of the Housing Act.** There are other special provisions of the Housing Act, 1957, which may be briefly mentioned here. First, payments may be made in respect of certain houses which, although unfit for habitation, have been well-maintained; see ss. 30 and 60 and Part I of the Second Schedule, *post*. These provisions are reproduced from s. 42 of the Housing Act, 1936 (11 Halsbury's Statutes (2nd Edn.) 490), as amended and extended by s. 3 of the Slum Clearance (Compensation) Act, 1956 (97 Statutes Supp. 23; 36 Halsbury's Statutes (2nd Edn.) 397). Secondly, there are special provisions in ss. 31 and 61, *post*, in favour of a limited class of owner-occupiers and others, in effect bringing up site value compensation to the level of compensation as it would have been assessed under the "Schedule rules", *i.e.*, the rules in Part III of the Third Schedule, *post*. Indeed, they may bring it up much further as para. 2 of those rules is disregarded (see the definition of the so-called "full compulsory purchase value" in para. 7 (2) of the Second Schedule, *post*). These special provisions

also derive from the Act of 1956. Thirdly, there are discretionary powers to make allowances to persons displaced: see ss. 32, 63, 100, *post*. These are an unusual but longstanding feature of housing legislation (the powers under ss. 18 and 44 of the Housing Act, 1936, did not extend to "Part V" purchases, but s. 6 of the Housing Act, 1949, introduced the provision now reproduced in s. 100, *post*).

**Tenants from year to year, etc.** Under the Lands Clauses Acts special provision was made for land in the possession of a person whose interest was no greater than as tenant for a year or from year to year, including a person holding under the last year of a longer term. By s. 121 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 949), such a person's interest was not bought, but if he was required to give up possession before his interest expired he was entitled to compensation to be assessed under that Act by justices. Such compensation is now to be assessed by the Lands Tribunal; see the Acquisition of Land (Assessment of Compensation) Act, 1919, s. 1 (31 Statutes Supp. 177; 3 Halsbury's Statutes (2nd Edn.) 975), and the Lands Tribunal Act, 1949 (61 Statutes Supp. 32; 28 Halsbury's Statutes (2nd Edn.) 317). In relation to business premises, where tenancies are continued by the Landlord and Tenant Act, 1954, special provision is made to preserve the effect of s. 121 of the Act of 1845 but to provide an appropriate measure of compensation; see generally ss. 37, 39, 57 and 59 of the Landlord and Tenant Act, 1954 (87 Statutes Supp. 130, 134, 153, 158; 34 Halsbury's Statutes (2nd Edn.) 420, 422, 434, 437).

The Housing Act, 1957, *post*, provides special powers of entry, some of which particularly affect persons with "short" tenancies of the kind mentioned above. It is important to avoid confusion between the three following types of provision:—

(1) Where a compulsory purchase order is made for the purposes of Part III of the Act of 1957 under the authorisation procedure of the Third Schedule, *post*, para. 9 of that Schedule confers a power of entry before compensation is assessed. Similar provision for Part II and Part V purchases, where the compulsory purchase order procedure is that of the Acquisition of Land (Authorisation Procedure) Act, 1946, is made by para. 3 of the Second Schedule to that Act (39 Statutes Supp. 20; 3 Halsbury's Statutes (2nd Edn.) 1081). These provisions do not in themselves affect s. 121 of the Act of 1845, but are an alternative to the procedure under ss. 85 *et seq.* of that Act (3 Halsbury's Statutes (2nd Edn.) 931).

(2) Where, however, either of these powers could be exercised, the local authority may now in certain cases take over the premises without entry; see para. 3 of the First Schedule, *post*, relating to Part II of the Act, para. 10 in Part II of the Third Schedule, *post*, in the case of certain Part III purchases, and s. 98, *post*, relating to Part V (reproducing in each case s. 14 (3) of the Housing Repairs and Rents Act, 1954). In either case, the authority serve notice on the occupier allowing him to stay on on certain terms, but compensation and other matters are settled as if entry had been made. In such a case the actual occupier may have been paying rent to a person who was entitled only as tenant for a year or from year to year; when the authority take over and that person ceases to be entitled to the rent he is deemed to have been required to give up possession as mentioned in s. 121 of the Act of 1845.

(3) Where the local authority are able to acquire superior interests by agreement, they are empowered to deal with "short" tenancies, of the kind mentioned above, as if they were acquiring compulsorily, under s. 62, *post* (Part III of the Act), and s. 101, *post* (Part V). These sections also apply to land already held by an authority, subject to such a short tenancy, for some other purpose, if the authority resolve to appropriate it for the purposes of Part III or Part V of this Act. In these cases the

local authority do not need to promote a compulsory purchase order. When the powers are exercised, compensation is payable as if the local authority had been authorised to acquire compulsorily.

**Alternative housing powers.** Some of the powers of purchase under the Housing Act, 1957, are alternatives to other powers not involving the purchase of land, *e.g.*, to demolition orders under Part II, or clearance orders under Part III, *post*. A clearance order may apply only to property which could be purchased at site value; cf. s. 59 (2), relating to site value, and para. 2 of the Fifth Schedule, *post*, relating to clearance orders. After demolition under a demolition order or clearance under a clearance order, the owners are left with the site, and *prima facie* are not entitled to compensation for the loss of the unfit house (or other building containing unfit dwelling accommodation). However, a number of the special compensation provisions mentioned above are applied to cases where action is taken by demolition, or the like, without purchase; see, for example, s. 30, *post* (well-maintained but unfit houses subject to demolition orders or certain closing orders), s. 31 (payments to certain owner-occupiers and others) and s. 32 (discretionary payments to persons displaced), and the somewhat similar provisions for clearance orders under Part III.

#### 4. Summary of this Chapter

It will thus be seen that the law of compulsory purchase and compensation in connection with the Housing Act, 1957, can conveniently be considered in four parts. First, there will be an enactment in the Housing Act itself conferring the power of purchase in general terms, *e.g.*, s. 97 (1), *post*. Secondly, there will be an authorisation procedure governing the making of a compulsory purchase order, if needed. This is provided by the Third Schedule, *post*, for purchases under Part III of the Act, and in other cases by the Acquisition of Land (Authorisation Procedure) Act, 1946, as applied by the First Schedule, para. 1 (1), or the Seventh Schedule, para. 1 (1), *post*. Thirdly, the confirmed compulsory purchase order with certain related enactments is read as the "special Act" and incorporates the Lands Clauses Acts with modifications. Fourthly, the assessment and amount of compensation are governed procedurally by the Acquisition of Land (Assessment of Compensation) Act, 1919, as modified by the Lands Tribunal Act, 1949, and generally by the large number of statutes affecting the measure of compensation.

These statutes affecting compensation may in turn be roughly divided into a threefold classification: (a) the Lands Clauses Acts, as modified by the Act of 1919 and the Lands Tribunal Act, 1949; (b) the planning Acts, dealing with development value and introducing the concept of existing use; and (c) the Housing Act, 1957, itself, with its special bases (site value and the "Schedule rules") and other special provisions (*e.g.*, well-maintained houses, discretionary allowances, and special payments to certain owner-occupiers and others).

### CHAPTER 3—GENERAL LAW OF HOUSING SINCE 1936

#### 1. Introductory

**Acts of 1936 and 1957 compared.** The Housing Act, 1936 (11 Halsbury's Statutes (2nd Edn.) 444), as originally enacted, contained 191 sections and 12 Schedules, a few of these provisions being only of temporary importance in the transition from the previous law. The Housing Act, 1957, *post*, is of comparable length, having 193 sections and 11 Schedules, but does not cover quite the same field. As noted in Chapter 1 of this Introduction,

p. 1, *ante*, the Act of 1957 contains fewer financial provisions, and is thus more nearly confined to what may be called the general law of housing. However, Part VI (ss. 135–142), *post*, contains some financial provisions, mainly concerned with the borrowing of money by housing authorities. The remainder of the Act of 1936, together with a number of other financial provisions, has been repealed and replaced by the Housing (Financial Provisions) Act, 1958 (Book II, *post*).

There are two other main differences between the Acts of 1936 and 1957. First, the few obsolete or repealed provisions of the earlier Act are not reproduced; *e.g.*, ss. 38 and 39 (11 Halsbury's Statutes (2nd Edn.) 487) which were transitional provisions concerned with "improvement areas" declared under s. 7 of the Housing Act, 1930. Secondly, the Act of 1957 incorporates the amendments and new provisions introduced in the general law of housing since 1936. In this chapter of the Introduction it is proposed to mention the more important of these changes.

**Arrangement of Act in Parts.** A helpful feature of the Act of 1957 is that it preserves the arrangement of the more important provisions of the Act of 1936, so far as concerns the division of the Act into Parts. There has been a good deal of rearrangement of sections, or between the sections and the Schedules, and a tendency to set out the same provisions several times over as they apply to different Parts or sections. Part II, however, which now runs from s. 4 to s. 41, *post*, still deals with the repair, maintenance, demolition, closing, etc., of individual houses. Its principal provisions still aim at securing (i) the execution of works, where this can be done at reasonable expense, to render a house fit for human habitation, pursuant to a "repairs notice" as it is sometimes called (s. 9, *post*), and (ii) the demolition of a house when it is not capable of being made fit at reasonable expense, pursuant to a demolition order (ss. 16, 17, *post*). There are some variants of these procedures, *e.g.*, the making of a closing order, and the number and scope of these alternative procedures has increased since the Act of 1936.

Part III (ss. 42–75), *post*, still contains the important provisions about "clearance areas", where conditions require a whole area to be cleared of buildings by the local authority (after purchase) or by owners (under clearance orders); and also the provisions, less frequently invoked, about "re-development areas". The latter provisions deal with areas of urban working-class houses and aim at improving conditions by providing better houses or streets and open spaces under a re-development plan (thus resembling what may be done under ss. 5 (3) and 38 of the Town and Country Planning Act, 1947 (48 Statutes Supp. 31, 88; 25 Halsbury's Statutes (2nd Edn.) 497, 545). Part IV, dealing with the abatement of overcrowding, is scarcely changed from Part IV of the Act of 1936, save for the addition of s. 90, derived from the Housing Repairs and Rents Act, 1954. Part V, *post*, though somewhat altered in many details, still relates to the provision of housing to meet general needs.

Thus it will still be possible to say of a compulsory purchase order that it is a Part II or III or V order, as the case may be, without confusion. Again it is still broadly true that action by a local authority under Part III or V requires confirmation by the Minister of Housing and Local Government, to whom persons aggrieved by the proposed action may make objection. Except where compulsory purchase is involved, the principal procedures of Part II (demolition orders, etc.) require no such confirmation, but make provision for appeals to the county court.

**Housing statutes since 1936.** Many of the statutes since 1936 deal with special topics in housing law. They are not relevant in this chapter (but see Chapter 4 of this Introduction, p. 24, *post*). A few provisions of the Housing Act, 1957, *post*, are derived from the following Acts, as is shown by the Table of Repeals and Replacements (Appendix I, *post*):—

The Housing (Financial Provisions) Act, 1938  
The Local Authorities Loans Act, 1945  
The Housing (Financial and Miscellaneous Provisions) Act, 1946  
The Acquisition of Land (Authorisation Procedure) Act, 1946  
The New Towns Act, 1946  
The Lands Tribunal Act, 1949  
The Industrial and Provident Societies Act, 1952  
The Housing Act, 1952  
The London County Council (General Powers) Act, 1953 (a local provision; see s. 166 (2), proviso (b), *post*)  
The Housing Subsidies Act, 1956  
The Rent Act, 1957.

The provisions taken from these Acts, *supra*, are mostly of minor importance, except perhaps the alteration of the powers of disposal and dealing with land by the Housing Act, 1952 (see notes to ss. 104, 105, *post*). More important changes were introduced by the following Acts:—

The Housing Act, 1949  
The Local Government (Miscellaneous Provisions) Act, 1953  
The Housing Repairs and Rents Act, 1954  
The Slum Clearance (Compensation) Act, 1956.

Some of these last-mentioned changes were of general importance, affecting the operation of the present Act as a whole; others were of a more detailed character.

## 2. General Changes since 1936

**Approval of local authority proposals.** A general change, which seems to have attracted little attention, was introduced by s. 1 of the Housing Repairs and Rents Act, 1954 (84 Statutes Supp. 3; 34 Halsbury's Statutes (2nd Edn.) 261), partly reproduced in s. 2 of the Act of 1957, *post*. Because of the 1939 War, and other circumstances, local authorities had in general failed for many years to exercise to the full their powers of dealing with individual unfit houses, or with clearance areas, under Parts II and III of the Act of 1936. A summary of the returns made by local authorities, under s. 1 of the Act of 1954, showed that of nearly 13 million permanent houses in England and Wales nearly 850,000 were provisionally, but officially, regarded as unfit to live in, *i.e.*, one in every fifteen (see Cmd. 9593, H.M.S.O., 3s. 6d.). The Government of the day had decided that the time had come to lessen the pace of new building and give more attention to "the nation's stock of existing houses" (cf. Ministry of Housing and Local Government Circular No. 55/54, dated August 1954; and the earlier White Paper, "Houses—The Next Step", Cmd. 8996, dated November 1953). The effect of s. 2 of the Act of 1957, *post*, is that local authorities must now exercise their powers under Parts II and III of this Act, having regard to proposals submitted by them and approved by the Minister. In one sense this detracts from the nature of the local authority's duty, which was absolute in form until the Act of 1954; indeed there had been cases, particularly in connection with rent-controlled houses, where an owner had been pressing an unwilling authority to do its duty and condemn houses which were unfit (for the owner could not otherwise obtain possession to demolish them himself). On the other hand, the existence of realistic proposals, approved by the Minister, should go some way to ensure that action is taken within a reasonable time and under an orderly programme. However, under Part II of the Act, there is no express provision that a judge of county courts need have regard, on an appeal to his court, to these proposals.

**Definition of unfitness.** The Housing Act, 1957, *post*, still contains no definition of what constitutes fitness or unfitness for human habitation. The Act of 1936, as originally enacted, defined "sanitary defects" as including

lack of air space or of ventilation, darkness, dampness, absence of adequate and readily accessible water supply or sanitary accommodation or other conveniences, and inadequate paving or drainage of courts, yards or passages. A house, for this purpose, included any yard, garden, outhouses or appurtenances (see now s. 189 (1), *post*). When unfitness for habitation was mentioned in the Act of 1936, the expression was sometimes qualified by words such as "in any respect" or "by reason of disrepair or sanitary defects"; and sometimes it stood alone without such qualification. Furthermore, by s. 188 (4) of that Act, an authority had to have regard to the extent, if any, to which a house by reason of disrepair or sanitary defects fell below certain byelaw or local Act standards or the general standard of working-class houses in the district. The reference to working-class housing standards was removed by s. 1 of the Housing Act, 1949 (61 Statutes Supp. 62; 28 Halsbury's Statutes (2nd Edn.) 607). The definition of "sanitary defects" was repealed by the Housing Repairs and Rents Act, 1954 (84 Statutes Supp. 1; 34 Halsbury's Statutes (2nd Edn.) 259), which also swept away the qualifying phrases from most sections (*i.e.*, the words such as "in any respect"), and removed the requirement of comparison with byelaw standards. It also repealed certain local Act provisions which varied the general law (see now s. 4 (2), *post*).

In s. 4 (1), *post*, there is now a list, taken from s. 9 of the Act of 1954, of the matters to which regard is to be had in determining whether a house is unfit. A house (including, of course, its yard, outhouses, etc.; see s. 189 (1), *post*) is to be considered unfit if, and only if, it is so far defective in one or more of these matters that it is not reasonably suitable for occupation in that condition. It is thought that the new standard in effect differs little from the old. The test remains a qualitative, indeed almost a subjective one. None of the matters listed necessarily renders a house unfit. Regard must be had to them, and to nothing else; but the medical officer of health, the local authority committee member, the Ministry's officials, or the county court judge must each still decide the general question, having regard to those matters, of whether the house is fit to live in.

It should here be mentioned that the Act of 1954 introduced two other standards. One, in connection with certain new "patching" powers, is that of a dwelling which can be regarded as "adequate for the time being". The powers of retaining such accommodation temporarily for use pending demolition are mentioned briefly below. The other was a standard "justifying an increase of rent" under Part II of the Act of 1954 (which amended the Rent Acts, and is outside the scope of this book); it resembled the standard of fitness implied by s. 9 of that Act, but it was also essential that the dwelling should be in "good repair". It is possible that the recognition of these two other standards, one lower and the other more stringent than the general test of unfitness, may throw a little light on the interpretation of s. 4 (1) of the present Act, *post*.

**The working classes.** The Housing Act, 1936, like the earlier Acts mentioned in Chapter 1 of this Introduction, at p. 3, *ante*, was concerned with the housing of the working classes, and all but a few of its provisions were expressly confined to this class of the community (or to houses of a type suitable for working class occupation: see *Green (H. E.) & Sons v. Minister of Health*, [1947] 2 All E.R. 469; [1948] 1 K.B. 34; 2nd Digest Supp.). The Housing Act, 1949 (61 Statutes Supp. 60; 28 Halsbury's Statutes (2nd Edn.) 604), reversed this emphasis, and in consequence only a few sections of the Act of 1957, *post*, retain references to the working classes, *e.g.*, s. 5 (back-to-back houses), s. 8 (duty to give information to tenants), ss. 55-57 (re-development areas) and most of Part IV (which relates to overcrowding of a "dwelling-house" as defined in s. 87, *post*; but this does not affect s. 90 which relates to lodgings). It should be noted that s. 6, *post* (conditions implied on letting small houses) is not expressly confined to working-class

houses, the test there being the rent of the house; s. 7, however, which extends s. 6 to certain contracts of service, is confined to workmen employed in agriculture, who may perhaps be regarded as part of the working class.

It has been observed that the social revolution (of the first half of this century) has made the term "working classes" quite inappropriate to-day (*Green (H. E.) & Sons v. Minister of Health, supra*). Where the term is still retained, however, it must, it is submitted, be given something like its old meaning. For one particular purpose, the Housing Act, 1936, contained a definition of the expression working class; see the Eleventh Schedule thereto, para. 11 (e) (repealed by the Act of 1949 and therefore not reproduced in the Ninth Schedule to the Act of 1957). For that repealed definition see 11 Halsbury's Statutes (2nd Edn.) 609. More generally, the old meaning "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"; *per* Denning, J. (as he then was) in the case cited, *supra*.

### 3. Particular Changes in Part II

**Letting of small houses.** Among the more particular changes of the general law since 1936 is that reproduced in s. 6 of the Act of 1957, *post*, relating to the implied conditions on letting small houses. This was one of the provisions (then s. 2 of the Act of 1936) where qualifying words ("in all respects reasonably") were struck out by the Act of 1954, as noted above. The more particular change was the alteration of the limits of rent there mentioned by the Rent Act, 1957 (see para. 22 of the Sixth Schedule to that Act (now repealed); 103 Statutes Supp. 128). The Rent Act, 1957, came into operation on 6th July 1957, which explains the reference to that date in s. 6, *post*.

**Unfit houses beyond repair.** When a house was unfit for habitation, and incapable of being rendered fit at reasonable expense, the Housing Act, 1936, as originally enacted, provided a procedure for the demolition of the house under a demolition order. This procedure remains (ss. 16 *et seq.*, *post*) but with various alternative procedures to meet special circumstances.

In demolition order procedure there are three main stages. First, the condition of the house must be considered at a meeting, after service of "notice of time and place" (s. 11 of the 1936 Act; now s. 16, *post*), and persons served with this notice may offer undertakings about the repair or use of the house. If such an undertaking is accepted by the authority, or on appeal by the county court judge, demolition will not be necessary. Secondly, if no undertaking under the procedure of the 1936 Act, as originally enacted, was offered, or none was accepted, or an undertaking was accepted but broken, a demolition order had to be made. This could not be avoided, for example, by making a closing order; that alternative applied to "part of a building" and a house could not be so regarded even if it was part of a terrace of houses and needed for the support of the other houses (*Birch v. Wigan Corpn.*, [1952] 2 All E.R. 893; 3rd Digest Supp.). There was no procedure for revoking a demolition order. The third stage was the vacation of the house and its demolition. Apart from emergency regulations (see notes to s. 34, *post*), it was an offence to enter into occupation of a condemned house (see now s. 22 (4), *post*).

Because of the effects of the 1939 War, and other circumstances, difficulties arose in practice, particularly at the second and third stages mentioned above, because:—

- (i) it was desirable to allow temporary occupation of sub-standard houses for the time being;
- (ii) some condemned houses had in fact been made fit, and there were others which could be made fit, and it might often be desirable to avoid their demolition;

(iii) some unfit houses were worth preserving, because of their historic or architectural interest, and indeed some were actually subject to "building preservation orders" under the Town and Country Planning Act, 1947, s. 29 (48 Statutes Supp. 75; 25 Halsbury's Statutes (2nd Edn.) 534); and

(iv) some unfit houses were needed for the support of others, as in *Birch v. Wigan Corpn.*, *supra*.

**Alternatives to demolition.** To meet these difficulties, alternative procedures, some of which were or are of limited importance, were introduced by the Housing Act, 1949, the Local Government (Miscellaneous Provisions) Act, 1953, and the Housing Repairs and Rents Act, 1954. The present effect of these provisions, so far as reproduced in Part II of the Housing Act, 1957, *post*, is as follows:—

(i) under s. 17 (2), *post*, the local authority may resolve to purchase a house where it is or can be rendered capable of providing accommodation which is "adequate for the time being". Notice has to be served of this resolution, as if it were a demolition order, and the right of appeal to the county court is preserved (ss. 19 and 20, *post*). If the determination becomes operative, because there is no such appeal or an appeal fails, the local authority may then purchase the house by agreement, or seek authorisation to purchase, by compulsion if need be, under a compulsory purchase order (s. 29, *post*). The basic compensation for the purchase is site value (see Chapter 2 of this Introduction, at p. 11, *ante*) with the possibility of special payments under ss. 30–32, *post* (mentioned in that chapter, and below).

The temporary provisions of s. 34, *post*, allow occupation of privately owned unfit houses to be licensed, where they are capable of providing accommodation of the humble standard mentioned above; in effect this continues the emergency powers of Defence Regulations 68A and 68AA. A licence under s. 34 may impose terms, including terms as to rent, and, except where the time has been extended, such licences were not to continue beyond 30th August 1957 (which in fact was before the commencement of the Act of 1957, on 1st September 1957);

(ii) under s. 24, *post* (derived from the Act of 1954 which widened certain earlier powers), a local authority may postpone demolition where proposals are submitted which will result in the provision of one or more fit houses;

(iii) under s. 17 (3), *post*, protection is afforded to "listed buildings" under s. 30 of the Town and Country Planning Act, 1947 (48 Statutes Supp. 77; 25 Halsbury's Statutes (2nd Edn.) 536) to buildings subject to a building preservation order under s. 29 of that Act, and to buildings which are being considered for listing or preservation. Such buildings are to be made subject to a closing order instead of being demolished or purchased. The right of appeal to the county court is preserved. Similarly, where a condemned building comes into one of the above categories the demolition order must be replaced by a closing order (s. 26, *post*);

(iv) under the proviso to s. 17 (1), *post*, where a demolition order would be inexpedient, because of the effect demolition of the house might have on other property, the local authority may make a closing order on the house. Again the right of appeal is preserved. Ultimately the closing order may be replaced by a demolition order (s. 28, *post*). Power to substitute a closing order for an existing demolition order is contained in s. 35, *post*.

**Well-maintained houses.** Part III of the Housing Act, 1936, provided, in s. 42 (see now s. 60, *post*), that special payments might be made in respect of an unfit house, which was purchased or cleared, if the house had

been well maintained. A very similar provision, though not identical, has been introduced, following s. 3 of the Slum Clearance (Compensation) Act, 1956 (97 Statutes Supp. 23; 36 Halsbury's Statutes (2nd Edn.) 397), into Part II; see s. 30 of the Housing Act, 1957, *post*. The amount of the payment is ascertained in accordance with the Second Schedule, *post*, and the general scale of payments is now to some extent open to variation by the Minister, who has power to prescribe "multipliers" of the rateable value for this purpose.

**Payments to certain owner-occupiers and others.** The Act of 1956, *supra*, also introduced a system of special payments to a limited class of owner-occupiers and business tenants (s. 31, *post*; and cf. s. 61 in Part III). The purpose of these payments is, in general, to bring up site value compensation to an ordinary compulsory purchase value, and to make similar provision where a house is demolished or cleared or closed without purchase. The detailed provisions, reproduced in Part II of the Second Schedule, contain important time limits and other restrictions, which allow these provisions a temporary and limited scope; in principle they allow some relief to persons who bought an interest in a house during the post-war housing shortage, when prices were high.

**Discretionary payments to persons displaced.** The scope of the discretionary payments which may be made to persons displaced by action taken under Part II (s. 32, *post*, and cf. s. 63 in Part III) has been widened to include cases under the alternative procedures, mentioned above, introduced since 1936.

**Other changes in Part II.** Among other changes in Part II, attention is drawn to the compulsory purchase order authorisation procedure, which is now that of the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 4; 3 Halsbury's Statutes (2nd Edn.) 1064); see ss. 12 and 29, and the First Schedule, *post*. A power to require the execution of works, or the reduction of the number of occupants, where a house is let in lodgings or occupied by members of more than one family, is reproduced in s. 36, *post*, from the Housing Repairs and Rents Act, 1954. The Act of 1954 also made an alteration in the date at which a receiver may be appointed (s. 10 (8), *post*) where a local authority have incurred expenses carrying out works required to be executed under a s. 9 notice. Sections 6-8 of the Act of 1936, giving power to make byelaws as to working-class houses, were in part superseded by Part IV of that Act, revived to a limited extent by the Housing Act, 1949, and finally repealed by the Act of 1954, which introduced provisions now re-enacted in s. 36, mentioned above, and in s. 90, *post*.

#### 4. Particular Changes in Part III

**Inquiries and hearings.** The compulsory purchase of land for the purposes of Part III of the Act of 1957, *post*, in connection with clearance areas (ss. 42 *et seq.*) and re-development areas (ss. 55 *et seq.*) is to be authorised under the present Act, and not under the standard procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946; see ss. 43 (3), 51 (2) and 57 (1) and Parts I and II of the Third Schedule, *post*. The procedure for the making and confirmation of clearance orders is similar (s. 44 and the Fifth Schedule, *post*). Under the Act of 1936, as originally enacted, the Minister was obliged, where an objection was duly made and not withdrawn, to cause a local inquiry to be held in public. Following the Housing Repairs and Rents Act, 1954, the Minister may, except under s. 57, direct a "hearing" instead of an inquiry; *i.e.*, he may afford an objector "an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose" (Third Schedule, Part I, para. 3 (3), and Fifth Schedule, para. 5 (2), *post*). Such hearings may be generally similar to an inquiry, though perhaps less formal. There would seem to be no power to summon

witnesses or make orders as to costs, except at a formal inquiry. The right to have advance notice of certain allegations of unfitness, and a statement of the Minister's reasons if he decides a house is unfit, applies to both inquiries and hearings (formerly s. 41 of the Act of 1936, as extended by the Act of 1954; now reproduced in the Third and Fifth Schedules, *post*).

The Third and Fifth Schedules, *post*, also provide (Part I, para. 2 (3), and para. 3 (3), respectively), again following the Act of 1954, that a "statutory tenant" shall be deemed to be a tenant for a period less than a month; such an occupier thus, in a sense, loses his right to object to a compulsory purchase order or a clearance order. More strictly, it should be said that his objection need not be regarded in deciding whether an inquiry or hearing must be held; there is nothing to stop such a person making an objection if he is aware that an order has been submitted to the Minister. A similar amendment was made by the Act of 1954 to the standard authorisation procedure (which applies to purchases under Parts II and V of the present Act). The Schedules also reproduce certain provisions of the Act of 1954 intended to simplify the service of notice of the making and submission of orders; in general the changes mentioned above as derived from the Act of 1954 are simplifications of procedure, at the expense of potential objectors, designed to assist slum clearance in accordance with the Government policy mentioned earlier in this chapter.

**Alternatives to clearance.** Some of the alternatives to demolition, noted above in connection with Part II of the Act of 1957, have their counterparts in Part III, *post*. There is no express provision to safeguard a building of architectural or historic interest, such as is found in s. 17 (3) in Part II, presumably because the Minister can, if he sees fit, refuse to confirm a compulsory purchase order or clearance order so far as it would affect such a building.

The retention of unfit accommodation where it can provide accommodation of a standard which is "adequate for the time being" is permitted by s. 48 (1), *post*, in the case of any houses purchased by the authority, or belonging to them, in the clearance area; see also s. 48 (2), *post*. Under s. 46, *post*, a special type of clearance order may be made with respect to such a house not belonging to the authority; this provides, in effect, for delayed clearance, the authority meantime taking a tenancy so as to use the house for temporary accommodation. Further, s. 53, *post*, provides for the licensing of occupation of certain houses already subject to clearance orders; this is a temporary provision, similar to that in the Defence Regulations mentioned earlier in this chapter, and the general time limit was again the 30th August 1957. The retention of a house needed for the support of some other house retained for temporary housing purposes, or the retention of a house needed for some other reason in connection with the exercise of the local authority's powers under s. 48 (1), is authorised by s. 48 (3), *post*. Houses capable of providing temporary accommodation, of a standard "adequate for the time being", and houses needed for the purposes just mentioned, may in some circumstances be purchased under s. 54, *post*; this applies to houses subject to clearance orders made before the Act of 1954. When a house is so purchased the clearance order ceases to have effect. This power of purchase, however, does not apply while a licence is in force under s. 53 (mentioned above).

**Well-maintained houses; owner-occupiers and others.** Under s. 60, *post*, replacing s. 42 of the Act of 1936, payments may be made in respect of unfit, but well-maintained houses, as already mentioned in this chapter. The particular change which affects Part III of the Act is the Minister's power to alter the scale of such payments, so far as they are based on a multiple of the rateable value (Second Schedule, Part I, para. 3, *post*). By s. 61, *post*, the payments to certain owner-occupiers and others, in the

circumstances and on the scale mentioned in Part II of the Second Schedule, *post*, are applied for the purposes of Part III of the Act, in the case of houses purchased at site value or vacated under a clearance order.

**Other changes in Part III.** Other changes affecting Part III include a curtailment of the period of notice under what is now s. 62 (1), *post*, to 14 days instead of 28. This reproduces the amendment to s. 145 of the Act of 1936 by the First Schedule to the Act of 1954. The Third Schedule, *post*, dealing with purchases under Part III, now refers to the "tribunal" instead of the "arbitrator", in consequence of the setting up of the Lands Tribunal under the Lands Tribunal Act, 1949 (61 Statutes Supp. 32; 28 Halsbury's Statutes (2nd Edn.) 317) (and see Chapter 2 of this Introduction, at p. 9, *ante*). The Lands Tribunal is also expressly mentioned in s. 65, *post*, as the tribunal for determining certain of the questions arising under that section in relation to the apparatus of statutory undertakers.

## 5. Changes in Parts IV to VII

**Additional overcrowding powers.** Part IV of the Housing Act, 1957, largely reproduces Part IV of the Act of 1936 (11 Halsbury's Statutes (2nd Edn.) 503). The Act of 1936, as originally enacted, contained, in ss. 6-8, powers to make byelaws as to working class houses. To some extent, by virtue of s. 6 (2) of that Act, these powers were superseded by the provisions of Part IV of the Act of 1936 as from "the appointed day" thereunder. The power was revived by s. 10 of the Housing Act, 1949 (61 Statutes Supp. 77; 28 Halsbury's Statutes (2nd Edn.) 614), but ss. 6-8 of the Act of 1936 were wholly repealed by the Housing Repairs and Rents Act, 1954. The Act of 1954 introduced instead the provisions now found in s. 36, *ante* (as to the execution of works or reduction of number of occupants) and in the section now added to Part IV (s. 90, *post*, as to overcrowding of houses let in lodgings).

**Changes in Part V.** In Part V of the Housing Act, 1957, *post*, there are incorporated a number of detailed changes made in the law since the Act of 1936. Before mentioning some of the more important of these changes, it may be desirable to mention that Government financial assistance for the provision of housing accommodation to meet the general need was severely curtailed by the Housing Subsidies Act, 1956 (94 Statutes Supp. 38; 36 Halsbury's Statutes (2nd Edn.) 371) (see now ss. 1-8 of the Housing (Financial Provisions) Act, 1958, Book II, *post*, and the notes thereto). This may in practice reduce the extent of the exercise of the local authority's powers under Part V of the Act of 1957.

**Provision of furniture, board and laundry facilities.** Under s. 72 (2) of the Act of 1936 housing accommodation provided by the local authority under that section (see now s. 92 (1) of the Act of 1957) could be supplied by the authority with all requisite furniture, fittings and conveniences. The Housing Act, 1949, s. 8 (61 Statutes Supp. 76; 28 Halsbury's Statutes (2nd Edn.) 613), added power to supply furniture on hire-purchase; see now s. 94, *post*, and see s. 122, *post*, as to a local authority selling furniture, or supplying furniture on hire-purchase, to occupants of houses provided by housing associations. The Act of 1949, s. 7, also conferred power to provide meals and refreshments and laundry facilities; see now s. 95, *post*.

**Power to acquire land.** The purposes for which land may be acquired under Part V have been somewhat extended (see s. 73 of the Act of 1936, and compare s. 96, *post*). The references to the working classes were removed by the Housing Act, 1949 (61 Statutes Supp. 60; 28 Halsbury's Statutes (2nd Edn.) 604); this has resulted in some rewording, particularly in s. 96 (b), *post*. The Act of 1949, s. 9, also added power to acquire land for the carrying

out of works to an adjoining house by the authority or by other persons to whom the land may be leased or sold; see ss. 96 (*d*) and (*e*) and 105 (2), *post*. The Housing Act, 1952, s. 5 (77 Statutes Supp. 87; 32 Halsbury's Statutes (2nd Edn.) 158), extended the powers to purchase land for certain supplementary purposes, by providing that those powers might be exercised whether or not the land concerned was part of a site for the erection of houses; the supplementary purposes concerned were those of s. 80 of the Act of 1936 (provision of shops, recreation grounds, etc.) (now reproduced in s. 93, *post*) and of s. 7 of the Housing Act, 1949 (board and laundry facilities, mentioned above) (see now s. 95, *post*). This change is now incorporated in s. 96 (*c*), *post*.

**Authorisation of Part V purchases.** The procedure for conferring powers of purchase by compulsory purchase order for the purposes of Part V of the Housing Act, 1957, is that of the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 4; 3 Halsbury's Statutes (2nd Edn.) 1064). The Housing Act, 1936, had provided its own procedure (s. 74, and First Schedule thereto) which is now preserved, as re-enacted in the Third Schedule to the present Act, only for purchases under Part III. The 1946 Act procedure is expressly made applicable to Part V purchases under the present Act by s. 97 and para. 1 (1) of the Seventh Schedule, *post*. When, under this procedure, the local authority have become entitled to enter on the land, they may now take a sort of notional possession instead of actual possession by allowing persons to remain in occupation on certain terms; see s. 98, *post*, mentioned in the paragraph headed, "Tenants from year to year, etc." in Chapter 2 of this Introduction, p. 12, *ante*.

**Discretionary payments to persons displaced.** In the Act of 1936, as originally enacted, the provisions now reproduced in s. 36 in Part II and s. 63 in Part III, *post*, did not extend to Part V cases, and there was thus no power under Part V to make payments and allowances to persons displaced. This was remedied by the Housing Act, 1949, s. 6 (61 Statutes Supp. 74; 28 Halsbury's Statutes (2nd Edn.) 612); see now s. 100, *post*.

**Disposal of land and similar powers.** The power of dealing with and disposing of land acquired under Part V (s. 79 of the Act of 1936) will now be found, with amendments, in ss. 104, 105 and 107 of the Housing Act, 1957, *post*. The changes derive, for the most part, from the Housing Act, 1952, ss. 3 and 4 (77 Statutes Supp. 85, 86; 32 Halsbury's Statutes (2nd Edn.) 155, 157), together with s. 9 of the Housing Act, 1949 (61 Statutes Supp. 77; 28 Halsbury's Statutes (2nd Edn.) 613), relating to the special case of land acquired for the execution of works to an adjoining house (already mentioned under the heading "Power to acquire land", p. 21, *ante*). By s. 3 (1), the Act of 1952 modified, "in relation to houses and in relation to land sold or leased with houses", the requirement that land should be sold or leased at the best price or rent that can reasonably be obtained; see now s. 105 (3), *post* (which together with s. 104 reproduces the effect of the Act of 1952). By s. 3 (2) and (4) of the Act of 1952, the Minister was given certain general powers to consent to the sale or leasing of houses, and the scope of arrangements for payment by instalments was slightly altered; see now s. 104 (1) and (2), *post*. By s. 3 (3) of the Act of 1952 power was given to impose further conditions limiting the price at which the purchaser might sell, etc.; see now s. 104 (3), *post*, incorporating this power as modified by the Housing Repairs and Rents Act, 1954, and the Rent Act, 1957. Consequential provisions derived from s. 4 (1) and (3) of the Act of 1952, will now be found in s. 104 (4) and (5), *post*, s. 4 (2) of the 1952 Act having been repealed by the Rent Act, 1957. The power of the Minister to impose conditions is now to be found in s. 106, *post* (the remainder of s. 86 of the Act of 1936, as amended, which related to exchequer subsidies being left unrepealed until consolidated by the Housing (Financial Provisions) Act, 1958, Book II, *post*).

**Roads outside the authority's area.** The Housing Act, 1949, s. 12 (61 Statutes Supp. 79; 28 Halsbury's Statutes (2nd Edn.) 615), clarified the highway responsibility for roads constructed in rural districts; see now sub-ss. (2) and (3) of s. 109, *post*, which, with s. 108, *post*, replaces s. 81 of the Act of 1936.

**Houses for agricultural population.** Certain subsections of s. 85 of the Housing Act, 1936, as originally enacted, required a number of houses to be reserved for the agricultural population where financial assistance had been provided under that Act or certain earlier enactments. Similar provisions were made by the Housing (Financial Provisions) Act, 1938, the Housing (Financial and Miscellaneous Provisions) Act, 1946 and the Housing Subsidies Act, 1956. The surviving financial provisions are now consolidated in the Housing (Financial Provisions) Act, 1958 (Book II, *post*), but the requirements as to reserving houses for the agricultural population are collected together in s. 114 of the Act of 1957, *post*. In this connection it may be noted that Part V of the Act of 1957 now includes, in s. 118 (1), *post*, certain powers of the Minister to assist rural housing, derived from the Housing (Rural Authorities) Act, 1931 (11 Halsbury's Statutes (2nd Edn.) 438).

**Development corporations; local authority in London; Isles of Scilly.** The New Towns Act, 1946 (25 Halsbury's Statutes (2nd Edn.) 427), provided that the development corporation of a new town under that Act should be deemed to be a housing association; see now s. 125, *post*. Provisions as to the "Part V" local authority in London were modified by the Housing Act, 1949, s. 13 (61 Statutes Supp. 81; 28 Halsbury's Statutes (2nd Edn.) 616); see now s. 132, *post*. The power to confer housing functions on the Council of the Isles of Scilly, introduced by s. 22 of the Housing (Financial and Miscellaneous Provisions) Act, 1946 (39 Statutes Supp. 55; 11 Halsbury's Statutes (2nd Edn.) 667), is reproduced (as amended by the Housing Subsidies Act, 1956) in s. 134, *post*.

**Omission of financial provisions.** The Housing Act, 1957, omits certain of the financial provisions of Parts V and VI of the Act of 1936; so far as still effective, these are now included in the Housing (Financial Provisions) Act, 1958 (Book II, *post*). Thus s. 92 from Part V of the Act of 1936, relating to loans by the Public Works Loan Commissioners, is replaced by s. 47 of the Act of 1958. In Part VI of the Act of 1936, as originally enacted, ss. 105-113 related generally to Government contributions towards the provision of accommodation and other expenses. This group of sections was affected in turn by the Housing (Financial Provisions) Act, 1938, the Housing (Financial and Miscellaneous Provisions) Act, 1946, and the Housing Subsidies Act, 1956; see now ss. 1 *et seq.* of the Act of 1958. A further group of sections, ss. 128-133, from Part VI of the Act of 1936 are now consolidated, as amended by intervening Acts, in Part III of the Act of 1958, and the Fifth Schedule thereto. In consequence, Part VI (ss. 135-142) of the Housing Act, 1957, *post*, is confined for the most part to borrowing powers of local authorities (see also s. 54 of the Act of 1958, Book II, *post*).

**Changes in Part VII.** Part VII of the Act of 1936 (ss. 135-186) corresponds with Part VII (ss. 143-187) of the Act of 1957, *post*, with a few minor changes: (i) there are a few omissions, arising from repeals (*e.g.*, ss. 156 (1) (b) and 159 (c) of the Act of 1936 are omitted as they referred to the byelaws under ss. 6-8 of that Act, repealed by the Housing Repairs and Rents Act, 1954); (ii) certain sections have now been removed and re-enacted in the Schedules to the Act of 1957 (*e.g.*, s. 147 of the Act of 1936, which excluded s. 133 of the Lands Clauses Consolidation Act, 1845 (relating to making good deficiencies in rates, etc.), is now reproduced in the First, Third and Seventh Schedules to the Act of 1957, which relate to purchases under

Parts II, III and V of that Act, respectively); and (iii) certain sections have now been re-arranged or distributed to other Parts of the Act (*e.g.*, s. 156 (1) of the Act of 1936, which provided for the recovery of possession of houses notwithstanding the Rent Acts, is distributed among the relevant sections (but see also s. 158 (1) in Part VII of the Act of 1957) as indicated in the Table of Repeals and Replacements, Appendix I, *post*).

A number of sections (notably ss. 169 *et seq.*) of the Act of 1936, providing default powers or otherwise necessary for the interim operation of the financial provisions, were reproduced by the Housing Act, 1957, but were also left in operation in the 1936 Act until repealed by the Housing (Financial Provisions) Act, 1958 (Book II, *post*). Certain of these provisions, as enacted in the Act of 1957, are now applied for the purposes of the financial provisions by s. 55 of the Act of 1958.

#### CHAPTER 4—OTHER HOUSING STATUTES

The Housing Act, 1957, came into operation on 1st September 1957 (s. 193 (2), *post*). It did not wholly repeal any of the Acts relating to housing then in force. Since then the Housing (Financial Provisions) Act, 1958 (Book II, *post*), has affected a number of those Acts; in particular it has consolidated large portions of the Housing (Financial and Miscellaneous Provisions) Act, 1946, the Housing Act, 1949, and the Housing Subsidies Act, 1956, and has wholly repealed five Acts (so far as they remained in force), namely the Housing (Revision of Contributions) Act, 1929, the Housing Act, 1936, the Housing (Financial Provisions) Act, 1938, the Housing (Temporary Provisions) Act, 1944, and the Housing Act, 1952.

It is thought convenient to list here the statutes in force at 1st September 1957; the list should be read subject to the Act of 1958 (Book II, *post*). It should also be noted that some of the provisions of the earlier Acts had been repealed, but with savings which related to the preservation of obligations entered into thereunder. Some of the repeals effected by the Act of 1958 have a similarly limited effect; see s. 59 (4) of that Act (Book II, *post*). Subject to these qualifications, the list of statutes in force, in whole or in part, immediately after the coming into operation of the Housing Act, 1957, is as follows:—

(1) **The Small Dwellings Acquisition Act, 1899** (11 Halsbury's Statutes (2nd Edn.) 382). This Act was amended by the Housing, Town Planning, etc., Act, 1919, by the Housing Act, 1921, and by the Housing, etc., Act, 1923, which provided a collective title, the Small Dwellings Acquisition Acts, 1899 to 1923. The general object is to permit a local authority to advance money to enable a person to acquire ownership of a house, the advance being secured by mortgage (*cf.* s. 43 of the Act of 1958, Book II, *post*). Further amendments were made by the Housing Act, 1935, s. 92, the Building Materials and Housing Act, 1945, s. 6, and the Housing Act, 1949, s. 44, which raised the limit of value to £5,000 and also raised the percentage which may be advanced by instalment on the value of work in progress.

(2) **The Housing Act, 1914** (11 Halsbury's Statutes (2nd Edn.) 391). This Act was passed to enable dwellings to be provided, where not otherwise available, for employees of the Government.

(3) **The Housing, Town Planning, etc., Act, 1919** (11 Halsbury's Statutes (2nd Edn.) 393). Of this important Act, there are preserved from repeal only ss. 49 (amendment of Act of 1899, *supra*) and 51 and 52, with a related Schedule. However ss. 7 and 19 (repealed with savings by the Housing, etc., Act, 1923, s. 6), dealing with exchequer payments to local authorities towards losses on schemes, and contributions to other bodies, remain important, as slightly amended by the Housing (Additional Powers) Act, 1919, and the Act of 1923. The Act of 1958 (Book II, *post*) contains

consequential provisions; see *ibid.*, s. 27 and Third Schedule (replacing s. 111 of, and the Seventh Schedule to, the Housing Act, 1936). The Act of 1958 also consolidates the Minister's powers to withhold payments and contributions under the Act of 1919, formerly contained in the Housing Act, 1936, and the Housing (Financial and Miscellaneous Provisions) Act, 1946.

(4) **The Housing, etc., Act, 1923** (11 Halsbury's Statutes (2nd Edn.) 401). As at 1st September 1957, this Act contained a section amending the Act of 1899, *supra*, and a number of financial provisions which had replaced those of the Act of 1919. Consequential provisions were contained in the Housing Act, 1936, and the Housing (Financial and Miscellaneous Provisions) Act, 1946. The 1936 Act and 1946 Act provisions are now contained in the Act of 1958 (Book II, *post*) which repeals ss. 1 and 3 of the 1923 Act with savings for the continuing liability to make payments thereunder. Section 3 was concerned with Government contributions to what are now called housing associations. Section 1 was concerned with Government contributions to local authorities, and as originally enacted or as amended by the Acts of 1924 and 1929, provided a number of different types of contribution. See further the notes to these Acts in 11 Halsbury's Statutes (2nd Edn.) 401 *et seq.*, and as to which contributions are now called "exchequer payments" see the Act of 1958, s. 58 (2) (Book II, *post*).

(5) **The Housing (Financial Provisions) Act, 1924** (11 Halsbury's Statutes (2nd Edn.) 411). This Act principally amended and extended the financial provisions of the Act of 1923, *supra*. It has been largely repealed, with savings, by the Act of 1958 (Book II, *post*).

(6) **The Housing (Rural Workers) Act, 1926** (11 Halsbury's Statutes (2nd Edn.) 420). This is the first of the Housing (Rural Workers) Acts, 1926 to 1942, comprising this Act, an amending Act of 1931 which is spent, ss. 37 and 38 of the Housing Act, 1935, *infra*, the Housing (Rural Workers) Amendment Act, 1938, *infra*, and the Housing (Rural Workers) Act, 1942, *infra*. The Act of 1942 amended this Act so as to fix the 30th September 1945 as the date before which any application for financial assistance under the Act had to be made. The purpose of the Act was to encourage the reconstruction and improvement of dwellings for agricultural workers, and for others in similar economic circumstances, by grants or loans from local authorities (primarily by county councils and county borough councils) who in turn would receive contributions from central Government funds. Certain conditions imposed as to rent are modified by the Rent Act, 1957, s. 20 (103 Statutes Supp. 84; 37 Halsbury's Statutes (2nd Edn.) 571). Provisions as to the reservation of dwellings for the agricultural population, with reference to these and other Acts, will be found in s. 114 of the Housing Act, 1957, *post*. See also the Housing (Financial and Miscellaneous Provisions) Act, 1946, s. 14 and Second Schedule (39 Statutes Supp. 48, 58; 11 Halsbury's Statutes (2nd Edn.) 659, 671) (that Schedule is largely repealed by the Housing (Financial Provisions) Act, 1958 (Book II, *post*), but not in relation to the Housing (Rural Workers) Act, 1926, so that s. 14 of the 1946 Act continues to apply thereto).

(7) **The Housing (Revision of Contributions) Act, 1929** (11 Halsbury's Statutes (2nd Edn.) 431). This Act, which is repealed by the Act of 1958 (Book II, *post*), amended retrospectively the Housing Acts (Revision of Contributions) Order, 1928 (S.R. & O. 1928 No. 1039; *Lumley's Public Health*, 12th Edn., Vol. VI, p. 863). That order, made under the Act of 1924, *supra*, had limited certain types of contribution under the Acts of 1923 and 1924 to houses provided before 1st October 1929. Other contributions under those Acts remained possible; see the Act of 1923 and s. 2 of the Act of 1924, relating to the higher rate for houses subject to certain conditions,

which continued to apply where proposals were submitted before 7th December 1932 (s. 1 of the Act of 1933, *infra*); and see s. 1 (3) of the Act of 1923, which was replaced by the Act of 1930 and later Acts.

(8) **The Housing Act, 1930** (11 Halsbury's Statutes (2nd Edn.) 433). The sections still in force as at 1st September 1957 were mainly modifications of the Acts of 1923 and 1924. The special conditions in s. 27 of this Act had ceased to apply to local authority houses; they had been applied to houses provided by housing associations by *ibid.*, s. 29 (repealed), and for this purpose are preserved by the Housing (Financial Provisions) Act, 1958, as re-enacted in para. 2 of the Second Schedule thereto (Book II, *post*). That Act repeals ss. 27 and 43-46 of the 1930 Act.

(9) **The Housing (Rural Authorities) Act, 1931** (11 Halsbury's Statutes (2nd Edn.) 438). This Act, by s. 1, provided for certain additional contributions to assist rural housing; that section is formally repealed by the Housing (Financial Provisions) Act, 1958 (Book II, *post*), with savings for the continuance of payments (s. 59 (4)) which are now called "exchequer payments" for the purposes of that Act (s. 58 (2)), *post*. See s. 118 of the Housing Act, 1957, *post*, for provisions replacing ss. 2 and 3 of the 1931 Act, giving the Minister power to acquire land and erect houses, etc., on behalf of rural district councils to meet the needs of agricultural workers and others.

(10) **The Housing (Financial Provisions) Act, 1933** (repealed) (11 Halsbury's Statutes (2nd Edn.) 440). This Act, by s. 1, discontinued the power to make contributions to local authorities and other bodies under the Acts of 1923 and 1924, *supra*, except where proposals had been submitted, or could be treated as having been submitted, before 7th December 1932. The whole of the 1933 Act had in fact been formally repealed before 1st September 1957; see the S.L.R. Act, 1950 (which did not, of course, revive the power of making fresh contributions; the Act of 1933, s. 1, thus in a sense remained operative despite its repeal).

(11) **The Housing Act, 1935** (11 Halsbury's Statutes (2nd Edn.) 441). This was a major amending Act, dealing with overcrowding, re-development areas, financial provisions, etc., but was very soon consolidated and replaced by the Housing Act, 1936. The sections remaining in force mainly affected the Housing (Rural Workers) Acts and the Small Dwellings Acquisition Acts. As to s. 39 (local authority contributions) see para. 7 of the Eighth Schedule to the Act of 1936 (repealed by the Housing Subsidies Act, 1956; see also s. 8 (1) (a) of that Act). Section 62 of the Act of 1935 contained amendments relating to clearance areas; sub-s. (2), which abolished the "reduction factor" (mentioned in the paragraph headed "Housing Law from 1890 to 1925" in Chapter 1 of this Introduction, at p. 4, *ante*), is repealed by the Housing Act, 1957, *post*, as a spent provision.

(12) **The Housing Act, 1936** (11 Halsbury's Statutes (2nd Edn.) 444). This Act was substantially replaced by the Housing Act, 1957, *post*, with amendments resulting from the incorporation of later legislation as mentioned in Chapter 3 of this Introduction, p. 13, *ante*. Certain general powers of the 1936 Act were not repealed by the Act of 1957, as they were required for the continued operation or interpretation of the financial provisions omitted from the Act of 1957. The financial provisions, with those of the Housing (Financial Provisions) Act, 1938, the Housing (Financial and Miscellaneous Provisions) Act, 1946, the Housing Act, 1949, and the Housing Subsidies Act, 1956, are largely consolidated in the Housing (Financial Provisions) Act, 1958 (Book II, *post*). That Act wholly repeals, subject to savings in s. 59 (4), all the surviving provisions of the Acts of 1936 and of 1938.

(13) **The Housing (Financial Provisions) Act, 1938** (11 Halsbury's Statutes (2nd Edn.) 610). This Act amended the financial provisions of the

then principal Act, the Housing Act, 1936. It was largely superseded by the Act of 1946, *infra*, in some cases with retrospective effect. It is now repealed by the Act of 1958 (Book II, *post*) with savings for the continuation of payments (s. 59 (4) of the 1958 Act).

(14) **The Housing (Rural Workers) Amendment Act, 1938** (11 Halsbury's Statutes (2nd Edn.) 621). The Rent Act, 1957, repealed s. 4 (which amended the Act of 1926) and s. 6. As to improvement grants, see s. 39 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*).

(15) **The Housing (Emergency Powers) Act, 1939** (7 Statutes Supp. (2nd Edn.) 81; 11 Halsbury's Statutes (2nd Edn.) 624). This Act was passed to enable local authorities to render buildings, whether houses or not, fit for use as emergency housing accommodation. By virtue of s. 2 thereof, and s. 191 (4) of the Housing Act, 1957, *post*, the Act now has effect as if it formed part of Part II of the Act of 1957, with certain modifications. The right of appeal to the county court under s. 11 of the Act of 1957 is excluded; the definition of "person having control" of a house, in s. 39 (2) of the Act of 1957, is extended to include a person having control of a building; and the provisions for the protection of owners of houses in s. 33 of the Act of 1957 are extended to owners of buildings.

(16) **The Repair of War Damage Act, 1941** (7 Statutes Supp. (2nd Edn.) 107; 11 Halsbury's Statutes (2nd Edn.) 628). So far as relevant, this Act contains amendments to the Act of 1939, *supra*. See also the S.L.R. Act, 1950.

(17) **The Housing (Rural Workers) Act, 1942** (16 Statutes Supp. 14; 11 Halsbury's Statutes (2nd Edn.) 629). This Act extended the time limit for applications under the Housing (Rural Workers) Acts to 30th September 1945. It is partly repealed, by the S.L.R. Act, 1950, without any real effect on its operation.

(18) **The Housing (Temporary Provisions) Act, 1944** (27 Statutes Supp. 35; 11 Halsbury's Statutes (2nd Edn.) 630). The temporary provisions as to dispensing with local inquiries, in s. 2 of this Act, are spent. Section 1 extended the scope of assistance under the Housing (Financial Provisions) Act, 1938, *supra*, in the case of houses completed between 3rd August 1944 and 30th September 1947, both dates inclusive. The whole Act is now repealed by the Act of 1958 (Book II, *post*).

(19) **The Housing (Temporary Accommodation) Act, 1944** (27 Statutes Supp. 37; 11 Halsbury's Statutes (2nd Edn.) 631). This Act has been affected by the S.L.R. Act, 1950, and the Requisitioned Houses and Housing Amendment Act, 1955, *infra*. It provided for erection of temporary structures, supplied by the Government, to meet the urgent housing need. For a limited period, possession of land could be taken by the local authority (within the meaning of Part V of the Housing Act, 1936) under a written authorisation and without a compulsory purchase order, or under a compulsory purchase order (under Part V of that Act as applied).

(20) **The Building Materials and Housing Act, 1945** (34 Statutes Supp. 37; 11 Halsbury's Statutes (2nd Edn.) 638). This Act provided, by ss. 1-5, for the expenses of the Minister of Works in connection with a fund created thereunder, and in providing temporary accommodation. Section 6, which increased the limit on the market value of houses in respect of which an advance may be made under the Act of 1899, *supra*, and also raised a similar limit under s. 91 of the Act of 1936, was superseded on this point by the Act of 1949, *infra*. Sections 7 and 8 were concerned with building licences under Defence Regulation 56A, and enabled conditions to be attached limiting rents and purchase prices of such houses. This form of

control ended on 20th December 1953, having been amended and extended by s. 43 of the Act of 1949. This form of control was applied with modifications on the disposal of houses by an authority under ss. 3 and 4 of the Housing Act, 1952, *infra*, as amended by the Rent Act, 1957; see now the Housing Act, 1957, s. 104 (3)–(5), *post*.

(21) **The Housing (Temporary Accommodation) Act, 1945** (32 Statutes Supp. 91; 11 Halsbury's Statutes (2nd Edn.) 646). This Act enabled the Minister before 15th June 1947 to authorise the use of an open space, other than a disused burial ground, for temporary accommodation under the Housing (Temporary Accommodation) Act, 1944, for a period not exceeding 10 years.

(22) **The Housing (Financial and Miscellaneous Provisions) Act, 1946** (39 Statutes Supp. 38; 11 Halsbury's Statutes (2nd Edn.) 648). This Act largely superseded the financial provisions of the Housing (Financial Provisions) Act, 1938, and was itself for the greater part superseded by the Housing Subsidies Act, 1956, after amendment by the Acts of 1949 and 1952, *infra*. It is almost wholly repealed by the Housing (Financial Provisions) Act, 1958 (Book II, *post*), but s. 14 continues to apply for the purposes of the Housing (Rural Workers) Act, 1926.

(23) **The Housing (Temporary Accommodation) Act, 1947** (51 Statutes Supp. 33; 11 Halsbury's Statutes (2nd Edn.) 673). This Act increased the sums available under the similarly titled Act of 1944, *supra*, from £200 millions (the limit substituted by the Building Materials and Housing Act, 1945, for the original figure of £150 millions) to £220 millions.

(24) **The Housing Act, 1949** (61 Statutes Supp. 66; 28 Halsbury's Statutes (2nd Edn.) 604). See the Table of Repeals and Replacements (Appendix I, *post*). This Act was amended notably by the Housing Repairs and Rents Act, 1954, and the Housing Subsidies Act, 1956, *infra*. The 1949 Act, s. 1, repealed most references in the Act of 1936 to the "working classes"; these references are omitted from the consolidating Acts of 1957 and 1958, *post*, and s. 1 is repealed as no longer needed by the latter Act. The remainder of Part I, ss. 2–14, contained other amendments, most of which are mentioned in Chapter 3 of this Introduction, p. 13, *ante*. A few sections in Part I, and the whole of Parts II and III, contained financial provisions as to exchequer contributions for the provision and improvement of housing accommodation and as to improvement grants to persons other than local authorities. These financial provisions as amended remained in force at 1st September 1957, until repealed and replaced by the Act of 1958 (Book II, *post*); the same is true of ss. 47–49 (borrowing powers, etc.). Sections 43–46 of the Act of 1949 amend the Building Materials and Housing Act, 1945 (as to conditions of building licences), the Small Dwellings Acquisition Acts, the Housing (Rural Workers) Acts, and the Water Act, 1945; s. 5 (4) amends the Building Societies Act, 1939 (2 Halsbury's Statutes (2nd Edn.) 670).

(25) **The Housing Act, 1952** (77 Statutes Supp. 82; 32 Halsbury's Statutes (2nd Edn.) 153). See the Table of Repeals and Replacements (Appendix I, *post*). Sections 3–5, as amended by the Rent Act, 1957, related to disposal of land and power to acquire land for ancillary purposes under Part V of the Act of 1936. Except for s. 3 (5), a consequential provision as to exchequer contributions, these sections were repealed and replaced by the Act of 1957, *post*; see also Chapter 3 of this Introduction, p. 13, *ante*. The remaining provisions, as affected by the Housing Subsidies Act, 1956, *infra*, are repealed and replaced by the Act of 1958 (Book II, *post*).

(The relevant sections, ss. 10 and 11, of the Local Government (Miscellaneous Provisions) Act, 1953 (78 Statutes Supp. 100, 102; 33 Halsbury's Statutes (2nd Edn.) 105), were repealed and replaced by the Housing Act, 1957, *post*).

(26) **The Housing Repairs and Rents Act, 1954** (84 Statutes Supp. 1; 34 Halsbury's Statutes (2nd Edn.) 259). See the Table of Repeals and Replacements (Appendix I, *post*). Part I of this Act (ss. 1-22) contained amendments of earlier Housing Acts, of which s. 2 (3) in part and ss. 7, 8 and 15-18 were financial provisions. All of Part I, except s. 19 (extending the period of authorisations under the Housing (Temporary Accommodation) Act, 1945, *supra*) and a related definition, is now repealed. The general amendments have been incorporated in the Housing Act, 1957, *post*, as mentioned in Chapter 3 of this Introduction, p. 13, *ante*. The financial provisions are replaced, as affected by the Housing Subsidies Act, 1956, *infra*, by the Housing (Financial Provisions) Act, 1958 (Book II, *post*). Part II of the Act of 1954 (ss. 23-49) amended the Rent Acts, but s. 33 (7) therein is the origin of certain words in parenthesis at the beginning of s. 104 (3) of the Housing Act, 1957, *post* (conditions not to be imposed on disposal of houses to local authorities, housing associations, etc.). Certain provisions from s. 50 of the Act of 1954, as to service of notices on statutory tenants, are reproduced in the Housing Act, 1957 (see s. 56 and the Third and Fifth Schedules, *post*), but s. 50 remains in operation for the purposes of the Acquisition of Land (Authorisation Procedure) Act, 1946, and corresponding enactments.

(27) **The Requisitioned Houses and Housing (Amendment) Act, 1955** (90 Statutes Supp. 4; 35 Halsbury's Statutes (2nd Edn.) 260). Part I of this Act transferred the right to possession of requisitioned houses from the Minister to local authorities, and provided for the retention for a limited time, and for the release or purchase of such houses. Contributions under s. 11 are now exchequer payments within the meaning of s. 58 (2) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*). That Act repeals s. 12 (3), which had had a similar effect in relation to the Act of 1936; the remainder of s. 12, dealing with rate fund contributions, was repealed by the Housing Subsidies Act, 1956, *infra*. In Part II of the Act of 1955, s. 15 deals with arrangements for the repayment of moneys advanced to the Ministry of Works under the Housing (Temporary Accommodation) Act, 1944, *supra*.

(28) **The Housing Subsidies Act, 1956** (94 Statutes Supp. 38; 36 Halsbury's Statutes (2nd Edn.) 371). Apart from two provisions reproduced in s. 114 (1) of the Housing Act, 1957, *post*, relating to the reservation of houses for the agricultural population, and in s. 134 (4) thereof, *post*, relating to the Isles of Scilly, the Act of 1956 was not affected by the repeals in the Act of 1957. However, virtually the whole of the Act of 1956 is repealed and replaced, so far as necessary, by the Housing (Financial Provisions) Act, 1958 (Book II, *post*). Certain provisions relating to new towns and town development remain in the 1956 Act.

(29) **The Slum Clearance (Compensation) Act, 1956** (97 Statutes Supp. 18; 36 Halsbury's Statutes (2nd Edn.) 392). See the Table of Repeals and Replacements (Appendix I, *post*). The effect of the repeals made by s. 191 (1) of, and the Eleventh Schedule to, the Housing Act, 1957, *post*, is to repeal the 1956 Act provisions in relation to purchases and orders, etc., under the Act of 1957 (which reproduces them for its own purposes), but to leave them in operation for the purposes of purchases at site value under the Town and Country Planning Act, 1944, as applied by the Town and Country Planning Act, 1947, and reprinted in the Eleventh Schedule thereto (1944 Act, Fifth Schedule, para. 9 (48 Statutes Supp. 276; 25 Halsbury's Statutes (2nd Edn.) 420)).

**Related statutes.** Attention is drawn to the Town Development Act, 1952 (77 Statutes Supp. 200; 32 Halsbury's Statutes (2nd Edn.) 1030), which can almost be regarded as a housing statute, and to the Acts relating

to town and country planning and to compulsory purchase and compensation, mentioned in Chapter 2 of this Introduction, p. 5, *ante*.

**Subordinate legislation.** The Housing Act (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842), made under s. 178 of the Housing Act, 1957, are printed in Appendix II, *post*.

Earlier regulations, etc., are preserved by s. 191 (2) of that Act, *post*. For these, reference may be made to 10 Halsbury's Statutory Instruments, title Housing, or to the appropriate title in *Lumley's Public Health* (12th Edn.), Vol. VI, pp. 823 *et seq.*, and Vol. VIII, pp. 271 *et seq.* The Lands Tribunal Rules, 1956 (S.I. 1956 No. 1734), will be found in 12 Halsbury's Statutory Instruments, title Lands Tribunal, or in *Lumley*, Vol. VIII, p. 401.

# THE HOUSING ACT, 1957

(5 & 6 Eliz. 2 c. 56)

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*An Act to consolidate the enactments relating to housing with the exception of certain provisions relating to financial matters* [31st July 1957]

## PART I

## GENERAL PROVISIONS AS RESPECTS LOCAL AUTHORITIES

**1. Local authorities for purposes of this Act.**—(1) Subject to the provisions of this Act, the local authority for the purposes of this Act as respects England and Wales other than the administrative county of London shall be the council of the borough, urban district or rural district.

(2) Subject to the provisions of this Act, the local authority for the purposes of this Act as respects the administrative county of London shall be,—

- (a) as respects the City of London, the Common Council,
- (b) as respects the administrative county of London other than the City of London, the metropolitan borough council or the London County Council as hereinafter provided.

## NOTES

**History.** This section contains provisions formerly in s. 1 of the Housing Act, 1936.

**General Note.** County councils, other than the London County Council, are not local authorities for the purposes of this Act, but they are given certain functions under a number of later sections of this Act. Special provisions are made, in later sections, for the allocation of functions in London, outside the City, as between the London County Council and metropolitan borough councils.

**Administrative county of London; borough; urban district; rural district; metropolitan borough.** As to the division of England and Wales, outside London, into administrative counties and county boroughs, and as to the division of counties into county districts (*i.e.*, non-county boroughs, urban districts and rural districts), see s. 1 of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 361). As to London, see s. 1 of the London Government Act, 1939 (15 Halsbury's Statutes (2nd Edn.) 1078).

**Sub-s. (1).**

**Subject to the provisions of this Act.** See further ss. 55-57, *post*, relating to re-development areas, and applying only to urban areas (county boroughs, non-county boroughs and urban districts); and ss. 116, 117, 135 (1) and 171, *post*, relating to rural districts.

For functions conferred on county councils, see, particularly, ss. 116, 117, 119, 126, 135-140, 156 and 171-176, *post*.

**Local authority.** See the General Note, *supra*, and cf. s. 189 (2), *post*. For general provisions, many of which affect the exercise by local authorities of functions under this Act, see Part VII (ss. 143 *et seq.*), *post*.

In relation to functions under s. 1 of the Housing (Emergency Powers) Act, 1939 (7 Statutes Supp. (2nd Edn.) 81; 11 Halsbury's Statutes (2nd Edn.) 624), the Council of the Isles of Scilly is deemed to be included in the local authorities enumerated in sub-s. (1) of this section; see s. 2 (5) of the Act of 1939 and s. 191 (4), *post*. See also, as to the Isles of Scilly, s. 134, *post*.

**Borough.** This word appears to refer both to a county borough (which is an "all-purpose" local authority) and to a non-county borough (which is a species of county district) under the Local Government Act, 1933; see the third note to this section, *supra*, and *Steele v. Minister of Housing and Local Government* (1956), 6 P. & C.R. 386, C.A.

**Sub-s. (2).**

**Subject to the provisions of this Act.** See particularly:—

- s. 3 (2), *post*, as to inspection of district, etc.;
- s. 41, *post*, as to local authority for Part II;
- s. 52, *post*, as to clearance areas;
- s. 58, *post*, as to re-development areas;
- s. 71, *post*, as to owners' proposals for re-development, etc.;
- s. 75, *post*, as to obstructive buildings;
- s. 88, *post*, as to overcrowding;
- s. 132, *post*, as to local authorities for Part V;
- s. 177, *post*, as to default powers;
- ss. 183-187, *post*, for miscellaneous provisions as to London.

See also ss. 2 (4), 36 (5), 90 (7), 121 (4), 136 and 164 (4), *post*.

**2. Approval by Minister of proposals for exercise of local authorities' functions under Parts II and III.**—(1) It shall be the duty of a local authority in carrying out their functions under Parts II and III of this Act to have regard to the proposals in that behalf submitted by them to the Minister and approved by him before the commencement of this Act under the Housing Repairs and Rents Act, 1954, but subject to any modifications made by subsequent proposals approved by the Minister under this section.

(2) A local authority may at any time, and if directed by the Minister shall within the period specified in the direction, submit further proposals for amplifying or modifying any proposals for dealing with unfit houses previously submitted by that authority and approved by the Minister; and the Minister may approve the further proposals with or without modifications.

(3) A copy of any proposals approved under this section shall be deposited at the offices of the local authority concerned, and shall be open to inspection without charge during ordinary office hours.

(4) The proposals submitted under this section in respect of any metropolitan borough shall be proposals submitted jointly by the London County Council and the council of the borough.

## NOTES

**History.** Sub-ss. (1)–(3) contain provisions formerly in s. 1 (3)–(5) of the Housing Repairs and Rents Act, 1954. Sub-s. (4) contains provisions formerly in s. 21 (1) of that Act. Section 1 (1) and (2) of that Act, relating to the submission of proposals by local authorities, are regarded as spent; they are repealed by s. 191 (1) and the Eleventh Schedule, *post*, and are not reproduced in this Act.

**General Note.** Until 1954, the powers and duties of local authorities under the Housing Act, 1936, were not expressed to be subject to any qualification which would enable an authority to refrain from action because, for example, of the post-war housing shortage. During the war, in practice, many powers had not been exercised; cf. Ministry of Health Circular No. 1866, dated 8th September 1939 (reprinted in *Lumley's Public Health* (12th Edn.), Vol. VI, p. 1094; *Hill's Complete Law of Housing* (4th Edn.), p. 580). After the war, some attempts were made by owners of property to compel local authorities to take action, particularly against houses subject to the Rent Acts, as the owners could not otherwise obtain possession to demolish worn-out property; cf. s. 22 (5), *post* (replacing a provision in s. 156 (1) of the Housing Act, 1936). In *R. v. Falmouth Borough Council* (1953) (unreported) proceedings were commenced to compel the making of a demolition order by *mandamus*, but were discontinued.

Section 1 of the Housing Repairs and Rents Act, 1954 (84 Statutes Supp. 3; 34 Halsbury's Statutes (2nd Edn.) 261), qualified the apparently absolute nature of the local authorities' functions, by requiring them to be exercised "having regard" to proposals submitted by the authority to the Minister and approved by him. The present section reproduces so much of that section as is not regarded as spent; the original proposals were generally to be submitted within one year after 30th August 1954, though there was power to extend the time in exceptional circumstances.

As to the information which the Minister required under the Act of 1954, see Ministry of Housing and Local Government Circular No. 55/54. The returns by local authorities were summarised by the Ministry and published as Cmd. 9593 (H.M. Stationery Office: price 3s. 6d.).

**Sub-s. (1).**

**Local authority.** See s. 1 and notes thereto, *ante*.

**Parts II and III.** Part II (ss. 4–41), *post*, is concerned with the repair, demolition closing, etc., of individual houses; Part III (ss. 42–75), *post*, is principally concerned with the clearance or re-development of whole areas. See, generally, Chapter 3 of the Introduction, p. 13, *ante*.

**Have regard to the proposals.** The phrase "have regard" is a loose and indefinite one; see the note "Regard shall be had" to s. 39 (1), *post*. Presumably the approved proposals are to act as a guide, but the authority are not bound to secure their exact fulfilment.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Commencement of this Act.** *I.e.*, 1st September 1957; see s. 193 (2), *post*.

**Housing Repairs and Rents Act, 1954.** 84 Statutes Supp. 1; 34 Halsbury's Statutes (2nd Edn.) 259; and see the General Note to this section, *supra*.

**Sub-s. (2).**

**Further proposals.** The scope of the original proposals was indicated in s. 1 (1) (repealed) of the Act of 1954 (*ubi supra*). They were to be for "dealing, under Parts II and III of the [Act of 1936] or under the following provisions of [Part I of the Act of 1954], with houses within the district of the authority which appear to the authority to be unfit for human habitation, and with any other houses which are or in the opinion of the authority ought to be included in clearance areas". The amplifications or modifications to be made under the present section will presumably be similar in scope, and will be for dealing with unfit houses under the corresponding provisions of this Act and with houses which, although not unfit, are suitable for inclusion in clearance areas under s. 42, *post*.

**With unfit houses.** This phrase might be read as limiting the scope of proposals to those dealing with houses which are unfit for human habitation under s. 4 and s. 5, *post*. The phrase did not occur in s. 1 (4) of the Act of 1954, which the present subsection replaces. It is submitted that the inclusion of this phrase was for convenience of drafting, and was not intended to narrow the scope of further proposals; see the note "Further proposals", *supra*. For the meaning of "house", see s. 189 (1), *post*.

**Sub-s. (4).**

**Metropolitan borough; London County Council.** See the notes to s. 1, *ante*.

**3. Duty of local authority to inspect district and keep records.—**

(1) It shall be the duty of every local authority to cause an inspection of their district to be made from time to time with a view to ascertaining

whether any house therein is unfit for human habitation, and for that purpose it shall be the duty of the local authority, and of every officer of the local authority, to comply with such regulations and to keep such records as the Minister may prescribe.

(2) As respects the administrative county of London other than the City of London the local authority for the purposes of this section shall be the council of the metropolitan borough.

#### NOTES

**History.** Sub-s. (1) contains provisions formerly in s. 5 of the Housing Act, 1936. Sub-s. (2) contains provisions formerly in s. 24 of that Act.

**General Note.** This is one of the sections imposing on local authorities a duty of inspection. See also s. 76, *post* (inspections as to overcrowding of dwelling-houses under Part IV), and s. 91, *post* (periodic review of housing conditions by local authorities under Part V). These powers may be compared with inspections of the district for detection of statutory nuisances under s. 91 of the Public Health Act, 1936 (19 Halsbury's Statutes (2nd Edn.) 378).

As to powers of entry and penalty for obstruction, see ss. 159 and 160, *post*.

#### Sub-s. (1).

**Local authority.** See s. 1, *ante*, and sub-s. (2) of the present section, *supra*.

**House.** For definition, see s. 189 (1), *post*.

**Unfit for human habitation.** See ss. 4 and 5, *post*.

**Regulations.** For the general power to make regulations, see s. 178 (1), *post*. By virtue of s. 191 (2), *post*, certain former regulations have effect for the purpose of this section; see Part IV (arts. 27-32) of the Housing Consolidated Regulations, 1925 (S.R. & O. 1925 No. 866), as amended by S.R. & O. 1932 No. 648. These are printed in *Hill's Complete Law of Housing* (4th Edn.), pp. 480, 490; and in 10 Halsbury's Statutory Instruments, title Housing.

**The Minister.** Now the Minister of Housing and Local Government (see s. 189 (1), *post*), although the regulations noted, *supra*, were made by the then Minister of Health.

#### Sub-s. (2).

**Administrative county of London; metropolitan borough.** See the notes to s. 1, *ante*.

**City of London.** The Common Council is the local authority for the City, see s. 1 (2) (a), *ante*.

### PART II

#### PROVISIONS FOR SECURING THE REPAIR, MAINTENANCE AND SANITARY CONDITION OF HOUSES

##### *Definition of Standard of Fitness*

**4. Matters to be taken into account in determining whether a house is unfit.**—(1) In determining for any of the purposes of this Act whether a house is unfit for human habitation, regard shall be had to its condition in respect of the following matters, that is to say—

- (a) repair;
- (b) stability;
- (c) freedom from damp;
- (d) natural lighting;
- (e) ventilation;
- (f) water supply;
- (g) drainage and sanitary conveniences;
- (h) facilities for storage, preparation and cooking of food and for the disposal of waste water;

and the house shall be deemed to be unfit for human habitation if and only if it is so far defective in one or more of the said matters that it is not reasonably suitable for occupation in that condition.

(2) So much of any local enactment—

- (a) as specifies defects by reason of which a house is to be deemed for the purposes of section nine of this Act not to be in all respects fit for human habitation, or

(b) as regulates the matters to be taken into consideration on an appeal under this Part of this Act in respect of a notice requiring the execution of works to remedy any defects so specified, shall cease to have effect.

#### NOTES

**History.** This section contains provisions formerly in s. 9 (1) and (3) (b) of the Housing Repairs and Rents Act, 1954. Section 9 (2) and (3) (a) of that Act are not reproduced.

In the Housing Act, 1936, as originally enacted, references to a house being fit or unfit for human habitation were sometimes qualified by additional phrases, e.g., "in all respects reasonably" fit, or "in any respect" unfit (*ibid.*, ss. 2 (1) and 9 (1)), or "by reason of disrepair or sanitary defects" (*ibid.*, ss. 25 (1) and 40 (2)); and sometimes were not so qualified (e.g., *ibid.*, s. 11 (1)). By s. 188 (4) of that Act, as originally enacted (11 Halsbury's Statutes (2nd Edn.) 588), it was necessary in determining whether a house was fit to have regard to "the extent, if any, to which by reason of disrepair or sanitary defects" the house fell below certain bye-law or local Act standards or the general standard of local working class houses. "Sanitary defects" were defined by *ibid.*, s. 188 (1).

The Housing Repairs and Rents Act, 1954, s. 9 (84 Statutes Supp. 24; 34 Halsbury's Statutes (2nd Edn.) 269), substituted the test of unfitness reproduced in sub-s. (1), *supra*. By s. 54 (4) of, and the Fifth Schedule to, that Act most of the various phrases in the Housing Act, 1936, which had qualified references to fitness or unfitness, were repealed. Those provisions also repealed the definition of "sanitary defects", and, together with s. 9 (3) (a) of the Act of 1954, they repealed s. 188 (4) of the Act of 1936 (certain words in which, referring to the working classes, had already been repealed by the Housing Act, 1949). Sub-s. (2), *supra*, reproduces s. 9 (3) (b) of the 1954 Act, which repealed local Act provisions varying the provision of the Housing Act, 1936.

It may still be necessary to know the provisions in force before the 1954 Act for two reasons: (i) for the purpose of deciding how far the cases decided under the Housing Act, 1936, or earlier Acts, are still of authority; and (ii) because certain provisions from the Fourth Schedule to the Housing Act, 1936 (11 Halsbury's Statutes (2nd Edn.) 598), have been reproduced in the Third Schedule, Part III, and the Seventh Schedule, para. 2, to the present Act. These latter provisions contain phrases such as "defective sanitation" which, it is submitted, still bear their original meaning.

**General Note.** This section introduces Part II of the Act (ss. 4-41) dealing with the repair, demolition or closing, etc., of individual houses. The present section, however, is concerned with the general standard of fitness for human habitation and applies to the whole of the Act.

Sub-s. (1), *supra*, in effect provides a list of matters which are relevant for consideration, but does not provide a "definition" or absolute standard. The decision whether a house is unfit or not will fall to be made for the purposes of this Act by a variety of persons, e.g., the medical officer of health, the local authority, the county court judge, the Minister, as the case may be. The duty of such persons is to decide the general question of whether it is "reasonably suitable for occupation"; in so deciding, regard is to be had to the extent to which it is defective in the particular matters listed in sub-s. (1), and to nothing else.

**Back-to-back houses; underground rooms.** This section does not affect the provisions of s. 5, *post*, whereunder certain back-to-back houses are deemed to be unfit. The Act of 1954, s. 9 (2) (84 Statutes Supp. 24; 34 Halsbury's Statutes (2nd Edn.) 270), contained an express saving for the corresponding provision, s. 22 (repealed by the present Act), of the Housing Act, 1936. There was no similar saving for s. 12 (2) of the Act of 1936, dealing with underground rooms. It is respectfully submitted that no saving was needed, in view of the language of the Act. In *Critchell v. Lambeth Borough Council*, [1957] 2 All E.R. 417; however, cited in the notes to s. 18, *post*, the Court of Appeal, following an earlier *obiter dictum*, held that s. 12 (2) of the Act of 1936, now re-enacted in s. 18 (2), *post*, had been repealed or "superseded". Thereafter the Bill for the present Act was amended by the insertion of the first 26 words of s. 18 (2), which refer to the present section. It is respectfully submitted that *Critchell's* case, *supra*, was wrongly decided and ought not to be followed on the wording of the present Act.

**Other standards.** The Housing Repairs and Rents Act, 1954 (84 Statutes Supp. 1; 34 Halsbury's Statutes (2nd Edn.) 259), introduced two other standards in addition to that reproduced in the present section. One was that mentioned in s. 23 (repealed by the Rent Act, 1957) as "the conditions justifying an increase of rent" for a dwelling-house to which the Rent Acts applied. This required that the dwelling should be in "good repair" both as respects structure and as respects decoration (having regard to the age, character and locality of the premises) (see *ibid.*, ss. 23 (1), 49 (1)), and also that it should be reasonably suitable for occupation having regard to the matters now reproduced in paras. (b) to (h) of sub-s. (1), *supra*. The other standard was a humbler one, in connection with the various powers of retaining and "patching-up" unfit houses introduced by that Act; see now ss. 17 (2), 29 (3), 48 (1), 53 (1), 54 (1), etc., *post*, referring to accommodation "which is adequate for the time being" or "of a standard which is adequate for the time being".

**Sub-s. (1).**

**Determining for any of the purposes.** See particularly ss. 6 (lettings of small houses), 9 ("repairs" notices), 16 (houses beyond repair at reasonable expense), 18 (1) (a) (part of a building used as dwelling), *post*, in this Part (Part II); ss. 42 (clearance area), 55 (re-development area), 59 (compensation), *post*, in Part III; and also para. 2 of the Fifth Schedule (clearance orders), *post*.

Under Part III, *post*, the opinion of the local authority on the question of unfitness may in effect be challenged by objection to the Minister against any compulsory purchase or clearance order. Under this Part (Part II) there is a right of appeal in general terms to the county court (see ss. 11 (1), 20 (1), and cf. ss. 27 (1), (3), 30 (5) and 36 (2), *post*) and the county court judge may differ from the view taken by the local authority. In connection, for example, with demolition orders under s. 16 *et seq.*, *post*, it should be noted that several stages may be involved: (1) the medical officer of health may make an official representation; (2) the local authority may come to the provisional view that the house is unfit, before inviting persons interested to submit any information or offer of an undertaking; (3) the local authority must thereafter reconsider the position in the light of any such information or offer; and (4) if the authority decide to make a demolition order, there is then the right of appeal to the county court.

**House.** For definition, see s. 189 (1), *post*. As to parts of buildings and underground rooms, see s. 18, *post*. As to huts, tents, caravans, etc., see ss. 9 (3) and 16 (7), *post*, in this Part (Part II); and cf. s. 44 (8), *post*, as to their inclusion in clearance orders.

**Unfit for human habitation.** Phrases such as "in any respect" or "by reason of disrepair and sanitary defects" which qualified the expression in earlier Acts were repealed by the Housing Repairs and Rents Act, 1954; see the note "History", *supra*. The question whether or not a house can be rendered fit "at a reasonable expense" still arises under certain provisions; see ss. 9 (1), 12 (1), 16 (1) and 39 (1), *post*, in this Part (Part II); and ss. 57 (3) and 59 (3), *post*, in Part III.

**Regard shall be had.** Cf. the note to similar words in s. 39 (1), *post*.

**The following matters.** The list is a milder version of that recommended by the Standards of Fitness for Habitation Sub-Committee of the Central Housing Advisory Committee (the "Miles Mitchell" committee) in 1946: cf. the notes to s. 9 of the Act of 1954 at 84 Statutes Supp. 25. Apart from the specific mention of food, the list differs little from the matters formerly relevant as "disrepair or sanitary defects" under s. 188 (1), (4) of the Act of 1936. The Act of 1954 drew a distinction for certain purposes between matters of repair and the other matters set out in paras. (b) to (h) of sub-s. (1), *supra*; see the note "Other standards", *supra*, referring to s. 23 (repealed) of that Act. A similar distinction is drawn in s. 30 (3) (b) of this Act, *post*, relating to payments in respect of houses which are unfit but have been well maintained.

**Repair.** In *Summers v. Salford Corporation*, [1943] 1 All E.R. 68; [1943] A.C. 283; 31 Digest (Repl.) 198, 3305, reference was made to the decisions on phrases such as "reasonable repair" or "habitable repair" as used in leases. Lord Atkin suggested that the standard of fitness required under s. 2 of the Act of 1936 (see now s. 6, *post*) was difficult to distinguish from that of the ordinary repairing covenant, as in *Proudfoot v. Hart* (1890), 25 Q.B.D. 42, C.A.; 31 Digest (Repl.) 359, 4900.

It has generally been thought that "repair" does not extend to matters of mere decoration, but might include, for example, painting or papering required to prevent decay. Some local Acts extended the provisions of the Housing Act so that matters of decoration had to be taken into account in considering whether a house was fit; these local Act provisions are repealed by sub-s. (2) (a), *supra*. See also the note, "Other standards", *supra*, as to the inclusion of decoration in the definition of "good repair" under the Act of 1954.

**Ventilation.** Cf. *Hall v. Manchester Corporation* (1915), 84 L.J. Ch. 732, H.L.; 38 Digest 212, 470, and *Johnson v. Leicester Corporation*, [1934] 1 K.B. 638, C.A., at p. 649; Digest Supp. As to back-to-back houses, see s. 5, *post*.

**If and only if.** These words confine attention to the condition of the house and to the degree to which it is defective in respect of the matters listed. *Quaere*, whether in considering such matters as ventilation, dampness, or natural lighting the affect of other houses or buildings on the house under consideration is to be regarded or not; see *Hall v. Manchester Corporation*, *ubi.*, *supra*. For specific provisions about badly arranged houses and buildings, see s. 43, *post* (clearance areas), and ss. 72-75, *post* (obstructive buildings).

**Not reasonably suitable for occupation.** In view of the very general nature of these words, it is submitted that many of the cases decided on earlier Acts (before the Act of 1954) still afford valuable guidance. See particularly *Summers v. Salford Corporation*, [1943] 1 All E.R. 68, H.L.; 31 Digest (Repl.) 198, 3305, and other cases cited in the notes to s. 6, *post* (letting of small houses). *Hall v. Manchester Corporation*, cited *supra*, was an important decision on a local Act. The Privy Council decision in *Estate and Trust Agencies (1927), Ltd. v. Singapore Improvement Trust*, [1937]

3 All E.R. 324; [1937] A.C. 898; Digest Supp., suggests that the superior courts will review the evidence on which a house has been held to be unfit. A similar decision has been given in Ireland; see *McCoy v. Cork Corporation*, [1934] I.R. 779; Digest Supp. In England and Wales, however, the question of fact as to whether a house is fit or not rarely comes directly before the superior courts. The question has principally been considered on the provisions now reproduced in ss. 6 and 7, *post* (implied term on letting small houses). It can also arise on an appeal to the county court under the later provisions of this Part (ss. 9 *et seq.*, *post*), but appeals from that court under this Act are confined to points of law. Such appeals from the county court, in the past, have been largely on procedural points. These appeals cannot go beyond the Court of Appeal; see s. 38 (2), *post*.

Cases decided on Parts III and V, *post* (see the notes to the Fourth Schedule, *post*), do not directly raise the question of fact as to whether a house is fit or not, because of the limited nature of the grounds on which an application may be made to the High Court under para. 2 of the Fourth Schedule, *post*; see, for example, *Re Falmouth (Well Lane, Sedgmond's Court and Smithwick Hill) Clearance Order, 1936, Halse's Application*, [1937] 3 All E.R. 308; Digest Supp.

#### Sub-s. (2).

**Section 9 of this Act.** That section, *post*, relates to notices requiring the execution of works to render a house fit for human habitation, when this can be done at reasonable expense. The references in local Acts will, in fact, have been to s. 9 of the Act of 1936 (11 Halsbury's Statutes (2nd Edn.) 457). The repeal mentioned in this subsection had already been effected by the Act of 1954; see the note on the effect of that Act, *supra*. It is not thought that any local Acts had reintroduced such extensions of s. 9 of the 1936 Act between the Act of 1954 and the present Act coming into force; and the present subsection seems therefore to be superfluous, except as a reminder.

**5. Prohibition of back-to-back houses.—(1)** Notwithstanding anything in any local Act or byelaw in force in any borough or district, it shall not be lawful to erect any back-to-back houses intended to be used as dwellings for the working classes, and any such house shall for the purposes of this Act be deemed to be unfit for human habitation:

Provided that nothing in this section shall prevent the erection or use of a house containing several tenements in which the tenements are placed back to back, if the medical officer of health for the borough or district certifies that the several tenements are so constructed and arranged as to secure effective ventilation of all habitable rooms in every tenement.

(2) This section shall apply to any house commenced to be erected after the third day of December, nineteen hundred and nine, except that it shall not apply to houses abutting on any streets, the plans whereof were approved by the local authority before the first day of May, nineteen hundred and nine, in any borough or district in which, on the third day of December, nineteen hundred and nine, any local Act or byelaws were in force permitting the erection of back-to-back houses.

#### NOTES

**History.** This section contains provisions formerly in s. 22 of the Housing Act, 1936.

**General Note.** The erection of back-to-back houses was in some districts prohibited by local Act provisions or byelaws even before the passing of the Housing, Town Planning, etc., Act, 1909 (repealed). That Act introduced the present prohibition, subject to certain savings reproduced in the present section.

#### Sub-s. (1).

**Borough or district.** This phrase was used in the Act of 1909 (*ubi supra*) when the nomenclature applied to local government areas was somewhat different from that now in use. The present types of area outside London are (in addition to administrative counties) county boroughs, non-county boroughs, urban districts, and rural districts the last three types being known as county districts; see the notes to s. 1, *ante*.

**Back-to-back.** This expression is not defined. For examples of what have been held to be back-to-back houses, see *Murrayfield Real Estate Co. v. Edinburgh Magistrates*, [1912] S.C. 217; 38 Digest 216c, and *White v. St. Marylebone Borough Council*, [1915] 3 K.B. 249; 38 Digest 216, 507. It should be noted that the latter decision, on a case stated by the then Local Government Board under s. 39 (1) of the Act of 1909, was to the effect that it was for the Board to decide the question of fact as to whether the buildings were back-to-back houses under that Act.

**Houses.** The definition of "house" in s. 189 (1), *post*, suggests that the word is normally used in this Act as referring to a whole building. The proviso to the present subsection, however, plainly contemplates that the erection of a "house" containing back-to-back tenements may contravene the prohibition of back-to-back "houses", unless the medical officer of health is prepared to certify the adequacy of the ventilation.

**Working classes.** See *White v. St. Marylebone Borough Council*, *ubi supra*, and cases cited in the notes to s. 8, *post*. The actual decision on this point in *White's* case was to the effect that a chauffeur might be a member of the working classes, and that it was for the Local Government Board to decide, under the Act of 1909, whether in fact the houses were "intended to be used as dwellings for the working classes". Note that, in this section, the houses must be "intended" for such use, whereas a house may come within s. 8, *post*, if it is "of a type suitable" for occupation by persons of the working classes.

**Medical officer of health.** As to the appointment of this officer, see the Local Government Act, 1933, ss. 106, 107 (14 Halsbury's Statutes (2nd Edn.) 410, 411), and the London Government Act, 1939, s. 77 (15 Halsbury's Statutes (2nd Edn.) 1109). See also s. 186, *post*, as to the London County Council appointing medical practitioners for the purposes of this Act.

**Sub-s. (2).**

**3rd December 1909.** *I.e.*, the date of the passing of the Act of 1909 (repealed); cf. the General Note to this section, *supra*.

**Streets.** For definition of "street", see s. 189 (1), *post*.

**Local authority.** This refers, presumably, to the authority who approved the plans for the purposes of building byelaws or local Act provisions and not necessarily to the local authority for the purposes of this Act as defined in s. 1, *ante*, and s. 41, *post*. Cf. s. 189 (2), *post*.

### *Obligation of Lessors of Small Houses*

#### **6. Conditions to be implied on the letting of small houses.—(1)**

This section applies—

- (a) to a contract made before the thirty-first day of July, nineteen hundred and twenty-three, for letting for human habitation a house at a rent not exceeding—
  - (i) in the case of a house situate in the administrative county of London, forty pounds;
  - (ii) in the case of a house situate in a borough or urban district outside the administrative county of London, being a borough or district which at the date of the contract had according to the last published census a population of fifty thousand or upwards, twenty-six pounds;
  - (iii) in the case of a house situate elsewhere, sixteen pounds, and
- (b) to a contract made on or after the said thirty-first day of July and before the sixth day of July, nineteen hundred and fifty-seven, for letting for human habitation a house at a rent not exceeding—
  - (i) in the case of a house situate in the administrative county of London, forty pounds;
  - (ii) in the case of a house situate elsewhere, twenty-six pounds, and
- (c) to a contract made on or after the said sixth day of July, nineteen hundred and fifty-seven, for letting for human habitation a house at a rent not exceeding—
  - (i) in the case of a house situate in the administrative county of London, eighty pounds;
  - (ii) in the case of a house situate elsewhere, fifty-two pounds.

(2) Subject to the provisions of this Act, in any contract to which this section applies there shall, notwithstanding any stipulation to the contrary, be implied a condition that the house is at the commencement of the tenancy, and an undertaking that the house will be kept by the landlord during the tenancy, fit for human habitation:

Provided that the condition and undertaking aforesaid shall not be implied when a house is let for a term of not less than three years upon the terms that it be put by the lessee into a condition reasonably fit for human habitation, and the lease is not determinable at the option of either party before the expiration of three years.

(3) The landlord, or any person authorised by him in writing, may at reasonable times of the day, on giving twenty-four hours' notice in writing to the tenant or occupier, enter any premises to which this section applies for the purpose of viewing the state and condition thereof.

(4) In this section the expression "landlord" means any person who lets for human habitation to a tenant any house under any contract referred to in this section, and includes his successors in title, and the expression "house" includes part of a house.

### NOTES

**History.** This section contains provisions formerly in s. 2 of the Housing Act, 1936, as amended by s. 54 (4) of, and the Fifth Schedule to, the Housing Repairs and Rents Act, 1954, and by s. 26 (1) of, and para. 22 of the Sixth Schedule to, the Rent Act, 1957.

**General Note.** This section introduces, into contracts for the letting of certain small houses for human habitation, a statutory implied term. The term so implied is two-fold: (1) it is made a condition that the house is fit for habitation at the commencement of the tenancy, and (2) there is an undertaking by the landlord that he will keep the house fit for habitation during the tenancy; see sub-s. (2), *supra*.

The "small" houses to which this section applies are those mentioned in sub-s. (1), *supra*, and the applicability of the section depends on (1) when the contract of tenancy was made, (2) where the house is situate, and (3) the rent at which it is let. Note also the exception in sub-s. (2), proviso, *supra*. For the extension of this section to certain agricultural workers, who have a contract of employment but no contract of tenancy, see s. 7, *post*.

At common law there is no implied condition warranty or undertaking, on the letting of an unfurnished house, as to its fitness for habitation; see *Hart v. Windsor* (1844), 12 M. & W. 68; 31 Digest (Repl.) 133, 2716; *Bartram v. Aldous* (1886), 2 T.L.R. 237; 31 Digest (Repl.) 192, 3224; and *Lane v. Cox*, [1897] 1 Q.B. 415, C.A.; 31 Digest (Repl.) 195, 3261. Cf. also, in the case of an unfurnished flat, *Cruse v. Mount*, [1933] Ch. 278; 31 Digest (Repl.) 195, 3263. The intending tenant is presumed to make his own inquiries as to the condition of the house and, in the absence of special stipulation, he takes the house as it stands; see *Chappell v. Gregory* (1863), 34 Beav. 250; 31 Digest (Repl.) 194, 3258. This common law rule does not apply to furnished lettings, where a condition or warranty as to fitness for occupation at the commencement of the tenancy may be implied from the circumstances; see *Smith v. Murrable* (1843), 11 M. & W. 5; 31 Digest (Repl.) 195, 3266.

A number of cases decided on the earlier Acts are thought to be still of importance. Note, however, that the Housing Repairs and Rents Act, 1954, made two changes which may affect the construction of the present section; first, it removed (from s. 2 of the Act of 1936) the words "in all respects reasonably" before the words "fit for human habitation" in what is now sub-s. (2), *supra*; and secondly it provided the list of matters to be given consideration in deciding whether a house is unfit, now to be found in s. 4, *ante*. These changes appear to render the reference in s. 147 (2) of the Law of Property Act, 1925 (20 Halsbury's Statutes (2nd Edn.) 750), to "any statutory liability to keep a house in all respects reasonably fit for human habitation" no longer applicable to the liability under this section. The changes might be construed as affecting to some extent the matters relied on in *Summers v. Salford Corporation*, [1943] 1 All E.R. 68, H.L.; 31 Digest (Repl.) 198, 3305.

The cases of *Morgan v. Liverpool Corporation*, [1927] 2 K.B. 131, C.A.; 31 Digest (Repl.) 198, 3307, and *McCarrick v. Liverpool Corporation*, [1946] 2 All E.R. 646; [1947] A.C. 219; 31 Digest (Repl.) 198, 3308, establish that the statutory implied undertaking to keep the house fit is subject to a further implied term that liability for breach does not arise unless the landlord has had notice of the defects. If the defect is latent, however, the landlord may be liable without notice; see *Fisher v. Walters*, [1926] 2 K.B. 315; 31 Digest (Repl.) 198, 3306, doubted in *McCarrick's case*, *supra*. Subject to these cases, when there is a breach the tenant can sue the landlord for damages, as well as abandon the tenancy; see *Walker v. Hobbs & Co.* (1889), 23 Q.B.D. 458; 31 Digest (Repl.) 198, 3304. Strangers to the contract cannot sue thereon (*Cavalier v. Pope*, [1906] A.C. 428; 31 Digest (Repl.) 386, 5124; *Cameron v. Young*, [1908] A.C. 176; 31 Digest (Repl.) 386, 5125; *Middleton v. Hall* (1912), 108 L.T. 804; 31 Digest (Repl.) 387, 5127; *Ryall v. Kidwell & Son*, [1914] 3 K.B. 135, C.A.; 31 Digest (Repl.) 387, 5128); see, however, the Occupiers' Liability Act, 1957, s. 4 (104 Statutes Supp. 86; 37 Halsbury's Statutes (2nd Edn.) 837), extending the ordinary occupier's liability to certain landlords.

The term implied by the present section extends only to the demised premises, and not to a common staircase (*Dunster v. Hollis*, [1918] 2 K.B. 795; 31 Digest (Repl.) 101, 2476), nor to incursions of rats from outside (*Stanton v. Southwick*, [1920] 2 K.B. 642; 31 Digest (Repl.) 198, 3303).

For other cases decided under earlier Acts (before the changes made by the Act of 1954), see *Jones v. Geen*, [1925] 1 K.B. 659, per Salter, J., at 668; 31 Digest (Repl.) 343, 4748 (although this case should be read subject to *Summers v. Salford Corporation*, *supra*); and *Daly v. Elstree Rural District Council*, [1948] 2 All E.R. 13, C.A.; 2nd Digest Supp.

#### Sub-s. (1).

**Contract . . . for letting.** Note that the term implied by sub-s. (2), *supra*, becomes a term of this contract, and consequently in *Morgan's* case and *McCarrick's* case, cited in the General Note, *supra*, the courts felt able to imply a further term about notice of defects. As to contracts of employment of agricultural workmen, see s. 7, *post*.

**31st July 1923.** The date of the passing of the Housing, etc., Act, 1923; s. 10 (1) of that Act altered the rent limits from those specified in sub-s. (1) (a), *supra*, to those specified in sub-s. (1) (b), *supra*.

**House.** For meaning, see sub-s. (4), *supra*, and s. 189 (1), *post*.

**Rent.** Rent means "the whole contractual rent payable by the tenant to his landlord", cf. *Palser v. Grinling, Property Holding Co., Ltd. v. Mischeff*, [1948] 1 All E.R. 1; [1948] A.C. 291; 31 Digest (Repl.) 651, 7541. No deduction is to be made for furniture, rates, etc. Thus when the rent paid to the landlord includes a sum for rates, that whole rent is the rent for the purposes of this section; see *Rousou v. Photi (Gort Estates Co., Third Party)*, [1940] 2 All E.R. 528; [1940] 2 K.B. 379, C.A.; 31 Digest (Repl.) 199, 3310. The rent referred to is an annual rent. It seems that a rent of 10 shillings a week exceeds £26 per annum; but see *Whitcombe v. Pollock* (1956), 106 L.J. 554 (Liverpool Court of Passage), when a weekly rent was simply multiplied by 52.

**Administrative county of London; borough; urban district.** See the notes to s. 1, *ante*.

**Last published census.** See the Census Act, 1920, s. 4 (20 Halsbury's Statutes (2nd Edn.) 1213). Reports on the census are prepared by the Registrar General, and published by H.M. Stationery Office.

**6th July 1957.** The date of commencement of the Rent Act, 1957 (103 Statutes Supp. 17; 37 Halsbury's Statutes (2nd Edn.) 550), which amended s. 2 of the 1936 Act (see the note "History", *supra*) by increasing the rent limits from those specified in sub-s. (1) (b), *supra*, to those specified in sub-s. (1) (c), *supra*.

#### Sub-s. (2).

**Subject to the provisions of this Act.** See the proviso to this subsection, *supra*; and s. 29 (4), *post* (letting of house condemned and purchased under Part II), s. 46 (5), *post* (letting of houses retained for temporary accommodation under Part III) and s. 48 (4), *post* (letting of similar unfit houses by local authority under Part III).

**Notwithstanding any stipulation to the contrary.** This prevents "contracting-out" of the section. In *Summers v. Salford Corporation*, cited in the General Note, *supra*, Lord Wright said: "The subsection must . . . be construed with due regard to its apparent object, and to the character of the legislation to which it belongs. The provision was to reduce the evils of bad housing accommodation and to protect working people by a compulsory provision, out of which they cannot contract, against accepting improper conditions." See also *Jones v. Geen*, [1925] 1 K.B. 659; 31 Digest (Repl.) 343, 4748.

This provision would appear to be unaffected by s. 33 (2), *post*.

**Condition.** The word "condition" is not used in any technical sense; see *Walker v. Hobbs & Co.*, and *Summers v. Salford Corporation*, cited in the General Note, *supra*.

**Undertaking.** The undertaking that the house will be kept fit by the landlord during the tenancy takes the form of an implied term of the tenancy. Thus only the tenant may sue for a breach (see, however, the Occupiers' Liability Act, 1957, s. 4), and the courts have implied a further term that the landlord's liability, at least for patent defects, arises only when he has notice; see cases cited in the general Note, *supra*.

**By the landlord.** As to "landlord" see sub-s. (4), *supra*, and note thereto, *infra*.

**During the tenancy.** As to statutory tenancies, see the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, s. 15 (1) (103 Statutes Supp. 148; 13 Halsbury's Statutes (2nd Edn.) 1017). See also *Strood Estates Co., Ltd. v. Gregory*, [1936] 2 K.B. 605, per Sir Boyd Merriman, P. (affirmed on other grounds, [1937] 3 All E.R. 656; [1938] A.C. 118; 31 Digest (Repl.) 667, 7660). The remarks of Sir Boyd Merriman doubting the applicability of this section to such "tenancies", appear to overlook the effect of s. 15 (1) of the Act of 1920 cited *supra*, and are not consistent with *Morgan's* case and *McCarrick's* case, cited in the General Note, *supra*. In *John Waterer, Sons & Crisp, Ltd. v. Huggins* (1931), 47 T.L.R. 305; 31 Digest (Repl.) 618, 7336, damages were assessed without regard to the security of tenure which the protection of the Rent Acts would have conferred; *sed quaere*.

**Fit for human habitation.** See ss. 4 and 5, *ante*; also s. 189 (1), *post*, which defines the phrase by reference to those sections.

**Sub-s. (3).**

**The landlord, or any person.** As to "landlord" see sub-s. (4) *supra*, and note thereto, *infra*. Any other person must have the landlord's written authority. *Semble*, a landlord might give his agent a general authority to enter and view the state and condition of any of his houses from time to time as occasion required. "Writing" includes typewriting, etc.; see the Interpretation Act, 1889, s. 20 (24 Halsbury's Statutes (2nd Edn.) 222).

**On giving . . . notice.** The notice must be in writing (cf. previous note, *supra*). This subsection states that the notice must be "given" (not "served"), but cf. s. 169, *post*, as to service of notices.

**Enter any premises.** *I.e.*, enter a house (including a part of a house; see sub-s. (4), *supra*) which is let as mentioned in sub-s. (1), *supra*. The premises may be entered, under this subsection, only "for the purpose of viewing the state and condition thereof". But the implied undertaking in sub-s. (2), *supra*, presumably carries with it a power of entry to do such works as are needed to keep the house fit for habitation.

Where entry is made under the present subsection, any obstruction of the entry itself or of the viewing of the state and condition of the premises would seem to be an obstruction within s. 160, *post*.

The existence of this right of entry is not in itself sufficient to render the landlord liable for patent defects; see *Morgan's case* and *McCarrick's case*, cited in the General Note, *supra*.

**Sub-s. (4).**

**Landlord.** Cf. s. 8, *post*, as to information in rent books or otherwise. Cf., also, s. 39 (2), *post*, as to the person "having control" of a house. In the present section "landlord" does not include an agent who merely lets on behalf of his principal, but would seem to include a tenant who sub-lets, or a mortgagee who lets in pursuance of his powers as such.

**7. Application of foregoing section to houses occupied by agricultural workers otherwise than as tenants.**—Notwithstanding any stipulation to the contrary, where under a contract of employment of a workman employed in agriculture the provision of a house or part of a house for his occupation forms part of his remuneration, and the provisions of the last foregoing section are inapplicable by reason only of the house or part of the house not being let to him, there shall be implied as part of the contract of employment the like condition and undertaking as would be implied under those provisions if the house or part of the house were so let, and those provisions shall apply accordingly, with the substitution of "employer" for "landlord", and such other modifications as may be necessary:

Provided that this section shall not affect the obligation of any person other than the employer to repair a house to which this section applies, or any remedy for enforcing any such obligation.

## NOTES

**History.** This section contains provisions formerly in s. 3 (1) of the Housing Act, 1936. Section 3 (2) of the Act of 1936, which is not reproduced, read as follows: "This section shall apply whether the contract of employment was entered into before or after the commencement of this Act".

**General Note.** This section implies a term into certain contracts of employment similar to that implied in contracts for the letting of small houses under s. 6, *ante*. The contracts of employment are those where the provision of a house, or part of a house, forms part of the remuneration of a workman employed in agriculture. In such cases the house is not "let" to the workman, and s. 6, *ante*, would therefore be inapplicable but for the present section.

Presumably where a house is not let, but occupied by a licensee, and the occupier is not an agricultural worker, or is an agricultural worker but the provision of the house, or part of a house, does not form part of his remuneration, neither this section nor s. 6, *ante*, applies.

The present section presumably applies to contracts entered into whether before or after the commencement of this Act; but cf. s. 3 (2) of the Act of 1936, cited in the note, "History", *supra*, and not reproduced in this Act.

**Notwithstanding any stipulation to the contrary.** Cf. the note to the same phrase in s. 6 (2), *ante*.

**Agriculture.** This word is not defined for the purposes of this section, but cf. s. 114 (5), *post*.

**House.** For definition, see s. 189 (1), *post*.

**Forms part of his remuneration.** Cf. the Agricultural Wages Act, 1948, s. 7 (56 Statutes Supp. 15; 28 Halsbury's Statutes (2nd Edn.) 11), as to the reckoning of benefits and advantages as payment of wages for the purposes of that Act.

**By reason only of the house . . . not being let.** When occupation is under a contract of employment, there may be not a letting but a licence (see *e.g.*, *Bomford v. South Worcestershire Assessment Committee*, [1946] 2 All E.R. 80 at p. 81; affirmed, [1947] 1 All E.R. 299, C.A.; 2nd Digest Supp.). The words "by reason only" imply that, if there had been a letting, the rent and other circumstances would have brought the contract for letting within s. 6 (1), *ante*.

**Person other than the employer.** The employer may not be the owner of the house which he provides as part of his workman's remuneration. The employer may, for example, himself hold the house under a lease; if so, the terms of that lease are preserved by the proviso to this section.

## 8. Information to be given to tenants of working-class houses.—

In the case of any house which is occupied, or is of a type suitable for occupation, by persons of the working classes, the name and address of the medical officer of health for the district and of the landlord or other person who is directly responsible for keeping the house in all respects reasonably fit for human habitation shall be inscribed in the rent book, or, where a rent book is not used, shall be delivered in writing to the tenant at the commencement of the tenancy and before any rent is demanded or collected; and, where there has been any failure to comply with the provisions of this section in respect of any house, any person who while the default continues demands or collects any rent in respect of the house as aforesaid shall on summary conviction be liable to a fine not exceeding forty shillings.

### NOTES

**History.** This section contains provisions formerly in s. 4 of the Housing Act, 1936.

**General Note.** Under this section it is an offence to demand or collect any rent, in respect of a house to which this section applies, unless certain information has been given to the tenant. The section applies to any house occupied by "persons of the working classes", or of a type suitable for such occupation. The required information is: (1) the name and address of the medical officer of health, and (2) the name and address of the landlord or other person "directly responsible for keeping the house in all respects reasonably fit for human habitation". This information must be inscribed in the rent book, if any; or where a rent book is not used must be delivered in writing to the tenant at the commencement of the tenancy.

**House.** For definition, see s. 189 (1), *post*.

**Suitable for occupation.** These words bring within the section houses of a type suitable for working class occupation (*i.e.*, presumably, by reason of their size, value, situation, etc.) although the actual occupier may belong to some other class of society. The wording of some of the earlier Acts was narrower.

**Working classes.** As to the meaning of this expression, see especially *Green (H. E.) & Sons v. Minister of Health*, [1947] 2 All E.R. 469, cited in Chapter 3 of the Introduction at p. 16, *ante*. See also *Belcher v. Reading Corporation*, [1949] 2 All E.R. 969 at p. 984; 2nd Digest Supp.; *Re Sanders' Will Trusts, Public Trustee v. McLaren*, [1954] 1 All E.R. 667 at p. 669; 3rd Digest Supp.; and *Guinness Trust (London Fund) Founded 1890 Registered 1902 v. Green*, [1955] 2 All E.R. 871, C.A.; 3rd Digest Supp. Reference may also be made to *London County Council v. Davis* (1897), 62 J.P. 68; 26 Digest 510, 2149; *Crow v. Davis* (1903), 67 J.P. 319; 34 Digest 588, 88; *White v. St. Marylebone B.C.*, [1915] 3 K.B. 249; 38 Digest 216, 507; and cf. *Arlidge v. Tottenham Urban Council*, [1922] 2 K.B. 719; 38 Digest 214, 489.

**Medical officer of health.** See the note to s. 5, *ante*.

**Other person who is directly responsible.** Presumably this is a reference to some person entrusted by the landlord with management of the house. It may, however, be read as a reference to the "person having control" as defined in s. 39 (2), *post*, who is the person primarily regarded as responsible under later sections of this Part (Part II) of the Act, dealing with repair, demolition, closing, etc. If so, the rent collector, who may be an estate agent, solicitor, trustee or the like, is the person whose name and address should be given.

**In all respects reasonably.** As mentioned in Chapter 3 of the Introduction, at p. 16, *ante*, similar words in various other sections of the Housing Act, 1936, were repealed by the Housing Repairs and Rents Act, 1954. This was no doubt connected with the introduction of the new list of matters to be regarded in deciding whether a house is unfit (s. 9 of the Act of 1954; now s. 4, *ante*). The qualifying words were not,

however, removed from s. 4 of the Act of 1936, reproduced verbatim in the present section. The present section therefore does not accord, in wording, with any of the sections in this Part of the Act to which it might be thought to refer, *e.g.*, s. 6, *ante*, or s. 9, *post*.

**Fit for human habitation.** See previous note, *supra*; and ss. 4 and 5, *ante*.

**Rent book.** Although this section imposes no obligation to provide a rent book, this may be required under other statutes; see the Increase of Rent and Mortgage Interest (Restrictions) Act, 1938, s. 6 (103 Statutes Supp. 167; 13 Halsbury's Statutes (2nd Edn.) 1072), and the Rent Act, 1957, s. 12 (6) (103 Statutes Supp. 67; 37 Halsbury's Statutes (2nd Edn.) 564). By s. 81, in Part IV of the present Act, *post*, every rent book "or similar document" must contain a prescribed form of summary of ss. 77, 78 and 80, *post*, dealing with overcrowding, and a statement of the "permitted number of persons" as determined under the Sixth Schedule, *post*. This applies to rent books and documents used in relation to "a dwelling-house", as defined in s. 87 (1), *post*. That definition resembles the present section in that it retains a reference to the working classes, but applies to any "premises used as a separate dwelling . . .", whereas the present section applies to houses.

**Delivered in writing.** The word used is "delivered" not "served" and s. 169, *post*, would seem not to apply, particularly in view of s. 169 (1) (a) whereunder "delivering" is only one of the methods of service there specified. For the meaning of "writing", see the Interpretation Act, 1889, s. 20 (24 Halsbury's Statutes (2nd Edn.) 222).

**Summary conviction.** Summary jurisdiction and procedure are governed mainly by the Magistrates' Courts Act, 1952 (32 Halsbury's Statutes (2nd Edn.) 416); see also the Magistrates' Courts Act, 1957 (104 Statutes Supp. 2; 37 Halsbury's Statutes (2nd Edn.) 626). By s. 104 of the Act of 1952 (32 Halsbury's Statutes (2nd Edn.) 503), proceedings must be instituted within six months of the commission of the offence.

Justices acting for any petty sessional division in the county of London within the metropolitan stipendiary court area, as well as metropolitan stipendiary magistrates, may take cases under the present Act by virtue of the County of London Justices (Jurisdiction) Order, 1957 (S.I. 1957 No. 211), and s. 191 (4), *post*.

Although the present section is aimed at protecting the tenant, it is a well-established principle that when an offence is not an individual grievance but is a matter of public concern, then any person may prosecute in the absence of express provision to the contrary; cf. the principle as stated in *Cole v. Coulton* (1860), 29 L.J.M.C. 125; 38 Digest 168, 127.

A prosecutor must take care to use appropriate words in laying an information, as this section creates a number of possible offences. A number of alternative charges may have to be framed, *e.g.*, when it is uncertain whether rent has been "demanded" or "collected", or whether a rent book is used or not.

**Fine.** As to imprisonment in certain circumstances, see the Magistrates' Courts Act, 1952, s. 64 and Third Schedule (32 Halsbury's Statutes (2nd Edn.) 470, 526).

#### *Unfit premises capable of repair at reasonable cost*

#### **9. Power of local authority to require repair of unfit house.—(1)**

Where a local authority, upon consideration of an official representation, or a report from any of their officers, or other information in their possession, are satisfied that any house is unfit for human habitation, they shall, unless they are satisfied that it is not capable at a reasonable expense of being rendered so fit, serve upon the person having control of the house a notice—

- (a) requiring him, within such reasonable time, not being less than twenty-one days, as may be specified in the notice, to execute the works specified in the notice, and
- (b) stating that, in the opinion of the authority, those works will render the house fit for human habitation.

(2) In addition to serving a notice under this section on the person having control of the house, the local authority may serve a copy of the notice on any other person having an interest in the house, whether as freeholder, mortgagee, lessee or otherwise.

(3) In this and the three next following sections references to a house include a reference to a hut, tent, caravan or other temporary or moveable form of shelter which is used for human habitation and has been in the same inclosure for a period of two years next before action is taken under this section.

#### **NOTES**

**History.** Sub-s. (1) contains provisions formerly in s. 9 (1) of the Housing Act, 1936, as amended by ss. 1 and 51 (4) of, and the First and Third Schedules to, the

Housing Act, 1949, and by s. 54 (4) of, and the Fifth Schedule to, the Housing Repairs and Rents Act, 1954. The Act of 1949 removed references to the working classes and the Act of 1954 removed the words "in any respect" before "unfit for human habitation"; see Chapter 3 of the Introduction, at p. 16, *ante*.

Sub-ss. (2) and (3) contain provisions formerly in ss. 9 (2) and 23, respectively, of the Act of 1936. Sub-ss. (3) and (4) of s. 9 of the 1936 Act are now reproduced in s. 39, *post*. Sub-s. (3), *supra*, should be compared with s. 16 (7), *post*, derived from the same section of the 1936 Act.

**General Note.** This section and ss. 10-12, *post*, contain the "repairs notice" procedure, as it is sometimes called, aimed at securing the execution of works to an unfit house so as to render it fit for human habitation. This procedure is appropriate where such works can be done at reasonable expense; when this is not possible, a demolition order, or one of the alternatives provided under ss. 16-32, *post*, is called for. As to the relation between this Act and other statutes, see s. 188, *post*, and *Salisbury Corporation v. Roles*, [1948] W.N. 412.

**Sub-s. (1).**

**Local authority.** See s. 1, *ante*, and as to London, s. 41, *post*.

**Upon consideration.** The local authority must approach the matter "in a judicial spirit" (cf. *Hall v. Manchester Corporation* (1915), 84 L.J. Ch. 732; 38 Digest 212, 470), but its decision is not subject to review in the courts, except on appeal by a person aggrieved by a notice as provided by s. 11 (1), *post*. On such an appeal the county court's powers in effect allow a complete review of the matter; see s. 11 (3), *post*.

Under this section there is no requirement that the authority's members, or committee members, should themselves inspect the property or consult with or hear any owner or other interested person, but there is nothing to prevent these things being done, before a notice is served. (Under s. 16, *post*, persons served with a notice under that section have a right to be heard at a preliminary stage, before action is taken under s. 17, *post*).

**Official representation.** *I.e.*, a written representation by the medical officer of health; see s. 157 (4), (5), *post*. Note that this is not the only information on which an authority may act. The medical officer of health will have regard to the matters relevant under s. 4, *ante*. On some of these, *e.g.*, questions of repair and stability, or as to the cost of repair being reasonable (s. 39 (1), *post*), the authority's surveyor may well assist the medical officer or prepare his own report to the authority.

**Satisfied.** As to the meaning of this word, see *Fletcher v. Ilkeston Corporation* (1931), 96 J.P. 7, C.A.; Digest Supp. (decided on a section corresponding to s. 16, *post*); *Cohen v. West Ham Corporation*, [1933] Ch. 814, C.A.; Digest Supp.; and *Johnson v. Leicester Corporation*, [1934] 1 K.B. 638, C.A.; Digest Supp. Cf. also, *Re City of Plymouth (City Centre) Declaratory Order*, 1946, *Robinson v. Minister of Town and Country Planning*, [1947] 1 All E.R. 851, C.A.; 2nd Digest Supp. (decided on s. 1 of the Town and Country Planning Act, 1944); *Re Beck and Pollitzer's Application*, [1948] 2 K.B. 339; 2nd Digest Supp. (decided on s. 15 (1) of the Requisitioned Land and War Works Act, 1945); and *Thorneloe and Clarkson, Ltd. v. Board of Trade*, [1950] 2 All E.R. 245; 2nd Digest Supp. (decided on s. 1 (4) of the Industrial Organisation and Development Act, 1947). In considering the last three cases, cited *supra*, however, it must be remembered that s. 11, *post*, gives a right of appeal to the county court against a notice under the present section.

**House.** For meaning of "house" generally in this Act, see s. 189 (1), *post*; in this section see also sub-s. (3), *supra*, as to temporary and moveable dwellings. Note that a single house may contain more than one dwelling (*e.g.*, two or more sets of rooms which might each be a separate dwelling under the Rent Acts). Separate notices under the present Act are not needed for each such dwelling, but, apart from this, each house must be considered separately. As to parts of buildings and underground rooms, see s. 18 (1), *post*.

**Unfit for human habitation.** See s. 4, *ante*, as to matter to be considered. S. 5, *ante*, deals with back-to-back houses, which are deemed to be unfit in most circumstances; these, however, will not normally be dealt with under the present section, in view of para. (b) of sub-s. (1), *supra*; *i.e.*, back-to-back houses, it is thought, cannot normally be made fit by works under this section.

**They shall.** See s. 2, *ante*, as to the authority's duty to have regard to proposals, as to the carrying out of their functions, approved by the Minister.

**Reasonable expense.** By s. 39 (1), *post*, it is provided that regard shall be had to the estimated cost of the works necessary to render the house fit, and to the value which the house will have when the works are completed. Some information on these matters must therefore be before the authority. Detailed estimates, however, are not required; see *Bacon v. Grimsby Corporation*, [1949] 2 All E.R. 875, C.A.; 2nd Digest Supp., and *Cohen v. West Ham Corporation*, [1933] Ch. 814, C.A.; Digest Supp.

The "value" of the house when the works have been executed means the freehold value; see *Bacon v. Grimsby Corporation*, *supra*.

On an appeal to the county court, the judge may form his own idea of what is a reasonable expense, and may do so by reference to the date of hearing; see *Fletcher v.*

*Ilkeston Corporation* (1931), 96 J.P. 7, C.A.; Digest Supp.; and *Leslie Maurice & Co., Ltd. v. Willesden Corporation*, [1953] 1 All E.R. 1014, C.A.; 3rd Digest Supp. It is fairly common for an appeal to be made to the county court on the ground that the expense would be excessive and unreasonable; when such an appeal succeeds, the authority will have an opportunity to back their own opinion by purchasing the house and executing the works (see s. 12, *post*).

Where the authority consider the house cannot be rendered fit at reasonable expense, the proper procedure will be to serve a notice under s. 16, *post*. That procedure may lead to the demolition or closing of the house, or to the acceptance of some undertaking, or, in some cases, to its purchase for temporary housing purposes; see ss. 17 *et seq.*, *post*.

**Serve.** As to mode of service see s. 169 (1), *post*. The "person having control" must be served, under sub-s. (1), *supra*; and sub-s. (2), *supra*, confers a discretion as to whether other persons interested in the house should also be served. As to obtaining information as to ownership, etc., of premises, see s. 170, *post*.

**Person having control.** The definition in s. 39 (2), *post*, should be studied with care. It corresponds broadly with the definition of "owner" in many statutes dealing with public health and other local government topics, and is entirely different from the definition of "owner" in the present Act (s. 189 (1), *post*).

**Notice.** A separate notice should, it seems, be served in respect of each house (cf. *West Ham Corporation v. Charles Benabo & Sons*, [1934] 2 K.B. 253; Digest Supp.), but not for each separate dwelling into which a house may have been divided (*Benabo v. Wood Green Borough Council*, [1945] 2 All E.R. 162; 2nd Digest Supp.). As to authentication, see s. 166 (2), *post*, and the earlier of the two cases just cited.

The prescribed form of notice is Form No. 2 in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), made under s. 178, *post*.

The time allowed for appeal is 21 days from service of the notice; see s. 11 (1), *post*. As to the coming into operation of a notice, see s. 37 (1), *post*.

**Requiring him.** The duty to comply is placed primarily on the "person having control". For default power of the local authority, see s. 10, *post*. As to protection of a person having control who is only an agent or trustee, see s. 10 (3), proviso, *post*. For other provisions, see ss. 13-15 and ss. 163 and 164, *post*.

**Such reasonable time.** Note that the time must in fact be reasonable and also not less than 21 days. An appeal under s. 11 (1), *post*, holds up proceedings under this section. What is in fact a reasonable time must depend on the nature and extent of the works required to be executed; see *Ryall v. Cubitt Heath*, [1922] 1 K.B. 275; 38 Digest 215, 498.

**Twenty-one days.** It is suggested that this period of not less than 21 days must run from the date when service is effected on the person having control, rather than the date of the notice itself; and that it is prudent to allow a few extra days to avoid any doubt, especially where the authority see fit to serve other persons under sub-s. (2), *supra*.

**Works specified.** These should have reference only to matters which render the house unfit for habitation; see *Adams v. Tuer* (1923), 130 L.T. 218; 38 Digest 215, 501. The works should be specified in some detail, and be sufficiently definite to enable an owner to ascertain what is required of him; see *Cohen v. West Ham Corporation*, [1933] Ch. 814, at pp. 827, 828. Where a notice contains requirements going beyond what is needed to render the houses fit, it seems the county court judge might vary the requirements under s. 11 (3), *post*; but he is entitled to quash the notice *in toto* where some items have been wrongly included (*Cochrane v. Chancetonbury Rural District Council*, [1950] 2 All E.R. 1134, C.A.; 2nd Digest Supp.).

**Will render the house fit.** Where an owner proposes to effect improvements, perhaps going beyond the requirements of a notice under the present section, he should not overlook the provisions of ss. 69 and 70, *post*, as to certificates. Such certificates are in broader terms than para. (b) of sub-s. (1), *supra*, and provide a measure of protection against the exercise of certain powers in this Act for a period of some five to ten years. In some cases, where such improvements would conflict with the requirements of a notice under the present section, it is suggested that an appeal should be lodged under s. 11 (1), *post*, and that a list of works might be submitted under s. 69 at the same time. The authority may then be willing to accept the owner's proposals and compromise the appeal; or the proposals might properly be accepted by the judge.

#### Sub-s. (2).

**Other person having an interest.** Cf. s. 170, *post* (power of authority to require information). See also s. 33 (1), *post*, whereunder an owner who is not in receipt of the rents and profits of a house may require the authority to give him notice of proceedings under this Part of the Act. Note also ss. 13-15 and ss. 163 and 164, *post*.

Under s. 16 (1), *post*, dealing with houses thought to be beyond repair at reasonable cost, all "owners" have to be given notice, and also all mortgages so far as it is reasonably practicable to ascertain such persons. Although this is not necessary under the present section, there will be many cases when it is desirable to serve other persons in addition to the person having control of the house.

**Sub-s. (3).**

**Hut, tent, caravan, etc.** The powers of the present section are in addition to, and not in derogation of, other statutory powers (s. 188, *post*), such as planning control under the Town and Country Planning Act, 1947 (48 Statutes Supp.; 25 Halsbury's Statutes (2nd Edn.) 489), or the licensing of moveable dwellings under s. 269 of the Public Health Act, 1936 (19 Halsbury's Statutes (2nd Edn.) 456), or similar provisions in local Acts.

**10. Enforcement of notice requiring execution of works.**—(1) If a notice under the last foregoing section requiring the person having control of a house to execute works is not complied with, then, after the expiration of the time specified in the notice or, if an appeal has been made against the notice and upon that appeal the notice has been confirmed with or without variation, after the expiration of twenty-one days from the final determination of the appeal, or of such longer period as the court in determining the appeal may fix, the local authority may themselves do the work required to be done by the notice, or by the notice as varied by the court, as the case may be.

(2) Where the local authority are about to enter upon a house under the provisions of the foregoing subsection for the purpose of doing any work, they may give to the person having control of the house and, if they think fit, to any other person being an owner of the house, notice in writing of their intention so to do, and if at any time after the expiration of seven days from the service upon him of the notice and whilst any workman or contractor employed by the local authority is carrying out works in the house, any person upon whom the notice was served or any workman employed by him, or by any contractor employed by him, is in the house for the purpose of carrying out any works, the person upon whom the notice was served shall be deemed to be obstructing the local authority in the execution of this Act and liable on summary conviction to a fine not exceeding twenty pounds, unless he proves to the satisfaction of the court before which he is charged that there was urgent necessity to carry out the works in order to obviate danger to occupants of the house.

(3) Any expenses incurred by the local authority under this section, together with interest from the date when a demand for the expenses is served until payment, may, subject as hereinafter provided, be recovered by them, by action or summarily as a civil debt, from the person having control of the house or, if he receives the rent of the house as agent or trustee for some other person, then either from him or from that other person, or in part from him and as to the remainder from that other person:

Provided that, if the person having control of the house proves that he—

- (a) is receiving the rent merely as agent or trustee for some other person; and
- (b) has not, and since the date of the service on him of the demand has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority;

his liability shall be limited to the total amount of the money which he has, or has had, in his hands as aforesaid.

(4) In all summary proceedings by the local authority for the recovery of any such expenses, the time within which the proceedings may be taken shall be reckoned from the date of the service of the demand or, if an appeal is made against that demand, from the date on which the demand becomes operative.

(5) The local authority may by order declare any such expenses to be payable by weekly or other instalments within a period not exceeding thirty years with interest from the date of the service of the demand until the whole amount is paid, and any such instalments and interest, or any part thereof, may be recovered summarily as a civil debt from any owner or occupier of the house, and, if recovered from an occupier, may be deducted by him from the rent of the house.

(6) Any interest payable under subsection (3) or subsection (5) of this section shall be at such rate as the Minister may, with the approval of the Treasury, from time to time fix for the purposes of either or both of those subsections by order contained in a statutory instrument.

(7) The amount of any expenses and interest thereon due to a local authority under this section shall be a charge on the premises in respect of which the expenses were incurred, and the local authority shall for the purpose of enforcing that charge have all the same powers and remedies under the Law of Property Act, 1925, and otherwise as if they were mortgagees by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.

(8) The power of appointing a receiver under the last foregoing subsection shall be exercisable at any time after the expiration of one month from the date of the service under subsection (3) of this section of a demand for the expenses charged on the premises.

(9) No action taken under this or the last foregoing section shall prejudice or affect any other powers of the local authority, or any remedy available to the tenant of a house against his landlord, either at common law or otherwise.

### NOTES

**History.** Sub-ss. (1)–(7) and (9) contain provisions formerly in s. 10 of the Housing Act, 1936, and sub-s. (8) contains provisions formerly in s. 13 of the Housing Repairs and Rents Act, 1954. In addition, sub-s. (6) reproduces the effect of the Statutory Instruments Act, 1946, s. 1 (2).

**General Note.** This section provides for the enforcement of "repairs" notices served under s. 9, *ante*. If the works are not carried out, the authority may themselves do the works (sub-s. (1), *supra*). It is an offence to obstruct the authority in the circumstances mentioned in sub-s. (2), *supra*. The local authority's expenses may be recovered from the person having control (or from his principal or beneficiary where the person having control is an agent or trustee) (sub-s. (3), *supra*). Sub-s. (3), proviso, contains a provision protecting such an agent or trustee, which was originally enacted to meet the difficulty pointed out by the court in *Watts v. Battersea Borough Council*, [1929] 2 K.B. 63; Digest Supp. Expenses may also be recovered under an order providing for weekly or other periodic instalments (sub-s. (5), *supra*). In either case interest is payable at a prescribed rate (sub-s. (6), *supra*). Furthermore the amount of the expenses and interest constitutes a charge on the property (sub-s. (7), *supra*).

A curious situation is created by sub-s. (8), *supra*, reproduced from the Act of 1954. It seems that a receiver may be appointed as mentioned therein although the demand under sub-s. (3) may not yet have become operative; see ss. 11 (1) (b) and 37 (1), *post*. Presumably if the demand is quashed or varied on appeal the receiver will be accountable to the person having control or other person entitled to any moneys he may have received.

#### Sub-s. (1).

**Person having control.** See s. 39 (2), *post*.

**Time specified in the notice.** See s. 9 (1) (a) and note thereto, *ante*.

**Appeal . . . against the notice.** See s. 11 (1) (a), *post*.

**Confirmed with or without variation.** See s. 11 (3), *post*.

**Final determination of the appeal.** See s. 37 (2), *post*.

**Local authority.** See s. 1, *ante*, and s. 41, *post*.

**Work required to be done.** The authority must not embark on works not specified in the notice served under s. 9, *ante*, or that notice as varied by the court, as the case may be.

#### Sub-s. (2).

**House.** For meaning, see s. 189 (1), *post*, and s. 9 (3), *ante*.

**Any other person being an owner.** For definition of "owner", see s. 189 (1), *post*, whereunder there may be several "owners" of a house; the definition is quite different from that of "person having control" in s. 39 (2), *post*. See also s. 33 (1), *post*, whereunder certain owners may require the giving of notice to them of any proceedings in relation to a house.

**Notice in writing.** As to authentication, see s. 166 (2), *post*. "Writing" is defined in the Interpretation Act, 1889, s. 20 (24 Halsbury's Statutes (2nd Edn.) 222).

**Expiration of seven days from the service.** The reference to "service" indicates that the word "give" used earlier is equivalent to "serve"; as to modes of service, see s. 169 (1), *post*. It is submitted that "the expiration of seven days from the

service" of the notice means, for example, that if a notice is dated 30th January and received on 1st February, seven days must then elapse, and 9th February is the first day on which an offence might occur.

**Workman or contractor.** The terms seem to refer to servants and independent contractors respectively. An offence under this subsection is committed where:

- (i) a notice has been served on the person having control;
- (ii) seven days have expired after service;
- (iii) a workman, or a contractor, employed by the local authority is carrying out works in the house;
- (iv) there is in the house, for the purpose of carrying out any works, the person having control, or a workman employed by him, or a workman employed by a contractor employed by him; and
- (v) the person having control cannot prove the urgent necessity of carrying out the works to obviate danger to the occupants.

Similarly, an offence may arise where notice has also been served on any other person as owner, if that owner is in the house, for the purpose mentioned, or his workmen, or his contractors' workmen.

Thus it would seem desirable, if the local authority have cause to think there will be obstruction, to serve all persons interested as owners with notice under this subsection (so as to avoid doubt as to the person by whom any workmen are employed) and to serve all such persons at the same time (to avoid doubt as to when the seven days expire).

**Deemed to be obstructing.** Cf. s. 160, *post*, as to obstructing the execution of this Act; but note that the present subsection provides its own penalty. It is difficult to see, therefore, why any reference to obstruction is necessary in this subsection, unless it is to simplify the statement of the offence in laying an information. See also s. 161, *post*, as to obtaining an order to permit the carrying into effect of the provisions of this Part (Part II) of the Act.

**Summary conviction.** Cf. the note to s. 8, *ante*.

**Twenty pounds.** The penalty is the same as that provided by s. 160, *post*. As to imprisonment in certain circumstances, see the Magistrates' Courts Act, 1952, s. 64 and Third Schedule (32 Halsbury's Statutes (2nd Edn.) 470, 526).

**Unless he proves.** The onus of proving the "urgent necessity" is thus cast on the defendant. It seems he need only establish a balance of probabilities in his favour, *i.e.*, the burden on him resembles that in civil cases, and is not the same as that which rests generally on the prosecution in criminal cases.

### Sub-s. (3).

**Expenses incurred.** The authority should be careful to limit their demand to expenses reasonably and *bona fide* incurred in carrying out the works specified in the notice under s. 9, *ante*, or in the notice as varied on appeal; cf. *London County Council v. Harling Street*, [1935] 2 K.B. 322; Digest Supp.

**With interest.** See sub-s. (6), *supra*.

**Demand for the expenses.** As to authentication, see s. 166 (2), *post*. In *West Ham Corporation v. Benabo (Charles) & Sons*, [1934] 2 K.B. 253; Digest Supp., it was held that the authority were not entitled to succeed in an action for the recovery of expenses under the corresponding section of an earlier Act because there had been no *valid* demand for payment. The demands were invalid for two reasons:—(a) they were not signed by the Town Clerk; (b) they did not specify the sums spent on each of the houses concerned. As to (a), cf. *Becker v. Crosby Corporation*, [1952] 1 All E.R. 1350; 3rd Digest Supp., in which a notice to quit, served by the authority, was held to be invalid because it was not signed by the Town Clerk, and there was no evidence that the housing manager (who in fact signed the notice) was his lawful deputy.

In *Benabo v. Wood Green Borough Council*, [1945] 2 All E.R. 162; 2nd Digest Supp., the local authority served notice on an appellant under s. 9 of the 1936 Act calling on him to repair. On his default the authority did the work and served a demand for recovery under s. 10 of the 1936 Act. The appellant refused to pay, contending that the house was let as two separate tenements and should have been treated as two separate houses and that he had not been served with particulars of the expense incurred and had had no opportunity of challenging the amount. *Held*, that the notice was good as the building was one house though it might be two dwellings for the purposes of the Rent Acts or Rating Acts. The items in the account should have been challenged by appeal (see now s. 11, *post*). If such a right is not exercised it cannot be raised in proceedings under the present section.

**Summarily as a civil debt.** The procedure to recover as a civil debt is by complaint to a magistrates' court, and such court is authorised to make an order for the payment; see the Magistrates' Courts Act, 1952, s. 50 (32 Halsbury's Statutes (2nd Edn.) 460). As to time limit, see *ibid.*, s. 104, and sub-s. (4), *supra*. The court may not issue a warrant for the arrest of the defendant if he fails to appear (Magistrates' Courts Act, 1952, s. 47 (8)), and may only commit to imprisonment in default of payment or distress where it can be proved that the defendant has means to pay, or has

had means since the date of the order for payment (Magistrates' Courts Act, 1952, s. 73). See also the Magistrates' Courts Rules, 1952 (S.I. 1952 No. 2190), rr. 42, 43 and 48; 13 Halsbury's Statutory Instruments, title Magistrates (Part I).

**Provided that, etc.** This important proviso, enacted for the protection of agents and trustees, should be carefully noted. It limits the liability of agents and trustees who are persons having control of houses as defined in s. 39 (2), *post*, and meets the difficulty pointed out in *Watts v. Battersea Borough Council*, [1929] 2 K.B. 63; Digest Supp.

**Sub-s. (4).**

**Time within which.** See the Magistrates' Courts Act, 1952, s. 104 (32 Halsbury's Statutes (2nd Edn.) 503) (six months). *Semble*, this time limit will apply also to High Court or county court actions; see *Tottenham Local Board v. Rowell* (1876), 1 Ex. D. 514 C.A.; 26 Digest 535, 2344.

**Demand becomes operative.** See s. 37 (1), *post*. For the right of appeal, see s. 11 (1) (b), *infra*.

**Sub-s. (5).**

**By order.** For prescribed form, see Form No. 5 in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), made under s. 178, *post*.

For right of appeal against orders under sub-s. (5), see s. 11 (1) (c), *infra*, and for the date of operation of such orders, see s. 37 (1), *post*.

As to making an order after abortive proceedings under sub-s. (3), see *Salford Corporation v. Hale*, [1925] 1 K.B. 503, C.A.; 38 Digest 215, 496.

**With interest.** See sub-s. (6), *supra*.

**Sub-s. (6).**

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**By order.** At the time of going to press no order has been made under sub-s. (6) of this section. By virtue, however, of s. 191 (2), *post*, the Housing (Rate of Interest) Order, 1956 (S.I. 1956 No. 1467), has effect as if made under that subsection. That order fixes the rate of interest at 5½ per cent. per annum, as respects demands under sub-s. (3), or orders under sub-s. (5), served on or after 1st October 1956. The orders fixing the rates of interest as respects demands or notices served at earlier dates are S.R. & O. 1925 No. 866, 1930 No. 930, 1934 No. 558, 1939 No. 662, and 1947 No. 445, and S.I. 1952 No. 772 and 1955 No. 1874.

**Statutory instrument.** See, generally, the Statutory Instruments Act, 1946 (36 Statutes Supp. 95; 24 Halsbury's Statutes (2nd Edn.) 440).

**Sub-s. (7).**

**Charge on the premises.** This charge must be registered in the local land charges register under s. 15 of the Land Charges Act, 1925 (20 Halsbury's Statutes (2nd Edn.) 1088). The charge created by the corresponding provision of the Housing Act, 1925, was held to be a charge upon the entirety of the interests of the premises (*Paddington Borough Council v. Finucane*, [1928] Ch. 567; Digest Supp.), and to rank in priority to a perpetual yearly rent-charge thereon, whether such rent-charge was created by grant or reservation (*Bristol Corporation v. Virgin*, [1928] 2 K.B. 622; Digest Supp.). In proceedings to enforce the charge it was held that it was sufficient if in the first place the rack-rent owner was brought before the court and there was no obligation upon the local authority to make inquiries to ensure that all the persons interested were before the court; see *Paddington Borough Council v. Finucane*, *supra*. See also *Payne v. Cardiff Rural District Council*, [1932] 1 K.B. 241; Digest Supp., and *Bromley Rural District Council v. Brooker*, [1934] W.N. 237.

**Law of Property Act, 1925.** See ss. 99–101 of that Act (20 Halsbury's Statutes (2nd Edn.) 641–662).

**Sub-s. (8).**

**One month from . . . service . . . of a demand.** See the General Note, *supra*, as to the situation which may arise if there is an appeal against the demand.

**11. Right of appeal.—(1) Any person aggrieved by—**

- (a) a notice under the foregoing provisions of this Part of this Act requiring the execution of works,
  - (b) a demand for the recovery of expenses incurred by a local authority in executing works specified in any such notice,
  - (c) an order made by a local authority with respect to any such expenses,
- may, within twenty-one days of the service of the notice, demand or order, appeal to the county court within the jurisdiction of which the premises to which the notice, demand or order relates are situate, and no proceedings

shall be taken by the local authority to enforce any notice, demand or order in relation to which an appeal is brought before the appeal has been finally determined.

(2) On an appeal under paragraph (b) or paragraph (c) of the foregoing subsection no question shall be raised which might have been raised on an appeal against the original notice requiring the execution of works.

(3) On an appeal to the county court under this section the judge may make such order either confirming or quashing or varying the notice, demand or order as he thinks fit and where the judge allows an appeal against a notice requiring the execution of works to a house, he shall, if requested by the local authority so to do, include in his judgment a finding whether the house can or cannot be rendered fit for human habitation at a reasonable expense.

### NOTES

**History.** Sub-s. (1) contains provisions formerly in s. 15 (1) (a)-(c) of the Housing Act, 1936; sub-s. (2) contains provisions formerly in proviso (i) to s. 15 (1) of that Act; and sub-s. (3) contains provisions formerly in s. 15 (2) (a) and (b) of that Act. The provisions of s. 15 (3)-(5) of the 1936 Act, so far as relevant for present purposes, will now be found reproduced in ss. 37 and 38, *post*. As to other provisions of the present Act derived from s. 15 of the Act of 1936, or that section applied by later Acts, see the Table of Repeals and Replacements (Appendix I, *post*).

**General Note.** This is the first of several sections, in the present Act, all derived from s. 15 of the Act of 1936, conferring a right of appeal to the county court against notices, demands, orders, etc., under this Part (Part II) of the Act; see also s. 72 (3) in Part III and s. 90 (3) in Part IV, *post*, dealing with obstructive buildings and the overcrowding of houses let in lodgings, respectively.

**Grounds of appeal under this section.** The following general grounds of appeal are suggested. They should be supplemented with any more particular grounds available. It is customary to add, to cover any matter overlooked, a further general ground to the effect that "the authority have acted unreasonably". As to the repeal of certain local Act provisions, see s. 4 (2), *ante*.

A. Against a "repairs" notice (s. 9, *ante*, and sub-s. (1) (a), *supra*):—

- (1) That the building in question is not a house [alternatively in the case of a notice under s. 9, *ante*, as applied by s. 18 (1), *post*, that the premises are not a part of a building or underground room as mentioned in that subsection].
- (2) That the house is not unfit.
- (3) The specified works in the notice are excessive or unreasonable or are not the proper method of dealing with the house.
- (4) That the specified works do not relate to matters relevant to unfitness under s. 4 or s. 5, *ante*. [See *Cochrane v. Chanctonbury Rural District Council*, [1950] 2 All E.R. 1134, C.A.; 2nd Digest Supp.]
- (5) That the house cannot be made fit at reasonable expense. [See s. 39 (1), *post*; and note sub-s. (3), *supra*, and s. 12, *post*.]

B. Against a local authority's demand for recovery of expenses (s. 10 (3), *ante*, and sub-s. (1) (b), *supra*):—

- (1) That the repairs notice (or that notice as varied by the court) was complied with.
- (2) That the authority's expenses arise from works different from those specified in the notice (or in the notice as varied by the court).
- (3) That the expenditure incurred was unreasonable.
- (4) That the appellant is neither the person having control nor a principal or beneficiary liable under s. 10 (3), and is therefore not liable to pay.
- (5) That the appellant is an agent or trustee whose liability is limited under s. 10 (3), proviso, and he is not liable to pay any part of the sum demanded (alternatively, any more than the sum of £. . ., the moneys he has, or has had, in his hands).

C. Against an order with respect to the local authority's expenses (s. 10 (5), *ante*, and sub-s. 1 (c), *supra*):—

- (1) That the repairs notice (or that notice as varied by the court) was complied with.
- (2) That the authority's expenses arise from works different from these specified in the notice (or in the notice as varied by the court).
- (3) That the expenditure incurred was unreasonable.
- (4) That the expenses ought not to be declared recoverable by instalments.
- (5) That the terms of the order are unreasonable [here specify the matters complained of, e.g., the period for repayment is too short, the instalments should be weekly, not monthly, or as the case may be].
- (6) That the effect of the order would be unjust as between owner and occupier.

**Sub-s. (1).**

**Person aggrieved.** On the meaning of this expression see, generally, *Re Sidebotham, Ex parte Sidebotham* (1880), 14 Ch.D. 458, C.A.; 4 Digest 225, 2114; *R. v. London Quarter Sessions, Ex parte Westminster Corporation*, [1951] 1 All E.R. 1032; 2nd Digest Supp.; *R. v. Surrey Quarter Sessions, Ex parte Lilley*, [1951] 2 All E.R. 659; 2nd Digest Supp.; *R. v. Nottingham Quarter Sessions, Ex parte Harlow*, [1952] 2 All E.R. 78; 3rd Digest Supp.; and *R. v. Lancashire Quarter Sessions Appeal Committee, Ex parte Huyton-with-Roby Urban District Council*, [1954] 3 All E.R. 225; 3rd Digest Supp.

Under the present section, the term extends, it is submitted, firstly to persons served with the notice under s. 9, *ante*, or the demand or order under s. 10 (3) or (5), *ante*. This is subject, however, to sub-s. (2), *supra*, limiting the matters which may be raised under sub-s. (1) (b) and (c). Particularly in view of this limitation, and of the decision in *Benabo v. Wood Green Borough Council*, [1945] 2 All E.R. 162; 2nd Digest Supp., an appellant under sub-s. (1) (b) or (c) may be precluded from arguing matters arising out of the original s. 9 notice, although he may not have been served therewith. To some extent an owner can protect himself in advance against this possibility by giving notice to the authority of his interest in the house under s. 33 (1), *post*. *Quaere*, whether the term "person aggrieved" does not, secondly, extend to persons not served with a notice, demand or order, but who will be directly affected thereby.

**Notice under the foregoing provisions.** See s. 9, *ante*. Separate provision for appeal against notices under s. 36, *post*, is made by s. 36 (2). Under s. 18 (1), *post*, the local authority may take "the like proceedings", under the "foregoing provision of this Part [Part II] of the Act", in respect of certain parts of a building or underground rooms, as they are empowered to take in relation to a house. This, it is considered, includes power to serve a repairs notice under s. 9, *ante*, in respect of such premises, although not "a house". When this is done, it is submitted, the notice is to be regarded as one served under s. 9, *ante*, and therefore within the scope of the present section (although s. 18 itself comes after the present section).

For the purposes of this section a notice under s. 1 of the Housing (Emergency Powers) Act, 1939, is not to be deemed a notice requiring the execution of works; see s. 2 (4) of the Act of 1939 (7 Statutes Supp. (2nd Edn.) 82; 11 Halsbury's Statutes (2nd Edn.) 626) and s. 191 (4), *post*.

**A demand.** See s. 10 (3), *ante*.

**An order.** See s. 10 (5), *ante*.

**Within twenty-one days.** The date of service is not to be reckoned; see *Goldsmiths' Co. v. West Metropolitan Rail. Co.*, [1904] 1 K.B. 1, C.A.; 42 Digest 950, 237; and *Stewart v. Chapman*, [1951] 2 All E.R. 613; 2nd Digest Supp. Note that under s. 9 (2), *ante*, persons other than the person having control of the house may also have been served, perhaps on different dates. Sub-ss. (3) and (5) of s. 10, *ante*, do not specifically state the persons to be served thereunder, but a number of persons may be involved.

**Appeal to the county court.** For provisions as to appeals to the county court, see s. 38, *post*; and as to the date of operation of notices, demands and orders subject to appeal, see s. 37, *post*.

If the notice, demand or order, is bad there is no need to appeal. *E.g.*, if the document is not authenticated as required by s. 166, *post*, s. 37 (1), *post*, will not operate to make it final and conclusive evidence of the matter which could be raised on an appeal against a valid document; see *West Ham Corporation v. Benabo (Charles) & Sons*, [1934] 2 K.B. 253; Digest Supp., cited in the notes to s. 10, *ante*.

**No proceeding shall be taken.** See, however, the General Note to s. 10, *ante*, referring to the appointment of a receiver as mentioned in s. 10 (7), (8).

**Finally determined.** See s. 37 (2), *post*.

**Sub-s. (2).**

**No question shall be raised.** Cf. *Benabo v. Wood Green Borough Council*, cited in the note "Person aggrieved", *supra*.

**Sub-s. (3).**

**Judge may make such order.** If a notice under s. 9, *ante*, is excessive in its requirements the judge is not bound to amend it by substituting other or lesser requirements; it may be quashed *in toto*; see *Cochrane v. Chancetonbury Rural District Council*, [1950] 2 All E.R. 1134, C.A.; 2nd Digest Supp. The judge may completely review the local authority's decision to serve a s. 9 notice (see *Fletcher v. Ilkestone Corporation* (1931), 96 J.P. 7, C.A.; Digest Supp.); *e.g.*, he may decide the house is not unfit, or on the other hand he may think the expense of the works unreasonable on the test in s. 39 (1), *post*, and in either case would quash the notice. In the case of a demand for expenses, it is submitted, the judge may review the expenditure incurred to see whether it properly and reasonably relates to the works specified; cf. *London County Council v. Harling Street*, [1935] 2 K.B. 322; Digest Supp. (but see *Benabo v. Wood Green Borough Council*, as reported in [1945] 2 All E.R. 162).

**Finding whether the house can . . . be rendered fit.** If the judge finds the house cannot be rendered fit at reasonable expense, within the meaning of ss. 4 and 5, *ante* (as to fitness), and s. 39 (1), *post* (as to expense), the local authority may persist in their own view and buy the house under s. 12, *infra*. If they so purchase compulsorily, it will be their duty to carry out the works specified in their notice. The judge determines the point on all the facts as he finds them at the date of the hearing; see *Leslie Maurice & Co., Ltd. v. Willesden Corporation*, [1953] 1 All E.R. 1014, C.A.; 3rd Digest Supp.

As to the meaning of "house", see s. 189 (1), *post*, s. 9 (3), *ante*, and the note, *supra*, on the words "Notice under the foregoing provisions", referring to s. 18 (1), *post* (parts of buildings and underground rooms).

**12. Power of local authority to buy house found on appeal not to be capable of repair at reasonable cost.**—(1) Where a person has appealed against a notice under this Part of this Act requiring the execution of works to a house, and the judge or court in allowing the appeal has found that the house cannot be rendered fit for human habitation at a reasonable expense, the local authority may purchase that house by agreement or may be authorised by the Minister to purchase it compulsorily; and the First Schedule to this Act shall apply in relation to a compulsory purchase under this section.

(2) The Minister shall not confirm an order for the compulsory purchase of a house under this section unless the order is submitted to the Minister within six months after the determination of the appeal and if any person being an owner or mortgagee of the house undertakes to carry out to the satisfaction of the Minister, within such period as the Minister may fix, the works specified in the notice against which the appeal was brought, the Minister shall not confirm the compulsory purchase order unless that person has failed to fulfil his undertaking.

(3) If the local authority purchase the house compulsorily they shall forthwith execute all such works as were specified in the notice against which the appeal was brought.

(4) The compensation to be paid for a house purchased compulsorily under this section shall be the value, at the time when the valuation is made, of the site as a cleared site available for development in accordance with the requirements of the building byelaws for the time being in force in the district, but the payment of compensation on a compulsory purchase in pursuance of this section shall be without prejudice to the making of such payment, if any, in respect of the compulsory purchase as is authorised by sections thirty and thirty-one of this Act.

#### NOTES

**History.** Sub-s. (1) contains provisions formerly in s. 16 (1) to (3) of the Housing Act, 1936, as affected by the Acquisition of Land (Authorisation Procedure) Act, 1946; sub-s. (2) contains provisions formerly in s. 16 (2) of the Act of 1936; sub-s. (3) contains provisions formerly in s. 16 (1) of that Act; and sub-s. (4) contains provisions formerly in s. 16 (4) of that Act as amended by s. 113 (2) of, and Part II of the Ninth Schedule to, the Town and Country Planning Act, 1947, and affected by the Slum Clearance (Compensation) Act, 1956.

**General Note.** The object of this section is to allow the local authority to "back to the last ditch" their original opinion that the house is capable, at reasonable expense, of being rendered fit for human habitation, although the judge in court has found that this cannot be done. To this end the authority may buy the house by agreement or compulsorily.

If the authority buy compulsorily the compensation will be at site value (sub-s. (4), *supra*) with the possibility of further payments under s. 30, *post*, for good maintenance, or under s. 31, *post*, importing the provisions of Part II of the Second Schedule. If the authority buy compulsorily they will have to carry out the works (sub-s. (3), *supra*).

**Sub-s. (1).**

**Has appealed.** See s. 11, *ante*.

**Notice . . . requiring the execution of works.** See s. 9, *ante*.

**House.** For meaning, see s. 189 (1), *post*, and s. 9 (3), *ante*; and cf. s. 18 (1), *post*.

**Judge . . . has found.** See s. 11 (3), *ante*.

**Rendered fit . . . at a reasonable expense.** Cf. the notes to s. 11 (3), *ante*, and see ss. 4 and 5, *ante*, and s. 39 (1), *post*.

**Local authority.** See s. 1, *ante*, and s. 41, *post*.

**Purchase that house.** As to purchases by agreement or compulsorily, see generally Chapter 2 of the Introduction, at pp. 6, 7, *ante*. As to compulsory purchases, note that the procedure is that of the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 4; 3 Halsbury's Statutes (2nd Edn.) 1064), applied for this purpose by para. 1 (1) of the First Schedule, *post*. As to compensation, see sub-s. (4), *supra*; and note ss. 30 and 31, *post*, there referred to, relating to well-maintained houses, certain owner-occupied and business premises, and also s. 32, *post*, relating to discretionary payments to persons displaced.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.  
**Sub-s. (2).**

**Confirm.** See the Acquisition of Land (Authorisation Procedure) Act, 1946, First Schedule, Part I, para. 4 (39 Statutes Supp. 16; 3 Halsbury's Statutes (2nd Edn.) 1076).

**Within six months.** Cf. the cases cited in the note "Within twenty-one days", to s. 11 (1), *ante*.

**Determination of the appeal.** For the meaning of the "final determination" of an appeal, see s. 37 (2), *post*.

**Owner.** For meaning, see s. 189 (1), *post*.

**Unless that person has failed.** In order to operate this part of the subsection, the Minister will presumably delay his formal decision on the compulsory purchase order while the person is afforded his opportunity to carry out the works; *i.e.*, during the period fixed by the Minister. *Semble*, the Minister may extend the time; see the Interpretation Act, 1889, s. 32 (24 Halsbury's Statutes (2nd Edn.) 225), whereunder statutory powers and duties may be exercised from time to time as occasion requires. Thus if the period fixed proves too short, it is suggested the Minister may fix another.

**Sub-s. (3).**

**Forthwith.** On the meaning of this word, cf. *Re Southam, Ex parte Lamb* (1881), 19 Ch.D. 169 at p. 173; 4 Digest 532; 4876; *Re Muscovitch, Ex parte Muscovitch*, [1939] 1 All E.R. 135 at p. 139; Digest Supp.; and *Brown v. Bonnyrigg and Lasswade Magistrates*, [1936] S.C. 258; Digest Supp.

**Sub-s. (4).**

**The compensation, etc.** The Lands Clauses Acts are incorporated for the purposes of this section by virtue of the First Schedule, *post*, and the Acquisition of Land (Authorisation Procedure) Act, 1946, subject to the modifications made by this Act, by the 1946 Act, and by other statutes; see Chapter 2 of the Introduction, p. 5, *ante*. The present subsection resembles s. 59 (2), *post*, in providing for compensation at site value.

**At the time when the valuation is made; as a cleared site; available for development.** See the notes to similar words in s. 59 (2), *post*.

**Building byelaws.** For meaning, see s. 189 (1), *post*.

**13. Recovery by lessees of proportion of cost of execution of works.**—(1) Where any person who incurs expenditure in complying with a notice under the foregoing provisions of this Part of this Act requiring the execution of works or in defraying expenses incurred by a local authority under those provisions in carrying out such works, is a lessee of the house or the agent of such a lessee, the lessee may recover from the lessor under the lease such part (if any) of that expenditure as may, in default of agreement between the parties, be determined by the county court to be just having regard—

- (a) to the obligations of the lessor and the lessee under the lease with respect to the repair of the house,
- (b) to the length of the unexpired term of the lease,
- (c) to the rent payable under the lease, and
- (d) to all other relevant circumstances.

(2) Where a person from whom any sum is recoverable under the foregoing subsection is himself a lessee of the house, the provisions of that subsection shall apply as if any sum so recoverable from him were expenditure as mentioned in that subsection.

(3) The foregoing provisions of this section shall not apply in relation to any expenditure in respect of which a charging order is in force under this Part of this Act, or in respect of which an application for such an order is for the time being pending.

(4) In this section "lease" includes an under-lease and any tenancy or agreement for a lease, under-lease or tenancy, and the expressions "lessee" and "lessor" shall be construed accordingly.

### NOTES

**History.** This section contains provisions formerly in s. 10 of the Housing Repairs and Rents Act, 1954.

**General Note.** This section is subject to s. 14, *post*, as to charging orders; see sub-s. (3), *supra*. It enables a lessee to recover, by agreement, or when it seems just to the court, part of any expenditure (1) incurred by the lessee in complying with a "repairs" notice under s. 9, *ante*, or (2) incurred by the local authority under s. 10, *ante*, and defrayed by the lessee.

The present Act unfortunately contains a number of potentially conflicting provisions about the ultimate incidence of such expenditure. For example, an owner who has completed works is entitled under s. 14 (2), *post*, to a charging order providing for an annuity resembling a rentcharge, binding the premises. Thereunder, it seems, the occupier for the time being, during the term of thirty years, has to pay an annual sum to repay the owners' expenses and costs; see the notes to ss. 14 and 15, *post*. On the other hand, if the works are carried out by the local authority, their expenses are recoverable from the person having control (or his principal or beneficiary, if he is an agent or trustee, or in part from each); see s. 10 (3), *ante*. The effect of an order under s. 10 (5), *ante*, is to make such expenses recoverable from any owner or occupier, without making any provision for ultimate liability as between owners, but relieving the occupier by authorising him to recoup any sums recovered from him by deduction from the rent.

#### Sub-s. (1).

**Any person who incurs expenditure in complying with a notice.** See s. 9, *ante*, as to service of a "repairs" notice on the person having control of a house. Under s. 9 (2) other persons having an interest in the house may also be served. The person having control may not himself have any interest in the house, as the definition in s. 39 (2), *post*, can apply, for example, to a rent collector, solicitor, agent or trustee. The present section, it is submitted, will apply to any lessee who has actually incurred expenditure in doing the works, whether or not he was himself served with the "repairs" notice. Note that under s. 164, *post*, any person interested may be empowered to do works where premises are, *inter alia*, unfit for human habitation; and s. 163, *post*, specifically provides for one "owner" (as defined in s. 189 (1), *post*) executing works, on default of another owner, where, *inter alia*, a notice has been served under s. 9, *ante*. Where the person who incurred expenditure is an owner, note sub-s. (3), *supra*, and ss. 14, 15, *post*, as to charging orders.

**Or in defraying expenses.** The local authority may incur such expenses under s. 10 (1), *ante*. Presumably a person will be regarded as having "defrayed" such expenses where moneys have been recovered from him on demand under s. 10 (3), *ante*, or he has paid an instalment pursuant to an order under s. 10 (5), *ante*. *Semble*, the deduction of money from rent under s. 10 (5), or the exercise of the authority's powers under the statutory charge created by s. 10 (7) and (8), *ante*, might also be regarded as "defraying" the authority's expenses.

**Local authority.** See s. 1, *ante*, and s. 41, *post*.

**Lessee.** See sub-s. (4), *supra*.

**House.** See s. 189 (1), *post*, for definition of "house". *Quaere*, whether the present section applies to parts of buildings or underground rooms mentioned in s. 18 (1), *post*.

**Agent.** Cf. the definition of person having control in s. 39 (2), *post*, and s. 10 (3) proviso, *ante*.

**May recover.** Presumably by action in any court having jurisdiction for the amount involved. No other means is provided, and it is thought the amount could not, save by agreement, be set off against rent. Note that a person from whom any sum is recoverable under this subsection, if he is himself a lessee, may avail himself of this subsection as against his own landlord; see sub-s. (2), *supra*.

**Obligation . . . under the lease.** Cf. s. 33 (2), *post*. When the lease is silent as to the responsibility for repair, the court may have regard, it seems, as a "relevant circumstance", to whether either party had in fact done some repairs before the notice was served.

**Other relevant circumstances.** It is not clear what is relevant and what is not. Presumably the relevant circumstances might include the age and character of the property, but might be held not to include the personal and financial circumstances of the parties.

#### Sub-s. (3).

**Charging order.** See ss. 14 and 15, *post*.

**14. Charging orders in favour of owner executing works.**—(1) Where any owner has completed in respect of a house any works required to be executed by a notice of a local authority under this Part of this Act, he may apply to the local authority for a charging order.

(2) An applicant for a charging order under this section shall produce to the local authority the certificate of their surveyor or engineer that the works have been executed to his satisfaction, and accounts of and vouchers for the expenses of the works; and the local authority, when satisfied that the owner has duly executed the required works, and of the amount of the expenses, and of the costs properly incurred in obtaining the charging order, shall make an order accordingly charging on the house an annuity to repay the amount.

(3) The annuity charged shall be a sum of six pounds for every one hundred pounds of the said amount and so in proportion for any less sum, and shall commence from the date of the order, and be payable for a term of thirty years to the owner named in the order, his executors, administrators, or assigns.

(4) Copies of the charging order and of the certificate of the surveyor or engineer, and of the accounts as passed by the local authority, certified to be true copies by the clerk to the authority, shall within six months after the date of the order be deposited with the clerk of the peace of the county in which the house is situate, and be by him filed and recorded.

(5) Any person aggrieved by a charging order made by a local authority under this section may appeal to Quarter Sessions against the order by a notice of appeal given within one month after notice of the charging order has been served upon him, and where a notice of appeal is so given, no proceedings shall be taken under the order until the appeal is determined or ceases to be prosecuted.

(6) Section thirty-one of the Summary Jurisdiction Act, 1879, and section eighty-four of the Magistrates' Courts Act, 1952 (which relate to appeals from courts of summary jurisdiction to courts of quarter sessions), shall apply in relation to an appeal under this section with the necessary modifications as if the charging order were an order of a magistrates' court.

(7) A court of quarter sessions to which an appeal is brought under this section shall, at the request of either party to the appeal, state the facts in the form of a special case for the opinion of the High Court.

#### NOTES

**History.** This section contains provisions formerly in s. 20 of the Housing Act, 1936.

**General Note.** This section enables an owner who has carried out works, required to be executed by a "repairs" notice under s. 9, *ante*, to obtain repayment under a charging order. This provides for a charge on the premises, resembling a rentcharge, to secure an annual payment of six per cent. of the owner's expenses and costs, over thirty years. It may be redeemed at any time as provided in s. 15 (5), *post*.

When an order has been made under this section, or an application for such an order is pending, a lessee's right to a contribution from his lessor under s. 13, *ante*, is excluded by s. 13 (3).

**Sub-s. (1).**

**Any owner.** For definition of "owner", see s. 189 (1), *post*. See also ss. 163, 164, *post*.

**Works required . . . by a notice.** See s. 9, *ante*.

**Local authority.** See s. 1, *ante*, and s. 41, *post*.

**Charging order.** As to prescribed form, see s. 15 (1) and notes thereto, *post*.

**Sub-s. (2).**

**When satisfied.** Cf. the note "Satisfied" to s. 9 (1), *ante*. Under the present subsection there is no appeal against a refusal to make a charging order; but its provisions are mandatory. If the authority are satisfied, they "shall" make an order. *Semble*, this duty may be enforceable by *mandamus*.

**The amount.** Note that this amount, on which the annuity is based, includes the owner's costs in obtaining the order as well as his expenses in doing the works.

**Charging on the house.** Subject to certain charges having priority under s. 15 (1), *post*, the charge binds all existing and future estates, interests and encumbrances.

In other words it binds the land itself; see *Hyde v. Berners* (1889), 53 J.P. 453; 38 Digest 215, 493. Cf. the cases cited in the notes to s. 10 (7), *ante*. In *Hyde v. Berners*, *supra*, it was held that the tenant in possession was the person from whom the annuity was recoverable. Cf. also *Holborn & Frascati, Ltd. v. London County Council* (1916), 80 J.P. 225; 31 Digest (Repl.) 338, 4712.

**Sub-s. (3).**

**The said amount.** *I.e.*, of the owner's expenses and his costs in obtaining the order; see sub-s. (2), *supra*.

**Sub-s. (4).**

**Certified . . . by the clerk.** *Quaere*, whether the clerk's lawful deputy may sign; see s. 166 (2), *post*.

**Within six months.** Cf. the note "Within twenty-one days" to s. 11 (1), *ante*.

**Sub-s. (5).**

**Person aggrieved.** See cases cited in the notes to s. 11, *ante*.

**May appeal to Quarter Sessions.** Note that this subsection assumes that notice of the order will have been served on the appellant. The scope of the appeal is perhaps indicated by sub-s. (2), *supra*, showing which documents are to be deposited; presumably an appellant can challenge the contents of these documents, *e.g.*, the accounts accepted by the local authority. See also s. 15, *infra*, as to the effect of an order, *e.g.*, it is conclusive evidence of the validity of the charge (s. 15 (2), *infra*).

**Within one month.** See also s. 84 of the Magistrates' Courts Act, 1952 (applied by sub-s. (6), *supra*), as to extension of time.

**Sub-s. (6).**

**Necessary modifications.** Note that sub-s. (5), *supra*, allows one month for giving notice of appeal.

**Summary Jurisdiction Act, 1879, s. 31.** 14 Halsbury's Statutes (2nd Edn.) 869.

**Magistrates' Courts Act, 1952, s. 84.** 32 Halsbury's Statutes (2nd Edn.) 486.

**Sub-s. (7).**

**Shall . . . state . . . a special case.** In civil cases, quarter sessions normally have a complete discretion as to whether or not they will state a case for the opinion of the High Court; see *R. v. Somerset Justices, Ex parte Cole (Ernest J.) & Partners, Ltd.*, [1950] 1 All E.R. 264; [1950] 1 K.B. 519; 2nd Digest Supp. In criminal cases, coming to quarter sessions on appeal from a conviction before a magistrates' court, they may be ordered to state a case by virtue of s. 20 of the Criminal Justice Act, 1925 (14 Halsbury's Statutes (2nd Edn.) 944).

Appeals under the present section are civil proceedings, but the present subsection compels quarter sessions to state a case at the request of either party. Appeals by way of special case are heard by the Queen's Bench Divisional Court; see the Supreme Court of Judicature (Consolidation) Act, 1925, s. 25 (5 Halsbury's Statutes (2nd Edn.) 353), and R.S.C. Ord. 59, rr. 30-32.

**15. Form, effect, etc., of charging orders.**—(1) Every charge created by a charging order under this Part of this Act shall be in such form as the Minister may prescribe, and shall be a charge on the premises specified in the order having priority over all existing and future estates, interests and incumbrances, with the exception of—

- (a) tithe commutation rent charge, and
- (b) any charge on the premises created or arising under any provision of the Public Health Act, 1875, the Public Health Act, 1936, or the Public Health (London) Act, 1936, or under any provision in any local Act authorising a charge for recovery of expenses incurred by a local authority; and
- (c) any charge created under any Act authorising advances of public money;

and where more charges than one are charged under this Part of this Act on any premises such charges shall, as between themselves, take order according to their respective dates.

(2) A charging order shall be conclusive evidence that all notices, acts, and proceedings by this Part of this Act directed with reference to, or consequent on, the obtaining of such an order or the making of such a charge, have been duly served, done, and taken, and that the charge has been duly created, and is a valid charge on the premises declared to be subject thereto.

(3) Every annuity charged by any such charging order may be recovered by the person for the time being entitled to it by the same means and in the like manner in all respects as if it were a rentcharge granted by deed out of the premises by the owner thereof.

(4) The benefit of any such charge may be from time to time transferred in like manner as a mortgage or rentcharge may be transferred; and any such transfer may be in such form as the Minister may prescribe.

(5) Any owner of, or other person interested in, premises on which an annuity has been charged by any such charging order shall at any time be at liberty to redeem the annuity on payment to the person entitled to the annuity of such sum as may be agreed upon, or in default of agreement determined by the Minister.

(6) Nothing in this section with respect to the priority or validity of charges thereunder shall be construed as affecting the application to any such charge of the provisions of the Land Charges Act, 1925, as amended by any subsequent enactment, or of the Yorkshire Registries Act, 1884, as so amended, and for the purposes of the last mentioned Act, every charging order under this Part of this Act which relates to a house in Yorkshire shall be registered in the manner in which a charge made by deed by the absolute owner of the premises would at the date of the order be required to be registered.

#### NOTES

**History.** This section contains provisions formerly in s. 21 of the Housing Act, 1936. Sub-s. (1), *supra*, omits para. (b) of s. 21 (1) of that Act, referring to quit rents and other charges having their origin in tenure; and in the present para. (b) (formerly para. (c) in s. 21 (1) of the 1936 Act) the language incorporates words from s. 188 (1) of that Act (not repealed by the present Act) defining the Public Health Acts.

**General Note.** This section contains provisions, supplemental to s. 14, *ante*, as to the form, effect, enforcement, transfer, redemption and registration of charging orders under that section.

#### Sub-s. (1).

**Charging order.** See s. 14, *ante*. Section 7 of the Housing Act, 1936, creating a further type of charging order under Part II of that Act, was repealed by the Housing Repairs and Rents Act, 1954.

**Such form as the Minister may prescribe.** For definition of "the Minister", see s. 189 (1), *post*. For the power to prescribe forms, see s. 178 (1), *post*. By virtue, however, of s. 191 (2), *post*, the form of charging order is that prescribed by the Housing Act (Form of Charging Order) Regulations, 1939 (S.R. & O. 1939 No. 563), printed in *Hill's Complete Law of Housing* (4th Edn.), p. 555, and *Lumley's Public Health*, (12th Edn.), Vol. VI, p. 1089. The annuity must be made payable over 30 years (see s. 14 (3), *ante*) despite the blank left in the prescribed form in the phrase "for the term of . . . . . years".

**Tithe commutation rent charge.** As to the extinguishment of tithe rentcharges, see the Tithe Act, 1936, s. 1 (25 Halsbury's Statutes (2nd Edn.) 297).

**Local authority.** For meaning, in this context, see s. 189 (2), *post*. As to the nature of local authority charges, and modes of recovery, see the cases cited in the notes to s. 10 (7), *ante*, and in the notes to s. 291 of the Public Health Act, 1936, in *Lumley's Public Health* (12th Edn.), Vol. III, pp. 2776 *et seq*.

**Act authorising advances of public money.** *E.g.*, the Small Dwellings Acquisition Act, 1899 (11 Halsbury's Statutes (2nd Edn.) 382), and the Housing (Financial Provisions) Act, 1958, s. 43 (Book II, *post*).

**Public Health Act, 1875.** See, especially, s. 257 of that Act (19 Halsbury's Statutes (2nd Edn.) 93).

**Public Health Act, 1936.** See, especially, s. 291 of that Act (19 Halsbury's Statutes (2nd Edn.) 469).

**Public Health (London) Act, 1936.** 15 Halsbury's Statutes (2nd Edn.) 887.

#### Sub-s. (3).

**Annuity . . . may be recovered.** Under s. 27 of the Artizans and Labourers Dwellings Act, 1868, which was similar to sub-s. (3), *supra*, it was held that the Act does not place the liability of the rentcharge on any person, but that the premises were charged with it, and that the tenant in possession is liable during the continuance of his estate (*Hyde v. Berners* (1889), 53 J.P. 453; 38 Digest 215, 493).

The holder of the rentcharge will be entitled to distrain (*Dodds v. Thompson* (1865), L.R. 1 C.P. 133; 18 Digest 262, 28). And an action will lie for arrears (*Thomas v.*

*Sylvester* (1873), L.R. 8 Q.B. 368; 39 Digest 205, 948; *Scottish Widows' Fund v. Craig* (1882), 20 Ch.D. 208; 39 Digest 203, 927; *Booth v. Smith* (1883), 47 J.P. 759; 39 Digest 206, 960; *Christie v. Barker* (1884), 53 L.J. Q.B. 537; 39 Digest 170, 611; *Booth v. Smith* (1884), 14 Q.B.D. 318; 39 Digest 170, 614; *Searle v. Cooke* (1890), 43 Ch.D. 519; 39 Digest 205, 954; *Pertwee v. Townsend*, [1896] 2 Q.B. 129; 39 Digest 206, 961; *Re Herbage Rents, Greenwich, Charity Commissioners v. Green*, [1896] 2 Ch. 811; 39 Digest 207, 966).

The Law of Property Act, 1925, s. 121 (20 Halsbury's Statutes (2nd Edn.) 691), provides that a rentcharge may be recovered by distress if unpaid for twenty-one days after the time appointed for payment; by entry and receipt of the rent and profits if unpaid for forty days; and in the like case by demise by deed to a trustee for a term of years on trust by mortgage, sale, or demise, for all or any part of the term of the land charged, or any part thereof, or by receipt of the income thereof, or by all or any of those means, or by any other reasonable means to raise and pay the annual sum, and any arrears thereof, and all costs and expenses.

Distress may be barred under the Limitation Act, 1939 (13 Halsbury's Statutes (2nd Edn.) 1159), if the rentcharge has not been paid for the statutory period (*Jones v. Withers* (1896), 74 L.T. 572; 32 Digest 418, 949). If the land falls into the possession of a company which is being wound up, see, as to the right of proof for arrears, *Re Blackburn and District Benefit Building Society, Ex parte Graham* (1889), 42 Ch.D. 343; 39 Digest 206, 964.

**Sub-s. (4).**

**Benefit . . . may be . . . transferred.** As to the transfer of mortgages, see ss. 114 and 118 of the Law of Property Act, 1925 (20 Halsbury's Statutes (2nd Edn.) 681, 689). No form of transfer has been prescribed by the Minister.

**Sub-s. (5).**

**Owner.** For definition, see s. 189 (1), *post*.

**Sub-s. (6).**

**House.** For definition, see s. 189 (1), *post*.

**Absolute owner.** *I.e.*, within the meaning of the Yorkshire Registries Act, 1884 (not the definition of "owner" in s. 189 (1), *post*).

**Land Charges Act, 1925.** See s. 10 (1) of that Act, as to Class A land charges (20 Halsbury's Statutes (2nd Edn.) 1076).

**Yorkshire Registries Act, 1884.** 20 Halsbury's Statutes (2nd Edn.) 1107.

*Unfit premises beyond repair at reasonable cost*

**16. Power of local authority to accept undertaking as to reconstruction or use of unfit house.**—(1) Where a local authority, on consideration of an official representation, or a report from any of their officers, or other information in their possession, are satisfied that any house—

- (a) is unfit for human habitation, and
- (b) is not capable at a reasonable expense of being rendered so fit,

they shall serve upon the person having control of the house, upon any other person who is an owner thereof, and, so far as it is reasonably practicable to ascertain such persons, upon every mortgagee thereof, notice of the time (being some time not less than twenty-one days after the service of the notice) and place at which the condition of the house and any offer with respect to the carrying out of works, or the future user of the house, which he may wish to submit will be considered by them.

(2) Every person upon whom such a notice is served under subsection (1) of this section shall be entitled to be heard when the matter is so taken into consideration.

(3) A person upon whom such a notice is served under subsection (1) of this section shall, if he intends to submit an offer with respect to the carrying out of works,—

- (a) within twenty-one days from the date of the service of the notice upon him, serve upon the authority notice in writing of his intention to make such an offer, and
- (b) within such reasonable period as the authority may allow, submit to them a list of the works which he offers to carry out.

(4) The local authority may if, after consultation with any owner or mortgagee, they think fit so to do, accept an undertaking from him, either that he will within a specified period carry out such works as will in the opinion of the authority render the house fit for human habitation, or that it shall not be used for human habitation until the authority, on being satisfied that it has been rendered fit for that purpose, cancel the undertaking.

(5) Nothing in the Rent Acts shall prevent possession being obtained of any premises by any owner thereof in a case where an undertaking has been given under this section that those premises shall not be used for human habitation.

(6) Any person who knowing that an undertaking has been given under this section that any premises shall not be used for certain purposes specified in the undertaking, uses those premises in contravention of the undertaking, or permits them to be so used, shall on summary conviction be liable to a fine not exceeding twenty pounds and to a further fine of five pounds for every day, or part of a day, on which he so uses them, or permits them to be so used, after conviction.

(7) In this section references to a house include references to a hut, tent, caravan or other temporary or moveable form of shelter which is used for human habitation and has been in the same inclosure for a period of two years next before action is taken under this Part of this Act.

#### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 11 (1) of the Housing Act, 1936, as amended by ss. 1 and 51 (4) of, and the First and Third Schedules to, the Housing Act, 1949. Sub-ss. (2) to (4) contain provisions formerly in s. 11 (1) to (3) of the Act of 1936. Sub-ss. (5), (6) and (7) contain respectively provisions formerly in ss. 156 (1) (d), 14 and 23 of that Act. The marginal note to s. 11 of the Act of 1936, "Power of local authority to order the demolition of insanitary house", referred particularly to sub-s. (4) thereof, now replaced by ss. 17 (1), 19 and 21, *post*. The requirement of a notice in writing under sub-s. (3) (a), *supra*, was introduced by s. 83 (1) (repealed) of the Housing Act, 1935, to meet the suggestion of the Court of Appeal in *Johnson's case*; see the notes to sub-s. (3), *infra*.

**General Note.** This section and ss. 17-32, *post*, are generally concerned with demolition order procedure, and a number of possible alternatives. Proceedings begun under this section may lead to (1) the making of a demolition order, under s. 17 (1), *post*, (2) the acceptance of an undertaking as to works or user under this section, (3) the purchase of the house under s. 17 (2), *post*, at site value where it is capable, or can be rendered capable, of providing "accommodation which is adequate for the time being", (4) the closing of the house where demolition is inexpedient, as mentioned in s. 17 (1) proviso, *post*, or (5) the closing of the house if it has architectural or historic interest, as mentioned in s. 17 (3), *post*.

The procedure of this section will be applied, under s. 18, *post*, where part of a building consists of unfit dwelling accommodation which cannot be rendered fit at a reasonable expense, and where certain underground rooms are treated as if they were unfit, by reason of their dimensions, etc., or non-compliance with regulations, and cannot be rendered fit at a reasonable expense. A somewhat similar procedure will be found in s. 72, *post* (obstructive buildings).

The procedure under the present section is as follows:

- (1) The matter is considered by the authority on the written representation of the medical officer of health or other report or information.
- (2) The authority come to the provisional decision that the house is unfit and cannot be rendered fit at a reasonable expense.
- (3) The authority serve notice, of the "time and place" of a meeting, on (a) the person having control, (b) every owner, and (c) so far as reasonably practicable to ascertain them, all mortgagees. The minimum period of notice is 21 days, but it is better to allow a longer time so that offers to carry out works, and lists of works offered under sub-s. (3) (b), can be received before the meeting.
- 4) Persons served with the notice should consider, and probably take expert advice, as to what they have to say about the condition of the house and as to what offer can be made as to carrying out works or as to the future user of the house. In the case of an offer of works, notice must be given to the authority within 21 days (however long the period in the notice of "time and place"), and, further, a list of works must be submitted. The authority must allow a reasonable time for submitting such a list; this is why it is suggested, *supra*, that the original notice of time and place should

allow a longer period than 21 days. If no notice is given of such an offer, or no list of works is submitted, under sub-s. (3), the county court judge will be unable to accept an offer as to works, on appeal under s. 20; see s. 20 (3), proviso, *post*.

- (5) The purpose of the meeting is to consider the condition of the house, and any offer as to carrying out works or as to future user. Every person served with notice of "time and place" is entitled to attend and be heard. The authority may accept an undertaking from an owner or mortgagee (i) that he will carry out works to render the house fit, or (ii) that the house will not be used for human habitation. In the latter case the undertaking is one that will be cancelled if and when the house is made fit; it somewhat resembles, but must not be confused with, a closing order under s. 17, *post*. The authority may also, it has been decided, accept an undertaking not precisely in either of the forms mentioned in sub-s. (4), *supra*, e.g., an offer to turn two unfit houses into one fit house. When considering offers of undertakings, the authority are no longer concerned about the reasonableness of the expense which an owner is willing to incur. They are not bound to accept any undertaking offered but, if they refuse, a person aggrieved may appeal under s. 20, *post* (subject, however, to s. 20 (3), proviso, when sub-s. (3), *supra*, has not been complied with) to the county court.

If no undertaking is offered, or one is offered but broken, the authority will make a demolition order, or take other action, under s. 17, *post*. It will be seen that demolition order procedure, under this section and ss. 17 *et seq.*, *post*, differs from "repairs notice" procedure under s. 9, *ante*, in that the present section provides a preliminary stage at which owners and mortgagees, and the person having control, are called into consultation with the local authority to discuss what should be done. Under s. 9, *ante*, the authority serve notice without the necessity of such discussions. It should also be noted that under s. 9 the authority will specify in sufficient detail in their notice the works which are to be executed and which in their opinion will render the house fit; but under the present section it is for persons served with notice of "time and place" to come forward, if they wish, with a list of works or other suggestions.

*Re-development and re-conditioning by owners.* The powers of the local authority under this section are subject to the provisions of ss. 68-71, *post*, as to re-development and re-conditioning by owners; see s. 40, *post*.

#### Sub-s. (1).

**Local authority.** See s. 1, *ante*, and s. 41, *post*.

**On consideration.** The local authority must approach the matter in a "judicial spirit" (cf. *Hall v. Manchester Corporation* (1915), 84 L.J. Ch. 732; 38 Digest 212, 470). Under the present section the authority's decision to serve notice of "time and place" must result from a *prima facie* satisfaction that the house is unfit and incapable of being rendered fit at reasonable expense; this must be reconsidered when the persons served are heard at the meeting. Cf. the note "Upon consideration" to s. 9 (1), *ante*, and the note "Satisfied", *infra*. The authority must also have regard to proposals approved by the Minister under the Housing Repairs and Rents Act, 1954, or to amended proposals; see s. 2, *ante*.

**Official representation.** See the note to s. 9 (1), *ante*.

**Satisfied.** Cf. the note to this word in s. 9 (1), *ante*. In *Fletcher v. Ilkeston Corporation* (1931), 96 J.P. 7, C.A.; Digest Supp., Scrutton, L.J., said at p. 10: "It seems to me perfectly obvious that the satisfaction with which the corporation begins is a temporary satisfaction on information then before them, open to be modified or completely changed when the owner of the house gives them further information, or makes a further offer to execute certain works." A similar view was expressed by Morris, L.J., in *Critchell v. Lambeth Borough Council*, cited in the notes to s. 18, *post*.

It must be noted also that notwithstanding that the local authority satisfy themselves on proper material that a demolition order ought to be made under this section, they may be overruled by a county court judge on an appeal under s. 20, *post*; see *Fletcher v. Ilkeston Corporation*, *supra*; *Johnson v. Leicester Corporation*, [1934] 1 K.B. 638; 98 J.P. 165; Digest Supp.

**House.** For definition, see s. 189 (1), *post*, and note sub-s. (7), *supra*, as to huts, tents, etc. As to parts of buildings and underground rooms, see s. 18, *post*. Where two or more houses are unfit, a clearance area may be declared under Part III; see s. 42, *post*. Note the distinction there made between "the houses" and "the other buildings".

**Unfit for human habitation.** See ss. 4 and 5, *ante*. It seems that a pair of back-to-back houses, within the meaning of s. 5, *ante*, might be converted into one fit house; see *Johnson's case*, *supra*. Alternatively one might be made fit by demolishing the other.

**At a reasonable expense.** See s. 39 (1), *post*, whereby regard is to be had to the estimated cost of the necessary works and to the (freehold) value of the house when the works are completed. Where the cost would be reasonable, a "repairs" notice under s. 9, *ante*, is appropriate. Under the present subsection (sub-s. (1), *supra*), the authority must consider the question objectively on the information before them. In *Johnson*

*v. Leicester Corporation, supra*, Slessor, L.J., said: "I would observe at the outset, that in considering whether the house is capable at a reasonable expense of being rendered fit for human habitation, the reasonableness of the expense must be considered objectively. They have to consider the general position of the house, the cost of labour and building material, the situation of the town and the like and the reasonable expense—not at that stage, at any rate, what the owner thinks to be reasonable, because he has not yet been called into consultation. They have to make that decision, one might say *ex parte* and unaided by the views of the owners."

At a later stage, when owners and mortgagees are consulted, an undertaking to render the house fit may be accepted although the cost may be considered unreasonable; see *Stidworthy and Stidworthy v. Brixham Urban District Council*, and *Coleman v. Dorchester Rural District Council*, cited in the notes, *infra*, to sub-s. (4).

The local authority, in considering the estimated cost of the works, need not have detailed estimates before them; see *Bacon v. Grimsby Corporation*, and *Cohen v. West Ham Corporation*, cited in the notes to s. 39 (1), *post*.

**Serve.** As to mode of service, see s. 169 (1), *post*. As to obtaining information as to ownership, etc., see s. 170, *post*. As to dispensing with notices, see s. 179, *post*.

**Person having control.** The definition in s. 39 (2), *post*, should be noted with care. It is quite different from that of owner, noted *infra*.

**Owner.** By s. 189 (1), *post*, "owner", in relation to any building or land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the building or land, whether in possession or in reversion, and includes also a person holding or entitled to the rents and profits of the building or land under a lease or agreement, the unexpired term whereof exceeds three years. Under this definition there may be several owners of the same premises. As to mortgagees who are not in possession, it should be noted that they must be served under the present subsection, so far as it is reasonably practicable to ascertain such persons.

Note the provisions for protection of owners of houses in s. 33, *post*.

**Reasonably practicable.** *I.e.*, in attempting to ascertain the mortgagees, the authority must do what is practicable within the limits of what is reasonable; cf. *Marshall v. Gotham Co., Ltd.*, [1952] 2 All E.R. 1044, C.A., *per* Jenkins, L.J. (affirmed, [1954] 1 All E.R. 937, H.L.; 3rd Digest Supp.).

It may happen that a mortgagee's name is known, but his address cannot be traced; as to dispensing with notices, see s. 179, *post*.

**Notice.** For prescribed form, see Form No. 6 in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), made under s. 178, *post*. The form to be used under this section as applied by s. 18, *post*, is Form No. 12 in the same regulations. As to authentication of notices, see s. 166 (2), *post*.

**Not less than twenty-one days.** *I.e.*, not less than 21 clear days must intervene between the date of service and the day on which the matter is considered: cf. *Re Hector Whaling, Ltd.*, [1936] Ch. 208; 9 Digest (Repl.) 618, 4114; *McQueen v. Jackson*, [1903] 2 K.B. 163; 25 Digest 106, 296. The minimum period may well be inconveniently short; see the General Note, *supra*, and the official note to the same effect to Form No. 6 in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*). Note also that several persons may have to be served, and each must be allowed at least 21 days before the meeting takes place.

**Offer.** See generally the notes, *infra*, to sub-s. (4). As to works, note sub-s. (3), *supra*.

#### Sub-s. (2).

**Entitled to be heard.** The local authority must hear such persons "judicially"; see *Broadbent v. Rotherham Corporation*, [1917] 2 Ch. 31; 28 Digest 466 775. The authority should be careful not to make up their minds in advance (nor to give the impression that they have done so; see *Fletcher v. Ilkeston Corporation, supra*). They should also bear in mind the right of persons aggrieved to appeal under s. 20, *post*.

#### Sub-s. (3).

**Offer . . . of works.** In *Johnson v. Leicester Corporation*, [1934] 1 K.B. 638; 98 J.P. 165; Digest Supp., Scrutton, L.J., considered it desirable that all offers to do works whether made to the local authority or to the county court should be in writing; to give effect to this suggestion a subsection corresponding to sub-s. (3), *supra*, was inserted in s. 19 of the Housing Act, 1930, by the Housing Act, 1935. An owner who intends to submit proposals for the carrying out of works to his property must (1) serve upon the local authority, within twenty-one days of the service of notice upon him, a notice in writing of his intention to submit such proposals; (2) submit a list of the proposed works within such reasonable period as the authority allow. Unless this is done, the county court judge is precluded from accepting this type of undertaking on appeal; see s. 20 (3), proviso, *post*. See, however, s. 24, *post* (power to permit reconstruction of condemned house).

**Within twenty-one days.** Cf. the note to s. 11 (1), *ante*. Under this subsection the period is 21 days in all cases, although a longer period before the meeting may have been allowed in the notice of "time and place" under sub-s. (1), *supra*.

**Serve upon the authority.** See s. 168, *post*, for mode of service.

**Such reasonable period.** What is in fact a reasonable period would seem to depend on the circumstances of each case; cf. *Ryall v. Cubitt Heath*, [1922] 1 K.B. 275; 38 Digest 215, 498, cited in the note "Such reasonable time" to s. 9 (1), *ante*. *Semble*, the authority may perhaps allow a further period of time if the period at first allowed proves inadequate; see the Interpretation Act, 1889, s. 32 (24 Halsbury's Statutes (2nd Edn.) 225), which provides that statutory powers may be exercised, and duties shall be performed, from time to time as occasion requires. A person concerned, as an owner, etc., will need time to take expert advice, and may wish to submit a revised list if his first list seems unlikely to be acceptable to the authority. *Semble*, also, that if the period allowed by the authority is in fact unreasonable, it will be advisable to submit a list of works as soon as possible. If the authority then proceed to make a demolition order (or take other steps under s. 17, *post*), it may be worth while to appeal to the county court under s. 20, *post*. It is submitted that in such a case the judge would have power to quash the order (or determination to purchase) as unreasonable or premature; or perhaps even to accept an undertaking despite s. 20 (3), proviso, *post* (see notes thereto).

#### Sub-s. (4).

**Consultation.** As to what constitutes consultation, cf. *Rollo v. Minister of Town and Country Planning*, [1948] 1 All E.R. 13, C.A.; 2nd Digest Supp., and *Re Union of Beneficiaries of Whippingham and East Cowes, Derham v. Church Commissioners of England*, [1954] 2 All E.R. 22, P.C.; 3rd Digest Supp.

**Undertaking.** It appears there is no limitation on the kind of undertaking which may be given by an owner, or mortgagee, and accepted by the local authority under this subsection; see *Johnson v. Leicester Corporation*, [1934] 1 K.B. 638, at p. 647, *per* Slessor, L.J. The learned Lord Justice was considering the provisions of ss. 16 to 19 of the Act of 1930; with the substitution of the section numbers of the present Act, the explanation given was as follows: "I cannot see that there is any limitation as to what sort of an undertaking an individual may give under [s. 16 (4)]. *Ex hypothesi*, before [s. 16] comes into operation at all, the local authority have already satisfied themselves that the repairs cannot be carried out at a reasonable expense, as mentioned in [ss. 9 and 39 (2)], because, if it is a house which can be repaired at a reasonable expense, then it is one which they are satisfied could come within [s. 9]. That, however, does not mean that the owner under [s. 16 (4)] cannot give any undertaking which he thinks fit to give. . . . In my view the owner is entitled under [s. 16 (4)] to give any undertaking which he thinks fit." In the same case the court held that the conversion of two unfit houses into one fit house was an undertaking which might be accepted by the local authority and, on appeal, by the judge.

When the stage of consultation with the owner is reached it is no concern of the local authority whether the sum which the owner is prepared to spend is reasonable or not: their only concern is whether the house can or cannot be made fit (*Stidworthy and Stidworthy v. Brixham Urban District Council* (1935), 2 L.J.C.C.R. 41; *Coleman v. Dorchester Rural District Council* [1935], L.J.C.C.R. 113).

**That he will . . . carry out such works, etc.** The local authority, it is submitted, may accept this type of undertaking even if the requirements of sub-s. (3), *supra*, have not been complied with (although the judge could not do so on appeal; s. 20 (3), proviso, *post*). If the undertaking is accepted but broken, see s. 17 (1) (a), *post*.

**Or that it shall not be used.** For penalty for breach of this undertaking, see sub-s. (6), *supra*, and for consequences, see s. 17 (1) (b), *post*. The owner may obtain possession (see sub-s. (5), *supra*) and put the house to use for other purposes, although this will probably require planning permission under Part III of the Town and Country Planning Act, 1947 (48 Statutes Supp. 44; 25 Halsbury's Statutes (2nd Edn.) 506). Cf., as to closing orders, s. 27, *post*, whereunder no use can be made without the approval of the authority, which is not to be unreasonably withheld.

**Cancel the undertaking.** There is no specific provision for appeal against a refusal to cancel an undertaking. *Semble*, if an owner contends the house has been made fit, but the authority refuse to cancel the undertaking, the owner could allow it to be used for human habitation. The authority might then proceed under s. 17, *post*, and the owner might appeal under s. 20, *post*, against the demolition order, or other action taken.

#### Sub-s. (5).

**Rent Acts.** *I.e.*, the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, see s. 189 (1), *post*. The present subsection is one of many derived from s. 156 of the Act of 1936; see the Table of Repeals and Replacements (Appendix I, *post*), and see in particular ss. 22 (5) and 27 (5), *post*.

The power to stay or suspend execution of an order for possession under s. 5 (2) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (103 Statutes Supp. 143; 13 Halsbury's Statutes (2nd Edn.) 990), is a power which affects the right to

possession and is among the provisions of the Rent Acts excluded by sub-s. (5), *supra*; see *London County Council v. Shelley*, [1947] 2 All E.R. 720, C.A. (affirmed, [1948] 2 All E.R. 898, H.L.; 31 Digest (Repl.) 616, 7317).

**Sub-s. (6).**

**Any person.** "Person" includes a corporation; see the Interpretation Act, 1889, s. 2 (1) (24 Halsbury's Statutes (2nd Edn.) 206).

**Knowing.** Knowledge is an essential ingredient of the offence and must be proved by the prosecution; see, generally, *Gaumont British Distributors, Ltd. v. Henry*, [1939] 2 All E.R. 808; Digest Supp., and *R. v. Hallam*, [1957] 1 All E.R. 665, C.C.A.; 3rd Digest Supp.

There is authority for saying that, where a person deliberately refrains from making inquiries the results of which he might not care to have, this constitutes in law actual knowledge of the facts in question; see *Knox v. Boyd*, [1941] S.C. (J.) 82, at p. 86; 30 Digest (Repl.), 99, \*412, and *Taylor's Central Garages (Exeter), Ltd. v. Roper* (1951), 115 J.P. 445, at pp. 449, 450, *per* Devlin, J.; 2nd Digest Supp.; and see also *James & Co., Ltd. v. Smees*, [1954] 3 All E.R. 273; 3rd Digest Supp. Mere neglect to ascertain what would have been found out by making reasonable inquiries is not, however, tantamount to knowledge; see *Taylor's Central Garages (Exeter), Ltd. v. Roper*, *supra*; and cf. *London Computator, Ltd. v. Seymour*, [1944] 2 All E.R. 11; 17 Digest (Repl.) 460, 192.

The undertaking will be registered as a local land charge under the Land Charges Act, 1925, s. 15, as amended (20 Halsbury's Statutes (2nd Edn.) 1088). *Semble*, this may constitute notice as mentioned in the Law of Property Act, 1925, s. 198 (20 Halsbury's Statutes (2nd Edn.) 821), but not necessarily knowledge of the undertaking for the purposes of the present section.

**Permits.** The word "permits" presupposes knowledge; see *Somerset v. Wade*, [1894] 1 Q.B. 574; 30 Digest (Repl.), 95, 709, and *James & Son, Ltd. v. Smees*, [1954] 3 All E.R. 273; 3rd Digest Supp. Yet, knowledge, in the words used by Parker, J. (as he then was), in delivering the judgment of the majority in *James and Son, Ltd. v. Smees*, *supra*, at p. 278, "in this connexion includes the state of mind of a man who shuts his eyes to the obvious, or allows his servant to do something in circumstances where a contravention is likely not caring whether a contravention takes place or not".

**Summary conviction.** Cf. the note to s. 8, *ante*.

**Every day . . . on which he so uses them . . . after conviction.** The fine must not be calculated by reference to a period of more than six months before the information was laid; see *R. v. Slade, Ex parte Saunders*, [1895] 2 Q.B. 247; 38 Digest 213, 476; and see also *R. v. Struve, etc., Glamorganshire Justices* (1895), 59 J.P. 584; 43 Digest 345, 40.

**Sub-s. (7).**

**Hut, tent, caravan, etc.** See the note to these words in s. 9 (3), *ante*.

**17. Duty of local authority to make demolition or closing order or to purchase house where no undertaking is accepted.**—(1) If no such undertaking as is mentioned in the last foregoing section is accepted by the local authority, or if, in a case where they have accepted such an undertaking,—

- (a) any work to which the undertaking relates is not carried out within the specified period, or
- (b) the premises are at any time used in contravention of the terms of the undertaking,

then, subject to the provisions of this section, the local authority shall forthwith make a demolition order for the demolition of the premises to which the notice given under the last foregoing section relates:

Provided that if in the case of any house the local authority consider it inexpedient to make a demolition order having regard to the effect of the demolition of that house upon any other house or building, they may make a closing order as respects that house instead of a demolition order.

(2) Where a local authority would under the foregoing subsection be required to make a demolition or closing order in respect of a house they may, if it appears to them that the house is or can be rendered capable of providing accommodation which is adequate for the time being, purchase the house instead of making a demolition or closing order.

(3) If in the case of any house—

- (a) a building preservation order under section twenty-nine of the Town and Country Planning Act, 1947, is in force as respects that house, or

- (b) the house is included in a list compiled or approved under section thirty of that Act by the Minister, or
- (c) a notice is in force given by the Minister to the local authority and stating that the architectural or historic interest of the house is sufficient to render it inexpedient that the house should be demolished pending determination of the question whether or not it should be made the subject of such a building preservation order as aforesaid or included in such a list as aforesaid,

subsection (2) of this section shall not apply and the order to be made under subsection (1) of this section shall be a closing order and not a demolition order.

#### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 11 (4) of the Housing Act, 1936, and, as to the proviso, in s. 10 (1) of the Local Government (Miscellaneous Provisions) Act, 1953; sub-s. (2) contains provisions formerly in ss. 3 (1) and 22 (1) of the Housing Repairs and Rents Act, 1954; and sub-s. (3) contains provisions formerly in s. 3 (1) of the Housing Act, 1949. Sub-s. (1), *supra*, reproduces part only of s. 11 (4) of the Act of 1936; see also ss. 19 and 21, *post*.

**General Note.** If no undertaking is accepted by the local authority under s. 16, *ante*, or an undertaking is accepted but broken, then in the ordinary case a demolition order must be made, but there are alternatives in special cases. If the house is a "listed building", or is being considered for inclusion in the list or for being made subject to a building preservation order, or is actually subject to a building preservation order, the only course open is to make a closing order: sub-s. (3), *supra*. If the house is capable, or can be rendered capable, of providing temporary dwelling accommodation, the authority may resolve to purchase it under sub-s. (2), *supra*, and s. 29, *post*, at site value. If the demolition of the house would be inexpedient, having regard to the effect on any other house or building, a closing order may be made under the proviso to sub-s. (1), *supra*, and the house may be demolished later under s. 28, *post*.

Closing orders under sub-s. (1), proviso, *supra*, differ in some of their consequences from those under sub-s. (3), *supra*. There are further differences in the case of closing orders under ss. 18 and 26, *post*. Closing orders under s. 26 appear to be precisely similar in effect to those under sub-s. (3), *supra*, with a trivial and presumably unintended distinction as to modes of serving copies of these orders, under s. 19 or 26, *post* (see s. 169 (2), *post*). A closing order under s. 35, *post*, resembles one under sub-s. (1), proviso, *supra*.

**Re-development and re-conditioning by owners.** The powers of the local authority under this section are subject to the provisions of ss. 68-71, *post*, as to re-development and re-conditioning by owners; see s. 40, *post*.

#### Sub-s. (1).

**Undertaking.** See s. 16 (4) and notes thereto, *ante*.

**Local authority.** See s. 1, *ante*, and s. 41, *post*.

**Used in contravention . . . of the undertaking.** The second type of undertaking expressly mentioned in s. 16 (4), *ante*, is that the house should not be used for human habitation until the authority, on being satisfied it has been rendered fit for that purpose, cancel the undertaking. It has been held, however, that other types of undertaking can be accepted; see notes to s. 16 (4), *ante*.

**Forthwith.** See the note to s. 12 (3), *ante*.

**Demolition order.** For content of a demolition order, see s. 21, *post*. The prescribed form is Form No. 7 in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), made under s. 178, *post*. As to authentication, see s. 166 (1), *post*, and as to service of copies, see s. 19, *post*.

For right of appeal, see s. 20, *post*, and for date of operation, see s. 37, *post*. See also ss. 22-26, *post*, for further provisions as to demolition orders; ss. 30-32, *post*, relating to payments for well-maintained houses, to certain owner-occupiers and others, and to persons displaced; ss. 33, *post*, for provisions for protection of owners; and ss. 162 and 163, *post*, for certain powers of the courts.

**Provided that, etc.** If a whole house is unfit, the normal order to be made is a demolition order. If the house is one of a terrace, it cannot be treated as "part of a building" and made subject to a closing order under s. 18 (1), *post*; see *Birch v. Wigan Corporation*, [1952] 2 All E.R. 893; 3rd Digest Supp. The Act of 1953 (see the note, "History", *supra*) introduced the power, now reproduced in this proviso, to make a closing order on such a house where its demolition would affect any other house or other building.

**House.** For definition, see s. 189 (1), *post*.

**Closing order.** For general provisions as to closing orders, see s. 27, *post*. The form to be used for a closing order under the present provision (sub-s. (1), proviso,

*supra*) is Form No. 14 in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), made under s. 178, *post*. As to authentication, see s. 166 (2), *post*; unlike demolition orders, or closing orders under s. 18, *infra*, closing orders under this proviso need not be under seal. As to service of copies, see s. 19, *post*.

For the right of appeal, see s. 20, *post*, and for date of operation, see s. 37, *post*. See further s. 28, *post*, whereunder a demolition order may be made later, and ss. 30–32, *post*, as to certain payments as in the case of a demolition order. For protection of owners, and powers of the court under Part VI, see ss. 33 and 162, *post*.

#### Sub-s. (2).

**Adequate for the time being.** See the note "Other standards" to s. 4, *ante*.

**Purchase the house.** Note that sub-s. (3), *supra*, excludes this power of purchase if the house comes within that subsection, but s. 26, *post*, is not expressed to have the like effect.

Where, under this subsection, the authority determine to purchase a house, notice of their determination must be served under s. 19, *post*. The prescribed form of notice is Form No. 11 in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), made under s. 178, *post*.

For the right of appeal against such a notice, see s. 20, *post*, and for date of operation, see s. 37, *post*. If the notice becomes operative, the power and procedure for purchasing the house are provided by s. 29 and the First Schedule, *post*, which apply the Acquisition of Land (Authorisation Procedure) Act, 1946. Site value compensation is payable, under the Lands Clauses Acts, etc., incorporated by the Act of 1946, and modified by s. 29 (2), *post*. Further payments may be made under ss. 30–32, *post*.

#### Sub-s. (3).

**Building preservation order.** See s. 29 of the Town and Country Planning Act, 1947 (48 Statutes Supp. 75; 25 Halsbury's Statutes (2nd Edn.) 534), which relates to buildings of special architectural or historic interest. Orders thereunder, and lists under s. 30 of that Act, are registered as local land charges.

**Included in a list; notice . . . by the Minister.** As to the compilation or approval of lists by the Minister, see s. 30 of the Town and Country Planning Act, 1947 (48 Statutes Supp. 77; 25 Halsbury's Statutes (2nd Edn.) 536). Arrangements where there were only provisional lists, or no lists at all, were explained in Ministry of Town and Country Planning Circular 98, dated 20th October 1950.

"The Minister" means the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Closing order.** If a demolition order has already been made, under sub-s. (1), *supra*, or s. 28, *post*, see s. 26, *post*, whereunder the demolition order is to be determined and a closing order substituted.

Closing orders under the present subsection, or s. 26, *post*, differ from those made under sub-s. (1) proviso, *supra*, in certain of their consequences. S. 32, *post* (payments to persons displaced), applies, but not ss. 30 or 31, *post*. For general provisions, see s. 27, *post*; and note in particular s. 27 (5), which does not refer to orders under the present subsection.

As to authentication, see s. 166 (2), *post*. For power to prescribe a form of order, see s. 178, *post*. The Housing Act, 1949, s. 3 (4), applied various provisions of the Act of 1936 to closing orders under that section, but did not expressly confer a power to prescribe forms. Model Forms were therefore suggested in Ministry of Health Circular 54/50, dated 15th May 1950. There is no form prescribed for the purposes of the present subsection at the time of going to press.

As to service of copies of a closing order, see s. 19, *post*. As to appeals to the county court, see s. 20, *post*, and for the date of operation of an order, see s. 37, *post*. As to protection of owners, see s. 33, *post*, and for powers of the court under Part VI, see s. 162, and note also ss. 164 and 165, *post*.

**18. Power to make a closing order as to part of a building.—(1)** A local authority may under the foregoing provisions of this Part of this Act take the like proceedings in relation to—

- (a) any part of a building which is used, or is suitable for use, as a dwelling, or
- (b) any underground room which is deemed for the purposes of this section to be unfit for human habitation,

as they are empowered to take in relation to a house subject, however, to this qualification that in circumstances in which, in the case of a house, they would have taken action under the last foregoing section (whether by making a demolition or closing order or by purchasing the house) they shall make a closing order as respects the part of the building or, as the case may be, as respects the room.

(2) Subject to the provisions of section four of this Act as to the circumstances under which a house is to be deemed unfit for human habitation, a room the surface of the floor of which is more than three feet below the surface of the part of the street adjoining or nearest to the room, or more than three feet below the surface of any ground within nine feet of the room, shall for the purposes of this section be deemed to be unfit for human habitation, if either—

- (a) the average height of the room from floor to ceiling is not at least seven feet, or
- (b) the room does not comply with such regulations as the local authority with the consent of the Minister may prescribe for securing the proper ventilation and lighting of such rooms, and the protection thereof against dampness, effluvia or exhalation:

Provided that, if the local authority, after being required to do so by the Minister, fail to make regulations, or such regulations as the Minister approves, the Minister may himself by statutory instrument make regulations which shall have effect as if they had been made by the local authority with the consent of the Minister.

### NOTES

**History.** This section contains provisions formerly in s. 12 of the Housing Act, 1936, as amended by s. 1 of, and the First Schedule to, the Housing Act, 1949, which substituted "which is used, or is suitable for use as a dwelling" for "which is occupied, or is of a type suitable for occupation, by persons of the working classes" in s. 12 (1) (a) (s. 12 (2) of the Act of 1936 was not confined to rooms occupied by the working classes). In addition sub-s. (2), *supra*, reproduces the effect of the Statutory Instruments Act, 1946. Some parts of s. 12 (1) of the Act of 1936 are now to be found in s. 27 (1) and (2), *post* (general provisions as to closing orders).

**General Note.** This section enables proceedings to be taken in respect of unfit dwelling accommodation in part of a building, and in respect of certain underground rooms which are treated as if they were unfit. It enables the local authority to take "the like proceedings" as may be taken in relation to a house, *i.e.*, to serve a repairs notice under s. 9, *ante*, or a notice of "time and place" under s. 16, *ante*. In the latter event, however, a demolition order under s. 17 (1) is not to be made, nor are the premises to be purchased under s. 17 (2), *ante*; instead a closing order is to be made prohibiting the use of the premises except for a purpose approved under s. 27, *post*. Before s. 84 of the Housing Act, 1935, a closing order on part of a building merely prohibited use for human habitation (*cf.* the second type of undertaking mentioned in s. 16 (4), *ante*); and in the case of an underground room the prohibition was against use for sleeping purposes.

A closing order on a whole house can now be made in special circumstances under s. 17 (1) proviso or s. 17 (3), *ante*, or s. 26, *post*; but not under this section: see *Birch v Wigan Corporation* cited in the notes to s. 17 (1), *ante*.

An unfortunate confusion has arisen as to the effect of sub-s. (2), *supra*, which replaces s. 12 (2) of the Act of 1936. In *Critchell v. Lambeth Borough Council*, [1957] 2 All E.R. 417, the Court of Appeal considered the former s. 12 (2) in the light of the test of unfitness for human habitation introduced by s. 9 of the Housing Repairs and Rents Act, 1954 (now s. 4, *ante*). That section of the 1954 Act listed the matters to be considered in determining whether or not a house is fit for human habitation and was not expressed to apply to underground rooms. An express saving was included (s. 9 (2) of that Act) for the deemed unfitness of certain back-to-back houses (s. 22 of the Act of 1936; now s. 5, *ante*), but there was no saving for s. 12 (2). It is respectfully submitted that no saving for s. 12 (2) was needed, but the court felt bound to say that the sub-section had been "superseded". With respect it is difficult to see why s. 4, *ante*, should over-ride sub-s. (2), *supra*, and it is submitted that, although the judgments contain a valuable exposition of the general operation of this section, the actual decision in *Critchell's* case cannot be supported and should not be followed. It will be noted that sub-s. (2), *supra*, has in fact been enacted after that case was decided, albeit with the addition of certain qualifying words. It should also be noted that in *Critchell's* case the court might have come to a different decision had they not felt it proper to follow the dicta in *London Hospital (Board of Governors) v. Jacobs*, [1957] 2 All E.R. 418n, C.A., where the decision was reached on other grounds, although it was said that the county court judge "would have been right in holding that s. 9 of the Act of 1954 amended [*sic*] s. 12 (2) of the Act of 1936". See further the notes, *infra*, to sub-s. (2).

**Re-development and re-conditioning by owners.** The powers of the local authority under this section are subject to the provision of ss. 68-71, *post*, as to re-development and re-conditioning by owners; see s. 40, *post*.

**Sub-s. (1).**

**Local authority.** See s. 1, *ante*. As to London, see s. 41, *post*, and the powers of the London County Council to complain under s. 177, *post*. Cf. also the restrictions on the use of underground rooms in ss. 132-134 of the Public Health (London) Act, 1936 (15 Halsbury's Statutes (2nd Edn.) 965-967).

**Under the foregoing provisions; like proceedings.** If the part of a building, or underground room, can be rendered fit at a reasonable expense, within the meaning of s. 39 (1), *post*, which appears to apply by analogy, a "repairs" notice may be served under s. 9, *ante*. The right of appeal under s. 11, *ante*, would then appear to apply (as s. 9 contains the "foregoing provisions" mentioned in s. 11). When the expense would be unreasonable, notice of "time and place" will be served under s. 16 (1), *ante*; undertakings may be accepted under s. 16 (4), *ante*; and a closing order may be made under the present section instead of a demolition order under s. 17 (1), *ante*. There is no power to purchase the premises under s. 17 (2), *ante*.

In taking "the like proceedings", the question will arise as to who are the persons to be served, or who may be served under s. 9 (2), *ante*, as the person having control, or as owners, mortgagees, etc. It is submitted that the person having control must be the person who would answer the definition in s. 39 (2), *post*, if "part of a building" or "room", as the case may be, were therein substituted for the word "house". Similarly the owners or mortgagees concerned will be those of the part or room. Unless this adaptation is made, there might be no person having control, for the part of a building or room may not be in a "house" at all. Authorities should note that the person having control of part, where the building happens to be a house, may not be the same as the person having control of the whole house; see *Kensington Borough Council v. Allen*, cited in the notes to s. 39 (2), *post*, and cf. the specific provision as to the meaning of "owner" in s. 42 (1) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*).

The form of notice of time and place, under s. 16 (1), *ante*, as applied, is Form No. 12 in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), made under s. 178, *post*. No form has been prescribed for use under s. 9, *ante*, as applied, at the time of going to press.

**Part of a building.** The part may be part of a house or part of some other kind of building; but it must not be a whole house: see *Birch v. Wigan Corporation*, cited in the notes to s. 17 (1), *ante*. In taking proceedings in respect of such a part, the analogy required by the present subsection seems to import the tests of unfitness in s. 4, *ante*, and of reasonableness of expense in s. 39 (1), *post*. There is no definition of a "building", but cf. the distinction in s. 42, in Part III, *post*, between "the houses" and "the other buildings" in a clearance area.

**Used, or is suitable for use.** These words originated in the Housing Act, 1949; see the note "History", *supra*. It may seem strange that the premises could be both "suitable for use as a dwelling" and at the same time "unfit for human habitation". However, the first phrase appears to mean simply that the premises consist of what could reasonably be regarded as dwelling accommodation, as opposed to premises constructed or adapted for some other type of user. Cf. the reference to unfit dwelling accommodation in s. 59 (2) proviso, in Part III, *post*, and a similar reference in connection with clearance orders in para. 2, proviso, in the Fifth Schedule, *post*.

**Underground room.** Sub-s. (2), *supra*, describes the type of underground room to which para. (b) of the present subsection applies. If the room answers that description it is "deemed for the purposes of this section to be unfit for human habitation". This, it is submitted, means that proceedings may be brought under s. 9 or s. 16, *ante*, as applied by the words "the like proceedings" in this subsection, whether or not the room is in fact unfit. In other words the room is treated as if it were unfit; but see *Critchell's* case, cited in the General Note, *supra*.

**House.** Para. (a) of the definition of "house" in s. 189 (1), *post*, is the one relevant to this Part (Part II) of the Act; para. (b) is relevant only to the provision of housing accommodation.

**Demolition order; purchasing the house.** See s. 17 (1) and (2), *ante*.

**Closing order.** For general provisions, see s. 27, *post*. Note particularly the right under s. 27 (3) to appeal against a withholding of approval as to user, or against a refusal to determine a closing order.

The prescribed form of closing order under this section is Form No. 13 in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), made under s. 178, *post*. As to authentication, see s. 166 (1), *post*, requiring the order to be under seal. As to service of copies of the order, see s. 19, *post*. For provision as to appeals, see ss. 20 and 38, *post*, and for the date of operation, see s. 37, *post*. See also s. 32 (payments to persons displaced), s. 33 (protection of owners) and s. 162 (1) proviso, *post*.

**Sub-s. (2).**

**Subject to the provisions of section four.** That section, *ante*, lists the matters relevant in determining whether a house is unfit for human habitation. A house is deemed to be unfit if, and only if, it is so far defective in one or more of those matters that it is not reasonably suitable for occupation in that condition. For the purposes of the

present section, two other tests are laid down in respect of underground rooms where the surface of the floor is more than three feet below the surface of the part of the street adjoining or nearest to the room, or more than three feet below the surface of any ground within nine feet of the room. The tests are dependent on the height of the room, or the regulations as to ventilation, etc. The reference to s. 4, *ante*, was not in the original Bill for this Act, but was inserted in deference, it is thought, to the decision in *Critchell's* case, cited in the General Note, *supra*. It is difficult to see what it means. Either *Critchell's* case was rightly decided, in which event the present subsection has no operation, or that decision was incorrect, in which event s. 4, *ante*, relating to houses, has no application to underground rooms: but see *per* Morris, L.J.: "It may be that the standards of s. 12 of the Act of 1936 [now replaced by this section] were left as standards subject to the overriding provisions of s. 9 of the Act of 1954 [now s. 4, *ante*] which are now introduced into s. 11 of the Act of 1936 [now ss. 16, 17, *ante*]." Lord Evershed, M.R., however, referring to the *London Hospital Board* case, cited in the General Note, *supra*, said: "It is quite true that that case turned on s. 23 of the Act of 1954 [cf. the note, "Other standards", to s. 4, *ante*] and, in so far as s. 9 was introduced by reference, it could be said that, if, looking at s. 23 and s. 9, one could say that all the conditions there set out were satisfied, one need not trouble oneself about the regulations . . . under s. 12 (2) of the Act of 1936. That is strictly so. None the less Jenkins, L.J. (with whom the other members of the court agreed) stated quite clearly . . . that s. 9 of the Act of 1954 had superseded s. 12 (2) of the Act of 1936, so as to provide, in regard to underground rooms, the sole standard of fitness or unfitness for human habitation, and so as to render no longer operative for that purpose the provisions of s. 12 (2) in the Act of 1936 or any regulations made thereunder."

**Street.** For definition, see s. 189 (1), *post*.

**Within nine feet.** Measured in a straight line on a horizontal plane; see the Interpretation Act, 1889, s. 34 (24 Halsbury's Statutes (2nd Edn.) 226).

**Regulations.** These will be of local application. If the authority fail to make regulations, the Minister may require them to do so, and on default, may himself make regulations under the proviso to this subsection. The Ministry have issued model regulations; see the note to s. 250 of the Local Government Act, 1933, in *Lumley's Public Health* (12th Edn.), Vol. II, p. 1988, which mentions Form XXII, of the Model Series issued by the then Ministry of Health, as being an unpriced form obtainable from the Ministry (not from H.M. Stationery Office).

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Statutory instrument.** For provisions as to statutory instruments generally, see the Statutory Instruments Act, 1946 (36 Statutes Supp. 95).

## 19. Service of notice of demolition or closing order or intention to purchase.—Where a local authority—

- (a) have made a demolition or closing order under either of the two last foregoing sections, or
- (b) have determined to purchase a house under the former of those sections,

they shall serve a copy of the order or, as the case may be, a notice of their determination to purchase the house on every person on whom they would be required under subsection (1) of section sixteen of this Act to serve a notice issued by them under that subsection.

### NOTES

**History.** This section contains provisions formerly in ss. 11 (4) and 12 (1) of the Housing Act, 1936, in s. 3 (1) of the Housing Act, 1949, in s. 10 (2) of the Local Government (Miscellaneous Provisions) Act, 1953, and in s. 3 (3) of the Housing Repairs and Rents Act, 1954. The provisions of the 1936 Act related to demolition orders under s. 11 (now s. 17 (1), *ante*) and closing orders under s. 12 (now s. 18, *ante*). The provisions of the 1949 Act related to closing orders on buildings of architectural or historic interest (now s. 17 (3), *ante*). The Acts of 1953 and 1954 related to other closing orders and to notices of determination to purchase, respectively (now s. 17 (1) proviso and s. 17 (2), *ante*).

**General Note.** The documents referred to in this section must be served on (a) the person having control of the house (or other premises), (b) every owner, and (c) so far as it is reasonably practicable to ascertain such persons, every mortgagee. These are the same persons as mentioned in s. 16 (1), *ante*, but the actual persons to be served may have changed since the notice of "time and place" under that subsection. The documents referred to in this section are (1) a demolition order under s. 17 (1), *ante*, (2) a closing order under s. 17 (1) proviso, s. 17 (3) or s. 18, *ante*, and (3) a notice under the present section of the determination of an authority to purchase as mentioned in s. 17 (2), *ante*.

The present section does not apply to houses to be purchased under s. 34 (5), *post*; where that section applies, the house may be purchased as if a notice of determination under this section had become operative, *i.e.*, there is no appeal to the court.

The present section is applied to a closing order under s. 35, *post*, which has effect as if made under s. 17 (1) proviso, *ante*; and to a demolition order under s. 28, *post*, which has effect as if made under s. 17 (1), *ante*; but copies of closing orders under s. 26, *post*, are to be served as mentioned in that section (which is to the like effect as the present section).

Other provisions for service will be found in s. 22 (1), *post* (notice, to occupiers, of demolition order), and s. 24 (3), *post* (power to permit reconstruction of condemned house).

**Local authority.** See s. 1, *ante*, and s. 41, *post*.

**Demolition order.** See s. 17 (1), *ante*, and cf. s. 28, *post*, which applies this section.

**Closing order.** See s. 17 (1) proviso, s. 17 (3), and s. 18, *ante*; and cf. s. 35, *post*. A separate and similar procedure is provided by s. 26, *post*. Under s. 18 and, *semble*, s. 26, the mode of service of the copies of the order is that provided by s. 169 (1), *post*. This is excluded in the case of orders under s. 17 (1) proviso, s. 17 (3) and, it seems, s. 35, by s. 169 (2), *post*.

**Determined to purchase; notice of this determination.** As to the prescribed form, etc., of a notice of determination to be served under this section where the authority have determined to purchase under s. 17 (2), *ante*, see the notes to that subsection. Where the authority determine to purchase in the circumstances mentioned in s. 34 (2), *post*, the present section does not apply; a notice hereunder is deemed to have become operative, and the authority proceed to purchase under s. 29, *post*, without there being an opportunity to appeal to the county court under s. 20, *infra*.

**Serve.** For mode of service, see s. 169 (1), *post*, with the exceptions mentioned in the note "Closing order", *supra*, which arise from s. 169 (2).

**Copy of the order.** As to prescribed forms of order, see the notes to ss. 17 and 18, *ante*. The copies must presumably reproduce the official notes which are appended to the prescribed forms: see generally, *Rayner v. Stepney Corporation*, [1911] 2 Ch. 312; 38 Digest 212, 471. *Rayner's* case was distinguished in *Re Bowman, South Shields (Thames Street) Clearance Order, 1931*, [1932] 2 K.B. 621; Digest Supp. (decided on a provision resembling para. 2 (ii) of the Fourth Schedule, *post*), and in *Arlidge v. Tottenham Urban Council*, [1922] 2 K.B. 719; 38 Digest 214, 489 (where the prescribed form contained no such note).

**20. Right of appeal against demolition order, etc.—(1)** Any person aggrieved by—

- (a) a demolition or closing order made under this Part of this Act, or
- (b) a notice of the determination of a local authority to purchase a house served under the last foregoing section,

may, within twenty-one days after the date of the service of the order or notice, appeal to the county court within the jurisdiction of which the premises to which the order or notice relates are situate, and no proceedings shall be taken by the local authority to enforce any order or notice in relation to which an appeal is brought before the appeal has been finally determined.

(2) No appeal shall lie under this section at the instance of a person who is in occupation of the premises to which the order or notice relates under a lease or agreement of which the unexpired term does not exceed three years.

(3) On an appeal to the county court under this section the judge may make such order either confirming or quashing or varying the order or notice as he thinks fit and may, if he thinks fit, accept from an appellant any such undertaking as might have been accepted by the local authority, and any undertaking so accepted by the judge shall have the like effect as if it had been given to and accepted by the local authority under this Part of this Act:

Provided that the judge shall not accept from an appellant upon whom such a notice as is mentioned in subsection (1) of section sixteen of this Act was served an undertaking to carry out any works unless the appellant complied with the requirements of subsection (3) of that section.

## NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 15 (1) of the Housing Act, 1936, in s. 3 (4) (b) of the Housing Act, 1949, in s. 10 (4) (c) of the Local Government

(Miscellaneous Provisions) Act, 1953, and in s. 3 (3) of the Housing Repairs and Rents Act, 1954. Sub-s. (2) contains provisions formerly in proviso (ii) to s. 15 (1) of the Act of 1936 and s. 3 (3) of the Act of 1954. Sub-s. (3) contains provisions formerly in s. 15 (2) (a) and s. 15 (2), proviso, of the Act of 1936. In the Act of 1936, s. 15 was the general section dealing with appeals to the county court; its provisions are distributed among several sections of the present Act, e.g., s. 11, *ante*, and ss. 37, 38, *post* (see the Table of Repeals and Replacements; Appendix I, *post*). The Acts of 1949, 1953 and 1954 applied the right of appeal, under the 1936 Act, to orders and notices under the later Acts.

**General Note.** This is the second section in this Part (Part II) of the Act conferring rights of appeal to the county court, as formerly provided by s. 15 of the Act of 1936, or by that section as applied. For similar provisions, see s. 11, *ante*, and ss. 27, 30, 36, 72 and 90, *post*. The present section must also be read with ss. 37 and 38, *post* (reproducing s. 15 (3)-(5) of the Act of 1936), as to appeals and the date on which orders, etc., become operative.

**Grounds of appeal under this section.** The following general grounds of appeal are suggested. Some of the grounds cover points which it is perhaps unnecessary to take on appeal: e.g., a demolition order purporting to apply to a building already subject to a building preservation order is presumably a nullity, and failure to appeal cannot make it operative under s. 37, *post*.

A. *Against a demolition order.*

- (1) That the premises are not a house.
- (2) That the premises are not unfit.
- (3) That the house is capable of being rendered fit at a reasonable expense.
- (4) That the house is capable of being rendered fit (regardless of expense) and the appellant has offered an undertaking to carry out works which the authority should have accepted.
- (5) That the appellant offered an undertaking [not to use the house for human habitation, or as the case may be] which the authority should have accepted [or that the appellant will now offer such an undertaking to the judge].
- (6) That the authority accepted an undertaking, which has been complied with.
- (7) That the house is subject to a building preservation order [or, as the case may be, is a listed building, or is the subject of a notice by the Minister, as mentioned in s. 17 (3), *ante*].
- (8) That demolition of the building is inexpedient having regard to the effect of demolition on some other house or building [and the authority should have exercised their powers under s. 17 (1) proviso, *ante*] [or, should not have made an order under s. 28, *post*].
- (9) That re-development is being proceeded with under s. 68, *post*.
- (10) That the house is subject to a certificate under s. 69, *post*.
- (11) That the authority failed to allow a reasonable period for the submission of a list of works [under s. 16 (3), *ante*] and the order is premature and unreasonable.
- (12) That the authority have acted unreasonably.

B. *Against a closing order under s. 17 (1) proviso or s. 35.*

Most of the same grounds as in A, above, will apply. The reference to ss. 16-18 in s. 69 (4), *post*, mentioned in ground A (10), *supra*, would appear possibly to include a reference to s. 35, *post*. Instead of ground A (8), the following ground is suggested:

That the house could be demolished without adversely affecting any other house or building, [and the existing demolition order should not have been revoked under s. 35];

C. *Against a closing order under s. 17 (3) or s. 26.*

Most of the same grounds as in A, above, will apply. *Quaere*, whether the reference to ss. 16-18 in s. 69 (4), *post*, could extend to s. 26, *post*. Instead of ground A (7), *supra*, the following ground is suggested as appropriate in cases where the house does not come within s. 17 (3), *ante*; e.g., where the closing order is made on the basis that the house is a "listed" building when, in fact, it has been deleted from the list, or is included only in a provisional list:

That the house is not a building coming within s. 17 (3) [or, within s. 17 (3) as applied by s. 26].

D. *Against a closing order under s. 18.*

- (1) That the premises are not part of a building used or suitable for use as a dwelling [or, are not an underground room within s. 18 (2)];
- (2) That the premises are not unfit [or, under s. 18 (1) (b), are not deemed to be unfit. Here state the average height of the room, or traverse the allegation of failure to comply with the regulations];
- (3) to (6): as in A (3) to (6), *supra*, substituting "premises" for "house" therein.
- (7) to (10): as in A (9) to (12), *supra*.

*E. Against notice of determination to purchase.*

Most of the same grounds as in A, above, will apply. Instead of A (8), *supra*, substitute:

The house is incapable and cannot be rendered capable of providing accommodation of an adequate standard and/or should not be used for that purpose because [here state reasons, *e.g.*, the expense involved, or the owner's wish to demolish and redevelop].

**Sub-s. (1).**

**Person aggrieved.** See note to s. 11 (1), *ante*, and note sub-s. (2), *supra*.

**Demolition order.** See s. 17 (1), *ante*, and s. 28, *post*.

**Closing order.** See s. 17 (1) proviso, s. 17 (3) and s. 18, *ante*, and ss. 26 and 35 (1), *post*.

**Notice of determination to purchase.** See ss. 17 (2) and 19, *ante*, and note that there is no appeal against a determination under s. 34, *post*.

**Within twenty-one days.** See note to s. 11 (1), *ante*.

**Service of the order.** Section 19, *ante*, requires *copies* of demolition orders and closing orders to be served, not the orders themselves. See also s. 26 (copies of closing order thereunder), s. 28 (copies of demolition order thereunder) and s. 35 (copies of closing order thereunder), *post*.

**Appeal to the county court.** Cf. the note to s. 11 (1), *ante*.

**Premises.** *I.e.*, the part of a building or room to which s. 18, *ante*, applies; or, in other cases, the house; see also s. 16 (7), *ante*, as to huts, tents, caravans, etc.

**Finally determined.** See s. 37 (2), *post*.

**Sub-s. (2).**

**No appeal shall lie, etc.** A similar exclusion of the right of appeal applies to a refusal to determine a closing order (see s. 27 (3) (b) and (4), *post*), and to a demolition order under Part III on an obstructive building (see s. 72 (3), *post*). No such provision applies under s. 11, *ante*, or ss. 27 (3) (a), 36 (2) or 90 (3), *post*.

**Person . . . in occupation.** Person includes a corporation; see the Interpretation Act, 1889, s. 19 (24 Halsbury's Statutes (2nd Edn.) 222). It seems that persons not in occupation of the premises are not excluded, however short their interest. Thus a lessee with two years to run is excluded from the right of appeal if he is in occupation himself, but not, it seems, if he has sub-let.

**Lease or agreement . . . does not exceed three years.** Cf. the latter part of the definition of "owner" in s. 189 (1), *post*.

**Sub-s. (3).**

**Judge may make such order.** Cf. the note to s. 11 (3), *ante*.

**Accept . . . any such undertaking.** For the power of the local authority to accept undertakings, see s. 16 (4) and the notes thereto, *ante*.

**Provided that, etc.** The requirements of s. 16 (3), *ante*, are that a person served with notice of time and place under s. 16 (1), if he intends to submit an offer with respect to carrying out works, shall (a) within 21 days from service of the notice on him serve upon the authority notice in writing of his intention to make such an offer and (b) within such reasonable period as the authority may allow, submit to them a list of the works which he offers to carry out.

The effect of the present proviso, to sub-s. (3), *supra*, seems to be as follows:

- (1) If the appellant was served with notice of "time and place", the judge cannot accept this type of undertaking from him unless the appellant complied with s. 16 (3), *ante*. It is not sufficient that some other person complied with s. 16 (3).
- (2) The judge may, however, in any case, accept an undertaking that the premises shall not be used for human habitation, as mentioned in s. 16 (4), or any other appropriate undertaking (see *Johnson's case*, cited in the notes to that subsection). It seems the judge may also, in any case, quash the order (or notice of determination to purchase) as the present proviso does not limit this power.
- (3) If the appellant was not served with notice of "time and place", the present proviso is not expressed to limit in any way the power to accept an undertaking from the appellant.
- (4) If the authority have refused to accept an undertaking, because they consider the list of works insufficient, the judge may consider the work sufficient and accept the undertaking. It seems he may go further, and accept an amended list of works offered at the hearing; this might have a bearing, however, on the costs of the hearing.
- (5) If the authority have not allowed a reasonable period for submitting a list of works, it is suggested that the judge might find that the appellant had complied with s. 16 (3), although his list of works was not submitted until after the inadequate period allowed by the authority. If this view is incorrect, it seems, at least, that the judge would in such circumstances quash the order

(or notice of determination to purchase) as being unreasonable and premature. The Act clearly contemplates that the order shall not be made (or notice of determination given) before the appellant has had a reasonable period to submit a list of works.

**21. Content of demolition order.**—A demolition order made under this Part of this Act with respect to any premises shall require—

- (a) that the premises shall be vacated within a period to be specified in the order, not being less than twenty-eight days from the date on which the order becomes operative, and
- (b) that the premises shall be demolished within six weeks after the expiration of that period, or, if the premises are not vacated before the expiration of that period, within six weeks after the date on which they are vacated, or in either case within such longer period as in the circumstances the local authority deem it reasonable to specify.

### NOTES

**History.** This section contains provisions formerly in s. 11 (4) of the Housing Act, 1936. Other provisions from that subsection are now contained in ss. 17 (1) and 19, *ante*.

**General Note.** This section states the general content of a demolition order made under s. 17 (1), *ante*, or s. 28, *post*. It may be compared with s. 45 (1), relating to clearance orders, and with ss. 72 (2) and 74 (2), relating to obstructive buildings, in Part III, *post*. For the prescribed form of order, see Form No. 7 in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), made under s. 178, *post*.

**Demolition order.** See s. 17 (1), *ante*, and s. 28, *post*. For power to permit reconstruction, see s. 24, *post*.

**Any premises.** The premises which may be subject to a demolition order under this Part (Part II) of the Act must be a house as defined in s. 189 (1), *post*. See s. 16 (1), *ante*, in conjunction with ss. 17 and 18, *ante*, and 28, *post*, and note that s. 22, *infra*, uses yet another term ("building, or part of any building"). In s. 11 (4) of the Act of 1936 the word used was "house".

**Vacated.** See further, s. 22, *infra*.

**Not being less than twenty-eight days.** Cf. the note "Not less than twenty-days" to s. 16 (1), *ante*.

**Date on which the order becomes operative.** See s. 37, *post*.

**Shall be demolished.** See further, s. 23, *post*.

**Within six weeks.** Cf. the note "Within twenty-one days" to s. 11 (1), *ante*.

**Local authority.** See s. 1, *ante*, and s. 41, *post*.

**22. Demolition orders: recovery of possession of building to be demolished.**—(1) Where a demolition order under this Part of this Act has become operative, the local authority shall serve on the occupier of any building, or any part of any building, to which the order relates a notice—

- (a) stating the effect of the order, and
- (b) specifying the date by which the order requires the building to be vacated, and
- (c) requiring him to quit the building before the said date or before the expiration of twenty-eight days from the service of the notice, whichever may be the later.

(2) If at any time after the date on which the notice requires the building to be vacated any person is in occupation of the building, or of any part thereof, the local authority or any owner of the building may make complaint to a magistrates' court and thereupon the court shall by its warrant in the form set out in the Schedule to the Small Tenements Recovery Act, 1838, or in a form to the like effect, order vacant possession of the building, or of the part thereof, to be given to the complainant within such period not being less than two weeks nor more than four weeks as the court may determine.

(3) Any expenses incurred by a local authority under this section in obtaining possession of any building or of any part of a building may be recovered by them from the owner, or from any of the owners, of that building summarily as a civil debt.

(4) Any person who, knowing that a demolition order under this Part of this Act has become operative and applies to a building, enters into occupation of that building, or of any part thereof, after the date by which the order requires that building to be vacated, or permits any other person to enter into such occupation after that date, shall be liable on summary conviction to a fine not exceeding twenty pounds and to a further fine of five pounds for every day, or part of a day, on which the occupation continues after conviction.

(5) Nothing in the Rent Acts shall be deemed to affect the provisions of this section relating to the obtaining possession of a building.

### NOTES

**History.** This section contains provisions formerly in ss. 155 and 156 (1) in Part VI of the Housing Act, 1936. For other provisions of the present Act derived from those sections, see the Table of Repeals and Replacements (Appendix I, *post*). In particular, sub-s. (5), *supra*, can be compared with s. 16 (5), *ante* (undertaking not to use a house for human habitation), and s. 27 (5), *post* (closing order). Sub-s. (4), *supra*, can be compared with ss. 16 (6) and 27 (1). The whole section can be compared with s. 45 (2) to (6), *post* (clearance orders). With the omission of sub-s. (3), *supra*, the same provisions occur again in s. 73, *post* (obstructive buildings under Part III).

**General Note.** When a demolition order has become operative, the local authority give notice to the occupier or occupiers under sub-s. (1), *supra*. Thereafter it is an offence, under sub-s. (4), for any person, knowing of the order, to enter into possession after the date specified for vacating the building; or for a person who knows of the order to permit entry by some other person. Either the local authority or an owner may obtain an order for vacant possession under the Small Tenements Recovery Act, 1838, as applied by sub-s. (2), *supra*. If the complainants are the local authority, their expenses in obtaining possession are recoverable from any owner under sub-s. (3). The Rent Acts are excluded by sub-s. (5).

In the Act of 1936 the provisions about obtaining possession, etc., were conveniently collected in ss. 155 and 156 immediately before the other general provisions, which are now reproduced in ss. 159, *et seq.*, *post*. For other provisions of the present Act reproducing parts of the former ss. 155 and 156, see the note, "History", *supra*, and s. 158, *post*, which is now confined to recovery of possession by local authorities.

The present section is excluded by s. 34 (2), *post*, when a licence is in force thereunder (permitting temporary occupation of houses subject to certain demolition orders, in continuance of similar powers in the Housing Repairs and Rents Act, 1954, or Defence Regulations 68A and 68AA). Under s. 24, *post*, there is power to permit reconstruction of a condemned house.

#### Sub-s. (1).

**Demolition order . . . has become operative.** See s. 37 (1), *post*. Demolition orders may be made under s. 17 (1), *ante*, or s. 28, *post*.

**Local authority.** For meaning, see s. 1, *ante*, and s. 41, *post*.

**Serve.** As to mode of service, see s. 169 (1), *post*.

**Building.** The words "building" was used in s. 155 (1) of the Act of 1936, because that subsection applied also to clearance orders, etc.

**Notice.** The prescribed form of notice under sub-s. (1), *supra*, is Form No. 10 in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), made under s. 178, *post*. As to authentication of notices, see s. 166 (2), *post*.

#### Sub-s. (2).

**Owner.** For definition, see s. 189 (1), *post*.

**Complaint to a magistrates' court.** As to jurisdiction and procedure, see the Magistrates' Courts Act, 1952, ss. 43 *et seq.* (32 Halsbury's Statutes (2nd Edn.) 456 *et seq.*).

**Not being less than two weeks.** Cf. the note "Not less than twenty-one days" to s. 16 (1), *ante*.

**Nor more than four weeks.** The court has no discretion to delay the operation of its warrant beyond the four weeks' maximum period; see *London County Council v. Shelley*, [1947] 2 All E.R. 720, C.A. (affirmed, [1948] 2 All E.R. 898, H.L.; 31 Digest (Repl.) 616, 7317).

**Small Tenements Recovery Act, 1838, Schedule.** 13 Halsbury's Statutes (2nd Edn.) 861. The value or rent of the premises need not be within the limits of the Act of 1838; cf. the express provision to that effect for a different purpose in s. 158 (2), *post*.

**Sub-s. (3).**

**Summarily as a civil debt.** See the note to s. 10 (3), *ante*.

**Sub-s. (4).**

**Knowing; permits.** See the notes to s. 16 (6), *ante*.

**Summary conviction.** Cf. the note to s. 8, *ante*. Note, however, the effect of licences under s. 34, *post*, and the power to permit reconstruction of a condemned house under s. 24, *post*.

**Every day . . . on which the occupation continues after conviction.** See the note "Every day . . . on which he so uses them . . . after conviction" to s. 16 (6), *ante*.

**Sub-s. (5).**

**Rent Acts.** *I.e.*, the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939; see s. 189 (1), *post*. Cf. the notes to s. 16 (5), *ante*.

**23. Demolition orders: enforcement.**—(1) Subject to the provisions of this Part of this Act, when a demolition order under this Part of this Act has become operative, the owner or owners of the premises to which it applies shall demolish those premises within the time limited in that behalf by the order; and if the premises are not demolished within that time, the local authority shall enter and demolish the premises and sell the materials thereof.

(2) Any expenses incurred by an authority under the foregoing subsection, after giving credit for any amount realised by the sale of materials, may be recovered by them as a simple contract debt from the owner of the premises or, if there is more than one owner, from the owners thereof in such shares as the judge may determine to be just and equitable; and any owner who pays to the authority the full amount of their claim may in the like manner recover from any other owner such contribution, if any, as the judge may determine to be just and equitable.

(3) Any surplus in the hands of the authority shall be paid by them to the owner of the premises, or if there is more than one owner, shall be paid as those owners may agree.

If there is more than one owner and the owners do not agree as to the division of the surplus, the authority shall be deemed by virtue of this subsection to be trustees of the surplus for the owners of the premises, and section sixty-three of the Trustee Act, 1925 (which relates to payment into court by trustees), shall have effect accordingly.

(4) The county court within the jurisdiction of which the premises are situate shall have jurisdiction to hear and determine any proceedings under subsection (2) of this section, and shall have jurisdiction under section sixty-three of the Trustee Act, 1925, in relation to any such surplus as is mentioned in subsection (3) of this section.

(5) A county court judge, in determining for the purposes of this section the shares in which any expenses shall be paid or contributed by, or any surplus shall be divided between, two or more owners of any premises, shall have regard to their respective interests in the premises, their respective obligations and liabilities in respect of maintenance and repair under any covenant or agreement, whether expressed or implied, and all the other circumstances of the case.

#### NOTES

**History.** This section contains provisions formerly in s. 13 of the Housing Act, 1936, with certain changes of wording.

The provisions of s. 13 (2)–(5) of that Act were applied by ss. 26 (4) and 55 (3) of that Act to clearance orders on houses or buildings containing unfit dwelling accommodation, and to obstructive buildings, respectively. Similar provision is now made by ss. 44 (4) and 74 (3) in Part III of the present Act, *post*.

**General Note.** A demolition order under this Part (Part II) of the Act will state (a) a period for the house to be vacated, and (b) a further period within which the house is

to be demolished; see s. 21, *ante*. The second period is six weeks from the expiration of the first, or (if later) six weeks from the actual date when the premises are vacated, or in either case such longer period as the authority deem it reasonable to specify in the circumstances. Within this second period the owner or owners must demolish the premises (sub-s. (1), *supra*). There may, however, be a delay when the authority have given notice under s. 25, *post*, before the order became operative, of their intention to cleanse the house from vermin; see s. 25 (2) and (3). The period allowed for demolition may also be extended if an owner submits proposals for reconstruction of the house; see s. 24, *post*. If such works are satisfactorily completed the demolition order will be revoked. The demolition order will also be determined if the house becomes one of the buildings of architectural or historic interest referred to in s. 17 (3), *ante*; see s. 26, *post*.

Subject to these possibilities, if the owners fail to demolish within the time allowed, it becomes the duty of the local authority to enter and demolish the house and sell the materials (sub-s. (1), *supra*).

In the Act of 1936, the word "house" was used in sub-s. (1), and throughout the section, although sub-ss. (2)–(5) were applied to clearance orders (which might relate to houses, or other buildings containing unfit dwelling accommodation) and demolition orders (which related to obstructive buildings) under Part III. In the present section the word "premises" has been substituted throughout, although sub-s. (1), *supra*, relates only to demolition orders on houses.

Under sub-ss. (2) to (5), *supra*, a local authority who incur expenses in demolishing a house under this Part (Part II) of this Act, or any premises under a clearance order or demolition order under Part III, must give credit for any amount realised by selling the materials. If there is a surplus it must be paid to the owners, or into court if the owners cannot agree on its division between them. If there is a deficit, it may be recovered from the owner, or from the owners in shares as determined by the judge; or if one owner discharges the liability he may be able to recover an appropriate contribution from other owners of the premises.

#### Sub-s. (1).

**Subject to the provision of this Part.** *I.e.*, Part II of this Act. See particularly s. 24, *post* (power to permit reconstruction), s. 25 (2) and (3), *post* (cleansing from vermin), and s. 26, *post* (building becoming one within s. 17 (3), *ante*, which relates to building preservation orders, etc.). In the case of certain old demolition orders, see s. 34, *post* (temporary occupation under licence), and s. 35, *post* (substitution of closing order, when demolition would affect other premises).

**Demolition order under this Part.** See s. 17 (1), *ante*, and s. 28, *post*. As to demolition orders on obstructive buildings under Part III, see the General Note, *supra*; the provision corresponding to this subsection is s. 74 (2), *post*, and s. 74 (3) applies sub-ss. (2)–(5), *supra*. As to clearance orders, see s. 44 (3) and (4), *post*.

**Has become operative.** See s. 37, *post*. A notice of intention to cleanse from vermin under s. 25, *post*, must be served *before* the order becomes operative.

**Owner.** For meaning, see s. 189 (1), *post*. For powers of the court under Part VI, see ss. 162 and 163, *post*.

**Premises.** This word has been substituted for "house", which appeared in the Act of 1936; see the General Note, *supra*.

**Time limited . . . by the order.** See the General Note, *supra*, referring to s. 21, *ante*.

**Local authority.** See s. 1, *ante*, and s. 41, *post*.

**Enter and demolish.** For power to enter for survey and examination of a house subject to an order, see s. 159, *post*. For penalty for obstructing officers, or others entitled to enter, in doing anything authorised to be done under this Act, see s. 160, *post*; and see also s. 161, *post*, whereunder a magistrates' court may order persons to permit the carrying into effect of any provisions of this Part of the Act. Delay on the part of a local authority has been held not to invalidate a demolition order (*Martin v. Downham Rural District Council* (1953), 51 L.G.R. 430, C.A.; 3rd Digest Supp.).

**Sell the materials.** Cf. in the case of clearance orders, and demolition orders on obstructive buildings, under Part III, ss. 44 (3) and 74 (2), *post*. Contrast sub-ss. (2)–(5), *supra*, with the provisions of this Act as to compensation for purchase at site value in s. 12 (4), *ante*, and ss. 29 (2) and 59 (2) and (3), *post*, whereunder the compensation is based on the value as a cleared site without any provision for the expense of clearing it or the value of the materials realised.

#### Sub-s. (2).

**Foregoing subsection.** See sub-s. (1), *supra*; and note that the remainder of this section is applied by ss. 44 (4) and 74 (3), *post*, to action taken under ss. 44 (3) and 74 (2), respectively.

**Sale of materials.** See the note "Sell the materials" to sub-s. (1), *supra*.

**Recovered . . . as a simple contract debt.** *I.e.*, by action in the county court (see sub-s. (4), *supra*), whatever the amount involved.

**Premises.** Under this Part (Part II) the premises will be a house as defined in s. 189 (1), *post*; see ss. 16 (1) and 17 (1), *ante*. The Act of 1936 used the word "house" in s. 13, now replaced by the present section. "Premises" has probably been substituted as a word more suitable where the present subsection is applied by ss. 44 (4) and 74 (3), *post*. The change has, however, been overlooked in the drafting of s. 44 (4), and both ss. 44 (4) and 74 (3) require the substitution of the word "building".

**If there is more than one owner.** This is possible under the definition of "owner" in s. 189 (1), *post*. In deciding what is just and equitable, as to the shares to be paid by owners, or as to the contribution, if any, to be paid by other owners to an owner who has paid the authority's claim, the judge is to have regard to their respective interests, obligations and liabilities, etc., as mentioned in sub-s. (5), *supra*. In this connection it should be noted that lessees with a term of three years or less to run are not "owners" as defined.

**Sub-s. (3).**

**Trustee Act, 1925, s. 63.** 26 Halsbury's Statutes (2nd Edn.) 145. That section enables trustees to pay trust moneys or securities into court, and obtain a receipt therefor, the moneys, etc., being dealt with by order of the court. By virtue of sub-s. (4), *supra*, the jurisdiction conferred on the county court under this section is apparently unlimited by the amount of money involved.

**Sub-s. (5).**

**Paid; contributed; divided.** These words refer to (1) the shares in which expenses are to be paid, where there is more than one owner, (2) the amount or amounts (if any) which other owners should contribute, if one owner has paid the whole claim for expenses, and (3) the division of surplus arising from sale of materials, where there is more than one owner and the owners do not agree; see sub-ss. (2) and (3), *supra*.

**Covenant . . . expressed or implied.** An owner within s. 189 (1), *post*, may be a tenant under a letting to which s. 6, *ante*, applies (implied covenant on letting small houses) if his agreement has more than three years to run; but note the proviso to s. 6 (2), *ante*.

**All the other circumstances.** It is thought that the court will take account of such matters as the power to determine leases under s. 162, *post*, and the fact that a freeholder may be able to redevelop the site profitably whereas a lessee may not. Again, one owner may have incurred some expenditure in partial compliance with the demolition order, before the local authority entered.

**24. Demolition orders: power to permit reconstruction of condemned house.**—(1) If an owner of a house in respect of which a demolition order has become operative submits proposals to the local authority for the execution by him of works designed to secure the reconstruction, enlargement or improvement of the house, or of any buildings of which the house is one, and the local authority are satisfied that the result of the works will be the provision of one or more houses fit for human habitation, the authority shall have power to extend for such period as they may specify the time within which the owner or owners of the house are required under subsection (1) of the last foregoing section to demolish it, in order that the said owner may have an opportunity of carrying out the works.

(2) The said time may be further extended by the local authority once or more often as occasion may require, if the works have been begun and appear to the authority to be making satisfactory progress or, though they have not been begun, the authority think there has been no unreasonable delay; and if the works are completed to the satisfaction of the authority they shall revoke the demolition order without prejudice to any subsequent proceedings under this Part of this Act.

(3) Where in relation to a house a local authority determine to extend or further extend the time mentioned in subsection (1) of this section, notice of the determination shall be served by the authority on every person having an interest in the house, whether as freeholder, mortgagee, lessee or otherwise.

#### NOTE

**History.** This section contains provisions formerly in s. 5 of the Housing Repairs and Rents Act, 1954. That section greatly extended the limited power of "reprieve" in the Housing Act, 1949, s. 2, as modified by the Local Government (Miscellaneous Provisions) Act, 1953, s. 11 (1), which are both spent and not reproduced in the present Act.

**General Note.** There was no power, in the Act of 1936 as originally enacted, to revoke a demolition order. Occupation of condemned houses was licensed in war-time under Defence Regulations 68A and 68AA (see notes to s. 34, *post*), and there were other cases in which demolition orders were not in fact enforced. Provision was made for quashing demolition orders, in certain cases where the house had been made fit for human habitation since the order became operative, by the Acts of 1949 and 1953, cited in the note "History", *supra*.

The present section, derived from the Act of 1954, now permits any owner of a house, which is subject to an operative demolition order, to put forward proposals for reconstruction, etc. The proposals may, for example, involve doing what was suggested in *Johnson v. Leicester Corporation*, [1934] 1 K.B. 638; Digest Supp., cited in the notes to s. 16 (4), *ante*, namely, converting two unfit houses into one fit house. The local authority, if satisfied that one or more fit houses will result, may extend the time mentioned in ss. 19 and 23 (1), *ante*, in which the house would have to be demolished, so as to allow the proposals to be put into effect. When they extend the time, the authority must give notice to persons having an interest in the house, see sub-s. (3), *supra*. Further extensions may be granted under sub-s. (2), *supra*, and again notice must be served on persons interested.

**Sub-s. (1).**

**Owner; house.** For meaning, see s. 189 (1), *post*. As to "house", cf. s. 16 (7), *ante*.

**Demolition order.** See s. 17 (1), *ante*, and s. 28, *post*. The enforcement of such orders is expressed to be "subject to the provisions of this Part [Part II] of this Act"; see s. 23 (1), *ante*. In Part III, *post*, s. 74 (2) is not subject to such a proviso, and it is doubtful whether the reference, in the present section, to a demolition order extends to one made on an obstructive building under s. 72 (2), *post*.

**Has become operative.** See s. 37, *post*.

**Local authority.** See s. 1, *ante*, and s. 41, *post*.

**Execution . . . of works.** As to the powers of the court under Part VI, see particularly s. 164, *post*. It seems that s. 163, *post*, is inapplicable.

**Any buildings of which the house is one.** This form of words gives a useful power to incorporate other accommodation, whether another house or part of a house or not, or to do any type of conversion that will result in a fit house or a number of fit houses.

**Fit for human habitation.** See ss. 4 and 5, *ante*. In connection with back-to-back houses, see the reference to *Johnson's* case in the General Note, *supra*.

**Power to extend . . . the time.** When the authority determine to extend the time, they must serve notice under sub-s. (3), *supra*. The time mentioned is that referred to in ss. 21 (b) and 23 (1), *ante*; see the General Note to s. 23.

**Sub-s. (2).**

**May be further extended.** Notice must be served under sub-s. (3), *supra*.

**Revoke the demolition order without prejudice.** No form is prescribed, nor any special procedure laid down, for revoking the order. Presumably the local authority will pass a resolution to that effect, and inform persons having an interest in the house. The phrase "without prejudice", etc., appears to mean that if the house, or any house produced by conversion, subsequently becomes unfit, appropriate proceeding can be begun under s. 9, *ante* ("repairs" notice), or s. 16 (1), *ante* (notice of "time and place").

**Sub-s. (3).**

**Notice.** As to authentication, see s. 166 (2), *post*. For power to prescribe a form of notice, see s. 178, *post*. No form for use under this section has been prescribed, at the date of going to press.

**Served.** As to modes of service, see s. 169 (1), *post*.

**Person having an interest.** The persons mentioned are the same as in s. 9 (2), *ante*; see the note "Other person having an interest" to that subsection.

**25. Demolition orders: cleansing before demolition.**—(1) If it appears to the local authority that premises to which a demolition order made under this Part of this Act applies require to be cleansed from vermin, the authority may, at any time between the date on which the order is made, and the date on which it becomes operative in relation to the premises, serve notice in writing on the owner or owners of the premises that the authority intend to cleanse them before they are demolished.

(2) A local authority who have served a notice under the foregoing subsection may, at any time after the order has become operative in relation to the premises and they have been vacated, enter and carry out such work as they may think requisite for the purpose of destroying or removing vermin, and

the demolition shall not be begun or continued by any owner after service of the notice on him until the authority have served on him a further notice authorising him to proceed with the demolition:

Provided that an owner upon whom a notice has been served under the foregoing subsection may, at any time after the premises have been vacated, serve notice in writing on the authority requiring them to carry out the work within fourteen days from the receipt of the notice served by him, and at the expiration of that period shall be at liberty to proceed with the demolition whether the work has then been completed or not.

(3) Where a local authority serve a notice under subsection (1) of this section, subsection (1) of section twenty-three of this Act shall have effect in relation to the house to which the notice relates subject to the proviso that the local authority shall not be entitled to take action thereunder until the expiration of six weeks from the date on which the owner or owners become entitled by virtue of subsection (2) of this section to proceed with the demolition.

### NOTES

**History.** This section contains provisions formerly in s. 17 of the Housing Act, 1936. That section was applied in relation to clearance orders under Part III, by s. 26 (7) of that Act. Similar provision under the present Act is made by s. 44 (7), *post*.

**General Note.** This section enables an authority to cleanse a house from vermin before it is demolished under s. 23, *ante*; or, as applied by s. 44 (7), *post*, so to cleanse a house before it is demolished under a clearance order under Part III of this Act.

The following points should be noted with respect to the operation of this section:—

- (1) The notice must be in writing, and be signed by the clerk or his lawful deputy (see s. 166 (2), *post*).
- (2) The notice may be served at any time between the date on which the order is made and the date on which it becomes operative, or, in the case of a clearance order, between the date of its being confirmed and the date on which it becomes operative.
- (3) The local authority may not enter the building for the purpose of cleansing it under this section until it has been vacated.
- (4) The owner upon whom the notice is served is not allowed to proceed with the demolition of the building until a further notice is served on him by the local authority authorising him to proceed, but such owner may at any time after the building has been vacated serve notice in writing on the authority requiring them to carry out the cleansing work within fourteen days from the receipt of the notice served by him, and at the end of that period he will be at liberty to proceed with the demolition of the building whether the cleansing has been carried out or not.

#### Sub-s. (1).

**Local authority.** See s. 1, *ante*, and s. 41, *post*.

**Premises.** Under this Part, the premises will be a "house" as defined in s. 189 (1), *post*; see ss. 16 (1) and 17 (1), *ante*. The Act of 1936 used the word "house" in s. 17, now replaced by the present section. By s. 44 (7), *post*, the present section is applied to a "house to which a clearance order applies", but not apparently to any other building which might be included in a clearance order. In sub-s. (3), *supra*, the word "house" is retained.

**Demolition order made under this Part.** See s. 17 (1), *ante*, and s. 28, *post*. As to clearance orders under Part III, see previous note, *supra*.

**Order is made.** In the case of clearance orders, substitute a reference to confirmation of the order; see s. 44 (7), *post*.

**Becomes operative.** As to when a demolition order becomes operative, see s. 37, *post*. As to when a clearance order becomes operative, see para. 3 of the Fourth Schedule, *post* (subject to any application to the court, the date is six weeks from publication of notice of confirmation).

**Serve.** As to service by an authority, see s. 169 (1), *post*.

**Notice.** As to authentication, see s. 166 (2), *post*. The prescribed forms of notice of intention to cleanse from vermin and to proceed with demolition after a building has been cleansed (sub-s. (2), *supra*) are Forms Nos. 8 and 9, respectively, in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), made under s. 178, *post*.

**Owner or owners.** See the definition of "owner" in s. 189 (1), *post*.

**Sub-s. (2).**

**After . . . they have been vacated.** As to vacating premises subject to a demolition order, see ss. 21 (a) and 22, *ante*. Corresponding provisions as to clearance orders will be found in s. 45, *post*.

**Enter and carry out . . . work.** For penalty for obstructing officers, and others authorised to enter, in the execution of this Act, see s. 160, *post*. For the power of a magistrates' court to order certain persons to permit the carrying into effect of this Part (Part II) of the Act, see s. 161, *post*.

**Further notice.** The further notice to be served by the authority, authorising an owner to proceed, is Form No. 9 mentioned in the note "Notice" to sub-s. (1), *supra*.

**Serve notice . . . on the authority.** The notice which an owner may serve under the proviso to the present subsection can take the following form:—

To the.....Council.

## HOUSING ACT, 1957, SECTION 25

I, [owner's name], of [owner's address], being an owner of the house known as [name or number, and address, of house] which [is the subject of a demolition order made the.....day of ....., 19..] [or, is included in the..... Clearance Order, 19..], and which is the subject of your notice dated the..... day of....., 19.., under [section 25] [sections 25 and 44] of the Housing Act, 1957, HEREBY GIVE YOU NOTICE to carry out such works as you think requisite for the purpose of destroying or removing vermin WITHIN FOURTEEN DAYS of the receipt by you of this notice.

[Signature.]

Dated this.....day of..... 19...

As to service of a notice on the authority by an owner, see s. 168, *post*.

**Within fourteen days.** Cf. the note "Within twenty-one days" to s. 11 (1), *ante*.

**Sub-s. (3).**

**House.** See s. 189 (1), *post*, and cf. the note "Premises" to sub-s. (1), *supra*.

**26. Demolition orders: substitution of closing order in case of house included in building preservation order, etc.**—Where a house with respect to which a demolition order made under this Part of this Act by a local authority applies (whether or not that order has become operative) becomes one to which paragraph (a), (b) or (c) of subsection (3) of section seventeen of this Act applies, the local authority shall determine the demolition order and make a closing order as respects the house; and the local authority shall serve notice that the demolition order has been determined and a copy of the closing order on every person on whom they would be required by subsection (1) of section sixteen of this Act to serve a notice issued by them under that subsection.

## NOTES

**History.** This section contains provisions formerly in s. 3 (2) of the Housing Act, 1949.

**General Note.** If a house becomes one answering the description in s. 17 (3), *ante*, which relates to certain buildings of architectural or historic interest, after a demolition order has been made, the demolition order must be replaced by a closing order.

**House.** For definition, see s. 189 (1), *post*.

**Demolition order under this Part.** See s. 17 (1), *ante*, and s. 28, *post*. Demolition orders may be made on obstructive buildings under Part III (see s. 72 (2), *post*) but to these the present section does not apply.

**Become operative.** See s. 37 (1), *post*.

**Section 17 (3) (a), (b) or (c).** These paragraphs, *ante*, refer to (a) houses subject to building preservation orders, (b) houses which are "listed" buildings, and (c) houses as to which the Minister has given notice, in effect, that they are being considered for inclusion in the list or may become subject to building preservation orders.

**Local authority.** See s. 1, *ante*, and s. 41, *post*.

**Closing order.** The Housing Act, 1949, s. 3 (4), applied a number of provisions of the Act of 1936 but did not expressly provide power to prescribe a form of order; but see now s. 178, *post*. Model Forms were suggested by Ministry of Health Circular 54/50; see notes to s. 17 (3), *ante*. A closing order under the present section would seem to be precisely similar to one under s. 17 (3), except as to modes of service of copies thereof (see next note, *infra*).

**Serve notice.** Presumably this notice is merely an explanation accompanying the copy of the closing order. The provisions of s. 166 (2), *post*, as to authentication are excluded, by proviso (a) thereto, in relation to the notice (but not in relation to the closing order). The modes of service under s. 169, *post*, are not applicable to service of copies of closing orders under s. 17 (1) proviso or s. 17 (3), *ante*, but appear to apply to service of the copies of the closing order under the present section. They do not, however, apply to notices under the present section; see s. 169 (2), *post*. The powers of the Minister to prescribe forms of notices, or to dispense with notices, are excluded by ss. 178 (1) proviso and 179 (1) proviso, *post*, in relation to notices under this section.

**27. Closing orders: general provisions.**—(1) A closing order shall be an order prohibiting the use of the premises as respects which the order is made for any purpose other than a purpose approved by the local authority, and any person who, knowing that a closing order has become operative and applies to any premises, uses those premises in contravention of the order, or permits them to be so used, shall on summary conviction be liable to a fine not exceeding twenty pounds and to a further fine of five pounds for every day, or part of a day, on which he so uses them, or permits them to be so used, after conviction.

(2) The approval of the local authority under the foregoing subsection shall not be unreasonably withheld and they shall determine the order on being satisfied that the premises as respects which it was made have been rendered fit for human habitation.

(3) Any person aggrieved by—

(a) the withholding of approval by the local authority of any use of the premises to which the closing order relates, or

(b) a refusal by the local authority to determine the closing order,

may, within twenty-one days after the refusal, appeal to the county court within the jurisdiction of which the premises to which the closing order relates are situated.

(4) No appeal shall lie under paragraph (b) of the last foregoing subsection at the instance of a person who is in occupation of the premises to which the closing order relates under a lease or agreement of which the unexpired term does not exceed three years.

(5) Nothing in the Rent Acts shall prevent possession being obtained by the owner of premises in a case where a closing order under the proviso to subsection (1) of section seventeen, or under section eighteen of this Act is in force in respect thereof.

#### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in ss. 12 (1) and 14 of the Housing Act, 1936, in s. 3 (1) and (2) of the Housing Act, 1949, and in s. 10 (1) and (4) (b) of the Local Government (Miscellaneous Provisions) Act, 1953. Sub-s. (2) contains provisions formerly in s. 12 (1) (a) of the Act of 1936, in s. 3 (3) of the Act of 1949, and in s. 10 (4) (a) of the Act of 1953. Sub-s. (3) contains provisions formerly in s. 15 (1) (e) and (f) of the Act of 1936, in s. 3 (4) (a) of the Act of 1949, and in s. 10 (4) (c) of the Act of 1953. Sub-s. (4) contains provisions formerly in s. 15 (1) proviso (ii) of the Act of 1936. Sub-s. (5) contains provisions formerly in s. 156 (1) (e) in Part VI of the Act of 1936 and in s. 10 (4) (f) of the Act of 1953. The provisions of the Act of 1936 originally applied to closing orders on a part of a building or an underground room under s. 12 (see now s. 18 of this Act, *ante*). The Acts of 1949 and 1953 applied these provisions, to the extent indicated, to closing orders under those Acts (see now s. 17 (3) and s. 17 (1) proviso, *ante*).

**General Note.** The general effect of a closing order is to prohibit the use of the premises except for a purpose approved by the local authority, but (i) the approval is not to be unreasonably withheld, and (ii) the authority must determine the order if the premises have been rendered fit. An appeal lies to the county court against a withholding of consent, or a refusal to determine an order, but sub-s. (4), *supra*, excludes certain persons from appealing against a refusal to determine an order.

Closing orders under s. 17 (1) proviso or s. 18, *ante*, or s. 35 (1), *post*, entitle an owner to obtain possession notwithstanding the Rent Acts; this is not so in the case of a closing order under s. 17 (3) or s. 26, *ante*, nor in the case of closing orders under the Public Health (London) Act, 1936 (see *Marela, Ltd. v. Machorowski*, [1953] 1 All E.R. 960, C.A.; 3rd Digest Supp.).

The penalty in sub-s. (1), *supra*, against using premises in contravention of an order can be compared with that under s. 16 (6), *ante* (user in contravention of an undertaking). Both provisions are derived from s. 14 of the Act of 1936.

**Grounds of appeal under this section.** The following grounds are suggested for appeals to the county court under sub-s. (3), *supra*:

**A. Against withholding approval of user.**

- (1) The appellant's proposal represents a satisfactory user of the premises.
- (2) The authority have acted unreasonably in withholding approval.

**B. Against a refusal to determine an order.**

- (1) The premises have been rendered fit for human habitation [in that . . . (here list works done and defects remedied)].
- (2) The authority have acted unreasonably in refusing to determine the closing order.

**Sub-s. (1).**

**Closing order.** See ss. 17 (1) proviso, 17 (3), 18 (1) and 26, *ante*, and s. 35 (1), *post*. Forms of order have been prescribed by the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), for use under s. 17 (1) proviso (Form 14), s. 18 (1) (Form 13). An order under s. 35 (1), *post*, is deemed to be made under s. 17 (1) proviso, and will presumably be in Form 14. No form has been prescribed under s. 17 (3) or 26, at the date of going to press, but see the Model Forms mentioned in the notes to those sections, *ante*.

**Premises.** *I.e.*, a part of a building or an underground room, under s. 18, *ante*; in other cases, a "house" as defined in s. 189 (1), *post*.

**Any purpose.** Note that the authority have complete control over the user of the premises, subject to the right to appeal against a withholding of consent; and contrast the position before s. 84 of the Housing Act, 1935, mentioned in the General Note to s. 18, *ante*. Contrast also s. 16 (4), *ante* (undertaking not to use for human habitation). As to temporary occupation of house subject to certain old closing orders, see s. 34, *post*.

**Local authority.** See s. 1, *ante*, and s. 41, *post*.

**Knowing; permits.** See the notes to s. 16 (6), *ante*.

**Become operative.** See s. 37, *post*.

**Summary conviction.** Cf. the note to s. 8, *ante*.

**Every day . . . on which he so uses them . . . after conviction.** See the note to s. 16 (6), *ante*.

**Sub-s. (2).**

**Approval . . . shall not be unreasonably withheld.** Presumably, to operate these provisions, a person interested in the premises should apply, preferably in writing, for the approval of some intended user. The authority should reply in writing, either approving or withholding approval. There are no prescribed forms, but it is desirable for matters to be dealt with in writing; cf. *Johnson's* case, cited in the note, "Offer . . . of works", to s. 16 (3), *ante*. The county court rules, cited in the notes to s. 38 (1), *post*, require the filing of the order (or the like) appealed against, so that some written document seems to be required.

**Shall determine the order.** Before 1st December 1957 there were prescribed forms for an order determining a closing order under s. 18, *ante*, and for a notice refusing to determine such an order. These were Forms 11 and 12 respectively, prescribed by the Housing (Form of Orders and Notices) Regulations, 1937 (S.R. & O. 1937 No. 78), the latter form having been amended by S.I. 1954 No. 1632. Those regulations were revoked by the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), which contain no corresponding forms.

**Fit for human habitation.** See ss. 4 and 5, *ante*.

**Sub-s. (3).**

**Person aggrieved; within twenty-one days.** Cf. the notes to s. 11, *ante*; and as to excluding certain persons from the right of appeal under para. (b) of this subsection, see sub-s. (4), *supra*.

**Appeal to the county court.** See s. 38, *post*. The present section does not expressly state what the judge may do, but presumably he may by order confirm, quash or vary the authority's decision as he thinks fit; cf. ss. 11 (3), 20 (3), *ante*, and ss. 30 (5) and 36 (2) (a), *post*.

**Sub-s. (4).**

**No appeal shall lie, etc.** Cf. s. 20 (2), and the notes thereto, *ante*.

**Sub-s. (5).**

**Nothing in the Rent Acts.** Cf. s. 16 (5), *ante*. The Acts are the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939; see s. 189 (1), *post*.

**Owner.** For definition, see s. 189 (1), *post*.

**Closing order.** The present subsection does not apply to closing orders under s. 17 (3) or s. 26, *ante*. The reference to s. 17 (1) proviso appears to include s. 35, *post*; see s. 35 (2).

**28. Closing orders: substitution of demolition order.**—Where a local authority have made a closing order under the proviso to subsection (1) of section seventeen of this Act, they may at any time revoke it and make a demolition order; and, when the demolition order has been made, the provisions of this Act relating to demolition orders (including the provisions relating to the service of copies of demolition orders and to appeals against demolition orders) shall apply as if the demolition order had been made under the said section seventeen.

#### NOTES

**History.** This section contains provisions formerly in s. 10 (3) of the Local Government (Miscellaneous Provisions) Act, 1953.

**General Note.** Closing orders may be made on a house under s. 17 (1) proviso, *ante*, when demolition would be inexpedient because of its effect on any other house or building, or, for similar reasons, under s. 35, *post*, to replace an existing demolition order made before the commencement of the Act of 1953. Similar orders could be made, before 1st September 1957, under ss. 10 and 11 of that Act. The present section allows such closing orders to be revoked and replaced by a demolition order. The demolition order so substituted has the same effect as an ordinary demolition order under s. 17 (1), *ante*.

**Local authority.** See s. 1, *ante*, and s. 41, *post*.

**Closing order.** The reference to s. 17 (1) proviso, *ante*, will include a reference to s. 35 (1), *post*; see s. 35 (2). It will also include a reference to ss. 10 (1) and 11 (2) of the Act of 1953; see s. 192, *post*.

**Demolition order.** See s. 17 (1), *ante*. The provisions for service of copies are in s. 19, *ante*; and as to appeals, see s. 20, *ante*, and ss. 37 and 38, *post*. Other provisions are contained in ss. 21 to 26, *ante*. Sections 32 and 162, *post*, apply to both demolition orders and closing orders. In connection with s. 31, *post* (payments to certain owner-occupiers), note the effect of para. 7 (3) in Part II of the Second Schedule, *post*. The procedure under this section is not expressed to include service of a notice that the closing order has been revoked (contrast s. 35 (2), *post*), but presumably at least an explanatory letter will be served on the persons mentioned in ss. 16 (1) and 19, *ante*, with the copy demolition order. The form of order should presumably follow that prescribed for use under s. 17 (1), *ante*; see Form No. 7 prescribed by the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*).

**29. Provisions as to purchase of condemned houses.**—(1) At any time after a notice of the determination of a local authority to purchase a house under section nineteen of this Act has become operative, the local authority may purchase the house by agreement or may be authorised by the Minister to purchase it compulsorily; and the First Schedule to this Act shall apply in relation to a compulsory purchase under this section.

(2) The compensation to be paid for a house purchased compulsorily under this section shall be the value, at the time when the valuation is made, of the site as a cleared site available for development in accordance with the requirements of the building byelaws for the time being in force in the district but the payment of compensation on a compulsory purchase in pursuance of this section shall be without prejudice to the making of such payment, if any, in respect of the compulsory purchase as is authorised by sections thirty and thirty-one of this Act.

(3) A local authority by whom a house is purchased under this section may carry out such works as may from time to time be required for rendering and keeping it capable of providing accommodation of a standard which is adequate for the time being pending its demolition by the authority.

(4) In respect of any house purchased under this section the local authority shall have the like powers as they have in respect of houses provided under Part V of this Act, and section six of this Act shall not apply to a contract for the letting by a local authority of any such house.

#### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 3 (4) of the Housing Repairs and Rents Act, 1954. Sub-s. (2) contains provisions formerly in s. 3 (5) of the

Act of 1954 (applying s. 16 (4) of the Housing Act, 1936; cf. now s. 12 (4) of the present Act, *ante*), as affected by ss. 1, 2 and 3 (2)–(4) of the Slum Clearance (Compensation) Act, 1956. Sub-ss. (3) and (4) contain provisions formerly in ss. 3 (2) and 20, respectively, of the Act of 1954.

**General Note.** This section provides powers of purchase where a local authority have determined to purchase a house, in lieu of making a demolition order, in order to provide temporary housing accommodation "which is adequate for the time being"; see s. 17 (2), *ante*. The powers arise after a notice of the authority's determination to purchase has been served, and become operative, *i.e.*, after an opportunity of appeal to the county court; see ss. 19 and 20, *ante*, and 37, *post*. The present section is also applied by s. 34 (5), *post*, when the local authority decide to purchase a house where temporary occupation has been licensed under that section or the enactments replaced thereby, *i.e.*, under the powers originally contained in Defence Regulations 68A or 68AA.

Sub-s. (1), *supra*, provides for purchase by agreement without the making of a compulsory purchase order, or by compulsion if need be after the making of such an order under the standard procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946; see the First Schedule, *post*. That Schedule also contains powers of service of notices, additional to those in the Act of 1946, and a special provision for the acquiring authority taking notional possession of the house without disturbing the occupiers. Both these provisions, in paras. 2 and 3 of the First Schedule, *post*, are derived from the Housing Repairs and Rents Act, 1954, from which the present section is also derived.

Sub-s. (2), *supra*, provides for compensation at site value, and corresponds with s. 12 (4), *ante*, which provides the same basis of compensation for houses acquired under that section; cf. also s. 59 (2) and (3) in Part III, *post*. Payments in respect of unfit but well-maintained houses, and to certain owner-occupiers and business tenants, may be payable under ss. 30 and 31, *post*, or allowances to persons displaced may be made under s. 32, *post*, if the authority see fit.

Sub-ss. (3) and (4), *supra*, deal with the powers of the authority when they have purchased the house. Unlike s. 57 (6) in Part III, *post*, relating to land in a re-development area, sub-s. (4) does not state that the house "shall be deemed to have been acquired under Part V", but confers the same powers. As to exchequer contributions, see s. 13 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*), and as to the inclusion of such houses in the authority's Housing Revenue Account, see s. 50 of that Act.

#### Sub-s. (1).

**At any time.** Contrast s. 12 (2), *ante*, which contains time limits in the case of purchases under that section. Cf. ss. 48 (2) and 53 (5), *post*, modifying s. 43 (4), *post*, in connection with certain similar purchases under Part III of this Act, and cf. also the notes to s. 54, *post*.

**Notice of the determination.** See ss. 17 (2) and 19, *ante*.

**Local authority.** See s. 1, *ante*, and s. 41, *post*.

**House.** The proceedings will have been started by a "notice of time and place" under s. 16 (1), *ante*, in respect of a "house" as defined in para. (a) of the definition in s. 189 (1), *post*.

**Has become operative.** As to the right of appeal, see s. 20, *ante*, and s. 38, *post*. As to the date of operation of a notice, see s. 37, *post*.

**Authorised by the Minister.** *I.e.*, by the Minister's confirmation of a compulsory purchase order made and submitted to him by the authority under the standard procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 4; 3 Halsbury's Statutes (2nd Edn.) 1064); see para. 1 (1) of the First Schedule, *post*. "The Minister" is defined in s. 189 (1), *post*.

#### Sub-s. (2).

**The compensation, etc.** Cf. the note to s. 12 (4), *ante*, which is in the same terms as this subsection.

**At the time when the valuation is made; as a cleared site; available for development.** See the notes to similar words in s. 59 (2), *post*.

**Building byelaws.** For meaning, see s. 189 (1), *post*.

#### Sub-s. (3).

**Adequate for the time being.** The purpose of the purchase is to provide accommodation which is of this standard; see s. 17 (2), *ante*. The standard is not defined; but see the note "Other standards" to s. 4, *ante*.

**Pending its demolition.** Houses purchased under this section are intended for temporary occupation (*i.e.*, "for the time being"; see s. 17 (2), *ante*) although they are unfit, and not capable at a reasonable expense of being rendered fit, for human habitation under the ordinary standards of fitness (see ss. 4 and 5, and s. 16 (1), *ante*). The present subsection assumes that the time will come when they are no longer needed, and that the authority will then pull them down. No special procedure is required for their demolition.

#### Sub-s. (4).

**Like powers as . . . under Part V.** Part V of this Act (ss. 91–134, *post*) relates to the provision, management, disposal, etc., of houses by local authorities to meet the

general needs of the district. Powers of management are conferred by ss. 111, *et seq.*; see also ss. 94, 95 (furniture and board), and, in Part VI, s. 158 (recovery of possession despite the Rent Acts) which contains powers exercisable, *inter alia*, for Part V purposes.

**Section 6 . . . shall not apply.** That section, *ante*, implies conditions, into contracts for the letting of small houses, as to their fitness for human habitation. The houses purchased under this section are, *ex hypothesi*, unfit (see ss. 16 (1) and 17 (2), *ante*) and are to be patched up only to a standard "adequate for the time being". Contrast the position under s. 12 (3), *ante*, where the authority have to carry out works, as contained in their original notice under s. 9, to make fit any house purchased compulsorily under s. 12.

**30. Payments in respect of condemned houses which have been well maintained.**—(1) Within three months of the service by a local authority under section nineteen of this Act of a copy of a demolition order or of a notice of their determination to purchase a house any person may represent to them that the house has been well maintained and that the good maintenance of the house is attributable wholly or partly to work carried out by him or at his expense.

(2) This section shall apply to a closing order made under the proviso to subsection (1) of section seventeen of this Act as it applies to a demolition order.

(3) If—

- (a) the house is vacated in pursuance of the demolition or closing order or purchased compulsorily in pursuance of the notice, and
- (b) leaving out of account any defects in the house in respect of any such matters as are mentioned in paragraphs (b) to (h) of subsection (1) of section four of this Act, the representation made as respects the house is correct,

the local authority shall make to the person by whom the representation was made in respect of the house such payment, if any, as is authorised by Part I of the Second Schedule to this Act.

(4) If, on receiving the representation, the local authority consider that the condition specified in paragraph (b) of the last foregoing subsection is not satisfied they shall serve on the person by whom the representation was made notice that no payment falls to be made to him under that subsection.

(5) Any person aggrieved by a notice under the last foregoing subsection may, within twenty-one days after the date of the service of the notice, appeal to the county court within the jurisdiction of which the house to which the notice relates is situated, and on the appeal to the county court the judge may make such order either confirming or quashing or varying the notice as he thinks fit:

Provided that if the persons who would be entitled to appear and be heard on such an appeal so agree in writing any matter in dispute which might have been the subject of such an appeal shall instead be submitted to arbitration.

(6) For the purposes of this section a house which might have been the subject of a demolition order under this Part of this Act but which has without the making of such an order been vacated and demolished in pursuance of an undertaking for its demolition given to the local authority shall be deemed to have been vacated in pursuance of a demolition order made and served at the date when the undertaking was given.

(7) In this section references to a demolition order do not include such an order in respect of a house already subject to a closing order so far as it affects any part of the house in relation to which a payment under this section or under the Second Schedule to this Act has fallen to be made in respect of the closing order.

#### NOTES

**History.** Sub-ss. (1) to (3), *supra*, contain provisions formerly in ss. 3 (2) and 4 (2) of the Slum Clearance (Compensation) Act, 1956. Sub-s. (4) contains provisions formerly in s. 3 (3) of the Act of 1956. Sub-s. (5) contains provisions formerly in s. 15

(1) and (2) of the Housing Act, 1936, and s. 3 (3) of the Act of 1956. Sub-ss. (6) and (7) contain provisions formerly in s. 4 (1) and (2) of the Act of 1956.

By s. 3, the Act of 1956 made provision for payments in respect of unfit but well-maintained houses similar to, but not identical with, the provisions of s. 42 in Part III of the Act of 1936 (see now s. 60, *post*). S. 4 of the Act of 1956 contained definitions. S. 15 of the Act of 1936, as applied by the Act of 1956, conferred a right of appeal to the county court (cf. ss. 11 (1), 20 (1) and 27 (3), *ante*, and s. 36 (2), *post*, for other provisions in this Part (Part II) of the present Act derived from s. 15 of the Act of 1936, or that section applied by later Acts).

**General Note.** Payments may be made under this section and Part I of the Second Schedule, *post*, in respect of unfit but well-maintained houses against which certain forms of action are taken under this Part (Part II) of the Act. The events giving rise to such a payment are:

- (1) the vacating of a house in pursuance of a demolition order (subject to sub-s. (7), *supra*, preventing double payment in certain cases);
- (2) the vacating of a house in pursuance of a closing order made because demolition would be inexpedient as mentioned in s. 17 (1), proviso, *ante*;
- (3) the compulsory purchase of a house in lieu of the making of a demolition order; and
- (4) the vacating of a house by arrangement without the making of a demolition order, as mentioned in sub-s. (6), *supra*.

The section appears not to apply to a purchase under s. 12, *ante*, to a closing order under s. 17 (3), 18 or 26, *ante*, or to a demolition order under s. 72 (obstructive buildings) in Part III, *post*. It will possibly apply to houses purchased under s. 29, *ante*, as applied by s. 34 (5), *post*; and it seems it will apply to houses vacated in pursuance of closing orders made under s. 35, *post*.

The claim under sub-s. (1), *supra*, has to be made by way of a representation to the local authority by a person who claims to have done work or spent money on the good maintenance of the house. This representation must be made within the three months' limit from service of the copy of the demolition order, or from the service of the copy of the closing order, or from the service of notice of intention to purchase, under s. 19, *ante*; or, in the cases mentioned in sub-s. (6), *supra*, within three months of the undertaking to demolish the house. In other words, the representations may have to be made before the house is actually purchased or vacated. It is not clear what the time limit is in the case of houses purchased under s. 34 (5), *post*, if the present section applies to such cases.

The present section should be compared with s. 60 in Part III, *post*, whereunder similar payments may be made, but the procedure (and certain other details) is different. The procedure of the present section is for the representation to be made to the authority; for the authority to dispute the matter, if they are not satisfied, by a notice under sub-s. (4); and for the dispute to be settled by appeal to the county court, or by arbitration, under sub-s. (5). In this section the real substance of the representations will, it seems, be that work has been done by way of *repair* or that money has been spent on *repair*; for by sub-s. (3), *supra*, such matters as stability, dampness, ventilation, mentioned in s. 4 (1) (b) to (h), *ante*, are left out of account. See further the notes, *infra*, to sub-s. (3).

The procedure of s. 60, *post*, is for the Minister, after causing the house to be inspected by an officer of the Ministry, to satisfy himself whether the house has been well-maintained; if so satisfied, he directs the authority to make the payment. He is not specifically required to leave out of account the matters listed in s. 4 (1) (b) to (h), *ante*: under s. 42 of the Act of 1936 (repealed) he was to satisfy himself that the house "notwithstanding its sanitary defects" had been well maintained; but the reference to sanitary defects was repealed, and not replaced, by the Act of 1954. "Sanitary defects", as defined in s. 188 (1) of the Act of 1936 (repealed), referred to lack of air space or of ventilation, darkness, dampness, absence of adequate and readily accessible water supply or sanitary accommodation or of other conveniences, and inadequate paving or drainage of courts, yards or passages. It is thought that, in practice, the Minister acting under s. 60, *post*, will still disregard what used to be called "sanitary defects" (despite the repeal of the words to that effect) and that these broadly correspond with the matters relevant under s. 4 (1) (c) to (h) of this Act; and it may be that he will also disregard questions of "stability" relevant under s. 4 (1) (b), *ante*. If so, good maintenance will have the same practical meaning in s. 60 as it has in this section; this seems a reasonable interpretation, as the scale of payments is the same in both cases, under Part I of the Second Schedule, *post*.

**Grounds of appeal under this section.** The following general grounds are suggested for appeals to the county court under sub-s. (5), *supra*; they should be supplemented with any necessary particulars:

- (1) The house has been well maintained.
- (2) The appellant has done the following work to the house . . . [here give details] [and/or the following work has been done at the appellant's expense . . .].
- (3) The said work has contributed to the good maintenance of the house as follows . . . [give details of the effect of the work].

- (4) The appellant's representation was correct [or, was correct except that . . . (here state any necessary corrections), and the authority's notice should be varied].
- (5) The respondent authority have acted mistakenly and/or unreasonably.

**Sub-s. (1).**

**Within three months.** Cf. the note "Within twenty-one days" to s. 11 (1), *ante*. The three months run from the service of a copy order, or of a notice, under s. 19, *ante*, not from the vacating or purchase of the house.

**Local authority.** See s. 1, *ante*, and s. 41, *post*.

**Under section 19.** That section, *ante*, relates to the following matters, relevant in the present section:

- (1) Service of a copy of a demolition order under s. 17 (1), *ante*. It is also applied by s. 28, *ante*, to demolition order thereunder.
- (2) Service of a copy of a closing order under s. 17 (1), proviso, *ante*, or s. 35, *post*. (It also applies to service of copies of other closing orders, but these are not mentioned in sub-s. (2), *supra*.)
- (3) Service of a notice of the authority's determination to purchase under s. 17 (2), *ante*. (It does not apply to purchases under s. 12, *ante* (after a successful appeal against a "repairs" notice under s. 9); and s. 34 (5) provides that on a purchase under s. 34, *post*, notice of determination to purchase is deemed to have become operative, so as to bring into force s. 29, *ante*. In this last-mentioned case there is no actual service of a notice of determination under s. 19, *ante*, and it is doubtful whether the present section applies or not.)

**House.** For definition, see s. 189 (1), *post*.

**Any person may represent.** The person must show that (i) the house has been well maintained (as to which, see the notes, *infra*, to sub-s. (3)); (ii) that work has been done by him or at his expense; and (iii) that the good maintenance is wholly or partly attributable to this work. Any person whose representation to this effect is correct, is entitled to a payment under this section, subject to the provisions of Part I of the Second Schedule, *post*, which, for example, excludes double payment where a person is also entitled under s. 31, *post*, and Part II of the Second Schedule. Cf. s. 60 (2), *post*, which provides that *prima facie* a payment under that section is to go to the owner-occupier, if any, or to the person or persons liable to maintain the house, subject to a power to divert the payment wholly or partly to some other person by whom, or at whose expense, work has been done. Representations under the present subsection should preferably be made in writing, and be supported by documents such as receipts for money spent on the house, together with any necessary explanations required by the authority in order for them to consider, under sub-s. (4), *supra*, whether the representation is correct, as mentioned in sub-s. (3) (b), or not.

**Sub-s. (3).**

**Vacated in pursuance of the demolition order.** See sub-s. (6), *supra*, as to cases where no actual demolition order is made; this resembles para. 7 (1) in Part II of the Second Schedule, *post*, which applies in cases coming within s. 31, *post*.

For the ordinary scope of the present section, see the General Note, and the note, "Under section 19", to sub-s. (1), *supra*.

**Leaving out of account (s. 4 (1) (b)-(h)).** See the General Note, *supra*, for a comparison of this provision with s. 60 in Part III, *post*. The matters listed at (a) to (h) of s. 4 (1), *ante*, are those relevant in determining, for the purposes of this Act, whether a house is or is not reasonably suitable for occupation and therefore whether or not it is "fit for human habitation". Paras. (a) and (b) relate respectively to repair and stability. Paras. (c) to (h) relate to freedom from damp, natural lighting, ventilation, etc., *i.e.*, to what used to be relevant in connection with the definition, in s. 188 (1) of the Act of 1936 (repealed by the Act of 1954), of "sanitary defects".

The present section appears to recognise that what used to be called "sanitary defects" are often inherent defects in the construction or situation of the house. They may be enough to render it unfit for human habitation, although money may have been spent on the house by way of repair or, it is suggested, on decoration or improvement. Accordingly, it is submitted, the correct approach under the present section is to decide the general question of whether the house has been well maintained, and to ignore questions of stability (s. 4 (1) (b)) and the various other defects (s. 4 (1) (c) to (h)) which may be present, often through no fault or neglect on the part of those concerned. This will largely, but not exclusively, be a matter of considering money spent on repairs (s. 4 (1) (a)). It is submitted that other matters, such as decoration and improvement, should also be considered; if this had not been intended, the present section could have referred simply to repairs, without the complicated reference to s. 4, *ante*. Cf. the reference in s. 60 (2) (b), *post*, to persons liable to "maintain and repair"; and to expenditure incurred in "maintaining" the house, in para. 2 (1) (a) in Part I of the Second Schedule, *post*.

**Representation . . . is correct.** If the local authority dispute (i) that the house has been well maintained, or (ii) that work has been done by or at the expense

of the person making the representation or (iii) that the good maintenance has been wholly or partly attributable to this work, they will serve notice under sub-s. (4), *supra*.

**To the person by whom the representation was made.** Cf. s. 60 (2), *post*.

**Such payment, if any.** See the limits and exclusions in para. 2 (1) proviso and para. 2 (2) in Part I of the Second Schedule, *post*.

**Sub-s. (4).**

**Serve . . . notice.** The notice, presumably in writing, will be to the effect that no payment falls to be made in respect of that person's representation (though a payment may be payable to some other person who may have made a representation). Note that ss. 166 (2), 169 (1), 178 (1) and 179 (1) do not apply to notices under this section; see s. 166 (2) proviso (a), s. 169 (2), s. 178 (1) proviso, and s. 179 (1) proviso, *post*.

**Sub-s. (5).**

**Person aggrieved, within twenty-one days, etc.** Cf. the notes to s. 11 (1), *ante*; and cf. the other provisions in this Part (Part II) providing for appeals, mentioned in the note, "History", *supra*. For general provisions as to appeals, see s. 38, *post*, and for the date of operation of notices, see s. 37, *post*.

**If the persons . . . agree, etc.** It would seem that, under sub-s. (4), *supra*, the local authority might, for example, accept one person's representation, but serve notice that the condition is not satisfied in the case of another person's representation. The first-mentioned person would however, it seems, have no right to appear on the appeal to the court or to be a party to the arbitration, unless the reference to "persons" entitled to appear and be heard implies that persons other than the appellant and the local authority may take part in such proceedings.

**Arbitration.** Part I of the Arbitration Act, 1950, will, in general, apply to the arbitration; see s. 31 of that Act (71 Statutes Supp. 38; 29 Halsbury's Statutes (2nd Edn.) 115).

**Sub-ss. (6) and (7).**

Cf. paras. 7 (1) and (3) in Part II of the Second Schedule, relating to payments under s. 31 (or s. 61 in Part III cases), *post*.

**31. Temporary provisions for payments to owner-occupiers and others.**—The provisions of Part II of the Second Schedule to this Act shall have effect as respects payments to be made in certain circumstances in respect of houses affected by action taken under this Part of this Act.

## NOTES

**History.** The provisions of Part II of the Second Schedule, *post*, are derived from ss. 1 and 2 of the Slum Clearance (Compensation) Act, 1956, together with definitions, etc., formerly contained in s. 4 of that Act.

**General Note.** The provisions of Part II of the Second Schedule, *post*, provide for payments to certain owner-occupiers of living accommodation in an unfit house, or persons carrying on a business in an unfit house, as formerly provided by the Slum Clearance (Compensation) Act, 1956. That Act itself now remains in force, subject to the repeals effected by s. 191 and the Eleventh Schedule, *post*, only for the purposes of purchases at site value under para. 9 of the Fifth Schedule to the Town and Country Planning Act, 1944, as amended and applied by the Town and Country Planning Act, 1947, and reprinted in the Eleventh Schedule thereto (48 Statutes Supp. 276; 25 Halsbury's Statutes (2nd Edn.) 420).

The Act of 1956, s. 3, amended s. 42 of the Housing Act, 1936, so as to empower the Minister to vary the scale of payments for unfit but well-maintained houses purchased at site value, or made subject to a clearance order under Part III of that Act, so far as such payments might be based on a multiple of the rateable value; see now s. 60 and Part I of the Second Schedule, *post*. It also introduced a similar, but not identical, provision for payments in some, but not all, Part II cases; see now s. 30, *ante*, whereunder Part I of the Second Schedule, *post*, is applied to a house vacated under a demolition order under this Part (Part II) of the Act, or vacated under certain types of closing order, or purchased in certain circumstances, where representations are made and established about the house having been well maintained.

The above-mentioned changes were permanent amendments of the law. The principal purpose of the Act of 1956, however, was to mitigate, to some extent and in certain cases, the hardship suffered by persons who lose their homes or business premises in unfit houses which are purchased at site value (or in certain similar circumstances). The general intention is to make up "site value" compensation to what is called "full compulsory purchase value". For the most part these are temporary provisions.

Paras. 4 and 5 of the Second Schedule, *post*, derived from s. 1 of the Act of 1956, deal with unfit houses wholly or partly occupied "as a private dwelling". They

extend to certain forms of action under this Part (Part II) of this Act (as applied by the present section) or under Part III (as applied by s. 61, *post*), namely (i) to purchases of an interest at site value under Part III in connection with clearance and re-development areas; (ii) to purchases at site value under this Part (Part II) (see ss. 12 and 29, *ante*, and note that this section, unlike s. 30, *ante*, applies to s. 12 as well as to s. 29; see also s. 34 (5), *post*); and (iii) to cases where, without purchase, premises have to be vacated pursuant to a clearance, demolition or closing order (with certain exceptions; *e.g.*, this does not apply to an order under s. 17 (3), *ante*). These provisions apply also where no demolition order was actually made, but the house was vacated by arrangement with the authority, as mentioned in para. 7 (1) in Part II of the Second Schedule, *post*, but, by para. 7 (3), double compensation is not payable where a closing order is followed by a demolition order.

A person whose house is thus bought, or is to be pulled down or "closed", has to rely on a purchase of the house or an interest therein on or after 1st September 1939 and before 13th December 1955 or, if earlier, the date when the "relevant proceedings" began, as mentioned in paras 4 (2) (b) and (6) in Part II of the Second Schedule, *post*. Broadly speaking this covers the period of the 1939 war and the immediate post-war housing shortage. (The Act of 1956 was passed on 2nd August 1956, but was introduced as a Bill on 8th February 1956 and preceded by an announcement of the Minister, of his intention to introduce such a Bill, on 13th December 1955; this date in 1955 was repeatedly mentioned in the 1956 Act, and is now similarly mentioned in the Second Schedule, *post*). Thus, if a clearance area was declared under s. 25 of the Act of 1936 (see now s. 42, *post*) before 13th December 1955, the purchase relied on must have taken place before the declaration of the area. If the original purchaser, or some other person regarded as a member of his family (see para. 4 (7) in Part II of the Second Schedule, *post*), was living in the house at 13th December 1955, and such a person is entitled to an interest when the house is purchased at site value, the authority who made the compulsory purchase order will make an additional payment to bring up the compensation to the so-called "full compulsory purchase value". If the house is not bought, but is vacated in order to be pulled down or closed, the original purchaser or member of his family so qualifying will receive a similar payment; this will be calculated as the difference between the "site value" and "full compulsory purchase value" of the interest. Such payments are not made in respect of closing orders under s. 17 (3) or 26, *ante*; nor in respect of demolition orders, under Part III, on obstructive buildings (ss. 72-75), *post*.

The payment, it is expected, will normally be made to the person entitled to the interest in the house in question, but may be diverted to some other person, as para. 4 (5) in Part II of the Second Schedule requires it to be dealt with as if it were compensation on a Part III compulsory purchase; and see the proviso to that sub-paragraph, *post*. Paras. 4 and 5 in Part II of the Second Schedule operate only for a ten-year period beginning with the date of the Minister's announcement, *i.e.*, up to 12th December 1965 (see para 4 (1)). These paragraphs also contain provisions for modifying the qualifying conditions (*e.g.*, where service-men were posted away from home, or other persons changed their place of employment). They apply only to the residential parts of the unfit house (business premises being covered by para. 6, mentioned briefly below). Para. 5 allows a county court to modify certain outstanding obligations, such as mortgages.

The provisions of para. 6 in Part II of the Second Schedule, *post*, deal with unfit houses occupied at the date of the relevant order partly or wholly for business purposes (other than the letting of accommodation; see para. 6 (5)). They extend to purchases at site value under this Act, to demolition orders under this Part (Part II) and to clearance orders under Part III, *post* (but not to any closing orders). The amount of the payment is again calculated as the difference between the so-called "full compulsory purchase value" and the "site value" compensation which was or would have been payable. These values relate to the interest in the house of the person entitled to the receipts of the business carried on therein. The qualifying conditions are different from those mentioned, *supra*, in connection with owner-occupiers of dwelling accommodation. Under para. 6 (2) in Part II of the Second Schedule the conditions are either (i) that the house was occupied wholly or partly for business purposes, and a person entitled to the receipts of a business carried on wholly or partly therein held an interest in the house, at 13th December 1955, or (ii) that the house was so occupied, and a person so entitled to the receipts of a business held an interest in the house, at all times during a ten-year period before the making of the demolition order, clearance order or compulsory purchase order. Unlike para. 4, mentioned *supra*, para. 6 does not cease to operate on 13th December 1965.

Under the above-mentioned provisions the Minister is given power to determine certain questions as to the purposes for which any part of the house was occupied. Subject to that, the amount of a payment will be determined as if it were compensation for a Part III compulsory purchase; see paras. 4 (5) and 6 (4) in Part II of the Second Schedule, *post*.

Many of the forms prescribed by the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), contain notes explaining the effect of the Second Schedule, *post*. The official explanations there given, *e.g.*, in the notes to Form No. 7,

paras. 9 and 10, refer only to "a freehold or a leasehold interest . . .", which does not accord with the wording of the Second Schedule to the Act, where the only limit on the kinds of interest which can give rise to a payment is that contained in para 7 (2) thereof, *post* (which excludes statutory "tenancies", or the interest of a tenant for a year or any less period).

**Houses.** See para. 7 (2) in Part II of the Second Schedule, *post* (not s. 189 (1)), for definition of "house".

**32. Payments to persons displaced.**—A local authority may pay to any person displaced from a house to which a demolition order made under this Part of this Act, or a closing order, applies, or which has been purchased by them under this Part of this Act, such reasonable allowance as they think fit towards his expenses in removing, and to any person carrying on any trade or business in any such house they may pay also such reasonable allowance as they think fit towards the loss which, in their opinion, he will sustain by reason of the disturbance of his trade or business consequent on his having to quit the house, and in estimating that loss they shall have regard to the period for which the premises occupied by him might reasonably have been expected to be available for the purpose of his trade or business and the availability of other premises suitable for that purpose.

#### NOTES

**History.** This section contains provisions formerly in s. 18 of the Housing Act, 1936, in s. 3 (4) (c) of the Housing Act, 1949, and in ss. 10 (4) (d) and 11 (3) of the Local Government (Miscellaneous Provisions) Act, 1953. The provisions of the Act of 1936 originally referred to demolition orders and closing orders, which might then be made under ss. 11 and 12 of that Act; see now ss. 17 (1) and 18 (1), *ante*. They were applied by the Acts of 1949 and 1953 to closing orders, thereunder; see now ss. 17 (1) proviso, 17 (3) and 26, *ante*, and see also s. 35 (1), *post* (closing order substituted for demolition order), and s. 28, *ante* (demolition order following closing order under s. 17 (1) proviso or 35). The Act of 1949, s. 6, also made a similar provision for "Part V" purchases; see now s. 100, *post*.

The Act of 1936, as originally enacted, did not contain a reference in s. 18, to persons displaced from houses which had been purchased by the authority under Part II thereof (*i.e.*, under the provisions replaced by s. 12, *ante*); nor did the Housing Repairs and Rents Act, 1954, make such provision in the case of purchases under s. 3 of that Act (see now s. 29, *ante*). Provision was made for "Part III" purchases under the Act of 1936 by s. 44 thereof (see now s. 63, *post*). In the present section the reference to purchases under this Part (Part II) has been introduced by analogy with s. 63, and a gap in the law has thus been filled.

**General Note.** This section provides for certain discretionary allowances by local authorities who purchase a house under this Part (Part II) or who make a demolition order or any type of closing order, under this Part. There are two types of allowance:

- (1) towards the expenses, of a person displaced from the house, in removing; and
- (2) towards the loss, by way of disturbance of his trade or business, of a person carrying on a trade or business in the house.

Comparable provisions are to be found in s. 63 (1) in Part III, and s. 100 in Part V, *post*. The present section does not include provisions similar to those of s. 63 (2), *post*, which applies where a whole area is cleared under Part III.

Although para. 6 in Part II of the Second Schedule, applied by s. 31, *ante*, and s. 61, *post*, makes provision for certain payments to persons carrying on a business in an unfit house, that paragraph does not cover all cases; it does not, for example, apply to closing orders (see para. 6 (1) of that Schedule) or to a statutory "tenancy" or the interest of a tenant for a year or any less period (para. 7 (2), defining "interest"). Furthermore there is no compensation under the Lands Clauses Acts for "disturbance", in the case of demolition or closing orders, as those Acts do not apply. In the case of purchases under this Part, the Lands Clauses Acts are applied subject to ss. 12 (4) and 16 (2), *ante*, which require an assessment of compensation to be at site value; even if compensation is payable for disturbance from a cleared site, its amount would be problematical. The present section permits the local authority, in its discretion, to relieve some of the hardship and loss which can well arise in these cases. The Ministry have urged authorities to make use of these powers; see Ministry of Housing and Local Government Circular No. 43/56, dated 13th August 1956.

**Local authority.** See s. 1, *ante*, and s. 41, *post*.

**House.** For definition, see s. 189 (1), *post*, and note to s. 16 (7), *ante*.

**Demolition order.** See ss. 17 (1) and 28, *ante*.

**Closing order.** See ss. 17 (1) proviso, 17 (3), 18 and 26, *ante*, and s. 35 (1), *post*.

**Purchased.** See s. 12, *ante*; and ss. 17 (2) and 29, *ante*, and s. 34 (5), *post*. The power to make allowances for purchases under this Part (Part II) of the Act seems to be new; see the note "History", *supra*.

**Such reasonable allowance as they think fit.** The word "may" in the opening phrase of this section indicates that the authority have a discretion whether to make an allowance or not. "May" is capable of meaning "must" or "shall" in some contexts (*R. v. Mitchell, Ex parte Livesey*, [1913] 1 K.B. 561; 14 Digest (Repl.) 144, 1071), but not, it is submitted, in this section. See also *R. v. Wandsworth District Board of Works* (1858), 6 W.R. 576; 42 Digest 717, 1360. The dictum of Cotton, L.J., in *Re Baker, Nichols v. Baker* (1890), 44 Ch.D. 262; 42 Digest 717, 1358, is too wide if it suggests that "may" can never mean "must".

If the authority decide to make an allowance, the amount seems also to be within their discretion, subject to two limits: (i) it must be reasonable, and (ii) it must be such as appears to them to be fitting; see *Roberts v. Hopwood*, [1925] A.C. 578; 33 Digest 20, 83, where "as they think fit" was held not to mean "as they choose" but "fitting" or "suitable". Further, in the case of allowances for loss by disturbance of a trade or business, the authority must have regard to the matters mentioned at the end of this section.

**Trade or business.** Cf. s. 31, *ante*, and para. 6 in Part II of the Second Schedule, *post*, as to payments in respect of certain businesses carried on in unfit houses.

**Have regard to the period.** Under this section the loss by disturbance can, it seems, be assessed on the basis of the period for which the occupier might have hoped to remain, and is not limited to the period of any current lease. This differs, therefore, from the position under the Lands Clauses Acts; see, as to this, 10 Halsbury's Laws (3rd Edn.) 162-165, 221-222. As to the meaning of "have regard", cf. *Cohen v. West Ham Corporation*, [1933] Ch. 814, C.A.; Digest Supp., cited in the notes to s. 39 (1), *post*.

### *Protection of owners*

**33. Provisions for protection of owners of houses.**—(1) If an owner of any house who is not the person in receipt of the rents and profits thereof gives notice to the local authority of his interest in the house the local authority shall give to him notice of any proceedings taken by them in relation to the house in pursuance of the foregoing provisions of this Part of this Act or of the provisions of Part III of this Act relating to demolition orders.

(2) Nothing in the foregoing provisions of this Part of this Act shall prejudice or interfere with the right or remedies of any owner for breach, non-observance, or non-performance of any covenant or contract entered into by a tenant or lessee in reference to any house in respect of which an order is made, or a notice requiring the execution of works is served, by a local authority under this Part of this Act; and if any owner is obliged to take possession of a house in order to comply with any such order or notice, the taking possession shall not affect his right to avail himself of any such breach, non-observance, or non-performance which has occurred before he so took possession.

### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in ss. 19 (1) and 55 (5) of the Housing Act, 1936, in s. 3 (4) (d) of the Housing Act, 1949, in s. 10 (4) (e) of the Local Government (Miscellaneous Provisions) Act, 1953, and in s. 22 (3) (b) of the Housing Repairs and Rents Act, 1954. Sub-s. (2) contains provisions formerly in s. 19 (2) of the Act of 1936, in s. 3 (4) (d) of the Act of 1949, and in s. 10 (4) (d) of the Act of 1953.

**General Note.** This section provides three things. First, under sub-s. (1), *supra*, an owner of a house who is not in receipt of the rents and profits may obtain notice of proceedings under Part II of this Act or the provisions of Part III, *post*, as to demolition orders on obstructive buildings. This is necessary because, for example, a "repairs" notice under s. 9, *ante*, need only be served on the person having control as defined in s. 39 (2), *post*, e.g., a rent collector. Secondly, the first part of sub-s. (2), *supra*, applies to houses where a "repairs" notice, or, perhaps, a notice specifying works to be executed to a house let in lodgings (see s. 36, *post*) is served, or where an order is made, under this Part (Part II) of the Act. It preserves an owner's contractual rights and remedies. Thirdly, there is a more specific provision that where an owner has to take possession, to comply with such a notice or order, that fact shall not waive his right to rely on prior breaches of covenant, or the like. It appears that sub-s. (2) does not override s. 6, *ante* (implied conditions on letting small

houses); that section may modify the actual terms of a letting; whereas sub-s. (2), *supra*, deals with rights and remedies for a breach, non-observance or non-performance of terms by the tenant or lessee.

As to powers to require information of ownership, etc., see s. 170, *post*; and as to re-development and re-conditioning by owners, see ss. 68-71, *post*, in conjunction with s. 40, *post*.

**Sub-s. (1).**

**Owner.** See s. 189 (1), *post*. The definition in that section is such that there may be more than one owner of the same premises.

**House.** For definition, see s. 189 (1), *post*; cf. also ss. 9 (3) and 16 (7), *ante*. The present section is applied by the Housing (Emergency Powers) Act, 1939, in conjunction with s. 191 (4), *post*, with the modification that references to a "building" are included; see s. 2 (2) of the Act of 1939 (7 Statutes Supp. (2nd Edn.) 82; 11 Halsbury's Statutes (2nd Edn.) 625).

**Not the person in receipt of the rents and profits.** This appears to refer to the rents collected from the person in physical occupation. Such rents may be collected by someone who is an owner as defined in s. 189 (1), *post*, and/or is the person having control as defined in s. 39 (2), *post*, or who is neither such an owner nor the person having control. In any of these cases there may be other persons who satisfy the definition of owner, and it is those other persons who can protect themselves under the present subsection.

**Notice to the local authority.** This should presumably be in writing. As to service, see s. 168, *post*.

**Local authority shall give . . . notice.** As to authentication and service, see ss. 166 (2) and 169 (1), *post*. This subsection is particularly important in connection with s. 9, *ante*, whereunder only the person having control need be served. If the authority fail to give notice as required by the present subsection, it would seem that these proceedings will be invalid; and the authority could be restrained by injunction and in appropriate cases be sued for damages for trespass. Cf. *Nalder v. Ilford Corporation*, [1950] 2 All E.R. 903; [1951] 1 K.B. 822; 2nd Digest Supp.

**Any proceedings.** The two principal procedures of this Part are commenced by a "repairs" notice under s. 9, *ante*, or by notice of "time and place" under s. 16, *ante*. But the reference here to "proceedings" would appear to cover every stage of every procedure under this Part, e.g., to service of notices or copy orders under s. 19.

**Part III . . . demolition orders.** See ss. 72-75, *post*, and cf. s. 74 (5) expressly applying the present subsection.

**Sub-s. (2).**

**Order is made.** Orders may be made under this Part under s. 17 (1) or 28, *ante* (demolition orders) or s. 17 (1), proviso, 17 (3), 18 or 26, *ante* (closing orders). For powers of the court under Part VI, see ss. 162 *et seq.*, *post*.

**Notice requiring the execution of works.** See s. 9, *ante* (and see also s. 36, *post*, which is perhaps also referred to). As to powers of the court under Part VI, see particularly s. 163, *post*.

*Transitory provisions as respects existing demolition orders*

**34. Temporary occupation of houses subject to existing demolition orders.—**(1) If it appears to a local authority that any house in respect of which—

- (a) a demolition order was made by that authority under Part II of the Housing Act, 1936, before the thirtieth day of August, nineteen hundred and fifty-four, or
- (b) a closing order was made by them under section ten or section eleven of the Local Government (Miscellaneous Provisions) Act, 1953, before that date,

is capable of providing accommodation of a standard which is adequate for the time being, they may grant to the person who, but for the said order, would be entitled to authorise the occupation of the house a licence permitting the occupation of the house during such period as may be specified in the licence by such number of persons and on such terms as to the rent, repairs and other conditions on which the house may be occupied as may be so specified.

(2) While a licence granted under this section is in force in respect of a house, section twenty-two of this Act and the provisions of Part III of this Act as to the vacation of buildings subject to clearance orders or demolition orders shall not apply to it.

(3) Where a licence in force under this section specifies a maximum rent in respect of a house, then notwithstanding any order or direction for the time being in force under section seven of the Agricultural Wages Act, 1948, the value at which the house may be reckoned for the purposes of a minimum rate of wages fixed under that Act shall not exceed the maximum rent so specified.

(4) Any licence granted by a local authority under this section may be revoked by that authority at any time, and shall be so revoked if it appears to the authority that the house is no longer capable of providing such accommodation as aforesaid; and every such licence shall, unless previously revoked, cease to have effect on the thirtieth day of August, nineteen hundred and fifty-seven, or on such later date as the Minister may in any particular case allow in pursuance of an application made by the local authority before the said date in the year nineteen hundred and fifty-seven.

(5) On the revocation or determination of a licence granted under this section in respect of a house, the local authority may, if they think fit, revoke the demolition order and purchase the house; and section twenty-nine of this Act shall apply as if notice of a determination to buy the house under section nineteen of this Act had become operative.

(6) Any licence issued under Regulation 68A or 68AA of the Defence (General) Regulations, 1939, and in force immediately before the commencement of this Act in respect of a house subject to a demolition or closing order shall continue in force and have effect as if granted under this section, and may be revoked thereunder accordingly.

#### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in ss. 6 (1) and 22 (2) of the Housing Repairs and Rents Act, 1954. Sub-ss. (2)–(6) contain provisions formerly in s. 6 (2)–(5) and (7) of that Act.

The Act of 1954, s. 6, was expressed to apply to demolition orders and clearance orders; the reference to certain closing orders was imported by s. 22 (2), which provided that references to a demolition order should include a reference to a closing order made in lieu of or in substitution for a demolition order under s. 10 or 11 of the Local Government (Miscellaneous Provisions) Act, 1953; see now sub-s. (1) (b), *supra*. In sub-s. (5), *supra*, the words "revoke the demolition order" have been copied from s. 6 (5) of the Act of 1954; this phrase, in the 1954 Act, included a reference to a closing order, but in the present Act the words "or closing order" should have been added in sub-s. (5), *supra*, to produce the same effect.

**General Note.** Because of war-time conditions, regs. 68A and 68AA were added in 1940 to the Defence (General) Regulations, 1939, so as to permit the occupation of condemned houses to provide accommodation for agricultural workers, and for homeless persons, respectively. The Act of 1954, s. 6, gave a similar power to license the occupation of a house which was capable of providing accommodation of a standard which was adequate for the time being; and, by s. 6 (7) of that Act, regs. 68A and 68AA were revoked, existing licences being continued in force as if granted under the 1954 Act. A time limit of three years, beginning with the commencement of that Act on 30th August 1954, was applied subject to the power to extend the time where the local authority applied to the Minister before 30th August 1957; cf. sub-s. (4), *supra*.

The present section was drafted on the assumption that this Act would come into force on 1st August 1957, but the date was postponed to 1st September 1957 (see s. 193 (2), *post*). All licences will by the latter date have ceased to have effect, except where an application had been made by 29th August 1957; but under sub-s. (4), *supra*, the Minister may it seems still allow an extension, provided the application was made in time under the former provisions. Because of the alteration of the date of commencement of this Act, it would appear that no new licences will be granted under sub-s. (1), *supra*.

This section may be compared with s. 53 in Part III, *post*; and cf. also s. 54, *post*.

#### Sub-s. (1).

**Local authority.** See s. 1, *ante*, and s. 41, *post*.

**House.** For definition, see s. 189 (1), *post*.

**Demolition order.** See s. 11 (4) (repealed) of the Housing Act, 1936 (11 Halsbury's Statutes (2nd Edn.) 461), which contained provisions now to be found in ss. 17 (1), 19 and 21, *ante*.

**30th August 1954.** The date of commencement of the Housing Repairs and Rents Act, 1954; see s. 54 (2) of that Act (81 Statutes Supp. 108; 34 Halsbury's Statutes (2nd Edn.) 283).

**Closing order.** *I.e.*, a closing order made in lieu of or in substitution for a demolition order under s. 10 or 11 (repealed) of the Local Government (Miscellaneous Provisions) Act, 1953 (78 Statutes Supp. 100, 102; 33 Halsbury's Statutes (2nd Edn.) 105, 106); see now s. 17 (1), proviso, *ante*, and s. 35, *post*.

**Adequate for the time being.** The house must have been considered unfit for human habitation, and incapable of being rendered fit at a reasonable expense, when the demolition order or closing order was made. The standard "adequate for the time being" is not defined; but see the note, "Other standards", to s. 4, *ante*. A licence may be revoked at any time, and must be revoked if the humble standard indicated by this subsection is no longer attained: see sub-s. (4), *supra*. Note also that, save where extended time is allowed, all licences will have expired before the present Act came into force; see the General Note, *supra*.

**Sub-s. (2).**

**Licence granted under this section.** See sub-s. (6), *supra*, as to licences granted under the Defence Regulations. It would seem that no new licences will be granted under sub-s. (1), *supra*, because of the date of commencement of this Act (1st September 1957) considered in conjunction with sub-s. (4), *supra*. Licences under s. 6 of the Act of 1954 are to be regarded as granted under this section; see s. 192, *post*.

**Section 22 . . . and the provisions of Part III, etc.** S. 22, *ante*, and s. 45 (2) to (6), *post*, as to the vacating of houses and buildings, are in almost identical terms. See also s. 73, *post*, in respect of demolition orders on obstructive buildings under Part III.

**Sub-s. (3).**

**Agricultural Wages Act, 1948, s. 7.** 56 Statutes Supp. 15; 28 Halsbury's Statutes (2nd Edn.) 11.

**Sub-s. (4).**

**Licence granted . . . under this section.** See the note to similar words in sub-s. (2), *supra*.

**30th August 1957.** This is the day after the expiry of 3 years beginning with the commencement of the Act of 1954. All licences will have ceased to have effect at the first moment of 30th August 1957, two days before the commencement of the present Act, except where a later date has been allowed by the Minister on an application by the local authority made before 30th August 1957. The closing words of this subsection suggest that where such an application has been made (under the Act of 1954) the Minister may still (under this subsection) allow a later date for the licence ceasing to have effect. It seems, however, that there is no provision for keeping the licence alive pending the Minister's decision on such an application. See the General Note, *supra*, as to the postponement of the commencement of this Act from the date originally intended.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Sub-s. (5).**

**Revocation or determination.** See sub-s. (4), *supra*.

**Demolition order.** In the Act of 1954, this expression included a reference to a closing order of the type now mentioned in sub-s. (1) (b), *supra*. The present subsection, to give effect to the former provisions, should now read, "revoke the demolition order or closing order".

**Section 29 shall apply.** That section, *ante*, normally applies where, under s. 19, *ante*, notice has been served of the authority's decision, under s. 17 (2), *ante*, to purchase a house for temporary accommodation, and the notice has become operative under s. 37, *post*, *i.e.*, after an appeal, or opportunity of appealing, under s. 20, *ante*. The present subsection affords no such opportunity for an appeal; the powers of purchase arise immediately as if a notice of determination to purchase had become operative. The local authority may therefore at once purchase by agreement, or make a compulsory purchase order under the First Schedule, *post*, and the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 4; 3 Halsbury's Statutes (2nd Edn.) 1064), with a view to compulsory purchase; see s. 29 (1), *ante*. See, generally, s. 29, *ante*, and the notes thereto, as to compensation at site value and other consequences of a purchase under that section.

**Sub-s. (6).**

**Commencement of this Act.** *I.e.*, 1st September 1957; see s. 193 (2), *post*.

**Regulation 68A or 68AA of the Defence (General) Regulations, 1939.** See S.R. & O. 1939 No. 927. Regs. 68A and 68AA were added thereto by S.R. & O. 1940 No. 1134 and S.R. & O. 1940 No. 1684, respectively. For revocations, see S.I. 1952 No. 2091, and s. 6 (7) (repealed) of the Act of 1954; the regulations had been continued in force after the war by S.R. & O. 1945 No. 1622, with some amendments, by virtue of the Supplies and Services (Transitional Powers) Act, 1945, as affected by the Supplies and Services (Extended Purposes) Act, 1947, and by the Supplies and Services (Defence Purposes) Act, 1951.

**35. Retention of houses subject to existing demolition orders and needed to support other buildings.**—(1) Where a demolition order was made under Part II of the Housing Act, 1936, at any time before the fourteenth day of August, nineteen hundred and fifty-three, and it appears to the local authority by whom the order was made that compliance therewith is inexpedient having regard to the effect of the demolition of that house on any other house or building, they may, whether or not that order has become operative and whether or not the period within which the house is thereby required to be demolished has expired, revoke the demolition order and make a closing order in respect of the house.

(2) On the making of a closing order under this section the provisions of this Part of this Act shall apply as if the order had been made under the proviso to section seventeen of this Act so, however, that a notice of the revocation of the demolition order shall be served under section nineteen of this Act together with a copy of the closing order.

### NOTES

**History.** This section contains provisions formerly in s. 11 (2) and (3) of the Local Government (Miscellaneous Provisions) Act, 1953. The present Act does not reproduce s. 11 (1) of the Act of 1953, which revived for twelve months, now expired, the power to quash demolition orders, which had been contained in s. 2 of the Housing Act, 1949, but had lapsed.

Sub-s. (2), *supra*, applies the provisions of this Part of this Act as if the closing order were one made under s. 17 (1) proviso, *ante*. This appears to make some change in the law, as s. 17 (1) proviso is derived from s. 10 of the Act of 1953. For some purposes orders under ss. 10 and 11 were treated similarly: *e.g.*, in s. 22 (2) of the Act of 1954 (see the note "History" to s. 34, *ante*). But in the Slum Clearance (Compensation) Act, 1956, references to closing orders were, by s. 4 (2) of that Act, confined to orders under s. 10 (not s. 11) of the Act of 1953. For the purposes of ss. 30 and 31, *ante*, and Parts I and II of the Second Schedule, *post*, it would seem that references to a closing order under s. 17 (1) proviso, *ante*, will include references to a closing order under the present section. The provisions derived from the Act of 1956 seem therefore to have been extended.

**General Note.** This section allows a closing order, similar to one under s. 17 (1) proviso, *ante*, to be substituted for a demolition order made before the commencement of the Act of 1953. The closing order is treated as one made under s. 17 (1) proviso for the purpose of applying the provisions of this Part (Part II) of the Act. So far as those provisions are derived from the Slum Clearance (Compensation) Act, 1956, this seems to represent some change in the law, as mentioned in the note "History", *supra*.

#### Sub-s. (1).

**Demolition order.** See s. 11 (4) (repealed) of the Act of 1936 (11 Halsbury's Statutes (2nd Edn.) 461), which contained provisions now to be found in ss. 17 (1), 19 and 21, *ante*.

**14th August 1953.** The date of commencement of the Local Government (Miscellaneous Provisions) Act, 1953; see s. 19 (2) of that Act (78 Statutes Supp. 105; 33 Halsbury's Statutes (2nd Edn.) 107).

**Having regard to the effect of the demolition.** Cf. the same phrase in s. 17 (1) proviso, *ante*.

**House.** For definition, see s. 189 (1), *post*.

**Become operative.** See s. 15 (5) (repealed) of the Housing Act, 1936, replaced by s. 37, *post*.

**Period . . . required to be demolished.** See s. 11 (4) (repealed) of the Act of 1936, replaced for this purpose by s. 21, *ante*.

**Closing order.** For general provisions, see s. 27, *ante*, and as to authentication, see s. 166 (2), *post*. As to service of a copy of the order, see s. 19, *ante*, and sub-s. (2), *supra*, which requires a notice of the revocation of the demolition order to be served also. As to appeals to the county court, see s. 20, *ante*, and s. 38, *post*; for the date of operation of an order, see s. 37, *post*. For other provisions, see ss. 30 (well-maintained houses), 31 (payments to owner-occupiers and others), 32 (discretionary payments) and 33 (protection of owners), *ante*; and for power of the court under Part VI, see in particular s. 162, *post*.

The form of order for use under s. 17 (1) proviso, *ante*, is Form No. 14 prescribed by the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*); it should presumably be used under the present section also.

#### Sub-s. (2).

**Provisions of this Part.** See the note "Closing order" to sub-s. (1), *supra*.

*Houses let in lodgings*

**36. Power to require execution of works or reduction of number of occupants of house.**—(1) Where it appears to a local authority, in the case of a house within their district, or of part of such a house, which is let in lodgings or occupied by members of more than one family, that with respect to any such matters as are specified in paragraphs (d) to (h) of subsection (1) of section four of this Act the premises are so far defective, having regard to the number of individuals or households, or both, accommodated for the time being on the premises, as not to be reasonably suitable for occupation by those individuals or households, the local authority may serve on the person having control of the house a notice—

- (a) specifying the works which in the opinion of the local authority are required for rendering the premises reasonably suitable for such occupation as aforesaid, and
- (b) requiring that person, in default of the execution of those works within a period specified in the notice, to take such steps as are reasonably open to him (including if necessary the taking of legal proceedings) for securing that the number of individuals accommodated on the premises or the number of households accommodated there, or both, is limited in any manner so specified.

(2) A person aggrieved by a notice under this section may, within twenty-one days after the date of the service of the notice, appeal to the county court within the jurisdiction of which the premises to which the notice relates are situated and on an appeal to the county court under this section—

- (a) the judge may make such order confirming or quashing or varying the notice as he thinks fit, and
- (b) the judge shall, if requested by the local authority so to do, include in his judgment a finding whether the house can or cannot be rendered fit for human habitation at a reasonable expense.

(3) Nothing in the Rent Acts shall prevent possession being obtained of any house or part of a house possession of which is required for the purpose of complying with a requirement under paragraph (b) of subsection (1) of this section.

(4) A person who fails to comply with any requirement of a notice under this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five pounds; and if the failure continues after conviction he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding two pounds for every day on which the failure so continues.

(5) In the administrative county of London, other than the City of London, both the metropolitan borough council and the London County Council shall be local authorities for the purposes of this section.

## NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 11 (1) of the Housing Repairs and Rents Act, 1954. Sub-s. (2) contains provisions formerly in s. 15 (1) and (2) of the Housing Act, 1936 as applied by s. 11 (4) of the Act of 1954. Sub-ss. (3) and (4) contain provisions formerly in s. 11 (2) and (3) of the Act of 1954. Sub-s. (5) is new in form; and it is not clear that it correctly reproduces the position under the Act of 1954. It most nearly resembles the provisions in s. 188 (2) of the Act of 1936 (cf. s. 189 (2) of the present Act, *post*), and it is probable that s. 22 (3) of the Act of 1954 was regarded as importing this definition; *sed quaere*. Cf. also s. 24 (repealed) of the Act of 1936, mentioned in the notes to s. 41, *post*; that section formerly contained words referring to s. 8 of that Act, which made specific provisions as to the local authorities for the purposes of the repealed byelaw making powers in London.

The present Act does not reproduce s. 11 (5) of the Act of 1954, which repealed:

- (a) section 6 of the Act of 1936 (relating to the making of byelaws), which had been revived to a limited extent by s. 10 of the Housing Act, 1949 (61 Statutes Supp. 77; 28 Halsbury's Statutes (2nd Edn.) 614);

- (b) section 155 of the Public Health (London) Act, 1936 (15 Halsbury's Statutes (2nd Edn.) 981), which was in effect an alternative byelaw making power, in London, for regulating the number of persons who might occupy a house or part of a house let in lodgings or occupied by more than one family, and for securing the separation of the sexes therein; and
- (c) so much of any local enactment as amended, extended or applied s. 6 of the Act of 1936, or s. 90 of the Public Health Act, 1875, s. 26 of the Housing, Town Planning, etc., Act, 1919, or s. 6 of the Housing Act, 1925, or conferred similar byelaw making powers for the purposes specified in these sections.

The history of these and other repealed provisions is described in the notes to s. 6 (repealed) of the Act of 1936, in *Lumley's Public Health* (12th Edn.) Vol. III, pp. 2916 *et seq.*

In the Act of 1954, s. 11 (1) contained words to the effect that the powers thereunder were without prejudice to other powers under the Act of 1936 or Part I of the Act of 1954; these words are now omitted, presumably as being unnecessary.

**General Note.** This section deals with houses or parts of houses which are unsuitable for occupation having regard (i) to defects in respect of matters listed in s. 4 (1) (d) to (h), *ante*, and (ii) to the number of persons or households or both accommodated on the premises. If the defects are sufficiently grave, the authority will presumably regard the house as unfit for human habitation, and prefer to proceed under s. 9 or 16, *ante*, by way of "repairs" notice or notice of "time and place", or by a "repairs" notice, or the making of a closing order, on part of the building under s. 18, *ante*. The present section will be of most importance when the house, in itself, is not actually unfit, but the ventilation, drainage, sanitary facilities or cooking facilities, etc., are insufficient for the persons or households actually accommodated. A notice hereunder will, in effect, give the person having control the choice of improving these matters or reducing the call on existing facilities by removing some of the persons or households from the premises.

The present section applies to a house, or part of a house, presumably as defined in para. (a) of the definition of "house" in s. 189 (1), *post*. There is no limit of value, and the section is not confined to working-class houses. It is, however, confined to premises "let in lodgings or occupied by members of more than one family", a phrase familiar from the repealed enactments mentioned in the note "History", *supra*, and in particular from s. 6 (3) (repealed) of the Act of 1936, as revived for a time by s. 10 (repealed) of the Housing Act, 1949. This seems to exclude, at one extreme, an ordinary private house even if lodgers are taken in (without having a separate "household" in a separate part of the premises), and to exclude, at the other extreme, premises which are not a house but a flat or block of flats; see the note "House . . . or . . . part of . . . a house", *infra*, to sub-s. (1).

**Grounds of appeal under this section.** The following general grounds are suggested for appeals to the county court under sub-s. (2), *supra*; they should be amplified with any necessary particulars. Some of the grounds suggested relate to matters which need not strictly be raised on appeal; *e.g.*, if the notice is served on the wrong person (not on the person having control) it would appear to be void and the absence of an appeal will not turn it into a valid notice under s. 37, *post*.

- (1) The premises are not a house or part of a house [but are a block of flats . . . or as the case may be].
- (2) The premises are not let in lodgings or occupied by members of more than one family [but are occupied by a single household . . . or as the case may be].
- (3) The appellant is not the person having control of the house.
- (4) The premises are not defective in any of the matters relevant under s. 4 (1) (d) to (h) of the Act.
- (5) There is no need to reduce the number of persons [and/or households] accommodated as mentioned in the authority's notice, or at all.
- (6) The works required by the notice are excessive and unreasonable.
- (7) The premises are a house which is unfit for human habitation and not capable of being rendered fit at a reasonable expense, and the authority should have proceeded under s. 16 of the Act [or the premises are part of a house, etc. . . . and the authority should have proceeded under s. 18].
- (8) The local authority have acted unreasonably.

#### Sub-s. (1).

**Local authority.** See s. 1, *ante*; and as to London note sub-s. (5), *supra*.

**House . . . or . . . part of . . . a house.** The word "house" is defined in s. 189 (1), *post*. It should be noted that paras. (a) and (b) of the definition reproduce the effect of s. 188 (1) and (3) (repealed) of the Act of 1936. "Flat" and "block of flats" were also defined in s. 188 (1) of that Act, and it therefore appeared that the word "house" did not normally extend to a flat or block of flats. It is submitted that this position is still unchanged. The Housing (Financial Provisions) Act, 1958, s. 58 (1) (Book II, *post*), refers to this Act as "the principal Act" but contains its own definition of "house" which, in that Act, includes in particular a "flat". The terms

"block of flats" and "flat" are defined in s. 29 (1) of that Act. This indicates that "house", in the present Act, retains its old meaning and does not in this section include a flat or block of flats.

In the present section the word "house" is governed also by the subsequent phrase "let in lodgings or occupied by members of more than one family". The same phrase occurred in s. 6 (3) (repealed) of the Act of 1936, whereunder byelaws for any of the purposes of that section might be limited to such houses. It was with this same limited application that the byelaw-making power was revived for a time by s. 10 (repealed) of the Act of 1949. The phrase can be traced back to the Public Health Act, 1875, mentioned in the note, "History", *supra*. It was regarded as not applying to a common lodging house; see 23 Halsbury's Laws (1st Edn.) 507.

In *Weatherill v. Cantlay*, [1901] 2 K.B. 285; 38 Digest 209, 438 (decided on s. 94 of the Public Health (London) Act, 1891), a block of tenement dwellings was held not to be a "house" but a collection of houses. In that case it was also held that it was immaterial whether or not the lodgings were furnished. In *Kyffin v. Simmons* (1903), 67 J.P. 227; 38 Digest 209, 439 (also decided on s. 94 of the Public Health (London) Act, 1891), it was held that an ordinary six-roomed house of which the floors were separately let was a "house... occupied by members of more than one family" within the meaning of that section. See also *Roots v. Beaumont* (1886), 51 J.P. 197; 38 Digest 209, 437.

**Let in lodgings; members of more than one family.** See the cases cited in the previous note, *supra*. See also *London County Council v. Cannon Brewery Co., Ltd.*, [1911] 1 K.B. 235; 34 Digest 591, 109, decided on the phrase "not more than two families" in s. 12 (1) of the London Building Act Amendment Act, 1905, where it was held that servants and staff were to be treated as part of a family. The test, in fact, appears to be whether there is more than one "household" or "establishment" on the premises; and it seems to have no connection, for example, with "family" as defined in para. 4 (7) in Part II of the Second Schedule, *post*, or as defined by decided cases on s. 12 (1) (g) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (103 Statutes Supp. 145; 13 Halsbury's Statutes (2nd Edn.) 999).

**Section 4 (1) (d) to (h).** These paragraphs, *ante*, set out some of the matters which are relevant in determining whether a house is reasonably suitable for occupation, and whether accordingly it is "fit for human habitation". Paras. (a) to (c), which are not here relevant, mention repair, stability and freedom from damp; paras. (d) to (h) relate to natural lighting; ventilation; water supply; drainage and sanitary conveniences; and facilities for storage, preparation and cooking of food and for the disposal of waste water.

If the defects in matters listed in s. 4 (1) (d) to (h) are sufficiently grave, the house or part of a house may in itself be unfit for human habitation (regardless of the number of individuals or households); in such a case it may be that the authority should take proceedings under s. 9 or 16 or 18, *ante*. A notice under the present section would not necessarily remedy such defects, as paras. (a) and (b) of the present subsection (sub-s. (1), *supra*) merely specify works and give a choice of either executing the works or reducing the number of individuals or households or both the number of individuals and the number of households.

**Serve.** As to mode of service, see s. 169 (1), *post*.

**Person having control.** The person having control of a house is defined by s. 39 (2), *post*. The person having control of the house is to be served, not a person having control of any part of a house, who might be a different person; see *Kensington Borough Council v. Allen*, [1926] 1 K.B. 576; 36 Digest (Repl.) 334, 773, cited in the notes to s. 39 (2), *post*.

**Notice.** As to authentication, see s. 166 (2), *post*. The prescribed form of notice is Form No. 3 in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), made under s. 178, *post*.

**Specifying the works.** The works will presumably be such as will meet the defects in respect of ventilation, cooking facilities, etc., mentioned in s. 4 (1) (d) to (h), *ante*, in the circumstances which arise from the number of individuals or households, or both, accommodated for the time being on the premises. For example it may be desirable for each "household" or "family" to have its own place for storing, preparing and cooking food. Sub-s. (1) (b), *supra*, offers the person having control the choice of remedying the defects or, in default, of taking steps to limit the number of individuals or households or both.

**Including... legal proceedings.** Note sub-s. (3), *supra*, excluding the Rent Acts.

**Sub-s. (2).**

**Person aggrieved; within twenty-one days.** Cf. the notes to s. 11 (1), *ante*.

**Appeal to the county court.** See s. 38, *post*; and see s. 37, *post*, as to the date of operation of a notice.

**Finding whether the house can... be rendered fit... at a reasonable expense.** This paragraph should be compared with the concluding words of s. 11 (3), *ante*. The purpose of such a finding under s. 11 (3) is to enable the authority, if they

choose, to purchase the house under s. 12 (1), *ante*. As to the matters to be considered in determining whether a house is fit for human habitation, see ss. 4 and 5, *ante*; and note s. 18 (2), *ante*, as to underground rooms. As to "reasonable expense", see s. 39 (1), *post*. It would seem that the present section may, and generally will, be employed when the premises are not actually unfit but deficient only because of the degree and manner of occupation. It is doubtful whether, therefore, there is any point in the judge making such a finding under the present subsection; or whether this could bring into operation the power of purchase under s. 12 (1), *ante*. That subsection refers to "a notice under this Part of this Act requiring the execution of works to a house"; a notice under s. 9, *ante*, answers this description, but it may be said of a notice under the present section that it specifies works but does not directly require them to be executed, merely stating what must be done if they are not executed.

**Sub-s. (3).**

**Nothing in the Rent Acts, etc.** *I.e.*, the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939; see the definition in s. 189 (1), *post*. The present subsection is derived from s. 11 (2) of the Act of 1954, which resembled s. 156 of the Act of 1936. See now s. 158, *post*; and cf. the note to s. 16 (5), *ante*, and other provisions shown in the Table of Repeals and Replacements (Appendix I, *post*) as derived from s. 156 of the Act of 1936.

When a controlled tenancy of a dwelling comes to an end by virtue of the present subsection, s. 11 (2) of the Rent Act, 1957 (which frees new tenancies from control), does not apply to free from control the first tenancy thereafter of that dwelling or any part thereof; see s. 11 (6) of that Act (103 Statutes Supp. 60; 37 Halsbury's Statutes (2nd Edn.) 562) in conjunction with s. 191 (4), *post*.

**Sub-s. (4).**

**Summary conviction.** Cf. the note to s. 8, *ante*.

**Every day on which the failure so continues.** Cf. the note "Every day . . . on which he so uses them . . . after conviction" to s. 16 (6), *ante*.

**Sub-s. (5).**

**Administrative county of London; City of London; metropolitan borough council; London County Council.** See the notes to s. 1, *ante*. By s. 1 (2) (a), *ante*, the Common Council are the local authority for the City. By the present subsection both the L.C.C. and the metropolitan boroughs are local authorities, elsewhere in London, under this section. The position as to byelaws under ss. 6 and 7 (repealed) of the Act of 1936, was quite differently regulated by s. 8 (repealed) of that Act (11 Halsbury's Statutes (2nd Edn.) 456). See, generally, the note "History", *supra*; and cf. s. 41, *post*.

*Supplemental*

**37. Date of operation of notices, demands and orders subject to appeal.**—(1) Any notice, demand or order against which an appeal might be brought to a county court under this Part of this Act shall, if no such appeal is brought, become operative on the expiration of twenty-one days from the date of the service of the notice, demand or order, and shall be final and conclusive as to any matters which could have been raised on such an appeal, and any such notice, demand or order against which an appeal is brought shall, if and so far as it is confirmed by a county court judge, or the Court of Appeal, become operative as from the date of the final determination of the appeal.

(2) For the purposes of this Part of this Act the withdrawal of an appeal shall be deemed to be the final determination thereof, having the like effect as a decision confirming the notice, demand or order, or decision appealed against and, subject as aforesaid, an appeal shall be deemed to be finally determined on the date on which the decision of the Court of Appeal is given, or in a case where no appeal is brought to the Court of Appeal, on the expiration of the period within which such an appeal might have been brought.

**NOTES**

**History.** This section contains provisions formerly in s. 15 (5) of the Housing Act, 1936. The former s. 15 of that Act, as originally enacted or as applied by later Acts, has in the present Act been distributed, with much repetition, between several sections. Sub-ss. (1) and (2) thereof are to be found in the sections indicated in the Table of Repeals and Replacements (Appendix I, *post*). Sub-ss. (3) and (4) thereof are to be found in s. 38, *post*. This section and s. 38, *post*, are applied by ss. 72 (3) and 90 (3), *post*, to appeals thereunder as to obstructive buildings and overcrowding of houses let in lodgings.

**General Note.** This section states when notices, demands and orders become operative, having regard to the right of appeal to the county court; or from that court to the Court of Appeal on a point of law (no further appeal, to the House of Lords, being possible by reason of s. 38 (2), *post*). The effect of this section is as follows:

- (1) If there is an appeal heard by the Court of Appeal, and that Court unholds the notice, demand or order (with or without variations) then it becomes operative in so far as it is so confirmed on the date on which the decision of the Court of Appeal is given.
- (2) If an appeal from the county court is brought to the Court of Appeal, but is withdrawn, the withdrawal of the appeal provides the "final determination" thereof. It has the same effect as if the Court of Appeal had confirmed the decision of the county court judge; *i.e.*, if the judge has confirmed the notice, demand or order (with or without variations) it becomes operative in so far as it was so confirmed on the date when the appeal is withdrawn, and if the judge has quashed the notice it does not become operative.
- (3) If an appeal is heard in the county court, but no appeal is brought to the Court of Appeal, the expiration of the time allowed for appealing to the Court of Appeal provides the "final determination" of the appeal. The notice, demand or order, if confirmed (with or without variations) by the judge, then becomes operative in so far as it was so confirmed; and if the judge has quashed it, it does not become operative.
- (4) If an appeal is brought to the county court, but withdrawn, the withdrawal of the appeal is the "final determination" thereof, and the notice, demand or order then becomes operative as if it had been confirmed by the county court judge.
- (5) If no appeal is brought, the notice, demand or order becomes operative on the expiration of twenty-one days from the date of its service.

Some complication might arise in practice if several persons are served with the same notice, demand or order (*e.g.*, under s. 9 (1) and (2); or s. 19, *ante*). Thus, if they are served at different dates, the times allowed for each to appeal to the county court will expire on different dates. Again if one enters an appeal to the county court but withdraws it, the notice, demand or order will "become operative" (see under (4), *supra*); but some other person may have lodged, or still be in time to lodge, an appeal against the same notice, demand or order. Presumably notices, etc., do not become operative until all persons interested have pursued their rights as far as they can go, or have become debarred from pursuing them further, as mentioned in this section.

#### Sub-s. (1).

**Notice, demand or order against which an appeal might be brought.** See ss. 11 (1), 20 (1), 30 (5), and 36 (2), *ante*, for rights of appeal under this Part (Part II) of the Act. A similar right is given under s. 27 (3), *ante*, against a local authority's refusal to permit a use of premises subject to a closing order, or a refusal to determine such an order: under s. 27 (3) the appeal is thus against a "withholding" or "refusal" rather than a "notice, demand or order", although there was, until 1st December 1957, a prescribed form of notice of refusal to determine certain forms of closing orders (see Form 12 in S.R. & O. 1937 No. 78, as amended, which is revoked by S.I. 1957 No. 1842, printed in Appendix II, *post*). There seems to be no need to specify the date of operation of a "withholding" or "refusal", and presumably the present section does not apply. Under s. 72 (3) in Part III, and s. 90 (3) in Part IV, *post*, the present section and s. 38, *post*, are applied to appeals thereunder as to "obstructive buildings" and the overcrowding of houses let in lodgings.

The notes to the above-mentioned sections mention the notices, demands and orders against which appeals may be brought to the county court thereunder. The time limit is, in each case, 21 days; cf. C.C.R., Ord. 6, r. 6 (cited in the notes to s. 38, *post*), also prescribing a limit of 21 days.

There is no need to appeal if the order or notice is invalid, see the notes to s. 11, *ante*, and *Rayner v. Stepney Corporation*, [1911] 2 Ch. 312, 38 Digest 212, 471.

**Confirmed by a county court judge.** The common form provision, in ss. 11, 20, 30 and 36, *ante*, and ss. 72 and 90, *post*, is that the judge may under such order "either confirming or varying or quashing" the order, etc., as he thinks fit. The phrase, in the present subsection, "if and so far as it is confirmed" thus appears to mean that the notice, demand or order becomes operative in its original form if the judge confirms it, or becomes operative as varied, if he varies it. In other words "varying" a notice (in those sections) means confirming it with variations, and in so far as it is thus confirmed it becomes operative (in the circumstances mentioned in this section).

**Final determination.** See sub-s. (2), *supra*.

#### Sub-s. (2).

**This Part.** *I.e.*, Part II; and see s. 72 (3), in Part III, and s. 90 (3), in Part IV, *post*.

**Confirming the notice . . . or decision.** *I.e.*, the withdrawal of an appeal, to the county court, is equivalent to confirmation of the notice, demand or order; and the withdrawal of an appeal to the Court of Appeal is equivalent to a decision of that court upholding the decision of the county court judge.

**Expiration of the period.** *I.e.*, for appealing from the county court. The notice of appeal must be served, and application to set down the appeal made, within 21 days from the date of judgment or order of the county court: see R.S.C. Ord. 58, r. 18. As to extension of time, see *ibid.*, rr. 13, 14. As to appeals from county courts generally, see the County Courts Act, 1934, ss. 105 *et seq.* (5 Halsbury's Statutes (2nd Edn.) 82 *et seq.*).

**38. Provisions as to appeals under Part II.—(1)** The rules made under section ninety-nine of the County Courts Act, 1934, for regulating the procedure and practice as respects appeals to the county court under this Part of this Act shall make provision with respect to an inspection by the judge of the premises to which the appeal relates in any case in which he considers that inspection is desirable.

(2) No appeal shall lie from a decision of the Court of Appeal on an appeal from a county court in proceedings originating in an appeal to the county court under this Part of this Act.

#### NOTES

**History.** This section contains provisions formerly in s. 15 (3) and (4) of the Housing Act, 1936. The former s. 15 (5) of that Act is now to be found in s. 37, *ante*. This section, and s. 37, *ante*, are applied by ss. 72 (3) and 90 (3), *post*, to appeals under those sections, which relate to obstructive buildings and to overcrowding of houses let in lodgings.

The former sub-ss. (1) and (2) of s. 15 of the 1936 Act, as originally enacted or as applied by later Acts, are in the present Act distributed among a number of sections, with much repetition, see, *e.g.*, ss. 11 (1) to (3) and 20 (1) to (3), *ante*; and see the Table of Repeals and Replacements (Appendix I, *post*).

**General Note.** This section contains certain general provisions relating to appeals under this Part of the Act. An appeal beyond the Court of Appeal is excluded by sub-s. (2), *supra*. Note that this exclusion is absolute, and cf. para. 4 of the Fourth Schedule, *post*, relating to certain orders under Part III, *post*, where an appeal to the House of Lords is possible, but only by leave of the Court of Appeal. A similar limitation formerly applied to proceedings to question the validity of compulsory purchase orders under the procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946, which is applied to purchases under this Part (Part II) and Part V, *post*, of this Act; but this was removed on 1st July 1948 by the Town and Country Planning Act, 1947. No such limitation applied to actions based on the implied covenant as to fitness on the letting of small houses, and a number of cases were heard by the House of Lords on those provisions (see now s. 6, and notes, *ante*).

#### Sub-s. (1).

**Appeals to the county court.** Appeals under this Part arise under ss. 11 (1), 20 (1), 27 (3), 30 (5) and 36 (2), *ante*; and see ss. 72 (3) and 90 (3), *post*, applying the present section to appeals thereunder. There is no need to appeal against an invalid order; see the notes to s. 11, *ante*.

**Inspection by the judge.** No special provision is made by the County Court Rules for inspection on appeals under this Part of the Act, but the judge may inspect the premises under the general power contained in C.C.R. Ord. 23, r. 14.

**County Courts Act, 1934, s. 99.** See 5 Halsbury's Statutes (2nd Edn.) 78, or the County Court Practice. The County Court Rules, 1936, as amended, with the forms to be used thereunder, will also be found in the County Court Practice. No special rules have been made as to appeals under this Part of the Act, so that C.C.R. Ord. 6, r. 6, governs the entry of an appeal. This rule requires the filing of the order, etc., appealed against together with a request for the entry of the appeal containing the name(s) and address(es) of the intended respondent(s), etc., within 21 days after the date of the order, etc., appealed against. A copy of the order appealed against must be lodged for service by the court on the local authority, as the intended respondent. Section 91 of the County Courts Act, 1934, as amended by s. 190 of, and the Tenth Schedule to, this Act, *post*, provides that the trial is to be without a jury.

#### Sub-s. (2).

**No appeal . . . from . . . the Court of Appeal.** This exclusion of a further appeal, from the Court of Appeal to the House of Lords, is absolute; see General Note, *supra*. As to appeals from the county court to the Court of Appeal, see the notes to sub-s. (1), *supra*, and to s. 37, *ante*. Note that this subsection applies only to proceedings originating in an appeal to the county court. It does not affect actions originating from the provision of s. 6, *ante*, or that section as extended by s. 7, *ante*.

**39. Interpretation of Part II.—(1)** In determining for the purposes of this Part of this Act whether a house can be rendered fit for human

habitation at a reasonable expense, regard shall be had to the estimated cost of the works necessary to render it so fit and the value which it is estimated that the house will have when the works are completed.

(2) For the purposes of this Part of this Act, the person who receives the rack-rent of a house, whether on his own account or as agent or trustee for any other person, or who would so receive it if the house were let at a rack-rent, shall be deemed to be the person having control of the house.

In this subsection the expression "rack-rent" means rent which is not less than two-thirds of the full net annual value of the house.

#### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 9 (3) of the Housing Act, 1936, and sub-s. (2) contains provisions formerly in s. 9 (4) of that Act, and also in that subsection as applied by s. 11 (1) of the Housing Repairs and Rents Act, 1954, for the purposes of what is now s. 36, *ante*.

**General Note.** This section contains important provisions for the interpretation of two phrases occurring in this Part (Part II) of the Act.

#### Sub-s. (1).

**In determining for the purposes of this Part.** In this Part (Part II) of the Act, the question whether a house can be rendered fit at a reasonable expense is of importance in deciding whether proceedings should be taken in respect of an unfit house under ss. 9-15, *ante*, relating to repairs notices (where the expense of rendering fit would be reasonable) or under ss. 16-35, *ante*, relating to demolition orders, closing orders, etc. (where the expense of rendering fit would be unreasonable). Under s. 18, *ante*, relating to certain parts of buildings and underground rooms, the same question arises, as the local authority may take "the like proceedings" as they are empowered to take in the case of a house, *i.e.*, to require repairs, etc. (if the expense would be reasonable), or to close the premises (if not).

If the local authority decide the expense would be reasonable and serve a "repairs" notice, under s. 9, *ante*, the right of appeal to the county court under s. 11, *ante*, provides the opportunity for this decision to be reviewed by the judge. Note particularly s. 11 (3). Conversely, if the local authority decide the expense would not be reasonable, and take action under s. 16, *ante*, the right of appeal under s. 20, *ante*, applies, and the judge may decide the expense would be reasonable. Furthermore the authority, or the judge, may accept an undertaking offered under s. 16 to render the house fit, regardless of expense; see the notes to that section, *ante*.

In Part III, *post*, the question of reasonableness of the expenditure which would be required to render a house fit can arise under s. 57 (3) (and see s. 59 (3)), *post*, in connection with re-development areas. It is not mentioned in ss. 42 (1) (a), and 59 (2), relating to clearance areas. The present subsection is not expressed to apply to Part III.

**House.** See s. 189 (1), *post*; and ss. 9 (3) and 16 (7), *ante* (as to moveable dwellings, etc.), and s. 18, *ante* (as to certain parts of buildings and underground rooms).

**Fit for human habitation.** See ss. 4 and 5, *ante*. The present subsection would appear to apply, by inference, to s. 18, *ante*; as to underground rooms being deemed to be unfit in certain circumstances, see s. 18 (2), *ante*.

**Regard shall be had.** In *Cohen v. West Ham Corporation*, [1933] Ch. 814; 97 J.P. 155; Digest Supp., Lord Hanworth, M.R., said: "That word 'regard' is intended to be a loose and indefinite term. I think it enables the local authority to take into account not merely an accurate estimate made by a surveyor or an estate agent with a schedule of dilapidations, but to take into account what would probably be the cost of the outlay required, and to consider whether after that outlay had been incurred, it would be possible to let the house and get a return for the total expenditure upon the premises." It is not a condition precedent to the service of a notice under s. 9, *ante*, that the local authority should have before them detailed estimates of the cost of carrying out the specified works; see *Bacon v. Grimsby Corporation*, [1949] 2 All E.R. 875, C.A.; 2nd Digest Supp. In cases under that section, the local authority will have a list of works which in their opinion will render the house fit; see s. 9 (1) (a) and (b). Their notice should specify the works in some detail, and be sufficiently definite to enable an owner to know what is required of him; see *per* Maugham, J., in *Cohen v. West Ham Corporation*, *supra*, also reported in 149 L.T. 271. On an appeal under s. 11, *ante*, therefore, the "estimated cost of the works", referred to in the present subsection, may not be difficult to ascertain if the persons interested accept that all the works are necessary.

Under s. 16, *ante*, the local authority, though they should have satisfied themselves that the expense would be unreasonable, will not have stated in the notice under s. 16 (1), *ante*, what works might be sufficient to render the house fit; it is for the persons served with such a notice to submit a list of works, under s. 16 (3) (b), if they wish to offer to carry out such works. On an appeal, therefore, under s. 20, *ante*, there may be a dispute as to the extent of "the works necessary" to render the house fit, and the appellant may not know in advance the authority's case on this point.

**Estimated cost; works necessary to render it so fit.** See previous note, *supra*, and the cases cited in the notes to s. 16, *ante*.

**Value . . . the house will have.** *I.e.*, the freehold value, not, for example, the value to some particular person having a limited interest such as the last few years of a lease; see *Bacon v. Grimsby Corporation*, *supra*. In practice, particularly with rent-restricted property, the expenditure of money on works to render a house fit often does not increase the value correspondingly or even at all. This is recognised, in another connection, by para. 2 of Part III of the Third Schedule and para. 2 (3) of the Seventh Schedule, *post*.

**Sub-s. (2).**

**House.** See the note to sub-s. (1), *supra*, and the note " Rack-rent; full net annual value ", *infra*.

For the purposes of s. 1 of the Housing (Emergency Powers) Act, 1939, references to a house in sub-s. (2), *supra*, have effect as if they included references to a building; see s. 2 (2) of the Act of 1939 (7 Statutes Supp. (2nd Edn.) 82; 11 Halsbury's Statutes (2nd Edn.) 625), and s. 191 (4), *post*.

**As agent or trustee.** See the note " Person having control ", *infra*; and s. 10 (3) proviso, *ante*, for a limitation of liability for the protection of agents and trustees.

As to who may be an agent or trustee within this subsection, see *St. Helen's (Mayor) v. Kirkham* (1885), 16 Q.B.D. 403; 26 Digest 551, 2468; *Peck v. Waterloo and Seaforth Local Board of Health* (1863), 2 H. & C. 709; 38 Digest 177, 194; *Metropolitan Water Board v. Brooks*, [1911] 1 K.B. 289; 43 Digest 1087, 207; *Broadbent v. Shepherd* (1900), 65 J.P. 70; 36 Digest (Repl.) 342, 833 (and subsequent proceedings *ibid.* p. 499, also reported at [1901] 2 K.B. 274); as to mortgagees, see *Tottenham Local Board v. Williamson* (1893) 62 L.J.Q.B. 322; 26 Digest 551, 2470; *Maguire v. Leigh-on-Sea Urban District Council* (1906), 70 J.P. 479; 26 Digest 545, 2435; *Solomons v. Gerzonstein (R.), Ltd.*, [1954] 1 All E.R. 1008; 3rd Digest Supp. (receiver, appointed by mortgagee, reversed on other grounds, [1954] 2 All E.R. 625; held, at first instance, to be within the definition); as to trustees, see *Re Barney, Harrison v. Barney*, [1894] 3 Ch. 562; 38 Digest 178, 199, as to persons receiving rents in some ministerial capacity only, where the employer rather than the servant may be said to receive them, see *Watts v. Battersea Borough Council*, [1929] 2 K.B. 63; Digest Supp., and *Bottomley v. Harrison*, [1952] 1 All E.R. 368; 36 Digest (Repl.) 338, 799.

**For any other person.** See *Bacup Corporation v. Smith* (1890), 44 Ch. D. 395; 26 Digest 524, 2248 (a receiver appointed by the court does not receive rent " as agent or trustee for any other person "; cf. the Nuisances Removal Act, 1855 (18 & 19 Vict. c. 121), which expressly included such a receiver or sequestrator).

**Person having control.** This definition is of the utmost importance in this Part (Part II) of the Act. It is quite different from that of " owner " in s. 189 (1), *post*. Local authorities must take care to see that notices under ss. 9 (1), 10 (2), 10 (3), 16 (1), 18 (1), 19, 26 (1), 28, 35 (2) and 36 (1), *ante*, are properly served on the person having control and, where required, on other persons. The phrase " person having control " was first used in s. 17 (2) (repealed) of the Housing Act, 1930, but earlier Acts had had a special definition of " owner ", in similar terms (by reference to public health legislation), for purposes resembling those where the present expression is used, as well as a general definition of " owner " for other purposes.

The present definition can be compared with the definition of " owner " in s. 42 (1) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*), and with similar definitions used in rating and public health statutes for more than a century, *e.g.*, in s. 1 (repealed) of the Parochial Assessments Act, 1836; in s. 4 of the Public Health Act, 1875 (19 Halsbury's Statutes (2nd Edn.) 60), which defines " owner " and " rack-rent "; and in s. 343 (1) of the Public Health Act, 1936 (19 Halsbury's Statutes (2nd Edn.) 495).

The purpose of the present definition is to single out some easily ascertainable person who can be regarded as economically responsible for the house. It is not dependent on questions of title; see *Caudwell v. Hanson* (1871), L.R. 7 Q.B. 55; 34 Digest 583, 44. The object of the legislature has been explained as being " to relieve the authority of the burden of discovering the owner. . . and to impose on them the easier task of finding out the person to whom the tenant pays his rent "; see *Watts v. Battersea Borough Council*, [1929] 2 K.B. 63, C.A.; Digest Supp., *per* Greer, L.J. at p. 73, and cf. *per* Scrutton, L.J., *ibid.* at p. 70. This case was decided on s. 3 (10) (repealed) of the Housing Act, 1925; immediately following the case, the new phrase " person having control " was used in the Act of 1930, which, in view of the observations of the Court, also introduced the provisions for the protection of trustees and agents by limiting their liability to the assets coming to their hands (s. 18 (3) of the Act of 1930; see now s. 10 (3), *ante*). The explanation of the definition given in *Watts v. Battersea Borough Council*, *supra*, closely resembles that in *Cook v. Montagu* (1872), L.R. 7 Q.B. 418; 36 Digest (Repl.) 337, 797.

It must be noted that the definition refers to the person having control of a " house " and the rack-rent of a " house ": " house " is defined in s. 189 (1), *post*. Rents of parts of a house or building are not mentioned; contrast s. 42 (1) of the Act of 1958 (Book II, *post*), and see *Kensington Borough Council v. Allen*, [1926] 1 K.B. 576; 36 Digest

(Repl.) 334, 773. Under s. 18 (1), *ante*, however, the definition must presumably be applied by analogy to the person having control of "part of a building" or an "underground room"; s. 36, *ante*, however, which may relate to part of a house, requires a notice thereunder to be served on the "person having control of the house".

Cases decided on similar definitions in other Acts suggest that the correct approach is first to look at the actual rent received in respect of the house. If this is a rack-rent, the second limb of the definition need not be considered. In this connection it seems to be established that a rent which was once a rack-rent will not cease to be so regarded because of changes in property values or other circumstances. If the actual rent is not a rack-rent, then, under the second limb of the definition, there must be found the person who "*rebus sic stantibus*" would receive what is, in present circumstances, a rack-rent if the house were let at such a rent.

In *Rawlence v. Croydon Corporation*, [1952] 2 All E.R. 535; 3rd Digest Supp., the Court of Appeal considered a rent-restricted house when the controlled rent was a rack-rent only if regard was had to the restriction of rents under the Rent Acts. The landlord argued that he had ceased to be the person having control, but the Court of Appeal held that the controlled rent must be considered to be a rack-rent, having regard to these Acts. Some of the *dicta* or reasons in the judgments go very much further, but must now be read subject to *Corporation of London v. Cusack-Smith*, [1955] 1 All E.R. 302, H.L.; 3rd Digest Supp., reversing *R. v. Minister of Housing and Local Government, Ex parte Corporation of London*, [1954] 1 All E.R. 88.

**Rack-rent; full net annual value.** At common law these might be considered as very similar terms, but by statute the former is often defined, as here, as being not less than two-thirds of the latter. The present Act does not define the latter phrase (though it is mentioned in the definition of "rateable value" in para. 3 (2) of Part I of the Second Schedule, *post*). Cf. also s. 42 (1) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*), where "rack-rent" is defined by reference to the Public Health Act, 1875.

The rack-rent referred to in the present section is the rack-rent "of a house". There is no express provision as to who is the person having control of part of a building or an underground room as mentioned in s. 18, *ante*. Note also that a house may be let in separate dwellings, but it is the rack-rent of the house as a whole which is relevant: cf. *Kensington Borough Council v. Allen*, [1926] 1 K.B. 576; 36 Digest (Repl.) 334, 773, but consider *Fillingham v. Wood*, [1891] 1 Ch. 51; 30 Digest (Repl.) 494, 1386.

**40. Saving for certain restrictions of Part III.**—The powers of a local authority exercisable under this Part of this Act shall be subject to the provisions of Part III of this Act with respect to redevelopment and reconditioning by owners of premises.

#### NOTES

**General Note.** This section has apparently been added as a reminder to draw attention to ss. 68–71, *post*.

**Local authority.** See s. 1, *ante*, and s. 41, *post*. Note that the authority must have regard to their proposals approved by the Minister as mentioned in s. 2, *ante*, in carrying out their functions under this Part (Part II) or Part III, *post*, of this Act. As to local authorities in London for the purposes of ss. 68–70, see s. 71, *post*.

**Provisions of Part III, etc.** See ss. 68–71, *post*.

**Owners.** "Owner" is defined in s. 189 (1), *post*. In s. 68, *post*, the reference is not to "owners" (except in the marginal note) but to "persons proposing to undertake the re-development of land." In s. 69, *post*, the reference is to "any owner" and the definition in s. 189 (1) accordingly applies in s. 69.

**41. Local authority for Part II in London.**—As respects the administrative county of London, other than the City of London, the local authority for the purposes of this Part of this Act shall, save as otherwise expressly provided, be the council of the metropolitan borough.

#### NOTES

**History.** This section contains provisions formerly in s. 24 of the Housing Act, 1936. The words "save as otherwise expressly provided" are a drafting device to take account of the inclusion of s. 36 in this Part (Part II) of the present Act, *ante*. Where these words now occur, s. 24 of the 1936 Act, as originally enacted, had the words "subject to the provisions of section 8 of this Act"; this qualification, together with s. 8 which referred to byelaws as to working-class houses in London, was repealed by the Housing Repairs and Rents Act, 1954, s. 54 and Fifth Schedule. The 1954 Act, in s. 11, introduced the powers now found in s. 36, *ante*, which with s. 90, *post*, replace the byelaw-making powers.

**General Note.** In this Part (Part II) of the Act, the local authority in London, other than the City, is the metropolitan borough council, by virtue of the present section. In the City of London, the local authority is the Common Council, by virtue of s. 1 (2) (a), *ante*. For the purposes of s. 36, *ante* (relating to houses let in lodging or occupied by members of more than one family, and conferring powers to require works to be done or the number of occupants to be reduced), the term "local authority" in London other than the City covers both the metropolitan borough council and the London County Council, by virtue of s. 36 (5), *ante*.

**Administrative county of London; City of London; metropolitan borough.** See s. 1 and notes thereto, *ante*.

**Otherwise expressly provided.** See s. 36 (5), *ante*. See also the note "Local authority" to s. 18, *ante*, referring to s. 177, *post*.

### PART III

#### CLEARANCE AND RE-DEVELOPMENT

##### *Clearance Areas*

**42. Power to declare an area to be a clearance area.**—(1) Where a local authority, upon consideration of an official representation or other information in their possession, are satisfied as respects any area in their district—

- (a) that the houses in that area are unfit for human habitation, or are by reason of their bad arrangement, or the narrowness or bad arrangement of the streets, dangerous or injurious to the health of the inhabitants of the area, and that the other buildings, if any, in the area are for a like reason dangerous or injurious to the health of the said inhabitants; and
- (b) that the most satisfactory method of dealing with the conditions in the area is the demolition of all the buildings in the area;

the authority shall cause that area to be defined on a map in such manner as to exclude from the area any building which is not unfit for human habitation or dangerous or injurious to health and shall pass a resolution declaring the area so defined to be a clearance area, that is to say, an area to be cleared of all buildings in accordance with the subsequent provisions of this Part of this Act:

Provided that, before passing any such resolution, the authority shall satisfy themselves—

- (i) that, in so far as suitable accommodation available for the persons who will be displaced by the clearance of the area does not already exist, the authority can provide, or secure the provision of, such accommodation in advance of the displacements which will from time to time become necessary as the demolition of buildings in the area, or in different parts thereof, proceeds; and
- (ii) that the resources of the authority are sufficient for the purpose of carrying the resolution into effect.

(2) A local authority shall forthwith transmit to the Minister a copy of any resolution passed by them under this section, together with a statement of the number of persons who on a day specified in the statement were occupying the buildings comprised in the clearance area.

(3) A local authority who have passed a resolution declaring any area to be a clearance area shall, before taking any action under that resolution which will necessitate the displacement of any persons, undertake to carry out or to secure the carrying out of such re-housing operations, if any, within such period as the Minister may consider to be reasonably necessary.

#### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 25 (1) of the Housing Act, 1936, as amended by ss. 1 and 51 (4) of, and the First and Third Schedules to, the Housing Act, 1949. Sub-ss. (2) and (3) contain provisions formerly in s. 25 (2) and 45 (1) of the Act of 1936, also amended as aforesaid by the Act of 1949. The amendments by the Act of 1949 removed references to the working classes; s. 25 (3) of the Act of 1936 will now be found in somewhat different form in s. 43 (1), *post*.

**General Note.** This section introduces Part III of this Act, which contains powers for dealing with clearance areas (ss. 42-54, *post*) and re-development areas (ss. 55-58, *post*), and further provisions which relate for the most part to compensation and other payments on compulsory purchase, etc. (ss. 59-67, *post*). Two further groups of sections, at the end of this Part, relate respectively to re-development and re-conditioning by owners (ss. 68-71, *post*; and note s. 40, *ante*, in Part II of the Act), and to demolition orders on obstructive buildings (ss. 72-75, *post*).

Clearance area procedure was first introduced by the Housing Act, 1930, and differs from the provisions as to unhealthy areas in the older Acts (*e.g.*, Part II of the Act of 1925) in giving the authority a choice of methods to secure the clearance of the area, either by purchase, or by ordering owners to demolish under a clearance order, or partly in one way and partly in the other; see s. 43 (1), *post*. The power to make a clearance order thus relieves the authority of the necessity to purchase when they do not require the cleared site for re-housing or other purposes.

The present section provides the first stage of clearance area procedure, namely the declaration of the area as such. The local authority must be satisfied—

- (1) That the area contains at least two "houses" (individual unfit houses can be dealt with under Part II of the Act, *ante*).
- (2) That all the houses in the area are either (a) unfit for human habitation within the meaning of s. 4 or s. 5, *ante*, or (b) dangerous or injurious to health by reason of their bad arrangement, or the narrowness or bad arrangement of the streets.
- (3) That all the other buildings, if any (whether containing dwelling accommodation or not, and cf. s. 44 (8), *post*, as to huts, tents, caravans, etc.) are dangerous or injurious to health by reason of their bad arrangement, or the narrowness or bad arrangement of the streets.
- (4) That the most satisfactory method of dealing with conditions in the area is the demolition of all the building therein (although there are now powers to delay demolition in certain circumstances).
- (5) That suitable accommodation (*i.e.*, dwelling accommodation) exists or can be provided in advance for persons to be displaced.
- (6) That the resources of the authority are sufficient to carry their resolution into effect.

It should be noted that the clearance area may surround "islands" of land, wholly enclosed by, but not part of, the area. The authority may in certain circumstances purchase such land, and also certain adjoining land (see s. 43 (2), *post*), but this does not make the "islands", or adjoining lands, parts of the actual clearance area. Note also para. 4 of the Third Schedule, *post*, whereunder a compulsory purchase order may be confirmed with modifications which in effect exclude land from the clearance area; proceedings will not be invalidated if the effect of this is to split the clearance area into two or more areas even, it seems, if the severed parts would not in themselves individually meet the requirements of this section, as when a single house or building is cut off from the rest of the area. It is also provided that land excluded from the area may still be left in the compulsory purchase order as modified, if it could have been included as an "island", or as adjoining land, for the purposes mentioned in s. 43 (2), *post*. The Minister cannot, however, make the opposite type of modification, *i.e.*, he cannot put land into the clearance area which was intended to be purchased as land outside the area, nor can he authorise a purchase on less favourable terms, as by showing property as an unfit house when it was included only for "bad arrangement".

When the authority have satisfied themselves on the matters listed above, they will define the actual clearance area on a map, excluding any building which is not unfit or dangerous or injurious to health, and pass a resolution declaring the area to be a clearance area. They will then forward certain documents to the Minister as required by sub-s. (2), *supra*, and by the practice of the Ministry. These documents are as follows:—

- (a) a copy of the resolution and the official representation or other information on which it is based;
- (b) two certified copies of the map defining the area; the scale should be 1/500 or thereabouts (when the whole area is included in a clearance order or compulsory purchase order submitted at the same time, the map relating to the order will suffice and a separate map of the area need not be sent);
- (c) an undertaking to secure necessary rehousing (sub-s. (3));
- (d) a statement of the number of houses, other buildings and occupants on a specified day;
- (e) the proposals for rehousing; and
- (f) a statement as to whether any property in the area is owned by the local authority, including how, when and under what authority it was acquired; whether there are any outstanding interests to be acquired; and whether s. 49, *post*, applies to the property (see s. 49 (2)).

When it is clear that rehousing accommodation can be provided, within such period as the Minister may consider reasonably necessary, the authority will proceed to

secure clearance either by clearance orders or by purchasing the land or partly by one method and partly by the other, as mentioned in s. 43, *post*. Clearance orders, however, cannot be applied to buildings containing no unfit dwelling accommodation; see para. 2 of the Fifth Schedule, *post*.

**Sub-s. (1).**

**Local authority.** See s. 1, *ante*. As to London, see s. 52, *post*.

**Upon consideration.** In the absence of evidence to the contrary the court will assume the duty has been performed if the authority have considered the report of one of their officials concerned: cf. *Cohen v. West Ham Corpn.*, [1933] Ch. 814; Digest Supp.

**Official representation.** For the meaning of this expression and for the duty of the medical officer to make representations, and of the authority to consider them, see s. 157, *post*.

**Other information.** Under the Act of 1925 the authority could only act on the official representation of the medical officer. On certain aspects the information might more properly be given by the surveyor or the public health inspector. The present words are wide enough to allow the housing committee to act on information gained on inspection.

**Satisfied.** It is enough if the authority have information before them on which they can be satisfied; there is no obligation to hear the owner (*Fredman v. Minister of Health* (1935), 100 J.P. 104; Digest Supp.).

**Any area.** A single house must be dealt with under Part II. In practice, as few as two houses have been dealt with as an area.

**Houses.** This section makes different provision for houses and other buildings. There is only a limited definition of "house" in the present Act, see s. 189 (1), *post*, but there have been a number of cases on the meaning of "house" in the Act of 1936, or of "dwelling-house" in earlier Acts. As to types of premises which have been held to be "houses" within s. 25 of the Act of 1936, see *Re Bainbridge, South Shields (D'Arcy Street) Compulsory Purchase Order, 1937*, [1939] 1 All E.R. 419; Digest Supp. (Shops with living room over); *Re Butler, Camberwell (Wingfield Mews), No. 2 Clearance Order, 1936*, [1939] 1 All E.R. 590, C.A., Digest Supp. (Garages and stores with dwellings over). Cf. also *Re Ross and Leicester Corpn.* (1932), 96 J.P. 459; Digest Supp. (common lodging house held to be a "dwelling-house"); *Premier Garage Co. v. Ilkeston Corpn.* (1933), 97 J.P. Jo. 786 (dwelling-house and shop as one property constituted a "dwelling-house"). An unoccupied house may be included in a clearance area: cf. *Robertson v. King*, [1901] 2 K.B. 265; 38 Digest 212, 467 (decided on ss. 29 and 32 of the Housing of the Working Classes Act, 1890). A house in multiple occupation may be treated as one house. It may have been treated as two hereditaments for rating purposes, or comprise more than one dwelling under the Rent Acts, but still be one house; cf. *Benabo v. Wood Green Borough Council*, [1945] 2 All E.R. 162; 2nd Digest Supp.

It has been held that buildings, which were originally dwelling-houses, did not cease to be "buildings of the dwelling-house class" simply because they had been compulsorily closed as unfit for human habitation and used as warehouses (*Morgan v. Kenyon* (1913), 78 J.P. 66; 38 Digest 182, 225), but this was for bye-law purposes. One house may contain a number of "dwelling-houses" in the sense of flats or tenements separately occupied, nevertheless the whole may, it would seem, be regarded as a dwelling-house; see *Kirkpatrick v. Maxwelltown Town Council*, [1912] S.C. 288; 38 Digest 212c, and cf. *Benabo v. Wood Green Borough Council*, *supra*. In *Re Liverpool (Portland Street No. 2) Housing Confirmation Order (1935)* (unreported) a building was used for business purposes. There was no evidence that it had ever been used as a house. In evidence the surveyor had alleged that it had been constructed as a dwelling-house; Swift, J., held that there was evidence on which the Minister could find that the building was in fact a "dwelling-house". See also *Lewin v. End*, [1906] A.C. 299; 19 Digest 523, 3848. As to "buildings" which contain dwelling accommodation, see s. 59 (2) proviso, *post* (site value compensation if such accommodation is unfit) and para. 2 of the Fifth Schedule, *post* (a comparable provision as to the inclusion of buildings in a clearance order).

**Unfit for human habitation.** See s. 4, *ante*, as to the matters to which regard is to be had in determining whether a house is unfit, and s. 5, *ante*, as to back-to-back houses; and see also the notes to ss. 4 and 6, *ante*. As to the power of the courts to review the finding of fact, see *Re Bowman, South Shields (Thames Street) Clearance Order, 1931*, [1932] 2 K.B. 621; Digest Supp.; and *Re Falmouth (Well Lane, Sedgmond's Court and Smithick Hill) Clearance Order, 1936*, [1937] 3 All E.R. 308; Digest Supp. See also *Estate and Trust Agencies (1927), Ltd. v. Singapore Improvement Trust*, [1937] 3 All E.R. 324; Digest Supp. Generally it would seem that power, if any, to review the evidence is limited to cases where it can be shewn that there is no material on which a reasonable person would have been satisfied; there is no reported English case in which a compulsory purchase order or clearance order has been quashed on precisely this ground; see the Fourth Schedule and notes thereto, *post*.

**Bad arrangement.** It is not bad arrangement from a planning standpoint which

is in question, but bad arrangement affecting the health of the inhabitants of the area. Matters which will be in issue are lack of light and air space, overshadowing and insanitary conditions arising in narrow, cramped courts, yards and alleys. It would seem that there must be more than bad arrangement: it must be dangerous or injurious to health; see note, *infra*. A building included in a clearance area solely on the ground of bad arrangement, etc., will be excluded from a clearance order unless the building was constructed or adapted as a dwelling or partly for that purpose and partly for other purposes and any part not being a part used for other purposes is unfit for human habitation (in other words, unless it contains unfit dwelling accommodation); see para. 2, Fifth Schedule, *post*. On compulsory purchase, the compensation for such buildings, which would be excluded from the clearance order, will not be "site value" under s. 59 (2), *post*, but normal compulsory purchase value subject, however, to the provisions of s. 59 (4), *post*, and the rules in Part III of the Third Schedule. Those provisions exclude, for example, values which may be based on rentals obtained for illegal purposes or by overcrowding, and provide that, where the premises are not in a reasonable condition, the value shall be reduced by the estimated cost of putting them in such condition.

**Streets.** "Street" includes any court, alley, passage, square or row of houses, whether a thoroughfare or not; see s. 189 (1), *post*.

**Dangerous or injurious to the health of the inhabitants of the area.** This provision can be contrasted with the expression "prejudicial to health, or a nuisance" used in s. 92 of the Public Health Act, 1936 (19 Halsbury's Statutes (2nd Edn.) 379). Under that provision interference with personal comfort would warrant action. "Dangerous or injurious" to health presupposes a real danger or injury to health. If this cannot be shown, but the purchase of a house or other building is desirable, the authority may be able to purchase it under s. 43 (2), *post*.

**Other buildings.** These can only be included in the clearance area where they are dangerous or injurious to the health of the inhabitants because of their bad arrangement or the narrowness or bad arrangement of the streets. Evidence should be given on this point, at the local inquiry or hearing. As to compensation for "other buildings" included in a compulsory purchase order, see s. 59 (2), *post*. The compensation will normally be assessed subject to the special rules in the Third Schedule, *post*.

By s. 44 (8), *post*, references to a building in the provisions of this Act relating to buildings included in an area to which a clearance order applies include references to a hut, tent, caravan or other temporary or moveable form of shelter which is used for human habitation and has been in the same enclosure for a period of two years went before action is taken under those provisions. It would seem, therefore, that such temporary or moveable dwellings can only be included in a clearance area for the reasons applicable to "other buildings", and not because they are unfit for human habitation.

**Most satisfactory method.** It is submitted that this expression is not exclusively limited to what is most beneficial to health; the cost, the possibility of rehousing, and the time factor, are among the matters covered by this term. Note also ss. 46 (2) and 48, *post*, as to temporary retention of houses.

**Defined on a map.** The map should be on the scale of 1/500 and show the clearance area coloured pink.

In defining the clearance area it should be borne in mind that the soil of a highway up to the centre is presumed to be owned by the owners of the land on each side of the road; see 19 Halsbury's Laws (3rd Edn.) 65. Attention is also directed to s. 64, *post* (extinguishment of ways and easements), and to s. 49, *post* (inclusion of land belonging to local authority in clearance area).

**Pass a resolution.** This should recite that the authority are satisfied (upon consideration of an official representation or as the case may be) on the points relevant under this section (*i.e.*, under paras. (a) and (b) and provisos (i) and (ii) of sub-s. (1), *supra*). It should also recite that the area has been defined on a map, which should be identified and incorporated in the resolution; and it should declare the area so defined to be "a clearance area within the meaning of the Housing Act, 1957". It need not, however, go on to deal with the choice of methods for clearing the area, mentioned in s. 43 (1), *post*, or the purchase of other land outside the area under s. 43 (2), *post*, etc.

Persons interested in property affected by the resolution have no right of objection at this stage; under the Third or Fifth Schedule, *post*, they may object to the compulsory purchase order or clearance order made under the next two sections.

**Suitable accommodation.** In *Re Gateshead County Borough (Barn Close) Clearance Order, 1931*, [1933] 1 K.B. 429; Digest Supp. it was admitted that the local authority had not considered the question of alternative accommodation for the business of the applicants, and it was contended that the order was, therefore, void on the ground that the proviso required the authority to be satisfied as to the existence, or of their ability to provide or secure the provision of, alternative business, as well as residential, premises. Swift, J., held that the proviso dealt only with the provision of dwelling

accommodation and dismissed the appeal. For an article on this case, see 96 J.P. Jo. 840. As to the obligation to re-house see sub-s. (3), *supra*.

**Persons who will be displaced.** As to discretionary payments to persons displaced, see s. 63, *post*; and as to other payments in certain cases, see ss. 60 and 61 and the Second Schedule, *post*.

**Resources of the authority are sufficient.** Housing committees are advised to have before them an estimate of the cost of all proposed schemes before declaring an area to be a clearance area. This is not a purely formal matter; the section clearly intends local authorities to consider the cost of their proposals before embarking on them.

**Sub-s. (2).**

**Forthwith.** Cf. the note to s. 12 (1), *ante*.

**Transmit to the Minister.** For definition of "the Minister", see s. 189 (1), *post*. The documents required in practice by the Minister are listed in the General Note, *supra*.

**Sub-s. (3).**

**Re-housing operations.** The local authority may carry out housing operations themselves in accordance with the provision of Part V (ss. 91 *et seq.*), *post*, or may arrange with housing associations for the provision of housing accommodation under s. 120, *post*, or may make advances under s. 43 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*).

Note that sub-s. (1) proviso (i), *supra*, requires the local authority to satisfy themselves, that it will be possible to provide suitable alternative accommodation for persons displaced by the clearance of an area, *before* declaring it to be a clearance area. The present subsection enables the Minister to ensure that such accommodation will in fact be available in advance of requirements.

In the absence of any definite requirement by the Minister as to re-housing it would seem that there is no legal obligation to re-house persons who will be displaced from clearance areas. Practical considerations, however, may oblige local authorities to offer the majority, if not all, of the persons who will be displaced alternative accommodation, and it will be advisable to make such offer in writing, stating the rent proposed to be charged, and specifying a time within which the accommodation must be accepted.

There is no legal obligation on the authority to provide alternative accommodation for business purposes: see *Re Gateshead County Borough (Barn Close) Clearance Order, 1931*, cited in the note "Suitable accommodation" to sub-s. (1), *supra*. Note also that s. 136 in Part VI of the Act of 1936 (standard of re-housing accommodation) was repealed by the Housing Act, 1949, and there is no equivalent provision, therefore, in the present Act.

**43. Method of dealing with clearance area.—(1)** So soon as may be after a local authority have declared any area to be a clearance area, they shall, subject to and in accordance with the provisions of this Part of this Act, proceed to secure the clearance of the area in one or other of the following ways, or partly in one of those ways and partly in the other of them, that is to say—

- (a) by making one or more orders (in this Act referred to as "clearance orders") for the demolition of the buildings in the area; or
- (b) by purchasing the land comprised in the area and themselves undertaking, or otherwise securing, the demolition of the buildings on that land.

(2) Where the local authority determine to purchase any land comprised in the area declared by them to be a clearance area, they may purchase also any land which is surrounded by the clearance area and the acquisition of which is reasonably necessary for the purpose of securing a cleared area of convenient shape and dimensions, and any adjoining land the acquisition of which is reasonably necessary for the satisfactory development or use of the cleared area.

(3) Where the local authority have determined to purchase under this Part of this Act land comprised in, or surrounded by or adjoining, a clearance area they may purchase that land by agreement, or they may be authorised to purchase that land compulsorily by a compulsory purchase order made and submitted to the Minister and confirmed by him in accordance with the provisions of Parts I and II of the Third Schedule to this Act.

The powers conferred by this subsection shall be exercisable notwithstanding that any of the buildings within the clearance area have been demolished since the area was declared to be a clearance area.

(4) Subject to the provisions of this Part of this Act, an order authorising the compulsory purchase of land comprised in a clearance area shall be submitted to the Minister within six months, and an order authorising the compulsory purchase of land surrounded by or adjoining a clearance area shall be submitted to the Minister within twelve months, after the date of the resolution declaring the area to be a clearance area, or within such longer period as the Minister may, in the circumstances of the particular case, allow.

(5) The provisions of the Fourth Schedule to this Act shall have effect with respect to the validity and date of operation of a compulsory purchase order made under this section.

#### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 25 (3) of the Housing Act, 1936, with two modifications: (i) the phrase "subject to and" is added to take account of later sections derived from the Housing Repairs and Rents Act, 1954, and (ii) para. (a) used to read "by ordering the demolition of the buildings in the area", and para. (b) is also slightly reworded. Sub-s. (2) contains provisions formerly in s. 27 of the Act of 1936. Sub-s. (3) contains provisions formerly in s. 29 (1) of the Act of 1936 with the addition of the second paragraph derived from s. 14 (2) of the Act of 1954. Sub-ss. (4) and (5) contain provisions formerly in s. 29 (2) and (3) of the Act of 1936 with the addition, in sub-s. (4) of the words "Subject to the provisions of this Part of this Act", referring to later sections derived from the Act of 1954.

**General Note.** Sub-s. (1) of this section states the two methods, either or both of which may be employed to secure the demolition of the buildings in an area declared to be a clearance area under s. 42, *ante*. Clearance orders may be made under s. 44 and the Fifth Schedule, *post*; and sub-s. (1) (a), *supra*, provides that one or more such orders may be made in respect of buildings in the area. This method of clearance cannot be applied to houses or buildings included in the area for "bad arrangement" reasons (see s. 42 (1) (a), *ante*), except those which are mentioned in para. 2, proviso, of the Fifth Schedule (in effect those which, though not included for unfitness, nevertheless contain unfit dwelling accommodation).

Land within the area, or surrounded by or adjoining it as mentioned in sub-s. (2), *supra*, may be purchased under sub-s. (3). This is the only method of clearance in the case of those buildings in the area which cannot be made subject to a clearance order, *i.e.*, for all the "bad arrangement" houses, and all "other buildings" which are not houses, with the exception, noted above, of those houses or buildings containing unfit dwelling accommodation. The purchase may be by agreement without the making of a compulsory purchase order, or it may follow the making of such an order under this section and the authorisation procedure of the Third Schedule, *post*.

There are time-limits in sub-s. (4), *supra*, for the submission of compulsory purchase orders, subject to exceptions in ss. 48 (2) and 53 (5), *post* (and cf. s. 54, *post*, and the notes thereto). The validity of a compulsory purchase order can be challenged within a limited period on limited grounds by the procedure of para. 2 of the Fourth Schedule, *post*, which relates to the validity and date of operation of compulsory purchase orders under this Part (Part III) of the Act. (This Schedule also applies to clearance orders, and to certain other matters in connection with re-development areas in this Part; it corresponds, with minor differences, with Part IV, paras. 15-17, of the First Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946, which applies to purchases under Parts II and V of the present Act.)

Although the object of the local authority purchasing land in the area is to enable them to clear it, or secure its clearance, there are now powers to postpone demolition; see s. 48, *post*. There are also powers to postpone demolition under clearance orders; these are mentioned in the notes to s. 44, *post*. The power of purchase, moreover, may now be exercised although the avowed object has already been achieved; see the latter part of sub-s. (3), *supra*. This provision, derived from the Act of 1954, reverses the effect of *Marriott v. Minister of Health*, [1936] 2 All E.R. 865, C.A.; Digest Supp., a case in which the compulsory purchase order was quashed because the land had already been cleared.

Further powers of purchase in connection with clearance areas are conferred by s. 51, *post* (owners' failure to redevelop cleared land) and by the transitory provisions of s. 53 (5), *post* (where temporary occupation has been licensed, notwithstanding a clearance order, under the Defence Regulations or similar powers) or s. 54 (other houses subject to clearance orders made before the commencement of the Act of 1954). Compulsory purchases under s. 54 would seem to be possible only where proceedings were begun within the time limit mentioned in sub-s. (4), *supra* (re-enacting s. 29 (2) of the Act of 1936).

Provisions as to compensation at site value, or subject to the special rules of Part III of the Third Schedule, are made by s. 59, *post*. Further provisions as to land affected are contained in ss. 60-67, *post*, and in s. 19 of the Licensing Act, 1953 (33 Halsbury's Statutes (2nd Edn.) 168) (replacing s. 47 of the Housing Act, 1936).

**Sub-s. (1).**

**So soon as may be.** There are limited powers in later sections to delay demolition of houses and buildings which are purchased or made subject to a clearance order; see ss. 46, 48, 53 and 54, *post*. Subject to these provisions, derived from the Act of 1954, the local authority are under a duty to proceed at once to secure the clearance of the area; they are not entitled to retain unfit property in order to draw the rents thereof or for any similar reason. Dispossessed owners have in the past complained that some authorities have delayed demolishing houses, and that there is no satisfactory method of compelling them to proceed. Note the time-limits for submitting compulsory purchase orders contained in sub-s. (4), *supra*; and s. 123 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 950), which provides a time-limit of three years, for the service of notice to treat, from the date when a compulsory purchase order made under the Third Schedule becomes operative under para. 3 of the Fourth Schedule, *post*. Note also s. 51, *post*, in connection with s. 44 (5), *post*, where owners fail to re-develop a site cleared pursuant to a clearance order.

**Local authority.** See s. 1, *ante*, and s. 52, *post*.

**Declared . . . to be a clearance area.** *I.e.*, under s. 42 (1), *ante*, or s. 25 (1) (repealed) of the Housing Act, 1936 (see s. 192, *post*).

**Subject to and in accordance with.** See particularly ss. 44-51, *post*, and the transitory provisions of ss. 53 and 54, *post*. The words "subject to and" have been added as a saving for ss. 46, 48, 53 and 54, *post*, which all derive from the Act of 1954.

**Secure the clearance.** Where the authority proceed by the method of purchasing all or part of the area, see s. 47, *post*, as to methods of securing demolition and treatment of the land.

**One or other of the following ways.** In the case of unfit houses, the authority have an unfettered choice of methods. Houses or other buildings included for "bad arrangement", etc., cannot normally be dealt with under a clearance order: see para. 2 of the Fifth Schedule, *post*, and the General Note, *supra*. At any public local inquiry or hearing under para. 5 of that Schedule or para. 3 in Part I of the Third Schedule, *post* (relating to a clearance order or a compulsory purchase order, respectively) there is no onus on the local authority to show why one method was chosen rather than the other; see *Re Greenwich (Prince of Orange Lane) Housing Order, 1936, Willey's Application*, [1937] 3 All E.R. 305; Digest Supp.; and *Robins & Son, Ltd. v. Minister of Health, Re Brighton (Everton Place Area) Housing Order, 1937*, [1938] 4 All E.R. 446, C.A.; Digest Supp. But see s. 50, *post*, as to the substitution of a clearance order, or similar arrangements under s. 47, *post*, where purchase is found to be unnecessary; the local authority and the owners must concur in this substitution and satisfy the Minister that this is a satisfactory course to take.

**One or more orders.** This phrase is new, but probably correctly represents the effect of s. 25 (3), read with s. 26 (1), of the Housing Act, 1936. It is not, however, necessary to have a separate order for each building (see s. 44, *post*), and this is so even where the special power to delay demolition under s. 46, *post*, is invoked.

**Clearance orders.** See further ss. 44 and 45 and the Fourth and Fifth Schedules, *post*, and particularly the notes to s. 44.

**Demolition of the buildings.** The buildings which may be included in a clearance order are, primarily, houses which are included in the area as unfit for human habitation; "bad arrangement" houses, and buildings which are not houses, can be included in a clearance order only in the circumstances mentioned in para. 2, proviso, of the Fifth Schedule, *post*. Thus the buildings referred to are those which, if the authority proceeded by way of purchase, would lead to compensation at site value under s. 59 (2), *post*.

The form and effect of a clearance order are in many respects similar to those of a demolition order under s. 17 (1) in Part II, *ante*: see s. 44 (3) and (4), and s. 45, *post*. Note also s. 44 (8), *post*, as to temporary and moveable dwellings, and cf. s. 16 (7), *ante*.

**By purchasing the land.** As to the land comprised in the clearance area, see s. 42 (1), *ante*. As to "islands" surrounded by, but not part of, the area, and as to certain adjoining land, see sub-s. (2), *supra*. As to the Minister's powers to modify a compulsory purchase order submitted under sub-s. (3), *supra*, and the Third Schedule, *post*, see para. 4 in Part I of that Schedule. Although the object of the purchase is the clearance of the area, note the second paragraph of sub-s. (3), *supra*.

For definition of "land", see s. 189 (1), *post*.

**Undertaking, or otherwise securing, the demolition.** See s. 47, *post*.

**Sub-s. (2).**

**Reasonably necessary.** The Fourth Schedule, *post*, provides a limited right of application to the High Court to quash or vary a compulsory purchase order. In

*Sheffield (Burgesses) v. Minister of Health* (1935), 154 L.T. 183; Digest Supp., it was held by Swift, J., that it was "for the Court, if material is brought before it, to say whether there is any material on which the Minister could come to the conclusion that it was reasonably necessary". In that case land was included which was not necessary in connection with one area, but was reasonably necessary for the satisfactory development of that area in conjunction with three other areas. The Minister's decision was upheld.

**Sub-s. (3).**

**Land comprised in, or surrounded by or adjoining, a clearance area.** As to land in the area, see s. 42, *ante*; and as to "islands" surrounded by the area, and land adjoining, see sub-s. (2), *supra*. For method of dealing with land purchased, see s. 47, *post*. For powers where purchase is found to be unnecessary, see s. 50, *post*. As to compensation, and other matters, in respect of land affected by this Part (Part III), see ss. 59, *et seq.*, *post*. Note that land outside the area may be purchased only for the purposes mentioned in sub-s. (2), *supra*, and only if the authority determine to purchase some land in the area.

**Compulsory purchase order.** For procedure, and prescribed forms to be used, see the Third Schedule and the notes thereto, *post*, and as to validity and date of operation, see the Fourth Schedule, *post*. Unlike Part II and Part V orders, which are made under the standard procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946 (applied by the First and Seventh Schedules to this Act, respectively), orders made under the Third Schedule come into operation *six weeks after* the first publication of notice of confirmation; and, save by leave of the Court of Appeal, cannot be challenged by an appeal beyond that court; see paras. 3 and 4 of the Fourth Schedule, *post*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Powers . . . exercisable notwithstanding, etc.** The second paragraph of this subsection contains provisions formerly in s. 14 (2) (now repealed) of the Housing Repairs and Rents Act, 1954. It reverses the effect of the decision in *Marriott v. Minister of Health*, [1936] 2 All E.R. 865, C.A.; Digest Supp. Owners can therefore no longer defeat a compulsory purchase order by themselves clearing the site. This change will particularly assist authorities who wish to avail themselves of the powers, also derived from the Act of 1954, to purchase houses and then retain them for temporary accommodation; see s. 48, *post*.

**Sub-s. (4).**

**Subject to the provisions of this Part.** See ss. 48 (2) and 53 (5), *post*, and the notes to s. 54, *post*. By s. 48 (2) the time-limit is excluded as respects (i) buildings, other than houses, in the area, and (ii) land such as is mentioned in sub-s. (2), *supra*, where, in either case, houses are being retained under s. 48 (1) for temporary accommodation. By s. 53 (5), the time-limit is six months from the approval of proposals under s. 1 (1) of the Housing Repairs and Rents Act, 1954 (mentioned in the notes to s. 2, *ante*); but the six months is in effect extended by disregarding any time where occupation of the house is licensed under the Defence Regulations or similar powers. A similar six months' limit applied under the provisions replaced by s. 54, *post*, without any possible extension; that section now contains no exception from the provisions of the present subsection.

**Within six (twelve) months.** Cf. the note "Within twenty-one days" to s. 11 (1), *ante*.

**The resolution.** *I.e.*, under s. 42 (1), *ante*, or s. 25 (1) (repealed) of the Housing Act, 1936 (see s. 192, *post*).

**44. Clearance orders: general provisions.—(1)** Where as respects any area declared by them to be a clearance area a local authority determine to order any buildings in the area to be demolished, they shall make and submit to the Minister, for confirmation by him, a clearance order ordering the demolition of each of those buildings.

(2) The provisions of the Fifth Schedule to this Act shall have effect with respect to the making, submission and confirmation of a clearance order, and the provisions of the Fourth Schedule to this Act shall have effect with respect to the validity and date of operation of such an order.

(3) When a clearance order has become operative, the owner or owners of any building to which the order applies shall demolish that building before the expiration of six weeks from the date on which the building is required by the order to be vacated or, if it is not vacated until after that

date, before the expiration of six weeks from the date on which it is vacated or, in either case, before the expiration of such longer period as in the circumstances the local authority may deem reasonable; and, if the building is not demolished before the expiration of that period, the local authority shall enter and demolish the building and sell the materials thereof.

(4) The provisions of subsections (2) to (5) of section twenty-three of this Act shall apply in relation to any expenses incurred by the authority under the last foregoing subsection and to any surplus remaining in the hands of the authority as they apply in relation to any expenses or surplus in a case where a house is demolished in pursuance of a demolition order made under Part II of this Act, with the substitution of references to the building demolished under this section for references to the house demolished under the said section twenty-three.

(5) When a clearance order has become operative, no land to which the order applies shall be used for building purposes, or otherwise developed, except subject to such restrictions and conditions, if any, as the local authority may think fit to impose:

Provided that an owner who is aggrieved by a restriction or condition so imposed on the user of his land, or by a subsequent refusal of the authority to cancel or modify any such restriction or condition, may at any time appeal to the Minister, who shall make such order in the matter as he thinks proper, and the Minister's decision shall be final.

(6) A person who commences, or causes to be commenced, any work in contravention of a restriction or condition imposed under the last foregoing subsection shall, on summary conviction, be liable to a fine not exceeding forty shillings, and to a further fine not exceeding ten pounds in respect of each day during which the work exists in such a form and state as to contravene the restriction or condition.

(7) The provisions of section twenty-five of this Act relating to the cleansing of houses from vermin shall have effect in relation to a house to which a clearance order applies as they have effect in relation to a building to which a demolition order made under Part II of this Act applies, with the substitution, for the reference to the date on which the demolition order is made, of a reference to the date on which the clearance order is confirmed, and, for the reference to subsection (1) of section twenty-three of this Act, of a reference to subsection (3) of this section.

(8) In the provisions of this Act relating to buildings included in an area to which a clearance order applies, references to a building shall include references to a hut, tent, caravan or other temporary or movable form of shelter which is used for human habitation and has been in the same enclosure for a period of two years next before action is taken under those provisions, and the reference to development in subsection (5) of this section includes a reference to the erection or placing on land of a hut, tent, caravan or other temporary or movable form of shelter.

#### NOTES

**History.** This section contains provisions formerly in s. 26 of the Housing Act, 1936.

**General Note.** This section, together with the related Schedules, contains general provisions as to the making and effect of clearance orders. Such an order is one of the methods provided by s. 43 (1), *ante*, for the clearance of an area declared to be a clearance area under s. 42 (1), *ante* (or the corresponding repealed provisions of the Act of 1936). This method was first introduced by the Housing Act, 1930 (see ss. 1 and 2 of that Act (repealed)) to save an authority the expense of acquiring the land if it was not required by them for re-housing or other purposes; by para. 2 of the Fifth Schedule, *post*, a clearance order can, in effect, only be made on property which would, if the authority proceeded by way of purchase, give rise to compensation at site value under s. 59 (2), *post*. Other land must still be cleared by way of purchase, under s. 43, *ante*.

Further provisions, as to the vacating of buildings and their demolition, are contained in s. 45, *post*, which corresponds closely to ss. 21 and 22, *ante*, relating to

demolition orders under Part II. The present section can be compared with s. 23, *ante*.

*Postponement of demolition.* For the power of a local authority to take a tenancy in a house, and delay demolition, see s. 46, *post*. For powers of licensing occupation, see the transitory provisions of s. 53, *post*. For powers of purchase where a clearance order was made before 30th August 1954, see s. 54, *post*. For similar powers as to houses purchased or belonging to the authority, see s. 48, *post*.

**Sub-s. (1).**

**Declared . . . to be a clearance area.** *I.e.*, under s. 42 (1), *ante*, or s. 25 (1) (repealed), of the Housing Act, 1936 (see s. 192, *post*).

**Local authority.** See s. 1, *ante*, and s. 52, *post*.

**Any buildings.** Houses or other buildings included in the area only for "bad arrangement", etc., must be excluded from a clearance order, except where, in effect, they contain unfit dwelling accommodation; see para. 2 of the Fifth Schedule, *post*. See also sub-s. (8), *supra*, as to temporary and movable dwellings.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Clearance order ordering the demolition of each of those buildings.** This does not mean that a separate clearance order must be made for each building; see s. 43 (1) (a), *ante*, and note the wording of the Fifth Schedule, *post*. See the notes to that Schedule as to the prescribed forms to be used. As to authentication, see s. 166 (1), *post*. See further ss. 45 and 46, *post*; and as to certain payments, see ss. 60, 61 and 63, *post*. Note also ss. 68-70, *post* (re-development and re-conditioning by owners), and s. 162, *post*, as to the powers of the court under Part VI.

**Sub-s. (2).**

**Fifth Schedule; Fourth Schedule.** The procedure for the making, submission and confirmation of a clearance order under the Fifth Schedule, *post*, closely resembles the procedure in connection with compulsory purchase orders under the Third Schedule, *post*. The provisions of the Fourth Schedule, as to validity and date of operation, apply to both types of order, and provide a limited right of application to the High Court. For decided cases, see the notes to the Fourth Schedule, *post*. As to the Minister giving advice to local authorities in an administrative capacity, see particularly, *Frost v. Minister of Health*, [1935] 1 K.B. 286; *Digest Supp.*, and *Offer v. Minister of Health*, [1936] 1 K.B. 40, C.A.; *Digest Supp.*

Under the Fifth Schedule, and the practice of the Ministry, the order is to:—

- (i) be in the prescribed form;
- (ii) describe the area to which it relates by reference to a map, which should be on a scale of approximately 1/500, each house or building being outlined and numbered;
- (iii) fix a date or dates, under s. 45 (1), *post*, for the vacating of the buildings, except those to be retained for temporary accommodation (see s. 46 (2), *post*);
- (iv) be advertised, in the prescribed forms, by newspaper advertisement and by service of notice on any owner, lessee and occupier (except tenants for a month or less, and statutory tenants), and so far as reasonably practicable to ascertain them, on mortgagees also; and
- (v) be submitted to the Minister with (a) three extra copies, (b) a certified copy, and three extra copies, of the map, (c) copies of the newspapers containing the advertisements, (d) copies of the notices served, (e) a certificate of service of notices, and (f) a copy of the authority's resolution applying for confirmation of the order; see Ministry of Housing and Local Government Circular 75/54, dated 16th December 1954. Copies of the advertisements and notices ((c) and (d) above) are not required under the simplified procedure of Circular 44/56, dated 13th August 1956. The Ministry are, however, still willing to receive and check these documents where, for example, the authority are short of expert staff. Where the authority accept responsibility for checking the documents, the form of certificate, S/C 52, in Appendix III to Circular 44/56, should be used.

**Date of operation.** See para. 3 of the Fourth Schedule, *post*. This is six weeks after the first publication of notice of confirmation; contrast para. 16 of the First Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 19; 3 Halsbury's Statutes (2nd Edn.) 1080). The six weeks' delay allows, *inter alia*, a notice to be served under s. 25 (1), *ante*, as applied by sub-s. (7), *supra*, relating to cleansing from vermin. The operation of the order may be suspended by the High Court on an application under para. 2 of the Fourth Schedule, *post*.

**Sub-s. (3).**

**Clearance order has become operative.** See the note, "Date of operation" to sub-s. (2), *supra*. The provisions of this subsection resemble those of ss. 21 (b) and 23 (1), *ante*, relating to demolition orders under Part II; and s. 23 (2) to (5) are applied by sub-s. (4), *supra*. Modifications are made by s. 46 (4), *post*, in the case of houses retained for temporary accommodation under that section.

**Owner or owners.** For definition of "owner", see s. 189 (1), *post*; and cf. s. 23 (1), *ante*.

**Before the expiration of six weeks.** Cf. the expression "within six weeks" in s. 21 (b), *ante*. See also s. 46 (4), *post*.

**Vacated.** See s. 45, *post*, as to fixing the date and as to obtaining vacant possession; and cf. ss. 21 and 22 in Part II, *ante*, relating to demolition orders. See also s. 46 (2) and (4), *post*.

**Local authority shall order and demolish.** See s. 160, *post*, as to penalty for obstruction. When a local authority demolish in default of the owner or owners, the authority must leave support for adjoining buildings, and will otherwise be restrained from demolishing (*Bond v. Norman, Bond v. Nottingham Corporation*, [1940] 2 All E.R. 12, C.A.; 2nd Digest Supp.). The same rule applies when the owner demolishes under an order (*Bond v. Norman, Bond v. Nottingham Corporation*, [1939] 2 All E.R. 610; 2nd Digest Supp.). Thus, where it is desirable to extinguish easements, the authority should proceed by purchasing the land. See also ss. 64 and 65, *post*.

#### Sub-s. (4).

**References to the building; references to the house.** Under this section the premises will usually be an unfit house, but see also para. 2, proviso, of the Fifth Schedule, *post*. Under s. 23, *ante*, the building will always be a "house" as defined in s. 189 (1), *post*; but in this Act the word "premises" has been substituted for "house" in s. 23 (although this has apparently been overlooked in drafting the present subsection). Note that s. 23 (2) to (5), *ante*, deal with the surplus or deficit arising from demolition; there are no comparable provisions in this Part (Part III) where the authority proceed by way of purchase and not by way of a clearance order.

#### Sub-s. (5).

**Land.** See s. 189 (1), *post*, and see paras. 1 and 2 of the Fifth Schedule, *post*, as to the description, by means of a map, of the area included in a clearance order. As to modification by the Minister, see paras. 5 and 6 of that Schedule.

**Used for building purposes, or otherwise developed.** Under s. 51, *post*, the local authority have power to purchase land which has been cleared under a clearance order but which has not been, or is not in process of being, used for building purposes or otherwise developed by the owner in accordance with plans approved by the authority and any restrictions or conditions imposed under the present subsection.

**Restrictions and conditions.** It is clearly contemplated by s. 51, *post*, that an owner is to be given a reasonable opportunity to build, or otherwise re-develop the site. For this purpose he needs the approval of the (housing) authority under this Act, and may also require planning permission under Part III (ss. 12 *et seq.*) of the Town and Country Planning Act, 1947 (48 Statutes Supp. 44; 25 Halsbury's Statutes (2nd Edn.) 506). The fact that the authority choose to clear the area by a clearance order or orders, rather than by purchase (see s. 43 (1), *ante*), implies, it is submitted, that the site should be left available for building or other re-development by the owner or owners. It is further submitted that restrictions and conditions imposed under this section should be related to the general objects of the present Act, *i.e.*, to housing matters. They will be aimed, therefore, at preventing the recurrence of insanitary conditions such as rendered the former houses unfit (cf. s. 4, *ante*) or created danger or injury to health by reason of bad arrangement or narrow streets; cf. s. 42 (1), *ante*.

**Owner who is aggrieved.** Cf. the cases cited in the note "Person aggrieved" to s. 11 (1), *ante*. For definition of "owner", see s. 189 (1), *post*.

**Appeal to the Minister.** This right of appeal extends both (i) to the original restrictions or conditions, and (ii) to any refusal to cancel or modify them.

The following general grounds of appeal are suggested, and should be amplified by any necessary particulars:—

#### A. Against the original restrictions or conditions.

The restrictions [and/or conditions]:—

- (1) are unreasonable;
- (2) prevent economic re-development;
- (3) conflict with the terms of the planning permission dated..... granted by [the.....Council; or the Minister; as the case may be];
- (4) go beyond the scope of the Housing Act;
- (5) are not necessary [or, will not secure any commensurate public advantage].

#### B. Against a refusal to modify or cancel.

- (1) It has proved impossible to build or develop in accordance with the restrictions or conditions.
- (2) They conflict with the terms of the planning permission [dated and granted, etc.].
- (3) The modification [or cancellation] will allow a better type of building to be erected, and better re-development to be carried out.

**Minister's decision shall be final.** This form of words is not sufficient to exclude proceedings by way of *certiorari*. Consider *R. v. Minister of Health, Ex parte Committee of Visitors of Glamorgan County Mental Hospital*, [1938] 4 All E.R. 32, C.A.; Digest Supp., in the light of *Walsall Overseers v. London & North Western Rail Co.* (1878), 4 App. Cas. 30; 16 Digest 186, 920, and *R. v. Nat Bell Liquors, Ltd.*, [1922] 2 A.C. 128; 16 Digest 419, 2795, which were applied in *R. v. Northumberland Compensation Appeal Tribunal, Ex parte Shaw*, [1951] 1 All E.R. 268 (affirmed, [1952] 1 All E.R. 122, C.A.; 3rd Digest Supp.).

**Sub-s. (6).**

**Summary conviction.** Cf. the note to s. 8, *ante*.

**Each day during which the work exists, etc.** The fine must not be calculated by reference to a period of more than six months before the information was laid; see *R. v. Slade, Ex parte Saunders*, [1895] 2 Q.B. 247; 38 Digest 213, 476; and see also *R. v. Struve, etc., Glamorganshire Justices* (1895), 59 J.P. 584; 43 Digest 345, 40.

**Sub-s. (7).**

**Section 25 . . . shall have effect.** Notice under s. 25 (1), *ante*, as applied, must be served between confirmation of the clearance order and its becoming operative; see para. 5 of the Fifth Schedule, and para. 3 of the Fourth Schedule, *post*, respectively. This allows six weeks (or a little longer) for service of such a notice.

**Sub-s. (8).**

**To which a clearance order applies.** See paras. 1 and 2 of the Fifth Schedule, *post*, as to the buildings which may be included, and the description of the land by reference to a map. Note that the present subsection refers only to such land; it is not expressed to apply when the authority are resolving to declare a clearance area under s. 42 (1), *ante*, or where they proceed by purchasing under s. 43, *ante* (although the power of purchase extends to all land in the clearance area).

**Hut, tent, caravan, etc.** Cf. ss. 9 (3) and 16 (7) in Part II, *ante*; and see the note to s. 9 (3), *ante*.

**Development.** In this context this refers to development as mentioned in sub-s. (5), *supra*. It may also be development under s. 12 of the Town and Country Planning Act, 1947 (48 Statutes Supp. 44; 25 Halsbury's Statutes (2nd Edn.) 506).

**45. Clearance orders: recovery of possession of buildings to be demolished.**—(1) A clearance order shall fix by reference to the date on which it becomes operative the period, not being less than twenty-eight days from that date, within which the local authority require the buildings in the area to be vacated for the purposes of demolition, and for that purpose may fix different periods as respects different buildings.

(2) Where a clearance order has become operative, the local authority shall serve on the occupier of any building, or any part of any building, to which the order relates a notice—

- (a) stating the effect of the order, and
- (b) specifying the date by which the order requires the building to be vacated, and
- (c) requiring him to quit the building before the said date or before the expiration of twenty-eight days from the service of the notice, whichever may be the later.

(3) If at any time after the date on which the notice requires the building to be vacated any person is in occupation of the building, or of any part thereof, the local authority or any owner of the building may make complaint to a magistrates' court and thereupon the court shall by its warrant in the form set out in the Schedule to the Small Tenements Recovery Act, 1838, or in a form to the like effect, order vacant possession of the building, or of the part thereof, to be given to the complainant within such period not being less than two weeks nor more than four weeks as the court may determine.

(4) Any expenses incurred by a local authority under this section in obtaining possession of any building or of any part of a building may be recovered by them from the owner, or from any of the owners, of that building summarily as a civil debt.

(5) Any person who, knowing that a clearance order has become operative and applies to a building, enters into occupation of that building, or of any part thereof, after the date by which the order requires that building to be vacated, or permits any other person to enter into such occupation after that date, shall be liable on summary conviction to a fine not exceeding twenty pounds and to a further fine of five pounds for every day, or part of a day, on which the occupation continues after conviction.

(6) Nothing in the Rent Acts shall be deemed to affect the provisions of this section relating to the obtaining possession of a building.

#### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in para. 1 of the Third Schedule to the Housing Act, 1936. Sub-ss. (2) and (3) contain provisions formerly in s. 155 (1) of that Act. Sub-ss. (4) and (5) contain, respectively, provisions formerly in s. 155 (2) and (3) of that Act. Sub-s. (6) contains provisions formerly in s. 156 (1) of that Act.

**General Note.** The present section provides for the vacating of buildings which are subject to a clearance order. Sub-s. (1), *supra*, requires a date or dates to be fixed in the order; this subsection thus supplements s. 44 (1) and (2), *ante*, and the Fifth Schedule, *post*, which deal with the procedure for making, and the contents of, a clearance order. It corresponds to s. 21 (a), *ante*, relating to demolition orders under Part II.

Sub-ss. (2) to (6), *supra* (corresponding to s. 22 (1) to (5) in Part II, *ante*) deal with obtaining possession. Logically they should precede s. 44 (3) to (8), *ante*, relating to the demolition of the buildings and the subsequent use of the cleared site; the corresponding provisions as to demolition orders in Part II (ss. 22 and 23, *ante*), are arranged in the logical order.

Where the local authority are to take a tenancy of the house for temporary accommodation, under s. 46, *post*, the order will not fix a date or dates as mentioned in sub-s. (1), *supra*; see s. 46 (2), *post*. Where the house is no longer required for temporary housing, the authority will serve a notice under s. 46 (4) (a), *post*; until then the present section will be excluded, and thereafter it will apply as if the date of the authority's notice were the date by which the building must be vacated. It seems that a notice under sub-s. (2), *supra*, will then be served in effect allowing a further 28 days for vacating the house; see sub-s. (2) (c), *supra*.

While the occupation of a house is licensed under s. 34 in Part II, *ante*, or s. 53, *post* (i.e., under the powers originally contained in the Defence Regulations or under the statutory continuation of those powers), the present section is excluded by s. 34 (2), *ante*, and s. 53 (2), *post*. Note also that on the purchase of any house under s. 54, *post*, the clearance order, made under the Housing Act, 1936, before 30th August 1954, will cease to have effect in respect of that house, and the present section will therefore not apply.

#### Sub-s. (1).

**Clearance order.** See ss. 43 (1) (a) and 44, *ante*, and the Fourth and Fifth Schedules, *post*. The present subsection contains provisions from para. 1 of the Third Schedule to the Housing Act, 1936; the remainder of that paragraph is now re-enacted as para. 1 of the Fifth Schedule, *post*.

**Shall fix.** See, however, s. 46 (2), *post*.

**Date on which it becomes operative.** See para. 3 of the Fourth Schedule, *post*; and cf. the note "Date of operation" to s. 44 (2), *ante*. The dates for vacating the premises have to be inserted when the order is submitted by reference to the date of operation, which will of course be unknown until after confirmation.

**Not being less than twenty-eight days.** Cf. s. 21 (a) in Part II, *ante*; and see the note "Not less than twenty-one days" to s. 16 (1), *ante*. As to the effect on an order of a mistake in the number of days allowed, and of a modification by the Minister in confirming the order and correcting the mistake, see *Re Bowman, South Shields (Thames Street) Clearance Order, 1931, [1932] 2 K.B. 621; Digest Supp.*

**Local authority.** See s. 1, *ante*, and s. 52, *post*.

**Buildings.** See the note "Any buildings" to s. 44 (1), *ante*; and s. 44 (8), *ante*.

**In the area.** I.e., the area mentioned in para. 1 of the Fifth Schedule, *post*. The present subsection and that paragraph were both parts of one sentence in para. 1 of the Third Schedule to the Housing Act, 1936.

#### Sub-s. (2).

**Serve.** See s. 169 (1), *post*, for modes of service.

**Notice.** The prescribed form of notice under sub-s. (2) is Form No. 22 in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957

No. 1842) (Appendix II, *post*), made under s. 178, *post*. As to authentication, see s. 166 (2), *post*. Cf. generally, s. 22 (1), *ante*.

**Specifying the date.** *I.e.*, the date fixed in advance, under sub-s. (1), by reference to the date of operation of the clearance order; or where, by virtue of s. 46 (2), *post*, no date was fixed, the date mentioned in s. 46 (4) (b), *post*.

**Sub-ss. (3)-(6).**

Cf. the notes to s. 22 (2)-(5), *ante*, which contain similar provisions as to demolition orders under Part II, *ante*, derived from the same sections of the Housing Act, 1936.

**46. Clearance orders: temporary retention of houses let to local authority.**—(1) The following provisions of this section shall have effect, in the case of a house on land in a clearance area which does not belong to the local authority, where the authority are of opinion that the house is or can be rendered capable of providing accommodation of a standard which is adequate for the time being, and that the house ought not to be demolished for the time being but ought to be retained for temporary use for housing purposes.

(2) Subject to the next following subsection, the local authority may include in any clearance order made by them and applying to the house a provision that the demolition of the house in pursuance of the order is to be postponed until the authority determine that the house is no longer required for use for housing purposes; and if such a provision is included, the order shall not fix a period for the vacation of the house as required by subsection (1) of the last foregoing section.

(3) A local authority shall not include in a clearance order such a provision as is mentioned in the last foregoing subsection unless they have acquired, or are satisfied that by the time the clearance order becomes operative they will have acquired, such rights under a tenancy of the house as will enable them to retain the house for use for housing purposes until they determine that it is no longer required for such use and to deal with it in all respects as if it were a house on land in a clearance area belonging to them.

(4) In relation to a house to which a clearance order applies with such a provision as is mentioned in subsection (2) of this section—

(a) subsection (3) of section forty-four of this Act shall have effect with the substitution for the period therein referred to of such a period not less than six weeks as may, in a notice served by the local authority on the owner or owners of the house as soon as they determine that the house is no longer required for use for housing purposes, be specified as the period within which the authority require the house to be demolished; and

(b) the last foregoing section shall not apply until the local authority determine that the house is no longer required for such use as aforesaid and shall then have effect with the substitution for references to the date by which the order requires the house to be vacated of references to the date of the authority's notice under the foregoing paragraph.

(5) In respect of any houses retained by a local authority under this section for temporary use for housing purposes, the authority shall have the like powers as they have in respect of houses provided under Part V of this Act, and section six of this Act shall not apply to a contract for the letting by a local authority of any such house.

#### NOTES

**History.** Sub-ss. (1)-(4), *supra*, contain provisions formerly in s. 4 of the Housing Repairs and Rents Act, 1954; and sub-s. (5) contains provisions formerly in s. 20 of that Act.

**General Note.** This section enables local authorities to make clearance orders (which normally require owners to demolish houses within a short time of the making of the order) with a provision postponing the demolition of the house. This power can be exercised in respect of houses on land which does not belong to the authority;

but they must have, or be in a position to acquire, a sufficient tenancy to enable them to ensure that the house is used for temporary housing purposes. When the house is no longer needed for those purposes, the authority will serve notice, under sub-s. (4) (a), *supra*, specifying a period for the demolition of the house. The section applies only to houses, and, because the land on which they are built must not belong to the local authority, it operates by affecting clearance orders only. Compare the provisions of the present section with those of s. 48, *post*, relating principally to houses on land belonging to or purchased by the authority. The present section will be limited in its scope by the necessity of persuading owners to grant a tenancy to the local authority; see notes, *infra*, to sub-s. (3).

As to exchequer contributions in respect of houses retained for temporary use under this section, see s. 13 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*).

#### Sub-s. (1).

**House.** The present section applies only to houses in a clearance area, and not to other buildings. Nor does it apply to houses or other buildings surrounded by or adjoining the area. For the meaning of "house", see s. 189 (1), *post*.

**Clearance area.** As to the declaration of a clearance area, see s. 42, *ante*, and s. 25 of the Housing Act, 1936 (repealed; but see s. 192, *post*).

**Does not belong to the local authority.** As to houses on land in clearance areas which belongs to, or has been purchased by, the local authority, see s. 48, *post*. For the meaning of "local authority", see s. 1, *ante*, and s. 52, *post*.

**Adequate for the time being.** The standard is not defined; but it will necessarily fall short of the standard established by s. 4, *ante*.

**Ought not to be demolished.** For the general duty of the authority to secure clearance so soon as may be after an area is declared to be a clearance area, see s. 43 (1), *ante*. The present section, and certain other provisions derived from the Act of 1954, operate as modifications of that general duty.

**Temporary use for housing purposes.** A house will not have been included in a clearance order unless (i) it was included in the clearance area for reasons of unfitness, or (ii) it was included for other reasons but contains unfit dwelling accommodation (see s. 42 (1) (a), *ante*, and para. 2 of the Fifth Schedule, *post*). When its temporary usefulness is over, see sub-s. (4), *supra*. In the meantime, the local authority have the same powers as under Part V; see sub-s. (5), *supra*. As the house is, *ex hypothesi*, unfit or contains unfit accommodation, sub-s. (5), *supra*, excludes the implied terms as to fitness under s. 6, *ante*.

#### Sub-s. (2).

**Clearance order.** Such an order is one of the methods of clearing a clearance area; see s. 43 (1) (a), *ante*. For general provisions, see ss. 44 and 45, *ante*, and the Fourth and Fifth Schedules, *post*. Such an order normally fixes a date or dates for the vacating of buildings; see s. 45 (1), *ante*, which is excluded by the present subsection. Demolition is required by s. 44 (3), *ante*, to be carried out within six weeks of the date fixed for vacating the building, or (if later) six weeks from actual vacating of the building, or (in either case) within such longer period as the authority deem reasonable. Note sub-s. (4) (a), *supra*, which allows a period of at least six weeks for demolition, to be specified in a notice thereunder; and sub-s. (4) (b), which provides for vacating the house. A special form of order is prescribed for the present purposes; see next note, *infra*.

**Provision that the demolition . . . is to be postponed.** For this purpose a special form of clearance order, and of the related notices, etc., are prescribed; see Form Nos. 16, 19 and 20, prescribed by the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*). Note also, sub-s. (3), *supra*, whereunder such a provision cannot be included unless the authority can acquire a sufficient tenancy to enable them to retain the house for housing purposes.

**Shall not fix a period.** The vacating of the house will be governed by sub-s. (4) (b), *supra*, in connection with s. 45, *ante*. The date of the authority's notice under sub-s. (4) (a), *supra*, will be deemed to be the date for vacating; but s. 45 (2) (c), *ante*, will in effect allow a further 28 days, for this purpose, from the service of notice under s. 45 (2).

#### Sub-s. (3).

**Shall not include . . . a provision . . . unless.** To satisfy the requirements of this subsection, the local authority must have acquired, or be in a position to acquire, a tenancy of a nature and duration to enable them to ensure that the house is used for temporary housing purposes for as long as it is required. There are no powers to compel owners to lease houses to the local authority, and the efficacy of the subsection will depend on their co-operation. The present section is really intended to meet cases where the local authority does not want to acquire the land. It was suggested, in

Ministry of Housing and Local Government Circular No. 55/54, that the section would be particularly useful where the owner intends to use the site of the houses for extending his neighbouring premises (industrial or otherwise) and his proposal accords with the development plan under Part II (ss. 5 *et seq.*) of the Town and Country Planning Act, 1947 (48 Statutes Supp. 30; 25 Halsbury's Statutes (2nd Edn.) 496). In such circumstances, the owner might be prepared to let the houses to the local authority for temporary housing purposes.

**By the time the clearance order becomes operative.** See s. 44 (2), *ante*, and para. 3 of the Fourth Schedule, *post*.

**Deal with it in all respects.** The local authority must be able to carry out works to the house to make it suitable for temporary occupation, and to keep it in that condition. See s. 49, *post*, for the powers of local authorities in relation to houses on land belonging to them in a clearance area, and s. 48, *post*, as to temporary retention of such houses. Note sub-s. (5), *supra*, as to the authority having the same powers as under Part V, and excluding s. 6, *ante* (implied conditions as to fitness or letting small houses). The present subsection does not confer powers; it requires the tenancy, to be taken by the authority, to be such as will enable them to exercise such powers.

#### Sub-s. (4).

**Period therein referred to.** S. 44 (3), *ante*, requires owners of houses in respect of which clearance orders have become operative to demolish them within six weeks of the date on which they are required to be vacated or are actually vacated, or within such longer period as the local authority deems reasonable. Sub-s. (4) (a), *supra*, substitutes, for the periods mentioned, a period of not less than six weeks specified in a notice served on the owner. Where the present section applies, no date will have been fixed for vacating the house; see sub-s. (2), *supra*, excluding s. 45 (1), *ante*. The notice under sub-s. (4) (a), *supra*, in effect provides also for vacating the house: see sub-s. (4) (b), *supra*, which provides that the date of the notice is to be regarded as the date for vacating; and see s. 45 (2), *ante*, as to service of notice on occupiers, affording them, in effect, a further 28 days to vacate the building. The period fixed by a notice under sub-s. (4) (a), *supra*, should presumably allow a reasonable period for demolition having regard to the time likely to be required for vacating the house. If the house is not demolished by the owner or owners in the time allowed, the local authority are under a duty to enter, demolish the building, and sell the materials; see s. 44 (3), *ante*.

**Not less than six weeks.** Cf. the note, "Not less than twenty-one days" to s. 16 (1), *ante*. Not that the period under the present subsection is fixed "once and for all". It should presumably allow sufficient time for obtaining possession; see the previous note, and sub-s. (4) (b), *supra*.

**Notice.** As to authentication, see s. 166 (2), *post*. The prescribed form of notice under sub-s. (4) (a) is Form No. 23 in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), made under s. 178, *post*.

**Served.** See s. 169 (1), *post*, for modes of service.

**Owner or owners.** See the definition of "owner" in s. 189 (1), *post*, whereunder there may be more than one owner of the same premises.

**Last foregoing section . . . shall then have effect, etc.** By s. 45 (2), *ante*, the local authority must serve on the occupiers notice specifying the date by which the clearance order requires the building to be vacated, requiring them to quit before that date or within 28 days of the notice, whichever is the later. The notice must be served when the clearance order has become operative. Sub-s. (4) (b), *supra*, provides that s. 45 does not apply to a house in respect of which the local authority have exercised their powers under the present section until they determine that the house is no longer needed for temporary accommodation. They must then serve notice requiring the occupiers to quit before the date of their notice to the owners under sub-s. (4) (a), or within 28 days, whichever is the later. The form of notice to the occupiers is Form No. 22 prescribed by the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), which should be modified as necessary to make it applicable to the circumstances mentioned in this paragraph.

#### Sub-s. (5).

Cf. the notes to s. 29 (4) in Part II, *ante*, which is derived from the same section of the Housing Repairs and Rents Act, 1954.

**47. Treatment of land acquired by local authority.—(1)** Subject to the provisions of the next following section, a local authority who have under this Part of this Act purchased any land comprised in, or surrounded by, or adjoining, a clearance area shall, so soon as may be, cause every building thereon to be vacated and shall deal with that land in one or other of the following ways, or partly in one of these ways and partly in the other of them, that is to say—

- (a) they shall demolish every building thereon before the expiration of six weeks from the date on which it is vacated, or before the expiration of such longer period as in the circumstances they deem reasonable, and thereafter may sell or let the land subject to such restrictions and conditions, if any, as they think fit, or may, subject to the approval of the Minister, and subject to the like restrictions as are contained in section one hundred and sixty-three of the Local Government Act, 1933, with respect to the appropriation of land by local authorities under that section, appropriate the land for any purpose for which they are authorised to acquire land; or
- (b) they shall, so soon as may be, sell or let the land subject to a condition that the buildings thereon shall be demolished forthwith and subject to such restrictions and other conditions, if any, as they think fit:

Provided that, in lieu of selling the land, the authority may, where the owner of other land (being land which the local authority have power to acquire) is willing to take the land in exchange for that other land, exchange it for that other land, either with or without paying or receiving money for equality of exchange, and in relation to any such exchange the like provisions shall have effect as respects the land to be given in exchange by the local authority as have effect by virtue of the foregoing provisions of this section as respects land sold thereunder.

(2) Land sold, exchanged or leased under this section shall be sold, exchanged or leased at the best price, for the best consideration or for the best rent that can reasonably be obtained having regard to any restriction or condition imposed.

(3) For the purposes of this section "sale" includes sale in consideration of a chief rent, rentcharge or other similar periodical payment and "sell" has a corresponding meaning.

#### NOTES

**History.** This section contains provisions formerly in s. 30 of the Housing Act, 1936, but the opening phrase is new and certain words are omitted as mentioned in the General Note, *infra*.

**General Note.** This section provides for the manner in which a local authority shall deal with land purchased in a clearance area (see ss. 42 and 43 (1) (b), *ante*), and land purchased as an "island" surrounded by a clearance area, or as adjoining such an area (see s. 43 (2), *ante*). It will also apply to certain similar land already belonging to the authority, as mentioned in s. 49, *post*. Power to retain houses temporarily as dwelling accommodation is conferred by s. 48, *post*.

The present section should be read with s. 42 (3), *ante*, which relates to re-housing. When clearance area procedure was originally introduced, by the Housing Act, 1930, requirements might be inserted in compulsory purchase orders requiring the site, or part of it, to be used for re-housing; but this has not been done since August 1935 when the Act of 1930 was amended by the Housing Act, 1935. A reference to this older procedure was retained in s. 30 of the Act of 1936, which subjected the powers of dealing with the land to compliance with any such requirements. This was for transitional purposes only, and the reference is omitted from the present section. Re-housing is now to be secured by the local authority's undertaking to carry out such operations, if any, within such period as the Minister considers to be reasonably necessary. This may, or may not, involve re-housing on the land acquired.

Under sub-s. (1) (a), *supra*, the local authority may themselves demolish the buildings and then sell or let or appropriate the land to some purpose for which they could acquire land. Under sub-s. (1) (b), *supra*, the authority may sell or let the land as it is, requiring the purchaser to carry out immediate demolition. The proviso to the subsection permits an exchange of land on similar terms.

The intention of the section is to secure immediate clearance of the area. Delay was countenanced in war-time by Ministry of Health Circular 1866/39, dated 8th September 1939, and after the war by Circular 61/47. The Housing Repairs and Rents Act, 1954, introduced more formal powers of delaying demolition; in connection with land not purchased, see s. 46, *ante*, and ss. 53 and 54, *post*. As to land purchased see s. 48, *post*. Subject to this, the land purchased is to be dealt with "so soon as may be" (see sub-s. (1), *supra*; and cf. s. 43 (1), *ante*).

**Sub-s. (1).**

**Subject to the provisions, etc.** This phrase is new, and is included as a saving for s. 48, *post*, derived from ss. 2 and 20 of the Housing Repairs and Rents Act, 1954.

**Local authority.** See s. 1, *ante*, and s. 52, *post*.

**Purchased.** *I.e.*, by agreement or otherwise, under s. 43, *ante*, or s. 29 (repealed) of the Housing Act, 1936 (see s. 192, *post*). As to land included in a clearance area, see s. 42 (1), *ante*, and s. 25 (repealed) of the Act of 1936. As to land surrounded by or adjoining the area, see s. 43 (2), *ante*, and s. 27 (repealed) of the Act of 1936. As to the power of purchase of certain houses subject to clearance orders, see ss. 53, and 54, *post*. As to land already belonging to the authority, see s. 49, *post*. As to discontinuance of proposed purchases, where purchase is found to be unnecessary, see s. 50, *post*. Where owners fail to re-develop cleared land, the land may be purchased under s. 51, *post*, and the present section is expressly applied by s. 51 (5), *post*.

**So soon as may be.** See the General Note, *supra*, and cf. s. 43 (1), *ante*.

**Building.** As to the inclusion of houses and other buildings in a clearance area, see s. 42 (1), *ante*. Note that the present section requires the demolition of all such buildings, and also of all buildings on land purchased as surrounded by or adjoining the area, as mentioned in s. 43 (2), *ante*.

**Vacated.** Note that s. 45, *ante*, applies only to land which is made subject to a clearance order and which is not, therefore, purchased. Where land is purchased under a compulsory purchase order, possession may be obtained under the Lands Clauses Acts as incorporated in the order. See also para. 9 in Part II of the Third Schedule, *post*, as to entry on land after service of notice to treat. As to purchases of superior interests by agreement, and cases where land belonging to the authority is appropriated for the purposes of a clearance area, see the power of entry under s. 62, *post*. As to houses temporarily retained under s. 48, *post*, the authority have "Part V" powers under s. 48 (4), *post*. Note the powers of recovering possession under s. 158 in Part VII, *post*. As to allowances to person displaced, see s. 63, *post*. Other special payments may be payable under s. 60 or s. 61, *post*.

**Deal with that land.** As to re-housing, see s. 42 (3), *ante*, and the General Note, *supra*.

**Before the expiration of six weeks.** Cf. s. 44 (3), *ante*, relating to clearance orders.

**Sell or let.** The approval of the Minister is not required for sales or lettings. As to the application of the proceeds of sale, or other capital moneys, under this section, see s. 142, *post*. As to the exercise of the power of letting, see *A.-G. (Martin) v. Finsbury Borough Council*, [1939] 3 All E.R. 995; Digest Supp. (lease of land to company to construct an air-raid shelter, and then re-let to the authority, held proper). Note, further, sub-ss. (2) and (3), *supra*.

**Restrictions and conditions.** Cf. s. 44 (5), *ante*, whereby restrictions and conditions may be imposed on building on or other development of land cleared by owners under a clearance order. There would be little point in expressly referring to restrictions and conditions in the present section, save (i) these may then be taken into account under sub-s. (2), *supra*, in connection with obtaining the best price or rent, and (ii) they may be enforced, despite the decision in *London County Council v. Allen*, [1914] 3 K.B. 642; 40 Digest 302, 2602, by virtue of s. 151, *post*, even where the authority retain no land in the area.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Subject to the like restrictions, etc.** Note, in particular, that under s. 163 of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 441), an appropriation takes effect subject to any covenant or restriction affecting the use of the land which binds the authority, and does not authorise any nuisance to be created or permitted.

**Forthwith.** Cf. the note to s. 12 (3), *ante*.

**Owner of other land.** "Owner" and "land" are defined in s. 189 (1), *post*, which however qualifies the definitions by the phrase "unless the context otherwise requires". It may be doubted whether the authority can, under the present section, give freehold land in exchange for a short leasehold interest or for a mere right over land.

**Local Government Act, 1933, s. 163.** 14 Halsbury's Statutes (2nd Edn.) 441.

**Sub-s. (2).**

**Best price; best rent.** Cf. s. 105 (3) in Part V, *post*.

**Sub-s. (3).**

**Sale; sell.** Cf. s. 105 (6) in Part V, *post*, and the note thereto.

**48. Temporary retention of unfit houses acquired by local authority.**—(1) Notwithstanding anything in the foregoing provisions of this Part of this Act a local authority by whom an area has been declared to be a clearance area may postpone, for such period as may be determined by the authority, the demolition of any houses on land purchased by or belonging to the authority within that area, being houses which in the opinion of the authority are or can be rendered capable of providing accommodation of a standard which is adequate for the time being, and may carry out such works as may from time to time be required for rendering or keeping such houses capable of providing such accommodation as aforesaid pending their demolition.

(2) Where the demolition of any houses in a clearance area is postponed under the foregoing subsection, the local authority may also postpone the taking of any proceedings under section forty-three of this Act in respect of any buildings (other than houses) within that area; and the provisions of subsection (4) of that section as to the time within which compulsory purchase orders may be submitted shall not apply to the purchase of any land in the area, other than houses, or to the purchase of any land surrounded by or adjoining the area.

(3) Where a local authority are satisfied, in the case of a house on land purchased by or belonging to them within a clearance area, not being a house retained by them for temporary use for housing purposes, that—

- (a) it is required for the support of a house which is so retained, or
- (b) there is some other special reason why it should not be demolished for the time being, and the reason is connected with the exercise of the authority's powers under subsection (1) of this section in relation to the clearance area,

then, notwithstanding anything in the foregoing provisions of this Part of this Act the authority may retain the house for the time being and shall not be required to demolish it so long as, in the case mentioned in paragraph (a) of this subsection, it is required for the purpose therein referred to, or, in any other case, the said powers are being exercised by the authority in relation to that area.

(4) In respect of any houses retained by a local authority under this section for temporary use for housing purposes the local authority shall have the like powers as they have in respect of houses provided under Part V of this Act and section six of this Act shall not apply to a contract for the letting by a local authority of any such houses.

#### NOTES

**History.** Sub-ss. (1)–(3), *supra*, contain provisions formerly in s. 2 (1)–(3) of the Housing Repairs and Rents Act, 1954, and sub-s. (4) contains provisions formerly in s. 20 of the Act of 1954. So far as s. 2 (3) of that Act varied s. 7 thereof, it was not repealed by the present Act (see the Eleventh Schedule, *post*), but it is now repealed by the Housing (Financial Provisions) Act, 1958 (Book II, *post*), and its effect incorporated in s. 13 of that Act. As to s. 2 (4) and (5) of the Act of 1954, see s. 54 and the notes thereto, *post*, and cf. s. 53 (5), *post*.

**General Note.** The main purpose of this section is to enable houses to be retained as accommodation of a standard "adequate for the time being". Sub-s. (1), *supra*, relates only to houses and not to other buildings (see s. 42 (1) (a), *ante*) in the clearance area. Furthermore, the house must be in the actual clearance area, and not on any other land mentioned in s. 43 (2), *ante*; and it must have been purchased by, or belong to, the authority (see s. 43 (3), *ante*, and s. 49, *post*; and cf. as to other houses, subject to clearance orders, s. 46, *ante*, and ss. 53 and 54, *post*). Where a house is retained, under sub-s. (1), clearance of buildings in the area, other than houses, may be delayed under sub-s. (2), *supra*.

A house purchased by or belonging to the authority in the actual clearance area may also be retained for support, or other special reasons, under sub-s. (3), *supra*.

The present section should be read with s. 54, *post*, relating to the purchase of houses subject to a clearance order made before the commencement of the Housing Repairs and Rents Act, 1954. The provisions replaced by s. 54 were introduced to enable such a house to be purchased for purposes corresponding to those of sub-s. (1)

and sub-s. (3) (a) or (b), *supra*; there were certain time-limits which are mentioned in the notes to s. 54, *post*.

As to exchequer contributions in respect of houses temporarily retained under this section, see s. 13 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*); and note that no contributions are payable under that section in respect of houses retained under sub-s. (3), *supra*.

Ministry of Housing and Local Government Circular 55/54, dated 28th August 1954 (see particularly Appendix II thereto, paras. 15–20) referred to the provisions of the Act of 1954 now replaced by this section, and suggested that the local authority's power to retain houses should be exercised only when the housing problem of the area was so large that it could not be solved by demolition and replacement within about five years. Any works should be limited to "patching" the houses so that they will become more comfortable and tolerable to live in until their turn comes for demolition. The first stage is to make them wind- and weather-tight. Additional services should be provided only for those houses which are to be kept longest.

#### Sub-s. (1).

**Foregoing provisions of this Part.** The present section, derived from the Housing Repairs and Rents Act, 1954, operates as an exception to the general duty of the local authority for the purposes of a clearance area to secure the clearance of the area so soon as may be (s. 43 (1), *ante*), and to the particular duty to secure the vacation and demolition of houses and other buildings purchased by them (ss. 43 (3) and 47 (1), *ante*) or treated as having been purchased in a case where they originally belonged to the authority (s. 49, *post*).

**Local authority.** See s. 1, *ante*, and s. 52, *post*.

**Declared to be a clearance area.** *I.e.*, under s. 42, *ante*, or s. 25 (repealed) of the Housing Act, 1936 (see s. 192, *post*).

**May postpone.** These words, and the phrase "pending their demolition" at the end of this subsection indicate that ultimately, when the houses have served their purpose as temporary accommodation, the land will be cleared and dealt with as mentioned in s. 47, *ante*. The authority must have regard to their proposals approved by the Minister under s. 1 of the Housing Repairs and Rents Act, 1954, or any amplified or modified proposals; see s. 2 of the present Act, *ante*.

**Houses.** This subsection applies only to houses; see para. (a) of the definition in s. 189 (1), *post*, and see the General Note, *supra*.

**Land.** See s. 189 (1), *post*.

**Purchased by or belonging to.** See s. 43, *ante*, and s. 49, *post*. See the extension of the time-limit for purchases contained in s. 53 (5), *post*, where occupation has been licensed under the Defence Regulations and similar powers. See also the power to purchase, notwithstanding the making of a clearance order before 30th August 1954, contained in s. 54, *post*.

**Are or can be rendered capable.** This phrase is similar to that in s. 46 (1), *ante*; it appears to be wider than that in s. 53 (1), *post* (which merely says "is capable"). The Minister has suggested that works be kept generally to the minimum necessary to make a house comfortable and tolerable to live in; see Circular 55/54 cited in the General Note, *supra*.

**Adequate for the time being.** This is the phrase introduced, but not defined, by the Housing Repairs and Rents Act, 1954. In other sections of the present Act (*e.g.*, s. 17 (2) in Part II, *ante*, or s. 46 in this Part (Part III), *ante*) the house will, *ex hypothesi*, be unfit for human habitation within the meaning of ss. 4 or 5, *ante*. Under the present section, the house may be one included in the clearance area either for unfitness or "bad arrangement" under s. 42 (1) (a), *ante*. But the standard "adequate for the time being" is still presumably a lower one than that of fitness for human habitation; cf. the note "Other standards" to s. 4, *ante*, and Circular 55/54 cited in the General Note, *supra*.

**Carry out such works.** As to exchequer contributions, see s. 13 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*), particularly sub-ss. (2) (b) and (3) thereof. Note also sub-s. (4), *supra*, conferring "Part V" powers. That subsection also excludes the implied conditions of s. 6, *ante*, as to fitness for habitation on letting small houses.

#### Sub-s. (2).

**Proceedings under s. 43.** That section requires the authority to secure the clearance of a clearance area by clearance orders or purchase (s. 43 (1) (a) and (b), *ante*); s. 43 (2) confers the power to purchase certain land not in the actual clearance area; and s. 43 (3) enables land to be purchased by agreement or under a compulsory purchase order. Time-limits of six months, for land in the actual area, and twelve months, for other land, are contained in s. 43 (4); these limits apply to the submission of a compulsory purchase order, and do not therefore affect purchases by agreement without the making of such an order. The present subsection has the following effect:

- (1) It applies only where any houses are retained under sub-s. (1), *supra* (not sub-s. (3)).
- (2) It applies, primarily, only to buildings other than houses, and such other buildings must be in the actual clearance area.
- (3) It enables the authority to postpone any proceedings under s. 43, *ante*, which seems to mean they are relieved of their duty either to purchase or make a clearance order or orders, which otherwise they would have to do "so soon as may be" after declaring the area.
- (4) In particular, it removes the six months' time limit for purchase of "other buildings" in the area.
- (5) It extends also to land, including land with houses or other buildings, outside the area, to the extent of removing the twelve months' time-limit for purchasing such land; see the closing words of this subsection.

**Buildings (other than houses).** For definition of "house", see s. 189 (1), *post*. For the inclusion of houses and "other buildings" in the area, see s. 42 (1) (a), *ante*.

**Land in the area.** The time-limit for submission of a compulsory purchase order relating to land in the area is six months from the resolution under s. 42 (1); see s. 43 (4), *ante*. The Minister has, apart from the present subsection, a power under s. 43 (4) to extend time only in particular cases.

**Land surrounded by or adjoining the area.** See s. 43 (2), *ante*. The time-limit in this case is generally twelve months under s. 43 (4), *ante*. Note that the opening words of the present subsection refer only to "buildings" in the area; but these closing words enable the authority to postpone, also, the purchase of land (whether a "building", or a "house", or not) outside the area.

#### Sub-s. (3).

**Not being . . . for temporary use for housing purposes.** *I.e.*, not being a house retained under sub-s. (1), *supra*. The present subsection gives two additional powers to retain (a) for support or (b) for some other special reason. These do not, however, attract an exchequer contribution under s. 13 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*); nor do they bring into operation sub-s. (2), *supra*.

**For support.** Cf. s. 17 (1), proviso, in Part II, *ante* (derived from the Local Government (Miscellaneous Provisions) Act, 1953).

**Other special reason.** Note that this power must be connected with the retention, under sub-s. (1), *supra*, of houses for temporary housing purposes; and the powers of para. (b) of this subsection last only so long as those powers of retention are being exercised. The purpose is believed to be to allow a local authority to use a house, for example, as a temporary depot to store building materials used in "patching" other houses.

#### Sub-s. (4).

Cf. the notes to s. 29 (4) in Part II, *ante*, which is derived from the same section of the Housing Repairs and Rents Act, 1954; and cf. also s. 46 (5), *ante*. Not all houses retained will necessarily be unfit for habitation; see the note "Adequate for the time being" to sub-s. (1), *supra*. Nevertheless s. 6, *ante* (implied conditions as to fitness on letting small houses) is wholly excluded.

**For temporary use for housing purposes.** *I.e.*, under sub-s. (1), but not sub-s. (3), *supra*.

**49. Provisions with respect to property originally belonging to a local authority.**—A local authority may include in a clearance area any land belonging to them which they might have included in such an area if it had not belonged to them, and where any land of the authority is included in a clearance area or, being land surrounded by or adjoining a clearance area, might have been purchased by the authority under subsection (2) of section forty-three of this Act had it not previously been acquired by them, the provisions of this Act shall apply in relation to that land as if it had been purchased by the authority as being land comprised in the clearance area or, as the case may be, as being land surrounded by or adjoining the clearance area:

Provided that the foregoing provisions of this section shall not apply in the case of any land belonging to the local authority being dwellings which were acquired by them on or after the first day of July, nineteen hundred and twenty-five, in such circumstances that the provisions of

paragraph 1 of the Ninth Schedule to this Act (or of any enactment reproduced in that paragraph) took effect in relation thereto.

### NOTES

**History.** This section contains provisions formerly in s. 28 of the Housing Act, 1936, as amended by ss. 1 and 51 (4) of, and the First and Third Schedules to, the Housing Act, 1949.

**General Note.** It should first be noted that this section does not apply to certain land; see the proviso, *supra*, which relates to dwellings acquired in such circumstances that any of the following provisions applied:—

- (1) para. (1) of the Fifth Schedule to the Housing Act, 1925 (repealed);
- (2) para. 1 of the Eleventh Schedule to the Housing Act, 1936 (repealed); or
- (3) para. 1 of the Ninth Schedule to the present Act, *post*.

These Schedules relate (or related) to the re-housing obligations of authorities, companies and persons acquiring land under certain Acts and orders; see now s. 144, *post*. Until the Eleventh Schedule to the Act of 1936 was amended by the Act of 1949, the provisions referred to were concerned only with "working-men's dwellings"; see para. 1 of that Schedule and the definition of "working class" in para. 11 (e) thereof (11 Halsbury's Statutes (2nd Edn.) 608, 609); the Act of 1949 deleted the relevant phrases referring to working-men and the working classes, including such a reference in what is now the proviso to the present section.

Subject to the above exceptions, the present section enables a local authority, for the purposes of a clearance area, to deal with land belonging to them in much the same way as they may deal with other land. In the Act of 1936, the corresponding provision (s. 28) was placed between the provisions now replaced by s. 43 (2) and (3), *ante*, with which the present section is closely connected.

Land which the present section requires to be treated as if it had been purchased under s. 43, *ante*, will fall to be dealt with under s. 47, *ante*; see also s. 48, *ante*, as to temporary retention of houses, etc.

Where the land belonging to the authority is vested in them for statutory purposes other than housing purposes, it has been considered in practice that the land can be brought within the present section only by a formal appropriation of the land for the purposes of the present Act where there is power to do so, and subject to all necessary consents. Thus charity land could be included only with the approval of the Charity Commissioners or the court; or in the case of educational land, with the approval of the Minister of Education. A scheme may be needed to replace such land.

It would seem that in many cases a double appropriation may be needed; first, to appropriate land, held for other purposes, to the purposes of this Part (Part III) of the Act, and secondly, under s. 47 (1) (a), *ante*, to appropriate it out again to some other purpose.

**Local authority.** See s. 1, *ante*, and s. 52, *post*.

**May.** Cf. the notes to s. 32, *ante*. The word "may" indicates that the authority can, but need not, include such land in the area.

**Clearance area.** See s. 42, *ante*.

**Land.** This includes any right over land; see s. 189 (1), *post*.

**Might have included.** See s. 42 (1) (a), *ante*.

**Surrounded by or adjoining.** See s. 43 (2), *ante*.

**Provisions of this Act.** See particularly s. 47, *ante*.

**As if it had been purchased.** *I.e.*, under s. 43 (3), *ante*, whether as land in the area (ss. 42 and 43 (1) (b), *ante*) or as land outside the area (s. 43 (2), *ante*).

**Dwellings.** See para. 11 (d) of the Ninth Schedule, *post*, and the corresponding provisions of the Fifth Schedule (repealed) to the Act of 1925 or the Eleventh Schedule (repealed) to the Act of 1936, mentioned in the General Note, *supra*. As mentioned in that note, the provisions referred to are no longer confined to "working-men's" dwellings.

**1st July 1925.** *I.e.*, the date of the commencement of the Housing Act, 1925 (repealed).

**Enactment reproduced in that paragraph.** These are listed in the General Note, *supra*.

**50. Arrangements where acquisition of land in a clearance area found to be unnecessary.**—Where a local authority have submitted to the Minister an order for the compulsory purchase of land in a clearance area, and the Minister, on an application for an authorisation under this section being made to him by the owner or owners of the land and the authority, is satisfied that the owner or owners of the land, with the concurrence of any mortgagee thereof, agree to the demolition of the buildings

thereon and that the authority can secure the proper clearance of the area without acquiring the land, the Minister may—

- (a) in a case where the order has not been confirmed, authorise the authority to submit, forthwith and without any previous publication or service, a clearance order with respect to the buildings, and upon their so doing may modify the compulsory purchase order by excluding the land therefrom and confirm the clearance order without causing an inquiry or hearing to be held; or
- (b) in a case where the compulsory purchase order has been confirmed but the land has not become vested in the authority, authorise them to discontinue proceedings for the purchase of the land on their being satisfied that such covenants have been or will be entered into by all necessary parties as may be requisite for securing that the buildings shall be demolished in like manner, and the land become subject to the like restrictions and conditions, as if the authority had dealt with the land in accordance with the provisions of section forty-seven of this Act.

#### NOTES

**History.** This section contains provisions formerly in s. 31 of the Housing Act, 1936.

**General Note.** This section enables a proposed compulsory purchase of land in a clearance area to be discontinued, in certain circumstances, on an application in that behalf to the Minister by the local authority and the owner or owners of the land. If a compulsory purchase order has been submitted but not confirmed, a clearance order may be substituted; or if a compulsory purchase order has been confirmed, but the land has not been vested in the authority, the land may be left with the owner or owners subject to covenants for demolition, restrictions and conditions, such as may be imposed, under s. 47 (1), *ante*, when a local authority dispose of land in, or surrounded by or adjoining, a clearance area. In the former case, where a clearance order is substituted, demolition will be secured, and restrictions and conditions may be imposed, under s. 44, *ante*.

Owing to the duty of the authority to secure the clearance of the clearance area (see s. 43 (1), *ante*), it seems there is no power, apart from the present section, for a local authority to discontinue proceedings for purchase under the provisions of this Part (Part III) of this Act in connection with clearance areas. In particular it would appear that the power, in certain circumstances, to withdraw a notice to treat as provided by s. 5 of the Acquisition of Land (Assessment of Compensation) Act, 1919 (31 Statutes Supp. 180; 3 Halsbury's Statutes (2nd Edn.) 980), as amended, is not available.

**Local authority.** See s. 1, *ante*, and s. 52, *post*.

**Have submitted an order.** See s. 43 (3), *ante*, and Part I of the Third Schedule, *post*.

**Land.** This includes any right over land; see s. 189 (1), *post*.

**Clearance area.** See s. 42, *ante*, and, by virtue of s. 192, *post*, see s. 25 of the Housing Act, 1936 (repealed).

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Owner.** See s. 189 (1), *post*, whereunder there may be more than one "owner" of the same land. Note that the local authority must join in the application under this section; the concurrence of any mortgagee is required; but a mortgagee, other than a mortgagee who is an "owner", need not join in the application.

**Mortgagee.** A mortgagee in possession may be an "owner" as defined in s. 189 (1), *post*; if so, he should join in the application to the Minister, and not merely concur in the proposed action.

**Confirmed.** As to the confirmation of compulsory purchase orders relating to clearance areas, see para. 3 in Part I of the Third Schedule, *post*. Cf. para. 5 of the Fifth Schedule, *post*, as to the confirmation of clearance orders.

**Forthwith.** Cf. the note to s. 12 (3), *ante*.

**Clearance order.** See ss. 43 (1) (a), 44 and 45, *ante*, and the Fourth and Fifth Schedules, *post*, for provisions as to clearance orders. Note that under the present paragraph (para. (a), *supra*) the requirements as to advertisements and notices, and as to an inquiry or hearing, are dispensed with. This paragraph does not contain references to covenants for demolition, or restrictions or conditions, such as are mentioned in para. (b); these matters will be covered, where a clearance order is substituted, by s. 44 (3), (5) and (6), *ante*.

**But the land has not become vested.** This paragraph (para. (b), *supra*) covers

any period after confirmation of a compulsory purchase order under para. 3 in Part I of the Third Schedule, *post*, up to the vesting of land in the authority. The purchase may, accordingly, be abandoned although (i) notice to treat may have been served, or (ii) agreement for purchase, or as to price, may have been reached, or (iii) compensation may have been assessed; so long always as the purchase has not been completed by conveyance or vesting by deed poll under the Lands Clauses Acts. If the land has become vested, it might it seems nevertheless be sold back, without the assent of the Minister, under s. 47 (1) (b), *ante*, in an appropriate case.

**To discontinue proceedings.** It is submitted that there is no general power to discontinue proceedings, apart from the powers conferred by the present section; see the General Note, *supra*.

**On their being satisfied.** *I.e.*, the Minister's authorisation will in terms allow the local authority to discontinue proceedings where they, the local authority, are satisfied about the necessary covenants, restrictions and conditions. As provided earlier in this section, the Minister must himself be satisfied about the general nature of the proposed arrangements.

**Covenants; restrictions and conditions.** Cf. s. 47 (1) (b), *ante*. As to restrictions and conditions, cf. also s. 44 (5) and (6), *ante*, relating to clearance orders.

**51. Power of local authority to purchase cleared land which owners have failed to re-develop.**—(1) Where land has been cleared of buildings in accordance with a clearance order, the local authority may, at any time after the expiration of eighteen months from the date on which the order became operative, by resolution determine to purchase any part of that land which at the date of the passing of their resolution has not been, or is not in process of being, used for building purposes or otherwise developed by the owner thereof in accordance with plans approved by the authority and any restrictions or conditions imposed under subsection (5) of section forty-four of this Act.

(2) Where a local authority have determined to purchase land under this section, they may purchase that land by agreement or they may be authorised to purchase that land compulsorily by a compulsory purchase order made and submitted to the Minister and confirmed by him in accordance with the provisions of Parts I and II of the Third Schedule to this Act.

(3) An order authorising the compulsory purchase of land for the purposes of this section shall be submitted to the Minister within three months after the date of the passing of the resolution to purchase.

(4) The provisions of the Fourth Schedule to this Act shall have effect with respect to the validity and date of operation of a compulsory purchase order made under this section.

(5) A local authority shall deal with any land purchased by them under this section by sale, letting, or appropriation in accordance with the provisions of section forty-seven of this Act.

#### NOTES

**History.** This section contains provisions formerly in s. 32 of the Housing Act, 1936.

**General Note.** This section should be read with s. 44, *ante*, and particularly sub-ss. (5) and (6) of that section. Those subsections prohibit the use of a site cleared under a clearance order, for building purposes or other development, except subject to restrictions and conditions imposed by the authority. There is a right of appeal thereunder to the Minister.

The object of the present section is to secure the use of such land, for building purposes or other development, but subject to plans approved by the authority and to the restrictions and conditions imposed under s. 44 (5), *ante*. The section operates by conferring a power of purchase if the owner has not fulfilled this object, or is not in course of so doing, eighteen months after the clearance order became operative.

The authority are not bound to resolve to purchase such land at once, on the expiry of the eighteen months, or at all; see the word "may" in sub-s. (1), *supra*. The Minister may also withhold his consent to a purchase, by refusing to confirm a compulsory purchase order under sub-s. (2), *supra*. He would presumably do so if he thought the owner or owners had not had a proper opportunity to re-develop, *e.g.*, because of unreasonable requirements under s. 44 (5), *ante*, or the failure of the authority to approve "plans" as mentioned in sub-s. (1), *supra*, or because of temporary difficulty in obtaining planning permission, or an industrial development certificate, under the Town and Country Planning Act, 1947 (48 Statutes Supp. 22; 25 Halsbury's Statutes (2nd Edn.) 489).

**Sub-s. (1).**

**Land.** Cf. s. 189 (1), *post*.

**Buildings.** *I.e.*, houses or "other buildings", see s. 42 (1) (a), *ante*, and para. 2 of the Fifth Schedule, *post*. Generally a clearance order will apply to unfit houses, but "bad arrangement buildings" may be included where they contain unfit dwelling accommodation.

**Clearance orders.** See ss. 43 (1) (a), 44 and 45, *ante*, and the Fourth and Fifth Schedules, *post*, for provisions as to clearance orders. They provide a method, as an alternative to purchase of the land, for securing the clearance of a clearance area, declared to be such under s. 42, *ante*. It is for the local authority in the first place to decide between purchase or the making of a clearance order; but they may be compelled, in effect, to proceed by way of clearance order if the Minister refuses to confirm a compulsory purchase order. The local authority, or the Minister, may decide a clearance order is the appropriate method because the land has particular importance to the owner or owners, or because it is not required by the authority for re-housing or other purposes, or for both reasons. This should be remembered in connection with the present section; the making of a clearance order would seem to imply that it was considered that the owner or owners should be left with the land. The present section is in the nature of a default power only; it is not intended as a general opportunity for the local authority to change their minds as to the ultimate use of the land, and they should not, it is submitted, resolve to purchase the site under this section where the owners have real reasons for their delay. In present conditions it is often difficult to commence re-development within eighteen months.

**Local authority.** See s. 1, *ante*, and s. 52, *infra*.

**May.** This word indicates that the authority have a discretion; cf. s. 32, *ante*, and contrast the use of the word "shall" in ss. 43 (1) and 47 (1), *ante*.

**Eighteen months.** *I.e.*, calendar months; see the Interpretation Act, 1889, s. 3 (24 Halsbury's Statutes (2nd Edn.) 207).

**Order became operative.** See s. 44 (2), *ante*, and para. 3 of the Fourth Schedule, *post*.

**Owner.** For definition, see s. 189 (1), *post*.

**Plans; restrictions or conditions.** Restrictions and conditions may be imposed under s. 44 (5), *ante*, which does not however refer to "plans"; the present subsection implies that building or other development must be in accordance with plans approved by the local (housing) authority. Plans may also have to be approved for bye-law and planning purposes.

**Sub-s. (2).**

**May purchase that land.** Cf. s. 43 (3), *ante*, which is in generally similar terms.

**Compulsory purchase order.** For procedure, and prescribed forms to be used, see the Third Schedule and the notes thereto, *post*, and as to validity and date of operation, see the Fourth Schedule, *post*. Note the time limit for submission in sub-s. (3), *supra*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Sub-s. (3).**

**Within three months.** Cf. the note "Within twenty-one days" to s. 11 (1), *ante*.

**Sub-s. (5).**

**Sale, letting or appropriation.** As to the application of proceeds of sale, etc., see s. 142, *post*. Note s. 47 (3), *ante*, as to the meaning of "sell"; it seems that land which could be sold may also be exchanged as mentioned in s. 47 (1) proviso, *ante*. Sales and lettings must be at the best price or rent reasonably obtainable having regard to any restrictions or conditions imposed; see s. 47 (2), *ante*.

**52. Local authority for clearance areas in London.**—Within a metropolitan borough both the London County Council and the council of the borough shall be local authorities for the purposes of the provisions of this Part of this Act relating to clearance areas:

Provided that where an official representation relating to not more than ten houses is made to the London County Council, the London County Council shall, unless they consider that the area should be dealt with by them as a clearance area, forward the representation to the borough council concerned.

**NOTES**

**History.** These provisions were formerly in s. 33 of the Housing Act, 1936, as amended by ss. 21 (2) and 54 (4) of, and the Fifth Schedule to, the Housing Repairs and Rents Act, 1954.

**General Note.** The London County Council and the metropolitan borough council are concurrently the authority for the purpose of clearance areas. There seems nothing to prevent the London County Council from declaring an area to be a clearance area even though a metropolitan borough council have already made a declaration relating to the same area, and have submitted orders to the Minister for confirmation. The Minister will decide between competing proposals; see *R. v. Minister of Health, Ex parte Finsbury Borough Council* (1934), 32 L.G.R. 349; Digest Supp.

**Metropolitan borough; London County Council.** See the notes to s. 1, *ante*. As to the powers of the London County Council concerning new streets on land purchased in clearance areas, see s. 66, *post*. As to the power of local authorities in London to enter into agreements as to action under this Part of the Act, see s. 183, *post*. See that section also as to the provision of information by metropolitan borough councils to the London County Council.

**Official representation.** For meaning, see s. 157 (4), *post*.

*Transitory provisions as respects houses in clearance areas*

**53. Temporary occupation of houses subject to existing clearance orders.**—(1) If it appears to a local authority that any house in respect of which a clearance order had been made before the thirtieth day of August, nineteen hundred and fifty-four, by that authority is capable of providing accommodation of a standard which is adequate for the time being, they may grant to the person who, but for the said order, would be entitled to authorise the occupation of the house a licence permitting the occupation of the house during such period as may be specified in the licence by such number of persons and on such terms as to the rent, repairs and other conditions on which the house may be occupied as may be so specified.

(2) While a licence granted under this section is in force in respect of a house, section forty-five of this Act shall not apply to it.

(3) Where a licence in force under this section specifies a maximum rent in respect of a house, then, notwithstanding any order or direction for the time being in force under section seven of the Agricultural Wages Act, 1948, the value at which the house may be reckoned for the purposes of a minimum rate of wages fixed under that Act shall not exceed the maximum rent so specified.

(4) Any licence granted by a local authority under this section may be revoked by that authority at any time, and shall be so revoked if it appears to the authority that the house is no longer capable of providing such accommodation as aforesaid; and every such licence shall, unless previously revoked, cease to have effect on the thirtieth day of August, nineteen hundred and fifty-seven, or on such later date as the Minister may in any particular case allow in pursuance of an application made by the local authority before the said date in the year nineteen hundred and fifty-seven.

(5) An order under section forty-three of this Act authorising the compulsory purchase by the local authority of any house in respect of which a licence has been granted under this section may, notwithstanding the provisions of subsection (4) of that section, be submitted to the Minister at any time not later than six months after his approval of proposals submitted by the local authority under subsection (1) of section one of the Housing Repairs and Rents Act, 1954, for dealing with unfit houses; and for the purposes of this subsection any time during which the licence was in force in respect of the house shall be disregarded.

(6) Any licence issued under Regulation 68A or 68AA of the Defence (General) Regulations, 1939, and in force immediately before the commencement of this Act in respect of a house subject to a clearance order shall continue in force and have effect as if granted under this section and may be revoked thereunder accordingly.

**NOTES**

**History.** Sub-ss. (1)–(4), *supra*, contain provisions formerly in s. 6 (1)–(4) of the Housing Repairs and Rents Act, 1954. Sub-s. (5) contains provisions formerly in ss. 2 (5) and 6 (6) of that Act. Sub-s. (6) contains provisions formerly in s. 6 (7) of that Act. See s. 34, *ante*, for other provisions derived from s. 6 of the Act of 1954.

**General Note.** This section relates to the licensing of occupation of houses which are included in clearance orders made before the commencement of the Housing Repairs and Rents Act, 1954, on 30th August 1954. It resembles s. 34 in Part II, *ante*, relating to demolition orders and certain closing orders made before that date, and is derived from the same section of the Act of 1954.

Under the Housing Act, 1936, where a clearance order became operative, the premises were to be vacated and it was an offence to enter into occupation, or to permit anyone to do so (see now s. 45 of the present Act, *ante*). During the war the occupation of condemned houses might be licensed under Defence Regulations 68A and 68AA, relating to the provision of accommodation for agricultural workers, and homeless persons, respectively; see the notes to s. 34, *ante*. The Act of 1954, finally revoked these two Regulations, but continued existing licences in force, and continued the licensing power itself for a limited period, expiring (normally) three years from that Act coming into force: *i.e.*, 30th August 1957, now mentioned in sub-s. (4), *supra*.

The present Act came into force not on 1st August 1957, as originally intended, but on 1st September 1957; see s. 193 (2), *post*. This was two days after the normal expiry of the licensing power mentioned above. It seems therefore that no new licences will be granted under this section; cf. the notes to s. 34, *ante*. References to licences in force will therefore be read as referring to those granted under the Act of 1954 (see ss. 191 (2) and (4) and 192, *post*) or the Defence Regulations (see sub-s. (6), *supra*), and extended on an application to the Minister.

When occupation has been so licensed the authority may purchase the house under a compulsory purchase order submitted within the time-limit provided by sub-s. (5), *supra*. This limit is six months from the approval of proposals under s. 1 of the Act of 1954 (repealed, but see the notes to s. 2, *ante*). This was the same variation of the ordinary time-limit as was made by s. 2 of the Act of 1954 for the purposes now mentioned in s. 54, *post*, save that the six months' period was extended by disregarding any time during which the licence was in force. (The period of six months would, apart from this variation, have expired by now; cf. the notes to s. 54, *post*.)

The power to purchase houses under s. 54, *post*, which was in part an alternative to the licensing powers now continued by the present section, seems now to be limited by s. 43 (4), *ante*; in other words the time-limit for the submission of a compulsory purchase order thereunder will now have expired, unless in a particular case an extension has been allowed by the Minister under s. 43 (4) or the corresponding provision in s. 29 (repealed) of the Housing Act, 1936.

#### Sub-s. (1).

**Local authority.** See s. 1, *ante*, and, as to London, s. 52, *ante*.

**House.** For definition, see s. 189 (1), *post*.

**Clearance order.** See s. 44, *ante*, and notes thereto. The order will have been made under s. 26 (repealed) of the Act of 1936.

**30th August, 1954.** *I.e.*, the commencement of the Housing Repairs and Rent Act, 1954; see s. 54 (2) of that Act (84 Statutes Supp. 108; 34 Halsbury's Statutes (2nd Edn.) 283).

**Is capable.** Cf. s. 48 (1), *ante*, which applies to houses which "are or can be rendered" capable.

**Adequate for the time being.** This standard is not defined but must be less than that of s. 4, *ante*. The Minister has indicated that power to retain should only be exercised if unfit houses cannot be replaced within five years. The standard would seem to be such that, by patching up, the house can be made tolerable to live in until the time comes for its demolition.

**Such period.** See sub-s. (4), *supra*, and notes thereto, *infra*.

#### Sub-s. (2).

**Licence granted under this section.** See sub-s. (6), *supra*, as to licences granted under the Defence Regulations. It would seem that no new licences will be granted under sub-s. (1), *supra*, because of the date of commencement of this Act (1st September 1957) considered in conjunction with sub-s. (4), *supra*. Licences under s. 6 of the Act of 1954 are to be regarded as granted under this section; see s. 192, *post*.

**Section 45.** That section, *ante*, provides for the recovery of possession of premises which are the subject of a clearance order and makes it an offence to enter, or to permit any person to enter, into occupation of such premises.

#### Sub-s. (3).

**Agricultural Wages Act, 1948, s. 7.** 56 Statutes Supp. 15; 28 Halsbury's Statutes (2nd Edn.) 11.

#### Sub-s. (4).

**Licence granted . . . under this section.** See the note to similar words in sub-s. (2), *supra*.

**30th August 1957.** This is the day after the expiry of three years beginning with the commencement of the Act of 1954. All licences will have ceased to have effect at the first moment of 30th August 1957, two days before the commencement of the present Act, except where a later date has been allowed by the Minister on an application by the local authority made before 30th August 1957. The closing words of this subsection suggest that where such an application has been made (under the Act of 1954) the Minister may still (under this subsection) allow a later date for the licence ceasing to have effect. It seems, however, that there is no provision for keeping the licence alive pending the Minister's decision on such an application. See the General Note, *supra*, as to the postponement of the commencement of this Act from the date originally intended.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Sub-s. (5).**

**S. 43 of this Act.** That section, *ante*, provides for the methods of dealing with clearance areas. The authority may proceed by making clearance orders requiring the demolition of the buildings in the area or by compulsory purchase to enable the authority to clear the area either by themselves or otherwise. Sub-s. (4) of that section requires that a compulsory purchase order relating to land in a clearance area must be submitted to the Minister within six months of the resolution declaring the area a clearance area. The Minister may in the circumstances of the particular case allow a longer period.

**Proposals . . . for dealing with unfit houses.** Since the licences with which this section is concerned are licences issued before the 30th August 1957 it can be assumed that all the houses concerned are likely to be included in proposals which have been made to the Minister under s. 1 (1) of the Housing Repairs and Rents Act, 1954. That subsection is regarded as spent, and not reproduced in s. 2 of the present Act, *ante*. The six months period is artificially extended by disregarding the time during which the licence is in force.

**Commencement of this Act.** *I.e.*, 1st September 1957; see s. 193 (2), *post*.

**Regulation 68A or 68AA of the Defence (General) Regulations, 1939.** See S.R. & O. 1939 No. 927. Regs. 68A and 68AA were added by S.R. & O. 1940 No. 1134 and S.R. & O. 1940 No. 1684 respectively; see, further, the notes to s. 34 (6), *ante*.

**54. Power to purchase buildings subject to existing clearance orders.—**(1) Where a clearance order made before the thirtieth day of August, nineteen hundred and fifty-four, applies to a house which in the opinion of the local authority—

- (a) is or can be rendered capable of providing accommodation of a standard which is adequate for the time being, or
- (b) should be retained for either of the purposes mentioned in paragraphs (a) and (b) of subsection (3) of section forty-eight of this Act,

then, subject to the provisions of subsection (2) of this section, the house may be acquired by the local authority under section forty-three of this Act notwithstanding that the clearance order has been made or that any proceedings have been taken in pursuance of the clearance order; and on the completion of the purchase of the house the clearance order shall cease to have effect so far as it relates to the house.

(2) The foregoing subsection shall not apply to a house as respects which a licence is for the time being in force under the last foregoing section.

#### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 2 (4) of the Housing Repairs and Rents Act, 1954, and sub-s. (2) contains provisions formerly in s. 2 (6) of that Act. Note that s. 2 (5) of that Act is not reproduced in the present section, but appears only in s. 53 (5), *ante*, for the purposes for which it was applied, in modified form, by s. 6 of that Act.

**General Note.** This is a transitory provision, derived from the Housing Repairs and Rents Act, 1954, enabling the local authority to purchase a house for certain purposes although it was subject, at the commencement of that Act on 30th August 1954, to an existing demolition order. The purposes are those of s. 48 (1) and (3), *ante*; see sub-s. (1) (a) and (b), *supra*.

The time-limit for the submission of a compulsory purchase order was (i) the six months' limit of s. 29 of the Housing Act, 1936 (now s. 43 (4), *ante*) or (ii) an alternative

limit of six months from the approval of proposals under s. 1 (1) of the Act of 1954 (repealed and not reproduced in s. 2, *ante*, but see the notes to that section). This alternative limit, formerly in s. 2 (5) of the Act of 1954, is now omitted as spent. It appears now only in the modified form required for special purposes in s. 53 (5), *ante*. Consequently no new order can be submitted under the present section, but where an order was submitted in time (*semble*, under either time limit) the proceedings may be continued. A purchase may also be made by agreement. In a particular case, also, the Minister may have allowed an extension of time for submitting a compulsory purchase order, under the ordinary power in s. 43 (4), *ante*, or the corresponding provisions of s. 29 (repealed) of the Act of 1936.

**Sub-s. (1).**

**Clearance order.** See s. 26 (repealed) of the Housing Act, 1936, and cf. ss. 43 (1) (a) and 44, *ante*.

**30th August 1954.** See the note to s. 53 (1), *ante*.

**House.** See s. 188 (1) of the Act of 1936, and para. (a) of the definition in s. 189 (1), *post*.

**Local authority.** See ss. 1 and 52, *ante*.

**Adequate for the time being.** Cf. s. 48 (1) and the notes thereto, *ante*.

**Section 48 (3) (a) and (b).** These paragraphs, *ante*, refer to houses required for support or some other special reason connected with the authority's powers to retain houses for temporary housing purposes under s. 48 (1), *ante*.

**Under s. 43.** Sub-s. (1) of s. 43, *ante*, provides for the clearance of a clearance area by clearance orders or purchase. Sub-ss. (2)–(5) of that section relate to purchases; and in particular sub-s. (3) confers the power to purchase by agreement or under a compulsory purchase order, while sub-s. (4) provides the time-limit for submitting such an order. The variation of that time-limit, by s. 2 (5) of the Housing Repairs and Rents Act, 1954, is now spent and is not reproduced; see the General Note, *supra*. The present subsection enables a change to be made from one method of clearing the area to the other method, *i.e.*, from clearance by the owners under a clearance order to clearance by the authority after purchase. The point of this was to enable the authority to delay the latter form of clearance, as provided by s. 48, *ante*.

**Sub-s. (2).**

**Licence.** *I.e.*, under the Defence Regulations or statutory powers in continuance thereof; see s. 53, *ante*. As to purchase of such houses, see s. 53 (5), *ante*.

*Re-development Areas*

**55. Duty of local authority to secure re-development.**—(1) If the local authority for any urban area (that is to say, the City of London, the rest of the administrative county of London, a county borough, a non-county borough, or an urban district) are satisfied, as a result of an inspection carried out under section seventy-six of this Act or otherwise, that their district comprises any area in which the following conditions exist, that is to say—

- (a) that the area contains fifty or more working-class houses;
- (b) that at least one-third of the working-class houses in the area are overcrowded, or unfit for human habitation and not capable at a reasonable expense of being rendered so fit, or so arranged as to be congested;
- (c) that the industrial and social conditions of their district are such that the area should be used to a substantial extent for housing the working classes; and
- (d) that it is expedient in connection with the provision of housing accommodation for the working classes that the area should be re-developed as a whole;

it shall be the duty of the local authority to cause the area to be defined on a map, and to pass a resolution declaring the area so defined to be a proposed re-development area.

(2) As soon as may be after a local authority have passed a resolution under the foregoing subsection, they shall send a copy of the resolution and of the map to the Minister, and shall publish in one or more local newspapers circulating in their district a notice stating that the resolution

has been passed and naming a place within their district where a copy of the resolution and of the map may be inspected.

(3) In so far as suitable accommodation is not available for persons who will be displaced from working-class houses in the carrying out of re-development in accordance with a re-development plan, it shall be the duty of the local authority to provide, or to secure the provision of, such accommodation in advance of the displacements from time to time becoming necessary as the re-development proceeds.

#### NOTES

**History.** Sub-ss. (1) and (2), *supra*, contain provisions formerly in s. 34 of the Housing Act, 1936; and sub-s. (3) contains provisions formerly in s. 45 (2) of that Act.

**General Note.** This section introduces a group of sections (ss. 55-58) containing the general procedure in connection with re-development areas, replacing ss. 34-37 as amended, and now repealed, of the Housing Act, 1936. Further provisions as to compensation, etc., are contained in ss. 59 *et seq.*, *post*, as in the case of clearance areas (ss. 42-54, *ante*). Re-development area procedure, when first introduced by the Housing Act, 1935, replaced that formerly applying to improvement areas; see also the transitional provisions of ss. 38 and 39 of the Act of 1936, now repealed and not replaced.

The procedure dealt with in this and the next three sections has not been widely used, but is not unknown in practice. It resembles certain re-development powers now available under Parts II and IV of the Town and Country Planning Act, 1947 (48 Statutes Supp. 30, 86; 25 Halsbury's Statutes (2nd Edn.) 496, 544); see particularly s. 5 (3) of that Act as to areas of war damage, bad lay-out, and obsolete development, and their inclusion in development plans as areas of comprehensive development. This procedure of the Act of 1947 is based on provisions formerly in the Town and Country Planning Act, 1944, which in turn were modelled on re-development area procedure under the Housing Act, 1936, though wider in scope.

The steps to be taken by the local authority under the present procedure may be listed as follows:—

- (1) Local authority must satisfy themselves that the conditions mentioned in this section exist (sub-s. (1), *supra*).
- (2) Definition of area on a map (sub-s. (1), *supra*).
- (3) Pass resolution declaring area so defined to be a proposed re-development area (sub-s. (1), *supra*).
- (4) Send a copy of the resolution and of the map to the Minister of Housing and Local Government (sub-s. (2), *supra*).
- (5) Publish in one or more local newspapers a notice stating that the resolution has been passed and naming a place within their district where a copy of the resolution and of the map may be inspected (sub-s. (2), *supra*).
- (6) Prepare a re-development plan indicating—
  - (a) the land intended to be used for the provision of houses for the working classes (note, in this connection, sub-s. (3), *supra*);
  - (b) the land to be used for streets;
  - (c) the land to be used for open spaces; and
  - (d) generally, the manner in which it is proposed that the defined area should be laid out (s. 56 (1), *post*).
- (7) Publish in one or more local newspapers a notice stating that the plan has been prepared, and is about to be submitted to the Minister, naming a place within their district where the plan may be inspected and specifying the time within which, and the manner in which, objections to the re-development indicated by the plan can be made (s. 56 (3), *post*).
- (8) Serve a notice to like effect on—
  - (a) every owner;
  - (b) every lessee and occupier (except tenants for a month or any period less than a month, or statutory "tenants" under the Rent Acts);
  - (c) all statutory undertakings owning apparatus in the area (s. 56 (3), *post*).
- (9) Submit re-development plan to the Minister, who must cause a local inquiry to be held before approving the plan if objections are made and not withdrawn (s. 56 (1), (4), *post*).
- (10) On receipt of notice of Minister's approval, publish in one or more local newspapers a notice that the re-development plan has been approved and naming a place within their district where a copy of the plan may be inspected (s. 56 (5), *post*).
- (11) Serve a like notice to that published in the newspaper on every person who, having given notice to the Minister of his objection to the plan, appeared at the local inquiry in support of his objection (s. 56 (5), *post*).
- (12) Proceed to carry out or secure the carrying out of the plan. Local authority may with the approval of the Minister purchase—

- (a) land in the re-development area; and
- (b) any land outside that area which they may require for the purpose of providing accommodation for persons evicted from premises within that area which they have purchased or agreed to purchase, or in respect of which they have submitted compulsory purchase orders (s. 57 (1), *post*).

As to altering the proposals, see the power to make a new plan under s. 56 (6), *post*. As to prescribed forms, see s. 178, *post*. The forms in use up to 30th November 1957 were prescribed by the Housing (Form of Orders and Notices Regulations), 1937 (S.R. & O. 1937 No. 78), as amended. They were revoked by the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842), and no corresponding forms are included in those regulations; see the Preliminary Note to those regulations (Appendix II, *post*). For the purposes of s. 57 (3), *post*, the Minister appears to be under a particular duty to prescribe a form of compulsory purchase order; but there is none in force at the time of going to press.

As to exchequer contributions towards rehousing, see s. 3 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*).

It will be noted that the present procedure is limited to urban areas, *i.e.*, it does not extend to rural districts. As to re-development, etc., by owners, see ss. 68-71, *post*.

#### Sub-s. (1).

**Local authority.** See s. 1, *ante*, and s. 58, *post*; and note the limitation to "urban areas".

**Under s. 76 of this Act.** That section, *post*, requires local authorities to inspect and make reports and proposals as to overcrowding. See also s. 3, *ante* (inspection to ascertain whether houses are unfit), and s. 91, *post* (periodical review of housing conditions in the area).

**Or otherwise.** This appears to mean that the authority may be otherwise satisfied, not merely that the inspection can be other than one under s. 76, *ante*.

**Working-class.** For the meaning of the term, cf. para. 11 (e) (repealed) of the Eleventh Schedule to the Act of 1936; and *Green (H. E.) & Sons v. Minister of Health*, [1947] 2 All E.R. 469; 2nd Digest Supp., in which, after observing that "the social revolution of the last 50 years has made the words 'working classes' quite inappropriate today", Denning, J., said that the working classes included those trades which were mentioned in para. 11 (e) of that Schedule, and a large and probably indefinable number besides. See also *Belcher v. Reading Corporation*, [1949] 2 All E.R. 969, at p. 984; 2nd Digest Supp.; *London County Council v. Davis* (1897), 62 J.P. 68; 26 Digest 510, 2149; *Crow v. Davis* (1903), 67 J.P. 319; 34 Digest 588, 88; *White v. St. Marylebone Borough Council*, [1915] 3 K.B. 249; 38 Digest 216, 507; *Re Sanders' Will Trusts, Public Trustee v. McLaren*, [1954] 1 All E.R. 667 at pp. 669, 670; 3rd Digest Supp.; and *Guinness Trust (London Fund) Founded 1890, Registered 1902 v. Green*, [1955] 2 All E.R. 871, C.A.; 3rd Digest Supp.; and cf. *Arlidge v. Tottenham Urban Council*, [1922] 2 K.B. 719; 38 Digest 214, 489.

**Houses.** For the meaning of "house", see s. 189 (1), *post*.

**One-third.** It is submitted that the "one-third" need not be made up wholly of houses which are overcrowded, or wholly of houses which are unfit, or wholly of houses which are congested; but may comprise houses falling into any combination of these three categories.

**Overcrowded.** See s. 77, *post*, which states the circumstances in which a house is deemed to be overcrowded for the purposes of this Act.

**Unfit for human habitation.** See ss. 4 and 5, *ante*, and the notes thereto.

**Not capable at a reasonable expense of being rendered so fit.** See s. 39 (1), *ante*, and notes thereto. The test in that provision is expressed to be for the purposes of that Part (Part II) of the Act. In that Part, an appeal lies to the county court. In the present section the ultimate judge is the Minister. It is not expressly required that he shall have regard to the test set out in s. 39.

**So arranged as to be congested.** Cf., the references to bad arrangement of houses and other buildings, and as to streets, in s. 42 (1) (a), *ante*, relating to clearance areas. The present section does not expressly refer to the conditions being such as to cause danger or injury to health.

**Re-developed as a whole.** This is to be achieved under a re-development plan; see s. 56, *post*, and the powers of purchase under s. 57, *post*. It is this aspect of the present procedure which most resembles the planning Act powers mentioned in the General Note, *supra*. Land purchased in pursuance of a notice to treat served, or contract made, before 18th November 1952, under the provisions re-enacted in s. 57, *post*, would seem to fall within s. 52 (2) (b) of the Town and Country Planning Act, 1954 (89 Statutes Supp. 164; 34 Halsbury's Statutes (2nd Edn.) 971). This view has been accepted by the Ministry of Housing and Local Government. Accordingly the acquiring authority will not have to refund any Central Land Board payment as provided by s. 52 (1) of that Act.

**Defined on a map; pass a resolution.** This is the first stage of the procedure; within six months of the resolution the re-development plan must be submitted under s. 56 (1), *post*. Cf., generally, s. 42 (1), *ante*, which deals with the first stage of clearance area procedure.

**Sub-s. (2).**

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Publish . . . a notice.** There is at present no prescribed form, nor was one prescribed under s. 34 (repealed) of the Housing Act, 1936.

**Within their district.** The offices of some local authorities are in fact situate outside their own districts. In such cases, it is suggested, the copy resolution and map must be available for inspection at some place within the district, and further copies may with advantage be deposited at the council's offices.

**Sub-s. (3).**

**Suitable accommodation.** *Semble*, this refers only to dwelling accommodation for the working classes; cf. the note to the same phrase in s. 42 (3), *ante*. That subsection and the present subsection were formerly sub-ss. (1) and (2) respectively in s. 45 (repealed) of the Act of 1936, and must presumably be interpreted in a similar sense. The present subsection, however, contains no mention of the Minister; but the Minister may well require to be satisfied that adequate provision is being made when he considers the re-development plan submitted under s. 56, *post*.

**Re-development plan.** See s. 56 (1), *post*. When there is a "new plan" under s. 56 (6), *post*, the reference will presumably be to that plan, cf. s. 56 (8). That subsection refers to "the following provisions"; in the drafting of the present Act, the present subsection has been moved forward, so that it is no longer a "following provision", but this presumably will not be taken to alter its meaning.

**56. Re-development plan.**—(1) Within six months after a local authority have passed a resolution under the last foregoing section, or within such extended period as the Minister may allow, the authority shall prepare and submit to the Minister a re-development plan indicating the manner in which it is intended that the defined area should be laid out and the land therein used, whether for existing purposes or for purposes requiring the carrying out of re-development thereon, and in particular the land intended to be used for the provision of houses for the working classes, for streets and for open spaces.

(2) In the preparation of the plan the local authority shall have regard to the provisions of any development plan within the meaning of the Town and Country Planning Act, 1947, relating to the defined area or land in the neighbourhood thereof.

(3) Before submitting the plan to the Minister the local authority shall—

- (a) publish in one or more local newspapers circulating in their district a notice stating that the plan has been prepared and is about to be submitted to the Minister, naming a place within their district where the plan may be inspected, and specifying the time within which, and the manner in which, objections can be made; and
- (b) serve a notice to the like effect on every owner, lessee and occupier (except tenants for a month or any period less than a month) of land in the defined area and on all statutory undertakers owning apparatus in that area.

For the purposes of this subsection an occupier being a statutory tenant within the meaning of Part II of the Housing Repairs and Rents Act, 1954, shall be deemed to be a tenant for a period less than a month.

(4) If no objection is duly made by any of the persons upon whom notices are required to be served, or if all objections so made are withdrawn, the Minister may, if he thinks fit, approve the plan, either without modification or with such modifications as he thinks fit (including, if he thinks fit, the alteration of the defined area so as to exclude land therefrom, but not so as to add land thereto), but in any other case he shall, before approving the plan, cause a public local inquiry to be held and shall consider any objection not withdrawn and the report of the person who held the inquiry,

and may thereafter approve the plan with or without any such modifications as aforesaid.

(5) On receipt of notice of the Minister's approval the local authority shall publish in one or more local newspapers circulating in their district a notice stating that the re-development plan has been approved and naming a place within their district where a copy thereof may be inspected, and shall serve a like notice on every person who, having given notice to the Minister of his objection to the plan, appeared at the public local inquiry in support of his objection.

(6) Where, after a re-development plan has been approved, it appears to the local authority that any land in the re-development area (that is to say the defined area or so much thereof as is comprised in the plan as approved) ought to be re-developed or used otherwise than as indicated in the plan, the authority shall prepare and submit to the Minister a new plan as respects that land, and the provisions of this section with respect to publication, service of notices and approval by the Minister shall have effect in relation to the new plan, with the substitution of references to the new plan and to the land comprised therein for references to the re-development plan and to the defined area.

(7) The provisions of the Fourth Schedule to this Act shall have effect with respect to the validity and date of operation of the Minister's approval of a re-development plan or of a new plan.

(8) In the following provisions of this Act references to re-development or use in accordance with a re-development plan shall be construed as references to re-development or use in accordance with a re-development plan approved under this section or, in the case of land comprised in a new plan approved under this section, in accordance with the new plan.

#### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 35 (1) of the Housing Act, 1936. Sub-s. (2) contains provisions formerly in s. 35 (2) of that Act, as amended by s. 113 (1) of, and the Eighth Schedule to, the Town and Country Planning Act, 1947. Sub-s. (3) contains provisions formerly in s. 35 (3) of the Act of 1936 and s. 50 (1) (not repealed) and s. 50 (2) (a) of the Housing Repairs and Rents Act, 1954. Sub-ss. (4)–(8) contain provisions formerly in s. 35 (4)–(8) of the Act of 1936. Thus this section reproduces s. 35 of the Act of 1936 with two changes: (i) references to a development plan were substituted for references to a planning scheme or proposed planning scheme (sub-s. (2), *supra*); and (ii) statutory tenants need no longer be served with a notice under sub-s. (3) (b), *supra*.

**General Note.** The first stage of the procedure for dealing with re-development areas is covered by s. 55, *ante*. The present section deals with the second stage, namely, the preparation, submission and approval of a re-development plan. It also provides for revision of the plan by means of a "new plan"; see sub-s. (6), *supra*.

A re-development plan, or a new plan, is open to challenge in the Courts only by the same limited procedure as applies to compulsory purchase orders and clearance orders under this Part (Part III) of this Act; see the Fourth Schedule, *post*.

When the plan has become operative, it does not follow that the local authority will necessarily carry out all or any of the re-development themselves: by s. 57 (2), *post*, they may make arrangements with other persons for carrying out re-development or securing the use of the land in accordance with the plan. In default of such arrangements, the local authority will make compulsory purchase orders and submit them to the Minister under s. 57 and the Third Schedule, *post*, or they may purchase by agreement with the Minister's approval.

It is contemplated by sub-s. (1), *supra*, that some land may continue to be used for existing purposes; this does not detract from the general purposes of a re-development area mentioned in the subsection and in s. 55 (1) (c) and (d), *ante*, but is intended to avoid the necessity of excluding from the area small parcels of land where no re-development or change of use is required.

As to re-development, etc., by owners, see ss. 68–71, *post*.

**Grounds of objection.** The following are suggested as possible grounds of objection. An objection should be made in the time and manner specified in the notices under sub-s. (3), *supra*, and should be sufficient to enable the Minister to understand the substance, if not the detail, of the objector's case.

- (1) The defined area does not satisfy the conditions of section 55 (1) (a) and (b) of the Housing Act, 1957.

- (2) It is denied that the area should be used for housing the working classes to a substantial extent or at all.
- (3) There is no need for the area to be re-developed as a whole [or at all].
- (4) The objector's property [situate at and known as . . .] should be excluded from the defined area.
- (5) The objector's said property should continue in use for existing purposes [or, should be available to the objector for use as . . .; or for re-development as . . . (here state the purposes for which the objector requires the land, *e.g.*, as an extension to his factory)].
- (6) The proposals of the plan are not the best method of dealing with the area [and in particular . . . (here state the nature of any objection to the lay-out, density, street pattern, open space provision, etc.)].

As to the Minister considering certain proposals under s. 68 or 69, *post*, as if they were objections to a re-development plan, see s. 70 (2), *post*.

**Sub-s. (1).**

**Within six months.** Cf. the note "Within twenty-one days" to s. 11 (1), *ante*.

**Local authority.** See s. 1, *ante*, and s. 58, *post*; and see s. 55 (1), *ante* (limitation to urban areas).

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Defined area.** *I.e.*, the area defined under s. 55 (1), *ante*.

**Land therein used.** As to the meaning of "land", see s. 189 (1), *post*. The purposes for which land is to be used must in general be consistent with the purpose of a re-development area as outlined in s. 55 (1), *ante*.

**Houses for the working classes.** As to the meaning of "house", see s. 189 (1), *post*. As to the meaning of "working classes", see the note to s. 55 (1), *ante*. A re-development area should "to a substantial extent" be used for housing such persons; see s. 55 (1) (c), *ante*.

**Streets.** For the meaning of "street", see s. 189 (1), *post*. Badly arranged and narrow streets may be one of the causes of the houses in the area being "congested" as mentioned in s. 55 (1) (b), *ante*; and cf. s. 42 (1) (a), *ante*, relating to clearance areas.

**Open spaces.** This expression, it is submitted, is not confined in meaning to "public" open spaces, such as gardens or recreation grounds to which the public have access without payment, but includes also "private" open spaces, particularly as these may be beneficial to the area by securing light and air to adjoining premises.

**Sub-s. (2).**

**Development plan.** See the definition in ss. 5 (1) and 119 (1) of the Town and Country Planning Act, 1947 (48 Statutes Supp. 30, 202; 25 Halsbury's Statutes (2nd Edn.) 496, 635). Part II (ss. 5-11) of that Act deals with the making, submission and approval of such plans, under a procedure somewhat resembling that of the present section. In the case of land in an urban district or non-county borough (outside London) it should be noted that the local planning authority who prepare the development plan under the Act of 1947 will normally be the county council, not the district council, mentioned in s. 55 (1), *ante*, who will prepare the plan under the present section.

**Sub-s. (3).**

**Publish . . . a notice.** The form prescribed under S.R. & O. 1937 No. 78 was revoked by the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842), on 1st December 1957 and, at the time of going to press, has not been replaced; see the Preliminary Note to the 1957 Regulations (Appendix II, *post*). For power to prescribe forms of notices, see s. 178, *post*.

**Within their district.** See the note to s. 55 (2), *ante*.

**Serve a notice.** As to the form of notice, see the note "Publish . . . a notice", *supra*. As to authentication, see s. 166 (2), and as to service, see s. 169 (1), *post*.

**Owner.** For meaning, see s. 189 (1), *post*; as to costs of an owner opposing the plan, see s. 67, *post*.

**Statutory undertakers; apparatus.** For definitions, see s. 189 (1), *post*; and note ss. 57 (5) and 65, *post*.

**For the purposes of this subsection, etc.** Apart from this provision, derived from the Housing Repairs and Rents Act, 1954, a "statutory tenant" would have to be served, because he would not be a "tenant for a month or any period less than a month" as mentioned in para. (b) of this subsection; see *Brown v. Ministry of Housing and Local Government*, [1953] 2 All E.R. 1385; 3rd Digest Supp. (decided on para. 3 (1) (b) of the First Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946). The definition of "statutory tenant" in s. 49 (1) in Part II of the Act of 1954 (84 Statutes Supp. 104; 34 Halsbury's Statutes (2nd Edn.) 373) refers to a "tenant" who retains possession by virtue of the Rent Acts and not as being entitled to a [contractual] tenancy; and "tenant" for this purpose includes a sub-tenant and also a widow or

member of the family who succeeds to the right of possession under s. 12 (1) (g), as amended, of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (103 Statutes Supp. 145; 13 Halsbury's Statutes (2nd Edn.) 999).

**Sub-s. (4).**

**If no objection is duly made.** The time-limit for making objections, and the manner of so doing, will be specified in the newspaper advertisements and personal notices under sub-s. (3), *supra*. If there is no objection "duly made" the Minister may approve the plan without inquiry; but in practice, if the Minister receives an objection a few days after the time allowed, he may well decide to hold an inquiry. For suggested grounds of objection, *vide supra*.

**Without . . . or with . . . modifications.** The Minister is expressly prevented from adding land to the area, but any other sort of modification appears to be possible; see *Minister of Health v. R., Ex parte Yaffé*, [1931] A.C. 494; Digest Supp.

**To exclude land.** *Quære*, whether the plan will be valid, if less land is left in the area than is necessary to satisfy s. 55 (1), *ante*. There is here no saving provision comparable to para. 4 (4) in Part I of the Third Schedule, *post* (relating to compulsory purchase orders in respect of a clearance area).

**Public local inquiry.** For powers in connection with local inquiries, see ss. 67 and 181 (1), *post*, and s. 290 of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 503) or s. 189 of the London Government Act, 1939 (15 Halsbury's Statutes (2nd Edn.) 1161); and see, generally, the notes to s. 181, *post*. Note that, under the present section, there is no power to substitute a "hearing" instead of a public local inquiry; contrast para. 3 (3) in Part I of the Third Schedule, *post*.

**Report of the person who held the inquiry.** In the past most Government Departments have refused to disclose the report of the inspector or other person appointed to hold an inquiry; see *Local Government Board v. Arlidge*, [1915] A.C. 120; 38 Digest 97, 708; *Denby (William) & Sons, Ltd. v. Minister of Health*, [1936] 1 K.B. 337; Digest Supp., but see *Darlassis v. Minister of Education* (1954), 118 J.P. 452. See now Ministry of Housing and Local Government Circular No. 9/58, dated 27th February 1958 (obtainable from H.M. Stationery Office); and cf. the notes to s. 181, and to para. 3 in Part I of the Third Schedule, *post*.

**Sub-s. (5).**

**Publish . . . a notice; serve a like notice.** Cf. sub-s. (3), *supra*, and notes thereto; there are at present no prescribed forms for this purpose.

**Sub-s. (8).**

**In the following provisions.** *Semble*, a similar interpretation will apply to s. 55 (3), *ante*. In the Housing Act, 1936, the provisions now in s. 55 (3) were in s. 45 (2) and thus occurred after those of the present subsection, which were in s. 35 (8) of that Act.

**Re-development plan.** See sub-s. (1), *supra*.

**New plan.** See sub-s. (6), *supra*.

**57. Purchase of land for purposes of re-development.**—(1) When the Minister's approval of a re-development plan has become operative, the local authority may with the approval of the Minister purchase by agreement, or may be authorised by means of an order made and submitted to the Minister and confirmed by him in accordance with Parts I and II of the Third Schedule to this Act to purchase compulsorily,—

- (a) land in the re-development area; and
- (b) any land outside that area which they may require for the purpose of providing accommodation for persons occupying premises within that area which they have purchased or agreed to purchase, or in respect of which they have submitted compulsory purchase orders.

(2) It shall be the duty of the local authority within the appropriate period specified in this subsection either to enter into agreements with the approval of the Minister for the purchase, or to make and submit to the Minister orders for the compulsory purchase, of all land in the re-development area other than land in respect of which the local authority have within that period made arrangements with other persons for the carrying out of re-development, or for securing the use of the land, in accordance with the re-development plan.

The appropriate period for the purposes of this subsection shall be—

- (a) in the case of land shown in the re-development plan as intended for the provision of houses for the working classes, six months from the date when the Minister's approval of the re-development plan becomes operative;
- (b) in the case of other land in the re-development area, two years from that date;

or, in either case, such extended period as the Minister may, on the application of the local authority, allow in respect of any land.

(3) Where a local authority submit to the Minister an order for the compulsory purchase under this section of land which comprises or consists of a house which in their opinion is unfit for human habitation and not capable at reasonable expense of being rendered so fit, the order as submitted shall be in a form prescribed for the purpose of indicating that the house is in that condition, and, if the Minister is of opinion that the house is properly so indicated, the order as confirmed may authorise the authority to purchase the house as being in that condition.

(4) The provisions of the Fourth Schedule to this Act shall have effect with respect to the validity and date of operation of a compulsory purchase order made under this section.

(5) Nothing in this section shall authorise the compulsory acquisition of any land which is the property of a local authority or is the property of statutory undertakers, having been acquired by them for the purposes of their undertaking, and the obligations imposed on the local authority by subsection (2) of this section shall not apply with respect to any such land.

(6) Land purchased by a local authority under this section for the provision of houses for the working classes shall be deemed to have been acquired by them under Part V of this Act.

(7) Land purchased by a local authority under this section otherwise than for the provision of houses for the working classes may, with the consent of the Minister, be sold or leased to any person, or exchanged for other land which the local authority have power to acquire either with or without paying or receiving money for equality of exchange, subject, in the case of land in the re-development area, to conditions for securing that it shall be re-developed or used in accordance with the re-development plan.

(8) When the Minister's approval of a re-development plan has become operative and the plan comprises any land of the local authority, the provisions of this Act shall apply in relation to that land as if it had been land in the re-development area purchased by the authority under this section.

(9) Nothing in the Rent Acts shall prevent possession being obtained of any house possession of which is required for the purpose of enabling re-development in accordance with a re-development plan to be proceeded with.

#### NOTES

**History.** Sub-ss. (1)–(8), *supra*, contains provisions formerly in s. 36 of the Housing Act, 1936. Sub-s. (9) contains provisions formerly in s. 156 (1) (c) of that Act.

**General Note.** This section provides for carrying an approved re-development plan into effect, and in particular for the purchase of land (a) in the area, or (b) required for accommodating the "over-spill" from that area. The authority are bound to purchase all land in the actual re-development area, except where satisfactory arrangements can be made with other persons to carry out re-development or secure the use of the land in accordance with the plan (see sub-s. (2), *supra*), and with the further exception of local authority land and the operational land of statutory undertakers (sub-s. (5)).

Compulsory purchase orders will be governed by the Third and Fourth Schedules, *post*. The latter Schedule allows a limited right of application to the High Court challenging the validity of an order; the same Schedule also applies at an earlier stage to the validity of the plan itself; see s. 56 (7), *ante*. A house unfit for human habitation, and not capable of being rendered fit at reasonable expense, may be indicated as such

in the order as submitted; if the Minister confirms the order in this form the house may be purchased at "site value" under s. 59 (3), *post*.

The re-development plan may include land of the local authority; if so, this is dealt with as if it had been purchased; see sub-s. (8), *supra*, and cf. s. 49, *ante*, relating to clearance areas. Land purchased, or treated as purchased, will in most cases "to a substantial extent" (see s. 55 (1) (c), *ante*) be required for working-class houses, *i.e.*, unless such houses can be provided by arrangements under sub-s. (2), *supra*. Land so purchased is treated as "Part V" land: see sub-s. (6), *supra*. Other land may be disposed of under sub-s. (7), *supra*, by sale, lease or exchange, subject to the consent of the Minister. On disposing of land in the re-development area, the local authority will impose conditions; cf. s. 47, *ante*, as to clearance areas.

#### Sub-s. (1).

**Minister's approval of a re-development plan.** See s. 56, *ante*, particularly s. 56 (4); and note s. 56 (6) as to the making and approval of a "new plan". "The Minister" is defined in s. 189 (1), *post*.

**Become operative.** See s. 56 (7), *ante*, and the Fourth Schedule, para. 3, *post*.

**Local authority.** See ss. 1 and 55 (1), *ante*, and s. 58, *post*.

**An order.** Compulsory purchase orders under this section are governed by the Third and Fourth Schedules, *post*. For power to prescribe forms of orders, notices and advertisements, etc., see s. 178, *post*. As to the forms in use up to 30th November 1957, see the Preliminary Note to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), which revoked the old forms but did not replace them.

As to the time for submitting such orders, in respect of land in the re-development area, see sub-s. (2), *supra*.

**Land in the re-development area.** "Land", unless the context otherwise requires, includes a right over land; see s. 189 (1), *post*. It also includes buildings (s. 3 of the Interpretation Act, 1889; 24 Halsbury's Statutes (2nd Edn.) 207), and note the references to houses in s. 55 (1) (a) and (b), *ante*, and in sub-s. (3), *supra*. The re-development area is that defined under s. 55 (1), *ante*, subject to any modification made by the Minister on confirming the re-development plan under s. 56 (4), *ante*.

**Land outside that area.** Such land may be required to accommodate any "over-spill". The time-limit in sub-s. (2), *supra*, does not apply.

**Accommodation for persons occupying premises.** This appears to refer to premises of any kind, not merely houses or other dwellings; cf. s. 55 (3), *ante*, which is expressly limited to persons displaced from working-class houses, and s. 42 (1), proviso (i) and (3), *ante*, as to clearance areas. It appears therefore that the powers of the local authority to purchase land to deal with "over-spill" are wider than their duty in respect of re-housing under s. 55 (3).

#### Sub-s. (2).

**Appropriate period.** As defined by the latter part of this subsection, the period allowed is six months from approval of the plan becoming operative in the case of land shewn therein as intended for working-class houses, and two years in other cases (or such extended period as the Minister may allow). Within this period the authority must (i) make arrangements with other persons as to re-development, etc., or (ii) make agreements for purchase, approved by the Minister, or (iii) submit compulsory purchase orders. This time-limit applies to all land in the re-development area, but not to land outside such as may be purchased under sub-s. (1) (b), *supra*.

**Arrangements.** A covenant entered into by an owner may be enforced against persons deriving title under him as mentioned in s. 151, *post*. In some cases the authority may purchase land and dispose of it under sub-s. (7), *supra*; this power could be used to assist and supplement arrangements under the present subsection. Note that s. 68, *post* (relating to re-development by owners), is excluded by s. 70 (1), *post*, in the case of premises comprised in a re-development plan which has been approved. As to arrangements with housing associations, see s. 120, *post*.

**In accordance with the re-development plan.** See s. 56 (8), *ante*, as to the meaning of this phrase.

#### Sub-s. (3).

**House.** For meaning, see s. 189 (1), *post*.

**Unfit for human habitation.** See ss. 4 and 5, *ante*.

**At reasonable expense.** Cf. s. 39 (1), *ante*, defining a similar phrase used in Part II of this Act, but not expressly applying to this Part (Part III). See s. 55 (1) (b), *ante*, and contrast s. 42 (1) (a), *ante*, as to the inclusion of unfit houses in a re-development area and a clearance area, respectively. Note that s. 42 contains no reference to whether or not the houses are capable of repair at reasonable expense.

**In a form prescribed.** For power to prescribe, see s. 178, *post*. The present subsection cannot operate without a prescribed form, but the form in use up to 30th November 1957 was revoked by the Housing (Prescribed Forms) Regulations, 1957

(S.I. 1957 No. 1842) (Appendix II, *post*). See, as to the old forms, the Preliminary Note to those regulations. At the time of going to press there is no prescribed form.

Unless a house is so indicated in the order as submitted, the Minister cannot on confirmation of the order indicate the house as coming within the present subsection; see para. 6 in Part I of the Third Schedule, *post*. When a house is so indicated in the order as submitted and confirmed, the house will be purchased at site value; see s. 59 (3), *post*.

**Sub-s. (5).**

**Land which is the property of a local authority.** For meaning, in this context, of "local authority", see s. 189 (2), *post*. Note that local authority land is, under this section, absolutely protected against compulsory purchase; contrast s. 1 (a) of, and Part III of the First Schedule to, the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 4, 17; 3 Halsbury's Statutes (2nd Edn.) 1065, 1077). The Act of 1946 applies to purchases under Part V of the present Act; and to purchases under Part IV of the Town and Country Planning Act, 1947 (48 Statutes Supp. 86; 25 Halsbury's Statutes (2nd Edn.) 544), which may provide an alternative to the use of this section of this Act. As to the local authority's own land, see sub-s. (8), *supra*.

**Statutory undertakers.** For meaning, see s. 189 (1), *post*. Statutory undertakers' land is absolutely protected under this section; but see the Act of 1946, cited in the previous note, *supra*. See further, as to apparatus of statutory undertakers, s. 65, *post*.

**Sub-s. (6).**

**Land purchased.** See sub-ss. (1) and (2), and note also sub-s. (8), *supra*.

**Deemed to have been acquired . . . under Part V.** That Part (s. 91 *et seq.*), *post*, deals with the provision of housing accommodation to meet the needs of the district. For general powers of management, etc., see s. 111, *et seq.*, *post*. As to inclusion in the Housing Revenue Account of land deemed to have been acquired under Part V by virtue of sub-s. (6), *supra*, see s. 50 (1) (f) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*).

**Sub-s. (7).**

**Otherwise than for the provision of houses.** Land purchased for providing working-class houses is, by sub-s. (6), *supra*, treated as "Part V" land; powers of disposal are therefore available under ss. 104 and 105 in Part V, *post*. For the meaning of "houses" in this context, see para. (b) of the definition in s. 189 (1), *post*. Other land may be disposed of under the present subsection. The Minister's consent is required in all cases under this subsection; if the land is within the re-development area (see ss. 55 (1) and 56 (4), *ante*), conditions will be imposed to secure re-development or use in accordance with the plan. Cf., generally, s. 47, *ante*, as to clearance areas; and see s. 142, *post*, as to the application of proceeds of sale.

**In accordance with the re-development plan.** See s. 56 (8), *ante*.

**Sub-s. (8).**

**Local authority.** *I.e.*, the urban authority dealing with the area; see ss. 1 and 55 (1), *ante*, and s. 58, *infra*, as to London. Land of other local authorities may be purchased by agreement, or dealt with by arrangements, under sub-ss. (1) and (2), *supra*; but is protected from compulsory purchase by sub-s. (5), *supra*. By virtue of the present section the local authority's land may be used for housing the working classes (see sub-s. (6), *supra*), or for other purposes of the plan, and in the latter case may be disposed of (under sub-s. (7), *supra*).

**Sub-s. (9).**

**Nothing in the Rent Acts, etc.** These Acts are the Rent and Mortgage Interest Restriction Acts, 1920 to 1939; see s. 189 (1), *post*. For similar provisions, also derived from s. 156 of the Housing Act, 1936, see the Table of Repeals and Replacements (Appendix I, *post*).

**58. Local authority for re-development areas in London.**—As respects the administrative county of London other than the City of London the London County Council shall be the local authority for the purposes of the provisions of this Part of this Act relating to re-development areas:

Provided that where a metropolitan borough council give notice in writing to the London County Council that in their opinion their district comprises an area (the limits of which shall be specified) which ought to be defined as a proposed re-development area, and that they intend to pass such a resolution as is mentioned in subsection (1) of section fifty-five of this Act, the metropolitan borough council shall, as respects that area and subject as hereinafter provided, be the local authority for the purposes of the provisions of this Part of this Act relating to re-development areas—

- (a) if the London County Council within two months after the date of the receipt by them of such notice do not notify the metropolitan borough council that they intend themselves to deal with the area as a re-development area or as part of a re-development area, or as a clearance area or part of a clearance area, or that they propose to acquire the area or any part thereof as a site for the erection of houses for the working classes; or
- (b) if the London County Council notify the metropolitan borough council that they do not so intend to deal with the area or any part thereof;

so, however, that—

- (i) if a metropolitan borough council who become, in pursuance of this proviso, the local authority as respects that area do not submit to the Minister a re-development plan relating to that area within a period of two years after the date on which the metropolitan borough council so became the local authority, or such further period as may be approved by the Minister; or
- (ii) if the Minister decides that the area is not a suitable one to be dealt with by the metropolitan borough council;

the metropolitan borough council shall cease to be, and the London County Council shall be, the local authority as aforesaid as respects that area without prejudice to the rights of the metropolitan borough council to give a further notice under this proviso to the London County Council.

#### NOTES

**History.** This section contains provisions formerly in s. 37 of the Housing Act, 1936.

**Administrative county of London; London County Council; metropolitan borough council.** See the notes to s. 1, *ante*. As to the powers of local authorities in London to enter into agreements relating to re-development areas, see s. 183 (1), *post*.

**City of London.** The local authority for the City is the Common Council; see s. 1 (2) (a), *ante*.

**Provision . . . relating to re-development areas.** See ss. 55 to 57, *ante*.

**Within two months.** Cf. the note "Within twenty-one days" to s. 11 (1), *ante*.

**Clearance area.** See s. 42, *ante*.

**Houses.** See the definition of "house" in s. 189 (1), *post*.

**Working classes.** See the note "Working-class" to s. 55 (1), *ante*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Re-development plan.** See s. 56, *ante*.

#### *General provisions as to land affected by provisions of Part III*

**59. Compensation for land purchased compulsorily.**—(1) Where land is purchased compulsorily by a local authority under this Part of this Act, the compensation payable in respect thereof shall be assessed in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919, subject to the following provisions of this section.

(2) The compensation to be paid for land, including any buildings thereon, purchased as being land comprised in a clearance area shall be the value at the time the valuation is made of the land as a site cleared of buildings and available for development in accordance with the requirements of the building byelaws for the time being in force in the district:

Provided that this subsection shall not have effect in the case of the site of a house or other building properly included in a clearance area only on the ground that by reason of its bad arrangement in relation to other buildings or the narrowness or bad arrangement of the streets, it is dangerous or injurious to the health of the inhabitants of the area, unless it is a building constructed or adapted as, or for the purposes of, a dwelling,

or partly for those purposes and partly for other purposes, and part thereof (not being a part used for other purposes) is unfit for human habitation.

(3) The compensation to be paid for a house which the local authority are authorised to purchase under section fifty-seven of this Act as being unfit for human habitation and not capable at reasonable expense of being rendered so fit shall be assessed in like manner as if it had been land purchased as being comprised in a clearance area.

(4) In the case of land, other than land in respect of which the provisions of subsection (2) or (3) of this section have effect, the rules specified in Part III of the Third Schedule to this Act shall be observed.

## NOTES

**History.** This section contains provisions formerly in s. 40 of the Housing Act, 1936, as amended by s. 54 (4) of, and the Fifth Schedule to, the Housing Repairs and Rents Act, 1954, which removed the words "by reason of disrepair or sanitary defects" which qualified the phrase "unfit for human habitation" at the end of sub-s. (2). The Act of 1936, s. 40, had incorporated the effect of the Housing Act, 1935, limiting the cases where "site value" compensation was appropriate.

**General Note.** This important section provides two measures of compensation for land purchased compulsorily under this Part (Part III) of this Act, namely (i) site value, and (ii) compensation assessed subject to the Schedule Rules, *i.e.*, those of Part III of the Third Schedule, *post*. It should be noted that houses and other buildings included in a clearance area for reasons only of "bad arrangement", etc., and not as being unfit for human habitation, fall normally within the first part of sub-s. (2) proviso, *supra*. It is only where they contain unfit dwelling accommodation, as mentioned in the latter part of that proviso, that "site value" is appropriate.

This is a considerable departure from the statutory provisions in force before the Act of 1935 (see s. 46 (repealed) of the Act of 1925 as to improvement and reconstruction schemes; s. 12 of, and the Third Schedule to, the Act of 1930 (repealed) as to clearance areas; s. 62 (now wholly repealed) of the Act of 1935, which *inter alia* took "bad arrangement" houses and other buildings out of the "site value" category, with the exception noted above; and s. 17 (repealed) of the Act of 1935, which made provision corresponding to s. 57 (3), *ante*, and sub-s. (3), *supra*. Sub-s. (2) of s. 62 of the Act of 1935, abolishing a special provision known as the "reduction factor", is now finally repealed by s. 191 (1) and the Eleventh Schedule, *post*). The effect of the present section is as follows:—

### A. Compensation for land in a clearance area.

- (1) Houses which are not unfit for human habitation and any buildings which are not houses, if in the clearance area, must have been included for "bad arrangement" (see s. 42 (1) (a), *ante*, and sub-s. (2) proviso of the present section) and are normally excluded from sub-s. (2) (site value) and fall into sub-s. (4), *supra*. They are valued under the general law, subject to the rules in Part III of the Third Schedule, *post*.
- (2) There is an exception to (1), above, *i.e.*, if a building is constructed or adapted (a) as a dwelling, or (b) for the purposes of a dwelling, or (c) partly for the purposes of a dwelling and partly for other purposes, it will be compensated at site value if part is unfit, unless that part is used for those other purposes. Cf. para. 2 of the Fifth Schedule, *post*, as to including such buildings in a clearance order.
- (3) Any other land is valued at site value, under sub-s. (2). This category includes unfit houses, whether or not they are capable, at reasonable expense, of being rendered fit; see, however, s. 60, *post*, as to payments for well-maintained houses, and ss. 61 and 63, *post*, as to certain payments to owner-occupiers and persons carrying on a business in an unfit house, and as to discretionary allowances.
- (4) Cleared land, purchased under s. 51, *ante*, is not in practice regarded as "purchased as being land comprised in a clearance area", within the meaning of sub-s. (2), *supra*, which is interpreted as referring to land purchased under s. 43, *ante*. If this practice is correct, the compensation for land purchased under s. 51 will be assessed under the general law subject to the rules in Part III of the Third Schedule, *post*.

### B. Compensation for land acquired under s. 43 (2).

Land surrounded by or adjoining a clearance area falls under sub-s. (4), and is valued under the general law, subject to the rules in Part III of the Third Schedule, *post*.

### C. Compensation for land purchased for the purposes of re-development under s. 57.

- (1) Houses which are indicated in the compulsory purchase order as being unfit for human habitation and incapable of being made fit at reasonable expense have compensation assessed on the basis of site value.
- (2) Buildings and land, other than houses so indicated, have compensation assessed

under the general law, subject to the rules in Part III of the Third Schedule, *post*.

D. *Compensation for cleared land purchased under s. 51.*

See A. (4), above.

*General law of compensation.* The law of compensation lies outside the scope of the present volume, but is described in outline in Chapter 2 of the Introduction, p. 5, *ante*.

The Acquisition of Land (Assessment of Compensation) Act, 1919 (31 Statutes Supp. 177; 3 Halsbury's Statutes (2nd Edn.) 975), which is applied by sub-s. (1), *supra*, subject to the provisions of this section, introduced (a) a system for the assessment of compensation by one of the "official arbitrators", and (b) the rules, in s. 2 thereof, which in general restricted the amount of compensation payable. Until the Housing Act, 1925 (see *ibid.*, ss. 46 and 136, and the Sixth Schedule; repealed) there was a saving in s. 7 of the 1919 Act for the methods of assessment under the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70). The rules in s. 2 of the 1919 Act were to some extent similar to certain rules already in force under the early housing statutes.

On 1st January 1950 the jurisdiction, in England and Wales, of the official arbitrators was transferred to the newly formed Lands Tribunal, upon whom additional jurisdiction was also conferred; see the Lands Tribunal Act, 1949 (61 Statutes Supp. 32; 28 Halsbury's Statutes (2nd Edn.) 317), which came into force on that date by virtue of the Lands Tribunal Act (Appointed Day) Order, 1949 (S.I. 1949 No. 2335).

The Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 4; 3 Halsbury's Statutes (2nd Edn.) 1064), which introduced a standard form of compulsory purchase order procedure, does not apply to this Part (Part III) of the present Act, although it applies to compulsory purchase orders under Part II, *ante*, and Part V, *post*. Compulsory purchase orders under Part III are governed by the Third and Fourth Schedules, *post*. They incorporate the Lands Clauses Acts, but many of the procedural provisions of those Acts are modified; in particular the combined effect of the Act of 1919 and the Lands Tribunal Act, 1949, is that questions of disputed compensation will be determined by the Lands Tribunal. The power conferred by s. 5 (2) of the Act of 1919, as amended by s. 5 of the Act of 1949, enabling an acquiring authority in certain circumstances to withdraw a notice to treat, appears, however, to be inconsistent with the provisions of the present Act when an authority are acquiring land in a clearance area; see ss. 43 and 50, *ante*.

The measure of compensation under s. 2 of the Act of 1919 was affected in turn by Part II (repealed) of the Town and Country Planning Act, 1944, and by Part V of the Town and Country Planning Act, 1947 (48 Statutes Supp. 105; 3 Halsbury's Statutes (2nd Edn.) 1090). Neither of these statutes is mentioned in the present section, or the relevant Schedule to this Act (see Part II of the Third Schedule, *post*). Part V of the Act of 1947 operates, generally, to limit compensation to "existing use" value, and it was assumed in practice that this operated as a further limit on "site value" compensation under the corresponding provisions (s. 40; repealed) of the Housing Act, 1936. A contrary view was arguable on a strict reading of the statutes, and is still arguable on the wording of the present Act; but see the definition of "compensation" in para. 7 (2) in Part II of the Second Schedule, *post*. This definition, for a special purpose, refers to the Town and Country Planning Act, 1954, ss. 31 and 35 (89 Statutes Supp. 101, 111; 34 Halsbury's Statutes (2nd Edn.) 76, 81), neither of which would be relevant unless Part V of the 1947 Act applied to "site value" purchases.

*Site value compensation.* Site value compensation is payable, under sub-s. (2) or (3), *supra*, in the cases mentioned under the headings A (2) and (3) and C (1) earlier in these notes. A similar measure applies to all compulsory purchases under Part II of this Act; see ss. 12 (4) and 29 (2), *ante*. As to whether it is limited by the "existing use" provisions of Part V of the Town and Country Planning Act, 1947, see the note "General law of compensation", *supra*.

*The Schedule Rules.* These rules, now set out in Part III of the Third Schedule, *post*, apply to compensation mentioned under the headings A (1) and (4), B, C (2), and D, earlier in these notes. Para. 2 of the Seventh Schedule, *post*, applies similar rules to purchases under Part V of this Act, *post*. Note the definition of the so-called "full compulsory purchase value" in para. 7 (2) in Part II of the Second Schedule, *post*, whereby one of the rules falls to be disregarded. This provision operates only for the special purposes of s. 31, *ante*, and s. 61, *post* (payments to certain owner-occupiers and others). Where it operates, it may have the peculiar effect of bringing the total compensation for unfit premises to a figure higher than would have been payable if the premises had been fit.

**Cross-references**

*Clearance areas:—*

- Section 42: declaration of clearance area.
- Section 43 (2): land surrounded by or adjoining clearance area.
- Section 43 (3): power of purchase for clearance.
- Section 50: power to abandon purchase.

*Cleared land:—*

- Section 51: power to purchase.

*Re-development areas:—*

Section 57: powers of purchase.

*Site value:—*

Section 42 (1) (a): reasons for inclusion in clearance area.

Section 57 (3): certain unfit houses to be indicated in compulsory purchase order.

Third Schedule: certain properties to be distinguished (para. 1); limits on power to modify the order (paras. 4 and 6); statement of reasons (paras. 3 (4) and (5) and 5 (3) and (4)).

Section 60: well-maintained houses.

Section 61: payments to certain owner-occupiers and others.

Section 63: discretionary allowances.

*Similar provisions:—*

Section 44: clearance without purchase under a clearance order.

Fifth Schedule: clearance order to exclude certain properties (para. 2), *i.e.*, those which would not be purchased at site value under sub-s. (2), *supra*.

Sections 12 and 29: site value provision in Part II.

Town and Country Planning Act, 1944, Fifth Schedule, para. 9 (48 Statutes Supp. 276; 25 Halsbury's Statutes (2nd Edn.) 420): declaration of unfitness in connection with purchases for planning and town development purposes under s. 38 of the Town and Country Planning Act, 1947 (48 Statutes Supp. 88; 25 Halsbury's Statutes (2nd Edn.) 545), and s. 6 of the Town Development Act, 1952 (77 Statutes Supp. 205; 32 Halsbury's Statutes (2nd Edn.) 1035), and other purchases, mostly of "designated" land under s. 37 of the Act of 1947. The Act of 1944 is also applied by the New Towns Act, 1946 (25 Halsbury's Statutes (2nd Edn.) 427), as modified by s. 23 of that Act, and it is now amended by s. 190 and the Tenth Schedule, *post*; see also Forms Nos. 32 and 33 in the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*). This procedure relates to unfit houses beyond repair at reasonable expense (*cf.* s. 57 (3), *ante*); and s. 60, *post*, is applied. Provisions similar to those under s. 61, *post*, are contained in the Slum Clearance (Compensation) Act, 1956 (97 Statutes Supp. 18; 36 Halsbury's Statutes (2nd Edn.) 392), as amended.

*General:—*

Section 67: costs of opposing orders.

Section 64: extinguishment of rights of way, etc.

Section 65: apparatus of statutory undertakers.

Licensing Act, 1953, s. 19 (33 Halsbury's Statutes (2nd Edn.) 168): licensed premises.

**Sub-s. (1).**

**Land.** This term includes any right over land (unless the context otherwise requires), see s. 189 (1), *post*. Note para. 1 (1) in Part I of the Third Schedule, *post* (compulsory purchase order to describe the land "to which it applies" by reference to a map); but compensation for severance or other injurious affection may be payable in respect of land not included in this map. Note also ss. 64 and 65, *post*, particularly s. 64 (3) and s. 65 (3) and (6) (a).

**Purchased compulsorily.** In all cases under this Part (Part III) there is an alternative power to purchase purely by agreement without the making of a compulsory purchase order; see ss. 43 (3), 51 (2), 57 (1), *ante*. An authorisation to purchase compulsorily, under those sections, will be conferred by a compulsory purchase order made and confirmed under the Third Schedule, Parts I and II, *post*. When such an order becomes operative, as mentioned in the Fourth Schedule, *post*, the acquiring authority will normally serve notice to treat (within three years), and may enter on the land, under para. 9 in Part II of the Third Schedule (modifying the Lands Clauses Consolidation Act, 1845). Whether or not the acquiring authority enter before completing the purchase the authority or the owners may have compensation assessed, in default of an agreed price, by the Lands Tribunal.

A sale under s. 74 (1), *post*, is not a compulsory purchase, but the price is assessed as if it were and is subject to the rules in Part III of the Third Schedule, *post*.

**Local authority.** See ss. 1, 52 and 58, *ante*.

**This Part.** See ss. 43 (3), 51 (2) and 57 (1), *ante*, for powers of purchase under this Part, and note the transitional provisions of ss. 53 (5) and 54 (1), *ante*, as to certain purchases under s. 43. By virtue of s. 192, *post*, the reference to this Part of this Act will include a reference to the corresponding provisions of the earlier Housing Acts, particularly ss. 29, 32 and 36 of the Act of 1936.

**Compensation.** The Lands Clauses Acts are incorporated, with modifications, by para. 7 in Part II of the Third Schedule, *post*, as if this Act and the compulsory purchase order were the special Act, as mentioned in s. 2 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 894). Compensation is payable by virtue of the Act of 1845, particularly ss. 49, 63 and 68, and other sections dealing with special circumstances, *e.g.*, s. 121 (tenants for a year or from year to year, etc.). The Lands Tribunal will assess the amount of such compensation, if disputed, but will not decide matters of title thereto, unless the parties submit these for arbitration by consent. The

rules in s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919 (31 Statutes Supp. 178; 3 Halsbury's Statutes (2nd Edn.) 977), are expressed not to affect the assessment of compensation "for disturbance or any other matter not directly based on the value of the land"; see *ibid.*, s. 2, r. (6). As to the nature of compensation for disturbance, see *Horn v. Sunderland Corporation*, [1941] 1 All E.R. 480, C.A., 11 Digest (Repl.) 127, 167. A claim for disturbance of a trade and loss of trade fixtures may be inconsistent with the provisions of the present section as to site value; see *Northwood v. London County Council*, [1926] 2 K.B. 411; 11 Digest (Repl.) 308, 2144 (decided on s. 46 (repealed) of the Housing Act, 1925). This was a decision of the Divisional Court relating to a licensed public house; there was at that date no right of appeal beyond that Court to the Court of Appeal; see *Northwood v. London County Council* (No. 2) (1927), 96 L.J. (K.B.) 520; 11 Digest (Repl.) 221, 865. See also s. 63, *post*, as to discretionary payments, and s. 61, *post*, as to certain payments to persons carrying on a business in an unfit house; as to licensed premises, see also s. 19 of the Licensing Act, 1953 (33 Halsbury's Statutes (2nd Edn.) 168). It is submitted that the present section does not preclude compensation for severance or other injurious affection, and the Lands Tribunal has so held; see *Palmer & Harvey, Ltd. v. Ipswich Corporation* (1953), 4 P. & C.R. 5, *per* Erskine Simes, Q.C., explaining *Northwood's* case, *supra*, as excluding compensation only so far as based on the occupation of buildings which are deemed to have been cleared.

**Acquisition of Land (Assessment of Compensation) Act, 1919.** 31 Statutes Supp. 177; 3 Halsbury's Statutes (2nd Edn.) 975. For statutes amending or affecting the Act of 1919, see the note, "General law of compensation", *supra*. For modifications by Part III of this Act, see para. 8 in Part II of the Third Schedule, *post*; and the following provisions of the present section. In so far as s. 7 of the Act of 1919 professed to nullify future inconsistent enactments, that section cannot prevail against later Acts and is *pro tanto* repealed; see *Vauxhall Estates, Ltd. v. Liverpool Corporation*, [1932] 1 K.B. 733; 11 Digest (Repl.) 309, 2150; *Ellen Street Estates, Ltd. v. Minister of Health*, [1934] 1 K.B. 590; 11 Digest (Repl.) 309, 2151 (explaining the effect of s. 46 of Housing Act, 1925).

#### Sub-s. (2).

**Clearance area.** As to the declaration of clearance areas, see s. 42, *ante*.

**At the time the valuation is made.** A notice to treat served under s. 18 of the Lands Clauses Consolidation Act 1845 (3 Halsbury's Statutes (2nd Edn.) 902), could not, save by agreement, be withdrawn. The owner could be compelled to sell under the procedure of the Lands Clauses Acts, and the promoters could be compelled to buy, if necessary, by *mandamus*. All that was lacking was the ascertainment of the "price", and when compensation had been assessed specific performance of the "statutory contract" was obtainable in the equity jurisdiction of the Courts. The effect of serving such a notice was to fix the interests in land which were to be compensated, and they were to be valued as at that date, though certain adjustments might be agreed, and it was customary, where convenient, to value at the date of assessment. The power, now commonly available to acquiring authorities, of withdrawing a notice to treat, subverts the whole basis of this practice; but modern statutes, when introducing artificial levels of value or assumptions as to the condition of the land, treat the date of notice to treat as the relevant time. The present subsection is anomalous in this respect, but follows earlier Housing Act provisions.

**As a site cleared of buildings.** As to temporary shelters, caravans, etc., cf. s. 44 (8), *ante*. It will be noted that the subsection requires valuation "as" a cleared site; there is no provision about costs of clearance or salvage value of materials, and whether the local authority will make a loss or profit in clearing the site is not the question to be decided. In some cases the value as a cleared site may exceed the value before clearance.

Modern statutes requiring the assessment of compensation on a penal or other artificial basis normally expressly provide that compensation for disturbance is not to be increased thereby, *i.e.*, the loss sustained by the limit set on compensation falls on the owner and cannot be off-set or diminished by his claiming it in another form as compensation for disturbance. There is no such express provision here; but cf. the effect of *Northwood's* case, cited in the note "Compensation", *supra*. In so far as the site value basis is inconsistent with the Act of 1919, the present subsection will prevail; see the note about that Act, to sub-s. (1), *supra*.

**Available for development.** Cf. ss. 12 (4) and 29 (2), *ante*; the corresponding provisions in the Housing Act, 1936, originally contained a reference to any planning scheme in operation, but this was repealed by the Town and Country Planning Act, 1947. Under the Act of 1936 it was assumed that new development, beyond "existing use" value was to be disregarded under Part V of the Town and Country Planning Act, 1947, and the Third Schedule thereto, as amended now by the Town and Country Planning Act, 1954. *Sed quare*, and see the note "General law of compensation", *supra*.

**Building byelaws.** For meaning, see s. 189 (1), *post*.

**Provided that, etc.** As to what land may properly be included in a clearance area, see s. 42, *ante*. Only houses may be included because of unfitness; both houses and

other buildings may be included for "bad arrangement." The words "in relation to other buildings", in the present proviso, throw light on the meaning of "bad arrangement" in s. 42, *ante*, and show that internal bad arrangement is not referred to. The effect of the proviso, down to the word "unless," is to exclude "bad arrangement" buildings from site value compensation, so that they fall within sub-s. (4) and are valued subject to the special rules in Part III of the Third Schedule, *post*. The words introduced by "unless" bring back into the present sub-section those buildings (whether properly described as "houses" or "other buildings") which are treated as containing unfit dwelling accommodation. These latter buildings are also mentioned in the proviso to para. 2 of the Fifth Schedule to this Act, *post*, whereunder they may be included in a clearance order (if the authority decide to clear that part of the area in that way, and do not purchase).

**House.** See note "Houses" to s. 42 (1), *ante*, and see s. 189 (1), *post*.

**Other building.** See note to s. 42 (1), *ante*; and *Re Camberwell (Wingfield Mews) No. 2 Clearance Order, 1936, Butler's Application*, [1939] 1 All E.R. 590, C.A.; Digest Supp., where the Court treated a number of "composite" buildings as houses. The distinction, here, is not between "other buildings" and "houses," but between those "bad arrangement" buildings which have no dwelling accommodation and those which are "constructed or adapted as or for the purposes of" a dwelling, or "partly for those purposes and partly for other purposes." Once it is shown that a building is so constructed or adapted the further question arises whether any part, not being a part used for other purposes, is unfit for human habitation; if so, site value compensation applies to that building. If the whole building is constructed or adapted as a dwelling, it would normally be a "house," and, if unfit, such a building would normally be included for unfitness and not only for "bad arrangement." The latter part of the proviso apparently contemplates, however, that this may not always be so; *i.e.*, there may be cases of a whole building, constructed or adapted as a dwelling, with a part unfit, when the authority would not properly regard the building, as such, as unfit, and would not include it in the area on that ground. "Site value" would nevertheless apply.

**Not being a part used for other purposes.** It is submitted that a part may be "used" for other purposes, though vacant, see *Schwerzerhof v. Wilkins*, [1898] 1 Q.B. 640; 24 Digest (Repl.) 1070, 299. This seems consistent with the general purpose of the present subsection. Conversely, if some part, not used for "other purposes," is unfit, though vacant, *e.g.* ruinous living rooms over a shop now used as a lock-up shop, compensation will be at site value.

**Unfit for human habitation.** See ss. 4 and 5, *ante*. Note that an underground room may be deemed to be unfit under s. 18 (2), *ante*, but not be unfit for present purposes; and even if unfit will not attract site value compensation if used for "other purposes", and not as a dwelling.

#### Sub-s. (3)

**Authorised to purchase . . . as being unfit.** This refers only to land which comprises or consists of a house which is unfit and cannot be made fit at reasonable expense. Such land can be purchased as if it fell within sub-s. (2), *supra*, as land in a clearance area; it must for this purpose have been indicated as such in the confirmed compulsory purchase order in accordance with s. 57 (3), *ante*.

Other land purchased compulsorily under s. 57, *ante*, falls within sub-s. (4) of the present section. Thus a house which is unfit, but which can be made fit at reasonable expense, will not be purchased at site value, as would be the case if it were in a clearance area; there may, however, be a reduction of compensation under Part III of the Third Schedule, *post*.

**Section 57.** That section, *ante*, provides for the authorisation of purchases, for purposes of re-development, of land in a re-development area, and of "accommodation land" outside the area for persons displaced.

#### Sub-s. (4).

**Part III of the Third Schedule.** For the cases which fall under this subsection, and not under sub-ss. (2) and (3), see the General Note, and note "Cross references," *supra*. For the effect of the rules in the Schedule, see the notes thereto, *post*.

**60. Payments in respect of well-maintained houses.—(1)** Where as respects a house—

- (a) which is made the subject of a compulsory purchase order under this Part of this Act as being unfit for human habitation, or
- (b) which is made the subject of a clearance order,

the Minister is satisfied, after causing the house to be inspected by an officer of his department, that it has been well maintained, the Minister may give directions for the making by the local authority of a payment in respect

of the house under this section of such amount, if any, as is authorised by Part I of the Second Schedule to this Act.

(2) A payment under this section shall be made—

- (a) if the house is occupied by an owner thereof, to him; or
- (b) if the house is not so occupied, to the person or persons liable under any enactment, covenant or agreement to maintain and repair the house, and if more than one person is so liable, in such shares as the authority think equitable in the circumstances:

Provided that, if any other person satisfies the local authority that the good maintenance of the house is attributable to a material extent to work carried out by him or at his expense, the local authority may, if it appears to them to be equitable in the circumstances, make the payment, in whole or in part, to him.

### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 42 (1) of the Housing Act, 1936, as amended by s. 54 (4) of, and the Fifth Schedule to, the Housing Repairs and Rents Act, 1954. Sub-s. (2) contains provisions formerly in s. 42 (3) of the Act of 1936.

**General Note.** In the present Act, the provisions of s. 42 (repealed) of the Housing Act, 1936, have been distributed between the present section and Part I of the Second Schedule, *post*. They provide for a payment in respect of a house which, although unfit for human habitation, has been well maintained. Attention is drawn to two changes from the Act of 1936 as originally enacted: (i) in sub-s. (1), the words " notwithstanding its sanitary defects " no longer occur before " it has been well maintained ", having been repealed by the Act of 1954 (see the note, " History ", *supra*), and (ii) by para. 3 in Part I of the Second Schedule, *post*, which is derived from the Slum Clearance (Compensation) Act, 1956, the Minister is empowered to vary the scale of payment in so far as it is based on a multiplier of the rateable value.

This section applies when a house is made subject to a compulsory purchase order under s. 43 (3) or 57 (3), *ante*, or a clearance order under s. 44, *ante*. Similar provision is made by s. 30, *ante*, for certain houses dealt with under Part II of this Act; see the note to that section for a comparison with this section, and as to differences of procedure, etc. Overlap of payments under s. 31, *ante*, or 61, *post* (which introduce the provisions of Part II of the Second Schedule) with payments under this section or s. 30, *ante*, is prevented by para. 2 (2) in Part I of the Second Schedule, *post*.

The present section is extended by para. 9 of the Fifth Schedule to the Town and Country Planning Act, 1944. That paragraph now exists in two forms: (i) as applied by Part IV of the Town and Country Planning Act, 1947, and s. 6 of the Town Development Act, 1952 (see 48 Statutes Supp. 276 for the paragraph as so applied; and note the amendments by s. 190 and Tenth Schedule, *post*), and (ii) as applied by the New Towns Act, 1946, with modifications (see 25 Halsbury's Statutes (2nd Edn.) 482, 483). This extension of the present section enables a payment to be made in respect of a well-maintained house by a purchasing authority under these Acts, where the " declaration of unfitness " procedure has been followed and the house purchased at site value; cf. the note " Cross-references ", to s. 59, *ante*.

Payments under this section are made by the local authority for the purposes of this Part (Part III) of this Act; or by the purchasing authority under the Acts mentioned above. The amount of the payment is governed by para. 2 in Part I of the Second Schedule, *post*. It is subject to a " ceiling " in that it cannot exceed the difference between " full value " and " site value " as defined in that paragraph. The definitions are similar to, but not identical with, those which appear in para. 7 in Part II of that Schedule (payments under s. 31, *ante*, or 61, *post*).

**Sub-s. (1).**

**House.** For meaning, see s. 189 (1), *post*.

**Compulsory purchase order.** See ss. 43 (3) and 57 (1)-(3), *ante*, and the Third Schedule, *post*. A house is presumably to be regarded as " made subject " to such an order when the order becomes operative under the Fourth Schedule, *post*. It is convenient, however, for the house to be inspected for the purposes of this section at the time of the inquiry or hearing before the confirmation of the order. Note the extension of this section, to certain planning, etc., purchases, by the Act of 1944 mentioned in the General Note, *supra*.

**Unfit for human habitation.** See ss. 4 and 5, *ante*. A house may be made subject to a compulsory purchase order, as being unfit, (i) if it is in a clearance area defined under s. 42 (1), *ante*, in which case its alleged unfitness will appear from the form of the order as submitted, and compensation will be at site value under s. 59 (2), *ante*, if the order is confirmed in that form, or (ii) if it is in a re-development area defined under s. 55 (1), *ante*, and is indicated in the confirmed order as mentioned in s. 57 (3), *ante*, in which case site value compensation is payable by virtue of s. 59 (3), *ante*. In the latter case

the house must be one incapable of being rendered fit at reasonable expense. The "declaration of unfitness" procedure of the Town and Country Planning Act, 1944 (see the General Note, *supra*) also applies only where the house is not capable of being rendered fit at reasonable expense; see para. 9 (1) of the Fifth Schedule to that Act. This qualification, however, does not apply to a house in a clearance area.

**Clearance order.** See ss. 43 (1) (a), 44 and 45, *ante*, and the Fifth Schedule, *post*. As to the validity and date of operation of such orders, see the Fourth Schedule, *post*. The houses which may be included in such an order, under para. 2 of the Fifth Schedule, are those which, if they had been purchased under s. 43 (3), would have attracted site value compensation under s. 59 (2), *ante*.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Inspected.** This inspection can conveniently be combined with any inspection of the property in connection with an inquiry or hearing held for the purposes of para. 3 (3) or 5 (2) of the Third Schedule, or para. 5 (2) of the Fifth Schedule, *post*, as the case may be. These Schedules also provide for the local authority stating the principal grounds on which they allege unfitness, and for the Minister, when he upholds the allegation, stating his reasons to certain persons; see paras. 3 (4), (5) and 5 (3), (4) of the Third Schedule, and para. 5 (3), (4) of the Fifth Schedule.

Where there is no objection to the compulsory purchase order or clearance order, a special inspection for the purposes of this section may be arranged. Whether or not an inquiry or hearing is held, and whether or not they appear as objectors, persons interested in a house which may come within this section should inform the Ministry as soon as possible and ask for an inspection. Letters may be addressed to the Secretary, Ministry of Housing and Local Government, Whitehall, S.W.1, or to such other address as may be given in the notices published and served in connection with the making of the order. A model form of representation and application for payment (S/C 55) may be available at council offices; see Ministry of Housing and Local Government Circular 44/56, dated 13th August 1956. It is important to notify the Ministry in this way, as it seems that inspectors holding inquiries or hearings will otherwise no longer inspect properties as a matter of course. Claims under this section as applied by the Town and Country Planning Act, 1944 (see the General Note, *supra*), should be made as mentioned in para. 9 (4) of the Fifth Schedule, *thereto*.

As to powers of entry, etc., see ss. 159 and 160, *post*. Those sections are also applied by the Act of 1944.

**It has been well maintained.** Cf. s. 30 (3) (b), *ante*, which requires defects in respect of matters listed in s. 4 (1) (b)–(h), *ante*, to be disregarded. In s. 42 (1) of the Housing Act, 1936, as originally enacted, the words "notwithstanding its sanitary defects" had a somewhat similar effect; the repeal of these words by the Housing Repairs and Rents Act, 1954, is discussed in the notes to s. 30, *ante*. "Maintenance", it is submitted, has a meaning which includes but is wider than repairs: note the reference to "persons liable . . . to maintain and repair" in sub-s. (2) (b), *supra*.

**Local authority.** See ss. 1, 52 and 58, *ante*. Under this section as applied by the Town and Country Planning Act, 1944 (see the General Note, *supra*), the payment will be made by the purchasing authority referred to therein.

**Such amount, if any.** A payment will be wholly excluded (i) where it would overlap a payment under Part II of the Second Schedule, as mentioned in para. 2 (2) in Part I of that Schedule, *post*, or (ii) where "site value" is not less than "full value" as defined in para. 2 (1), proviso, of that Schedule. Subject to these possibilities, the scale of payments is based on expenditure incurred (compared with rateable value) or on a multiple of the rateable value; see paras. 2 (1) and 3 of that Schedule.

Where compensation is payable under this section as applied by the Town and Country Planning Act, 1944 (see the General Note, *supra*), it should be noted that compensation may also be payable under ss. 1 and 2 of the Slum Clearance (Compensation) Act, 1956 (97 Statutes Supp. 18, 22; 36 Halsbury's Statutes (2nd Edn.) 393, 396), which resemble the provisions of Part II of the Second Schedule, *post*. Overlap of payments was prevented by s. 3 (4) of the Act of 1956, but that provision is wholly repealed, presumably by mistake, by the present Act. It is re-enacted only in a limited form by para. 2 (2) of the Second Schedule, *post*, which fails to mention the surviving provisions of the Act of 1956.

#### Sub-s. (2).

**Owner.** For definition, see s. 189 (1), *post*. This subsection, unlike s. 30 (3), *ante*, provides that the owner-occupier, if any, is *prima facie* entitled to the payment, which may, however, be diverted to another, in whole or in part, under the proviso. Para. (b) of this subsection operates only where there is no owner-occupier, *i.e.*, an owner-occupier does not have to shew that he is responsible for maintenance and repair; and persons who are so responsible receive the payment or a share therein only where there is no owner-occupier, subject always to the possibility of satisfying the authority that the payment should be diverted under the proviso.

**Such shares as the authority think equitable.** Where more than one person is liable for maintenance and repair, and there is no owner-occupier, the payment will be

shared. The authority will presumably have regard to any work done or expenditure incurred by the persons concerned. It appears that it would be proper also to consider the terms of any enactment, covenant or agreement, including terms as to rent and other financial considerations.

**Any other person.** *E.g.*, a tenant who has carried out repairs, though not bound to do so, and who is not an "owner" under s. 189 (1), *post*.

**If it appears . . . to be equitable.** The power conferred by the proviso arises only where some person shews that the good maintenance is attributable to a material extent to work carried out by him or at his expense. Whether or not and to what extent the payment should be diverted to such a person is for the local authority to decide, and in deciding what is equitable they may have regard, it seems, to circumstances of the case going beyond the question of the value of the work or the amount of the expenditure.

**61. Temporary provisions for payments to owner-occupiers and others.**—The provisions of Part II of the Second Schedule to this Act shall have effect as respects payments to be made in certain cases in respect of houses comprised in a clearance area or re-development area.

#### NOTES

**General Note.** See the notes to s. 31, *ante*, and Part II of the Second Schedule, *post*.

**Houses.** For the meaning of "house", see s. 189 (1), *post*.

**Clearance area; re-development area.** Such areas are declared under ss. 42 (1) and 55 (1), *ante*, respectively. Part II of the Second Schedule applies to houses in such areas purchased at site value (see paras. 4 (1) and 6 (1) of that Schedule, *post*, and as to site value, s. 59 (2) and (3), *ante*) or vacated in pursuance of a clearance order (see ss. 44 and 45, *ante*, and para. 2 of the Fifth Schedule, *post*).

**62. Power of entry on land to be purchased by agreement under Part III or appropriated for the purposes of clearance areas.**—  
(1) Where a local authority—

- (a) have agreed to purchase land under this Part of this Act, or
- (b) have determined to appropriate land for the purposes of the provisions of this Part of this Act relating to clearance areas,

subject to the interest of the person in possession thereof, and that interest is not greater than that of a tenant for a year or from year to year, then, at any time after the agreement has been made, or the appropriation has been approved by the Minister, the local authority may, after giving to the person so in possession not less than fourteen days notice, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent.

(2) The exercise of a local authority's power under the foregoing subsection shall be subject to the payment to the person so in possession of the like compensation for the land of which possession is taken, and interest on the compensation awarded, as would have been payable if the local authority had been authorised to purchase the land compulsorily and that person had in pursuance of their powers in that behalf been required to quit possession before the expiration of his term or interest in the land, but without any necessity for compliance with sections eighty-four to ninety of the Lands Clauses Consolidation Act, 1845.

#### NOTES

**History.** This section contains provisions formerly in s. 145 (2) and 3 (a) of the Housing Act, 1936, as amended by para. 3 of the First Schedule to the Housing Repairs and Rents Act, 1954. As to other provisions formerly in s. 145 of the Act of 1936, see the General Note, *infra*.

**General Note.** This section confers a power of entry where land has been purchased by agreement under this Part (Part III) of the Act, or where land already belonging to the authority is to be appropriated for the purposes of a clearance area. It enables the authority to dispossess a tenant whose interest is not greater than that of a tenant for a year or from year to year, *i.e.*, the same class of persons as, in the case of a compulsory purchase, could be required to give up possession under s. 121 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 949). At least fourteen days' notice must be given.

In the Housing Act, 1936, as originally enacted, s. 145 (in Part VII thereof) conferred powers of entry for the purposes of Part III and Part V. The provisions of that section are now distributed as follows:—

- (1) Entry after confirmation of a Part III compulsory purchase order and service of notice to treat (s. 145 (1) of the Act of 1936): see now para. 9 in Part II of the Third Schedule, *post*. The period of notice, originally not less than 28 days (s. 145 (3) (a)), was reduced to not less than 14 days by the Housing Repairs and Rents Act, 1954.
- (2) Entry after confirmation of a Part V compulsory purchase order and service of notice to treat, on not less than 14 days' notice (s. 145 (1) and (3) (b)): see now para. 3 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 20; 3 Halsbury's Statutes (2nd Edn.) 1081). The Act of 1946 also applies to compulsory purchase orders under Part II (ss. 12 and 29, *ante*), and gives a corresponding power of entry although this was not provided by the Act of 1936.
- (3) Purchases by agreement under Part III, and land appropriated for clearance or improvement areas (s. 145 (2) and (3) (a)): see now the present section. References to improvement areas are now obsolete. The period of notice was reduced by the Act of 1954.
- (4) Purchases by agreement for Part V purposes, and land appropriated for such purposes (s. 145 (2) and (3) (b)): see now s. 101, *post*, which is practically identical with the present section.

In connection with (1) and (2), *supra*, there are now certain powers to take possession without actual entry: see para. 3 of the First Schedule, *post* (Part II purchases), para. 10 in Part II of the Third Schedule, *post* (Part III purchase for temporary housing under s. 48, *ante*), and s. 98, *post* (Part V purchases). These powers apply only where there has been a compulsory purchase order and notice to treat; they are not available under the present section or s. 101, *post*.

Attention is also drawn to Part II of the Landlord and Tenant Act, 1954 (87 Statutes Supp. 101; 34 Halsbury's Statutes (2nd Edn.) 408). Business tenancies protected thereunder appear not to fall within the scope of the present section; see the note "Tenant for a year", *infra*.

Compensation under sub-s. (2), *supra*, will be on the basis provided by s. 121 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 949), subject to the Acquisition of Land (Assessment of Compensation) Act, 1919 (31 Statutes Supp. 177; 3 Halsbury's Statutes (2nd Edn.) 975), as amended and, presumably, as applied by s. 59, *ante*. Where the land is purchased by agreement (sub-s. (1) (a), *supra*), a discretionary allowance may be payable under s. 63, *post*. By virtue of s. 49, *ante*, the same may be true of land appropriated for the purposes of a clearance area (sub-s. (1) (b), *supra*).

It is not clear whether payments may arise under s. 60 or 61, *ante*, relating to well-maintained houses, and to payments to certain owner-occupiers or persons carrying on a business in an unfit house. Section 60 is expressed to apply where a house is subject to a compulsory purchase order (cf. sub-s. (2), *supra*). In connection with s. 61, note the references to a compulsory purchase order in paras. 4 (1) and 6 (1) in Part II of the Second Schedule, *post*, and the definition of an "interest" in para. 7 (2) thereof.

#### Sub-s. (1).

**Local authority.** See ss. 1, 52, and 58, *ante*; and note s. 55 (1), *ante*, limiting ss. 55–58 to urban areas.

**Agreed to purchase.** See ss. 43 (3) and 57 (1), *ante*, conferring powers to purchase by agreement without a compulsory purchase order. Note also s. 51 (2), *ante*, which is not likely to be relevant as it relates to land already cleared of buildings; and ss. 53 and 54, *ante*, which extend the powers of purchase under s. 43. Where, however, a compulsory purchase order is made the Lands Clauses Acts are incorporated by para. 7 in Part II of the Third Schedule, *post*, and s. 121 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 949), can be used to require a tenant, whose interest is not greater than that of a tenant for a year or from year to year, to give up possession.

**Land.** See s. 189 (1), *post*.

**Determined to appropriate.** As to including land belonging to the local authority in a clearance area, and dealing with such land and other land surrounded by the area or adjoining the area as if it had been purchased, see s. 49, *ante*. As to appropriating land after clearance, see s. 47 (1) (a), *ante*.

**Clearance areas.** See ss. 42–54, *ante*. Note that para. (b) of the present subsection does not refer to re-development areas (ss. 55–58, *ante*), although land of the local authority may be dealt with, under a re-development plan, by virtue of s. 57 (8), *ante*.

**Tenant for a year.** Cf. s. 121 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 949), referring to persons "having no greater interest . . . than as tenant for a year or from year to year". This expression includes a person occupying under the last year of a longer term; see *R. v. Great Northern Railway Company* (1876), 2 Q.B.D. 151, and see 10 Halsbury's Laws (3rd Edn.) 221, 222. Part II of the Landlord and Tenant Act, 1954 (87 Statutes Supp. 101; 34 Halsbury's Statutes

(2nd Edn.) 408) contains, in s. 39 (3), a saving for s. 121 of the Act of 1845, which continues to apply to business tenancies despite s. 24 of the Act of 1954. There was, however, no such saving for s. 145 (2) of the Housing Act, 1936, which the present section replaces. It appears, therefore, that a business tenant, protected by Part II of the Landlord and Tenant Act, 1954, cannot be dispossessed under the present section, but must be dealt with under that Act. Note further ss. 57 and 59 thereof (87 Statutes Supp. 153, 158; 34 Halsbury's Statutes (2nd Edn.) 434, 437) as to modifications of Part II of that Act, and as to compensation under ss. 37 *et seq.* thereof.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Giving . . . notice.** As to authentication and service of notices, see ss. 166 (2) and 169 (1), *post*.

**Not less than fourteen days.** Cf. the note "Not less than twenty-one days" to s. 16 (1), *ante*. The period for present purposes was reduced by the Housing Repairs and Rents Act, 1954, from the period of not less than 28 days required in Part III cases by s. 145 (3) (a) of the Housing Act, 1936.

**Enter on and take possession.** Compensation will be payable under sub-s. (2), *supra*, as if on a compulsory purchase. Note that the powers conferred, in certain cases, by the present Act to take "notional" possession without entry, do not apply to the present section; see the General Note, *supra*.

**Sub-s. (2).**

**Compensation.** Compensation is payable as if (i) the local authority had been authorised to purchase compulsorily, *i.e.*, presumably by a compulsory purchase order made under the Third Schedule, *post*, for the purposes of s. 43 or 57, *ante*; and (ii) as if the person in possession had been required to quit possession "before the expiration of his term or interest", which is the expression used in s. 121 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 949). Such compensation would be governed by s. 59, *ante*, and would be assessed, if disputed by the Lands Tribunal. Presumably the present section imports not only this measure of compensation but also the procedure of assessment by the Lands Tribunal. See also the General Note, *supra*, as to ss. 60 and 61, *ante*, and s. 63, *post*.

**Interest.** As to interest on compensation awarded, see s. 85 of the Act of 1845 (*ubi supra*) as amended by s. 57 of the Town and Country Planning Act, 1947 (48 Statutes Supp. 114; 3 Halsbury's Statutes (2nd Edn.) 1100). The latter section provides for the rate of interest being prescribed, from time to time, by Treasury regulations.

**Authorised to purchase . . . compulsorily; required to quit possession.** See the Third Schedule, *post*, and s. 121 of the Act of 1845, mentioned in the note, "Compensation", *supra*.

**Lands Clauses Consolidation Act, 1845, ss. 84-90.** 3 Halsbury's Statutes (2nd Edn.) 930-935. Those sections prohibit entry on land, under the Lands Clauses Acts, except by agreement, or where the price has been paid, or where money is deposited as security. They are commonly excluded by modern statutes: *e.g.*, by para. 9 of the Third Schedule, *post*; and, similarly, by para. 3 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946, mentioned in the General Note, *supra*. The interest on compensation under this subsection nevertheless arises from s. 85 of the Act of 1845; the rate of interest however is varied by Treasury regulations under s. 57 of the Town and Country Planning Act, 1947.

**63. Power of local authority to make allowances to persons displaced.—(1)** A local authority may pay to any person displaced from a house or other building—

- (a) to which a clearance order applies, or
- (b) which has been purchased by them under the provisions of this Part of this Act relating to clearance areas, or
- (c) which has been purchased by them under the provisions of this Part of this Act relating to redevelopment areas as being unfit for human habitation and not capable at reasonable expense of being rendered so fit,

such reasonable allowance as they think fit towards his expenses in removing, and to any person carrying on any trade or business in any such house or other building, they may pay also such reasonable allowance as they think fit towards the loss which, in their opinion, he will sustain by reason of the disturbance of his trade or business consequent on his having to quit the house or building, and in estimating that loss they shall have regard to the period for which the premises occupied by him might reasonably have been

expected to be available for the purpose of his trade or business and the availability of other premises suitable for that purpose.

(2) Where, as a result of action taken by a local authority under the provisions of this Part of this Act relating to clearance areas, the population of the locality is materially decreased, they may pay to any person carrying on a retail shop in the locality such reasonable allowance as they think fit towards any loss involving personal hardship which in their opinion he will thereby sustain, but in estimating any such loss they shall have regard to the probable future development of the locality.

#### NOTES

**History.** This section contains provisions formerly in s. 44 of the Housing Act, 1936.

**General Note.** This section provides for discretionary allowances under this Part (Part III) of the Act, the first two types (sub-s. (1), *supra*) corresponding closely to those under s. 32 in Part II, *ante*. The third type (sub-s. (2), *supra*) has no counterpart in Part II of the Act, and is intended to avoid hardship to retail shopkeepers who lose customers as a result of action taken by a local authority in connection with a clearance area.

The three types of allowance are therefore as follows:—

- (1) Under sub-s. (1), an allowance towards the cost of removal. This is payable to anyone displaced from a house or other building which has been made the subject of a clearance order, or which has been purchased by the local authority under the provisions relating to clearance areas; or from a house which has been purchased by them as being unfit and not capable of being rendered fit at reasonable expense under the provisions relating to re-development areas.
- (2) Also under sub-s. (1), an allowance towards loss resulting from trade disturbance. This is payable to anyone carrying on a trade or business in premises which are covered by (1), *supra*. In calculating the allowance, regard must be had to the length of time for which the old premises might have continued to be available for the trade or business, and the availability of suitable new premises.
- (3) Under sub-s. (2), an allowance to compensate retail traders for any loss causing them personal hardship resulting from action which has been taken by the local authority under the provisions relating to clearance areas, and which has brought about a material decrease in the population of the locality. Unlike the two allowances already mentioned, the present one is payable to persons who are not displaced by the operation of the Act, despite the Queen's Printer's marginal note (Power . . . to make allowances to persons displaced).

#### Sub-s. (1).

**Local authority.** See ss. 1, 52 and 58, *ante*; and note s. 55 (1), *ante*, in connection with para. (c) of the present subsection (re-development areas limited to urban areas).

**House.** For meaning, see s. 189 (1), *post*.

**Other building.** See s. 42 (1) (a), *ante*, as to the inclusion of buildings other than houses in a clearance area; and note s. 44 (8), *ante*, as to clearance orders applying to huts, tents, caravans, etc. As to the purchase of land surrounded by or adjoining a clearance area, see s. 43 (2) and (3), *ante*.

**Clearance order.** See ss. 43 (1) (a), 44 and 45, *ante*, and the Fourth and Fifth Schedules, *post*. As to the land, including houses and certain buildings, which may be included in such an order, see particularly para. 2 of the Fifth Schedule. As to the vacating of buildings, see s. 45, *ante*.

**Purchased . . . under the provisions . . . relating to clearance areas.** *I.e.*, as being in the area declared under s. 42, *ante*, or as land surrounded by or adjoining the area as mentioned in s. 43 (2); see s. 43 (3), *ante*. Note the extension of s. 43 by ss. 53 and 54, *ante*; and s. 49, *ante*, as to land of the local authority, applying the provisions of this Act as if the land had been purchased. The power to purchase cleared land under s. 51, *ante*, is not relevant; any allowance under this section would be payable at an earlier stage in respect of the clearance order which led to the demolition of the buildings. The present section provides no allowances for persons trading otherwise than in a building, *e.g.*, persons trading on a cleared site or other open land.

**Purchased . . . under the provisions . . . relating to re-development areas.** As to re-development areas, see ss. 55–58, *ante*. The power of purchase here relevant is that in s. 57 (3), *ante*, and is confined to houses.

**Unfit for human habitation, etc.** See s. 57 (3), *ante*. As to unfitness, see ss. 4 and 5, *ante*. As to capability of being rendered fit at reasonable expense, cf. s. 39 (1), *ante*, which is expressed, however, to apply only to Part II of the Act.

**Such reasonable allowance as they think fit.** See the note to s. 32, *ante*.

**Person carrying on any trade or business.** See also s. 61, *ante*, and para. 6 in Part II of the Second Schedule, *post*, as to payments to certain persons carrying on a business in an unfit house.

**Have regard to the period.** Cf. the note to the same phrase in s. 32, *ante*.

**Sub-s. (2).**

**Action taken . . . relating to clearance areas.** Land in the area defined under s. 42, *ante*, will be cleared of buildings under a clearance order or orders or will be purchased for clearance; see s. 43 (1) (a) and (b). Land cleared under a clearance order is intended to be used for building purposes or other development by the owners; see ss. 44 (5) and 51, *ante*. Land purchased for clearance will be dealt with under s. 47, *ante*, which applies both to land in the area and to other land surrounded by or adjoining the area as mentioned in s. 43 (2), *ante*. In any of these cases, the land may be used wholly or in part for houses or other dwellings, or for other purposes; cf. s. 42 (3), *ante*, as to the local authority's rehousing operations. Where the land is used for other purposes, local shopkeepers may well suffer personal hardship by loss of customers; and the present subsection may be used to mitigate their loss. Even where the land is ultimately re-developed for housing purposes there may be a temporary loss of custom, and an allowance may be made, bearing in mind, however, the effect of the future development which might even increase the shop's trade in future years.

The present subsection does not apply to re-development areas, under ss. 55-58, *ante*. Such areas are, however, intended to be used "to a substantial extent" for working-class housing; see s. 55 (1) (c), *ante*.

**Personal hardship.** These words may be intended to limit this subsection to cases where there is real financial difficulty, as opposed to some slight reduction of profits; and may exclude shops which are branches of large companies where, it is suggested, there would be no "personal hardship" of the sort which might arise in the case of a one-man business or small family concern.

**64. Extinguishment of rights of way, easements, &c.—(1)** A local authority may, with the approval of the Minister, by order extinguish any public right of way over any land purchased by them under this Part of this Act, but an order made by an authority under this subsection shall be published in the prescribed manner, and if any objection thereto is made to the Minister before the expiration of six weeks from the publication thereof, the Minister shall not approve the order until he has caused a public local inquiry to be held into the matter.

(2) Where a local authority have resolved to purchase under this Part of this Act land over which a public right of way exists, it shall be lawful under the foregoing subsection for the authority to make and the Minister to approve, in advance of the purchase, an order extinguishing that right as from the date on which the buildings on the land are vacated, or at the expiration of such period after that date as may be specified in the order, or as the Minister in approving the order may direct.

(3) Upon the completion by a local authority of the purchase by them of any land under this Part of this Act, all private rights of way and all rights of laying down, erecting, continuing, or maintaining any apparatus on, under or over that land and all other rights or easements in or relating to that land shall be extinguished and any such apparatus shall vest in the local authority, and any person who suffers loss by the extinguishment or vesting of any such right or apparatus as aforesaid shall be entitled to be paid by the local authority compensation to be determined under and in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919:

Provided that this subsection shall not apply to any right vested in statutory undertakers of laying down, erecting, continuing or maintaining any apparatus, or to any apparatus belonging to statutory undertakers, and shall have effect as respects other matters subject to any agreement which may be made between the local authority and the person in or to whom the right or apparatus in question is vested or belongs.

#### NOTES

**History.** This section contains provisions formerly in s. 46 of the Housing Act, 1936.

**General Note.** Sub-ss. (1) and (2), *supra*, provide a procedure for extinguishing by order any public right of way over land purchased under this Part (Part III) of this Act. Such an order may be made in advance of the purchase to take effect, at the earliest, from the date when the buildings on the land purchased are vacated.

Sub-s. (3), *supra*, provides that private rights of way and all other easements and rights are automatically extinguished on completion of a purchase under this Part of the Act, and also vests apparatus such as drains and pipes in the local authority, subject to two exceptions (i) for rights and apparatus of statutory undertakers, which are dealt with under s. 65, *post*, and (ii) for agreements between the authority and the persons entitled to the right or apparatus. It should be noticed that sub-s. (3) operates even where the purchase is by agreement without the making of a compulsory purchase order.

For similar powers, see ss. 22 to 25 of the Town and Country Planning Act, 1944, as applied by Part IV of the Town and Country Planning Act, 1947 (48 Statutes Supp. 254-259; 25 Halsbury's Statutes (2nd Edn.) 398-402), and as applied by the New Towns Act, 1946 (25 Halsbury's Statutes (2nd Edn.) 459-463). Cf. also s. 3 of the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 8; 3 Halsbury's Statutes (2nd Edn.) 1069) as to the extinguishment of non-vehicular rights of way.

#### Sub-s. (1).

**Local authority.** See ss. 1, 52, 55 (1) and 58, *ante*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**By order.** The form of order is prescribed by reg. 4 of, and the Schedule to, the Housing Act (Extinguishment of Public Right of Way) Regulations, 1937 (S.R. & O. 1937 No. 79), printed in *Hill's Complete Law of Housing* (4th Edn.), at p. 545. As to authentication, see s. 166 (1), *post*.

The land over which the right of way exists should be shown on a map of a scale of 1/500 or thereabouts. It is usual to show the land purchased by pink edging, and the right of way in brown hatching within dotted lines; alternatively, these colours may be replaced by diagonal hatching and diagonal cross-hatching respectively: see Ministry of Housing and Local Government Circulars 75/54 and 44/56, dated 16th December 1954 and 13th August 1956, respectively. The prescribed form of order (in the Schedule to the regulations) should be adapted to refer to the present section, instead of s. 46 of the Housing Act, 1936.

Under the practice of the Ministry, the local authority should submit to the Minister:

- (1) The sealed order and map (two copies, duly authenticated).
- (2) A copy of the prescribed notices and of newspapers advertising the order; in accordance with Circular 44/56 (*ubi supra*) the Ministry, however, would now, it seems, be content to leave the checking of these to the authority.
- (3) A certificate relating to advertisement of the order, to the fact that the street or other highway is in fact a public right of way, and to the purchase or intended purchase (*i.e.*, date of conveyance, or other details).
- (4) A copy of the resolution making the extinguishment order and applying for confirmation.

**Public right of way.** This seems to refer to any street, road, pathway or passage, etc., which is a public highway.

**Over any land.** Land is defined in s. 189 (1), *post* (save where the context otherwise requires) as including any right over land. In the present section, which deals specifically with rights over land, land must presumably bear its more limited meaning of a corporeal hereditament.

**Purchased . . . under this Part.** See ss. 43 (3) 51 (2) and 57 (1) (2) (3), *ante*. Note ss. 53 and 54, *ante*, in connection with s. 43; and ss. 49 and 57 (8), *ante*, as to land, originally belonging to the local authority, to which the provisions of this Act apply as if it had been purchased.

**Published in the prescribed manner.** For power to prescribe, see s. 178, *post*. The regulations, cited *supra*, continue in force by virtue of s. 191 (2), *post*. They require publication of the prescribed form of notice (in the Schedule thereto) in one or more local newspapers, and the affixing of the same form of notice in a prominent position at each end of the right of way. The notices affixed at each end of the right of way must be kept exhibited for at least six weeks. The prescribed form should be adapted to refer to the present section, instead of s. 46 of the Housing Act, 1936, and to require objections to be addressed to the Minister of Housing and Local Government, Whitehall, S.W.1, instead of the Minister of Health (see s. 189 (1), *post*).

**Public local inquiry.** See s. 181, and the notes thereto, *post*. Under sub-s. (2), *supra*, which relates to cases where the purchase has not been completed, the inquiry under this section can often conveniently be combined with the inquiry held in connection with any compulsory purchase order under para. 3 or 5 in Part I of the Third Schedule, *post*.

#### Sub-s. (2).

**Vacated.** See s. 47 (1), *ante*. Where the extinguishment order is made in advance of purchase, its date of operation must be specified by reference to the date of vacating the

buildings, or a period specified by reference thereto. This might prove very inconvenient unless the extinguishment order, or its map, clearly indicates which buildings are referred to. Where the order is made under sub-s. (1), *supra*, after purchase, the date of operation can be the date of approval, or some date thereafter.

**As the Minister . . . may direct.** The Minister may presumably do this by modifying the order accordingly. Grammatically, the phrase "as the Minister may direct" is here an alternative to "as may be specified in the order". Accordingly whether the period is specified in the order or is directed by the Minister it must be expressed to run from the vacating of the buildings.

**Sub-s. (3).**

**Completion . . . of the purchase . . . of any land.** See the notes "Over any land" and "Purchased . . . under this Part", to sub-s. (1), *supra*, as to the meaning of "land", and as to the powers of purchase under this Part (Part III), respectively. The present subsection is of particular importance where land is purchased by agreement without the making of a compulsory purchase order. Private rights are extinguished and apparatus is vested automatically, without any such order as is required under sub-s. (1), *supra*, but subject to any contrary agreement under the proviso to this subsection. The extinguishment of rights, and the vesting of privately owned "apparatus", takes place when the purchase is completed. This refers to the date of conveyance, not the date of notice to treat or contract. See also, as to vesting by deed poll, s. 77 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 926); and as to completion generally, see 10 Halsbury's Laws (3rd Edn.) 81.

**All private rights of way.** It sometimes happens that a private right of way exists over land which is subsequently dedicated as a public highway. Extinguishment of the public right of way by an order under sub-s. (1), *supra*, would not, it seems, affect the private right, which will be extinguished by virtue of this subsection; and accordingly compensation may be payable.

**Apparatus.** For meaning, see s. 189 (1), *post*. As to statutory undertakers' apparatus, see the proviso to this subsection, *supra*, and s. 65, *post*.

**All other rights or easements.** Under the corresponding provision (s. 20) of the Artizans and Labourers Dwellings Improvement Act, 1875 (38 & 39 Vict. c. 36) (repealed), it was held that the section applied to ancient lights in buildings adjoining the lands purchased and that the loss of the right to light was matter for compensation by the authority; see *Badham v. Marris* (1881), 52 L.J. (Ch.) 237, *n*. That decision was followed in *Swainston v. Finn and Metropolitan Board of Works* (1883), 52 L.J. Ch. 235, where it was held that the effect of the section was that upon purchase of land under the Act, all easements whatsoever affecting the land became extinguished, but that the authority must pay compensation to persons injured as provided by the section. In that case the authority had taken a house for the purpose of an improvement scheme. The plaintiffs, the owners of an adjoining building, claimed to be entitled to a right to support from the house taken by the authority, and brought an action to restrain the authority from removing the house in such a way as to interfere with such right. It was held that the only right the plaintiffs could have was to receive compensation under the section. This position should be contrasted with cases where the land is not purchased but cleared under a clearance order; see *Bond v. Norman, Bond v. Nottingham Corporation*, cited in the notes to s. 44, *ante*. Cf. also s. 48 (3) (a), *ante* (retention of certain houses in clearance areas for support only of other houses retained by the local authority). In *Barlow v. Ross* (1890), 24 Q.B.D. 381, C.A.; 11 Digest (Repl.) 308, 2137, it was again held that the section applied to an easement of light and that it included cases where a right or easement was in process of being acquired by enjoyment under the Prescription Act, 1832, at the date of the purchase of the land, and had the effect of extinguishing such inchoate rights, as well as rights or easements already acquired over the land and, therefore, the owner of a house to which there had been access of light over land purchased under the Act for a period of ten years before and ten years after the purchase, did not gain an easement of light under the Prescription Act, 1832, by reason of such twenty years' enjoyment, as any benefit due for the first ten years' user had been swept away. All the members of the Court expressed the opinion that the owner would be entitled to compensation.

**Compensation.** The measure of compensation would in most cases appear to be the difference in value of the premises (*i.e.*, the dominant tenement) with the right or easement, and without it. This is to be determined "under" and "in accordance with" the Acquisition of Land (Assessment of Compensation) Act, 1919 (31 Statutes Supp. 177; 3 Halsbury's Statutes (2nd Edn.) 975). The assessment "in accordance with" that Act will presumably be governed by the rules in s. 2 thereof, with such modifications as may be required. The assessment "under" that Act will now be made by the Lands Tribunal, by virtue of the Lands Tribunal Act, 1949, s. 1 (3) (61 Statutes Supp. 32; 28 Halsbury's Statutes (2nd Edn.) 318). The measure of compensation appears not to be affected by the modifications of the measure of compensation, for compulsory purchases in pursuance of a notice to treat, introduced by the Town and Country Planning Act, 1947, Part V (s. 50 *et seq.*) (48 Statutes Supp. 105; 3 Halsbury's Statutes (2nd Edn.)

1090), and the Town and Country Planning Act, 1954, Part III (s. 30 *et seq.*) (89 Statutes Supp. 99; 34 Halsbury's Statutes (2nd Edn.) 76).

**Statutory undertakers.** For meaning, see s. 189 (1), *post.* As to apparatus of statutory undertakers, see s. 65, *infra.*

**65. Provisions as to apparatus of statutory undertakers.—(1)** Where the removal or alteration of apparatus belonging to statutory undertakers on, under, or over land purchased by a local authority under this Part of this Act, or on, under, or over a street running over, or through, or adjoining any such land, is reasonably necessary for the purpose of enabling the authority to exercise any of the powers conferred upon them by the foregoing provisions of this Part of this Act, the local authority shall have power to execute works for the removal or alteration of the apparatus subject to and in accordance with the provisions of this section.

(2) A local authority who intend to remove or alter any apparatus under the powers conferred by the foregoing subsection shall serve on the undertakers notice in writing of their intention with particulars of the proposed works and of the manner in which they are to be executed, and plans and sections thereof, and shall not commence any works until the expiration of a period of twenty-eight days from the date of service of the notice, and the undertakers may within that period by notice in writing served on the authority—

- (a) object to the execution of the works or any of them on the ground that they are not necessary for the purpose aforesaid; or
- (b) state requirements to which, in their opinion, effect ought to be given as to the manner of, or the observance of conditions in, the execution of the works, as to the execution of other works for the protection of other apparatus belonging to the undertakers or as to the execution of other works for the provision of substituted apparatus whether permanent or temporary;

and—

- (i) if objection is so made to any works and not withdrawn, the local authority shall not execute the works unless they are determined by arbitration to be so necessary;
- (ii) if any such requirement as aforesaid is so made and not withdrawn, the local authority shall give effect thereto unless it is determined by arbitration to be unreasonable.

(3) A local authority shall make to statutory undertakers reasonable compensation for any damage which is sustained by them by reason of the execution by the authority of any works under subsection (1) of this section and which is not made good by the provision of substituted apparatus.

Any question as to the right of undertakers to recover compensation under this subsection or as to the amount thereof shall be determined by arbitration.

(4) Where the removal or alteration of apparatus belonging to statutory undertakers, or the execution of works for the provision of substituted apparatus, whether permanent or temporary, is reasonably necessary for the purposes of their undertaking by reason of the stopping up, diversion, or alteration of the level or width of a street by a local authority under powers exercisable by virtue of this Act, they may, by notice in writing served on the authority, require them at the expense of the authority to remove or alter the apparatus or to execute the works, and where any such requirement is so made and not withdrawn, the local authority shall give effect thereto unless they serve notice in writing on the undertakers of their objection to the requirement within twenty-eight days from the date of service of the notice upon them and the requirement is determined by arbitration to be unreasonable.

(5) At least seven days before commencing any works which they are

authorised or required under the foregoing provisions of this section to execute, the local authority shall, except in case of emergency, serve on the undertakers notice in writing of their intention so to do, and the works shall be executed by the authority under the superintendence (at the expense of the authority) and to the reasonable satisfaction of the undertakers:

Provided that, if within seven days from the date of service on them of notice under this subsection the undertakers so elect, they shall themselves execute the works in accordance with the reasonable directions and to the reasonable satisfaction of the authority, and the reasonable costs thereof shall be repaid to the undertakers by the authority.

(6) Any difference arising between statutory undertakers and a local authority under the last foregoing subsection and any matter which is by virtue of the foregoing provisions of this section to be determined by arbitration shall—

- (a) in the case of a question arising under subsection (3) of this section be referred to and determined by the Lands Tribunal;
- (b) in any other case, be referred to and determined by an arbitrator to be appointed, in default of agreement, by the Minister.

(7) In this section references to the alteration of apparatus include references to diversion and to alterations of position or level.

### NOTES

**History.** This section contains provisions formerly in s. 49 of the Housing Act, 1936, as amended by ss. 1 (3) (a) and 10 (4) of, and the Second Schedule to, the Lands Tribunal Act, 1949. As originally enacted, s. 49 (6) (a) of the Act of 1936 required questions under s. 49 (3) to be determined by an official arbitrator under the Acquisition of Land (Assessment of Compensation) Act, 1919. The formal amendment by s. 10 (4) of the Lands Tribunal Act, 1949, merely repealed certain words relating to procedure, and not the reference to the official arbitrator, but the effect of s. 1 of that Act was to transfer the jurisdiction to the Lands Tribunal; see now sub-s. (6) (a), *supra*.

**General Note.** When land is purchased by the local authority under this Part (Part III) of the Act, it may be necessary to remove or alter sewers, mains, pipes, cables and other apparatus from the land, or from the streets on or adjoining the land. When the apparatus belongs to statutory undertakers it is dealt with under the procedure of the present section; and s. 64, *ante*, does not apply.

Statutory undertakers may:—

- (i) object to works on the ground that they are not necessary;
- (ii) state requirements which ought to be observed;
- (iii) receive compensation for damage suffered and not made good by substituted apparatus (sub-ss. (3) and (6) (a));
- (iv) require the removal, alteration or substitution of apparatus in connection with the stopping up, diversion or alteration of the level or width of streets, by virtue of the powers in this Act;
- (v) superintend works done by the authority under this section, or themselves do the works and recover the cost from the authority.

Disputes are settled by arbitration, before a single arbitrator appointed by agreement or, in default, by the Minister, except for compensation under sub-s. (3), when the Lands Tribunal has jurisdiction to determine both the right to such compensation and the amount thereof.

The present section should be compared with s. 25 of the Town and Country Planning Act, 1944, as applied by the Town and Country Planning Act, 1947 (48 Statutes Supp. 257; 25 Halsbury's Statutes (2nd Edn.) 402), and also as applied by the New Towns Act, 1946 (25 Halsbury's Statutes (2nd Edn.) 462).

#### Sub-s. (1).

**Alteration.** See sub-s. (7), *supra*.

**Apparatus; statutory undertakers.** For meanings, see s. 189 (1), *post*; and note s. 64 (3) proviso, *ante*.

**On, under or over land.** Cf. the note "Over any land" to s. 64 (1), *ante*.

**Purchased . . . under this Part.** Cf. the note to these words in s. 64 (1), *ante*.

**Local authority.** See ss. 1, 52, 55 (1) and 58, *ante*.

**Street.** For meaning, see s. 189 (1), *post*. Note that the present section extends to streets adjoining the land purchased. This is particularly necessary as the boundary of the land purchased is often the middle of a street.

**Sub-s. (2).**

**Serve on the undertakers notice in writing.** As to authentication and service of the authority's notice, see ss. 166 (2) and 169 (1), *post*. This notice of intention to execute works must give or be accompanied by particulars of the works and the manner of execution proposed; and be accompanied by plans and sections.

**Twenty-eight days from . . . service.** The effect of this part of the subsection appears to be that if, for example, a notice dated 28th February is served on 1st March, the undertakers' notice, objecting (para. (a) of this subsection) or stating requirements (para. (b)), must be served at the latest on 29th March. If the undertakers serve no such notice, the works may be started on 30th March.

If the undertakers' notice merely states requirements, the local authority may accept them and start the works or may dispute them and await the outcome of an arbitration under sub-s. (6) (b), or the withdrawal by the undertakers of the requirements. Similarly if the undertakers object, the local authority must await the outcome of an arbitration or the withdrawal of the objection.

**Notice in writing served on the authority.** As to mode of service, see s. 168, *post*.

**Arbitration.** See sub-s. (6) (b), *supra*.

**Sub-s. (3).**

**Reasonable compensation.** The compensation is payable for "any damage" caused by the removal or alteration of apparatus under sub-s. (1), *supra*. Although disputes were formerly referred to an official arbitrator under the Act of 1919 (see the note "History", *supra*), and the procedural provisions of that Act were applied, the assessment was not subject to the rules in s. 2 of that Act, or to the provisions of the Town and Country Planning Acts. Note that the Lands Tribunal is to decide any question as to the right to compensation, as well as the amount thereof.

If the local authority execute the works in a negligent manner and by reason of their negligence cause damage, an action in tort would lie, quite apart from compensation under this section. But if there is no negligence, the only right available is the right to compensation; see *Canadian Pacific Railway Co. v. Roy*, [1902] A.C. 220; 38 Digest 27, 142; *Ash v. Great Northern, Piccadilly and Brompton Railway Co.* (1903), 67 J.P. 417; 38 Digest 46, 274; *Roberts v. Charing Cross, etc. Railway Co.* (1903), 87 L.T. 732; 42 Digest 723, 1423; *Howard-Flanders v. Maldon Corporation* (1926), 90 J.P. 97; Digest Supp. Where a public body, in answer to a claim for compensation, pleaded that the damage was due to its contractor's negligence, and that, therefore, a claim for compensation was not the proper remedy, it was held that the onus was on the public body to prove such negligence; see *St. James and Pall Mall Electric Light Co., Ltd. v. R.* (1904), 73 L.J.K.B. 518; 38 Digest 51, 294.

**Substituted apparatus.** The local authority may have offered to provide this as part of their proposals under sub-s. (2), or in the course of, or in order to avoid, an arbitration thereunder. See also sub-s. (4), as to cases where the undertakers may require works to be executed.

**Sub-s. (4).**

**By virtue of this Act.** See, particularly, s. 64 (1), *ante*. As to certain powers of the London County Council, see s. 66, *post*.

**Within twenty-eight days.** Cf. the note "Within twenty-one days" to s. 11 (1), *ante*, and the note "Twenty-eight days from . . . service" to sub-s. (2), *supra*. Under the present subsection the first notice is given by the undertakers, and the counter-notice by the local authority. If the local authority object, by such a counter-notice, the matter will be decided by arbitration under sub-s. (6) (b), *supra*.

**Sub-s. (5).**

**At least seven days.** The time must be reckoned excluding both the day the works are commenced and that on which notice is served; see *R. v. Shropshire Justices* (1838), 8 Ad. & El. 173; 42 Digest 946, 196; *Young v. Higgon* (1840), 8 Dowl. 212; 42 Digest 947, 206; and *Zouch v. Empsey* (1821), 4 B. & Ald. 522; 42 Digest 956, 287.

**Sub-s. (6).**

**Any difference.** Differences might arise under sub-s. (5), *supra*, as to (i) the costs of the undertakers in superintending work executed by the authority; (ii) the "reasonable satisfaction" of the authority or the undertakers as to work done by the other party; (iii) the actual superintending of work, by the undertakers, or the "reasonable directions" given by the authority; and (iv) the cost of works done by the undertakers.

**Matter . . . to be determined by arbitration.** See sub-ss. (2) (i) and (ii), (3) and (4), *supra*.

**Lands Tribunal.** See the Lands Tribunal Act, 1949 (61 Statutes Supp. 32; 28 Halsbury's Statutes (2nd Edn.) 317) and the Lands Tribunal Rules, 1956 (S.I. 1956 No. 1734). See s. 3 of that Act as to procedure and costs (applying certain provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, as amended); as to the

right of appeal to the Court of Appeal on a point of law; and as to the extent to which the Arbitration Act is applicable.

**Arbitrator.** Part I of the Arbitration Act, 1950 (71 Statutes Supp. 15; 29 Halsbury's Statutes (2nd Edn.) 91) is applicable, subject to certain exceptions; see s. 31 of that Act.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**66. Power to construct streets in clearance areas in London.**—The London County Council may, on any land purchased by them in connection with a clearance area, lay out and construct and sewer such new streets and such widenings and improvements of existing streets as they think fit, and all new streets and new parts of streets so constructed by them shall, when completed, become repairable by the council of the metropolitan borough.

#### NOTES

**History.** This section contains provisions formerly in s. 48 of the Housing Act, 1936.

**London County Council.** The London County Council is a local authority for the purposes of the provisions of this Part of the Act relating to clearance areas by virtue of s. 52, *ante*.

**Land purchased . . . in connection with a clearance area.** *I.e.*, under s. 43 (3) or 51 (2), *ante*; and cf. s. 49, *ante*, concerning land belonging to a local authority.

**Street.** For meaning, see s. 189 (1), *post*.

**Council of the metropolitan borough.** In London such councils are highway authorities; see the Metropolis Management Act, 1855, s. 96 (15 Halsbury's Statutes (2nd Edn.) 540).

#### *Costs of opposing orders, etc.*

**67. Provisions as to costs of persons opposing orders and as to costs of Minister.**—(1) The Minister may make such order as he thinks fit in favour of any owner of any lands included in a clearance order, or in a compulsory purchase order made under this Part of this Act, or in a re-development plan or a new plan, for the allowance of reasonable expenses properly incurred by the owner in opposing the order or the approval of the plan.

(2) All expenses incurred by the Minister in relation to any such order or approval as aforesaid, to such amount as the Minister thinks proper to direct, and all expenses of any person to such amount as may be allowed to him by the Minister in pursuance of the aforesaid power, shall be deemed to be expenses incurred by the local authority under this Part of this Act, and shall be paid to the Minister and to that person respectively in such manner and at such times, and either in one sum or by instalments, as the Minister may order; and the Minister may order interest to be paid at such rate not exceeding five pounds per cent. per annum as he thinks fit upon any sum for the time being due in respect of such expenses as aforesaid.

(3) Any order made by the Minister in pursuance of this section may be made a rule of the High Court, and be enforced accordingly.

#### NOTES

**History.** This section contains provisions formerly in s. 43 of the Housing Act, 1936.

**General Note.** For the right to oppose the confirmation of clearance orders and compulsory purchase orders under this Part of the Act, see the Fifth Schedule and Part I of the Third Schedule, *post*, respectively, and for the right to oppose the approval of a re-development plan or a new plan, see s. 56, *ante*. The application for costs is normally reserved until the owner has been notified of the Minister's decision with regard to the order or plan. If the owner is successful in his opposition he should then make a written application for his costs under this section, and give particulars of the costs incurred by him. Normally the Minister does not give costs to a successful objector unless there are special circumstances which entitle the owner to such costs. It is understood that the Minister takes the view that if a successful objector were normally given costs it would be difficult to resist the claim of a successful authority to costs against an objector. See further the notes to s. 181, *post*, as to local inquiries.

**Sub-s. (1).**

**Minister; owner; land.** For definitions, see s. 189 (1), *post*.

**Clearance order.** As to the making of clearance orders, see, especially, ss. 43 (1) and 44 (1), *ante*, and the Fourth and Fifth Schedules, *post*.

**Compulsory purchase order.** Such orders may be made under s. 43 (3), 51 (2), 54 (1) or 57 (1), *ante*.

**Re-development plan; new plan.** See s. 56, *ante*, as to the preparation of such plans.

**Sub-s. (3).**

**Order . . . may be made a rule of the High Court, etc.** A rule of the High Court is enforced in the same manner as a judgment: see the Judgments Act, 1838, s. 18 (13 Halsbury's Statutes (2nd Edn.) 370). If it is an order for payment of money, it may be enforced like any other judgment against a local authority by mandamus.

*Re-development and re-conditioning by owners*

**68. Re-development by owners.**—(1) Any persons proposing to undertake the re-development of land may submit particulars of their proposals to the local authority, who shall consider the proposals and, if they appear to the authority to be satisfactory, shall give to the persons by whom they were submitted notice to that effect, specifying times within which the several parts of the re-development are to be carried out, and if and so long as the re-development is being proceeded with in accordance with the proposals and within the specified time limits, subject to any variation or extension approved by the authority, no action shall be taken in relation to the land under any of the powers conferred by Part II, or the foregoing provisions of this Part, of this Act.

(2) Where the local authority are satisfied that, for the purpose of enabling re-development to be carried out in accordance with proposals which have been submitted as aforesaid and in respect of which the authority have given notice of their satisfaction, it is necessary that any dwelling-house to which the Rent Acts apply should be vacated, and that suitable alternative accommodation within the meaning of Part IV of this Act is available for the tenant or will be available for him at a future date, the authority may issue to the landlord a certificate that such suitable alternative accommodation is available for the tenant or will be available for him by that future date, and a certificate so issued shall, for the purposes of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, have the like effect as if it had been such a certificate as mentioned in subsection (2) of section three of that Act with respect to accommodation to be provided forthwith or on that future date, as the case may be.

**NOTES**

**History.** This section contains provisions formerly in s. 50 of the Housing Act, 1936.

**General Note.** The section provides:—

- (1) That any persons proposing to undertake the re-development of land may submit particulars of their proposals to the local authority.
- (2) That the local authority shall consider any such proposals and if they appear to them to be satisfactory, shall give the persons by whom they were submitted notice to that effect and specify times within which the several parts of the re-development are to be carried out.
- (3) That if and so long as the re-development is being proceeded with in accordance with the proposals and within the specified time limits (subject to any variation or extension afforded by the authority) no action shall be taken under Part II of this Act or the foregoing provisions of this Part (Part III).
- (4) That where the local authority are satisfied—
  - (a) that for the purpose of enabling any re-development to be carried out in accordance with the proposals it is necessary that any controlled dwelling-house should be vacated, and
  - (b) that suitable alternative accommodation within the meaning of s. 87, *post*, is available for the tenant or will be available for him at a future date,

the authority may issue to the landlord a certificate that such suitable alternative accommodation is or will be available.

- (5) That any such certificate shall have the like effect as if it had been such a certificate as is mentioned in s. 3 (2) of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (103 Statutes Supp. 157; 13 Halsbury's Statutes (2nd Edn.) 1048), with respect to accommodation to be provided forthwith or on that future date, as the case may be.

The two advantages to be gained by a person submitting proposals under this section are, therefore (i) immunity from action by the local authority under Part II, *ante*, or the foregoing provisions of this Part (Part III), so long as the re-development is being proceeded with in a satisfactory manner; and (ii) facilities for obtaining possession of controlled premises.

Note that by s. 70 (1), *post*, the provisions of this section do not have effect in the case of premises comprised in a clearance order, or compulsory purchase order relating to a clearance area, confirmed by the Minister, or in the case of premises comprised in a re-development plan approved by him, or in the case of premises comprised in a demolition order made under Part II, *ante*, which has become operative. The effect of the section is therefore to enable such orders to be anticipated by persons who prefer to carry out the re-development themselves.

#### Sub-s. (1).

**Any persons.** Persons submitting their proposals should inform the local authority of the nature of their interest in the land which they propose to re-develop, so that the authority may be made aware that their interest is such as to enable them to carry out the proposals.

**Particulars of their proposals.** The best way to submit these proposals will probably be to prepare a complete set of plans showing the exact nature of the proposed re-development and to accompany the plans with an explanatory memorandum. If it is proposed to execute the re-development in parts, the memorandum should state the times within which it is proposed to carry out the several parts of the re-development. Steps should be taken to see that the proposals comply with the requirements of the general law, local enactments, town planning schemes, and byelaws in force within the district. Permission of the local planning authority for the area should also be sought. Local authorities who are also the local planning authority will doubtless consider any re-development proposal submitted to them from the town planning as well as the housing aspect.

**Local authority.** For meaning, see s. 1, *ante*, and s. 71 (1), *post*.

**If they appear to the authority to be satisfactory.** If a local authority, acting in good faith, take the view that proposals submitted to them are not satisfactory, no appeal lies against their decision.

Before deciding to treat proposals for re-development as satisfactory, a metropolitan borough council must generally obtain the approval of the London County Council; see s. 71 (2), *post*.

See also the provisions of s. 70 (2), *post*. Where the premises in respect of which proposals are submitted under this section, or s. 69 are comprised in an area which has been defined as a clearance area or a proposed re-development area, the authority may transmit the proposals to the Minister who must consider the proposals in connection with his consideration of the clearance order, compulsory purchase order or development plan, as if the proposals had been objections.

**Give . . . notice.** As to the authentication and service of notices by local authorities, see ss. 166 (2) and 169 (1), *post*.

**No action shall be taken.** It would appear that where such re-development has been sanctioned any action under the powers conferred by Part II of this Act, or the foregoing provisions of this Part, could be restrained by injunction without joining the Attorney-General (*Boyce v. Paddington Borough Council*, [1903] 1 Ch. 109; 16 Digest 488, 3701). Alternatively an owner could seek a writ of prohibition (*R. v. Ministry of Health, Ex parte Davis*, [1929] 1 K.B. 619; Digest Supp.; *R. v. Electricity Commissioners, Ex parte London Electricity Joint Committee Co. (1920), Ltd.*, [1924] 1 K.B. 171; Digest Supp.; *R. v. Minister of Health, Ex parte Villiers*, [1936] 1 All E.R. 817; Digest Supp.).

#### Sub-s. (2).

**Suitable alternative accommodation.** See s. 87, *post*, for meaning in Part IV of this Act.

**Tenant; landlord.** For the meanings of these expressions in relation to dwelling-houses to which the Rent Acts apply, see the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, s. 12 (1) (f), (g) (103 Statutes Supp. 145; 13 Halsbury's Statutes (2nd Edn.) 999).

**Certificate.** The prescribed form of certificate is Form H in Part II of the Schedule to the Housing Act (Overcrowding and Miscellaneous Forms) Regulations, 1937 (S.R. & O. 1937 No. 80), printed in *Hill's Complete Law of Housing* (4th Edn.), p. 552. As to the authentication of certificates and their admission in evidence, see ss. 166 (2) and 167, *post*.

**Rent Acts.** *I.e.*, the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939; see s. 189 (1), *post*.

**Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, s. 3 (2).** 103 Statutes Supp. 157; 13 Halsbury's Statutes (2nd Edn.) 1048. A certificate issued by the housing authority under that subsection is conclusive evidence that suitable alternative accommodation will be available for the tenant by the date specified therein.

**69. Certificates as to condition of houses.**—(1) Any owner of a house in respect of which works of improvement (otherwise than by way of decoration or repair) or structural alteration are proposed to be executed, may submit a list of the proposed works to the local authority with a request in writing that the authority shall inform him whether in their opinion the house would, after the execution of those works, or of those works together with any additional works, be fit for human habitation and would, with reasonable care and maintenance, remain so fit for a period of at least five years.

(2) As soon as may be after receipt of such a list and request as aforesaid the local authority shall take the list into consideration and shall inform the owner whether they are of opinion as aforesaid or not, and in a case where they are of that opinion, shall furnish him with a list of the additional works (if any) appearing to them to be required.

(3) Where the local authority have stated that they are of opinion as aforesaid and the work specified in the list submitted to them, together with any additional works specified in a list furnished by them, have been executed to their satisfaction, they shall, on the application of any owner of the house, and upon payment by him of a fee of one shilling, issue to him a certificate that the house is fit for human habitation and will with reasonable care and maintenance remain so fit for a period (being a period of not less than five nor more than ten years) to be specified in the certificate.

(4) During the period specified in a certificate given under this section, no action shall be taken under the provisions of this Part of this Act relating to clearance areas with a view to the demolition of the house as being unfit for human habitation, or under sections sixteen to eighteen of this Act.

(5) In this section the expression "improvement" includes the provision of additional or improved fixtures or fittings.

#### NOTES

**History.** This section contains provisions formerly in s. 51 of the Housing Act, 1936, as amended by ss. 1 and 51 (4) of, and the First and Third Schedules to, the Housing Act, 1949, and s. 54 (4) of, and the Fifth Schedule to, Housing Repairs and Rents Act, 1954.

**General Note.** This section provides:—

- (1) That any owner of a house may submit a list of works of improvement or structural alterations to the local authority together with a request in writing that the authority will inform him whether in their opinion, the house would, after the execution of those works or of those works together with any additional works, be fit for human habitation and would with reasonable care and maintenance remain so fit for a period of at least five years.
- (2) That the local authority shall consider any such list submitted as aforesaid.
- (3) That the local authority shall inform the owner whether they are of opinion as aforesaid or not. If they are not of such opinion that is the end of the matter; if they are of such opinion then they must furnish the owner with a list of additional works (if any) appearing to them to be required.
- (4) That where a local authority have expressed such opinion as aforesaid and the owner has executed the works specified in his own list, together with the works (if any) specified in a list furnished to him by the authority, to their satisfaction, the authority must, on application of the owner of the house and upon payment of a fee of one shilling, furnish a certificate that the house is fit for human habitation and will with reasonable care and maintenance remain so fit for a period (not less than five years nor more than ten years) to be specified in the certificate.
- (5) That during the period specified in the certificate the local authority will not be able to include the house in a clearance area as being unfit for human habitation or to take any action under ss. 16 to 18 in Part II of this Act, *ante*.

Note that by s. 70 (1), *post*, the provisions of this section do not have effect in the case of premises comprised in a clearance order, or compulsory purchase order relating to a clearance area, confirmed by the Minister, or in the case of premises comprised in a demolition order made under Part II, *ante*, which has become operative. See also the provisions of s. 70 (2), *post*.

**Sub-s. (1).**

**Owner; house.** For definitions, see s. 189 (1), *post*.

**Works of improvement.** By sub-s. (5), *supra*, "improvement" includes the provision of additional or improved fixtures or fittings. The object of this section is to give owners an opportunity of proposing works of improvement or structural alteration (as distinct from works of repair or decoration) with a view to saving from demolition a house which might otherwise be condemned. If the house merely requires repair, this section is not applicable.

The following cases decided under the law of landlord and tenant afford some indication of the distinction between works of improvement and works of repair.

If a floor has become rotten and worn out, the laying of a new floor could be enforced under a covenant to repair (*Proudfoot v. Hart* (1890), 25 Q.B.D. 42, C.A.; 31 Digest (Repl.) 359, 4900). But the laying of a new floor of a different kind or on an improved plan could not be enforced under a covenant to repair (*Soward v. Leggatt* (1836), 7 C. & P. 613, N.P.; 31 Digest (Repl.) 361, 4926; *Proudfoot v. Hart*, *supra*).

Under a lessee's covenant in the lease of a house to well and substantially repair and keep in thorough repair and good condition the demised premises and in such repair and condition to deliver them up at the end of the term the lessee is bound to renew a building or any subsidiary part of the premises which is past ordinary repair. Where, therefore, the front wall of the demised premises consisting of an old house had by natural decay at the end of the term fallen into such a state that it has been condemned as a dangerous structure, it was held that the lessee was liable under his covenant to pull down and rebuild the same (*Lurcott v. Wakely & Wheeler*, [1911] 1 K.B. 905, C.A.; 31 Digest (Repl.) 363, 4953). But in another case where the defects (settlement and bulging of walls) were caused by the natural operation of time and the elements upon a house, the original construction of which was faulty, the defendants were held not liable to repair under a covenant to "when and where and as often as occasion shall require, well, sufficiently, and substantially repair, uphold, sustain, maintain, and mend and keep" (*Lister v. Lane & Nesham*, [1893] 2 Q.B. 212, C.A.; 31 Digest (Repl.) 358, 4893).

Speaking generally, a tenant must replace any parts which are worn out or have become unsuitable where the replacing is necessary to maintain the house in a habitable state (*Lurcott v. Wakely & Wheeler*, *supra*).

While the tenant is not bound under his covenant to repair and improve the building so as to make it something different from what it was originally, he must do such repairs as are suitable for the building having regard to its age and class and he must replace any parts (including the floors or roofs or external walls) which have become defective or dangerous owing to the lapse of time or the effect of the elements (*Lurcott v. Wakely & Wheeler* and *Proudfoot v. Hart*, *supra*). He must also do such repairs as are necessary to preserve the premises (*Proudfoot v. Hart*, *supra*; *Belcher v. M'Intosh* (1839), 8 C. & P. 720; 31 Digest (Repl.) 357, 4870; *Payne v. Haine* (1847), 16 M. & W. 541; 31 Digest (Repl.) 359, 4895; *Saner v. Bilton* (1878), 7 Ch. D. 815; 31 Digest (Repl.) 379, 5077).

**Local authority.** See s. 1, *ante*, and s. 71 (1), *post*.

**Fit for human habitation.** See (by virtue of s. 189 (1), *post*) ss. 4 and 5, *ante*.

**Sub-s. (2).**

**Take the list into consideration.** The submission of a list of proposed works together with a request worded in the terms of sub-s. (1) will oblige local authorities to consider:

- (1) whether any works will make the house fit for human habitation;
- (2) if so, what works, and
- (3) whether the owner's proposed list of works covers everything which in the opinion of the local authority it will be necessary to carry out.

The local authority are not here concerned with the cost of the necessary works. They have merely to decide what works, if any, will make the house, in their opinion fit for human habitation, so that it would remain fit for a period of not less than five years, with reasonable care and maintenance, and then leave it to the owner to say whether he will execute those works. If he is not prepared to carry out the works, then he will not get his immunity certificate and the house may be dealt with at any time under the appropriate provisions of this Act.

**Additional works.** In specifying any additional works, local authorities must be careful to specify only "works of improvement" (otherwise than by way of decoration or repair). If it is desired that the owner should, at the same time, execute works of repair or decoration, this should be approached as an entirely separate matter. The approval of works under this section will not give immunity from notices to repair under s. 9, *ante* (see sub-s. (4) of this section).

**Sub-s. (3).**

**Certificate.** The prescribed form of certificate is Form I in Part II of the Schedule to the Housing Act (Overcrowding and Miscellaneous Forms) Regulations, 1937 (S.R. & O. 1937 No. 80), printed in *Hill's Complete Law of Housing* (4th Edn.), p. 553. As to the authentication of certificates and their admission in evidence, see ss. 166 (2) and 167, *post*.

**Sub-s. (4).**

**No action shall be taken.** Cf. the note to s. 68 (1), *ante*.

Note that the certificate under the present section does not give immunity from action by the local authority under s. 9, *ante* (repairs notices), nor does the grant of such a certificate prevent the inclusion of the house in a re-development area under s. 55, *ante*.

**Clearance areas.** See ss. 42 *et seq.*, *ante*.

**70. Re-development, &c. by owners: excepted cases.**—(1) The provisions of the two last foregoing sections shall not have effect in the case of premises comprised in a clearance order confirmed by the Minister or in a compulsory purchase order so confirmed under the provisions of this Part of this Act relating to clearance areas, or in the case of premises comprised in a demolition order made under Part II of this Act which has become operative, or in the case of premises comprised in a re-development plan approved by him.

(2) Where proposals are submitted to a local authority under either of the two last foregoing sections in relation to premises not comprised in a clearance or compulsory purchase order or re-development plan so confirmed or approved as aforesaid but comprised in an area which has been defined as a clearance area or as a proposed re-development area, the authority may, in lieu of proceeding as mentioned in that section, transmit the proposals to the Minister and the Minister shall deal with the proposals in connection with the consideration by him of the clearance order or compulsory purchase order, or of the re-development plan, as the case may be, as if the proposals had been objections to the order or plan made on the date on which the proposals were submitted to the authority, and if, in confirming the order or plan, the Minister excludes the premises from the clearance area or the re-development area, the authority shall thereupon proceed in relation to the proposals as mentioned in the said section and the provisions thereof shall have effect accordingly.

**NOTES**

**History.** This section contains provisions formerly in s. 52 of the Housing Act, 1936.

**General Note.** This section provides:—

- (1) That the provisions of ss. 68 and 69, *ante*, shall not have effect in the case of
  - (a) premises included in a clearance order confirmed by the Minister,
  - (b) premises included in a compulsory purchase order relating to a clearance area confirmed by the Minister,
  - (c) premises comprised in a demolition order made under Part II, *ante*, which has become operative,
  - (d) premises comprised in a re-development plan approved by the Minister.
- (2) That where proposals submitted to a local authority under ss. 68 or 69 relate to premises which have been included in—
  - (a) a clearance order, or
  - (b) a compulsory purchase order, or
  - (c) a re-development plan
 which has not been confirmed or approved by the Minister, as the case may be, the authority instead of dealing with the proposals in the manner prescribed by ss. 68 or 69, as the case may be, *may* submit the proposals to the Minister.
- (3) That where proposals are submitted to the Minister in this way, the Minister shall deal with the proposals as if they had been objections to the order or plan made on the date on which the proposals were submitted to the authority.
- (4) That if after treating such proposals as objections the Minister excludes the premises from the clearance area or the re-development area, the

authority shall thereupon proceed in relation to the proposals as mentioned in ss. 68 or 69, as the case may be, and the provisions of the sections (68 or 69) shall have effect accordingly.

**Sub-s. (1).**

**Clearance order.** As to the making and confirmation of clearance orders, see ss. 43 (1) and 44, *ante*, and the Fourth and Fifth Schedules, *post*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Compulsory purchase order.** As to the making and confirmation of compulsory purchase orders under the provisions relating to clearance areas, see s. 43 (3)-(5), *ante*, and the Third Schedule, Parts I and II, and Fourth Schedule, *post*.

**Demolition order made under Part II.** *I.e.*, under s. 17 (1) or s. 28, *ante*. As to when such orders become operative, see s. 37 (1), *ante*.

**Re-development plan.** As to the making and approval of re-development plans, see s. 56, *ante*, and the Fourth Schedule, *post*.

**Sub-s. (2).**

**Local authority.** For meaning, see s. 1, *ante*, and s. 71 (1), *infra*.

**Clearance area; re-development area.** For the declaration of such areas, see, respectively, ss. 42 and 55, *ante*.

**As if the proposals had been objections.** For the manner in which the Minister is required to deal with objections to clearance orders, compulsory purchase orders under the provisions relating to clearance areas, and re-development plans, see the Fifth Schedule, para. 5, and the Third Schedule, Part I, para. 3, *post*, and s. 56 (4), *ante*, respectively. In this connection the date on which the proposals were submitted to the local authority becomes important. If objections are *duly* made to a clearance order, compulsory purchase order or re-development plan, the Minister must cause a local inquiry (or in some cases a hearing) to be held before confirming the order or approving the plan. An objection will not be *duly* made unless it is made within the prescribed time. If proposals are not submitted to the local authority within the time allowed for the lodging of objections, the Minister will not be obliged to hold a local inquiry or hearing.

**Excludes the premises from the clearance area.** Although the Minister may exclude the premises from a clearance area, he may authorise their acquisition under s. 43 (2), *ante*, where the order before him is a compulsory purchase order (not a clearance order). In this event the premises will then be included in a compulsory purchase order confirmed by the Minister and the provisions of sub-s. (1), *supra*, will apply so as to exclude the operation of s. 68 or s. 69, *ante*, as the case may be.

**71. Local authority for re-development, &c., by owners in London.**—(1) As respects the administrative county of London other than the City of London the metropolitan borough council shall be the local authority for the purposes of the three last foregoing sections.

(2) Before deciding to treat as satisfactory any proposals submitted to them for such re-development as is mentioned in section sixty-eight of this Act, a metropolitan borough council shall consult the London County Council and shall obtain their approval to the proposals:

Provided that if, within a period of two months from the date on which the metropolitan borough council first inform the London County Council in writing of any such proposals, the latter council fail to give notice to the metropolitan borough council of their approval of, or their refusal to approve the proposals, the London County Council shall be deemed to have given their approval thereto for the purposes of this section.

NOTES

**History.** This section contains provisions formerly in s. 53 of the Housing Act, 1936.

**Administrative county of London; metropolitan borough council.** See the notes to s. 1, *ante*.

**City of London.** The local authority as respects the City of London is the Common Council; see s. 1 (2), *ante*.

**Consult.** See the note "Consultation" to s. 16 (4), *ante*.

**Within . . . two months.** Cf. the note "Within twenty-one days" to s. 11 (1), *ante*.

*Demolition of obstructive buildings*

**72. Power of local authority to order demolition of obstructive building.**—(1) The local authority may serve upon the owner or owners of a building which appears to the authority to be an obstructive building notice of the time (being some time not less than twenty-one days after the service of the notice) and place at which the question of ordering the building to be demolished will be considered by the authority; and the owner or owners shall be entitled to be heard when the matter is so taken into consideration.

(2) If, after so taking the matter into consideration, the authority are satisfied that the building is an obstructive building and that the building or any part thereof ought to be demolished, they may make a demolition order requiring that the building or that part thereof shall be demolished, and that the building, or such part thereof as is required to be vacated for the purposes of the demolition, shall be vacated within two months from the date on which the order becomes operative, and if they do so, shall serve a copy of the order upon the owner or owners of the building.

(3) Any person aggrieved by a demolition order made under this section may, within twenty-one days after the date of the service of the order, appeal to the county court within the jurisdiction of which the premises to which the order relates are situated and no proceedings shall be taken by the local authority to enforce any such order in relation to which an appeal is brought before the appeal has been finally determined, so, however, that no appeal shall lie at the instance of a person who is in occupation of the premises to which the order relates under a lease or agreement of which the unexpired term does not exceed three years.

On an appeal under this subsection the judge may make such order either confirming or quashing or varying the order as he thinks fit, and sections thirty-seven and thirty-eight of this Act shall apply to any such appeal.

(4) In this section the expression "obstructive building" means a building which, by reason only of its contact with, or proximity to, other buildings, is dangerous or injurious to health.

(5) This section shall not apply to a building which is the property of statutory undertakers, unless it is used for the purposes of a dwelling, showroom, or office, or which is the property of a local authority.

**NOTES**

**History.** Sub-ss. (1), (2), (4) and (5) of this section contain provisions formerly in s. 54 of the Housing Act, 1936; and sub-s. (3) contains provisions formerly in ss. 15 (1) and (2) and 55 (5) of that Act.

**General Note.** This section enables a local authority to take action in respect of any building which appears to them to be by reason of its contact with, or proximity to, other buildings dangerous or injurious to health. The local authority may serve on the owner or owners of the building notice of the time (not less than twenty-one days after the service of the notice) and place at which the question of ordering the demolition of the building will be considered by the authority. On considering the question they must hear and consider any representation which the owner may wish to make. If after consideration they are satisfied that the building or part of it should be demolished they will make a demolition order. A copy of the order must be served upon the owner or owners of the building. Any person aggrieved by such an order may appeal, within twenty-one days after the date of service, to the county court. No appeal will lie, however, at the instance of a person in occupation under a lease or an agreement of which the unexpired term does not exceed three years. The section does not apply to the property of statutory undertakers unless it is used as a dwelling-house, showroom or an office; neither does it apply to the property of a local authority.

**Sub-s. (1).**

**Local authority.** For meaning, see s. 1, *ante*, and s. 75, *post*.

**Serve.** As to mode of service, see s. 169 (1), *post*.

**Owner or owners.** See the definition of "owner" in s. 189 (1), *post*.

**Appears.** The authority may have to consider the matter further if the owner asks to be heard. A *prima facie* case is sufficient at this stage; cf. the notes "On consideration" and "Satisfied" to s. 16 (1), *ante*.

**Obstructive building.** See sub-s. (4), *supra*.

**Notice.** The form in use up to 30th November 1957 was Form 4A in the Housing Act (Forms of Orders and Notices) Regulations, 1937 (S.R. & O. 1937 No. 78). Those regulations were replaced by the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), and that instrument contains no corresponding form of notice. As to the authentication of notices, see s. 166 (2), *post*.

**Not less than twenty-one days; entitled to be heard.** Cf. the notes to s. 16 (1) and (2), *ante*.

In order to afford the owner or owners a proper hearing, the local authority should inform them of the reasons why they are considering making a demolition order. The authority should also avoid giving the impression to owners that they have come to a final conclusion and that nothing the owner or owners can say will make any difference. The Act appears to contemplate that upon hearing the owner or owners the authority may change their mind. Even though the authority are quite satisfied after hearing the owner or owners that the building is an obstructive building, they are not bound to make a demolition order—the making of such an order is discretionary.

**Sub-s. (2).**

**Demolition order.** The form in use up to 30th November 1957 was Form 7 in the Housing Act (Forms of Orders and Notices) Regulations, 1937 (S.R. & O. 1937 No. 78), as amended by S.I. 1954 No. 1632, but no form is now prescribed; cf. the note "Notice" to sub-s. (1), *supra*. As to the authentication of orders, see s. 166 (1), *post*. See also as to demolition orders under this section, ss. 73 and 74, *post*, and s. 162, *post* (determination of leases).

**Vacated.** See, further, s. 73, *infra*.

**Within two months.** Cf. the note "Within twenty-one days" to s. 11 (1), *ante*. "Months" means calendar months; see the Interpretation Act, 1889, s. 3 (24 Halsbury's Statutes (2nd Edn.) 207).

**Date on which the order becomes operative.** See (by virtue of sub-s. (3), *supra*) s. 37, *ante*.

**Sub-s. (3).**

**Person aggrieved; within twenty-one days.** Cf. the notes to s. 11 (1), *ante*.

**Appeal has been finally determined.** See (by virtue of sub-s. (3), *supra*) s. 37 (2), *ante*.

**Sub-s. (4).**

**Building.** The powers in this section are not restricted to dwelling-houses. "Building" under the corresponding provisions (s. 38) of the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70) (repealed), was held to include a building constructed for use and solely used as a workshop; see *Jackson v. Knutsford Urban Council*, [1914] 2 Ch. 686; 38 Digest 214, 488. In this connection note the reference to a show-room or office in sub-s. (5), *supra*; and see also *Grosvenor (Lord) v. Hampstead Junction Rly. Co.* (1857), 1 De G. & J. 446; 11 Digest (Repl.) 195, 608.

**Dangerous or injurious to health.** It will suffice to show that the building is dangerous to health without showing that it is also injurious to health; cf. s. 43 (1) (a), *ante*.

**Sub-s. (5).**

**Statutory undertakers.** For definition, see s. 189 (1), *post*.

**Local authority.** For meaning in this context, see s. 189 (2), *post*.

**73. Recovery of possession of building subject to demolition order under Part III.—**(1) Where a demolition order under the foregoing provisions of this Part of this Act has become operative, the local authority shall serve on the occupier of any building, or any part of any building, to which the order relates a notice—

- (a) stating the effect of the order,
- (b) specifying the date by which the order requires the building to be vacated, and
- (c) requiring him to quit the building before the said date or before the expiration of twenty-eight days from the service of the notice, whichever may be the later.

(2) If at any time after the date on which the notice requires the building to be vacated any person is in occupation of the building, or of any part thereof, the local authority or any owner of a building may make complaint to a magistrates' court and thereupon the court shall by its warrant in the form set out in the Schedule to the Small Tenements Recovery Act, 1838,

or in a form to the like effect, order vacant possession of the building, or of the part thereof, to be given to the complainant within such period not being less than two weeks nor more than four weeks as the court may determine.

(3) Any person who, knowing that a demolition order under this Part of this Act has become operative and applies to any building, enters into occupation of that building, or of any part thereof, after the date by which the order requires that building to be vacated, or permits any other person to enter into such occupation after that date, shall be liable on summary conviction to a fine not exceeding twenty pounds and to a further fine of five pounds for every day, or part of a day, on which the occupation continues after conviction.

(4) Nothing in the Rent Acts shall be deemed to affect the provisions of this section relating to the obtaining possession of a building.

#### NOTES

**History.** Sub-ss. (1) and (2) of this section contain provisions formerly in s. 155 (1) of the Housing Act, 1936; sub-s. (3) contains provisions formerly in s. 155 (3) of that Act; and sub-s. (4) contains provisions formerly in s. 156 (1) (a) of that Act, as amended by s. 1 of, and the First Schedule to, the Housing Act, 1949. For other provisions of the present Act derived from those sections, see the Table of Repeals and Replacements (Appendix I, *post*).

**General Note.** When a demolition order under s. 72, *ante*, becomes operative the local authority serve a notice on the occupier stating the effect of the order, specifying the date on which the building is to be vacated, and requiring him to quit before that date or before twenty-eight days from the service of the notice whichever is the later. If need be possession can be determined under the Small Tenements Recovery Act, 1838. Sub-s. (3) makes it an offence to enter or permit entry into occupation of a building after the date on which it is required to be vacated. Possession may be obtained notwithstanding the provisions of the Rent Acts.

**Sub-s. (1).**

**Demolition order . . . has become operative.** Demolition orders made under s. 72 (2), *ante*, become operative as provided by s. 37, *ante*; see s. 72 (3), *ante*.

**Local authority.** For meaning, see s. 1, *ante*, and s. 75, *post*.

**Serve.** As to mode of service, see s. 169 (1), *post*.

**Notice.** The form in use up to 30th November 1957 was Form 8A in the Housing Act (Forms of Orders and Notices) Regulations, 1937 (S.R. & O. 1937 No. 78), but no form is now prescribed; cf. the note to s. 72 (1), *ante*. As to the authentication of notices, see s. 166 (2), *post*.

**Sub-ss. (2)–(4).**

Cf. the notes to s. 22 (2), (4) and (5), *ante*, which subsections are derived from the same provisions of the Housing Act, 1936, as sub-s. (2)–(4), *supra*.

#### 74. Effect of order for demolition of obstructive building.—

(1) If, before the expiration of the period within which a building in respect of which a demolition order is made under this Part of this Act is thereby required to be vacated, any owner or owners, whose estate or interest, or whose combined estates or interests, in the building and the site thereof is or are such that the acquisition thereof by the local authority would enable the local authority to carry out the demolition provided for by the order, make to the local authority an offer for the sale of that interest, or of those interests, to the local authority at a price to be assessed, as if it were compensation for a compulsory purchase subject to observance of the rules specified in Part III of the Third Schedule to this Act, the authority shall accept the offer and shall, as soon as possible after obtaining possession, carry out the demolition.

(2) If no such offer as is mentioned in the foregoing subsection is made before the expiration of the said period, the owner or owners of the building shall carry out the demolition provided for by the order before the expiration of six weeks from the last day of that period, or, if the building, or such part thereof as is required to be vacated, is not vacated until after that day, before the expiration of six weeks from the day on which it is vacated or,

in either case, before the expiration of such longer period as in the circumstances the local authority deem reasonable, and if the demolition is not so carried out the local authority shall enter and carry out the demolition and sell the materials rendered available thereby.

(3) The provisions of subsections (2) to (5) of section twenty-three of this Act shall apply in relation to any expenses incurred by a local authority under the last foregoing subsection and to any surplus remaining in the hands of the authority, as they apply in relation to any expenses or surplus in a case where a house is demolished in pursuance of a demolition order made under Part II of this Act, with the substitution of references to the building demolished under this section for references to the premises demolished under the said section twenty-three.

(4) Where the demolition of a building is carried out under subsection (2) of this section, either by the owner or owners thereof or by the local authority, compensation shall be paid by the authority to the owner or owners in respect of loss arising from the demolition, and that compensation shall, notwithstanding that no land is acquired compulsorily by the local authority, be assessed in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919, subject to observance of the rules set out in Part III of the Third Schedule to this Act except that paragraphs (2) to (6) of section two of the said Act of 1919 shall not apply and that paragraph (1) of the said section two shall have effect with the substitution of a reference to demolition for the reference to acquisition.

(5) Subsection (1) of section thirty-three of this Act shall have effect for the purpose of enabling the owner of a house to obtain notice of any proceedings for the making of a demolition order under this Part of this Act with respect to the house.

(6) Nothing in the provisions of this Part of this Act relating to demolition orders shall prejudice or interfere with the rights or remedies of any owner for the breach, non-observance or non-performance of any covenant or contract entered into by a tenant or lessee in reference to any house in respect of which such an order is made; and if any owner is obliged to take possession of a house in order to comply with any such order, the taking possession shall not affect his right to avail himself of any such breach, non-observance or non-performance which has occurred before he so took possession.

#### NOTES

**History.** Sub-ss. (1) to (5) of the section contain provisions formerly in s. 55 of the Housing Act, 1936, as amended by s. 10 (4) of, and the Second Schedule to, the Lands Tribunal Act, 1949, and sub-s. (6) contains provisions formerly in ss. 19 (2) and 55 (5) of the Act of 1936.

**General Note.** Under this section the owner or owners of an obstructive building in respect of which a demolition order has been made under s. 72 (2), *ante*, may offer to sell the building to the local authority. It should be noted that:—

- (1) The offer must be made before the expiration of the period within which the building is required by the order to be vacated.
- (2) The offer must be an offer to sell an estate or interest the acquisition of which would enable the local authority to carry out the demolition provided for by the order.
- (3) The offer must be an offer to sell the estate or interest at a price to be assessed as if it were compensation for a compulsory purchase subject to observance of the rules specified in Part III of the Third Schedule, *post*.
- (4) If the offer is duly made, the local authority must accept it.
- (5) The local authority must, as soon as possible after obtaining possession, carry out the demolition.

Where no offer as aforesaid is made, the owner or owners must demolish the obstructive building:—

- (i) within six weeks from the last day of the period within which the building must be vacated; or
- (ii) if the building is not vacated until after the last day of the period within which it ought to have been vacated, before the expiration of six weeks from the date on which it is vacated; or

(iii) in either case, before the expiration of such longer period as the local authority may allow.

If the demolition is not so carried out, the local authority must enter and carry out the demolition and sell the materials rendered available thereby.

The provisions of s. 23 (2)–(5) in Part II, *ante*, are applied so as to enable the local authority to recover the expenses incurred in demolishing an obstructive building, after giving credit for any amount realised by the sale of materials, or to pay over any surplus to the owner or owners of the premises. Where the building is demolished either by the owner or by the local authority in default of the owner compensation is to be paid by the authority, in accordance with sub-s. (4), *supra*, for the loss arising from the demolition. This section also contains (see sub-ss. (5) and (6), *supra*) provisions for the protection of owners of houses (but not of owners of other buildings) corresponding to those of s. 33 in Part II, *ante*.

**Sub-s. (1).**

**Period within which a building . . . is . . . to be vacated.** See s. 72 (2), *ante*.

**Owner or owners.** See the definition of "owner" in s. 189 (1), *post*.

**Local authority.** For meaning, see s. 1, *ante*, and s. 75, *infra*.

**Shall accept.** Note that if the owner makes the offer the authority have no alternative but to accept.

**Sub-s. (2).**

**Owner . . . shall carry out the demolition.** For the power of the court to authorise an owner to demolish a house on default of another owner, see s. 163, *post*.

**Enter and carry out the demolition.** Penalties for obstruction may be imposed under s. 160, *post*.

**Sub-s. (4).**

**Acquisition of Land (Assessment of Compensation) Act, 1919.** 31 Statutes Supp. 177; 3 Halsbury's Statutes (2nd Edn.) 975.

**Sub-s. (5).**

**House.** For meaning, see s. 189 (1), *post*. Note that this subsection and sub-s. (6), *supra* (and s. 33 (1) in Part II, *ante*, which expressly extends to the provisions of this Part (Part III) relating to demolition orders), refer only to owners of houses and not to owners of other buildings in respect of which demolition orders under s. 72 (2), *ante*, may be made. *Quære* whether this is due to inadvertence since the corresponding provision (s. 55 (5)) of the Housing Act, 1936, extended to any description of building or part of a building to which such a demolition order applied.

**Sub-s. (6).**

**Provisions of this Part . . . relating to demolition orders.** *I.e.*, this section and ss. 72 and 73, *ante*.

**House.** See the note to sub-s. (5), *supra*.

**75. Local authority for demolition of obstructive buildings in London.**—As respects the administrative county of London other than the City of London the metropolitan borough council shall be the local authority for the purposes of the three last foregoing sections.

**NOTES**

**History.** This section contains provisions formerly in s. 56 of the Housing Act, 1936.

**Administrative County of London; metropolitan borough council.** See the notes to s. 1, *ante*.

**City of London.** The local authority as respects the City of London is the Common Council; see s. 1 (2), *ante*.

**PART IV**

**ABATEMENT OF OVERCROWDING**

*General provisions*

**76. Duty of local authority to inspect and to make reports and proposals as to overcrowding.**—If it appears to a local authority that occasion has arisen for a report on overcrowding in their district, or any part thereof, in addition to the report made by them under subsection (1) of section fifty-seven of the Housing Act, 1936, before the commencement

of this Act, or the Minister so directs, it shall be the duty of the authority to cause a further inspection to be made and to prepare and submit a report showing the result of the inspection and the number of new houses required in order to abate overcrowding in the district or the part of the district and, unless they are satisfied that the required number of new houses will be otherwise provided, to prepare and submit to the Minister proposals for the provision thereof. Where the Minister gives a direction under this section he may, after consultation with the local authority, fix dates before which the performance of the said duties is to be completed.

### NOTES

**History.** This section contains provisions formerly in s. 57 of the Housing Act, 1936, which in turn was derived from s. 1 of the Housing Act, 1935.

**General Note.** This section and ss. 77-90, *post*, form Part IV of this Act, dealing with the abatement of overcrowding. Section 90 deals with houses let in lodgings or occupied by members of more than one family. It is derived from s. 12 of the Housing Repairs and Rents Act, 1954, and may be compared with s. 36 in Part II, *ante*, derived from s. 11 of that Act.

The remainder of this Part (ss. 76-89) is concerned with overcrowding of "any premises used as a separate dwelling by members of the working classes or of a type suitable for such use"; see the definition of "dwelling-house" in s. 87, *post*. With minor changes, these provisions reproduce, section by section, Part IV (ss. 57-70) of the Housing Act, 1936, which in turn was mainly derived from ss. 1-12 of the Housing Act, 1935. For an explanation of the provisions as originally enacted in the Act of 1935, reference may be made to Memorandum B, issued by the Ministry of Health in October 1935, and mentioned in the General Note to s. 77, *post*. The provisions of this Part appear not to apply to moveable dwellings such as caravans; as to these, see ss. 268 and 269 of the Public Health Act, 1936 (19 Halsbury's Statutes (2nd Edn.) 455, 456), and s. 135 of the Public Health (London) Act, 1936 (15 Halsbury's Statutes (2nd Edn.) 967).

The present section makes specific reference to s. 57 of the Act of 1936 (repealed by s. 191 (1) and the Eleventh Schedule, *post*) and does not reproduce the whole of that section. Section 57 (1) of the Act of 1936 required every local authority, before such dates as might be fixed by the Minister as respects their district, to inspect their district for overcrowded dwelling-houses, to report to the Minister the result of the inspection and the number of new houses required to abate overcrowding, and, unless they were satisfied that the required houses would be otherwise provided, to submit proposals to the Minister for the provision thereof. The Minister duly fixed the dates for these purposes, and the duties of local authorities under the subsection were completed before the 1939 war. It was provided, however, by s. 57 (2) of the Act of 1936 that, if at any time or times after effect had been given to s. 57 (1), it appeared to a local authority that occasion had arisen therefor, or the Minister so directed, it should be the duty of the local authority to cause a further inspection to be made and to submit a further report, and (if necessary) further proposals, to the Minister as respects their district or any part of it. The present section continues these obligations in cases where the local authority considers it necessary or the Minister requires it. The Minister is given the same power as in the earlier Act to fix dates for the carrying out of the duties of inspection, etc., where he himself has directed the further inspection.

As to prescribed forms for use under this Part of the Act, see the General Note to s. 77, *post*.

**Local authority.** See s. 1, *ante*, and as to London, see ss. 88 and 89, *post*.

**Report on overcrowding.** The scope of the local authority's original report under s. 57 (1) (repealed) of the Act of 1936 (or the corresponding provision of the Act of 1935), was to show "the result of the inspection and the number of new houses required in order to abate overcrowding in their district". A further inspection and report, and any further proposals, under s. 57 (2) of the Act of 1936, now replaced by the present section, might relate to the whole district or any part thereof. For the meaning of "overcrowding", see s. 77 and the Sixth Schedule, *post*, which replace s. 58 of, and the Fifth Schedule to, the Act of 1936. Cf. s. 181 (2), *post*, as the general power of the Minister to require a report on the circumstances of any area.

**Commencement of this Act.** *I.e.*, 1st September 1957; see s. 193 (2), *post*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Directs.** Note the saving, in s. 191 (2), *post*, for directions given before 1st September 1957.

**Inspection.** Cf. s. 3, *ante*, as to the duty to inspect with a view to ascertaining whether houses are unfit for human habitation, and s. 91, *post*, as to the periodic review of the housing conditions and needs of the district. In connection with

measuring rooms to ascertain the "permitted number" of persons sleeping in a dwelling-house, see s. 77 (1) (b) and the Sixth Schedule, *post*, and the power of entry under s. 159 (d), *post*. For the penalty for obstruction, see s. 160, *post*. As to the landlord's duty to inform the authority of overcrowding, see s. 83, *post*. As to requiring information, see s. 85 (3), *post*.

**New houses required.** Cf. para. (b) of the definition of "house" in s. 189 (1), *post*, and the definition of "dwelling-house" in s. 87, *post*. Having regard to the scope and object of this Part (Part IV) of the Act, the new houses required to abate overcrowding should probably be such as will provide "suitable alternative accommodation" as defined in s. 87, *post*. The enforcement of this Part under ss. 78 and 85, *post*, partly depends on such accommodation being offered.

**Consultation.** On what constitutes consultation, see especially *Rollo v. Minister of Town and Country Planning*, [1948] 1 All E.R. 13, C.A.; 2nd Digest Supp., and *Re Union of Whippingham and East Cowes Benefices*, *Derham v. Church Comrs. of England*, [1954] 2 All E.R. 22, P.C.; 3rd Digest Supp.

**The said duties.** *I.e.*, the duty of the local authority to cause an inspection to be made, to submit a report, and to submit proposals for the provision of new houses. The section does not go so far as to empower the Minister to fix a date for the actual provision of the houses. As to the general duty of the authority to enforce this Part (Part IV) of this Act, see s. 85, *post*.

**Housing Act, 1936, s. 57 (1).** 11 Halsbury's Statutes (2nd Edn.) 503; that subsection is repealed by s. 191 (1) and the Eleventh Schedule, *post*, and is not re-enacted in this Act. For its effect, see the General Note, *supra*. So much of s. 57 (1) of that Act as was incorporated by reference in s. 57 (2) thereof is now set out in the present section.

**77. Definition of overcrowding.**—(1) A dwelling-house shall be deemed for the purposes of this Act to be overcrowded at any time when the number of persons sleeping in the house either—

- (a) is such that any two of those persons, being persons ten years old or more of opposite sexes and not being persons living together as husband and wife, must sleep in the same room; or
- (b) is, in relation to the number and floor area of the rooms of which the house consists, in excess of the permitted number of persons as defined in the Sixth Schedule to this Act.

(2) In determining for the purposes of this section the number of persons sleeping in a house, no account shall be taken of a child under one year old, and a child who has attained one year and is under ten years old shall be reckoned as one-half of a unit.

#### NOTES

**History.** This section contains provisions formerly in s. 58 of the Housing Act, 1936, which in turn was derived from s. 2 of the Act of 1935.

**General Note.** There are two standards in sub-s. (1), *supra*. A dwelling-house is regarded as overcrowded if *either*:

- (a) two persons over 10 years old, of opposite sexes, who are not living together as man and wife, must sleep in the same room; or
- (b) the "permitted number" is exceeded.

Examples of the calculation of the permitted number, under sub-s. (1) (b) and (2), *supra*, and the Sixth Schedule, *post*, are given in Memorandum B, issued in October 1935 by the Ministry of Health on the Act of 1935 and printed in *Hill's Complete Law of Housing* (4th Edn.), pp. 608 *et seq.* By s. 81 (1), *post*, a summary of the present section is to be contained in every rent book or similar document. For the form prescribed see, by virtue of s. 191 (2), *post*, Part I of the Schedule to the Housing Act (Overcrowding and Miscellaneous Forms) Regulations, 1937 (S.R. & O. 1937 No. 80), printed in *Hill, op. cit.*, p. 547. Those regulations also prescribe the method of measuring the "floor area" for the purposes of sub-s. (1) (b), *supra* (see reg. 4); and the following forms (Schedule, Part II, to the regulations):—

- Form A: Notice before entry for the purpose of measurement of the rooms of a house (see s. 159 (d), *post*);
- Form B: Notice requiring statement of persons sleeping in a house (s. 85 (3), *post*);
- Form C: Notice that a house is overcrowded (s. 78 (5), *post*);
- Form D: Notice to abate overcrowding (s. 85 (2), *post*);
- Form E: Licence for temporary use of house by persons in excess of the permitted number (s. 80, *post*);

Form F: Notice revoking licence to exceed the permitted number of persons (s. 80 (3), *post*);

Form G: Certificate as to "suitable alternative accommodation" (see definition in s. 87, *post*);

Form H: Certificate of availability of suitable alternative accommodation (see s. 68 (2), *ante*, relating to re-development by owners);

Form I: Certificate of fitness of a house (s. 69, *ante*).

The above-mentioned Memorandum B, and the regulations, are also reprinted in *Lumley's Public Health* (12th Edn.), Vol. VI, pp. 936-956, 1051-1056.

**Sub-s. (1).**

**Dwelling-house.** For meaning, see s. 87, *post*. Note, in particular, the reference to members of the working classes. The definition is such that it might possibly apply to a single room, if used as a separate dwelling.

**Living together.** Overcrowding will not arise under sub-s. (1) (a) if the persons are living together as husband and wife though they may be unmarried.

**Must sleep in the same room.** "Room" is defined in s. 87, *post*, so as to exclude any room not normally used in the locality as a living room or as a bedroom. Overcrowding arises under sub-s. (1) (a) only where the circumstances are such that the two persons are forced to sleep in the same room. It is immaterial if they elect to do so of their own choice leaving other rooms vacant. Thus, if a dwelling-house consists of a living room and a bedroom, a scullery and a bathroom (*i.e.*, two rooms within the terms of the definition) and is occupied by a man and his daughter who is over the age of 10 years, there is no overcrowding under this paragraph even if they in fact both sleep in the same room, because, in theory, one of them could sleep in the living room. There may, however, be overcrowding under sub-s. (1) (b).

**Floor area.** As to ascertainment of floor area, see s. 81 (3), *post*, and reg. 4 of the Housing Act (Overcrowding and Miscellaneous Forms) Regulations, 1937, cited in the General Note, *supra*.

**Permitted number.** Note sub-s. (2), *supra*, as to the reckoning of some children as one-half a unit, and disregarding those under one year old. The Sixth Schedule, *post*, indicates how the number is calculated; see the General Note, *supra*, as to Memorandum B issued by the Ministry of Health. See also s. 79, *post*, as to the Minister increasing the permitted number, and s. 80, *post*, as to licences to exceed the permitted number.

**Sub-s. (2).**

**For the purposes of this section.** *I.e.*, in connection with the "permitted number" under sub-s. (1) (b), *supra*. It will be seen that sub-s. (1) (a) does not apply to children under ten.

**Under one year, etc.** A person is deemed to attain a given age at the beginning of the day immediately preceeding the relevant anniversary of his or her birth; see *Re Shurey, Savory v. Shurey*, [1918] 1 Ch. 263; 28 Digest 140, 12.

**78. Offences in relation to overcrowding.**—(1) Subject to the provisions of this Part of this Act, if the occupier or the landlord of a dwelling-house causes or permits it to be overcrowded, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five pounds and to a further fine not exceeding two pounds in respect of every day subsequent to the day on which he is convicted on which the offence continues.

(2) The occupier of a dwelling-house which was occupied on the appointed day shall not be guilty of an offence under this section in respect of the overcrowding thereof so long as all the persons sleeping in the house are persons who were living there on the appointed day and have thereafter lived there continuously, or children born after that day of any of those persons, unless—

(a) suitable alternative accommodation is offered to the occupier and he fails to accept it; or

(b) suitable alternative accommodation is offered to some person living in the house who is not a member of the occupier's family and whose removal is reasonably practicable in all the circumstances, and the occupier fails to require his removal.

(3) Where a dwelling-house which would not otherwise be overcrowded becomes overcrowded by reason of a child attaining one of the ages referred to in the last foregoing section, then, if the occupier applies to the local

authority for suitable alternative accommodation or has so applied before the date when the child attains that age, he shall not be guilty of an offence under this section in respect of the overcrowding of the house after the date of his application, so long as all the persons sleeping in the house are persons who were living there on the date when the child attained that age and thereafter continuously live there, or children born after that date of any of those persons, unless—

- (a) suitable alternative accommodation is offered to the occupier on or after the date when the child attains that age, or, if he has applied before that date, is offered at any time after the application, and he fails to accept it; or
- (b) the removal from the house of some person not a member of the occupier's family is on that date or thereafter becomes reasonably practicable having regard to all the circumstances (including the availability of suitable alternative accommodation for that person), and the occupier fails to require his removal.

(4) Where the persons sleeping in an overcrowded house include a member of the occupier's family who does not live there but is sleeping there temporarily, the occupier shall not be guilty of an offence under this section in respect of the overcrowding of the house unless the circumstances are such that he would be so guilty if that member of his family were not sleeping in the house.

(5) The landlord of an overcrowded house shall be deemed to cause or permit it to be overcrowded—

- (a) if, after notice in writing that it is overcrowded in such circumstances as to render the occupier thereof guilty of an offence has been served upon the landlord or his agent by the local authority, the landlord fails to take such steps as it is reasonably open to him to take for securing the abatement of the overcrowding, including if necessary legal proceedings for possession of the house; or
- (b) if, when letting the house the landlord, or any person effecting the letting on the landlord's behalf, had reasonable cause to believe that it would become overcrowded in such circumstances as to render the proposed occupier thereof guilty of an offence, or failed to make inquiries of the proposed occupier as to the number, age and sex of persons who would be allowed to sleep in the house;

and not otherwise.

#### NOTES

**History.** This section contains provisions formerly in s. 59 of the Housing Act, 1936, which in turn was derived from s. 3 of the Act of 1935. References to the "appointed day" are now omitted from sub-ss. (1), (3) and (5) (b), as no longer required. See the note "Appointed day" to s. 87, *post*, as to the appointment of days under the Acts of 1935 and 1936.

**General Note.** Sub-s. (1) provides that an occupier or landlord who causes or permits overcrowding shall, subject to certain conditions, be guilty of an offence and be liable on conviction to a fine not exceeding five pounds and to a further fine not exceeding two pounds for every day the offence continues after the first conviction.

Sub-s. (2) provides that an occupier will not be guilty of an offence where the overcrowding arises out of the occupation of his dwelling house by persons who have been living there continuously since the appointed day, and by their children born since that date. This defence ceases to be available when suitable alternative accommodation (which is defined in s. 87, *post*) is offered to him and rejected, and also when accommodation is offered to one or more of the residents who are not members of the occupier's family, and the occupier does not then require their removal. Because of the lapse of time since days were appointed for the whole country, it is perhaps unlikely that anyone will now be in a position to avail himself of this defence. Sub-s. (3) provides the occupier with a defence when the overcrowding is the result of a child's attaining the age of 1 or 10 years, and thus increasing the number of units sleeping in the house (cf. s. 77 (2), *ante*). The occupier must, however, have applied to the local authority for alternative accommodation, and the defence is only effective for the period following such an application. If an offer of suitable

alternative accommodation is thereafter rejected, the defence ceases to be available. Moreover, the occupier is bound to take advantage of any opportunity which offers itself to relieve the situation by the possibility of one of the residents' moving elsewhere, and the defence is only effective so long as the residents remain persons who were in the house on the day when the child reached the requisite age, or are the children of such persons. Sub-s. (4) provides that the *occupier* will not be guilty of an offence when the house is overcrowded solely by reason of the fact that a member of his family is temporarily sleeping there. By sub-s. (5) a *landlord* is only guilty of an offence in the following circumstances:—(i) where he fails to take steps to abate the overcrowding after he has had notice from the local authority of its existence, or (ii) where he or his agent lets the house, having reasonable cause to believe that overcrowding would result, or without making enquiries of the proposed occupier as to the number, age and sex of the proposed residents.

By s. 81 (1), *post*, rent books and similar documents must contain a summary of this section; cf. the General Note to s. 77, *ante*.

**Sub-s. (1).**

**Subject to the provisions of this Part of this Act.** See sub-ss. (2)–(5) of this section, which limit the liability of both occupier and landlord for overcrowding. Section 80, *post*, enables local authorities to grant temporary licences permitting overcrowding by reason of the permitted number's being exceeded. This may only be done in exceptional circumstances. Section 80 (5) provides that an occupier shall not be guilty of an offence under the present section when acting under the authority of such a licence. Note also the power of the Minister to increase the permitted number temporarily in exceptional circumstances, which is contained in s. 79, *post*. Where the Minister has made an order under s. 79, not only is no offence committed but there is no overcrowding within the meaning of s. 77, *ante*.

**Landlord.** See definition in s. 87, *post*, and notes thereto. As to the landlord's duty to inform the local authority of overcrowding, see s. 83, *post*.

**Dwelling-house.** See s. 87, *post*, and notes thereto.

**Causes or permits.** As to occupiers, note the special provisions of sub-ss. (2)–(4), *supra*. As to when a landlord causes or permits overcrowding, note sub-s. (5), *supra*.

**Overcrowded.** See s. 77, *ante*; and note the effect of ss. 79 and 80, *post*.

**Guilty of an offence.** By s. 104 of the Magistrates' Courts Act, 1952 (32 Halsbury's Statutes (2nd Edn.) 503), an information must be laid within six months "from the time when the offence was committed". The present section, however, deals with both "causing" and "permitting" overcrowding, and the latter is clearly a continuing offence. Therefore an information laid within six months of any day on which the dwelling-house can be proved to have been overcrowded will be sufficient, even though more than six months may have elapsed since it first began to be overcrowded; see, e.g., *Barrett v. Barrow-in-Furness Corporation* (1887), 51 J.P. Jo. 803; 38 Digest 172, 153; and *Ex parte Burnby*, [1901] 2 K.B. 458; 14 Digest (Repl.) 418, 4085. Note that there is a further penalty for each day on which the offence is continued after conviction. Prosecutions may only be instituted by the local authority, except where they are themselves the landlords, when anyone may institute proceedings with the consent of the Attorney-General; see s. 85 (1), *post*. For the power of the local authority to demand information from an occupier in order to detect offences under this Part of the Act, see s. 85 (3), *post*.

**Summary conviction.** Cf. the note to s. 8, *ante*. The general rule, there stated, that any person may prosecute for an offence, is varied under this Part (Part IV) of the Act by s. 85 (1), *post*.

**Every day . . . on which the offence continues.** Cf. the note "Every day . . . on which he so uses them . . . after conviction" to s. 16 (6), *ante*. The fine for the continuing offence cannot be calculated by reference to a period of more than six months before the information for that offence was laid.

**Sub-s. (2).**

**Persons sleeping in the house.** Cf. s. 77, *ante*.

**Appointed day.** See the definition in s. 87, *post*, and the note thereto.

**Suitable alternative accommodation.** See the definition in s. 87, *post*. Note that the two paragraphs (sub-s. 2 (a) and (b), *supra*) contemplate the removal of either (a) the occupier and his family or (b) some person who is not a member of his family. The definition in s. 87, *post*, is expressed to refer to the former case only; under para. (b), however, it is submitted that it will nevertheless be relevant to consider the questions of security of tenure, proximity to place of work, and the means of the person who is required to go. Where the accommodation is offered to the occupier, these questions are dealt with by a certificate under s. 87; but where someone else is required to go, the questions appear to be questions of fact which could be raised by way of defence to a prosecution.

**Member of the occupier's family.** This term is not defined for the purposes of this section. It will no doubt be construed widely as a narrow construction would lead to hardship by disruption of the household. Cases decided under the Rent Acts,

*e.g.*, on s. 12 (1) (g) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (103 Statutes Supp. 145; 13 Halsbury's Statutes (2nd Edn.) 1003), or s. 3 of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (103 Statutes Supp. 157; 13 Halsbury's Statutes (2nd Edn.) 1048), should be considered with caution for present purposes. The following decisions under those Acts may be referred to: a husband is a member of his wife's family (*Salter v. Lask*, [1925] 1 K.B. 584; 31 Digest (Repl.) 663, 7635); an adopted child is a member of the adopter's family (*Brock v. Wollams*, [1949] 1 All E.R. 715; 31 Digest (Repl.) 664, 7641); a niece who went to live with her aunt out of "love and kindness" was held to be a member of the family of her uncle by marriage (*Jones v. Whitehill*, [1950] 1 All E.R. 71; 31 Digest (Repl.) 664, 7644); where a man and woman lived together as husband and wife, it was held that the man was not a member of the woman's family (*Gammans v. Ekens*, [1950] 2 All E.R. 140; 31 Digest (Repl.) 664, 7643); but a woman was held to be a member of the family of a man by whom she had had children and whose mistress she was (*Hawes v. Evenden*, [1953] 2 All E.R. 737; 3rd Digest Supp.). In view of s. 77 (1) (a), *ante*, it is doubtful whether *Gammans v. Ekens*, *supra*, would be followed under this section.

Note also the use of the expression, in sub-s. (4), *supra*, in connection with a person sleeping temporarily in a house.

**Reasonably practicable.** Cf. the note to these words in s. 16 (1), *ante*.

### Sub-s. (3).

**Attaining one of the ages.** *I.e.*, the ages of 1 or 10 years; see s. 77 (2), *ante*, and the note "Under one year, etc.," to that subsection.

**Local authority.** See s. 1, *ante*, and s. 88, *post*.

**Suitable alternative accommodation; member of the occupier's family.** Cf. the notes to sub-s. (2), *supra*. There is a difference of wording between sub-ss. (2) (b) and (3) (b), *supra*. An occupier may be deprived of his defence under the latter provision, although suitable alternative accommodation has not been offered, but the availability of such accommodation is one of the circumstances to be regarded in deciding whether it is reasonably practicable to remove a person who is not a member of the family.

### Sub-s. (5).

**Notice.** For power to prescribe, see s. 178, *post*. By virtue of s. 191 (2), *post*, the prescribed form of notice under sub-s. (5) (a) is Form C in Part II of the Schedule to the Housing Act (Overcrowding and Miscellaneous Forms) Regulations, 1937 (S.R. & O. 1937 No. 80), mentioned in the General Note to s. 77, *ante*.

As to authentication of notices, see s. 166 (2), *post*.

**Served.** For mode of service, see s. 169 (1), *post*.

**Agent.** See the definition of "landlord" in s. 87, *post*, where "agent" is also defined.

**Legal proceedings.** In this connection, see s. 84, *post*. Note also s. 85 (2), *post*, as to the power of the authority to recover possession for the landlord.

**Such circumstances as to render the proposed occupier thereof guilty of an offence.** Note the special provisions of sub-ss. (2)–(4), *supra*, and s. 80 (5), *post*. Cf. also the references to such circumstances in ss. 84 and 85 (2), *post*, and the notes thereto.

**Number, age and sex.** For the relevance of these matters, see s. 77, *ante*. Cf. also the power of the local authority to require information from an actual occupier, under s. 85 (3), *post*.

**79. Power of Minister to increase the permitted number temporarily to meet exceptional conditions.**—(1) Where, on the representation of the local authority and after consultation with the Central Housing Advisory Committee constituted under section one hundred and forty-three of this Act, the Minister is satisfied that dwelling-houses consisting of few rooms, or comprising rooms of exceptional floor area, constitute so large a proportion of the housing accommodation in the district of the authority, or in any part thereof, that the application of the provisions of the Sixth Schedule to this Act throughout the district, or that part thereof, immediately after the appointed day would be impracticable, he may by order direct that, in relation to those houses or to such of them as are of a specified type, the said provisions shall, during such period, not exceeding three years from the coming into operation of the order, as may be specified therein and any extension of that period which the Minister may allow, have effect subject to such modifications for increasing the permitted number of persons as may

be specified therein, and the order may specify different modifications in relation to different types of houses.

(2) After consultation with the said Committee and the local authority, the Minister may by order revoke any such order as aforesaid, or vary the provisions of any such order either as respects the modifications specified therein or as respects the houses to which the modifications apply or as respects both.

(3) The power of making orders under this section shall be exercisable by statutory instrument.

#### NOTES

**History.** Sub-ss. (1) and (2) contain provisions formerly in s. 60 of the Housing Act, 1936, which in turn was derived from s. 4 of the Act of 1935. Sub-s. (3) reproduces the effect of s. 1 (2) of the Statutory Instruments Act, 1946.

**General Note.** Two types of overcrowding are defined in s. 77 (1) (a) and (b), *ante*, respectively. The second type arises when the number of persons sleeping in a dwelling-house exceeds the "permitted number", in relation to the number and floor area of the rooms, as ascertained under the Sixth Schedule, *post*. When these provisions were originally introduced, by the Acts of 1935 and 1936, it was recognised that the application of the standards contained in the provisions corresponding to the Sixth Schedule, *post*, was not practicable in all areas immediately after the "appointed day" (as to which, see s. 87, *post*). Cf. Memorandum B issued by the Ministry of Health and mentioned in the General Note to s. 77, *ante*.

This section accordingly empowers the Minister, on the representation of the local authority, and after consulting the Central Housing Advisory Committee (as to which, see s. 143, *post*), by order to increase the "permitted number" for a period of not more than three years and for any extension of that period which the Minister may allow. The power may be exercised only where the Minister is satisfied that the conditions mentioned in sub-s. (1) exist, *i.e.*, in particular, there must be in the local authority's district, or some part thereof, a high proportion of dwelling-houses containing few rooms, or rooms of exceptional floor area. The order may apply to all such houses, or to particular types of such houses, and may make different modifications for different types.

This section is not intended to deal individually with single houses where some hardship would arise by the application of the Sixth Schedule standard; in such cases, however, a licence to exceed the permitted number may be granted under s. 80, *post*.

#### Sub-s. (1).

**Local authority.** See s. 1, *ante*, and s. 88, *post*.

**Consultation.** See the note to s. 76, *ante*.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Dwelling-houses.** For meaning, see s. 87, *post*.

**Few rooms; exceptional floor area.** "Room" is defined in s. 87, *post*. As to the ascertainment of "floor area", see s. 81 (3), *post*, and reg. 4 of the Housing Act (Overcrowding and Miscellaneous Forms) Regulations, 1937, cited in the General Note to s. 77, *ante*. Reference to the Sixth Schedule, *post*, will show that exceptionally small or exceptionally large floor areas could equally create problems; *i.e.*, certain small rooms are not counted under Table I of that Schedule, and no room however large can provide for more than two units under Table II thereof, in ascertaining the "permitted number".

**Appointed day.** See s. 87 and the notes thereto, *post*.

**By order.** For general provisions as to orders by the Minister, see s. 180 (1), *post*. Such orders will be of local application, and are not recorded in this volume.

**Those houses.** *I.e.*, the dwelling-houses having few rooms, or rooms of exceptional floor area, mentioned earlier in this subsection as constituting a large proportion of the housing accommodation in the district, or any part thereof. The Minister's order may well relate to some types only of those houses; cf. Memorandum B issued by the Ministry of Health under the Act of 1935 and mentioned in the General Note to s. 77, *ante*.

**Permitted number of persons.** See, by virtue of s. 77 (1) (b), *ante*, the Sixth Schedule, *post*.

#### Sub-s. (3).

**Statutory instrument.** For provisions relating to statutory instruments generally, see the Statutory Instruments Act, 1946 (36 Statutes Supp. 95; 24 Halsbury's Statutes (2nd Edn.) 440). The present subsection applies both to orders under sub-s. (1), *supra*, and to orders under sub-s. (2) revoking or varying such an order.

**80. Power of local authority to authorise the temporary use of a house by persons in excess of the permitted number.**—(1) Where it appears to the local authority, having regard to the existence of exceptional circumstances, to be expedient so to do, they may, on the application of the occupier or intending occupier of a dwelling-house in their district, grant him a licence authorising him to permit such number of persons in excess of the permitted number as may be specified in the licence to sleep in the house.

(2) A licence granted under this section shall be in the prescribed form and may be granted either unconditionally or subject to any conditions specified therein.

(3) A licence granted under this section shall, unless previously revoked, continue in force for such period (not exceeding twelve months) as may be specified therein, but may be revoked by the local authority at their discretion by means of a notice in writing served upon the occupier and specifying a period (not being less than one month from the date of the service of the notice) at the expiration of which the licence is to cease to be in force.

(4) A copy of any licence granted under this section, and of any notice served thereunder, shall be served by the local authority on the landlord, if any, of the dwelling-house to which it relates within seven days after the issue of the licence or the service of the notice on the occupier, as the case may be.

(5) The occupier of a dwelling-house shall not be guilty of an offence under section seventy-eight of this Act by reason of anything done by him under the authority of, and in accordance with any conditions specified in, a licence in force under this section.

(6) A local authority may take into consideration a seasonal increase of population in their district as an exceptional circumstance to which regard is to be had for the purposes of this section.

#### NOTES

**History.** This section contains provisions formerly in s. 61 of the Housing Act, 1936, which in turn was derived from s. 5 of the Act of 1935.

**General Note.** It will be observed that an application for a licence under this section can be made only by an occupier or intending occupier. The licence will be a personal licence, that is to say, it will not be one which will apply to a house for any occupier, but one which will apply to an occupier in respect of his occupation. The following further points should be noted with regard to the licence:—

- (1) It must be in the prescribed form.
- (2) It may be granted either conditionally or unconditionally.
- (3) It must specify the number of persons in excess of the permitted number, who may be permitted by the occupier to sleep in the house.
- (4) It will continue in force for twelve months or such less period as may be specified therein.
- (5) It may, however, be revoked by the local authority at their discretion by means of a notice in writing specifying a period (not being less than one month from the date of service of the notice) at the expiration of which the licence is to cease to be in force.
- (6) A copy of the licence and of any notice determining a licence must be served on the landlord (if any) within seven days from the issue of the licence or the service of the notice, as the case may be.

Although the licence may not be granted for a period exceeding one year, it may apparently be renewed from time to time.

By s. 81 (1), *post*, rent books must contain a summary of this section.

#### Sub-s. (1).

**Local authority.** See s. 1, *ante*, and s. 88, *post*.

**Exceptional circumstances.** There is no definition of this term; but see sub-s. (6), *supra*, which suggests one exceptional circumstance. Two others suggested in Memorandum B, issued by the Ministry of Health on the Act of 1935, are:—(i) the care of a family who are obliged to move, but are temporarily unable to find accommodation where they will not infringe the standard; (ii) where there is a temporary increase in population of a small district caused, for example, by an influx of workmen engaged on constructional work. The local authority clearly has a wide discretion to use the power wherever it is necessary.

**Dwelling-house.** See definition in s. 87, *post*, and notes thereto.

**Permitted number.** For meaning, see (by virtue of s. 77 (1) (b), *ante*) the Sixth Schedule, *post*.

**Sub-s. (2).**

**Prescribed form.** A general power to prescribe forms is conferred by s. 178 (1), *post*. By virtue, however, of s. 191 (2), *post*, the prescribed form of licence under this section is Form E in Part II of the Schedule to the Housing Act (Overcrowding and Miscellaneous Forms) Regulations, 1937 (S.R. & O. 1937 No. 80), mentioned in the General Note to s. 77, *ante*. As to the authentication of licences, see s. 166 (2), *post*.

**Sub-s. (3).**

**Notice.** The prescribed form of notice revoking a licence under this section is Form F in Part II of the Schedule to the above-mentioned regulations. As to authentication of notices, see s. 166 (2), *post*.

**Served.** See s. 169 (1), *post*, for mode of service of notices on persons other than local authorities.

**Not being less than one month.** *I.e.*, not less than one clear month must intervene between the day on which notice is served and the day on which the licence is thereby cancelled; see *Re Hector Whaling, Ltd.*, [1936] Ch. 208; Digest Supp., and *McQueen v. Jackson*, [1903] 2 K.B. 163; 25 Digest 106, 296. Note that "month" means calendar month; see the Interpretation Act, 1889, s. 3 (24 Halsbury's Statutes (2nd Edn.) 207).

**Sub-s. (4).**

**Landlord.** For meaning, see s. 87, *post*.

**Within seven days.** The date of the issue of the licence or service of the notice is not to be reckoned; see especially *Goldsmiths' Co. v. West Metropolitan Rail. Co.* [1904] 1 K.B. 1 C.A.; 42 Digest 950, 237, and *Stewart v. Chapman*, [1937] 2 All E.R. 613; 2nd Digest Supp.

**Sub-s. (6).**

This is the only attempt to define what may be an exceptional circumstance justifying a local authority in exercising its powers under the section. In Memorandum B of the Memoranda issued by the Ministry of Health on the 1935 Act, it is contemplated that this subsection will apply to holiday resorts.

**81. Entries in rent books, information and certificates with respect to the permitted number.**—(1) Every rent book or similar document used in relation to a dwelling-house by or on behalf of the landlord thereof shall contain a summary in the prescribed form of the provisions of sections seventy-seven, seventy-eight and eighty of this Act and a statement of the permitted number of persons in relation to the house, and if any such book or document not containing such summary and statement as aforesaid is used by or on behalf of the landlord he shall be liable on summary conviction to a fine not exceeding ten pounds.

An occupier of a dwelling-house who is required by an officer of the local authority duly authorised in that behalf to produce for inspection by the authority any rent book or similar document which is being used in relation to the house and is in the custody of the occupier or under his control shall, on being so required as aforesaid or within seven days thereafter, produce any such book or document to the officer or at the offices of the authority, and if he fails so to do he shall be liable on summary conviction to a fine not exceeding two pounds.

(2) It shall be the duty of the local authority, upon the application of the landlord, or of the occupier, of a dwelling-house, to inform the applicant in writing of the number of persons constituting the permitted number in relation to the house, and a statement inserted in a rent book or similar document under the foregoing subsection shall be deemed to be a sufficient and correct statement if it agrees with information given under this subsection.

(3) The Minister may prescribe the manner in which the floor area of a room is to be ascertained for the purposes of the Sixth Schedule to this Act, and the regulations may provide for the exclusion from computation, or for the bringing into computation at a reduced figure, of floor space in any part of a room which is of less than a specified height not exceeding eight feet.

(4) A certificate of the local authority stating the number and floor areas of the rooms in a dwelling-house, and that the floor areas thereof have been ascertained in the prescribed manner, shall, for the purposes of any legal proceedings, be *prima facie* evidence of the facts stated therein.

### NOTES

**History.** This section contains provisions formerly in s. 62 of the Housing Act, 1936, which in turn was derived from s. 6 of the Act of 1935. In the earlier Acts, sub-s. (1) was prefixed with the words "As from the expiration of six months from the appointed day"; these words are now omitted as days were long ago appointed for this purpose, in all localities, under the earlier Acts (see the note "Appointed day" to s. 87, *post*).

**General Note.** Under sub-s. (1), *supra*, a landlord is guilty of an offence if a rent book or similar document used by him or on his behalf fails to contain the prescribed summary of ss. 77, 78 and 80, *ante*, together with a statement of the "permitted number" of persons. An occupier is guilty of an offence if he fails to produce the rent book or other similar document. By sub-s. (2), it is the duty of the local authority, on the application of the landlord or occupier, to state what is the "permitted number"; and sub-s. (1), so far as it requires this information to be given in rent books, etc., is complied with if the statement therein agrees with the information given by the authority.

Under sub-s. (3), the Minister may make regulations governing the measuring of rooms. Sub-s. (4) makes a certificate by the local authority *prima facie* evidence of certain matters.

Sub-s. (1), it will be observed, does not require the use of a rent book; it merely states what must be contained in a rent book, if one is used, or in any similar document. Note, however, that s. 6 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1938 (103 Statutes Supp. 167; 13 Halsbury's Statutes (2nd Edn.) 1072), requires a landlord to provide a rent book in the case of tenancies to which the Rent Acts apply if the rent is payable weekly; and similarly s. 12 (6) of the Rent Act, 1957 (103 Statutes Supp. 67; 37 Halsbury's Statutes (2nd Edn.) 564), requires the landlord to provide a rent book where rent is payable weekly under any contract to which the Furnished Houses (Rent Control) Act, 1946 (103 Statutes Supp. 173; 13 Halsbury's Statutes (2nd Edn.) 1085), applies. See also s. 8, *ante*, as to information to be included in a rent book, or brought to a tenant's notice, in the case of working-class houses.

#### Sub-s. (1).

**Rent book.** See the General Note, *supra*.

**Dwelling-house; landlord.** For definitions, see s. 87, *post*, and note that the latter expression includes the employer of a "service occupier". Though an agent (also defined in s. 87) may be the person who issues the rent book, it is the landlord who may be prosecuted under this subsection if the necessary information is not included.

**Summary in the prescribed form.** For power to prescribe, see s. 178, *post*. By virtue of s. 191 (2), *post*, the prescribed form of summary is that set out in Part I of the Schedule to the Housing (Overcrowding and Miscellaneous Forms) Regulations, 1937 (S.R. & O. 1937 No. 80), mentioned in the General Note to s. 77, *ante*.

**Permitted number of persons.** See, by virtue of s. 77 (1) (b), *ante*, the Sixth Schedule, *post*. Note that this number must be stated correctly, or be in agreement with the information supplied by the local authority under sub-s. (2), *supra*.

**Summary conviction.** Cf. the note to s. 8, *ante*. By s. 104 of the Magistrates' Courts Act, 1952 (32 Halsbury's Statutes (2nd Edn.) 503, summary proceedings must be commenced within six months of the commission of the offence. Use of a rent book or other document, without the necessary information, appears to be a continuing offence, so that an information may be laid within six months of any day on which the book or document is so used. As to who may prosecute for an offence under this Part (Part IV), see s. 85 (1), *post*.

**Local authority.** See s. 1, *ante*, and s. 88, *post*.

**Duly authorised.** It is suggested that the officer should be authorised by resolution of the local authority, and be provided with written authority which he can produce to the occupier.

**Within seven days.** Cf. the note to s. 80 (4), *ante*. Note that the rent book or document may be produced for inspection either to the officer or at the offices of the local authority.

#### Sub-s. (3).

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**May prescribe, etc.** A general power to make regulations is conferred by s. 178 (1), *post*. By virtue, however, of s. 191 (2), *post*, reg. 4 of the above-mentioned

regulations has effect for the purposes of sub-s. (3), *supra*. That regulation provides that floor area shall be ascertained in the following manner:—

- (i) The area of any part of the floor space over which the vertical height of the room is, by reason of a sloping roof or ceiling, reduced to less than 5 feet shall be excluded from the computation of the floor area of that room.
- (ii) Subject to any exclusion under the foregoing rule, the floor shall be measured so as to include in the computation of the floor area any floor space formed by a bay window extension and any area at floor level which is covered or occupied by fixed cupboards or projecting chimney breasts.
- (iii) All measurements for the purpose of computing the floor area shall be made at the floor level and, subject as aforesaid, shall extend to the back of all projecting skirtings.

**Room.** For meaning, see s. 87, *post*.

**Sub-s. (4).**

**Certificate.** A certificate under this subsection is to be *prima facie* evidence of the matters stated; it may be rebutted by contrary evidence. Contrast the effect of certificates for the purposes of the definition of "suitable alternative accommodation" in s. 87, *post*.

As to authentication of certificates, see s. 166 (2), *post*, and as to their admissibility in evidence generally, see s. 167, *post* (a purported certificate is to be deemed to be such, unless the contrary is shown).

**82. Information as to rights and duties as respects overcrowding.**

—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 provisions of this Part of this Act relating to overcrowding and as to the enforcement thereof.

**NOTES**

**History.** This section contains provisions formerly in s. 63 of the Housing Act, 1936, which in turn was derived from s. 7 of the Act of 1935.

**General Note.** Note that this section merely confers a *power*; it does not impose a *duty* on local authorities to publish information for the assistance of landlords and occupiers as to their rights and duties under this Part of the Act. It is suggested that a summary of those rights and duties should cover the following matters:—

*Duties of landlord relating to overcrowding—*

- (1) Duty to take such steps as it is reasonably open to him to take for securing the abatement of overcrowding, including if necessary legal proceedings for possession of house. This arises after notice in writing has been served on the landlord or his agent that the house is overcrowded in such circumstances as to render the occupier guilty of an offence (s. 78 (1), (5) (a), *ante*).
- (2) Duty not to let where he or his agent has reasonable cause to believe that the house will become overcrowded, or without making inquiries of the proposed occupier regarding the number, etc., of the persons who will sleep in the house (s. 78 (1), (5) (b), *ante*).
- (3) Duty to cause certain entries to be made in rent book or other similar document (s. 81 (1), *ante*).
- (4) Duty to inform local authority of overcrowding (s. 83, *post*).

*Rights of landlord relating to overcrowding—*

- (1) Right to be served with copy of any licence or notice determining licence under s. 80, *ante* (s. 80 (4), *ante*).
- (2) Right, on application, to be informed in writing by the local authority of the number of persons permitted to occupy the house (s. 81 (2), *ante*).
- (3) Right to obtain possession of overcrowded house notwithstanding the Rent Acts (s. 84, *post*).

*Duties of occupier relating to overcrowding—*

- (1) Duty not to cause or permit overcrowding (s. 78 (1), *ante*).
- (2) Duty to produce rent book or other similar document for inspection of local authority (s. 81 (1), *ante*).
- (3) Duty to permit entry of local authority's officers for purpose of measurement of the rooms (s. 159 (d), *post*).
- (4) Duty, when requested, to supply local authority with a statement in writing of the number, ages and sexes of persons sleeping in the house (s. 85 (3), *post*).

*Rights of occupier relating to overcrowding—*

- (1) Right to apply to local authority for suitable alternative accommodation (s. 78 (3), *ante*).

- (2) Right to accommodate temporarily in excess of the permitted number a member of his family who does not normally reside at the house (s. 78 (4), *ante*).
- (3) Right to apply to local authority for a licence authorising him to permit such number of persons in excess of the permitted number as may be specified in the licence to sleep in the house (s. 80 (1), *ante*).
- (4) Right, on application, to be informed in writing by the local authority of the number of persons permitted to occupy the house (s. 81 (2), *ante*).

**Local authority.** For meaning, see s. 1, *ante*, and s. 88, *post*.

**Landlord; dwelling-house.** For definitions, see s. 87, *post*.

### 83. Duty of landlord to inform local authority of overcrowding.—

Where it comes to the knowledge of the landlord of a dwelling-house or of his agent that it is overcrowded then, unless notice thereof has already been given to the local authority, the landlord or his agent, as the case may be, shall within seven days after that fact first comes to his knowledge give notice thereof to them, and if he fails so to do he shall be liable on summary conviction to a fine not exceeding two pounds:

Provided that this section shall not apply to overcrowding which existed on the appointed day, or has been notified to the landlord or to his agent by the local authority, or is constituted by the use of the house for sleeping by such number of persons as the occupier is authorised to permit to sleep there by a licence in force under this Part of this Act.

### NOTES

**History.** This section contains provisions formerly in s. 64 of the Housing Act, 1936, which in turn was derived from s. 8 of the Act of 1935. The former sections opened with the words "Where after the appointed day it comes to the knowledge . . .", etc., but this reference to the appointed day is no longer required (see the note "Appointed day" to s. 87, *post*).

**General Note.** Under this section a landlord or an agent, as defined in s. 87, *post*, must inform the local authority of overcrowding. A landlord is guilty of an offence if he fails to give notice within seven days of its coming to his knowledge that a dwelling-house is overcrowded; and similarly an agent is guilty of an offence if he fails to give such notice of overcrowding which comes to his knowledge.

The exceptions to this are:—

- (i) where notice has already been given to the local authority; or
- (ii) where the overcrowding existed at the appointed day; or
- (iii) where it has been notified to the landlord or agent by the local authority; or
- (iv) where it is licensed under s. 80, *ante*.

The duty to give notice under this section applies, it is submitted, whether or not the overcrowding is such as will render anyone liable to be prosecuted. Thus, for example, under s. 78 (4), *ante*, an occupier is not guilty of an offence merely because some member of his family sleeps in the house temporarily; this may nevertheless constitute overcrowding which should be notified to the local authority.

**Landlord; dwelling-house; agent.** For definitions, see s. 87, *post*. It appears that, as each is under a separate duty to give notice under this section, the knowledge of an agent will not be imputed to a landlord who has no actual knowledge of the overcrowding.

**Overcrowded.** See s. 77, *ante*.

**Unless notice thereof has already been given.** *I.e.*, by the agent or the landlord or, it seems, by anyone else.

**Local authority.** See s. 1, *ante*, and s. 88, *post*.

**Within seven days.** Cf. the note to s. 80 (4), *ante*.

**Give notice.** This section does not require the notice to be "in writing" or to be "served" (cf. s. 78 (5) (a), *ante*). It is, however, obviously desirable to give written notice, and to serve it as mentioned in s. 168, *post*.

**Summary conviction.** Cf. the note to s. 8, *ante*. As to who may prosecute for an offence under this Part (Part IV), see s. 85 (1), *post*.

**Appointed day.** See the definition in s. 87, *post*, and the note thereto.

**Notified . . . by the local authority.** This seems to include any form of notification, whether by formal notice under s. 78 (5) (a), *ante*, or otherwise.

**Licence . . . under this Part.** See s. 80, *ante*.

**84. Right of landlord to obtain possession of overcrowded house.**—Where a dwelling-house is overcrowded in such circumstances as to render the occupier thereof guilty of an offence, nothing in the Rent Acts shall prevent the landlord from obtaining possession of the house.

#### NOTES

**History.** This section contains provisions formerly in s. 65 (1) of the Housing Act, 1936, which in turn was derived from s. 9 (1) of the Act of 1935. Both former sections contained an additional subsection designed to exclude the operation of s. 2 of the Rent and Mortgage Interest Restrictions Act, 1923 (103 Statutes Supp. 152), which provided, *inter alia*, for the decontrol of all houses coming into possession of the landlord. Section 2 of the Act of 1923 was, however, repealed by the combined effect of s. 3 (1) of the Increase of Rent and Mortgage (Restrictions) Act, 1938 (103 Statutes Supp. 165), and ss. 2 and 9 (3) of, and the Second Schedule to, the Rent and Mortgage Interest Restrictions Act, 1939 (60 Statutes Supp. 118, 120, 123). The omitted subsection has, therefore, been redundant since 1939, and it was repealed by s. 26 (3) of, and Part I of the Eighth Schedule to, the Rent Act, 1957 (103 Statutes Supp. 99, 135). The present position is regulated by s. 11 (6) of the Rent Act, 1957 (103 Statutes Supp. 60), which by virtue of s. 191 (4), *post*, applies to the present section, and provides that, where possession is regained thereunder, s. 11 (2) of the Act of 1957, which reintroduces the principle of decontrol upon the gaining of possession by a landlord, shall not apply to the first tenancy created thereafter of the dwelling or any part thereof.

**General Note.** This section excludes the protection of the Rent Acts where a dwelling-house is overcrowded in circumstances amounting to an offence on the part of the occupier. The landlord who is hereby enabled to gain possession may also be under a duty to do so; see s. 78 (5) (a), *ante*, whereunder the landlord may himself be guilty of an offence if he fails to take steps to abate overcrowding. If possession is obtained under this section, the first re-letting will be a controlled tenancy; see the note "History", *supra*.

The local authority may, under s. 85 (2), *infra*, obtain possession under the Small Tenements Recovery Act, 1838, on behalf of the landlord. In practice this is often a more convenient course.

**Dwelling-house.** For definition, see s. 87, *post*, and the notes thereto.

**Overcrowded.** See ss. 77 and 79, *ante*.

**Such circumstances as to render the occupier thereof guilty of an offence.** See ss. 78 and 80 (5), *ante*. The protection of the Rent Acts is excluded only if and so long as these circumstances continue. The relevant date for considering the matter, in an action for possession, is the date when the matter comes before the court; see *Zbytnewski v. Broughton*, [1956] 3 All E.R. 348, C.A.; 3rd Digest Supp.

In proving that the circumstances amount to an offence on the part of the occupier, a landlord will be much assisted by information obtained from the local authority, or by calling as a witness an official of the authority. Note that certificates under s. 81 (4), *ante*, are *prima facie* evidence of the number and floor areas of the rooms, and that the floor areas have been ascertained in the manner prescribed under s. 81 (3). It is, of course, unnecessary to show that the occupier has been convicted of the offence; it is sufficient to show the circumstances are such as to render him guilty. If he has in fact been prosecuted, the result of those proceedings would appear to be irrelevant, but a plea of guilty by the occupier would seem to be admissible in evidence, as an admission, in the landlord's action for possession.

**Nothing in the Rent Acts.** The "Rent Acts" are the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939; see the definition in s. 189 (1), *post*. As to the application of the Rent Acts to the first tenancy created after possession is obtained by virtue of the present section, see the note "History", *supra*, and cf. the note to s. 36 (3), *ante*. As to the relevant date when the circumstances relied on must exist, see *Zbytnewski v. Broughton*, *supra*; and contrast s. 85 (2), *infra*.

**Landlord.** For definition, see s. 87, *post*.

**85. Enforcement of Part IV.**—(1) It shall be the duty of the local authority to enforce the foregoing provisions of this Part of this Act as respects dwelling-houses in their district, and a prosecution for an offence against the said provisions shall not be instituted otherwise than by the local authority:

Provided that such a prosecution may be instituted against the local authority themselves by another person with the consent of the Attorney-General.

(2) The local authority may serve upon the occupier of a dwelling-house which is overcrowded in such circumstances as to render him guilty of an

offence notice in writing requiring him to abate the overcrowding before the expiration of fourteen days from the date of the service of the notice, and, if at any time within three months from the expiration of that period the house is in the occupation of the person upon whom the notice was served or of a member of his family and is overcrowded in such circumstances as to render the occupier guilty of an offence, the local authority may make complaint to a magistrates' court and thereupon the court shall, by its warrant in the form set out in the Schedule to the Small Tenements Recovery Act, 1838, or in a form to the like effect, order vacant possession of the dwelling-house to be given to the landlord within such period, not being less than fourteen nor more than twenty-eight days, as they may determine.

Any expenses incurred by the local authority under this subsection in securing the giving of possession of a dwelling-house to the landlord may be recovered by them from him summarily as a civil debt.

(3) For the purpose of enabling them to discharge their duties under the foregoing provisions of this Part of this Act, the local authority may serve notice on the occupier of a dwelling-house requiring him to furnish them within fourteen days with a statement in writing of the number, ages and sexes of the persons sleeping in the house, and, if the occupier makes default in complying with the requirement or furnishes a statement which to his knowledge is false in any material particular, he shall be liable on summary conviction to a fine not exceeding two pounds.

#### NOTES

**History.** This section contains provisions formerly in s. 66 of the Housing Act, 1936, which in turn was derived from s. 10 of the Act of 1935.

**General Note.** Sub-s. (1) imposes on the local authority the duty to enforce the foregoing provisions of this Part, *i.e.*, ss. 76 *et seq.*, *ante*. This includes the prosecution of offences under ss. 78, 81 (1) and 83, *ante*, and perhaps under sub-s. (3), *supra*. So far as enforcement depends on prosecuting offenders, it will be noticed that sub-s. (1) puts this power solely in the hands of the local authority, save where they themselves are guilty of an offence or, possibly, where the offence is against sub-s. (3), *supra*. This does not mean that the local authority must prosecute every offender; s. 84, *ante*, and sub-s. (2), *supra*, envisage that it may be a sufficient remedy to evict the occupier where the circumstances are such that he is guilty of an offence. Memorandum B, issued by the Ministry of Health on the Act of 1935 (and mentioned in the General Note to s. 77, *ante*), suggests that prosecution ought not to be the normal way of enforcing the provisions relating to overcrowding. The local authority should assist the overcrowded family to find other accommodation, resorting to the powers of eviction contained in sub-s. (2), *supra*, if persuasion fails. The power of prosecution should be used to deal with flagrant and repeated offences.

The proviso to sub-s. (1) is obviously intended to meet the case of a local authority who are themselves the landlord of an overcrowded house, but proceedings against an offending authority may be taken only with the consent of the Attorney-General.

Sub-s. (2) is a discretionary provision whereunder the local authority may obtain possession in certain circumstances on behalf of the landlord. The power arises where:

- (1) a dwelling-house is overcrowded in such circumstances that the occupier is guilty of an offence (see ss. 78 and 80 (5), *ante*);
- (2) the local authority serve 14 days' notice requiring the occupier to abate the overcrowding;
- (3) at any time, within a 3 month period after the expiry of the notice, the dwelling-house is overcrowded in such circumstances that the occupier is guilty of an offence; and
- (4) the occupier at that time is either the original occupier or a member of his family.

The proceedings will be by way of complaint under the Small Tenements Recovery Act, 1838, in a magistrates' court.

An occupier may, under sub-s. (3), *supra*, be required to supply certain information to the authority, and may be fined for default, or for making a false statement.

#### Sub-s. (1).

**Local authority.** See s. 1, *ante*, and s. 88, *post*.

**The foregoing provisions.** Prosecution of offenders is not the only method of enforcing the provisions of ss. 76, *et seq.*, *ante*. Cf. the summary of the duties of landlords and occupiers in the notes to s. 82, *ante*; and the General Note, *supra*.

**Dwelling-houses.** For definition, see s. 87, *post*.

**Prosecution.** See particularly s. 78, *ante*, as to offences of overcrowding, and ss. 81 (1) and 83 for other offences. Note also sub-s. (3), *supra*, which also creates an offence, but is not a "foregoing" provision.

**Consent of the Attorney-General.** S. 1 of the Law Officers Act, 1944 (4 Halsbury's Statutes (2nd Edn.) 540), enables the Solicitor-General to discharge the functions of the Attorney-General in certain circumstances.

Applications for the fiat of the Attorney-General under this section should be addressed to the Legal Secretary, Law Officers' Department, Room 545, Royal Courts of Justice, Strand, London, W.C.2. It is necessary to lodge a Memorial, and a statutory declaration verifying the statements in the Memorial. (For a form of Memorial, see *Hill's Complete Law of Housing* (4th Edn.), p. 650.)

**Sub-s. (2).**

**Serve.** For mode of service see s. 169 (1), *post*.

**Overcrowded.** See ss. 77 and 79, *ante*.

**Such circumstances as to render him guilty of an offence.** See ss. 78 and 80 (5), *ante*, and cf. the note to similar words in s. 84, *ante*. Under the present subsection overcrowding of this kind must, it is submitted, exist (i) when the authority serve their 14 days' notice and also (ii) at a time in the three months which follow the expiry of the notice. It seems that this will suffice, and such circumstances need not also exist when the case comes before the magistrates (contrast, s. 84, *ante*). If the authority prove the matters required under this section, the magistrates must issue their warrant ordering vacant possession.

**Notice in writing.** For power to prescribe a form of notice, see s. 178, *post*. By virtue of s. 191 (2), *post*, the prescribed forms of notice under sub-ss. (2) and (3), *supra*, are Forms D and B, respectively, in Part II of the Schedule to the Housing Act (Overcrowding and Miscellaneous Forms) Regulations, 1937 (S.R. & O. 1937 No. 80) mentioned in the General Note to s. 77, *ante*. As to authentication, see s. 166 (2), *post*. As to the meaning of "writing", see s. 20 of the Interpretation Act, 1889 (24 Halsbury's Statutes (2nd Edn.) 222).

**Fourteen days; three months.** Note that the day of service itself should be discounted in reckoning the fourteen days. "Month" means a calendar month, by virtue of s. 3 of the Interpretation Act, 1889 (24 Halsbury's Statutes (2nd Edn.) 207). Thus, for example, if a notice dated 30th January is served on 1st February, the fourteen days run from 2nd to 15th February. If there is overcrowding in the circumstances mentioned on any day between 16th February and 15th May, both dates inclusive, the local authority may then start proceedings.

**Member of his family.** Cf. the note "Member of the occupier's family" to s. 78 (2), *ante*. The reference, in this section, appears to be to any member of the original occupiers' family, whether or not living or sleeping in the dwelling-house when the fourteen days' notice was served. Cf. the use of this expression in s. 78 (4), *ante*.

**Complaint to a magistrates' court; Small Tenements Recovery Act, 1838, Schedule.** See the notes to s. 22 (2), *ante*.

**Landlord.** For definition, see s. 87, *post*.

**Not being less than fourteen nor more than twenty-eight days.** Cf. the note "Not less than twenty-one days" to s. 16 (1), *ante*, and the notes to s. 22 (2), *ante*.

**Expenses incurred; summarily as a civil debt.** Cf. the notes to s. 10 (3), *ante*. In particular, it appears that the expenses must be such as were reasonably and *bona fide* incurred by the authority in obtaining possession for the landlord.

**Sub-s. (3).**

**Serve notice.** See the notes "Serve" and "Notice in writing" to sub-s. (2), *supra*.

**Number, ages and sexes.** For the relevance of these matters, see s. 77, *ante*. Cf., also, s. 78 (5) (b), *ante*, as to landlord enquiring about them, when letting a dwelling-house.

**Sleeping in the house.** This seems primarily to refer to those persons who normally use the house for sleeping purposes. If a person is sleeping there temporarily, it seems advisable that the statement should say so, and state also whether the person is a member of the occupier's family; cf. s. 78 (4), *ante*.

**False in any material particular.** A statement may be false on account of what it omits even though it is literally true; see *R. v. Kylsant* (Lord), [1932] 1 K.B. 442; 15 Digest (Repl.) 1115, 11,075, and *R. v. Bishirgian*, [1936] 1 All E.R. 586; 15 Digest (Repl.) 1115, 11,076. Whether or not gain or advantage accrues from the false statement to the person making it is irrelevant; see *Jones v. Meatyard*, [1939] 1 All E.R. 140; Digest Supp., and *Stevens & Steeds, Ltd. and Evans v. King*, [1943] 1 All E.R. 314; 2nd Digest Supp.

**Summary conviction.** Cf. the note to s. 8, *ante*. Note the limitation, of the right to prosecute for an offence, contained in sub-s. (1), *supra*. The present subsection may perhaps be regarded as an exception to this limitation, as it is not a "foregoing provision" as mentioned in sub-s. (1).

**86. Duty of medical officers to furnish particulars of overcrowding.**—Regulations prescribing the duties to be performed by medical officers of health of boroughs and urban and rural districts, and by medical officers of health in London, made by the Minister under section one hundred and eight of the Local Government Act, 1933, and section seventy-nine of the London Government Act, 1939, respectively, shall include provisions for imposing on those officers a duty to furnish annually to the Minister particulars with respect to conditions in relation to overcrowding, and in particular to furnish to him particulars of any cases in which dwelling-houses in respect of which the local authority have taken steps for the abatement of overcrowding have again become overcrowded.

### NOTES

**History.** This section contains provisions formerly in s. 67 of the Housing Act, 1936, which in turn was derived from s. 11 of the Act of 1935.

**General Note.** This section extends the power of making regulations under the Local Government Act, 1933 (outside London), or the London Government Act, 1939, so that medical officers may be required to make certain returns relating to overcrowding.

**Regulations.** Outside London, the regulations, originally made under ss. 103 and 108 of the Local Government Act, 1933, and the Housing Act, 1935, are the Sanitary Officers (Outside London) Regulations, 1935 (S.R. & O. 1935 No. 1110), printed in *Hill's Complete Law of Housing* (4th Edn.), p. 492, and in *Lumley's Public Health* (12th Edn.), Vol. VII, p. 1664. (These were amended, by the substitution of new regs. 9-11, 15, 16, 21 and 26, by the Sanitary Officers (Outside London) Regulations, 1951 (S.I. 1951 No. 1022). The substituted regulations are printed in the Second Cumulative Supplement to *Lumley* at pp. 303, 304.)

In London, the regulations are the Sanitary Officers (London) Regulations, 1935 (S.R. & O. 1935 No. 1111), originally made under s. 108 of the Public Health (London) Act, 1891, and s. 11 of the Housing Act, 1935, and printed in *Hill* at p. 499.

Reg. 17 (4) of S.R. & O. 1935 No. 1110, and reg. 2 of S.R. & O. 1935 No. 1111, relating to duties under the present section, are in similar terms.

**Medical officers of health.** See the note to s. 5, *ante*.

**Boroughs and urban and rural districts.** See the notes to s. 1, *ante*.

**The Minister.** The Minister who may make regulations under the Local Government Act, 1933, s. 108 (14 Halsbury's Statutes (2nd Edn.) 411), or the London Government Act, 1939, s. 79 (15 Halsbury's Statutes (2nd Edn.) 1110) is the Minister of Health.

The Minister of Health was also originally the Minister for the purposes of the Housing Acts of 1935 and 1936. By the Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No. 1) Order, 1951 (S.I. 1951 No. 142), the functions of the Minister of Health under many enactments, including the Housing Act, 1936, were transferred to the Minister of Local Government and Planning, whose style and title was subsequently changed (by S.I. 1951 No. 1900) to that of Minister of Housing and Local Government, *i.e.*, "the Minister" as now defined in s. 189 (1), *post*. However, the above-mentioned transfer of functions made an exception for certain "retained health functions", including those under s. 67 of the Act of 1936, now replaced by this section. The Minister referred to, in this context, is still the Minister of Health, and not the Minister of Housing and Local Government.

**Furnish . . . particulars.** Note s. 89 proviso (iii), *post*, as to the duty of a metropolitan borough council to submit to the London County Council a copy of such particulars.

**Overcrowding.** For meaning, see s. 77, *ante*.

**Dwelling-houses.** For definition, see s. 87, *post*.

**Local authority.** See s. 1, *ante*, and s. 88, *post*.

**Local Government Act, 1933, s. 108; London Government Act, 1939, s. 79.** See the note "The Minister", *supra*.

**87. Definitions for purposes of Part IV.**—In the foregoing provisions of this Part of this Act, and in the Sixth Schedule to this Act, except where the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively:—

"the appointed day" means, in the application of this Part of this Act to any locality, the day appointed as respects that locality for the purposes of the provisions reproduced in this Part of this Act;

- "dwelling-house" means any premises used as a separate dwelling by members of the working classes or of a type suitable for such use;
- "landlord" means the immediate landlord of an occupier and includes, in relation to an occupier of a dwelling-house who holds under a contract of employment under which the provision of the house for his occupation forms part of his remuneration, his employer, and
- "agent" means, in relation to the landlord of a dwelling-house, a person who collects rent in respect thereof on behalf of the landlord or is authorised by him so to do, or, in the case of a dwelling-house occupied by a person who holds as aforesaid, a person who pays remuneration to the occupier on behalf of the employer or is authorised by him so to do;
- "room" does not include any room of a type not normally used in the locality either as a living room or as a bedroom;
- "suitable alternative accommodation" means, in relation to the occupier of a dwelling-house, a dwelling-house as to which the following conditions are satisfied, that is to say—

(a) the house must be a house in which the occupier and his family can live without causing it to be overcrowded;

(b) the local authority must certify the house to be suitable to the needs of the occupier and his family as respects security of tenure and proximity to place of work and otherwise and to be suitable in relation to his means; and

(c) if the house belongs to the local authority, they must certify it to be suitable to the needs of the occupier and his family as respects accommodation and for the purposes of this paragraph they shall treat a house containing two bedrooms as providing accommodation for four persons, and a house containing three bedrooms as providing accommodation for five persons, and a house containing four bedrooms as providing accommodation for seven persons.

#### NOTES

**History.** This section contains provisions formerly in s. 68 of the Housing Act, 1936, which in turn was derived from s. 12 of the Act of 1935 with the addition of the definition of the "appointed day" from s. 97 of that Act. In the present Act the wording of the definition of the "appointed day" has been re-phrased; and the definition of "suitable alternative accommodation" now sets out, at the end of para. (c), a standard of rehousing formerly introduced by reference to s. 136 (repealed) of the Act of 1936, which in turn was formerly s. 37 (ii) of the Act of 1930.

**General Note.** Attention is particularly drawn to three points in connection with the definitions contained in this section. First, the definition of "dwelling-house" retains references to the working classes. Secondly, the standard of "suitable alternative accommodation" applies only to an occupier, and his family, but not to other persons mentioned in s. 78 (2) (b) or (3) (b), *ante*. Thirdly, the provisions of s. 90, *post*, which have been added to this Part (Part IV) of the Act from the Housing Repairs and Rents Act, 1954, do not fall to be interpreted in accordance with the present section.

**Appointed day.** Days were appointed for the provisions of Part IV (ss. 57-70, repealed) of the Act of 1936, or the corresponding provisions of the Act of 1935, under s. 68 of the Act of 1936 or s. 97 of the earlier Act. Different days were appointed for different localities, and in all areas the provisions were brought into force in two stages.

The first date appointed in each locality was that for s. 6 of the Act of 1935 or s. 62 of the Act of 1936 (see now s. 81, *ante*), relating to entries in rent books or similar documents. Under the Acts of 1935 and 1936 the relevant sections opened with the words "As from the expiration of six months from the appointed day", and in almost all the orders cited below the appointed day for these sections was fixed six months ahead of the appointed day in the same localities for all other purposes. This was done so that rent books would contain the necessary information when the other provisions came into force. The second date appointed, in each of the orders cited below, was for the purposes of ss. 3, 4 and 8 of the Act of 1935 or ss. 59, 60 and 64 of the Act of 1936 (see now ss. 78, 79 and 83, *ante*). (The second date also applied for the purposes of s. 68 of the Act of 1935 or s. 6 of the Act of 1936, relating to byelaws. This byelaw making power was finally repealed by the Housing Repairs and Rents Act, 1954, which instead introduced provisions now reproduced in s. 36, *ante*, and s. 90, *post*. Those sections contain no reference to an appointed day.)

The Housing Act, 1935 (Operation of Overcrowding Provisions) Order, 1936 (S.R. & O. 1936 No. 665), printed in *Lumley's Public Health* (12th Edn.), Vol. VI, p. 987, was the first of a series of orders appointing days for the purposes of the earlier Acts, and fixed the two dates as 1st July 1936, for entries in rent books, and 1st January 1937, for other purposes, over large areas of England and Wales where the overcrowding problem was not serious. For later orders fixing dates in other localities, see S.R. & O. 1936 Nos. 838, 1017 and 1335, made under the Act of 1935, and S.R. & O. 1937 Nos. 216, 555, 854 and 1172 and S.R. & O. 1938 No. 216, made under the Act of 1936, all of which are printed in *Lumley, op. cit.*, pp. 994-998, 1058-1061.

**Dwelling-house.** As to the meaning of the "working classes", see the note to s. 8, *ante*. The phrase "used as a separate dwelling" may be compared with the narrower phrase "let as a separate dwelling" in s. 12 (2) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (103 Statutes Supp. 145; 13 Halsbury's Statutes (2nd Edn.) 1006). The present definition, and para. (b) of the definition of "suitable alternative accommodation", were no doubt modelled on the provisions of the Rent Acts; cf. Memorandum B issued by the Ministry of Health on the Act of 1935 and mentioned in the General Note to s. 77, *ante*.

The present definition of "dwelling-house" must be contrasted with para. (a) of the definition of "house" in s. 189 (1), *post*; cf. *Benabo v. Wood Green Borough Council*, [1945] 2 All E.R. 162; 2nd Digest Supp., cited in the note "Demand for the expenses" to s. 10 (3), *ante*. It seems that the provisions, for example, of Part II, *ante*, are concerned with a house as a physical structure, whereas the provisions of this Part (Part IV) are concerned with conditions in a dwelling-house regarded as a unit of accommodation for living purposes, and particularly for sleeping purposes (cf. s. 77, *ante*). Problems may arise, as under the Rent Acts, where essential living rooms are shared (cf. *Neale v. Del Soto*, [1945] 1 All E.R. 191, C.A.; 31 Digest (Repl.) 646, 7508; and *Baker v. Turner*, [1950] 1 All E.R. 834, H.L.; 31 Digest (Repl.) 647, 7516), but note also the definition of "room" in the present section. Under the Rent Acts, a kitchen has been regarded as an essential living room, but not a bathroom or a lavatory.

The question of whether accommodation is "used as a separate dwelling" and therefore a dwelling-house, appears to be one of mixed law and fact. The definition, it is submitted, extends to separate accommodation which is sub-let (this view is expressed in Memorandum B mentioned *supra*), in which event the immediate landlord is the landlord as defined in this section; to accommodation provided under a contract of employment, *i.e.*, a "service occupancy" (see the definition of "landlord", *supra*); and to premises which are owner-occupied, *i.e.*, where there is no landlord. The latter instance is clearly recognised in this Part (cf. s. 80 (4), *ante*, which refers to the "landlord, if any" of the dwelling-house); but certain provisions, such as s. 81, *ante*, as to entry in rent books and similar documents would seem to be inoperative where there is no landlord. Persons who live in "lodgings", or whose families "share" accommodation, seem not to have a "separate" dwelling; but see s. 90, *post*, as to overcrowding in such circumstances.

**Landlord.** The term landlord:—

- (1) means the immediate landlord of an occupier, and
- (2) includes also the employer of an occupier under certain contracts of employment. This seems particularly to refer to the case of a "service occupancy," where there is no tenancy, but the provision of the house is part of the occupier's remuneration; cf. the notes to s. 7, *ante*, as to certain agricultural workers.

It appears that if A lets a house to B, and B sub-lets part of the house to C, and B and C each occupy their respective parts of the house as a separate dwelling, then there will be two dwelling-houses within the meaning of this section. A will be the landlord of the part occupied by B, and B will be the landlord of the part occupied by C.

**Agent.** Although specific reference is made to the landlord's agent in several sections in this Part (Part IV) of the Act, most of the duties are placed on the landlord himself. Under s. 83, *ante*, both the landlord and the agent are under a duty to inform the authority of overcrowding, and either may be prosecuted for failure to give such information when it comes to his knowledge.

Note that where the occupier's employer is regarded as his landlord, under this section, the term "agent" is correspondingly extended to any person who pays, or is authorised to pay, the occupier's remuneration.

**Room.** This definition excludes bathrooms, sculleries and attics not normally used in the locality as living rooms or bedrooms. Under the Rent Acts (cf. the note "Dwelling-house", *supra*), the Courts have attempted to lay down the types of rooms which can constitute a separate dwelling as a matter of law, particularly in connection with the doctrine of "sharing". Note that the present definition of "room" takes account of the way in which rooms are normally used in particular localities, which appears to be a question of fact.

As to the measurement of floor area, see s. 81 (3), *ante*, and the notes thereto. See also the proviso to the Sixth Schedule, *post*, as to disregarding certain small rooms in calculating the "permitted number" under s. 77, *ante*.

**Suitable alternative accommodation.** This term is defined only in relation to an occupier. There is a difference therefore, between cases where alternative accommodation is offered to an occupier, for himself and his family (see s. 78 (2) (a) and (3) (a), *ante*), and cases where it is offered to other persons who are not members of the occupier's family (see s. 78 (2) (b) and (3) (b), *ante*). In the former case, questions of suitability as regards security of tenure, proximity to place of work, and means, are covered by the certificate of the authority as mentioned in para. (b) of this definition. Similarly, if the house offered belongs to the local authority, they may certify it as suitable as respects accommodation as mentioned in para. (c). In the debates on the Act of 1935, an attempt was made in Parliament to introduce amendments to afford an appeal against such certificates, but these were defeated.

On a prosecution under s. 78, *ante*, it appears, however, to be open to an occupier to raise as questions of fact all matters not covered by a certificate under this definition. Thus he could raise the point that accommodation offered to him, but not belonging to local authority, was insufficient (despite para. (c)); or that any accommodation offered him was such that he and his family could not live there without it being overcrowded (para. (a)). Similarly, he could argue that any accommodation offered to a person who is not a member of his family was not suitable, on any ground.

Para. (b) of the present definition may be compared with s. 3 of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (103 Statutes Supp. 157; 13 Halsbury's Statutes (2nd Edn.) 1048). The present definition indicates that a house owned by the local authority, and offered to an occupier, may be suitable, although he will have no security of tenure (cf. *Sills v. Watkins*, [1955] 3 All E.R. 319, C.A.; 3rd Digest Supp., decided under the 1933 Rent Act). Memorandum B, mentioned above, suggested that where alternative accommodation is to be provided by a private landlord, the local authority should usually come to a definite arrangement with the landlord that he will afford the tenant reasonable security of tenure so long as he pays a rent suitable to his means.

**Family.** See the note "Member of the occupier's family", to s. 78 (2), *ante*. Under the present definition, the reference is probably to those members of the family who normally live and sleep in the occupier's dwelling-house, and probably does not extend to those who sleep there only occasionally (cf. s. 78 (4), *ante*).

**Overcrowded.** See s. 77, *ante*.

**Local authority.** See s. 1, *ante*, and s. 88, *infra*.

**Certify.** The form of certificate for the purposes of para. (b), or of both paras. (b) and (c), of this definition is Form G in Part II of the Schedule to the Housing Act (Overcrowding and Miscellaneous Forms) Regulations, 1937 (S.R. & O. 1937 No. 80), mentioned in the General Note to s. 77, *ante*. (The reference, in the form, to s. 136 (repealed) of the Act of 1936 is now unnecessary. The relevant provisions are now set out in the definition in the present section as the latter part of para. (c).)

**88. Local authority for overcrowding in London.**—(1) As respects the administrative county of London other than the City of London, the metropolitan borough council shall be the local authority for the purposes of the foregoing provisions of this Part of this Act other than the provisions of section seventy-six of this Act relating to the submission of proposals for the provision of new houses required in order to abate overcrowding:

Provided that—

- (a) the metropolitan borough council shall, instead of submitting their report under section seventy-six of this Act to the Minister, submit the report to the London County Council;
- (b) the London County Council shall take into consideration the statements in the report as to the number of new houses required in order to abate overcrowding in the borough and shall, in the event of their not agreeing with the conclusions arrived at, consult with the metropolitan borough council thereon with a view to the amendment of the statements by agreement between the two councils;
- (c) the London County Council shall transmit to the Minister the report of the metropolitan borough council or such report revised as hereinbefore provided as the case may require.

(2) As respects the administrative county of London other than the City of London, the London County Council shall be the local authority for the purposes of the provisions of section seventy-six of this Act relating to the

submission of proposals for the provision of new houses required in order to abate overcrowding:

Provided that—

- (a) if a metropolitan borough council propose to provide houses themselves for the purpose of abating overcrowding, they shall, when submitting to the London County Council their report under section seventy-six of this Act, or as soon as may be thereafter, submit to the county council proposals for the provision of such houses;
- (b) if the London County Council are of opinion that, having regard to the amount of suitable land available in the borough for the purpose of the provision of such houses, to the financial and other resources of the metropolitan borough council for such provision, or to any other relevant consideration to be stated by the county council in writing at the time, the metropolitan borough council will not be in a position to provide within a reasonable time or at a reasonable cost the number of new houses proposed by them, the county council shall consult with the metropolitan borough council with a view to the revision of the proposals by agreement between the two councils;
- (c) the London County Council, when submitting their proposals under section seventy-six of this Act for the county, shall transmit to the Minister copies of any proposals made by a metropolitan borough council, or such proposals as revised as hereinbefore provided, as the case may be.

(3) If any difference arises between the London County Council and a metropolitan borough council as to the number of houses to be stated in the report as required in order to abate overcrowding within the borough, or as to the provision of such houses by the metropolitan borough council, the difference shall be referred to the Minister, whose decision shall be final.

#### NOTES

**History.** This section contains provision formerly in s. 69 of the Housing Act, 1936, which in turn was derived from s. 21 (2)–(4) of the Act of 1935.

**General Note.** This section deals with the distribution of functions under ss. 76 to 87, *ante*, in London (other than the City), as between the metropolitan borough councils and the London County Council. Subject to the detailed provisions of this section, and subject to any agreement under s. 183 (1), *post*, the London County Council is the local authority who will submit proposals under s. 76, *ante*, for providing the new houses needed to abate overcrowding. The metropolitan borough council is the local authority who will carry out inspections, and make reports, under s. 76; and is the local authority also for all other purposes under ss. 77–87, *ante*.

The metropolitan borough council are required, by sub-s. (1), *supra*, to submit the report of an inspection under s. 76 to the London County Council instead of to the Minister. If the London County Council do not agree about the number of new houses needed, they must consult with the metropolitan borough council to try to arrive at an agreed statement, before transmitting the report to the Minister. In default of agreement, the difference of opinion will be settled by the Minister under sub-s. (3), *supra*.

The borough council may make proposals for providing houses themselves to abate overcrowding, and submit these proposals to the London County Council, under sub-s. (2), *supra*, with or after their report under s. 76, *ante*. The London County Council may dispute these proposals, on certain grounds; if they do so, they must try to revise the proposals by consultation, before transmitting them, with their own proposals for providing houses under s. 76, to the Minister. Again, any difference of opinion will be settled by the Minister under sub-s. (3), *supra*.

Under s. 89, *post*, the London County Council may contribute to the expenses of a metropolitan borough council in carrying out inspections, and making reports, or in enforcing the foregoing provisions of this Part (Part IV) of the Act.

**Sub-s. (1).**

**Administrative county of London; City of London; metropolitan borough council.** See s. 1 and the notes thereto, *ante*. In the City, the Common Council is the local authority by virtue of s. 1 (2) (a). As to agreements between local authorities in London, and default powers of the London County Council, see ss. 183 and 177, respectively, *post*.

**Foregoing provisions of this Part.** *I.e.*, ss. 76-87, *ante*. In the present Act, the word "foregoing", which did not occur in the corresponding provisions of the Acts of 1935 and 1936, has been inserted to exclude reference to s. 90, *post*, which has been added to this Part (Part IV) from the Housing Repairs and Rents Act, 1954; as to local authorities in London under that section, see s. 90 (7), *post*.

**Proposals for the provision of new houses.** Under s. 76, *ante*, the duties of a local authority are (i) to inspect the district; (ii) to make a report showing the result of the inspection and the number of new houses required; and (iii) to submit proposals for providing the new houses (unless satisfied the houses will be otherwise provided). By sub-s. (2), *supra*, the third-mentioned duty is placed on the London County Council, subject to the right of the borough council to submit proposals of their own under the proviso to that subsection.

As to the meaning of "houses", cf. para. (b) of the definition of "house" in s. 189 (1), *post*, and the definitions of "dwelling-house" and "suitable alternative accommodation" in s. 87, *ante*.

**Overcrowding.** For meaning, see s. 77, *ante*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**London County Council.** See s. 1, *ante*, and the notes thereto.

**Consult.** Cf. the note "Consultation" to s. 76, *ante*, as to the general meaning of this term.

**Amendment . . . by agreement.** Where a difference arises it must be referred to the Minister under sub-s. (3), *supra*.

**Sub-s. (3).**

**Decision shall be final.** Cf. the notes to s. 44 (5), *ante*.

**89. Contributions by London County Council to expenses in relation to overcrowding.**—The London County Council may, if they think fit as respects any period, pay to a metropolitan borough council a sum equal to one-half of the expenses incurred by the last-mentioned council in the remuneration of any person specifically employed by that council for the purpose of rendering clerical or other assistance to a public health inspector in connection with—

- (a) any inspection of the borough made by the metropolitan borough council with a view to ascertaining what dwelling-houses therein are overcrowded, and the preparation of the report thereon; and
- (b) the enforcement of the foregoing provisions of this Part of this Act:

Provided that the London County Council shall not be required to pay any sum to a metropolitan borough council under this subsection unless the following conditions are satisfied in relation to that council, that is to say—

- (i) the metropolitan borough council must obtain the prior approval of the London County Council to the number of persons to be so employed and their rate of remuneration;
- (ii) the metropolitan borough council must comply with such reasonable conditions as the London County Council may think fit to impose as to the rate of progress to be made with respect to the inspection of the borough, and as to the arrangements to be made for the carrying out by the metropolitan borough council of their duties in relation to overcrowding; and
- (iii) the metropolitan borough council must submit to the London County Council at the end of each year information as to the steps taken in connection with, and as to the result of, the enforcement of the provisions relating to overcrowding in the borough, together with a copy of any particulars furnished to the Minister in pursuance of section eighty-six of this Act.

#### NOTES

**History.** This section contains provisions formerly in s. 70 of the Housing Act, 1936, which in turn was derived from s. 22 (1) of the Act of 1935.

As respects the period from 16th May 1934 to 31st March 1941, the former sections provided that the London County Council were under a duty to make the payments mentioned towards the expenses of a metropolitan borough council. As respects any

period after 31st March 1941 the payments were discretionary. Reference to the earlier period has now been omitted from the section. Similarly the proviso has been shortened by the omission of the former para. (i), as to the approval of expenses incurred before 2nd August 1935, and the omission of certain related words from the former para. (ii) (now para. (i) of the proviso, *supra*).

**General Note.** This section enables the London County Council to pay half the expenses incurred by a metropolitan borough council for certain purposes of this Part (Part IV) of the Act. It should be read with s. 183, *post*, which enables agreements to be made between local authorities in London; see s. 183 (1) (c) as to contributions towards expenses incurred.

**London County Council; metropolitan borough council.** See s. 1, *ante*, and the notes thereto. As to the allocation of functions under this Part (Part IV) of the Act, other than those under s. 90, *infra*, see s. 88, *ante*.

**May, if they think fit.** The words "if they think fit" have been inserted, in this Act, to emphasise the discretionary character of payments under this section. In the Acts of 1935 and 1936 this was clear from the use of the words "shall" and "may", respectively, as respects the periods before and after 31st March 1941 (cf. the note "History", *supra*).

**Public health inspector.** Sanitary inspectors are now designated public health inspectors by virtue of the Sanitary Inspectors (Change of Designation) Act, 1956 (97 Statutes Supp. 33; 36 Halsbury's Statutes (2nd Edn.) 501).

**Inspection; report.** See ss. 76 and 88 (1), *ante*.

**Dwelling-houses.** For definition, see s. 87, *ante*.

**Overcrowded.** For meaning, see s. 77, *ante*.

**Foregoing provisions of this Part.** *I.e.*, ss. 76–88, *ante*. In this Act the word "foregoing" has been inserted to exclude reference to s. 90, *infra*, which has been added to this Part (Part IV) from the Housing Repairs and Rent Act, 1954; as to local authorities in London under that section, see s. 90 (7), *post*.

**Prior approval.** Note that both the number of persons to be employed and their rate of remuneration must be approved in advance; this has always been the position, as respects any period after 2nd August 1935, see the former provisos (i) and (ii) in the sections of the Acts of 1935 and 1936 mentioned in the note "History", *supra*.

**The Minister.** See the note to those words in s. 86, *ante*. "The Minister", as defined in s. 189 (1), *post*, is the Minister of Housing and Local Government, but under s. 86 particulars are required to be furnished to the Minister of Health.

### *Overcrowding in houses let in lodgings*

**90. Overcrowding in houses let in lodgings.—(1)** If it appears to a local authority, in the case of a house within their district, or of part of such a house, which is let in lodgings or occupied by members of more than one family, that excessive numbers of persons are being accommodated on the premises having regard to the rooms available, the local authority may serve on the occupier of the premises or on any person having the control and management thereof, or on both, a notice—

(a) stating, in relation to any room on the premises, what is in the authority's opinion the maximum number of persons by whom it is suitable to be occupied as sleeping accommodation at any one time, or, as the case may be, that it is in their opinion unsuitable to be occupied as aforesaid, and

(b) informing him of the effect of subsection (4) of this section.

(2) For the purposes of paragraph (a) of the foregoing subsection a notice may, in relation to any room, prescribe special maxima applicable in any case where some or all of the persons occupying the room are under such age as may be specified in the notice.

(3) Any person aggrieved by a notice under this section may, within twenty-one days after the date of the service of the notice, appeal to the county court within the jurisdiction of which the premises to which the notice relates are situated, and—

(a) on any appeal to the county court under this section the judge may make such order either confirming or quashing or varying the notice as he thinks fit, and

- (b) sections thirty-seven and thirty-eight of this Act shall apply in relation to an appeal under this section as they apply in relation to an appeal to the county court under Part II of this Act.
- (4) Any person who has been served with a notice under this section shall be guilty of an offence if, after the notice has become operative,—
- (a) he causes or knowingly permits any room to which the notice relates to be occupied as sleeping accommodation otherwise than in accordance with the notice, or
- (b) he causes or knowingly permits to be accommodated on the premises such number of persons that it is not possible, without contravention of the foregoing paragraph or the occupation as sleeping accommodation of some part of the premises for which a maximum is not specified under paragraph (a) of subsection (1) of this section, to avoid persons of opposite sexes and over the age of twelve years (other than persons living together as husband and wife) occupying sleeping accommodation in the same room.
- (5) Any person committing an offence under this section shall be liable on summary conviction to a fine not exceeding five pounds and, where the offence of which he was convicted continues after conviction, to a further fine not exceeding two pounds for every day for which the offence so continues.
- (6) Where a local authority have served a notice under this section in respect of any premises, they may at any time withdraw the notice, without prejudice to anything done in pursuance thereof or to the service of another notice, or, if there is any material change of circumstances, they may substitute for the notice a further notice under this section; and, where a notice is withdrawn, subsection (4) of this section shall cease to apply in relation to the premises, without prejudice to its further application if a subsequent notice is served in respect of the same premises.
- (7) In the administrative county of London, other than the City of London, both the metropolitan borough council and the London County Council shall be local authorities for the purposes of this section.

#### NOTES

**History.** Sub-ss. (1) and (2) contain provisions formerly in s. 12 (1) and (2) of the Housing Repairs and Rents Act, 1954. Sub-s. (3) contains provisions formerly in s. 12 (5) of that Act and s. 15 of the Housing Act, 1936. Sub-ss. (4)–(6) contain provisions formerly in s. 12 (3), (4) and (6) of the Act of 1954. Sub-s. (7), which is new in form, is identical with s. 36 (5), *ante*: see the note "History" to that section, *ante*, as to its probable derivation.

Section 12 (5) of the Act of 1954 also expressly applied s. 157 (d) (repealed) of the Act of 1936, relating to the power of entry; see now s. 159 (d), *post*, which is in the same terms as s. 157 (d) of the Act of 1936 and makes no specific provision for the purposes of the present section. Section 12 (7) of the Act of 1954, which is not reproduced in this Act, provided that the powers of that section should be without prejudice to s. 11 of that Act (see now s. 36, *ante*), or to Part IV of the Act of 1936 (see now ss. 76–89, *ante*).

**General Note.** The purpose of this section is to prevent over-occupation of a house, or part of a house, let in lodgings or occupied by members of more than one family. It supplements, therefore, the powers of local authorities under s. 36 in Part I, *ante*, and under ss. 76–89 in this Part (Part IV), *ante*.

The present section resembles ss. 76–89 in that it seeks to control the extent to which premises are used for sleeping purposes (cf. the definition of overcrowding in s. 77, *ante*), but differs from these sections in that they are concerned with overcrowding in a "dwelling-house" (defined in s. 87, *ante*, as meaning any premises used as a separate dwelling by members of the working classes, or of a type suitable for such use). Both s. 36, *ante*, and this section, derived from ss. 11 and 12 respectively of the Act of 1954, apply to a house or part of a house let in lodgings or occupied by members of more than one family. Both provisions were introduced to replace the former byelaw-making powers mentioned in the note "History" to s. 36. Under s. 36 the aim is to secure the provision of better facilities in such premises, with the option, however, of reducing the number of persons or households accommodated therein. The present section was originally added to the Bill for the Act of 1954 (see 187 H. of L. Official

Report 696) to provide a more detailed control over the number of persons who may sleep in any room on the premises.

A comparison of sub-ss. (1) (a) and (4) (b), *supra*, suggests that a notice under this section may in effect classify the parts of the premises into three different categories:

- (A) Rooms which may be used for sleeping. A maximum number of persons for any such room will be stated, and special maxima may be stated under sub-s. (2).
- (B) Rooms which may not be used for sleeping.
- (C) Other parts of the premises.

If this interpretation is correct, an offence under sub-s. (4) may arise in the following ways, namely by:—

- (1) Causing a room in category (A), above, to be used as sleeping accommodation in contravention of the maximum, or special maximum, stated in the notice.
- (2) Causing a room in category (B) to be used for sleeping.
- (3) Knowingly permitting use as in (1) or (2), above.
- (4) Causing such number of persons to be accommodated that one of the following is bound to happen, namely that:—
  - (i) there will be a contravention of the notice, as in (1) to (3) above, or
  - (ii) someone will have to sleep in part of the premises in category (C), above, or
  - (iii) persons of opposite sexes over the age of 12 and not living together as husband and wife will have to sleep in the same room.
- (5) Knowingly permitting such occupation as mentioned in (4), above.

This interpretation of the section, which is by no means clearly phrased, is the one accepted by the Ministry, as may be seen from the prescribed form of notice (Form No. 4, mentioned in the notes, *infra*, to sub-s. (1)).

By sub-s. (6), *supra*, the authority may substitute a different notice where there is a material change of circumstances; or they may withdraw a notice. Where a notice is withdrawn, there can be no offence under sub-s. (4) unless and until a further notice is served.

**Grounds of appeal under this section.** The following general grounds are suggested for appeals to the county court under sub-s. (3); they should be amplified by any necessary particulars. Some of the grounds suggested relate to matter which it may not be strictly necessary to raise by appeal; *e.g.*, if the notice is served on the wrong person it would appear to be void, and the absence of an appeal will not turn it into a valid notice under s. 37, *ante*, as applied by this section.

- (1) The premises are not within s. 90 of the Act [but are a block of flats, or are occupied by a single family, or as the case may be].
- (2) The appellant is neither the occupier, nor the person having the control and management, of the premises.
- (3) The number of persons accommodated on the premises is not excessive.
- (4) The rooms constitute suitable sleeping accommodation for the following maximum numbers of persons [give details for each room, including any room which the authority have wholly omitted from their notice, or listed in the First Schedule thereto, if it is claimed that such rooms are suitable for sleeping purposes].
- (5) Special maxima should have been stated, under s. 90 (2), for the following rooms [give details].
- (6) The local authority have acted unreasonably.

#### Sub-s. (1).

**Local authority.** See s. 1, *ante*, and, as to London, note sub-s. (7), *supra*.

**House . . . or . . . part of . . . a house; let in lodgings; members of more than one family.** See the notes to these words in s. 36 (1), *ante*. Cf., also, the note "Member of the occupier's family" to s. 78 (2), *ante*.

**Premises; rooms.** The notice under this section will relate to "premises", *i.e.*, the house or part of a house in question. In these premises, there will be a number of "rooms"; the restricted definition of "room" in s. 87, *ante*, does not apply for present purposes. As to some or all of the rooms, it appears, "maxima" may be stated, or the room may be stated to be unsuitable for sleeping. From the terms of sub-s. (4) (b), it appears that some other parts of the premises may not be mentioned in these ways; *semble*, these other parts may also be "rooms", or may be parts of the premises such as landings and passages which could not be called "rooms".

**Serve.** For mode of service, see s. 169 (1), *post*.

**Person having the control and management.** This does not refer to the definition of the "person having control" of a house in s. 39 (2), *ante*; contrast the wording of s. 36 (1), *ante*. Cf., also, s. 112 (2) (a), *post*, referring to the "management and control" of lodging-houses provided by a local authority under Part V. Although the present section appears not to apply to a common lodging-house, as defined in s. 235 in Part IX of the Public Health Act, 1936 (19 Halsbury's Statutes (2nd Edn.)

439), the term "keeper" used in that Part of that Act may be somewhat similar in meaning to the present expression.

**Notice.** The prescribed form of notice is Form No. 4 in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), made under s. 178, *post*. As to authentication, see s. 166 (2), *post*.

The rooms for which "maxima" are stated, referred to as category (A) in the General Note, *supra*, are to be listed in the Second Schedule of Form No. 4; the rooms unsuitable for sleeping, referred to as category (B) in the General Note, are to be listed in the First Schedule to the Form. Para. 3 of the Form gives the effect of sub-s. (4) as required by sub-s. (1) (b), *supra*.

**Any room.** The definition of room in s. 87, *ante*, does not apply. It seems desirable, but not strictly necessary, to state in respect of every room, either the maximum number who may sleep in it or that it is unsuitable for sleeping. The prescribed form of notice (Form No. 4, mentioned, *supra*), envisages that there may be parts of the premises not included in either Schedule thereto, *i.e.*, rooms or other parts of the premises which are referred to as category (c) in the General Note, *supra*.

**Sub-s. (2).**

**Special maxima.** *E.g.*, a room normally suitable for two adults might be suitable to accommodate also a child under, say, 10 or 12 years of age; cf. sub-s. (4) (b), *supra* (which mentions the age of 12) and s. 77 (1) (a) and (2), *ante* (which mention the age of 10). For present purposes, however, it is for the authority to specify whatever age they think appropriate. The wording of this subsection, and the reference in sub-s. (6) to a change of circumstances, suggest the local authority are entitled to take into account the problems and circumstances of the actual occupiers.

**Sub-s. (3).**

**Person aggrieved; within twenty-one days; appeal to the county court.** Cf. the notes to s. 11 (1), *ante*. As to procedure on such appeals, and the date of operation of notices, see ss. 38 and 37, *ante*, applied by this subsection.

**Judge may make such order.** Cf. the note to these words in s. 11 (3), *ante*, and the note "Confirmed by a county court judge" to s. 37 (1), *ante*.

**Sub-s. (4).**

**Person . . . served with a notice.** Under sub-s. (1), *supra*, the notice may be served on the occupier or the person having the control and management of the premises, or on both.

**An offence.** It is not clear how many different offences the present subsection creates, *e.g.*, whether "causing" is a different offence from "knowingly permitting". Cf. the summary, in the General Note, *supra*, of the circumstances in which an offence may arise; and the notes "Knowing" and "Permits" to s. 16 (6), *ante*.

The present section makes no provision for obtaining possession of any part of the premises to which the Rent Acts may apply: contrast s. 36 (3), *ante*. It is submitted that a person will not be guilty of an offence unless, after receipt of the notice, he is in a position to take steps to prevent a contravention, or the accommodation of excessive numbers, and fails to do so.

**Notice has become operative.** See s. 37, *ante*, applied by sub-s. (3), *supra*.

**Part of the premises for which a maximum is not specified.** This seems to include rooms which are stated in the notice to be unsuitable for sleeping, and other parts of the premises referred to as category (c) in the General Note, *supra*.

**Age of twelve years.** See the note "Under one year, etc." to s. 77 (2), *ante*, and note that the age here is 12, and not 10 as in s. 77 (1) (a), *ante*.

**Living together.** Note that the expression is "living together as husband and wife" not "being husband and wife"; cf. s. 77 (1) (a), *ante*.

**Sub-s. (5).**

**Summary conviction.** Cf. the note to s. 8, *ante*.

**Every day for which the offence so continues.** Cf. the note "Every day . . . on which he so uses them . . . after conviction" to s. 16 (6), *ante*. *Quaere*, whether "causing" can be an offence which "continues".

**Sub-s. (7).**

**Administrative county of London; City of London; metropolitan borough council; London County Council.** See s. 1, *ante*, and the notes thereto. By s. 1 (2) (a), *ante*, the Common Council are the local authority for the City. By the present subsection both the L.C.C. and the metropolitan boroughs are local authorities, elsewhere in London, under this section.

# PART V

## PROVISION OF HOUSING ACCOMMODATION

### *General powers and duties of local authorities*

#### **91. Periodical review of housing conditions by local authorities.—**

It shall be the duty of every local authority to consider housing conditions in their district and the needs of the district with respect to the provision of further housing accommodation and for that purpose to review the information which has been brought to their notice, either as a result of inspections and surveys carried out under Part I of this Act or otherwise, and as often as occasion arises, or within three months after notice has been given to them by the Minister, to prepare and submit to the Minister proposals for the provision of new houses, distinguishing those houses which the authority proposes to provide for the purpose of rendering accommodation available for persons to be displaced by, or in consequence of, action taken by the authority under this Act.

### NOTES

**History.** This section contains provisions formerly in s. 71 of the Housing Act, 1936, as amended by ss. 1 (a) (i) and 51 (4) of, and the First and Third Schedules to, the Housing Act, 1949. The amendments by the Act of 1949 repealed the words "for the working classes" which occurred in s. 71 of the Act of 1936 after the phrases "provision of further housing accommodation" and "provision of new houses". Similar amendments were made to the heading of Part V of the Act of 1936 (as to this heading, however, see *Rodwell v. Minister of Health*, [1947] 1 All E.R. 80; 2nd Digest Supp.); and to many individual sections in that Part, which originally referred to the working classes. The Act of 1949 also repealed s. 136 (standard of re-housing accommodation) of the Act of 1936; but note that the standard of that section is retained for certain purposes of s. 87, *ante*.

**General Note.** This section introduces Part V (ss. 91–134) of the Act, which is concerned with the provision of housing accommodation to meet general needs. The group of sections which immediately follow (ss. 92–110, *post*), contains powers for the local authority to provide such accommodation, including powers of acquiring and disposing of land. Other provisions of this Part deal, for example, with the management of local authority houses (ss. 111–115, *post*); and with the provision of accommodation by housing associations and by the development corporations of new towns (ss. 119–125, *post*).

The present section requires the local authority to review the conditions and needs of the district, and when occasion arises, or after notice from the Minister, to submit to the Minister proposals for providing new houses. Since the Act of 1949, these duties are not confined to the needs of the working classes; see the note "History", *supra*. See also Chapter 3 of the Introduction at p. 16, *ante*, and for other changes in this Part, see that Chapter at pp. 21–23, *ante*. As to financial provisions relating to this Part, and other cross-references, see the General Note to s. 92, *post*; and cf. the note "Distinguishing those . . . for persons to be displaced", *infra*.

**Local authority.** See s. 1, *ante*, and s. 132, *post*. For special provisions as to rural districts, conferring powers on the Minister and county councils, see ss. 116–119, *post*.

**Needs of the district.** These words do not relate only to persons already resident in the district of the local authority, but extend to residents in adjacent areas who might require to reside, or who might be more conveniently housed, in the district in the future; see *Re Havant and Waterloo Urban District Council Compulsory Purchase Order* (No. 4), 1950, *Application of Watson*, [1951] 2 All E.R. 664; 2nd Digest Supp. Thus a district near a large and over-populated town may have to receive an "overflow" of persons from that town. Cf., also, the Town Development Act, 1952, ss. 5 and 8 (77 Statutes Supp. 204, 206; 32 Halsbury's Statutes (2nd Edn.) 1035, 1037), which contain certain powers for councils of "receiving districts" and other authorities participating in "town development". Section 5 and some of the provisions of s. 8 appear to have been expressly designed to avoid the type of doubt which arose in *Watson's case*, *supra*.

**Provision of . . . housing accommodation.** See s. 92 (4), *post*, and cf. para. (b) of the definition of "house" in s. 189 (1), *post*.

**Inspections and surveys . . . or otherwise.** By s. 3 in Part I, *ante*, a local authority is required to make periodic inspections to see whether any houses are unfit for human habitation. See also s. 76, *ante*, in Part IV (inspections as to overcrowding) and s. 157, *post* (official representations, and duty of medical officer to inspect certain houses). Note also s. 2, *ante* (proposals as to the exercise of powers under Parts II and III), and ss. 42 (3) and 55 (3), *ante* (re-housing of persons displaced from clearance areas and re-development areas under Part III). As to London, see s. 132 (3), *post*.

**Within three months.** Cf. the note "Within twenty-one days" to s. 11 (1), *ante*.

**Notice.** For mode of serving notice on a local authority, see s. 168, *post*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**New houses.** Cf. para. (b) of the definition of "house" in s. 189 (1), *post*. In this context, the phrase "provision of new houses" may mean the same as "provision of housing accommodation" used earlier in this section; and see s. 92 (4), *infra*. Cf. the use of the expression "new houses" in s. 76, *ante*.

**Distinguishing those . . . for persons to be displaced.** Under the corresponding section (s. 71, repealed) of the Act of 1936, this distinction was of importance in connection with the financial provisions, particularly s. 105, of that Act, whereunder a Government contribution was payable towards the provision of accommodation rendered necessary by action taken to demolish unfit houses (cf. s. 17 (1), *ante*), to close parts of buildings (cf. s. 18, *ante*), or for dealing with clearance areas (cf. ss. 42 *et seq.*, *ante*, and see particularly s. 42 (3)) or improvement areas (now obsolete); or required for persons displaced from certain unfit houses in a re-development area (cf. ss. 55 *et seq.*, *ante*, and see particularly ss. 55 (3) and 57 (3)). These contributions were originally on a "*per capita*" basis. The system of contributions was changed by the Housing (Financial Provisions) Act, 1938 (11 Halsbury's Statutes (2nd Edn.) 610), the Housing (Temporary Provisions) Act, 1944 (27 Statutes Supp. 37; 11 Halsbury's Statutes (2nd Edn.) 630), and the Housing (Financial and Miscellaneous Provisions) Act, 1946 (39 Statutes Supp. 38; 11 Halsbury's Statutes (2nd Edn.) 648). The Act of 1946 rendered the distinction no longer of importance, until the passing of the Housing Subsidies Act, 1956 (94 Statutes Supp. 38; 36 Halsbury's Statutes (2nd Edn.) 371).

The effect of the Act of 1956 is now reproduced in the Housing (Financial Provisions) Act, 1958 (Book II, *post*); see ss. 1-8 of that Act as to exchequer subsidies for new housing accommodation, and in particular s. 3 thereof as to persons displaced by slum clearance or re-development. By s. 28 of that Act, the payment of subsidy is subject to such conditions as the Minister, with the consent of the Treasury, may impose; note, in this connection, Ministry of Housing and Local Government Circulars 33/56 and 2/57, dated 17th July 1956 and 10th January 1957. These require the maintenance of certain registers by the local authority relating, *inter alia*, to new dwellings provided for slum clearance, etc., and to displacements caused by action under the present Act.

**92. Mode of provision of accommodation.—**(1) A local authority may provide housing accommodation—

- (a) by the erection of houses on any land acquired or appropriated by them,
- (b) by the conversion of any buildings into houses,
- (c) by acquiring houses,
- (d) by altering, enlarging, repairing or improving any houses or buildings which have, or an estate or interest in which has, been acquired by the local authority.

Any such powers as aforesaid may, for supplying the needs of the district, be exercised outside the district of the local authority.

(2) The local authority may alter, enlarge, repair or improve any house so erected, converted or acquired.

(3) It shall be the duty of a local authority for the purposes of this Part of this Act by whom any house is erected under the enactments relating to housing, whether with or without financial assistance from the Government, to secure—

- (a) that a fair wages clause complying with the requirements of any resolution of the Commons House of Parliament for the time being in force with respect to contracts for Government departments is inserted in all contracts for the erection of the house, and
- (b) except in so far as the Minister may, in any particular case, dispense with the observance of this paragraph, that the house is provided with a fixed bath in a bathroom.

(4) For the purposes of this Part of this Act "provision of housing accommodation" includes the provision of lodging-houses, and separate houses or cottages containing one or several tenements, and, in the case of a cottage, a cottage with a garden of not more than one acre.

#### NOTES

**History.** This section contains provisions formerly in s. 72 of the Housing Act, 1936, as amended by ss. 1 (a) (ii) and 51 (4) of, and the First and Third Schedules to,

the Housing Act, 1949. The amendments repealed references to the working classes in sub-s. (1) and (3), and the words "suitable for the purpose" which occurred at the end of sub-s. (1) (c). The limits on the standard of re-housing, formerly contained in s. 136 of the Act of 1936, were also repealed by s. 1 of the Act of 1949 (except as applied for certain overcrowding provisions; see now s. 87, *ante*).

In the present Act, the latter part of s. 72 (2) of the Act of 1936, relating to the provision of furniture and fittings, has been incorporated in s. 94, *post*. The requirements of sub-s. (3) were introduced by the Housing Act, 1935, and have operated since 2nd August 1935; a reference to that date, in s. 72 (3) of the Act of 1936, has now been omitted as no longer required.

**General Note.** As mentioned in Chapter 1 of the Introduction at p. 3, *ante*, the original statutory power to provide accommodation related to lodging houses for the labouring classes. It now extends to accommodation of the types mentioned in sub-s. (4), *supra*, for all classes of society. The methods by which a local authority may provide such accommodation are listed in sub-s. (1); the powers may be exercised outside the authority's own district. Houses so provided may, by virtue of sub-s. (2), be altered, enlarged, repaired or improved.

By sub-s. (3), houses erected by a local authority under any housing enactments must normally have a fixed bath in a bathroom; and contracts must contain a "fair wages" clause.

The present section should be read with ss. 96 *et seq.*, *post* (powers of acquiring and appropriating land) and ss. 93-95, *post* (powers to provide buildings, furniture, board and laundry facilities). By ss. 29 (4), 46 (5) and 48 (4), *ante*, a local authority are given the like powers in respect of certain unfit houses, retained for temporary housing purposes, as they have in respect of houses provided under this Part (Part V); and by s. 57 (6) and (8), *ante*, certain land purchased for the purposes of a re-development area, or belonging to the authority in such an area, is deemed to have been acquired under this Part.

Exchequer subsidies for new houses are now payable under the Housing (Financial Provisions) Act, 1958 (Book II, *post*), ss. 1-8; cf. the last note to s. 91, *ante*. Part I of the Act of 1958 also provides, *inter alia*, for contributions towards conversions and improvements (s. 9), and towards approved expenditure on unfit houses, retained as mentioned above (s. 13). Part III of the Act of 1958 requires the keeping of a housing revenue account (s. 50), in relation to all houses provided under Part V of this Act, and certain other houses (*e.g.*, those coming within s. 9 or 13 of that Act, or purchased under s. 12 of the present Act, *ante*). The reference to Part V of the present Act, in s. 50 (1) (a) of the Act of 1958, includes references to the corresponding provisions of earlier Acts; the housing revenue account will cover all houses and buildings provided under such Acts at any time after 6th February 1919. Broadly speaking, the financial provisions relating to "Part V" houses vary according to the date when they were provided: cf. the definition of "exchequer payment" in s. 58 (2) of the Act of 1958, and s. 59 (4) of that Act as to the saving of liabilities under the enactments repealed by that section.

Special powers of providing housing accommodation were conferred by the Housing (Temporary Accommodation) Act, 1944 (27 Statutes Supp. 35; 11 Halsbury's Statutes (2nd Edn.) 631), and similarly entitled Acts of 1945 and 1947 (32 Statutes Supp. 91; 51 Statutes Supp. 33; 11 Halsbury's Statutes (2nd Edn.) 646, 673). Accommodation for persons who were inadequately housed was also provided under the requisitioning powers in the Defence Regulations; see now the consequential provisions of the Requisitioned Houses and Housing (Amendment) Act, 1955 (90 Statutes Supp. 4; 35 Halsbury's Statutes (2nd Edn.) 260).

Provisions intended to safeguard existing residential property from change of use to other purposes, in view of the housing shortage, were contained in Defence Regulation 68CA (revoked). The restriction has been continued in a modified form under certain powers in Part III of the Town and Country Planning Act, 1947; see Ministry of Housing and Local Government Circular No. 94/52, dated 18th December 1952, and reprinted in *Hill's Complete Law of Town and Country Planning*, 2nd Supplement to 4th Edn., pp. B402, B403, and in *Lumley's Public Health* (12th Edn.), Vol. VIII, pp. 928 *et seq.* This circular contained the Town and Country Planning (Housing Accommodation) Direction, 1952. This direction is not published in the Statutory Instruments series, but is reprinted in *Hill and Lumley (ubi supra)*, and in 21 Halsbury's Statutory Instruments, title Town and Country Planning.

The provision of housing accommodation is also one of the primary purposes of the Town Development Act, 1952; see *ibid.*, s. 1 (77 Statutes Supp. 201; 32 Halsbury's Statutes (2nd Edn.) 1032). "Town development" is development carried out in a county district, known as a "receiving district", to relieve congestion and over-population elsewhere. Its effect, and primary purpose, must be the provision of accommodation for residential purposes, with or without accommodation for the carrying on of industrial or other activities, and with all appropriate public services, facilities for public worship, recreation and amenity, and other requirements. Sections 2-4 of that Act, as amended, contain financial provisions (see also s. 3 (2) (c) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*)) as to exchequer subsidies. The powers of the local authority of the "receiving" district are widened by ss. 5 and 6

of the Act of 1952, which enable the authority to take action which is not, or may not be, for the benefit of their own area (cf. the note "Needs of the district" to s. 91, *ante*), and confer special powers to acquire land. Arrangements for participation by authorities in town development are governed by ss. 7 *et seq.*, of that Act.

**Sub-s. (1).**

**Local authority.** See s. 1, *ante*, and s. 132, *post*.

**May provide housing accommodation.** Note that under s. 91, *ante*, the authority are under a duty to review housing conditions and needs. The use of the word "may" in the present subsection suggests that the authority is given power, but is not under a positive duty, to provide accommodation; the word "may" however, is capable of meaning "shall" or "must" if the context so requires: cf. the note, "Such reasonable allowance as they think fit" to s. 32, *ante*. For the meaning of "provision of housing accommodation", see sub-s. (4), *supra*, and cf. para. (b) of the definition of "house" in s. 189 (1), *post*.

**Houses.** For definition of "house", see s. 189 (1), *post*. As to providing shops and other buildings or land, see s. 93, *infra*.

**Land acquired or appropriated.** Land may be acquired, compulsorily if need be, under ss. 96 and 97, *post*; see particularly s. 96 (a). Power to appropriate land for the purposes of this Part (Part V) is conferred by s. 99, *post*.

**By conversion; by acquiring houses.** See, particularly, s. 96 (b), *post*.

**Needs of the district.** See the note to these words in s. 91, *ante*. Cf. the Town Development Act, 1952 (cited in the General Note, *supra*), particularly ss. 5 and 8 thereof.

**Exercised outside the district.** As to the execution of works in connection with housing operations by a local authority outside its own area, see s. 108, *post*. See also s. 109, *post*, as to responsibility for roads; and s. 110, *post*, as to differences between local authorities. As to agreements between the London County Council and neighbouring authorities for provision of houses, see s. 185, *post*.

**Sub-s. (3).**

**Fair wages clause.** The latest resolution with respect to the Fair Wages Clauses in Government contracts was passed by the House of Commons on 14th October 1946, and was brought to the notice of local authorities by Ministry of Health Circular 206/46, dated 16th November 1946; see also Circular 90/47, dated 31st May, 1947. These circulars are reproduced in *Lumley's Public Health* (12th Edn.), Vol. VI, pp. 115-118.

**Contracts.** As to contracts of local authorities, see the Local Government Act, 1933, s. 266 (14 Halsbury's Statutes (2nd Edn.) 492), and the London Government Act, 1939, s. 160 (15 Halsbury's Statutes (2nd Edn.) 1148).

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Fixed bath in a bathroom.** Ministry of Housing and Local Government Circular 18/57, dated 18th March 1957, states that consideration will be given to dispensing with this requirement in the provision of certain accommodation intended for old people.

**Sub-s. (4).**

**Lodging-houses.** Cf. s. 112 (2) and the note thereto, *post*.

**Separate houses or cottages.** In para. (b) of the definition of "house" in s. 189 (1), *post*, reference is made to "any part of a building which is occupied or intended to be occupied as a separate dwelling". A separate house or cottage, mentioned in the present subsection, is presumably a whole building, but may contain one or more "tenements". A tenement, it is submitted, may either be a "separate dwelling" (*i.e.*, a "house" within s. 189 (1)) or dwelling accommodation which is not "separate" and self-contained. As to the meaning of a "separate" dwelling, cf. the note "Dwelling-house" to s. 87, *ante*.

**93. Supplementary powers of providing buildings or land in connection with provision of accommodation.—(1)** The powers of a local authority under this Part of this Act to provide housing accommodation shall include a power (either by themselves or jointly with any other person) to provide and maintain with the consent of the Minister in connection with any such housing accommodation any building adapted for use as a shop, any recreation grounds, or other buildings or land which in the opinion of the Minister will serve a beneficial purpose in connection with the requirements of the persons for whom the housing accommodation is provided.

(2) The Minister, in giving his consent to the provision of any land or building under the foregoing provisions of this section, may by order apply, with any necessary modifications, to that land or building any statutory

provisions which would have been applicable thereto if it had been provided under any enactment giving any local authority powers for the purpose.

(3) The powers of the London County Council and of a metropolitan borough council under this Part of this Act to provide housing accommodation shall include also a power to provide and maintain with the consent of the Minister in connection with any such housing accommodation any building or part of a building adapted for use for any commercial purpose:

Provided that the powers conferred by this subsection shall not be exercised outside the administrative county of London except with the consent of the council of the borough or district concerned.

### NOTES

**History.** This section contains provisions formerly in s. 80 of the Housing Act 1936.

**General Note.** This section enables shops, recreation grounds, and other buildings or land to be provided and maintained in connection with housing accommodation. For power to acquire land, if need be compulsorily, see ss. 96 and 97, *post*, particularly s. 96 (c) and the note "History" to that section.

#### Sub-s. (1).

**Powers . . . to provide housing accommodation.** For the local authority's powers, see s. 92, *ante*, and note the definition in s. 92 (4).

**Local authority.** See s. 1, *ante*, and s. 132, *post*.

**Either by themselves or jointly.** This phrase is new in form but replaces a similar phrase in s. 80 (1) of the Act of 1936. The section seems to authorise a local authority to engage in the business, for example, of running a shop; but in many cases it will be more convenient to let such property.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*. Note that the Minister's consent is required, even where the building or other land can be acquired by agreement; it is also for the Minister to decide whether a "beneficial purpose" will be served.

**In connection with any such housing accommodation.** This appears to refer to housing accommodation provided by the local authority under this Part (Part V) of this Act, or under the corresponding provisions of earlier Acts; see s. 192, *post*. By s. 120 (3), *post*, the scope of this section is extended, so that buildings or land may be provided under this section in connection with housing accommodation provided by a housing association under arrangements with a local authority, *i.e.*, under s. 120, *post*, or the corresponding sections (repealed) of the Housing Act, 1930, the Housing Act, 1935, or the Housing Act, 1936.

**Buildings or land which . . . will serve a beneficial purpose, etc.** Note the powers of the L.C.C. and metropolitan boroughs to provide commercial buildings under sub-s. (3), *supra*. Generally the powers of this section seem to be narrower than those of the Town Development Act, 1952 (cited in the General Note to s. 92, *ante*). The words "in the opinion of the Minister" appear to govern the words "any building adapted for use as a shop, any recreation grounds" as well as the subsequent reference to other buildings or land; *i.e.*, the Minister must in all cases be satisfied that a beneficial purpose will be served in connection with the requirements of those for whom the housing accommodation is provided.

The corresponding provision (s. 11, repealed) of the Housing of the Working Classes Act, 1903, was held to empower a local authority, with the Minister's consent, to provide a beer-house on a building estate; see *Conron v. London County Council*, [1922] 2 Ch. 283; 38 Digest 215, 503. Buildings other than houses can be provided for the benefit of housing estates even though people from outside the estate may share the benefit. Garages come within this provision; see *Green (H. E.) & Sons v. Minister of Health*, [1947] 2 All E.R. 469; [1948] 1 K.B. 34; 2nd Digest Supp. The provision of board and laundry facilities is expressly dealt with by s. 95, *post*, which does not contain a requirement that the Minister must consent, or be of opinion that a beneficial purpose will be served.

By s. 189 (1), *post*, "land" is defined (except where the context otherwise requires) as including any right over land. This does not mean that, on a compulsory purchase, under ss. 96 (c) and 97 and the Seventh Schedule, *post*, an owner can be compelled to sell anything less than his estate or interest in land, *i.e.*, the authority cannot "carve out" some lesser interest, such as an easement, which might suffice for their purposes. Cf. the note "Land" to para. 1 of the First Schedule, *post*.

#### Sub-s. (2).

**By order.** As to orders of the Minister, see s. 180 (1), *post*.

**Apply . . . any statutory provisions.** *E.g.*, as to recreation grounds, ss. 76 and 77 of the Public Health Acts Amendment Act, 1907 (19 Halsbury's Statutes (2nd Edn.) 198, 199).

Sub-s. (3).

London County Council; metropolitan borough council; administrative county of London; borough or district. See s. 1, *ante*, and the notes thereto, and cf. s. 132, *post*, as to "Part V" local authorities in London.

**Provided that the powers . . . shall not be exercised.** See *R. v. Bedfordshire County Council, Ex parte Sear*, [1920] 2 K.B. 465; 11 Digest (Repl.) 310, 2169. It would appear that the consent is not a condition precedent to a compulsory purchase order (under s. 97 and the Seventh Schedule, *post*), but may be obtained subsequently before the power is exercised.

**94. Power to provide furniture.**—A local authority may fit out, furnish and supply any house erected, converted or acquired by them under section ninety-two of this Act with all requisite furniture, fittings and conveniences and may sell, or supply under a hire-purchase agreement, furniture to the occupants of houses provided by the local authority and, for that purpose, may buy furniture.

In this subsection "hire-purchase agreement" has the same meaning as in the Hire Purchase Act, 1938.

NOTES

**History.** This section contains provisions formerly in s. 72 (2) of the Housing Act, 1936, and in s. 8 of the Housing Act, 1949.

**General Note.** The first part of this section, up to the word "conveniences", empowers the local authority in general terms to fit out and furnish houses provided under s. 92, *ante*. It was apparently doubted whether the corresponding provisions of s. 72 (2) of the Act of 1936 were wide enough to authorise the sale of furniture or the provision of furniture on hire-purchase; the remainder of the present section is derived from s. 8 of the Act of 1949, which expressly conferred such powers. That section was expressed to be without prejudice to s. 72 (2) of the Act of 1936, and provided that the authority should be deemed always to have had these powers.

Corresponding powers, also derived from the same section of the Act of 1949, to sell or supply furniture for houses provided by a housing association, under arrangements with the local authority, are contained in s. 122, *post*. In Ministry of Health Circular 90/49, dated 15th September 1949, it is suggested that the services provided under the latter part of this section, and under ss. 95 and 122, *post* (*i.e.*, originally, under ss. 7 and 8 of the Act of 1949) should be financially self-supporting, at least over a period of years.

**Local authority.** See s. 1, *ante*, and s. 132, *post*.

**House.** See s. 189 (1), *post*; and note s. 92 (4), *ante*.

**Erected, converted or acquired.** See s. 92 (1) (a)–(c), *ante*.

**May buy furniture.** The express power to buy furniture, for the purposes of selling it or supplying it on hire-purchase, should not be construed, it is submitted, so as to preclude the authority from selling or so supplying furniture which they have made, or which they have bought originally for other purposes, *e.g.*, furniture originally bought for furnishing houses as mentioned in the earlier part of this section.

**In this subsection.** This phrase should read "in this section".

**Hire-Purchase Act, 1938.** For the meaning of "hire-purchase agreement", see s. 21 (1) of that Act (22 Halsbury's Statutes (2nd Edn.) 1033).

**95. Power to provide board and laundry facilities.**—(1) The power of a local authority under this Part of this Act to provide housing accommodation shall include power to provide, in connection with the provision of such accommodation for any persons, such facilities for obtaining meals and refreshments and such facilities for doing laundry, and such laundry services as accord with the needs of those persons, and the local authority may make such reasonable charges for meals and refreshments provided by virtue of this subsection and such reasonable charges to persons availing themselves of facilities for doing laundry or laundry services so provided as the authority may determine.

(2) A justices' licence under the Licensing Act, 1953, for the sale of intoxicating liquor in connection with the provision of facilities for obtaining meals and refreshments under this section shall only authorise the sale of such liquor for consumption with a meal, and a local authority shall in carrying on any activities under this section be subject to all enactments and rules

of law relating thereto, including enactments relating to the sale of intoxicating liquor, in like manner as other persons carrying on the like activities.

# NOTES

**History.** Sub-s. (1) contains provisions formerly in s. 7 (1) and (2) of the Housing Act, 1949. Sub-s. (2) contains provisions formerly in s. 7 (4) of that Act. It was provided by s. 7 (3) of that Act (not reproduced) that that section should be deemed always to have had effect, and that the reference therein to Part V of the Act of 1936 included references to certain earlier Acts.

**General Note.** This section empowers the local authority, providing housing accommodation under this Part (Part V) of the Act, to provide also in connection therewith (i) facilities for obtaining meals and refreshments; (ii) facilities for doing laundry; and (iii) laundry services. These must be such as accord with the needs of the persons for whom the housing accommodation is provided. Reasonable charges may be made: Circular 90/49, cited in the General Note to s. 94, *ante*, suggested that these services should be financially self-supporting, and that it is open to the authority to employ contractors to provide the services.

It appears that the powers of this section can be exercised in connection with housing accommodation provided by the local authority under the earlier housing Acts; cf. s. 7 (3) of the Act of 1949, cited in the note "History", *supra*; and s. 192, *post*. Before the Act of 1949, a local authority had a general power to provide meals and refreshments given by the Civic Restaurants Act, 1947 (41 Statutes Supp. 24; 14 Halsbury's Statutes (2nd Edn.) 650) and a general power to provide public baths and washhouses under the Public Health Act, 1936, ss. 221 *et seq.* (19 Halsbury's Statutes (2nd Edn.) 434 *et seq.*), and the Public Health (London) Act, 1936, ss. 167 *et seq.* (15 Halsbury's Statutes (2nd Edn.) 986 *et seq.*), but there was no general or special power to provide laundry services; see *A.-G. v. Fulham Corporation*, [1921] 1 Ch. 440; 38 Digest 207, 429, and s. 167 (2) of the Public Health (London) Act, 1936.

By sub-s. (2), *supra*, the sale of intoxicating liquor is limited to sale for consumption with a meal and the Licensing Acts, etc., will apply as to any other person supplying such facilities.

## Sub-s. (1).

**Power . . . to provide housing accommodation.** For the local authority's powers, see s. 92, *ante*, and note the definition in s. 92 (4). For power to acquire land, see ss. 96 (c) and 97, *post*.

**Local authority.** See s. 1, *ante*, and s. 132, *post*.

**Provide . . . such facilities . . . and . . . services.** It seems clear that the authority may themselves run a restaurant or may employ "outside" caterers to do so; similarly they may themselves run a laundry service or employ contractors to do so. In providing facilities for persons to do their own laundry, the authority may presumably provide a room or rooms for the purpose and also fit them out with washing machines, etc.

**Needs of those persons.** These words appear to limit the extent, and the type or quality, of the facilities and services which may be provided under this section. It would seem they do not necessarily prevent the persons concerned inviting a friend or guest to a meal; but Circular 90/49 (mentioned in the General Note to s. 94, *ante*), suggests that steps should be taken to prevent abuse of the facilities, particularly laundry services, for private gain.

**Reasonable charges.** The scale of charges is to be determined by the local authority, but must in fact be reasonable. It seems the authority should have regard to the needs of the persons concerned, and their ability to pay, and also to the desirability of making the facilities and services financially self-supporting.

## Sub-s. (2).

**Licensing Act, 1953.** 33 Halsbury's Statutes (2nd Edn.) 142. As to justices' licences, see ss. 1 *et seq.* of that Act (33 Halsbury's Statutes (2nd Edn.) 147 *et seq.*), and for the meaning of "intoxicating liquor", see s. 165 (1) thereof (33 Halsbury's Statutes (2nd Edn.) 287).

**96. Power of local authority to acquire land for provision of accommodation.**—A local authority shall have power under this Part of this Act—

- (a) to acquire any land, including any houses or buildings thereon, as a site for the erection of houses,
- (b) to acquire houses, or buildings which may be made suitable as houses, together with any lands occupied with the houses or buildings, or any estate or interest in houses or in buildings which may be made suitable as houses,

- (c) to acquire land (including houses or other buildings) proposed to be used for any purpose authorised by sections ninety-three or ninety-five of this Act, whether or not the land forms part of a site for the erection of houses,
- (d) to acquire land for the purpose of the carrying out thereon by them of works for the purpose of, or connected with, the alteration, enlarging, repair or improvement of an adjoining house,
- (e) to acquire land for the purpose of the sale or lease of the land under the powers conferred by paragraph (a) of subsection (1) and by subsection (2) of section one hundred and five of this Act.

#### NOTES

**History.** This section contains provisions formerly in s. 73 of the Housing Act, 1936, as amended by ss. 1 and 51 (4) of, and the First and Third Schedules to, the Housing Act, 1949 (for the purpose of removing references to the working classes); and other provisions formerly in s. 9 (1) of the Act of 1949 and in s. 5 of the Housing Act, 1952.

Paras. (a) and (b), *supra*, and so much of para. (e) as relates to s. 105 (1) (a), *post*, are derived respectively from s. 73 (a)-(c) of the Act of 1936, as amended by the Act of 1949. Para. (c), *supra*, is derived from the Act of 1952, s. 5, which provided that land could be acquired for the purposes of s. 80 of the Act of 1936 or s. 7 of the Act of 1949 (see now ss. 93 and 95, *ante*), whether or not that land formed part of a site for the erection of houses. Para. (d), *supra*, and so much of para. (e) as relates to s. 105 (2), *post*, are derived from s. 9 (1) (a) and (b) of the Act of 1949, and relate respectively to purchases for the carrying out of works by the authority and purchases to enable such works to be carried out by other persons.

**General Note.** This section states the scope of the powers of the local authority to acquire land under this Part (Part V) of this Act. Land may be acquired by agreement, or if need be compulsorily, under s. 97 and the Seventh Schedule, *post*. Land already belonging to the authority may be appropriated for the purposes of this Part under s. 99, *post*; and by s. 153, *post*, a local authority may accept donations for any of the purposes of this Act. For powers of dealing with land, see ss. 104-107, *post*.

By s. 128 (1), *post*, trustees of houses provided for the working classes may sell them to the local authority, or arrange for the local authority to take over their management; and s. 129, *post*, enables a body corporate to sell, etc., land for working class houses at a price which need not be the best that could be obtained for other purposes.

For other powers in connection with the acquisition of land, see s. 98, *post* (power, on a compulsory purchase, to take notional possession of a house without disturbing the occupier), s. 100, *post* (allowances to persons displaced) and s. 103, *post* (power to acquire water rights).

**Local authority.** See s. 1, *ante*, and s. 132, *post*.

**Land; houses.** For definitions, see s. 189 (1), *post*. Note the special provisions of s. 103, *post*, as to water rights. As to the "land" which may be acquired compulsorily under s. 97 and the Seventh Schedule, *post*, cf. the note "Land" to para. 1 of the First Schedule, *post*; the local authority cannot compel an owner to sell less than his estate or interest in land, *i.e.*, they cannot "carve out" some lesser interest or right over land which might suffice for their purpose.

**Erection of houses.** This is one of the modes of providing housing accommodation mentioned in s. 92; see s. 92 (1) (a), *ante*. Note that the site may include existing houses or other buildings, and that it may be desirable either to retain these or demolish them, according to the nature of the plans for developing the site. Under the corresponding provision (s. 12 (1), repealed) of the Housing, Town Planning, etc., Act, 1919, it was held that a building might be retained to serve a beneficial purpose (as a beer-house) in connection with the requirements of the persons for whom housing accommodation was provided; see *Conyon v. London County Council*, [1922] 2 Ch. 283; 38 Digest 215, 503, and cf. s. 93, *ante* (which corresponds with s. 11 of the Act of 1903, also considered in that case). A house or other building purchased under the present paragraph (para. (a), *supra*), may be demolished and need not be retained as, or converted into, a house; s. 105 (4), *post*, relates only to buildings purchased for conversion under para. (b), *supra*; see *Uttoxeter Urban District Council v. Clarke*, [1952] 1 All E.R. 1318; 3rd Digest Supp. and *Attridge v. London County Council*, [1954] 2 All E.R. 444; 3rd Digest Supp.

**Acquire houses.** This mode of providing accommodation is mentioned in s. 92 (1) (c), *ante*.

**Buildings which may be made suitable as houses.** See s. 92 (1) (b), *ante*, and s. 105 (4), *post*.

**Whether or not the land forms part of a site.** The acquisition of land (including houses or other buildings) for a beneficial purpose under s. 93, *ante*, or for the provision of board and laundry facilities under s. 95, *ante*, must be connected with the provision

of housing accommodation. The present paragraph (para. (c), *supra*), which is derived from the Act of 1952, makes it clear that land to be acquired for these ancillary purposes need not form part of a site for the erection of houses.

**Land for . . . carrying out . . . works.** This paragraph (para. (d), *supra*), relates to land required for alterations, etc., to be carried out by the local authority; cf. s. 92 (1) (d) and (2), *ante*. Land may be acquired by the local authority to enable other persons to make alterations, etc., under the latter part of para. (e), *supra*; and see s. 105 (2), *post*. This latter power might be used to assist an owner to improve a house and render it fit for human habitation within the meaning of ss. 4 and 5, *ante*, or to enable an owner to provide sufficient light and ventilation for an underground room (see s. 18 (2), *ante*).

**97. Procedure for acquiring land.**—(1) Land for the purposes of this Part of this Act may be acquired by a local authority by agreement, or they may be authorised to purchase land compulsorily for those purposes by the Minister; and the Seventh Schedule to this Act shall apply in relation to a compulsory purchase under this section.

(2) A local authority may, with the consent of, and subject to any conditions imposed by, the Minister, acquire land for the purposes of this Part of this Act, notwithstanding that the land is not immediately required for those purposes:

Provided that a local authority shall not be authorised to purchase any land compulsorily for those purposes unless it appears to the Minister that it is likely to be required for those purposes within ten years from the date on which he confirms the compulsory purchase order.

#### NOTES

**History.** Sub-s. (1) contains provisions formerly in s. 74 (1) of the Housing Act, 1936, as amended by s. 6 (1) of, and the Fourth Schedule to, the Acquisition of Land (Authorisation Procedure) Act, 1946. Sub-s. (2) contains provisions formerly in s. 74 (2) of the Act of 1936.

Section 75 of the Act of 1936, which prohibited the compulsory acquisition, under Part V of that Act, of any land of another local authority, operational land of statutory undertakers, or land forming part of a park, garden or pleasure ground or otherwise required for the amenity or convenience of any house, was repealed by ss. 6 and 10 of, and the Fourth and Sixth Schedules to, the Act of 1946. The repealed section was considered in *R. v. Minister of Health, Ex parte Waterlow & Sons, Ltd.*, [1946] 2 All E.R. 189; 2nd Digest Supp. A more limited protection for certain land is now provided by the Act of 1946; see s. 1 (2) and (3) of that Act and the First Schedule, Part III, paras. 8–14, and the Second Schedule, Part I, para. 4, thereto (39 Statutes Supp. 5, 17, 18, 20; 3 Halsbury's Statutes (2nd Edn.) 1065, 1077–1079, 1081).

The provisions as to the validity and date of operation of compulsory purchase orders, originally contained in s. 74 (4) of, and the Second Schedule to, the Act of 1936, have been replaced by s. 1 of, and Part IV, paras. 15–17, of the First Schedule to, the Act of 1946 (39 Statutes Supp. 4, 18, 19; 3 Halsbury's Statutes (2nd Edn.) 1064, 1079, 1080), now applied by para. 1 (1) of the Seventh Schedule to the present Act, *post*. The requirement that compensation for compulsory purchase shall be assessed subject to special rules (s. 74 (3) of, and the Fourth Schedule to, the Act of 1936) is now contained in para. 2 of the Seventh Schedule, *post*.

**General Note.** Sub-s. (1), *supra*, provides for purchases by agreement without the making of a compulsory purchase order, or by compulsion if need be after the making of such an order under the standard procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946; see the Seventh Schedule, *post*. Land may, with the consent of the Minister, under sub-s. (2), be acquired in advance of requirements; but if it is to be so acquired compulsorily, the Minister must be satisfied that it is likely to be required within ten years.

The purposes for which land may be acquired under this section include:—

- (i) the erection of houses by the local authority (see ss. 92 (1) (a) and 96 (a), *ante*);
- (ii) the conversion of buildings into houses (see ss. 92 (1) (b) and 96 (b), *ante*);
- (iii) the acquisition of houses (see ss. 92 (1) (c) and 96 (b), *ante*);
- (iv) the provision of buildings or land to serve an ancillary "beneficial purpose", or for board and laundry facilities (see ss. 93, 95 and 96 (c), *ante*);
- (v) the sale or lease of land to a person willing to provide houses and otherwise develop the land (see s. 105 (1) (a), *post*, and s. 96 (e), *ante*);
- (vi) the carrying out of works of alteration, etc., to an adjoining house, by the authority (see s. 96 (d), *ante*), or by other persons (see s. 105 (2), *post*, and s. 96 (e), *ante*).

By s. 126, *post*, a county council are given similar powers to provide houses for their employees. By s. 118, *post*, the Minister is empowered to assist rural councils, and

may for that purpose exercise the councils' powers to acquire land. By s. 120, *post*, the local authority may make arrangements with a housing association for the provision, etc., of houses on land acquired by the authority; and by s. 119 (2), *post*, a county council may exercise the power to acquire land for a housing association where the "local authority" (for the purposes of this Part) are unwilling to do so. By s. 103 (1), *post*, the procedure for acquiring land is applied to the acquisition of water rights.

As to the power of entry on land under a compulsory purchase order, see para. 3 in Part I of the Second Schedule to the Act of 1946 (39 Statutes Supp. 20; 3 Halsbury's Statutes (2nd Edn.) 1081). For similar powers in respect of land purchased by agreement, or appropriated, see s. 101, *post*; and cf. the notes to s. 62, *ante*. On a compulsory purchase, the authority may take notional possession without actual entry, under s. 98, *post*. As to the validity of orders and the assessment of compensation, cf. the note "History", *supra*. As to allowances to persons displaced, see s. 100, *post*. For powers of disposing of, and dealing with, land, see ss. 104-107, *post*. As to Exchequer subsidies, cf. the General Note to s. 92, *ante*.

The position of the Minister in hearing objections to, and in confirming, compulsory purchase orders has been considered in a number of cases; his functions are ultimately of an administrative (or indeed legislative) character, but at the stage of hearing objections it appears that he has a duty to hear both sides fairly and to follow the principles of natural justice. See, generally, 10 Halsbury's Laws (3rd Edn.) 42, and the notes to s. 181, *post*. Reference may be made to: *Errington v. Minister of Health*, [1935] 1 K.B. 249, C.A.; Digest Supp.; *Frost v. Minister of Health*, [1935] 1 K.B. 286; Digest Supp.; and *Offer v. Minister of Health*, [1936] 1 K.B. 40, C.A.; Digest Supp. (the above three cases being decisions in relation to clearance areas; cf. ss. 42, *et seq.*, in Part III, *ante*); *Johnson (B.) & Co. (Builders), Ltd. v. Minister of Health*, [1947] 2 All E.R. 395, C.A.; 2nd Digest Supp.; *Miller v. Minister of Health*, [1946] K.B. 626; 2nd Digest Supp.; *Price v. Minister of Health*, [1947] 1 All E.R. 47; 2nd Digest Supp.; *Summers v. Minister of Health*, [1947] 1 All E.R. 184; 2nd Digest Supp.; *Green (H.E.) & Sons v. Minister of Health*, [1947] 2 All E.R. 469; 2nd Digest Supp.; and *Stafford v. Minister of Health*, [1946] K.B. 621; 2nd Digest Supp.; cf. also the notes to the Fourth Schedule, *post*.

The Minister may consult with and advise an authority about an order which is to be or has been submitted, before an inquiry or hearing; and his decision may be based on information from extraneous sources reaching him in the course of his administrative duties and not disclosed at the inquiry or hearing; see, for example, the cases of *Offer* and *Price*, *supra*.

In *Errington's* case, *supra*, it was held that the Minister should not engage in *ex parte* consultation with the local authority, after the inquiry or hearing and before confirmation of a clearance order, under a section corresponding to s. 44, *ante*. In *Stafford's* case, *supra*, where the Minister was entitled to dispense with an inquiry by virtue of s. 2 of the Housing (Temporary Provisions) Act, 1944 (27 Statutes Supp. 36) (expired), he took into consideration a document sent by the local authority in answer to the owner's objection, without affording the objector an opportunity to reply: the compulsory purchase order was quashed.

#### Sub-s. (1).

**Land.** See the definition in s. 189 (1), *post*, but see also the notes on this word to s. 96, *ante*, and para. 1 of the First Schedule, *post*.

**Purposes of this Part.** See the General Note, *supra*, and note, in particular, s. 96, *ante*.

**Local authority.** See s. 1, *ante*, and s. 132, *post*.

**By agreement.** As to purchases by agreement by local authorities in London, including the City, see s. 133, *post*.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

#### Sub-s. (2).

**Not immediately required.** The power to acquire land in advance of requirements is very unusual; it was extended to compulsory purchases by s. 70 of the Housing Act, 1935 (repealed), with the safeguard contained in the proviso, *supra*.

**Confirms the compulsory purchase order.** See para. 4 in Part I of the First Schedule to the Act of 1946 (39 Statutes Supp. 16; 3 Halsbury's Statutes (2nd Edn.) 1076). As to the date of operation of the order, see para. 6 in that Part of that Schedule, and paras. 15-17 in Part IV thereof. The period for the exercise of the power of purchase is three years after the date of its becoming operative; see s. 123 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 950).

**98. Continuance of tenancies of houses compulsorily acquired and to be used for housing purposes.**—Where a local authority are authorised to purchase compulsorily any house to be used for housing purposes under this Part of this Act and have acquired the right to enter on and take possession

of the house by virtue of having served a notice under paragraph 3 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946, the local authority may, instead of exercising that right by taking actual possession of the house, proceed by serving notice on any person then in occupation of the house or any part thereof authorising him to continue in occupation upon terms specified in the notice, or on such other terms as may be agreed; and accordingly where the authority proceed in the manner authorised by this section,—

- (a) the like consequences shall then ensue, with respect to the determination of the rights and liabilities of any person arising out of any interest of his in the house or any part thereof, as would have ensued if the authority had taken actual possession on the date of the notice, and the authority may deal with the premises in all respects as if they had done so; and
- (b) for the purposes of section one hundred and twenty-one of the Lands Clauses Consolidation Act, 1845 (which provides for payment of compensation to persons entitled to possession under short tenancies who are required to give up possession), any person who by virtue of this subsection ceases to be entitled to receive rent in respect of any premises shall be deemed to have been required to give up possession thereof.

#### NOTES

**History.** This section contains provisions formerly in s. 14 (3) of the Housing Repairs and Rents Act, 1954.

**General Note.** This section provides a mode of taking possession of a house without actual entry. It is available where a local authority have obtained a confirmed compulsory purchase order under the standard procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946, and have served notice of intention to enter under that Act. The object of this power is to allow the occupier to stay on by arrangement with the authority, but to allow the question of compensation to be settled as if possession had been taken.

Corresponding provision is made by para. 3 of the First Schedule, *post*, for houses to be acquired for temporary accommodation under s. 29 in Part II, *ante*; and also for any house to be purchased under s. 12, *ante*, if it is intended to be used for housing purposes under this Part (Part V) of the Act. Para. 10 in Part II of the Third Schedule makes similar provision for houses to be used for housing purposes under s. 48 in Part III, *ante*.

**Local authority.** See s. 1, *ante*, and s. 132, *post*.

**Authorised to purchase compulsorily.** *I.e.*, by a confirmed compulsory purchase order made under the standard procedure of the Act of 1946 (cited below), as applied for the purposes of s. 97 (1), *ante*, and the Seventh Schedule, *post*.

**Any house to be used for housing purposes.** This seems to refer primarily to a house which is to be acquired and used as such, *i.e.*, such as is mentioned in ss. 92 (1) (c) and 96 (b), *ante*. For definition of "house", see s. 189 (1), *post*.

**Serving notice.** As to authentication and service of notices, see ss. 166 (2) and 169 (1), *post*.

**By virtue of this subsection.** "Subsection" should read "section".

**Acquisition of Land (Authorisation Procedure) Act, 1946, Second Schedule, para. 3.** 39 Statutes Supp. 20; 3 Halsbury's Statutes (2nd Edn.) 1081. That paragraph (which applies by virtue of s. 97 (1), *ante*, and para. 1 (1) of the Seventh Schedule, *post*), enables 14 days' notice of intention to enter to be given, after service of notice to treat, and entry to be made thereafter without compliance with ss. 84-90 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 930-935), but subject to the payment of the like compensation and interest thereon. The paragraph closely resembles para. 9 in Part II of the Third Schedule to the present Act, *post*; and para. 10 of that Schedule contains a provision, resembling the present section, relating to houses purchased for temporary accommodation under s. 48, *ante*.

Note that the present section, and para. 10 of the Third Schedule, apply only where there is a confirmed compulsory purchase order (under the Act of 1946, or the Third Schedule to this Act, respectively) and notice to treat and notice of intention to enter are served. They do not apply where entry may be made, under s. 62, *ante*, or s. 101, *post*, in the absence of a compulsory purchase order.

Para. 3 of the Second Schedule to the Act of 1946 also applies to compulsory purchase orders under Part II of the present Act, by virtue of ss. 12 and 29, *ante*, and para. 1 (1) of the First Schedule, *post*; and para. 3 of the First Schedule contains provisions resembling this section.

**Lands Clauses Consolidation Act, 1845, s. 121.** 3 Halsbury's Statutes (2nd Edn.) 949. That section enables an acquiring authority to require a person in possession of land, whose interest is not greater than that of a tenant for a year or from year to year, to give up possession, subject to the payment of compensation.

**99. Appropriation of land for provision of accommodation.—** A local authority may appropriate for the purposes of this Part of this Act any houses or land which may be for the time being vested in them, or at their disposal, subject—

- (a) in the case of land other than land for the time being vested in them in their capacity as a local educational authority for the purposes of any of their functions under the Education Act, 1944, to obtaining the consent of the Minister, and
- (b) in the case of land for the time being vested in them in their capacity as a local education authority for the said purposes, to obtaining the consent both of the said Minister and of the Minister of Education.

#### NOTES

**History.** This section contains provisions formerly in s. 76 of the Housing Act, 1936, amended to take account of the Education Act, 1944, instead of the Education Act, 1921.

**General Note.** The local authority, by virtue of this section, may "appropriate" land (*i.e.*, change the purposes for which the land is vested in them or at their disposal) to the purposes of this Part (Part V) of the Act. The consent of the Minister is required, and if the land is vested in the local authority in their capacity as a local education authority, the consent of the Minister of Education is required also.

For general powers to appropriate land, see the Local Government Act, 1933, s. 163 (14 Halsbury's Statutes (2nd Edn.) 441), and the London Government Act, 1939, s. 106 (15 Halsbury's Statutes (2nd Edn.) 1122). There is also power, under s. 47, *ante*, to appropriate land purchased under Part III as land comprised in, surrounded by, or adjoining a clearance area; and note s. 49, *ante*, as to similar land already belonging to the local authority. By s. 57 (6), *ante*, land acquired in connection with a re-development area for the purpose of providing working class houses is deemed to have been acquired under this Part (Part V): there is no need for a formal appropriation. See also s. 57 (8) as to land already belonging to the authority. Similarly no appropriation appears to be needed where a house is retained as temporary accommodation; see, for example, ss. 29 (4) and 48 (4), *ante*.

Where a local authority have determined to appropriate land for the purposes of this Part, a power of entry is conferred, as against certain short tenancies, by s. 101, *post*. For powers of disposing of and dealing with land appropriated, see ss. 104–107, *post*.

Where land is held for the purposes of some particular statute, the present section may be insufficient to allow appropriation away from those purposes; see *R. v. Minister of Health, Ex parte Villiers*, [1936] 1 All E.R. 817; Digest Supp., and contrast *Harlow v. Minister of Transport*, [1950] 2 All E.R. 1005 (decided on s. 118 of the Town and Country Planning Act, 1947).

**Local authority.** See s. 1, *ante*, and s. 132, *post*.

**Houses or land.** For definitions of "house" and "land", see s. 189 (1), *post*.

**Local educational authority.** The correct style is "local education authority". By s. 6 (1) of the Education Act, 1944 (8 Halsbury's Statutes (2nd Edn.) 151), local education authorities are now the councils of counties and county boroughs. County borough councils are also local authorities for the purposes of the present Act; see s. 1, *ante*; and so (subject to s. 132, *post*) is the London County Council. The property of county district councils, held for the purpose of their functions under the Education Acts, 1921 to 1939, was transferred to the county councils by s. 6 (3) of the Education Act, 1944.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Education Act, 1944.** 8 Halsbury's Statutes (2nd Edn.) 145; and see the note "Local educational authority", *supra*. That Act (s. 90 (2)) also provided that the Minister of Education should be the Minister referred to, as respects educational land, for the purpose of appropriations under s. 163 of the Local Government Act, 1933 (mentioned in the General Note, *supra*).

**100. Power to make allowances to persons displaced by purchase under Part V.—**A local authority may pay to any person displaced from a house or other building which has been purchased by them under this Part

of this Act such reasonable allowance as they think fit towards his expenses in removing, and to any person carrying on any trade or business in any such house or other building they may pay also such reasonable allowance as they think fit towards losses which, in their opinion, he will sustain by reason of the disturbance of his trade or business consequent on his having to quit the house or building, and in estimating that loss they shall have regard to the period for which the premises occupied by him might reasonably have been expected to be available for the purposes of his trade or business and the availability of other premises suitable for that purpose.

# NOTES

**History.** This section contains provisions formerly in s. 6 of the Housing Act, 1949.

**General Note.** This section provides for certain discretionary allowances by local authorities who purchase a building under this Part (Part V) of the Act. There are two types of allowance:

- (i) towards the expenses, of a person displaced from a house or other building, in removing; and
- (ii) towards the loss, by way of disturbance of his trade or business, of a person carrying on a trade or business in a house or other building.

Comparable provisions are to be found in s. 32 in Part II, and s. 63 (1) in Part III, *ante*. The present section does not include provisions similar to those of s. 63 (2). Under ss. 32 and 63 (1) payments may be made to persons displaced not only by purchases, but also as a result of demolition orders, closing orders and clearance orders; persons displaced by such orders have no right to "disturbance" compensation under the Lands Clauses Acts. Again, all purchases under Part II, and some purchases under Part III, will be made at "site value"; see ss. 12 (4), 29 (2) and 59 (2) and (3), *ante*. Special payments in such cases may be payable under ss. 30, 31, 60 and 61, *ante*, and Parts I and II of the Second Schedule, *post*.

This Part (Part V) has few such complications; compensation for a compulsory purchase under s. 97, *ante*, is, however, to be assessed subject to the rules in para. 2 of the Seventh Schedule, *post*. The first type of allowance authorised by the present section, towards removal expenses, may not add much to the right of compensation for disturbance under the Lands Clauses Acts which are incorporated with the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 4; 3 Halsbury's Statutes (2nd Edn.) 1064), as applied by para. 1 (1) of the Seventh Schedule, *post*; or to the right of compensation, on certain purchases by agreement, conferred by s. 101 (2), *post*. The second type of allowance, in respect of a trade or business, may be of considerable advantage, because it is to be assessed having regard to the period for which the premises might reasonably have been expected to be available, and is not limited by reference to the period of any current tenancy.

**Local authority.** See s. 1, *ante*, and s. 132, *post*.

**House.** For definition, see s. 189 (1), *post*.

**Purchased.** See s. 97, and the General Note thereto, *ante*, as to powers of purchase under this Part.

**Such reasonable allowance as they think fit.** Cf. the note to s. 32, *ante*.

**Trade or business; have regard to the period.** See the General Note, *supra*, and the note "Have regard to the period" to s. 32, *ante*. (The note "Trade or business" to s. 32, *ante*, and the reference to s. 31 in the General Note to s. 32, have no application to the present section.)

**101. Power of entry on land to be purchased by agreement or appropriated for the purposes of Part V.—**(1) Where a local authority—

- (a) have agreed to purchase land for the purposes of this Part of this Act, or
- (b) have determined to appropriate land for those purposes,

subject to the interest of the person in possession thereof, and that interest is not greater than that of a tenant for a year or from year to year, then, at any time after the agreement has been made, or the appropriation has been approved by the Minister, the local authority may, after giving to the person so in possession not less than fourteen days' notice, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent.

(2) The exercise of a local authority's power under the foregoing subsection shall be subject to the payment to the person so in possession of the

like compensation for the land of which possession is taken, and interest on the compensation awarded, as would have been payable if the local authority had been authorised to purchase the land compulsorily and that person had in pursuance of their powers in that behalf been required to quit possession before the expiration of his term or interest in the land, but without any necessity for compliance with sections eighty-four to ninety of the Lands Clauses Consolidation Act, 1845.

## NOTES

**History.** Sub-s. (1) contains provisions formerly in s. 143 (2) and (3) (b) of the Housing Act, 1936, and sub-s. (2) contains provisions formerly in s. 143 (2) of that Act. For other provisions derived from s. 143 of that Act, see the General Note to s. 62, *ante*.

**General Note.** This section confers a power of entry where land has been purchased by agreement under this Part (Part V) of the Act, or where land already belonging to the authority is to be appropriated for the purposes of this Part. It enables the authority to dispossess a tenant whose interest is not greater than that of a tenant for a year or from year to year, *i.e.*, the same class of persons as, in the case of a compulsory purchase, could be required to give up possession under s. 121 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 949). Compensation is payable, under sub-s. (2), *supra*, on the same basis as would have applied if compulsory powers had been obtained.

The present section closely resembles s. 62 in Part III, *ante*. The period of notice required under that section is now not less than 14 days, as under the present section; see the General Note to s. 62, *ante*. As to business tenancies, protected by Part II of the Landlord and Tenant Act, 1954 (87 Statutes Supp. 101; 34 Halsbury's Statutes (2nd Edn.) 408), see the note "Tenant for a year" to s. 62 (1), *ante*.

### Sub-s. (1).

**Local authority.** See s. 1, *ante*, and s. 132, *post*.

**Agreed to purchase.** See s. 97 (1), *ante*, and the notes to that section. Where a compulsory purchase order is made, the Lands Clauses Acts are incorporated by the Acquisition of Land (Authorisation Procedure) Act, 1946, s. 1 (3) and Second Schedule (39 Statutes Supp. 5, 19; 3 Halsbury's Statutes (2nd Edn.) 1065, 1081), as applied by s. 97 (1), *ante*, and para. 1 (1) of the Seventh Schedule, *post*; accordingly s. 121 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 949), can be used to require a tenant, whose interest is not greater than that of a tenant for a year or from year to year, to give up possession.

**Land.** See s. 189 (1), *post*.

**Determined to appropriate.** See s. 99, *ante*.

**Tenant for a year.** See the note to s. 62 (1), *ante*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Giving . . . notice.** As to authentication and service of notices, see s. 166 (2) and 169 (1), *post*.

**Not less than fourteen days.** Cf. the note "Not less than twenty-one days" to s. 16 (1), *ante*.

**Enter on and take possession.** Compensation will be payable under sub-s. (2), *supra*. Note that the power to take "notional" possession without actual entry, under s. 98, *ante*, applies only where there is a confirmed compulsory purchase order and notice to treat has been served.

### Sub-s. (2).

**Compensation.** Compensation is payable as if (i) the local authority had been authorised to purchase compulsorily, *i.e.*, presumably, by a compulsory purchase order under the Acquisition of Land (Authorisation Procedure) Act, 1946 (cf. the note "Agreed to purchase" to sub-s. (1), *supra*), and as if (ii) the person in possession had been required to give up possession under s. 121 of the Lands Clauses Consolidation Act, 1845 (*ubi supra*). Such compensation would be assessed, subject to the Acquisition of Land (Assessment of Compensation) Act, 1919 (31 Statutes Supp. 177; 3 Halsbury's Statutes (2nd Edn.) 975) as applied by the Act of 1946 (*supra*), and subject also, by virtue of s. 97 (1), *ante*, to the rules in para. 2 of the Seventh Schedule, *post*.

**Interest.** See the note to s. 62 (2), *ante*.

**Authorised to purchase . . . compulsorily.** *I.e.*, presumably, under s. 97 (1), *ante*, and the Seventh Schedule, *post*, which apply the Act of 1946 (*ubi supra*).

**Lands Clauses Consolidation Act, 1845, ss. 84-90.** 3 Halsbury's Statutes (2nd Edn.) 930-935; and see the note to s. 62 (2), *ante*.

**102. Land in New Forest.**—The provision of houses under this Part of this Act shall be deemed to be a local sanitary requirement for the purposes of the New Forest (Sale of Land for Public Purposes) Act, 1902:

Provided that the total area of land being part of the New Forest which may be sold or let for the provision of houses shall not exceed thirty acres.

#### NOTES

**History.** This section contains provisions formerly in s. 77 of the Housing Act, 1936.

**Provision of houses.** For definition of "house", see s. 189 (1), *post*. Note also s. 92 (4), *ante*, as to the meaning of "provision of housing accommodation" in this Part (Part V).

**New Forest (Sale of Land for Public Purposes) Act, 1902.** 2 Edw. 7 c. cxcviii.

**103. Power to acquire water rights for houses provided.**—(1) A local authority or a county council may, notwithstanding anything in sections three hundred and thirty-one, three hundred and thirty-three or three hundred and thirty-four of the Public Health Act, 1936, but subject to the provisions of subsection (2) of section one hundred and sixteen and section one hundred and seventeen of that Act, be authorised to abstract water from any river, stream or lake, or the feeders thereof, whether within or without the district of the local authority or the county, for the purpose of affording a water supply for houses provided under this Part of this Act, and to do all such acts as may be necessary for affording a water supply to such houses, subject to prior obligation of affording a sufficient supply of water to any houses or agricultural holdings or other premises that may be deprived thereof by reason of such abstraction, in like manner and subject to the like restrictions as they may be authorised to acquire land for the purposes of this Part of this Act:

Provided that no local authority or county council shall be authorised under this section to abstract any water which any local authority, corporation, company or person are empowered by Act of Parliament to impound, take or use for the purpose of supply within any area, or any water the abstraction of which, in the opinion of the Minister, would injuriously affect the working or management of any canal or inland navigation.

(2) Any expenses incurred by a local authority under this section in connection with any houses provided or to be provided shall be treated as part of the expenses of providing those houses.

#### NOTES

**History.** This section contains provisions formerly in s. 78 of the Housing Act, 1936, with references to the sections of the Public Health Act, 1936, substituted for references to ss. 327, 331 and 52 of the Public Health Act, 1875.

**General Note.** Under this section a local authority or county council may be authorised to abstract water and supply it to houses provided under this Part (Part V). The exercise of this power is restricted by:—

- (1) The prior obligation to afford a sufficient supply to houses, agricultural holdings or other premises mentioned in sub-s. (1), *supra*.
- (2) The protection of any water over which any authority, corporation, etc., have statutory powers as mentioned in sub-s. (1) proviso.
- (3) The protection for canals, etc., in sub-s. (1) proviso.
- (4) The requirement, in certain circumstances, of the consent of statutory water undertakers under s. 116 (2) of the Public Health Act, 1936 (19 Halsbury's Statutes (2nd Edn.) 394). That subsection provides that consent is not to be unreasonably withheld, and that the Minister (of Housing and Local Government) may determine disputes on this question.
- (5) The right of statutory water undertakers to give notice, under s. 117 of the Public Health Act, 1936 (19 Halsbury's Statutes (2nd Edn.) 395), that they are able and intend to supply the premises.

It is not, however, affected by the savings and restrictions in ss. 331, 333 and 334 of the Public Health Act, 1936 (19 Halsbury's Statutes (2nd Edn.) 489, 490, 491).

**Local authority.** See s. 1, *ante*, and s. 132, *post*. For general powers of local authorities in respect of water supply, see Part IV of the Public Health Act, 1936 (19 Halsbury's Statutes (2nd Edn.) 391), particularly ss. 111, 137, 138, as amended by the Water Act, 1945. As to the provision of houses by county councils, see s. 126, *post*.

**Be authorised; in like manner.** - See s. 97 (1), *ante*, and the Seventh Schedule, *post*. This appears to mean that the abstraction of water, for supply to the houses, will be authorised by a compulsory purchase order under the standard procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 4; 3 Halsbury's Statutes (2nd Edn.) 1064), as applied by para. 1 (1) of the Seventh Schedule, *post*. The right to take the water would seem to be the "land" to be acquired: see the definitions of "land" in s. 189 (1), *post*, and in s. 8 (1) of the Act of 1946.

**Within or without the district . . . or . . . county.** Cf. s. 92 (1), *ante*, and s. 108, *post*.

**Houses provided under this Part.** For definition of house, see s. 189 (1), *post*, and cf. s. 92 (4), *ante*, as to the meaning of "provision of housing accommodation" in this Part (Part V).

**Subject to the like restrictions.** This phrase, as it appeared in s. 78 of the Act of 1936 (replaced by the present section), presumably referred to s. 75 (repealed) of that Act; see the note "History" to s. 97, *ante*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Public Health Act, 1936, ss. 116 (2), 117, 331, 333, 334.** 19 Halsbury's Statutes (2nd Edn.) 394, 395, 489, 490, 491. Cf. the General Note, *supra*.

**104. Power of disposing of houses provided under Part V.—(1)** Where a local authority have acquired or appropriated any land for the purposes of this Part of this Act, then, without prejudice to any of their other powers under this Act, the local authority may, with the consent of the Minister, sell or lease any houses on the land or erected by them on the land, subject to such covenants and conditions as they may think fit to impose in regard to the maintenance or use of the houses, and upon any such sale or on the grant of any such lease they may, if they think fit, agree to the price or any premium being paid by instalments or to a payment of part thereof being secured by a mortgage of the premises.

(2) For the purposes of the foregoing subsection the consent of the Minister may be given generally either to all local authorities or to any local authority or authorities and either in relation to all houses or to any house or houses, and may be given subject to such conditions as the Minister thinks expedient as to the price or rent to be obtained or otherwise as to the exercise of any powers of the authority under this section in connection with the sale or lease.

(3) On the sale of a house in accordance with this section (not being a sale to a local authority, county council, development corporation, housing association or housing trust subject to the jurisdiction of the Charity Commissioners) a local authority may in any case, and shall if so required by the Minister, impose conditions—

- (a) limiting the price at which the house may be sold during any period not exceeding five years from the completion of the sale,
- (b) limiting the rent at which the house may be let to the limit imposed by section twenty of the Rent Act, 1957, during any such period,
- (c) precluding the purchaser (including any successor in title of his and any person deriving title under him or any such successor) from selling or letting the house during any such period unless he has notified the authority of the proposed sale or letting and offered to resell or sell the house to them and the authority have refused the offer or have failed to accept it within one month after it is made, and prescribing or providing for the determination of the price to be paid in the event of the acceptance of such an offer.

(4) Where a house has been sold by a local authority subject to any such condition as is mentioned in paragraph (a) or paragraph (b) of the last foregoing subsection the following enactments, that is to say—

- (a) section seven of the Building Materials and Housing Act, 1945 (which, as amended by section forty-three of the Housing Act, 1949, imposes penalties for breach of certain conditions of building licences),

- (b) paragraphs (a) and (b) of subsection (3) and subsection (4) of section nine of that Act (which contains supplementary provisions for ascertaining when a house is sold or let, or sold or let at an excessive price or rent), and
- (c) subsection (6) of section forty-three of the Housing Act, 1949 (which relates to the jurisdiction of justices to try offences under the said section seven),

shall apply as if the house were constructed under the authority of a building licence granted subject to the like condition, and for that purpose shall have effect as if for the reference in the said section seven (as amended as afore-said) to the period of eight years beginning with the passing of the said Act of 1945 there were substituted a reference to the period specified in the condition.

(5) Where any such condition as is mentioned in paragraph (a), paragraph (b) or paragraph (c) of subsection (3) of this section is imposed on the sale of a house by a local authority, the condition shall be registered in the register of local land charges by the proper officer of the local authority in such manner as may be specified by rules made for the purposes of this section under subsection (6) of section fifteen of the Land Charges Act, 1925, but without prejudice to the registration under section ten of that Act of any condition being an estate contract within the meaning of that Act.

(6) The provisions of sections one hundred and twenty-eight to one hundred and thirty-two of the Lands Clauses Consolidation Act, 1845 (which relate to the sale of superfluous land), shall not apply with respect to the sale by a local authority, under the powers conferred by this section, of any land acquired by the authority for the purposes of this Part of this Act.

(7) For the purposes of this section "sale" includes sale in consideration of a chief rent, rentcharge or other similar periodical payment, and "sell" has a corresponding meaning.

#### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 79 (1) (d) of the Housing Act, 1936, as amended by ss. 1 and 51 (4) of, and the First and Third Schedules to, the Housing Act, 1949, and further amended by s. 3 (4) of the Housing Act, 1952. Sub-s. (2) contains provisions formerly in s. 3 (2) of the Act of 1952. Sub-s. (3) contains provisions formerly in s. 3 (3) of the Act of 1952, as amended by s. 26 (3) of, and the Eighth Schedule to, the Rent Act, 1957, and in s. 33 (7) of the Housing Repairs and Rents Act, 1954. Sub-ss. (4) and (5) contain provisions formerly in s. 4 (1) and (3) of the Act of 1952. Sub-ss. (6) and (7) contain provisions formerly in s. 79 (5) and (6) of the Act of 1936.

Other powers of dealing with land under this Part, also derived from s. 79 of the Act of 1936 as affected by later statutes, are contained in ss. 105 and 107, *post*; sub-ss. (6) and (7), *supra*, correspond with s. 105 (5) and (6), *post*.

**General Note.** The general power of disposing of land acquired or appropriated for the purposes of this Part (Part V) of the Act is contained in s. 105, *post*. The present section relates to the disposal of houses; these are separately dealt with because of the changes introduced by the Housing Act, 1952, particularly as to the imposition of conditions (which may now include conditions limiting re-sale prices and rents) similar to those which used to be imposed on the grant of building licences.

It is not a requirement, under this section, that the houses must be sold or let at the best price or rent reasonably obtainable; this requirement was removed by the Act of 1952 because, in particular, it would have hindered sales of local authority houses to sitting tenants, which the then Government wished to encourage. Note the similar exception, in s. 105 (3), *post*, for "Land sold or leased with houses", also derived from the Act of 1952. Sub-s. (2), *supra*, is intended to facilitate the obtaining of the Minister's consent to sales and leases of houses.

#### Sub-s. (1).

**Local authority.** See s. 1, *ante*, and s. 132, *post*.

**Acquired or appropriated any land.** See ss. 96, 97 and 99, *ante*. "Land" is defined in s. 189 (1), *post*, but the definition, it seems, is not relevant here.

**Without prejudice to any of their other powers.** *E.g.*, the power to dispose of houses, under this section, does not prevent land which may have houses on it being sold or leased under s. 105 (1) (a), *post*.

**Consent of the Minister.** *I.e.*, of the Minister of Housing and Local Government; see s. 189 (1), *post*. As to the manner in which consent may be given, see sub-s. (2), *supra*, and the note thereto, *infra*.

**Sell.** Note sub-s. (7), *supra*; and cf. s. 47 (3), *ante*, and s. 105 (6), *post*. As to the application of the proceeds of sale or any other capital moneys received by a local authority in respect of any transaction under this section, see s. 142, *post*.

The Minister has sanctioned the use of the proceeds of sale of houses under this section either in the repayment of housing debt having not less than twenty years to run or for any new housing capital purposes for which a loan sanction for not less than twenty years is issued; see para. 11 of Circular No. 64/52, mentioned in the note, *infra*, to sub-s. (2).

**Houses on the land or erected by them.** This form of words is presumably intended to include any house on the land, *e.g.*, a house purchased as such (see ss. 92 (1) (c) and 96 (b), *ante*); or a house which already existed on land bought or appropriated as a site for the erection of houses (see ss. 92 (1) (a) and 96 (a), *ante*); or a house erected on such a site; or a house produced by conversion (see ss. 92 (1) (b) and 96 (b), *ante*). For definition of "house", see s. 189 (1), *post*; and cf. s. 92 (4), *ante*.

**Subject to such covenants and conditions.** This refers to covenants and conditions imposed by the authority on the purchaser or lessee. These must not be confused with the conditions, under sub-s. (2), *supra*, or s. 106, *post*, which the Minister may impose on the authority in giving his consent; though the latter type of condition might require the authority to impose the former type.

By sub-s. (3), *supra*, conditions limiting the selling price on a re-sale, etc., may be imposed by the authority, and shall be so imposed if the Minister so requires. The covenants and conditions mentioned in the present subsection (sub-s. (1)) must relate to the "maintenance or use" of the houses. This is a narrow phrase, and would not of itself authorise the imposition of conditions of the type mentioned in sub-s. (3): the original intention was presumably to secure the maintenance of the houses as houses for the working classes, as mentioned in s. 79 (1) (d) of the Act of 1936 as originally enacted (*i.e.*, before the amendment by the Act of 1949 mentioned in the note "History", *supra*). As to the enforcement of covenants, see s. 151, *post*.

**Price or any premium.** The references to any premium being paid by instalments, or secured by mortgage, on the grant of a lease, were introduced by s. 3 (4) of the Act of 1952. This was to facilitate the grant of long leases on financial terms similar to those applying to sales.

#### Sub-s. (2).

**Consent of the Minister.** The purpose of this subsection, which is derived from the Act of 1952, is to facilitate the disposal of houses by enabling the Minister to grant consent in general terms, either to all authorities or to particular authorities, and either in relation to all houses or to particular houses; cf. Ministry of Housing and Local Government Circular No. 64/52, dated 26th August 1952, printed in *Lumley's Public Health* (12th Edn.), Vol. VIII, at pp. 281 *et seq.*

In paras. 8 and 9 of that Circular general consent is given to the sale, or grant of a lease for 99 years or longer, of any house provided by the local authority under Part V (of the Act of 1936, now replaced by this Part of this Act) to the sitting tenant; or in the case of unoccupied houses, to a person in need of a house for his own exclusive use. The conditions imposed on this consent may be summarised as follows:—

#### *In the case of sale:—*

- (1) That the sale price shall be not less than:—
  - (a) 20 years' purchase of the net rent exclusive of rates and water rates, and ignoring rebates and other adjustments in the case of houses completed on or before 8th May 1945;
  - (b) the all-in cost of providing the house if completed since 8th May 1945.
- (2) That the authority should impose conditions to secure the following matters:—
  - (a) restriction of the rent at which the house may be let, for a period of 5 years;
  - (b) restriction of selling price during the same period—not to exceed purchase price plus value of improvements;
  - (c) reservation of right of pre-emption to local authority for 5 years—price to be original purchase price plus value of improvements, less depreciation.

#### *In the case of leasing:—*

- (1) Consideration for grant of lease to be not less than:—
  - (a) 20 years' purchase of net rent less 20 years' purchase of proposed ground rent, if house completed on or before 8th May 1945;
  - (b) the all-in cost of providing the house, less 20 years' purchase of proposed ground rent, if house completed since 8th May 1945.
- (2) That the authority should impose a covenant not to assign, etc., for 5 years, and thereafter not to assign, etc., at an excessive premium or rent, or otherwise without consent.

Para. 10 of the above-mentioned Circular suggests that any financial assistance should be given as permitted by sub-s. (1), *supra*, rather than under the Small Dwellings Acquisition Act, 1899 (11 Halsbury's Statutes (2nd Edn.) 382), or s. 4 of the Housing Act, 1949 (see now s. 43 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*)). Paras. 11 and 12 and Appendices II and III of the Circular deal with financial matters. See also s. 106, *post*, and s. 18 (2) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*), which together contain the provisions formerly in s. 86 of the Act of 1936 and s. 3 (5) of the Act of 1952, as to the imposition of conditions and the reduction, suspension or discontinuance of Exchequer contributions (now called exchequer payments; see ss. 18 (4) and 58 (2) of the Act of 1958, *post*) on the sale of a house within the Housing Revenue Account.

References to rate fund contributions, in the former sections, and in Appendix II to the above-mentioned Circular No. 64/52, are now obsolete by reason of the abolition of compulsory rate fund contributions by s. 8 of the Housing Subsidies Act, 1956 (94 Statutes Supp. 46; 36 Halsbury's Statutes (2nd Edn.) 380) (now repealed by the Housing (Financial Provisions) Act, 1958 (Book II, *post*)).

#### Sub-s. (3).

**Sale.** Note sub-s. (7), *supra*. The present subsection and sub-ss. (4) and (5), *supra*, apply only to sales. Where a house is leased, the official view is that sufficient control may be exercised by covenants in the lease, enforceable under the ordinary law of landlord and tenant.

**Not being . . . to a local authority, county council, etc.** This exemption was introduced by s. 33 (7) of the Housing Repairs and Rents Act, 1954 (84 Statutes Supp. 75; 34 Halsbury's Statutes (2nd Edn.) 359); the official view was that such bodies could be trusted not to seek a profit by exploiting the housing shortage.

The above-mentioned section was primarily concerned to exclude the protection of the Rent Acts from tenancies where the landlord was a local authority, development corporation, housing trust or, in certain circumstances, a housing association; see s. 33 (1) and (2) of the Act of 1954, and note the addition of s. 33 (2) (c) by s. 26 (1) of, and para. 26 of the Sixth Schedule to, the Rent Act, 1957 (103 Statutes Supp. 99, 129; 37 Halsbury's Statutes (2nd Edn.) 578, 600). The Act of 1957 also repealed s. 33 (5) of the Act of 1954, relating to sublettings. The added s. 33 (2) (c) relates to houses provided or improved with assistance under the enactments now replaced by ss. 119 (3) and 121, *post*; see also para. 26 (2) of Sixth Schedule to the Act of 1957.

For the meaning of "local authority", in the words within brackets in this subsection, see s. 189 (2), *post*; together with the express reference to county councils, this corresponds to s. 33 (1) (a) and (7) of the Act of 1954 (*ubi supra*). As to "development corporation", see s. 189 (1), *post*, and cf. s. 33 (1) (b) of the Act of 1954; development corporations are deemed to be housing associations by virtue of s. 125, *post*. "Housing association" and "housing trust" are defined in s. 189 (1), *post*; cf. s. 33 (1) (c) and (d) of the Act of 1954; and note that the special definition of "housing trust" in s. 33 (9) of that Act is not here reproduced. The conditions as to housing associations in s. 33 (2), as amended, of that Act are not here relevant.

As to the jurisdiction of the Charity Commissioners, see 4 Halsbury's Laws (3rd Edn.) 423 *et seq.*

**Local authority.** For the meaning of this expression, as it appears after the parentheses in this subsection, see s. 1, *ante*, and s. 132, *post*.

**Shall if so required . . . impose conditions.** As to the conditions required to be imposed under the general consent to sales contained in Circular No. 64/52, see the note "Consent of the Minister" to sub-s. (2), *supra*. As to registration, see sub-s. (5), *supra*, and as to the enforcement of certain conditions, see sub-s. (4), *supra*.

**Precluding the purchaser, etc.** Sub-s. (3) (c), *supra* (derived from s. 3 (3) (b) of the Housing Act, 1952) goes further than the power to limit the price on a re-sale; it confers a power to secure by condition a right of pre-emption for the local authority. This was intended not only to prevent a purchaser exploiting the housing shortage by making a profitable re-sale, but also to secure that, if the purchaser wished to sell, the house could be taken back by the authority and sold, leased or let to some person for whom they wished to provide accommodation under this Part, *e.g.*, someone on their list of applicants for accommodation.

**Rent Act, 1957, s. 20.** 103 Statutes Supp. 84; 37 Halsbury's Statutes (2nd Edn.) 571. That section amended s. 3 of the Housing Act, 1952, and a number of other housing enactments, so as to substitute references to the "rent limit", under s. 1 of the Act of 1957, for the limits on rent under those enactments, with certain savings for conditions already imposed and fixing a higher limit (s. 20 (1)). The section also provided for modifying entries in the local land charges register, where the effect of any condition was modified by that section (s. 20 (2)); and made special provision in the case of tenancies falling within s. 33 (1) (c) or (d) of the Act of 1954 (mentioned in the note "Not being . . . to a local authority, county council, etc.", *supra*) (s. 20 (3)).

It should be noted, also, that part of s. 3 (3), together with s. 4 (2), of the Housing Act, 1952, were repealed by the Rent Act, 1957, s. 26 (3) and Eighth Schedule, in consequence of the above changes, and are therefore not reproduced in the present section.

The enactments mentioned in s. 20 (1) of the Act of 1957 now include a reference to the present section; see s. 190 and the Tenth Schedule, *post*.

**Sub-s. (4).**

**Has been sold.** Cf. the note "Sale" to sub-s. (3), *supra*. The present subsection provides for the enforcement of conditions limiting the price on re-sale, or limiting the rent, under sub-s. (3) (a) and (b), *supra*; it does not extend to conditions conferring a right of pre-emption under sub-s. (3) (c), *supra*.

**Building Materials and Housing Act, 1945, ss. 7, 9 (3) (a), (b), (4).** 34 Statutes Supp. 41, 44; 11 Halsbury's Statutes (2nd Edn.) 642, 645. Section 7, as originally enacted, created offences, triable summarily, of selling or offering to sell for more than the "permitted price" or letting or offering to let at more than the "permitted rent" where the price or rent of a house was limited by the terms of a building licence. By the present subsection, this form of control is applied to prices and rents limited under sub-s. (3), *supra*. The fine may be such as deprives the offender of any benefit, plus a further £100; and in addition or as an alternative, a sentence of three months' imprisonment may be imposed. A prosecution must be instituted within six months; see *R. v. Wimbledon J.J., Ex parte Derwent*, [1953] 1 All E.R. 390; 3rd Digest Supp. There are elaborate provisions to cover, for example, cases where a house is sold with other property, or for a consideration not wholly in money; see *Modern Housing (Leicester), Ltd. v. Gunning*, [1948] 1 All E.R. 784; 2nd Digest Supp.; and *Duplex Settled Investment Trust, Ltd. v. Worthing Borough Council*, [1952] 1 All E.R. 545; 17 Digest (Repl.) 454, 173.

**Housing Act, 1949, s. 43.** 61 Statutes Supp. 117; 28 Halsbury's Statutes (2nd Edn.) 637. This section amended s. 7 of the Act of 1945 (*ubi supra*). In particular s. 43 (1) extended the time limit to eight years, as mentioned in the present subsection, but this expired in 1953; s. 7 of the Act of 1945 accordingly now operates only as applied for the present purposes, and during the period, not exceeding five years, mentioned in any condition imposed under sub-s. (3), *supra*.

Section 43 (6) of the Act of 1949 confers jurisdiction on the magistrates having jurisdiction in the area where the house is situate; but for this, proceeding could be taken only where the offence (*e.g.*, the sale) occurred; see *R. v. Edwards, Ex parte Joseph*, [1947] 1 All E.R. 314; 2nd Digest Supp.

**Sub-s. (5).**

**Any such condition.** This refers expressly to conditions imposed by the local authority under any of the three paragraphs of sub-s. (3), *supra*, but not to those which may be imposed under sub-s. (1), *supra*, but conditions under sub-s. (1) would seem to be registrable if they "prohibit or restrict the user or mode of user" of the land as mentioned in the Land Charges Act, 1925, s. 15 (as amended) (20 Halsbury's Statutes (2nd Edn.) 1088).

**Register of local land charges; proper officer.** As to this register, see the Land Charges Act, 1925, s. 15 (20 Halsbury's Statutes (2nd Edn.) 1088). The basic framework of rules thereunder is contained in the Local Land Charges Rules, 1934 (S.R. & O. 1934 No. 285) (18 Halsbury's Statutory Instruments, title Real Property (Part 2); see also *Garner's Local Land Charges*). The "proper officer" is defined by r. 4 of those rules.

The amending rules made for the purposes of the Act of 1952, under s. 4 (3) thereof, are the Housing Act, 1952 (Registration of Conditions) Rules, 1953 (S.I. 1953 No. 250); these, it seems, are saved by s. 191 (2), *post*.

By s. 20 (2) of the Rent Act, 1957 (see the note on that section, to sub-s. (3), *supra*) the proper officer is required to record any change in a registered condition effected by that section; note also s. 1 (2) of that Act as to changes in the "rent limit", and s. 190 and the Tenth Schedule, *post*, which extend s. 20 (1) of the Act of 1957 (as if the reference therein to s. 3 of the Act of 1952 included a reference to the present section).

**Rules.** See the previous note, *supra*.

**Land Charges Act, 1925, ss. 10, 15 (6).** 20 Halsbury's Statutes (2nd Edn.) 1076, 1089. For the meaning of an "estate contract", see s. 10 (1) of that Act; conditions imposed under sub-s. (3) (c), *supra*, may, it seems, be registrable as estate contracts.

**Sub-ss. (6) and (7).**

See the notes to s. 105 (5) and (6), *post*.

**105. Other powers of dealing with land acquired or appropriated for provision of accommodation.**—(1) Where a local authority have acquired or appropriated any land for the purposes of this Part of this Act, then, without prejudice to any of their other powers under this Act, the local authority may, with the consent of the Minister—

- (a) sell or lease the land or part thereof to any person for the purpose and under the condition that that person will erect thereon in accordance with plans approved by the local authority, and maintain, such

number of houses of such types as may be specified by the authority and, when necessary, will lay out and construct public streets or roads and open spaces on the land, or will use the land for purposes which, in the opinion of the authority, are necessary or desirable for, or incidental to, the development of the land as a building estate in accordance with plans approved by the authority, including the provision, maintenance and improvement of houses and gardens, factories, workshops, places of worship, places of recreation and other works or buildings,

(b) sell the land or part thereof, or exchange the land or part thereof for land better adapted for those purposes, either with or without paying or receiving any money for equality of exchange.

(2) Where a local authority have acquired any land with a view to the carrying out on the land by a person other than the local authority of works for the purpose of, or connected with, the alteration, enlargement, repair or improvement of an adjoining house, they may, with the consent of the Minister, sell or lease the land to any person for the purpose and under the condition that that person will carry out thereon, in accordance with plans approved by the authority, those works.

(3) Land sold or leased under the provisions of this section, other than land sold or leased with houses, shall be sold or leased at the best price or for the best rent that can reasonably be obtained, having regard to any condition imposed.

(4) Where a local authority acquire a building which may be made suitable as a house, or an estate or interest in such a building, they shall forthwith proceed to secure that the building is so made suitable either by themselves executing any necessary work or by leasing it or selling it to some person subject to conditions for securing that he will so make it suitable.

(5) The provisions of sections one hundred and twenty-eight to one hundred and thirty-two of the Lands Clauses Consolidation Act, 1845 (which relate to the sale of superfluous land), shall not apply with respect to the sale by a local authority, under the powers conferred by this section, of any land acquired by the authority for the purposes of this Part of this Act.

(6) For the purposes of this section "sale" includes sale in consideration of a chief rent, rentcharge or other similar periodical payment, and "sell" has a corresponding meaning.

#### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 79 (1) (b) of the Housing Act, 1936, as amended by ss. 1 and 51 (4) of, and the First and Third Schedules to, the Housing Act, 1949, and in s. 79 (1) (c) of the Act of 1936. Sub-s. (2) contains provisions formerly in s. 9 (2) of the Act of 1949. Sub-s. (3) contains provisions formerly in s. 79 (3) of the Act of 1936, s. 9 (2) of the Act of 1949, and s. 3 (1) of the Housing Act, 1952. Sub-s. (4) contains provisions formerly in s. 79 (4) of the Act of 1936, as substituted by s. 1 of, and the First Schedule to, the Act of 1949. Sub-s. (5) contains provisions formerly in s. 79 (5) of the Act of 1936 and in s. 9 (2) of the Act of 1949. Sub-s. (6) contains provisions formerly in s. 79 (6) of the Act of 1936 and s. 9 (3) of the Act of 1949.

**General Note.** This section contains general powers of disposing of, and dealing with, land held for the purposes of this Part (Part V). For other powers, see s. 104, *ante* (sales and leases of houses), and s. 107, *post* (streets and other development). As to conditions, see s. 106, *post*, and the financial provisions mentioned in the notes thereto.

As to the application of proceeds of sale or other capital moneys arising under sub-s. (1), see s. 142, *post*. Comparison may be made with s. 47, *ante*, and that section as applied by s. 51 (5), *ante*, relating to the disposal of land held for the purposes of a clearance area under Part III of that Act. Certain land purchased in connection with a re-development area may fall within the present section; see s. 57 (6), *ante*. Other land held for the purposes of a re-development area may be sold, leased or exchanged under s. 57 (7), *ante*.

**Sub-s. (1).**

**Local authority.** See s. 1, *ante*, and s. 132, *post*.

**Acquired or appropriated any land.** As to land acquired, see ss. 96 and 97, *ante*, and the General Note to s. 97. As to appropriations, see s. 99, *ante*. "Land" includes houses and buildings; see s. 3 of the Interpretation Act, 1889 (24 Halsbury's Statutes (2nd Edn.) 207), and cf. s. 96, *ante*. The definition of "land" in s. 189 (1), *post*, seems to have little relevance in this context.

**Without prejudice to any of their other powers.** *E.g.*, the powers to sell or lease houses under s. 104, *ante*.

**Consent of the Minister.** *I.e.*, of the Minister of Housing and Local Government; see s. 189 (1), *post*. As to the imposition of conditions, see s. 106, *post*, and the notes thereto. Under this section, there is no power to give consent in general terms; contrast s. 104 (2) and the note thereto, *ante*.

**Sell.** Note sub-s. (6), *supra*. Note that sub-s. (1) (a), *supra*, gives power to sell or lease land either (i) for the erection of houses, together with streets, roads, and open spaces if necessary, or (ii) for the purposes of or incidental to a building estate. The latter purposes are widely expressed; cf. ss. 92 and 93, *ante*. Under s. 96 (e), *ante*, the local authority are expressly empowered to acquire land for the purpose of selling or leasing it under sub-s. (1) (a), *supra*.

As to the application of proceeds of sale, see s. 142, *post*.

**Houses; streets.** For definitions of "house" and "street", see s. 189 (1), *post*. As to building byelaws, see s. 145, *post*, and the notes thereto; and note s. 107, *post*.

**Sell . . . or exchange . . . for land better adapted for those purposes.** The purposes referred to are "the purposes of this Part of this Act", mentioned earlier in this subsection. As to the application of proceeds of sale, or other capital moneys, see s. 142, *post*. The power of sale under sub-s. (1) (b) appears to be quite general in its terms; *i.e.*, land can be sold thereunder because it is not required at all, or because land better adapted is available.

#### Sub-s. (2).

**Acquired any land with a view to . . . carrying out . . . works.** Express power is conferred by s. 96 (e), *ante*, for the local authority to acquire land so as to enable some other person to carry out works for the alteration, etc., of an adjoining house. The present subsection empowers the authority, with the consent of the Minister, to sell or lease the land to some person for the purpose of carrying out such works. Power to acquire land in cases where the local authority themselves intend to carry out similar works is conferred by s. 96 (d), *ante*.

The present subsection, derived from the Housing Act, 1949, may be useful where the adjoining owner can use the extra land for the purposes of rendering a house fit for human habitation, or for remedying defects in an underground room coming within s. 18 (2), *ante*.

#### Sub-s. (3).

**Under the provisions of this section.** Land may be sold or leased under this section in four types of cases:

- (1) for the erection of houses, etc., or the development of a building estate (sub-s. (1) (a), *supra*);
- (2) to enable an adjoining house to be altered, etc. (sub-s. (2), *supra*);
- (3) for the conversion of a building, where the authority do not themselves undertake the work (sub-s. (4), *supra*); and
- (4) under sub-s. (1) (b), *supra*, which relates, however, only to sales (and exchanges) and not leases: the purposes of that paragraph, it is submitted, include the sale of surplus land, or the sale of land to raise money to purchase better land.

It seems that one or other of these powers may be used to sell or lease land "with houses"; houses themselves may be sold or leased under s. 104, *ante*. As the word "house" includes any yard, garden, outhouses, etc., by virtue of the definition in s. 189 (1), *post*, the reference to land sold or leased "with houses" presumably refers to additional land in connection therewith, *e.g.*, amenity land or open space not forming part of the house or houses.

The requirement as to obtaining the best price or rent is excluded (i) on the sale or lease of a house under s. 104, *ante*, or (ii) on the sale or lease of land "with houses" under this section; but it applies to any other sale or lease under this section.

**Land sold or leased with houses.** See the previous note, *supra*.

**Best price; best rent; condition.** Cf., generally, s. 47 in Part III, *ante*, as to land held for the purpose of a clearance area. Note that under the present section, except sub-s. (4), the consent of the Minister is required.

The local authority may impose conditions under sub-ss. (1) (a), (2) and (4), *supra*. It seems that the Minister, by imposing conditions under s. 106, *post*, can control the nature of the conditions which the authority will impose on the purchaser or lessee under this section.

#### Sub-s. (4).

**Acquire a building which may be made suitable as a house.** A building

may be acquired for this type of conversion under ss. 96 (b) and 97, *ante*; see also, s. 92 (1) (b), *ante*.

**Forthwith proceed to secure, etc.** This obligation extends only to buildings acquired for the purpose under s. 96 (b), *ante*, and not to any buildings which may exist on land acquired, as a site for the erection of houses, under s. 96 (a), *ante*; see *Uitoxeter Urban District Council v. Clarke*, [1952] 1 All E.R. 1318; 3rd Digest Supp., and *Attridge v. London County Council*, [1954] 2 All E.R. 444; 3rd Digest Supp. For the meaning of "forthwith", see the note to s. 12 (3), *ante*.

#### Sub-s. (5).

**Lands Clauses Consolidation Act, 1845, ss. 128-132.** 3 Halsbury's Statutes (2nd Edn.) 953, 954. Note that ss. 127-132 are also excluded by s. 1 of, and para. 2 (a) in Part I of the Second Schedule to, the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 4, 20; 3 Halsbury's Statutes (2nd Edn.) 1065, 1081), in the case of land acquired under a compulsory purchase order made under the procedure of that Act. The same sections are excluded in the case of land acquired under a compulsory purchase order under the Third Schedule, *post* (see para. 8 (3) (a) thereof); and note in this connection s. 57 (6), *ante*, whereby certain land purchased under an order to which that Schedule applies is to be treated as acquired for the purposes of this Part (Part V). Cf., also, para. 1 (a) of the First Schedule to the Housing Act, 1936 (repealed), as to land purchased under compulsory purchase orders made thereunder, which may include land purchased in the past for "Part V" purposes under that Schedule, *i.e.*, before the Act of 1946 was applied to such purchases.

Section 127 of the Act of 1845, not mentioned in the present section, requires the promoters of an undertaking within a certain time to dispose of land not required for the purposes of their "special Act"; ss. 128-132 confer certain rights of pre-emption over such surplus lands. These sections are all commonly excluded by modern statutes.

#### Sub-s. (6).

**Sale in consideration of a chief rent, etc.** This type of transaction is common in certain parts of England and Wales. It was recognised, in the case of purchases by promoters under the Lands Clauses Acts, by s. 10 of the Lands Clauses Consolidation Act, 1845, as amended by the Lands Clauses Consolidation Acts Amendment Act, 1860, s. 1 (3 Halsbury's Statutes (2nd Edn.) 899). Where under the present section a local authority sell land on this basis, sub-s. (3), *supra*, will presumably be read as requiring the obtaining of the best consideration that can reasonably be obtained in the form of chief rent or other periodic payment.

**106. Power of Minister to impose conditions on sale of houses and land.**—If any house, building, land or dwelling in respect of which a local authority are required to keep a Housing Revenue Account is with the consent of the Minister sold by them or leased by them under either of the two last foregoing sections he may in giving consent impose such conditions as he thinks just.

### NOTES

**History.** This section contains provisions formerly in s. 86 of the Housing Act, 1936, and s. 3 (5) of the Housing Act, 1952. So far as it related to exchequer contributions, s. 86 of the Act of 1936 was not repealed by the present Act, nor was s. 3 (5) of the Act of 1952; but both are now repealed by s. 59 (1) of, and the Sixth Schedule to, the Housing (Financial Provisions) Act, 1958 (Book II, *post*). See now s. 18 (2) of that Act, whereunder the Minister may reduce, suspend or discontinue, any exchequer payment.

**General Note.** This section enables the Minister to impose conditions where a house, or other land, etc., within the Housing Revenue Account, is sold or leased under s. 104 or 105, *ante*. As to the effect of such a sale or lease on the making of exchequer payments, see the note "History", *supra*, and the provisions there mentioned.

**House; land.** For definitions, see s. 189 (1), *post*, and cf. the notes to ss. 104 and 105, *ante*.

**Local authority.** See s. 1, *ante*, and s. 132, *post*; and cf. s. 50 (1) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*).

**Housing Revenue Account.** See s. 50 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*), replacing s. 128 of the Act of 1936 (repealed) and later enactments which had extended the matters to be included within the account.

**107. Powers relating to the development of land.**—A local authority may lay out and construct public streets or roads and open spaces on land acquired or appropriated by them for the purposes of this Part of this Act and where they sell or lease land under the foregoing provisions of this Part of this Act they may contribute towards the expenses of the development of

the land and the laying out and construction of streets thereon, subject to the condition that the streets are dedicated to the public.

### NOTES

**History.** This section contains provisions formerly in s. 79 (1) (a) and (2) of the Housing Act, 1936. For other provisions derived from s. 79 of that Act, see ss. 104 and 105, *ante*.

**General Note.** This section enables the local authority (i) to lay out and construct public streets or roads and open spaces, and (ii) to contribute to the expenses of development and laying out and construction of streets, where they sell or lease the land.

**Streets; land.** For definitions, see s. 189 (1), *post*. As to building byelaws, see s. 145 and the notes thereto, *post*. Streets and roads constructed by the authority under the first part of this section must be "public", *i.e.*, it seems, dedicated as highways. The authority cannot throw the expense of construction on the frontagers: see *Kingston-upon-Hull Local Board of Health v. Jones* (1856), 1 H. & N. 489; 26 Digest 520, 2212.

**Acquired or appropriated.** See ss. 96 and 97, *ante*, and the General Note to s. 97, as to land acquired; as to appropriations, see s. 99, *ante*.

**Sell or lease land under the foregoing provisions.** See ss. 104 and 105, particularly s. 105 (1) (a), *ante*.

**Subject to the condition.** This phrase qualifies the words "they may contribute", *i.e.*, the latter part of this section which is derived from s. 79 (2) of the Act of 1936.

**108. Execution of works in connection with housing operations by local authority outside their own area.**—(1) Where any housing operations under this Part of this Act are being carried out by a local authority outside their own area, that authority shall, subject to the approval of the Minister, have power to execute any works which are necessary for the purposes, or are incidental to the carrying out, of the operations, subject to entering into an agreement with the council of the county, borough or district in which the operations are being carried out, as to the terms and conditions on which any such works are to be executed.

(2) Where housing operations under this Act have been carried out by a local authority outside their own area, and a habitation certificate from the council of the borough or district in which the houses are situate is in that borough or district required under any local Act or byelaw, such a certificate shall not be necessary in respect of any houses which were constructed in accordance with the plans and specifications approved by the Minister.

### NOTES

**History.** This section contains provisions formerly in s. 81 (1) and (3) of the Housing Act, 1936; see s. 109 (1) and (4), *post*, for provisions derived from s. 81 (2) and (4) of the Act of 1936.

**General Note.** This section and ss. 109 and 110, *post*, regulate certain matters arising where one local authority carries out housing operations in the area of another local authority.

#### Sub-s. (1).

**Housing operations.** This phrase is not defined, but refers principally, it is thought, to the provision of housing accommodation as mentioned in s. 92, *ante*.

**Local authority.** See s. 1, *ante*, and s. 132, *post*.

**Outside their own area.** As to the power to provide accommodation outside the authority's district, see s. 92 (1), *ante*; but as to the provision of commercial buildings by London local authorities, see s. 93 (3) proviso, *ante*. As to roads, see s. 109, *post*. As to the adjustment of differences, see s. 110, *post*. Note also the provisions of s. 185, *post*, as to arrangements between London authorities and certain neighbouring authorities. For financial provisions in this connection, see ss. 137 and 140 (2) in Part VI, *post*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Execute any works.** This apparently refers to such works as the laying of sewers and provision of other services. The present section is expressed to empower the execution of such works by the authority which is carrying out the housing operations; the Act also contemplates such works being executed by the local authority in whose area the operations are taking place; see s. 140 (2), *post*, which authorises the advance of money for that purpose; and s. 137 (2), *post*, authorising borrowing.

**Agreement.** See s. 110, *post*, as to the adjustment of differences about carrying out proposals for the provision of houses. An agreement under the present subsection may, apparently, authorise the execution of the works, or some of them, by an authority in whose area the housing operations are being carried out; see ss. 137 (2) and 140 (2), *post*.

**Council of the county, borough, or district.** Cf. the notes to s. 1, *ante*. In the case of works in county districts (*i.e.*, non-county boroughs, urban districts and rural districts) it seems that agreements may be necessary both with the county council and with the county district council.

**Sub-s. (2).**

**Habitation certificate.** Building byelaws under ss. 61 *et seq.*, of the Public Health Act, 1936 (19 Halsbury's Statutes (2nd Edn.) 358 *et seq.*), usually follow fairly closely the model byelaws issued by the Ministry of Housing and Local Government. These contain no requirement of a habitation certificate; but such a certificate may be required, under byelaws or local Act provisions in force in some districts, before a newly erected house may be used for habitation. The present subsection provides an exemption from any such requirement.

**Borough or district.** Cf. the note to s. 5 (2), *ante*; and see the notes to s. 1, *ante*, as to the present use of the terms.

**House.** For definition, see s. 189 (1), *post*.

**109. Responsibility for roads constructed by local authority outside their own area.**—(1) Where housing operations under this Act have been carried out by a local authority outside their own area, and for the purposes of the operations public streets or roads have been constructed and completed by that local authority, the liability to maintain the streets or roads shall, subject to the provisions of this section, vest in the council of the borough or district in which the operations were carried out, unless that council are, or on appeal the Minister is, satisfied that the streets or roads have not been properly constructed in accordance with the plans and specifications approved by the Minister.

(2) The foregoing subsection shall not apply to the liability to maintain a public street or road in a rural district constructed and completed, by a local authority other than the council of the district for the purposes of housing operations under this Part of this Act, but that liability shall, unless the council of the county comprising the rural district are, or on appeal the Minister is, satisfied that the street or road has not been properly constructed in accordance with the plans and specifications approved by the Minister, vest in the council of the county.

(3) If the council of a rural district are under a liability to maintain a street or road, being a liability which vested in them by virtue of subsection (2) of section eighty-one of the Housing Act, 1936, or the corresponding provisions of an enactment repealed by that Act, and the council of the county comprising the rural district are, or on appeal the Minister is, at any time satisfied that the street or road has been brought into a proper state of construction and repair, the liability to maintain it shall be transferred to and vested in the county council.

(4) Where housing operations under this Act have been carried out by the London County Council within the area of a metropolitan borough, the liability to maintain the streets or roads shall vest in the council of that metropolitan borough, unless that council are, or on appeal the Minister is, satisfied that the streets or roads have not been properly constructed in accordance with plans and specifications approved by the Minister.

#### NOTES

**History.** Sub-s. (1) contains provisions formerly in s. 81 (2) of the Housing Act, 1936. Sub-ss. (2) and (3) respectively contain provisions formerly in s. 12 (1) and in s. 12 (2) and (3) of the Housing Act, 1949. Sub-s. (4) contains provisions formerly in s. 81 (4) of the Act of 1936.

Some of the provisions of s. 12 of the Act of 1949 are regarded as spent and not reproduced, particularly s. 12 (4) and most of s. 12 (2) of that Act.

**General Note.** This section deals with the liability to maintain public streets and roads constructed in the course of housing operations carried out by a local authority

under this Part (Part V) outside their own area, and also, in sub-s. (4), with similar liabilities in metropolitan boroughs. Where the operations are carried out in a county borough, non-county borough or urban district, the liability vests in the council of that borough or district subject to the right of objection, and appeal to the Minister, on the ground that the street or road has not been properly constructed (sub-s. (1), *supra*).

Where the operations are carried out in a rural district, the liability vests in the county council, subject to the right of objection and appeal (sub-s. (2), *supra*). This is because county councils are the local highway authorities for rural districts by virtue of the Local Government Act, 1929, s. 30 (14 Halsbury's Statutes (2nd Edn.) 270). That section was overlooked in the drafting of s. 80 (2) of the Housing Act, 1936 (now replaced by sub-s. (1), *supra*), and differing views were taken as to whether the liability thereunder in rural districts vested in the county council or the rural district council. These difficulties were resolved by the Housing Act, 1949: s. 12 (1) thereof (now replaced by sub-s. (2), *supra*) provided that the liability should vest in the county council in the case of streets or roads completed in rural districts on or after 30th July 1949. It was assumed, in s. 12 (2) and (3) thereof, that the liability for such streets or roads completed earlier had vested in the rural district council; this liability was transferred to the county council subject to a right of objection and appeal on the ground that the street or road was not properly constructed or had not been maintained in proper repair (s. 12 (2)); liability for streets or roads excepted from vesting on this ground, might be vested later in the county council, where the streets or roads were brought into a proper state of construction and repair (s. 12 (3), now continued by sub-s. (3), *supra*). Transitional provisions as to appeals pending under s. 81 (2) of the Act of 1936 on 30th July 1949 were contained in s. 12 (4) of the Act of 1949; these provisions are now omitted as spent.

Where housing operations are carried out by the London County Council within the area of a metropolitan borough, the liability to maintain streets or roads vests in the borough council, subject to the right of objection and appeal (sub-s. (4), *supra*).

#### Sub-s. (1).

**Housing operations . . . outside their own area.** See ss. 92 (1) and 108, *ante*.

**Local authority.** See s. 1, *ante*, and s. 132, *post*.

**Public streets or roads.** See s. 107, *ante*, and the notes thereto.

**Council of the borough or district.** *I.e.*, of a county borough, non-county borough, or urban district; but the present subsection is excluded in the case of rural districts by sub-s. (2), *supra*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

#### Sub-s. (2).

**Vest in the council of the county.** In general, the county council is the highway authority for all roads (other than trunk roads or private roads) within a rural district; see the General Note, *supra*.

#### Sub-s. (3).

**Housing Act, 1936, s. 81 (2).** 11 Halsbury's Statutes (2nd Edn.) 521. That subsection is now replaced by sub-s. (1), *supra*. The earlier "corresponding provisions", repealed by the Act of 1936, were contained in s. 109 of the Housing Act, 1925, as amended by the Fifth Schedule to the Housing Act, 1930. The present subsection (sub-s. (3)) provides for the transfer of liability in cases excepted from transfer under s. 12 (2) of the Act of 1949; see the General Note, *supra*.

#### Sub-s. (4).

**London County Council; metropolitan borough.** See the notes to s. 1, *ante*.

**110. Adjustment of differences between local authorities as to carrying out proposals.**—Where the Minister approves proposals of a local authority in relation to the provision of houses, whether under this Act or any other Act, in the area of another local authority, any difference arising between those authorities with respect to the carrying out of the proposals may be referred by either authority to the Minister, and the Minister's decision shall be final and binding upon the authorities.

#### NOTES

**History.** This section contains provisions formerly in s. 82 of the Housing Act, 1936.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Proposals . . . in relation to the provision of houses.** As to proposals under this Part (Part V) of this Act, see s. 91, *ante*.

**Local authority.** See s. 1, *ante*, and as to local authorities in London for the purposes of this Part of this Act, see s. 132, *post*.

**Area of another local authority.** As to an authority providing accommodation outside their own area, see ss. 92 (1) and 108, *ante*.

**Decision shall be final and binding.** Cf. the note "Minister's decision shall be final" to s. 44 (5), *ante*.

### *Management, &c., of local authority's houses*

**111. General responsibility for local authority's houses.—(1)** The general management, regulation and control of houses provided by a local authority under this Part of this Act shall be vested in and exercised by the authority, and the authority may make such reasonable charges for the tenancy or occupation of the houses as they may determine.

(2) Without prejudice to the foregoing provisions of this section, any such house shall be at all times open to inspection by the local authority of the district in which it is situate, or by any officer duly authorised by them.

### NOTES

**History.** This section contains provisions formerly in s. 83 of the Housing Act, 1936.

**General Note.** By this section the local authority are given the powers of management, regulation and control of houses provided by them under this Part (Part V). By virtue of s. 192, *post*, the powers extend to houses provided under the corresponding provisions in the enactments repealed by this Act, by the Housing Act, 1936, or by the Housing Act, 1925. Certain conditions are required to be observed, in relation to these and other houses within the Housing Revenue Account, by s. 113, *post*; note also that certain houses acquired under Parts II and III, *ante*, are within the powers of management under this Part (or similar powers); see the notes to s. 92, *ante*.

As to byelaws, see s. 112, *post*. For power to establish a Housing Management Commission, see s. 115, *post*. For power to recover possession, see s. 158 (2) in Part VII, *post*.

A very large number of "Part V" houses are in fact let by the local authorities on weekly "unfurnished" tenancies. This Act, however, would appear to permit the letting of furnished accommodation; and there is power to fit out and furnish houses under s. 94, *ante*. Occupation otherwise than under a tenancy seems also to be permissible, and may be the appropriate method, in particular, of providing accommodation in lodging-houses; cf. s. 112 (2), *post*. The Act does not specify the dividing line between lettings, in the course of management, and the grant of leases under s. 104 or 105, *ante*, which amounts to "disposing" of the property.

Prior to the Housing Act, 1935, special conditions attached to certain houses, according to the powers under which they had been provided. The effect of ss. 51 and 52 of that Act was to unify the conditions; see Memorandum E issued by the Ministry of Health in October 1935 (printed in *Hill's Complete Law of Housing* (4th Edn.) p. 634), and s. 85 of the Housing Act, 1936, now replaced by ss. 113 and 114, *post*. Cf. also s. 123, *post*, for the power to effect a similar unification of conditions affecting the houses of housing associations. The Act of 1935 also rationalised the system of housing accounts; see Memorandum E (*ubi supra*), and ss. 50–53 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*). In consequence, local authorities are encouraged to regard all their "Part V" houses, old and new, as a "pool" of accommodation, and this has an important effect on fixing the "reasonable charges" mentioned in sub-s. (1), *supra*, and the rents, and any rebates, under s. 113 (3) and (4), *post*. The view of the Ministry of Housing and Local Government appears to favour the revision of the low rents often paid for older houses in order to meet the high cost of providing new houses; and cf. *Summerfield v. Hampstead Borough Council*, [1957] 1 All E.R. 221, cited in the notes to s. 113, *post*.

#### **Sub-s. (1).**

**Management.** For power to establish a Housing Management Commission, see s. 115, *post*. Schemes under that section seem to be rare in practice. Many authorities appoint a full-time official as housing manager with the responsibility, together with the clerk, surveyor and financial officer, of advising the housing committee, and of managing the houses subject to the control of the council. In such cases, care must be taken about the authentication of notices, including notices to quit; see s. 166 (2), *post*, and *Becker v. Crosby Corporation*, [1952] 1 All E.R. 1350; 3rd Digest Supp. (notice signed by housing manager not sufficient unless he is shewn to be the clerk's lawful deputy).

The recovery of possession of a house, in order to re-let it, is an exercise of the power of management under this section. Possession may therefore be obtained under s. 158 (2), *post*; see *R. v. Snell, Ex parte St. Marylebone Borough Council*, [1942] 1 All E.R.

612; 2nd Digest Supp.; and *London County Council v. Shelley*, [1947] 2 All E.R. 720, C.A. (affirmed, [1948] 2 All E.R. 898, H.L.; 31 Digest (Repl.) 616, 7317).

The Rent Acts are excluded by s. 158 (1), *post*, and a more general exclusion was introduced by s. 33 of the Housing Repairs and Rents Act, 1954 (mentioned in the note "Not being . . . to a local authority, county council, etc." to s. 104 (3), *ante*), where the landlord's interest is that of a local authority, development corporation, housing trust, or, in certain comparable circumstances, a housing association.

**Houses provided . . . under this Part.** See s. 92, *ante*; and s. 192, *post*, as to houses provided under earlier Acts. "House" is defined in s. 189 (1), *post*, but note also the definition of "provision of housing accommodation" in s. 92 (4), *ante*, and the use of the word "house", in connection with lodging-houses, in s. 112 (2), *infra*.

**Local authority.** See s. 1, *ante*, and s. 132, *post*.

**Reasonable charges for the tenancy or occupation.** As to rents, see s. 113 (3) and (4) and the notes thereto, *post*. The same principles would appear to apply to charges other than rents; cf. also s. 95 (1), *ante*, as to charges for board and laundry facilities.

**Sub-s. (2).**

**Open to inspection.** Penalties for obstruction may be imposed under s. 160, *post*.

**112. Byelaws for regulation of authority's houses.—(1)** A local authority may make byelaws for the management, use and regulation of houses provided by them.

(2) A local authority shall as respects lodging-houses provided by them (that is to say, houses not occupied as separate dwellings) by byelaws make sufficient provision for the following purposes—

- (a) for securing that the lodging-houses shall be under the management and control of the officers, servants or others appointed or employed in that behalf by the local authority,
- (b) for securing due separation at night of men and boys above eight years old from women and girls,
- (c) for preventing damage, disturbance, interruption and indecent and offensive language and behaviour and nuisances,
- (d) for determining the duties of the officers, servants and others appointed by the local authority,

and a printed copy or a sufficient abstract of the byelaws relating to lodging-houses shall be put up and at all times kept in every room therein.

(3) The Minister shall be the confirming authority as respects byelaws made under this section.

(4) The provisions of section two hundred and seventy-seven of the Public Health (London) Act, 1936, shall apply to byelaws under this section as respects the City of London.

## NOTES

**History.** This section contains provisions formerly in s. 84 (1), (2), (4) and (5) of the Housing Act, 1936. Section 84 (3) of that Act, relating to the application of fines for byelaw offences is omitted (cf. now s. 27 of the Justices of the Peace Act, 1949, and s. 114 of the Magistrates' Courts Act, 1952), and s. 84 (6) of the Act of 1936 was repealed by the London Government Act, 1939.

**General Note.** By sub-s. (2), *supra*, the local authority are required to make byelaws for lodging-houses provided by them, and to exhibit a copy or sufficient abstract. By sub-s. (1), the authority may, if they wish, make byelaws for the management, use and regulation of houses; little use seems to be made of this power in practice.

For the procedure for making byelaws, see:—

- (i) outside London, the Local Government Act, 1933, ss. 250–252 (14 Halsbury's Statutes (2nd Edn.) 485–487);
- (ii) in the City of London, the Public Health (London) Act, 1936, s. 277 (15 Halsbury's Statutes (2nd Edn.) 1019, and sub-s. (4), *supra*);
- (iii) elsewhere in London, the London Government Act, 1939, ss. 147–149 (15 Halsbury's Statutes (2nd Edn.) 1142–1144).

The Minister is the confirming authority: see sub-s. (3), *supra*. Existing byelaws are saved by s. 191 (2), *post*.

**Sub-s. (1).**

**Local authority.** See s. 1, *ante*, and s. 132, *post*.

**May.** This word confers a discretion; contrast the use of the word "shall" in sub-s. (2).

**Byelaws.** As to making of byelaws, see the General Note, *supra*.

**Houses provided by them.** As to the provision of houses by the local authority under this Part of this Act, see s. 92, *ante*. The present section apparently applies also to houses provided under earlier corresponding powers (see s. 192, *post*) or under other powers, including those of Part II and Part III, *ante*, mentioned in the General Note to s. 92, *ante*.

**Sub-s. (2).**

**Lodging-houses; houses not occupied as separate dwellings.** Cf. the definition of "house" in s. 189 (1), *post*; and as to occupation as a "separate" dwelling, cf. the note "Dwelling-house" to s. 87, *ante*. The phrase "let in lodgings", in ss. 36 and 90, *ante*, has a different meaning, as it can apply to a house containing a number of separate dwellings.

The Housing (Financial Provisions) Act, 1958 (Book II, *post*), contains special provisions for "hostels" as defined in s. 15 (4), thereof. *Quaere*, whether such building ought to be regarded as lodging-houses within the present subsection.

**Eight years old.** See the note "Under one year, etc." to s. 77 (2), *ante*.

**Sub-s. (3).**

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Sub-s. (4).**

**Public Health (London) Act, 1936, s. 277.** 15 Halsbury's Statutes (2nd Edn.) 1019.

**113. Conditions to be observed in management of local authority's houses.**—(1) A local authority shall, in relation to all the houses and dwellings in respect of which they are required to keep a Housing Revenue Account, observe the requirements specified in the following provisions of this section.

(2) The local authority shall secure that in the selection of their tenants a reasonable preference is given to persons who are occupying insanitary or overcrowded houses, have large families or are living under unsatisfactory housing conditions.

(3) The local authority may grant to any tenants such rebates from rent, subject to such terms and conditions, as they may think fit.

(4) The local authority shall from time to time review rents and make such changes, either of rents generally or of particular rents, and rebates (if any) as circumstances may require.

(5) The local authority shall make it a term of every letting that the tenant shall not assign, sub-let or otherwise part with the possession of the premises, or any part thereof, except with the consent in writing of the authority, and shall not give such consent unless it is shown to their satisfaction that no payment other than a rent which is in their opinion a reasonable rent has been, or is to be, received by the tenant in consideration of the assignment, sub-letting or other transaction.

(6) The conditions contained in section three of the Housing (Rural Workers) Act, 1926, shall not have effect in relation to dwellings to which the requirements of this section apply.

## NOTES

**History.** Sub-ss. (1), (2) and (4)–(6), *supra*, respectively, contain provisions formerly in s. 85 (1), (2) and (6)–(8) of the Housing Act, 1936. Sub-s. (3) contains provisions formerly in s. 85 (5) of that Act, as substituted by s. 1 of, and the First Schedule to, the Housing Act, 1949. Provisions derived from s. 85 (3) and (4) of the Act of 1936 are contained in s. 114 (3) and (2), respectively, *post*; and s. 114 (4), *post*, corresponds with sub-s. (6), *supra* (both being derived from s. 85 (8) of the Act of 1936).

**General Note.** In substance, this section and s. 114, *post*, result from the unification of conditions affecting local authority houses brought about by ss. 51 and 52 (2) of the Housing Act, 1935, and continued by s. 85 (repealed) of the Housing Act, 1936; cf. the General Note to s. 111, *ante*, and the power to unify conditions affecting housing association houses now contained in s. 123, *post*.

The present section applies to all houses and dwellings within the Housing Revenue Account; see sub-s. (1), *supra*, and s. 50 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*).

**Sub-s. (1).**

**Local authority.** See s. 1, *ante*, and as to local authorities in London for the purposes of this Part of this Act, see s. 132, *post*; see also s. 50 (1) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*).

**Houses.** See s. 189 (1), *post*, and s. 58 (1) of the Act of 1958 (Book II, *post*).

**Dwellings.** See the references to dwellings in s. 50 (1) of the Act of 1958 (Book II, *post*), and note the definition of "dwelling" in s. 29 (1) of that Act for the purposes of Part I thereof.

**Housing Revenue Account.** See s. 50 of the Act of 1958 (Book II, *post*), replacing s. 128 of the Housing Act, 1936 (repealed) and other former enactments.

**Sub-s. (2).**

**Reasonable preference.** Note that this phrase is limited by the words "in the selection of their tenants"; this avoids the doubt which arose on the construction of s. 3 (1) (f) of the Housing (Financial Provisions) Act, 1924 (repealed), as to whether the preference referred to selection of tenants or the fixing of rents. As to this, see *Leeds Corporation v. Jenkinson*, [1935] 1 K.B. 168, at p. 176; Digest Supp.

Some authorities run schemes whereunder "points" are allotted to applicants for tenancies, according to the size of the applicants' families or other circumstances. It is submitted that great care is needed to give due weight to the requirements of this subsection, and to avoid allotting large numbers of "points" in respect of other circumstances: residence in the authority's own area, length of time upon the "housing list", war service, etc., should not, in general, be over-riding considerations.

**Insanitary or over-crowded houses.** The definition of overcrowding in s. 77 in Part IV, *ante*, applies throughout this Act. There is no definition of an "insanitary" house, but the term appears to include houses which are unfit for human habitation, within s. 4 or 5, *ante*, and probably other houses which have sanitary defects as formerly defined in s. 188 (1) of the Housing Act, 1936: cf. the notes to ss. 4 and 30, *ante*. Note also the reference in s. 42 (1), *ante*, to houses which are dangerous or injurious to health.

**Living under unsatisfactory housing conditions.** Such conditions, it is submitted, may arise from the manner in which premises are arranged or occupied and the needs of particular occupants such as the old or infirm, as well as from defects in the premises themselves; cf. s. 36, *ante*.

**Sub-s. (3).**

**Rebates from rents.** This subsection appears to be intended to allow to particular tenants some reduction of rent below the ordinary rent charged for comparable accommodation. The effect of such a rebate might be to throw some financial burden on other tenants or on the local authority's rates. It differs in form, but perhaps not in substance, from a "differential rents" scheme under which, within reasonable limits, the rent of each house is adjusted up or down according to the tenant's circumstances. Doubts about the legality of "differential rents" schemes appear now to be removed: see the notes, *infra*, to sub-s. (4).

**Sub-s. (4).**

**From time to time review rents.** Since the Housing Act, 1935 (repealed), the duty to review rents is a continuous one; and since the Act of 1949, which amended s. 85 (5) of the Act of 1936 (now replaced by sub-s. (3), *supra*), the authority are no longer required to have regard to the rents ordinarily payable for working class houses, when fixing their own rents.

It is recognized that the object of this type of legislation is to provide accommodation for persons who may not be able to afford economic rents. The authority are entitled to discriminate between the means of particular tenants in fixing rents for comparable accommodation in the same area; see *Leeds Corporation v. Jenkinson* (*supra*) (decided on s. 67 of the Housing Act, 1925, and s. 3 of the Housing (Financial Provisions) Act, 1924 (both repealed)). It is the authority's duty, so far as possible, to maintain a balance between the interests of the ratepayers as a whole and those of council tenants, having regard to the requirements of the Housing Acts; see *Belcher v. Reading Corporation*, [1949] 2 All E.R. 969; 2nd Digest Supp. By s. 111 (1), *ante*, charges for a tenancy (or other occupation) are to be reasonable in fact. However, the onus of showing that charges are unreasonable is on the person who so asserts; see *Smith v. Cardiff Corporation*, [1955] 1 All E.R. 113; 3rd Digest Supp. The earlier case of *Smith v. Cardiff Corporation*, [1953] 2 All E.R. 1373; 3rd Digest Supp., decided that a group of individual tenants could not bring a representative action on behalf of themselves and others as a class of persons affected by the Corporation's rents policy.

It has been held that a local authority, in fixing rents, are limited only by the requirement of reasonableness (see s. 111 (1), *ante*). They may spread costs over their pool of houses, old or new, so long as the rent fixed does not exceed what is reasonable "from a market point of view", and are not confined to the economic rent calculated by reference to the original cost of construction; see *Summerfield v. Hampstead Borough Council*, [1957] 1 All E.R. 221; 3rd Digest Supp.

Although the legality of "differential rents" schemes is established by the above cases, it is a matter of disputed opinion whether such schemes are generally beneficial in

practice, having regard to the administrative costs and difficulties involved. Examples of a number of actual schemes are given in the Appendix to Ministry of Housing and Local Government Circular No. 29/56, dated 23rd May 1956, which is printed in *Lumley's Public Health* (12th Edn.), Vol. VIII, at pp. 340 *et seq.*

The review of rents under this subsection, and the making of changes in rents or the making of rebates, is a duty imposed on the local authority. In *Smith v. Cardiff Corporation*, [1955] 1 All E.R. 113 at p. 116, Danckwerts, J., expressed the view that, where a scheme allowed charges to be waived in certain circumstances, the discretion should be exercised by the authority, and not by one of its officers.

Where changes in rents are to be made, this may involve the raising of existing rents. This will involve terminating the existing tenancy by agreement or by notice to quit as was done in the *Cardiff* case, *supra*: see also *Bathavon Rural District Council v. Carlile*, [1958] 1 All E.R. 801, C.A., and *Havant and Waterloo Urban District Council v. Norum*, [1958] 2 All E.R. 423, C.A.

#### Sub-s. (5).

**Term of every letting.** This refers, it seems, to lettings in the course of management of houses and dwellings; it does not appear to effect the grant of leases under s. 104 or 105, *ante*.

**Except with the consent . . . of the authority.** Such consent must not be unreasonably withheld: see the Landlord and Tenant Act, 1927, s. 19 (1) (13 Halsbury's Statutes (2nd Edn.) 904). But it seems that the authority might withhold consent for reasons connected with the exercise of their housing powers and duties which might not be open to a private landlord; and the latter part of this subsection requires them to withhold consent unless satisfied of certain matters, *i.e.*, in effect, that no premium is exacted.

#### Sub-s. (6).

**Housing (Rural Workers) Act, 1926, s. 3.** 11 Halsbury's Statutes (2nd Edn.) 424. That section is amended by ss. 20 and 26 (1) of, and para. 12 of the Sixth Schedule to, the Rent Act, 1957 (103 Statutes Supp. 84, 99, 127; 37 Halsbury's Statutes (2nd Edn.) 571, 578, 598) which substituted a reference to the "rent limit" under s. 20 of that Act. The conditions in the Act of 1926, as amended, continue to apply to privately owned houses, but are excluded by the present subsection, and by s. 114 (4), *post*, where the conditions of this section, or s. 114 (2) or (3), *post*, apply.

### 114. Reservation of houses for agricultural population.—(1) Where—

- (a) any annual exchequer subsidies under the Housing Subsidies Act, 1956, increased under subsection (1) of section four of that Act (which provides for increased subsidies for housing provided for the agricultural population), or
- (b) any annual exchequer contributions under the Housing (Financial and Miscellaneous Provisions) Act, 1946, the amount of which has been determined on the assumption that the houses in respect of which they are payable were provided by way of housing accommodation required for the agricultural population, or
- (c) any contributions under section two of the Housing (Financial Provisions) Act, 1938 (which provided for a special rate of contribution for housing accommodation required for the agricultural population),

are payable to the council of a county district, the council shall secure that a number of houses equal to the number of houses in respect of which such subsidies or contributions are payable to the council is reserved for members of the agricultural population, except in so far as the demand for housing accommodation in the district on the part of members of the agricultural population can be satisfied without such reservation.

(2) Where a county council have undertaken to make contributions to a local authority under subsection (2) of section one hundred and fifteen of the Housing Act, 1936, or are required by subsection (3) of that section to make contributions to the local authority, the local authority shall secure that a number of houses equal to the number of those in respect of which the contributions are payable are reserved for members of the agricultural population, except in so far as the demand for housing accommodation in the district of the authority on the part of members of the agricultural population can be satisfied without such reservation.

(3) Where a local authority have received assistance under section one of the Housing (Rural Workers) Act, 1926, or the Minister has undertaken to pay a contribution to a local authority under subsection (2A) of section four of that Act, the local authority shall secure that a number of houses or dwellings equal to the number of those in respect of which they have received such assistance, or in respect of which such an undertaking has been given, are reserved for such persons as are mentioned in paragraph (a) of subsection (1) of section three of that Act except in so far as the demand for housing accommodation in the district of the authority on the part of such workers can be satisfied without such reservation.

(4) The conditions contained in section three of the Housing (Rural Workers) Act, 1926, shall not have effect in relation to dwellings to which the requirements of subsection (2) or subsection (3) of this section apply.

(5) For the purposes of this section,—

the expression “agricultural population” means persons whose employment or latest employment is or was employment in agriculture or in an industry mainly dependent upon agriculture, and includes also the dependants of such persons as aforesaid;

the expression “agriculture” includes dairy-farming and poultry-farming and the use of land as grazing, meadow or pasture land, or orchard or osier land, or woodland, or for market gardens or nursery grounds.

#### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 2 (2) of the Housing (Financial Provisions) Act, 1938, and in s. 19 (1) and (2) of the Housing (Financial and Miscellaneous Provisions) Act, 1946, as affected by s. 12 (3) of, and para. 9 of the First Schedule to, the Housing Subsidies Act, 1956, which required the inclusion of a reference to s. 4 (1) of the Act of 1956. Sub-ss. (2), (3) and (4) respectively contain provisions formerly in s. 85 (4), (3) and (8) of the Housing Act, 1936. Sub-s. (5) contains definitions formerly included in s. 115 (2) of the Act of 1936 for the purposes of that subsection (now repealed by the Housing (Financial Provisions) Act, 1958, Book II, *post*); those definitions applied also for the purposes of s. 85 (4) of the Act of 1936 (by virtue of s. 188 (1) thereof), of s. 2 of the Act of 1938 (by virtue of s. 11 (2) thereof), of s. 3 of the Act of 1946 (by virtue of s. 25 (1) thereof), and of s. 4 (1) of the Act of 1956 (by virtue of s. 11 (2) thereof).

**General Note.** Sub-ss. (1) and (2) of this section require the local authority to reserve a number of houses for members of the agricultural population. Except where the demand can be otherwise satisfied, a number of houses must be reserved equal to the number of houses in respect of which special subsidies or contributions, etc., have been received. It is not, however, necessary to reserve the actual houses for which the subsidy, etc., was payable; the local authority's duty is to reserve an equivalent number of houses. Sub-s. (3) contains corresponding provisions requiring the reservation of a number of houses for rural workers, *i.e.*, those persons described in s. 3 (1) (a) of the Housing (Rural Workers) Act, 1926.

Exchequer subsidies at the increased rate formerly provided by s. 4 (1) of the Housing Subsidies Act, 1956, are now payable by virtue of s. 5 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*); the other enactments referred to in sub-ss. (1) and (2), *supra*, are repealed by s. 59 (1) of, and the Sixth Schedule to, the Act of 1958, subject to the important savings contained in s. 59 (4) thereof (repeals are not to affect liability, to make payments under those enactments, already undertaken while they were in force).

The Minister has power to reduce, suspend or discontinue exchequer payments under s. 18 of the Act of 1958 (Book II, *post*), replacing s. 113 of the Housing Act, 1936 (repealed), and the later enactments which had in effect extended that section (see s. 4 of the Housing (Financial Provisions) Act, 1938, in connection with contributions under s. 2, thereof; s. 24 of, and para. 2 of the Third Schedule to, the Housing (Financial and Miscellaneous Provisions) Act, 1946, in connection with contributions of the “special standard amount” under s. 3 (1) thereof; and s. 12 (3) of, and para. 2 of the First Schedule to, the Housing Subsidies Act, 1956, in connection with the increased subsidy under s. 4 (1) thereof). As to county council contributions, see ss. 23 and 24 of the Act of 1958 (Book II, *post*), replacing s. 8 (1) of the Act of 1946, and the later enactments affecting and applying the provisions of that Act, and replacing also s. 7 (3) of the Act of 1938, and s. 115 (5) of the Housing Act, 1936.

**Sub-s. (1).**

**County district.** *I.e.*, a non-county borough, urban district or rural district; see the Local Government Act, 1933, s. 1 (1) (14 Halsbury's Statutes (2nd Edn.) 361).

**Houses.** For the meaning of "house", see s. 189 (1), *post*. Note, however, that some of the enactments referred to in the present section also contained definitions of "house" or "dwelling"; see, for example, the definition of "dwelling" in s. 11 (2) of the Housing Subsidies Act, 1956, now replaced by s. 29 (1) of the Act of 1958 (Book II, *post*).

**Agricultural population.** See sub-s. (5), *supra*, and the note "History", *supra*, as to the former enactments replaced thereby.

**Housing Subsidies Act, 1956, s. 4 (1).** 94 Statutes Supp. 43; 36 Halsbury's Statutes (2nd Edn.) 378; now repealed with savings by s. 59 (1) and (3) of, and the Sixth Schedule to, the Housing (Financial Provisions) Act, 1958 (Book II, *post*). The subsection, now replaced by s. 5 of the Act of 1958, enabled the Minister, if he thought fit, to increase by £9 the annual exchequer subsidy for a dwelling under s. 3 (2) (a) of the Act of 1956 (see now s. 4 (2) (a) and (4) (a) of the Act of 1958) if the dwelling was provided by, or by arrangement with, the local authority of a county district by way of housing accommodation required for the agricultural population of the district. Although subsidies for "general need" houses were in general abolished by the Housing Subsidies Order, 1956 (S.I. 1956 No. 2015) (made under s. 2 of the Act of 1956), a nominal subsidy of one shilling was retained in cases where this could then be used to found an increase under s. 4 (1) of the Act of 1956. As to county council contributions in such cases, see s. 4 (2) (repealed) of the Act of 1956, applying s. 8 of the Housing (Financial and Miscellaneous Provisions) Act, 1946, as amended (see now ss. 23 and 24 of the Act of 1958, Book II, *post*).

**Housing (Financial and Miscellaneous Provisions) Act, 1946.** 39 Statutes Supp. 38; 11 Halsbury's Statutes (2nd Edn.) 646. Section 3 (1) of that Act (repealed with savings; see s. 59 (1) and (4) of the Act of 1958, Book II, *post*) provided a "special standard rate" of annual exchequer contributions for houses provided by county district councils for the agricultural population. This provision was varied by s. 1 (1) (b) of the Housing Act, 1952, and by art. 3 (2) (b) of the Housing (Review of Contributions) Order, 1954 (S.I. 1954 No. 1407); and then superseded by s. 4 (1) of the Act of 1956 (*ubi supra*).

**Housing (Financial Provisions) Act, 1938, s. 2.** 11 Halsbury's Statutes (2nd Edn.) 613. The section is repealed with savings by s. 59 (1) and (4) of the Act of 1958 (Book II, *post*). It provided for an annual contribution by the Minister for houses provided by county district councils for the agricultural population, and was superseded by the Act of 1946 (*ubi supra*); cf., also, ss. 9 and 10 of the Act of 1946 (also repealed).

Note that the present subsection does not refer to the earlier corresponding provision, s. 108, of the Housing Act, 1936 (repealed with savings by s. 59 (1) and (4) of the Act of 1958, Book II, *post*); this omission appears to be covered by the reference, in sub-s. (2), *supra*, to s. 115 (3) of the Act of 1936.

#### Sub-s. (2).

**Housing Act, 1936, s. 115 (2), (3).** 11 Halsbury's Statutes (2nd Edn.) 548. That section is repealed with savings by s. 59 (1) and (4) of, and the Sixth Schedule to, the Act of 1958 (Book II, *post*). Section 115 (2) of the Act of 1936 provided for contributions by county councils for houses provided by rural district councils for the "agricultural population", and contained also certain definitions (reproduced in part by sub-s. (5), *supra*). By s. 108 of that Act (also repealed with savings by s. 59 of the Act of 1958, Book II, *post*), the Minister might contribute towards the expenses of a rural district council in providing accommodation for the agricultural population to relieve overcrowding; when the Minister undertook to make such a contribution, the county council were also required to contribute under s. 115 (3) of that Act. The reference, in the present subsection, to s. 115 (3) appears therefore to cover cases where the Minister undertook to make contributions under s. 108 (which are not mentioned in sub-s. (1), *supra*).

#### Sub-s. (3).

**The local authority.** For the meaning of local authority in this Part (Part V) of this Act, see s. 1, *ante* (and as to London, s. 132, *post*). For the meaning of "the local authority" in the Housing (Rural Workers) Act, 1926, see particularly s. 5 (1) thereof, as amended (11 Halsbury's Statutes (2nd Edn.) 429).

**Such persons as are mentioned in . . . that Act.** The general object of the Act of 1926 (*ubi supra*) was to promote the provision of housing accommodation for agricultural workers and others in similar economic circumstances; see s. 1 (1) of that Act. One of the conditions, attaching to grants thereunder, was a condition that the dwelling should be occupied by a person coming within the somewhat elaborate definition in s. 3 (1) (a), thereof. The conditions in s. 3 (1) of that Act are displaced by sub-s. (4), *supra*, in cases coming within sub-ss. (2) or (3) of the present section, *i.e.*, where the local authority are required to provide an *equivalent number* of houses, for the agricultural population, or for the persons specified in s. 3 (1) (a) of the Act of 1926, as the case may be.

**Housing (Rural Workers) Act, 1926, ss. 1, 3 (1) (a), 4 (2A).** 11 Halsbury's Statutes (2nd Edn.) 420, 425, 427. Section 4 (2A) of that Act was added by s. 38 (2)

of the Housing Act, 1935. The Housing (Rural Workers) Acts are not repealed by the Housing (Financial Provisions) Act, 1958 (Book II, *post*), but in effect they remain in force only in respect of obligations resulting from applications made thereunder before 30th September 1945; see s. 1 of the Housing (Rural Workers) Act, 1942 (16 Statutes Supp. 14; 11 Halsbury's Statutes (2nd Edn.) 629).

**Sub-s. (4).**

**Housing (Rural Workers) Act, 1926, s. 3.** See the note "Such persons as are mentioned in . . . that Act", *supra*, and the note to s. 113 (6), *ante*.

**115. Power to establish Housing Management Commissions.—**

(1) Where it appears to a local authority to be expedient that a Housing Management Commission should be established with a view to the transfer to and the performance by the Commission of all or any of the functions of the authority under the enactments relating to housing with respect to the management, regulation and control, and the repair and maintenance, of houses and other buildings or land provided in connection therewith, the authority shall prepare and submit to the Minister a scheme making provision for the establishment of the Commission, and for the incorporation thereof, under the name of the Housing Management Commission with the addition of the name of the district of the local authority, with perpetual succession and a common seal, and power to hold land for the purposes of their constitution without licence in mortmain.

(2) A scheme submitted as aforesaid may make provision with respect to the constitution, procedure and functions of the Commission and in particular, but without prejudice to the generality of the foregoing words, may make provision—

- (a) as to the mode of appointment and term of office of the members of the Commission;
- (b) as to the payment of remuneration out of funds under the control of the Commission to the chairman of the Commission, where he is not a member of the local authority or of any committee or sub-committee of the local authority or as a representative of the local authority on a joint committee appointed by agreement between them and another body;
- (c) as to the employment by the Commission of officers and staff and the remuneration out of funds under the control of the Commission and the superannuation of persons so employed;
- (d) as to the financial relations between the local authority and the Commission;
- (e) for conferring on the local authority power to defray temporarily on behalf of the Commission any of their expenses;
- (f) for making the accounts of the Commission subject to audit by a district auditor or otherwise;
- (g) for determining what property is to be vested in the Commission, and for what estate or interest, and whether by way of transfer of the estate or interest of the local authority or of the creation of a lesser estate or interest or otherwise, and the manner in which that vesting is to be effected, and as to the re-vesting of property in the local authority in the event of the dissolution of the Commission or in other circumstances; and
- (h) for imposing on the Commission the duty to consult the Central Housing Advisory Committee as respects any matter specified in the scheme.

(3) The provisions of section one hundred and fifty of, and the Fourth Schedule to, the Local Government Act, 1933 (which relate to the transfer and compensation of officers of a local authority affected by a scheme or order under Part VI of that Act), shall have effect in relation to a scheme submitted under this section as they have effect in relation to a scheme or order under

the said Part VI, and as if references therein to a local authority included references to the Commission.

(4) A scheme submitted under this section may provide for the application with necessary modifications of the enactments (including schemes) governing the superannuation of persons employed by the local authority for the purposes of the superannuation of persons employed by the Commission as if they had been persons employed by the local authority and as if employment by the Commission had been employment by the local authority.

(5) The Minister may approve a scheme submitted to him under this section with or without modifications, and any such scheme when approved by the Minister shall have effect as from such date as may be specified therein and may be amended by a further scheme submitted by the local authority and approved by the Minister.

(6) Unless the scheme makes provision for making the accounts of the Commission subject to audit by a district auditor, no person shall be qualified to be appointed as auditor of those accounts unless he is a member of one or more of the following bodies, namely:—

The Institute of Chartered Accountants in England and Wales;  
The Society of Incorporated Accountants;  
The Institute of Chartered Accountants in Scotland;  
The Association of Certified and Corporate Accountants.

#### NOTES

**History.** This section contains provisions formerly in s. 87 of the Housing Act, 1936, as amended by s. 1 of, and the First Schedule to, the Housing Act, 1949.

**General Note.** This section enables the local authority, by a scheme approved by the Minister, to set up an *ad hoc* corporate body, known as a Housing Management Commission, for the performance of their housing functions, or some of them. The scheme may be amended; and it would seem that the Commission could be dissolved by such an amending scheme, if the local authority desired to resume their functions, and the Minister approved this course. Equally it would seem that the scheme itself might provide for the dissolution of the Commission, and the resumption of functions, in specified circumstances.

The power of borrowing for the purposes of this Part of this Act does not extend to the present section; see s. 136 (1) (c), *post*.

#### Sub-s. (1).

**Local authority.** See s. 1, *ante*, and s. 132, *post*.

**Management, regulation and control.** Cf., s. 111 (1), *ante*, in connection with houses provided by the local authority under this Part (Part V) of this Act.

**Houses and other buildings or land.** The limitation to "working-class" houses, in the corresponding section of the Act of 1936, was repealed by the Act of 1949; see the note "History", *supra*. "House" and "land" are defined, save where the context otherwise requires, by s. 189 (1), *post*. Cf., in general, ss. 92, 93 and 95, *ante*, and the notes thereto.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Scheme.** Note particularly sub-ss. (2) and (5), *supra*, as to the general contents of a scheme, its approval by the Minister, etc.

**Common seal.** The contracts of a corporation aggregate are required to be under seal, but there are many exceptions to this rule: see 9 Halsbury's Laws (3rd Edn.) 82 *et seq*.

**Licence in mortmain.** The present provision removes the necessity for a licence under s. 2 of the Mortmain and Charitable Uses Act, 1888 (2 Halsbury's Statutes (2nd Edn.) 911), which would otherwise be required by s. 1 (1) of that Act.

#### Sub-s. (2).

**District auditor or otherwise.** As to the appointment of district auditors, see s. 220 of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 470). Where a "private" auditor is to be employed, he must be qualified as mentioned in sub-s. (6), *supra*.

**Central Housing Advisory Committee.** As to this committee, see s. 142, *post*.

#### Sub-s. (3).

**Local Government Act, 1933, Part VI, s. 150, Fourth Schedule.** 14 Halsbury's Statutes (2nd Edn.) 423, 432, 526.

**Sub-s. (6).**

**Society of Incorporated Accountants.** Under Schemes of Integration, dated 5th December 1956 and which became effective on 2nd November 1957, the Society of Incorporated Accountants became integrated with the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland and the Institute of Chartered Accountants in Ireland. A resolution placing the Society in voluntary liquidation was approved on 1st November 1957. Under the above-mentioned schemes the members of the Society in practice in the United Kingdom and Ireland, and other members whose qualification was obtained after experience in the offices of accountants practising in those countries, were offered membership of one of the three Institutes with the right to the description "Chartered Accountant". The remaining members of the Society were offered membership of the English Institute in a new class of membership with the designation "Incorporated Accountant".

*Special provisions for rural districts*

**116. Responsibility of county councils in respect of housing conditions in rural districts.**—(1) It shall be the duty of the council of every county, as respects each rural district within the county, to have constant regard to housing conditions in the district, to the extent to which overcrowding or other unsatisfactory conditions exist and the sufficiency of the steps which the council of the district have taken, or are proposing to take, to remedy those conditions and to provide further housing accommodation.

(2) The council of every rural district shall at such intervals, not being in any case less than one year, as the county council may direct, furnish to that council such information with regard to the matters mentioned in the foregoing subsection as the county council may reasonably require for the purposes of enabling them to carry out their duties thereunder.

**NOTES**

**History.** This section contains provisions formerly in s. 88 of the Housing Act, 1936, as amended by s. 1 of, and the First Schedule to, the Housing Act, 1949.

**General Note.** This section imposes a special responsibility on county councils to have regard to housing conditions in rural districts. By s. 117, *post*, agreements may be made between a county council and a rural district council for the exercise by the county council of powers under this Part (Part V) of the Act; financial provisions for such purposes are now contained in s. 25 (1) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*). The Minister may assist a rural district council under s. 118, *post*, where the county council are unwilling to do so under s. 117, by way of providing certain dwelling accommodation in agricultural parishes.

By ss. 171 and 172, *post*, a county council may by order assume the exercise of powers under this Act on default of a rural district council; and the Minister in turn may by order assume the exercise of such transferred powers where the county council themselves are in default; consequential financial provisions are now contained in s. 25 (2) of the Act of 1958 (Book II, *post*).

A further power is conferred on county councils by s. 119 (2), *post*, in connection with the provision of houses by a housing association, where the local authority are not willing to acquire land to be transferred to the association; that provision is not confined to rural districts. As to county council contributions to councils of county districts in respect of housing accommodation for the agricultural population, see s. 23 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*).

**Sub-s. (1).**

**Rural district.** See the notes to s. 1, *ante*. The rural district council is the local authority for its district for the purpose of this Act, by virtue of s. 1 (1), but "subject to the provisions of this Act", *e.g.*, ss. 117, 171, 172, *post*.

**Have constant regard to housing conditions.** Note the power in sub-s. (2), *supra*, to require the rural district council to furnish information. Information will be largely of the type obtained from inspections under s. 3, *ante* (as to unfit houses), s. 76, *ante* (overcrowding) or s. 91, *ante* (housing conditions and needs). The present subsection does not confine the county council to the consideration of information supplied under sub-s. (2), *supra*, but, it is submitted, enables them to collect other information. Note also s. 157 (4), *post*, as to official representations by county medical officers as to houses in rural districts, etc. In some counties, it is believed, the county medical officer and other county officials carry out in rural districts extensive inspections on the lines of those required by ss. 3, 76 and 91, *ante*.

**Overcrowding.** For meaning, see s. 77, *ante*.

**Provide further housing accommodation.** Cf. the definition of the "provision of housing accommodation" in s. 92 (4), *ante*, and the references to proposals for the provision of "new houses" in ss. 76 and 91, *ante*.

**117. Agreements by county council for assisting rural district councils in provision of accommodation.**—(1) The council of any county may, for the purpose of assisting the council of any rural district within the county in the performance of their duties under this Part of this Act, agree with the district council for the exercise by the county council of all or any of the powers of the district council under this Part of this Act.

(2) An agreement made under this section may contain such provisions with regard to the expenses to be incurred by the county council, including the raising of loans to meet those expenses, and with regard to the vesting in the district council of any houses built by the county council under the agreement and such other incidental or consequential provisions as the councils think proper.

#### NOTES

**History.** This section contains provisions formerly in s. 89 (1) and in the latter part of s. 89 (2) of the Housing Act, 1936. These provisions are repealed by s. 191 and the Eleventh Schedule, *post*. The remainder of s. 89 (2), and s. 89 (3), of that Act related to financial matters, and had been amended and extended by the Housing (Financial Provisions) Act, 1938, the Housing (Financial and Miscellaneous Provisions) Act, 1946, and the Housing Subsidies Act, 1956; they are now repealed by the Housing (Financial Provisions) Act, 1958 (Book II, *post*), and replaced by s. 25 (1) of that Act.

**General Note.** This section enables agreements to be made for the exercise, by the county council, of all or any of the powers of a rural district council under this Part (Part V) of the Act. The section should be read with s. 25 (1) of the Act of 1958 (Book II, *post*), mentioned in the note "History", *supra*, and with s. 118, *infra*, conferring certain powers on the Minister. Cf., also, the General Note to s. 116, *ante*.

#### Sub-s. (1).

**Rural district.** See the notes to s. 1, *ante*.

**Under this Part.** *I.e.*, Part V (ss. 91–134), which relates to the provision of housing accommodation. See, particularly, s. 92, *ante* (modes of providing housing accommodation) and ss. 96 and 97, *ante* (acquisition of land). Note that the agreement may relate to "all or any" of the powers, but the section does not expressly provide that the agreement may extend to part only of the rural district; this, however, is assumed in s. 25 (1) of the Act of 1958 (Book II, *post*), which is derived from the same section (s. 89) of the Act of 1936. Cf., also, the wording of s. 171 (5), *post*.

**Agree with the district council.** Note that the consent of the Minister is unnecessary.

#### Sub-s. (2).

**Expenses; loans.** See particularly Part VI (ss. 135 *et seq.*), *post*.

**Houses.** For definition of "house", see s. 189 (1), *post*. Cf., also, s. 92 (4), *ante*, as to the meaning of "provision of housing accommodation".

**118. Minister's power to assist rural district councils by acquiring land and erecting houses.**—(1) With a view to assisting rural district councils in the preparation and carrying out of schemes for the provision of dwelling accommodation in the agricultural parishes of their districts to meet the needs of agricultural workers and persons whose incomes are, in the opinion of the council concerned, such that they would not ordinarily pay rents in excess of those paid by agricultural workers in the council's district, the Minister, if he is requested by any such council so to do and is satisfied—

- (a) that their financial resources are insufficient, and
- (b) that the council of the county is unwilling to give assistance to them under the last foregoing section,

may, with the consent of the Treasury, acquire land and erect houses on behalf and at the expense of that council, and for that purpose may exercise any powers which under this Act the council may exercise in regard to the acquisition of land and the erection of houses, or may make arrangements with any other Government department for the exercise by that Department of any of those powers which, in his opinion, could more conveniently be so exercised.

(2) For the purposes of this section a house shall be deemed to be situated in an agricultural parish if—

- (a) the net annual value of the agricultural land in the parish in which the house is situate as appearing in the valuation list in force on the first day of April, nineteen hundred and twenty-nine, exceeded 25 per cent. of the total net annual value of that parish as appearing in the said list, and
- (b) the population of the parish, according to the latest census return of the Registrar-General, is less than fifty persons per hundred acres.
- (3) For the purposes of the last foregoing subsection the expression "agricultural land" has the meaning assigned to it by subsection (2) of section two of the Rating and Valuation (Apportionment) Act, 1928, and in the case of any hereditament occupied by or on behalf of the Crown for public purposes, the value directed by subsection (3) of section sixty-four of the Rating and Valuation Act, 1925, to be entered in the valuation list as respects the rateable value of that hereditament shall be taken as being in the case of agricultural land fifty per cent. of the net annual value of the hereditament and in any other case the net annual value thereof.
- (4) Any question whether a parish is or is not an agricultural parish within the meaning of this section shall be determined by the Minister whose decision shall be final.

#### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 2 of the Housing (Rural Authorities) Act, 1931. Sub-ss. (2)-(4) contain provisions, defining an "agricultural parish", which were originally contained in s. 60 of the Housing Act, 1930. The definition was originally provided for a different purpose, *i.e.*, in connection with the higher rate of government contribution made for the rehousing of persons displaced from houses in such parishes; see, for example, s. 26 (3) (a) in Part III of the Housing Act, 1930 (repealed), and cf. s. 105 (3) (a) in Part V of the Housing Act, 1936 (repealed). Section 60 of the Act of 1930 was applied by s. 3 of the Act of 1931 for the purposes of s. 2 of that Act (now sub-s. (1), *supra*). It was replaced by s. 105 (7)-(9) of the Act of 1936, now repealed by s. 59 (1) of, and the Sixth Schedule to, the Housing (Financial Provisions) Act, 1958 (Book II, *post*), subject to the saving for existing obligations in s. 59 (4) of that Act.

**General Note.** Even with the special rates of Government contributions (cf. the note, "History", *supra*), financial and other difficulties were encountered in the provision of housing accommodation in agricultural parishes. The Housing (Rural Authorities) Act, 1931, s. 1 (which is now spent and repealed; see s. 1 (3) (a) of that Act, and s. 59 (1) of, and the Sixth Schedule to, the Act of 1958, Book II, *post*), provided for certain further Government contributions as a temporary measure.

Section 2 of the Act of 1931 (now sub-s. (1), *supra*), introduced the unusual provision that the Minister might acquire land and erect houses to assist the rural district council to provide accommodation in such parishes, at the request of the council and subject to Treasury consent. The Minister must be satisfied that the resources of the district council are insufficient, and that the county council are unwilling to act under s. 117, *ante*.

Sub-ss. (2)-(4), *supra*, set out provisions, for the purpose of defining an "agricultural parish", which were formerly applied by reference to s. 60 of the Housing Act, 1930 or s. 105 (7)-(9) of the Housing Act, 1936.

#### Sub-s. (1).

**Rural district councils.** See the notes to s. 1, *ante*.

**Provision of dwelling accommodation.** Cf. the expression "provision of housing accommodation", defined in s. 92 (4), *ante*.

**Agricultural parishes.** Note sub-ss. (2)-(4), *supra*.

**Minister.** *I.e.*, the Minister of Housing and Local Government: see s. 189 (1), *post*.

**Acquisition of land and the erection of houses.** For powers under this Part (Part V) of this Act, see particularly ss. 92, 96 and 97, *ante*. "Land" and "house" are defined, save when the context otherwise requires, by s. 189 (1), *post*.

#### Sub-s. (2).

**Latest census return.** Reports on the census returns are prepared by the Registrar-General under s. 4 (1) of the Census Act, 1920 (20 Halsbury's Statutes (2nd Edn.) 1213. The latest census were taken on 8th April 1951, by virtue of the Census Order, 1950 (S.I. 1950 No. 1269).

#### Sub-s. (3).

**Rating and Valuation (Apportionment) Act, 1928, s. 2 (2).** 20 Halsbury's Statutes (2nd Edn.) 174.

**Rating and Valuation Act, 1925, s. 64 (3).** 52 Statutes Supp. 438; 20 Halsbury's Statutes (2nd Edn.) 142.

**Sub-s. (4).**

**Decision shall be final.** Cf. the note "Minister's decision shall be final" to s. 44 (5), *ante*.

### *Housing associations*

**119. Power of local authorities and county councils to promote and assist housing associations.**—(1) A local authority for the purposes of this Part of this Act, or a county council, may promote the formation or extension of, or, subject to the provisions of this Act, assist, a housing association.

(2) Where a housing association desires to erect houses which in the opinion of the Minister are required, and the local authority of the area in which the houses are proposed to be built are unwilling to acquire land with a view to selling or leasing it to the association, the county council, on the application of the association, may for this purpose acquire land and exercise all the powers of a local authority under this Part of this Act in regard to the acquisition and disposal of land, and the provisions of this Part of this Act as to the acquisition of land by local authorities shall apply accordingly.

(3) Any such local authority or county council with the consent of, and subject to any regulations or conditions which may be made or imposed by, the Minister may, for the assistance of a housing association—

- (a) make grants or loans to the association,
- (b) subscribe for any share or loan capital of the association,
- (c) guarantee or join in guaranteeing the payment of the principal of and interest on any money borrowed by the association (including money borrowed by the issue of loan capital) or of interest on any share capital issued by the association,

on such terms and conditions as to rate of interest and repayment or otherwise and on such security as the local authority or county council think fit.

The Minister's power of making regulations under this subsection shall be exercisable by statutory instrument.

(4) Notwithstanding the provisions of section four of the Industrial and Provident Societies Act, 1893, where a local authority or county council assist an association under this subsection, the local authority or council shall not be prevented from having or claiming an interest in the shares of the association exceeding the limit prescribed by that section.

(5) Any expenses incurred by a county council under this section shall be defrayed as expenses for general county purposes.

### NOTES

**History.** This section contains provisions formerly in s. 93 of the Housing Act, 1936, as amended by ss. 1 and 51 (4) of, and the First and Third Schedules to, the Housing Act, 1949, and by s. 1 (1) (d) of the Industrial and Provident Societies Act, 1952. In addition, sub-s. (3) reproduces the effect of s. 1 (2) of the Statutory Instruments Act, 1946.

**General Note.** This section and ss. 120–124, *post*, relate to housing associations, as defined in s. 189 (1), *post*. Development corporations of new towns and the Church of England Pensions Board are also deemed to be housing associations; see s. 125, *post*, and the note "Housing association" to s. 189 (1), *post*.

The local authority, for the purposes of this Part (Part V), or a county council, may promote the formation of a housing association under sub-s. (1), *supra*. In practice housing associations may also be formed, for example, by industrial concerns with a view to housing their employees, by groups of persons desiring to build houses for their own occupation ("self-help" associations), or by groups of philanthropic or public-spirited persons anxious to assist in solving the housing problem. Housing associations are usually formed under, and regulated by, the Industrial and Provident Societies Acts, 1893 to 1954 (rather than under the Companies Act, 1948). Advice on their formation may doubtless be obtained from the National Federation of Housing Societies, mentioned in the notes to s. 124, *post*.

Conditions will not be imposed under s. 104 (3), *ante*, where a house is sold under that section by a local authority to a housing association; cf. the note "Not being . . .

to a local authority, county council, etc.", to that subsection. The same note also refers to the exclusion of the Rent Acts in certain circumstances where the landlord's interest in any premises is that of a housing association. This exclusion, by s. 33 of the Housing Repairs and Rents Act, 1954 (84 Statutes Supp. 73; 34 Halsbury's Statutes (2nd Edn. 357), as amended by s. 26 (1) of, and para. 26 of the Sixth Schedule to, the Rent Act, 1957 (103 Statutes Supp. 99, 129; 37 Halsbury's Statutes (2nd Edn.) 578, 600), extends to housing association tenancies where:—

- (a) the premises were provided by arrangements under s. 94 (repealed) of the Housing Act, 1936, or (see s. 190 and the Tenth Schedule, *post*) under s. 120, *post*, which replaces s. 94 of the Act of 1936; or under s. 27 (repealed) of the Housing Act, 1935, or s. 29 (repealed) of the Housing Act, 1930; or with the assistance of a local authority under s. 2 of the Housing, etc., Act, 1923; or
- (b) the association is registered under the Industrial and Provident Societies Act, 1893, and the provision of the premises forms part of the purposes for which its business is mainly conducted; or
- (c) the premises were provided with assistance under s. 93 (3) of the Act of 1936 (see now sub-s. (3), *supra*, which, however, is not expressly mentioned in the Tenth Schedule, *post*) or were provided or improved under arrangements under s. 31 of the Housing Act, 1949 (see now s. 121, *post*, which again is not expressly mentioned in the Tenth Schedule, *post*).

Because of this exclusion, existing arrangements with local authorities under s. 94 of the Act of 1936 (and some of the earlier Acts) might be varied under s. 33 (8) of the Act of 1954; see, further, Ministry of Housing and Local Government Circular No. 58/54, dated 31st August 1954 (printed in *Lumley's Public Health* (12th Edn.), Vol. VIII, pp. 307 *et seq.*). The Rent Acts are also excluded in the case of development corporation tenancies by s. 33 (1) (b) of the Act of 1954.

#### Sub-s. (1).

**Local authority for the purposes of this Part.** See s. 1, *ante*, and as to London, see s. 132, *post*.

**Housing association.** For meaning, see s. 189 (1), *post*, and cf. the General Note, *supra*.

#### Sub-s. (2).

**Houses.** For definition of "house", see s. 189 (1), *post*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Acquire land with a view to selling or leasing.** See ss. 96 (e), 97 and 105 (1) (a), *ante*, for the powers of a local authority to acquire land and dispose of it to any person for the erection of houses. The present section confers the like powers on a county council to acquire land and dispose of it to a housing association, where the local authority, as defined in s. 1, *ante*, and s. 132, *post*, are unwilling to do so.

#### Sub-s. (3).

**Regulations.** At the time of going to press, no regulations under this subsection have been published by H.M. Stationery Office.

**Grants.** Grants under this subsection can presumably be made at any time towards the general expenses of the association.

Annual grants are also payable in respect of dwellings provided under "authorised arrangements". These annual grants were formerly payable in accordance with s. 94 (3) and (4) of the Housing Act, 1936 (as amended, and now repealed with savings by s. 59 (1), (3) and (4) of, and the Sixth Schedule to, the Housing (Financial Provisions) Act, 1958 (Book II, *post*)). S. 94 of the Act of 1936 is now mostly replaced by s. 120, *post*, but the related financial provisions are now to be found in ss. 1 (2) (b), 19, 20 and 29 (2) of the Act of 1958. See further the notes to s. 120, *post*.

**Loans.** Loans may also be obtained by housing associations from the Public Works Loan Commissioners; see s. 47 of the Act of 1958 (Book II, *post*), replacing s. 92 of the Act of 1936.

**Statutory instrument.** For provisions as to statutory instruments generally, see the Statutory Instruments Act, 1946 (36 Statutes Supp. 95; 24 Halsbury's Statutes (2nd Edn.) 440).

#### Sub-s. (4).

**This subsection.** It appears that a reference to sub-s. (3) of this section is intended.

**Industrial and Provident Societies Act, 1893, s. 4.** 12 Halsbury's Statutes (2nd Edn.) 878.

#### Sub-s. (5).

**General county purposes.** For the meaning of this expression, see the Local Government Act, 1933, s. 180 (1) (14 Halsbury's Statutes (2nd Edn.) 450) and the London Government Act, 1939, s. 115 (1) (15 Halsbury's Statutes (2nd Edn.) 1126); cf., also, s. 135 (2) and (3), *post*.

**120. Arrangements with housing associations for provision of housing.**—(1) A local authority may, with the approval of the Minister, make arrangements with a housing association for the purpose of enabling the association to provide housing accommodation or to alter, enlarge, repair or improve houses or buildings which, or an estate or interest in which, the local authority have acquired with a view to the provision or improvement of housing accommodation.

(2) Arrangements made under this section shall include such terms with regard to such matters, including the types of houses to be provided, and the rents at which the houses provided are to be let, as may appear to the local authority to be expedient in view of the needs of their district in relation to housing and may be approved by the Minister.

(3) For the purposes of section ninety-three of this Act, the housing accommodation in connection with which buildings or land may be provided under that section shall include housing accommodation provided by a housing association under arrangements made with a local authority under this section.

In this subsection the reference to arrangements made under this section includes a reference to arrangements made under section twenty-nine of the Housing Act, 1930, and, without prejudice to section one hundred and ninety-two of this Act, to arrangements made under section twenty-seven of the Housing Act, 1935, or section ninety-four of the Housing Act, 1936.

(4) If a housing association represent to the Minister that they have submitted to the local authority proposals for arrangements under this section and that the local authority have unreasonably refused to make arrangements in accordance with the proposals, the Minister may require the authority to furnish him with a report as to the matter stating the reasons for their refusal.

#### NOTES

**History.** This section contains provisions formerly in s. 94 (1), (2), (5) and (6) of the Housing Act, 1936, as amended by s. 1 of, and the First Schedule to, the Housing Act, 1949. In particular sub-s. (1), *supra*, is in the form substituted by the Act of 1949 for the original s. 94 (1) of the Act of 1936. That subsection had been earlier amended by s. 8 of the Housing (Financial Provisions) Act, 1938. Section 94 (3) and (4) of the Act of 1936 are now replaced by the Housing (Financial Provisions) Act, 1958 (Book II, *post*); see the note "Financial provisions" in the General Note, *infra*.

**General Note.** Sub-ss. (1) and (2), *supra*, enable arrangements to be made between a local authority and a housing association, with the approval of the Minister, for the provision, etc., of housing accommodation by the association. Such arrangements are sometimes referred to as "authorised arrangements", e.g., in Part I of the Act of 1958 (Book II, *post*) (see s. 29 (2) thereof). A revised model form of agreement was appended to Ministry of Housing and Local Government Circular No. 58/54, dated 31st August 1954 (printed in *Lumley's Public Health* (12th Edn.), Vol. VIII, pp. 307 *et seq.*).

Ancillary buildings and land may be provided by the local authority under s. 93, *ante*, in connection with accommodation provided under authorised arrangements by the association (sub-s. (3), *supra*).

**Financial provisions.** Financial assistance for the provision of houses by housing associations has been available, in different forms, from central government funds, under a number of statutes beginning with the Housing, Town Planning, etc., Act, 1919. Under the earlier Acts the government contributions were paid direct to the housing association. Under the later Acts (including those mentioned in sub-s. (3), *supra*) the system has been for the Minister to pay a contribution to the local authority, who in effect pass this on in the form of an annual grant, not less in amount, to the association.

Provisions of the latter type, in s. 94 (3) of the Act of 1936, were extended to exchequer "subsidies" under the Housing Subsidies Act, 1956; see s. 1 (1) (b), (2) (b) and (3) (repealed) and s. 12 (3) (not repealed) of, and para. 4 (repealed) of the First Schedule to, that Act (and see now s. 1 (1) (c) and (2) (b) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*)). Note also s. 59 (3) and (4) of the Act of 1958, containing savings in connection with the repeal of certain of the former enactments by s. 59 (1) of that Act and the Sixth Schedule thereto.

Where contributions or subsidies are payable from central funds, or where a local authority are required to make an annual grant, a number of consequential provisions also apply (differing according to the Act under which the obligation to make payments arose). Power to unify conditions is contained in s. 123, *post*; the various conditions may be modified thereunder. Subject to any such modification, reference should now

be made, for the consequential financial provisions, to s. 19 of the Act of 1958 (Book II, *post*), relating to development corporations, s. 20 thereof, as to other housing associations, and s. 21 thereof, as to the effect of houses vesting in the local authority.

In connection with the present section, ss. 19 (1) and 20 (1) of the Act of 1958 (replacing s. 94 (3), proviso, and (4), as amended, of the Act of 1936) enable the Minister to reduce, suspend or discontinue his contribution or subsidy to the local authority, if the housing association make default in giving effect to the "authorised arrangements" (see the definition in s. 29 (2) of the Act of 1958); and where he so acts, the local authority may, to a corresponding (or less) extent, withhold their annual grant to the association.

For the circumstances in which exchequer subsidies are now payable in respect of new accommodation, see ss. 1 *et seq.*, of the Act of 1958 (Book II, *post*), and note particularly ss. 1 (3) and 2 thereof.

Reference may also be made to the financial provisions relating to hostels provided under authorised arrangements; see ss. 15 (2) and 22 of the Act of 1958 (Book II, *post*) which contain provisions formerly in s. 40 of the Housing Act, 1949. As to arrangements for conversions and improvements, see s. 121, *post*, and the related financial provisions in s. 12 of the Act of 1958, replacing certain provisions formerly in ss. 31 and 32 of the Act of 1949. As to certain associations established since the passing of the Housing (Financial and Miscellaneous Provisions) Act, 1946, see the provisions for additional financial assistance in s. 17 of the Act of 1958, replacing s. 18 of the Act of 1946.

#### Sub-s. (1).

**Local authority.** See s. 1, *ante*, and s. 132, *post*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Housing association.** See s. 189 (1) and the notes thereto, *post*. See also the General Note to s. 119, *ante*.

**Provide housing accommodation.** In s. 94 (1) (a) of the Housing Act, 1936 (as substituted by s. 8 of the Housing (Financial Provisions) Act, 1938, for the original s. 94 (1) (a)-(c)) the corresponding phrase was "provide any housing accommodation which the local authority are empowered under this Act to provide". The present form of words is derived from s. 94 (1) as substituted by the Housing Act, 1949. Cf., now, s. 92, *ante*, and for the meaning of the "provision of housing accommodation", see s. 92 (4). Cf., also, the wording of s. 125, *post*.

As to the local authority providing buildings or land for ancillary purposes, see s. 93, *ante*, as extended by sub-s. (3), *supra*. As to the provision of furniture by the local authority, see s. 122, *post*.

**Alter, enlarge, repair or improve houses or buildings.** This is one of the modes by which a local authority may themselves provide housing accommodation; see s. 92 (1) (d), *ante*. Further provision as to conversions and improvements is made by s. 121, *post*; special financial provisions in that connection are contained in s. 12 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*).

This part of the present subsection reproduces the latter part of s. 94 (1) of the Act of 1936, as substituted by the Act of 1949, which in turn replaced s. 94 (1) (d) of the Act of 1936 as originally enacted; s. 121, *post*, and its related financial provisions are derived from the Housing Act, 1949.

#### Sub-s. (2).

**Arrangements . . . shall include such terms.** On default by the association in giving effect to such terms, the Minister has power to withhold financial assistance and the local authority may in turn withhold their annual grant; see the note "Financial provisions" in the General Note, *supra*.

**Rents.** As to the exclusion of the Rent Acts, and the consequential power to modify certain existing arrangements, see the General Note to s. 119, *ante*.

#### Sub-s. (3).

**Housing Act, 1930, s. 29.** That section was repealed by s. 27 (6) of the Housing Act, 1935, with a saving for existing obligations; it related to arrangements for the provision of houses by "public utility societies" (defined in terms somewhat narrower than the present definition of "housing association") in consideration of an annual grant by the local authority; and for contributions by the Minister to the local authority.

**Housing Act, 1935, s. 27.** That section (except sub-s. (6) mentioned, *supra*) was repealed by s. 190 of, and the Twelfth Schedule to, the Housing Act, 1936; it replaced the relevant provisions of the Act of 1930 (*ubi supra*) in wider but somewhat similar terms, corresponding closely to those of s. 94 (1)-(4) and (6) of the Act of 1936 as originally enacted.

**Housing Act, 1936, s. 94.** This was the corresponding provision of the Act of 1936; see the note "History" and the General Note, *supra*.

**Sub-s. (4).**

**Report . . . stating the reasons.** This section does not state what action the Minister may take on this report. *Semble*, he might exercise the default powers of ss. 171 *et seq.*, *post*; or encourage the county council to acquire land, for the erection of houses by the association, under s. 119 (2), *ante*.

**121. Arrangements with housing associations for improvement of housing.**—(1) A local authority may, with the approval of the Minister, make arrangements with a housing association for—

- (a) the provision of dwellings by the association by means of the conversion of houses or other buildings,
- (b) the alteration, enlargement, repair or improvement of dwellings by the housing association.

(2) Arrangements made under this section shall include such terms with regard to such matters, including the rents at which the dwellings are to be let, as may appear to the local authority to be expedient in view of the needs of their district in relation to housing and may be approved by the Minister.

(3) In this section the reference to repair does not include the execution of works of ordinary repair except so far as the execution thereof is incidental to or connected with the execution of works of improvement, alteration or enlargement or of works of repair not being ordinary works of repair.

(4) As respects the administrative county of London, other than the City of London, both the metropolitan borough council and the London County Council shall be local authorities for the purposes of this section.

**NOTES**

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 31 (1) of the Housing Act, 1949; the words "alteration, enlargement, repair or" in sub-s. (1) (b) are derived from s. 36 (2) of that Act (now repealed by the Housing (Financial Provisions) Act, 1958, Book II, *post*). Sub-s. (2) contains provisions formerly in s. 31 (2) of the Act of 1949. Sub-s. (3) contains provisions formerly in s. 36 (2) of that Act (repealed as mentioned, *supra*). Sub-s. (4) contains provisions formerly in s. 33 (2) of the Act of 1949 (also repealed by the Act of 1958). See also the Table of Repeals and Replacements (Appendix I, *post*).

For the provisions formerly contained in s. 31 (3) and (4) of the Act of 1949, see s. 12 of the Act of 1958 (Book II, *post*).

**General Note.** Part II (ss. 15–36) of the Housing Act, 1949, was concerned with financial assistance towards the improvement of housing accommodation; "improvement" included alteration or enlargement and, to a limited extent, repair (see s. 36 (2) of the Act of 1949, and sub-ss. (1) (b) and (3), *supra*). Of these provisions of the Act of 1949, only s. 31 (1) and (2) were repealed by s. 191 and the Eleventh Schedule, *post*; the whole of Part II is now however repealed by the Housing (Financial Provisions) Act, 1958 (Book II, *post*). The principal provisions of that Part are now replaced as follows:—

- (1) Exchequer contributions for improvements by local authorities (ss. 15–17); see now the Act of 1958, ss. 9 and 10.
- (2) Exchequer contributions for improvements payable direct to a development corporation (s. 19); see now the Act of 1958, s. 11.
- (3) Improvement grants by local authorities and exchequer contributions towards such grants (ss. 20–30); see now the Act of 1958, ss. 30–42.
- (4) Arrangements with housing associations, including development corporations, for improvements (s. 31); see now the present section and s. 12 of the Act of 1958.

Part II of the Act of 1949 also contained general and incidental provisions; *e.g.*, a general power to reduce exchequer contributions thereunder (s. 32), an interpretation section (s. 36), and provisions as to local authorities in London (s. 33 (2)). For the purposes of the present section, the general power to reduce contributions is now contained in s. 12 (1) of the Act of 1958; and the relevant definitions, and provisions as to London, are incorporated in sub-ss. (1), (3) and (4), *supra*. These and other incidental provisions of Part II of the Act of 1949 are also reproduced in the Act of 1958 for the purposes mentioned at (1) to (3), above; see the Table of Repeals and Replacements (Appendix I, *post*).

Contributions in connection with the present section are payable by the Minister to the local authority under s. 12 (1) of the Act of 1958. They are based on a proportion of the annual loss incurred, and the local authority are required to make an annual grant, not less than the amount of the contribution, to the association. If the association make default in giving effect to the arrangements, the Minister may reduce, suspend

or discontinue the contribution, and the authority may to a corresponding (or less) extent withhold their grants; see s. 12 (2) of the Act of 1958, and cf. also the similar provisions of ss. 19 (1) and 20 (1) of that Act in connection with arrangements under s. 120, *ante*.

**Sub-s. (1).**

**Local authority.** See s. 1, *ante*, and sub-s. (4), *supra*, which make provision corresponding to s. 33 (1) and (2) (repealed) of the Act of 1949.

**Approval of the Minister.** *I.e.*, of the Minister of Housing and Local Government; see s. 189 (1), *post*. Applications to the Minister under this section should be submitted on form IMP.2, set out in Circular No. 48/57, dated 20th September 1957.

**Housing association.** See s. 189 (1) and the notes thereto, *post*.

**Provision of dwellings by . . . conversion of houses or other buildings.** " Dwelling " and " building " are not defined by the present Act; " house " is defined, save where the context otherwise requires, by s. 189 (1), *post*. It may be difficult in practice to decide whether a scheme of conversion falls within sub-s. (1) (a) of this section, or within s. 120 (1), *ante*, as the " provision of housing accommodation ". Cf. also s. 92, *ante*, as to the provision of accommodation by local authorities, and in particular s. 92 (1) (b).

**Repair.** Note sub-s. (3), *supra*. In the present section the term appears to include:—

- (i) the execution of works of repair which go beyond " ordinary " repair;
- (ii) " ordinary " repair, if incidental to such extraordinary repair, or if incidental to improvement, alteration or enlargement.

As to the distinction between " improvement " and " repair ", cf. s. 69 (1) and the notes thereto, *ante*.

**Sub-s. (2).**

**Arrangements.** Cf., in general, s. 120 (2), *ante*. As to financial provisions, see the General Note, *supra*.

**Rents.** As to the exclusion of the Rent Acts, see the General Note to s. 119, *ante*.

**Sub-s. (4).**

**Administrative county of London; metropolitan borough council; London County Council.** See the notes to s. 1, *ante*. The present subsection forms an exception to s. 132, *post*.

**City of London.** The local authority for the City is the Common Council; see s. 1 (2) (a), *ante*.

**122. Power of local authorities to sell furniture to persons housed by housing associations.**—A local authority shall have power to sell, or supply under hire-purchase agreement, furniture to the occupants of houses provided by a housing association under arrangements made with the local authority, and, for that purpose, to buy furniture.

In this section the expression " hire-purchase " has the same meaning as in the Hire-Purchase Act, 1938.

NOTES

**History.** This section contains provisions formerly in s. 8 of the Housing Act, 1949.

**General Note.** This section enables the local authority to sell furniture, or supply it on hire-purchase, to the occupants of certain houses provided by housing associations. It corresponds to the latter part of s. 94, *ante*, which relates to houses provided by the local authority.

**Local authority.** See s. 1, *ante*, and s. 132, *post*.

**Houses; housing association.** For definitions, see s. 189 (1), *post*.

**Hire-Purchase Act, 1938.** Cf. the note to s. 94, *ante*. In the second paragraph of the present section " hire-purchase " should read " hire-purchase agreement " as in s. 94.

**123. Unification of conditions affecting housing associations' houses.**—Where the Minister has undertaken to make in respect of any houses under the management of a housing association contributions under more than one enactment and the association are required to observe in the management of the houses varying special conditions or terms imposed by those enactments, the Minister may, on the application of the association and

after consultation with any local authority who are under obligation to make grants or contributions in respect of any of the houses, make a scheme specifying, as conditions to be observed in the management of all the houses in substitution for the conditions or terms imposed as aforesaid, such conditions as he thinks fit, and in specifying the conditions to be so observed the Minister shall have regard to the provisions of this Part of this Act with respect to the conditions which a local authority are required to observe in relation to their houses.

#### NOTES

**History.** This section contains provisions formerly in s. 95 of the Housing Act, 1936, which was in turn derived from s. 28 of the Housing Act, 1935.

**General Note.** Conditions affecting local authority houses were unified by the Housing Act, 1935; see now s. 113, *ante*, and the notes thereto. The present section enables a similar unification to be made in the conditions applying to houses provided by a housing association.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*, and the notes thereto. The Minister concerned under the earlier enactments was the Minister of Health.

**Undertaken to make . . . contributions.** Cf. the note "Financial provisions" in the General Note to s. 120, *ante*.

**Houses; housing association.** For definitions, see s. 189 (1), *post*.

**Special conditions or terms.** See, for example, the conditions in paras. 1 and 2 of the Second Schedule to the Housing (Financial Provisions) Act, 1958 (Book II, *post*) in connection with s. 20 (2) and (4) of that Act, relating to houses provided with assistance under s. 3 of the Housing (Financial Provisions) Act, 1924 (repealed) and s. 29 of the Housing Act, 1930 (repealed).

It seems that the present expression extends to the terms of "authorised arrangements", *i.e.*, of agreements between local authorities and housing associations under s. 94 of the Housing Act, 1936 (repealed), or s. 120, *ante*, if such terms may be regarded as "imposed by" those enactments.

**Consultation.** See the note to s. 16 (4), *ante*.

**Local authority who are under obligation to make grants.** Cf. the note "Financial provisions" in the General Note to s. 120, *ante*.

**Make a scheme.** Note that s. 20 of the Act of 1958 (Book II, *post*) has effect subject to the provisions of any such scheme; see s. 20 (4) of that Act.

**Conditions which a local authority are required to observe.** See s. 113, *ante*.

**124. Power of Minister to recognise central housing association.**—The Minister may, if he thinks fit, recognise for the purposes of this section any central association or other body established for the purpose of promoting the formation and extension of housing associations and of giving them advice and assistance, and the Minister may, in any of the five years next following the date on which he recognises the said body, make a grant in aid of the expenses of the body of such amount as he may with the approval of the Treasury determine.

#### NOTES

**History.** This section contains provisions formerly in s. 96 of the Housing Act, 1936.

**General Note.** Under s. 96 of the Act of 1936 the Minister recognised (soon after the passing of that Act) the National Federation of Housing Societies, 12, Suffolk Street, Pall Mall, London, S.W.1, and made a grant in aid of its expenses. If yet another central body is recognised, the Minister will have power to make a grant, under this section, in any of the first five years after recognition.

**Minister; housing associations.** For definitions, see s. 189 (1), *post*.

#### *Development corporations*

**125. Provision of housing accommodation by development corporations.**—A development corporation shall be deemed to be a housing association within the meaning of this Act and accordingly arrangements may be made under section one hundred and twenty of this Act for the provision by a development corporation of any housing accommodation which a local authority are empowered to provide under this Act, and section

one hundred and twenty-one of this Act shall apply to a development corporation as it applies to a housing association:

Provided that the said section one hundred and twenty-one shall not apply to a development corporation established by an order under section sixteen of the New Towns Act, 1946 (which relates to orders for the combination and transfer of functions of development corporations).

# NOTES

**History.** This section contains provisions formerly in s. 8 (1) of the New Towns Act, 1946, and in s. 31 (1) of the Housing Act, 1949. Section 8 (1) of the Act of 1946 is repealed by the Housing (Financial Provisions) Act, 1958 (Book II, *post*). Section 31 (1) of the Act of 1949 (repealed by s. 191 of, and the Eleventh Schedule to, the present Act, *post*) is now replaced by s. 121, *ante* (and by that section as applied by the present section) relating to arrangements for the improvement, etc., of dwellings by housing associations.

The proviso to the present section is new in form. It arises from the definition of "development corporation" in s. 50 (1) of the Act of 1949, which refers to corporations established under s. 2 of the Act of 1946 but fails to refer to s. 16 of that Act.

**General Note.** The New Towns Act, 1946, provides for the designation of land as the site of a new town to be laid out and developed by a "development corporation" established for the purpose, with powers to acquire land, carry out building, provide services, etc. Section 8 (1) of that Act enabled the development corporation to enter into arrangements with the local authority under s. 94 of the Housing Act, 1936, for the provision of housing accommodation by the development corporation; see now s. 120, *ante*, as applied by the present section, and the related financial provisions in ss. 1 (1) (c) and (2) (b) and 19 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*).

Section 8 (2) of the New Towns Act, 1946, provided for direct financial assistance by the Minister to development corporations, *i.e.*, otherwise than under "authorised arrangements"; see now as to direct subsidies, s. 1 (1) (b) and (2) (a) of the Act of 1958 and s. 19 (3) of that Act.

Section 31 of the Housing Act, 1949, enabled the local authority to enter into arrangements with a development corporation for the conversion, improvement, etc., of dwellings by the corporation; see now s. 121, *ante*, as applied by the present section, and the related financial provisions in s. 12 of the Act of 1958. The Minister was also empowered to contribute directly towards the expenses of development corporations in converting or improving dwellings (otherwise than under "authorised arrangements") under s. 19 of the Act of 1949; see now s. 11 of the Act of 1958.

Where a house is sold by a local authority to a development corporation under s. 104, *ante*, conditions of the type mentioned in s. 104 (3) will not be imposed; see the note "Not being . . . to a local authority, county council, etc.", by s. 104 (3). That note also refers to the exclusion of the Rent Acts, where the interest of the landlord in premises is that of a development corporation, by s. 33 (1) (b) of the Housing Repairs and Rents Act, 1954.

**Development corporation.** See definition in s. 189 (1), *post*. Development corporations are established under s. 2 of the New Towns Act, 1946 (25 Halsbury's Statutes (2nd Edn.) 428), but see also s. 16 of that Act.

**Housing association.** For meaning, see s. 189 (1), *post*; and cf. the General Note to s. 119, *ante*.

**Arrangements . . . for the provision . . . of any housing accommodation.** As to the "provision of housing accommodation", see the powers of local authorities under s. 92, *ante*, and the definition in s. 92 (4). See also the note "Provide housing accommodation" to s. 120 (1), *ante*; it will be observed that the wording of the present section closely resembles that of s. 94 (1) (a) of the Housing Act, 1936, before a new form of that subsection was substituted by the Housing Act, 1949, and accordingly differs somewhat from the wording of s. 120 (1), *ante*.

**Local authority.** See s. 1, *ante*, and s. 132, *post*.

**Section 121 . . . shall apply.** That section, *ante*, relates to conversions, improvements, etc. Note the proviso to the present section.

**Provided that.** This proviso appears to perpetuate what was presumably a drafting error in the Act of 1949; see the note "History", *supra*.

**New Towns Act, 1946, s. 16.** 25 Halsbury's Statutes (2nd Edn.) 443.

## Miscellaneous

**126. Power of county councils to provide houses for their employees.**—A county council shall have power to provide houses for persons employed or paid by, or by a statutory committee of, the council,

and for that purpose may be authorised to acquire or appropriate land in like manner as a local authority may be authorised to acquire or appropriate land for the purposes of this Part of this Act.

### NOTES

**History.** This section contains provisions formerly in s. 97 of the Housing Act, 1936. See the General Note, *infra*, as to the omission of references to mental hospitals boards.

**General Note.** County councils, outside London, are not "local authorities" for the purposes of this Part (Part V) of this Act; see s. 1 (1), *ante*, and the note "subject to the provisions of this Act" to that subsection. The present section, however, confers a power to provide houses for persons employed or paid by the county council or by any of its statutory committees. A police superintendent has been held to be a person "paid by" a county council, although it was conceded that the standing joint committee was not a statutory committee of the county council; see *Rodwell v. Minister of Health*, [1947] 1 All E.R. 80; 2nd Digest Supp. In that case it was further held that the heading to Part V of the Housing Act, 1936, which before it was amended by the Housing Act, 1949, read "Provision of Housing Accommodation for the Working Classes", did not confine the powers of s. 97 of that Act (now replaced by the present section) to the provision of houses thereunder for employees, etc., who were members of the working classes.

References in s. 97 of the Housing Act, 1936, as originally enacted, to mental hospitals boards were repealed by s. 76 of, and the Tenth Schedule to, the National Health Service Act, 1946. The Act of 1946 also repealed s. 183 of the Public Health Act, 1936 (which related to the provision of houses for hospital officers). See now the National Health Service Act, 1946, s. 65 (63 Statutes Supp. 160; 15 Halsbury's Statutes (2nd Edn.) 393), whereunder local health authorities have power to provide residential accommodation for certain officers.

**Houses.** For definition of "house", see s. 189 (1), *post*, and cf. the phrase "provision of housing accommodation" defined by s. 92 (4), *ante*.

**Acquire or appropriate land.** Land is defined, save where the context otherwise requires, by s. 189 (1), *post*. For the relevant powers of a local authority under this Part (Part V), see particularly ss. 96, 97 and 99, *ante*.

**Local authority.** See s. 1, *ante*, and the notes thereto, and s. 132, *post*.

**127. Power of companies, &c., to provide houses for working classes.**—Any dock or harbour company, or any other company, society, or association established for trading or manufacturing purposes in the course of whose business, or in the discharge of whose duties, persons of the working class are employed, may (notwithstanding any Act of Parliament, or charter, or any rule of law or equity to the contrary) at any time erect, either on their own land or on any other land (which they are hereby authorised to purchase and hold for the purpose and to pay for out of any funds at their disposal), houses for the accommodation of all or any of the persons of the working class employed by them.

### NOTES

**History.** This section contains provisions formerly in s. 98 of the Housing Act, 1936.

**General Note.** Companies, etc., whose articles or the like may not be sufficiently widely drafted for the purpose, are by this section given power to erect houses for their working class employees, and power also to buy and hold land for that purpose.

As to loans by the Public Works Loan Commissioners, see s. 47 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*), replacing s. 92 of the Housing Act, 1936.

**Land; houses.** For definitions, see s. 189 (1), *post*. In the present context, "land" appears to be used in the common sense of any corporeal hereditament.

**Working class.** See the note "Working classes" to ss. 5 and 8, *ante*.

**128. Trusts for provision of houses for working classes.**—(1) The trustees of any houses for the working classes for the time being provided in any district by private subscriptions or otherwise, may, with the consent of a majority of the committee or other persons by whom they were appointed trustees, sell or lease the houses to the local authority of the district, or make over to them the management thereof.

(2) If in any case it appears to the Minister that the institution of legal proceedings is requisite or desirable with respect to any property required to be applied under any trusts for the provision of houses available for the

working classes, or that the expediting of any such legal proceedings is requisite or desirable, the Minister may certify the case to the Attorney-General, and the Attorney-General may institute any legal proceedings, or intervene in any legal proceedings already instituted, in such manner as he thinks proper in the circumstances.

(3) Before preparing any scheme with reference to property required to be applied under any trusts for the provision of houses available for the working classes, the court or body which is responsible for making the scheme shall communicate with the Minister and consider any recommendations made by him with reference to the proposed scheme.

#### NOTES

**History.** This section contains provisions formerly in s. 99 of the Housing Act, 1936.

**General Note.** Sub-s. (1), *supra*, in effect supplements ss. 96, 97 and 99, *ante*, as to the provision of housing accommodation by local authorities; it enables the trustees of working class houses to sell or lease them to the local authority, or make over their management to the local authority.

Sub-ss. (2) and (3) deal with the administration of any "trusts for the provision of houses available for the working classes", an expression which is wider than the definition of "housing trust" in s. 189 (1), *post*. The purpose of sub-s. (2) is to ensure the proper administration of trusts, by providing for the taking of proceedings by the Attorney-General, or for his intervention in existing proceedings. Under sub-s. (3), the Minister is enabled to tender recommendations about proposed schemes for the application of the trust property.

#### Sub-s. (1).

**Houses.** For definition of "house", see s. 189 (1), *post*.

**Working classes.** See the notes to ss. 5 and 8, *ante*.

**Local authority.** See s. 1, *ante*, and s. 132, *post*.

**Make over . . . the management.** This appears to mean that the property will remain vested in the trustees, but the local authority will manage the houses in the same way that they manage, under ss. 111-113, *ante*, houses provided by them under this Part (Part V). Presumably agreement will be made on financial matters, *e.g.*, for the repair and maintenance of the property by the authority out of income received from rents.

#### Sub-s. (2).

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Attorney-General.** Section 1 of the Law Officers Act, 1944 (26 Statutes Supp. 20; 4 Halsbury's Statutes (2nd Edn.) 540), enables the Solicitor-General to discharge the functions of the Attorney-General in certain circumstances. The present subsection appears to be drafted on the analogy of s. 20 of the Charitable Trusts Act, 1853 (2 Halsbury's Statutes (2nd Edn.) 846), but is not expressed to be confined to trusts which are charitable. For the position of the Attorney-General in relation to charitable trusts generally, see 4 Halsbury's Laws (3rd Edn.) 439 *et seq*.

#### Sub-s. (3).

**Scheme.** As to schemes in connection with trusts which are charitable, see generally 4 Halsbury's Laws (3rd Edn.) 309 *et seq*.

**129. Power of corporate bodies to sell or let land for housing purposes.**—Any body corporate holding land may sell, exchange, or lease the land for the purpose of the erection of houses for the working classes at such price, or for such consideration, or for such rent, as having regard to the said purpose and to all the circumstances of the case is the best that can reasonably be obtained, notwithstanding that a higher price, consideration, or rent might have been obtained if the land were sold, exchanged, or leased for another purpose.

#### NOTES

**History.** This section contains provisions formerly in s. 100 of the Housing Act, 1936.

**General Note.** Corporate bodies holding land may be obliged, on any sale, exchange or lease, to obtain the highest possible price, consideration or rent. The present section enables such bodies to sell, exchange or lease land for the erection of working class houses on terms which are appropriate in the circumstances.

**Land; houses.** For definitions, see s. 189 (1), *post*.

**Working classes.** See the notes to ss. 5 and 8, *ante*.

**130. Power of water and gas companies to supply on favourable terms.**—Any commissioners or trustees of waterworks, water companies, gas boards, and other corporations, bodies and persons having the management of any waterworks, reservoirs, wells, springs, or streams of water, and gasworks respectively, may, in their discretion, grant and furnish supplies of water or gas for houses provided under this Part of this Act, either without charge or on such other favourable terms as they think fit.

#### NOTES

**History.** This section contains provisions formerly in s. 101 of the Housing Act, 1936.

**Houses provided under this Part.** For definition of "house", see s. 189 (1), *post*. As to the "provision of housing accommodation" under this Part, see s. 92 (4), *ante*. Such accommodation may be provided by local authorities under s. 92, *ante*, and land may be acquired or appropriated for the purpose under ss. 96, 97 and 99, *ante*. See also ss. 119 (2) and 120, *ante*, in relation to housing associations; and ss. 125 and 126, *ante*, as to development corporations and county councils. Note also the power to acquire water rights under s. 103, *ante*.

**Such other favourable terms.** Cf. the power of Area Boards, under s. 53 (6) of the Gas Act, 1948 (54 Statutes Supp. 147; 10 Halsbury's Statutes (2nd Edn.) 930), to enter into special agreements with consumers. As to special agreements for the supply of electricity, see the Electricity Act, 1947, s. 37 (7) (50 Statutes Supp. 109; 8 Halsbury's Statutes (2nd Edn.) 979).

**131. Exercise of Public Health Act powers for purposes of Part V.**—(1) A local authority may, for the purposes of this Part of this Act, exercise the same powers as in the execution of their duties under the Public Health Act, 1936.

(2) In the application of this section to local authorities in London, for the reference to the Public Health Act, 1936, there shall be substituted a reference, in the case of a metropolitan borough council, to the Public Health (London) Act, 1936, in the case of the London County Council, a reference to the Metropolis Management Acts, 1855 to 1890, and, in the case of the Common Council of the City of London, a reference to the City of London (Sewers) Acts, 1848 to 1897.

#### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 102 of the Housing Act, 1936, in conjunction with the definition of "the Public Health Acts" in s. 188 (1) of that Act (now repealed by the Housing (Financial Provisions) Act, 1958 (Book II, *post*)). Sub-s. (2) contains provisions formerly in s. 104 (2) of the Act of 1936, and the above-mentioned provisions of ss. 102 and 188 (1) thereof.

**General Note.** The principal purpose of the corresponding provisions of the earlier housing Acts was to enable authorities to use for housing purposes their powers, under public health statutes, of entering into contracts. Thus s. 57 (3) of the Housing Act, 1925 (repealed), referred to the exercise of the same powers "whether of contract or otherwise" as under the Public Health Acts (or the relevant statutes relating to London; cf. now sub-s. (2), *supra*). (The remainder of s. 57 of that Act contained provisions broadly corresponding to s. 92 (1), (2) and (4), *ante*.) The express reference to powers of contract was repealed (outside London) by the Local Government Act, 1933, s. 307, and the Eleventh Schedule; and was not therefore reproduced in s. 102 of the Housing Act, 1936. However, s. 104 (2) of the Act of 1936, applying s. 102 thereof to London, still expressly provided that the powers of local authorities in London should include powers of contract.

As to powers of contract, see now s. 266 of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 492), and, as respects the London County Council and metropolitan borough councils, s. 160 of the London Government Act, 1939 (15 Halsbury's Statutes (2nd Edn.) 1148). As to the exercise of the functions of county councils (outside London), see s. 156, *post*, which requires matters to be referred to the public health and housing committee. As to the power of the Common Council of the City of London to appoint a committee for any purpose of the present Act, see s. 187, *post*. That section also contains provisions as to disqualification of members from voting which, in the case of other authorities, are contained in the Local Government Act, 1933, or the London Government Act, 1939. The Act of 1939 also repealed s. 186 of the Housing Act, 1936 (local inquiries in London); see now the Act of 1939, s. 189 (which corresponds to s. 290 of the Local Government Act, 1933), and the notes to s. 181 of the present Act, *post*. See further, as to London, ss. 132 and 133, *post*.

**Sub-s. (1).**

**Local authority.** See s. 1, *ante*, and s. 132, *infra*.

**Public Health Act, 1936.** 19 Halsbury's Statutes (2nd Edn.) 302.

**Sub-s. (2).**

**Metropolitan borough council; London County Council.** See the notes to s. 1, *ante*.

**Public Health (London) Act, 1936.** 15 Halsbury's Statutes (2nd Edn.) 887.

**Metropolis Management Acts, 1855 to 1890.** *I.e.*, the Metropolis Management Act, 1855; the Metropolis Management Amendment Act, 1856; the Metropolis Management Amendment Act, 1858 (repealed); the Metropolis Management Amendment Act, 1862; the Metropolis Management and Building Acts Amendment Act, 1878, Part I; the Metropolis Management Amendment Act, 1885; the Metropolis Management (Battersea and Westminster) Act, 1887 (repealed); the Metropolis Management Act, 1862, Amendment Act, 1890; and the Metropolis Management Amendment Act, 1890. These Acts have been much amended, *e.g.*, by the London County Council (General Powers) Act, 1934, and the London Government Act, 1939. For the Acts of 1855, 1856, 1862, 1885 and the two Acts of 1890, see 15 Halsbury's Statutes (2nd Edn.) 535, 578, 582, 604, 616 and 618. For Part I of the Act of 1878, see 25 Halsbury's Statutes (2nd Edn.) 30.

**City of London (Sewers) Acts, 1848 to 1897.** *I.e.*, the City of London Sewers Acts, 1848 (c. clxiii), 1851 (c. xci) and 1897 (c. cxxxiii).

*Provisions as to London*

**132. Local authority for Part V in London other than City.—(1)**  
As respects the administrative county of London other than the City of London, the question whether or not in any case the London County Council or the metropolitan borough council are to be the local authority for the purposes of this Part of this Act shall, save as otherwise expressly provided, be determined in accordance with the succeeding provisions of this section.

(2) The London County Council shall be the local authority for the purposes of this Part of this Act so far as regards the provision of any houses outside the administrative county of London.

(3) The London County Council shall carry out such reviews of housing conditions and submit to the Minister such proposals for the provision of new houses as are required by this Part of this Act, but, before preparing any such proposals, the county council shall consult with the councils of the several metropolitan boroughs, and the council of every metropolitan borough shall furnish such information as may reasonably be required by the London County Council for the purpose of preparing any such proposals.

(4) As respects a metropolitan borough, the council of the borough shall be the local authority for the purposes of this Part of this Act save as regards the provision of any houses outside the borough and the carrying out of such reviews of housing accommodation and the submission to the Minister of such proposals for the provision of new houses as are required by this Part of this Act.

(5) Without prejudice to the powers conferred on a metropolitan borough council by this Act, the London County Council shall be a local authority for the purposes of this Part of this Act as respects any part of the administrative county of London, other than the City of London, for all the purposes of this Part of this Act other than those for which it is the local authority to the exclusion of the metropolitan borough council:

Provided that the London County Council shall not develop land in a metropolitan borough for the purpose only of meeting the needs of the borough without the consent of the council thereof.

(6) If it appears to the Minister to be expedient that the needs of a metropolitan borough with respect to the provision of housing accommodation should be satisfied by the provision by the council of that borough of such accommodation outside the administrative county of London or within another metropolitan borough, he may by order contained in a statutory instrument provide for the transfer to that council, to such extent as appears

to him to be requisite for that purpose, of any powers which, by virtue of subsection (2) or subsection (5) of this section are powers of the London County Council.

### NOTES

**History.** This section contains provisions formerly in s. 103 of the Housing Act, 1936, as amended, ss. 13 and 51 (4) of, and the Third Schedule to, the Housing Act, 1949. In addition sub-s. (6) reproduces the effect of s. 1 (2) of the Statutory Instruments Act, 1946. By s. 13 of the Act of 1949, new sub-ss. (4)–(6) were substituted for the original s. 103 (4) and (5) of the Act of 1936. The other amendment by the Act of 1949 removed from s. 103 (2) a reference to s. 91 of the Act of 1936 (also repealed by the Act of 1949, and replaced by ss. 4 and 5 thereof; see now ss. 43–45 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*)).

**General Note.** The Common Council is the local authority for the purposes of this Act for the City of London by virtue of s. 1 (2), *ante*. The present section provides for the distribution of functions under this Part (Part V) in the remainder of the administrative county of London. Broadly speaking, the metropolitan borough council is responsible for the provision of housing accommodation within its own borough, and the London County Council is responsible for other functions.

In more detail the distribution of functions is as follows:—

#### *Functions of London County Council.*

- (1) Reviews of housing conditions under s. 91, *ante* (sub-s. (3), *supra*).
- (2) Submission of proposals for new houses under s. 91, *ante*, subject to the requirement of consultation with the borough council, who must furnish information (sub-s. (3), *supra*).
- (3) Provision of houses outside London (sub-s. (2), *supra*).
- (4) All purposes under Part V in London except the City (sub-s. (5), *supra*). These powers are concurrent with those of the borough council as "the" local authority, for the provision of houses inside the borough, and for other purposes not expressly excluded (sub-s. (4), *supra*). The London County Council need the consent of the borough council for development within a borough to meet the needs only of that borough (sub-s. (5), proviso, *supra*).

#### *Functions of metropolitan borough council.*

- (1) Provision of houses in the borough (sub-s. (4), *supra*). This power is concurrent with the London County Council's powers which, however, are limited by sub-s. (5) proviso, *supra*.
- (2) Furnishing information to the London County Council, and consultation with them, about proposals for new houses (sub-s. (3), *supra*), but not the carrying out of reviews or the submission of proposals direct to the Minister (sub-s. (4), *supra*).
- (3) Purposes, other than those expressly excluded, as respects their own borough (sub-s. (4), *supra*). These powers are concurrent with those of the London County Council (sub-s. (5), *supra*).
- (4) Provision of houses outside the borough (*i.e.*, outside London, or in another metropolitan borough but not in the City) if the Minister, under sub-s. (6), transfers the powers of the London County Council for the purpose.

For the powers of the London County Council and metropolitan borough councils to provide commercial buildings in connection with housing accommodation, see s. 93 (3), *ante*. As to certain purchases of land by authorities who are local authorities in London, see s. 133, *post*. As to agreements between the London County Council and other authorities in London, or neighbouring authorities, see ss. 183–185, *post*.

Certain of the miscellaneous provisions as to London, originally contained in Part VII of the Housing Act, 1936, were repealed and replaced by the London Government Act, 1939. Section 183 (1) of the Act of 1936 (as to temporary medical officers in London) is superseded by s. 83 of the Act of 1939 and repealed by s. 207 of, and the Eighth Schedule to, that Act; accordingly it does not appear in s. 186, *post*. Section 185 of the Act of 1936 (as to members voting) was similarly repealed except as to the City; see now ss. 51 and 52 of the Act of 1939 and, as to the City, s. 187 (2) and (3), *post*. Section 186 of the Act of 1936 (as to inquiries) was similarly repealed and replaced by s. 189 of the Act of 1939. See also the notes to s. 131, *ante*.

#### **Sub-s. (1).**

**Administrative county of London; London County Council; metropolitan borough council.** See the notes to s. 1, *ante*.

**City of London.** The local authority for the City is the Common Council; see s. 1 (2) (a), *ante*.

**Save as otherwise expressly provided.** See s. 121 (4), *ante* (arrangements with housing associations for the improvement, etc., of dwellings).

**Sub-s. (2).**

**Provision of any houses outside . . . London.** A local authority is empowered by s. 92 (1), *ante*, to provide housing accommodation outside its own district; note, however, the proviso to s. 93 (3), *ante*, as to commercial buildings. As to the meaning of "house", see s. 189 (1), *post*, but cf. s. 92 (4), *ante*.

**Sub-s. (3).**

**Reviews; proposals.** See s. 91, *ante*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Consult.** Cf. the note "Consultation" to s. 16 (4), *ante*.

**Sub-s. (5).**

**Other than the City.** The general effect of this subsection is to make the London County Council "a" local authority in cases where the metropolitan borough council is "the" local authority. As respects the City, the Common Council is the local authority by virtue of s. 1 (2), *ante*. It appears that the London County Council cannot develop land for housing purposes in the City, as they are neither "the" local authority nor "a" local authority for the City; nor yet is the City "outside their district" or "outside the administrative county" as mentioned in s. 92 (1), *ante*, or sub-s. (2), *supra*. Cf. also the wording of sub-s. (6), *supra*; but see s. 185, *post*.

**Shall not develop land.** This appears to forbid such development as the erection of houses under s. 92, *ante*, or the provision of other buildings, *e.g.*, under s. 93, *ante*, except with consent. Possibly, consent is not required for improvements to existing buildings, though these might amount to development within the meaning of s. 12 of the Town and Country Planning Act, 1947 (48 Statutes Supp. 44; 25 Halsbury's Statutes (2nd Edn.) 506).

**Needs of the borough.** Cf. the expression "the needs of the district" in ss. 91 and 92 (1), *ante*. The interpretation placed on that expression might lead to considerable difficulties in practice, if extended to the present subsection.

**Sub-s. (6).**

**Order contained in a statutory instrument.** As to orders of the Minister, see s. 180 (1), *post*. As to statutory instruments generally, see the Statutory Instruments Act, 1946 (36 Statutes Supp. 95; 24 Halsbury's Statutes (2nd Edn.) 440).

**133. Exercise by local authorities in London of certain powers for purposes of Part V.—(1)** So much of subsection (1) of section ninety-seven of this Act as provides that a local authority may acquire land for the purposes of this Part of this Act by agreement shall have effect so as to authorise a local authority in the administrative county of London to acquire land for those purposes by agreement in like manner as if those purposes were purposes of the Public Health Act, 1875, and sections one hundred and seventy-five to one hundred and seventy-eight of that Act so far as they relate to the purchase of land by agreement shall apply accordingly and shall for the purposes of this Part of this Act extend to London in like manner as if the common council of the City of London, the London County Council and a metropolitan borough council, respectively, were a local authority in the said sections mentioned.

(2) Any purchase money payable in pursuance of this section by a local authority in respect of any land, estate or interest of another local authority which would, but for this subsection, be paid into court in manner provided by the Lands Clauses Acts may, if the Minister consents, instead of being paid into court, be paid as the Minister may determine.

A decision of the Minister under this subsection shall be final and conclusive.

**NOTES**

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 104 (1) of the Housing Act, 1936; for the former s. 104 (2), see now s. 131 (2), *ante*. Sub-s. (2) contains provisions formerly in s. 146 of the Act of 1936, as to which see the Table of Repeals and Replacements (Appendix I, *post*).

**General Note.** Sub-s. (1) enables the Common Council, the London County Council and metropolitan borough councils to acquire land by agreement under s. 97 (1), *ante*. For this purpose ss. 175 to 178 (repealed save as to London) of the Public Health Act, 1875, are applied.

Sub-s. (2) is intended to avoid the expense of payment into, and out of, court under ss. 69 *et seq.* of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 921). Where a compulsory purchase order is made under this Part (Part V) similar provision is made by para. 1 (3) of the Seventh Schedule, *post*. Cf., also, as to purchases by agreement by authorities outside London, s. 177 of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 448), and as to the London County Council and metropolitan borough councils, s. 111 of the London Government Act, 1939 (15 Halsbury's Statutes (2nd Edn.) 1124).

#### Sub-s. (1).

**Local authority.** As to local authorities for London under this Part (Part V), see ss. 1 (2) and 132, *ante*.

**Land.** For definition, see s. 189 (1), *post*, but cf. s. 97 (1) and the note thereto, *ante*.

**Administrative county of London; City of London; London County Council; metropolitan borough council.** The Common Council is the local authority for the City by virtue of s. 1 (2), *ante*. As to the distribution of function between the London County Council and metropolitan borough councils under this Part, see s. 132, *ante*, and see generally the notes to s. 1, *ante*.

**Public Health Act, 1875, ss. 175-178.** Section 175 of that Act (38 & 39 Vict. c. 55) was repealed (outside London) by the Public Health Act, 1936, ss. 346, 347 and Third Schedule, Part I. It contains a power for a local authority to purchase lands, or take lands on loan, and to sell or exchange lands, etc., and provisions as to the disposal of surplus lands. Sections 176-178 of the Act of 1875 were repealed (outside London) by the Local Government Act, 1933, ss. 307, 308 and Eleventh Schedule, Part I. They provide: (i) for the incorporation of the Lands Clauses Acts except certain sections (and for procedure on compulsory purchase, which is not here relevant) (s. 176); (ii) for the letting of land in certain circumstances (s. 177); and (iii) for the disposal of land to local authorities by the Duchy of Lancaster (s. 178). Cf., now, the powers of purchase of, and dealing with, land by the London County Council or a metropolitan borough council under ss. 97-114 of the London Government Act, 1939 (15 Halsbury's Statutes (2nd Edn.) 1120-1126). Section 111 of the Act of 1939 corresponds with sub-s. (2), *supra*.

#### Sub-s. (2).

**Would . . . be paid into court.** See the note to para. 1 (3) of the First Schedule, *post*, which contains a similar provision as to compulsory purchases under Part II, *ante*; and cf. para. 1 (3) of the Seventh Schedule as to compulsory purchases under this Part (Part V), and the General Note, *supra*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Decision . . . shall be final and conclusive.** See the note to para. 1 (3) of the First Schedule, *post*.

**Lands Clauses Acts.** The reference here is, in particular, to ss. 69 *et seq.* of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 921 *et seq.*); cf. the notes to para. 1 (3) of the First Schedule, *post*. By virtue of s. 23 of the Interpretation Act, 1889 (24 Halsbury's Statutes (2nd Edn.) 222), the expression "the Lands Clauses Acts" means, in England and Wales, the Lands Clauses Consolidation Act, 1845; the Lands Clauses Consolidation Acts Amendment Act, 1860; the Lands Clauses Consolidation Act, 1869; the Lands Clauses (Umpire) Act, 1883 (3 Halsbury's Statutes (2nd Edn.) 890, 961, 964, 965); and any Acts for the time being in force amending the same, *e.g.*, the Lands Clauses (Taxation of Costs) Act, 1895 (3 Halsbury's Statutes (2nd Edn.) 965). The Acts of 1845, 1860 and 1869 are expressly incorporated with s. 176 (1) of the Public Health Act, 1875, except for certain sections of the Act of 1845.

### Scilly Isles

**134. Provision of housing accommodation in Isles of Scilly.—(1)** Without prejudice to his powers under section two hundred and ninety-two of the Local Government Act, 1933, the Minister may, upon the application of the council of the Isles of Scilly, by order confer or impose upon that council such functions relating to the provision of housing accommodation in the Isles of Scilly as the Minister thinks appropriate.

(2) An order made under this section may provide for the making by the Minister and by the said council of contributions in respect of houses provided in pursuance of such an order.

(3) An order made under this section may contain such incidental and consequential provisions, including provisions conferring powers or imposing duties on the said council, as the Minister thinks necessary.

(4) An order made under this section may be revoked or varied by a subsequent order made by the Minister whether or not on the application by the said council.

(5) The power of making orders under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### NOTES

**History.** Sub-ss. (1)–(3), *supra*, contain provisions formerly in ss. 22 (1)–(3) of the Housing (Financial and Miscellaneous Provisions) Act, 1946. Sub-s. (4) contains provisions formerly in s. 22 (4) of that Act as amended by s. 12 (4) of, and Part II of the Third Schedule to, the Housing Subsidies Act, 1956, and in s. 12 (5) of the Act of 1956. Sub-s. (5) reproduces the effect of ss. 1 (2) and 5 (2) of the Statutory Instruments Act, 1946.

#### Sub-s. (1).

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**By order.** At the time of going to press no order has been made under this section, but by virtue of s. 191 (2), *post*, the Isles of Scilly (Housing) Order, 1946 (S.R. & O. 1946 No. 2105), as amended by S.I. 1957 No. 1440, has effect thereunder.

**Provision of housing accommodation.** For meaning, see s. 92 (4), *ante*.

**Local Government Act, 1933, s. 292.** 14 Halsbury's Statutes (2nd Edn.) 505.

#### Sub-s. (2).

**And by the said council.** These words appear to have been included owing to a drafting error. In s. 22 (2) of the Act of 1946 (see the note "History", *supra*), these words were repealed by s. 12 (4) of, and Part I of the Third Schedule to, the Act of 1956, in consequence of the abolition of compulsory rate fund contributions by s. 8 of that Act.

**House.** See s. 189 (1), *post*, for definition; but cf. s. 92 (4), *ante*, and the definition of "dwelling" in s. 29 (1) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*), for the purposes of Part I of that Act.

#### Sub-s. (5).

**Statutory instrument.** For provisions as to statutory instruments generally, see the Statutory Instruments Act, 1946 (36 Statutes Supp. 95; 24 Halsbury's Statutes (2nd Edn.) 440. As to annulment, see ss. 5 (1) and 7 (1) of that Act. See also the Laying of Documents before Parliament (Interpretation) Act, 1948 (56 Statutes Supp. 293; 24 Halsbury's Statutes (2nd Edn.) 448).

### PART VI

#### FINANCIAL PROVISIONS

##### *Expenses of local authorities*

#### 135. Expenses of rural district councils and county councils.—

(1) Subject to the powers of the Minister to direct the debiting of any expenses to the Housing Revenue Account, any expenses incurred by a rural district council under Part II of this Act or under the provisions of Part III of this Act relating to clearance areas shall be charged as special expenses on the contributory place in respect of which they are incurred:

Provided that this subsection shall not apply to expenses incurred under section thirty of this Act or under Part II of the Second Schedule to this Act.

(2) Subject to the provisions of this Act, any expenses incurred in the execution of this Act by a county council, other than the London County Council, shall be defrayed as expenses for general county purposes, or as expenses for special county purposes, as the case may require.

(3) The following expenses incurred by the London County Council shall be defrayed as expenses incurred for special county purposes, namely—

all expenses incurred in the execution of this Act which are attributable to the exercise by the London County Council of their powers under the Housing of the Working Classes Act, 1890, not being expenses so incurred in respect of houses or other buildings provided or land acquired or

appropriated under the last mentioned Act after the sixth day of February, nineteen hundred and nineteen.

### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 116 (1) of the Housing Act, 1936, and s. 22 (3) of the Housing Repairs and Rents Act, 1954. Sub-s. (2) contains provisions formerly in s. 116 (2) of the Act of 1936. Sub-s. (3) contains provisions formerly in s. 14 (2) of the Housing Act, 1949, as amended by s. 12 (4) of, and Part I of the Third Schedule to, the Housing Subsidies Act, 1956. Section 14 of the Act of 1949 had replaced s. 117 (2) of the Act of 1936 (repealed by the Act of 1949, s. 51 and Third Schedule).

#### Sub-s. (1).

**Powers of the Minister to direct the debiting . . . to the Housing Revenue Account.** As to the keeping of the Housing Revenue Account, see the Housing (Financial Provisions) Act, 1958, s. 50 (Book II, *post*), and for the power of the Minister to direct the debiting of certain outgoings to that account, see para. 4 of the Fifth Schedule to that Act. For definition of "the Minister", see s. 189 (1), *post*.

**Clearance areas.** See ss. 42 *et seq.*, *ante*.

**Special expenses.** As to the distinction between general expenses and special expenses of rural district councils, see the Local Government Act, 1933, s. 190 (14 Halsbury's Statutes (2nd Edn.) 454). Apart from sub-s. (1), *supra*, the expenses mentioned would be general expenses by virtue of s. 190 (2) of the Act of 1933. The importance of the distinction lies in the fact that where the liabilities of a rural district council are discharged by levying a rate, sums attributable to general expenses are met by a rate chargeable on the whole of the district, whereas sums attributable to special expenses are chargeable on the part of the district in respect of which the expenses are incurred; see s. 192 of the Act of 1933.

**Contributory place.** For meaning, see s. 189 (1), *post*, and the notes thereto.

#### Sub-s. (2).

**Subject to the provisions of this Act.** See, e.g., s. 119 (5), *ante*, as to expenses incurred by county councils in promoting or assisting housing associations.

**General county purposes; special county purposes.** These terms are defined in s. 180 (1) of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 450). Apart from sub-s. (2), *supra*, the expenses mentioned would be deemed to be expenses for general county purposes by virtue of s. 180 (2) of that Act; the effect of sub-s. (2) is to allow them to be classed as expenses for special county purposes in appropriate cases, *i.e.*, where they ought to be chargeable on a part of the county, and not on the whole. The distinction between general and special county purposes affects the manner in which precepts are issued for the levying of rates. The whole county is chargeable in respect of expenses for general county purposes, but only part of the county in respect of expenses for special county purposes; see s. 183 of the Act of 1933.

#### Sub-s. (3).

**Defrayed as expenses incurred for special county purposes.** The expressions "general county purposes" and "special county purposes" are defined in s. 115 (1) of the London Government Act, 1939 (c. 40), 15 Halsbury's Statutes (2nd Edn.) 1126. All expenses incurred by the London County Council in the execution of this Act, other than those mentioned in sub-s. (3), *supra*, are deemed to be expenses for general county purposes by virtue of s. 115 (2) of the Act of 1939. Express provision to that effect was made by s. 14 (1) of the Housing Act, 1949, which is now repealed as no longer required.

**House; land.** For definitions, see s. 189 (1), *post*.

**6th February 1919.** Cf. s. 50 (1) (a) and (f) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*), as to the inclusion of houses provided, and land purchased or appropriated, after this date, in the Housing Revenue Account.

**Housing of the Working Classes Act, 1890.** 53 & 54 Vict. c. 70. That Act (except s. 74 (1)) was repealed by s. 136 of, and the Sixth Schedule to, the Housing Act, 1925, and s. 74 (1) was repealed by s. 119 of, and the Fifth Schedule to, the Settled Land Act, 1925.

### Borrowing

#### 136. Power of local authorities to borrow for purposes of Act.—

(1) Subject to the provisions of this Act, a local authority may borrow—

- (a) for the purposes of Part II of this Act, so far as it relates to the execution of repairs and works by local authorities,
- (b) for the purposes of Part III (except sections seventy-two to seventy-five and Part II of the Second Schedule) and Part IV of this Act,

(c) for the purposes of Part V of this Act (except sections one hundred and fifteen and one hundred and twenty),  
and a county council (other than the London County Council) may borrow for the purposes of this Act.

(2) Money borrowed under this Act by the London County Council may be borrowed in manner provided by the London County Council (Loans) Act, 1955.

(3) The maximum period which may be sanctioned as the period for which money may be borrowed by the London County Council or the Common Council of the City of London for the purposes of this Act shall, notwithstanding the provisions of any Act of Parliament, be eighty years.

#### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 118 of the Housing Act, 1936, as amended by s. 51 (4) of, and the Third Schedule to, the Housing Act, 1949, and in s. 120 (1) of the Act of 1936, and s. 47 (1) of the Act of 1949. Sub-s. (2) contains provisions formerly in s. 119 (a) of the Act of 1936, and s. 47 (1) of the Act of 1949. Sub-s. (3) contains provisions formerly in proviso (i) to s. 119 of the Act of 1936, and s. 47 (1) of the Act of 1949. Note that s. 47 of the Act of 1949, and ss. 119 and 122-124 of the Act of 1936 as applied thereby were not repealed by this Act, but are repealed by the Housing (Financial Provisions) Act, 1958 (Book II, *post*); see now ss. 54 and 59 (6) of that Act.

#### Sub-s. (1).

**Subject to the provisions of this Act.** Note that further borrowing powers are contained in ss. 137 (1), (2), 138 (4), 175 (3) and 180 (2), *post*.

**Local authority may borrow.** For the meaning of "local authority", see s. 1, *ante*. General provisions relating to borrowing by local authorities are contained in Part IX (ss. 195 *et seq.*) of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 457), and in Part VII (ss. 124 *et seq.*) of the London Government Act, 1939 (15 Halsbury's Statutes (2nd Edn.) 1130); see also the Local Authorities Loans Act, 1945, s. 8 (30 Statutes Supp. 78; 16 Halsbury's Statutes (2nd Edn.) 501), relating to the use of capital funds. *Quaere* whether, by virtue of s. 195 of the Act of 1933 and s. 124 (1) of the Act of 1939, the power conferred by sub-s. (1), *supra*, may be exercised only with the consent of the Minister of Housing and Local Government; cf. s. 138 (4), *post*, which expressly excludes the necessity for such consent. In practice consent is obtained; for procedure, see, *e.g.*, Part III of the Memorandum accompanying Circular No. 48/57, dated 20th September 1957.

The amount which may be borrowed is now controlled by the Treasury, whose permission is generally necessary for the borrowing by a local authority of more than £50,000 in any one period of twelve months; see the Borrowing (Control and Guarantees) Act, 1946 (43 Statutes Supp. 173; 16 Halsbury's Statutes (2nd Edn.) 551), and the Control of Borrowing Order, 1958 (S.I. 1958 No. 1208).

**Execution of repairs and works by local authorities.** *E.g.*, under ss. 10, 12 (3) and 29 (3), *ante*.

**Part V of this Act.** See also s. 59 (6) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*).

#### Sub-s. (2).

London County Council (Loans) Act, 1955. 4 & 5 Eliz. 2 c. xxvi.

#### Sub-s. (3).

**Maximum period which may be sanctioned, etc.** Sub-s. (3), *supra*, should be compared with the proviso to s. 198 (1) of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 459), together with the Eighth Schedule to that Act (14 Halsbury's Statutes (2nd Edn.) 531), as amended by s. 190 and the Tenth Schedule, *post* (relating to the period for repayment of moneys borrowed by local authorities outside London), and with the proviso to s. 134 (1) of the London Government Act, 1939 (15 Halsbury's Statutes (2nd Edn.) 1135), as so amended (relating to the period for repayment of moneys borrowed by metropolitan borough councils).

**137. Borrowing in connection with operations carried out by a local authority outside its own area.**—(1) Where housing operations under Part V of this Act are being carried out by a local authority outside their own area, that authority shall, subject to the approval of the Minister, have power to borrow money for the purpose of defraying any expenses (including, if the Treasury so approve, interest payable in respect of any period before the completion of the operations, or a period of five years from the date of the borrowing, whichever period is the shorter, on money borrowed under this

section) incurred by the local authority in connection with any works necessary for the purposes of the operations, or incidental to the carrying out thereof, which under this Act they are authorised to execute:

Provided that any approval of the Minister, in so far as it relates to the sanction of a loan under the foregoing provisions for the purpose of the payment of interest payable in respect of money borrowed, shall be given by order which shall be provisional only and of no effect until confirmed by Parliament.

(2) The council of any county, borough or district in which operations are being carried out as aforesaid shall have power, with the approval of the Minister, to borrow money for the purposes of any agreement entered into by the council with the local authority under Part V of this Act.

(3) For the purposes of subsection (3) of section eight of the Statutory Orders (Special Procedure) Act, 1945 (under which that Act may be applied to any enactment passed before that Act which applies the provisional order procedure), the proviso to subsection (1) of this section shall be treated as an enactment passed before that Act.

#### NOTES

**History.** Sub-ss. (1) and (2), *supra*, contain provisions formerly in s. 121 of the Housing Act, 1936, and sub-s. (3) is required to preserve the application of s. 8 (3) of the Statutory Orders (Special Procedure) Act, 1945.

#### Sub-s. (1).

**Housing operations . . . outside their own area.** A local authority may carry out housing operations outside its own area by virtue of s. 92 (1), *ante*; see also the proviso to s. 93 (3), *ante*, and ss. 108–110, *ante*. For the power of such an authority to make advances to the other authority concerned, see s. 140 (2), *post*.

**Local authority.** For meaning in Part V of this Act, see ss. 1 and 132, *ante*; and as to the local authority in London for providing houses outside London, note particularly s. 132 (2) and (6).

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Order which shall be provisional.** For the procedure with regard to provisional orders, see the Local Government Act, 1933, s. 285 (1) (14 Halsbury's Statutes (2nd Edn.) 501), and the London Government Act, 1939, s. 188 (1) (15 Halsbury's Statutes (2nd Edn.) 1160). As to costs in respect of provisional orders, see s. 180 (2), *post*.

#### Sub-s. (2).

**Agreement . . . under Part V.** See s. 108 (1), *ante*.

#### Sub-s. (3).

**Statutory Orders (Special Procedure) Act, 1945, s. 8 (3).** 34 Statutes Supp. 145; 24 Halsbury's Statutes (2nd Edn.) 437.

**138. Power to issue local housing bonds.**—(1) Without prejudice to any other powers of borrowing, a local authority (other than a metropolitan borough council) or a county council may, with the consent of the Minister, borrow any sums which they have power to borrow for the purposes of this Act, by the issue of bonds (in this Act referred to as "local bonds") in accordance with the provisions of this Act.

(2) The provisions set out in the Eighth Schedule to this Act shall have effect with respect to local bonds.

(3) Where on an application made by two or more local authorities or county councils the Minister is satisfied that it is expedient that those authorities or councils should have power to make a joint issue of local bonds, the Minister may by order contained in a statutory instrument make such provision as appears to him necessary for the purpose, and any such order shall provide for the securing of the bonds issued upon the joint rates, property and revenues of the authorities or councils.

The provisions of any such order shall have effect as if they were contained in an order made under section six of the Public Health Act, 1936.

(4) A local authority or county council by whom any local bonds have

been issued may, without the consent of the Minister, borrow for the purpose of redeeming those bonds.

### NOTES

**History.** This section contains provisions formerly in s. 122 of the Housing Act, 1936, and sub-s. (3) also reproduces the effect of s. 1 (2) of the Statutory Instruments Act, 1946. The present Act repealed s. 122 of the Act of 1936, except as applied by s. 47 of the Housing Act, 1949; see now the Housing (Financial Provisions) Act, 1958 (Book II, *post*), ss. 54 and 59 (6).

**General Note.** Local bonds issued under this section, and mortgages of any fund or rate granted after 22nd December 1919 under the authority of any Act or provisional order by a local authority (including a county council) which is authorised to issue local bonds under this section, are authorised trustee investments; see the Trustee Act, 1925, s. 1 (1) (p) (26 Halsbury's Statutes (2nd Edn.) 53), and s. 191 (4), *post*.

The provisions of Part IX (borrowing) of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 457), except those relating to the making of returns to the Minister, do not apply to local bonds issued under this section or to the power conferred by this section to issue such bonds; see s. 217 (c) of the Act of 1933 (14 Halsbury's Statutes (2nd Edn.) 468), as amended by s. 190 and the Tenth Schedule, *post*.

Provisions as to the issue, etc., of bonds are contained in the Eighth Schedule, *post*, and in the regulations mentioned in the notes to that Schedule. The present section is applied by s. 54 (5) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*).

#### Sub-s. (1).

**Other powers of borrowing.** Other modes of borrowing are provided for in s. 196 of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 458); and cf. the Local Authorities Loans Act, 1945, s. 8 (30 Statutes Supp. 78; 16 Halsbury's Statutes (2nd Edn.) 501), relating to the use of capital funds.

**Local authority.** For meaning, see s. 1, *ante*.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Sums which they have power to borrow.** Borrowing powers are contained in ss. 136 (1) and 137 (1), (2), *ante*, and ss. 175 (3) and 180 (2), *post*. Note also sub-s. (4), *supra*, and s. 59 (6) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*).

#### Sub-s. (3).

**By order.** Orders made under sub-s. (3), *supra*, being of local application only, are not recorded in this volume.

**Statutory instrument.** For provisions as to statutory instruments generally, see the Statutory Instruments Act, 1946 (36 Statutes Supp. 95; 24 Halsbury's Statutes (2nd Edn.) 440).

**Public Health Act, 1936, s. 6.** 19 Halsbury's Statutes (2nd Edn.) 317.

**139. Loans by Public Works Loan Commissioners to local authorities.**—Where a loan is made by the Public Works Loan Commissioners to a local authority for the purposes of this Act or to a county council for the purpose of the provision of houses for employees—

- (a) the loan shall be made at the minimum rate allowed for loans out of the Local Loans Fund applicable to the period for which the loan is made, and
- (b) the period for which the loan is made may exceed the period allowed under any enactment limiting the period for which loans may be made by the Commissioners, but shall not exceed eighty years.

### NOTES

**History.** This section contains provisions formerly in s. 123 (2) of the Housing Act, 1936, and s. 6 (c) of the Local Authorities Loans Act, 1945. See also s. 54 (4) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*), replacing s. 123 (2) of the Act of 1936 as applied by s. 47 of the Housing Act, 1949.

**Public Works Loan Commissioners.** These Commissioners were constituted by s. 4 of the Public Works Loans Act, 1875 (16 Halsbury's Statutes (2nd Edn.) 425). For the powers of the Commissioners to make loans, see s. 9 of that Act (16 Halsbury's Statutes (2nd Edn.) 428), and the Local Authorities Loans Act, 1945, s. 2 (1) (30 Statutes Supp. 75; 16 Halsbury's Statutes (2nd Edn.) 497). Cf. s. 47 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*), as to loans by the Commissioners to housing associations, etc.

**Local authority.** For meaning, see s. 1, *ante*.

**Purposes of this Act.** See also s. 54 (4) of the Act of 1958 (Book II, *post*).

**Provision of houses for employees.** For the power of county councils to provide houses for employees, see s. 126, *ante*.

**Minimum rate allowed for loans out of the Local Loans Fund.** For the establishment of this fund, see the National Debt and Local Loans Act, 1887, s. 7 (1) (16 Halsbury's Statutes (2nd Edn.) 464). The rates of interest at which loans may be made out of the fund are fixed by the Treasury under s. 1 of the Public Works Loans Act, 1897 (16 Halsbury's Statutes (2nd Edn.) 478). The words "applicable to the period for which the loan is made" were inserted, in s. 123 (2) (a) of the Act of 1936 (see the note "History", *supra*) by s. 6 of the Local Authorities Loans Act, 1945, which repealed s. 123 (2) (c) of the Act of 1936. That repealed paragraph had prohibited the charging of higher interest rates for longer-period loans.

**140. Power of local authorities to lend to other authorities.—(1)** A county council may lend to any local authority within their area any money which that authority have power to borrow for the purposes of this Act, subject to any conditions (including conditions with respect to the borrowing by a local authority from the county council of the money so raised) which the Minister may impose by general or special order contained in a statutory instrument.

(2) Where housing operations under Part V of this Act are being carried out by a local authority outside their own area, that authority shall, subject to the approval of the Minister, have power to advance to the council of any county, borough or district in which the operations are being carried out such sums as may, by reason of any agreement made with that council under that Part, be required by that council in connection with the construction by them of any works which are necessary for the purposes, or incidental to the carrying out, of the operations.

#### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 124 of the Housing Act, 1936, and also reproduces the effect of s. 1 (2) of the Statutory Instruments Act, 1946. Sub-s. (2) contains provisions formerly in s. 125 of the Act of 1936. The Housing (Financial Provisions) Act, 1958 (Book II, *post*) repeals s. 125 of the Act of 1936 and also s. 124 thereof, as preserved in connection with s. 47 of the Housing Act, 1949; see now s. 54 (5) of the Act of 1958.

#### Sub-s. (1).

**Local authority.** For meaning, see s. 1, *ante*.

**Money which that authority have power to borrow.** Local authorities may borrow under ss. 136 (1), 137 (1), (2) and 138 (4), *ante*, and ss. 175 (3) and 180 (2), *post*. Note also s. 59 (6) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*), and s. 54 (5) of that Act which applies the present section.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**By general or special order.** At the time of going to press no order has been made under sub-s. (1), *supra*. By virtue, however, of s. 191 (2), *post*, the Housing (Loans by County Councils) Order, 1925 (S.R. & O. 1925 No. 733), has effect under that subsection. This order is printed in *Hill's Complete Law of Housing* (4th Edn.) 478-480, and in 10 Halsbury's Statutory Instruments, title Housing.

For general provisions as to orders made by the Minister, see s. 180 (1), *post*.

**Statutory instrument.** For provisions as to statutory instruments generally, see the Statutory Instruments Act, 1946 (36 Statutes Supp. 95; 24 Halsbury's Statutes (2nd Edn.) 440).

#### Sub-s. (2).

**Housing operations . . . outside their own area.** A local authority may carry out housing operations outside its own area by virtue of s. 92 (1), *ante*; see also ss. 108-110, *ante*. As to borrowing in connection with such operations, see s. 137, *ante*. As to local authorities in London providing houses outside London, note s. 132 (2) and (6), *ante*, and, as to commercial buildings, s. 93 (3) proviso, *ante*.

**Agreement . . . under that Part.** See s. 108 (1), *ante*. A comparison of that subsection and the present subsection suggests that the works referred to may be carried out either (i) by the authority which is carrying out the housing operations, subject to agreement with the "receiving" council or councils, or (ii) by a "receiving" council. The present subsection relates to the latter alternative. The works referred to presumably include the provision of drainage and other services.

*Subscription to local savings committees*

**141. Subscriptions by local authorities to local savings committees.**—A local authority for the purposes of Part V of this Act may, subject to the approval of the Minister, contribute to the expenses of any local savings committee established for their district or any part thereof.

NOTES

**History.** This section contains provisions formerly in s. 126 of the Housing Act, 1936.

**Local authority for the purposes of Part V.** See ss. 1 and 132, *ante*.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

*Capital moneys*

**142. Application to purchase money, &c.**—The proceeds of the sale of any land acquired by a local authority for any of the purposes of this Act and any other capital moneys received by a local authority in respect of any transaction under sections forty-seven, fifty-one or one hundred and four or under subsection (1) of section one hundred and five of this Act shall be applied, with the sanction of the Minister, either in the repayment of debt or for any other purpose for which capital money may properly be applied:

Provided that the capital moneys received in respect of any transaction under section one hundred and four or subsection (1) of section one hundred and five of this Act may be applied by the authority in or towards the purchase of other land for the purposes of Part V of this Act.

NOTES

**History.** This section contains provisions formerly in s. 127 of the Housing Act, 1936.

**Application to purchase money, &c.** The marginal note to this section should read "Application of purchase money, &c.", as in the "Arrangement of Sections" at p. 34, *ante*, and as in the Act of 1936.

**Land; the Minister.** For definitions, see s. 189 (1), *post*.

**Local authority.** For meaning, see s. 1, *ante*.

**Purchase of other land for the purposes of Part V.** As to the purposes for which land may be acquired under Part V of this Act, see s. 96, *ante*.

PART VII

GENERAL

*Central Housing Advisory Committee*

**143. Central Housing Advisory Committee.**—(1) The Minister shall appoint a committee, to be called the Central Housing Advisory Committee, for the purpose of—

- (a) advising the Minister on any matter, relating to a temporary increase of the permitted number of persons in relation to overcrowding, as respects which he is required by section seventy-nine of this Act to consult the Committee;
- (b) advising the Housing Management Commissions constituted under Part V of this Act on any matter as respects which such Commissions are required to consult the Committee;
- (c) advising the Minister on any question which may be referred by him to the Committee with respect to any other matter arising in connection with the execution of the enactments relating to housing;
- (d) considering the operation of the enactments relating to housing and making to the Minister such representations with respect to matters of general concern arising in connection with the execution of those enactments as the Committee think desirable.

(2) The Minister may by order contained in a statutory instrument make provision with respect to the constitution and procedure of the Committee, and any such order may be varied by a subsequent order under this subsection.

(3) The Minister may, out of moneys provided by Parliament, pay such expenses of the Committee as he may, with the approval of the Treasury, determine.

### NOTES

**History.** This section reproduces s. 135 of the Housing Act, 1936. Sub-s. (2), *supra*, also reproduces the effect of s. 1 (2) of the Statutory Instruments Act, 1946.

**General Note.** The committee appointed under this section is purely advisory and has no executive functions. In practice most of the committee's work is carried on by sub-committees. The report of the Standards of Fitness for Habitation Sub-Committee, which appeared in 1946 and provided the basis for the new provisions as to the standard of fitness now contained in s. 4, *ante*, is an example of the kind of work done.

**Sub-s. (1).**

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Permitted number of persons.** See s. 79, *ante*; and (by virtue of s. 77 (1), *ante*) the Sixth Schedule, *post*.

**Housing Management Commissions.** These Commissions may be established under s. 115, *ante*.

**Matter as respects which such Commissions are required to consult the Committee.** It is provided by s. 115 (2) (h), *ante*, that, where a local authority submits a scheme to the Minister for the transfer to a Housing Management Commission of all or any of its housing functions, that scheme may impose on the Commission the duty to consult the Central Housing Advisory Committee as respects any specified matters.

**Sub-s. (2).**

**Statutory instrument.** For provisions as to statutory instruments generally, see the Statutory Instruments Act, 1946 (36 Statutes Supp. 95; 24 Halsbury's Statutes (2nd Edn.) 440).

**Orders under this section.** The Ministry of Health (Central Housing Advisory Committee) Order, 1935 (S.R. & O. 1935 No. 1115), as amended by S.R. & O. 1945 No. 1240, has effect under sub-s. (2), *supra*, by virtue of s. 191 (2), *post*. These orders are printed in *Lumley's Public Health* (12th Edn.), Vol. VI, pp. 980, 1115.

For general provisions as to orders made by the Minister, see s. 180 (1), *post*.

### Re-housing

**144. Re-housing obligations of undertakers.**—Where under the powers given by any local Act or Provisional Order or Order having the effect of an Act (not being an order made under this Act), any land is acquired, whether compulsorily or by agreement, by any authority, company or persons, or where any land is so acquired compulsorily under any general Act other than this Act, the provisions set out in the Ninth Schedule to this Act shall apply with respect to the provision of housing accommodation.

### NOTES

**History.** This section reproduces s. 137 of the Housing Act, 1936, as amended by ss. 1 and 51 (4) of, and the First and Third Schedules to, the Housing Act, 1949.

**Not being an order made under this Act.** Certain re-housing obligations are, however, imposed by ss. 42 (3) and 55 (3), *ante*, in connection with clearance areas and re-development plans, respectively. But note that s. 136 of the Act of 1936, as to the standard of re-housing, is wholly repealed, except for a special purpose mentioned in the note "History" to s. 87, *ante*.

**Land.** This includes any right over land; see s. 189 (1), *post*, but cf. the note to para. 1 of the First Schedule, *post*.

**Under any general Act.** This section does not apply to acquisitions for the purposes of Part IV of the Town and Country Planning Act, 1947 (48 Statutes Supp. 86; 25 Halsbury's Statutes (2nd Edn.) 544). The duty to provide accommodation for persons displaced by such acquisitions is governed by s. 30 of the Town and Country Planning Act, 1944, as reprinted in the Eleventh Schedule to the Town and Country Planning Act, 1947 (48 Statutes Supp. 265; 25 Halsbury's Statutes (2nd Edn.) 411). Sub-s. (2) of that section, as amended by s. 190 and the Tenth Schedule, *post*, specifically excludes the operation of the present section. (Section 30 of the Act of 1944 is similarly applied to purchases under the New Towns Act, 1946, by s. 23 of that Act and the

Fourth Schedule, thereto; for the section as so applied, see 25 Halsbury's Statutes (2nd Edn.) 468-469.)

*Provisions as to building byelaws, &c.*

**145. Building byelaws not to apply to certain buildings.**—(1) Where in connection with housing operations carried out under this Act by a local authority or county council, or by a housing association or housing trust, new buildings are constructed, or public streets and roads are laid out and constructed, in accordance with plans and specifications approved by the Minister, the provisions of any building byelaws shall not, so far as they are inconsistent with the plans and specifications so approved, apply to those buildings and streets, and, notwithstanding the provisions of any other Act, any public street or road laid out and constructed in accordance with those plans and specifications may be taken over and thereafter maintained by the local authority:

Provided that as respects the administrative county of London, the Minister shall not approve for the purposes of this subsection any plans and specifications inconsistent with the provisions of any building byelaws in force in the county except after consultation with the London County Council on the general question of the relaxation of such provisions in connection with housing operations.

(2) Where the Minister has approved plans and specifications which in certain respects are inconsistent with the provisions of any building byelaws in force in the district in which the works are to be executed, any proposals for the erection thereon of houses and the laying out and construction of new streets which do not form part of housing operations carried out under this Act may, notwithstanding those provisions, be carried out if the local authority are, or, on appeal the Minister is, satisfied that they will involve departures from such provisions only to the like extent as in the case of the plans and specifications so approved, and that, where such plans and specifications have been approved subject to any conditions, the like conditions will be complied with in the case of proposals to which this subsection applies.

(3) In the application of the last foregoing subsection to the administrative county of London, references to the local authority shall be construed, in relation to matters within the jurisdiction of the London County Council, as references to them, and, in relation to other matters, as references to the Common Council of the City of London or the council of a metropolitan borough as the case may be.

(4) Subject to any conditions which may be prescribed by the Minister, the provisions of any building byelaws shall not apply to any new buildings and new streets constructed and laid out by a local authority or county council in accordance with plans and specifications approved by the Minister of Agriculture, Fisheries and Food under Part IV of the Agriculture Act, 1947, or under the Allotments Acts, 1908 to 1950.

NOTES

**History.** Sub-s. (1) of this section reproduces s. 138 (1), (3) and (5) of the Housing Act, 1936; sub-ss. (2) and (3) reproduce s. 138 (2) and (4) of that Act; and sub-s. (4) reproduces s. 139 of that Act, as affected by the Transfer of Functions (Ministry of Food) Order, 1955 (S.I. 1955 No. 554).

**General Note.** This section provides for a relaxation of the general rule that a local authority cannot dispense with the requirements of its byelaws. Sub-s. (1), *supra*, applies only to housing operations carried out under this Act by a local authority, county council, housing association or housing trust, and therefore does not apply to houses erected by private persons with the assistance of an advance from the local authority under s. 43 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*); see *Bean (William) & Sons, Ltd. v. Flaxton Rural District Council*, [1929] 1 K.B. 450, C.A.; Digest Supp. However, where relaxations of the building byelaws have been permitted under sub-s. (1), then sub-s. (2), *supra*, authorises corresponding relaxations in the case of works to be carried out in the same district which are not housing operations falling within sub-s. (1); sub-s. (2), *supra*, will apply, therefore, to houses erected by private persons.

Further provisions as to building byelaws are contained in ss. 146–148, *post*; and cf. s. 13 (4) of the Town and Country Planning Act, 1947 (48 Statutes Supp. 47; 25 Halsbury's Statutes (2nd Edn.) 509), for the Minister's power to direct that byelaws, etc., shall not apply to development specified in a development order made under Part III of that Act (48 Statutes Supp. 44; 25 Halsbury's Statutes (2nd Edn.) 506) or shall apply with specified modifications.

**Sub-s. (1).**

**Local authority.** For meaning in this context, see ss. 1 and 132, *ante*.

**Housing association; housing trust; street; the Minister; building bye-laws.** For meanings, see s. 189 (1), *post*.

**Administrative county of London; London County Council.** See the notes to s. 1, *ante*.

**Consultation.** On what constitutes consultation, see especially *Rollo v. Minister of Town and Country Planning*, [1948] 1 All E.R. 13, C.A.; 2nd Digest Supp., and *Re Union of Benefices of Whippingham and East Cowes, Derham v. Church Comrs. of England*, [1954] 2 All E.R. 22, P.C.; 3rd Digest Supp.

**Sub-s. (2).**

**Where the Minister has approved, etc.** Approval of temporary structures under the Housing (Temporary Accommodation) Act, 1944, is not approval for the purposes of sub-s. (2), *supra*; see s. 4 (4) of that Act (27 Statutes Supp. 39; 11 Halsbury's Statutes (2nd Edn.) 634) in conjunction with s. 191 (4), *post*.

**House.** For meaning, see s. 189 (1), *post*.

**Local authority.** For meaning in sub-s. (2), *supra*, see ss. 1 and 132, *ante*, together with sub-s. (3) of this section.

**Sub-s. (3).**

**Metropolitan borough council.** See the note to s. 1, *ante*.

**Sub-s. (4).**

**Agriculture Act, 1947, Part IV.** 46 Statutes Supp. 111; 1 Halsbury's Statutes (2nd Edn.) 831.

**Allotments Acts, 1908 to 1950.** The enactments which may be cited by this collective title are the provisions of the Small Holdings and Allotments Act, 1908 (1 Halsbury's Statutes (2nd Edn.) 724), and of the Land Settlement (Facilities) Act, 1919 (1 Halsbury's Statutes (2nd Edn.) 763), which relate to allotments, the Allotments Act, 1922 (1 Halsbury's Statutes (2nd Edn.) 780), the Allotments Act, 1925 (1 Halsbury's Statutes (2nd Edn.) 796), so much of Part II of the Agricultural Land (Utilisation) Act, 1931 (1 Halsbury's Statutes (2nd Edn.) 819) as relates to allotments, and the Allotments Act, 1950 (68 Statutes Supp. 4; 29 Halsbury's Statutes (2nd Edn.) 7); see s. 15 (1) of the Act of 1950.

**146. Relaxation of Building Acts or byelaws in London.**—For the purpose of facilitating the erection of houses within the administrative county of London, the London County Council may, with the consent of the Minister, suspend, alter or relax the provisions of any enactment or byelaw relating to the formation or laying out of new streets, or the construction of sewers or of buildings intended for human habitation.

## NOTES

**History.** This section reproduces s. 140 (5) (in part) of the Housing Act, 1936; the effect of the words omitted is now reproduced in s. 147 (5), *post*, i.e., that that section does not apply to London.

**House; the Minister; street.** For meanings, see s. 189 (1), *post*.

**Administrative county of London; London County Council.** See the notes to s. 1, *ante*.

**147. Power of Minister to prescribe a code of byelaws for new streets.**—(1) For the purpose of facilitating the erection of houses, the Minister may prescribe a code of building byelaws relating to the level, width, and construction of new streets, but no such code shall have effect unless and until adopted by resolution of a local authority; and where such code or any part thereof is so adopted it shall not be necessary for the local authority to comply with the requirements of subsections (3), (4) and (5) of section two hundred and fifty of the Local Government Act, 1933, or, if the byelaws are made under a local Act, the corresponding provisions of that Act, and the code or such part thereof shall have full force and effect as part of the bye-

laws of the local authority in substitution for such of the existing byelaws of the authority as may be specified in the resolution.

(2) Where a local authority have approved any plans and sections for a new street, subject to any conditions imposed or authorised by any byelaws in force in the area of that authority, those conditions may be enforced at any time by the authority against the owner for the time being of the land to which the conditions relate.

(3) Where, as respects the district of any local authority, matters relating to the level, width and construction of new streets are regulated by a local Act and not by byelaws, and the local authority pass a resolution adopting the said code or any part thereof, the code or such part as aforesaid shall have full force and effect as if it formed part of the local Act in substitution for such provisions of the local Act as may be specified in the resolution.

(4) Before a resolution is passed under this section, notice of the proposed resolution shall be published in one or more newspapers circulating in the district, and when such a resolution has been passed the local authority shall, within seven days thereafter, send a copy thereof to the Minister.

(5) This section shall not apply to the administrative county of London.

#### NOTES

**History.** Sub-ss. (1)–(4), *supra*, reproduce s. 140 (1)–(4) of the Housing Act, 1936. Sub-s. (5), *supra*, reproduces so much of s. 140 (5) of that Act as is not now contained in s. 146, *ante*.

**General Note.** The operation of sub-ss. (1), (3) and (4), *supra*, depends upon the existence of a code of building byelaws, prescribed by the Minister under sub-s. (1), and adopted by local authorities. No code has so far been prescribed, and these subsections, therefore, have no positive effect.

Sub-s. (2), *supra*, operates independently of the existence of a code. Conditions to which the subsection applies must be registered as local land charges by virtue of s. 15 (7) (b) of the Land Charges Act, 1925 (20 Halsbury's Statutes (2nd Edn.) 1089).

The Building Restrictions (War-Time Contraventions) Act, 1946, ss. 2 and 7 (1) (36 Statutes Supp. 105, 110; 26 Halsbury's Statutes (2nd Edn.) 269, 275), gave power to sanction war-time non-compliance with (*inter alia*) conditions enforceable under s. 140 (2) of the Act of 1936 (now replaced by sub-s. (2), *supra*). Applications for that purpose had to be made within five years from the commencement of the Act (*i.e.*, from 26th March 1946), but in computing this period any period during which the conditions were unenforceable because the Crown had an interest in or right to possession over the land had, by s. 7 (6), to be disregarded. The Act may, therefore, still be effective in some cases.

#### Sub-s. (1).

**House; the Minister; street.** For meanings, see s. 189 (1), *post*.

**Local authority.** For meaning in this context, see s. 189 (2), *post*.

**Local Government Act, 1933, s. 250 (3)–(5).** 14 Halsbury's Statutes (2nd Edn.) 485. These subsections provide that notice of intention to seek confirmation of byelaws must be given in one or more local newspapers; that a copy of the proposed byelaws shall be open to inspection at the local authority's offices; and that copies of the byelaws shall be available on payment. Under the present section, the only requirements are those of sub-s. (4), *supra*.

#### Sub-s. (4).

**Within seven days.** The date of the passing of the resolution is not to be reckoned: see especially *Goldsmiths' Co. v. West Metropolitan Rail. Co.*, [1904] 1 K.B. 1, C.A.; 42 Digest 950, 237, and *Stewart v. Chapman*, [1951] 2 All E.R. 613; 2nd Digest Supp.

#### Sub-s. (5).

**Shall not apply to the administrative county of London.** See, however, s. 146, *ante*, as to relaxation of byelaws in London relating to new streets.

**148. Power of Minister to revoke unreasonable byelaws.—(1)** If the Minister is satisfied, by a local inquiry or otherwise, that the erection of any buildings within any borough or urban or rural district is, or is likely to be, unreasonably impeded in consequence of any byelaws with respect to new streets or buildings in force therein, the Minister may require the local authority to revoke those byelaws or to make such new byelaws as he may consider necessary for the removal of the impediment.

(2) If the local authority do not within three months after the requisition comply therewith, the Minister may himself revoke the byelaws, and make by statutory instrument such new byelaws as he considers necessary for the removal of the impediment, and those new byelaws shall have effect as if they had been duly made by the local authority and confirmed by the Minister.

(3) The provisions of this section shall be without prejudice to the provisions of subsection (2) of section sixty-nine of the Public Health Act, 1936 (under which the Minister may require a local authority to revoke building byelaws if the erection of any building is unreasonably impeded by them).

### NOTES

**History.** Sub-ss. (1) and (2) of this section reproduce s. 141 of the Housing Act, 1936, and sub-s. (3) is new. Sub-s. (2) also reproduces the effect of s. 1 (2) of the Statutory Instruments Act, 1946.

**General Note.** The Courts have power to declare a byelaw unreasonable, but this power will not be exercised unless the byelaw is manifestly partial and unequal in its operation between different classes, or unjust, or made in bad faith, or clearly involving an unjustifiable interference with the liberty of those subject to it (*Kruse v. Johnson*, [1898] 2 Q.B. 91; 13 Digest 326, 631; *Thomas v. Sutters*, [1900] 1 Ch. 10; 25 Digest 435, 327). Byelaws which impede the erection of houses in rural districts have been held valid as not falling within the principle enumerated in these cases (*Salt v. Scott Hall*, [1903] 2 K.B. 245; 38 Digest 196, 327; *Pomeroy v. Malvern Urban District Council* (1903), 67 J.P. 375; 38 Digest 197, 329). The object of the section is evidently to give the Minister a wider power than that exercised by the Courts, and to enable him to set aside a byelaw which, reasonable enough in itself, nevertheless unreasonably impedes the erection of dwelling-houses or other buildings.

Apart from this power to revoke byelaws, their provisions may be relaxed under s. 145, *ante*. The Minister also has power under s. 69 (2) of the Public Health Act, 1936 (19 Halsbury's Statutes (2nd Edn.) 364) to revoke unreasonable building byelaws (cf. sub-s. (3), *supra*); and under s. 13 (4) of the Town and Country Planning Act, 1947 (48 Statutes Supp. 47; 25 Halsbury's Statutes (2nd Edn.) 509), he may direct that byelaws, etc., shall not apply to development specified in a development order made under Part III of that Act (48 Statutes Supp. 44; 25 Halsbury's Statutes (2nd Edn.) 506) or shall apply with specified modifications.

#### Sub-s. (1).

**The Minister; street.** For meanings, see s. 189 (1), *post*.

**Borough or urban or rural district.** See the notes to s. 1, *ante*.

**Local authority.** For meaning in this context, see s. 189 (2), *post*.

#### Sub-s. (2).

**Within three months.** Cf. the note "Within seven days" to s. 147 (4), *ante*.

**Statutory instrument.** For provisions as to statutory instruments generally, see the Statutory Instruments Act, 1946 (36 Statutes Supp. 95; 24 Halsbury's Statutes (2nd Edn.) 440).

**Duly made . . . and confirmed.** As to the procedure for making byelaws, see the Local Government Act, 1933, s. 250 (14 Halsbury's Statutes (2nd Edn.) 485).

#### Sub-s. (3).

**Public Health Act, 1936, s. 69 (2).** 19 Halsbury's Statutes (2nd Edn.) 364. That subsection, together with s. 69 (3) of that Act (corresponding to the concluding phrase of sub-s. (2), *supra*), contains provisions almost identical with the present section. Both sets of provisions derive ultimately from the same source, s. 44 of the Housing, Town Planning, etc., Act, 1909 (repealed). There was no express saving for s. 69 of the Public Health Act, 1936, in s. 141 (now replaced by the present section) of the Housing Act, 1936, presumably because both Acts were passed on the same day; see, however, s. 187 of the Housing Act, 1936 (now replaced by s. 188, *post*).

The present section applies to byelaws as to new streets, as well as to byelaws as to buildings; only the latter are within the scope of s. 69 of the Public Health Act, 1936; compare the definitions of "building byelaws" in s. 343 (1) of the Public Health Act, 1936, and in s. 189 (1), *post*.

### Provisions as to acquisition, &c. of Land

**149. Protection for amenities of locality, &c.—(1)** A local authority in preparing any proposals for the provision of houses, or in taking any action under this Act, shall have regard to the beauty of the landscape or countryside and the other amenities of the locality, and the desirability of

preserving existing works of architectural, historic or artistic interest, and shall comply with such directions, if any, in that behalf as may be given to them by the Minister.

(2) No land which is the site of an ancient monument or other object of archaeological interest shall be acquired for the purposes of this Act by means of a compulsory purchase order under Part II or Part III of this Act or by any means other than that of a compulsory purchase order.

(3) Where any land proposed to be acquired under this Act by means of a compulsory purchase order under Part II or Part III of this Act or by any means other than that of a compulsory purchase order, or any land proposed to be appropriated under this Act, is situate within the prescribed distance from any of the royal palaces or parks, the local authority shall communicate with the Minister of Works, and the Minister of Housing and Local Government shall, before authorising the acquisition or appropriation of the land or the raising of any loan for the purpose, take into consideration any recommendations which the local authority may have received from the Minister of Works with reference to the proposal.

For the purposes of this sub-section, "prescribed" means prescribed by regulations in a statutory instrument made by the Minister of Housing and Local Government after consultation with the Minister of Works.

#### NOTES

**History.** Sub-s. (1), *supra*, reproduces s. 142 (1) of the Housing Act, 1936. Sub-s. (2) reproduces s. 142 (2) of that Act, as affected by s. 6 of, and the Fourth Schedule to, the Acquisition of Land (Authorisation Procedure) Act, 1946. Sub-s. (3) reproduces s. 144 of the Act of 1936, as affected by the above-mentioned provisions of the Act of 1946 and by the Ministry of Works (Transfer of Powers) (No. 1) Order, 1945 (S.R. & O. 1945 No. 991), and reproduces also the effect of s. 1 (2) of the Statutory Instruments Act, 1946.

The effect of the Acquisition of Land (Authorisation Procedure) Act, 1946, was to repeal ss. 142 (2) and 144 of the Housing Act, 1936, in relation only to compulsory purchase orders under Part V of that Act; compulsory purchase orders under Part V of the present Act, *ante*, are accordingly not mentioned in sub-ss. (2) and (3), *supra*.

**General Note.** Sub-s. (1), *supra*, may be compared with the provisions of ss. 28 and 29 of the Town and Country Planning Act, 1947 (48 Statutes Supp. 73, 75; 25 Halsbury's Statutes (2nd Edn.) 532, 534), under which the local planning authority may make orders for the preservation of trees and woodlands and for the preservation of buildings of special architectural or historic interest; see also s. 30 of that Act (48 Statutes Supp. 77; 25 Halsbury's Statutes (2nd Edn.) 536), as to lists of such buildings. Under Part II of this Act (see ss. 17 (3) and 26, *ante*) a closing order is to be made, in lieu of or in substitution for a demolition order, in the case of an unfit house (a) as respects which a building preservation order is in force under s. 29 of the Act of 1947, or (b) included in a list compiled or approved under s. 30 of that Act by the Minister, or (c) as respects which a notice is in force given by the Minister stating that the architectural or historic interest of the house is sufficient to render it inexpedient that the house should be demolished pending determination of the question whether it should be made the subject of such an order or included in such a list.

Sub-ss. (2) and (3), *supra*, prohibit or regulate the acquisition of certain land; sub-s. (3) relates also to proposed appropriations (cf. s. 150, *post*). The only exception from these provisions is for compulsory purchase orders under Part V, *ante* (cf. the note "History", *supra*), which are made under the Acquisition of Land (Authorisation Procedure) Act, 1946, as applied by s. 97, *ante*, and the Seventh Schedule, para. 1 (1), *post*; see s. 1 (2) (c) of, and para. 12 in Part III of the First Schedule to, that Act (39 Statutes Supp. 5, 18; 3 Halsbury's Statutes (2nd Edn.) 1065, 1078) for the limited protection of ancient monuments and objects of archaeological interest thereunder. Compulsory purchase orders under Part II of this Act are also governed by the Act of 1946 (see ss. 12 and 29, *ante*, and the First Schedule, para. 1 (1), *post*), but sub-ss. (2) and (3), *supra*, are not excluded; contrast s. 150 (1), *post*, whereby Part II compulsory purchase orders are excluded from that section.

**Sub-s. (1).**

**Local authority.** For meaning, see s. 1, *ante*.

**House; the Minister.** For meanings, see s. 189 (1), *post*.

**Sub-s. (2).**

**Ancient monument.** As to ancient monuments, see the Ancient Monuments Consolidation and Amendment Act, 1913 (17 Halsbury's Statutes (2nd Edn.) 374), the Ancient Monuments Act, 1931 (17 Halsbury's Statutes (2nd Edn.) 389), and Parts II

and III of the Historic Buildings and Ancient Monuments Act, 1953 (33 Halsbury's Statutes (2nd Edn.) 458, 463). The expression "ancient monument" is defined for the purposes of those Acts, in s. 15 (1) of the Act of 1931 (17 Halsbury's Statutes (2nd Edn.) 397).

**Compulsory purchase order under Part II or Part III.** See the General Note, *supra*, as to the provisions of the Acquisition of Land (Authorisation Procedure) Act, 1946, which apply to compulsory purchase orders under Part V, *ante*. Although compulsory purchase orders under Part II, *ante*, are made under the procedure of that Act, the present subsection (sub-s. (2), *supra*) contains an absolute prohibition of the acquisition, under such an order, of an ancient monument or object of archaeological interest, and this appears to prevail over the more limited protection afforded by the Act of 1946.

**Any means other than that of a compulsory purchase order.** This refers principally to purchases by agreement (including such purchases under s. 97 in Part V, *ante*); and to gifts of land under s. 153, *post*.

**Sub-s. (3).**

**Proposed to be appropriated.** Cf. the General Note to s. 99, *ante*.

**Prescribed distance.** See the last note to this section.

**Statutory instrument.** See the note to s. 148 (2), *ante*.

**Consultation.** See the note to s. 145 (1), *ante*.

**Regulations under this section.** By virtue of s. 191 (2), *post*, Part VI (reg. 34) of the Housing Consolidated Regulations, 1925 (S.R. & O. 1925 No. 866) has effect as if made under sub-s. (3), *supra*. That regulation prescribes a distance of two miles in the case of Windsor Castle, Windsor Great Park and Windsor Home Park, and half a mile in the case of any other Royal Palace or Park.

**150. Provisions as to commons and open spaces.—(1)** Where any order under this Act (not being an order for the compulsory purchase of land under Part II or Part V of this Act) authorises the acquisition or appropriation to any other purpose of any land forming part of any common, open space or allotment, the order so far as it relates to the acquisition or appropriation of such land shall be subject to special Parliamentary procedure except where it provides for giving in exchange for such land other land, not being less in area, certified by the Minister after consultation with the Minister of Agriculture, Fisheries and Food to be equally advantageous to the persons, if any, entitled to commonable or other rights and to the public.

(2) Before giving any such certificate, the Minister shall give public notice of the proposed exchange, and shall afford opportunities to all persons interested to make representations and objections in relation thereto, and shall, if necessary, hold a local inquiry on the subject.

(3) An order which authorises such an exchange shall provide for vesting the land given in exchange in the persons in whom the common, open space or allotment was vested, subject to the same rights, trusts and incidents as attached to the common or open space or allotment and for discharging the part of the common, open space or allotment acquired or appropriated from all rights, trusts and incidents to which it was previously subject.

(4) For the purposes of this section—

"common" includes any land subject to be enclosed under the Inclosure Acts, 1845 to 1882, and any town or village green;

"open space" means any land laid out as a public garden or used for the purposes of public recreation, and any disused burial ground;

"allotment" means any allotment set out as a fuel allotment or a field garden allotment under an Inclosure Act.

#### NOTES

**History.** This section reproduces s. 143 of the Housing Act, 1936, as amended by the Statutory Orders (Special Procedure) (Substitution) Order, 1949 (S.I. 1949 No. 2393), and as affected by s. 6 of, and the Fourth Schedule to, the Acquisition of Land (Authorisation Procedure) Act, 1946. The Act of 1946 repealed s. 143 of the Act of 1936 in relation to compulsory purchase orders under Part V of that Act. See now, however, sub-s. (1), *supra*, which excludes the present section in relation to compulsory purchase orders under Part II, as well as Part V, of this Act, *ante*.

**General Note.** By virtue of this section, land forming part of a common, open space or allotment, as defined in sub-s. (4) is afforded some protection from acquisition or appropriation by a requirement that the relevant order shall be subject to special parliamentary procedure, unless provision is made for its replacement in the order, following a certificate of the Minister who must consult the Minister of Agriculture, Fisheries and Food.

There is an exception for compulsory purchase orders under Parts II and V (cf. the note "History", *supra*), where a somewhat similar protection is afforded by s. 1 (2) (b) of, and para. 11 in Part III of the First Schedule to, the Requisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 5, 17; 3 Halsbury's Statutes (2nd Edn.) 1065, 1078). Where a certificate is given under the Act of 1946, in respect of a proposed acquisition for the purposes of Part II or Part V of the present Act, the validity of the certificate can be challenged only under the procedure of Part IV of the First Schedule to the Act of 1946 (which resembles the Fourth Schedule to the present Act, *post*).

There is no such special procedure for challenging a certificate under this section; and the remedies by way of orders of prohibition or *certiorari* are available to prevent an excess of the Minister's jurisdiction: see *R. v. Minister of Health, Ex parte Villiers*, [1936] 1 All E.R. 817; 11 Digest (Repl.) 309, 2153. In that case it was decided also that the corresponding provision of the Housing Act, 1925 (repealed), did not override the special provisions of an earlier Act relating to the land in question.

The Act of 1946 (*ubi supra*) did not affect s. 143 of the Housing Act, 1936, so far as it related to appropriations of land; the present section accordingly applies to appropriations, including those under s. 99 in Part V, *ante*.

See also as to appropriations of commons, open spaces, etc., the power contained in s. 42 of the Town and Country Planning Act, 1947 (48 Statutes Supp. 93; 25 Halsbury's Statutes (2nd Edn.) 550), which expressly extends to land specially regulated by other enactments.

#### Sub-s. (1).

**Compulsory purchase . . . under Part II or Part V.** Compulsory purchase orders under Part II (ss. 12 and 29, *ante*) and Part V (s. 97, *ante*) are made under the Acquisition of Land (Authorisation Procedure) Act, 1946, as applied by the First Schedule, para. 1 (1) and the Seventh Schedule, para. 1 (1), *post*. Any compulsory purchase order under Part II, *ante*, will relate to an unfit "house", as defined in s. 189 (1), *post*. Land which is part of a house is not likely to be part of a common, open space or allotment.

**Appropriation.** Cf. the General Note to s. 99, *ante*. Appropriations are not normally effected by an "order", but by a resolution of the local authority with the consent, where necessary, of the Minister of Housing and Local Government, or of the Minister of Education (or of both such Ministers). The present section nevertheless applies; see *R. v. Minister of Health, Ex parte Villiers*, cited in the General Note, *supra*.

**Land; the Minister.** For definitions, see s. 189 (1), *post*.

**Subject to special Parliamentary procedure.** The provisions of the Statutory Orders (Special Procedure) Act, 1945 (34 Statutes Supp. 139; 24 Halsbury's Statutes (2nd Edn.) 430), will apply in relation to the order by virtue of s. 1 (1) of that Act.

**Consultation.** See the note to s. 145 (1), *ante*.

#### Sub-s. (2).

**Local inquiry.** See generally as to inquiries, s. 181 and the notes thereto, *post*.

#### Sub-s. (4).

**Common.** This definition is the same as that in s. 8 (1) of the Acquisition of Land (Authorisation Procedure) Act, 1946.

**Open space.** Cf. the definition in s. 8 (1) of the Act of 1946 (*ubi supra*). As to building on disused burial grounds, see the Disused Burial Grounds Act, 1884 (2 Halsbury's Statutes (2nd Edn.) 792); note also the power of appropriation by certain authorities under s. 19 of the Town and Country Planning Act, 1944 (48 Statutes Supp. 250; 25 Halsbury's Statutes (2nd Edn.) 394) (relating to certain land acquired or appropriated for planning purposes), and the powers as to churches, burial grounds, etc., under s. 28 of that Act (48 Statutes Supp. 262; 25 Halsbury's Statutes (2nd Edn.) 407).

**Allotment.** Cf. the definition of "fuel or field garden allotment" in s. 8 (1) of the Act of 1946 (*ubi supra*).

**Inclosure Acts, 1845 to 1882.** The Acts which may be cited by this collective title are set out in the Second Schedule to the Short Titles Act, 1896 (24 Halsbury's Statutes (2nd Edn.) 389).

### 151. Power of local authorities to enforce covenants against owner for the time being of land.—Where—

- (a) a local authority have sold or exchanged land acquired by them under this Act and the purchaser of the land or the person taking the land

in exchange has entered into a covenant with the local authority concerning the land; or

- (b) an owner of any land has entered into a covenant with the local authority concerning the land for the purposes of any of the provisions of this Act;

the authority shall have power to enforce the covenant against the persons deriving title under the covenantor, notwithstanding that the authority are not in possession of or interested in any land for the benefit of which the covenant was entered into, in like manner and to the like extent as if they had been possessed of or interested in such land.

## NOTES

**History.** This section reproduces s. 148 of the Housing Act, 1936.

**General Note.** Apart from this section, restrictive covenants, including those which are positive in form but restrictive in substance, are enforceable in equity against successors of the original covenantor, except purchasers for value without notice (*Tulk v. Moxhay* (1848), 2 Ph. 774; 40 Digest 313, 2667; *Re Nisbet and Potts' Contract*, [1906] 1 Ch. 386, C.A.; 19 Digest 20, 58). But such covenants must be for the benefit of land retained by the covenantee (*Formby v. Baker*, [1903] 2 Ch. 539; 40 Digest 306, 2626), except in the case of mutually enforceable covenants among purchasers under a building scheme (*Rogers v. Hosegood*, [1900] 2 Ch. 388, C.A.; 35 Digest 342, 846). Apart from this section a local authority who held no land intended to be benefited could not enforce the covenant (*London County Council v. Allen*, [1914] 3 K.B. 642, C.A.; 40 Digest 302, 2602). The present section renders such covenants enforceable as if the authority were possessed of such land. This fiction enables the covenant to be enforced although the authority have parted with all such land or (under para. (b), *supra*) were never possessed of such land. Cf. s. 25 (2) of the Town and Country Planning Act, 1947 (48 Statutes Supp. 68; 25 Halsbury's Statutes (2nd Edn.) 528), as to the enforcement of agreements regulating the use of land under that section.

The form of words employed is not such as to render enforceable, against successors in title, any covenant which is not a restrictive covenant but is positive in effect, e.g., a covenant requiring the expenditure of money. Restrictive covenants are registrable under the Land Charges Act, 1925, s. 10 (1), Class D (ii) (20 Halsbury's Statutes (2nd Edn.) 1077), and are not enforceable against a purchaser for value without notice.

As to the attaching of conditions on sales or exchanges of land by local authorities, see, for example, ss. 47 (1), 50 (b), 51 (5) and 104, *ante*.

**Local authority.** For meaning, see s. 1, *ante*.

**Land; owner.** For definitions, see s. 189 (1), *post*.

**152. Compensation in certain cases of subsidence.**—Notwithstanding anything in section fifty of the Brine Pumping (Compensation for Subsidence) Act, 1891, a local authority or county council shall be entitled to compensation in accordance with the provisions of that Act in respect of any injury or damage to any houses belonging to them which were provided under a housing scheme towards the losses on which the Minister is liable to contribute under the Housing, Town Planning, &c. Act, 1919.

## NOTES

**History.** This section reproduces s. 149 of the Housing Act, 1936.

**General Note.** By s. 50 of the Brine Pumping (Compensation for Subsidence) Act, 1891 (16 Halsbury's Statutes (2nd Edn.) 80), county councils, municipal corporations and sanitary, highway and other local authorities were excluded from compensation under that Act for subsidence caused by pumping or raising brine. The present section gives the right to such compensation in respect of houses owned by a local authority or county council, which have been provided under a scheme towards the losses on which the Minister is liable to contribute under s. 7 of the Housing, Town Planning, etc., Act, 1919 (11 Halsbury's Statutes (2nd Edn.) 394). That section was repealed with savings by s. 6 (1) and 24 (1) of, and the Third Schedule to, the Housing, etc., Act, 1923 (11 Halsbury's Statutes (2nd Edn.) 408, 409, 410); see now, as to the ascertainment of the amount of contributions under the Act of 1919, s. 27 of, and the Third Schedule to, the Housing (Financial Provisions) Act, 1958 (Book II, *post*), replacing s. 111 of, and the Seventh Schedule to, the Housing Act, 1936.

**Local authority.** For meaning in this context, see s. 189 (2), *post*.

**House; the Minister.** For meanings, see s. 189 (1), *post*.

**Brine Pumping (Compensation for Subsidence) Act, 1891, s. 50.** 16 Halsbury's Statutes (2nd Edn.) 80.

**Housing, Town Planning, etc., Act, 1919.** 11 Halsbury's Statutes (2nd Edn.) 393, and see the General Note, *supra*.

**153. Donations for housing purposes.**—A local authority may accept a donation of land, money or other property for any of the purposes of this Act, and it shall not be necessary to enrol any assurance with respect to any such property under the Mortmain and Charitable Uses Act, 1888.

#### NOTES

**History.** This section reproduces s. 150 of the Housing Act, 1936.

**Local authority.** For meaning, see s. 1, *ante*, and s. 189 (2), *post*.

**Accept a donation.** See also, as to the acceptance of gifts of property by local authorities, the Local Government Act, 1933, s. 268 (14 Halsbury's Statutes (2nd Edn.) 493), and the London Government Act, 1939, s. 164 (15 Halsbury's Statutes (2nd Edn.) 1150).

**Land.** This includes any right over land; see s. 189 (1), *post*.

**Mortmain and Charitable Uses Act, 1888.** 2 Halsbury's Statutes (2nd Edn.) 910.

#### *Procedure of local authorities: Official representations*

**154. Joint action by local authorities.**—Where, upon an application made by one of the local authorities concerned, the Minister is satisfied that it is expedient that any local authorities should act jointly for any purposes of this Act, either generally or in any special case, the Minister may by order contained in a statutory instrument make provision for the purpose and any provisions so made shall have the same effect as if they were contained in an order made under section six of the Public Health Act, 1936.

#### NOTES

**History.** This section reproduces s. 151 of the Housing Act, 1936, and the effect of s. 1 (2) of the Statutory Instruments Act, 1946.

**Local authorities.** For meaning, see s. 1, *ante*.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Statutory instrument.** See the note to s. 148 (2), *ante*.

**Public Health Act, 1936, s. 6.** 19 Halsbury's Statutes (2nd Edn.) 317. That section relates to the union of districts, or parts of districts, for certain purposes under joint boards.

**Orders under this section.** Orders under this section, being of local application only, are not recorded in this volume. For general provisions as to orders made by the Minister, see s. 180 (1), *post*.

**155. Buildings situated in districts of more than one local authority.**—(1) In the case of a building which is situated partly in the district of one local authority and partly in the district of another, the local authorities may agree that this section shall have effect in relation to the building or to the building and the site thereof and any yard, garden, out-houses, and appurtenances belonging thereto or usually enjoyed therewith.

(2) Whilst such an agreement as aforesaid is in force, the enactments relating to housing shall have effect as if the district of such one of the local authorities as may be specified therein included the whole of the building and, if the agreement so provides, the site thereof and any such other premises as aforesaid.

#### NOTES

**History.** This section reproduces s. 152 of the Housing Act, 1936.

**General Note.** This useful provision should not be overlooked. The agreement must obviously be in writing, and it will be advisable to notify the owner of the building of its effect.

**Local authority.** For meaning, see s. 1, *ante*.

**Yard, garden, outhouses, and appurtenances.** As to houses, cf. para. (a) of the definition of "house" in s. 189 (1), *post*. The present section, however, relates to all buildings, and is not confined to houses.

**156. References by local authority to public health and housing committee.**—In the case of a county council, other than the London County

Council, all matters relating to the exercise and performance by the council of their powers and duties under this Act (except the power of raising a rate or borrowing money) shall stand referred to the public health and housing committee of the council, and the council, before exercising any such powers, shall, unless in their opinion the matter is urgent, receive and consider the report of that committee with respect to the matter in question, and the council may also delegate to that committee, with or without restrictions or conditions as they think fit, any of their powers under this Act, except the power of raising a rate or borrowing money and except any power of resolving that the powers of a district council in default should be transferred to the council.

#### NOTES

**History.** This section reproduces s. 153 of the Housing Act, 1936, as extended by s. 48 of, and para. 7 of the Second Schedule to, the Housing Act, 1949. Those provisions were not repealed by the present Act but are now repealed by the Housing (Financial Provisions) Act, 1958 (Book II, *post*). The present section is applied by s. 55 (1) (a) of that Act as if references herein to this Act included references to that Act.

**Power of . . . borrowing money.** See s. 136 (1), *ante*.

**Public health and housing committee.** Section 85 of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 400), gives local authorities (including county councils) power to appoint committees and to include persons who are not members of the local authority provided that at least two-thirds of the members of every committee are members of the local authority.

**Resolving that the powers of a district council in default should be transferred.** This power is conferred by s. 171, *post*.

**157. Official representations.**—(1) The medical officer of health of a local authority shall make an official representation to the authority whenever he is of the opinion that any house in their district is unfit for human habitation, or that any area in their district is an area which should be dealt with as a clearance area.

(2) If any justice of the peace acting for the district of a local authority or, in the case of a rural district, the parish council of any parish within that area, complain to the medical officer of health in writing that any house is unfit for human habitation or that any area should be dealt with as a clearance area, it shall be his duty forthwith to inspect that house or that area and to make a report to the local authority, stating the facts of the case and whether, in his opinion, the house is unfit for human habitation or whether, in his opinion, the area should be dealt with as a clearance area, but the absence of any such complaint shall not excuse him from inspecting any house or area or making a representation thereon to the local authority.

(3) A local authority shall as soon as may be take into consideration any official representation which has been made to them.

(4) In this Act, the expression "official representation" means in the case of any local authority a representation made to that authority by the medical officer thereof, and includes also, in the case of the council of a rural district or of an urban district not containing according to the last published census a population of more than ten thousand, a representation made by the medical officer of health of the county to the county council and forwarded by them to the council of the district, and, in the case of the council of a metropolitan borough, a representation made by the medical officer of health of the County of London to the London County Council and forwarded by them to the borough council.

(5) Every representation made by a medical officer of health in pursuance of this Act shall be in writing.

#### NOTES

**History.** Sub-ss. (1)–(3) and (5), *supra*, reproduce s. 154 of the Housing Act, 1936. Sub-s. (4) reproduces the definition of "official representation" in s. 188 (1) of that Act (now repealed by the Housing (Financial Provisions) Act, 1958, Book II, *post*).

**Sub-s. (1).**

**Medical officer of health.** See the note to s. 5, *ante*, as to the powers to appoint such officers.

**Local authority.** See s. 1, *ante*; and note also sub-s. (4), *supra*, and s. 189 (2), *post*.

**Official representation.** Note sub-ss. (4) and (5), *supra*.

**House.** For meaning, see s. 189 (1), *post*.

**Unfit for human habitation.** The question of fitness is to be determined in accordance with ss. 4 and 5, *ante*. Representations as to individual unfit houses will be considered under Part II, ss. 9 (1) and 16 (1), *ante*. The authority may also take action under those sections on the basis of other information in their possession.

**Dealt with as a clearance area.** *I.e.*, under ss. 42 *et seq.*, *ante*.

**Sub-s. (2).**

**If any justice of the peace, etc.** Note that under s. 154 (2) of the Act of 1936 any four or more local government electors of the district (as well as justices of the peace and parish councils) had the right to make a complaint to the medical officer of health.

**Rural district.** See the notes to s. 1, *ante*.

**Writing.** For meaning, see the Interpretation Act, 1889, s. 20 (24 Halsbury's Statutes (2nd Edn.) 222).

**Forthwith.** See the note to s. 12 (3), *ante*.

**Sub-s. (4).**

**Urban district; metropolitan borough council; London County Council.** See the note to s. 1, *ante*.

**Last published census.** Reports on the census returns are to be prepared by the Registrar-General under s. 4 (1) of the Census Act, 1920 (20 Halsbury's Statutes (2nd Edn.) 1213). The latest census was taken on 8th April 1951, by virtue of the Census Order, 1950 (S.I. 1950 No. 1269), made under s. 1 of the Act of 1920.

**Medical officer of health of the county.** County medical officers of health are appointed in accordance with s. 103 of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 409), or, in the case of London, under s. 73 of the London Government Act, 1939 (15 Halsbury's Statutes (2nd Edn.) 1108).

**Sub-s. (5).**

**In writing.** Cf. the note to sub-s. (2), *supra*. The form of official representation would appear to be sufficient if the medical officer states in writing that he represents the house as being unfit for human habitation, or the area as one that should be dealt with as a clearance area. It is usual, however, for the representation to list the defects in the house (see ss. 4 and 5, *ante*), and the works required, and to state whether the works can be executed at a reasonable expense (see ss. 9 (1), 16 (1), and 39 (1), *ante*); or, in the case of a proposed clearance area, to deal with questions of unfitness, and the danger or injuries to health arising from bad arrangement (see s. 42 (1) (a), *ante*).

### *Recovery of possession, entry, &c.*

**158. Recovery of possession of controlled houses.**—(1) Nothing in the Rent Acts shall prevent possession being obtained of any house possession of which is required for the purpose of enabling a local authority to exercise their powers under any enactment relating to housing.

(2) Where a local authority, for the purpose of exercising their powers under any enactment relating to housing, require possession of any building or any part of a building of which they are the owners, then, whatever may be the value or rent of the building or part of a building, they may obtain possession thereof under the Small Tenements Recovery Act, 1838, as in the cases therein provided for, at any time after the tenancy of the occupier has expired, or has been determined.

### NOTES

**History.** This section reproduces s. 156 (1) (a) and (2) of the Housing Act, 1936, as amended by s. 1 of, and the First Schedule to, the Housing Act, 1949 (which removed references to the working classes).

In the Act of 1936, s. 155 provided, *inter alia*, for the recovery of possession of any building or part of a building which was subject to an operative demolition order or clearance order, by the local authority or an owner, on complaint under the Small Tenements Recovery Act, 1938; the provisions of that section are now distributed among ss. 22, 45 and 73, *ante*, as shown in the Table of Repeals and Replacements (Appendix I, *post*).

By s. 156 (1) of the Act of 1936, the protection of the Rent Acts was excluded, not only in the case of demolition orders and clearance orders, but also in other cases listed in s. 156 (1) (a) to (e), and this exclusion of the Rent Acts was extended to houses subject to closing orders under the provisions now replaced by s. 17 (1) proviso, *ante*; see now the Table of Repeals and Replacements (Appendix I, *post*). Sub-s. (1), *supra*, reproduces

only s. 156 (1) (a); s. 156 (1) (b) related to a repealed power of making byelaws (cf. the notes to s. 36, *ante*) and is not reproduced in this Act.

Note also ss. 84 and 85 (2) in Part IV, *ante*, relating to certain overcrowded houses  
**Sub-s. (1).**

**Nothing in the Rent Acts, etc.** Cf. the note to s. 16 (5), *ante*, and the note "Management" to s. 111 (1), *ante*. "The Rent Acts" are the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939; see s. 189 (1), *post*.

**House.** For meaning, see s. 189 (1), *post*.

**Local authority.** For meaning, see s. 1, *ante*.

**Sub-s. (2).**

**Exercising their powers under any enactment relating to housing.** The local authority recovering possession are, in general, under no obligation to offer alternative accommodation; see *Parry v. Harding*, [1925] 1 K.B. 111; 31 Digest (Repl.) 716, 8009. However, in the special circumstances of Part IV, *ante*, relating to the abatement of overcrowding, the power to obtain possession under s. 85 (2) may depend on alternative accommodation having been offered as mentioned in s. 78 (2) or (3).

The recovery of a flat for re-letting is an exercise of the power of management under s. 111 (1), *ante*. By sub-s. (2), *supra*, the local authority may recover possession summarily under the Small Tenements Recovery Act, 1838 (13 Halsbury's Statutes (2nd Edn.) 855), although the rent may be above the limit mentioned in that Act; see *R. v. Snell, Ex parte St. Marylebone Borough Council*, [1942] 1 All E.R. 612; 31 Digest (Repl.) 616, 7318; and *London County Council v. Shelley*, [1947] 2 All E.R. 720, C.A. (affirmed, [1948] 2 All E.R. 898, H.L.; 31 Digest (Repl.) 616, 7317).

**Owner.** For meaning, see s. 189 (1), *post*.

**Small Tenements Recovery Act, 1838.** 13 Halsbury's Statutes (2nd Edn.) 855. The procedure will be by way of complaint to a magistrates' court; cf. the notes to s. 22 (2), *ante*. The court must order the giving of possession at a date within the limits of 21 and 30 days mentioned in s. 1 of that Act, and has no discretion to extend the time; see *Shelley's case*, *supra*.

**159. Power of entry for inspection, &c.**—Any person authorised in writing stating the particular purpose or purposes for which the entry is authorised, by the local authority or the Minister, may at all reasonable times, on giving twenty-four hours' notice to the occupier and to the owner, if the owner is known, of his intention, enter any house, premises, or buildings—

(a) for the purpose of survey or valuation, in the case of houses, premises, or buildings which the local authority are authorised by this Act to purchase compulsorily; or

(b) for the purpose of survey and examination, in the case of a house in respect of which—

(i) a notice requiring the execution of works has been served under Part II of this Act, or

(ii) a demolition order has been made under Part II or Part III of this Act, or

(iii) a closing order has been made under section eighteen of this Act, or

(iv) a clearance order has been made under Part III of this Act, or

(c) for the purpose of survey and examination, where it appears to the authority or Minister that survey or examination is necessary in order to determine whether any powers under this Act should be exercised in respect of the house, premises or building; or

(d) for the purpose of measuring the rooms of a house in order to ascertain for the purposes of Part IV of this Act the number of persons permitted to use the house for sleeping.

#### NOTES

**History.** This section reproduces s. 157 of the Housing Act, 1936; para. (d) of that section was extended by s. 12 (5) of the Housing Repairs and Rents Act, 1954, but the effect of that extension does not appear to be incorporated in para. (d), *supra* (see the note "History" to s. 90, *ante*).

**Writing.** For meaning, see the Interpretation Act, 1889, s. 20 (24 Halsbury's Statutes (2nd Edn.) 222).

**Local authority.** For meaning, see s. 1, *ante*.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Notice.** The prescribed form of notice for the purposes of this section is Form No. 1 in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), made under s. 178, *post*. A form of notice before entry for the measurement of rooms under para. (d), *supra*, is also contained in Part II (Form A) of the Schedule to the Housing Act (Overcrowding and Miscellaneous Forms) Regulations, 1937 (S.R. & O. 1937 No. 80), mentioned in the General Note to s. 77, *ante*.

As to authentication and service of notices by local authorities, see ss. 166 (2) and 169 (1), *post*.

**If the owner is known.** Under the definition in s. 189 (1), *post*, there may be more than one "owner". The obligation under this section appears to be to serve a notice on any owner or owners who are in fact known to the authority. Under s. 170, *post*, for certain purposes, information may be required about ownership, but there seems to be no requirement to make such inquiries before exercising the power of entry under this section.

**Enter any house, etc.** "House" is defined in s. 189 (1), *post*. For penalty for obstruction, see s. 160, *post*, and note also s. 161, *post*.

**Notice requiring the execution of works.** *I.e.*, a notice served under s. 9, *ante*.

**Demolition order.** See ss. 17, 28 and 72, *ante*.

**Clearance order.** See ss. 43 (1) (a) and 44, *ante*.

**Powers under this Act.** By the Town and Country Planning Act, 1944, Fifth Schedule, para. 9 (5) (as set out in the Eleventh Schedule to the Town and Country Planning Act, 1947 (48 Statutes Supp. 277; 25 Halsbury's Statutes (2nd Edn.) 421), and amended by s. 190 and the Tenth Schedule, *post*), this section and s. 160, *infra*, have effect as if the powers conferred by that paragraph were powers under this Act.

**Room.** For meaning, see s. 87, *ante*.

**Number of persons permitted to use the house for sleeping.** See s. 77 (1) (b), *ante*, and the Sixth Schedule, *post*. *Semble*, the power under para. (d), *supra*, does not extend to the purposes of s. 90, *ante*; see the note "History" to that section.

**160. Penalty for obstructing execution of Act.**—If any person obstructs the medical officer of health or any officer of the local authority, or of the Minister, or any person authorised to enter houses, premises, or buildings in pursuance of this Act in the performance of anything which such officer, authority, or person is by this Act required or authorised to do, he shall, on summary conviction, be liable to a fine not exceeding twenty pounds.

## NOTES

**History.** This section reproduces s. 158 of the Housing Act, 1936.

**Obstructs.** Obstruction need not involve physical violence; see, especially, *Borrow v. Howland* (1896), 74 L.T. 787; 38 Digest 236, 652, and *Hinchliffe v. Sheldon*, [1955] 3 All E.R. 406; 3rd Digest Supp. In fact there is authority for saying that anything which makes it more difficult for an officer or other authorised person to carry out his duty amounts to obstruction; see *Hinchliffe v. Sheldon*, *supra*. Yet, standing by and doing nothing is not obstruction unless there is a legal duty to act; see *Swallow v. London County Council*, [1916] 1 K.B. 224; 44 Digest 139, 75, and contrast *Baker v. Ellison*, [1914] 2 K.B. 762; 8 Digest (Repl.) 123, 799.

**Medical officer of health.** See the note to s. 5, *ante*.

**Local authority.** For meaning, see s. 1, *ante*.

**The Minister; house.** For meanings, see s. 189 (1), *post*.

**In pursuance of this Act.** See the note "Powers under this Act" to s. 159, *supra*.

**Summary conviction.** Cf. the note to s. 8, *ante*. Note also the powers available in certain cases under s. 161, *infra*.

**161. Penalty for preventing execution of repairs, &c.**—If any person, after receiving notice of the intended action,—

- (a) being the occupier of any premises, prevents the owner thereof or his officers, agents, servants or workmen, from carrying into effect with respect to those premises any of the provisions of Part II of this Act; or
- (b) being the owner or occupier of any premises prevents the medical officer of health, or any officers, agents, servants or workmen of that officer or of the local authority, from so doing;

a magistrates' court may order him to permit to be done on the premises all things requisite for carrying into effect those provisions, and if he fails to comply with the order, he shall, in respect of each day during which the failure continues, be liable on summary conviction to a fine not exceeding twenty pounds.

#### NOTES

**History.** This section reproduces s. 159 (a) and (b) of the Housing Act, 1936; s. 159 (c) (not reproduced), referred to the obstruction of compliance with byelaws. The present Act still contains some byelaw provisions, but those principally relevant have been repealed (see the notes to s. 36, *ante*).

**General Note.** The powers of this section are available where the medical officer of health is prevented from entering premises for the purpose of survey and examination under s. 159, *ante*; see *Arlidge v. Scrace*, [1915] 3 K.B. 325; 38 Digest 217, 510. The section goes further than s. 160, *ante* (penalty for obstruction), in that failure to comply with the court's order may lead to a daily penalty.

**Owner.** For meaning, see s. 189 (1), *post*.

**Medical officer of health.** See the note to s. 5, *ante*.

**Local authority.** For meaning in this context, see ss. 1 and 41, *ante*.

**Magistrates' court may order, etc.** The order must be made on complaint, and apparently the defendant must be summoned.

**Each day during which the failure continues.** The fine must not be calculated by reference to a period of more than six months before the information was laid; see *R. v. Slade, Ex parte Saunders*, [1895] 2 Ch.B. 247; 38 Digest 213, 476; and see also *R. v. Struve, etc., Glamorganshire Justices* (1895), 59 J.P. 584; 43 Digest 345, 40.

**Summary conviction.** Cf. the note to s. 8, *ante*.

#### *Powers of the court for housing purposes*

**162. Power of court to determine lease where premises demolished.**—(1) Where any premises in respect of which a demolition or closing order or a clearance order has become operative form the subject matter of a lease, either the lessor or the lessee may apply to the county court within the jurisdiction of which the premises are situate for an order under this section:

Provided that this subsection shall not apply to a closing order made under section eighteen of this Act.

(2) Upon any such application as aforesaid, the county court judge, after giving to any sub-lessee an opportunity of being heard, may, if he thinks fit, make an order for the determination of the lease, or for the variation thereof, and, in either case, either unconditionally or subject to such terms and conditions (including conditions with respect to the payment of money by any party to the proceedings to any other party thereto by way of compensation, damages, or otherwise) as he may think just and equitable to impose, regard being had to the respective rights, obligations, and liabilities of the parties under the lease and all the other circumstances of the case.

(3) In this section the expression "lease" includes an under-lease and any tenancy or agreement for a lease, under-lease, or tenancy, and the expressions "lessor," "lessee," and "sub-lessee" shall be construed accordingly, and as including also a person deriving title under a lessor, lessee or sub-lessee.

#### NOTES

**History.** This section reproduces s. 160 of the Housing Act, 1936 (relating to demolition orders and clearance orders), as extended by s. 3 (4) of the Housing Act, 1949, and ss. 10 (5) and 11 (3) of the Local Government (Miscellaneous Provisions) Act, 1953, to premises subject to closing orders under those Acts.

**General Note.** This section gives the county court judge, on application being made to him by either the lessor or lessee under a lease of premises in respect of which a demolition or closing order (except a closing order under s. 18, *ante*) or a clearance order has become operative, power to determine or vary the lease, conditionally or unconditionally, at his discretion, subject only to two limitations:

- (a) sub-lessees, if any, must be given the opportunity of being heard;
- (b) regard must be had to the respective rights, obligations and liabilities under the lease and all other circumstances of the case. Note in this connection that

the implied terms imported into leases by s. 6, *ante*, create rights and duties just as much as does any express term of the lease.

For other powers which may affect the position of persons interested in premises, see s. 164, *post*, and, in relation to demolition orders and clearance orders (and also notices under s. 9, *ante*, but not closing orders), the powers of a magistrates' court to authorise works under s. 163, *post*. For a power to relax restrictions on conversions, see s. 165, *post*. As to expenses in connection with notices under s. 9, see ss. 13-15, *ante*, and in connection with demolition orders and clearance orders, see s. 23 and the notes thereto, *ante*.

#### Sub-s. (1).

**Demolition order.** Demolition orders may be made under s. 17 (1), 28 or 72, *ante*. As to the coming into operation of such orders, see ss. 37 and 72 (3), *ante*.

**Closing order.** See ss. 17 (1) proviso, 17 (3), 26 and 35 (1), *ante*, and note the exclusion of closing orders under s. 18, *ante*. As to the coming into operation of such orders, see s. 37, *ante*.

**Clearance order.** For meaning, see s. 43 (1) (a), *ante*, and for the coming into operation of such orders, see s. 44 (2), *ante*, and the Fourth Schedule, para. 3, *post*.

**Apply to the county court.** Applications to the county court for the determination or variation of a lease are governed by the County Court Rules. The proceedings must be commenced by originating application, under C.C.R. Ord. 6, r. 4, in Form 23 prescribed by the Rules. It seems that so many of the lessors or lessees as agree upon the relief to be sought, should join in the application, and others who do not concur should be joined as respondents.

#### Sub-s. (2).

**Other circumstances of the case.** The relevant circumstances appear to include, in the case of a demolition order or clearance order, the use to which the cleared site will be put, and the party best able to use or re-develop it. Note ss. 44 (5) and (6) and s. 51, *ante*, as to land cleared under a clearance order. If one owner has incurred the cost of demolition, that can presumably be taken into account in imposing conditions, particularly as to the payment of money; and if the local authority have carried out the demolition, see s. 23, *ante*, and the notes thereto, as to the incidence of expenses or the application of any proceeds from selling materials.

In the case of a closing order, it is thought the court will have regard to any use of the premises which is permitted under s. 27, *ante*, by the local authority or, on appeal, by the judge.

In all cases, in having regard to the rights, obligations and liabilities of the parties under the lease, it is thought the court may have regard to the length of the unexpired term, the rent payable, etc. (cf. s. 13, *ante*). *Quaere*, whether the length of the lease might be extended.

**163. Power of court to authorise owner to execute works on default of another owner.**—(1) If it appears to a magistrates' court, on the application of any owner of a house in respect of which a notice requiring the execution of works has been served under Part II of this Act, or a demolition order or a clearance order has been made, that owing to the default of any other owner of the house in executing any works required to be executed on the house, or in demolishing the house, the interests of the applicant will be prejudiced, the court may make an order empowering the applicant forthwith to enter on the house, and, within a period fixed by the order, execute the said works or demolish the house, as the case may be; and where it seems to the court just so to do, the court may make a like order in favour of any other owner.

(2) Before an order is made under this section, notice of the application shall be given to the local authority.

#### NOTES

**History.** This section reproduces s. 161 of the Housing Act, 1936.

**General Note.** The purpose of this section is to protect the interests of owners other than the person upon whom a notice or order was originally served. If the latter defaults in carrying out the repairs or demolition required, one of his fellow owners may seek an order from the magistrates' court under the present section empowering him to do the work or demolition himself. For certain powers of other courts, see s. 162, *ante*, and ss. 164 and 165, *post*. The definition of "owner" in s. 189 (1), *post*, is so wide as to allow a multiplicity of persons to come within its scope. For example, the applicant under the present section might be a superior landlord. As to expenses incurred, see ss. 13-15, *ante*, and cf. s. 23 and the notes thereto, *ante*.

Note the provisions of s. 33 (1), *ante*, which entitles an owner not in receipt of the rents and profits of a house to receive notice of proceedings under Part II of the Act, if he notifies the local authority of his interest.

**Sub-s. (1).**

**Magistrates' court; application.** The application will be by way of complaint for an order under s. 43 of the Magistrates' Courts Act, 1952 (32 Halsbury's Statutes (2nd Edn.) 456).

**Owner; house.** For meanings, see s. 189 (1), *post*.

**Notice requiring the execution of works.** *I.e.*, a notice served under s. 9, *ante*.

**Demolition order.** Demolition orders may be made under s. 17 (1), 28 or 72, *ante*.

**Clearance order.** See ss. 43 (1) (a) and 44, *ante*.

**Forthwith.** See the note to s. 12, *ante*.

**Enter on the house.** For penalty for obstructing entry, see s. 160, *ante*; and as to preventing execution of repairs, see s. 161, *ante*. See also s. 33 (2), *ante* (owner's rights not prejudiced by taking possession, etc.).

**Sub-s. (2).**

**Notice . . . shall be given.** For mode of service of notices on local authorities, see s. 168, *post*.

**Local authority.** For meaning in this context, see ss. 1, 41, 52 and 75, *ante*.

**164. Power of court to authorise execution of works on unfit premises or for improvement.**—(1) Where it is proved to the satisfaction of the court, on an application made in accordance with rules of court by any person entitled to any interest in any land used in whole or in part as a site for houses—

- (a) that the premises on the land are, or are likely to become, dangerous or injurious to health or unfit for human habitation, and that the interests of the applicant are thereby prejudiced; or
- (b) that the applicant should be entrusted with the carrying out of a scheme of improvement or reconstruction approved by the local authority of the district in which the land is situate;

the court may make an order empowering the applicant forthwith to enter on the land and within a period fixed by the order to execute such works as may be necessary, and may order that any lease or agreement for a lease held from the applicant and any derivative under-lease shall be determined, subject to such conditions and to the payment of such compensation as the court may think just.

(2) The court shall include in its order provisions to secure that the proposed works are carried out and may authorise the local authority in whose district the land is situated, or which approved the scheme of improvement or reconstruction, as the case may be, to exercise such supervision or take such action as may be necessary for the purpose.

(3) For the purposes of this section, "court" means the High Court, and the Court of Chancery of the county palatine of Lancaster or Durham or the county court, where those courts respectively have jurisdiction.

(4) As respects the administrative county of London other than the City of London—

- (a) the local authority for the purposes of the provisions of this section relating to such premises as are mentioned in paragraph (a) of subsection (1) thereof shall be the metropolitan borough council; and
- (b) both the London County Council and the council of a metropolitan borough shall within that borough be local authorities for the purposes of the provisions of this section relating to schemes of improvement or reconstruction.

**NOTES**

**History.** This section reproduces s. 162 of the Housing Act, 1936, as amended by ss. 1 and 51 (4) of, and the First and Third Schedules to, the Housing Act, 1949.

**Sub-s. (1).**

**Rules of court.** *I.e.*, rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of the court in question; see the Interpretation Act, 1889, s. 14 (24 Halsbury's Statutes (2nd Edn.) 217), and note the definition of "court" in sub-s. (3), *supra*.

**House.** For meaning, see s. 189 (1), *post*.

**Dangerous or injurious to health.** Cf. s. 42 (1) (a), *ante*.

**Unfit for human habitation.** The question of unfitness is to be determined in accordance with ss. 4 and 5, *ante*.

**Scheme . . . approved by the local authority.** The court does not appear to have jurisdiction to compel a local authority to approve any particular scheme, nor does the language of this section impose on local authorities a duty to consider a scheme. As to re-development and re-conditioning by owners, see ss. 68-71, *ante*, whereunder the local authority are bound to consider proposals and lists of works submitted to them. *Seem*, such proposals may constitute a "scheme" for the purposes of this section.

For the meaning of "local authority", see s. 1, *ante*, and note sub-s. (4), *supra*, and cf. s. 71, *ante*.

**Forthwith.** See the note to s. 12, *ante*.

**Enter on the land.** For penalty for obstructing entry, see s. 160, *ante*.

**Sub-s. (4).**

**Administrative county of London; metropolitan borough council; London County Council.** See the notes to s. 1, *ante*. As to agreements between local authorities in London with respect to action to be taken under the provisions of this section relating to schemes of improvement or reconstruction, see s. 183 (1) (a), *post*.

**City of London.** The local authority for the City of London is the Common Council; see s. 1 (2) (a), *ante*.

**165. Power of court to authorise conversion of house into several tenements.**—Where the local authority or any person interested in a house applies to the county court and—

- (a) it is proved to the satisfaction of the court that, owing to changes in the character of the neighbourhood in which the house is situated, the house cannot readily be let as a single tenement but could readily be let for occupation if converted into two or more tenements; or
- (b) planning permission has been granted under Part III of the Town and Country Planning Act, 1947, for the use of the house as converted into two or more separate dwelling-houses instead of as a single dwelling-house,

and it is proved to the satisfaction of the court that by reason of the provisions of the lease of or any restrictive covenant affecting the house, or otherwise, such conversion is prohibited or restricted, the court, after giving any person interested an opportunity of being heard, may vary the terms of the lease or other instrument imposing the prohibition or restriction so as to enable the house to be so converted subject to such conditions and upon such terms as the court may think just.

**NOTES**

**History.** This section reproduces s. 163 of the Housing Act, 1936, as extended by s. 11 of the Housing Act, 1949, to the cases mentioned in para. (b), *supra*.

**General Note.** This section is not confined to houses which, if converted into tenements, could readily be let for occupation by persons of the working classes, but is of general application, and applies where the house if converted could be let for occupation by persons of any class (*Johnston v. Maconochie*, [1921] 1 K.B. 239; 31 Digest (Repl.) 168, 3024).

As to the construction of the section, and the conditions which must be satisfied before an order is made, see *Alliance Economic Investment Co. v. Berton* (1923), 92 L.J.K.B. 750, C.A.; 31 Digest (Repl.) 188, 3203.

See also the power to modify or discharge restrictive covenants affecting land contained in s. 84 of the Law of Property Act, 1925 (20 Halsbury's Statutes (2nd Edn.) 605), as amended by s. 52 of the Landlord and Tenant Act, 1954 (87 Statutes Supp. 149; 34 Halsbury's Statutes (2nd Edn.) 431).

**Local authority.** For meaning, see s. 1, *ante*, and s. 189 (2), *post*.

**House.** For meaning, see s. 189 (1), *post*.

**Applies to the county court.** *I.e.*, by originating application under C.C.R. Ord. 6, r. 4.

**Conversion.** The expression "conversion" does not import the necessity for structural alteration of the premises; see *Stack v. Church Commissioners for England*, [1952] 1 All E.R. 1352, C.A.; 3rd Digest Supp.

**Town and Country Planning Act, 1947, Part III.** 48 Statutes Supp. 44; 25 Halsbury's Statutes (2nd Edn.) 506.

### *Notices, orders, &c.*

**166. Authentication of orders, notices, &c.—**(1) Any demolition order, any closing order under section eighteen of this Act, any clearance order and any other order in writing made by a local authority under this Act, not being a closing order, shall be under their seal and authenticated by the signature of their clerk or his lawful deputy.

(2) A notice, demand or other written document proceeding from a local authority under this Act shall be signed by their clerk or his lawful deputy:

Provided that—

- (a) this subsection shall not apply to a notice to be served under section twenty-six or section thirty of this Act; and
- (b) a notice, demand or other document proceeding from the London County Council in their capacity as landlord of the premises to which the notice, demand or other document relates may be signed by any officer of the Council authorised by the Council to sign notices, demands or documents of that particular kind or the particular notice, demand or document, as the case may be, and, if so signed, need not be signed by the clerk to the London County Council or his lawful deputy.

### NOTES

**History.** This section reproduces s. 164 of the Housing Act, 1936, as modified by s. 40 of the London County Council (General Powers) Act, 1953, and by s. 22 (2), (3) of the Housing Repairs and Rents Act, 1954.

**General Note.** The distinction between an order and a notice, demand or other document should be noticed. An order must generally be under seal: a notice need not. Reference to the distinction was made in *Ryall v. Cubitt Heath*, [1922] 1 K.B. 275; 38 Digest 215, 498. In *Arlidge v. Hampstead Metropolitan Borough*, [1916] 1 Ch. 59; 38 Digest 212, 472, it was held that the document served was both an order and notice of the order. Certain provisions of this Act require service not of the original order, but of copies; see, for example, as to demolition orders, ss. 19, 28 and 72 (2), *ante*.

The new types of closing order, introduced since the Housing Act, 1936 (see ss. 17 (1) proviso, 17 (3), 26 and 35, *ante*), need not be under seal; but the original type of closing order (see s. 18 (1), *ante*) must still be under seal.

A notice signed by an official, not the clerk or his deputy, is bad (*West Ham Corporation v. Benabo (Charles) & Sons*, [1934] 2 K.B. 253; Digest Supp.); thus a notice signed by the housing manager of a local authority is bad, in the absence of evidence that he is the lawful deputy of the clerk to the authority (*Becker v. Crosby Corporation*, [1952] 1 All E.R. 1350; 3rd Digest Supp.). Note, however, proviso (b) to sub-s. (2), *supra*.

**Demolition order.** Demolition orders may be made under s. 17 (1), 28 or 72, *ante*.

**Closing order.** See the General Note, *supra*.

**Clearance order.** For meaning, see s. 43 (1) (a), *ante*.

**Writing.** For meaning, see the Interpretation Act, 1889, s. 20 (24 Halsbury's Statutes (2nd Edn.) 222).

**Local authority.** For meaning, see s. 1, *ante*.

**London County Council.** See the note to s. 1, *ante*.

**167. Authentication of certificates.—**Any document purporting to be a certificate of a local authority named therein issued for any of the purposes of this Act and to be signed by the clerk to that authority shall be received

in evidence and be deemed to be such a certificate without further proof unless the contrary is shown.

#### NOTES

**History.** This section reproduces s. 165 of the Housing Act, 1936.

**Authentication of certificates.** Although the marginal note to this section reads "Authentication of certificates" it deals primarily with the admission in evidence of documents purporting to be certificates of local authorities, issued for the purposes of this Act, without need of proving, for example, that the signature is in fact that of the clerk.

**Local authority.** For meaning, see s. 1, *ante*.

**168. Service of notices, &c., on local authorities.**—Any notice, summons, writ or other proceeding at law or otherwise required to be served on a local authority for any of the purposes of this Act may be served upon the authority by delivering it to their clerk, or by leaving it at his office with some person employed there, or by sending it by post in a registered letter addressed to the authority or their clerk at their office.

#### NOTES

**History.** This section reproduces s. 166 of the Housing Act, 1936.

**Local authority.** For meaning, see s. 1, *ante*.

**Purposes of this Act.** The application of this section is extended to notices served under Part I of the Requisitioned Houses and Housing (Amendment) Act, 1955 (90 Statutes Supp. 5; 35 Halsbury's Statutes (2nd Edn.) 262), by s. 13 (2) of that Act, as amended by s. 170 and the Tenth Schedule, *post*.

**169. Service of notices, &c., on persons other than local authorities.**—(1) Subject to the provisions of this and the last foregoing section, any notice, order or other document required or authorised to be served under this Act may be served either—

- (a) by delivering it to the person on whom it is to be served, or
- (b) by leaving it at the usual last known place of abode of that person, or
- (c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode, or
- (d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office, or
- (e) if it is not practicable after reasonable enquiry to ascertain the name or address of an owner, lessee or occupier of land on whom it should be served, by addressing it to him by the description of "owner" or "lessee" or "occupier" of the premises (naming them) to which it relates, and by delivering it to some person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

(2) This section shall not apply to the service under section nineteen of this Act of a copy of a closing order made under the proviso to subsection (1) of section seventeen of this Act or made under subsection (3) of that section, or to the service of a notice under section twenty-six or section thirty of this Act.

#### NOTES

**History.** Sub-s. (1) of this section reproduces s. 167 of the Housing Act, 1936. Sub-s. (2) is new in form.

**General Note.** It will be observed that the various methods of service are alternative, though sub-s. (1) (d) only applies to incorporated companies or bodies and sub-s. (1) (e) only applies if it is not practicable after reasonable enquiry to ascertain the name or address of an owner, lessee or occupier. Note, however, that in certain

instances the method of service prescribed by sub-s. (1) (e) may be used without first making enquiries; see the First Schedule, para. 2, the Third Schedule, Part I, para. 2 (2), and the Fifth Schedule, para. 3 (2), *post*.

Under s. 179, *post*, the Minister may dispense with the service of notices if he is satisfied there is reasonable cause.

**Sub-s. (1).**

**Notice . . . under this Act.** Sub-s. (1), *supra*, is applied to notices served under Part I of the Requisitioned Houses and Housing (Amendment) Act, 1955 (90 Statutes Supp. 5; 35 Halsbury's Statutes (2nd Edn.) 262), and to notices, certificates and documents served under the Rent Act, 1957 (103 Statutes Supp. 17; 37 Halsbury's Statutes (2nd Edn.) 550); see s. 13 (2) of the Act of 1955, as amended by s. 190 and the Tenth Schedule, *post*, and s. 26 (1) of, and para. 23 of the Sixth Schedule to, the Act of 1957, in conjunction with s. 191 (4), *post*.

**Last known place of abode.** Apparently the service will be good although it is known that the person has left the place in question; see *Re Follick, Ex parte Trustee* (1907), 97 L.T. 645; 4 Digest 508, 4587.

**After reasonable enquiry.** Note, in this connection, the power conferred on local authorities by s. 170, *post*. In certain instances, however, the method of service prescribed by sub-s. (1), (e), *supra*, may be used without first making enquiries; see the General Note, *supra*.

**Owner; land.** For meanings, see s. 189 (1), *post*.

**Sub-s. (2).**

**This section shall not apply.** The provisions of ss. 17 (1) proviso, 17 (3), 26 and 30, *ante*, referred to in sub-s. (2), *supra*, are derived from the Local Government (Miscellaneous Provisions) Act, 1953, the Housing Act, 1949, and the Slum Clearance (Compensation) Act, 1956. Those Acts did not apply the provisions of s. 167 of the Housing Act, 1936. Cf., also, as to ss. 26 and 30, the provisos to s. 166 (2), *ante*, and to ss. 178 (1) and 179 (1), *post*.

These exclusions are presumably intended to preserve the position which existed before the passing of this Act, but they do not wholly do so; *e.g.*, there is no express reference in this subsection to notices under s. 35 (2), *ante*, or to copies of closing orders (as opposed to notices) under s. 26, *ante*.

**170. Power of local authority to require information as to ownership of premises.**—A local authority may, for the purpose of enabling them to serve any notice (including any copy of any notice) which they are by this Act authorised or required to serve, require the occupier of any premises and any person who, either directly or indirectly, receives rent in respect of any premises, to state in writing the nature of his interest therein and the name and address of any other person known to him as having an interest therein, whether as freeholder, mortgagee, lessee or otherwise, and any person who, having been required by a local authority in pursuance of this section to give to them any information, fails to give that information, or knowingly makes any mis-statement in respect thereof, shall be liable on summary conviction to a fine not exceeding five pounds.

**NOTES**

**History.** This section reproduces s. 168 of the Housing Act, 1936.

**Local authority.** For meaning, see s. 1, *ante*.

**Knowingly.** Cf. the note to s. 16 (6), *ante*.

**Summary conviction.** See the note to s. 8, *ante*.

*Default of local authorities*

**171. Powers of county council and Minister in the event of default of rural district council.**—(1) In any case where—

- (a) complaint is made to the council of a county by the parish council or parish meeting of any parish comprised in any rural district in the county, or by any justice of the peace acting for, or by any four or more local government electors of, any such district, that the council of that district have failed to exercise their powers under this Act in any case where those powers ought to have been exercised; or

- (b) the council of a county is of opinion that an investigation should be made as to whether the council of any rural district in the county have failed as aforesaid;

the county council may cause a public local inquiry to be held, and if, after the inquiry has been held, they are satisfied that there has been such a failure on the part of the district council, they may make an order declaring the district council to be in default and transferring to themselves all or any of the said powers of the district council with respect to the whole or any part of the district.

(2) Where an order is made under subsection (1) of this section the council of the rural district with respect to which it is made may, within a period of twenty-eight days beginning with the date on which the order is made, appeal to the Minister against the order; and in any such case the Minister shall give to the councils of the rural district and the county, and to any other authority or person appearing to him to be interested, an opportunity to appear before and be heard by a person appointed by the Minister for the purpose, and may either confirm the order with or without modification or quash the order.

(3) An order under subsection (1) of this section shall not come into force—

- (a) in any case, until the expiration of a period of twenty-eight days beginning with the date on which the order is made, and  
(b) in a case where an appeal is brought under this section, unless and until the order is confirmed on the appeal.

(4) An order made under this section may provide that section sixty-three of the Local Government Act, 1894, shall, subject to such modifications and adaptations as may be specified in the order, apply in relation to the powers transferred by the order as it applies in relation to powers transferred under that Act.

(5) If upon a representation made to the Minister by any justice of the peace acting for, or by any four or more local government electors of, any rural district, or otherwise, it appears to the Minister that a county council have failed or refused to make an order under subsection (1) of this section in any case where they should have made such an order, or that any such order made by a county council is defective in that it fails to transfer powers which should have been transferred, or in that it does not apply to any part of the district to which it should have applied, the Minister may, if the county council have not made any order, himself make any order which they might have made, and if an order made by the county council is a defective order, himself make a supplementary order enlarging the scope of their order in such manner as he thinks fit.

The Minister's powers of making orders under this subsection shall be exercisable by statutory instrument; and subsection (2) of this section shall apply in relation to an order made under this subsection as it applies in relation to an order made under subsection (1) of this section.

#### NOTES

**History.** Sub-s. (1), *supra*, reproduces s. 169 (1) of the Housing Act, 1936, as extended by s. 48 of, and para. 8 of the Second Schedule to, the Housing Act, 1949. Sub-ss. (2) and (3) reproduce respectively s. 18 (2) and (1) of the Housing Repairs and Rents Act, 1954. Sub-ss. (4) and (5) reproduce s. 169 (2) and (4) of the Act of 1936, and sub-s. (5) also reproduces the effect of s. 1 (2) of the Statutory Instruments Act, 1946. None of the former provisions was repealed by the present Act; but see the General Note, *infra*.

**General Note.** This section and ss. 172–177, *post*, contain default powers, and generally speaking replace ss. 169–175 of the Act of 1936. Certain of those sections had been affected by the Statutory Instruments Act, 1946 (requiring certain orders to be made by statutory instrument), and by the Acts of 1949 and 1954 mentioned in the note "History", *supra*.

Of those provisions of the Act of 1936, the present Act, by s. 191 and the Eleventh Schedule, *post*, repealed only s. 175 (now replaced by s. 177, *post*), the other provisions

being left in operation until their repeal by the Housing (Financial Provisions) Act, 1958 (Book II, *post*). This section and ss. 172–176, *post*, are now applied for the purposes of the Act of 1958, by s. 55 (1) (b) thereof, as if references to this Act included references to that Act.

The present section does not reproduce s. 169 (3) of the Act of 1936, and s. 174, *post*, similarly omits s. 172 (2) of the Act of 1936. These omitted provisions, as affected by the Housing (Financial and Miscellaneous Provisions) Act, 1946, the Housing Act, 1949, and the Housing Subsidies Act, 1956, related to exchequer subsidies and contributions; see now s. 25 (2) of the Act of 1958 (Book II, *post*), which applies where an order is made under the present section or under s. 173, *post*.

The present section relates to defaults by rural district councils, and the normal remedy is to transfer the powers to the county council; if the county council themselves fail to exercise the transferred powers, see s. 172, *post*. For powers on default of authorities other than rural district councils, see ss. 173 and 174, *post*. General provisions are contained in ss. 175 and 176, *post*; and s. 177, *post*, relates to London.

#### Sub-s. (1).

**Parish council; parish meeting.** As to the constitution of parish meetings and parish councils in rural parishes, see ss. 43 *et seq.* of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 379 *et seq.*).

**Rural district.** As to the division of England and Wales (exclusive of London) into administrative areas for the purposes of local government, see the Local Government Act, 1933, s. 1 (14 Halsbury's Statutes (2nd Edn.) 361).

**Local government elector.** This has the meaning assigned by para. 1 (1) of the Eighth Schedule to the Representation of the People Act, 1949 (8 Halsbury's Statutes (2nd Edn.) 815), as amended by the Electoral Registers Act, 1953 (33 Halsbury's Statutes (2nd Edn.) 74); see s. 189 (1), *post*.

**Public local inquiry.** Note that the provisions of ss. 290 and 291 of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 503, 504), relating to inquiries do not apply to public local inquiries held by county councils under this section; s. 290 applies only to inquiries held by government departments, and s. 291 applies only to inquiries held by county councils under the Act of 1933.

For the text of s. 290 of the Act of 1933, see the notes to s. 181, *post*.

**Order.** Orders made by a county council under this subsection (sub-s. (1), *supra*) come into force as mentioned in sub-s. (3), *i.e.*, after an appeal, or opportunity of appeal, under sub-s. (2). An order made by the Minister under sub-s. (5) is also subject to appeal, and will be made by statutory instrument. As to the variation or revocation of orders, see s. 176, *post*. Generally as to orders made by the Minister, see s. 180, *post*.

Orders under this section, being of local application, are not recorded in this volume.

As to the making of exchequer payments where an order is made transferring to a county council any of the powers of a district council under Part V of this Act, see s. 25 (2) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*), replacing s. 169 (3) of the Housing Act, 1936, as mentioned in the General Note, *supra*.

#### Sub-s. (2).

**Within . . . twenty-eight days.** Cf. the note "Within twenty-one days" to s. 11 (1), *ante*.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Opportunity to . . . be heard.** The hearing may, but need not, take the form of a public local inquiry under s. 181 (1), *post*.

#### Sub-s. (4).

**Local Government Act, 1894, s. 63.** That section provides as follows:—

"63.—(1) Where the powers of a district council are by virtue of a resolution under this Act transferred to a county council, the following provisions shall have effect:—

- (a) Notice of the resolution of the county council by virtue of which the transfer is made shall be forthwith sent to the district council and to the *Local Government Board*;
- (b) The expenses incurred by the county council shall be a debt from the district council to the county council, and shall be defrayed as part of the expenses of the district council in the execution of the Public Health Acts, and the district council shall have the like power of raising the money as for the defraying of those expenses;
- (c) The county council for the purpose of the powers transferred may on behalf of the district council borrow subject to the like conditions, in the like manner, and on the security of the like fund or rate, as the district council might have borrowed for the purpose of those powers;
- (d) The county council may charge the said fund or rate with the payment of the principal and interest of the loan, and the loan with the interest thereon shall be paid by the district council in like manner, and the charge shall have the like effect, as if the loan were lawfully raised and charged on that fund or rate by the district council:

- (e) The county council shall keep separate accounts of all receipts and expenditure in respect of the said powers:
- (f) The county council may by order vest in the district council all or any of the powers, duties, property, debts, and liabilities of the county council in relation to any of the said powers, and the property, debts, and liabilities so vested shall be deemed to have been acquired or incurred by the district council for the purpose of those powers.

(2) Where a rural district is situate in two or more counties a parish council complaining under this Act may complain to the county council of the county in which the parish is situate, and if the subject-matter of the complaint affects any other county the complaint shall be referred to a joint committee of the councils of the counties concerned, and any question arising as to the constitution of such joint committee shall be determined by the *Local Government Board*, and if any members of the joint committee are not appointed, the members who are actually appointed shall act as the joint committee."

The references in s. 63 of the Act of 1894 to the Local Government Board are now to be construed as references to the Minister of Housing and Local Government, as successor to the Minister of Health, who in turn had assumed the functions of the Board.

**Sub-s. (5).**

**County council have failed or refused to make an order, etc.** The present subsection applies where the county council have not taken over any powers, or any sufficient powers; where they have taken powers but fail to exercise them, see s. 172, *post*.

**Statutory instrument.** For provisions as to statutory instruments generally, see the Statutory Instruments Act, 1946 (36 Statutes Supp. 95; 24 Halsbury's Statutes (2nd Edn.) 440).

**172. Powers of Minister in the event of default by county council in the exercise of transferred powers.**—If upon a representation made to the Minister by any justice of the peace acting for, or by any four or more local government electors of, any rural district, or otherwise, it appears to the Minister that a county council to whom powers have been transferred under the last foregoing section have failed to exercise those powers in any case where those powers ought to have been exercised, he may cause a public local inquiry to be held and if, after the inquiry has been held, he is satisfied that the county council have failed as aforesaid, he may either—

- (a) make an order directing them to exercise such of the said powers, in such manner and within such time as may be specified in his order;
- or
- (b) make an order rendering any of the said powers exercisable by himself.

NOTES

**History.** This section reproduces s. 170 of the Housing Act, 1936. S. 170 of the Act of 1936, which was not repealed by the present Act, is now repealed by the Housing (Financing Provisions) Act, 1958 (Book II, *post*). Cf. the General Note to s. 171, *ante*.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Local government elector.** This has the meaning assigned by para. 1 (1) of the Eighth Schedule to the Representation of the People Act, 1949 (8 Halsbury's Statutes (2nd Edn.) 815), as amended by the Electoral Registers Act, 1953 (33 Halsbury's Statutes (2nd Edn.) 74); see s. 189 (1), *post*.

**Rural district.** See the note to s. 171 (1), *ante*.

**Public local inquiry.** As to local inquiries held by the Minister, see generally the note "Local inquiries" to s. 181, *post*.

**Rendering any of the said powers exercisable by himself.** As to the exercise by the Minister of powers of local authorities transferred to himself by order under this section, see s. 175, *post*.

**Orders under this section.** Orders made under this section, being of local application only, are not recorded in this volume.

As to the variation and revocation of orders under this section, see s. 176, *post*; and for general provisions as to orders made by the Minister, see s. 180 (1), *post*.

**173. Power of Minister in the event of default of local authority other than rural district council.**—(1) In any case where—

(a) a complaint is made to the Minister—

(i) as respects the council of any non-county borough or urban district, by the council of the county in which the borough or district is situate, or by any justice of the peace acting for, or by any four or more local government electors of, the borough or district; or

(ii) as respects any local authority, not being the council of a non-county borough or of an urban or rural district, by any justice of the peace acting for, or by any four or more local government electors of, the area of the authority,

that the local authority have failed to exercise their powers under this Act in any case where these powers ought to have been exercised; or

(b) the Minister is of opinion that an investigation should be made as to whether any local authority, not being the council of a rural district, have failed as aforesaid;

the Minister may cause a public local inquiry to be held and, if after the inquiry has been held he is satisfied that there has been such a failure on the part of the local authority, he may make an order declaring the authority to be in default and directing them to exercise for the purpose of remedying the default such of their powers, and in such manner and within such time or times, as may be specified in the order.

(2) If a local authority with respect to whom an order has been made under the foregoing subsection fail to comply with any requirement thereof within the time limited thereby for compliance with that requirement, the Minister, in lieu of enforcing the order, may, if he thinks fit, adopt one of the following courses—

(a) if the local authority concerned is the council of a non-county borough, or of an urban district, he may make an order directing the council of the county within which that borough or district is situate to perform such of the obligations of the borough or district council under the original order within such times as may be specified in his order addressed to the county council; or

(b) in any case, he may make an order rendering exerciseable by himself such of the powers of the local authority under this Act as may be specified in his order.

(3) The Minister's powers of making orders under this section shall be exercisable by statutory instrument.

#### NOTES

**History.** Sub-ss. (1) and (2) of this section reproduce s. 171 of the Housing Act, 1936, as extended by s. 48 of, and para. 9 of the Second Schedule to, the Housing Act, 1949. The provisions of the Acts of 1936 and 1949 mentioned above were not repealed by the present Act, but are now repealed by the Housing (Financial Provisions) Act, 1958 (Book II, *post*); cf. the General Note to s. 171, *ante*. Sub-s. (3) reproduces the effect of the Statutory Instruments Act, 1946.

**Sub-s. (1).**

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Non-county borough; urban district; rural district.** As to the division of England and Wales (exclusive of London) into administrative areas for the purposes of local government, see the Local Government Act, 1933, s. 1 (14 Halsbury's Statutes (2nd Edn.) 361).

For the powers of the county council and the Minister in the event of default by a rural district council, see s. 171, *ante*.

**Local government elector.** This has the meaning assigned by para. 1 (1) of the Eighth Schedule to the Representation of the People Act, 1949 (8 Halsbury's Statutes (2nd Edn.) 815), as amended by the Electoral Registers Act, 1953 (33 Halsbury's Statutes (2nd Edn.) 74); see s. 189 (1), *post*.

**Local authority.** For meaning, see s. 1, *ante*.

**Public local inquiry.** As to local inquiries held by the Minister, see generally the note "Local inquiries" to s. 181, *post*.

**Sub-s. (2).**

**Order directing the council of the county, etc.** For provisions as to orders made under sub-s. (2) (a), *supra*, see s. 174, *post*; and as to the making of Exchequer contributions where an order transfers to a county council any of the powers of a local authority under Part V of this Act, see s. 25 (2) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*), and cf. the General Note to s. 171, *ante*.

**Rendering exercisable by himself, etc.** As to the exercise by the Minister of powers of local authorities transferred to himself by order under this section, see s. 175, *post*.

**Sub-s. (3).**

**Statutory instrument.** For provisions as to statutory instruments generally, see the Statutory Instruments Act, 1946 (36 Statutes Supp. 95; 24 Halsbury's Statutes (2nd Edn.) 440).

**Orders under this section.** See the note to s. 172, *ante*.

**174. Provisions as to orders directing county council to perform obligations of urban district councils.**—An order under the last foregoing section directing a county council to perform any obligations of the council of a non-county borough or of an urban district may—

- (a) for the purpose of enabling the county council to comply with the order, transfer to them any of the powers conferred by this Act on local authorities;
- (b) provide that section sixty-three of the Local Government Act, 1894, shall, subject to such modifications and adaptations as may be specified in the order, apply in relation to the powers so transferred as it applies in relation to powers transferred under that Act.

#### NOTES

**History.** This section reproduces s. 172 (1) of the Housing Act, 1936, as extended by s. 48 of, and para. 9 of the Second Schedule to, the Act of 1949. These provisions of the Acts of 1936 and 1949 were not repealed by the present Act, but are now repealed by the Housing (Financial Provisions) Act, 1958 (Book II, *post*); cf. the General Note to s. 171, *ante*. The present section is applied by s. 55 (1) (b) of the Act of 1958, and s. 25 (2) thereof contains provisions formerly in s. 172 (2) of the Act of 1936 (not reproduced in the present section).

**Local Government Act, 1894, s. 63.** See the note to s. 171 (4), *ante*, where the text of this section is set out.

**175. Provisions as to exercise by Minister of powers of a local authority.**—(1) The following provisions of this section shall have effect in any case where under the foregoing provisions of this Part of this Act the Minister has by order rendered exercisable by himself any powers of a local authority.

(2) Any expenses incurred by the Minister in exercising the said powers shall be paid in the first instance out of moneys provided by Parliament, but the amount of those expenses as certified by the Minister shall on demand be paid by the local authority to the Minister and shall be recoverable as a debt due to the Crown.

(3) The payment of any such expenses as aforesaid shall, to such extent as may be sanctioned by the Minister, be a purpose for which a local authority may borrow money.

(4) The Minister may by order vest in and transfer to the local authority any property, debts or liabilities acquired or incurred by him in exercising the powers of the local authority, and that property and those debts or liabilities shall vest and attach accordingly.

(5) In this section the expression "local authority", in relation to any powers which, upon the default of a local authority, have been transferred

to a county council, means the local authority in whom those powers were originally vested.

### NOTES

**History.** This section reproduces s. 173 of the Housing Act, 1936. That section, which was not repealed by the present Act, is now repealed by the Housing (Financial Provisions) Act, 1958 (Book II, *post*); cf. the General Note to s. 171, *ante*.

#### Sub-s. (1).

**Under the foregoing provisions.** *I.e.*, under s. 172 (b) or 173 (2) (b), *ante*.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Local authority.** For meaning, see s. 1, *ante*, and note sub-s. (5), *supra*.

#### Sub-s. (3).

**Purpose for which a local authority may borrow.** As to the power of local authorities to borrow for the purposes of this Act, see s. 136, *ante*.

**Orders under this section.** Orders made under sub-s. (4), *supra*, being of local application only, are not recorded in this volume.

For general provisions as to orders made by the Minister, see s. 180 (1), *post*.

**176. Power to vary and revoke certain orders relating to defaults.**—In any case where under this Act an order has been made by a county council transferring to that council any powers or duties of a local authority, or an order has been made by the Minister transferring to a county council, or directing a county council to exercise, any powers or duties of a local authority, or rendering any powers or duties of a local authority exercisable by the Minister, the county council, or, in the case of an order made by the Minister, the Minister, may at any time by a subsequent order vary or revoke that order, but without prejudice to the validity of anything previously done thereunder; and, when any order is so revoked, the county council or, as the case may be, the Minister, may either by the revoking order, or by a supplemental order, make such provision as appears to be desirable with respect to the transfer, vesting and discharge of any property, debts or liabilities acquired or incurred by the county council, or by the Minister, in exercising the powers or duties to which the order so revoked related.

### NOTES

**History.** This section reproduces s. 174 of the Housing Act, 1936. That section, which was not repealed by the present Act, is now repealed by the Housing (Financial Provisions) Act, 1958 (Book II, *post*); cf. the General Note to s. 171, *ante*.

**Order . . . made by a county council.** *I.e.*, an order made under s. 171 (1), *ante*.

**Local authority.** For meaning, see s. 1, *ante*.

**Order . . . made by the Minister.** This section relates to three types of orders made by the Minister:—

- (i) transferring powers to a county council under s. 171 (5), *ante*;
- (ii) directing a county council to exercise powers of a local authority under s. 172 (a) or s. 173 (2) (a), *ante*;
- (iii) rendering powers of a local authority exercisable by himself under s. 172 (b) or s. 173 (2) (b), *ante*.

"The Minister" means the Minister of Housing and Local Government; see s. 189 (1), *post*.

**177. Power of London County Council in the event of default of metropolitan borough council.**—(1) Where a complaint has been made to the Minister by the London County Council that the council of a metropolitan borough have failed—

- (a) to exercise their powers under section eighteen of this Act in a case where those powers ought to have been exercised; or
- (b) to make an inspection of their borough under section seventy-six of this Act or, within a reasonable period, to complete the inspection and to submit the report thereon; or
- (c) to enforce the provisions of Part IV of this Act;

the Minister, if satisfied after due inquiry that there has been such a failure on the part of that council, may make an order declaring that council to be in default and directing that council to exercise such powers as may be necessary for the purpose of remedying the default in such manner and within such time as may be specified in the order.

(2) If the council to whom the order is addressed fail to comply with any requirement thereof within the time limited thereby for compliance therewith, the Minister may make an order directing the London County Council to perform such of the obligations of the metropolitan borough council under the original order within such time as may be specified in his order addressed to the London County Council.

(3) An order under the last foregoing subsection may provide that section two hundred and ninety-two of the Public Health (London) Act, 1936, shall, subject to such modifications and adaptations as may be specified in the order, apply in relation to the obligations specified therein as it applies in relation to duties which the London County Council are appointed to perform under that section.

(4) The Minister's powers of making orders under this section shall be exercisable by statutory instrument.

#### NOTES

**History.** Sub-ss. (1) to (3) of this section reproduce s. 175 of the Housing Act, 1936, as amended by s. 54 (4) of, and the Fifth Schedule to, the Housing Repairs and Rents Act, 1954 (which repealed a reference to certain byelaws under s. 6 (repealed) of the Act of 1936). Sub-s. (4) reproduces the effect of s. 1 (2) of the Statutory Instruments Act, 1946.

**Sub-s. (1).**

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**London County Council; metropolitan borough.** See the notes to s. 1, *ante*. Cf., also, the note "Local authority" to s. 18 (1), *ante*, and, as to s. 76 and Part IV, see ss. 88 and 89 in that Part, *ante*.

**After due inquiry.** The Minister may make his inquiry in whatever manner he chooses; he need not hold a public local inquiry and probably will not do so.

As to local inquiries, see the notes to s. 181, *post*.

**Order.** Orders made under sub-s. (1) or (2), *supra*, being of local application only, are not recorded in this volume. For general provisions as to orders made by the Minister, see s. 180 (1), *post*; and note sub-s. (4), *supra*, requiring orders under this section to be made by statutory instrument.

**Sub-s. (3).**

**Public Health (London) Act, 1936, s. 292.** 15 Halsbury's Statutes (2nd Edn.) 1025. This section deals with default on the part of a metropolitan borough council in executing or performing their duties under the Public Health (London) Act, 1936. The section provides (*inter alia*) for the defraying of expenses incurred by the county council and for the securing of any necessary loans.

**Sub-s. (4).**

**Statutory instrument.** For provisions as to statutory instruments generally, see the Statutory Instruments Act, 1946 (36 Statutes Supp. 95; 24 Halsbury's Statutes (2nd Edn.) 440).

#### General Powers of Minister

**178. Power of Minister to prescribe forms, etc.—(1)** The Minister may by regulations prescribe anything which by this Act is to be prescribed and the form of any notice, advertisement, statement or other document which is required or authorised to be used under, or for the purposes of, this Act:

Provided that this subsection shall not apply to a notice under section twenty-six or section thirty of this Act.

(2) The power of making regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### NOTES

**History.** Sub-s. (1), *supra*, reproduces s. 176 (1) of the Housing Act, 1936, with the addition of the proviso excluding notices under s. 26 or 30, *ante*, which sections

are derived from the Housing Act, 1949, and the Slum Clearance (Compensation) Act, 1956. Sub-s. (2) reproduces s. 177 of the Act of 1936, and the effect of ss. 1 (2) and 5 (2) of the Statutory Instruments Act, 1946. For the provisions formerly in s. 176 (2) and (3) of the Act of 1936, see now s. 179, *post*. Ss. 176 and 177 of the Act of 1936, which were not repealed by the present Act, are now repealed by the Housing (Financial Provisions) Act, 1958 (Book II, *post*); see now s. 52 (3) of that Act, and cf. s. 49 thereof (derived from s. 35 of the Housing Act, 1949).

**General Note.** This section empowers the Minister to prescribe forms of notices and other documents for use under this Act. The most important forms are now contained in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*).

Regulations made under the Housing Act, 1936, or earlier statutes, which were in force at the commencement of this Act on 1st September 1957 were saved by s. 191 (2), *post*, and continue in force, except those revoked by the 1957 Regulations. It should be noted that the 1957 Regulations not only replaced a number of forms but also revoked some others without replacing them; see the Preliminary Note to those Regulations (Appendix II, *post*) and cf., in particular, the notes to s. 57, *ante*.

The regulations which appear to be saved by virtue of s. 191 (2) include the Housing Act (Extinguishment of Public Right of Way) Regulations, 1937 (S.R. & O. 1937 No. 79) (see the notes to s. 64, *ante*); the Housing Act (Overcrowding and Miscellaneous Forms) Regulations, 1937 (S.R. & O. 1937 No. 80) (see the notes to ss. 68, 69, 77, 78, 80, 81, 85, 87 and 159, *ante*); and the Housing Act (Form of Charging Order) Regulations, 1939 (S.R. & O. 1939 No. 563) (see the notes to s. 15, *ante*). See also the Housing (Repair of War Damage) Regulations, 1941 (Provisional Regulations dated 10th October 1941), which were made under s. 176 (1) of the Act of 1936, as applied by s. 2 of the Housing (Emergency Powers) Act, 1939 (7 Statutes Supp. (2nd Edn.) 82; 11 Halsbury's Statutes (2nd Edn.) 625).

#### Sub-s. (1).

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Regulations.** See the General Note, *supra*; and note sub-s. (2), *supra*.

**Notice under s. 26 or s. 30.** Under s. 26, *ante*, which is derived from the Act of 1949 (see the note, "History", *supra*), the local authority will serve both a copy of a closing order and a notice that the demolition order has been determined. The present proviso excludes the power to prescribe a form of notice, but does not refer to the form of closing order; cf. also s. 17 (3), *ante*, also derived from the Act of 1949, but not mentioned in this proviso. As mentioned in the note "Closing order" to that subsection, Model Forms were suggested in Ministry of Health Circular 54/50.

Notices under s. 30 (4), *ante*, are notices served by the local authority disputing representations made under that section by a person claiming to be entitled to a payment in respect of an unfit but well-maintained house. The Act of 1956 (see the note "History", *supra*) did not apply s. 176 of the Act of 1936 for this purpose; cf., however, para. 3 (1) in Part I of the Second Schedule, *post* (power to prescribe "the appropriate multiplier" by order of the Minister).

The exclusions by the present proviso may be compared with those under ss. 166 (2) proviso and 169 (2), *ante*, and s. 179 (1) proviso, *infra*.

#### Sub-s. (2).

**Statutory instrument.** For provisions as to statutory instruments generally, see the Statutory Instruments Act, 1946 (36 Statutes Supp. 95; 24 Halsbury's Statutes (2nd Edn.) 440). For provisions as to annulment, see ss. 5 (1) and 7 (1) of that Act; and see also the Laying of Documents before Parliament (Interpretation) Act, 1948 (56 Statutes Supp. 293; 24 Halsbury's Statutes (2nd Edn.) 448).

**179. Dispensation with advertisements and notices.—(1)** The Minister may dispense with the publication of advertisements or the service of notices required to be published or served by a local authority under this Act, if he is satisfied that there is reasonable cause for dispensing with the publication or service:

Provided that this subsection shall not apply to a notice under section twenty-six or section thirty of this Act.

(2) Any such dispensation may be given by the Minister either before or after the time at which the advertisement is required to be published or the notice is required to be served, and either unconditionally, or upon such conditions as to the publication of other advertisements or the service of other notices or otherwise as the Minister thinks fit, due care being taken by

him to prevent the interests of any persons being prejudiced by the dispensation.

# NOTES

**History.** This section reproduces s. 176 (2) and (3) of the Housing Act, 1936, now repealed by the Housing (Financial Provisions) Act, 1958 (Book II, *post*).

**General Note.** As to service of notices by local authorities, see s. 169, *ante*. In connection with "Part II" or "Part V" compulsory purchase orders, see para. 19 of the First Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 19; 3 Halsbury's Statutes (2nd Edn.) 1080). For further powers, see para. 2 of the First Schedule, para. 2 (2) in Part I of the Third Schedule, and para. 3 (2) of the Fifth Schedule, *post*.

The present section empowers the Minister to dispense with the service of notices, or the publication of advertisements, on such conditions, if any, as he thinks fit.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Local authority.** For meaning, see s. 1, *ante*.

**Notice under s. 26 or s. 30.** See the note to s. 178 (1), *ante*.

**180. Provisions as to orders made by Minister.**—(1) All orders made by the Minister in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as the Minister may direct.

(2) The reasonable costs of any local authority in respect of provisional orders made in pursuance of this Act, and of the inquiry preliminary thereto, as sanctioned by the Minister, shall be deemed to be expenses properly incurred for purposes of this Act by the local authority interested in such provisional orders, and such costs shall be paid accordingly; and if thought expedient by the Minister, the local authority may contract a loan for the purposes of defraying such costs.

# NOTES

**History.** This section reproduces ss. 295 and 298 of the Public Health Act, 1875, as applied by s. 178 (2) of the Housing Act, 1936.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Shall be binding and conclusive.** This does not prevent the court from considering the question of jurisdiction; see *A.-G. v. Hanwell Urban Council*, [1900] 1 Ch. 51; 38 Digest 150, 9.

**Local authority.** For meaning, see s. 1, *ante*.

**Provisional orders made in pursuance of this Act.** For a power to make such orders, see the proviso to s. 137 (1), *ante*; see also the Ninth Schedule, para. 3 (1), *post*. For the procedure on the making of provisional orders, see the Local Government Act, 1933, s. 285 (14 Halsbury's Statutes (2nd Edn.) 501), and the London Government Act, 1939, s. 188 (15 Halsbury's Statutes (2nd Edn.) 1160). Sub-s. (2), *supra*, should be compared with s. 285 (2) of the Act of 1933 and s. 188 (2) of the Act of 1939.

**181. Local inquiries and reports.**—(1) For the purpose of the execution of his powers and duties under this Act, the Minister may cause such local inquiries to be held as he may think fit.

(2) If it appears to the Minister that owing to density of population, or any other reason, it is expedient to inquire into the circumstances of any area with a view to determining whether any powers under this Act should be put into force in that area or not, the Minister may require the local authority to make a report to him containing such particulars as to the population of the district and other matters as he may direct, and the local authority shall comply with the requirement of the Minister, and any expenses incurred by them in so doing shall be paid as expenses incurred in the execution of such Part of this Act as the Minister may determine.

# NOTES

**History.** Sub-s. (1), *supra*, reproduces s. 178 (1) of the Housing Act, 1936; that subsection, which was not repealed by the present Act, is now repealed by the Housing (Financial Provisions) Act, 1958 (Book II, *post*), and sub-s. (1), *supra*, is applied for the purposes of s. 18 and Part III (ss. 50-53) of that Act (see ss. 18 (3) and 55 (2) thereof).

Sub-s. (2) contains provisions formerly in s. 179 of the Act of 1936. For the provisions formerly in s. 178 (2) of that Act, see s. 180, *ante*. S. 186 of that Act (inquiries in London) was repealed by the London Government Act, 1939; see now s. 189 of that Act, mentioned in the note "Local inquiries", *infra*.

**General Note.** By sub-s. (1), *supra*, the Minister is empowered to cause to be held such local inquiries as he thinks fit for the purpose of the execution of his powers and duties. It will be noted that these powers fall into four categories: (i) where the Minister is bound to hold an inquiry under this Act, *e.g.*, where there is an objection, duly made and not withdrawn, on the grounds mentioned in para. 5 in Part I of the Third Schedule, *post*, to a compulsory purchase order under s. 57, *ante*, which relates to re-development areas; or where there is an objection to a re-development plan, see s. 56 (4), *ante*; (ii) where the Minister is bound to cause to be held either an inquiry or a "hearing" before a person appointed for the purpose, *e.g.*, where there is an objection, duly made and not withdrawn, to a compulsory purchase order under s. 43 or s. 51, *ante* (clearance areas, and land cleared of buildings), see para. 3 in Part I of the Third Schedule, *post*; (iii) where some investigation is necessary, but this Act does not specifically require that it should be carried out by public local inquiry or "hearing", *e.g.*, s. 177 (1), *ante*, under which the Minister may make an order "after due inquiry"; and (iv) where the Minister chooses to inquire into a matter, although not bound to do so.

To these must be added a fifth category, namely, where an inquiry or hearing required in connection with a compulsory purchase order under s. 12 or s. 29 in Part II or s. 97 in Part V, *ante*. In these instances, the procedure is that of the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 4; 3 Halsbury's Statutes (2nd Edn.) 1064), applied by para. 1 (1) of the First Schedule, or para. 1 (1) of the Seventh Schedule, *post*. As to inquiries in such cases, see s. 5 of the Act of 1946; para. 4 of the First Schedule to that Act requires the holding of an inquiry or hearing if an objection is duly made and not withdrawn (*cf.* para. 3 (2), (3) and (6) in Part I of the Third Schedule to the present Act, *post*). In general there will be no substantial difference between inquiries held under the Act of 1946 and those held under the present Act.

In the note "Local inquiries", *infra*, to sub-s. (1), attention is drawn to a number of different aspects affecting the holding of inquiries, namely, the legal requirements as to the conduct of the inquiry itself, the legal position of the Minister in confirming an order, and the procedure which is in practice usually followed at an inquiry.

#### Sub-s. (1).

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Local inquiries.** The statute law relating to inquiries held by the Minister in connection with the functions of local authorities is contained in s. 290 of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 503), or, as respects the administrative county of London, the somewhat similar provisions of s. 189 of the London Government Act, 1939 (15 Halsbury's Statutes (2nd Edn.) 1161), which superseded s. 186 of the Housing Act, 1936, as to inquiries under that Act in London. Note also that s. 5 of the Act of 1946 (mentioned in the General Note, *supra*, in connection with compulsory purchase orders under ss. 12, 29 and 97, *ante*) expressly applies s. 290 (2)-(5) of the Act of 1933.

S. 290 (1)-(5) of the Act of 1933 provide as follows:—

"(1) Where any department are authorised by this Act to determine any difference, to make or confirm any order, to frame any scheme, or to give any consent, confirmation, sanction or approval to any matter, or otherwise to act under this Act, and where the Secretary of State or the Minister is authorised to hold an inquiry, either under this Act or under any other enactment relating to the functions of a local authority, they or he may cause a local inquiry to be held.

(2) For the purpose of any such inquiry, the person appointed to hold the inquiry may by summons require any person to attend, at such time and place as is set forth in the summons, to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the inquiry, and may take evidence on oath, and for that purpose administer oaths, or may, instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matter respecting which he is examined:

Provided that—

- (a) no person shall be required, in obedience to such a summons, to go more than ten miles from his place of residence, unless the necessary expenses of his attendance are paid or tendered to him; and
- (b) nothing in this section shall empower the person holding the inquiry to require the production of the title, or of any instrument relating to the title, of any land not being the property of a local authority.

(3) Every person who refuses or wilfully neglects to attend in obedience to a summons issued under this section, or to give evidence, or who wilfully alters, suppresses, conceals, destroys, or refuses to produce any book or other document which he may be required to produce for the purposes of this section, shall be liable,

on summary conviction, to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

(4) Where a department cause any such inquiry to be held, the costs incurred by them in relation to that inquiry (including such reasonable sum not exceeding five guineas a day as they may determine for the services of any officer engaged in the inquiry) shall be paid by such local authority or party to the inquiry as the department may direct, and the department may certify the amount of the costs so incurred, and any amount so certified and directed by the department to be paid by any authority or person shall be recoverable from that authority or person either as a debt to the Crown or by the department summarily as a civil debt.

(5) The department may make orders as to the costs of the parties at any such inquiry and as to the parties by whom such costs shall be paid, and every such order may be made a rule of the High Court on the application of any party named in the order."

For the Minister's power to order costs in favour of persons opposing orders under Part III of this Act, see s. 67, *ante*.

*Conduct of inquiries.* The Minister is not himself bound to hold inquiries but only to cause inquiries to be held. The Act does not bind the Minister to cause inquiries to be held by any particular person, but in practice inquiries under this Act are held by inspectors of the Ministry of Housing and Local Government. An inquiry under this section is in the nature of a quasi-judicial proceeding. In *Errington v. Minister of Health*, [1935] 1 K.B. 249, Roche, L.J., said, at p. 280: "It is sufficient to say that, whereas it is sometimes contended that the principles of natural justice are vague and difficult to ascertain, fortunately the principles of British justice have been authoritatively laid down. They extend at all events to the assertion of this principle—that where judicial functions, or quasi-judicial functions, have to be exercised by a court or by a board, or any body of persons, it is necessary and essential, in the words of Lord Haldane, in *Local Government Board v. Arlidge*, that they must always give a fair opportunity to them who are parties in the controversy to correct or to contradict any relevant statement prejudicial to their view. In other words, these principles of British justice proceed upon the basis that both sides have a right to be heard. The learned Solicitor-General . . . said he did not dispute that all that was involved in the public inquiry were functions of the Minister and those who represented him and were quasi-judicial"; see also *Board of Education v. Rice*, [1911] A.C. 179; 19 Digest 602, 290, and *Local Government Board v. Arlidge*, [1915] A.C. 120; 38 Digest 97, 708. As to the position and duties of persons who hold inquiries, Swift, J., in *William Denby & Sons v. Minister of Health*, [1936] 1 K.B. 337, said, at p. 342: "It seems obvious that he [*i.e.*, the person holding an inquiry] must in the discharge of his duties be bound by the dictates of natural justice, and that his inquiry must be one which is fair to all parties interested. He must hear everything which any of them wish to say, and he should not hear anything from one party without giving the other an opportunity of answering it. He should not receive anything from one behind the back of the other, and, although he is not bound in any sense by the rules of evidence and procedure which apply to an ordinary Court of Law, he must, before making his report, comply with the ordinary dictates of natural justice in the obtaining and consideration of the matters which go to form the opinions or conclusions which he expresses in his report."

Some of the cases cited, *infra*, in connection with the duties of the Minister, have raised doubts about the general principles expressed in *Errington's* case and *Denby's* case, *supra*; but those principles were re-asserted in *Steele v. Minister of Housing and Local Government* (1956), 6 P. & C.R. 386, C.A.; and cf. 10 Halsbury's Laws (3rd Edn.) 42.

In the past most Government Departments have refused to disclose the report of the inspector or other person appointed to hold an inquiry or hearing, and in law they cannot be compelled to do so; see *Arlidge's* case and *Denby's* case, *supra*. The Ministry of Education, however, in practice disclosed reports made to that Ministry; see *Darlassis v. Minister of Education* (1954), 118 J.P. 452; 3rd Digest Supp.

It is now proposed, in practice, to disclose reports made by the Ministry of Housing and Local Government; see that Ministry's Circular No. 9/58, dated 27th February 1958. That Circular also drew attention to s. 41 (repealed) of the Housing Act, 1936 (see now paras. 3 (4), (5) and 5 (3), (4) in Part I of the Third Schedule, and para. 5 (3), (4) in the Fifth Schedule, *post* (relating to compulsory purchase orders, and clearance orders, under Part III of the Act)), particularly s. 41 (1), requiring certain information to be provided at least 14 days before the inquiry or hearing.

*Duties of the Minister.* The position of the Minister in hearing objections to, and in confirming, compulsory purchase orders and other orders has been considered in a number of cases decided on the housing Acts and other statutes; cf. the notes to the Fourth Schedule, *post*, and the General Note to s. 97, *ante*. Not all the cases can be easily reconciled. It seems to be established that the Minister's functions are ultimately of an administrative (or indeed legislative) character, but that at the stage of hearing objections he has the duty to hear both sides fairly and to follow the principles of natural justice.

In *Franklin v. Minister of Town and Country Planning*, [1947] 2 All E.R. 289, H.L.; 2nd Digest Supp., the Minister's functions were described as "administrative"; it is

submitted that, historically, the confirmation of an order is of a legislative rather than an administrative character. The Minister performs functions which, in the past, were discharged by parliamentary committees dealing with private bills.

It is established that the Minister need not accept any recommendations in the inspector's report; see *A.-G. v. Great Western Rail. Co.* (1877), 4 Ch.D. 735, C.A.; 38 Digest 357, 608. He may take action, if he wishes, on information not raised at the inquiry but which he has obtained in his administrative capacity; see *Miller v. Minister of Health*, [1946] K.B. 626; 2nd Digest Supp.; *Price v. Minister of Health*, [1947] 1 All E.R. 47; 2nd Digest Supp.; *Summers v. Minister of Health*, [1947] 1 All E.R. 184; 2nd Digest Supp.; *Johnson (B.) & Co. (Builders), Ltd. v. Minister of Health*, [1947] 2 All E.R. 395, C.A.; 2nd Digest Supp.

It is not clear whether the Minister's powers to act on extraneous information differ when the order is one which he himself has made (*e.g.*, under s. 171 (5), *ante*) and when, on the other hand, he is considering an order submitted by a local authority for confirmation. It is submitted, however, that there are limits on these powers. The present Act contemplates, *e.g.*, in ss. 2, 76 and 91, *ante*, that a local authority's proposals will be submitted and discussed in advance with the Ministry; cf. *Price's case*, *supra*, and *Offer v. Minister of Health*, [1936] 1 K.B. 40, C.A.; Digest Supp. On the other hand, it is submitted that *Errington v. Minister of Health*, [1935] 1 K.B. 249, C.A.; Digest Supp., and *Stafford v. Minister of Health*, [1946] K.B. 621; 2nd Digest Supp., cited in the notes to s. 97, *ante*, are still good law. If so, the Minister should not engage in *ex parte* consultation with the local authority after an inquiry and before confirmation of the order, nor receive from the authority a document specifically prepared in answer to an objection, without disclosing it to the objector. When Parliament intends to authorise such *ex parte* consultations, specific provision is made in the relevant statute; *e.g.*, s. 10 (3) of the Town and Country Planning Act, 1947 (48 Statutes Supp. 40; 25 Halsbury's Statutes (2nd Edn.) 504), relating to the approval of development plans. See also *Horn v. Minister of Health*, [1936] 2 All E.R. 1299; Digest Supp., where it was held that an interview about overcrowding, and as to general housing policy, after an inquiry had been held, did not invalidate the Minister's confirmation of a compulsory purchase order under Part III of the Act of 1936.

Some decisions of the Minister under this Act are open to review on narrow grounds and within a short time limit by the special procedure of the Fourth Schedule, *post*. This is available to challenge the validity of a compulsory purchase order made under s. 43, 51 or 57 in Part III, *ante*, and the Third Schedule, *post*; or a clearance order made under s. 44 in that Part, *ante*, and the Fifth Schedule, *post*; or a re-development plan or new plan under s. 56, *ante*. A similar procedure exists in the case of compulsory purchase orders under Part II or V (ss. 12, 29 and 97), *ante*; see Part IV, paras. 15-17, of the First Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 18, 19; 3 Halsbury's Statutes (2nd Edn.) 1079, 1080). In other cases, where no such procedure is provided, the validity of a decision may be open to challenge by *certiorari*, or by prohibition; see *Minister of Health v. R., Ex parte Yaffé*, [1931] A.C. 494; Digest Supp.; *R. v. Minister of Health, Ex parte Davis*, [1929] 1 K.B. 619; Digest Supp.; and *R. v. Minister of Health, Ex parte Waterlow and Sons, Ltd.*, [1946] 2 All E.R. 189; 2nd Digest Supp. Even when the decision of the Minister is to be "final" or "final and conclusive" it appears that these words are not sufficient to exclude *certiorari*; cf. the note to such words in s. 44 (5), *ante*.

Where a decision of the Minister is open to challenge, by *certiorari*, prohibition, or the special procedure mentioned above, the Courts will interfere only on limited grounds, *e.g.*, where the decision is *ultra vires*, and will not treat the proceedings as an appeal on points of fact, or evidence, or on matters of policy which have been entrusted by the legislature to decision by the Minister. Cf. *Re City of Plymouth (City Centre) Declaratory Order, 1946*, *Robinson v. Minister of Town and Country Planning*, [1947] 1 All E.R. 851; [1947] K.B. 702, C.A.; 2nd Digest Supp., and other cases cited in the General Note to the Fourth Schedule, *post*.

*Practice at inquiries.* The person appointed to hold an inquiry under this Act will in all probability be an inspector of the Ministry of Housing and Local Government, but any suitable person may be appointed. There may be occasions when it would be desirable to appoint an independent expert, *e.g.*, a surveyor, architect or lawyer, with special qualifications to deal with some point of difficulty which is likely to arise. The procedure at an inquiry somewhat resembles the hearing of a case in a court of law, and a "hearing", before a person appointed to hear objections without a public local inquiry, is also somewhat similar, though perhaps less formal.

The order of speeches, and of adducing evidence, may differ where the proceedings are (i) by way of appeal (*e.g.*, under s. 44 (5) or s. 109, *ante*), or are (ii) for the hearing of objections against a compulsory purchase order, or the like, made by the local authority and submitted for confirmation.

In the latter case, the promoting authority will usually open the proceedings with a statement by their counsel or other advocate, outlining the authority's case, and follow by calling their witnesses. Each witness will be examined in chief, cross-examined, and if necessary re-examined. The objectors then follow in turn, with statements by their counsel or other advocates, outlining their objections, and calling their witnesses for examination in chief, cross-examination and any necessary re-

examination. The authority's advocate will usually be allowed to reply. At large inquiries it is often convenient to recall the authority's witnesses to deal in detail with the property of each objector. In such cases the parties may be able to agree with the inspector a programme of dates on which the cases of particular objectors will be heard.

Where the proceedings are by way of appeal, the procedure is similar, except that it will be usual for the appellant to present his case before that of the authority, and to have a right of reply.

Although an inspector is not bound to insist on following precisely the procedure of a court of law (cf. *Marriot v. Minister of Health*, [1936] 2 All E.R. 865; Digest Supp.), it is convenient to follow such procedure fairly closely. Thus, if the witnesses of the local authority are called first, an objector who intends to call medical or other technical evidence to show, for example, that a house is not unfit for human habitation, should put the substance of his case to the local authority's witnesses in cross-examination so that they may be able to comment thereon. An objector who appears in person, however, may often find it difficult to put his case in this way; if so, the better course is to allow the authority's witnesses to be recalled if necessary.

It is generally undesirable for an advocate to address the inspector on matters unsupported by evidence. Some latitude may be allowed on this point, particularly when an objector cannot afford to call professional witnesses. An inspector, however, is entitled to refuse to hear statements which are not supported by evidence; see *Re London (Hammersmith) Housing Order, Land Development, Ltd.'s Application*, [1936] 2 All E.R. 1063; Digest Supp.

The power to award costs, under s. 67, *ante*, or s. 290 (5) of the Local Government Act, 1933, set out *supra*, or the corresponding provisions of s. 189 (5) of the London Government Act, 1939, is not often exercised in practice.

The inspector, or other person conducting the inquiry or hearing, will in practice visit the site, usually in the company of representatives of any parties interested, or alone. It was the practice to combine this visit with an inspection of all houses for the purposes of s. 42 (1) of the Act of 1936; see now s. 60 (1), *ante*, and the notes thereto. Any person who thinks he may be entitled to a payment under s. 60 should now specifically ask for his house to be inspected.

#### Sub-s. (2).

**Require the local authority to make a report.** For the meaning of "local authority", see s. 1, *ante*. It is probable that *mandamus* would issue in the event of a local authority refusing to comply with a requirement of the Minister under this section.

In this connection, note also the duties of local authorities under s. 76, *ante* (reports and proposals as to overcrowding), and s. 91, *ante* (periodical review of housing conditions); and cf. s. 2, *ante* (proposals for dealing with unfit houses).

### 182. Arrangements between the Minister and other Departments.

—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.

#### NOTES

**History.** This section reproduces s. 180 of the Housing Act, 1936, which was not repealed by the present Act, but is repealed by the Housing (Financial Provisions) Act, 1958 (Book II, *post*). The present section is applied for the purposes of s. 18 and Part III (ss. 50–53) of the Act of 1958 by ss. 18 (3) and 55 (2) thereof, respectively.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

#### *Miscellaneous provisions as to London*

**183. Relations between local authorities in London.**—(1) The London County Council and the Common Council of the City of London or the council of a metropolitan borough may at any time enter into an agreement with respect to—

- (a) any action to be taken under the provisions of Part III of this Act relating to clearance areas, or redevelopment areas, or under Part IV of this Act, or under the provisions of section one hundred and sixty-four of this Act relating to schemes of improvement or reconstruction, or in connection with the provision of new houses to abate overcrowding;

- (b) the exercise by one of the parties to the agreement of any powers conferred under the provisions of Part III of this Act relating to redevelopment areas or under Part IV of this Act on the other party thereto;
- (c) the making of contributions by one of those councils towards the expenses incurred by the other of them in taking any such action or in any such exercise of powers as aforesaid; or
- (d) the carrying out of any housing operations under Part V of this Act and the apportionment of the expenses incurred in carrying out such operations.

(2) It shall be the duty of the council of every metropolitan borough to furnish any information in their power which may reasonably be required by the London County Council for the purpose of enabling them to carry out their duties under the provisions of Part III of this Act relating to clearance areas, or under the provisions of section one hundred and sixty-four of this Act relating to schemes of improvement or reconstruction.

### NOTES

**History.** This section reproduces s. 181 of the Housing Act, 1936.

**General Note.** This section and ss. 184–187, *post*, containing special provisions as to London, broadly correspond with ss. 181–186 (repealed) of the Act of 1936, with the omission of ss. 183 (1) and 186 of the Act of 1936 (repealed by the London Government Act, 1939, s. 207 and Eighth Schedule), and the addition, in s. 184, *post*, of provisions from an earlier Act. Note also that s. 187 (2) and (3), *post*, are now confined to the City of London, as s. 185 of the Act of 1936 was repealed as respects other London authorities by the London Government Act, 1939.

The local authority under this Act as respects the City is the Common Council, and as respects the remainder of the administrative county of London is the London County Council or the metropolitan borough council (or both) as provided in this Act; see s. 1 (2), *ante*, and the notes thereto. The present section, which relates to a variety of matters under Parts III, IV and V of this Act, *ante*, should accordingly be read with ss. 52, 58, 88, 89 and 132, *ante*, which provide for the distribution of functions, etc., between the London County Council and metropolitan borough councils.

#### Sub-s. (1).

**London County Council; metropolitan borough.** See the notes to s. 1, *ante*.

**Clearance areas.** See ss. 42 *et seq.*, *ante*; and note s. 52, *ante*, as to the functions of the London County Council and metropolitan borough councils.

**Re-development areas.** See ss. 55 *et seq.*, *ante*; and note s. 58, *ante*.

**Part IV.** That Part, ss. 76–90, *ante*, relates to the abatement of overcrowding; as to London, note ss. 88 and 89, *ante*.

**Schemes of improvement or reconstruction.** Under s. 164, *ante*, the Court may empower an applicant to carry out such a scheme approved by, and under the supervision of, the local authority; note s. 164 (4), as to authorities in London (outside the City).

**New houses to abate overcrowding.** Cf. s. 76, *ante*, and the notes thereto. Note also ss. 88 and 89, *ante*. "Overcrowding" is defined, for the purposes of this Act, by s. 77, *ante*.

**Contributions . . . towards the expenses.** Cf. s. 89 in Part IV, *ante*.

**Housing operations under Part V.** The phrase "housing operations" is not defined. Presumably it refers principally to the provision of housing accommodation as mentioned in s. 92, *ante*. Note also ss. 93–95, and particularly s. 93 (3), *ante*, and cf. s. 185, *post*. As to the local authority under Part V as respects London (other than the City), see s. 132, *ante*, and the General Note thereto; and see also s. 133, *ante*, as to certain powers of acquiring land by agreement by authorities in London.

#### Sub-s. (2).

**Furnish any information.** This subsection may be compared with s. 88 (1), proviso (a), in Part IV, and s. 132 (3) in Part V, *ante*.

**184. Agreements between the London County Council and other authorities in London.**—The London County Council and the Common Council of the City of London or any metropolitan borough council may enter into agreements by which the Common Council or the metropolitan borough council may contribute such amounts as may be agreed towards

the provision of houses by the London County Council within or without the county to meet any special needs of the Common Council or of any metropolitan borough council.

#### NOTES

**History.** This section reproduces s. 14 (1) of the Housing (Financial Provisions) Act, 1924, as amended by s. 99 of, and Part I of the Seventh Schedule to, the Housing Act, 1935.

**London County Council; metropolitan borough council.** See the notes to s. 1, *ante*.

**Provision of houses.** Cf. para. (b) of the definition of "house" in s. 189 (1), *post*, and the definition of "provision of housing accommodation" in s. 92 (4), *ante*.

**Within or without the county.** The powers of providing housing accommodation, for supplying the needs of the district, may be exercised outside the district of the local authority; see s. 92 (1), *ante*. The present section may be compared with ss. 108 and 140 (2), *ante*, and s. 185, *post*.

**185. Agreements between the London County Council and neighbouring authorities as to provision of houses.**—The London County Council and the Common Council of the City of London, or any other council being a local authority of an area adjacent to or in the vicinity of the county of London, may enter into agreements for the provision by the London County Council of houses outside the county of London to meet the special needs of the other council, or for the provision by the other council of houses within their area to meet the needs of the London County Council, and for the payment in either case of such contributions as may be agreed by the council needing the houses to the council providing them.

In this section the expression "county of London" means the administrative county of London exclusive of the City of London.

#### NOTES

**History.** This section reproduces s. 182 of the Housing Act, 1936.

**General Note.** This section enables agreements to be made for:—

- (1) The provision of houses by the London County Council "outside the county" to meet the special needs of the Common Council of the City of London or the special needs of another local authority, being the authority of an area adjacent to or in the vicinity of "the county" of London. As "the county", in this section, excludes the City, the phrase "outside the county" appears to mean "in the City, or in an area adjacent to or in the vicinity of the rest of London".
- (2) The provision of houses by the Common Council, or a local authority for such a neighbouring area as aforesaid, within their district, to meet the needs of the London County Council.

The section thus draws a distinction between the needs of the London County Council and the needs of the other authority concerned; cf. the note "Needs of the district" to s. 91, *ante*. If *Watson's* case, there cited, was correctly decided, there would seem to be little substance in this distinction; but cf. s. 132 (5) proviso, *ante*, where a somewhat similar distinction is drawn. It will be noted that the London County Council, apart from this section, have power to provide houses outside London to meet their own needs under ss. 92 (1) and 132 (2), *ante*.

The present section appears to contain the only power for the London County Council to provide houses in the City; see the note "Other than the City" to s. 132 (5), *ante*.

**London County Council; administrative county of London.** See the note to s. 1, *ante*; and note the last sentence of the present section.

**Local authority.** See s. 1 (1), *ante*; s. 189 (2), *post*, does not appear to be relevant.

**Provision of houses.** See the note to s. 184, *supra*.

**Needs of the other council; needs of the London County Council.** See the General Note, *supra*.

**186. Provisions as to medical officers of health in London.**—(1) The London County Council may, with the consent of the Minister, at any time appoint one or more duly qualified medical practitioner or practitioners with such remuneration as they think fit for the purpose of carrying into effect any Part of this Act.

(2) Any medical officer of health appointed by the London County Council and any officer appointed by them under this section shall be deemed to be a medical officer of health of a local authority within the meaning of this Act.

### NOTES

**History.** This section reproduces s. 183 (2) and (3) of the Housing Act, 1936. S. 183 (1) of the Act of 1936 (as to temporary medical officers in London) was repealed by the London Government Act, s. 207 and Eighth Schedule; see now s. 83 of the Act of 1939.

**London County Council.** See the notes to s. 1, *ante*.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Duly qualified medical practitioner.** *I.e.*, a fully registered person as defined in s. 54 (1) of the Medical Act, 1956; see s. 52 (1) of that Act (36 Halsbury's Statutes (2nd Edn.) 614).

**Medical officer of health appointed by the London County Council.** *I.e.*, under s. 73 of the London Government Act, 1939 (15 Halsbury's Statutes (2nd Edn.) 1108). As to the appointment, qualifications, duties, etc., of medical officers of health in London, see the Sanitary Officers Order, 1926 (S.R. & O. 1926 No. 552), as amended by S.R. & O. 1935 Nos. 1110 and 1111 and S.I. 1951 No. 1021. As to official representations in London, see s. 157 (4), *ante*; and as to reports on overcrowding, see s. 79 of the Act of 1939 in conjunction with s. 86, *ante*.

**187. Provisions as to City of London.**—(1) The Common Council of the City of London may appoint a committee, consisting of so many persons as they think fit, for any purposes of this Act which in their opinion may be better regulated and managed by means of a committee:

Provided that a committee so appointed shall consist as to a majority of its members of members of the Common Council, and shall not be authorised to borrow any money, or to make any rate, and shall be subject to any regulations and restrictions which may be imposed by the Common Council.

(2) A person shall not, by reason only of the fact that he occupies a house at a rental from the Common Council of the City of London, be disqualified from being elected or being a member of the Common Council or of any committee thereof, but no person shall vote as a member of the Common Council, or any committee thereof, upon any resolution or question which is proposed or arises in pursuance of this Act, if it relates to any house, building or land in which he is beneficially interested.

(3) If any person votes in contravention of this section, he shall, on summary conviction, be liable to a fine not exceeding fifty pounds, but the fact of his giving the vote shall not invalidate any resolution or proceeding of the local authority.

### NOTES

**History.** Sub-s. (1) of this section reproduces s. 184 of the Housing Act, 1936 (repealed by this Act), as affected by s. 48 of, and para. 10 of the Second Schedule to, the Housing Act, 1949 (repealed by the Housing (Financial Provisions) Act, 1958, Book II, *post*). Sub-s. (1), *supra*, is now applied by s. 55 (1) (c) of the Act of 1958.

**Sub-s. (1).**

**Appoint a committee.** As to the power of local authorities, other than the Common Council of the City of London, to appoint committees for any purposes, see the Local Government Act, 1933, s. 85 (14 Halsbury's Statutes (2nd Edn.) 400), and the London Government Act, 1939, s. 59 (15 Halsbury's Statutes (2nd Edn.) 1100).

**Purposes of this Act.** The reference to this Act includes a reference to the Housing (Financial Provisions) Act, 1958 (Book II, *post*), by virtue of s. 55 (1) (c) of that Act.

**Sub-s. (2).**

**No person shall vote, etc.** As to the disability of members of local authorities (and of committees thereof), other than the Common Council of the City of London, for voting in certain cases, see the Local Government Act, 1933, ss. 76, 95 (14 Halsbury's Statutes (2nd Edn.) 395, 405), and the London Government Act, 1939, ss. 51, 52, 65 (15 Halsbury's Statutes (2nd Edn.) 1095, 1096, 1103). See also *Brown v. Director of Public Prosecutions*, [1956] 2 All E.R. 189; [1956] 2 Q.B. 369 (decided on Act of 1933) as to voting on housing matters.

**House; land.** For meanings, see s. 189 (1), *post*.

**Sub-s. (3).**

**Summary conviction.** See the note to s. 8, *ante*.

PART VIII

SUPPLEMENTAL

**188. Powers of Act to be cumulative.**—All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by 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.

NOTES

**History.** This section reproduces s. 187 of the Housing Act, 1936.

**General Note.** The relation between the housing Acts and the Public Health Act, 1936 (19 Halsbury's Statutes (2nd Edn.) 302), was considered in *Salisbury Corporation v. Roles*, [1948] W.N. 412. Provisions for dealing with "statutory nuisances", as defined in s. 92 of the Public Health Act, 1936, are contained in *ibid.*, ss. 91 *et seq.*; s. 93 provides for the service of an "abatement notice" by the local authority, and s. 94 (2), dealing with the making of "nuisance orders" by the court of summary jurisdiction, specifically provides for the prohibition of the use of a building for human habitation until it is rendered fit for human habitation.

In the above-mentioned case the local authority served notices under the Public Health Act on certain houses which were not only unfit for human habitation but also not capable of being rendered fit at a reasonable expense. The owner contended that demolition orders should have been made under the Housing Act, 1936 (see now ss. 16, 17 (1) and 39 (1), *ante*); that if "repairs notices" had been served under the Housing Act, a successful appeal could have been brought to the county court (see now ss. 9 and 11, *ante*); and that, particularly as the Public Health Act, 1936, and the Housing Act, 1936, came into force on the same day, the Public Health Act powers were not intended to be available in such a case. The justices refused to make an order; on appeal to the Divisional Court, the proceedings were adjourned, that court intimating that it presumed that the local authority would wish to act reasonably; and no decision was given.

As to London, cf. the power to make closing orders under the Public Health (London) Act, 1936, s. 282 and Fifth Schedule (15 Halsbury's Statutes (2nd Edn.) 1021, 1043).

**Penalty.** For provisions as to offences under two or more laws, see the Interpretation Act, 1889, s. 33 (24 Halsbury's Statutes (2nd Edn.) 226).

**Local authority.** For meaning, see s. 1, *ante*, and s. 189 (2), *post*.

**Local Act.** Note also s. 4 (2), *ante*, which reproduces the repeal of certain local Act provisions by the Housing Repairs and Rents Act, 1954. It seems, however, that a future local Act may expressly or by necessary implication override the provisions of this Act. The maxim, *leges posteriores priores contrarias abrogant*, would apply; cf. *Ellen Street Estates, Ltd. v. Minister of Health*, [1934] 1 K.B. 590, C.A.; Digest Supp.

**189. Interpretation.**—(1) In this Act, unless the context otherwise requires—

"apparatus" means sewers, drains, culverts, water-courses, mains, pipes, valves, tubes, cables, wires, transformers, and other apparatus laid down or used for or in connection with the carrying, conveying or supplying to any premises of a supply of water, water for hydraulic power, gas or electricity, and standards and brackets carrying street lamps;

"building byelaws" includes byelaws made by any local authority under section one hundred and fifty-seven of the Public Health Act, 1875, or section sixty-one of the Public Health Act, 1936, with respect to new buildings, including the drainage thereof, and new streets, and any enactments in any local Acts dealing with the construction

and drainage of new buildings and the laying out and construction of new streets, and any byelaws made with respect to such matters under any such local Act;

“contributory place” has the same meaning as in the Public Health Act, 1936;

“development corporation” means a development corporation established under the New Towns Act, 1946;

“fit for human habitation” has the meaning assigned to it by sections four and five of this Act;

“house” includes—

(a) any yard, garden, outhouses, and appurtenances belonging thereto or usually enjoyed therewith, and

(b) for the purposes of any provisions of this Act relating to the provision of housing accommodation, any part of a building which is occupied or intended to be occupied as a separate dwelling;

“housing association” means a society, body of trustees or company established for the purpose of, or amongst whose objects or powers are included those of, constructing, improving or managing or facilitating or encouraging the construction or improvement of, houses, being a society, body of trustees or company who do not trade for profit or whose constitution or rules prohibit the issue of any capital with interest or dividend exceeding the rate for the time being prescribed by the Treasury, whether with or without differentiation as between share and loan capital;

“housing trust” means a corporation or body of persons which by the terms of its constituent instrument, is required to devote the whole of its funds, including any surplus which may arise from its operations, to the provision of houses for persons the majority of whom are in fact members of the working classes, and to other purposes incidental thereto;

“land” includes any right over land;

“local government elector” has the meaning assigned to it by subparagraph (1) of paragraph 1 of the Eighth Schedule to the Representation of the People Act, 1949, as amended by the Electoral Registers Act, 1953;

“official representation” has the meaning assigned to it by section one hundred and fifty-seven of this Act;

“the Minister” means the Minister of Housing and Local Government;

“owner”, in relation to any building or land, means a person other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the building or land, whether in possession or in reversion, and includes also a person holding or entitled to the rents and profits of the building or land under a lease or agreement, the unexpired term whereof exceeds three years;

“the Rent Acts” means the Increase of Rent and Mortgage Interest Restrictions Acts, 1920 to 1939;

“statutory undertakers” means any persons authorised by any enactment or by an order, rule or regulation made under an enactment, to construct, work or carry on a railway, canal, inland navigation, dock, harbour, tramway, gas, electricity, water or other public undertaking;

“street” includes any court, alley, passage, square, or row of houses, whether a thoroughfare or not.

(2) In this Act references to a local authority where not limited by the context to references to the local authority for the purposes of this Act or of any enactment in this Act or of any other enactment relating to housing, unless the context otherwise requires include references to the Common

Council of the City of London, the London County Council, a metropolitan borough council and the council of a borough, urban district or rural district.

(3) Save where the context otherwise requires, references in this Act to any enactment shall be construed as references to that enactment as amended by any other enactment.

### NOTES

**History.** Sub-s. (1), *supra*, contains provisions formerly in s. 188 (1) and (3) of the Housing Act, 1936, as amended by ss. 1 and 51 (4) of, and the First and Third Schedules to, the Housing Act, 1949. These former provisions were not repealed by the present Act, but are now repealed by the Housing (Financial Provisions) Act, 1958, s. 59 and Sixth Schedule (Book II, *post*). The definition of "sanitary defects" in s. 188 (1) of the Act of 1936 was repealed by the Housing Repairs and Rents Act, 1954, s. 54 (4) and Fifth Schedule, which also repealed s. 188 (4) of the Act of 1936; see the paragraph "Definition of unfitness" in Chapter 3 of the Introduction at pp. 15, 16, *ante*, and the note "History" to s. 4, *ante*. As to certain other changes, see the General Note, *infra*.

Sub-s. (2) contains provisions formerly in s. 188 (2) of the Act of 1936, now repealed by the Act of 1958 (Book II, *post*). Sub-s. (3) is new.

**General Note.** This section omits certain definitions, which appeared in s. 188 of the Act of 1936, but which are now spent or repealed, or are required only for the purposes of the Housing (Financial Provisions) Act, 1958 (Book II, *post*), or are incorporated elsewhere in this Act, or are no longer required for drafting reasons. Similarly, it contains certain additional definitions, required in connection with new provisions not contained in the Act of 1936, or required to take account of other new legislation or for drafting reasons. Some of the definitions appearing both in this section and in s. 188 of the Act of 1936 are now modified for similar reasons (see the notes to such definitions, *infra*).

**Definitions omitted.** The following terms, which were defined in s. 188 of the Act of 1936, are not defined by the present section:—

(1) "The Act of 1919", "The Act of 1923", "The Act of 1924", "The Act of 1931" and "The Housing Acts". Both in this Act and in the Act of 1958 (Book II, *post*) the earlier statutes are now referred to by their full short titles, *e.g.*, the Housing, Town Planning, etc., Act, 1919; and the expression "the Housing Acts" is in places now replaced by "the enactments relating to housing", *e.g.*, in s. 155 (2), *ante*. This is a drafting change.

(2) "Agricultural population" (by reference to s. 115 (2) of the Act of 1936); see now s. 114 (5), *ante*, and the note "History" to that section; cf. also s. 58 (1) of the Act of 1958 (Book II, *post*) applying s. 114 (5), *ante*.

(3) "Exchequer contribution"; see now the definition of "Exchequer payment" in s. 58 (2) of the Act of 1958 (Book II, *post*) which also incorporates references to statutes passed since the Act of 1936.

(4) "Flat" and "block of flats"; see now s. 29 (1) of the Act of 1958 (Book II, *post*). Note also the definition of "house" in s. 58 (1) of that Act which, unlike para. (a) or (b) of the definition of "house" in sub-s. (1), *supra*, specifically includes a "flat".

(5) "Loan charges"; see now s. 58 (1) of the Act of 1958 (Book II, *post*).

(6) "Mental hospitals board"; references to such boards appeared in ss. 97 and 120 of the Act of 1936 but are omitted from ss. 126 and 136, *ante*; cf. the General Note to s. 126.

(7) "Planning scheme"; references to such schemes in ss. 16 (4) and 35 (2) of the Act of 1936, and the associated definition, were repealed by the Town and Country Planning Act, 1947, s. 113 and Eighth and Ninth Schedules. A reference to a development plan was substituted in s. 35 (2) (see now s. 56 (2), *ante*) but not in s. 16 (4) (see now s. 12 (4), *ante*).

(8) "Public Health Acts"; see s. 131, *ante* (and cf. the definition "building byelaws" in sub-s. (1), *supra*).

(9) "Sanitary defects"; see the note "History", *supra*.

(10) "Statutory security"; see s. 53 (3) of the Act of 1958 (Book II, *post*).

**Definitions added.** The definitions of "development corporation", "fit for human habitation", "local government elector" and "the Rent Acts" did not appear in s. 188 of the Act of 1936; see the notes, *infra*, to those definitions. In connection with "fit for human habitation" there was a limited definition in s. 188 (4): see the note "History", *supra*. Note also that the definition of "house" now contains, in paras. (a) and (b), respectively, the two very different definitions from s. 188 (1) and (3) of the Act of 1936.

**Other definitions.** Certain other definitions are provided elsewhere in this Act, *e.g.*, in s. 39 ("reasonable expense", "person having control") and s. 43 (1) (a) ("clearance order"); and in the Act of 1958, *e.g.*, in ss. 29, 42 and 58 thereof (Book II, *post*).

**Sub-s. (1).**

**Means; includes.** See *R. v. Kershaw* (1856), 21 J.P. 181, where Erle, J., points out the distinction between the words "include" and "mean"; the former has an extending effect and the latter an excluding effect. But the word "include" may be equivalent to "mean and include" and so have an excluding effect; see *Dilworth v. Commissioner of Stamps*, [1899] A.C. 99, at p. 106. See further as to its meaning, *Worsley v. South Devon Rail. Co.* (1851), 16 Q.B. 539; *Ex parte Ferguson* (1871), L.R. 6 Q.B. 280, *per* Blackburn, J., at p. 291; 42 Digest 679, 914; *Jones v. Cook* (1871), L.R. 6 Q.B. 505; 38 Digest 219, 527; *Pound v. Plumstead Board of Works* (1871), L.R. 7 Q.B. 183, *per* Blackburn, J., at p. 194; 42 Digest 680, 917; *Baker v. Portsmouth Corporation* (1877), 3 Ex.D. 4, 157; 26 Digest 552, 2488; *Robinson v. Barton-Eccles Local Board* (1883), 8 App. Cas. 798, H.L.; 26 Digest 269, 86; *Nutter v. Accrington Local Board* (1878), 4 Q.B.D. 375, C.A.; 42 Digest 680, 916.

**Building byelaws.** Note, in general, ss. 145–148, *ante*; and the references to such byelaws in ss. 12 (4), 29 (2) and 59 (2), *ante* (site value compensation).

The Public Health Act, 1875, s. 157 (19 Halsbury's Statutes (2nd Edn.) 74), was superseded by s. 61 of the Public Health Act, 1936 (19 Halsbury's Statutes (2nd Edn.) 358), except as to byelaws with respect to the level, width and construction of new streets and the provisions for the sewerage thereof. The present definition is wider than the definition of building byelaws in s. 343 (1) of the Public Health Act, 1936; cf. also s. 148 (1), *ante*, where this Act uses the phrase "byelaws with respect to new streets or buildings" to indicate clearly that that section refers to byelaws such as are made under the Public Health Act, 1875, as well as those which may be made under the Public Health Act, 1936 (or similar local Act powers). *I.e.*, s. 148 (1), *ante*, unlike s. 69 (2) of the Public Health Act, 1936, is not confined to building byelaws within the (narrower) definition in s. 343 (1) of that Act.

S. 157 of the Public Health Act, 1875, is printed below, with the words repealed by the Public Health Act, 1936, indicated in italics:—

" 157.—Every urban authority may make byelaws with respect to the following matters; (that is to say):

- (1) With respect to the level, width and construction of new streets, and the provisions for the sewerage thereof:
- (2) *With respect to the structure of walls, foundations, roofs and chimneys of new buildings for securing stability and the prevention of fires, and for purposes of health:*
- (3) *With respect to the sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings:*
- (4) *With respect to the drainage of buildings, to water-closets, privies ashpits and cesspools in connexion with buildings, and to the closing of buildings or parts of buildings unfit for human habitation, and to prohibition of their use for such habitation:*

And they may further provide for the observance of such byelaws by enacting therein such provisions as they may think necessary as to the giving of notices, as to the deposit of plans and sections by persons intending to lay out streets or to construct buildings, as to inspection by the urban authority, and as to the power of such authority (subject to the provisions of this Act) to remove, alter, or pull down any work begun or done in contravention of such byelaws: *Provided that no byelaws made under this section shall affect any building erected in any place (which at the time of the passing of this Act is included in an urban sanitary district) before the Local Government Acts came into force in such place, or any building erected in any place (which at the time of the passing of this Act is not included in an urban sanitary district) before such place becomes constituted or included in an urban district, or by virtue of any order of the Local Government Board subject to this enactment.*

The provisions of this section and of the two last preceding sections shall not apply to buildings belonging to any railway company and used for the purposes of such railway under any Act of Parliament."

S. 61 of the Public Health Act, 1936, is printed below, with the addition of the word "estimates" in sub-s. (2) as required by the Statistics of Trade Act, 1947, s. 14:—

" 61.—(1) Every local authority may and, if required by the Minister, shall make byelaws for regulating all or any of the following matters:—

- (i) as regards buildings:—
  - (a) the construction of buildings, and the materials to be used in the construction of buildings;
  - (b) the space about buildings, the lighting and ventilation of buildings, and the dimensions of rooms intended for human habitation;
  - (c) the height of buildings; the height of chimneys, not being separate buildings, above the roof of the building of which they form part;
- (ii) as regards works and fittings:—
  - (d) sanitary conveniences in connection with buildings; the drainage of buildings, including the means for conveying refuse water and water

from roofs and from yards appurtenant to buildings; cesspools and other means for the reception or disposal of foul matter in connection with buildings;

- (e) ashpits in connection with buildings;
- (f) wells, tanks and cisterns for the supply of water for human consumption in connection with buildings;
- (g) stoves and other fittings in buildings (not being electric stoves or fittings), in so far as byelaws with respect to such matters are required for the purposes of health and the prevention of fire;
- (h) private sewers; communications between drains and sewers and between sewers.

(2) Byelaws made under this section may include provisions as to:—

- (a) the giving of notices and the deposit of plans, sections, specifications [estimates] and written particulars; and
- (b) the inspection of work; the testing of drains and sewers, and the taking by the local authority of samples of materials to be used in the construction of buildings, or in the execution of other works.

(3) A local authority who propose to apply to the Minister for confirmation of any byelaws made under this section shall, in addition to complying with the requirements of section two hundred and fifty of the Local Government Act, 1933, publish in the London Gazette at least one month before the application is made notice of their intention to apply for confirmation."

**Contributory place.** This definition is relevant where expenses incurred by a rural district council are to be treated as special expenses; see s. 135 (1), *ante*. By s. 343 (1) of the Public Health Act, 1936 (19 Halsbury's Statutes (2nd Edn.) 495), a contributory place is in effect defined as (a) a rural parish no part of which is included in a special purpose area, (b) an area which is a special purpose area, or (c) where part of a rural parish is or is included in a special purpose area, the remainder of the parish. A special purpose area means one formed under s. 12 (1) of that Act, or under any Act repealed by that Act or by the Public Health Act, 1875. The Public Health Act, 1936, s. 12 (2), redesignates, as special purpose areas, any special drainage districts constituted under s. 277 of the Act of 1875 or the corresponding provisions of earlier Acts, such as s. 25 of the Public Health Act, 1872.

**Development corporation.** Development corporations are established under s. 2 of the New Towns Act, 1946 (25 Halsbury's Statutes (2nd Edn.) 428), and may also be established, for special purposes of combination and transfer of functions, under s. 16 of that Act; see the notes to s. 125, *ante*. Development corporations of the latter type were not expressly referred to in the Housing Act, 1949, and in consequence are now excluded from s. 121, *ante*, by s. 125 proviso; and from ss. 11, 14 and 15 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*), by the definition in s. 58 (1) of that Act.

**Fit for human habitation.** This definition is added merely to draw attention to ss. 4 and 5, *ante*, which, though placed in Part II, apply generally for the purposes of this Act.

**House.** Paras. (a) and (b) contain two very different definitions, the latter applying only for the purposes of any provisions of this Act relating to the "provision of housing accommodation"; this latter phrase being itself defined, for the purposes of Part V, in s. 92 (4), *ante*.

**Meaning in para. (a).** The definition in para. (a) merely extends the meaning of "house" to include any yard, garden, etc. In the earliest Acts, *e.g.*, s. 29 (repealed) of the Housing of the Working Classes Act, 1890, it was provided that "dwelling-house means any inhabited building and includes" any yard, garden, etc. Even in that form the definition applied to a house which had been unoccupied for some years; see *Robertson v. King*, [1901] 2 K.B. 215; 38 Digest 212, 467.

The question of what the word "house" now means is one of some difficulty. Clearly a separate building used as a dwelling is a house; but problems arise where a building contains several dwellings, or is used partly for purposes other than those of a dwelling. It is useful to refer to the following provisions:—

- (1) In s. 6, *ante*, which refers to contracts for letting a house for human habitation, the expression "house" is specially defined by s. 6 (4) to include part of a house. This implies that a house, within the ordinary definition, may include parts which are separately let. This view is supported by *Benabo v. Wood Green Borough Council*, [1945] 2 All E.R. 162; Digest Supp., cited in the note "Notice" to s. 9 (1), *ante*, and the note "Demand for the expenses" to s. 10 (3), *ante*.
- (2) In ss. 36 (1) and 90 (1), *ante*, there is a somewhat similar reference to a house or part of a house which is let in lodgings or occupied by members of more than one family.
- (3) In s. 42, *ante*, relating to clearance areas, a distinction is drawn between the houses in the area and the other buildings, if any. In s. 59 (2) proviso, *ante*, and para. 2 proviso of the Fifth Schedule, *post*, relating respectively to site value compensation and to clearance orders, it is contemplated that a building,

which is constructed or adapted partly or even wholly as, or for the purposes of, a dwelling, may yet not be a house. However, in practice, "composite" buildings have been regarded as houses, or at least as capable of being regarded as houses; see *Re Bainbridge, South Shields (D'Arcy Street) Compulsory Purchase Order, 1937, [1939] 1 All E.R. 419; Digest Supp.; Re Butler, Camberwell (Wingfield Mews) No. 2 Clearance Order, 1936, [1939] 1 All E.R. 590, C.A.; Digest Supp.*

- (4) Similarly, s. 18 (1), *ante*, refers to part of a building, used or suitable for use as a dwelling, and empowers the local authority to take "the like proceedings" as they may take in relation to a house. This again indicates that the presence of some living accommodation in a building does not, or does not necessarily, mean that the building, or that part used as a dwelling, is a house.
- (5) Under s. 33, *ante*, an owner of a house can require notice to be given to him of proceedings under Part II, or under ss. 72-75 in Part III, *ante*. Again there is a distinction between a "house" and a "building", as appears from s. 2 (2) of the Housing (Emergency Powers) Act, 1939, which, in conjunction with s. 191 (4), *post*, specifically extends s. 33, *ante*, to include references to a building, for the purposes of s. 1 of that Act. See also the note "House" to s. 74 (5), *ante*; the provisions of s. 74 (5) and (6), *ante*, appear to apply only to "houses" whereas the corresponding provisions of the Act of 1936 (s. 19 (1), (2), applied by s. 55 (5)) referred appropriately to "a building or part of a building".
- (6) The power to make closing orders under s. 17 (1) proviso, *ante*, recognises the decision, in *Birch v. Wigan Corporation, [1952] 2 All E.R. 893; 3rd Digest Supp.*, that a house in a terrace is a "house" and not "part of a building" (and could not therefore be made the subject of a closing order of the type now referred to in s. 18 (1), *ante*). This suggests that a house must be a separate building in the sense of being structurally one unit, but need not be separate in the sense of being "detached", *i.e.*, standing entirely on its own.
- (7) Huts, tents, caravans, etc., appear not to be regarded as either houses or buildings; special provision for them is made by ss. 9 (3), 16 (7) and 44 (8), *ante*. They are thus treated as if they were houses for certain purposes of Part II; and as buildings for the purposes of clearance orders.
- (8) Part II of the Second Schedule, *post*, and in particular paras. 6 and 7, contemplates that a building may be treated as an unfit house, and purchased at site value or demolished under a demolition order or clearance order, although part, or indeed the whole, is used for business purposes; cf. *Re Liverpool (Portland Street No. 2) Housing Confirmation Order (1935)* (unreported; cited in the note "Houses" to s. 42 (1), *ante*).
- (9) The definitions of "house" in para. (b), *supra*, of "dwelling-house" in s. 87, *ante*, of "house" in s. 58 (1) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*), and of "dwelling" and "flat" in s. 29 (1) of that Act, all, it is submitted, point to a distinction between the premises referred to in those definitions, which may be part only of a building, and a house as defined in para. (a), *supra*, which by contrast must be a whole building.
- (10) In s. 5, *ante*, the word "house" is used in two senses, referring to a whole building or, it seems, to part only of a building. That section contemplates that the erection or use of "a house containing several tenements" may, in some circumstances, contravene that section, *i.e.*, that the tenements in the "house" might be regarded as back-to-back "houses". The more normal use of the term is illustrated by s. 92 (4), *ante*, under which the "provision of housing accommodation" includes the provision of "separate houses . . . containing one or several tenements"; cf. also the definition of "block of flats" in s. 29 (1) of the Act of 1958 (Book II, *post*) and the cases of *Weatherill v. Cantlay, [1901] 2 K.B. 285; 38 Digest 209, 438* (where a block of tenement dwellings was held not to be a house but a collection of houses), and *Kyffin v. Simmons (1903), 67 J.P. 227; 38 Digest 209, 439* (where an ordinary six-roomed house was treated as a house though the floors were separately let). It is submitted that a block of flats is not within the present definition of "house", but that a building let in lodgings or divided into a number of separate dwellings is within the definition. What is sometimes called a "tenement house" may fall within the definition, but a large building containing tenements on the lines of a block of flats would not. A common lodging house is within the definition; see *Re Ross and Leicester Corporation (1932), 96 J.P. 459; Digest Supp.*; but cf. *London County Council v. Davis, London County Council v. Rowton House Co. (1897), 62 J.P. 68; 26 Digest 510, 2149* (decided on the London Building Act, 1894 (repealed) and cited in *Ross's case, supra*).

It is accordingly suggested that a "house" for the purposes of the definition in para. (a):—

- (i) must be a whole building, although not necessarily wholly detached from other buildings;
- (ii) may contain a number of households or indeed a number of separate dwellings;
- (iii) may be used partly, or even wholly, for business or other non-residential purposes;
- (iv) does not include every building in which there is dwelling accommodation or even, necessarily, every building which is constructed or adapted as, or for the purposes of, a dwelling.

It should be remembered that many of the cases decided on the housing Acts do not decide positively that the premises in question were a house, but merely that they were capable of being considered as such. Cases decided on other Acts should be treated with caution; e.g., *Bristol Guardians v. Bristol Waterworks Co.*, [1914] A.C. 379; 43 Digest 1066, 62 (where it was held, on an enactment relating to water supply, that a workhouse was a dwelling-house, but not a private dwelling-house), and *Richards v. Swansea Improvement and Tramways Co.* (1878), 9 Ch.D. 425, C.A.; 11 Digest (Repl.) 193, 596 (decided on s. 92 of the Lands Clauses Consolidation Act, 1845, as to taking part only of a house, building or manufactory).

Further reference may be made to *Trim v. Sturminster Rural District Council*, [1938] 2 All E.R. 168, C.A.; Digest Supp. (as to the meaning of "appurtenances"); and to *Lawson v. Fraser* (1881), 8 L.R. Ir. 55; *Slight v. Portsmouth Corporation* (1906), 95 L.T. 356; 38 Digest 212, 468; *Lewin v. End*, [1906] A.C. 299; 19 Digest 523, 3848; *Kirkpatrick v. Maxwelltown Town Council*, [1912] S.C. 288; 38 Digest 212c; *M'Diarmid v. Glasgow Housing Committee*, [1917] S.C. 361; 38 Digest 212d; *Epsom Grandstand Association, Ltd. v. Clarke* (1919), 35 T.L.R. 525; 31 Digest (Repl.) 704, 7935; *Callaghan v. Bristowe* (1920), 89 L.J.K.B. 817; 31 Digest (Repl.) 640, 7473; *Ellen v. Goldstein* (1920), 89 L.J. Ch. 586; 31 Digest 647, 7518; *Waller v. Thomas*, [1921] 1 K.B. 541; 31 Digest (Repl.) 657, 7591; *Premier Garage Company v. Ilkeston Corporation* (1933), 97 J.P. Jo. 786; and *Re Hammersmith (Berghem Mews) Clearance Order, 1936, Wilmot's Application*, [1937] 3 All E.R. 539; Digest Supp.

Although a "house" may be used wholly for business purposes, as mentioned above, a stage may be reached when, by reason of alterations and change of use to non-residential purposes, it ceases properly to be regarded as a house. In such cases the Minister has, in practice, accepted the argument that the building in question has ceased to be a house, and, on confirming a compulsory purchase order (under what is now s. 43, *ante*) has modified the order so as to indicate the property as "grey" or "pink hatched yellow" instead of "pink", i.e., as a building included only for "bad arrangement" or as land outside the actual clearance area; cf. ss. 42 (1) and 43 (2), *ante*, and the Third Schedule, *post*. The effect of such modifications has been that the property is not purchased at "site value" under s. 59 (2), *ante*, but subject only to the rules now contained in Part III of the Third Schedule, *post*, as applied by s. 59 (4), *ante*. An argument that such a modification should be made will be greatly assisted if the objector can show that planning permission was granted for the change of use under the Town and Country Planning Act, 1947.

*Meaning in para. (b).* The definition of "house" in para. (b), *supra*, applies principally for the purposes of Part V (ss. 91-134, *ante*); cf. also the reference to "new houses required" to abate overcrowding in s. 76 in Part IV, *ante*. In Part V, however, s. 92 (4) contains a definition of the "provision of housing accommodation", which is difficult to reconcile with the present definition and is of very long standing in the housing Acts (cf. s. 53 (1) (repealed) of the Housing of the Working Classes Act, 1890). There has been some tendency to substitute references to the "provision of housing accommodation" for references to the present form of definition; thus s. 29 of the Housing Act, 1930 (repealed) referred to the provision by public utility societies of "houses" (defined in s. 62 (2) of that Act, which resembled the present definition), but s. 120, *ante*, following the Acts of 1935 and 1936, uses the phrase "provide housing accommodation"; cf. the notes to s. 120 (1) and (3), *ante*.

As to the meaning of "separate dwelling", cf. the note "Dwelling-house" to s. 87, *ante*. Note also the definitions of "dwelling" in s. 29 (1) of the Act of 1958 (Book II, *post*) and of "house" in s. 58 (1) of that Act. A "flat" appears to come within the present definition, although not specifically mentioned (as in s. 58 (1) of the Act of 1958). As to temporary structures, see the Housing (Temporary Accommodation) Act, 1944 (27 Statutes Supp. 37; 11 Halsbury's Statutes (2nd Edn.) 631).

**Housing association.** The Church of England Pensions Board is to be deemed to be a housing association; see the Church of England Pensions Board (Powers) Measure, 1952, s. 4 (32 Halsbury's Statutes (2nd Edn.) 102), in conjunction with s. 191 (4), *post*. A development corporation (see the definition in sub-s. (1), and the note thereto, *supra*) of a new town is also deemed to be a housing association; see s. 125, *ante*. The present definition of "housing association" is applied by s. 58 (1) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*). In that Act, however, development corporations are referred to as such and not as being included in the term "housing association", e.g., in s. 19 of that Act (although that section contains provisions related to s. 120 as applied by s. 125, *ante*); this is merely a matter of drafting.

As to housing associations generally, see the General Note to s. 119, *ante*. The present term and its definition were introduced by s. 26 of the Housing Act, 1935 (repealed); the former term was "public utility society" which was more narrowly defined. The words "for the working classes" which appeared after the word "houses" in the definition in the Act of 1935 (as re-enacted in s. 188 (1) (repealed) of the Housing Act, 1936) were repealed by the Housing Act, 1949; a reference to the working classes remains, however, in the definition of "housing trust" in the present section, *supra*.

No instrument prescribing a rate of interest or dividend for the purposes of the present definition has been published in the S.R. & O. or S.I. series. As to the expression "who do not trade for profit", cf. the reference to organisations "not established or conducted for profit" in s. 8 (1) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955 (91 Statutes Supp. 64; 35 Halsbury's Statutes (2nd Edn.) 394).

**Housing trust.** As to the meaning of the "working classes", see the note to s. 8, *ante*, and, in particular, *Guinness Trust (London Fund) Founded 1890 Registered 1902 v. Green*, [1955] 2 All E.R. 871, C.A.; 3rd Digest Supp. The present definition does not expressly confine housing trusts to such as are charitable; cf., also, s. 128, *ante*.

By s. 33 of the Housing Repairs and Rents Act, 1954 (84 Statutes Supp. 73; 34 Halsbury's Statutes (2nd Edn.) 357), provision was made, *inter alia*, (i) for excluding the protection of the Rent Acts when the landlord's interest is that of a housing trust, and (ii) for excluding s. 3 (3) (repealed) of the Housing Act, 1952, on the sale of a house by a local authority to a housing trust. The latter provision is now repealed and re-enacted by certain words in parentheses in s. 104 (3), *ante* (which otherwise re-enacts s. 3 (3) of the Act of 1952); see the note "Not being . . . to a local authority, county council, etc." to s. 104 (3), *ante*.

In the Act of 1954, s. 33 (9) extends the effect of the present definition, by treating as housing trusts certain charitable trusts whose constituent instruments would allow their funds to be devoted to wider purposes, but who in fact devote the whole, or substantially the whole, of their funds to the purposes mentioned in the present definition. This extension is not re-enacted in s. 104 (3), *ante*. Consequently, it seems, the "housing trusts" mentioned in s. 104 (3), *ante*, must be subject to the jurisdiction of the Charity Commissioners and satisfy the present definition; and the "housing trusts" mentioned in s. 33 of the Act of 1954, as amended, must be subject to such jurisdiction and satisfy this definition (applied by that section, as now adapted by s. 190 and the Tenth Schedule, *post*), but with the extension mentioned above.

The present definition does not exclude "trading for profit" (see the definition of "housing association", *supra*) so long as any surplus which may arise is devoted to the purposes of the trust; cf. *Guinness Trust (London Fund) Founded 1890 Registered 1902 v. West Ham Corporation*, [1958] 2 All E.R. 237.

**Land.** "Land" will include buildings; see s. 3 of the Interpretation Act, 1889 (24 Halsbury's Statutes (2nd Edn.) 207). As to rights over land, note ss. 64 and 65, *ante* (extinguishment of rights of way, etc., on purchases under Part III) and s. 103, *ante* (acquisition of water rights under Part V). As to the "land" which may be acquired under a notice to treat, see the note "Land" to para. 1 of the First Schedule, *post*. As to the "land" which must be shown on the map referred to in a compulsory purchase order, see *Tutin v. Northallerton Rural District Council* (1947), 91 Sol. Jo. 383, C.A.; 2nd Digest Supp., cited in the notes to para. 1 of the Third Schedule, *post*.

**Local government elector.** This expression was not defined in the Housing Act, 1936, but presumably referred to persons registered as such under the Representation of the People Act, 1918, as amended. For the Representation of the People Act, 1949, Eighth Schedule, para. 1 (1), see 8 Halsbury's Statutes (2nd Edn.) 815, and for the Electoral Registers Act, 1953, see 33 Halsbury's Statutes (2nd Edn.) 74. See also the Electoral Registers Act, 1949 (28 Halsbury's Statutes (2nd Edn.) 487) (as amended by the Act of 1953). The express reference to the Housing Act, 1936, in the list at the end of the Schedule to the Act of 1953, is now repealed by s. 191 and the Eleventh Schedule, *post*.

**The Minister.** The Minister referred to in the Housing Act, 1936, was the Minister of Health. By the Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No. 1) Order, 1951 (S.I. 1951 No. 142), which was made under the Ministers of the Crown (Transfer of Functions) Act, 1946 (36 Statutes Supp. 8; 4 Halsbury's Statutes (2nd Edn.) 558), all functions of the Minister under the Act of 1936 were transferred to the Minister of Local Government and Planning, formerly styled the Minister of Town and Country Planning, *i.e.*, the Minister appointed under the Minister of Town and Country Planning Act, 1943 (19 Statutes Supp. 4; 4 Halsbury's Statutes (2nd Edn.) 536). An exception was made for s. 67 of the Act of 1936; see the notes to s. 86, *ante* (duty of medical officers to furnish particulars of overcrowding). That order also transferred the functions of the Minister under all other housing statutes then in force; see the list in Part I of the Schedule to the order (which in effect corresponds with the statutes listed as (1) to (24) in Chapter 4 of the Introduction, pp. 24-28, *ante*). The order came into operation on 30th January 1951; and is printed in *Hill's Complete Law of Housing*, 2nd Supplement to 4th Edn., at pp. B213-B217, and in 5 Halsbury's Statutory Instruments, title Constitutional Law (Part 5).

By the Minister of Local Government and Planning (Change of Style and Title) Order, 1951 (S.I. 1951 No. 1900), which came into operation on 3rd November 1951, the Minister became the Minister of Housing and Local Government.

**Owner.** This definition is virtually the same as that in s. 8 (1) of the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 11; 3 Halsbury's Statutes (2nd Edn.) 1074), which now applies to compulsory purchase orders under Part II and Part V of this Act, *ante*, by virtue of the First and Seventh Schedules, *post*.

It is entirely different from the definition of "owner" in s. 42 (1) of the Housing (Financial Provisions) Act, 1958 (Book II, *post*), which resembles that of "owner" in s. 343 (1) of the Public Health Act, 1936 (19 Halsbury's Statutes (2nd Edn.) 495), and that of the "person having control" of a house in s. 39 (2), *ante*.

As to requiring information about the interest of any person in premises "whether as freeholder, mortgagee, lessee or otherwise", see s. 170, *ante*. Mortgagees who are not owners may be entitled to receive certain notices under this Act; see, for example, s. 16 (1), *ante*, and para. 2 (1) (b) in Part I of the Third Schedule, *post*.

Where the Lands Clauses Acts are incorporated with any of the provisions of this Act, the word "owner" will mean any person who is enabled to sell and convey lands to the "promoters", *i.e.*, the acquiring authority; see s. 3 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 895).

**Rent Acts.** The correct collective title is the "Rent and Mortgage Interest Restrictions Acts, 1920 to 1939"; see s. 9 (1) of the Act of 1939 (*infra*). The Acts which may be so cited are the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920; the Increase of Rent and Mortgage Interest Restrictions (Continuance) Act, 1923; the Rent Restrictions (Notices of Increase) Act, 1923; the Rent and Mortgage Interest Restrictions Act, 1923; the Prevention of Eviction Act, 1924; the Rent and Mortgage Interest (Restrictions Continuance) Act, 1925; the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933; the Increase of Rent and Mortgage Interest (Restrictions) Act, 1935; the Increase of Rent and Mortgage Interest (Restrictions) Act, 1938; and the Rent and Mortgage Interest Restrictions Act, 1939. The first-mentioned Act of 1923 is no longer relevant, and the second-mentioned Act of that year was repealed as respects England and Wales by the Rent Act, 1957. For the other Acts, see 103 Statutes Supp. 141-173, and 13 Halsbury's Statutes (2nd Edn.) 981-1084. Note also sub-s. (3), *supra*, whereby references in this Act to any enactment are to that enactment as amended, save when the context otherwise requires. As to the exclusion of the Rent Acts by certain provisions of this Act, cf. the note "History" to s. 158, *ante*, and as to their exclusion by s. 33 of the Housing Repairs and Rents Act, 1954, see the note "Not being . . . to a local authority, county council, etc." to s. 104 (3), *ante*.

**Statutory undertakers.** This definition closely resembles that in s. 343 (1) of the Public Health Act, 1936 (19 Halsbury's Statutes (2nd Edn.) 497), and in s. 305 of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 512); cf., also, s. 8 (1) of the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 11; 3 Halsbury's Statutes (2nd Edn.) 1073), and s. 119 (1) of the Town and Country Planning Act, 1947 (48 Statutes Supp. 202; 25 Halsbury's Statutes (2nd Edn.) 635).

**Street.** In the Public Health Act, 1936, "street" is defined by s. 343 (1) (19 Halsbury's Statutes (2nd Edn.) 497), to "include any highway, including a highway over a bridge, and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not"; cf., also, s. 4 of the Public Health Act, 1875 (19 Halsbury's Statutes (2nd Edn.) 61). The present definition appears to be narrower, but many of the provisions of this Act referring to streets refer also to building byelaws (defined, in sub-s. (1), *supra*, by reference to the Public Health statutes), so that in practice there may be little difference between these definitions.

**Sub-s. (2).**

**Local authority.** As to local authorities for the purposes of this Act, see s. 1, *ante*.

**London County Council; metropolitan borough council; borough, urban district or rural district.** See the notes to s. 1, *ante*. Note that county councils, other than the London County Council, are not mentioned in this subsection, nor are they local authorities within the meaning of s. 1. They are therefore expressly mentioned in s. 104 (3), *ante* (in the words, in parentheses, excluding that subsection where a house is sold by the local (housing) authority to a local authority, etc.); and see also ss. 116, 117, 119, 126, 135-140, 156 and 171-176, *ante*.

**190. Consequential amendments.**—The enactments mentioned in the Tenth Schedule to this Act shall have effect subject to the amendments specified in that Schedule, being amendments consequential on the provisions of this Act.

**191. Repeal and savings.**—(1) The enactments set out in the Eleventh Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(2) The repeals made by this section shall not affect any order, byelaw, regulation or plan made, charge effected, undertaking, notice, approval, certificate, direction or determination given, or other thing done before the commencement of this Act, but any order, byelaw, regulation, plan, charge, undertaking, notice, approval, certificate, direction, determination or thing made, effected, given or done, or having effect as if made, effected, given or done, under any enactment repealed by this section shall, if in force at the commencement of this Act, continue in force and shall, so far as it could have been made, effected, given or done under this Act, have effect as if made, effected, given or done under the corresponding provision of this Act.

(3) Any person who at the commencement of this Act holds office or acts or serves under or by virtue of any enactment repealed by this Act shall continue to hold his office or to act or serve as if he had been appointed under this Act.

(4) Any enactment or document referring to any enactment repealed by this Act, by the Housing Act, 1936, or by the Housing Act, 1925, shall be construed as referring to the corresponding provision of this Act.

(5) For the purposes of subsection (3) of section one hundred and twenty-two of the Magistrates' Courts Act, 1952 (which provides that rules under that section may amend or repeal any enactment passed before the sixteenth day of December, nineteen hundred and forty-nine so far as it relates to matters about which such rules may be made), this Act shall be treated as if it had been passed before that date.

(6) The provisions of this section shall be without prejudice to the provisions of section thirty-eight of the Interpretation Act, 1889, as to the effect of repeals.

#### NOTES

**General Note.** Sub-ss. (2)–(4) and (6), *supra*, together with s. 192, *post*, may be compared with s. 189 (1), (2) and (5)–(7) of the Housing Act, 1936.

**Enactments repealed.** The housing statutes remaining in force, in whole or in part, immediately after the commencement of this Act are listed in Chapter 4 of the Introduction, pp. 24–29, *ante*. Further repeals were effected by the Housing (Financial Provisions) Act, 1958 (Book II, *post*); see the Table of Repeals and Replacements (Appendix I, *post*).

**Commencement of this Act.** *I.e.*, 1st September 1957; see s. 193 (2), *post*.

**Housing Act, 1936.** 11 Halsbury's Statutes (2nd Edn.) 444. For the enactments repealed by that Act, see s. 190 and the Twelfth Schedule (11 Halsbury's Statutes (2nd Edn.) 591, 610).

**Housing Act, 1925.** 15 Geo. 5 c. 14. That Act was repealed by s. 190 of, and the Twelfth Schedule to, the Housing Act, 1936 (11 Halsbury's Statutes (2nd Edn.) 591, 610).

**Magistrates' Courts Act, 1952, s. 122 (3).** 32 Halsbury's Statutes (2nd Edn.) 517.

**Interpretation Act, 1889, s. 38.** That section provides as follows:

“38.—(1) When this Act or any Act passed after the commencement of this Act repeals or re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intentions appear, be construed as references to the provisions as re-enacted.

(2) When this Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or
- (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or

- (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed."

**192. Construction of references to this Act and to enactments repealed.**—Without prejudice to subsection (2) of the last foregoing section, any reference in any provision of this Act to, or to things done or falling to be done under, any provision of this Act shall, if and so far as the context permits, be construed as including, in relation to times, circumstances and purposes in relation to which the corresponding provision in the enactments repealed by this Act, by the Housing Act, 1936, or by the Housing Act, 1925, has or had effect, a reference to, or to things done or falling to be done under, that corresponding provision.

#### NOTE

Housing Act, 1936; Housing Act, 1925. See the notes to s. 191, *ante*.

**193. Short title, commencement and extent.**—(1) This Act may be cited as the Housing Act, 1957.

(2) This Act shall come into force on the first day of September, nineteen hundred and fifty-seven.

(3) This Act shall not extend to Scotland or Northern Ireland.

### SCHEDULES

#### FIRST SCHEDULE

Sections 12, 29

##### COMPULSORY PURCHASE OF LAND UNDER PART II

1.—(1) The Acquisition of Land (Authorisation Procedure) Act, 1946, shall apply to a compulsory purchase of land under Part II of this Act as if this Act had been in force immediately before the commencement of that Act, but that Act and the enactments applied by that Act shall have effect subject to the provisions of this Act.

(2) In the case of a compulsory purchase of land under Part II of this Act section one hundred and thirty-three of the Lands Clauses Consolidation Act, 1845 (which relates to promoters making good deficiencies in rates), shall not apply.

(3) Any compensation payable in pursuance of a compulsory purchase under Part II of this Act by a local authority in respect of any lands, estate or interest of another local authority which would, but for this sub-paragraph, be paid into court in manner provided by the Lands Clauses Acts may, if the Minister consents, instead of being paid into court, be paid and applied as the Minister may determine.

A decision of the Minister under this sub-paragraph shall be final and conclusive.

#### NOTES

**History.** This paragraph contains provisions formerly in ss. 146 and 147 of the Housing Act, 1936, in s. 1 (1) (not repealed) of, and para. 2 (b) (repealed in part) of the Second Schedule to, the Acquisition of Land (Authorisation Procedure) Act, 1946, and in ss. 3 (4) and 22 (3) of the Housing Repairs and Rents Act, 1954.

**General Note.** This Schedule is applied by ss. 12 (1) and 29 (1), *ante*, to the compulsory purchase of houses under those sections. Under s. 12 (1), the power of purchase arises after an appeal to the county court (under s. 11, *ante*) against a "repairs" notice (s. 9, *ante*), where the judge has found that the house cannot be rendered fit for human habitation at a reasonable expense. Under s. 29 (1), *ante*, the power of purchase arises from s. 17 (2), *ante* (determination to purchase for temporary accommodation, in lieu of demolition) or from s. 34 (5), *ante* (certain houses subject to orders made before 13th August 1954, where occupation has been authorised by Defence Regulations 68A or 68AA, or similar statutory powers).

Para. 1 (1), *supra*, applies the procedural and other provisions of the Acquisition of Land (Authorisation Procedure) Act, 1946, to compulsory purchase orders for the purposes of Part II of the present Act. Those provisions are applied subject to those of this Act; e.g., the compensation for all "Part II" purchases is to be at "site value" under ss. 12 (4) and 29 (2), *ante*, which thus modify the ordinary measure of compensation under the enactments incorporated with the Act of 1946.

Paras. 2 and 3, *post*, relate respectively to the service of certain notices, and to the taking of "notional" possession of a house, without actual entry.

#### Sub-para. (1).

**Acquisition of Land (Authorisation Procedure) Act, 1946.** 39 Statutes Supp. 4; 3 Halsbury's Statutes (2nd Edn.) 1064. Under the present Act Part II purchases are governed by the Act of 1946 as applied by this Schedule; Part III purchases have their own authorisation procedure under the Third Schedule, *post*; and Part V purchases are governed by the Act of 1946 as applied by the Seventh Schedule, *post*. The forms originally prescribed under the Housing Act, 1936, for Part II purchases, lapsed on the coming into force of the 1946 Act. The forms prescribed for use, under the Act of 1946, are at present contained in the Compulsory Purchase of Land Regulations, 1949 (S.I. 1949 No. 507); see the Preliminary Note to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*).

**Compulsory purchase.** Both ss. 12 (1) and 29 (1), *ante*, provide that the local authority, in the circumstances to which those sections respectively apply, may purchase the house by agreement or may be authorised by the Minister to purchase it compulsorily. Thus if the persons interested in the house are willing to sell, there is normally no need to make a compulsory purchase order. If there is a compulsory purchase order, it will be made by the authority under the procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946 (*ubi supra*). After an opportunity for objections, which may lead to the holding of an inquiry or hearing, the Minister may confirm the order, with or without modifications; or he may decline to do so. If the order is confirmed, the local authority are thereby placed in the position of the "promoters of the undertaking" under the Lands Clauses Acts, as if they had obtained a "special Act" (see the definitions in s. 2 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 894)). This "special Act" consists of the relevant provision of the present Act and the compulsory purchase order; see the Act of 1946, s. 1 (3) and Second Schedule, para. 1 (39 Statutes Supp. 5, 19; 3 Halsbury's Statutes (2nd Edn.) 1065, 1081).

The Lands Clauses Consolidation Act, 1845, s. 6 (3 Halsbury's Statutes (2nd Edn.) 896), as incorporated with the compulsory purchase order, will enable the authority to purchase by agreement at this stage (*i.e.*, after the order has become operative); and this is so whether or not notice to treat has been served under s. 18 of that Act. A notice to treat (as its name implies) is in form a notice requesting an owner to sell by agreement; but if agreement is not reached the authority have power to acquire compulsorily under ss. 18-68 of the Act of 1845, and the owner may have his compensation assessed, in default of agreement, by the Lands Tribunal.

In the present paragraph the term "compulsory purchase" is used in the general sense of any purchase following a compulsory purchase order, and is not confined to cases where the whole procedure of a strictly compulsory acquisition is followed through; cf. 10 Halsbury's Laws (3rd Edn.) 4, where the various meanings of the phrase "compulsory acquisition" are considered.

**Land.** The powers of purchase under ss. 12 (1) and 29 (1), *ante*, and this Schedule, relate to the purchase of a "house" within the meaning of para. (a) of the definition in s. 189 (1), *ante*. "Land" is defined in s. 189 (1), *ante*, as including any right over land; see also s. 8 (1) of the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 11; 3 Halsbury's Statutes (2nd Edn.) 1073), whereby "land" in that Act will include anything falling within the meaning of that expression in the enactment which gives the power of purchase.

The reference to "any right over land" in s. 189 (1), *ante*, will not enable the local authority to purchase compulsorily anything less than the estate, interest or right which the owner has to offer; *i.e.*, they cannot "carve out" some lesser right in the property if, for example, the owner can offer the freehold. See 10 Halsbury's Laws (3rd Edn.) 61, where the general principle is stated, with reference to service of notice to treat, as follows: "No notice need be served if the undertakers merely desire to interfere with or destroy incorporeal rights in property, such as easements, and do not desire to acquire those rights . . .; and this is so even where they are authorised to purchase easements. If, however, . . . it would be sufficient for the undertakers to purchase and take only easements or corporeal rights in land, such as a stratum in order to construct a tunnel, they must serve notice to treat for the whole of the land, unless there is express power in their special Act to acquire an easement or some such limited right in the land, in which case they would under most statutes be required to serve notices in respect of the easements or other right."

**Under Part II.** See ss. 12, 17 (2), 29 and 34 (5), *ante*, and the General Note, *supra*.

**As if this Act had been in force.** This form of words is necessary to preserve the application of the Acquisition of Land (Authorisation Procedure) Act, 1946, to purchases under this Schedule. The Act of 1946 was passed and came into operation on 18th April 1946. It applied to "Part II" purchases under the Act of 1936 as follows: (i) in the case of purchases under s. 16 of the Act of 1936 (see now s. 12, *ante*), the standard procedure of the 1946 Act was introduced by s. 1 (1) (a) of the latter Act; and (ii) in the case of purchases under the Housing Repairs and Rents Act, 1954, s. 3, which was construed as one with Part II of the Act of 1936 (see now s. 29, *ante*), the Act of 1946 applied by virtue of s. 3 (4) of the 1954 Act, which contained the appropriate form of words similar to those now used in this Schedule.

**The enactments applied by that Act.** See the Act of 1946 (*ubi supra*), s. 1 (3) and Second Schedule, applying with modifications (i) the Lands Clauses Acts; (ii) the railway "mining code" in ss. 77-85, or s. 77 only, of the Railways Clauses Consolidation Act, 1845 (19 Halsbury's Statutes (2nd Edn.) 633-638) (if the compulsory purchase order so provides); and (iii) the Acquisition of Land (Assessment of Compensation) Act, 1919 (31 Statutes Supp. 177; 3 Halsbury's Statutes (2nd Edn.) 975).

Para. 2 (b) of the Second Schedule to the Act of 1946 (now amended by s. 191, *ante*, and the Eleventh Schedule, *post*) excluded s. 133 of the Lands Clauses Consolidation Act, 1845, in the case of compulsory purchase orders for the purposes of Parts II and V of the Housing Act, 1936 (cf. s. 147 (repealed) of that Act), and in the case of purchases under other Acts if the compulsory purchase order so provided. The present Act has repealed the express reference in the Act of 1946 to the Housing Act, 1936; but para. 1 (2), *supra*, preserves the effect of the Act of 1946 and of s. 147 of the Housing Act, 1936, and s. 133 of the Act of 1845 remains excluded (see the note as to that section, *infra*).

Paras. 3 and 4 of the Second Schedule to the Act of 1946 contain important provisions relating to entry on land on 14 days' notice after service of notice to treat (without compliance with ss. 84-90 of the Act of 1845; and cf. para. 3 of the present Schedule, *post*) and to the purchase of part only of premises (a "material detriment" provision, varying s. 92 of the Act of 1845).

**Subject to the provisions of this Act.** *E.g.*, to the modifications in this Schedule; to the provisions of ss. 12 (4) and 29 (2), *ante*, as to "site value" compensation; and to s. 149, *ante*, as to ancient monuments, etc.

#### Sub-para. (2).

**Lands Clauses Consolidation Act, 1845, s. 133.** 3 Halsbury's Statutes (2nd Edn.) 955. That section originally required undertakers to make good, until the completion of any works for which land was taken, any deficiency of land tax and poor rate caused by the land being taken or used for such works. The liability to make good land tax deficiencies was abolished by the Finance Act, 1949. References to poor rate are now to be construed in accordance with s. 2 (7) of the Rating and Valuation Act, 1925 (20 Halsbury's Statutes (2nd Edn.) 105); and as to London, see s. 43 of the London County Council (General Powers) Act, 1949 (71 Statutes Supp. 80; 20 Halsbury's Statutes (2nd Edn.) 325). The effect of the present sub-paragraph is to nullify the decision in *St. Leonard, Shoreditch Vestry v. London County Council*, [1895] 2 Q.B. 104; 11 Digest (Repl.) 109, 53. It is derived from s. 147 of the Act of 1936, which is also reproduced in the Third Schedule, Part II, para. 8 (3) (b), and in the Seventh Schedule, para. 1 (2), *post*, in relation to Part III and Part V purchases respectively. See also the note "The enactments applied by that Act" (*i.e.*, the Act of 1946) to para. 1 (1), *supra*.

#### Sub-para. (3).

**By a local authority; another local authority.** This sub-paragraph is derived from s. 146 of the Act of 1936 (cf. the Third Schedule, Part II, para. 8 (7), and the Seventh Schedule, para. 1 (3), *post*; and s. 133 (2), *ante*, as to purchases by agreement made by local authorities for London). For the limited protection of local authority land against compulsory purchase under the procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946, see s. 1 (2) (a) of, and Part III of the First Schedule to, that Act (39 Statutes Supp. 5, 17; 3 Halsbury's Statutes (2nd Edn.) 1065, 1077). The restrictions formerly contained in s. 75 of the Act of 1936 applied only to "Part V" purchases, and were repealed by the Act of 1946. For the meaning of "local authority" in this Act, see s. 1 and the notes thereto, and s. 189 (2), *ante*; and for the meaning of that expression in the Act of 1946, see s. 8 (1) thereof.

**Would . . . be paid into court.** See the Lands Clauses Consolidation Act, 1845, ss. 69 *et seq.*, as affected by the Law of Property Act, 1925, s. 42 (7). Note also ss. 109 *et seq.* of the Act of 1845, as to mortgaged land, and s. 117 of that Act as to rentcharges.

The purpose of the present sub-paragraph is to avoid the trouble and expense of such deposit, and the subsequent procedures for payment out. Cf. s. 177 of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 448), which was copied from s. 129 of the Housing Act, 1925 (repealed).

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *ante*.

**Decision . . . shall be final and conclusive.** The word "consents", in this sub-paragraph, appears to indicate that the acquiring authority will suggest that the

Minister should exercise his power to direct how the compensation shall be paid and applied. The Minister may give or withhold such consent; this seems to be the first "decision" he must make. Then, if he decides to exercise the power, he will do so; this seems to be a further "decision". Either type of decision will be difficult, if not impossible, to challenge in the courts; see *R. v. Minister of Health, Ex parte Glamorgan County Mental Hospital (Committee of Visitors)*, [1938] 4 All E.R. 32, C.A.; Digest Supp., but consider *Walsall Overseers v. London & North Western Rail. Co.* (1878), 4 App. Cas. 30; 16 Digest 186, 920, and *R. v. Nat Bell Liquors, Ltd.*, [1922] 2 A.C. 128; 16 Digest 419, 2795 (followed in *R. v. Northumberland Compensation Appeal Tribunal, Ex parte Shaw*, [1951] 1 All E.R. 268; affirmed, [1952] 1 All E.R. 122, C.A.).

**Lands Clauses Acts.** See the note to s. 133 (2), *ante*.

2.—(1) A notice relating to a compulsory purchase of land under Part II of this Act which by paragraph (b) of sub-paragraph (1) of paragraph 3 of the First Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946, is to be served on an owner, lessee or occupier of such land may be served by addressing it to him by the description of "owner" or "lessee" or "occupier" of the land (describing it) to which it relates and by delivering it to some person on the premises or, if there is no person on the premises to whom it may be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

(2) The foregoing sub-paragraph shall be without prejudice to the methods of serving notices prescribed by paragraph 19 of the First Schedule to the said Act.

#### NOTES

**History.** This paragraph contains provisions formerly in para. 1 of the First Schedule to the Housing Repairs and Rents Act, 1954. The Act of 1954 contained a saving for the Acquisition of Land (Authorisation Procedure) Act, 1946 (see now para. 2 (2), *supra*) and for s. 167 of the Housing Act, 1936 (see now s. 169, *ante*).

**General Note.** This paragraph provides additional modes of service, supplemental to para. 19 in Part V of the First Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 19; 3 Halsbury's Statutes (2nd Edn.) 1080). Para. 19 (1) in that Schedule deals with ordinary or "personal" service of a document by delivering it to the person to be served, or leaving it at his "proper address" (defined in para. 19 (3) of that Schedule), or by sending it by registered post. Sub-para. (1) *supra*, is similar to para. 19 (4) in the First Schedule to the Act of 1946, with the important difference that it does not require the Minister to be satisfied that it is not reasonably practicable to ascertain the name or address of any person to be served before resort is made to the substituted modes of service. In this respect, cf. also s. 169 (1) (e), *ante*, and note s. 179, *ante*.

**Sub-para. (1).**

**Acquisition of Land (Authorisation Procedure) Act, 1946, First Schedule, para. 3 (1) (b).** 39 Statutes Supp. 15; 3 Halsbury's Statutes (2nd Edn.) 1075. The notice referred to is a notice to be served in the form prescribed by the Compulsory Purchase of Land Regulations, 1949 (S.I. 1949 No. 507), stating the effect of a compulsory purchase order, and that it is about to be submitted for confirmation, and specifying the time and manner in which objections may be made. It has to be served on every owner, lessee and occupier, subject to three exceptions: (i) the confirming authority may excuse service in a particular case, (ii) tenants for a month or less period need not be served, and (iii) "statutory tenants" need not be served, as a result of s. 50 of the Housing Repairs and Rents Act, 1954. This last-mentioned provision is reproduced in several provisions of the present Act (*e.g.*, para. 2 (3) in Part I of the Third-Schedule, *post*, relating to "Part III" purchases); see the Table of Repeals and Replacements (Appendix I, *post*).

**Owner.** The definition of "owner" in the Act of 1946 is virtually identical with that in s. 189 (1), *ante*. The difference between them is that this Act refers to "building or land" whereas the Act of 1946 refers only to "land" (which will, however, include any building, by virtue of s. 3 of the Interpretation Act, 1889; 24 Halsbury's Statutes (2nd Edn.) 207).

**Lessee; occupier.** Note the exceptions referred to in the first note, *supra*, to this sub-paragraph.

**Sub-para. (2).**

**The said Act.** For para. 19 of the First Schedule to the Act of 1946, see 39 Statutes Supp. 19; 3 Halsbury's Statutes (2nd Edn.) 1080.

3. Where a local authority are authorised under Part II of this Act to purchase compulsorily any house (and, in the case of a purchase under section twelve of this Act, the house is to be used for housing purposes under Part V of this

Act) and the local authority have acquired the right to enter on and take possession of the house by virtue of having served a notice under paragraph 3 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946, the local authority may, instead of exercising that right by taking actual possession of the house, proceed by serving notice on any person then in occupation of the house or any part thereof authorising him to continue in occupation upon terms specified in the notice, or on such other terms as may be agreed; and accordingly where the authority proceed in the manner authorised by this paragraph,—

- (a) the like consequences shall then ensue, with respect to the determination of the rights and liabilities of any person arising out of any interest of his in the house or any part thereof, as would have ensued if the authority had taken actual possession on the date of the notice, and the authority may deal with the premises in all respects as if they had done so; and
- (b) for the purposes of section one hundred and twenty-one of the Lands Clauses Consolidation Act, 1845 (which provides for payment of compensation to persons entitled to possession under short tenancies who are required to give up possession), any person who by virtue of this paragraph ceases to be entitled to receive rent in respect of any premises shall be deemed to have been required to give up possession thereof.

# NOTES

**History.** This paragraph contains provisions formerly in s. 14 (3) of the Housing Repairs and Rents Act, 1954. It is almost identical in terms with s. 98, *ante*, which relates to purchases under Part V of this Act, and is also derived from s. 14 (3) of the Act of 1954.

S. 14 (3) of the Act of 1954 was expressed to apply to purchases under Part I of that Act (see now s. 29, *ante*), or Part V of the Act of 1936 (see now ss. 91 *et seq.*, *ante*), but did not expressly refer to purchases under s. 16 of the Act of 1936 (see now s. 12, *ante*). Purchases under s. 12, *ante*, are now expressly included, where the house is to be used for Part V housing purposes. S. 12, *ante*, unlike s. 57 (6) in Part III of this Act, relating to land in re-development areas, does not state that houses purchased thereunder are to be "deemed to have been acquired under Part V". Separate provision is made for their inclusion in the local authority's Housing Revenue Account by s. 50 of the Housing (Financial Provisions) Act, 1958 (Book II, *post*). See that section and s. 13 of that Act as to the inclusion of houses purchased under s. 29 of this Act; and cf. s. 29 (4), *ante*, as to the local authority having the like powers as under Part V of this Act.

**General Note.** The purpose of this paragraph is to enable an acquiring authority under Part II of this Act to take "notional possession" of the house acquired, without disturbing the actual occupants; this is of particular importance where the house is purchased under s. 29, *ante*, for temporary accommodation.

**Local authority.** See ss. 1 and 41, *ante*.

**Are authorised.** *I.e.*, where a confirmed compulsory purchase order has become operative, as mentioned in paras. 16 and 17 in Part IV of the First Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 19; 3 Halsbury's Statutes (2nd Edn.) 1080), as applied by para. 1 of this Schedule, *ante*.

**Under Part II.** See ss. 12, 17 (2), 29 and 34 (5), *ante*.

**House.** See para. (a) of the definition in s. 189 (1), *ante*.

**Right to enter, etc.** For para. 3 of the Second Schedule to the Act of 1946, see 39 Statutes Supp. 20; 3 Halsbury's Statutes (2nd Edn.) 1081. It provides a power of entry as an alternative to ss. 84-90 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 930-935), subject to the payment of the like compensation, and interest, as if those sections had been complied with. The power in the Act of 1946 is exercisable where, after service of notice to treat under s. 18 of the 1845 Act, a further notice, of intention to enter, etc., is served on the owner, lessee and occupier. The present paragraph provides for service of yet another notice, in this case "on any person . . . in occupation" allowing him to remain there upon terms.

**Serving notice, etc.** As to authentication and service of notices, see ss. 166 (2) and 169 (1), *ante*. See also para. 19 of the First Schedule, and para. 6 of the Second Schedule, to the Act of 1946 (*ubi supra*).

Sections 30, 60

SECOND SCHEDULE

PAYMENTS IN RESPECT OF UNFIT HOUSES

PART I

ASCERTAINMENT OF AMOUNT PAYABLE FOR WELL-MAINTAINED  
HOUSES

1. The payment in respect of a house under section thirty or section sixty of this Act shall be an amount ascertained in accordance with the provisions of this Part of this Schedule.

2.—(1) The payment shall be of an amount equal either—

- (a) to the amount by which the aggregate expenditure which is shown to the satisfaction of the local authority to have been incurred in maintaining the house during the five years immediately before the date on which the relevant order was made exceeds an amount equal to one and one-quarter times the rateable value of the house, or
- (b) to the rateable value of the house multiplied by the appropriate multiplier,

whichever is the greater:

Provided that the payment shall not in any case exceed the difference between the full value of the house (that is to say the amount which would have been payable as compensation if it had been purchased compulsorily but not as being unfit for human habitation) and the site value thereof (that is to say the amount which is payable as compensation by virtue of its being purchased compulsorily as being unfit for human habitation, or which would have been so payable if it had been so purchased), and any question as to such value shall be determined, in default of agreement, as if it had been a question of disputed compensation arising on such a purchase.

(2) No payment shall be made under this paragraph to any person in respect of a house where a payment falls to be made in respect of an interest of that person in that house under Part II of this Schedule:

Provided that where the payment under Part II of this Schedule falls to be made in relation to part only of the house, this sub-paragraph shall not apply to so much of any amount which has been paid or which would otherwise be payable under this Part of this Schedule as may reasonably be attributed to the remainder of the house.

3.—(1) In the foregoing provisions of this Schedule "the appropriate multiplier" means—

- (a) if at the date of the making of the relevant order the house is occupied by the owner thereof and has been owned or occupied by him or by a member of his family continuously during the three years immediately before that date, three times or such other multiple as may be prescribed;
- (b) if at the said date the house is not so occupied, one-and-a-half times or such other multiple as may be prescribed.

In this sub-paragraph "prescribed" means prescribed by an order made by the Minister by statutory instrument which shall be of no effect until it is approved by a resolution of each House of Parliament.

(2) In this Part of this Schedule "rateable value" means in relation to a house the value which, in the valuation list in force at the date on which the relevant order is made, is shown on that date as the rateable value of the house, or, where the net annual value differs from the rateable value, as the net annual value.

NOTES

**History.** Para. 2 (1) contains provisions formerly in s. 42 (2) of the Housing Act, 1936, and in s. 3 (1) of the Slum Clearance (Compensation) Act, 1956. Para. 2 (2) contains provisions formerly in s. 3 (4) of the Act of 1956. Para. 3 (1) contains provisions formerly in s. 42 (2) of the Act of 1936 and in s. 3 (1) of the Act of 1956. Para. 3 (2) contains provisions formerly in s. 42 (4) of the Act of 1936 (or that subsection as applied by s. 3 of the Act of 1956).

Attention is drawn to the total repeal, by this Act, of s. 3 of the Act of 1956; it appears that s. 3 (4) should have been preserved to prevent overlap between s. 60, *ante*, as applied by para. 9 of the Fifth Schedule to the Town and Country Planning Act,

1944 (mentioned in the General Note to s. 60, *ante*), and the surviving provisions of ss. 1 and 2 of the Act of 1956, which correspond to Part II of this Schedule. Para. 2 (2), *supra*, is not sufficient for this purpose.

**General Note.** Part I of this Schedule (paras. 1-3, *supra*) deals with the amount of payments in respect of an unfit but well-maintained house, under s. 30 in Part II or s. 60 in Part III, *ante*. As read with s. 60, those provisions replace s. 42 (repealed) of the Housing Act, 1936; and as read with s. 30 they replace the somewhat similar provisions introduced by the Slum Clearance (Compensation) Act, 1956, for certain purchases and orders under Part II (repealed) of the Act of 1936; see the notes to s. 30, *ante*.

Part II of this Schedule (paras. 4-7, *post*), also derived from the Act of 1956, and now introduced by ss. 31 and 61, *ante*, provides for payments to certain owner-occupiers or persons carrying on a business in an unfit house; see the notes to s. 31, *ante*. Overlap between the two Parts of the Schedule is prevented by para. 2 (2), *supra*. Under Part II of the Act, the cases in which payments may be made under Part I of this Schedule, *supra*, are stated in s. 30 (1) and (2), and note also s. 30 (6) and (7), *ante*; such payments are claimed by way of a representation to the local authority which, if disputed, may lead to an appeal to the county court or an agreed submission to arbitration. Under Part III of the Act persons who may be entitled to a payment should notify the Minister, as payments in the cases mentioned in s. 60, *ante*, are made where the Minister so directs, and it will be necessary for the house to be inspected.

#### Para. 1.

**House.** For meaning, see s. 189 (1), *ante*.

**Section 30.** That section, *ante*, and this Part of this Schedule, replace s. 3 of the Act of 1956 extending this type of payment to certain "Part II" cases.

**Section 60.** That section, *ante*, and this Part of this Schedule, replace s. 42 of the Act of 1936. Note that s. 60, *ante*, is applied by the Town and Country Planning Act, 1944, Fifth Schedule, para. 9 (4), as amended by s. 190 of, and the Tenth Schedule to, the present Act, *post*. Payments under this Part of this Schedule, and s. 60 as so applied, may thus be made in the case of planning, town development and other purchases under Part IV of the Town and Country Planning Act, 1947, or the New Towns Act, 1946, as mentioned in the notes to s. 60, *ante*. See also the note "History", *supra*, as to the total repeal of s. 3 (4) of the Act of 1956 which formerly prevented overlap between s. 42 of the Act of 1936, as applied by the Act of 1944, and ss. 1 and 2 of the Act of 1956.

#### Para. 2.

**Aggregate expenditure.** This has to be shown to the satisfaction of the local authority (not the Minister) whether the payment arises under Part II (s. 30, *ante*) or Part III (s. 60, *ante*) of the Act. Bills and receipts should be produced where possible. The expenditure must relate to "maintaining" the house.

**Local authority.** See ss. 1, 41, 52, 55 (1) and 58, *ante*.

**Maintaining.** It is submitted that this word has a meaning wider than "repairing"; cf. the notes to s. 60, *ante*.

**The relevant order was made.** In some of the cases mentioned in ss. 30 and 60, *ante*, there may be some doubt as to what is meant by the "making" of the order. The orders mentioned in s. 60 are compulsory purchase orders and clearance orders made, respectively, under the Third and Fifth Schedules, *post*. The "making" of the order would appear to refer to its making by the authority, rather than its confirmation by the Minister; this view could be supported by the reference, in s. 42 (1) (repealed) of the Act of 1936, to orders "made" on or after 20th December 1934. (This reference is now omitted as spent from s. 60, *ante*.) In the case of Part II purchases, and demolition orders and certain types of closing order under that Part, the reference may possibly be to the service of notice of the authority's determination to purchase, or service of the copy order, under s. 19, *ante*, mentioned in s. 30. If this is not the proper interpretation, anomalies may result, as demolition or closing orders would be "made" before service of copies thereof, but compulsory purchase orders would be "made", under s. 29, *ante*, after service of the notice of intention to purchase. There is no direct mention of a compulsory purchase order in s. 30.

**Rateable value.** See para. 3 (2), *supra*.

**Appropriate multiplier.** See para. 3 (1), *supra*.

**Provided that, etc.** The proviso to para. 2 (1) may operate to cut down the payment computed under heads (a) and (b). It provides that the payment under head (a) or (b) shall not exceed the difference between the site value and the "full" value of the house. It will thus be necessary to ascertain the following:—

- (i) the aggregate expenditure shown to have been incurred in maintaining the house during the five years immediately preceding the date on which the order was made less one and one-quarter times the rateable value; and
- (ii) the amount of the rateable value multiplied by the appropriate multiplier (as defined in para. 3 (1), *supra*); and

- (iii) the site value; and
- (iv) the full value.

In connection with Part III of this Act (s. 60, *ante*), the present proviso replaces s. 42 (2) proviso of the Housing Act, 1936; and it is plain that full value and site value mean values assessed under s. 59 (4) and s. 59 (2), (3), *ante*, respectively. This interpretation will apply to para. 9 of the Fifth Schedule to the Town and Country Planning Act, 1944 (cited in the General Note to s. 60, *ante*), and also, it seems, in connection with Part II of the present Act (s. 30, *ante*), for s. 3 of the Slum Clearance (Compensation) Act, 1956, operated by applying s. 42 of the Act of 1936. As to site value, see also s. 29 (2), *ante*. Disputes as to these values will be determined by the Lands Tribunal; cf. the note "General law of compensation" in the General Note to s. 59, *ante*.

**Unfit for human habitation.** See ss. 4 and 5, *ante*.

#### Para. 3.

**Owner; the Minister.** For definitions, see s. 189 (1), *ante*.

**Member of his family.** Cf. the fourth note to s. 78 (2), *ante*.

**Prescribed by an order.** At the time of going to press no order has been made under para. 3 (1), *supra*. By virtue, however, of s. 191 (2), *ante*, the Housing (Payments for Well-Maintained Houses) Order, 1956 (S.I. 1956 No. 1710), has effect under that paragraph; it provides that for the purposes of payments made not earlier than 13th December 1955 the multipliers shall be  $4\frac{1}{2}$  times and 9 times the rateable value of the house instead of  $1\frac{1}{2}$  and 3 times the rateable value, respectively.

**Statutory instrument.** For provisions as to statutory instruments generally, see the Statutory Instruments Act, 1946 (36 Statutes Supp. 95).

### PART II

#### Sections 31, 61

#### PAYMENTS TO OWNER-OCCUPIERS AND OTHERS IN RESPECT OF UNFIT HOUSES PURCHASED OR DEMOLISHED

##### *Private dwellings*

4.—(1) This paragraph shall have effect where at any time before the thirtieth day of December, nineteen hundred and sixty-five, a house has been purchased at site value in pursuance of a compulsory purchase order made by virtue of Part II or Part III of this Act or has been vacated in pursuance of—

- (a) a demolition order under Part II of this Act, or
- (b) a closing order under the proviso to subsection (1) of section seventeen of this Act, or
- (c) a clearance order.

(2) If on the thirteenth day of December, nineteen hundred and fifty-five, the house was wholly or partly occupied as a private dwelling by (or by a member of the family of) a person who acquired an interest in that house by purchase for value on or after the first day of September, nineteen hundred and thirty-nine, and before—

- (a) the said thirteenth day of December, nineteen hundred and fifty-five, or
- (b) the date when the relevant proceedings leading to the purchase or vacation of the house were begun,

whichever was the earlier, and at the date when the house was purchased compulsorily or, as the case may be, vacated that person or a member of his family was entitled to an interest in the house, the local authority by whom the order in question was made shall make in respect of that interest a payment of the amount hereinafter specified.

(3) Where a person ceased to occupy a house or part of a house not more than one year before the said thirteenth day of December, nineteen hundred and fifty-five, by reason only of a posting in the course of his duties as a member of the armed forces of the Crown or of a change in the place of his employment or occupation, the last foregoing sub-paragraph shall have effect as if that person had occupied that house or part on that day in like manner as immediately before he ceased to occupy it.

(4) The amount of any payment made under this paragraph in respect of an interest shall be an amount equal to its full compulsory purchase value less the compensation which was or would have been payable in respect of the interest in connection with the compulsory purchase of the house at site value:

Provided that any amount which would otherwise be payable under this sub-paragraph shall be reduced by so much, if any, of that amount as may

reasonably be attributed to any part of the house occupied for any purposes other than those of a private dwelling at the date of the making of the compulsory purchase order, demolition or closing order or clearance order.

(5) Any question arising under the proviso to the last foregoing subparagraph as to the purposes for which any part of a house was occupied shall be determined by the Minister, and subject thereto the amount of any payment in respect of an interest under this paragraph shall be determined (in default of agreement), and any such payment shall be dealt with, as if it were compensation payable in respect of a compulsory purchase of the interest under Part III of this Act:

Provided that, in relation to an interest which, at the date when the house was purchased compulsorily or, as the case may be, vacated, was held by virtue of an agreement to purchase by instalments, this subparagraph shall have effect as if the words "and any such payment shall be dealt with" were omitted therefrom, and the payment shall be made to the person entitled to the interest at the said date.

(6) For the purposes of this paragraph the relevant proceedings leading to the purchase or vacation of the house shall be deemed to have been begun—

- (a) in the case of a house comprised in an area declared as a clearance area, on the date when the area was so declared,
- (b) in the case of a house authorised by an order confirmed by the Minister under subsection (3) of section fifty-seven of this Act to be purchased compulsorily as being unfit for human habitation and not capable at reasonable expense of being rendered so fit, on the date when the order was made,
- (c) in the case of a house purchased compulsorily under section twelve of this Act after the court, in allowing an appeal against a notice requiring the execution of works to that house, has found that the house cannot be rendered fit for human habitation at a reasonable expense, on the date when that notice was served,
- (d) in the case of a house purchased compulsorily under section twenty-nine of this Act, on the date when notice of the determination to purchase was served in pursuance of section nineteen of this Act,
- (e) in the case of a house vacated in pursuance of a demolition order or closing order, the date when the order was made.

(7) In this paragraph "family", in relation to any person, means the husband or wife, the children over eighteen years of age and the parents of that person.

#### NOTES

**History.** This paragraph contains provisions formerly in ss. 1 (1), (2) (a) and (3) and 4 (2) of the Slum Clearance (Compensation) Act, 1956; see para. 5, *post*, for provisions formerly in s. 1 (4) and (5) of that Act.

By s. 1 (2) (b) of that Act, which is not reproduced, it was provided that where a house had been vacated before 13th December 1955 in consequence of the making of a compulsory purchase order in respect thereof or in pursuance of a clearance order, demolition order or closing order but the demolition of that house had not been started by that day, s. 1 (1) of that Act was to have effect as if that house had been occupied on that day by the same persons and in the like manner as immediately before it was vacated and, in the case of a clearance, demolition or closing order, as if it had been vacated immediately after that day. *Quære* whether claims for payments on this basis, made before the commencement of this Act, are preserved by s. 191 (2), *ante*, as a "thing done" before such commencement.

**General Note.** This paragraph, with para. 5, *post*, substantially reproduces the provisions of s. 1 of the Act of 1956. The paragraphs are now introduced by ss. 31 and 61 of the present Act, *ante*; cf. the General Note to s. 31. The Act of 1956 remains in force so far as it applies to purchases at site value under para. 9 of the Fifth Schedule to the Town and Country Planning Act, 1944 (mentioned in the note "Cross-references" to s. 59, *ante*).

The present paragraph, and para. 5, *post*, deal with persons who lose their houses in the course of slum clearance and certain other proceedings under the present Act. This paragraph provides for payments following:—

- (i) a purchase of a house at site value in pursuance of a compulsory purchase order;
- (ii) the vacating of a house in pursuance of a clearance order;
- (iii) the vacating of a house in pursuance of a demolition order under Part II of this Act (subject to para. 7 (3), *post*, preventing double compensation where there was an earlier closing order);

- (iv) the vacating of a house in pursuance of certain types of closing order, *i.e.*, those made because demolition would affect other property (see ss. 17 (1) proviso and 35, *ante*).

To be entitled to a payment, a person must have an interest, other than that of a tenant for a year or any less period than a year or a bare statutory tenancy under the Rent Acts, in the house at the date when it is acquired or vacated. Furthermore he must either be a person who purchased an interest, but not necessarily the same interest, in the house for value during the period mentioned in sub-para. (2), *supra*; or he must be a member of that person's family (by which is meant the husband or wife, the children over the age of 18 and the parents of that person). It is also a requirement that on 13th December 1955, the house was wholly or partly occupied as a private dwelling by the person who had so purchased an interest in it or by a member, but not necessarily the same member, of his family.

There is a relaxation of these requirements in sub-para. (3), *supra*, for certain persons who left home in the period from 13th December 1954 to 12th December 1955. In the Act of 1956 (see the note "History", *supra*) there was a further relaxation in favour of persons who had vacated a house before 13th December 1955 if demolition had not begun; this is repealed in the case of purchases, etc., under the present Act, but remains in the Act of 1956, as amended by the repeals in s. 191, *ante*, and the Eleventh Schedule, *post*, in the case of purchases at site value under the planning Acts.

The period in which an interest in the house must have been so purchased, as mentioned above, begins with 1st September 1939 and ends with 12th December 1955 or, if earlier, the date when the proceedings in question were begun, as defined in sub-para. (6), *supra*.

The amount of the payment, under this paragraph, is calculated as the difference between two values of the interest in respect of which it falls to be made. These values are its "full compulsory purchase value", defined in para. 7 (2), *post* (*i.e.*, the value as on a Part III compulsory purchase, but excluding the effect of para. 2 of the rules in Part III of the Third Schedule, *post*) and its "site value" as defined in para. 7 (2), *post* (*i.e.*, the site value compensation which was payable under s. 12 (4), 29 (2) or 59 (2) or (3); or, if there was no purchase, the site value compensation as it would have been calculated on a purchase).

The amount of the payment will be reduced where, at the date of the order, any part of the house was occupied for purposes other than those of a private dwelling (sub-para. (4) proviso, *supra*). It is for the Minister to decide for what purposes any part of a house was then occupied. Subject to that, the payment is to be determined as if it were compensation on compulsory purchase under Part III of this Act, *ante*; that means that disputes may be referred to the Lands Tribunal, from whose decision a person aggrieved on a point of law may appeal to the Court of Appeal, with a further possible appeal to the House of Lords. Cf. the notes to s. 59 of the Act, *ante*.

The payment is to be made by the authority who made the compulsory purchase or other order in question. It is to be dealt with as if it were compensation on a Part III compulsory purchase; see the notes, *infra*, to sub-para. (5) and note the proviso to that sub-paragraph. Certain mortgages, etc., may be modified by the county court under para. 5 of this Schedule, *post*.

#### Sub-para. (1).

**13th December 1965.** *I.e.*, ten years after the Minister's announcement; see the note "13th December 1955" to sub-para. (2), *infra*. Although this sub-paragraph has the words "at any time before", the Act of 1956, s. 1 (1), specifically referred to this ten-year period; as sub-para. (2) requires the house to have been occupied as mentioned therein at 13th December 1955 the law is not significantly changed. (There might be a change if a purchase had taken place before that date, but the occupiers remained until after that date. Note also the omission from this Schedule of the provisions in s. 1 (2) (b) of the Act of 1956, cited in the note "History", *supra*.)

**House.** In this Part of this Schedule, by virtue of para. 7 (2), *post*, "house" includes any building constructed or adapted wholly as, or for the purposes of, a dwelling.

**Purchased.** The phrase "has been purchased . . . in pursuance of a compulsory purchase order" signifies (i) that payments under this paragraph arise *after* the purchase, although as the machinery for assessment of compensation is the same as, or resembles, the assessment of compulsory purchase compensation it would be convenient if both could be assessed together; and (ii) the purchase may have been either by agreement or strictly compulsorily so long as the stage of a confirmed compulsory purchase order was reached. But if there was no confirmed order, the parties should make their own bargain on a sale by agreement, the vendor taking care to secure a price inclusive of the payment he would have received under this Schedule.

**At site value.** See the definition in para. 7 (2), *post*; and s. 59 (2) and (3) expressly mentioned, or ss. 12 (4) and 29 (2) mentioned in general terms, in that definition.

**Compulsory purchase order made by virtue of Part II or Part III.** The phrase "made by virtue of" is employed rather than "made under" because Part II compulsory purchase orders are made under the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 4; 3 Halsbury's Statutes (2nd Edn.) 1064;

see para. 1 (1) of the First Schedule, *ante*. Part III compulsory purchase orders are made under the Third Schedule, *post*.

The reference to Parts II and III of this Act will include, by virtue of s. 191, *ante*, a reference to the provisions replaced thereby. These were principally:—

- (i) Housing Act, 1936, s. 16;
- (ii) Housing Repairs and Rents Act, 1954, s. 3 (4);
- (iii) Housing Act, 1936, s. 29;
- (iv) Housing Act, 1936, s. 36.

The related "site value" provisions were those of s. 16 of the Act of 1936, in the case of (i) and (ii) listed *supra*, and of s. 40 of that Act, in the case of (iii) and (iv).

For the relevant provisions of this Act, see ss. 12 (1), 29 (1), 43 (3), 53 (5), 54 (1) and 57 (1), *ante*; the "site value" provisions being those of ss. 16 (4), 29 (2) and 59 (2) and (3), *ante*. Purchases of cleared land under s. 51, *ante*, are not in practice regarded as being purchases at site value; in such cases a payment under this Part of this Schedule may be payable in respect of the earlier clearance order, under which the land was cleared.

**Vacated.** As to vacating of premises subject to a demolition order, see particularly ss. 21 (a) and 22, *ante*. Similar provisions as to clearance orders will be found in s. 45, *ante*. As to cases where no demolition order was actually made, see para. 7 (1) of this Schedule, *post*.

**Demolition order.** See ss. 17 (1) and 28, *ante*, and, by virtue of s. 192, *ante*, the corresponding provisions of the Acts replaced by this Act. As to exclusion of double compensation when a demolition order follows a closing order, see para. 7 (3), *post*. Demolition orders under Part III (ss. 72–75, *ante*) do not come within this Schedule.

**Closing order.** Note that this does not include a closing order under s. 17 (3), 18 or 26, *ante*. It seems to include a closing order under s. 35 (1); see s. 35 (2), *ante*; and also to include a closing order under the provisions replaced by the present Act.

**Clearance order.** See s. 44, *ante*. It seems that clearance orders under the provisions replaced by this Act are also included.

**Sub-para. (2).**

**13th December 1955.** *I.e.*, the date on which the Minister of Housing and Local Government made a statement announcing his intention of introducing a Bill on the lines of the Act of 1956; see 547 H. of C. Official Report 1013–1014. The Bill was introduced on 8th February 1956 and the Act was passed on 2nd August 1956. The date in 1955 is repeatedly mentioned in this Schedule. For the purpose of this paragraph its importance is threefold:—

- (i) the period in which an interest in the house must have been purchased for value ends at the latest immediately before that date;
- (ii) on that date, the house must have been occupied wholly or partly as a private dwelling by the person who so purchased, or a member of his "family";
- (iii) the purchase at site value, or vacating of the house, must occur before the tenth anniversary of this date.

**Wholly or partly occupied.** Note the proviso to sub-para. (4), *supra*, reducing the payment if any part of the house was occupied for purposes other than those of a dwelling. As to business premises in an unfit house, see para. 6, *post*. It has long been established under the Housing Act, 1936, and earlier enactments, that a building may be a "house" though partly or even wholly occupied for non-residential purposes; see also para. 7 (2), *post*. Here there is a twofold test:—

- (i) the house must have been wholly or partly occupied as a private dwelling (by a purchaser of an interest therein or a member of his family) at 13th December 1955; and
- (ii) if any part of the house is occupied for other purposes at the date of the compulsory purchase order or other order, the payment is reduced by the provisions of sub-para. (4), *supra*.

As to the Minister deciding the latter question, see sub-para. (5), *supra*.

**As a private dwelling.** This expression is not defined. The word "private" is presumably inserted to restrict the wide meaning often given to the term "dwelling" or "dwelling-house" in statutes. See *Bristol Guardians v. Bristol Waterworks Co.*, [1914] A.C. 379; 78 J.P. 217; 43 Digest 1067, 62 (expressions "dwelling-house" and "private dwelling-house" in enactments relating to water supply; the former expression would include a workhouse, but the latter would not). In *Re Ross and Leicester Corporation* (1932), 96 J.P. 459, a common lodging house was held to be a dwelling-house within the meaning of a former Housing Act; but under the present Act would presumably not be regarded as occupied as a private dwelling. Such premises would appear to be excluded also from para. 6, *post*, by the definition of "business" therein (does not include the letting of accommodation in the house, whether with or without service). Some assistance may be found in cases decided on covenants in leases, to the effect that premises are to be used "as a private dwelling-house only"; see Hill and Redman's *Law of Landlord and Tenant* (12th Edn.), p. 244; but in many of those cases the covenant required the whole premises to be used as one dwelling, whereas the

present section would seem to be satisfied if part only was so used. Note also that such covenants usually constitute an absolute prohibition of any business user, even if the premises continue also to be used as a private dwelling; *e.g.*, where a trade name-plate is affixed to a person's house which is still occupied principally as a private residence. *Semble*, the present Schedule contemplates a test whereunder it is possible to say that a part or parts of the building are living rooms and therefore "occupied as a private dwelling" while other parts are occupied for other purposes.

The common example is that of a house, the front or the whole of the ground floor of which has been converted into a shop. This would clearly be a breach of the usual form of covenant to use as a private dwelling-house only, but under this section the living rooms could be said to be occupied as a private dwelling, and the shop occupied for other purposes.

**Member of the family.** See the definition in sub-para. (7), *supra*.

**An interest.** See para. 7 (2), *post*, whereby "house" is defined and certain types of "interest" are excluded. *Semble*, an interest in part of a house, or part of a building, will suffice; if not, many cases will be excluded from the benefits conferred by this Part of this Schedule. Cf. *Benabo v. Wood Green Borough Council*, [1945] 2 All E.R. 162; 2nd Digest Supp.

**By purchase for value.** At common law, a purchase means the acquiring of an estate or interest by act of the parties, as opposed to acquisition by operation of law on inheritance or escheat. A sale for money, an exchange, a devise or a gift would each be a purchase in this sense.

The words "for value" appear to mean for any consideration other than mere "good" consideration (natural love and affection); cf. *Currie v. Misa* (1875) L.R. 10 Ex. 153 ("A valuable consideration, in the sense of the law, may consist either in some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility, given, suffered, or undertaken by the other.") The terms purchaser "for value" or "for valuable consideration" have often been considered for the purposes of the Bankruptcy Act, 1914 (2 Halsbury's Statutes (2nd Edn.) 321); under the Statutes of Elizabeth I, now replaced by s. 172 of the Law of Property Act, 1925 (20 Halsbury's Statutes (2nd Edn.) 785); and in equity.

**Relevant proceedings.** See sub-para. (6), *supra*.

**Date when the house was purchased compulsorily.** The phrase "purchased compulsorily" appears to refer back to the words "purchased . . . in pursuance of a compulsory purchase order" in sub-para. (1); see the note "Purchased" thereto, *supra*. The date referred to, in the case of purchases, is presumably that of the vesting of title in the acquiring authority. At that date, the original purchaser or a member of his family must be entitled to an interest in the house; it may be a different interest from that originally purchased, and the person then entitled need not be the same as the person who occupied the house on 13th December 1955 as mentioned at the beginning of this sub-paragraph.

**Local authority.** See ss. 1, 41, 52, 55 (1) and 58, *ante*.

**Shall make in respect of that interest.** *I.e.*, of the interest subsisting at the date of purchase, or vacating, of the house. The amount of the payment is based on the difference between two values of that interest; sub-para. (4), *supra*. It is not necessarily paid to the person entitled to that interest; see sub-para. (5), *supra*, and the notes thereto, *infra*; and note the powers of the court under para. 5 of this Schedule, *post*.

**Sub-para. (3).**

**Where a person ceased to occupy.** Note that this sub-paragraph deals only with persons who were posted or moved away as mentioned therein. It does not extend to cases where the house was vacated because the authority had taken proceedings against the house (as mentioned in s. 1 (2) (b) of the Act of 1956, cited in the note "History", *supra*). Where the present sub-paragraph applies, the effect is to satisfy the requirements of the opening words of sub-para. (2), *supra*, but the other requirements must still be satisfied.

**Sub-para. (4).**

**Full compulsory purchase value.** For meaning, see para. 7 (2) of this Schedule, *post*.

**Less the compensation . . . at site value.** For the meaning of "site value", see para. 7 (2) of this Schedule, *post*. In the case of purchases, site value compensation will be payable by virtue of s. 12 (4) or 29 (2) in Part II, or s. 59 (2), or that subsection applied by s. 59 (3), in Part III, *ante*. The payment under this Part of this Schedule will be in addition to the site value compensation, bringing it up to the so-called full compulsory purchase value. In the case of clearance orders and the other orders mentioned in para. 4 (1), *supra*, the site will not be purchased and site value compensation will not be payable; the payment under this Part of this Schedule will be the difference between the site value compensation which would have been payable, if the house had been purchased, and the so-called full compulsory purchase value.

**Purposes other than those of a private dwelling.** This proviso deals with the

state of occupation at the date of relevant compulsory purchase order or other order, and any question arising about this is to be determined by the Minister under sub-para. (5), *supra*. As to payments in respect of certain business premises, see para. 6 of this Schedule, *post*, but note para. 6 (5) excluding the business of letting accommodation in the house. As to what is the "date of making" of an order, cf. the note "The relevant order was made" to para. 2 of this Schedule, *ante*.

**Sub-para. (5).**

**Determined by the Minister.** *I.e.*, by the Minister of Housing and Local Government; see s. 189 (1), *post*. His functions here are limited to determining the purposes for which any part of the house was occupied at the date of the order, and do not, for example, extend to deciding the state of occupation at 13th December 1955. The Minister's determination is not subject to appeal, but is open to review by *certiorari*; cf. especially *R. v. Electricity Commissioners, Ex parte London Electricity Joint Committee Co. (1920), Ltd.*, [1924] 1 K.B. 171, C.A., at pp. 204, 205, *per* Atkin, L.J.; Digest Supp., and see the cases cited in the note "Minister's decision shall be final" to s. 44 (5), *ante*.

**As if it were compensation.** Authority to purchase an interest compulsorily under Part III, *ante*, is conferred by a compulsory purchase order under s. 43, 51 or 57, *ante*, and the Third Schedule, *post*. Part II of that Schedule incorporates the Lands Clauses Acts and the Acquisition of Land (Assessment of Compensation) Act, 1919, subject to the provisions of the Schedule itself and other special provisions of this Act (cf. s. 59 (1), *ante*, and the notes to that section). Disputed compensation is assessed by the Lands Tribunal; see the Lands Tribunal Act, 1949, s. 1 (28 Halsbury's Statutes (2nd Edn.) 318; 61 Statutes Supp. 32).

Compensation is "dealt with" in accordance with the Lands Clauses Acts. In the ordinary course, compensation under the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 890), is payable to the person entitled to the interest acquired or the person who has power to sell and convey it; cf. the definition of "owner" in s. 3 of that Act, and ss. 18, 49, 63 and 68 thereof. Special provisions are made in certain cases, *e.g.*, by ss. 108-114 of that Act (lands subject to mortgage).

**Agreement to purchase by instalments.** This phrase occurs in para. 5 of this Schedule in addition to references to a mortgage or charge; it therefore means something other than a mortgage or charge. Under the type of agreement referred to, it would seem that the purchaser would be the owner of an equitable interest, and the payment under this Part of the Schedule would be calculated by reference to the two values of that interest mentioned in sub-para. (4), *supra*; and under the Lands Clauses Acts it would be dealt with by being paid to the owner of that interest, *i.e.*, the purchaser under the agreement to purchase by instalments.

The present proviso, however, seems to be drafted on the basis that it is necessary to provide expressly for the payment to be made to such a purchaser, *i.e.*, on the assumption that it would otherwise be made to the vendor. Indeed this proviso may be interpreted as having an effect opposite to that which is believed to have been intended. On this interpretation, the payment would be made to the vendor as the person "entitled to the interest", *i.e.*, as having legal title, instead of to the purchaser who would have been entitled if the payment were "dealt with" as compensation under a Part III compulsory purchase.

**Sub-para. (6).**

**Clearance area.** As to the declaration of clearance areas, see s. 42, *ante*. Note that it is the date of such declaration which is relevant, not the date of the making or confirmation of the compulsory purchase order under s. 43 or 51, *ante*, or of the clearance order under s. 44, *ante*.

**Unfit for human habitation; reasonable expense.** Under s. 57 (3), *ante*, relating to re-development areas, houses may be indicated as being unfit, etc., and if the Minister confirms the compulsory purchase order in this form, the house may be purchased at site value by virtue of s. 59 (3), *ante*. For the meaning of "unfit for human habitation", see ss. 4 and 5, *ante*, and as to "reasonable expense", cf. s. 39 (1), *ante*, which, however, is not expressed to apply to Part III of the Act. As to when the order is "made", cf. the note "The relevant order was made" to para. 2 of this Schedule, *ante*.

**Notice requiring the execution of works.** See s. 9, *ante*. Note that it is the date of this notice which is relevant, not the date of the appeal or judgment under s. 11, *ante*, or the date when the compulsory purchase order is made under s. 12, *ante*.

**Notice of the determination to purchase.** Under s. 17 (2), *ante*, the local authority may determine to purchase a house to provide temporary accommodation; notice of this determination is to be served under s. 19, *ante*. It is the date of this notice which is relevant, not the date of any appeal or judgment under s. 20, *ante*, or of the compulsory purchase order under s. 29, *ante*.

**Demolition order; closing order.** In the case of orders under s. 17 (1) and s. 17 (1) proviso, *ante*, the reference here is to the making of the order under that section, and not to the date of service of a copy thereof under s. 19, *ante*, or the date when the order became operative under s. 37, *ante*. See also ss. 28 and 35, *ante*.

**Sub-para. (7).**

**Eighteen years of age.** Cf. the note "Under one year, etc." to s. 77, *ante*.

5.—(1) Where a payment falls to be made under the last foregoing paragraph in respect of any person's interest in a house and at the date when the house was purchased compulsorily or, as the case may be, vacated, that interest was the subject of a mortgage or other charge or an agreement to purchase by instalments, either party to the mortgage, charge or agreement may apply to the county court who, after giving to the other party to the mortgage, charge or agreement an opportunity of being heard, may, if the court thinks fit, make an order—

- (a) in the case of a house which has been purchased compulsorily, discharging or modifying any outstanding liabilities of the person aforesaid by virtue of any bond, covenant or other obligation with respect to the debt secured by the mortgage or charge or by virtue of the agreement, or
- (b) in the case of a house vacated in pursuance of a demolition order, closing order or clearance order, discharging or modifying the terms of the mortgage, charge or agreement,

and in either case either unconditionally or subject to such terms and conditions, including conditions with respect to the payment of money, as the court may think just and equitable to impose.

(2) In determining in any case what order, if any, to make under this paragraph, the court shall have regard to all the circumstances of the case, and in particular in the case of a mortgage or charge—

- (a) to whether the mortgagee or person entitled to the benefit of the charge acted reasonably in advancing the principal sum on the terms of the mortgage or charge, and
- (b) to the extent to which the house may have become unfit for human habitation owing to any default on the part of the mortgagor or person entitled to the interest charged in carrying out any obligation under the terms of the mortgage or charge with respect to the repair of the house,

or, in the case of an agreement to purchase by instalments, to how far the amount already paid by way of principal, or, where the house has been purchased compulsorily, the aggregate of that amount and so much, if any, of the compensation in respect of the compulsory purchase as falls to be paid to the vendor, represents an adequate price for the purchase; and for the purposes of paragraph (a) of this sub-paragraph the mortgagee or person entitled to the benefit of the charge shall be deemed to have acted unreasonably if, at the time when the mortgage or charge was made, he knew or ought to have known that in all the circumstances of the case the terms of the mortgage or charge did not afford sufficient security for the principal sum advanced.

**NOTES**

**History.** This paragraph contains provisions formerly in s. 1 (4) and (5) of the Slum Clearance Compensation Act, 1956. Those provisions of the Act of 1956 continue to apply to purchases under the Town and Country Planning Act, 1944, Fifth Schedule, para. 9; cf. the note "Cross-references" to s. 59, *ante*.

**General Note.** This paragraph has effect where a payment falls to be made under para. 4 of this Schedule, *ante*, in respect of an interest in a private dwelling in an unfit house; it does not extend to para. 6, *post*, relating to business premises. It provides for the modification of certain liabilities by the county court where the interest in question was subject to a mortgage, or other charge, at the date when the house was acquired compulsorily or vacated in pursuance of a clearance order or other order mentioned in para. 4 (1), *ante*. It also makes similar provision where, at that date, the interest was the subject of an agreement to purchase by instalments.

**Sub-para. (1).**

**Interest in a house.** "House" and "interest" are defined in para. 7 (2) of this Schedule, *post*. For the interests qualifying for a payment, see particularly para. 4 (2), *ante*. As to who will receive such a payment, see para. 4 (5), *ante*, and the notes thereto.

**Purchased compulsorily.** This phrase is apparently used as equivalent to "purchased . . . in pursuance of a compulsory purchase order" for the purposes of Part II or Part III of the Act; see para. 4 (1) of this Schedule, *ante*, and the notes thereto.

**Vacated.** See para. 4 (1) of this Schedule, *ante*, and the notes "Vacated", "Demolition order", "Closing order" and "Clearance order" thereto.

**Agreement to purchase by instalments.** See the note to para. 4 (5) of this Schedule, *ante*. Where the house has been vacated under an order, without purchase by the authority, it seems that the only payment will be to the person whose interest qualifies for a payment under para. 4 (5), *ante*; see the proviso thereto. That person will, in most cases, be the person who was buying the house under the instalment agreement; but it seems that in other cases it might be the person who was selling it, e.g., where that person occupied the house on 13th December 1955 and thereafter entered into an agreement to sell it by instalments.

Where the house is purchased under a compulsory purchase order, in addition to the payment to one party under para. 4, *ante*, both the person who was buying the house and the person who was selling it would appear to be entitled to compensation for the acquisition under the Lands Clauses Acts; but in view of the "site value" provisions (ss. 12 (4), 29 (2) and 59 (2), (3), *ante*) either or both might find his compensation was assessed as nil. Where such compensation is paid to the person who was selling the house, sub-para. (2), *supra*, provides that the court shall take it into consideration, together with the principal amount of the instalments already received, to see how far these represent an adequate price for the house.

**Any outstanding liabilities.** In the case of a purchase of mortgaged property, the acquiring authority may proceed by redeeming the mortgage under the Lands Clauses Consolidation Act, 1845, ss. 104 *et seq.*; or by dealing with the mortgagor leaving him to pay off the mortgagee; or by serving notice to treat to acquire the interests of both mortgagor and mortgagee; cf. 10 Halsbury's Laws (3rd Edn.) 213-217. Any order of the county court, under sub-para. (1), *supra*, will no doubt be affected by the method adopted by the acquiring authority, and the consequent position of the parties to the mortgage. It is thought that the payment under para. 4 of this Schedule, *ante*, will normally be made by the local authority to the mortgagee, who must presumably apply it in reduction of the mortgage debt.

**Sub-para. (2).**

**Mortgagee . . . acted reasonably.** Note the concluding words of this sub-paragraph as to cases where money was advanced on insufficient security.

**Unfit for human habitation.** For meaning, see ss. 4 and 5, *ante*. Site value compensation is payable, by virtue of ss. 12 (4), 29 (2) and s. 59 (2), (3), *ante*, only in cases where a house is unfit, or a building contains unfit dwelling accommodation; and it is in such circumstances that a demolition order or closing order (of the types mentioned in para. 4 (1) of this Schedule, *ante*), or a clearance order, may be made. Under sub-para. 2 (b), *supra*, the county court is directed, in effect, to have regard to the extent to which the mortgagor or chargor should carry the responsibility for the property having been condemned.

**Compensation.** See para. 7 (2) of this Schedule, *post*.

**Adequate price for the purchase.** *I.e.*, for the purchase of the house under the agreement to purchase by instalments. Thus, if the principal amount of the instalments received by the vendor, or the aggregate of that amount and the compensation received by him, exceeds what the court considers the house was worth, the court's order will presumably discharge the obligation to pay any further instalments. Despite the reference to conditions with respect to the payment of money, at the end of sub-para. (1), *supra*, it seems that the court has no power to order the repayment to the purchaser of any amount already paid by him in instalments in excess of an adequate price. The definition of "compensation" in para. 7 (2), *post*, excludes compensation which arises from the unexpended balance of established development value under s. 31 of the Town and Country Planning Act, 1954, or under s. 35 of that Act; this seems to produce a peculiar result under the present sub-paragraph.

#### *Business premises*

6.—(1) This paragraph shall have effect where on or after the thirteenth day of December, nineteen hundred and fifty-five, a house has been purchased at site value in pursuance of a compulsory purchase order made by virtue of Part II or Part III of this Act or vacated in pursuance of—

- (a) a demolition order under Part II of this Act, or
- (b) a clearance order.

(2) If at the date of the making of the order the house was occupied wholly or partly for the purposes of a business and the person entitled to the receipts of the business held an interest in the house, the local authority by whom the order was made shall make in respect of that interest a payment of the amount hereinafter specified:

Provided that no payment shall be made under this paragraph in respect of any interest in a house unless the house was occupied wholly or partly for business purposes, and a person entitled to the receipts of a business carried

on wholly or partly therein held an interest in the house, either on the thirteenth day of December, nineteen hundred and fifty-five, or at all times during the ten years preceding the date of the making of the order.

(3) The amount of the payment shall be the full compulsory purchase value of the interest less the compensation which was or would have been payable in respect of the interest in connection with the compulsory purchase of the house at site value:

Provided that any amount which would otherwise be payable shall be reduced by so much, if any, of that amount as may reasonably be attributed to any part of the house not occupied at the date of the making of the order for the purposes of the business.

(4) Any question arising under the proviso to the last foregoing sub-paragraph as to the purposes for which any part of a house was occupied shall be determined by the Minister, and subject thereto the amount of any payment in respect of an interest under this section shall be determined (in default of agreement), and any such payment shall be dealt with, as if it were compensation payable in respect of a compulsory purchase of the interest under Part III of this Act.

(5) In this paragraph "business", in relation to the purposes for which a house was occupied, does not include the letting of accommodation in that house, whether with or without service.

#### NOTES

**History.** This paragraph contains provisions formerly in ss. 2 and 4 (2) of the Slum Clearance Compensation Act, 1956. Those provisions of the Act of 1956 continue to apply to purchases under the Town and Country Planning Act, 1944, Fifth Schedule, para. 9; cf. the note "Cross-references" to s. 59, *ante*.

**General Note.** This paragraph, introduced by s. 31 or 61, *ante*, provides for payments to certain persons carrying on business in an unfit house. The events which may give rise to such a payment are:—

- (i) a purchase of a house at site value in pursuance of a compulsory purchase order;
- (ii) the vacating of a house in pursuance of a clearance order;
- (iii) the vacating of a house in pursuance of a demolition order, under Part II of this Act.

There is here no reference to any type of closing order; contrast para. 4 (1) of this Schedule, *ante*, relating to private dwellings. Note also para. 7 (3) of this Schedule, *post*, whereby references to a demolition order are sometimes excluded, where there has been an earlier closing order, but only where there has been a payment under s. 30, *ante*, or this Schedule.

Under this paragraph, the event in question must have occurred on or after 13th December 1955, but there is no final time limit; contrast para. 4 (1), *ante*. A payment arises if the house was occupied wholly or partly for the purposes of a business at the date of the relevant order, and the person entitled to the receipts of the business held an interest in the house at that date. It is a further requirement that the house should have been occupied for business purposes (not necessarily the same business), and the person entitled to the receipts of such a business should have held an interest in the house, either (i) at 13th December 1955, or (ii) during a ten-year period before the relevant order.

The amount of the payment will, as under para. 4 (4) of this Schedule, *ante*, be the difference between the so-called "full compulsory purchase value" and "site value" as defined in para. 7 (2), *post*. It will be reduced where part of the house is not occupied, at the date of making the order, for business purposes; see sub-para. (3) proviso, *supra*. Questions as to the state of occupation at that date will be determined by the Minister; subject to that the payment, if the amount is disputed, will be determined as if it were compensation for a compulsory purchase under Part III of the Act, *ante*, and dealt with as if it were such compensation; see sub-para. (4), *supra*, and cf. para. 4 (5) of the Schedule, *ante*.

**Sub-para. (1).**

**13th December 1955.** Cf. the notes to para. 4 (1) and (2) of this Schedule, *ante*. In the present paragraph this date has a twofold importance:—

- (i) the purchase or vacating of the property must occur after that date (sub-para. (1), *supra*);
- (ii) the house must have been occupied for business purposes, and the persons entitled to the receipts of such a business must have held an interest therein, at that date; unless the alternative requirement is satisfied, *i.e.*, during the ten-year period before the order (sub-para. (2) proviso, *supra*).

**House.** For meaning, see para. 7 (2) of this Schedule, *post*.

**Purchased; at site value; compulsory purchase order made by virtue of Part II or Part III.** See the notes to para. 4 (1) of this Schedule, *ante*.

**Vacated; demolition order; clearance order.** See the notes to para. 4 (1) of this Schedule, *ante*, and note the omission from the present paragraph of references to any closing order. Note particularly para. 7 (1) and (3) of this Schedule, *post*.

**Sub-para. (2).**

**Date of the making of the order.** Note that, in the case of purchase, it is not the date of purchase which is relevant, but the (earlier) date of making the compulsory purchase order. Cf., generally, the note "The relevant order was made" to para. 2 in Part I of this Schedule, *ante*.

**Business.** Note sub-para. (7), *supra*; and cf. the note "As a private dwelling" to para. 4 (2) of this Schedule, *ante*.

**Interest.** For definition, see para. 7 (2) of this Schedule, *post*.

**Local authority.** See ss. 1, 41, 52, 55 (1) and 58, *ante*.

**Sub-para. (3).**

**Full compulsory purchase value; site value.** For definitions, see para. 7 (2) of this Schedule, *post*; and cf., generally, para. 4 (4), *ante*, containing corresponding provisions in the case of private dwellings.

**Sub-para. (4).**

**Determined by the Minister; as if it were compensation.** See the notes to para. 4 (5) of this Schedule, *ante*. Note that the present paragraph has no proviso corresponding to para. 4 (5) proviso, nor is there any provision for modifying liabilities under mortgages, etc., as in para. 5, *ante*.

### Interpretation

7.—(1) For the purposes of this Part of this Schedule, a house which might have been the subject of a demolition order but which has, without the making of such an order, been vacated and demolished in pursuance of an undertaking for its demolition given to the local authority shall be deemed to have been vacated in pursuance of a demolition order made and served at the date when the undertaking was given.

(2) In this Part of this Schedule, except where the context otherwise requires,—

"compensation", in relation to compulsory purchase, means the compensation payable in respect thereof apart from any payment under section thirty-one or thirty-five of the Town and Country Planning Act, 1954,

"full compulsory purchase value", in relation to any interest in a house, means the compensation payable in respect of the compulsory purchase of that interest if that compensation fell to be assessed in accordance with subsections (1) and (4) of section fifty-nine of this Act and paragraph 2 of Part III of the Third Schedule to this Act had not been passed and, in the case of a house subject to a clearance order, demolition order or closing order, if the making of that order were a service of the notice to treat,

"house" includes any building constructed or adapted wholly or partly as, or for the purposes of, a dwelling,

"interest" in a house does not include the interest of a tenant for a year or any less period than a year or of a tenant whose sole right to possession is under the Rent Acts,

"site value", in relation to the compulsory purchase of a house, means compensation in respect thereof assessed in accordance with the provisions of subsection (2) or (3) of section fifty-nine of this Act (or under the corresponding provisions applicable to any compulsory purchase under Part II of this Act).

(3) In this Part of this Schedule references to a demolition order do not include such an order in respect of a house already subject to a closing order so far as it affects any part of the house in relation to which a payment under section thirty of this Act or under this Schedule has fallen to be made in respect of the closing order.

### NOTES

**History.** This paragraph contains provisions formerly in s. 4 (1) and (2) of the Slum Clearance Compensation Act, 1956.

**General Note.** Sub-para. (1), *supra*, provides for cases where a payment would have been payable under s. 31, *ante*, and this Part (paras. 4-7) of this Schedule if a demolition order had been made. Where the house was vacated by virtue of an undertaking given to the local authority, without the making of a demolition order, such an

order is deemed to have been made and served at the date of the undertaking; and thus the appropriate payment may be made.

Sub-para. (3) is designed to exclude a double payment where there has been a closing order, followed by a demolition order (see, particularly, s. 28, *ante*). No payment under s. 31, *ante*, and this Part of this Schedule will be made in respect of the demolition order, if an earlier payment under s. 30, *ante* (relating to well-maintained houses) or this Schedule, has been made in respect of the closing order.

Sub-para. (2) contains important definitions, which apply only to this Part (Part II) of the Schedule. See also the definitions of "family" in para. 4 (7) and "business" in para. 6 (5), *ante*. The terms "house", "family", "full value", "site value", occurring in Part I (paras. 1-3) of this Schedule, bear different meanings in that Part.

#### Sub-para. (1).

**House.** For meaning, see sub-para. (2), *supra*.

**Demolition order.** This refers to demolition orders under Part II of the Act (s. 17 (1) or 28, *ante*) only; see paras. 4 (1) (a) and 6 (1) (a) of this Schedule, *ante*.

**Deemed to have been vacated.** Payments under this Part of the Schedule cannot be made unless the vacating of the premises occurred (i) before 13th December 1965, in the case of a private dwelling (para. 4 (1), *ante*), or (ii) after 13th December 1955 in the case of business premises (para. 6 (1), *ante*); and a number of other requirements have to be satisfied.

**Made and served.** Service of copies of demolition orders is required by s. 19, *ante*, or that section applied by s. 28, *ante*. For present purposes the notional demolition order is taken to be made and served on the same date, *i.e.*, that of the giving of the undertaking; cf. the difficulty of interpretation in other cases referred to in the note "The relevant order was made" to para. 2 in Part I of this Schedule, *ante*.

#### Sub-para. (2).

**Compensation.** This definition particularly affects the definitions of "full compulsory purchase value" and "site value". It makes the important assumption that compensation for compulsory purchases under this Act can (apart from the present definition) include a payment under the Town and Country Planning Act, 1954, s. 31 or 35 (89 Statutes Supp. 101, 111; 34 Halsbury's Statutes (2nd Edn.) 76, 81). This in turn involves the assumption that compensation for such purchases is "compensation on the basis of existing use" and in particular that it will be limited by s. 51 in Part V of the Town and Country Planning Act, 1947 (48 Statutes Supp. 106; 3 Halsbury's Statutes (2nd Edn.) 1090) which, in general, excludes development value based on the prospect of development beyond the Third Schedule to the Act of 1947. Cf. Chapter 2 of the Introduction at p. 10, *ante*.

Payments under s. 31 of the Act of 1954 are based upon any unexpended balance of established development value, arising from claims under Part VI of the Act of 1947, attached to any part or parts of the land in which the interest acquired subsists. Where there is no such balance, because no claim for loss of development value was made, an *ex gratia* payment may be made in certain circumstances under s. 35 of the Act of 1954. The present definition appears to assume that payments under the Act of 1954 would be the same, whether the house was purchased at "site value" or at the so-called "full compulsory purchase value". If so, where these two values are to be compared (under paras. 4 (4) and 6 (3) of this Schedule, *ante*), the payments under the Act of 1954 would be included in each value, and thus cancel out. This calculation is accordingly dispensed with in this Part (Part II) of the Schedule. Note, however, that there is no corresponding provision for disregarding them in calculating the "full value" and "site value" of a house under para. 2, proviso, in Part I of this Schedule, *ante*.

There is a reference to "compensation" in respect of a compulsory purchase in para. 5 (2) of this Schedule, *ante*, relating to a house which is the subject of an agreement to purchase by instalments. It is difficult to see why payments under s. 31 or 35 of the Act of 1954 should be disregarded in that context.

**Full compulsory purchase value.** Note that "compensation" "house" and "interest", mentioned in this definition, are themselves defined in this sub-paragraph; in particular any payment under s. 31 or 35 of the Town and Country Planning Act, 1954, is to be disregarded, and will also be disregarded for the purposes of the definition of "site value". As to the demolition orders and closing orders to which this Part of the Schedule applies, see paras. 4 (1) and 6 (1), *ante*.

The present definition is relevant in paras. 4 (4) and 6 (3), *ante*, when the "full compulsory purchase value" is to be compared with the "site value"; the payment under those paragraphs is the difference between these two values of an interest in the house. The two values correspond to those discussed in the General Note to s. 59, *ante*, except that (i) the payments under the Act of 1954 are disregarded in both values, and (ii) the present definition excludes r. 2 of the Third Schedule, Part III, *post*.

**Notice to treat.** See the Lands Clauses Consolidation Act, 1845, s. 18 (3 Halsbury's Statutes (2nd Edn.) 902). The Lands Clauses Acts are incorporated by para. 7 (1) in Part II of the Third Schedule, *post*.

**House.** This definition differs from that in s. 189 (1), *ante*, and from the definition of "dwelling-house" in s. 87, *ante*. It corresponds closely with certain words in s. 59

(2) proviso, *ante* (relating to site value compensation) and para. 2 proviso of the Fifth Schedule, *post* (relating to the inclusion of houses and buildings in a clearance order).

**Interest.** This definition excludes certain types of interest. As to tenants for a year or less, cf. s. 121 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 949), mentioned in Chapter 2 of the Introduction at p. 12, *ante*. As to the power to make discretionary allowances, see s. 32 in Part II of the Act, *ante*, and the General Note thereto, and s. 63 in Part III, *ante*.

The "statutory tenancies" which are excluded are those where the *only* right to possession is that conferred by the Rent Acts, *i.e.*, where the contractual tenancy has been terminated. The "Rent Acts" are defined in s. 189 (1), *ante*.

Apart from these exclusions, this definition would appear to apply to legal and equitable interests of any description: see, however, the last paragraph of the General Note to s. 31, *ante*, as to the notes appended to certain prescribed forms.

**Site value.** Note that "compensation" and "house", mentioned in this definition, are themselves defined in this sub-paragraph; in particular any payment under s. 31 or 35 of the Town and Country Planning Act, 1954, is disregarded. The provisions of Part II of the Act corresponding to s. 59 (2) or (3), are contained in ss. 12 (4) and 29 (2), *ante*.

**Sub-para. (3).**

**References to a demolition order.** The object of this sub-paragraph is to prevent double payments in respect of the same premises; cf. s. 30 (7), *ante*. Some forms of closing order, however, may not have given rise to an earlier payment.

### THIRD SCHEDULE

Sections 43, 51, 57

#### COMPULSORY PURCHASE OF LAND UNDER PART III

##### PART I

#### PROCEDURE FOR AUTHORISING COMPULSORY PURCHASES

##### General

1.—(1) A compulsory purchase order under Part III of this Act shall be in the prescribed form and shall describe by reference to a map the land to which it applies.

(2) If the order is made under section forty-three of this Act it shall show in the prescribed manner—

- (a) what parts, if any, of the land to be purchased compulsorily are outside the clearance area, and
- (b) what buildings, if any, to be purchased compulsorily are included in the clearance area only on the ground that by reason of their bad arrangement in relation to other buildings, or the narrowness or bad arrangement of the streets, they are dangerous or injurious to the health of the inhabitants of the area.

2.—(1) Before submitting the order to the Minister the local authority shall—

- (a) publish in one or more newspapers circulating within their district a notice in the prescribed form stating the fact of such an order having been made and describing the area comprised therein and naming a place where a copy of the order and of the map referred to therein may be seen at all reasonable hours; and
- (b) serve on every owner, lessee and occupier (except tenants for a month or a less period than a month) of any land to which the order relates and, so far as it is reasonably practicable to ascertain such persons, on every mortgagee of any land to which the order relates, a notice in the prescribed form stating the effect of the order and that it is about to be submitted to the Minister for confirmation and specifying the time within and the manner in which objections thereto can be made:

Provided that in the case of an order under section fifty-seven of this Act the notice need not be served on a mortgagee of any land unless it is land comprising or consisting of a house indicated in the order as being unfit for human habitation and not capable at reasonable expense of being rendered so fit.

(2) A notice which under this paragraph is to be served on an owner, lessee or occupier may be served by addressing it to him by the description of "owner"

or "lessee" or "occupier" of the land (describing it) to which it relates and by delivering it to some person on the premises or, if there is no person on the premises to whom it may be delivered, by fixing it, or a copy of it, to some conspicuous part of the premises.

The provisions of this subsection shall be without prejudice to the service of a notice in a manner authorised by section one hundred and sixty-nine of this Act.

(3) For the purposes of this paragraph an occupier being a statutory tenant within the meaning of Part II of the Housing Repairs and Rents Act, 1954, shall be deemed to be a tenant for a period less than a month.

## NOTES

**History.** Para. 1 contains provisions formerly in paras. 1 and 9 of the First Schedule to the Housing Act, 1936. Para. 2 (1) contains provisions formerly in paras. 3, 8 (b) and 13 of that Schedule. Para. 2 (2) and (3) contain, respectively, provisions formerly in para. 1 of the First Schedule to the Housing Repairs and Rents Act, 1954, and in s. 50 (1) (not repealed) of that Act, with some alteration in that para. 2 (2) has been excluded to compulsory purchase orders under s. 57, *ante*.

**General Note.** Part I of this Schedule (paras. 1 and 2, *supra*, and paras. 3-6, *post*), contain the procedure for authorising compulsory purchases of land under Part III of the Act (see ss. 43, 51 and 57, *ante*). Part II of this Schedule (paras. 7-10, *post*), relates to the incorporation, with modifications, of the Lands Clauses Acts and other enactments with the compulsory purchase order. Part III of the Schedule, *post*, contains rules for the assessment of compensation under s. 59 (1) and (4), *i.e.*, in cases where compensation is not at "site value" under s. 59 (2) or (3), *ante*. The rules are also applicable to the assessment of the price of an obstructive building which the owners require to be purchased under s. 74 (1), *ante*; and they are repeated, so far as relevant, in para. 2 of the Seventh Schedule, *post* (purchases under Part V of the Act).

Paras. 1 and 2, *supra*, relate to the form of compulsory purchase order, and the giving of notice of the making of the order by advertisement and personal notices. Paras. 3 and 4, *post*, relate to the holding of an inquiry or hearing in connection with compulsory purchase orders relating to clearance areas (ss. 43 and 51, *ante*), and to the confirmation of such orders. Paras. 5 and 6, *post*, relate to inquiries, and confirmation, in the case or orders relating to re-development areas (s. 57, *ante*).

### Para. 1.

**Compulsory purchase order.** The purpose and effect of a confirmed compulsory purchase order is to put the intended acquiring authority in the position of the "promoters" of an undertaking authorised by a special Act to acquire land: see Chapter 2 of the Introduction, pp. 5 and 6, *ante*, and cf. 10 Halsbury's Laws (3rd Edn.), pp. 14 *et seq.*, and 51.

**Part III of this Act.** See s. 43 (3), *ante* (land in, surrounded by or adjoining a clearance area) and ss. 53 (5) and 54 (1) and the notes thereto, *ante*. There is normally a time limit, of six or twelve months, for the submission of such orders, from the date of declaration of the clearance area under s. 42, *ante*; see s. 43 (4). As to the purchase of cleared land, see s. 51 (2), *ante*. As to purchases in connection with re-development areas, see s. 57, *ante*.

**Prescribed form.** For the general power to prescribe forms, see s. 178 (1), *ante*. The prescribed forms of compulsory purchase order for purchases under ss. 43 and 51, *ante*, are, respectively, Form Nos. 24 and 28 in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*). There is at present no prescribed form for purchases under s. 57, *ante*; see the notes to that section, *ante*, and the Preliminary Note to the above-mentioned Regulations (Appendix II, *post*). As to the authentication of orders, see s. 166 (1), *ante*. For the prescribed forms of notices, see the note, *infra*, to para. 2.

Note that this Schedule does not apply to purchases under Part II or Part V of the Act. These are governed by the Acquisition of Land (Authorisation Procedure) Act, 1946, and the prescribed forms under that Act are contained in the Compulsory Purchase of Land Regulations, 1949 (S.I. 1949 No. 507), printed in *Hill's Complete Law of Housing*, 2nd Supplement to 4th Edn., p. B182, and in *Lumley's Public Health* (12th Edn.), Vol. VII, p. 1272.

**By reference to a map.** There is no prescribed scale. A scale of 1/500 or thereabouts is used in practice; see Ministry of Housing and Local Government Circular No. 75/54, dated 16th December 1954, repeating the advice formerly contained in the Ministry of Health Circular of August, 1930. The Ministry will now accept maps on a smaller scale, if sufficient to show details clearly; or enlargements to 1/500 from smaller scale ordnance maps; see Circular No. 44/56, dated 13th August 1956 (printed in *Lumley's Public Health*, 12th Edn., Vol. VIII, pp. 376-381).

If the compulsory purchase order is made under s. 43, *ante*, para. 1 (2), *supra*, requires certain properties to be distinguished in the order. The practice is to show, on the map, land in the actual clearance area (see s. 42, *ante*), in pink if included for

"unfitness", and in pink hatched yellow if included for "bad arrangement"; and to show additional land (see s. 43 (2), *ante*), in grey: see para. 1 of the above-mentioned prescribed form (Form No. 24). An alternative notation, using hatchings, etc., instead of colour is acceptable to the Ministry; see the above-mentioned Circular No. 44/56. Where the compulsory purchase order under s. 43 includes the whole clearance area declared under s. 42, one map will serve for the purposes of both sections. Reference may be made also to s. 64 (1) and (2), *ante*, and the notes thereto, as to the extinguishment of public rights of way.

**Land to which it applies.** In practice, this is taken to mean the land intended to be purchased, and to exclude neighbouring land which may be injuriously affected. Cf. the phrases, "land to which the order relates" in para. 2 (1) (b), *supra*, and "the area comprised therein" in para. 2 (1) (a), *supra*. In *Tutin v. Northallerton Rural District Council* (1947), 91 Sol. Jo. 383, C.A.; 2nd Digest Supp., the plaintiff argued, *inter alia*, that she should have received notice of the making of a compulsory purchase order for the purchase of certain land which was opposite, but did not include, her house, on the ground that as her property was affected by the purchase it was land to which the order "related". Cohen, L.J., expressed the view that he was "far from satisfied" that this was so, but considered that, if that had been the sole question, there "might, however, be a point to argue". The case was decided on other grounds.

Persons whose lands are not to be purchased, but may be injuriously affected, are not, in practice, served with personal notices under para. 2 (1) (b), *supra*, but may learn of the making of the order from the newspaper advertisements under para. 2 (1) (a). If so, there is nothing to prevent them lodging an objection with the Minister. Under para. 3, *post*, the Minister might, if he chose, ignore such an objection in deciding whether to hold an inquiry or hearing; but if an inquiry is arranged the objector would be heard. If there is a hearing instead of an inquiry (under para. 3 (3), and note the absence of this alternative in para. 5, *post*), it is quite probable that the person appointed would be willing to hear such an objector.

As to the meaning of "land", see also s. 189 (1), *ante*, and the note to para. 1 of the First Schedule, *ante*.

**Show in the prescribed manner.** See the note "By reference to a map", *supra*.

**Outside the clearance area.** The area will have been defined under s. 42, *ante*; certain land outside the area may be purchased under s. 43 (2) and (3). Note the general time limit of twelve months in s. 43 (4); it is sometimes found necessary to submit a compulsory purchase order for land outside the area after the submission of an order authorising the purchase of land in the actual clearance area. There was formerly a separate prescribed form of order for this purpose (No. 26 in the Schedule to S.R. & O. 1937 No. 78); but the ordinary form will now be used (No. 24 in the Second Schedule to S.I. 1957 No. 1842, Appendix II, *post*).

**Buildings . . . bad arrangement.** Houses or other buildings may both be included in a clearance area for the reason mentioned in para. 1 (2) (b), *supra*; see s. 42 (1) (a). Compensation for such buildings will not be at site value, unless (in effect) they contain unfit dwelling accommodation (s. 59 (2) proviso, *ante*), but will be assessed, by virtue of s. 59 (4), *ante*, subject to the rules in Part III of this Schedule, *post*. Other land in the clearance area, and in particular houses included for the reason of unfitness for human habitation, will be the subject of site value compensation by virtue of s. 59 (2), *ante*. See the note "By reference to a map", *supra*, as to notations employed: usually "bad arrangement" buildings are shown in pink hatched yellow, and unfit houses in pink.

As to the Minister's power to modify an order when confirming it, and the limits on this power, see paras. 3 and 4 of this Schedule, *post*, and particularly para. 4 (2) (b).

## Para. 2.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *ante*.

**Local authority.** See ss. 1, 52, 55 (1) and 58, *ante*.

**Prescribed form.** Cf. the note to para. 1, *supra*. The forms of advertisement and personal notice in relation to orders under s. 43, *ante*, are Form Nos. 25 and 26 respectively in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*). The forms for use under s. 51, *ante* (land cleared under a clearance order) are Nos. 29 and 30. There are at present no forms prescribed for the purposes of s. 57, *ante* (re-development areas). As to the authentication of notices, see s. 166 (2), *ante*.

The date of first publication or service may be relevant for the purposes of s. 33 of the Town and Country Planning Act, 1954 (89 Statutes Supp. 106); 34 Halsbury's Statutes (2nd Edn.) 79, which affords a measure of protection, in the assessment of compensation on a compulsory purchase, to persons who have bought land with the benefit of planning permission. See also para. 8 (5) of this Schedule, *post*, as to disregarding improvements, etc., made after this date with a view to obtaining or increasing compensation.

**Serve.** For modes of service, see s. 169, *ante*, and note para. 2 (2), *supra* (which, in the present Act, has been extended to all "Part III" compulsory purchase orders).

**Owner; lessee; occupier.** "Owner" is defined in s. 189 (1), *ante*. For the power of local authorities to require information as to ownership, etc., see s. 170, *ante*.

which refers to persons having an interest "whether as freeholder, mortgagee, lessee or otherwise". Para. 2 (1) (b), *supra*, excludes the requirement of service on tenants for a month or less; para. 2 (3), *supra*, extends this provision by excluding also statutory tenants.

**Land to which the order relates.** Cf. the phrase "the area comprised therein" in para. 2 (1) (a), *supra*, and the note "Land to which it applies" to para. 1, *supra*.

**Mortgagee.** A mortgagee in possession may have to be served as an "owner" as defined in s. 189 (1), *ante*. Other mortgagees must be served so far as it is "reasonably practicable" to ascertain them (cf. s. 16 (1), *ante*, and the notes thereto) but, if the order is made under s. 57, *ante*, this requirement extends only to mortgagees of a house indicated as unfit as mentioned in s. 57 (3).

**Objections.** Form Nos. 26 and 30, mentioned *supra*, require that any objection to the compulsory purchase order must be made in writing to the Minister of Housing and Local Government, Whitehall, S.W.1, before a date specified in the notice, and must state the grounds of the objection.

**Suggested form of objection.** An objection may be made by letter in the following form, with the addition of appropriate grounds of objection.

To the Minister of Housing and Local Government, Whitehall, London, S.W.1.

Housing Act, 1957

[Title of compulsory purchase order]

[Address or description of premises to which  
the objection relates]

We act on behalf of [name] of [address of objector] who is the [owner] [lessee] [occupier] [mortgagee] [or as the case may be] of the premises situated at and known as [address or description of premises to which the objection relates]. These premises appear to be included in an order dated the      day of      , 19      , and intituled the [title of compulsory purchase order], which has been or is about to be submitted for confirmation by the [name of local authority] for the purposes of Part III of the Housing Act, 1957. The premises appear to be those referred to by reference number[s]      in [Part I] [Part II] [Part III] of the Schedule to the said order, and to be coloured [pink] [pink hatched yellow] [grey] [or as the case may be] on the map therein referred to.

Take notice that the said [name of objector] objects to the said order on the grounds stated below and asks that the order be not confirmed and in the alternative further asks that (should the order be confirmed) the order may be modified as may be just and necessary to give effect to this objection.

And the Grounds of this objection are:

[Set forth grounds; see suggested grounds, *infra*.]

Dated this      day of      , 19      .

For and on behalf of the said objector,

[Signature]

**Suggested grounds of objection.** An objector may wish, in effect, to challenge the whole project of the local authority, *e.g.*, by contending that a clearance area should not have been defined as such; or his objection may be a more limited one, *e.g.*, that his particular property need not be purchased, or that it is wrongly shewn as an unfit house to be purchased at site value. The following are examples of objections which might be taken to a compulsory purchase order in connection with a clearance area; see ss. 42, 43 and 59 in Part III of this Act, *ante*.

**General objections:**

- (1) It is not admitted that the area shown on the map, or any area, should have been defined as a clearance area.
- (2) It is not admitted that the area contains any unfit houses [or any houses at all, as the premises therein are all shops and offices].
- (3) The demolition of all buildings is not the most satisfactory method of dealing with the area [if, as is not admitted, it contains unfit houses].
- (4) The local authority's resources are insufficient.
- (5) There is not sufficient accommodation available for persons displaced, and none is likely to be available in time.
- (6) It is not admitted that the statutory procedure has been properly followed.  
[If there is any specific complaint, state what requirements have been disregarded.]

**Objections to the inclusion of particular premises:**

- (7) The objector's premises are neither unfit nor badly arranged, nor are the streets narrow or badly arranged, and the premises should not have been included in the clearance area or the compulsory purchase order.
- (8) The objector's premises are not a house and should not have been included in the clearance area or the compulsory purchase order on grounds of alleged unfitness.

- (9) The objector's premises should be excluded [from the clearance area and] from the compulsory purchase order because it is unnecessary to acquire the premises for the purposes mentioned in section 43 (2) of the Housing Act, 1957.
- (10) The objector is willing himself to demolish the premises and to redevelop the site. It would be reasonable to allow him to do so, and the purchase of the premises should not be authorised. [*Add particulars of the objector's proposals, stating whether application has been made for planning permission, bye-law approval, etc.*].

*Objections to the classification of particular premises:*

- (11) The objector's premises are wrongly shown coloured pink on the map. The premises are not a house and cannot be included on grounds of alleged unfitness.
- (12) The objector's premises are wrongly shown coloured pink on the map. The premises are not unfit for habitation.
- (13) The objector's premises are shown pink hatched yellow, but should not have been included in the clearance area.
- (14) The objector's premises are said to contain unfit dwelling accommodation, but in fact [the premises are used only for the purposes of a shop and are entirely constructed and adapted for such purposes] [the premises contain only three rooms not used for business purposes and those rooms are fit for habitation] [*or as the case may be*].

*Add, if desired:*

- (15) The Minister is asked to cause the objector's premises to be inspected for the purposes of section 60 of the Housing Act, 1957. If, as is denied the house is unfit for habitation it has nevertheless been well maintained, and the Minister is asked to direct the making of a payment under section 60.
- (16) Should the Minister decide that the objector's premises are a building unfit for habitation, he is hereby requested to furnish the objector with a statement of his reasons for so deciding, in accordance with [para. 3 (5)] [para. 5 (4)] of the Third Schedule to the Housing Act, 1957.

**House indicated . . . as being unfit.** See s. 57 (3), *ante*, and the notes thereto.

**Notice . . . may be served.** The provisions of para. 2 (2), *supra*, derived from the Housing Repairs and Rents Act, 1954, and now applied to all Part III compulsory purchase orders, are in effect an extension of s. 169 (1) (e), *ante*; in proving service effected under these provisions it will be unnecessary to show that reasonable enquiries had first been made. Note also the Minister's powers under s. 179, *ante*, to dispense with publication or service.

**Subsection.** This should read "sub-paragraph".

**Statutory tenant.** Cf. s. 56 (3), *ante*, and the note "For the purposes of this subsection, etc." thereto.

*Procedure for orders for the compulsory purchase of land within, surrounded by or adjoining a clearance area*

3.—(1) The provisions of this paragraph shall have effect with respect to any order made under section forty-three or section fifty-one of this Act.

(2) If no objection is duly made by any of the persons on whom notices are required to be served, or if all objections so made are withdrawn, then, subject to the provisions of this Part of this Schedule, the Minister may, if he thinks fit, confirm the order with or without modification.

(3) If any objection duly made is not withdrawn, the Minister shall, before confirming the order, either cause a public local inquiry to be held or afford to any person by whom an objection has been duly made as aforesaid and not withdrawn an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose, and, after considering any objection not withdrawn and the report of the person who held the inquiry or of the person appointed as aforesaid, may, subject to the provisions of this Part of this Schedule, confirm the order with or without modification.

(4) Where any objection not withdrawn has been made on the ground that a building included in the order is not unfit for human habitation the public local inquiry or hearing shall not be held earlier than the expiration of fourteen days after it has been shown to the satisfaction of the Minister that the local authority have served upon the objector a notice in writing stating what facts they allege as their principal grounds for being satisfied that the building is so unfit.

(5) A person who objects to the order on the grounds that a building included therein, being a building in which he is interested, is not unfit for human

habitation and who appears at the public local inquiry or hearing in support of his objection shall, if the building is included in the order as confirmed as being unfit for human habitation, be entitled, on making a request in writing, to be furnished by the Minister with a statement in writing of his reasons for deciding that the building is so unfit.

(6) Notwithstanding anything in the foregoing provisions of this paragraph, the Minister may require any person who has made an objection to state in writing the grounds thereof and may disregard the objection for the purposes of this paragraph if he is satisfied that the objection relates exclusively to matters which can be dealt with by the tribunal by whom the compensation is to be assessed.

4.—(1) An order as confirmed by the Minister under the last foregoing paragraph shall not authorise the local authority to purchase any land which the order would not have authorised them to purchase if it had been confirmed without modification.

(2) An order under section forty-three of this Act shall not, as confirmed under the last foregoing paragraph,—

- (a) authorise the local authority to purchase as being land comprised in a clearance area any land shown in the order as submitted as being outside that area; or
- (b) authorise the local authority to purchase compulsorily any building on less favourable terms with respect to compensation than the terms on which the order would have authorised them to purchase the building if the order had been confirmed without modification.

(3) If the Minister is of opinion that any land included by the local authority in a clearance area should not have been so included, he shall in confirming an order made under section forty-three of this Act modify it so as to exclude that land for all purposes from the clearance area, but if in any such case he is of opinion that the land may properly be purchased by the authority under subsection (2) of that section, he shall further modify the order so as to authorise the local authority to purchase that land under that subsection and not as being land comprised in a clearance area.

(4) The Minister may confirm an order made in connection with a clearance area notwithstanding that the effect of the modifications made by him in excluding any building from the clearance area is to sever that area into two or more separate and distinct areas, and in any such case the provisions of this Act relating to the effect of the order when confirmed and to the proceedings to be taken subsequent to the confirmation thereof shall apply as if those areas formed one clearance area.

## NOTES

**History.** Para. 3, *supra*, contains provisions formerly in s. 41 of, and para. 4 of the First Schedule to, the Housing Act, 1936, and in para. 2 (1) and (2) of the First Schedule to the Housing Repairs and Rents Act, 1954. (These provisions of the Act of 1954 allowed a "hearing" to be substituted for an "inquiry", as now provided by para. 3 (3), *supra*; and also applied to such a hearing the provisions of s. 41 of the Act of 1936, which are now reproduced in para. 3 (4) and (5), *supra*). Para. 4, *supra*, contains provisions formerly in paras. 6 and 10–12 of the First Schedule to the Act of 1936.

**General Note.** Paras. 3 and 4, *supra*, of this Schedule relate to the hearing of objections to, and confirmation of, compulsory purchase orders under ss. 43 and 51, *ante* (land in, or surrounded by or adjoining a clearance area, and land cleared of buildings which the owners fail to re-develop).

Comparable provisions for compulsory purchase orders under s. 57 (re-development areas) are contained in paras. 5 and 6, *post*, but under those paragraphs there is no power to substitute a "hearing" for an "inquiry". Very similar provisions for the hearing of objections to, and confirmation of, clearance orders under s. 44, *ante*, are contained in paras. 5 and 6 of the Fifth Schedule, *post*.

### Para. 3.

**Objection.** For suggested form of objection, and for grounds suggested for objections to an order under s. 43, *ante* (clearance areas), see the note "Objections" to para. 2 of this Schedule, *ante*. The time and manner for making objections will be specified in the forms of notice (Form Nos. 26 and 30) mentioned in that note.

**Duly made.** The Minister may choose to consider an objection made too late, or by a person other than those required to be given personal notice under para. 2 of this Schedule, *ante*; but he is not bound to do so. As to when an objection is "duly made", cf. *Middlesex County Council v. Minister of Local Government and Planning*,

[1952] 2 All E.R. 709, C.A.; 11 Digest (Repl.) 224, 889 (decided on para. 9 of the First Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946).

**Subject to the provisions of this Part of this Schedule; with or without modification.** See the note "Order as confirmed", *infra*, to para. 4, *supra*. Where the Minister is empowered to confirm the order without inquiry or hearing (para. 3 (2), *supra*), or because the objections may be disregarded (under para. 3 (6), *supra*), the Minister is nevertheless bound by para. 4; *e.g.*, he cannot modify the order so as to include further land, or so as to authorise a purchase on less favourable terms. The same is true where an inquiry or hearing has taken place (para. 3 (3), *supra*).

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *ante*.

**Confirm the order.** As to the validity and date of operation of orders, see the Fourth Schedule, *post*.

**Public local inquiry.** See s. 181 (1), *ante*, and the notes thereto, and *cf.* the cases cited in the notes to the Fourth Schedule, *post*. The power to dispense with an inquiry under the Housing (Temporary Provisions) Act, 1944, has now lapsed; but the present paragraph contains provisions, derived from the Housing Repairs and Rents Act, 1954, allowing a "hearing" to be held instead of an inquiry. As to the costs of opposing orders, see s. 67, *ante*.

**Report.** Although an objector may be entitled to call for the Minister's reasons for deciding that a building is unfit (para. 3 (5), *supra*), he is not entitled, as a matter of law, to see the report of the inspector or other person holding the inquiry or hearing: *Local Government Board v. Arlidge*, [1915] A.C. 120; 38 Digest 97, 708; *Denby (William) & Sons, Ltd. v. Minister of Health*, [1936] 1 K.B. 337; Digest Supp. It is now, however, proposed, in practice, to disclose such reports, following certain recommendations of the Report of the Committee on Administrative Tribunals and Inquiries (the "Franks" Report) (Cmd. 218; H.M.S.O., price 5s. 0d.); see Ministry of Housing and Local Government Circular 9/58, dated 27th February 1958. This has always been the practice of the Ministry of Education in connection with inquiries held by that Department; *cf. Darlassis v. Minister of Education* (1954), 118 J.P. 452; 3rd Digest Supp.

**Unfit for human habitation.** For meaning see (by virtue of s. 189 (1), *ante*), ss. 4 and 5, *ante*, although the reference here is to a "building" (not "house"). As to the inclusion of unfit houses in a clearance area, and for the compensation payable for unfit houses and buildings containing unfit dwelling accommodation, see ss. 42 (1) and 59 (2), *ante*. As to the indication of such properties in the order, see the notes to para. 1 of this Schedule, *ante*.

**Local authority.** See ss. 1 and 52, *ante*.

**Principal grounds.** See *R. v. Minister of Health, Ex parte Hack*, [1937] 3 All E.R. 176; Digest Supp.

Where a local authority included "bad internal arrangement" as one of their grounds, and the Minister stated that the house was substantially in the condition alleged, the owner contended that a compulsory purchase order was thereby invalidated (as "bad internal arrangement" did not come within the scope of what is now s. 4, *ante*). It was held that this was a minor matter which could not have influenced the result, and an application to quash the order was dismissed; see *Steele v. Minister of Housing and Local Government and West Ham County Borough Council* (1956), 6 P. & C.R. 386, C.A.

**Entitled . . . to be furnished by the Minister with . . . his reasons.** It is doubtful whether such a statement will in practice enable the validity of the order to be challenged under the Fourth Schedule, *post*, see *Re Falmouth (Well Lane, Sedgmond's Court and Smithwick Hill) Clearance Order, 1936, Re Halse's Application*, [1937] 3 All E.R. 308; Digest Supp. Where the Minister included among his reasons a matter which was alleged not to come within the scope of what is now s. 4, *ante*, namely "bad internal arrangement", the Court held this was a minor matter and refused to quash a compulsory purchase order; see *Steele v. Minister of Housing and Local Government, supra*.

It may be noted, however, that where the reasons relate mainly to sanitary defects (*cf.* s. 4 (1) (c) to (h), *ante*), or in stability (s. 4 (1) (b), *ante*), as opposed to disrepair, the Minister's statement will assist any claim for a payment under s. 60 and Part I of the Second Schedule, *ante*. *Cf.* the General Note to s. 30, *ante*; and the note "It has been well maintained" to s. 60 (1), *ante*.

**Minister may require any person . . . to state in writing.** Grounds of objection should be included in making an objection, but if the Minister intends to exercise his power of disregarding an objection (para. 3 (6), *supra*), he must first, it is submitted, specifically require a further statement of the grounds of objection. Note, in particular, that the notices served under para. 2 of this Schedule, *ante* (see the note, "Prescribed form" thereto), which require grounds to be stated, do not emanate from the Minister but are served by the local authority.

**Matters which can be dealt with by the tribunal.** The matters within the jurisdiction of the Lands Tribunal are, primarily, the assessment of the amount of compensation in accordance with the statutory provisions, and, secondly, certain special questions, *e.g.*, under para. 8 (4) and (5) in Part II of this Schedule, *post*. The Tribunal cannot, however, deal with such matters as a submission that the statutory measure of compensation would be inadequate and that this would lead to exceptional hardship to the objector. As the Tribunal cannot consider such matters, the Minister must do so.

The present mention of the "tribunal" replaces a reference in the Housing Act, 1936, to the "arbitrator": cf. the note "General law of compensation" in the General Note to s. 59, *ante*.

#### Para. 4.

**Order as confirmed.** Paras. 3 (2) and (3), *supra*, enable the Minister to confirm a compulsory purchase order under s. 43 or 51, *ante*, "with or without modification". The present paragraph in part extends this power (see para. 4 (3) and (4), *supra*) and is partly restrictive (paras. 4 (1) and (2), *supra*). In general, apart from the specific restrictions, any sort of modification appears to be possible (cf. *Minister of Health v. R., Ex parte Yaffé*, [1931] A.C. 494 at p. 504; Digest Supp.), including a modification designed to cure a defect in the order originally submitted (*ibid.*; and see *Re Bowman, South Shields (Thames Street) Clearance Order, 1931*, [1932] All E.R. Rep. 257; [1932] 2 K.B. 621; Digest Supp. (decided on a provision now contained in s. 45 (1), *ante*).

**Clearance area; outside that area.** See ss. 42 and 43 (2), *ante*. Para. 4 (2) (a) forbids the change of "grey lands", under s. 43 (2), to land within the clearance area; but the reverse type of modification is allowed by para. 4 (3), *supra*. Cf. the General Note to s. 42, *ante*.

#### *Procedure for orders for compulsory purchase of land for purposes of re-development*

5.—(1) The provisions of this paragraph shall have effect with respect to any order under section fifty-seven of this Act.

(2) If any objection is duly made in writing by any of the persons on whom notices are required to be served, stating as the ground thereof either—

- (a) that any house indicated in the order as being unfit for human habitation and not capable at reasonable expense of being rendered so fit ought not to have been so indicated; or
- (b) in the case of land in the re-development area, that the objector is prepared to enter into arrangements for the carrying out of re-development, or for securing the use of the land, in accordance with the re-development plan; or
- (c) in the case of land outside the re-development area, any matter not being a matter which in the opinion of the Minister can be dealt with by the tribunal by whom the compensation is to be assessed;

the Minister shall, unless the objection is withdrawn, cause a public local inquiry to be held with respect thereto and shall consider any objection not withdrawn and the report of the person who held the inquiry, and may then, subject to the provisions of this Schedule, confirm the order either with or without modification, and in any other case the Minister may, subject as aforesaid, confirm the order with or without modification and either after, or without, causing a public local inquiry to be held.

(3) Where any objection not withdrawn has been made on the ground that a building included in the order is not unfit for human habitation the public local inquiry shall not be held earlier than the expiration of fourteen days after it has been shown to the satisfaction of the Minister that the local authority have served upon the objector a notice in writing stating what facts they allege as their principal grounds for being satisfied that the building is so unfit.

(4) A person who objects to the order on the grounds that a building included therein, being a building in which he is interested, is not unfit for human habitation and who appears at the public local inquiry in support of his objection shall, if the building is included in the order as confirmed as being unfit for human habitation, be entitled, on making a request in writing, to be furnished by the Minister with a statement in writing of his reasons for deciding that the building is so unfit.

6. An order as confirmed by the Minister under the last foregoing paragraph shall not authorise the local authority to purchase any land which the order would not have authorised them so to purchase if it had been confirmed without modification, or to purchase, as being a house unfit for human habitation, and

not capable at reasonable expense of being rendered so fit, any house not indicated in the order as submitted as being in that condition.

### NOTES

**History.** Para. 5 (1) and (2), *supra*, contain provisions formerly in para. 5 of the First Schedule to the Housing Act, 1936. Para. 5 (3) and (4) contain provisions formerly in s. 41 (1) and (2) of that Act. Para. 6 contains provisions formerly in paras. 6 and 14 of the First Schedule to that Act.

**General Note.** Paras. 5 and 6, *supra*, provide for the hearing of objections to, and the confirmation of, compulsory purchase orders under s. 57, *ante*, in connection with re-development areas. Again the provisions of s. 41 of the Act of 1936 are incorporated in the Schedule: see para. 5 (3) and (4), *supra*, closely resembling para. 3 (4) and (5), *ante*, and para. 5 (3) and (4) of the Fifth Schedule, *post*.

#### Para. 5.

**House; unfit for human habitation; not capable at a reasonable expense, etc.** See s. 57 (3), *ante*, and the notes thereto.

**Re-development area.** See ss. 55 *et seq.*, *ante*.

**Objection; duly made.** Cf. the notes to paras. 2 and 3 of this Schedule, *ante*.

**Enter into arrangements.** Cf. s. 57 (2), *ante*.

**Re-development, or . . . use . . . , in accordance with the re-development plan.** See s. 56 (8), *ante*. Note that, in connection with re-development areas, the first stage is the preparation of the re-development plan under s. 56, *ante*, before questions of compulsory purchase arise under s. 57, *ante*. The present paragraph (para. 5 (2) (b), *supra*), provides for the holding of an inquiry where the objector is willing to put the proposals of the re-development plan into effect, but not where he has alternative proposals. However, in Committee of the House of Commons (discussing a clause which became s. 15 of the Housing Act, 1935; see now s. 57, *ante*), an assurance was given that an objector's alternative proposals would be considered if a compulsory purchase order was made.

Despite this assurance, it would seem more prudent for owners who wish to re-develop any property included in a re-development area, and whose proposals for re-development differ from those put forward by the local authority, to object to the re-development plan under s. 56, *ante*, and support their objections at the inquiry held into that plan. If they delay and subsequently object to the compulsory purchase order on the ground that they have alternative proposals, they may be met with the objection that the Minister is not obliged and does not intend to hear such objections at that inquiry, or even, if all objections are in the nature of alternative proposals, that he is under no obligation, and does not intend, to hold a local inquiry at all.

**Matter which . . . can be dealt with by the tribunal.** See the note to a similar phrase in para. 3 (6) of this Schedule, *ante*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Public local inquiry; report.** Cf. the notes to para. 3 of this Schedule, *ante*. Under the present paragraph there is no power to substitute a "hearing".

**Subject to the provisions of this Schedule; with or without modifications.** Apart from the express restrictions in para. 6, *supra*, any sort of modification would appear possible; cf. para. 4 of this Schedule, *ante*, which applies to orders under ss. 43 and 51, and the note "Order as confirmed" to that paragraph.

**Confirm the order.** As to the validity and date of operation of orders, see the Fourth Schedule, *post*.

**Unfit for human habitation.** For meaning, see (by virtue of s. 189 (1), *ante*), ss. 4 and 5, *ante*. For the power to indicate houses as being unfit and not capable of being rendered fit at reasonable expense, see s. 57 (3), *ante*, and as to compensation, see s. 59 (2), (3), *ante*.

**Local authority.** See ss. 1, 55 (1) and 58, *ante*.

**Principal grounds; entitled . . . to be furnished by the Minister with . . . his reasons.** Cf. the notes to para. 3 of this Schedule, *ante*.

#### Para. 6.

**House . . . indicated in the order as submitted.** See s. 57 (3), *ante*.

### PART II

#### INCORPORATION OF ENACTMENTS

7.—(1) A compulsory purchase order under Part III of this Act shall incorporate, subject to the modifications hereinafter mentioned and any necessary adaptations,—

(a) the Lands Clauses Acts;

(b) the Acquisition of Land (Assessment of Compensation) Act, 1919; and

- (c) section seventy-seven of the Railways Clauses Consolidation Act, 1845, and sections seventy-eight to eighty-five of that Act as originally enacted and not as amended for certain purposes by section fifteen of the Mines (Working Facilities and Support) Act, 1923.

(2) In construing for the purposes of this Schedule or any order made thereunder any enactment incorporated in the order, this Act, together with the order, shall be deemed to be the special Act, and the local authority shall be deemed to be the promoters of the undertaking.

8.—(1) The modifications subject to which the Lands Clauses Acts and the Acquisition of Land (Assessment of Compensation) Act, 1919, shall be incorporated in the order are set out in this paragraph.

(2) The compensation shall be assessed in accordance with such of the provisions of section fifty-nine of this Act as are applicable to the particular case.

(3) The following sections of the Lands Clauses Consolidation Act, 1845, shall be excepted from incorporation as aforesaid, that is to say,—

- (a) sections one hundred and twenty-seven to one hundred and thirty-two (which relate to the sale of superfluous land);  
(b) section one hundred and thirty-three (which relates to promoters making good deficiencies in rates).

(4) In the case of an order under section forty-three or section fifty-one of this Act, the tribunal by whom the compensation is to be assessed may, notwithstanding anything in section ninety-two of the Lands Clauses Consolidation Act, 1845, determine that such part of any house, building or manufactory as is proposed to be taken by the local authority can be taken without material damage to the house, building or manufactory and, if they so determine, may award compensation in respect of the severance of the part so proposed to be taken in addition to the value of that part.

Where they so determine, the party interested shall be required to sell and convey to the local authority that part of the house, building or manufactory.

(5) 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 in respect of which a claim is made was not reasonably necessary and was carried out with a view to obtaining or increasing compensation.

(6) Where any land to which an order relates is glebe land or other land belonging to an ecclesiastical benefice, the order shall provide that sums agreed upon or awarded for the purchase of the land, or to be paid by way of compensation for damage to be sustained by the owner by reason of severance or injury affecting the land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Church Commissioners to be applied by them as money paid to them upon a sale, under the provisions of the Ecclesiastical Leasing Acts, of land belonging to a benefice.

(7) Any compensation payable in pursuance of this Act by a local authority in respect of any lands, estate or interest of another local authority which would, but for this paragraph, be paid into court in manner provided by the Lands Clauses Acts may, if the Minister consents, instead of being paid into court, be paid and applied as the Minister may determine and a decision of the Minister under this paragraph shall be final and conclusive.

(8) All notices required to be served by the local authority may, notwithstanding anything in section nineteen of the Lands Clauses Consolidation Act, 1845, be served and addressed in the manner specified in this Schedule or in section one hundred and sixty-nine of this Act in relation to notices required to be served by or under this Act.

9. Where a local authority have been authorised by an order confirmed under this Schedule to purchase any land compulsorily, then, at any time after serving notice to treat and after giving to the owner and occupier of the land not less than fourteen days notice, they may enter on and take possession of the land, or such part thereof as is specified in the notice, without previous consent or compliance with sections eighty-four to ninety of the Lands Clauses Consolidation Act, 1845, but subject to payment of the like compensation for

the land of which possession is taken, and interest on the compensation awarded, as would have been payable if those provisions had been complied with.

10. Where a local authority are authorised to purchase compulsorily any house to be used for housing purposes under section forty-eight of this Act, and have acquired the right to enter on and take possession of the house by virtue of having served a notice under the last foregoing paragraph, the authority may, instead of exercising that right by taking actual possession of the house, proceed by serving notice on any person then in occupation of the house or any part thereof authorising him to continue in occupation upon terms specified in the notice, or on such other terms as may be agreed; and accordingly, where the authority proceed in the manner authorised by this paragraph—

- (a) the like consequences shall then ensue, with respect to the determination of the rights and liabilities of any person arising out of any interest of his in the house or any part thereof, as would have ensued if the authority had taken actual possession on the date of the notice, and the authority may deal with the premises in all respects as if they had done so; and
- (b) for the purposes of section one hundred and twenty-one of the Lands Clauses Consolidation Act, 1845 (which provides for payment of compensation to persons entitled to possession under short tenancies who are required to give up possession), any person who by virtue of this paragraph ceases to be entitled to receive rent in respect of any premises shall be deemed to have been required to give up possession thereof.

#### NOTES

**History.** Para. 7, *supra*, contains provisions formerly in paras. 1 and 7 of the First Schedule to the Housing Act, 1936. Para. 8 (1) and (2) contain provisions formerly in para. 2 of the said Schedule; para. 8 (3) contains provisions formerly in para. 1 of the said Schedule and in s. 147 of that Act (cf. para. 1 (2) of the First Schedule, *ante*, and para. 1 (2) of the Seventh Schedule, *post*); para. 8 (4) contains provisions formerly in para. 8 (a) of the said First Schedule to the Act of 1936, as affected by s. 1 (3) (a) of the Lands Tribunal Act, 1949 (in effect substituting the reference to the [Lands] Tribunal for a reference to the [official] arbitrator); para. 8 (5) contains provisions formerly in para. 2 (b) of the said Schedule, also affected by the Act of 1949; para. 8 (6) contains provisions formerly in para. 2 (c) of the said Schedule, as affected by s. 18 (2) of the Church Commissioners Measure, 1947 (in consequence of the establishment of the Church Commissioners under s. 1 of that Measure, in succession to the Ecclesiastical Commissioners, who were thereby united with the body known as Queen Anne's Bounty); para. 8 (7) contains provisions formerly in s. 146 of the Act of 1936 (cf. s. 133 (2), *ante*, para. 1 (3) of the First Schedule, *ante*, and para. 1 (3) of the Seventh Schedule, *post*); and para. 8 (8) contains, with some alteration, provisions formerly in para. 2 (d) of the said First Schedule to the Act of 1936.

Para. 9 contains provisions formerly in s. 145 (1) and (3) of the Act of 1936 (cf. the General Note to s. 62, *ante*), as amended by para. 3 of the First Schedule to the Housing Repairs and Rents Act, 1954 (which reduced the minimum period of notice, for present purposes, from 28 to 14 days). Para. 10 contains provisions formerly in s. 14 (3) of the Act of 1954 (cf. s. 98, *ante*, and para. 3 of the First Schedule, *ante*).

**General Note.** Paras. 7-10, *supra*, form Part II of this (the Third) Schedule, and provide for the incorporation of certain enactments in a compulsory purchase order made under ss. 43, 51 or 57 in Part III of the Act, *ante*.

In the case of compulsory purchase orders under s. 12 or 29 in Part II of the Act, or s. 97 in Part V, *ante*, the compulsory purchase order procedure is that of the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 4; 3 Halsbury's Statutes (2nd Edn.) 1064), as applied by the First Schedule, *ante*, or the Seventh Schedule, *post*. It should be noted that those Schedules and the Act of 1946 contain provisions as to the incorporation of enactments closely resembling those of the present Schedule.

#### Para. 7.

**Compulsory purchase order.** See the notes to para. 1 of this Schedule, *ante*, as to the prescribed form, etc.

**Shall incorporate.** Strictly speaking, the Acquisition of Land (Assessment of Compensation) Act, 1919, would be automatically incorporated by virtue of s. 1 of that Act and cf. s. 59 (1), *ante*. It is necessary to provide, in the order, for the incorporation of the Lands Clauses Acts, as those Acts apply automatically only where there is a "special Act" of Parliament; see, for example, Form No. 24 in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*). Compulsory purchase orders under the Act of 1946 (see the General Note, *supra*),

need not contain an express incorporation of the Lands Clauses Acts, as they are incorporated by para. 1 of the Second Schedule to that Act.

**Any necessary adaptations.** It is probably advisable to specify in the order the adaptations of the Railway Clauses Consolidation Act, 1845, mentioned in para. 7 (1) (c), *supra* (despite para. 7 (2), *supra*); i.e., it should be provided that references to the "company" are to be construed as references to the acquiring authority, and references to the "railway or works" as references to the lands authorised to be purchased or taken and to any buildings or works constructed thereon or to be constructed thereon.

**Lands Clauses Acts.** The Acts which may be so cited are listed in the note to s. 133, *ante*. The principal statute is the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 890).

**Acquisition of Land (Assessment of Compensation) Act, 1919.** 31 Statutes Supp. 177; 3 Halsbury's Statutes (2nd Edn.) 975. Cf. Chapter 2 of the Introduction, at p. 9, *ante*, and the notes to s. 59, *ante*.

**Railway Clauses Consolidation Act, 1845, ss. 77-85.** 19 Halsbury's Statutes (2nd Edn.) 633-638. See also the note, "Any necessary adaptations", *supra*.

**Special Act; promoters of the undertaking.** See s. 2 of the Lands Clauses Consolidation Act, 1845 and s. 2 of the Railway Clauses Consolidation Act, 1845 (*ubi supra*); and see Chapter 2 of the Introduction at p. 5, *ante*.

#### Para. 8.

**Such of the provisions of s. 59.** That section, *ante*, provides two measures of compensation, namely "site value" (s. 59 (2), (3)) or compensation subject to the rules in Part III of this Schedule, *post* (s. 59 (1), (4)). See Chapter 2 of the Introduction at p. 11, *ante*, and the notes to s. 59, *ante*.

**Lands Clauses Consolidation Act, 1845, ss. 127-132, 133.** As to ss. 127-132 of that Act (3 Halsbury's Statutes (2nd Edn.) 953, 954), cf. the note to s. 105 (5), *ante*. As to s. 133 of that Act, cf. the note to para. 1 (2) of the First Schedule, *ante*. Note also that the effect of s. 19 of that Act (service of notices) is varied by para. 8 (8), *supra*, and s. 92 thereof is varied by para. 8 (4), *supra*. Para. 9, *supra*, provides a procedure for entry without compliance with ss. 84-90 of that Act, and note the special power of taking "notional possession" under para. 10, *supra*, and the consequent extension of s. 121 of that Act by para. 10 (b).

**Tribunal by whom the compensation is to be assessed.** Disputed compensation will be assessed by the Lands Tribunal; see the note "History", *supra*, and the note "General law of compensation" in the General Note to s. 59, *ante*.

**Part of a house . . . material damage.** This provision (para. 8 (4), *supra*), does not apply to orders under s. 57, *ante*. It is in the nature of a "material detriment" provision (see Chapter 2 of the Introduction at p. 9, *ante*), relaxing s. 92 of the Act of 1845 (3 Halsbury's Statutes (2nd Edn.) 935). The practice under that section is for an owner who has received notice to treat and wishes to compel the promoters to take the whole house, building or manufactory, to serve a counter-notice to that effect. It is suggested that a similar procedure may with advantage be followed under this subparagraph (or, on purchases under Part II or V of this Act, under the corresponding provisions of para. 4 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946).

Under s. 92 of the Act of 1845, the promoters on being served with a counter-notice would have the choice of taking the whole property or withdrawing their notice to treat. The present provision (or the corresponding "material detriment" provision of the Act of 1946) introduces the alternative of taking part only of the property and paying compensation for severance; but this applies only where the Tribunal finds that the severance will not cause material damage (or detriment). Where the Tribunal finds the contrary, the acquiring authority will be in the same position as under the Act of 1845, i.e., they will have to take the whole property or withdraw their notice to treat. Furthermore it seems that a notice to treat for a purchase under s. 43 or 51, *ante*, cannot normally be withdrawn (cf. the General Note to s. 50, *ante*), so that the authority in such a case would have no choice, but would have to take the whole property.

The word "house", in this context, appears to bear the same meaning as in s. 92 of the Act of 1845; cf. the note to the definition in s. 189 (1), *ante*.

**Tribunal shall not take into account, etc.** This provision (para. 8 (5), *supra*), extends the general rule that the date of notice to treat fixes the interests in respect of which compensation for a compulsory purchase will be assessed, and that an owner cannot thereafter deal with his interest so as to add to the burden of compensation. It requires the Tribunal to disregard certain matters occurring after an earlier date, namely that of publication of notice, under para. 2 of this Schedule, *ante*, of the making of the order.

The corresponding provision for purchases under Part I or Part V of the Act, *ante*, is in even wider terms, mentioning no specific date: see para. 8 in Part III of the Second Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 21; 3 Halsbury's Statutes (2nd Edn.) 1083).

**Not reasonably necessary and was carried out, etc.** The word "and" is important. The Tribunal cannot disregard works, or an interest, unless satisfied both of the lack of reasonable necessity and of the fact that the matters were "carried out with a view to obtaining or increasing compensation". A landowner is not imperilled by carrying out works or creating an interest in circumstances where he will be able to convince the Tribunal (if the order is confirmed and his land is taken) that it was reasonably necessary to do so, or that his object was not to obtain or increase compensation thereby.

For example, it is thought that the present paragraph is not intended to discourage proper estate management during the period in which the order is submitted and is under consideration by the Minister.

**Where any land . . . is glebe land, etc.** The corresponding provision as to purchases under Part I or Part V of the Act, *ante*, is para. 5 in Part I of the Second Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 20; 3 Halsbury's Statutes (2nd Edn.) 1082); but under that Act the provisions take effect automatically, whereas the present provision (para. 8 (6), *supra*), requires express provision to be made in the compulsory purchase order. Where such provision is made, the requirement of payment to the Church Commissioners applies both to compensation awarded for a strictly compulsory purchase (including compensation for severance or other injurious affection) and also to the price on a purchase by agreement under the order. Though it seems that the Commissioners can give an effective receipt for such moneys, it may be that other persons will have to join in the conveyance to make title. Where there is a sale by agreement, without assessment of the compensation by the Lands Tribunal, it may be necessary to comply with s. 9 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 898), other than the requirement of payment into the Bank.

*Quære*, whether this paragraph relates to land not purchased but injuriously affected: note the phrase "land to which an order relates", and cf. the note "Land to which it applies" to para. 1 of this Schedule, *ante*.

**Church Commissioners.** The functions, rights, privileges and property of the former Ecclesiastical Commissioners were transferred to the Church Commissioners for England by s. 2 of the Church Commissioners Measure, 1947 (7 Halsbury's Statutes (2nd Edn.) 1171) on 1st April 1948, the day appointed by the Archbishop of Canterbury; cf. the note "History", *supra*.

**Ecclesiastical Leasing Acts.** By s. 13 of the Ecclesiastical Leasing Act, 1858, this expression refers to that Act and the Ecclesiastical Leasing Act, 1842 (7 Halsbury's Statutes (2nd Edn.) 785, 800).

**Any compensation payable in pursuance of this Act.** The present (Third) Schedule relates to compulsory purchase orders under Part III of the Act; see ss. 43, 51 and 57, *ante*. The present sub-paragraph (para. 8 (7), *supra*), applies to purchases, under such a Part III order, of land belonging to another local authority; but note s. 57 (5), *ante*. Similar provision is made for compulsory purchase orders made for the purposes of Part II or Part V, *ante*, by para. 1 (3) of the First Schedule, *ante*, and para. 1 (3) of the Seventh Schedule, *post*. As to certain purchases by agreement, see s. 133 (2) in Part V, *ante*. All these provisions are derived from s. 146 (repealed) in Part VII of the Housing Act, 1936, which applied to all purchase moneys or compensation payable in pursuance of that Act by a local authority in respect of the land of another local authority. See the General Note to s. 133, *ante*, as to purchases by agreement; where there is no compulsory purchase order, the corresponding provisions of the Local Government Act, 1933 or the London Government Act, 1939, appear to apply to a purchase under Part III of this Act.

**Local authority; another local authority.** As to the local authority under Part III, see ss. 1 and 52, *ante* (clearance areas) and ss. 1, 55 (1) and 58, *ante* (re-development areas). As to the other local authority, see s. 189 (2), *ante*; and note s. 57 (5), *ante*, as to re-development areas.

**Would . . . be paid into court; decision . . . shall be final and conclusive.** See the notes to para. 1 (3) of the First Schedule, *ante*.

**Minster.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *post*.

**All notices . . . may . . . be served.** The effect of this sub-paragraph (para. 8 (8), *supra*), is to provide modes for the service of notices under the confirmed compulsory purchase order; *e.g.*, for the service of notice to treat under s. 18 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 902) (without prejudice to s. 19 of that Act) or for service of notice of intention to enter under para. 9, *supra*.

For compulsory purchase orders made for the purposes of Part II or Part V of the Act, *ante*, the corresponding provision is para. 6 in Part I of the Second Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946, which applies para. 19 in Part V of the First Schedule to that Act (39 Statutes Supp. 19; 3 Halsbury's Statutes (2nd Edn.) 1080, 1082).

The present paragraph allows notices to be served as mentioned in s. 169, *ante*, and also "in the manner specified in this Schedule". The inclusion of this last-mentioned

method, *i.e.*, as mentioned in para. 2 (2), *ante*, appears to be a most unfortunate drafting error, arising from a mis-reading of para. 1 (1) of the First Schedule to the Housing Repairs and Rents Act, 1954. Cf. the note "A notice . . . may be served" to para. 2 (2), *ante*, which now applies to notice of the making of any "Part III" compulsory purchase order (although orders under what is now s. 57, *ante*, were not dealt with by the Act of 1954).

**Para. 9.**

**Order confirmed under this Schedule.** See paras. 3 (2), (3) and 5 (3) in Part I of this Schedule, *ante*; and as to the validity and date of operation of such orders, see the Fourth Schedule, *post*.

**After serving notice to treat and after giving . . . not less than fourteen days notice.** For modes of service, see s. 169, *ante*, and para. 8 (8), *supra*. This provision is derived from s. 145 (1) (repealed) of the Act of 1936, the minimum period for the notice of intention to enter having been reduced to 14 days by the Housing Repairs and Rents Act, 1954; see the General Note to s. 62, *ante*, which refers also to the corresponding provisions for compulsory purchases under Part II or Part V of this Act, etc.

In *Liverpool Corporation v. Rose* (1935), 100 J.P. 62; 11 Digest (Repl.) 309, 2152, it was held that it was lawful to serve the notice to treat and the notice of intention to enter simultaneously, and further, that if the notice of intention to enter is served before the notice to treat, the time prescribed by the section will commence to run from the date of the service of notice to treat.

For the meaning of owner, see s. 189 (1), *post*. For the interpretation of "not less than fourteen days", cf. the note "Not less than twenty-one days" to s. 16 (1), *ante*. As to authentication of notices, see s. 166 (2), *ante*.

**Enter on and take possession.** Note also para. 10, *supra*, as to taking "notional" possession in certain cases.

**Lands Clauses Consolidation Act, 1845, ss. 84-90.** See the note to s. 62 (2), *ante*.

**Compensation . . . and interest.** As to compensation, see s. 59, and notes, *ante*. As to interest, see the note to s. 62 (2), *ante*.

**Para. 10.**

**Authorised to purchase compulsorily, etc.** This paragraph applies where (i) there is a confirmed and operative compulsory purchase order, (ii) notice to treat has been served, and (iii) notice of intention to enter has been served under para. 9, *supra*. For comparable provisions for the purposes of Part II and Part V of the Act, *ante*, see para. 3 of the First Schedule and s. 98, *ante*, respectively. The purpose of these provisions is explained in the notes to s. 98.

**House to be used for housing purposes.** This appears to refer only to houses retained as temporary accommodation under s. 48 (1), *ante*. For the meaning of "house", see s. 189 (1), *ante*.

**Lands Clauses Consolidation Act, 1845, s. 121.** 3 Halsbury's Statutes (2nd Edn.) 949. That section enables an acquiring authority to require a person in possession of land, whose interest is not greater than that of a tenant for a year or from year to year, to give up possession, subject to the payment of compensation. The section applies to a person occupying under the last year of a longer term; see *R. v. Great Northern Railway Company* (1876), 2 Q.B.D. 151, and see 10 Halsbury's Laws (3rd Edn.) 221, 222.

Sections 59, 74

PART III

RULES AS TO THE ASSESSMENT OF COMPENSATION WHERE LAND PURCHASED OTHERWISE THAN AT SITE VALUE

1. If the tribunal by whom the 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.

2. If the tribunal are satisfied that any premises are in a state of defective sanitation, or are not in reasonably good repair, the compensation shall be the estimated value of the premises if put into a sanitary condition, or reasonably good repair, less the estimated expense of putting them into such condition or repair.

3. The local authority may tender evidence as to the matters aforesaid, notwithstanding that they have not taken any steps with a view to remedying the defects or evils disclosed by the evidence, but before tendering evidence as to sanitation or repair, the authority shall furnish to the tribunal and to the

claimant a statement in writing of the respects in which the premises are alleged to be so defective.

4. The tribunal shall have regard to and make an allowance in respect of any increased value which, in their opinion, will be given to other premises of the same owner—

- (a) where the premises for which compensation is to be assessed are purchased under section fifty-seven of this Act, by the proposed re-development of the area in accordance with the re-development plan; or
- (b) in any other case by the demolition by the local authority of any buildings.

5. In assessing compensation for premises purchased under section fifty-seven of this Act, the tribunal may take into account and embody in their award any undertaking given by the local authority with respect to the time within which, and the manner in which, the re-development or any part thereof is to be carried out, and the terms of any undertaking so embodied in the award shall be binding on and enforceable against the authority.

6. The tribunal shall embody in their award a statement showing separately whether compensation has been reduced by reference to the use of the premises for illegal purposes, to overcrowding, to the considerations mentioned in paragraph 2 of this Part of this Schedule and to the considerations mentioned in paragraph 4 thereof, and the amount, if any, by which compensation has been reduced by reference to each of those matters.

#### NOTES

**History.** This Part of this Schedule contains provisions formerly in the Fourth Schedule to the Housing Act, 1936, as affected by s. 1 (3) (a) of the Lands Tribunal Act, 1949.

**General Note.** This Schedule contains special rules affecting the assessment of compensation (1) for a compulsory purchase of land under Part III of this Act, except where "site value" compensation is payable (see s. 59 and the notes thereto, *ante*); (2) for the purchase of an obstructive building under s. 74 (1), *ante*; and (3) for the demolition of an obstructive building, without purchase, under s. 74 (4), *ante*. In the case of purchases, the assessment is also subject to the Acquisition of Land (Assessment of Compensation) Act, 1919 (31 Statutes Supp. 177; 3 Halsbury's Statutes (2nd Edn.) 975), see s. 59 (1), *ante*; under s. 74 (4), *ante*, that Act is applied to a more limited extent.

These rules do not apply to compulsory purchases under Part II of the Act, as "site value" will in all such cases be payable under s. 12 (4) or 29 (2), *ante*. So far as relevant to purchases under Part V of the Act, the rules are set out again in para. 2 of the Seventh Schedule, *post*, with some difference in numbering.

The purpose of the rules is to restrict the measure of compensation in cases where rented premises are used for illegal purposes or are overcrowded (para. 1); where premises are in a state of defective sanitation or poor repair (para. 2); and where the owner will benefit by betterment in the course of re-development of a re-development area, or by the demolition of buildings (para. 4). The local authority are not estopped by their own inactivity from tendering evidence for the purposes of paras. 1 or 2, but must give prior notice of evidence directed at matters of repair or sanitation (para. 3). Where the Tribunal reduce compensation pursuant to paras. 1, 2 or 4, this fact, and the amount of the reduction or reductions, must be stated in the award (para. 6). For the purposes of para. 4 (a), relating to re-development areas, the local authority's proposals for re-development, so far as relevant, may be embodied in an enforceable undertaking on their part (para. 5).

Similar rules were contained in earlier housing statutes, *e.g.*, the Housing of the Working Classes Act, 1890 (repealed), and Part II of the Third Schedule to the Housing Act, 1930 (repealed); and in the course of re-enactment by the Housing Act, 1936, and now by this Act, much of the old language has been preserved. Thus para. 2 still refers to "defective sanitation" although the definition of "sanitary defects" no longer appears in this Act; cf. the note "History" to s. 4, *ante*.

The present rules are not applied to purchases under Part IV of the Town and Country Planning Act, 1947 (48 Statutes Supp. 86; 25 Halsbury's Statutes (2nd Edn.) 544), although "site value" compensation may be payable thereunder in certain cases, as mentioned in the notes to s. 59, *ante*.

Para. 2 of these rules is excluded, for special purposes under ss. 31 and 61, *ante* (payments to certain owner-occupiers and others) by the definition of "full compulsory purchase value" in para. 7 (2) in Part II of the Second Schedule, *ante*. There is no such exclusion, in relation to ss. 30 and 60, *ante* (well-maintained houses), in the definition of the "full value of the house" in para. 2 (1) proviso in Part I of the Second Schedule, *ante*.

**Para. 1.**

**Tribunal.** The Lands Tribunal replaced the official arbitrators, in England and Wales, on 1st January 1950; see the note "General law of compensation" in the General Note to s. 59, *ante*.

**Satisfied.** Provided that the member or members who constitute the tribunal come to a decision on proper material, it would seem there is no method of challenging a decision on the matters mentioned in this Schedule, by appeal or otherwise. See s. 3 (4) of the Lands Tribunal Act, 1949 (61 Statutes Supp. 38; 28 Halsbury's Statutes (2nd Edn.) 322), for the right of appeal by a person aggrieved on a point of law.

**Illegal purposes.** Cf. r. (4) in s. 2 of the Act of 1919 (*ubi supra*), which provides for disregarding any increased value arising, *inter alia*, from a use which is "contrary to law". That rule is, however, excluded in the case of compensation under s. 74 (4), *ante*.

**Overcrowded within the meaning of Part IV.** See s. 77, *ante*. That Part (except s. 90) relates to overcrowding of "dwelling-houses" (as defined in s. 87, *ante*).

**So far as it is based on rental.** A common method of valuing premises which are let at a rent, is to take a number of years' purchase of that rent. *Semble*, there is nothing to prevent an alternative valuation being submitted, based on a selling price unless, by inference, that must be taken in turn to reflect a value "based on rental".

**Para. 2.**

**Defective sanitation; reasonably good repair.** These expressions are not defined. "Sanitary defects" were formerly defined in s. 188 (1) of the Housing Act, 1936, but that definition was repealed by the Housing Repairs and Rents Act, 1954. "Sanitary defects" and "disrepair" were formerly relevant, in determining whether a house was fit for human habitation, under s. 188 (4) of the Act of 1936, also repealed by the Act of 1954. See, generally, the notes to s. 4, *ante*. References to "sanitary defects" and "disrepair" also occurred in ss. 25 (1) (a) and 40 (2) proviso of the Act of 1936, until deleted by the Act of 1954 (see now ss. 42 (1) (a) and 59 (2) proviso, *ante*).

It is suggested that "defective sanitation" includes such matters as (1) lack of ventilation, (2) darkness, (3) dampness, (4) inadequate or inaccessible water supply and (5), inadequate drainage, sanitary accommodation, etc. In premises which fall to be valued under this present Schedule, the defects as a whole are unlikely to be so grave as to make the premises unfit to live in: cf. s. 4 (1), *ante*, and in particular the matters there listed in paras. (c) to (h). As to "repair", see the note to that word in s. 4 (1) (a), *ante*, and *Proudfoot v. Hart*, there cited. Any lack of ordinary "decorative" repair is probably not relevant in the present paragraph. It was usually considered irrelevant to the old standard of unfitness (s. 188 (4) of the Act of 1936), in the absence of local Act amendments expressly directing regard to be had to decorative condition. See, however, s. 147 (2) (iii) of the Law of Property Act, 1925; 20 Halsbury's Statutes (2nd Edn.) 750, which appears to be drafted on the contrary assumption. Reference may also be made to the note "Works of improvement" to s. 69 (1), *ante*, and to the special definition of "repair" in s. 121 (3), *ante*.

**Estimated value . . . if put into a sanitary condition.** The mischief aimed at by this paragraph is that landlords may allow property to deteriorate while continuing to draw the rent. In many cases the estimated value in a proper condition is little higher than in its actual condition; but the expense of remedying the defects may be very high. In some cases the expense would even exceed the value of the premises. Where this is so, only nominal compensation would be payable; see *Pinson and Richards v. Bristol Corporation* (1955), 5 P. & C.R. 282 (Lands Tribunal).

This would also defeat the object of ss. 31 and 61, *ante* (payments to certain owner-occupiers and others): hence the exclusion of the present paragraph in such cases, mentioned in the General Note, *supra*.

**Para. 3.**

**Local authority.** For meaning in this Schedule, see ss. 1, 52, 55 (1), 58 and 75, *ante*.

**Notwithstanding that they have not taken any steps.** The defects or evils relevant under this Schedule (or para. 2 of the Seventh Schedule, *post*), will not in general be such as would render a house unfit for human habitation within the meaning of s. 4 or 5, *ante*, but include such matters as overcrowding which, by s. 85, *ante*, the local authority under Part IV of the Act are under a duty to abate.

As to disrepair and defective sanitation it seems that, unless a house is unfit for human habitation, the local authority will have had no power to proceed against it (*e.g.*, under s. 9 or 16, *ante*); and that if it is unfit, it is likely to be purchased at site value (and not valued under the rules of this Schedule) or to be demolished under s. 17, *ante* (and not under s. 74, *ante*). However, under s. 9 of the Act of 1936 (as originally enacted) a "repairs" notice (see now s. 9, *ante*), could be served if a house was "in any respect unfit", and it was thought that this might apply to very minor defects (but see now s. 4, *ante*, which clearly provides a uniform standard of unfitness throughout this Act). Again, cases frequently arise where the local authority might have taken action under other powers, *e.g.*, s. 92 of the Public Health Act, 1936 (19 Halsbury's Statutes (2nd Edn.) 379). Their failure to do so is not to estop them from alleging the defects, etc., in mitigation of their liability for compensation under this Schedule.

**Before tendering evidence.** This requirement of a statement in writing applies to allegations as to sanitation or repair. It will be of advantage to supply such information at least 14 days before the hearing; cf. paras. 3 (4) and 5 (3) in Part I of this Schedule, *ante*, and para. 5 (3) of the Fifth Schedule, *post* (statement of reasons as to unfitness at least 14 days before any inquiry or hearing as to confirmation of a compulsory purchase, or clearance, order). It will also be of advantage to give similar notice as to other allegations (*e.g.*, overcrowding) which may be relevant under this Schedule, although this is not strictly required. Reference should also be made to the Lands Tribunal Rules, 1956 (S.I. 1956 No. 1734), and in particular r. 38 as to expert witnesses.

**Para. 4.**

**Increased value.** This "betterment" provision operates only where the owner compensated under this Schedule is also the owner of other premises which, in the Tribunal's opinion, will be increased in value.

**Owner.** For meaning, see s. 189 (1), *ante*. In this context, however, "owner" may mean a person who, under the Lands Clauses Acts or the "special Act", would be enabled to sell to the acquiring authority; see s. 3 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 895), which, in the case of a compulsory purchase to which this Schedule applies, will be incorporated with the compulsory purchase order.

**Re-development . . . in accordance with the re-development plan.** For meaning, see s. 56 (8), *ante*.

**Para. 5.**

**Enforceable against the authority.** This paragraph is designed to prevent the authority benefitting by the set-off of betterment under para. 4 (a), *supra*, and subsequently failing to carry out the re-development of the area as planned or at all. It seems the undertaking embodied in the Tribunal's award would be enforced by *mandamus*. The amount of betterment taken into account will have been stated (para. 6), and damages of this amount with interest might perhaps be recoverable by the owner if the undertaking is broken.

# FOURTH SCHEDULE

Sections 43, 44, 51, 56, 57

## VALIDITY AND DATE OF OPERATION OF CERTAIN ORDERS UNDER PART III

1. So soon as may be after a compulsory purchase order under Part III of this Act or a clearance order has been confirmed by the Minister, the local authority shall publish in a newspaper circulating in their district a notice in the prescribed form stating that the order has been confirmed, and naming a place where a copy of the order as confirmed and of the map referred to therein may be seen at all reasonable hours, and shall serve a like notice on every person who, having given notice to the Minister of his objection to the order, appeared at the public local inquiry in support of his objection.

2. If any person aggrieved by such an order as aforesaid, or by the Minister's approval of a re-development plan or of a new plan, desires to question the validity thereof on the ground that it is not within the powers of this Act or that any requirement of this Act has not been complied with, he may, within six weeks after the publication of the notice of confirmation of the order, or of the approval of the plan, make an application for the purpose to the High Court, and where any such application is duly made the court—

- (i) may by interim order suspend the operation of the order, or the approval of the plan, either generally or in so far as it affects any property of the applicant until the final determination of the proceedings; and
- (ii) if satisfied upon the hearing of the application that the order, or the approval of the plan, is not within the powers of this Act or that the interests of the applicant have been substantially prejudiced by any requirement of this Act not having been complied with, may quash the order, or the approval of the plan, either generally or in so far as it affects any property of the applicant.

3. Subject to the provisions of the last foregoing paragraph, the order, or the approval of the plan, shall not be questioned in any legal proceedings whatsoever, either before or after the order is confirmed or the approval is given, as the case may be, and shall become operative at the expiration of six weeks

from the date on which notice of confirmation of the order, or of the approval of the plan, is published in accordance with the provisions of this Act.

4. Except by leave of the Court of Appeal, no appeal shall lie to the House of Lords from a decision of the Court of Appeal in proceedings under this Schedule.

5. So soon as may be after a compulsory purchase order made under section forty-three or fifty-one of this Act or a clearance order has become operative, the local authority shall serve a copy thereof on every person on whom a notice was served by them of their intention to submit the order to the Minister for confirmation.

## NOTES

**History.** This Schedule contains provisions formerly in the Second Schedule to the Housing Act, 1936.

**General Note.** The principal provisions of this Schedule make available, on limited grounds and within a short time limit, a procedure for questioning the validity of compulsory purchase orders under Part III of the Act, *ante*, or of clearance orders, re-development plans and new plans under that Part.

There are similar provisions as to compulsory purchase orders for the purposes of Part II or Part V of the Act, *ante*: see Part IV, paras. 15–17, of the First Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 18, 19; 3 Halsbury's Statutes (2nd Edn.) 1079, 1080). The Act of 1946, however, provides that orders made under the procedure of that Act become operative as soon as first published (contrast para. 3, *supra*), although the period for challenging an order, by application to the Court, is still six weeks from publication (as in para. 2, *supra*). Para. 15 (2) of the First Schedule to the Act of 1946, corresponding with para. 4, *supra*, was repealed on 1st July 1948 by the Town and Country Planning Act, 1947.

Para. 2, *supra*, empowers the Court, first, to suspend the operation of the order, or the approval of the plan, while the proceedings are heard; and, secondly, to quash the order or approval on either of two grounds. These grounds are that the order or approval is *ultra vires* (not within the powers of the Act), or that some requirement of the Act has not been complied with; in the latter case it must also be shown that the non-compliance has substantially prejudiced the interests of the applicant.

An application to the Court, under para. 2, cannot be employed to question a policy decision of the Minister, made in his administrative capacity; see the note "Local inquiries" to s. 181, *ante*, and *Johnson (B.) & Co. (Builders), Ltd. v. Minister of Health*, [1947] 2 All E.R. 395, C.A.; 2nd Digest Supp.; *Re Bowman, South Shields (Thames Street) Clearance Order, 1931*, [1932] All E.R. Rep. 257; Digest Supp.; *Re London County Council (Riley Street, Chelsea, No. 1) Order, 1938*, [1945] 2 All E.R. 484; 2nd Digest Supp. (the last-mentioned case appears in some reports *sub nom. Gilbert v. Minister of Health*). Cf., also, *Re City of Plymouth (City Centre) Declaratory Order, 1946*, *Robinson v. Minister of Town and Country Planning*, [1947] 1 All E.R. 851; 2nd Digest Supp., and *Franklin v. Minister of Town and Country Planning*, [1947] 1 All E.R. 612, C.A.; affirmed, [1947] 2 All E.R. 289, H.L.; 2nd Digest Supp. As to the grounds on which an application may be made, see the notes to para. 2, *infra*.

It has usually been said that the Court will not disturb a finding of fact by the Minister, and will not review the evidence which was before him as a result of a public local inquiry or hearing; see *Bowman's case* and the *Riley Street case* (*supra*), and *Re Falmouth (Well Lane, Sedgmond's Court and Smithwick Hill) Clearance Order, 1936*, *Re Halse's Application*, [1937] 3 All E.R. 308; Digest Supp. These cases recognise, in varying terms, that the Court may have to review the evidence in certain circumstances, as where it is suggested that there was no material at all on which an order could be made, or where the evidence shows that the decision was *ultra vires*. The cases of *Estate and Trust Agencies (1927), Ltd. v. Singapore Improvement Trust*, [1937] 3 All E.R. 324, P.C.; Digest Supp.; and *McCoy v. Cork Corporation*, [1934] I.R. 779; Digest Supp., go further than any English decision in holding that the evidence may be reviewed by the Court. But see *Marriot v. Minister of Health* (1935), 154 L.T. 47, *per* Swift, J., affirmed, [1936] 2 All E.R. 865, C.A.; Digest Supp. (cited in the notes to s. 43 (3), *ante*); and *Re Ripon (Highfield) Housing Order, 1938*, *Applications of White and Collins*, [1939] 3 All E.R. 548, C.A.; Digest Supp., in which orders were quashed. In *Marriot's case* the evidence at the inquiry showed that the buildings had been demolished already, and confirmation of the order was therefore *ultra vires* (but see now s. 43 (3), *ante*). In the *Ripon case* the Court of Appeal considered affidavits lodged in support of the application and the transcript of the evidence at the inquiry, in order to determine whether the land was part of a park within the meaning of s. 75 (repealed) of the Act of 1936 (mentioned in the note "History" to s. 97, *ante*). See also *Sheffield Burgesses v. Minister of Health*, [1935] All E.R. Rep. 703; Digest Supp. (cited in the note to s. 43 (2), *ante*).

The procedure by way of application to the Court, under para. 2 (or the corresponding provision of the Act of 1946 in the case of compulsory purchase orders under Part II or Part V, *ante*), replaces the remedies formerly available before the present procedure was introduced by the Housing Act, 1930; see *Errington v. Minister of Health*, [1935] 1 K.B.

249 at pp. 264, 265 and 278; Digest Supp. Before that Act (and cf., also, the Public Works Facilities Act, 1930 (repealed)) it had been established that a decision of the Local Government Board, or of their successor the Minister of Health, was subject to control by the prerogative writs of prohibition and *certiorari* (since replaced by the prerogative orders similarly named). In *Board of Education v. Rice*, [1911] A.C. 179; 19 Digest 602, 290 (decided on the Education Act, 1902 (repealed)) a defective decision of the Board of Education was quashed by *certiorari*, and *mandamus* issued to the Board to give a proper determination. In *R. v. Local Government Board, Ex parte Arlidge*, [1914] 1 K.B. 160, C.A., an order of the Local Government Board under the Housing Town Planning, etc., Act, 1909 (repealed) was quashed by *certiorari*. This decision was reversed, *sub nom. Local Government Board v. Arlidge*, [1915] A.C. 120, H.L.; 38 Digest 97, 708, without any suggestion that *certiorari* would not lie in a proper case. See also *R. v. Minister of Health, Ex parte Davis*, [1929] 1 K.B. 619, C.A.; Digest Supp. (prohibition), and *Minister of Health v. R., Ex parte Yaffé*, [1931] A.C. 494; Digest Supp.

It was also possible to proceed by way of action, for an injunction (see *Conron v. London County Council*, [1922] 2 Ch. 283; 38 Digest 215, 503, cited in the notes to ss. 93 and 96, *ante*), or for a declaration (cf. *Arlidge v. Metropolitan Borough of Hampstead*, [1916] 1 Ch. 59, C.A.; 38 Digest 212, 472).

Where the present procedure is not applied, the other remedies remain available; see, for example, *R. v. Minister of Health, Ex parte Villiers*, [1936] 1 All E.R. 817; 11 Digest (Repl.) 309, 2153, and *R. v. Minister of Health, Ex parte Waterlow and Sons, Ltd.*, [1946] 2 All E.R. 189; 2nd Digest Supp. (and cf. the notes to s. 181, *ante*). See also *Ealing Borough Council v. Minister of Housing and Local Government*, [1952] 2 All E.R. 639; 3rd Digest Supp. (action for declaration); and *London Corporation v. Cusack-Smith*, [1955] 1 All E.R. 302, H.L.; 3rd Digest Supp. (*certiorari*), both decided on s. 19 of the Town and Country Planning Act, 1947.

It will be noted that para. 3, *supra*, does not exactly reproduce para. 3 of the Second Schedule to the Act of 1936, which expressly provided that the order or approval should not be questioned "by prohibition or *certiorari* or" in any legal proceedings whatsoever. There is authority to the effect that express words in a statute are needed to exclude the remedy of *certiorari* (*R. v. Plowright* (1686), 3 Mod. Rep. 94; 16 Digest 437, 3018; *R. v. Jukes* (1800), 8 Term Rep. 542; 16 Digest 437, 3019); but the omission from this Act of the express exclusion of prohibition and *certiorari* is not likely to be interpreted as restoring those remedies. Cf., also, the wording of para. 16 of the First Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946.

Reference may be made to the Irish case of *The State (Wood) v. West Cork Board of Health and Public Assistance and Minister for Local Government and Public Health*, [1936] I.R. 401 (decided on s. 17 of the Housing (Miscellaneous Provisions) Act, 1931, which was in terms similar to those of the (English) Housing Act, 1930); it was there held that *certiorari* was not excluded. It is thought this case would not be followed in England, but see *R. v. Minister of Health, Ex parte Hack*, [1937] 3 All E.R. 176; Digest Supp., where a rule *nisi* was obtained for a writ of prohibition. This appears to have been the wrong remedy, as the Court observed, but the application was nevertheless dealt with, and dismissed, on the merits.

Para. 4, *supra*, which prevents an appeal to the House of Lords, except by leave of the Court of Appeal, may be contrasted with s. 38 (2) in Part II, *ante*; cf. the General Note to that section. It will be noted that *Local Government Board v. Arlidge, supra*, was concerned with an order of the Board confirming the refusal of the local authority to determine a closing order under the Act of 1909; an appeal against a refusal to determine a closing order under the present Act lies to the county court under s. 27 (3), *ante*, and no appeal can be taken beyond the Court of Appeal.

Para. 5, *supra*, provides for service of copies of a clearance order and of certain types of compulsory purchase orders; this applies when the order has become operative under para. 3, *supra*. By that time it will be too late to question its validity under para. 2, *supra*.

In addition to the cases already cited, *supra*, and those cited in the notes, *infra*, to paras. 2 and 3, the following may be considered relevant as expressing general principles, or as decisions on the earlier housing Acts or other statutes containing similar provisions:—

*Hall v. Manchester Corporation* (1915), L.J. Ch. 732, H.L.; 38 Digest 212, 470; *White v. St. Marylebone Borough Council*, [1915] 3 K.B. 249; 38 Digest 216, 507; *Broadbent v. Rotherham Corporation*, [1917] 2 Ch. 31; 28 Digest 466, 775; *R. v. Electricity Commissioners, Ex parte London Electricity Joint Committee Co. (1920) Ltd.*, [1924] 1 K.B. 171, C.A.; 20 Digest 197, 1; *R. v. Housing Appeal Tribunal*, [1920] 3 K.B. 334; 38 Digest 187, 259; *R. v. Bedfordshire County Council, Ex parte Sear*, [1920] 2 K.B. 465; 17 Digest (Repl.) 310, 2169; *Roberts v. Hopwood*, [1925] A.C. 578; 33 Digest 20, 83; *Re Gateshead County Borough (Barn Close) Clearance Order, 1931*, [1933] 1 K.B. 429; Digest Supp.; *Ellen Street Estates, Ltd. v. Minister of Health*, [1934] 1 K.B. 590, C.A.; Digest Supp.; *R. v. Minister of Health, Ex parte Finsbury Borough Council* (1934), 32 L.G.R. 349; Digest Supp.; *Re Manchester City (Ringway Airport) Compulsory Purchase Order, 1934* (1935), 153 L.T. 219; 99 J.P. 319; 11 Digest (Repl.) 315, 2235; *Fredman v. Minister of Health*, [1935] All E.R. Rep. 916; Digest Supp.; *Re*

*Liverpool (Portland Street No. 2) Housing Confirmation Order, 1935* (unreported; see the note "Houses" to s. 42 (1), *ante*); *Re London (Hammersmith) Housing Order, Land Development, Ltd.'s Application*, [1936] 2 All E.R. 1063; Digest Supp.; *Re Greenwich (Prince of Orange Lane) Housing Order, 1936, Willey's Application*, [1937] 3 All E.R. 305; Digest Supp.; *Re London County (Stoke Newington) Housing Order, 1936, Stocker's Appeal*, [1937] 4 All E.R. 678; Digest Supp.; *Re Brighton (Everton Place Area) Housing Order, 1937, Robins & Son, Ltd.'s Application*, [1938] 4 All E.R. 446, C.A.; Digest Supp.; *Re London-Portsmouth Trunk Road (Surrey) Compulsory Purchase Order (No. 2), 1938*, [1939] 2 All E.R. 464; Digest Supp.; *Miller v. Minister of Health*, [1946] K.B. 626; 2nd Digest Supp.; *Price v. Minister of Health*, [1947] 1 All E.R. 47; 2nd Digest Supp.; *Rodwell v. Minister of Health*, [1947] 1 All E.R. 80; 2nd Digest Supp.; *Green (H. E.) & Sons v. Minister of Health*, [1947] 2 All E.R. 469; 2nd Digest Supp.; *Re Havant and Waterloo Urban District Council Compulsory Purchase Order (No. 4), 1950, Application of Watson*, [1951] 2 All E.R. 664; 2nd Digest Supp.; *Palmer v. Minister of Housing and Local Government and Romford Corporation* (1952), 3 P. & C.R. 165; 3rd Digest Supp.; *Darlassis v. Minister of Education* (1954), 118 J.P. 452; 3rd Digest Supp.

#### Para. 1.

**Compulsory purchase order under Part III.** See ss. 43, 51 and 57; and the Third Schedule, *ante*. For compulsory purchase orders made for the purposes of Part II or Part V of the Act, *ante*, provisions very similar to those of this paragraph are contained in para. 6 in Part I of the First Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946. Similar provisions as to re-development plans, and new plans, are contained in s. 56 (5), *ante*, and that subsection as applied by s. 56 (6).

**Clearance order.** See s. 44, *ante*, and the Fifth Schedule, *post*.

**Confirmed.** See paras. 3 (2), (3) and 5 (2) in Part I of the Third Schedule, *ante*, and para. 5 (1), (2) of the Fifth Schedule, *post*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *ante*.

**Local authority.** See ss. 1, 52, 55 (1) and 58, *ante*.

**Prescribed form.** The prescribed forms under para. 1 of this Schedule are contained in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), made under s. 178 (1), *ante*. The forms of personal notice are now the same as the forms of newspaper advertisement; Form No. 21 relates to clearance orders, and Form Nos. 27 and 31 relate to compulsory purchase orders under ss. 43 and 51, *ante*, respectively. There is at present no prescribed form relating to a compulsory purchase order under s. 57, *ante*; see the Preliminary Note to the above-mentioned Regulations (Appendix II, *post*).

**Having given notice . . . of his objection.** See para. 2 (1) (b) in Part I of the Third Schedule, *ante*, and para. 3 (1) (b) of the Fifth Schedule, *post*, as to making objections to compulsory purchase orders and clearance orders, respectively. The present paragraph appears to relate to persons who made an objection at any time up to the date of the inquiry and is not confined to persons who objected in the time and manner specified in the local authority's notices under the provisions just cited. See also the next note, *infra*.

**Appeared at the public local inquiry.** Under para. 3 (3), but not para. 5 (2), in Part I of the Third Schedule, *ante*, and under para. 5 (2) of the Fifth Schedule, *post*, there may now be a "hearing" before a person appointed by the Minister, as an alternative to a public local inquiry. In para. 3 (5) of the Third Schedule and para. 5 (4) of the Fifth Schedule, there is accordingly a reference to "A person who objects . . . and who appears at the public local inquiry or hearing in support of his objection". The words "or hearing" do not appear in the present paragraph, because the Housing Repairs and Rents Act, 1954, in introducing the alternative of a "hearing", failed to make the necessary amendment in para. 1 of the Second Schedule to the Act of 1936. It is nevertheless desirable that a person who appears at a hearing, held instead of an inquiry, should receive personal notice under this paragraph, if and when the order is confirmed.

#### Para. 2.

**Person aggrieved.** Cf. the note to s. 11 (1), *ante*. A person having no interest in the land except as a "statutory tenant" under the Rent Acts may be a person aggrieved; see *Brown v. Ministry of Housing and Local Government*, [1953] 2 All E.R. 1385; 3rd Digest Supp. (but such persons need no longer be served with notice of the making of a re-development plan, new plan, compulsory purchase order or clearance order, under s. 56 (3) and (6), *ante*, para. 2 of the Third Schedule, *ante*, para. 3 of the Fifth Schedule, *post*). A person concerned only as the secretary of a tenant's association, some of whose members were tenants of premises included in an order, was held not to be a person aggrieved, and the Court declined to consider his application; see *Burke v. Minister of Housing and Local Government* (1956), 8 P. & C.R. 25. In the case of a compulsory purchase order, a person whose lands are not to be purchased but will be injuriously affected by the purchase of the land included in the order, may be a person aggrieved; see *Tutin v. Northallerton Rural District Council* (1947), 91 Sol. Jo. 383, C.A.; 2nd Digest Supp., cited in the note "Land to which it applies" to para. 1 in Part I

of the Third Schedule, *ante*. A clearance order, however, does not authorise the withdrawal of support from adjoining properties; see *Bond v. Norman, Bond v. Nottingham Corporation*, [1940] 2 All E.R. 12, C.A.; 2nd Digest Supp. The owner of such an adjoining property would appear therefore to be unlikely to be "aggrieved" by a clearance order.

There is nothing in the present paragraph to limit the meaning of "person aggrieved" to a person who objected and appeared at an inquiry (as mentioned in para. 1, *supra*, or s. 56 (5) and (6), *ante*). Indeed there may have been no objection, and no inquiry or hearing, as in *Richardson v. Minister of Housing and Local Government* (1956), 8 P. & C.R. 29 (a case relating to the protection of common land under the Act of 1946), where the order was nevertheless quashed.

**Such an order as aforesaid.** *I.e.*, a clearance order or a compulsory purchase order under ss. 43, 51 or 57, *ante*, as mentioned in para. 1, *supra*. The reference is to the order as confirmed, with or without modifications, by the Minister; cf. *Errington v. Minister of Health, supra*, at [1935] 1 K.B., p. 268 ("the order referred to is the confirming order and not the original order"). Thus the Minister, in confirming an order, may correct an error in the order originally submitted: *Re Bowman, supra*, at [1932] 2 K.B., pp. 633-635, following *Minister of Health v. R., Ex parte Yaffé, supra*.

**Approval of a re-development plan or of a new plan.** See s. 56 (4), and that subsection as applied by s. 56 (6), *ante*.

**Not within the powers of this Act; any requirement . . . has not been complied with; substantially prejudiced.** The distinction between the two grounds on which a person aggrieved may apply to the Court, namely (i) *ultra vires* and (ii) non-compliance with a requirement of the Act, is not easy to draw in practice. Both grounds will usually be pleaded in an application, to avoid any need to ask leave to amend.

Applications to quash compulsory purchase orders on the first ground above-mentioned in *Marriot v. Minister of Health* and *Re Ripon (Highfield) Housing Order, 1938* (both cited in the General Note, *supra*). *Marriot's* case decided that the power to acquire land in a clearance area was provided for the purpose of securing the clearance of the buildings, and that confirmation of an order relating to buildings which the owner had demolished by the date of the public local inquiry was *ultra vires*; power to purchase in such circumstances, however, is now expressly conferred by the last sentence of s. 43 (3), *ante*. The *Ripon* case was concerned with the prohibition of the purchase of part of a park, etc., by s. 75 (repealed) of the Housing Act, 1936 (mentioned in the note "History" to s. 97, *ante*): it was argued that the Minister had been satisfied on proper material that the land was not so protected, but the Court of Appeal came to the opposite conclusion, and quashed the order as *ultra vires*; cf. *Re Newhill Compulsory Purchase Order, 1937, Payne's Application*, [1938] 2 All E.R. 163; 11 Digest (Repl.) 309, 2155 (explained in the *Ripon* case at [1939] 3 All E.R., pp. 560, 561), and *Richardson v. Minister of Housing and Local Government, supra*.

The Act contains a number of prohibitions and requirements about the land which may be included in an order or plan. Thus para. 2 of the Fifth Schedule, *post*, requires certain houses and buildings to be excluded from a clearance order, and s. 57 (5), *ante*, protects land which is the property of a local authority or statutory undertakers from compulsory acquisition, under that section, in connection with a re-development area. Again, the Minister may not modify a re-development plan, when approving it, so as to add land to the area (s. 56 (4), *ante*, and as to new plans, see that subsection as applied by s. 56 (6), *ante*). Similarly, paras. 4 and 6 in Part I of the Third Schedule, *ante*, and para. 6 of the Fifth Schedule, *post*, contain provisions affecting the Minister's powers of modification when confirming a compulsory purchase order or clearance order. Disregard of these provisions would, it is submitted, make the approval of the plan, or confirmation of the order, open to question on the first ground (*ultra vires*).

However, if the plan or order, as submitted by the local authority, is defective in that it contains land which could not be included, the defect may be cured by the Minister in making modifications; see *Minister of Health v. R., Ex parte Yaffé, supra*. Where a clearance order specified too short a period for the vacation of the buildings (see s. 45 (1), *ante*), this was referred to, by Swift, J., as a failure to comply with the requirements of the Act; the defect was cured by the Minister's modification on confirmation; see *Re Bowman, South Shields (Thames Street) Clearance Order, 1931, supra*, at [1932] 2 K.B., pp. 636, 637. An omission, from the same clearance order, of a prescribed note informing the owner of his right of objection was treated, at most, as a procedural defect; and it was held that as the owner knew of his right, and objected at the inquiry, his interests could not be said to have been prejudiced; *ibid.*, pp. 637-640.

In *Brown v. Ministry of Housing and Local Government* (cited in the note "Person aggrieved", *supra*), a compulsory purchase order was quashed on the ground that failure to serve notice of the making of the order (see para. 2 in Part I of the Third Schedule, *ante*, and cf. s. 56 (3), *ante*, and para. 3 of the Fifth Schedule, *post*) was a failure to comply with a requirement of the Act. If, as a result of such failure, a person misses his opportunity to object and appear at an inquiry or hearing, it seems clear that his interests will be "substantially prejudiced"; see *ibid.*, at [1953] 2 All E.R., pp. 1387, 1388.

With few exceptions, where there is an objection duly made to a plan or order, the holding of an inquiry, or in some cases a hearing, is one of the requirements of this Act (see s. 56 (4), (6), *ante*; paras. 3 (3), (6), and 5 (2) in Part I of the Third Schedule, *ante*; and para. 5 (2) of the Fifth Schedule, *post*). In *Errington v. Minister of Health*, *supra*, a clearance order was quashed because the Ministry indulged in *ex parte* consultation with the local authority after the inquiry. Greer, L.J., referred to the Minister's confirmation of the order as "not within the powers of the Act" (*ibid.*, at [1935] 1 K.B., p. 268), but the other members of the Court treated the case as one of non-compliance with a procedural requirement (*ibid.*, at pp. 279, 282).

The general requirements as to the holding of inquiries were stated in *Board of Education v. Rice* (mentioned in the General Note, *supra*), and adopted in *Local Government Board v. Arlidge*, *supra*, and *Errington's case*, *supra*, and many other cases. In *Rice's case*, Lord Loreburn observed (at [1911] A.C., p. 182):

"Comparatively recent statutes have extended, if they have not originated, the practice of imposing on departments or officers of State, the duty of deciding or determining questions of various kinds. In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion, involving no law. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matters of law as well as matters of fact, or even depend on matters of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing so they must act in good faith and listen fairly to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial. . . . They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view."

In *Local Government Board v. Arlidge*, *supra*, it was held (*inter alia*): (i) that an objector is not entitled to be heard personally by the Board (now the Minister) (cf. *Re Simeon (J. W. B.)*, [1935] 2 K.B. 183; 11 Digest (Repl.) 315, 2230 (decided on the Public Works Facilities Act, 1930)), or to know the identity of the official who acted on the inspector's report; (ii) that the objector is not entitled to see the inspector's report (see also *Denby (William) & Sons, Ltd. v. Minister of Health*, [1936] 1 K.B. 337; Digest Supp. (approved in *Steele v. Minister of Housing and Local Government* (1956), 6 P. & C.R. 386), but see also the notes to s. 181, *ante*); (iii) that the word "public", used for the first time by the Act of 1909 in relation to a "local inquiry", indicated that every member of the public would have a *locus standi* to bring before the inquiry any matters relevant thereto from the point of view of the owner or occupier or the public (*per* Lord Moulton, at [1915] A.C., p. 148); (iv) that the Board (now the Minister) must "act justly" and "without bias", "in a judicial spirit and in accordance with the principles of substantial justice" and "in a judicial temper", in the sense explained in *Board of Education v. Rice*, *supra*, but that there is no need to follow the procedure of a court of law.

Subject to the above considerations, it is not a requirement of the Act that the Minister should refrain from consulting with, or advising, the local authority about the making of an order; see *Frost v. Minister of Health*, [1935] 1 K.B. 286; Digest Supp. (approved in *Offer v. Minister of Health*, [1936] 1 K.B. 40, C.A.; Digest Supp.). In *Frost's case*, the clearance area as defined by the local authority wrongly included certain property of their own; on the advice of the Ministry this was excluded from the clearance order, but the original resolution and map (see now s. 42, *ante*), were not amended. Swift, J., held that this did not make the order *ultra vires*, but that "putting it at its highest" there was merely a non-compliance with the requirements of the Act, and that there was no prejudice to the interests of the applicants. See, further, *Horn v. Minister of Health*, [1936] 2 All E.R. 1299; Digest Supp. (reversing Swift, J., whose judgment appears at [1936] 2 All E.R., p. 1301, and distinguishing *Errington's case*, *supra*), and *Stafford v. Minister of Health*, [1946] K.B. 621; 2nd Digest Supp. (following *Errington's case*). (*Stafford's case* also appears *sub nom. Re Mowsley (No. 1) Compulsory Purchase Order, 1944*, in some reports.)

In *Johnson (B.) & Co. (Builders) Ltd. v. Minister of Health* (cited in the General Note, *supra*), Lord Greene, M.R. (see [1947] 2 All E.R. at p. 405) considered that the observations, set out above, from the speech of Lord Loreburn in *Board of Education v. Rice*, were not applicable to the case of a compulsory purchase order under the Housing Act, 1936. This *dictum* appears to conflict with *Errington's case* and with *Minister of Health v. R., Ex parte Yaffé*, *supra*, and with *dicta* in *Steele's case*, *supra*. In *Steele's case*, also, Parker, L.J., stated that evidence should not be received from one party in the absence of the other and that action should not be taken on material, however obtained, unless the parties have had an opportunity of commenting upon it; see 6 P. & C.R. at pp. 398, 399. Denning, L.J., also considered that the inspector must not take into consideration extrinsic information coming to his knowledge in the absence of one party or the other, and that the Minister must not act on extrinsic information which an owner has had no opportunity of correcting; *ibid.*, at p. 392.

It is sometimes difficult to discover the basis on which the Minister has approached a case. In *Re Butler, Camberwell (Wingfield Mews) No. 2 Clearance Order, 1936*, [1938]

2 All E.R. 279 (affirmed, [1939] 1 All E.R. 590, C.A.; Digest Supp.), the properties included in a clearance order consisted of mews dwellings and garages and workshops beneath them. The appellant argued that none of the properties was a house and that all were "other buildings". Du Parc, J., considered the dwellings were "houses" and the garages, etc., were "other buildings", but rightly included in the order on his construction of the Act. The Court of Appeal accepted the argument, on behalf of the Minister, that all the buildings were "houses"; and on this basis upheld the order. Cf. *Re Hammersmith (Berghem Mews) Clearance Order, 1936, Wilmot's Application*, [1937] 3 All E.R. 539; Digest Supp., and *Re Bainbridge, South Shields (D'Arcy Street) Compulsory Purchase Order, 1937*, [1939] 1 All E.R. 419; Digest Supp. Even when it appears that the Minister may in some sense have misdirected himself on the meaning of the Act, this will not, it appears, render the confirmation of an order, or approval of a plan, *ultra vires*. In *Steele's case, supra*, both the local authority and the Minister appear to have included, among their reasons for considering a house to be unfit for human habitation (see the Third Schedule, para. 3 (4), (5), *ante*), an allegation of "bad internal arrangement". The Court of Appeal doubted whether this was relevant to the test of unfitness (see now s. 4, *ante*); on the assumption that it was not relevant, they declined to quash the order on the ground that it was a very minor matter and the applicant's interests had not been prejudiced; see 6 P. & C.R. at pp. 393, 397, 398.

**Within six weeks.** Cf. the note "Within twenty-one days" to s. 11 (1), *ante*, and see the next note, *infra*. As to publication of the notice of confirmation, etc., see para. 1, *supra*, and s. 56 (5) and (6), *ante*.

**Application . . . to the High Court.** For the procedure for making application to the High Court under para. 2, see R.S.C. Ord. 55B, rr. 71-75. The grounds of the application are to be stated in the originating notice of motion, but may be amended by leave, under Ord. 28, r. 1, even after the expiry of the six weeks' period; see *Hanily v. Minister of Local Government and Planning*, [1951] 2 All E.R. 749, C.A.; 3rd Digest Supp. The notice of motion must be entered at the Crown Office within the six weeks' period, and served on the Minister and, in the case of a compulsory purchase order or clearance order, on the authority by whom the order was made. Such service must also be made within the six weeks' period, but the time may be extended under Ord. 64, r. 7; see *Summers v. Minister of Health*, [1947] 1 All E.R. 184; 2nd Digest Supp. Except in so far as the Court at the hearing may direct oral evidence to be given, any evidence will be by affidavit, and the rules provide for the filing of affidavits and service of copies thereof. It seems that, if the evidence in an affidavit is disputed, an application may and should be made to cross-examine; see *Franklin v. Minister of Town and Country Planning* (cited in the General Note, *supra*) in the Court of Appeal, *per* Lord Oaksey, L.J., at [1947] 1 All E.R., p. 616.

For precedents of the originating notice of motion, affidavits, etc., see the Encyclopaedia of Court Forms and Precedents, Cumulative Supplement, title Compulsory Purchase of Land and Compensation, and Vol. 15, title Town and Country Planning and Housing.

An unsuccessful applicant will not normally be liable for more than one set of costs; see *Re Bowman, South Shields (Thames Street) Clearance Order, 1931, supra*, and *Re Mason* (1934), 50 T.L.R. 392; Digest Supp.

**Interests of the applicant; property of the applicant.** A statutory tenant is a person whose interests may be substantially prejudiced and has, in a sense, a right of property under the Rent Acts: see *Brown's case* (cited in the note "Person aggrieved", to para. 2, *supra*).

### Para. 3.

**Shall not be questioned, etc.** The remedies of prohibition and *certiorari* appear to be excluded, despite the omission, from this Act, of the express words to that effect which appeared in the Act of 1936; see the General Note, *supra*. The present paragraph excludes proceedings which directly or indirectly impugn the validity of the order, or approval of a plan. See *Tutin v. Northallerton Rural District Council* (cited in the note "Person aggrieved" to para. 2, *supra*); *Uthorpe Urban District Council v. Clarke*, [1952] 1 All E.R. 1318; 3rd Digest Supp.; *Woollett v. Minister of Agriculture and Fisheries*, [1954] 3 All E.R. 529, C.A.; 3rd Digest Supp.; and *Smith v. East Elloe Rural District Council*, [1956] 1 All E.R. 855, H.L.; 3rd Digest Supp.

The position is different, however, when it is not the validity of an order, or approval of a plan, which is being questioned, but the validity of action taken thereunder. The distinction is recognised in *Travis v. Minister of Local Government and Planning*, [1951] 2 All E.R. 673 at pp. 677, 678, *per* Devlin, J.; 2nd Digest Supp. See also *Bond v. Norman, Bond v. Nottingham Corporation* (cited in the note "Person aggrieved" to para. 2, *supra*), and *Attridge v. London County Council*, [1954] 2 All E.R. 444; 3rd Digest Supp. It appears that if a local authority fail to serve notice to treat or take other steps within three years of the confirmation of a compulsory purchase order, their powers will lapse by virtue of s. 123 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 950), and that an attempt to take the property thereafter can be resisted by the owner without impugning the validity of the order. The position is presumably the same if the authority are guilty of long delay after service of notice to treat.

Para. 5.

**Shall serve a copy.** This requirement applies only to clearance orders and to compulsory purchase orders in connection with clearance areas. The original notices will have been served under para. 2 (1) (b) in Part I of the Third Schedule, *ante*, or para. 3 (1) (b) of the Fifth Schedule, *post*. For modes of serving the copies of the confirmed order, see s. 169, *ante*, and, in the case of compulsory purchase orders, see also para. 8 (8) in Part II of the Third Schedule, which appears to make available the modes of service mentioned in para. 2 (2) in Part I of that Schedule, *ante*.

Section 44

FIFTH SCHEDULE

CLEARANCE ORDERS

1. A clearance order shall be in the prescribed form and shall describe by reference to a map the area to which it applies.

2. There shall be excluded from the order any houses or other buildings properly included in the clearance area only on the ground that by reason of their bad arrangement in relation to other buildings, or the narrowness or bad arrangement of the streets, they are dangerous or injurious to the health of the inhabitants of the area:

Provided that the foregoing provisions of this paragraph shall not apply to a building constructed or adapted as, or for the purposes of, a dwelling, or partly for those purposes and partly for other purposes, if any part (not being a part used for other purposes) is unfit for human habitation.

3.—(1) Before submitting the order to the Minister the local authority shall—

(a) publish in one or more newspapers circulating within their district a notice in the prescribed form stating the fact of such an order having been made and describing the area comprised therein and naming a place where a copy of the order and of the map referred to therein may be seen at all reasonable hours; and

(b) serve on every owner, lessee and occupier (except tenants for a month or a less period than a month) of any building included in the area to which the order relates and so far as it is reasonably practicable to ascertain such persons, on every mortgagee thereof, a notice in the prescribed form stating the effect of the order and that it is about to be submitted to the Minister for confirmation, and specifying the time within and the manner in which objections thereto can be made.

(2) A notice which under this paragraph is to be served on an owner, lessee or occupier may be served by addressing it to him by the description of "owner" or "lessee" or "occupier" of the land (describing it) to which it relates and by delivering it to some person on the premises or, if there is no person on the premises to whom it may be delivered, by fixing it, or a copy of it, to some conspicuous part of the premises.

The provisions of this subsection shall be without prejudice to the service of a notice in a manner authorised by section one hundred and sixty-nine of this Act.

(3) For the purposes of this paragraph an occupier being a statutory tenant within the meaning of the Housing Repairs and Rents Act, 1954, shall be deemed to be a tenant for a period less than a month.

4. So soon as may be after the required notices have been given, the local authority shall submit the order to the Minister for confirmation.

5.—(1) If no objection is duly made by any of the persons on whom notices are required to be served, or if all objections so made are withdrawn, then, subject to the provisions of this Schedule, the Minister may, if he think fit, confirm the order with or without modification.

(2) If any objection duly made is not withdrawn, the Minister shall, before confirming the order, either cause a public local inquiry to be held or afford to any person by whom an objection has been duly made as aforesaid and not withdrawn an opportunity of appearing before and being heard by a person appointed for the purpose, and, after considering any objection not withdrawn and the report of the person who held the inquiry or of the person appointed as aforesaid, may, subject to the provisions of this Schedule, confirm the order with or without modification.

(3) Where any objection not withdrawn has been made on the ground that a building included in the clearance order is not unfit for human habitation

the public local inquiry or hearing shall not be held earlier than the expiration of fourteen days after it has been shown to the satisfaction of the Minister that the local authority have served upon the objector a notice in writing stating what facts they allege as their principal grounds for being satisfied that the building is so unfit.

(4) A person who objects to a clearance order on the ground that a building included therein, being a building in which he is interested, is not unfit for human habitation and who appears at the public local inquiry or hearing in support of his objection shall, if the building is included in the order as confirmed as being unfit for human habitation, be entitled, on making a request in writing, to be furnished by the Minister with a statement in writing of his reasons for deciding that the building is so unfit.

6.—(1) An order as confirmed under this Schedule shall not apply to any building to which the order would not have applied if it had been confirmed without modification.

(2) The Minister may confirm an order notwithstanding that the effect of the modifications made by him in excluding any buildings from the clearance area is to sever that area into two or more separate and distinct areas, and in any such case the provisions of this Act relating to the effect of an order when confirmed and of the proceedings to be taken subsequent to the confirmation thereof shall apply as if those areas formed one clearance area.

### NOTES

**History.** Para. 1, *supra*, contains provisions formerly in para. 1 of the Third Schedule to the Housing Act, 1936; for other provisions derived from that paragraph, see s. 45 (1), *ante*. Para. 2 contains provisions formerly in para. 2 of that Schedule, omitting the words "by reason of disrepair or sanitary defects" which were repealed by s. 54 (4) of, and the Fifth Schedule to, the Housing Repairs and Rents Act, 1954; cf. the note "History" to s. 4, *ante*. Para. 3 (1), (2) and (3) contain, respectively, provisions formerly in para. 3 of the Third Schedule to the Act of 1936, in para. 1 of the First Schedule to the Act of 1954, and in s. 50 (1) and (2) (b) of the Act of 1954. Para. 4 contains provisions formerly in para. 4 of the Third Schedule to the Act of 1954.

Para. 5 (1) and (2) contain provisions formerly in para. 5 of the Third Schedule to the Act of 1936, with the addition, in para. 5 (2), of provisions formerly in para. 2 (1) of the First Schedule to the Act of 1954 (as to "hearings" as an alternative to inquiries); para. 5 (3) and (4) contain, respectively, provisions formerly in s. 41 (1) and (2) of the Act of 1936, as extended by para. 2 (2) of the First Schedule to the Act of 1954 (applying the said s. 41 to "hearings" as well as to inquiries). Para. 6 (1) and (2) contain, respectively, provisions formerly in para. 5 proviso and para. 6 of the Third Schedule to the Act of 1936.

**General Note.** This Schedule provides the procedure for the making and confirmation of clearance orders, as defined by s. 43 (1) (a), *ante*; see ss. 44 to 46, *ante*. The procedure is virtually identical with that provided for the making of a compulsory purchase order for the purposes of s. 43 or 51, *ante*, under Part I of the Third Schedule, *ante*. Thus para. 1, *supra*, may be compared with para. 1 (1) of that Schedule; para. 3 with para. 2 of that Schedule (omitting the proviso); para. 5 with para. 3 (2)–(5) of that Schedule; and para. 6 with para. 4 (1) and (4) of that Schedule.

In substance, the present Schedule re-enacts the Third Schedule to the Act of 1936 (see the note "History", *supra*), with the following changes: (i) the words which qualified "unfit for human habitation" are omitted, and the definition in ss. 4 and 5, *ante*, now apparently applies in para. 2, proviso; (ii) service on "statutory tenants" is no longer required; and an alternative mode of service of personal notices is provided, in para. 3; (iii) a "hearing" may now be held instead of an inquiry under para. 5; and (iv) the requirement that the order shall fix a date for vacating the building is now contained in s. 45 (1), *ante*; and under s. 46 (2) a special type of order may be made providing for postponed demolition and fixing no such date.

As to the submission of the order and other documents by the local authority to the Ministry, see the notes to s. 44 (1), *ante*.

#### Para. 1.

**Clearance order.** For meaning, see s. 43 (1) (a), *ante*. For general provisions, and as to obtaining possession of buildings, see ss. 44 and 45, *ante*. As to temporary retention of certain houses, see s. 46, *ante*, and cf. the transitional provisions of ss. 53 and 54. As to the purchase of cleared sites which the owners fail to re-develop, see s. 51, *ante*.

In special circumstances a clearance order may be made without previous publication or service under s. 50, *ante*. Note also ss. 68–70, *ante* (re-development and re-conditioning by owners), s. 162, *ante* (powers of the Court under Part VI), and, as to certain payments, see ss. 60, 61 and 63, and the Second Schedule, *ante*.

**Prescribed form.** The prescribed forms of clearance orders under ss. 44 and 46, *ante*, are, respectively, Form Nos. 15 and 16 in the Second Schedule to the Housing

(Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), made under s. 178, *ante*. As to the authentication of orders, see s. 166 (1), *ante*.

**By reference to a map.** As to the scale of the map, cf. the note to similar words in para. 1 (1) of the Third Schedule, *ante*. The map referred to in a clearance order will usually indicate the area included in the order in pink, individual properties being outlined and numbered. The area covered by the order will not necessarily be the whole clearance area as declared and defined under s. 42, *ante*. Note also para. 2, *supra*, which requires "bad arrangement" properties to be excluded, unless in effect they contain unfit dwelling accommodation.

**Area to which it applies.** Cf. the reference to the "area comprised therein" in para. 3 (1) (a), *supra*; and similar phrases in paras. 1 (1) and 2 (1) (a) of the Third Schedule, *ante*. It seems that the map will not show, as included in the order, any houses or other buildings which are not to be demolished; the order, if confirmed, will not authorise interference with other buildings not included in the order, e.g., by withdrawal of support (*Bond v. Norman, Bond v. Nottingham Corporation*, [1940] 2 All E.R. 12, C.A.; 2nd Digest Supp., cited in the notes to s. 44, *ante*). The position on a "Part III" compulsory purchase is different; persons whose lands are not to be purchased are not entitled to be served with notices under para. 2 of the Third Schedule (see the note "Land to which it applies" to para. 1 of that Schedule, *ante*), but their land may be injuriously affected by the purchase of other land, and accordingly they may be entitled to compensation (see, in particular, s. 64 (3), *ante*, and the notes thereto).

#### Para. 2.

**Shall be excluded.** The houses and other buildings which, by this paragraph, are required to be excluded from a clearance order, correspond to those which, on a compulsory purchase under s. 43, *ante*, could not be purchased at "site value" under s. 59 (2), *ante*. Although by s. 43 (1), *ante*, the authority have a choice of methods for securing the clearance of a clearance area, namely by making clearance orders or by purchase, only the latter alternative will apply to the houses or buildings which cannot be included in clearance orders; they must therefore be purchased, but the compensation will not be at site value (see s. 59 (4), and the rules in Part III of the Third Schedule, *ante*).

**Houses; other buildings; clearance area; bad arrangement; streets; dangerous or injurious to the health of the inhabitants of the area.** As to the meaning of "clearance area", see s. 42 (1), *ante*; and as to the meaning of the other expressions, see the notes to that subsection. In *Re Butler, Camberwell (Wingfield Mews) No. 2 Clearance Order, 1936*, [1938] 2 All E.R. 279; Digest Supp., certain garages were, at first instance, treated as "other buildings", but as being rightly included in a clearance order by virtue of a provision corresponding to para. 2 proviso, *supra*. On appeal ([1939] 1 All E.R. 590, C.A.; Digest Supp.), however, the garages together with the dwellings over them, were regarded as unfit "houses".

**Provided that, etc.** The proviso to para. 2, *supra*, brings back within the scope of this Schedule those buildings (whether properly described as "houses" or "other buildings") which are treated as containing unfit dwelling accommodation. It corresponds with the latter part of s. 59 (2) proviso, *ante* (from the word "unless" onward) which similarly brings back buildings within the scope of "site value" compensation on a compulsory purchase under s. 43. It has also been held that a composite building may be regarded as a "house", and may therefore have been included in the clearance area as being "unfit" and not only for reasons of "bad arrangement". The present paragraph and its proviso would not be relevant in such a case: see *Butler's case, supra*.

**Building.** As to the inclusion of huts, tents, caravans, etc., in a clearance order, see s. 44 (8), *ante*.

**Not being a part used for other purposes.** It is submitted that a part may be "used" for other purposes, though vacant (*Schwerzerhof v. Wilkins*, [1898] 1 Q.B. 640; 24 Digest (Repl.) 1070, 299); cf., generally, the notes to s. 59 (2), *ante*.

**Unfit for human habitation.** See ss. 4 and 5, *ante*. It would seem that those sections apply, though they refer only to "houses"; see the definition of "fit for human habitation" in s. 189 (1), *ante*. An underground room might be regarded as unfit for human habitation for the purposes of s. 18 (1), *ante*, by virtue of s. 18 (2), but not necessarily be unfit for present purposes. Even if such a room is unfit, it will not lead to the inclusion of the building in a clearance order by virtue of the present proviso, if the room is used for "other purposes" and not those of a dwelling.

#### Para. 3.

**Minister.** I.e., the Minister of Housing and Local Government; see s. 189 (1), *post*.

**Local authority.** See ss. 1 and 52, *ante*.

**Prescribed form.** The prescribed forms of advertisement of a clearance order made under s. 44 or 46, *ante*, are Form Nos. 18 and 20, respectively in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1842) (Appendix II, *post*), made under s. 178, *ante*; and the corresponding forms of personal notice are Form Nos. 17 and 19 in that Schedule. As to authentication of notices, see s. 166 (2), *ante*.

**Serve.** For modes of service, see s. 169, *ante*, and note para. 3 (2), *supra*.

**Owner; lessee; occupier; mortgagee.** Cf. the notes to para. 2 of the Third Schedule, *ante*. Para. 3 (2) and (3), *supra*, correspond with para. 2 (2) and (3) of that Schedule.

**Area to which the order relates.** Cf. the note "Area to which it applies" to para. 1, *supra*.

**Objections.** The form of objection to a clearance order may be adopted from that suggested, in the case of a compulsory purchase order, in the note "Objections" to para. 2 of the Third Schedule, *ante*. Many of the grounds of objection there suggested will also apply, with the necessary adaptations, *i.e.*, those numbered (1)–(8), (11), (12) and (14)–(16) in that note.

**A notice . . . may be served.** Cf. the note to para. 2 of the Third Schedule, *ante*.

**Subsection.** This should read "sub-paragraph".

**Statutory tenant.** Cf. s. 56 (3), *ante*, and the note "For the purposes of this subsection, etc.", thereto.

#### Para. 4.

**So soon as may be.** Cf. the note to s. 43 (1), *ante*.

#### Para. 5.

**Duly made.** Cf. the note to para. 3 of the Third Schedule, *ante*.

**Subject to the provisions of this Schedule.** Note para. 6, *supra*.

**Confirm the order with or without modification.** As to the validity and date of operation of orders, see the Fourth Schedule, *ante*. Apart from the restrictions in para. 6, *supra*, any sort of modification appears to be possible (cf. *Minister of Health v. R., Ex parte Yaffé*, [1931] A.C. 494, at p. 504; Digest Supp.), including a modification designed to cure a defect in the order originally submitted (*ibid.*, and see *Re Bowman, South Shields (Thames Street) Clearance Order, 1931*, [1932] All E.R. Rep. 257; [1932] 2 K.B. 621; Digest Supp., where the order originally provided too short a period for vacating the buildings under the provisions now contained in s. 45 (1), *ante*).

**Public local inquiry.** See s. 181, *ante*, and the notes thereto. As to the costs of opposing orders, see s. 67, *ante*.

**Report.** Cf. the notes to s. 181 and to para. 3 of the Third Schedule, *ante*.

**Unfit for human habitation.** See ss. 4 and 5, *ante*. Note that the objections referred to in para. 5 (3) and (4), *supra*, may relate to a "building", not necessarily a "house"; this seems to refer both to a "house", as defined in s. 189 (1), *ante*, included in the clearance area for reasons of unfitness, and also to a house or other building included in the clearance area only for reasons of "bad arrangement" but included in the clearance order by virtue of para. 2, proviso, *supra*.

**Principal grounds; entitled . . . to be furnished by the Minister with . . . his reasons.** Cf. the notes to para. 3 of the Third Schedule, *ante*.

#### Para. 6.

**Clearance area; sever that area.** As to the land which may constitute a clearance area, see s. 42, *ante*. The present paragraph will allow the Minister to make modifications, on confirming an order, although this may result in there being a number of small severed areas which would not, in themselves, satisfy the requirements of that section.

## SIXTH SCHEDULE

Sections 77, 79

### NUMBER OF PERSONS PERMITTED TO USE A HOUSE FOR SLEEPING

For the purposes of Part IV of this Act, the expression "the permitted number of persons" means, in relation to any dwelling-house, either—

- (a) the number specified in the second column of Table I in the annex hereto in relation to a house consisting of the number of rooms of which that house consists, or
- (b) the aggregate for all the rooms in the house obtained by reckoning, for each room therein of the floor area specified in the first column of Table II in the annex hereto, the number specified in the second column of that Table in relation to that area,

whichever is the less:

Provided that in computing for the purposes of the said Table I the number of rooms in a house, no regard shall be had to any room having a floor area of less than 50 square feet.

## ANNEX

Table I

Where a house consists of—

(a) One room .. ..	2.
(b) Two rooms .. ..	3.
(c) Three rooms .. ..	5.
(d) Four rooms .. ..	7½.
(e) Five rooms or more .. ..	10, with an additional 2 in respect of each room in excess of five.

Table II

Where the floor area of a room is—

(a) 110 sq. ft. or more .. ..	2.
(b) 90 sq. ft. or more, but less than 110 sq. ft. .. ..	1½.
(c) 70 sq. ft. or more, but less than 90 sq. ft. .. ..	1.
(d) 50 sq. ft. or more, but less than 70 sq. ft. .. ..	½.
(e) Under 50 sq. ft. .. ..	Nil.

## NOTES

**History.** This Schedule contains provisions formerly in the Fifth Schedule to the Housing Act, 1936.

**General Note.** Memorandum B of the Memoranda issued by the Ministry of Health on the Housing Act, 1935, contains an explanation of how the rules in this Schedule should be applied, and some examples of their application. The Memorandum is printed in *Lumley's Public Health* (12th Edn.), Vol. VI, at pp. 936 *et seq.*, and in *Hill's Complete Law of Housing* (4th Edn.) at pp. 608 *et seq.*

**Dwelling-house; room.** For definitions, see s. 87, *ante*.

**Floor area.** As to the ascertainment of floor area, see s. 81 (3), *ante*, and the notes thereto.

## Section 97

## SEVENTH SCHEDULE

## COMPULSORY PURCHASE OF LAND UNDER PART V

1.—(1) The Acquisition of Land (Authorisation Procedure) Act, 1946, shall apply to a compulsory purchase of land under Part V of this Act as if this Act had been in force immediately before the commencement of that Act, but that Act and the enactments applied by that Act shall have effect subject to the provisions of this Act.

(2) In the case of a compulsory purchase of land under Part V of this Act section one hundred and thirty-three of the Lands Clauses Consolidation Act, 1845 (which relates to promoters making good deficiencies in rates), shall not apply.

(3) Any compensation payable in pursuance of a compulsory purchase under Part V of this Act by a local authority in respect of any lands, estate or interest of another local authority which would, but for this sub-paragraph, be paid into court in manner provided by the Lands Clauses Acts, may, if the Minister consents, instead of being paid into court, be paid and applied as the Minister may determine.

A decision of the Minister under this sub-paragraph shall be final and conclusive.

2.—(1) In the case of a compulsory purchase under Part V of this Act compensation shall be assessed subject to observance of the rules set out in this paragraph.

(2) If the tribunal by whom the 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 in respect of the land 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.

(3) If the tribunal are satisfied that any premises are in a state of defective sanitation, or are not in reasonably good repair, the compensation shall be the estimated value of the premises if put into a sanitary condition, or reasonably good repair, less the estimated expense of putting them into such condition or repair.

(4) The local authority may tender evidence as to the matters aforesaid, notwithstanding that they have not taken any steps with a view to remedying the defects or evils disclosed by the evidence, but before tendering evidence as to sanitation or repair, the authority shall furnish to the tribunal and to the claimant a statement in writing of the respects in which the premises are alleged to be so defective.

(5) The tribunal shall have regard to and make an 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 any buildings.

(6) The tribunal shall embody in their award a statement showing separately whether compensation has been reduced by reference to the use of the premises for illegal purposes, to overcrowding and to the considerations mentioned in sub-paragraph (3) of this paragraph, and the amount, if any, by which compensation has been reduced by reference to each of those matters.

#### NOTES

**History.** Para. 1 (1), *supra*, contains provisions which preserve the effect of s. 1 (1) (not repealed) of the Acquisition of Land (Authorisation Procedure) Act, 1946. Para. 1 (2) contains provisions formerly in s. 147 of the Housing Act, 1936, and in para. 2 (b) (not repealed, but amended by s. 191, *ante*, and the Eleventh Schedule, *post*) of the Second Schedule to the Act of 1946. Para. 1 (3) contains provisions formerly in s. 146 of the Act of 1936.

Para. 2 (1) contains provisions formerly in s. 74 (3) of the Act of 1936, and para. 2 (2) to (6) contain the rules formerly contained in paras. 1-3, 4 (b) and 6 of the Fourth Schedule to that Act as affected by s. 1 (3) (a) of the Lands Tribunal Act, 1949.

**General Note.** This Schedule applies to compulsory purchase orders made for the purposes of Part V of the Act; see s. 97, *ante*. Para. 1 resembles para. 1 of the First Schedule, *ante*, relating to compulsory purchase orders under Part II of the Act. Para. 2 resembles Part III of the Third Schedule, *ante*, relating to compulsory purchases under Part III of the Act, and setting out similar rules for the assessment of compensation under that Part.

#### Para. 1.

**Acquisition of Land (Authorisation Procedure) Act, 1946.** 39 Statutes Supp. 4; 3 Halsbury's Statutes (2nd Edn.) 1064. Cf. the note to para. 1 (1) of the First Schedule, *ante*.

**Compulsory purchase.** See s. 97 (1), and the notes to that section, *ante*, as to powers of purchase by agreement without the making of a compulsory purchase order, or by compulsion, if need be, after the making and confirmation, etc., of such an order. Here the word "compulsory purchase" is used in a general sense, as referring to any purchase authorised by a compulsory purchase order; cf. the note to para. 1 (1) of the First Schedule, *ante*.

**Land.** The powers of purchase under Part V of the Act, include powers to purchase houses and buildings: see ss. 96 and 97, *ante*. "Land" is defined in s. 189 (1), *ante*, as including any right over land; but cf. the note "Land" to para. 1 (1) of the First Schedule, *ante*. An express power to take water rights is conferred by s. 103 (1), *ante*.

**As if this Act had been in force.** This form of words is necessary to preserve the application of the Act of 1946, s. 1 (1) of which is expressed to apply to powers under Acts in force immediately before the commencement of that Act on 18th April 1946.

**The enactments applied by that Act.** See s. 1 (3) of, and the Second Schedule to, the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 5, 19; 3 Halsbury's Statutes (2nd Edn.) 1065, 1081); and cf. the note to para. 1 (1) of the First Schedule, *ante*.

**Subject to the provisions of this Act.** *E.g.*, to the provisions of para. 2 of this Schedule, *post*, as to the assessment of compensation subject to special rules; or of sub-paras. (2) and (3), *supra*.

**Lands Clauses Consolidation Act, 1845, s. 133.** 3 Halsbury's Statutes (2nd Edn.) 955; and cf. the note to para. 1 (2) of the First Schedule, *ante*.

**By a local authority; another local authority.** See ss. 1 and 132, *ante*, as to local authorities for the purposes of Part V; and see the notes to s. 97, *ante*, as to purchases by a county council or the Minister. As to local authorities, where the reference is not restricted to local authorities for housing purposes, see s. 189 (2), *ante*. Cf., also, the note to para. 1 (3) of the First Schedule, *ante*.

**Would . . . be paid into court.** See the note to para. 1 (3) of the First Schedule, *ante*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *ante*.

**Decision . . . final and conclusive.** See the note to para. 1 (3) of the First Schedule, *ante*.

**Para. 2.**

**Rules set out in this paragraph.** The original numbering of the rules, as set out in the Fourth Schedule to the Act of 1936 (see the note "History", *supra*), is preserved in Part III of the Third Schedule, *ante*. Sub-para. (2) to (6), *supra*, thus correspond with rr. 1-3, 4 (b) and 6 in that Schedule, and reference may be made to the notes thereto. Sub-para. (6), however, fails to provide that the award shall show separately whether compensation has been reduced by reference to the considerations mentioned in sub-para. (5); it will nevertheless be convenient for the Tribunal to do this (cf. r. 6 in Part III of the Third Schedule, which correctly reproduces the requirements of the Act of 1936).

For the meaning of "local authority" in this paragraph, see ss. 1 and 132, *ante*. The powers of purchase under Part V of the Act may also be exercised, in certain circumstances, by the Minister or a county council; see the General Note to s. 97, *ante*.

Section 138

EIGHTH SCHEDULE

LOCAL HOUSING BONDS

1. Local bonds shall—

- (a) be secured upon all the rates, property and revenues of the local authority;
- (b) bear interest at such rate as the local authority may determine at the time of the issue of the bonds;
- (c) be issued in denominations of five, ten, twenty, fifty, and one hundred pounds and multiples of hundred pounds;
- (d) be issued for periods of not less than five years.

2. Local bonds shall be exempt from stamp duty under the Stamp Act, 1891, and no duty shall be chargeable under section eight of the Finance Act, 1899, as amended by any subsequent enactment in respect of the issue of any such bonds.

3. The provisions of section one hundred and fifteen of the Stamp Act, 1891 (which relates to composition for stamp duty), shall, with the necessary adaptations, apply in the case of any local authority by whom local bonds are issued as if those bonds were stock or funded debt of the authority within the meaning of that section.

4. A local authority shall, in the case of any person who is the registered holder of local bonds issued by that authority of a nominal amount not exceeding in the aggregate one hundred pounds, pay the interest on the bonds held by that person without deduction of income tax, but any such interest shall be accounted for and charged to income tax under the third case of Schedule D, subject, however, to any provision of the enactments relating to income tax with respect to exemption or abatement.

5. Local bonds issued by a local authority shall be accepted by that authority at their nominal value in payment of the purchase price of any house erected by or on behalf of any local authority in pursuance of operations under this Act.

6. The Minister may, with the approval of the Treasury, by statutory instrument make regulations with respect to the issue (including terms of issue), transfer and redemption of local bonds and the security therefor, and any such regulations may apply, with or without modifications, any provisions of the Local Loans Act, 1875, and the Acts amending that Act, and of any Act relating to securities issued by the London County Council or by any other local or public body.

7. For the purposes of this Schedule the expression "local authority" includes a county council.

NOTES

**History.** This Schedule contains provisions formerly in the Ninth Schedule to the Housing Act, 1936, and para. 6 also reproduces the effect of s. 1 (2) of the Statutory Instruments Act, 1946.

**Para. 1.**

**Local bonds.** For meaning, see s. 138 (1), *ante*.

**Local authority.** Note that by para. 7, *supra*, the expression "local authority" includes a county council; see also ss. 1 and 138 (1), *ante*.

**Para. 2.**

**Stamp Act, 1891.** 21 Halsbury's Statutes (2nd Edn.) 610.

**Finance Act, 1899, s. 8.** 21 Halsbury's Statutes (2nd Edn.) 723.

**Para. 3.**

**Stamp Act, 1891, s. 115.** 21 Halsbury's Statutes (2nd Edn.) 648.

**Para. 4.**

The operation of the provision of the Housing Act, 1936, corresponding to this paragraph was saved by s. 529 (2) of the Income Tax Act, 1952 (75 Statutes Supp. 493; 31 Halsbury's Statutes (2nd Edn.) 493).

**Schedule D.** This is the Schedule set out in s. 122 of the Income Tax Act, 1952 (75 Statutes Supp. 112; 31 Halsbury's Statutes (2nd Edn.) 112). For Case III of Schedule D, see s. 123 (1) of that Act.

**Para. 5.**

**House.** For meaning, see s. 189 (1), *ante*.

**Para. 6.**

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *ante*.

**Statutory instrument.** For provisions as to statutory instruments generally, see the Statutory Instruments Act, 1946 (36 Statutes Supp. 95; 24 Halsbury's Statutes (2nd Edn.) 440).

**Regulations.** At the time of going to press no regulations have been made under para. 6, *supra*. By virtue, however, of s. 191 (2), *ante*, Part III (regs. 9-26) of the Housing Consolidated Regulations, 1925 (S.R. & O. 1925 No. 866) (*Hill's Complete Law of Housing* (4th Edn.), pp. 481-484; 10 Halsbury's Statutory Instruments, title Housing), has effect as if made under that paragraph.

**Local Loans Act, 1875.** 16 Halsbury's Statutes (2nd Edn.) 404.

NINTH SCHEDULE

Sections 49, 144

REHOUSING BY UNDERTAKERS

1. If in the administrative county of London or in any borough or urban district, or in any parish in a rural district, the undertakers have power to take under the enabling Act dwellings occupied by thirty or more persons, the undertakers shall not enter on any such dwellings in that county, borough, urban district, or parish, until the Minister has either approved of a housing scheme under this Schedule or has decided that such a scheme is not necessary.

For the purpose of determining for the purposes of this Schedule, the number of persons by whom any dwellings are occupied, any occupation on or after the fifteenth day of December next before the passing of the enabling Act, or, in the case of land acquired compulsorily under a general Act without the authority of an order, next before the date of the application to the Minister under this Schedule, for his approval of or decision with respect to a housing scheme, shall be taken into consideration.

2. The housing scheme shall make provision for the accommodation of such number of persons as is, in the opinion of the Minister, taking into account all the circumstances, required, but that number shall not exceed the aggregate number of persons displaced; and in calculating that number the Minister shall take into consideration not only the persons who are occupying the dwellings which the undertakers have power to take, but also any persons who, in the opinion of the Minister, have been displaced within the previous five years in view of the acquisition of land by the undertakers.

3.—(1) Provision may be made by the housing scheme for giving undertakers who are a local authority, or who have not sufficient powers for the purpose, power for the purpose of the scheme to appropriate land or to acquire land, either by agreement or compulsorily under the authority of a Provisional Order, and for giving any local authority power to erect dwellings on land so appropriated or acquired by them, and to sell or dispose of any such dwellings, and to raise money for the purpose of the scheme as for the purposes of Part V of this Act, and for regulating the application of any money arising from the sale or disposal of the dwellings; and any provisions so made shall have effect as if they had been enacted in an Act of Parliament.

(2) For the purposes of the Acquisition of Land (Authorisation Procedure) Act, 1946, this paragraph shall be deemed to have been in force immediately

before the commencement of that Act, and for the purposes of subsection (3) of section eight of the Statutory Orders (Special Procedure) Act, 1945, this paragraph shall be deemed to be an enactment passed before that Act.

4. The housing scheme shall provide that any land acquired under the scheme shall, for a period of twenty-five years from the date of the scheme, be appropriated for the purpose of dwellings, except so far as the Minister may dispense with such appropriation; and every conveyance, demise, or lease of any such land shall be endorsed with notice of this provision, and the Minister may require the insertion in the scheme of any provision with respect to the standards of the houses that are to be erected under the scheme, or any conditions to be complied with as to the mode in which the houses are to be erected.

5. If the Minister does not hold a local inquiry with reference to a housing scheme, he shall, before approving the scheme, send a copy of the draft scheme to every local authority, and shall consider any representation by any such authority made within the time fixed by him.

6. The Minister may, as a condition of his approval of a housing scheme, require that the new dwellings under the scheme, or some part of them, shall be completed and fit for occupation before possession is taken of any dwellings under the enabling Act.

7. Before approving any scheme the Minister may, if he thinks fit, require the undertakers to give such security as the Minister considers proper for carrying the scheme into effect.

8. If the undertakers enter on any dwellings in contravention of the provisions of this Schedule, or of any conditions of approval of the housing scheme made by the Minister, they shall be liable to a penalty not exceeding five hundred pounds in respect of every such dwelling.

Any such penalty shall be recoverable by the Minister by action in the High Court, and shall be carried to and form part of the Consolidated Fund.

9. If the undertakers fail to carry out any provision of the housing scheme, the Minister may make such order as he may think necessary or proper for the purpose of compelling them to carry out that provision, and any such order may be enforced by order of mandamus.

10. The Minister may, on the application of the undertakers, modify any housing scheme which has been approved by him under this Schedule, and any modifications so made shall take effect as part of the scheme.

11. For the purposes of this Schedule—

- (a) the expression "undertakers" means any authority, company, or person who are acquiring land compulsorily or by agreement under any local Act or Provisional Order or order having the effect of an Act, or are acquiring land compulsorily under any general Act;
- (b) the expression "enabling Act" means any Act of Parliament or Order under which the land is acquired;
- (c) the expression "local authority" means, as respects England and Wales other than the administrative county of London, the council of any county, borough, urban district or rural district, as respects the City of London, the Common Council, and, as respects the administrative county of London other than the City of London, the council of any metropolitan borough, in which in any case any houses in respect of which the re-housing scheme is made are situated;
- (d) the expression "dwelling" or "house" means any house or part of a house occupied as a separate dwelling.

#### NOTES

**History.** This Schedule (except para. 3 (2)) reproduces the Eleventh Schedule to the Housing Act, 1936, as amended by ss. 1 and 51 (4) of, and the First and Third Schedules to, the Housing Act, 1949. Before the Act of 1949, these provisions related to "working-men's dwellings", and to the re-housing of members of the "working class" as defined in para. 11 (e) (repealed) of the Eleventh Schedule to the Act of 1936. Para. 3 (2), *supra*, is required to preserve the application of the Acquisition of Land (Authorisation Procedure) Act, 1946, and of s. 8 (3) of the Statutory Orders (Special Procedure) Act, 1945.

**General Note.** This Schedule is as much part of the law of compulsory purchase as it is part of the law of housing. In the Fifth Schedule to the Housing Act, 1925 (repealed), and in the Eleventh Schedule, as originally enacted, to the Housing Act, 1936 (repealed), these provisions were limited to working-men's houses and to the re-housing of members of the working class; but those limitations were removed by the

considerable amendments effected by the Housing Act, 1949 (see the note "History", *supra*). It will be noted that s. 49, *ante* (land belonging to a local authority in, or surrounded by or adjoining, a clearance area) does not apply to dwellings acquired by an authority in such circumstances that para. 1, *supra*, applied (or the corresponding provisions of the Act of 1925 or 1936); see s. 49 proviso, *ante*.

The general purpose of this Schedule is to ensure that, where any considerable number of dwellings are to be taken by an acquiring body, whether by compulsion or agreement, provision shall be made for the replacement of dwellings, where necessary, under a re-housing scheme. The Schedule does not apply to certain planning purchases or purchases under an order made under the present Act; see s. 144, *ante*, and the notes thereto. A scheme under this Schedule may itself confer powers of purchase; see para. 3, *supra*.

**Para. 1.**

**Administrative county of London; borough; urban district; rural district.** See the notes to s. 1, *ante*.

**Undertakers; enabling Act; dwelling.** For meanings, see para. 11, *supra*.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 189 (1), *ante*.

**Para. 3.**

**Local authority.** For meaning, see para. 11, *supra*.

**Provisional Order.** For the procedure on making provisional orders, see the Local Government Act, 1933, s. 285 (1) (14 Halsbury's Statutes (2nd Edn.) 501), and the London Government Act, 1939, s. 188 (1) (15 Halsbury's Statutes (2nd Edn.) 1160). As to costs in respect of provisional orders made in pursuance of this Act, see s. 180 (2), *ante*.

**Acquisition of Land (Authorisation Procedure) Act, 1946.** 39 Statutes Supp. 4; 3 Halsbury's Statutes (2nd Edn.) 1064.

**Statutory Orders (Special Procedure) Act, 1945, s. 8 (3).** 34 Statutes Supp. 145; 24 Halsbury's Statutes (2nd Edn.) 437.

**Para. 4.**

**House.** For meaning, see para. 11, *supra*, and s. 189 (1), *ante*.

**Para. 5.**

**Local inquiry.** See generally, as to local inquiries held by the Minister, the notes to s. 181, *ante*.

**Para. 9.**

**Order of mandamus.** The old writ of *mandamus* was abolished by s. 7 of the Administration of Justice (Miscellaneous Provisions) Act, 1938 (6 Halsbury's Statutes (2nd Edn.) 102), which replaced it by an order of *mandamus*. The procedure is now governed by R.S.C. Ord. 59, rr. 1-10; for forms, see 10 Ency. Court Forms 280 *et seq.*

**Para. 11.**

**Occupied as a separate dwelling.** Cf. the expression "Used as a separate dwelling" in s. 87, *ante*, and the note "Dwelling-house" to that section. Cf., also, the note "House" to s. 189 (1), *ante*.

TENTH SCHEDULE

Section 190

ADAPTATION OF REFERENCES TO ENACTMENTS IN HOUSING ACTS

*The Local Government Act, 1933*

(23 & 24 Geo. 5 c. 51)

1. In paragraph (c) of section two hundred and seventeen the references to section eighty-seven of the Housing Act, 1925, shall include references to section one hundred and twenty-two of the Housing Act, 1936, and to section one hundred and thirty-eight of this Act.

2. In the Seventh Schedule for the reference to the Housing Acts, 1925 and 1930, there shall be substituted a reference to this Act.

3. In the Eighth Schedule the references to the Housing Acts, 1925 and 1930, shall include references to the Housing Act, 1936, and to the provisions of this Act with the exception of section one hundred.

*The County Courts Act, 1934*

(24 & 25 Geo. 5 c. 53)

In paragraph (c) of subsection (1) of section ninety-one for the reference to appeals under section twenty-two of the Housing Act, 1930, there shall be substituted a reference to any appeal to a county court under this Act.

*The London Government Act, 1939*

(2 &amp; 3 Geo. 6 c. 40)

1. In subsection (1) of section one hundred and thirty-four, in the proviso, the references to the Housing Acts, 1936 and 1938, shall include references to this Act.

2. In the Fifth Schedule for the reference to the Housing Acts, 1936 and 1938, there shall be substituted a reference to this Act.

*The Town and Country Planning Act, 1944*

(7 &amp; 8 Geo. 6 c. 47)

1. In subsection (2) of section thirty the reference to section one hundred and thirty-seven of the Housing Act, 1936, shall be taken as a reference to section one hundred and forty-four of this Act.

2.—(1) In paragraph 9 of the Fifth Schedule the reference in sub-paragraph (4) to section forty-two of the Housing Act, 1936, shall be taken as a reference to section sixty of this Act and the reference to Part III of that Act shall be taken as a reference to Part III of this Act.

(2) In sub-paragraph (5) of the said paragraph 9 the reference to the Housing Act, 1936, shall be taken as a reference to this Act and the reference to sections one hundred and fifty-seven and one hundred and fifty-eight of that Act shall be taken as a reference to sections one hundred and fifty-nine and one hundred and sixty of this Act.

*The Housing Repairs and Rents Act, 1954*

(2 &amp; 3 Eliz. 2 c. 53)

In paragraph (a) of subsection (2) of section thirty-three the reference to section ninety-four of the Housing Act, 1936, shall include a reference to section one hundred and twenty of this Act and in subsections (1) and (9) of that section a reference to the Housing Act, 1936, shall be taken as a reference to this Act.

*The Requisitioned Houses and Housing (Amendment) Act, 1955*

(3 &amp; 4 Eliz. 2 c. 24)

In subsection (2) of section thirteen the reference to sections one hundred and sixty-six and one hundred and sixty-seven of the Housing Act, 1936, shall be taken as a reference to section one hundred and sixty-eight and subsection (1) of section one hundred and sixty-nine of this Act.

*The Rent Act, 1957*

(5 &amp; 6 Eliz. 2 c. 25)

In subsection (1) of section twenty the reference to section three of the Housing Act, 1952, shall include a reference to section one hundred and four of this Act.

## NOTES

**General Note.** This Schedule, introduced by s. 190, *ante*, makes specific adaptation of references to certain housing enactments, in seven statutes, in consequence of the present Act. Note also ss. 191 (4) and 192, *ante*.

**Local Government Act, 1933, s. 217 (c), Seventh and Eighth Schedules.** 14 Halsbury's Statutes (2nd Edn.) 468, 530, 531. Para. 1, *supra*, of the adaptations of the Act of 1933 relates to local housing bonds (see now s. 138 and the Eighth Schedule, *ante*). Part IX (ss. 195–218) of the Act of 1933 deals with borrowing powers; s. 217 (c), as originally enacted, contained savings for local housing bonds under the Act of 1925 or any enactment repealed thereby, and is now expressly extended to make the like saving for such bonds under the Act of 1936 or this Act.

Part VII (ss. 156–179) of the Act of 1933, relates to acquisitions of, and dealings in, land by local authorities. The Seventh Schedule to that Act lists certain statutes, including the Housing Acts, 1925 and 1930, which are not affected by the Act of 1933. In these cases, the provisions of the Act of 1933 do not displace the provisions of the more particular statutes as to acquisition, appropriation or disposal of land or the application of capital moneys; see s. 179 (g) of the Act of 1933. That paragraph was repealed by s. 6 of, and the Fourth Schedule to, the Acquisition of Land (Authorisation Procedure) Act, 1946, but only as respects compulsory purchases of land falling within s. 1 (1) of that Act.

The effect of para. 2, *supra*, of the adaptations made to the Act of 1933, is to substitute a reference to the present Act in the Seventh Schedule to the Act of 1933. Except in cases falling within the Act of 1946, therefore, s. 179 (g) of the Act of 1933 has the effect of requiring acquisitions, etc., to be dealt with under this Act and not under that Act.

The Eighth Schedule to the Act of 1933 (as amended by the Housing Act, 1935), refers, *inter alia*, to borrowing for certain purposes under the Housing Acts, 1925 and 1930. The effect of that Schedule, and of s. 198 of that Act, is to allow certain housing loans to be for a maximum period of 80 (instead of 60) years. Para. 3, *supra*, of the adaptations of the Act of 1933, now expressly extends these provisions to include borrowing under the Act of 1936 or the present Act. Borrowing by county councils for the purposes of making grants or loans to, or subscribing to the capital of, housing associations (see now s. 119 (3), *ante*) is excluded from the Eighth Schedule to the Act of 1933; and the present Act excludes borrowing for the purpose of making allowances to persons displaced under Part V (see s. 100, *ante*, derived from the Housing Act, 1949).

**Housing Act, 1925.** 15 Geo. 5 c. 14. That Act was repealed by s. 190 of, and the Twelfth Schedule to, the Housing Act, 1936 (11 Halsbury's Statutes (2nd Edn.) 591, 610).

**Housing Act, 1936.** 11 Halsbury's Statutes (2nd Edn.) 444. The greater part of that Act was repealed by s. 191, *ante*, and the Eleventh Schedule, *post*; and the whole Act is repealed (with savings) by s. 59 of, and the Sixth Schedule to, the Housing (Financial Provisions) Act, 1958 (Book II, *post*). Of the provisions of the Act of 1936 specifically mentioned in this Schedule, s. 94 (3) and (4), and s. 122 as applied by s. 47 of the Housing Act, 1949, were not repealed by the present Act; see now ss. 19 (1), 20 (1) and 54 (5) of the Act of 1958.

**Housing Acts, 1925 and 1930.** *I.e.*, the Housing Act, 1925 (*ubi supra*) (repealed), and the Housing Act, 1930 (11 Halsbury's Statutes (2nd Edn.) 433); see s. 65 (1) of the Act of 1930. Much of the Act of 1930 was repealed by the Housing Act, 1936, and earlier Acts; see also s. 59 of, and the Sixth Schedule to, the Act of 1958 (Book II, *post*), for further repeals.

**County Courts Act, 1934, s. 91 (1) (c).** 5 Halsbury's Statutes (2nd Edn.) 72. As adapted, that paragraph provides that an appeal to a county court under this Act shall be tried without a jury. As to appeals to a county court under this Act, see the notes to s. 38, *ante*.

**London Government Act, 1939, s. 134 (1), Fifth Schedule.** 15 Halsbury's Statutes (2nd Edn.) 1135, 1174. Section 134 (1), as adapted, makes provision for repayment of housing loans by metropolitan borough councils, the maximum period being 80 years; cf. para. 3 of the adaptations of the Local Government Act, 1933, *supra*. The Fifth Schedule to the Act of 1939 contains a list of statutes, introduced by s. 114 (2) of the Act, which preserves the provisions of those statutes, relating to acquisitions and dealing in land; cf. para. 2 of the adaptations of the Act of 1933, *supra*.

**Housing Acts, 1936 and 1938.** *I.e.*, the Housing Act, 1936 (*ubi supra*) (repealed), and the Housing (Financial Provisions) Act, 1938 (11 Halsbury's Statutes (2nd Edn.) 610); see ss. 11 (a) and 12 (1) of the Act of 1938. The Act of 1938 is now repealed (with savings) by s. 59 of, and the Sixth Schedule to, the Act of 1958 (Book II, *post*).

**Town and Country Planning Act, 1944, s. 30 (2), Fifth Schedule, para. 9 (4), (5).** For the text of these provisions, as amended and applied by the Town and Country Planning Act, 1947, see the Eleventh Schedule to the Act of 1947 (48 Statutes Supp. 266, 276, 277; 25 Halsbury's Statutes (2nd Edn.) 411, 420, 421). These provisions are also amended and applied by the New Towns Act, 1946, s. 23 (25 Halsbury's Statutes (2nd Edn.) 446), and the text for these purposes is set out in 25 Halsbury's Statutes (2nd Edn.) 469, 483. Section 30 (2) of the Act of 1944 excludes the re-housing obligations of undertakers (see s. 144 and the Ninth Schedule, *ante*). Para. 9 of the Fifth Schedule provides the "declaration of unfitness" procedure for the purchase of certain unfit houses at site value (see the note "Cross references" to s. 59, *ante*, and Form Nos. 32 and 33 in the Second Schedule to the Housing (Prescribed Forms) Regulations, 1957 (S.I. 1957 No. 1852) (Appendix II, *post*)); para. 9 (4) and (5) contain incidental and consequential provisions as to payments for "well-maintained" houses (s. 60, *ante*), powers of entry, etc.

**Housing Repairs and Rents Act, 1954, s. 33 (1), (2) (a), (9).** 84 Statutes Supp. 73, 74, 75; 34 Halsbury's Statutes (2nd Edn.) 357, 358, 359. These provisions relate to housing associations and housing trusts: see the note "Not being . . . to a local authority, county council, etc." to s. 104 (3), *ante*, the General Note to s. 119, *ante*, and the note "Housing trust" to s. 189 (1), *ante*.

**Requisitioned Houses and Housing (Amendment) Act, 1955, s. 13 (2).** 90 Statutes Supp. 21; 35 Halsbury's Statutes (2nd Edn.) 279. That subsection, as adapted, now applies ss. 168 and 169 (1), *ante*, to the service of notices on, or by, a local authority under Part I of that Act, relating to the transfer of requisitioned houses to local authorities, release from requisition, etc.

**Rent Act, 1957, s. 20 (1).** 103 Statutes Supp. 84; 37 Halsbury's Statutes (2nd Edn.) 571. That subsection, in general, substituted the "rent limit" under that

Act for the limitations of the rent of subsidised private dwellings under a number of housing statutes; see the note to s. 104 (3), *ante*.

**Housing Act, 1952, s. 3.** 77 Statutes Supp. 85; 32 Halsbury's Statutes (2nd Edn.) 155. Sub-ss. (1)–(4) of that section were repealed by s. 191 (1), *ante*, and the Eleventh Schedule, *post* (see now ss. 104 and 105, *ante*); and s. 3 (5) of the Act of 1952 is now repealed, with all other remaining provisions of that Act, by s. 59 of, and the Sixth Schedule to, the Act of 1958 (Book II, *post*) (see now s. 18 (2) of that Act).

Section 191

ELEVENTH SCHEDULE

REPEALS

Session and Chapter	Short Title	Extent of Repeal
14 & 15 Geo. 5 c. 35	The Housing (Financial Provisions) Act, 1924	In section fourteen, subsection (1).
21 & 22 Geo. 5 c. 39	The Housing (Rural Authorities) Act, 1931	Sections two and three.
25 & 26 Geo. 5 c. 40	The Housing Act, 1935	Section sixty-two.
26 Geo. 5 and 1 Edw. 8 c. 51	The Housing Act, 1936	Parts I to IV. In Part V— Sections seventy-one to eighty-five. Section eighty-six except so far as it relates to exchequer contributions. Sections eighty-seven and eighty-eight. In section eighty-nine, subsection (1) and in subsection (2) the words from the beginning to the words "think proper". Section ninety-three. In section ninety-four, subsections (1), (2), (5) and (6). Section ninety-five to the end of Part V. In Part VI— Sections one hundred and sixteen to one hundred and eighteen. Section one hundred and nineteen except as applied by section forty-seven of the Housing Act, 1949. Sections one hundred and twenty and one hundred and twenty-one. Sections one hundred and twenty-two to one hundred and twenty-four except as applied by section forty-seven of the Housing Act, 1949. Sections one hundred and twenty-six and one hundred and twenty-seven. In Part VII— Sections one hundred and thirty-five to one hundred and fifty-two. Sections one hundred and fifty-four to one hundred and sixty-eight. Section one hundred and seventy-five.

Session and Chapter	Short Title	Extent of Repeal
26 Geo. 5 and 1 Edw. 8 c. 51— <i>cont.</i>	The Housing Act, 1936— <i>cont.</i>	In section one hundred and seventy-eight, subsection (2). Section one hundred and seventy-nine. Section one hundred and eighty-one to the end of Part VII. In Part VIII— Section one hundred and eighty-seven. The First, Second, Third, Fourth and Fifth Schedules. The Ninth Schedule. The Eleventh Schedule. In section two, subsection (2).
1 & 2 Geo. 6 c. 16	The Housing (Financial Provisions) Act, 1938	In section six, paragraph (c).
8 & 9 Geo. 6 c. 18	The Local Authorities Loans Act, 1945	In section nineteen, subsections (1) and (2). Section twenty-two.
9 & 10 Geo. 6 c. 48	The Housing (Financial and Miscellaneous Provisions) Act, 1946	In section one, paragraph (b) of subsection (4). In Part I of the Second Schedule the words "in the case of a purchase under the Housing Act, 1936, and" and the word "other" in sub-paragraph (b) of paragraph 2. In the Fourth Schedule the amendments of the Housing Act, 1936.
9 & 10 Geo. 6 c. 49	The Acquisition of Land (Authorisation Procedure) Act, 1946	Sections two and three. Sections six to fourteen. In section thirty-one, subsections (1) and (2). In section one, in subsection (1), paragraph (d).
12, 13 & 14 Geo. 6 c. 60	The Housing Act, 1949	In section three, subsections (1), (2), (3) and (4). Sections four and five. Sections ten and eleven.
15 & 16 Geo. 6 & 1 Eliz. 2 c. 17	The Industrial and Provident Societies Act, 1952	Section forty.
15 & 16 Geo. 6 & 1 Eliz. 2 c. 53	The Housing Act, 1952	In the list at the end of the Schedule the words "the Housing Act, 1936". Section one. In section two, subsections (1), (2), (4) and (5) and, except so far as it amends section seven of that Act, subsection (3). Sections three to six. Section nine except as applied by paragraph 11 of the Second Schedule to the Housing Act, 1949. Sections ten to fourteen.
1 & 2 Eliz. 2 c. 26	The Local Government (Miscellaneous Provisions) Act, 1953	
1 & 2 Eliz. 2 c. xliii	The London County Council (General Powers) Act, 1953	
2 & 3 Eliz. 2 c. 8	The Electoral Registers Act, 1953	
2 & 3 Eliz. 2 c. 53	The Housing Repairs and Rents Act, 1954	

Session and Chapter	Short Title	Extent of Repeal
2 & 3 Eliz. 2 c. 53— <i>cont.</i>	The Housing Repairs and Rents Act, 1954— <i>cont.</i>	Sections twenty and twenty-one. In section twenty-two, subsections (2) and (3). In section thirty-three, subsection (7). In section fifty, in subsection (2), paragraphs (a) and (b). The First Schedule.
4 & 5 Eliz. 2 c. 33	The Housing Subsidies Act, 1956	In section twelve, subsection (5). In the First Schedule, paragraph 9 so far as it amends subsection (1) of section nineteen of the Housing (Financial and Miscellaneous Provisions) Act, 1946.
4 & 5 Eliz. 2 c. 57	The Slum Clearance (Compensation) Act, 1956	Section one as it applies to a house purchased compulsorily under the powers contained in this Act, and in subsection (1) the words from "or vacated" to "closing order" and the words "or, as the case may be, vacated", in subsection (2) the words "or in pursuance of a clearance order, demolition order or closing order" and the words from "and, in the case" to the end of the subsection, in subsection (3) the words "or, as the case may be, vacated", in subsection (4) the words "or, as the case may be, vacated", paragraph (b) and the words "in either case". Section two as it applies to a house purchased compulsorily under the powers contained in this Act, and in subsection (1) the words "or vacated in pursuance of a clearance order or demolition order". Section three. In section four, subsection (1), and in subsection (2), the definitions of "clearance order", "closing order", "demolition order", and in the definition of "material period" paragraphs (a), (c), (d) and (e) and in paragraph (b) the words from "a house authorised" to "so fit, or". In section six, in subsection (1), the words from "and shall" to the end of the subsection. In the Sixth Schedule, paragraph 22.
5 & 6 Eliz. 2 c. 25	The Rent Act, 1957	

## BOOK II

### INTRODUCTION TO THE HOUSING (FINANCIAL PROVISIONS) ACT, 1958

**Scope of the Act of 1958.** The Housing (Financial Provisions) Act, 1958, attempts a consolidation of the current financial provisions relating to the provision of housing accommodation and the financial administration of the housing Acts. It came into force on 23rd October 1958, and does not extend to Scotland or Northern Ireland (s. 61, *post*). Certain provisions of the Act may be extended so as to apply to the Isles of Scilly by order of the Minister of Housing and Local Government (s. 57, *post*).

The Act deals with various subsidies, contributions, grants and advances, and with housing accounts. Provisions of this character were contained in Part VI of the Housing Act, 1936. That Act attempted a more or less complete consolidation of housing law, but nevertheless left outstanding a number of enactments mainly of a financial character; cf. Chapter 4 of the Introduction to the Housing Act, 1957 (Book I, at pp. 24 *et seq.*, *ante*), as to the statutes remaining in force at the commencement of the Act of 1957.

The financial provisions of the Act of 1936 were soon substantially amended by the Housing (Financial Provisions) Act, 1938. The separation which thus arose between the financial and the more general law of housing was continued by later statutes, such as the Housing (Financial and Miscellaneous Provisions) Act, 1946. The principal Act, containing the general law, is now the Housing Act, 1957 (Book I, *ante*); Part VI (financial provisions; ss. 135-142) of that Act is now concerned in the main with borrowing powers. Even in respect of borrowing powers, however, certain provisions are now to be found in the present Act, *e.g.*, in ss. 47 and 54, *post*.

This Act does not reproduce the financial provisions of a number of earlier housing statutes, beginning with the Housing, Town Planning, etc., Act, 1919, which had already been repealed, with savings for the continuance of existing obligations to make exchequer contributions and other payments thereunder. It repeals, with similar savings, and does not reproduce, a number of other financial enactments which had been superseded but not repealed; see s. 59 and the Sixth Schedule, *post*. Contributions by the Minister to local authorities, or to public utility societies, housing associations, housing trusts, and development corporations of new towns, are still paid under those provisions. In some cases grants by local authorities to housing associations, etc., and county council contributions, are also still paid under the repealed enactments.

Consequential provisions as to payments under the repealed enactments are contained in this Act, *e.g.*, in s. 18 (as to withholding payments to local authorities), ss. 19-21 (as to development corporations, housing associations, etc.), s. 24 (as to county council contributions) and ss. 27 and 28 (as to the determination of the amount of certain contributions, and the time, manner and conditions of payment) in Part I, *post*. Similarly, payments by the Minister to local authorities under the enactments listed in the definition of "exchequer payment" in s. 58 (2), *post*, must appear in the authority's Housing Revenue Account (see s. 50 and the Fifth Schedule, *post*), and, again, by s. 59 (5) and (6), *post*, certain other repealed provisions are kept alive for special purposes.

This Act does not repeal or consolidate certain statutes such as the Small Dwellings Acquisition Acts, 1899 to 1923, or the Housing (Rural Workers) Acts, 1926 to 1942, although it contains consequential provisions affecting the latter Acts, *e.g.*, in s. 18, *post* (as to withholding payments to local authorities) and s. 50 and the Fifth Schedule (as to the Housing Revenue Account).

**Exchequer subsidies.** The first eight sections of this Act set out the current provisions as to exchequer subsidies, derived mainly from the Housing Subsidies Act, 1956. Most of the Act of 1956 is repealed by s. 59 (1) and the Sixth Schedule, *post*, but by the combined effect of ss. 59 (3) and 60, *post*, references to the corresponding provisions of the present Act will include a reference to the provisions of the Act of 1956.

The subsidies under ss. 1-8, *post*, are payable to a local authority, or the development corporation of a new town, in respect of approved dwellings provided pursuant to a resolution of the authority or corporation passed on or after 3rd November 1955. Similar subsidies in respect of approved dwellings provided by a development corporation or housing association, under authorised arrangements with the local authority made on or after that date, are payable to the local authority, who in effect pass on the subsidy as an annual grant, not less in amount. Subsidies may be abolished or reduced by an order made by the Minister under s. 2, *post*, after approval of the order in draft by resolution of the House of Commons, and this power is extended by certain later sections. The corresponding power in the Housing Subsidies Act, 1956, was exercised before the passing of the Act, and the effect of the order so made is incorporated in s. 4 of this Act, *post*.

**Subsidies for slum clearance, etc.** Broadly speaking, the present subsidy provisions attempt a return to the pre-war position in which there was no exchequer contribution for the provision of housing accommodation for "general needs". Compared with the position in 1939, however, the special circumstances which can give rise to subsidies are now more numerous. Under s. 3 (1), *post*, subsidies payable to a local authority (or directly to a development corporation) are provided for the purposes mentioned in s. 3 (2), namely:—

- (a) slum clearance and re-development;
- (b) rehousing from unsatisfactory temporary accommodation;
- (c) town development;
- (d) providing for the urgent needs of industry;
- (e) providing for overspill of population from a congested area where the development is similar to new town development; and
- (f) the provision of houses by a development corporation otherwise than under authorised arrangements.

Subsidies under paras. (a), (b), (d) and (e), *supra*, may be made available also under s. 3 (3) for dwellings provided, under authorised arrangements with the local authority, by development corporations and housing associations. The standard exchequer subsidy under s. 3 in the cases mentioned in paras. (a) and (b), *supra*, is £22 1s. 0d. for sixty years, and under paras. (c) to (f) is £24 for the same period. In the case of flats in blocks of four or more storeys the subsidies are increased.

**Other subsidies.** In certain cases exchequer subsidies at the lower rates provided under s. 3 of the Act of 1956 are continued by s. 4, *post*. These are payable in respect of dwellings provided in pursuance of a resolution passed, or authorised arrangements made, before the 2nd November, 1956; see s. 4 (3) and (5), *post*. These subsidies are also still available under s. 4 (2) in the case of single-bedroom dwellings. The possibility of a nominal subsidy, of one shilling for sixty years, is provided by s. 4 (4) in respect of the provision of a dwelling (a) for the agricultural population, or (b) where the cost is enhanced by measures taken for protection against subsidence, or by measures taken in construction in order to preserve the character of the surroundings, or (c) where the Minister considers that accommodation is urgently required but the local authority are faced with a heavy rate burden or the necessity of charging unreasonably high rents. This power to pay a nominal subsidy enables the Minister to pay the increased subsidies available

in such cases under ss. 5, 8 and 6, respectively, *post*. Section 7, *post*, provides an additional form of subsidy for expensive sites.

The powers to increase subsidies in such cases are by no means new. Those under s. 8, *post*, are derived from the Housing (Financial and Miscellaneous Provisions) Act, 1946, and the Housing Act, 1949 (as adapted by the Housing Subsidies Act, 1956, ss. 4 (3) and 12, and First Schedule, paras. 5 and 12); the increased or additional subsidies under ss. 5, 6 and 7, *post*, correspond to those introduced by ss. 4, 5 and 6 of the Act of 1956 (which superseded certain provisions in ss. 3 and 4 of the Act of 1946, as amended). When the increased subsidy under s. 5 is payable to the council of a county district, in respect of a dwelling provided for the agricultural population, a county council contribution is payable under s. 23, *post*.

**Contributions and grants for other purposes.** The present Act also continues the exchequer contributions for the improvement of housing accommodation made available by the Housing Act, 1949; the financial assistance for certain houses, retained for temporary accommodation, introduced by the Housing Repairs and Rents Act, 1954; the grants and contributions provided by the Act of 1949 for building experiments and for the provision of hostels; and a number of other powers to provide financial assistance, such as those of ss. 16 and 17, *post* (derived from the Housing (Financial and Miscellaneous Provisions) Act, 1946) which were introduced for special purposes in the post-war period.

Under ss. 9-12, *post*, contributions may be made in respect of the conversion and improvement of dwellings by a local authority or development corporation, or by a development corporation or housing association under arrangements with the local authority under s. 121 of the Housing Act, 1957 (Book I, *ante*). The Minister's contribution is to equal three-quarters of the annual loss and is payable for twenty years; and an annual grant, not less in amount, is payable by the local authority in the case of arrangements with a development corporation or housing association. The contribution may be reduced (as respects proposals approved by the Minister, or arrangements made, after a specified date) by an order under s. 2, *post*, as applied by ss. 10 (1) proviso and 12 (1) proviso, to an amount less than three-quarters of the annual loss, but not less than two-thirds. In connection with improvement grants by local authorities to private individuals (ss. 30-42, in Part II, *post*), exchequer contributions, equal to three-quarters of the annual loan charges, are payable for twenty years under s. 36, *post*. Again, the proportion may be reduced, by order under s. 2 as applied, to not less than two-thirds.

Under s. 13, *post*, the Minister may contribute to expenditure incurred by a local authority in the provision of temporary housing accommodation in houses retained by virtue of s. 48 (1) or 46 of the Housing Act, 1957 (Book I, *ante*), or after purchase under s. 29 of that Act. The contribution in respect of houses approved for this purpose will be: (a) in the case of a house purchased by the authority in a clearance area, or under s. 29 of that Act, an annual payment of one-half of the annual loan charges referable to the cost of the purchase for each year in which the use of the house is approved by the Minister; and (b) in any case, a sum of £3 for each dwelling for fifteen years from the date of the Minister's approval. These payments may be varied by an order under s. 13, which requires the approval of the House of Commons.

The grants under s. 14, *post*, for experiments in the construction of houses, and as to materials, equipment and fittings used or installed in the construction of houses or otherwise, are payable to a local authority or development corporation; subject to any conditions imposed by the Treasury, the amount and manner of payment are such as the Minister may determine.

Contributions for hostels (*i.e.*, buildings in which residential accommodation is provided, otherwise than in separate and self-contained sets of

premises, together with board) are governed by ss. 15 and 22, *post*. The Minister's contribution may be of an amount up to £5 per bedroom, payable for up to sixty years, and is paid either directly to a local authority or development corporation, or in the case of hostels provided under "authorised arrangements" to the local authority, who will make an annual grant, not less in amount, to the development corporation or housing association.

Under s. 16, *post*, payments may be made by or to the Minister in respect of losses or profits arising from a local authority's use of government war buildings for temporary housing purposes. Additional assistance may be given, under s. 17, *post*, to certain housing associations established since the passing of the Housing (Financial and Miscellaneous Provisions) Act, 1946, where the local authority have also undertaken to make payments equivalent to the former rate fund contribution under s. 5 of that Act.

**Control over subsidies and other payments.** The time, manner and conditions of payments by the Minister to local authorities under this Act, or the Housing Act, 1957 (Book I, *ante*), and a number of other enactments, are governed by s. 28, *post*. Payments to local authorities coming within the definition of "exchequer payment" in s. 58 (2), *post*, may be reduced, suspended or discontinued under s. 18, *post*, on default by the local authority, or when houses, buildings, land, or dwellings are disposed of in certain circumstances.

Control over subsidies, contributions, grants and payments relating to development corporations and housing associations, is provided by ss. 19 to 21, *post*; these relate to defaults, to cases where houses are not kept available as fit dwellings, to cases where the special conditions in earlier enactments are not observed, and to cases where houses are transferred to or vest in the local authority (cf. the General Note to s. 18, *post*). Other powers of control are contained in ss. 12 (2) and 22, *post* (relating respectively to improvements by development corporations and housing associations under arrangements with the local authority, and to grants for hostels); and in s. 25 (2), proviso.

By s. 24, *post*, county council contributions for houses for the agricultural population, under s. 23 of this Act or similar provisions in earlier Acts which are still applicable despite their repeal, may be withheld when the Minister exercises his default power in s. 18, *post*, because of a failure to reserve houses for the purposes mentioned in s. 114 of the Act of 1957 (Book I, *ante*).

**Payments to county councils.** Provision is made by s. 25, *post*, for subsidies under ss. 1 to 8, improvement contributions under ss. 9 and 10, and contributions for hostels under s. 15, to be paid to a county council, where (1) an agreement is made with a rural district council under s. 117 of the Act of 1957 (Book I, *ante*), or (2) where powers are transferred to a county council, on default of a local authority, under s. 171 or 173 of that Act. In the case of an agreement under s. 117 of that Act, a consequential modification is made to s. 3 (2) (a), *post*, relating to subsidies for slum clearance or re-development; and in the other cases the Minister is empowered, by s. 25 (2) proviso, to reduce the amount or duration of payments.

**Rate fund contributions.** The obligation of a local authority, under a number of enactments, to make a compulsory contribution to their housing accounts from the rates, was abolished by s. 8 (1) of the Housing Subsidies Act, 1956 (see the General Note to s. 1, *post*). Consequential provisions for the modification of agreements referring to such contributions, originally contained in s. 8 (2) and (3) of the Act of 1956, are now to be found in s. 26, *post*. Under s. 6 (4) of the Housing (Financial Provisions) Act, 1938 (repealed), the making of rate fund contributions was a necessary condition of receiving exchequer contributions, but this position had already been somewhat relaxed by s. 20 (repealed) of the Housing (Financial and Miscellaneous Provisions) Act, 1946.

**Improvement grants to private persons.** Sections 30 to 42 in Part II, *post*, replace the power given in the Housing Act, 1949, for local authorities to make grants to private individuals to improve housing accommodation. The amount of such grants will be a fraction not exceeding one-half of the approved expense and is not to exceed £400 (s. 32, *post*). This maximum may be varied by regulations under ss. 32 (1) (b) and 49, *post*. Exchequer contributions are available to the local authority, in connection with improvement grants, under s. 36, *post*. The conditions to be observed in respect of improved dwellings are now set out in the Fourth Schedule, *post*.

These provisions follow closely those of ss. 20 *et seq.*, of the Act of 1949, with some amendments, mainly made by s. 16 of the Housing Repairs and Rents Act, 1954. The Rent Act, 1957, repealed s. 22 of the Act of 1949, and is the source, also, of para. 4 of the Fourth Schedule in its present form (relating to the limit on rent).

**Other assistance by local authorities.** Local authorities and county councils may make advances under s. 43, *post*, to any person for the purpose of—

- (a) acquiring a house;
- (b) building a house;
- (c) converting, or acquiring and converting, a building into a house; or
- (d) altering, enlarging, repairing or improving a house.

The principal of the advance may amount to ninety per cent. of the value of the mortgaged security and advances may be made on properties up to a value of five thousand pounds.

Local authorities and county councils may also, under s. 45, *post*, guarantee the repayment of advances by building societies. Under s. 46 exchequer contributions can be made available for the provision of accommodation by private individuals for the agricultural population. The contribution, not exceeding £10, for forty years, is paid to the county district council, who make an annual grant, not less in amount, to the owner of the house. Section 47 deals with the circumstances in which loans may be obtained from the Public Works Loan Commissioners. Powers to withhold, or in some circumstances to continue, contributions and grants are contained in s. 48, *post*. These powers resemble certain powers in ss. 20 and 21, but relate to houses constructed with the financial assistance of a local authority under s. 2 of the Housing, etc., Act, 1923.

**Accounts.** Local authorities are now required under Part III (ss. 50–53), *post*, to keep a Housing Revenue Account and a Housing Repairs Account; and they may also keep a Housing Equalisation Account if they think fit.

*Housing Revenue Account.* Under s. 50, *post*, the Housing Revenue Account must be kept of the income and expenditure in respect of:—

- (a) all houses and other buildings provided after 6th February 1919 under Part V of the Housing Act, 1957 (Book I, *ante*) (including earlier corresponding provisions);
- (b) all houses retained to provide temporary accommodation approved under s. 13, *post*, or purchased under s. 12 of the Act of 1957;
- (c) all dwellings provided or improved under proposals approved under s. 9, *post*;
- (d) all dwellings in respect of which the authority have received assistance under s. 1 of the Housing (Rural Workers) Act, 1926, or the Minister has undertaken to pay a contribution under s. 4 (2A) of that Act;
- (e) such other houses as the authority with the consent of the Minister may determine;

- (f) all land acquired or appropriated for the purposes of Part V of the Act of 1957 at any time after 6th February 1919, including land in a re-development area which is deemed to have been so acquired by virtue of s. 57 (6) of the Act of 1957.

Houses which become vested in the authority by reason of the default of any person under an arrangement providing for assistance are deemed to have been provided by the authority under Part V of the Act of 1957. Hostel buildings approved under s. 15, *post*, are not included unless the Minister so directs, on being satisfied that the building has ceased to be used for a hostel. Even where an authority has no property in respect of which an account must be kept, they may still be required to keep an account if they are entitled to receive any income arising from investment or other use of money borrowed by them for the purpose of (a) the provision of housing accommodation under Part V of the Act of 1957, (b) the provision of temporary accommodation in houses approved under s. 13, *post*, or purchased under s. 12 of the Act of 1957, or (c) the execution of works in respect of which the Minister has undertaken to make a contribution under s. 4 (2A) of the Housing (Rural Workers) Act, 1926, or in respect of which the local authority for the purposes of that Act have given assistance (under s. 2 thereof).

The detailed directions as to the keeping of the account are set out in the Fifth Schedule, *post*, which makes provision for the amounts to be credited and debited to the account and for the disposal of surpluses. Para. 1 (6) of that Schedule re-enacts the power to make voluntary rate fund contributions, as provided by s. 8 (1) of the Housing Subsidies Act, 1956, upon the abolition of compulsory rate fund contributions by that subsection; and para. 1 (5) still requires a contribution to be made to meet any deficit in the account for the year.

*Housing Repairs Account.* The stated purpose of this account is to equalise the annual charge to revenue in respect of the repair and maintenance of properties in respect of which the Housing Revenue Account is kept. In each year the authority are to carry to the credit of the Housing Repairs Account from the Housing Revenue Account such amount as they think proper, not being less than eight pounds, in respect of each house and any amount necessary to make good a deficit in the repairs account in the previous year. Moneys standing to the credit of the Housing Repairs Account are to be applied to the repair and maintenance of properties within the Housing Revenue Account. The Minister may give directions as to what may be done, if an excessive credit balance should arise, by way of reducing or suspending the making of credits or of closing the account.

*Housing Equalisation Account.* This account was previously necessary (before the Housing (Financial and Miscellaneous Provisions) Act, 1946) when exchequer contributions and loan charges were payable for different periods, *i.e.*, generally for forty and sixty years respectively. There may still be circumstances, as where contributions are still received over a period shorter than sixty years but loans are repayable over sixty years (or a longer period), in which it may be convenient to continue to keep an equalisation account.

**General provisions.** Part IV of the Act contains provisions for the interpretation of the Act, and as to repeals and savings (ss. 58–60); provision for the necessary payments out of the exchequer to the Minister from moneys provided by Parliament (except for making loans under s. 17) (s. 56); and provisions for the commencement and extent of the Act, already mentioned (ss. 57 and 61). Various provisions of the Housing Act, 1957 (Book I, *ante*), as to default powers, public inquiries, etc., are applied by s. 55, *post*; and s. 54, as mentioned earlier, relates to borrowing powers and thus supplements Part VI of the Act of 1957.

# THE HOUSING (FINANCIAL PROVISIONS) ACT, 1958

(6 & 7 Eliz. 2 c. 42)

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*An Act to consolidate certain enactments relating to the giving of financial assistance for the provision of housing accommodation and to other financial matters*  
[23rd July 1958]

# PART I

## FINANCIAL ASSISTANCE FOR HOUSING ACCOMMODATION PROVIDED BY LOCAL AUTHORITIES AND OTHER PUBLIC BODIES

### *Exchequer subsidies for new housing accommodation*

**1. Dwellings qualifying for subsidies.**—(1) Exchequer subsidies shall be payable in accordance with the provisions of this Act in respect of, and in certain circumstances in respect of the site of, any new dwelling which is—

- (a) provided by a local authority in exercise of their powers to provide housing accommodation, or
- (b) provided by a development corporation otherwise than in pursuance of authorised arrangements, or
- (c) provided by a development corporation or housing association in pursuance of authorised arrangements with a local authority;

and which is approved for the purposes of those provisions by the Minister, and such a dwelling which is so approved is hereafter in this Act referred to as an "approved dwelling".

(2) An exchequer subsidy payable under this Part of this Act—

- (a) in respect of, or of the site of, a dwelling such as is mentioned in paragraph (a) or (b) of the foregoing subsection shall be paid to the local authority or, as the case may be, to the development corporation,
- (b) in respect of, or of the site of, a dwelling such as is mentioned in paragraph (c) of the foregoing subsection shall be paid to the local authority, who shall pay to the development corporation or housing association by way of annual grant an amount not less than the exchequer subsidy.

(3) An exchequer subsidy shall not be payable in respect of a dwelling, or the site of a dwelling, except where—

- (a) in a case where the dwelling was provided by a local authority in the exercise of their powers to provide housing accommodation or by a development corporation otherwise than in pursuance of authorised arrangements, the tender or estimate for its erection was accepted by a formal resolution of the authority or corporation passed on or after the third day of November, nineteen hundred and fifty-five;
- (b) in a case where the dwelling was provided by a development corporation or housing association in pursuance of authorised arrangements with a local authority the authorised arrangements were made on or after the said third day of November:

Provided that—

- (i) a formal resolution passed as aforesaid accepting a tender or estimate which was submitted to the Minister for approval before the said third day of November shall be deemed for the purposes of this subsection to have been passed before that day, and
- (ii) where, on approving any authorised arrangements made on or after the said third day of November, the Minister is satisfied that the substantial effect of those arrangements had been agreed between the parties before that day, those arrangements

shall be deemed for the purposes of this subsection to have been made before that day.

#### NOTES

**History.** Sub-ss. (1) and (3) of this section contain provisions formerly in s. 1 (1) of the Housing Subsidies Act, 1956; and sub-s. (2) contains provisions formerly in s. 1 (2) of that Act. Contributions under s. 1 of the Housing (Financial and Miscellaneous Provisions) Act, 1946, or s. 8 (2) of the New Towns Act, 1946, or s. 94 (3) of the Housing Act, 1936, were excluded, in respect of dwellings which might come within s. 1 (1) of the Act of 1956, by s. 1 (3) of that Act (not reproduced in this Act; but cf. s. 59 (4), *post*).

**General Note.** This section and the next seven sections of this Act largely reproduce the provisions of ss. 1 to 6 of the Housing Subsidies Act, 1956 (94 Statutes Supp. 38-45; 36 Halsbury's Statutes (2nd Edn.) 372-380), and of the Housing Subsidies Order, 1956 (S.I. 1956 No. 2015), which was made under s. 2 of the Act of 1956 (and is printed in *Lumley's Public Health* (12th Edn.), Vol. VIII, p. 383). That Act introduced a new system of exchequer contributions, re-named "exchequer subsidies", payable in respect of dwellings provided by local authorities, housing associations and development corporations. The new subsidies apply, in general, to dwellings the erection of which was agreed upon on or after 3rd November 1955 (sub-s. (3), *supra*). The term "subsidies" does not apply to other forms of exchequer contributions under this Act, *i.e.*, under ss. 9, 13, 16, etc., *post*.

Houses which are excluded from the present Act because they were the subject of a resolution passed or arrangements made before 3rd November 1955 will continue to be subsidised (i) at the rates provided by the Housing (Financial and Miscellaneous Provisions) Act, 1946, or that Act as amended by the Housing Act, 1949, the Housing Act, 1952, and the Housing (Review of Contributions) Order, 1954 (S.I. 1954 No. 1407); or (ii) at the rates provided by other earlier enactments which (though they are repealed by the present Act) continue to apply, as respects housing accommodation provided before certain dates, by virtue of the savings in s. 59 (4), *post*; or (iii) at the rates provided by other earlier enactments which had already been repealed with similar savings: cf. the definition of "exchequer payment" in s. 58 (2), *post*, as to such contributions to local authorities. Contributions payable in respect of houses previously provided by development corporations and housing associations continue to be governed by s. 94 (3) (repealed) of the Housing Act, 1936 (or earlier Acts), or s. 8 (2) (repealed) of the New Towns Act, 1946. The present Act deals compendiously with houses provided by local authorities, development corporations and housing associations. In the case of development corporation houses, the subsidy may be payable either directly to the corporation or under "authorised arrangements" with the local authority.

Under the provisions of this section the exchequer subsidies are normally payable in respect of new "dwellings" as defined in s. 29 (1), *post*. The basic rates of subsidy are contained in ss. 3 and 4, *post* (which reproduce the effect of s. 3 of the Housing Subsidies Act, 1956, as varied by the Housing Subsidies Order, 1956 (S.I. 1956 No. 2015)), and are payable for sixty years from the completion of the dwelling. The rates of subsidy vary according to the purpose for which the dwellings were provided, and the nature of the dwellings. In the case of dwellings for general needs, the erection of which was agreed upon on or after 2nd November 1956 (see s. 4 (3), *post*), no subsidy at all is payable except in the case of (i) approved one-bedroomed houses and flats and (ii) approved dwellings which satisfy any of the conditions which permit of the payment of additional subsidies by virtue of s. 5, 6 or 8, *post*. In the latter case a nominal annual subsidy of one shilling may be paid under s. 4 (4), *post*, so that the appropriate additional subsidy may be claimed. Higher rates of subsidy are provided by s. 3, *post*, for dwellings provided in consequence of slum clearance and for other special purposes.

In addition to the basic rates of subsidy, determined in accordance with s. 3 or 4, *post*, the Minister has power to direct the payment of certain increases. An increase is allowed in respect of dwellings provided by, or in pursuance of arrangements with, county district councils for the agricultural population (s. 5, *post*); in cases where the provision of urgently needed housing accommodation would result in an unreasonably high rate burden or unreasonably high rents for an authority's houses (s. 6, *post*); and where the cost of providing accommodation is increased by the necessity of acquiring rights of support or taking other measures against possible subsidence of the site (s. 8 (1), *post*), or by the taking of measures to preserve the character of the surroundings (s. 8 (2), *post*). Where the cost of a site on which an approved dwelling is provided exceeds, as developed, £4,000 per acre an "expensive site" subsidy is payable in respect of the site (in addition to that, if any, provided in respect of the dwelling itself) (s. 7 and the First Schedule, *post*).

The subsidies under ss. 1-8 of this Act may be abolished or reduced by order of the Minister of Housing and Local Government as respects dwellings, the erection of which is agreed upon after a date specified in the order, but no such order may be made unless a draft thereof has been approved by the House of Commons; and before laying such a draft before the House the Minister must consult with the associations of local authorities concerned and with any local authority with whom consultation appears to be desirable (s. 2, *post*). The corresponding power in s. 2 (repealed) of the Housing Subsidies Act,

1956, had been exercised, and the provisions of the relevant order are now incorporated in s. 4, *post*; the order is accordingly repealed by s. 59 (1) and the Sixth Schedule, *post* (and note also s. 4 (6)).

As to the reduction or withholding of subsidies on account of defaults, etc., see ss. 18 *et seq.*, *post*; and as to the time, manner and conditions of payment, see s. 28, *post*.

**Rate fund contributions.** Before the Housing Subsidies Act, 1956, local authorities receiving exchequer contributions were required, under a number of enactments, to make contributions themselves from their rates. They were relieved of this obligation, as from 1st April 1956, by s. 8 (repealed) of the Act of 1956. The enactments in question were: (a) a number of early enactments, beginning with the Housing, Town Planning, etc., Act, 1919, mentioned in paras. 1 to 7 of the Eighth Schedule to the Housing Act, 1936 (repealed) (11 Halsbury's Statutes (2nd Edn.) 603, 604); (b) s. 6 of the Housing (Financial Provisions) Act, 1938 (repealed), which applied where exchequer contributions were payable under s. 1 or 2 of that Act; (c) s. 5 (repealed) of the Housing (Financial and Miscellaneous Provisions) Act, 1946, which applied where exchequer contributions were payable under s. 1 of that Act (superseded by the subsidies under this section); (d) s. 18 (repealed) of the Housing Act, 1949, which applied where exchequer contributions were payable towards improvements under s. 15 of that Act (replaced by s. 9, *post*); (e) s. 8 (repealed) of the Housing Repairs and Rents Act, 1954, which applied where exchequer contributions were payable in respect of temporary housing accommodation under s. 7 of that Act (replaced by s. 13, *post*); and (f) s. 12 (1) (repealed) of the Requisitioned Houses and Housing (Amendment) Act, 1955, which applied where exchequer contributions, towards the deficit on purchases, etc., of houses, were payable under s. 11 (not repealed) of that Act. The exchequer contributions are still payable in the above cases (see the savings in s. 59 (4), *post*, in connection with the repeal of many of the relevant provisions effected by that section and the Sixth Schedule, *post*; and note the definition of "exchequer payment" in s. 58 (2), *post*).

The local authority remain under a duty to meet any deficit in the Housing Revenue Account, see s. 50 and para. 1 (5) of the Fifth Schedule, *post*; and further amounts may be credited, if the authority think fit, under para. 1 (6) of that Schedule. (These provisions in the Fifth Schedule replace those in the Housing Act, 1936, s. 129 and Eighth Schedule, para. 8, and in s. 8 (1) of the Housing Subsidies Act, 1956, respectively.)

#### Sub-s. (1).

**In accordance with the provisions of this Act.** *I.e.*, the provisions of this section and ss. 2-8, *post*.

**In respect of the site.** The subsidies payable in certain circumstances in respect of expensive sites are governed by s. 7, *post*.

**Dwelling; local authority.** For meanings, see s. 29 (1), *post*.

**Powers to provide housing accommodation.** See, in particular, Part V of the Housing Act, 1957 (Book I, *ante*), and the notes to ss. 91 and 92 of that Act.

**Development corporation; housing association.** For definitions, see (by virtue of s. 58 (1), *post*), the Housing Act, 1957, s. 189 (1) (Book I, *ante*). In this Act development corporations are referred to as such (and not as being included in the term "housing association" as in s. 125 of the Act of 1957). Note that under s. 17, *post*, additional exchequer assistance may be obtained by certain housing associations.

**Authorised arrangements.** For meaning, see s. 29 (2), *post*; and cf. the notes to s. 120 of the Housing Act, 1957 (Book I, *ante*).

**Approved . . . by the Minister.** The procedure for submission of housing proposals to the Ministry of Housing and Local Government is set out in the Memorandum accompanying Circular No. 48/57, which was issued by that Ministry on 20th September 1957; see also Appendices II, III and V to Ministry of Housing and Local Government Circular No. 33/56, dated 17th July 1956 (reprinted in *Lumley's Public Health* (12th Edn.), Vol. VIII, p. 347), and Circular No. 57/57, dated 31st December 1957, concerning the additional information to be supplied where any of the higher or increased rates of subsidy provided by this Act is claimed.

"The Minister" means the Minister of Housing and Local Government; see s. 58 (1), *post*.

#### Sub-s. (2).

**Shall be paid to the local authority.** For cases in which exchequer subsidies or contributions, under ss. 1-10 and 15 of this Act, are payable to county councils, see s. 25, *post*. Payments to a local authority under sub-s. (2) (a), *supra*, are "exchequer payments" as defined by s. 58 (2), *post*, and must be credited to the Housing Revenue Account under s. 50, *post*; see para. 1 (1) (b) of the Fifth Schedule, *post*. See also para. 1 (5) and (6) of that Schedule as to contributions by the authority to that account.

#### Sub-s. (3).

**3rd November 1955.** This date was two days after the introduction of the Bill for the Housing Subsidies Act, 1956. The subsidies payable in respect of dwellings, the erection of which was agreed upon before 3rd November 1955, continue to be governed by the appropriate earlier enactments; cf. the General Note, *supra*.

**Provided that, etc.** The proviso to sub-s. (3), *supra*, may be compared with s. 4 (3)

and (5), *post*, embodying part of the effect of the Housing Subsidies Order, 1956 (S.I. 1956 No. 2015). In both cases the purpose is to preserve the effect of arrangements well advanced but not completed before the relevant date (3rd November 1955, or 2nd November 1956); *i.e.* (i) where a tender or estimate had been submitted to the Ministry but there had been no formal resolution of the local authority or (under this section) of the development corporation; or (ii) where the Minister is satisfied that the substance of "authorised arrangements" had been agreed before the relevant date, but the making and approval of the arrangements took place on or after the date.

**Satisfied.** The use of this word makes it clear that the Minister, acting in good faith, is to be the sole judge of the matter in question; see, *e.g.*, *Re City of Plymouth (City Centre) Declaratory Order, 1946*, *Robinson v. Minister of Town and Country Planning*, [1947] 1 All E.R. 851, C.A.; 2nd Digest Supp., and *Re Beck & Pollitzer's Application*, [1948] 2 K.B. 339; 2nd Digest Supp.; and see also *Thorneloe & Clarkson, Ltd. v. Board of Trade*, [1950] 2 All E.R. 245; 2nd Digest Supp.

**2. Power to abolish or reduce subsidies.**—(1) The Minister may from time to time by order direct that, in respect of, or of the site of, dwellings of any description specified in the order, or such dwellings in any area so specified, exchequer subsidies under sections one to eight of this Act—

- (a) shall cease to be payable; or
- (b) shall be reduced to such amount as may be specified in the order; or
- (c) shall be payable for such reduced number of years as may be so specified.

(2) Any such order shall be expressed to apply to, or to the site of, a dwelling of the description specified in the order—

- (a) the tender or estimate for the erection of which is accepted—
  - (i) by a formal resolution of a local authority; or
  - (ii) in the case of a dwelling provided by a development corporation otherwise than in pursuance of authorised arrangements, by a formal resolution of the corporation, passed on or after a date specified in the order; or
- (b) which is provided by a development corporation or housing association in pursuance of authorised arrangements made on or after that date.

(3) An order under this section shall be made by statutory instrument and—

- (a) shall not be made unless a draft thereof has been approved by a resolution of the Commons House of Parliament; and
- (b) shall not specify a date under the last foregoing subsection earlier than the date of the laying of the draft;

and before laying such a draft the Minister shall consult with such associations of local authorities as appear to him to be concerned and with any local authority with whom consultation appears to him to be desirable.

#### NOTES

**History.** This section contains provisions formerly in s. 2 (1)–(3) of the Housing Subsidies Act, 1956, which superseded s. 16 of the Housing (Financial and Miscellaneous Provisions) Act, 1946; see s. 2 (4) of the Act of 1956 (not reproduced in the present Act).

**General Note.** This section enables the Minister of Housing and Local Government, with the approval of the House of Commons, to make orders reducing the amount of Exchequer subsidies payable under ss. 1 to 8 of this Act, or the number of years for which they are payable, or abolishing them altogether. Such an order may apply to dwellings, or the sites of dwellings, of any specified description, and it may be confined to a specified area.

The corresponding power in the Housing Subsidies Act, 1956, was exercised by the Minister when he made the Housing Subsidies Order, 1956 (S.I. 1956 No. 2015), which, subject to certain exceptions, abolished the subsidy payable in respect of dwellings provided for general needs, the erection of which was agreed upon on or after 2nd November 1956 (*cf.* the General Note to s. 1, *ante*). The provisions of that order are now re-enacted in s. 4, *post*, and the order is accordingly repealed by s. 59 (1) and the Sixth Schedule, *post*.

**Sub-s. (1).**

**The Minister.** *I.e.*, the Minister of Housing and Local Government, see s. 58 (1), *post*.

**By order direct that, etc.** Certain other provisions may also be contained in an order made under this section; see ss. 10 (1) proviso, 12 (1) proviso, 23 proviso, and 36 (2) proviso, (5), *post*. The provision to this effect in s. 23 proviso is derived from s. 8 of the Housing (Financial and Miscellaneous Provisions) Act, 1946, as amended by the Housing Subsidies Act, 1956, s. 12 (3) and First Schedule. The other provisions cited are derived from the Housing Act, 1949, as so amended. Note that by s. 4 (6), *post*, sub-ss. (3) and (4) of s. 4 (which are derived from the Housing Subsidies Order, 1956 (S.I. 1956 No. 2015)) are to have effect as if contained in an order under this section.

At the time of going to press no order has been made under this section.

**Dwellings of any description specified, etc.** These words apparently allow the Minister to exercise his powers under the present section in relation to any category of dwellings he might devise, or in relation to dwellings of a category defined by him in a particular area. The Minister may, for example, abolish subsidies in respect of all dwellings of a certain size or constructed in a certain manner after a specified date.

For the meaning of "dwelling", see s. 29 (1), *post*.

**Sub-s. (2).**

**Any such order shall be expressed to apply; on or after a date specified in the order.** The order may provide savings for resolutions formally passed, or arrangements made, after the date specified: cf. the Order of 1956 (*supra*), containing such savings (now reproduced in s. 4 (3) and (5), *post*).

**Local authority.** For meaning, see s. 29 (1), *post*.

**Development corporation; housing association.** For definitions, see (by virtue of s. 58 (1), *post*), the Housing Act, 1957, s. 189 (1) (Book I, *ante*). Note the distinction, in sub-s. (2) (a) (ii) and (b), *supra*, between development corporation dwellings which receive a direct subsidy and those provided under authorised arrangements; cf. s. 1 (1) (b) and (c) and (2) (a) and (b), *ante*.

**Authorised arrangements.** For definition, see s. 29 (2), *post*; and cf. the notes to s. 120 of the Housing Act, 1957 (Book I, *ante*).

**Sub-s. (3).**

**Statutory instrument.** For provisions as to statutory instruments generally, see the Statutory Instruments Act, 1946 (36 Statutes Supp. 95; 24 Halsbury's Statutes (2nd Edn.) 440).

**Laying of the draft.** For the meaning of references to laying before Parliament, see the Laying of Documents before Parliament (Interpretation) Act, 1948, s. 1 (1) (56 Statutes Supp. 293; 24 Halsbury's Statutes (2nd Edn.) 448).

**Shall consult.** Despite the mandatory form of the words, the question of the scope of such consultation is within the discretion of the Minister by virtue of the words which follow. On what constitutes consultation, see especially *Rollo v. Minister of Town and Country Planning*, [1948] 1 All E.R. 13, C.A.; 2nd Digest Supp., and *Re Union of Whippingham and East Cowes Benefices*, *Derham v. Church Comrs. of England*, [1954] 2 All E.R. 22, P.C.; 3rd Digest Supp.

**Appear.** The use of the word "appear" makes the Minister, acting in good faith, the sole judge of what associations of local authorities are concerned and of the desirability of consulting with any local authority; see *Robinson v. Sunderland Corporation*, [1899] 1 Q.B. 751, at pp. 756, 757, *per* Channell, J.; 38 Digest 154, 41; *R. v. Comptroller-General of Patents, Ex parte Bayer Products, Ltd.*, [1941] 2 All E.R. 677, C.A.; 17 Digest (Repl.) 478, 276; *Point of Ayr Collieries, Ltd. v. Lloyd-George*, [1943] 2 All E.R. 546, C.A.; 11 Digest (Repl.) 619, 469; and *Re City of Plymouth (City Centre) Declaratory Order*, 1946, *Robinson v. Minister of Town and Country Planning*, [1947] 1 All E.R. 851, C.A., at pp. 861, 862, *per* Somervell, L.J.; 2nd Digest Supp.; see also *Smith v. East Elloe Rural District Council*, [1956] 1 All E.R. 855, H.L.; 3rd Digest Supp.

**3. Rate of subsidies for dwellings provided for the purposes of slum clearance, etc.—**(1) In respect of each approved dwelling which satisfies one of the conditions specified in subsection (2) of this section the Minister shall pay for each of the sixty years following the completion of the dwelling an annual exchequer subsidy of—

(a) in the case of a dwelling other than a flat in a block of flats of four or more storeys—

(i) being a dwelling such as is mentioned in paragraph (a) or (b) of the said subsection (2), twenty-two pounds one shilling;

(ii) being a dwelling such as is mentioned in any of paragraphs

(c) to (f) of the said subsection (2), twenty-four pounds;

- (b) in the case of a flat in a block of flats of four storeys, thirty-two pounds;
  - (c) in the case of a flat in a block of flats of five storeys, thirty-eight pounds;
  - (d) in the case of a flat in a block of flats of six or more storeys, fifty pounds, increased by one pound fifteen shillings for each storey by which the block exceeds six storeys.
- (2) The conditions referred to in the foregoing subsection are that the dwelling was—
- (a) provided by a local authority for the purposes of slum clearance or re-development; or
  - (b) provided by a local authority for the purposes of re-housing persons coming from such camps or other unsatisfactory temporary housing accommodation as the Minister may designate for the purposes of this paragraph; or
  - (c) provided by a local authority in the course of a scheme of town development as defined by the Town Development Act, 1952, carried out with the approval of the Minister wholly or partly in the area of that authority; or
  - (d) provided by a local authority for the accommodation of persons coming from outside the area of that authority in order to meet the urgent needs of industry, where the dwelling has been so provided in accordance with arrangements approved by the Minister as being desirable by reason of special circumstances and so long as any conditions laid down by the Minister on the giving of his approval are complied with; or
  - (e) provided by the local authority of a congested or over-populated area in some other area as part of a scheme of comprehensive development the general character of which is, in the opinion of the Minister, similar to development for the purposes of a new town under the New Towns Act, 1946; or
  - (f) provided by a development corporation otherwise than in pursuance of authorised arrangements.
- (3) In the case of a dwelling provided in pursuance of authorised arrangements with a local authority, the Minister may direct that this section shall apply to that dwelling as if it were a dwelling mentioned in such, if any, of paragraphs (a), (b), (d) or (e) of the last foregoing subsection as the Minister, having regard to the intentions of the local authority with respect to the use of that dwelling when entering into the arrangements, may determine to be appropriate.
- (4) For the purposes of paragraph (a) of subsection (2) of this section, a dwelling shall be deemed to be provided by a local authority for the purposes of slum clearance or re-development if, and only if, provision of the dwelling by the authority is rendered necessary—
- (a) by displacements of persons occurring—
    - (i) in connection with any action taken by the authority under the principal Act for the demolition of insanitary houses or for dealing with clearance areas, or for closing the whole or part of any building; or
    - (ii) in connection with the implementation of an undertaking for the demolition of an insanitary house given by the owner thereof in lieu of the taking by the authority of such action as aforesaid; or
    - (iii) in connection with the demolition of an insanitary house belonging to the authority; or
  - (b) by displacements occurring in the carrying out of re-development in accordance with a re-development plan within the meaning of

Part III of the principal Act from houses which are unfit for human habitation and not capable at a reasonable expense of being rendered so fit, or which are so arranged as to be congested, or, where the re-development plan was submitted to the Minister before the third day of November, nineteen hundred and fifty-five, from any house in the re-development area.

### NOTES

**History.** Sub-ss. (1), (2) and (3) of this section contain provisions formerly in s. 3 (1), (3) and (4), respectively, of the Housing Subsidies Act, 1956. Sub-s. (4) contains provisions formerly in s. 11 (1) of the Act of 1956.

**General Note.** This section and s. 4, *post*, set out the rates of subsidy generally applicable to new dwellings which come within the operation of the present Act. The highest rates are those, paid under the present section, in respect of dwellings which are required to relieve unsatisfactory housing conditions, or for other reasons, specified in sub-s. (2), *supra*, which relate mostly to planned movements of population, *e.g.*, to new towns. Under sub-s. (1) the rates of subsidy payable in respect of such dwellings vary according to the purpose for which the dwelling was provided and, in the case of flats, according to the number of storeys in the building. The highest subsidy is payable in respect of flats in a block consisting of six or more storeys. Dwellings provided by housing associations and development corporations in pursuance of authorised arrangements do not qualify for the higher subsidies, under this section, unless the Minister gives a direction under sub-s. (3). Such a direction may be given, it seems, where the intentions of the local authority, in entering into the arrangements, correspond with the conditions specified in para. (a), (b), (d) or (e) of sub-s. (2); the direction will state which of those paragraphs is to apply to the dwelling.

Where the conditions specified in the present section are not satisfied, the subsidies payable are governed by s. 4, *post*. Additional or increased subsidies may be payable in certain cases under ss. 5 to 8, *post*, and the subsidies may be reduced or abolished as provided by s. 2, *ante*. As to the reduction or withholding of subsidies on account of defaults, etc., see ss. 18 *et seq.*, *post*; and as to the time, manner and conditions of payment, see s. 28, *post*.

In certain cases subsidies under this section may be payable to the county council instead of the local authority; see s. 25, *post*.

#### Sub-s. (1).

**Approved dwelling.** *I.e.*, a dwelling approved by the Minister under s. 1, *ante*; see s. 1 (1), *ante*, and s. 29 (1), *post*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Dwelling; flat; block of flats (of a given number of storeys).** For definitions, see s. 29 (1), *post*.

**Block of flats of four storeys.** If a block of flats consists of two maisonettes one above the other on four floors, the Minister will regard the block as one of four storeys; see Ministry of Housing and Local Government Circular No. 33/56 (printed in *Lumley's Public Health* (12th Edn.), Vol. VIII, pp. 347 *et seq.*), Appendix V, para. 1 (1) (b).

#### Sub-s. (2).

**Provided . . . for the purposes of slum clearance or re-development.** A dwelling is deemed to be provided for these purposes in the cases specified in sub-s. (4), *supra*.

The special rate of subsidy will be payable in certain cases where a family displaced by slum clearance is re-housed in a privately owned dwelling which has become available because the local authority has itself provided a new dwelling for the family previously living in it; see Ministry of Housing and Local Government Circular No. 2/57, dated 10th January 1957.

**Local authority.** For meaning, see s. 29 (1), *post*.

**Camps or other unsatisfactory . . . accommodation.** For the purpose of sub-s. (2) (b) the Minister has designated all temporary hutted camps administered by local authorities under paras. 6 and 7 of Ministry of Health Circular No. 20/46, all the two-year hutments provided under Ministry of Health Circular No. 134/44 by local authorities in London, and all temporary houses which have been erected on open spaces with the authority of the Minister under s. 1 of the Housing (Temporary Accommodation) Act, 1945 (32 Statutes Supp. 91; 11 Halsbury's Statutes (2nd Edn.) 646); see Ministry of Housing and Local Government Circular No. 33/56 (printed in *Lumley's Public Health* (12th Edn.), Vol. VIII, pp. 347 *et seq.*), paras. 9, 11, Appendix II, paras. 14, 21. It is also stated in Appendix II to that Circular that, where on the request of a government department a local authority considers it desirable because of the condition of the dwellings to re-house the occupants of camps or bungalow estates under the administration of that department, the Minister will consider an application for the designation of a particular camp or estate for the purposes of sub-s. (2) (b), and that if, in exceptional cases, it can be shown that temporary houses not situated on open spaces are

unfit for human habitation, the Minister will be prepared to designate them for the purposes of that provision. New dwellings required as a result of demolishing huts in camps leased or owned by local authorities (*e.g.*, camps administered under para. 4 of Circular No. 20/46) will be treated for purposes of subsidy as satisfying the condition in sub-s. (2) (a).

**Provided . . . in the course of a scheme of town development.** "Town development" is defined by s. 1 (1) of the Town Development Act, 1952 (77 Statutes Supp. 201; 32 Halsbury's Statutes (2nd Edn.) 1032); cf. the last paragraph of the General Note to s. 92 of the Housing Act, 1957 (Book I, *ante*).

The subsidy payable in respect of dwellings provided by a receiving authority under a town development scheme may be supplemented under s. 2 (2) (a) of the Town Development Act, 1952 (77 Statutes Supp. 201; 32 Halsbury's Statutes (2nd Edn.) 1032) (as substituted by s. 12 (3) of, and para. 14 of the First Schedule to, the Housing Subsidies Act, 1956 (94 Statutes Supp. 52, 56; 36 Halsbury's Statutes (2nd Edn.) 386, 389)), under which the Minister may contribute an annual sum not exceeding £8 per dwelling. See also s. 3 of the Act of 1952, as modified by s. 12 (3) of, and para. 15 of the First Schedule to, the Act of 1956, for the conditions of payment of such contributions, and s. 4 of the Act of 1952, for the power of exporting authorities to contribute to the expenses of receiving authorities. Under s. 9 of the Act of 1956, the Minister may recover from an exporting authority a proportion of any contributions made under s. 2 (2) (a) of the Act of 1952. Cf. the provisions as to new towns, cited in the note "Provided by a development corporation", *infra*.

**Approved . . . by reason of special circumstances.** An indication of the special circumstances to which the Minister will have regard for the purposes of sub-s. (2) (d) was given by him in the House of Commons on 31st January 1956 (see 548 H. of C. Official Report 874), and is reproduced in Appendix V to Ministry of Housing and Local Government Circular No. 33/56 (printed in *Lumley's Public Health* (12th Edn.), Vol. VIII, pp. 347 *et seq.*).

**Conditions laid down . . . on the giving of his approval.** The approval will be given on condition that the local authority will for ten years reserve a number of dwellings, equal to the number for which the higher subsidy is payable, for workers who have been recruited outside the local authority's area for the industry for which houses have specially been provided; see Ministry of Housing and Local Government Circular No. 33/56, Appendix V, para. 7.

**Scheme of comprehensive development.** It is stated in Ministry of Housing and Local Government Circular No. 33/56, Appendix III, para. 12, that in order to qualify for a subsidy payable by virtue of sub-s. (2) (e) it is essential that a scheme should make provision not only for residential development of all types, but also for industry and commerce, and that there should be adequate shopping, recreational and community facilities; in other words, the development should result in a self-contained and balanced community.

**Opinion.** It is clear from the reference to the opinion of the Minister that he, acting in good faith, is to be the sole judge of the question mentioned in sub-s. (2) (e); cf. *Allcroft v. London (Lord Bishop)*, [1891] A.C. 666; 19 Digest 343, 1555, and *Re City of Plymouth (City Centre) Declaratory Order, 1946*, *Robinson v. Minister of Town and Country Planning*, [1947] 1 All E.R. 851, C.A.; 2nd Digest Supp.; and see *Smith v. East Elloe Rural District Council*, [1956] 1 All E.R. 855, H.L.; 3rd Digest Supp.

**Provided by a development corporation.** Under s. 12 (2) of the New Towns Act, 1946 (25 Halsbury's Statutes (2nd Edn.) 439), the Minister may make contributions towards the expenses of development corporations additional to the subsidies provided for by this Act, but under s. 9 of the Housing Subsidies Act, 1956 (94 Statutes Supp. 48; 36 Halsbury's Statutes (2nd Edn.) 382), which remains in force, the Minister may recover from an exporting authority a proportion of any grant made under s. 12 (2) of the Act of 1946 by way of annual payments.

For the meaning of "development corporation", see (by virtue of s. 58 (1), *post*), the Housing Act, 1957, s. 189 (1) (Book I, *ante*).

**Authorised arrangements.** For definition, see s. 29 (2), *post*.

**Town Development Act, 1952.** 77 Statutes Supp. 200; 32 Halsbury's Statutes (2nd Edn.) 1030.

**New Towns Act, 1946.** 25 Halsbury's Statutes (2nd Edn.) 427.

**Sub-s. (4).**

**Demolition of insanitary houses.** *I.e.*, under ss. 16 *et seq.* of the Housing Act, 1957 (Book I, *ante*). Demolition orders may be made under ss. 17 (1) and 28 of that Act; note also sub-s. (4) (a) (ii), *supra*, and cf. s. 30 (6) of the Housing Act, 1957 (Book I, *ante*), and para. 7 (1) of the Second Schedule to that Act.

For the meaning of "house", see ss. 16 (7) and 189 (1) of the Act of 1957, and s. 58 (1), *post*.

**Dealing with clearance areas.** *I.e.*, under ss. 42 *et seq.*, of the Housing Act, 1957 (Book I, *ante*). Where persons will be displaced, the local authority will undertake any re-housing operations required under s. 42 (3) of that Act. The slum clearance subsidy

under the present section is not confined to dwellings required to re-house directly persons displaced from unfit houses in the area: it extends to any approved dwelling required by reason of slum clearance, whether the persons displaced are to occupy that dwelling or some other dwelling, and whether they are displaced from an unfit house or from some other building in or outside the clearance area.

**Closing . . . any building.** Closing orders may be made under ss. 17 (1) proviso, 17 (3), 18 (1), 26 and 35 (1) of the Housing Act, 1957 (Book I, *ante*).

**Insanitary house belonging to the authority.** *E.g.*, a house retained for temporary accommodation after purchase under s. 29 of the Housing Act, 1957 (Book I, *ante*).

**Re-development in accordance with a re-development plan.** Re-development by local authorities is dealt with in ss. 55 to 58 of the Housing Act, 1957 (Book I, *ante*). For the meaning of "re-development plan", and of re-development in accordance with such a plan, see s. 56 (1) and (8) of that Act. As to the re-housing of persons displaced from working-class houses in the course of re-development, see s. 55 (3) of that Act.

**Unfit for human habitation.** For the standard by which houses are judged unfit, see (by virtue of s. 58 (3), *post*), the Housing Act, 1957, s. 4 (Book I, *ante*). Houses which are unfit, within the meaning of s. 4 (or s. 5) of that Act, and not capable at a reasonable expense of being rendered fit, may be purchased at site value under s. 57 (3) of that Act. As to the inclusion of such houses, and houses "so arranged as to be congested", in a re-development area, see s. 55 (1) (b) of that Act.

**3rd November 1955.** This date was two days after the introduction of the Bill for the Housing Subsidies Act, 1956. It is relevant under s. 1 (3), *ante*, in determining whether a dwelling qualifies for an exchequer contribution under earlier financial provisions or for a subsidy under the provisions of the Act of 1956, now replaced by ss. 1-8 of this Act. Under sub-s. (4) (b), *supra*, it is relevant for another purpose. All the dwellings there mentioned are those coming within this Act by virtue of s. 1 (3), *ante*; but a distinction is drawn between re-development plans submitted for confirmation, under s. 35 of the Housing Act, 1936, before 3rd November 1955, and those submitted, under that section or s. 56 of the Housing Act, 1957 (Book I, *ante*), on or after that date. Dwellings required to implement the earlier plans all attract the re-development subsidy. Under the later plans, only the dwellings required by reason of displacements of persons from certain unfit and congested houses attract this subsidy; *i.e.*, in particular, dwellings required to abate overcrowding (see s. 55 (1) (b) of the Act of 1957) are excluded from sub-s. (2) (a), *supra*, by sub-s. (4) (b).

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I), *ante*; see s. 58 (1), *post*.

**4. Rate of subsidies for other dwellings.—**(1) This section shall have effect as respects dwellings which do not satisfy any of the conditions specified in subsection (2) of the last foregoing section.

(2) In respect of each approved dwelling which contains not more than one bedroom the Minister shall pay for each of the sixty years following the completion of the dwelling an annual exchequer subsidy of—

- (a) in the case of a dwelling other than a flat in a block of flats of four or more storeys, ten pounds;
- (b) in the case of a flat in a block of flats of four storeys, twenty pounds;
- (c) in the case of a flat in a block of flats of five storeys, twenty-six pounds;
- (d) in the case of a flat in a block of flats of six or more storeys, thirty-eight pounds, increased by one pound fifteen shillings for each storey by which the block exceeds six storeys.

(3) Subject to the provisions of subsection (4) of this section, no exchequer subsidy shall be payable under this section in respect of an approved dwelling which contains more than one bedroom if—

- (a) in a case of a dwelling provided by a local authority in the exercise of their powers to provide housing accommodation, the tender or estimate for its erection, not having been submitted to the Minister for approval before the second day of November, nineteen hundred and fifty-six, was accepted by a formal resolution of the authority passed on or after that day, and
- (b) in a case of a dwelling provided by a development corporation or housing association in pursuance of authorised arrangements with a local authority, the arrangements were made and approved by

the Minister on or after that day, and were not arrangements the substantial effect of which the Minister is satisfied had been agreed between the parties before that day.

(4) In respect of an approved dwelling which contains more than one bedroom and to which paragraph (a) or (b) or subsection (3) of this section applies, the Minister shall pay for each of the sixty years following the completion of the dwelling an annual exchequer subsidy of one shilling—

- (a) if the Minister thinks fit so to determine in the case of a dwelling (other than a flat in a block of flats of four or more storeys) provided by, or in pursuance of authorised arrangements with, the council of a county district by way of housing accommodation required for the agricultural population of that district, or
- (b) if the Minister is satisfied that the cost of providing the dwelling has been substantially enhanced by expenses attributable to measures taken—
  - (i) for securing protection against the consequences of a subsidence of the site, or
  - (ii) in the construction of the dwelling in order to preserve the character of the surroundings, or
- (c) if the dwelling is provided by a local authority as to whom the Minister is of opinion that more housing accommodation is urgently required to be provided by that authority and could not be provided without imposing an unreasonably heavy rate burden or necessitating charging unreasonably high rents for that and other housing accommodation provided by that authority.

(5) In respect of each approved dwelling which contains more than one bedroom and to which paragraphs (a) and (b) of subsection (3) of this section do not apply, the Minister shall pay an exchequer subsidy at the rate applicable under subsection (2) of this section in the case of a dwelling which does not contain more than one bedroom.

(6) For the purposes of section two of this Act subsections (3) and (4) of this section shall have effect as if contained in an order under that section.

#### NOTES

**History.** Sub-ss. (1) and (5) of this section contain provisions formerly in s. 3 (2) of the Housing Subsidies Act, 1956. Sub-s. (2) contains provisions formerly in s. 3 (2) of that Act and in art. 3 (2) of the Housing Subsidies Order, 1956 (S.I. 1956 No. 2015). Sub-ss. (3) and (4) contain provisions formerly in art. 3 (1) and (3), respectively, of that Order. Sub-s. (6), which is new, is consequential upon the repeal of the Housing Subsidies Order, 1956, by s. 59 (1) and the Sixth Schedule, *post*, and its replacement in this section.

**General Note.** This section sets out the rates of subsidy applicable to new dwellings which do not qualify for the higher rates provided by s. 3, *ante*; i.e., broadly speaking, those provided for general needs. As respects dwellings the erection of which was agreed to by a resolution passed or arrangements made on or after 3rd November 1955 (see s. 1 (3), *ante*), but before 2nd November 1956 (see sub-s. (3), *supra*), the rates are those specified in sub-s. (2) (see sub-ss. (2) and (5), *supra*). In the case of flats these rates vary according to the number of storeys in the building, the highest subsidy being payable in respect of flats in a block of six or more storeys.

In general, dwellings the erection of which was agreed to on or after 2nd November 1956 do not qualify for any subsidy (sub-s. (3)), but approved one-bedroomed houses or flats continue to attract the full rates payable under the Act (sub-s. (2)), and approved dwellings which satisfy any of the conditions which permit of the payment of increased subsidies under s. 5, 6 or 8, *post*, may attract a nominal annual subsidy of one shilling so that the increases provided by those sections may be claimed in appropriate cases (sub-s. (4)).

Subsidies under this section may be reduced or abolished as provided by s. 2, *ante*. As to the reduction or withholding of subsidies on account of defaults, etc., see ss. 18 *et seq.*, *post*; and as to the time, manner and conditions of payment, see s. 28, *post*.

In certain cases subsidies under this section may be payable to the county council instead of the local authority; see s. 25, *post*.

#### Sub-s. (1).

**Dwellings.** For definition, see s. 29 (1), *post*.

**Sub-s. (2).**

**Approved dwelling.** *I.e.*, a dwelling approved by the Minister under s. 1, *ante*; see s. 1 (1), *ante*, and s. 29 (1), *post*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Flat; block of flats (of a given number of storeys).** For definitions, see s. 29 (1), *post*. See also the note "Block of flats of four storeys" to s. 3 (1), *ante*.

**Sub-s. (3).**

**Local authority.** For meaning, see s. 29 (1), *post*. Unlike s. 1 (3) (a), *ante*, and proviso (i) thereto, sub-s. (3) (a), *supra*, does not refer to resolutions of development corporations. Dwellings provided by development corporations, otherwise than under authorised arrangements, were not affected by the Housing Subsidies Order, 1956; they come within s. 3 by virtue of s. 3 (2) (f), *ante*, and are not within the present section.

**Powers to provide housing accommodation.** These powers are mainly conferred by Part V of the Housing Act, 1957 (Book I, *ante*); cf. the notes to ss. 91 and 92 of that Act.

**2nd November 1956.** *I.e.*, the date fixed by the Housing Subsidies Order, 1956 (S.I. 1956 No. 2015), the provisions of which are re-enacted in this section.

**Development corporation; housing association.** For meanings, see (by virtue of s. 58 (1), *post*), the Housing Act, 1957, s. 189 (1) (Book I, *ante*). Note the power of the Minister under s. 3 (3), *ante*, to direct that dwellings provided under authorised arrangements may be treated as coming within s. 3 (2) (a), (b), (d) or (e).

**Authorised arrangements.** For definition, see s. 29 (2), *post*; and cf. the notes to s. 120 of the Housing Act, 1957 (Book I, *ante*).

**Satisfied.** See the note to s. 1 (3), *ante*.

**Sub-s. (4).**

**County district.** *I.e.*, a non-county borough, urban district or rural district; see the Local Government Act, 1933, s. 1 (1) (14 Halsbury's Statutes (2nd Edn.) 361).

**Accommodation required for the agricultural population.** Dwellings falling within sub-s. (4) (a), *supra*, attract the increase of subsidy provided by s. 5, *infra*.

For the meaning of "agricultural population", see (by virtue of s. 58 (1), *post*), the Housing Act, 1957, s. 114 (5) (Book I, *ante*).

**Cost . . . enhanced by expenses attributable to measures taken, etc.** Dwellings falling within sub-s. (4) (b) qualify for the increases provided by s. 8 (1) and (2), *post*.

**Opinion.** Cf. the note to s. 3 (2), *ante*.

**Accommodation is urgently required, etc.** As respects dwellings falling within sub-s. (4) (c) the increased subsidy provided by s. 6, *post*, is payable.

**5. Increase of subsidies for agricultural dwellings, etc.—**If the Minister thinks fit so to determine in the case of any dwelling provided by, or in pursuance of authorised arrangements with, the council of a county district by way of housing accommodation required for the agricultural population of that district (being a dwelling in respect of which a contribution is payable under the last foregoing section and not being a flat in a block of flats of four or more storeys), the amount of the annual exchequer subsidy payable in respect of that dwelling under this Act, as determined apart from the provisions of this and the next following section, shall be increased by nine pounds.

NOTES

**History.** This section contains provisions formerly in s. 4 (1) of the Housing Subsidies Act, 1956. That subsection superseded s. 3 (1) of the Housing (Financial and Miscellaneous Provisions) Act, 1946, as amended, which is now repealed by s. 59 (1) and the Sixth Schedule, *post*, subject to the saving in s. 59 (4), *post*, for existing obligations to make payments. As to other earlier provisions for special contributions in respect of dwellings for the agricultural population, see the notes to s. 114 of the Housing Act, 1957 (Book I, *ante*), and s. 24, *post*.

**General Note.** This section provides for an increase of £9 in the exchequer subsidy payable under this Act as respects dwellings (other than flats in a block of four or more storeys) provided by, or in pursuance of authorised arrangements with, the council of a county district for members of the agricultural population of the district. The increased subsidy is payable, however, only where the Minister so determines, and applies only to dwellings qualifying for subsidy under s. 4, *ante* (*i.e.*, it is not payable in respect of dwellings attracting the higher rates provided by s. 3, *ante*, or s. 6, *post*).

Where exchequer subsidies increased under this section are payable, the county council must also pay contributions to the council of the county district concerned under

s. 23, *post* (see also s. 24, *post*, as to the withdrawal of such contributions). As to reservation of houses for members of the agricultural population where increased subsidies are paid under this section, see the Housing Act, 1957, s. 114 (1) (Book I, *ante*), in conjunction with s. 59 (7), *post*.

Exchequer contributions in respect of privately provided agricultural dwellings may be paid under s. 46, *post* (derived from s. 3 of the Housing (Financial Provisions) Act, 1938, as amended).

**If the Minister thinks fit, etc.** "The Minister" is the Minister of Housing and Local Government; see s. 58 (1), *post*. It is stated in para. 11 of Appendix V to Ministry of Housing and Local Government Circular No. 33/56 (printed in *Lumley's Public Health* (12th Edn.), Vol. VIII, pp. 347 *et seq.*) that the Minister proposes to pay the increased subsidy only where dwellings are provided on isolated sites in small groups. A small group will for this purpose consist of not more than eight dwellings in a single scheme, and this rule will apply whether or not the new dwellings constitute an addition to other council houses already existing in the area.

**Dwelling; flat; block of flats (of four or more storeys).** For definitions, see s. 29 (1), *post*. See also the note "Block of flats of four storeys" to s. 3 (1), *ante*.

**Authorised arrangements.** For meaning, see s. 29 (2), *post*.

**County district.** *I.e.*, a non-county borough, urban district or rural district; see the Local Government Act, 1933, s. 1 (1) (14 Halsbury's Statutes (2nd Edn.) 361).

**Agricultural population.** For definition, see (by virtue of s. 58 (1), *post*), the Housing Act, 1957, s. 114 (5) (Book I, *ante*).

**As determined apart from . . . the next following section.** The effect of these words is that a dwelling cannot attract an increased subsidy under the present section if it is also the subject of a direction under s. 6, *infra*.

**6. Power to increase subsidies for housing to meet special needs.**—(1) Where the Minister is of opinion, on an application made to him by a local authority—

- (a) that there is urgent need for more housing accommodation which will only be met if that accommodation is provided by that authority; and
- (b) that unless the Minister exercises his powers under this section that housing accommodation could not be provided without imposing an unreasonably heavy rate burden or necessitating the charging of unreasonably high rents for that and other housing accommodation provided by the authority,

the Minister may direct that, in the case of any approved dwelling provided by that authority (not being a dwelling such as is mentioned in paragraph (c), (d) or (e) of subsection (2) of section three of this Act), the amount of the annual exchequer subsidy otherwise payable under this Act, if less than the amount hereinafter specified, shall be increased to such sum as may be specified in the direction not exceeding—

- (i) in the case of a dwelling other than a flat in a block of flats of four or more storeys, thirty pounds; or
- (ii) in the case of such a flat, forty pounds.

(2) In exercising his powers under this section the Minister shall have regard to any conditions which may be laid down by the Treasury.

## NOTES

**History.** This section contains provisions formerly in s. 5 of the Housing Subsidies Act, 1956.

**General Note.** This section gives the Minister power to increase subsidies in cases where the provision of urgently needed housing accommodation would result in imposing an unreasonably heavy rate burden on the local authority's area, or would necessitate the charging of unreasonably high rents for accommodation provided by the authority. The increase cannot be directed in respect of dwellings mentioned in paras. (c), (d) or (e) of s. 3 (2), *ante*. These paragraphs relate to dwellings provided in the course of a scheme of town development under the Town Development Act, 1952, to dwellings provided as part of a scheme of comprehensive development of "new town" character, and to dwellings provided to accommodate persons coming from outside the authority's area in order to meet the urgent needs of industry. Furthermore, when an increase is directed under the present section, the subsidy for a dwelling cannot be further increased under s. 5, *ante*, or s. 8, *post*.

This section applies only to dwellings provided by a local authority, and not to those provided directly by a development corporation, or by such a corporation or a housing association under authorised arrangements. Note, however, s. 3 (3), *ante*, under which dwellings provided under such arrangements may, in effect, be brought within s. 3 instead of s. 4, *ante*, in certain cases.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Opinion.** Cf. the note to s. 3 (2), *ante*.

**Local authority; dwelling; flat; block of flats (of four or more storeys).** For definitions, see s. 29 (1), *post*. See also the note "Block of flats of four storeys" to s. 3 (1), *ante*.

**Urgent need . . . which will only be met . . . by that authority.** It is stated in para. 27 of Appendix V to Ministry of Housing and Local Government Circular No. 33/56, dated 17th July 1956 (printed in *Lumley's Public Health* (12th Edn.), Vol. VIII pp. 347 *et seq.*), that the Minister will be prepared to consider applications from a local authority who can show that more houses, which can only be satisfactorily provided by the authority itself, are urgently needed in the district (a) for families without a satisfactory home of their own, or (b) for the rehousing of families from unfit houses or unsatisfactory temporary accommodation.

**Unreasonably heavy rate burden.** The local authority will be required to show that, if the houses in question were built without increased exchequer subsidy, the general rate levied by the authority would materially exceed the average rate levied by authorities of the same class; see para. 27 of Appendix V to the above-mentioned Circular No. 33/56.

**Unreasonably high rents.** The local authority will be required to show that the total net rents of the existing dwellings in the authority's housing revenue account exceed twice their total gross values for rating purposes, where the authority is responsible for repairs but not for internal decorations, or two and one-third times their total gross values, where the authority is responsible also for internal decorations; see Ministry of Housing and Local Government Circular No. 57/57, dated 31st December 1957.

**Approved dwelling.** *I.e.*, a dwelling approved by the Minister under s. 1, *ante*; see s. 1 (1), *ante*, and s. 29 (1), *post*.

**Subsidy otherwise payable.** For the rates of subsidy payable, see ss. 3 and 4, *ante*. The rates of subsidy provided by the present section are in general higher, except in the case of certain high blocks of flats. Where, in certain cases under s. 4, no subsidy would normally be payable, the nominal subsidy of one shilling under s. 4 (4) (c) is available to support the increase under the present section. Note that if the Minister authorises an increase under the present section, there cannot also be an increase under s. 5, *ante*, or s. 8, *post*; cf. the notes to those sections.

**7. Subsidies for expensive sites.**—If any building consisting of or comprising an approved dwelling is provided on a site the cost of which as developed (ascertained in accordance with the provisions of the First Schedule to this Act and expressed as a cost per acre) exceeds four thousand pounds, then in respect of that site or the portion thereof on which that building is erected the Minister shall pay for each of the sixty years following the completion of the building an annual exchequer subsidy at the rate of sixty pounds per acre, increased at the rate of thirty-four pounds per acre for every thousand pounds or part of a thousand pounds by which the said cost exceeds five thousand pounds;

Provided that—

- (a) if none of the buildings provided or to be provided on the site is a block of flats of four or more storeys, any amount by which the said cost exceeds ten thousand pounds shall be disregarded;
- (b) if any building or part of a building erected or to be erected on the site is designed for use otherwise than as housing accommodation, then, for the purpose of calculating any exchequer subsidy under this section in respect of that site or any portion thereof, the said cost shall be deemed to be reduced by so much thereof as, in the opinion of the Minister, may fairly be apportioned to that building or part of a building.

#### NOTES

**History.** This section contains provisions formerly in s. 6 of the Housing Subsidies Act, 1956. That section superseded s. 4 of the Housing (Financial and Miscellaneous Provisions) Act, 1946, as amended, which is now repealed by s. 59 (1) and the

Sixth Schedule, *post*, subject to the saving in s. 59 (4), *post*, for existing obligations to make payments.

**General Note.** This section and the First Schedule, *post*, provide for the payment of an "expensive site" subsidy towards the cost of purchasing (or otherwise making available, e.g., by appropriation from some other use), and developing, an expensive site on which any building consisting of or comprising an approved dwelling (as defined by s. 1 (1), *ante*), whether a house or a flat, is erected. The subsidy under this section is payable separately from, and is additional to, that under s. 3 or 4, *ante*, for the dwellings themselves. An expensive site is one whose cost as developed (calculated in accordance with the First Schedule, *post*), exceeds £4,000 per acre. If the site was purchased by a local authority for housing purposes, the cost is the purchase price plus the expenses of preparing the site, and providing streets and sewers, and any other expenses which the Minister, with Treasury consent, may determine. If the site was not so purchased, the cost is taken as being the value as certified by the Minister with the same additions. The Minister has power to determine what constitutes a separate site and certain other related matters. If the cost per acre, when determined, exceeds £4,000, a subsidy of £60 per acre is payable for sixty years. An additional £34 is payable for each £1,000, or part thereof, by which the cost per acre exceeds £5,000. If none of the buildings on the site is a block of flats of four or more storeys, the additional subsidy is only payable in respect of the cost up to £10,000. The maximum subsidy would therefore be £230 per acre. If a building or part of a building erected on the site is designed for use otherwise than as housing accommodation, the cost of the site is deemed to be reduced by such proportion as the Minister decides to be appropriate.

Subsidies under this section may be reduced or abolished as provided by s. 2, *ante*. See also ss. 18 *et seq.*, *post*, as to the reduction or withholding of subsidies on account of defaults, etc.; and s. 28, *post*, as to the time, manner and conditions of payment.

Detailed information on the administration of the subsidies for expensive sites is given in paras. 29 to 38 of Appendix V to Ministry of Housing and Local Government Circular No. 33/56, dated 17th July 1956 (printed in *Lumley's Public Health* (12th Edn.), Vol. VIII, pp. 347 *et seq.*).

**Approved dwelling.** *I.e.*, a dwelling approved by the Minister under s. 1, *ante*; see s. 1 (1), *ante*, and s. 29 (1), *post*.

**Site; portion thereof on which that building is erected.** The Minister is empowered to determine any question as to what constitutes a separate site, or as to the portion of such a site on which any building has been erected; see the First Schedule, para. 3, *post*. See also paras. 4 and 5 of that Schedule.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Block of flats (of four or more storeys).** For meaning, see s. 29 (1), *post*. See also the note "Block of flats of four storeys" to s. 3 (1), *ante*.

**Opinion.** Cf. the note to s. 3 (2), *ante*.

**8. Increase of subsidies: rights of support and houses constructed to preserve the character of surroundings.—**(1) Where the Minister is satisfied, on an application made to him—

- (a) by a local authority with respect to any house which the authority have provided or intend to provide, or
- (b) by a housing association or development corporation with respect to a house provided by him in pursuance of authorised arrangements,

that the cost of providing the house has been or will be substantially enhanced by expenses attributable to the acquisition of rights of support, or otherwise attributable to measures taken by them for securing protection against the consequences of a subsidence of the site, then, if the Minister thinks fit so to determine, the amount of the annual exchequer subsidy payable under this Act shall be that amount as determined apart from the provisions of this subsection and section six of this Act plus such sum not exceeding two pounds as the Minister may determine.

(2) Where the Minister is satisfied, on an application made to him—

- (a) by a local authority with respect to any house which the authority have provided or intend to provide, or
- (b) by a housing association or development corporation with respect to a house provided by them in pursuance of authorised arrangements,

that the cost of providing the house has been or will be substantially enhanced

by expenses attributable to measures taken with his consent by them in the construction of the house (whether by the use of stone or other special material or otherwise howsoever) in order to preserve the character of the surroundings, then, if the house is or becomes one in respect of which an annual exchequer subsidy is payable under this Act and the Minister thinks fit so to determine, the amount of the annual exchequer subsidy payable under this Act shall be that amount as determined apart from the provisions of this subsection and section six of this Act plus such sum not exceeding five pounds as the Minister may determine.

#### NOTES

**History.** Sub-s. (1) of this section contains provisions formerly in s. 6 of the Housing (Financial and Miscellaneous Provisions) Act, 1946, as applied by ss. 4 (3) and 12 (3) of, and para. 5 of the First Schedule to, the Housing Subsidies Act, 1956, and amended by s. 12 (4) of, and Part I of the Third Schedule to, the Act of 1956. Sub-s. (2) contains provisions formerly in s. 39 (1) of the Housing Act, 1949, as applied by ss. 4 (3) and 12 (3) of, and para. 12 of the First Schedule to, the Act of 1956, and amended by s. 12 (4) of, and Part I of the Third Schedule to, that Act. The effect of the Act of 1956 was to extend the provisions of the Acts of 1946 and 1949 to include references to subsidies under the Act of 1956, and to include houses provided as mentioned in sub-s. (1) (b), *supra*.

**Minister; house.** For definitions, see s. 58 (1), *post*.

**Satisfied.** See the note to s. 1 (3), *ante*.

**Local authority.** For meaning, see s. 29 (1), *post*.

**Provided or intend to provide.** The application may, therefore, be made after the house has been provided, if the house becomes entitled to an exchequer subsidy and if (in the case of applications under sub-s. (2), *supra*), the additional cost is attributable to measures taken with the consent of the Minister.

**Housing association; development corporation.** For definitions, see (by virtue of s. 58 (1), *post*), the Housing Act, 1957, s. 189 (1) (Book I, *ante*).

**Authorised arrangements.** Defined in s. 29 (2), *post*.

**Otherwise attributable to measures . . . against . . . subsidence.** *E.g.*, strengthened foundations might be provided.

**If the Minister thinks fit.** In practice the Minister restricts the increased subsidy under sub-s. (1), *supra*, to houses built on sites liable to mining subsidence; see Ministry of Housing and Local Government Circular No. 33/56, dated 17th July 1956, Appendix V, para. 16.

Before approving additional subsidy under sub-s. (2), *supra*, the Minister requires to be satisfied (i) that the character of the surroundings is such that it should be preserved; (ii) that the special measures proposed are necessary for that purpose; and (iii) that the cost of providing the dwellings will be substantially increased by those measures; see para. 22 of Appendix V to the above-mentioned Circular No. 33/56. For the general duty of a local authority, when preparing proposals for the provision of houses, to have regard to the beauty of the landscape, etc., see s. 149 (1) of the Housing Act, 1957 (Book I, *ante*).

**As determined apart from . . . s. 6.** The effect of these words is that a dwelling cannot attract an additional subsidy under sub-s. (1) or (2), *supra*, if it is also the subject of a direction under s. 6, *ante*. For the basic rates of subsidy, see ss. 3 and 4, *ante*; under s. 4 (4) (b) (i) or (ii), a nominal subsidy of one shilling may be payable, in cases where a subsidy is not otherwise payable under that section, in order to allow the addition of £2 or £5 under the present section.

#### *Exchequer contributions for improving housing accommodation*

#### 9. Contributions for dwellings improved by local authorities.—

(1) With a view to encouraging the improvement of housing accommodation by local authorities, the Minister may approve proposals (hereafter in this and the next following section referred to as "improvement proposals") submitted to him by a local authority for—

- (a) the provision of dwellings by the authority by means of the conversion of houses or other buildings,
- (b) the improvement of dwellings by the authority,

and may, subject to and in accordance with the provisions of the next following section, make a contribution towards the annual loss likely to be

incurred by a local authority as a result of giving effect to approved improvement proposals.

(2) Before approving any improvement proposals the Minister shall satisfy himself that, as respects dwellings to be provided in accordance with the proposals, the dwellings will provide satisfactory housing accommodation for a period of not less than thirty years from the completion of the works necessary for the conversion of the buildings in question, and, as respects dwellings to be improved in accordance with the proposals, the dwellings as so improved will provide such accommodation for a period of not less than thirty years from the completion of the improvements:

Provided that the Minister may approve the proposals as respects dwellings to be provided or improved if satisfied that the said period is likely to be more than fifteen years and that it is expedient in all the circumstances that the proposals should be approved.

(3) The Minister shall also satisfy himself that all dwellings to be provided or improved in accordance with the proposals will conform with such requirements with respect to their construction and physical condition and the provision of services and amenities as may be specified for the purposes of this section by the Minister:

Provided that if, in relation to all or any of the said dwellings, the Minister is not satisfied that the dwellings or dwelling will conform with a particular requirement so specified, he may, notwithstanding that fact, approve the proposals if he is satisfied that, in all the circumstances of the case, conformity with that requirement would be impracticable.

(4) The local authority for the purposes of this section as respects England and Wales other than the administrative county of London, shall be the council of the borough, urban district or rural district.

(5) As respects the administrative county of London, other than the City of London, both the London County Council and the council of a metropolitan borough shall be local authorities for the purposes of this section, and as respects the City of London, the Common Council shall be the local authority for those purposes.

(6) References in this section to the improvement of dwellings shall be construed as including references to the alteration or enlargement thereof and to the execution of works of repair thereto, not being works of ordinary repair, and as including also references to the execution of works of ordinary repair thereto so far, but so far only, as the execution thereof is incidental to or connected with the execution of works of improvement, alteration or enlargement or of works of repair not being works of ordinary repair, and in this section the expression "improved" shall be construed accordingly.

#### NOTES

**History.** Sub-s. (1) of this section contains provisions formerly in s. 15 (1) of the Housing Act, 1949. Sub-s. (2) contains provisions formerly in s. 15 (2) of the Act of 1949 and s. 16 (1) of the Housing Repairs and Rents Act, 1954. Sub-ss. (3), (4), (5) and (6) contain provisions formerly in ss. 15 (2), 33 (1) and (2) and 36 (2), respectively, of the Act of 1949.

**General Note.** This section, which should be read with s. 10, *post*, gives the Minister power to make contributions towards the annual loss likely to be incurred by a local authority (as defined in sub-ss. (4) and (5), *supra*), in giving effect to proposals submitted by the authority and approved by the Minister for the provision by them of dwellings by means of the conversion of houses and other buildings, and for the improvement by them of existing dwellings. The Minister is required, before approving an authority's proposals, to satisfy himself that the resulting dwellings will provide satisfactory housing accommodation for at least thirty years, and will conform with such requirements with respect to their construction and physical condition and the provision of services and amenities as he may specify. The Minister may, however, where it is expedient in all the circumstances, approve proposals where it is likely that the dwellings will provide satisfactory accommodation for more than fifteen years, and he may dispense with conformity with one or more of the specified requirements in a particular case if he is satisfied that conformity with that or those requirements would be impracticable in that case.

By virtue of s. 11, *post*, the provisions of this section extend also to proposals submitted directly to the Minister by development corporations; and under s. 12, *post*, exchequer contributions may also be made in respect of dwellings improved by housing associations or development corporations under arrangements with local authorities. Grants for improvement works carried out privately may be made, with exchequer assistance, by local authorities under Part II, ss. 30 *et seq.*, *post*. As to the derivation of these provisions, see the General Note to s. 121 of the Housing Act, 1957 (Book I, *ante*).

Contributions under the present section are "exchequer payments", as defined by s. 58 (2), *post*, and on default of the local authority may be reduced, suspended or discontinued under s. 18, *post*. The scale of contributions is provided by s. 10, *post*, and may be reduced somewhat by an order under s. 2, *ante*, as extended by s. 10 (1) proviso. Generally, as to the time, manner and conditions of payment, see s. 28, *post*. By virtue of s. 25, *post*, contributions under this section may in certain cases be payable to the county council instead of the local authority.

As to crediting the Housing Revenue Account, see s. 50 and para. 1 (1) (b) of the Fifth Schedule, *post*. Rate fund contributions under s. 18 of the Housing Act, 1949, were abolished by ss. 8 (1) (d) and 12 (4) of, and Part I of the Third Schedule to, the Housing Subsidies Act, 1956; but see para. 1 (5) and (6) of the Fifth Schedule, *post*, as to meeting deficits in the account, and further contributions thereto.

**Sub-s. (1).**

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Submitted . . . by a local authority.** The local authorities for the purposes of this section are specified in sub-ss. (4) and (5), *supra*. Applications to the Ministry under this section should be in form IMP.1 in the Appendix to Circular No. 48/57, dated 20th September 1957.

**Provision of dwellings . . . by means of the conversion of houses, etc.** Power to provide housing accommodation by the conversion of buildings into houses is conferred on local authorities by s. 92 (1) (b) of the Housing Act, 1957 (Book I, *ante*).

For the meanings of "dwelling" and "house", see, respectively, ss. 29 (1) and 58 (1), *post*.

**Improvement of dwellings.** This phrase is to be construed in accordance with sub-s. (6), *supra*. Power to alter, enlarge, repair or improve houses and buildings is conferred on local authorities by s. 92 (1) (d) and (2) of the Housing Act, 1957 (Book I, *ante*).

**Contribution.** Contributions to local authorities under this section are "exchequer payments" within the meaning of s. 58 (2), *post*. As to the amount of contributions, see s. 10, *post*.

**Annual loss.** See s. 10 (2), *post*.

**Sub-s. (2).**

**Satisfy.** Cf. the note "Satisfied" to s. 1 (3), *ante*.

**Improved.** For meaning, see sub-s. (6), *supra*.

**Sub-s. (3).**

**Such requirements . . . as may be specified.** The following requirements have been specified in para. 11 of Ministry of Housing and Local Government Circular No. 36/54, dated 20th April 1954 (printed in *Lumley's Public Health* (12th Edn.), Vol. VIII, pp. 293 *et seq.*) (but see also para. 14 of Appendix IV to Circular No. 55/54, *op. cit.*, at p. 306):—

The dwelling must, after improvements or conversion—

- (i) be in a good state of repair and substantially free from damp;
- (ii) have each room properly lighted and ventilated;
- (iii) have an adequate supply of wholesome water laid on inside the dwelling;
- (iv) be provided with efficient and adequate means of supplying hot water for domestic purposes;
- (v) have an internal or otherwise readily accessible water closet;
- (vi) have a fixed bath (or shower) preferably in a separate room;
- (vii) be provided with a sink or sinks and with suitable arrangements for the disposal of waste water;
- (viii) have a proper drainage system;
- (ix) be provided in each room with adequate points for gas or electric lighting (where reasonably available);
- (x) be provided with adequate facilities for heating;
- (xi) have satisfactory facilities for storing, preparing and cooking food;
- (xii) have proper provision for the storage of fuel (where required).

Note that the Minister is empowered to waive particular requirements by the proviso to sub-s. (3), *supra*.

**Sub-s. (4).**

**Administrative county of London.** *I.e.*, the City of London, the twenty-eight metropolitan boroughs, and the Inner Temple and the Middle Temple; see the London

Government Act, 1939, s. 1 (1) and First Schedule (15 Halsbury's Statutes (2nd Edn.) 1078, 1171).

**Borough, urban district or rural district.** As to the division of England and Wales (exclusive of London) for the purposes of local government, see the Local Government Act, 1933, s. 1 and First Schedule (14 Halsbury's Statutes (2nd Edn.) 361, 515). For the constitution of the councils of boroughs, urban districts and rural districts, see ss. 17, 31 and 32 of the Act of 1933 (14 Halsbury's Statutes (2nd Edn.) 368, 374).

**Sub-s. (5).**

This subsection corresponds with the combined effect of ss. 1 (2) and 121 (4) of the Housing Act, 1957 (Book I, *ante*), in the cases coming within s. 12, *post*.

**London County Council.** For the constitution of the Council, see the London Government Act, 1939, s. 2 (15 Halsbury's Statutes (2nd Edn.) 1079).

**Council of a metropolitan borough.** The metropolitan boroughs are the boroughs named in the First Schedule to the London Government Act, 1939 (15 Halsbury's Statutes (2nd Edn.) 1171); see s. 1 (1) (b) of that Act (15 Halsbury's Statutes (2nd Edn.) 1078). For the constitution of their councils, see s. 17 of the Act of 1939 (15 Halsbury's Statutes (2nd Edn.) 1083).

**Sub-s. (6).**

**Improvement; repair.** As to the distinction between works of improvement and works or repair, see the note "Works of improvement" to s. 69 (1) of the Housing Act, 1957 (Book I, *ante*). The combined effect of sub-ss. (1) (a) and (b) and (6), *supra*, may be compared with s. 121 (1) and (3) of the Act of 1957, relating to arrangements with housing associations and, by virtue of s. 125 of that Act, with development corporations; see the notes to s. 121 of that Act, and for the related financial provisions, see s. 12, *post*.

**10. Rate of contribution for local authorities.**—(1) A contribution under the last foregoing section towards the annual loss likely to be incurred by a local authority as a result of giving effect to approved improvement proposals shall be a sum equal to three-quarters of that loss, payable annually for the period of twenty financial years beginning with the year in which the carrying out of the proposals is completed:

Provided that an order under section two of this Act may, as respects proposals approved by the Minister after such date as may be specified in the order, reduce the proportion of the said annual loss to some other proportion, less than three-quarters but not less than two-thirds.

(2) The amount of the said annual loss shall be determined by the Minister and for the purpose of the determination regard shall be had—

- (a) to expenses proposed to be incurred by the local authority in acquiring interests in land for the purpose of giving effect to the proposals,
- (b) to the estimated cost of executing works of conversion or improvement in accordance with the proposals,
- (c) to the annual income, which, if effect were not given to the proposals, might reasonably be expected to accrue to the authority from interests owned by them in buildings proposed to be converted or dwellings proposed to be improved,
- (d) to the annual income which may reasonably be expected to accrue to the authority from the dwellings provided or improved as a result of giving effect to the proposals, and
- (e) to any other matter which appears to the Minister to be relevant.

(3) It shall be the duty of a local authority by whom improvement proposals are submitted to the Minister to furnish to him such estimates and such particulars with respect to the proposals as he may require for the purposes of this section.

**NOTES**

**History.** Sub-s. (1) of this section contains provisions formerly in s. 16 of the Housing Act, 1949, and in s. 32 (1) of that Act as amended by s. 12 (3) of, and para. 11 of the First Schedule to, the Housing Subsidies Act, 1956. Sub-s. (2) contains provisions formerly in s. 17 (1) and (2) of the Act of 1949. Sub-s. (3) contains provisions formerly in s. 17 (3) of that Act. Provisions resembling those of sub-ss. (1) and (2), *supra*, occur in s. 12 (1) and (3), *post*. Cf. also, s. 11, *post*, as to direct contributions to development corporations.

**Sub-s. (1).**

**Local authority.** For meaning, see s. 9 (4), (5), *ante*; and cf., as to direct contributions to development corporations, s. 11, *post*.

**Improvement proposals.** Defined in s. 9 (1), *ante*.

**Shall be.** Subject to the proviso to sub-s. (1), *supra*, the contribution must be equal to three-quarters of the annual loss as determined under sub-s. (2), *supra*. The only control by the Minister over the amount, therefore, lies in his determination of that loss.

**Financial years.** "Financial year" means, by virtue of s. 22 of the Interpretation Act, 1889 (24 Halsbury's Statutes (2nd Edn.) 222), the twelve months ending 31st March; and cf. the definitions in s. 305 of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 510), and s. 206 of the London Government Act, 1939 (15 Halsbury's Statutes (2nd Edn.) 1168).

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Sub-s. (2).**

**Acquiring interests in land.** See the powers conferred on local authorities by ss. 96 and 97 of the Housing Act, 1957 (Book I, *ante*).

**Dwelling.** For definition, see s. 29 (1), *post*.

**Improved.** As to the construction of this expression, see s. 9 (6), *ante*.

**Appears.** See the note "Appear" to s. 2 (3), *ante*.

**Sub-s. (3).**

**Such estimates and such particulars . . . as he may require.** The information required to be furnished when proposals are submitted for approval is set out in para. 15 of Appendix III to Ministry of Health Circular No. 90/49, dated 15th September 1949 (printed in *Lumley's Public Health* (12th Edn.), Vol. VI, pp. 1203 *et seq.*); see also form IMP.1 in the Appendix to Ministry of Housing and Local Government Circular No. 48/57, dated 20th September 1957.

**11. Contributions for dwellings improved by development corporations.**—The Minister may approve any proposals for the provision or improvement of dwellings submitted to him by a development corporation which he would have power to approve under section nine of this Act if they were submitted to him by a local authority, and the like contribution shall be made by the Minister to a development corporation towards the annual loss likely to be incurred by the corporation as a result of giving effect to proposals approved under this section as would have been made by him had the proposals been submitted by a local authority.

NOTES

**History.** This section contains provisions formerly in s. 19 of the Housing Act, 1949.

**General Note.** This section places development corporations under the New Towns Act, 1946, on the same footing as local authorities as respects improvement proposals and empowers payment to them direct of similar exchequer assistance. Where, however, arrangements have been made under ss. 121 and 125 of the Housing Act, 1957 (Book I, *ante*), between a local authority and a development corporation for the improvement of housing, the payment of contributions and grants is governed by s. 12, *infra* (which applies also to housing associations).

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Improvement of dwellings.** As to the construction of this phrase, cf. s. 9 (6), *ante*. "Dwelling" is defined by s. 29 (1), *post*.

**Development corporation.** For the meaning of this expression in this section, see s. 58 (1), *post*.

**Local authority.** For meaning, see s. 9 (4), (5), *ante*.

**Like contribution shall be made.** For the rate of contribution, see s. 10 (1), *ante*. By virtue of the proviso to that subsection contributions under this section are subject to reduction by order in the same way as contributions under s. 9, *ante*.

**Annual loss.** This is to be determined in accordance with s. 10 (2), *ante* (substituting references to the corporation for references to the local authority).

**12. Contributions for dwellings improved under arrangements with local authorities.**—(1) Where arrangements have been made under section one hundred and twenty-one of the principal Act by a local authority with a housing association or, by virtue of section one hundred and twenty-five of that Act, with a development corporation, the Minister shall make to

the local authority a contribution of a sum, payable annually for the period of twenty financial years beginning with the year in which the carrying out of the arrangements is completed, equal to three-quarters of the annual loss determined by the local authority, with the approval of the Minister, to be likely to be incurred by the corporation or association in carrying out the arrangements, and the local authority shall pay to the corporation or association for that period annual grants each of an amount not less than the said sum:

Provided that an order under section two of this Act may, as respects arrangements made after such date as may be specified in the order, reduce the proportion of the said annual loss to some other proportion less than three-quarters, but not less than two-thirds.

(2) If the Minister is satisfied that the corporation or association have made default in giving effect to the terms of the arrangements, he may reduce the amount of the contribution payable to the local authority under this section, or suspend or discontinue the payment thereof as he thinks just, and the local authority may reduce to a proportionate or any less extent, the annual grant payable by them to the corporation or association, or may suspend the payment thereof for a corresponding period, or may discontinue the payment thereof, as the case may be.

(3) For the purpose of the determination of the amount of the annual loss under this section regard shall be had—

- (a) to expenses proposed to be incurred by the corporation or association in acquiring interests in land for the purpose of giving effect to the arrangements,
- (b) to the estimated cost of executing works of conversion or improvement in accordance with the arrangements,
- (c) to the annual income which, if effect were not given to the arrangements, might reasonably be expected to accrue to the corporation or association from interests owned by them in buildings proposed to be converted or dwellings proposed to be improved,
- (e) to the annual income which may reasonably be expected to accrue to the corporation or association from the dwellings provided or improved as a result of giving effect to the arrangements, and
- (f) to any other matter which appears to the local authority to be relevant.

#### NOTES

**History.** Sub-s. (1) of this section contains provisions formerly in s. 31 (3) of the Housing Act, 1949, and in s. 32 (1) of that Act as amended by s. 12 (3) of, and para. 11 of the First Schedule to, the Housing Subsidies Act, 1956. Sub-s. (2) contains provisions formerly in s. 31 (3) of the Act of 1949. Sub-s. (3) contains provisions formerly in ss. 17 (2), as applied by 31 (4), of that Act; cf. s. 10 (2), *ante*.

**General Note.** Under s. 121 (1) of the Housing Act, 1957 (Book I, *ante*), a local authority (as defined in ss. 1 and 121 (4) of that Act) may, with the approval of the Minister, make arrangements with a housing association for (a) the provision of dwellings by the association by means of the conversion of houses or other buildings, (b) the alteration, enlargement, repair or improvement of dwellings by the housing association; and by s. 125 of the Act of 1957 this power is extended to the making of similar arrangements with development corporations. The present section regulates the payment of contributions by the Minister to the local authority, and grants by the local authority to the housing association or development corporation, in cases where such arrangements have been made. Where dwellings are improved by development corporations otherwise than in pursuance of arrangements made with a local authority, the payment of contributions is governed by s. 11, *ante*. Under s. 17, *post*, additional exchequer assistance may be obtained by certain housing associations.

#### Sub-s. (1).

**Local authority.** In this section the "local authority" is the local authority for the purposes of s. 121 of the Housing Act, 1957 (Book I, *ante*). For the meaning of this expression in that section, see ss. 1 and 121 (4) of the Act of 1957; and cf. s. 9 (4) and (5), *ante*.

**Housing association.** For meaning, see (by virtue of s. 58 (1), *post*) the Housing Act, 1957, s. 189 (1) (Book I, *ante*).

**Development corporation.** This means a development corporation established under the New Towns Act, 1946 (25 Halsbury's Statutes (2nd Edn.) 427); see (by virtue of s. 58 (1), *post*), the Housing Act, 1957, s. 189 (1) (Book I, *ante*). Note, however, that by the proviso to s. 125 of the Act of 1957 the application by that section of the provisions of s. 121 of that Act to development corporations does not extend to such corporations established by order under s. 16 of the Act of 1946 (25 Halsbury's Statutes (2nd Edn.) 443) (which relates to orders for the combination and transfer of functions of development corporations). The application of the present section is, therefore, similarly limited.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Shall make.** The contribution must be made and, subject to the proviso to sub-s. (1), must be three-quarters of the annual loss as determined by the local authority with the approval of the Minister. The only control by the Minister lies in the amount which he approves as that loss.

**Financial years.** See the note to s. 10 (1), *ante*.

**Annual loss.** This is to be determined in accordance with sub-s. (3), *supra*.

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *post*.

**Sub-s. (2).**

**Satisfied.** See the note to s. 1 (3), *ante*. The powers conferred by sub-s. (2), *supra*, may be compared with those in ss. 19 (1) and 20 (1), *post*. Those subsections relate to arrangements under s. 120 of the Housing Act, 1957 (Book I, *ante*); and this subsection refers to arrangements under s. 121 of that Act. Cf. also s. 22 (1), *post*, as to contributions for hostels under s. 15 (2), *post*.

**Sub-s. (3).**

**Dwelling.** For definition, see s. 29 (1), *post*.

**Improved.** As to the construction of this expression in this section, cf. s. 9 (6), *ante*, and s. 121 (1) (b) and (3) of the Housing Act, 1957 (Book I, *ante*).

**Appears.** Cf. the note "Appear" to s. 2 (3), *ante*.

#### *Grants and other financial assistance for special purposes*

**13. Exchequer contributions for local authorities buying unfit houses for temporary occupation.**—(1) The Minister may make such contributions as are authorised by this section towards expenditure incurred by any local authority in respect of houses approved by the Minister for the purposes of this section, being—

- (a) houses on land in a clearance area purchased by or belonging to the local authority within that area, the demolition of which is postponed under the powers conferred by Part III of the principal Act, being houses retained for temporary use for housing purposes,
- (b) houses comprised in a clearance order the demolition of which is, under the provisions of the order, to be postponed,
- (c) houses purchased under section twenty-nine of the principal Act.

(2) Subject to the following provisions of this section, contributions payable by the Minister in respect of any house shall be as follows, that is to say,—

- (a) in the case of a house purchased by the local authority, an annual payment equal to one half of the annual loan charges referable to the cost of the purchase, payable for each financial year during the whole or part of which the house or any part of the house is used for housing purposes with the approval of the Minister, and
- (b) in any case an annual payment of three pounds or, in the case of a house containing at the date on which the house is approved for the purpose of this section more than one separate dwelling, of the said sum for each such dwelling, payable for fifteen years from the said date:

Provided that the Minister may from time to time by order contained in a statutory instrument direct that paragraph (b) of this subsection shall have effect, in relation to houses approved after the date on which the order comes into force, as if for the sum therein specified there were substituted such higher or lower sum as may be specified in the order.

(3) If it appears to the Minister that the expenditure incurred as a whole by a local authority in the repair, improvement and maintenance of houses approved by the Minister for the purposes of this section is unduly low having regard to the amount of the contributions for the time being payable in respect of those houses under paragraph (b) of subsection (2) of this section, he may withhold the whole or any part of the contributions payable under that paragraph to that authority.

(4) An order of the Minister under subsection (2) of this section shall be of no effect until it is approved by resolution of the Commons House of Parliament.

(5) For the purposes of this section the annual loan charges referable to the cost of a purchase shall (whatever may be the manner in which the local authority have provided or intend to provide the money required for the purchase) be the annual sum which, in the opinion of the Minister, would fall to be provided by the local authority for the payment of interest on, and the repayment of, an amount of borrowed money equal to the said cost, being money the period for the repayment of which is sixty years.

#### NOTES

**History.** Sub-s. (1) of this section contains provisions formerly in ss. 2 (3) and 7 (1) of the Housing Repairs and Rents Act, 1954. Sub-s. (2) contains provisions formerly in ss. 7 (2) and 51 of the Act of 1954. Sub-ss. (3), (4) and (5) contain provisions formerly in s. 7 (3), (4) and (6), respectively of that Act. The effect of s. 7 (5) of that Act is preserved by s. 58 (2), *post*, which includes contributions under the present section within the definition of "exchequer payment".

**General Note.** This section provides for exchequer contributions in respect of houses which, under certain provisions of the Housing Act, 1957 (Book I, *ante*), derived from the Housing Repairs and Rents Act, 1954, are retained for temporary use for housing purposes since they are, or can be rendered, capable of providing accommodation of a standard which is adequate for the time being. The section applies to: (i) houses on land in a clearance area purchased by or belonging to the local authority, the demolition of which is postponed under s. 48 (1) of the Act of 1957; (ii) unfit houses on land in a clearance area which does not belong to the local authority, the demolition of which is postponed, by virtue of s. 46 of that Act, under the terms of a clearance order applying to the houses; and (iii) unfit houses purchased by the local authority under s. 29 of the Act of 1957 in lieu of making a demolition order or closing order (sub-s. (1)). All houses approved by the Minister for the purposes of this section come within the Housing Revenue Account; see s. 50, and (as to crediting contributions), para. 1 (1) (b) of the Fifth Schedule, *post*.

The contributions payable are as follows: (a) where the house has been purchased by the local authority, there will be an annual payment equal to one-half of the annual loan charges (as on a sixty years' loan—sub-s. (5)) referable to the cost of purchase; this will be payable in respect of each financial year if during any part of that year any part of the house is used for housing purposes with the Minister's approval; (b) whether the house has been purchased by the local authority or not, there will be an annual payment of £3 for fifteen years for each separate dwelling contained in the house at the date when the house is approved by the Minister (sub-s. (2)). The Minister is given power to vary the amount of the last-mentioned payment by order (which must be approved by resolution of the House of Commons (sub-s. (4))) from time to time in respect of houses approved after the date of the operation of the order (sub-s. (2), proviso). The Minister may also withhold that payment or any part of it, if it appears to him that the expenditure incurred as a whole by the local authority in the repair, improvement and maintenance of approved houses is unduly low having regard to the amount of the contributions for the time being payable in respect of those houses (sub-s. (3)).

Information and guidance notes on the provisions of this section are contained in Appendix III to Ministry of Housing and Local Government Circular No. 55/54, dated 28th August 1954 (printed in *Lumley's Public Health* (12th Edn.), Vol. VIII, pp. 300 *et seq.*).

As to the reduction or withdrawal of contributions on account of defaults, etc., see s. 18, *post*; and as to the time, manner and conditions of payment, see s. 28, *post*.

#### Sub-s. (1).

**Minister; house.** For definitions, see s. 58 (1), *post*. *Semble*, however, that the definition of "house" which applies in Part II and Part III of the Housing Act, 1957 (see para. (a) of the definition in s. 189 (1) of that Act), applies in this section also. If it did not, sub-s. (2) (b) would not contain a reference to a house containing more than one separate dwelling.

**Local authority.** For meaning, see s. 29 (1), *post*.

**Houses on land in a clearance area . . . the demolition of which is postponed.** This power to postpone demolition is contained in s. 48 (1) of the Housing Act, 1957 (Book I, *ante*).

For powers of purchase, see s. 43 (3) of that Act; and note ss. 53 (5) and 54 (1) (a) of that Act, containing transitory provisions extending those powers to certain houses already subject to clearance orders made before 30th August 1954. As to land "belonging to" the authority, see s. 49 of that Act. Sub-s. (1) (a), *supra*, applies only to houses in the actual clearance area, as defined under s. 42 of that Act.

**Being houses retained for temporary use for housing purposes.** Houses retained under s. 48 (3) of the Housing Act, 1957 (Book I, *ante*) (i.e., houses required for the support of houses which are retained for temporary use for housing purposes, and houses retained for some other special reason connected with the exercise of the local authority's powers under s. 48 (1) of the Act of 1957) do not, therefore, qualify for exchequer contributions under this section.

**Houses comprised in a clearance order the demolition of which is . . . to be postponed.** As to such clearance orders, see s. 46 of the Housing Act, 1957 (Book I, *ante*).

**Houses purchased under s. 29 of the principal Act.** Section 7 (1) (b) of the Housing Repairs and Rents Act, 1954, referred both to houses purchased under s. 3 thereof (see now s. 29 of the Housing Act, 1957 (Book I, *ante*)), and to houses purchased under that section as applied by s. 6 of the Act of 1954 (see now s. 34 of the Act of 1957).

The reference in the present section to houses purchased under s. 29 of the Act of 1957 may be construed to include houses purchased under that section as applied by s. 34 of that Act.

It is probable that virtually all licences having effect under s. 34 of the Act of 1957 will have expired before the commencement of the present Act, and that the power of purchase, on the revocation or determination of such a licence, conferred by s. 34 (5) will, therefore, no longer be exercisable. Existing liabilities to make contributions in respect of houses purchased under s. 3 of the Housing Repairs and Rents Act, 1954, as applied by s. 6 of that Act, or under the corresponding provisions of the Act of 1957, will it seems be unaffected owing to the provisions of s. 59 (3), *post*.

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *post*.

**Sub-s. (2).**

**Annual loan charges referable to the cost of purchase.** See sub-s. (5), *supra*. "Loan charges" is defined by s. 58 (1), *post*.

**Financial year.** See the note to s. 10 (1), *ante*.

**Separate dwelling.** Note the definitions of "dwelling" and "house" in ss. 29 (1) and 58 (1) respectively, *post*, and compare these with the two definitions of "house" in s. 189 (1) of the Housing Act, 1957 (Book I, *ante*). Para. (a) of the definition in s. 189 (1) of the Act of 1957 applies in Parts II and III of that Act, which contain the powers referred to in sub-s. (1), *supra*.

*Cf.* the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, s. 12 (2) (103 Statutes Supp. 145; 13 Halsbury's Statutes (2nd Edn. 1004), and the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, s. 16 (1) (103 Statutes Supp. 161; 13 Halsbury's Statutes (2nd Edn.) 1057), which refer to a house, or part of a house, "let as a separate dwelling". Under those Acts it is well established that accommodation let to a tenant on terms which, in addition to giving him the exclusive use of accommodation, include the "sharing" of living accommodation (such as a kitchen, in contrast to a W.C., bathroom or box-room) by him in common with other persons does not constitute a house or part of a house "let as a separate dwelling"; see, especially, *Neale v. Del Soto*, [1945] 1 All E.R. 191, C.A.; 31 Digest (Repl.) 646, 7508; *Cole v. Harris*, [1945] 2 All E.R. 146, C.A.; 31 Digest (Repl.) 646, 7509; *Llewellyn v. Hinson*, [1948] 2 All E.R. 95, C.A.; 31 Digest (Repl.) 647, 7513; *Hayward v. Marshall*, [1952] 1 All E.R. 663, C.A.; 3rd Digest Supp.; and *Goodrich v. Paisner*, [1956] 2 All E.R. 176, H.L.; 3rd Digest Supp.; also *Baker v. Turner*, [1950] 1 All E.R. 834, H.L.; 31 Digest (Repl.) 647, 7516, and *Rogers v. Hyde*, [1951] 2 All E.R. 79, C.A.; 3rd Digest Supp.

**Statutory instrument.** For provisions as to statutory instruments generally, see the Statutory Instruments Act, 1946 (36 Statutes Supp. 95; 24 Halsbury's Statutes (2nd Edn.) 440).

Note the requirement of approval by the House of Commons (sub-s. (4), *supra*). An order under this subsection may increase the rates of contribution under para. (b), or reduce them; contrast the scope of orders under s. 2, *ante* (which does not apply to the present section).

**Sub-s. (3).**

**Appears.** See the note "Appear" to s. 2 (3), *ante*.

**Sub-s. (5).**

**Opinion.** *Cf.* the note to s. 3 (2), *ante*.

**Interest.** The rate of interest for the purposes of sub-s. (5), *supra*, will be the rate

prevailing at the time of acquisition for loans from the Public Works Loan Board for sixty years; see para. 2 of Appendix III to the above-mentioned Circular No. 55/54.

#### 14. Grants for building experiments.—Where—

- (a) the Minister is satisfied on an application made to him by a local authority or development corporation with respect to a house which they have provided that the cost of providing the house has been substantially enhanced by reason of either or both of the following matters, namely,—
  - (i) that, with his consent, the house has been constructed in whole or in part by an experimental method;
  - (ii) that, with his consent, materials have, for the purposes of experiment, been used in the construction of the house or equipment or fittings have, for those purposes, been installed in the house in the course of the construction thereof; or
- (b) with the consent of the Minister expense is incurred by a local authority or development corporation in incorporating or installing in a house, otherwise than in the course of the construction thereof, materials, equipment or fittings for the purposes of experiment;

then, subject to such conditions (if any) as the Treasury may determine, the Minister may make to the authority or corporation a grant of such amount and payable in such manner as he may determine.

#### NOTES

**History.** This section contains provisions formerly in s. 41 (1) of the Housing Act, 1949.

**General Note.** This section enables the Minister to make grants to a local authority or to a development corporation towards expense incurred with the Minister's consent by reason of building experiments in the course of construction of a house or of certain experiments otherwise than in the course of construction.

Application for the grant must be made to the Minister if applied for in respect of experiments in the course of construction, and the Minister must be satisfied that the cost has been substantially enhanced by either or both of the following:—

- (i) construction in whole or in part by an experimental method;
- (ii) use of experimental materials in construction or the installation, during the course of construction, of experimental fittings or equipment.

Experiments, otherwise than in the course of construction, by the installation or incorporation in a house of experimental materials, equipment or fittings may attract a grant without satisfying the Minister that the cost of providing the house has been substantially enhanced thereby.

**Minister; development corporation; house.** For definitions, see s. 58 (1), *post*.

**Satisfied.** See the note to s. 1 (3), *ante*.

**Local authority.** For meaning, see s. 29 (1), *post*.

**15. Grants for hostels.—(1)** In respect of a new building provided, or a building converted, by a local authority or development corporation for use as a hostel, being a building approved for the purposes of this subsection by the Minister, the Minister shall (subject to the provisions of section twenty-two of this Act) make to the authority or corporation a contribution—

- (a) payable annually for such number of financial years, not exceeding sixty, as he may determine, being years beginning with the year in which the building is, or, as the case may be, the works of conversion are, completed;
- (b) of such amount, not exceeding the sum produced by multiplying five pounds by the number of bedrooms contained in the building, as he may determine having regard to the standard of construction and amenity of the building.

(2) Subject to the provisions of section twenty-two of this Act, the like contribution, if any, shall be payable in respect of a building which, under

authorised arrangements made by a local authority with a development corporation or housing association, has been provided or converted by that corporation or association for use as a hostel as would be payable if the building had been provided or converted by the local authority for such use, and shall be paid by the Minister to the authority, who shall pay to the corporation or association by way of annual grant an amount not less than the contribution.

(3) This section shall not apply to a new building completed or a building converted before the thirtieth day of July, nineteen hundred and forty-nine, or to any premises provided for the purposes of Part III of the National Assistance Act, 1948, by a local authority.

(4) In this section the expression "hostel" means a building wherein is provided, for persons generally or for any class or classes of persons, residential accommodation (otherwise than in separate and self-contained sets of premises) and board.

#### NOTES

**History.** Sub-ss. (1), (2), (3) and (4) of this section contain provisions formerly in s. 40 (1), (2), (6) and (7), respectively, of the Housing Act, 1949. Other provisions derived from s. 40 of the Act of 1949 are now contained in ss. 22 and 50 (3), *post*.

**General Note.** Sub-s. (1), *supra*, authorises the payment of exchequer contributions to local authorities and development corporations in respect of new buildings provided, or buildings converted, for use as hostels (as defined in sub-s. (4), *supra*); and sub-s. (2) makes comparable provision as respects buildings for use as hostels provided or converted by development corporations and housing associations under arrangements made with a local authority. A new building completed, or a building converted, before 30th July 1949, and premises provided for the purposes of Part III of the National Assistance Act, 1948, are outside the section (sub-s. (3)).

Contributions under this section are not within the definition of "exchequer payment" in s. 58 (2), *post*. Provision is made by s. 22 (1) and (3), *post*, for the reduction or withholding of contributions and grants under sub-s. (2), *supra*, in certain circumstances; and see also s. 22 (2) as to development corporation hostels. It is provided by s. 50 (3), *post*, that income and expenditure in respect of a building provided or converted by a local authority for use as a hostel and approved for the purposes of this section shall be excluded from the Housing Revenue Account which the local authority is required to keep under that section (unless the Minister is satisfied that the building has ceased to be used as a hostel).

By virtue of s. 25, *post*, contributions under this section may in certain cases be payable to the county council instead of the local authority. As to the time, manner and conditions of payments by the Minister, see s. 28, *post*.

#### Sub-s. (1).

**New building provided, or a building converted, etc.** A local authority has power under s. 92 (1) and (4) of the Housing Act, 1957 (Book I, *ante*), to provide housing accommodation, including lodging-houses, by new building or conversion of existing buildings, and under s. 95 (1) of that Act this power to provide accommodation includes power to provide facilities for obtaining meals and refreshments. These provisions would appear to authorise the provision by a local authority of hostels within the meaning of sub-s. (4), *supra*. As to arrangements with development corporations and housing associations, see ss. 120 and 125 of the Act of 1957. The power of development corporations to provide hostels, otherwise than under arrangements with the local authority, appears to be part of their general powers under ss. 2 *et seq.* of the New Towns Act, 1946. The original power to make exchequer contributions direct to the corporation for housing purposes was contained in s. 8 (2) (repealed) of that Act; see now s. 1 (1) (b), *ante*, and cf. s. 11, *ante*.

For buildings excluded from this section, see sub-s. (3), *supra*.

**Local authority.** For meaning, see s. 29 (1), *post*.

**Development corporation; the Minister.** For definitions, see s. 58 (1), *post*.

**Hostel.** For meaning, see sub-s. (4), *supra*.

**Financial years.** See the note to s. 10 (1), *ante*; and cf. also the definition in s. 26 (1) of the New Towns Act, 1946 (25 Halsbury's Statutes (2nd Edn.) 447).

#### Sub-s. (2).

**Authorised arrangements.** For meaning, see s. 29 (2), *post*.

**Housing association.** For definition, see (by virtue of s. 58 (1), *post*), the Housing Act, 1957, s. 189 (1) (Book I, *ante*).

**Annual grant.** The system, whereby the local authority receive the Minister's contribution, and pass on a grant to the corporation or association, resembles that of

ss. 1 (2) (b) and 12 (1), *ante*. The default powers, which enable the grant to be withheld in certain circumstances are also similar, see s. 12 (2), *ante*, and ss. 19 (1), 20 (1) and 22 (1), *post*.

**Sub-s. (3).**

**30th July 1949.** *I.e.*, the date of the commencement of the Housing Act, 1949, from which the provisions of this section are derived.

**National Assistance Act, 1948, Part III.** 59 Statutes Supp. 59; 16 Halsbury's Statutes (2nd Edn.) 947.

**Sub-s. (4).**

**Otherwise than in separate . . . sets of premises.** This condition presumably is imposed to exclude accommodation in the nature of flats.

**16. Grants for temporary housing accommodation provided in war buildings.**—(1) Where a local authority have, for the purpose of discharging any of their duties under Part V of the principal Act, acquired the right to use any government war buildings, and the Minister has approved for the purposes of this section arrangements made by the authority for using those buildings, whether with or without alterations, for providing temporary housing accommodation, then—

(a) if the Minister estimates that the authority will incur a loss in any year in respect of the provision of housing accommodation in pursuance of the arrangements, the Minister shall make to the authority a contribution for that year of a sum equivalent to the estimated loss; and

(b) if the Minister estimates that the authority will make a profit in any year in respect of the provision of housing accommodation in pursuance of the arrangements, the authority shall pay to the Minister in respect of that year a sum equivalent to the estimated profit.

(2) For the purposes of any such estimate, there shall be deemed to accrue to a local authority, in respect of any house provided by the authority in pursuance of any such arrangements as aforesaid, in addition to any other income accruing from the house—

(a) where the authority are the council of a rural district, the sum of six pounds a year; and

(b) in any other case, the sum of eight pounds a year.

(3) Where any buildings are demolished by a local authority upon ceasing to be used for the purpose of providing housing accommodation in pursuance of such arrangements as aforesaid, then—

(a) the Minister shall pay to the authority the cost of demolition; and

(b) any sums realised by the authority by the disposal of materials derived from the demolished buildings shall be paid by the authority to the Minister.

(4) In this section the expression "government war building" means any building which constitutes government war works as defined by section fifty-nine of the Requisitioned Land and War Works Act, 1945, and the expression "alterations" includes adaptations, enlargements and improvements.

#### NOTES

**History.** This section contains provisions formerly in s. 12 of the Housing (Financial and Miscellaneous Provisions) Act, 1946.

**General Note.** This section authorises the payment of contributions where a local authority have acquired the right to use government war buildings (as defined in sub-s. (4), *supra*) for the purpose of providing temporary housing accommodation under arrangements approved by the Minister. The contribution is based on the estimated loss of the authority in any financial year, and if it is estimated that the authority will make a profit in any year a sum equivalent to the estimated profit must be paid to the Minister (sub-s. (1)). These calculations are "weighted" in the Minister's favour by taking into account the notional income in sub-s. (2). On the demolition of the building the cost of demolition is borne by the Minister, and the local authority must pay to him sums realised by the disposal of materials from the building (sub-s. (3)).

Dwellings required to re-house persons from such war buildings (and other similar camps, etc.) will attract subsidies at the rates under s. 3, by virtue of designation under s. 3 (2) (b), *ante*; see Circular 33/56, cited in the notes thereto.

As to the reduction or withholding of contributions on account of defaults, see s. 18, *post*; and as to the time, manner and conditions of payment, see s. 28, *post*.

**Sub-s. (1).**

**Local authority.** For definition, see s. 29 (1), *post*.

**Acquired the right to use any government war buildings.** The terms on which temporary government wartime buildings were to be made available to local authorities are set out in para. 4 of Ministry of Health Circular No. 20/46, dated 22nd January 1946 (printed in *Hill's Complete Law of Housing* (4th Edn.), pp. 581 *et seq.*, and in *Lumley's Public Health* (12th Edn.), Vol. VI, pp. 1125 *et seq.*). This circular was issued in anticipation of the provisions of the Act of 1946, cited in the note "History", *supra*. Paras. 6 and 7 thereof dealt with other temporary dwellings. It was stated, however, in Ministry of Housing and Local Government Circular No. 31/55 that no new schemes under para. 4 of Circular No. 20/46 were to be authorised, and consequently if local authorities wished to acquire government buildings they would have to do so under their normal statutory powers. Payments under this section to the local authority are within the definition of "exchequer payment" in s. 58 (2), *post*. In Circular 20/46 it was indicated that all transactions in respect of converted dwellings would pass through the Housing Revenue Account, now kept under s. 50 and the Fifth Schedule, *post*.

For the meaning of "government war buildings", see sub-s. (4), *supra*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Alterations.** See the definition in sub-s. (4), *supra*. The cost of conversion, which must not exceed £250 in respect of any one dwelling, is to be borne in the first instance by the local authority, the period for the repayment of loans to cover the cost of the works being normally ten years; see para. 4 (v) of the above-mentioned Circular No. 20/46.

**Estimated loss; estimated profit.** It was stated in the above-mentioned Circular No. 20/46 that the Minister would estimate the probable loss or profit after taking into account:—

- (1) A fixed annual charge of £6 10s. per dwelling to cover repairs and maintenance, management, voids, etc. This charge would be subject to review after three years and to retrospective adjustment if that amount were found, in the light of experience to be insufficient. Any such revised charge would apply uniformly to all the local authorities by whom the scheme outlined in the Circular was adopted.
- (2) The estimated annual loan charges on an eighty years basis on the cost of the land as approved for loan consent (or the approved rental in the case of land leased), excluding the cost to the local authority of the residual value of the development works.
- (3) The estimated annual loan charges on the cost of conversion, as approved for loan consent.
- (4) The agreed rents.
- (5) An assumed annual charge on the Housing Revenue Account of the local authority of £8 per dwelling (or £6 in the case of a rural district council) (*cf.* sub-s. (2), *supra*).

If the dwellings remained available for housing after the expiration of the period for which loan sanction to the cost of conversion had been given, the annual payments would be adjusted accordingly.

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *post*.

**Sub-s. (2).**

**House.** For meaning, see s. 58 (1), *post*.

**Sub-s. (4).**

**Requisitioned Land and War Works Act, 1945, s. 59.** 31 Statutes Supp. 126; 3 Halsbury's Statutes (2nd Edn.) 1058. In that section "government war works" is defined as "works constructed in the course of government war work" and "government war work" is defined as "work done during the war period for war purposes by or by arrangement with a Minister under emergency powers". The expressions "works", "war period", "war purposes", "Minister" and "emergency powers" are also defined.

**17. Additional financial assistance for certain housing associations.—**(1) The provisions of this section shall have effect as respects any housing association—

- (a) which, in pursuance of arrangements made by the Minister, has been established since the eighteenth day of April, nineteen hundred and forty-six, and
- (b) whose objects include both the construction of houses and the provision and management of houses,

and any such association is hereafter in this section referred to as "the association".

(2) If the Minister is satisfied that the total net expenditure of the association in any year, calculated in such manner as he may with the consent of the Treasury determine, being expenditure necessarily incurred by the association—

- (a) for the purpose of the execution of authorised arrangements made with the association, or
- (b) for the purpose of the execution of work which the association had been employed by a local authority to undertake in connection with the provision by the authority of housing accommodation,

cannot be met without the provision of assistance under this subsection, he may, with the approval of the Treasury, make such payments by way of grant to the association as he may determine to be necessary for the purpose of enabling them to meet that expenditure:

Provided that no payment shall be made by the Minister under this subsection in respect of any expenditure incurred by the association for the purpose of the execution of any authorised arrangements unless, in respect of each house provided by the association under the arrangements, the association are entitled to receive, in addition to the annual grants under section one of this Act or any other enactment, a grant from the appropriate local authority of an amount not less than the annual rate fund contribution which in the opinion of the Minister would have been payable by the authority in respect of that house under section five of the Housing (Financial and Miscellaneous Provisions) Act, 1946, if that section had continued in force and if the authority had, in exercise of their powers to provide housing accommodation, provided the house themselves.

(3) Subject to the provisions of this section, the Treasury may issue to the Minister, out of the Consolidated Fund of the United Kingdom, such sums as are necessary to enable the Minister to make loans to the association for the purpose of enabling or assisting the association to defray—

- (a) any preliminary expenses incurred in connection with the establishment of the association;
- (b) any expenses incurred by the association for the purpose of the execution of authorised arrangements made with a local authority; or
- (c) any expenses of the association in respect of work which the association have been employed by a local authority to undertake in connection with the provision by the authority of housing accommodation.

(4) The power of the Treasury, under subsection (1) of section one of the Building Materials and Housing Act, 1945, to advance money to the Minister of Works out of the Consolidated Fund of the United Kingdom shall include power, subject to and in accordance with the provisions of that section, to advance money to that Minister for the purpose of defraying his expenses in carrying out work on behalf of and at the request of the association, being—

- (a) work which the association have been employed by a local authority to undertake in connection with the provision by the authority of housing accommodation; or
- (b) work in connection with the execution of authorised arrangements made with a local authority.

(5) The total amount issued by the Treasury under subsection (3) of this section, after deducting any sums which have been repaid, shall not at any time exceed fifteen million pounds.

(6) For the purpose of providing sums to be issued under subsection (3) of this section, the Treasury may, at any time, if they think fit, raise money in any manner in which they are authorised to raise money under the National Loans Act, 1939; and any securities created and issued to raise money under this subsection shall be deemed for all purposes to have been created and issued under the National Loans Act, 1939.

(7) The Minister shall, as respects each financial year in which sums are outstanding from the Exchequer in respect of money issued to him under subsection (3) of this section, prepare, in such form and manner as the Treasury may direct, an account of those sums.

Any account prepared under this subsection shall, on or before the thirtieth day of November next following the expiration of the financial year in question, be transmitted to the Comptroller and Auditor General, who shall examine and certify the account and lay copies thereof, together with his report thereon, before Parliament.

(8) Any sums received by the Minister by way of interest on or repayment of any loan made out of money issued to him by the Treasury under this section shall be paid into the Exchequer and issued out of the Consolidated Fund of the United Kingdom at such times as the Treasury may direct and shall be applied by the Treasury as follows:—

- (a) so much thereof as represents principal shall be applied in redeeming or paying off debt of such description as the Treasury think fit;
- (b) so much thereof as represents interest shall be applied towards meeting such part of the annual charges for the National Debt as represents interest.

#### NOTES

**History.** Sub-ss. (1) to (7) of this section contain provisions formerly in s. 18 of the Housing (Financial and Miscellaneous Provisions) Act, 1946. Sub-s. (8) contains provisions formerly in s. 23 (2) and (3) of that Act, as varied by para. 4 of the Fifth Schedule to the Finance Act, 1954 (consequent upon the abolition of the permanent annual charge for the National Debt).

**General Note.** Exchequer subsidies are payable under ss. 1 *et seq.*, *ante*, in respect of dwellings provided by housing associations in pursuance of "authorised arrangements" (under s. 120 of the Housing Act, 1957 (Book I, *ante*)) with a local authority, and by s. 12, *ante*, similar provision is made for contributions as respects dwellings improved by housing associations under arrangements made with a local authority under s. 121 of the Act of 1957; see also s. 15 (2), *ante*, as respects hostels. Loans may also be made to housing associations from the Local Loans Fund, under s. 47, *post*; and loans and other forms of assistance may be available from local authorities and county councils under s. 119 (3) of the Act of 1957.

The present section authorises the provision of exchequer assistance additional to that payable under the above-mentioned sections, but it applies only as respects housing associations established in pursuance of any arrangements made by the Minister since 18th April 1946, the objects of which include both the construction of houses and the provision and management of houses (sub-s. (1)). Assistance under the section may take the form either of exchequer grants towards expenditure of the descriptions mentioned in sub-s. (2), or exchequer loans towards expenditure of the descriptions specified in sub-s. (3). Grants may be made, with the approval of the Treasury, only when the conditions specified in sub-s. (2) proviso are satisfied. The total amount issued by the Treasury in respect of loans under sub-s. (3), after deducting any sums repaid, is not to exceed £15 million (sub-s. (5)). Further provisions as to the raising of money by the Treasury, the preparation of accounts and their examination, etc., and the repayment of moneys into the Exchequer, are contained in sub-ss. (6), (7) and (8), *supra*.

This section also provides that the power of the Treasury under s. 1 (1) of the Building Materials and Housing Act, 1945, to advance money to the Minister of Works shall include power to do so for the purpose of defraying his expenses in carrying out certain work on behalf of any housing association to which the section applies (sub-s. (4)).

#### Sub-s. (1).

**Housing association.** For meaning, see (by virtue of s. 58 (1), *post*), the Housing Act, 1957, s. 189 (1) (Book I, *ante*).

**Minister; house.** For definitions, see s. 58 (1), *post*.

**18th April 1946.** *I.e.*, the date of the passing of the Housing (Financial and Miscellaneous Provisions) Act, 1946, from which the provisions of this section are derived.

**Sub-s. (2).**

**Satisfied.** See the note to s. 1 (3), *ante*.

**The association.** *I.e.*, any such association as is mentioned in sub-s. (1), *supra*.

**Authorised arrangements.** Defined in s. 29 (2), *post*.

**Local authority.** For meaning, see s. 29 (1), *post*.

**Provision . . . of housing accommodation.** For the meaning of this expression in Part V of the Housing Act, 1957, see s. 92 (4) thereof (Book I, *ante*).

**Annual grants under s. 1.** See s. 1 (2) (b), *ante*, and (by virtue of ss. 59 (2), (3) and 60, *post*) s. 1 (2) (b) of the Housing Subsidies Act, 1956, which was to the same effect.

**Or any other enactment.** This refers in particular to s. 94 (3) of the Housing Act, 1936 (repealed), which was in force when the provisions now contained in this section were first enacted, and under which grants may still be payable by virtue of the saving enacted in s. 59 (4), *post*. Cf., also, the note "Financial provisions" in the General Note to s. 120 of the Housing Act, 1957 (Book I, *ante*).

**Annual rate fund contribution.** Cf. the General Note to s. 1, *ante*. Compulsory rate fund contributions under s. 5 of the Housing (Financial and Miscellaneous Provisions) Act, 1946, and under certain other enactments, were abolished as from 1st April 1956 by s. 8 (now repealed) of the Housing Subsidies Act, 1956 (94 Statutes Supp. 46; 36 Halsbury's Statutes (2nd Edn.) 380), and the first-mentioned section was accordingly repealed by s. 12 (4) of, and Part I of the Third Schedule to, the Act of 1956. Certain consequential provisions from s. 8 (1) and (3) of the Act of 1956 are re-enacted in s. 26 and in the Fifth Schedule, *post*. To qualify for a grant under sub-s. (2), *supra*, the association must still be entitled to receive from the local authority a grant not less in amount than the former rate fund contribution, in addition to any other grants.

**Opinion.** Cf. the note to s. 3 (2), *ante*.

**Powers to provide housing accommodation.** See, in particular, Part V of the Housing Act, 1957 (Book I, *ante*), and the notes to ss. 91 and 92 thereof.

**Housing (Financial and Miscellaneous Provisions) Act, 1946, s. 5.** 39 Statutes Supp. 42; 11 Halsbury's Statutes (2nd Edn.) 652. As to the repeal of that section, see the note "Annual rate fund contribution", *supra*.

**Sub-s. (3).**

**Consolidated Fund.** This fund was established under s. 1 of the Consolidated Fund Act, 1816 (21 Halsbury's Statutes (2nd Edn.) 31); see also, in particular, the Finance Act, 1954, s. 34 (3) (86 Statutes Supp. 70; 34 Halsbury's Statutes (2nd Edn.) 736).

**Loans . . . to defray . . . expenses.** Cf. the powers of local authorities, etc., mentioned in the General Note, *supra*.

**Sub-s. (4).**

**Building Materials and Housing Act, 1945, s. 1 (1).** 34 Statutes Supp. 37; 11 Halsbury's Statutes (2nd Edn.) 639.

**Sub-s. (6).**

**National Loans Act, 1939.** 2 Statutes Supp. 23; 21 Halsbury's Statutes (2nd Edn.) 1232.

**Sub-s. (7).**

**Financial year.** *I.e.*, the twelve months ending on the 31st March; see the Interpretation Act, 1889, s. 22 (24 Halsbury's Statutes (2nd Edn.) 222).

**Comptroller and Auditor General.** The Comptroller and Auditor General is appointed under s. 6 of the Exchequer and Audit Departments Act, 1866 (21 Halsbury's Statutes (2nd Edn.) 207), and holds office in accordance with s. 3 of that Act.

**Lay . . . before Parliament.** For meaning, see the Laying of Documents before Parliament (Interpretation) Act, 1948, s. 1 (1) (56 Statutes Supp. 293; 24 Halsbury's Statutes (2nd Edn.) 448).

### *Power to reduce or withhold certain grants*

**18. Powers with respect to grants for housing provided by local authorities.—**(1) If at any time the Minister is satisfied that a local authority—

(a) have failed to discharge any of the duties imposed on them by virtue of the principal Act or this Act, or

- (b) have failed to observe any condition subject to which they are entitled to receive an exchequer payment,

the Minister may reduce the amount of any exchequer payment payable to the local authority, or suspend or discontinue the payment of any such exchequer payment, as he thinks just.

(2) If any house, building, land or dwelling in respect of which a local authority are required by this Act to keep a Housing Revenue Account is with the consent of the Minister sold by them or leased by them under section one hundred and four or section one hundred and five of the principal Act, he may reduce the amount of any exchequer payment payable to the authority, or suspend or discontinue the payment of any such exchequer payment, as he thinks just.

(3) Subsection (1) of section one hundred and eighty-one and section one hundred and eighty-two of the principal Act (which relate to powers exercisable by the Minister) shall apply as if references therein to that Act included references to this section.

(4) In this section "exchequer payment" has the meaning assigned to it by subsection (2) of section fifty-eight of this Act.

#### NOTES

**History.** Sub-s. (1) of this section contains provisions formerly in s. 113 of the Housing Act, 1936; that section related to "exchequer contributions", as defined in s. 188 (1) of that Act, under the provisions of the relevant statutes from 1919 to 1936 now listed in the definition of "exchequer payment" in s. 58 (2), *post*. It was extended, by the effect of later statutes, to apply to exchequer contributions or subsidies under the further provisions now listed in s. 58 (2), *post* (or under the provisions now replaced by those so listed). Sub-s. (2) contains provisions formerly in s. 86 of the Act of 1936, as extended by s. 3 (5) of the Housing Act, 1952 (so as to cover leases, as well as sales, under s. 79 of the Act of 1936, as amended, and now replaced by ss. 103 and 104 of the Housing Act, 1957, Book I, *ante*), and as amended by s. 12 (4) of, and Part I of the Third Schedule to, the Housing Subsidies Act, 1956. The scope of s. 86, like that of s. 113, of the Act of 1936 had been extended by later statutes relating to exchequer contributions or subsidies; and also by provisions extending the scope of the Housing Revenue Account (see now s. 50, *post*). The Act of 1956 repealed so much of s. 86 of the Act of 1936 as gave the Minister power to reduce the contributions formerly payable by the authority, *i.e.*, the various forms of rate fund contributions listed in the Eighth Schedule to the Act of 1936 (repealed); the surviving provisions of s. 86 are now distributed between s. 106 of the Act of 1957 (Book I, *ante*) and sub-s. (2), *supra*. Sub-s. (3) applies ss. 181 (1) and 182 of the Act of 1957, *i.e.*, the provisions formerly in ss. 178 (1) and 180 of the Act of 1936, as to local inquiries and arrangements with other government departments. Sub-s. (4) is new in form, and takes account, by reference to the definition of "exchequer payment" in s. 58 (2), *post*, of exchequer contributions, or subsidies, under certain relevant enactments passed after the Act of 1936, as well as of those referred to in that Act.

**General Note.** This section enables the Minister to reduce, suspend or discontinue, exchequer contributions and subsidies payable to a local authority on default of the local authority (sub-s. (1), *supra*), or when a house, building, land or dwelling within the Housing Revenue Account, kept under s. 50, *post*, is sold, or is leased under s. 104 or 105 of the Housing Act, 1957 (Book I, *ante*) (sub-s. (2), *supra*). The contributions and subsidies which may be so withheld are those payable to the local authority in respect of houses provided, or improved, etc., by the authority themselves, *i.e.*, those coming within the definition of "exchequer payment" in s. 58 (2), *post*. Almost all of these payments come also with s. 28, *post*, as to the time, manner and conditions of payment. Certain consequential provisions, where the Minister exercises his powers under the present section, are contained in s. 24, *post* (county council contributions in respect of agricultural and similar dwellings).

Other powers, in relation to exchequer contributions and subsidies not coming within the present section, are conferred by other sections of this Act. These relate mainly to:—

- (i) defaults by development corporations and housing associations in giving effect to arrangements for the provision or improvement of houses and dwellings; see s. 12 (2), *ante*, and ss. 19 (1), 20 (1), and 22 (1), *post*.
- (ii) cases where houses are not available as dwellings fit for human habitation; see ss. 19 (2), 20 (3), 46 (4) and 48 (2), *post*, and cf. s. 14 of the Housing (Financial and Miscellaneous Provisions) Act, 1946, from which these provisions are derived and which now remains in force only in connection with the Housing (Rural Workers) Act, 1926 (cf. the Introduction to the Housing Act, 1957, at pp. 25 and 28, *ante*);

- (iii) cases where houses are transferred to or become vested in the local authority; see ss. 19 (3), 21, 22 (2) and (3), 46 (5) and 48 (3), *post*;
- (iv) cases where special conditions are not complied with; see ss. 20 (2) and 48 (1), *post*.

**Sub-s. (1).**

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Satisfied.** See the note to s. 1 (3), *ante*. It appears that the Minister may satisfy himself under this subsection that a local authority are in default on any evidence before him, but doubtless he will, before taking so drastic a step, give the local authority alleged to be in default every opportunity of rebutting the charges brought against it, and for this purpose exercise, if necessary, his power (under s. 181 (1) of the Housing Act, 1957 (Book I, *ante*), as applied by sub-s. (3), *supra*) to hold a local inquiry into the matter.

As to powers exercisable on the default of a local authority, see, generally, the Housing Act, 1957, ss. 171–177 (Book I, *ante*); ss. 171–176 of the Act of 1957 are applied for the purposes of the present Act by s. 55 (1), *post*. As to orders under s. 171 or 173 of the Act of 1957 transferring powers to county councils, see s. 25 (2), *post*.

**Local authority.** For meaning, see s. 29 (1), *post*.

**Condition subject to which they are entitled to receive an exchequer payment.** “Exchequer payment” is defined by s. 58 (2), *post* (see sub-s. (4), *supra*). By s. 28, *post*, payments to be made by the Minister to a local authority under this Act or certain other Acts are payable subject to such conditions as to records, certificates, audit or otherwise as the Minister may, with the approval of the Treasury, impose.

**Minister may reduce the amount, etc.** See also s. 24, *post*, as to the withdrawal of county council contributions to councils of county districts where the Minister exercises his powers, under sub-s. (1), *supra*, on certain grounds.

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *post*.

**Sub-s. (2).**

**House . . . in respect of which a local authority are required . . . to keep a Housing Revenue Account.** The houses, buildings, land and dwellings referred to are those which are listed in s. 50 (1), *post*. For the meanings of “dwelling” and “house”, see, respectively, ss. 29 (1) and 58 (1), *post*.

**Principal Act.** Sections 104 and 105 of the Housing Act, 1957 (Book I, *ante*), contain powers of disposing of land held for the purposes of Part V of that Act; see also the note “History”, *supra*.

**Sub-s. (3).**

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *post*. Under s. 181 (1) of that Act the Minister may cause local inquiries to be held for the purpose of the execution of his powers and duties under the Act, and by s. 182 he may make arrangements with any other government department for the exercise by that department of any of his duties and powers under the Act of 1957. Sections 181 (1) and 182 are also applied by s. 55 (2), *post*, for the purposes of Part III of this Act.

**19. Provisions with respect to grants for houses provided by development corporations.—**(1) If the Minister is satisfied that a development corporation have made default in giving effect to the terms of any authorised arrangements made with a local authority—

- (a) he may reduce the amount of any subsidy or contribution payable to the corporation in respect of houses provided under authorised arrangements by the corporation, or suspend or discontinue the payment of any such subsidy or contribution, as he thinks just, and
- (b) the local authority may reduce to a proportionate or any less extent the annual grant payable by them to the corporation, or may suspend the payment thereof for a corresponding period, or may discontinue the payment thereof, as the case may be.

(2) No annual grant shall be made to a development corporation by a local authority in respect of a house provided under authorised arrangements if, before the grant is made, the Minister is satisfied that, during the whole or the greater part of the period to which the payment is referable, the house has not been available as a dwelling fit for habitation and where the duty of a local authority to make an annual grant is wholly or partly discharged by virtue of this subsection, the Minister may make such consequential reductions as he thinks appropriate in any sum payable by him to the local authority:

Provided that this subsection shall not apply if the Minister is satisfied that the house could not with reasonable diligence have been made available, during the whole or the greater part of the period to which the grant is referable, as a dwelling fit for habitation.

Any question under this subsection as to the period to which a grant is referable shall be determined by the Minister.

(3) Where, in pursuance of any agreement or order made under the New Towns Act, 1946, a house provided by a development corporation, being a house in respect of which a subsidy or contribution is for the time being payable under section one of this Act, subsection (3) of section ninety-four of the Housing Act, 1936, or subsection (2) of section eight of the New Towns Act, 1946, is transferred to a local authority, then—

- (a) the subsidy or contribution shall cease to be payable, and
- (b) the Minister may, if he thinks fit, pay to the local authority sums not exceeding the subsidies or contributions which would be payable in respect of the house if it had not been so transferred.

### NOTES

**History.** Sub-s. (1) of this section contains provisions formerly in s. 94 (3) and (4) of the Housing Act, 1936, as extended by s. 8 (1) of the New Towns Act, 1946, and by s. 12 (3) of, and para. 4 of the First Schedule to, the Housing Subsidies Act, 1956. Sub-s. (2) contains provisions formerly in s. 14 (1) and (2) of, and the Second Schedule to, the Housing (Financial and Miscellaneous Provisions) Act, 1946, as extended by s. 8 (1) of the New Towns Act, 1946, and by s. 12 (3) of, and para. 7 of the First Schedule to, the Act of 1956. Sub-s. (3) contains provisions formerly in s. 8 (3) of the New Towns Act, 1946, as extended by s. 12 (3) of, and para. 10 of the First Schedule to, the Act of 1956.

**General Note.** Sub-ss. (1) and (2), *supra*, relate to the withholding, etc., of subsidies, contributions, and grants, in respect of development corporation houses provided under "authorised arrangements"; sub-s. (3) relates both to such houses and also to houses where subsidies or contributions are paid direct to the corporation. For comparable provisions, see the General Notes to s. 18, *ante*, and to s. 20, *post*.

#### Sub-s. (1).

**Minister; house.** For definitions, see s. 58 (1), *post*.

**Satisfied.** See the note to s. 1 (3), *ante*.

**Development corporation.** For meaning, see (by virtue of s. 58 (1), *post*) the Housing Act, 1957, s. 189 (1) (Book I, *ante*).

**Authorised arrangements.** Defined in s. 29 (2), *post*; cf. the notes to s. 120 of the Housing Act, 1957 (Book I, *ante*).

**Local authority.** For meaning, see s. 29 (1), *post*.

**Any subsidy or contribution, etc.; the annual grant, etc.** By virtue of s. 29 (2), *post*, the reference to any subsidy or contribution payable in respect of houses provided under "authorised arrangements" extends to subsidies payable under s. 1, *ante*, and to contributions payable under s. 94 (3) of the Housing Act, 1936 (repealed) (as extended by s. 8 (1) (repealed) of the New Towns Act, 1946), which continues to apply as respects houses which were the subject of arrangements made before 3rd November 1955 (cf. the General Note to s. 1, *ante*), and the reference to the annual grant payable in respect of such houses is to be similarly construed. As to contributions and grants under arrangements for improvements, see s. 12, *ante*; and as to hostels, see s. 22, *post*.

**Payable to the corporation.** It is clear that the first reference to "the corporation" in sub-s. (1) (a) should be a reference to the local authority. Cf. the wording of s. 12 (2), *ante*, of ss. 20 (1) (a) and 22 (1) (a), *post*; and of s. 94 (3) proviso (repealed) of the Housing Act, 1936. Under s. 1 (2) (b), *ante*, exchequer subsidies payable under this Part of the Act in respect of dwellings provided by a development corporation in pursuance of "authorised arrangements" with a local authority are to be paid to the local authority (who must pay to the corporation by way of annual grant an amount not less than the subsidy); and the same system applies, under s. 94 (3) (repealed with savings) of the Act of 1936, to exchequer contributions still payable thereunder.

#### Sub-s. (2).

**Dwelling.** For meaning, see s. 29 (1), *post*.

**Fit for habitation.** This expression was not defined in the Act of 1946 (from which this subsection is derived; see the note "History", *supra*). *Semble*, it has the same meaning as "fit for human habitation" and any question of fitness is accordingly to be determined (by virtue of s. 58 (3), *post*), in accordance with s. 4 (1) of the Housing Act, 1957 (Book I, *ante*).

**Sub-s. (3).**

**In pursuance of any agreement or order.** This refers to an agreement made under s. 14 of the New Towns Act, 1946 (25 Halsbury's Statutes (2nd Edn.) 441), transferring any part of the undertaking of a development corporation, or an order under s. 15 of that Act providing for the winding up of a development corporation.

**Subsidy or contribution.** The subsidies payable in respect of dwellings provided by a development corporation under s. 1, *ante*, replacing the corresponding provisions of the Housing Subsidies Act, 1956, are either (i) paid direct to the corporation (see s. 1 (1) (b) and (2) (a), *ante*), or (ii) paid to the local authority and in effect passed on to the corporation by way of annual grant (see s. 1 (1) (c) and (2) (b), *ante*). Before the Act of 1956, exchequer contributions, and annual grants, were paid (i) directly under s. 8 (2) of the New Towns Act, 1946, or (ii) under s. 94 (3) and (4) of the Housing Act, 1936, as applied by s. 8 (1) of the New Towns Act, 1946. In either case the exchequer contributions were at the same rates as applied to houses provided by local authorities under the statutes then in force, *i.e.*, principally, the Housing (Financial and Miscellaneous Provisions) Act, 1946. Section 8 (3) of the New Towns Act, 1946, contained the provisions as to exchequer contributions now contained in the present subsection; it was extended to exchequer subsidies by the Act of 1956 (see the note "History", *supra*).

**Minister may . . . pay to the local authority.** As to the time, manner and conditions of payment, see s. 28, *post*.

**New Towns Act, 1946.** 25 Halsbury's Statutes (2nd Edn.) 427; for s. 8 (2), see 25 Halsbury's Statutes (2nd Edn.) 434. That section, which contained provisions mentioned in the note "Subsidy or contribution", *supra*, is repealed by s. 59 (1) and the Sixth Schedule, *post*, but note (in connection with s. 8 (1) and (2)) the savings for s. 94 of the Act of 1936, and s. 8 (2) of the Act of 1946, in s. 59 (4), *post*, and (as to s. 8 (3)) the general savings in s. 59 (2) and (3).

**Housing Act, 1936, s. 94 (3).** 11 Halsbury's Statutes (2nd Edn.) 535. Section 94 of the Housing Act, 1936, was applied to development corporations by s. 8 (1) of the New Towns Act, 1946. As so applied, s. 94 of the Act of 1936 is now replaced by ss. 120 and 125 of the Housing Act, 1957 (Book I, *ante*), and by sub-s. (1), *supra*; and is repealed, in part, by the Act of 1957, and, as to the remainder, *i.e.*, s. 94 (3) and (4), by s. 59 (1) and the Sixth Schedule, *post*, subject to the savings in s. 59 (4).

**20. Powers with respect to grants for housing provided by housing associations.**—(1) If the Minister is satisfied that a housing association have made default in giving effect to the terms of any authorised arrangements made with a local authority,—

- (a) he may reduce the amount of any subsidy or contribution payable to the local authority in respect of houses provided under authorised arrangements by the housing association, or suspend or discontinue the payment of any such subsidy or contribution, as he thinks just, and
  - (b) the local authority may reduce to a proportionate or any less extent the annual grant payable by them to the housing association, or may suspend the payment thereof for a corresponding period, or may discontinue the payment thereof, as the case may be.
- (2) If in the case of a house—
- (a) which has been provided by a housing association, and
  - (b) in respect of which contributions are payable by the Minister under the Housing (Financial Provisions) Act, 1924, or section twenty-nine of the Housing Act, 1930,

the Minister is satisfied that any of the conditions set out in paragraph 1, or, as the case may be, paragraph 2 of the Second Schedule to this Act, has not been complied with, any contribution payable in respect of the house may be discontinued, or the amount thereof may be reduced, and the duration thereof may be curtailed, as the Minister thinks just.

(3) No payment shall be made to a housing association or housing trust—

- (a) by a local authority by way of annual grant in respect of a house provided under authorised arrangements, or
- (b) by the Minister by way of contribution under section nineteen of the Housing, Town Planning, &c., Act, 1919, or section three of the

Housing, &c., Act, 1923, in respect of a house provided under either of those sections,

if, before the payment is made, the Minister is satisfied that, during the whole or the greater part of the period to which the payment is referable, the house has not been available as a dwelling fit for habitation and where the duty of a local authority to make an annual grant is wholly or partly discharged by virtue of this subsection, the Minister may make such consequential reductions as he thinks appropriate in any sum payable by him to the local authority:

Provided that this subsection shall not apply if the Minister is satisfied that the house could not with reasonable diligence have been made available, during the whole or the greater part of the period to which the grant is referable, as a dwelling fit for habitation.

Any question under this subsection as to the period to which any payment is referable shall be determined by the Minister.

(4) This section shall have effect subject to the provisions of any scheme under section one hundred and twenty-three of the principal Act (which authorises the unification of the conditions to be observed by a housing association in respect of houses provided by them under different enactments).

#### NOTES

**History.** Sub-s. (1) of this section contains provisions formerly in s. 94 (3) and (4) of the Housing Act, 1936, as extended by s. 12 (3) of, and para. 4 of the First Schedule to, the Housing Subsidies Act, 1956. Sub-s. (2) contains provisions formerly in s. 3 (4) of the Housing (Financial Provisions) Act, 1924, and s. 27 (3) of the Housing Act, 1930. Sub-s. (3) contains provisions formerly in s. 14 (1) and (2) of, and the Second Schedule to, the Housing (Financial and Miscellaneous Provisions) Act, 1946, as extended by s. 12 (3) of, and para. 7 of the First Schedule to, the Act of 1956. So far as s. 14 of, and the Second Schedule to, the Act of 1946 related to payments by local authorities, and by the Minister to such authorities, under s. 3 of the Housing (Financial Provisions) Act, 1938, or to such payments under s. 2 of the Housing, etc., Act, 1923 read with ss. 2 and 3 of the Housing (Financial Provisions) Act, 1924, these provisions are now re-enacted in ss. 46 (4) and 48 (2), *post*; note also that those provisions of the Act of 1946 are not repealed by this Act so far as they relate to ss. 1 and 2 of the Housing (Rural Workers) Act, 1926. Sub-s. (4) is new in form, and is a saving for the power to unify conditions effecting housing association houses, first introduced by the Housing Act, 1935, and now contained in s. 123 of the Housing Act, 1957 (Book I, *ante*).

**General Note.** This section and s. 21, *post*, contain powers of withholding (*i.e.*, reducing, suspending, discontinuing, curtailing, etc.), or in some cases of continuing, various subsidies, contributions, grants and other payments in respect of housing provided by housing associations, or, in some cases, by housing trusts. The powers are exercisable in the four types of circumstances mentioned at the end of the General Note to s. 18, *ante*.

As the provisions are more complex than those applying to development corporations, under s. 19, *ante*, it may be convenient to note the enactments under which the payments referred to in this section, and s. 21, *post*, are payable. References to these enactments will be found in the Introduction to the Housing Act, 1957 (Book I, *ante*), at pp. 4 and 24 *et seq.*, and in the notes to s. 120 of that Act, as well as in the notes, *infra*, to the present section.

- (1) Section 19 of the Housing, Town Planning, etc., Act, 1919 (contributions by the Minister towards schemes by public utility societies and housing trusts; cf. s. 7 of that Act as to the schemes of local authorities, county councils, etc.). The Public Utility Society Regulations, 1925 (S.R. & O. 1925 No. 237), made under s. 19, and revoking earlier regulations under that section, are printed in *Hill's Complete Law of Housing* (4th Edn.), pp. 473-478. The relevant provisions of this Act were amended by the Housing (Additional Powers) Act, 1919 and by the Housing, etc., Act, 1923, and were repealed by s. 6 of the Act of 1923, with savings. These contributions are affected by sub-s. (3), *supra*.
- (2) Section 3 of the Housing, etc., Act, 1923 as originally enacted (contributions by the Minister to non-profit-making societies, bodies of trustees and companies; cf. s. 1 of that Act as to contributions to local authorities, and s. 2 as to grants by local authorities to promote house-building). The relevant provisions were extended by s. 1 of the Housing (Financial Provisions) Act, 1924, and affected by the Housing Acts (Revision of Contributions) Orders of 1926 and 1928, and the Housing (Revision of Contributions) Act, 1929, and are now formally repealed by s. 59 and the Sixth Schedule, *post*, with the savings mentioned in s. 59 (4). These contributions are affected by sub-s. (3), *supra*, and s. 21 (3), *post*, if still payable (the 20-year period mentioned in s. 1 of the

Act of 1923, as originally enacted, would appear to have expired; but cf. the reference to s. 1 (1) (b), as originally enacted, in s. 58 (2), *post*.

- (3) Section 3 of the Act of 1923 (*supra*), as amended by s. 2 of the Housing (Financial Provisions) Act, 1924 (contributions by the Minister at a higher rate and for a longer period in respect of houses subject to the special conditions in s. 3 of the Act of 1924; similar provision was made for local authority houses). By s. 3 (4) of the Act of 1924, these contributions might be discontinued, etc., as now provided by sub-s. (2), *supra*; they were excluded, in respect of houses the provision of which was not proposed before 7th December 1932, by the Housing (Financial Provisions) Act, 1933 (repealed). These contributions are now affected by sub-s. (2), *supra*, as well as by sub-s. (3), and s. 21 (3), *post*, and the conditions to be observed are set out in para. 1 of the Second Schedule, *post*.
- (4) Section 29 of the Housing Act, 1930 (contributions by the Minister to the local authority under s. 29 (3), and annual grants by the local authority under s. 29 (1), in respect of houses provided for certain purposes by public utility societies, etc., *i.e.*, the same bodies as mentioned in s. 3 of the Act of 1923, *supra*, under arrangements with the local authority). The contributions were at the same rate and subject to the same conditions as exchequer contributions under s. 26 of that Act for houses provided by the local authority, and, in particular, the special conditions in s. 27 were adapted and applied. Section 29 of the Act of 1930 was repealed with savings by s. 27 (6) of the Housing Act, 1935; and s. 27 of the Act of 1930 is repealed by s. 59 and the Sixth Schedule, *post*. The conditions to be observed are set out in para. 2 of the Second Schedule, *post*. Arrangements under s. 29 of the Act of 1930 are apparently not within the definition of "authorised arrangements" in s. 29 (2), *post*. Contributions and grants are affected by sub-s. (2), *supra*, and s. 21 (2), *post*.
- (5) Section 27 of the Housing Act, 1935 (contributions by the Minister to the local authority, and annual grants by the local authority, in respect of houses provided by a housing association under arrangements with the local authority). The relevant provisions were repealed by the Housing Act, 1936, and re-enacted in s. 94 (1)–(4) and (6) of that Act. It seems that, by virtue of s. 189 (2) of that Act, contributions and payments under s. 27 of the Act of 1935 were thereafter regarded as payable under s. 94 (3) of the Act of 1936, and as being liable to be reduced, suspended or discontinued under s. 94 (3) and (4) of that Act. It is submitted that a similar interpretation should be placed on s. 29 (2), *post*. That subsection defines "authorised arrangements" by reference to s. 120 of the Housing Act, 1957 (Book I, *ante*), but that reference, as appears from s. 29 (2) itself, is intended to include a reference to s. 94 of the Act of 1936, and, it is submitted, to s. 27 of the Act of 1935. Accordingly arrangements under s. 27 of the Act of 1935 are "authorised arrangements" for the purposes of sub-ss. (1) and (3) (a), *supra*, and s. 21 (1), *post*, and contributions and annual grants thereunder are within those provisions.
- (6) Section 94 of the Housing Act, 1936 (contributions by the Minister to the local authority, and annual grants by the local authority, in respect of houses provided by a housing association under arrangements with the local authority). As originally enacted these provisions reproduced those of the Act of 1935 (*supra*); their scope was extended in turn by s. 8 of the Housing (Financial Provisions) Act, 1938, and s. 1 of, and the First Schedule to, the Housing Act, 1949, which altered the scope of arrangements under s. 94 of the Act of 1936. The rates of contribution, and grant, followed those for the time being applicable to houses provided by local authorities under ss. 105, *et seq.*, of the Act of 1936, or under the Act of 1938, or under the Housing (Financial and Miscellaneous Provisions) Act, 1946, or under the Act of 1946 as subsequently amended (cf. the General Note to s. 1, *ante*). They were excluded by s. 1 (3) of the Housing Subsidies Act, 1956, as mentioned in the note "History" to s. 1, *ante*. Arrangements under s. 94 of the Act of 1936 are "authorised arrangements": see s. 29 (2), and cf. s. 60, *post*, and references to contributions and grants are to be construed in accordance with s. 29 (2). These payments are therefore affected by sub-ss. (1) and (3) (a), *supra*, and s. 21 (1), *post*.
- (7) Section 1, *ante*, replacing the corresponding provisions of the Housing Subsidies Act, 1956 (subsidies by the Minister to the local authority, and annual grants by the local authority, in respect of dwellings provided by a housing association under "authorised arrangements" as defined in s. 11 (2) (repealed) of the Act of 1956, and now in s. 29 (2), *post*, *i.e.*, arrangements under s. 94 of the Act of 1936, or now under s. 120 of the Housing Act, 1957 (Book I, *ante*)). These subsidies and grants relate to dwellings provided under arrangements made on or after 3rd November 1955; see s. 1 (1) (c), (2) (b) and (3) (b) and proviso (ii), *ante*. Sub-s. (1), *supra*, replaces s. 94 (3) and (4) of the Act of 1936 (as extended to such dwellings, subsidies and grants by s. 12 (3) of, and para. 4 of the First Schedule to, the Act of 1956); and sub-s. (3), *supra*, and s. 21 (1), *post*, also apply.

References above to "authorised arrangements" do not include arrangements for the improvement, etc., of dwellings under s. 31 (repealed) of the Housing Act, 1949, now replaced by s. 121 of the Housing Act, 1957 (Book I, *ante*), and s. 12 of the present Act, *ante*. For the special provisions as to hostels, formerly contained in s. 40 of the Act of 1949, see s. 15, *ante*, and s. 22, *post*. Certain provisions affecting housing associations in earlier Acts, e.g., s. 11 of the Housing (Financial and Miscellaneous Provisions) Act, 1946 (which is understood to have related only to one particular Association), are repealed by s. 59 and the Sixth Schedule, *post*, subject to the savings in s. 59 (4).

In the case of houses, etc., provided by local authorities themselves, the enactments corresponding to those listed above are set out in the definition of "exchequer payment" in s. 58 (2), *post*; powers to reduce, suspend and discontinue payments are contained in s. 18, *ante*, and the time, manner and conditions of payment are governed by s. 28, *post*.

**Sub-s. (1).**

**Minister; house.** For definitions, see s. 58 (1), *post*.

**Satisfied.** See the note to s. 1 (3), *ante*.

**Housing association.** For meaning, see (by virtue of s. 58 (1), *post*), the Housing Act, 1957, s. 189 (1) (Book I, *ante*).

**Authorised arrangements.** See the General Note, *supra*, and the definition in s. 29 (2), *post*.

**Local authority.** For meaning, see s. 29 (1), *post*.

**Any subsidy or contribution; the annual grant.** By virtue of s. 29 (2), *post*, the reference to any subsidy or contribution in respect of a house provided under "authorised arrangements" is to be construed as a reference to a subsidy under s. 1, *ante* (and this reference, by virtue of s. 60, *post*, includes a reference to s. 1 of the Housing Subsidies Act, 1956) or a contribution under s. 94 of the Housing Act, 1936 (which appears to include the corresponding provision of the Housing Act, 1935; see the General Note, *supra*); and reference to any annual grant is to be similarly construed. Subject to s. 1 (3) proviso (ii), *ante*, the "contributions" under the Act of 1936 are payable in respect of houses provided under arrangements made before 3rd November 1955 and the "subsidies" under s. 1, *ante*, are payable in respect of houses provided under arrangements made on or after that date; see the General Note, *supra*, and the notes to s. 1, *ante*.

**Sub-s. (2).**

**Housing (Financial Provisions) Act, 1924.** 11 Halsbury's Statutes (2nd Edn.) 411. This Act, which amended and extended the financial provisions of the Housing, etc., Act, 1923 (11 Halsbury's Statutes (2nd Edn.) 401), as mentioned in the General Note, *supra*, is largely repealed by s. 59 (1) and the Sixth Schedule, *post*, but existing obligations to make contributions continue by virtue of s. 59 (4), *post*.

**Housing Act, 1930, s. 29.** The effect of this section is mentioned in the General Note, *supra*; it was repealed by ss. 27 (6) and 99 of, and the Seventh Schedule to, the Housing Act, 1935, with a saving for any liability under any undertaking to make payments given before 2nd August 1935.

**Sub-s. (3).**

**Housing trust.** For meaning, see (by virtue of s. 58 (1), *post*) the Housing Act, 1957, s. 189 (1) (Book I, *ante*).

**Dwelling.** For meaning, see s. 29 (1), *post*.

**Fit for habitation.** See the note to s. 19 (2), *ante*.

**Housing, Town Planning, etc., Act, 1919, s. 19.** 11 Halsbury's Statutes (2nd Edn.) 396; and see the reference to that section in the General Note, *supra*. The section was repealed by ss. 6 (1) and 24 (1) of, and the Third Schedule to, the Housing, etc., Act, 1923 (11 Halsbury's Statutes (2nd Edn.) 408, 409, 410), with a saving for the liability of the Minister to make payments which he had already undertaken to pay.

**Housing, etc., Act, 1923, s. 3.** 11 Halsbury's Statutes (2nd Edn.) 407; and see the references to that section, as originally enacted and as amended by s. 2 of the Act of 1924, in the General Note, *supra*. The section is repealed by s. 59 (1) and the Sixth Schedule, *post*, but existing obligations to make contributions continue by virtue of s. 59 (4), *post*.

**Sub-s. (4).**

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *post*.

**21. Effect on contributions of a house provided by a housing association vesting in a local authority.—(1)** Where a house which has been provided by a housing association under authorised arrangements with a local authority becomes vested in that local authority—

(a) no further subsidy or contribution or annual grant shall, after the time of the vesting, become payable by the Minister or, as the case may be, by the authority in respect of the house, and

- (b) the Minister may, if he thinks fit, pay to the authority a sum equivalent to any subsidy or contribution which would, after the said time, become payable to the authority in respect of the house if all conditions precedent to the payment of that subsidy or contribution had been at all material times observed.

(2) Where a house which has, with the assistance of a local authority given under section twenty-nine of the Housing Act, 1930, been provided by a housing association becomes vested in the local authority, then, if at the time of the vesting the house is a house in respect of which a contribution is payable by the Minister under subsection (3) of the said section twenty-nine the Minister may continue to make payments by way of that contribution as if the house had been provided by the local authority.

(3) Where a house which has, with the assistance of the Minister given under section three of the Housing, &c. Act, 1923, been provided by a housing association becomes vested in a local authority then, if at the time of the vesting the house is a house in respect of which a contribution is payable by the Minister under that section, the Minister may pay to the authority any contribution which would have fallen to be made thereunder to the housing association if the house had not become vested in the local authority and if all conditions precedent to the making of that contribution had been fulfilled.

#### NOTES

**History.** Sub-s. (1) of this section contains provisions formerly in s. 15 (1) of the Housing (Financial and Miscellaneous Provisions) Act, 1946, as extended by s. 12 (3) of, and para. 8 of the First Schedule to, the Housing Subsidies Act, 1956. For provisions formerly contained in ss. 15 (2) and 21 (1) of the Act of 1946, relating respectively to the vesting in the local authority of certain agricultural housing accommodation, and to the inclusion of certain houses in the Housing Revenue Account on their vesting in the local authority by reason of defaults, see ss. 46 (5) and 50 (2), *post*. Sub-ss. (2) and (3) contain provisions formerly in s. 42 (1) and (2), respectively, of the Housing Act, 1949. So much of s. 42 (1) of that Act as related to the continuation of contributions under s. 1 of the Housing, etc., Act, 1923, where a house provided by a person, other than the local authority, with the financial assistance of the authority under s. 2 of that Act, becomes vested in the authority, is now re-enacted in s. 48 (3), *post*. The earlier and narrower power, in s. 9 of the Housing (Financial Provisions) Act, 1938, was excluded by s. 42 (3) of the Act of 1949 except in respect of houses which had become vested before 30th July 1949; the repeal of s. 9 of the Act of 1938 by s. 59 and the Sixth Schedule, *post*, is subject to the savings in s. 59 (4) for existing obligations.

**General Note.** This section empowers the Minister to continue to pay certain subsidies or contributions in respect of houses which were provided by a housing association but have become vested in a local authority. The financial provisions relating to houses provided by housing associations have varied from time to time; see the General Note to s. 20, *ante*. Accordingly sub-ss. (1) to (3), *supra*, are in differing terms. Sub-s. (3), in effect, diverts to a local authority, *i.e.*, any local authority in which the house has become vested (for whatever reason), the contribution which would otherwise be payable by the Minister direct to the housing association under s. 3 of the Act of 1923. Sub-s. (2) relates to a house provided under arrangements with a local authority under s. 29 (1) and (2) of the Act of 1930, and enables the Minister to replace his contribution under s. 29 (3) of that Act, on the vesting of the house (for whatever reason) in that authority, by the contribution he would have made if the house had been provided by that authority. Sub-s. (1) relates to a house provided under "authorised arrangements" with a local authority; such arrangements appear to include those made under s. 27 of the Housing Act, 1935, as well as those under the later Acts (see the General Note to s. 20, *ante*). Where the house vests in the local authority in question (for whatever reason) no further subsidy or contribution is payable by the Minister to that authority, and no further grant is payable by the authority to the association; but a sum equal to the subsidy or contribution may be paid to the authority by the Minister.

#### Sub-s. (1).

**House; the Minister.** For definitions, see s. 58 (1), *post*.

**Housing association.** For meaning, see (by virtue of s. 58 (1), *post*) the Housing Act, 1957, s. 189 (1) (Book I, *ante*).

**Authorised arrangements.** Defined in s. 29 (2), *post*; and see the General Note to s. 20, *ante*.

**Local authority.** For meaning, see s. 29 (1), *post*.

**Subsidy or contribution or annual grant.** References to any subsidy, contribution or annual grant are to be construed in accordance with s. 29 (2), *post*. See further the note to similar words in s. 20 (1), *ante*.

**Minister may . . . pay to the authority, etc.** Payments by the Minister to a local authority under this subsection, or sub-ss. (2) and (3), *supra*, are within the definition of "exchequer payment" in s. 58 (2), *post*. The payments may be reduced, suspended or discontinued on default by the authority, etc., under s. 18, *ante*, and the time, manner and conditions of payment are governed by s. 28, *post*.

**Sub-s. (2).**

**Housing Act, 1930, s. 29.** See the note to s. 20 (2), *ante*.

**Sub-s. (3).**

**Housing, etc., Act, 1923, s. 3.** See the note to s. 20 (3), *ante*.

**22. Provisions with respect to grants for hostels.**—(1) If the Minister is satisfied that a development corporation or housing association have made default in giving effect to the terms of authorised arrangements for providing or converting a building for use as a hostel—

- (a) he may reduce the amount of the contributions payable to the local authority under section fifteen of this Act, or suspend or discontinue the payment thereof, as he thinks just, and
- (b) the local authority may reduce to a proportionate or less extent the annual grant payable by them to the corporation or association, or may suspend the payment thereof for a corresponding period, or may discontinue the payment thereof, as the case may be.

(2) Where, in pursuance of any agreement or order made under the New Towns Act, 1946, a building provided or converted by a development corporation for use as a hostel, being a building in respect of which a contribution is payable under section fifteen of this Act, is transferred to a local authority—

- (a) no further contributions shall, after the time of the transfer, be payable under that section, but
- (b) the Minister may, if he thinks fit, pay to the local authority sums not exceeding any sums which would, after that time, have become payable by him under that section in respect of the building if all conditions precedent to the payment of the sums had been fulfilled.

(3) Where a building which, under authorised arrangements with a local authority, has been provided or converted by a housing association for use as a hostel becomes vested in the local authority, and at the time of the vesting the building is one in respect of which a contribution is payable under subsection (2) of the said section fifteen—

- (a) no further sums shall, after the time of the vesting, become payable under that subsection, but
- (b) the Minister may, if he thinks fit, pay to the local authority sums not exceeding any sums which would, after that time, have become payable by him under that subsection in respect of the building if all conditions precedent to the payment of the sums had been fulfilled.

#### NOTES

**History.** Sub-s. (1) of this section contains provisions formerly in the proviso to s. 40 (2) of the Housing Act, 1949. Sub-ss. (2) and (3) contain provisions formerly in s. 40 (3) and (4), respectively, of the Act of 1949. Other provisions derived from s. 40 of the Act of 1949 are contained in s. 15, *ante*, and s. 50 (3), *post*.

**General Note.** This section provides for the withholding of contributions and grants for hostels on default of a development corporation or housing association (sub-s. (1)); and for their replacement by discretionary payments by the Minister to a local authority when a hostel is transferred to or vests in that authority (sub-ss. (2) and (3)).

**Sub-s. (1).**

**Minister; development corporation.** For definitions, see s. 58 (1), *post*.

**Satisfied.** See the note to s. 1 (3), *ante*.

**Housing association.** For meaning, see (by virtue of s. 58 (1), *post*) the Housing Act, 1957, s. 189 (1) (Book I, *ante*).

**Authorised arrangements.** Defined in s. 29 (2), *post*.

**Contributions; annual grant.** For meaning, in this section, see s. 15 (1) and (2), *ante* (as to contributions) and s. 15 (2) (as to annual grants).

**Hostel.** For the purposes of s. 15, *ante* (which authorises the payment of contributions and grants in respect of hostels), the expression "hostel" is defined in sub-s. (4) of that section. The same definition must clearly apply for the purposes of the present section.

**Local authority.** For meaning, see s. 29 (1), *post*.

**Sub-s. (2).**

**In pursuance of any agreement or order.** See the note to s. 19 (3), *ante*.

**Contribution.** See s. 15 (1), *ante*.

**Minister may . . . pay to the local authority.** As to the time, manner and conditions of payment, see s. 28, *post*. Hostels approved for the purposes of s. 15, *ante*, are excluded from the Housing Revenue Account by s. 50 (3), *post*. Payments under this section by the Minister to the local authority are not within the definition of "exchequer payment" in s. 58 (2), *post*.

**New Towns Act, 1946.** 25 Halsbury's Statutes (2nd Edn.) 427.

**Sub-s. (3).**

**No further sums . . . under that subsection.** *I.e.*, by way of contribution or annual grant, under s. 15 (2), *ante*.

### *Contributions by county councils for housing provided for agricultural population*

#### **23. Payment of contributions to councils of county districts.—**

Where exchequer subsidies increased under section five of this Act are payable in respect of any house to the council of a county district, the council of the county in which the district is situated shall, subject to the provisions of this Act, pay to the council of the district in respect of that house, for each of the sixty years following the completion of the house an annual contribution of two pounds ten shillings:

Provided that an order by the Minister under section two of this Act may direct that any such contribution shall be reduced to such amount as may be specified in the order.

#### **NOTES**

**History.** This section contains provisions formerly in s. 8 (1) of the Housing (Financial and Miscellaneous Provisions) Act, 1946, as amended by s. 1 (1) (d) of the Housing Act, 1952, and extended by ss. 4 (2) and 12 (3) of, and para. 6 of the First Schedule to, the Housing Subsidies Act, 1956. The Act of 1952 increased the rate of county council contributions from £1 10s. to £2 10s. The Act of 1956, by s. 4 (1), introduced the present provisions for increased exchequer subsidies for agricultural dwellings (now s. 5, *ante*), and by s. 4 (2) extended county council contributions, under the Act of 1946, to these cases, with the proviso reproduced, *supra*, from para. 6 of the First Schedule to that Act. (The effect of s. 4 (3) of the Act of 1956 is now contained in s. 8, *ante*.)

**General Note.** This section provides for county council contributions to the local authority when exchequer subsidies, for dwellings for the agricultural population of a county district, are payable at the increased rate under s. 5, *ante*, which replaces provisions formerly in s. 4 (1) of the Housing Subsidies Act, 1956. Such subsidies are payable in respect of dwellings provided by the local authority, or under authorised arrangements with the authority, when the authority's resolution was passed, or the arrangements were made, on or after 3rd November 1955; see s. 1 (3), *ante*.

Earlier statutes made provision for special exchequer contributions for agricultural dwellings, and for county council contributions. Reference may be made to s. 114 of the Housing Act, 1957 (Book I, *ante*), as to the duty to reserve a number of houses for the agricultural population and rural workers; to s. 18, *ante*, as to withholding exchequer payments payable by the Minister to a local authority; to s. 24, *post*, as to withdrawing county council contributions; and to para. 1 (1) (d) of the Fifth Schedule, *post*, as to crediting the Housing Revenue Account. The references in s. 114 of the Act of 1957 (Book I, *ante*), and in this Act, to s. 115 (2) and (3) of the Housing Act, 1936, may it seems include references to the enactments replaced thereby, namely s. 34 (2) and (3) of the Housing Act, 1930; see s. 189 (2) of the Act of 1936 (repealed), s. 192 of the Act of 1957, and s. 60, *post*. The repeal of the former enactments providing for county council contributions, by s. 59 and the Sixth Schedule, *post*, is subject to

the savings in s. 59 (4) for existing obligations to make payments under s. 115 of the Act of 1936, or s. 7 of the Housing (Financial Provisions) Act, 1938, or s. 8 of the Act of 1946. County council contributions under these enactments are still payable at the old rates.

Earlier statutes also provided more general powers for county councils to contribute voluntarily to district councils; see s. 115 (4) of the Act of 1936, and s. 8 (2) and (3) of the Act of 1946, which were repealed by the Local Government Act, 1948, s. 147 and Second Schedule, Part V. They were replaced by s. 126 of that Act (52 Statutes Supp. 339; 14 Halsbury's Statutes (2nd Edn.) 672), as from 24th March 1948. That section was amended by the Housing Subsidies Act, 1956 (repealing a reference, in s. 126 (3), to adjustments of the former rate fund contributions) (and see s. 59 and the Sixth Schedule, *post*; and para. 1 (1) (e) of the Fifth Schedule, *post*), and it was repealed as from 23rd July 1958 by ss. 56 (1) and 67 of, and Part I of the Ninth Schedule to, the Local Government Act, 1958. Section 56 (1) of the Act of 1958 provides that a county council may make any contribution the council think fit to expenditure of the council of a county district in the county, and s. 56 (3) of that Act provides that where an amount equal to the expenditure to which any contribution is made under s. 56 (1) falls to be debited to the Housing Revenue Account of the council of the county district, that council shall carry to the credit of the account, in addition to the amounts which they are required to carry to its credit under s. 129 of the Housing Act, 1936 (see now the Fifth Schedule, para. 1, *post*), an amount equal to the contribution under s. 56 (1) of the Act of 1958.

**House.** For definition, see s. 58 (1), *post*. In s. 5, *ante*, the expression used is "dwelling" (as defined in s. 29 (1), *post*). The two definitions are similar, but the latter contains provision for treating premises as one dwelling, although temporarily divided into two or more parts.

**County district.** *I.e.*, a non-county borough, urban district or rural district, see the Local Government Act, 1933, s. 1 (1) (14 Halsbury's Statutes (2nd Edn.) 361).

**Shall, subject to the provisions of this Act, pay.** As to the withdrawal of county council contributions, see s. 24, *infra*. Note also the general power to make contributions voluntarily under s. 56 of the Local Government Act, 1958, cited in the General Note, *supra*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

#### 24. Reduction or withdrawal of county council contributions.—

(1) Where, on the ground that the council of a county district have failed to discharge duties imposed on them by paragraphs (a) or (b) of subsection (1) of section one hundred and fourteen of the principal Act (which relate to the reservation of houses for the agricultural population), the Minister exercises his powers under section eighteen of this Act with respect to an exchequer subsidy increased under section five of this Act or to an annual exchequer contribution under the Housing (Financial and Miscellaneous Provisions) Act, 1946, so that either—

(a) the amount of the subsidy or contribution payable to the council in respect of a house for any year is reduced, or

(b) the subsidy or contribution which would otherwise have been payable to the council in respect of a house for any year is not payable,

no county council contribution shall be payable in respect of that house for that year under the last foregoing section or under the said Act of 1946.

(2) Where, on the ground that the council of a county district have failed to discharge the duties imposed on them by paragraph (c) of subsection (1) of section one hundred and fourteen of the principal Act, the Minister so exercises his powers under section eighteen of this Act that either—

(a) the amount of any contribution under section two of the Housing (Financial Provisions) Act, 1938, payable to the council for any year is reduced, or

(b) the contribution which would otherwise have been payable under the said section two to the council for any year is not payable,

the county council shall not be under any liability to make any contribution for that year under subsection (1) or (2) of section seven of the Housing (Financial Provisions) Act, 1938.

(3) Where, on the ground that the council of a county district have failed to discharge a duty imposed upon them by Part V of the principal Act to

reserve accommodation for members of the agricultural population or other persons the Minister so exercises his powers under section eighteen of this Act that either—

- (a) the amount of any exchequer payment payable to the council for any year is reduced, or
- (b) any such exchequer payment which would otherwise have been payable to the council for any year is not payable,

the county council shall not be under any liability to make any contribution for that year under section one hundred and fifteen of the Housing Act, 1936.

#### NOTES

**History.** Sub-s. (1) of this section contains provisions formerly in s. 19 (3) of the Housing (Financial and Miscellaneous Provisions) Act, 1946, as extended by s. 12 (3) of, and para. 9 of the First Schedule to, the Housing Subsidies Act, 1956. Sub-s. (2) contains provisions formerly in s. 7 (3) of the Housing (Financial Provisions) Act, 1938. Sub-s. (3) contains provisions formerly in s. 115 (5) of the Housing Act, 1936.

**General Note.** By s. 114 of the Housing Act, 1957 (Book I, *ante*) local authorities are required to secure the reservation of a number of houses or dwellings for the agricultural population or, under s. 114 (3), for rural workers. This obligation arises where increased exchequer subsidies are payable under s. 5, *ante*, which replaces provisions formerly in s. 4 (1) of the Housing Subsidies Act, 1956; or where special forms of exchequer contribution or county council contributions are payable under the repealed provisions of earlier Acts; or where financial assistance has been provided under the obsolescent Housing (Rural Workers) Act, 1926. In almost all these instances the local authority are entitled to an exchequer subsidy or contribution from the Minister and also to a contribution from the county council; but county council contributions alone may be payable under s. 115 (2) of the Housing Act, 1936, and no county council contributions, as such, are payable under the Act of 1926.

Exchequer subsidies and contributions payable by the Minister to a local authority in these cases are almost all within the definition of "exchequer payment" in s. 58 (2), *post*; and may therefore be reduced, suspended or discontinued by the Minister under s. 18, *ante*, if the local authority fail to discharge their duty under s. 114 of the Act of 1957. When the Minister exercises this power, the county council are relieved of their obligation to contribute, for the year in question, under s. 23, *ante*, or the relevant provisions of the earlier Acts.

Sub-ss. (2) and (3), *supra*, provide that in such circumstances the county council "shall not be under any liability to make any contribution" for that year under s. 7 (1) or (2) of the Housing (Financial Provisions) Act, 1938, or as the case may be, s. 115 of the Act of 1936. This wording should be compared with that of sub-s. (1), derived from the Housing (Financial and Miscellaneous Provisions) Act, 1946, which refers to the subsidy or contribution payable to the council "in respect of a house" and provides that no county council contribution shall be payable "in respect of that house".

The marginal note, in referring to the "Reduction or withdrawal" of county council contributions, may be misleading, as this section does not in any circumstances "reduce" such a contribution; presumably however the marginal note is intended to refer to the distinction in the wording of the subsections, mentioned above.

#### Sub-s. (1).

**County district.** *I.e.*, a non-county borough, urban district or rural district; see the Local Government Act, 1933, s. 1 (1) (14 Halsbury's Statutes (2nd Edn.) 361).

**Agricultural population.** This expression is defined in s. 114 (5) of the Housing Act, 1957 (Book I, *ante*), and that definition applies for the purposes of this Act by virtue of s. 58 (1), *post*.

**Minister; house.** For definitions, see s. 58 (1), *post*. See also, as to "house", s. 25 (2) of the Housing (Financial and Miscellaneous Provisions) Act, 1946, and cf. the definition of "dwelling" in s. 29 (1), *post*.

**Exchequer subsidy; exchequer contribution.** The reference to s. 5 of this Act, *ante*, will include a reference to s. 4 (1) of the Housing Subsidies Act, 1956, by virtue of s. 59 (3), *post*. The county council contribution is payable in such cases under s. 23, *ante*. The reference to an exchequer contribution under the Act of 1946, is to one of the "special standard amount" under s. 3 (1) of that Act; cf. the note to s. 114 (1) of the Housing Act, 1957 (Book I, *ante*); the county council contribution is payable in such cases under s. 8 (1) of the Act of 1946 (39 Statutes Supp. 44; 11 Halsbury's Statutes (2nd Edn.) 654). In connection with that Act, note also ss. 58 (2) and 59 (4), *post* (definition of "exchequer payment", and savings on repeal).

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *post*.

**Housing (Financial and Miscellaneous Provisions) Act, 1946.** 39 Statutes Supp. 38; 11 Halsbury's Statutes (2nd Edn.) 648. That Act is largely repealed by

s. 59 (1) and the Sixth Schedule, *post*, but existing obligations to make contributions thereunder continue by virtue of s. 59 (4), *post*.

**Sub-s. (2).**

**Housing (Financial Provisions) Act, 1938, ss. 2, 7 (1), (2).** 11 Halsbury's Statutes (2nd Edn.) 613, 617. The whole of that Act is repealed by s. 59 (1) and the Sixth Schedule, *post*, but existing obligations to make exchequer contributions under s. 2, and county council contributions under s. 7 (1) or (2), of that Act are saved by s. 59 (4), *post*. As to s. 2, cf. also the note to s. 114 (1) of the Housing Act, 1957 (Book I, *ante*) and s. 58 (2), *post*. By s. 7 (1), county council contributions were required in the case of new houses provided for the agricultural population of a county district under s. 2, and also in certain other cases where special exchequer contributions were provided. By s. 7 (2) increased county council contributions were required in certain cases. The effect of s. 7 (3) and (4) is incorporated in this subsection (sub-s. (2), *supra*) and in para. 1 (1) (d) of the Fifth Schedule, *post* (as to crediting the Housing Revenue Account).

**Sub-s. (3).**

**County district.** See the note to sub-s. (1), *supra*. In s. 115 (5) of the Housing Act, 1936, which sub-s. (3), *supra*, replaces, the term used was local authority (and cf. s. 85 (3) and (4) of that Act; and s. 114 (3) of the Housing Act, 1957, Book I, *ante*).

**Duty imposed upon them; agricultural population or other persons.** The duties referred to are those under s. 114 of the Housing Act, 1957 (Book I, *ante*), and the agricultural population is defined by s. 114 (5) of that Act (applied to this Act by s. 58 (1), *post*). The "other persons" referred to are those mentioned in s. 3 (1) (a) of the Housing (Rural Workers) Act, 1926 (11 Halsbury's Statutes (2nd Edn.) 425); they were mentioned in ss. 85 (3) and 115 (5) of the Housing Act, 1936, and are now mentioned in s. 114 (3) of the Act of 1957.

**Exchequer payment.** The definition in s. 58 (2), *post*, includes payments by the Minister to a local authority under s. 4 (2A) of the Housing (Rural Workers) Act, 1926, or ss. 105-108 of the Housing Act, 1936. By s. 5 of the Act of 1926 (11 Halsbury's Statutes (2nd Edn.) 429) the local authorities thereunder were normally county councils and county borough councils, but a county district council might in some circumstances be the local authority or enter into arrangements with the county council. By s. 1 of that Act, local authorities might prepare schemes to promote housing for the agricultural population, and under s. 2 might make grants and loans, subject to the observance of conditions set out in s. 3. As respects local authority houses, these conditions were superseded by s. 85 of the Housing Act, 1936 (reproducing provisions of the Housing Act, 1935): see now s. 114 (4) of the Housing Act, 1957 (Book I, *ante*). Government contributions in this connection are of two kinds: first, under s. 4 of the Act of 1926, as originally enacted, a contribution may be payable to the local authority as defined in that Act, towards their expenses incurred in making grants to other persons (including other local authorities) and, secondly, under s. 4 (2A), inserted by the Act of 1935, s. 38, contributions may be payable to local authorities who have themselves executed works which would have attracted a grant from them if executed by another person. It is this latter type of contribution, under s. 4 (2A), which comes within s. 58 (2), *post*. But the duty to reserve houses for rural workers, under s. 114 (3) of the Act of 1957 (Book I, *ante*) extends both to cases where the Minister has undertaken to make such payments, and to those where the authority have received assistance under a scheme under s. 1 of the Act of 1926.

As to exchequer payments under the Act of 1936, see particularly s. 108 thereof, which related to houses needed in certain circumstances for the agricultural population of a rural district; in such cases a county council contribution was required by s. 115 (3) of that Act: cf. the note to s. 114 (2) of the Act of 1957 (Book I, *ante*), and see the savings for the continued obligation to make payments under the Act of 1936 in s. 59 (4), *post*.

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *post*; and see the second note to the present subsection, *supra*, referring to s. 114 of that Act.

**Housing Act, 1936, s. 115.** 11 Halsbury's Statutes (2nd Edn.) 547. The whole of the Act of 1936 is repealed by s. 59 (1) and the Sixth Schedule, *post*, subject to the savings, for existing obligations to make contributions, in s. 59 (4), *post*. As to the two types of county council contributions, under s. 115 (2) and (3) cf. the note to s. 114 (2) of the Act of 1957 (Book I, *ante*); and as to crediting such contributions to the Housing Revenue Account, see para. 1 (1) (d) of the Fifth Schedule, *post*. As to the voluntary contributions which might formerly be made under s. 115 (4) of the Act of 1936, see the General Note to s. 23, *ante*.

*Miscellaneous and general*

**25. Cases in which exchequer grants are payable to county councils.—(1)** For the purposes of any agreement under section one hundred and seventeen of the principal Act between a county council and a rural

district council as to the exercise by the county council of the powers of the rural district council under Part V of the principal Act, and so far as the agreement extends, the county council shall be deemed to be the district council for the purposes of sections one to ten and fifteen of this Act and, subject to the provisions of any such agreement, any annual exchequer subsidy payable by virtue of paragraph (a) of subsection (2) of section three of this Act shall be payable to that one of the councils by which re-housing accommodation available for displaced persons is provided, notwithstanding that the operations in consequence of which those persons were displaced were initiated or carried out by the other council.

(2) Where an order made under section one hundred and seventy-one or section one hundred and seventy-three of the principal Act transfers to a county council any of the powers of a local authority under Part V of the principal Act sections one to ten and fifteen of this Act shall, with the necessary modifications, apply in relation to that county council as they apply in relation to that local authority and the Minister shall make payments accordingly:

Provided that, notwithstanding anything in this Act or in any order made under this Act, the amount or duration of any such payments may be reduced by the Minister at his discretion.

#### NOTES

**History.** Sub-s. (1) of this section contains provisions formerly in s. 89 (2), (3) of the Housing Act, 1936, as extended by s. 24 of, and paras. 3 and 4 of the Third Schedule to, the Housing (Financial and Miscellaneous Provisions) Act, 1946, by s. 48 of, and para. 4 of the Second Schedule to, the Housing Act, 1949, and by s. 12 (3) of, and para. 3 of the First Schedule to, the Housing Subsidies Act, 1956. Sub-s. (2) contains provisions formerly in ss. 169 (3) and 172 (2) of the Act of 1936, as extended by the above-mentioned provisions of the Acts of 1946 and 1956 and by s. 48 of, and paras. 8 and 9 of the Second Schedule to, the Act of 1949.

**General Note.** This section provides for payment to the county council, in certain cases, of exchequer subsidies under ss. 1-8, *ante*, exchequer contributions for conversions and improvements under ss. 9 and 10, *ante*, and exchequer contributions for hostels under s. 15, *ante*. The reference, in the marginal note, to "exchequer grants" presumably arises because the contributions under s. 15 are not "exchequer payments" as defined in s. 58 (2), *post*. The adaptation of s. 3 (2) (a), *ante*, by sub-s. (1), *supra*, meets the difficulty which would otherwise arise from s. 3 (4); *e.g.*, it will not matter that one party to the agreement deals with an old house and the other provides the necessary new dwelling.

The references to the above provisions will include a reference to the corresponding provisions of the Housing Act, 1949, and the Housing Subsidies Act, 1956; see s. 59 (3), *post*. The reference to s. 117 of the Housing Act, 1957, will similarly include a reference to s. 89 of the Housing Act, 1936, from which that section and sub-s. (1), *supra*, are both derived; and the reference to an order under s. 171 or 173 of the Act of 1957 will include a reference to an order under s. 169 or 171 of the Act of 1936, or those sections as amended; see s. 60, *post*.

**The Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *post*. The scope of ss. 171 and 173 of that Act, relating to defaults by rural district councils and certain other local authorities, respectively, is extended by s. 55 (1) (b), *post*.

**26. Modification of agreements incorporating references to rate fund contributions.**—(1) Where arrangements were in force immediately before the first day of April, nineteen hundred and fifty-six, between a local authority and some other local authority, a development corporation or a housing association providing for annual payments in respect of a dwelling by the authority to the other party to the arrangements of an amount determined by reference to the amount of any contribution to be made by a local authority to their Housing Revenue Account under an enactment repealed as from the said day or any corresponding contributions provided for by the enactments for the time being in force with respect to the provision of housing accommodation, then, without prejudice to any variation of those arrangements by the parties thereto,—

- (a) in the case of a dwelling in respect of which payments under the arrangements were on the said day already being made, the arrangements shall be deemed to provide for payments thereunder of the amount being paid before that day; and
- (b) in the case of any other dwelling in respect of which such payments become payable, the amount of those payments shall be the amount equal to one-third of the annual exchequer subsidy payable in respect of the dwelling under this Part of this Act, or eight pounds, whichever is the less.

(2) This section shall not apply to any arrangements made between the London County Council and the Council of a metropolitan borough or the Common Council of the City of London under section one hundred and eighty-three of the principal Act.

#### NOTES

**History.** Sub-ss. (1) and (2) of this section contain provisions formerly in s. 8 (2) and (3) (b), respectively, of the Housing Subsidies Act, 1956.

**General Note.** This section is necessary because of the termination by s. 8 (1) (now repealed) of the Housing Subsidies Act, 1956 (94 Statutes Supp. 46; 36 Halsbury's Statutes (2nd Edn.) 380), with effect from 1st April 1956, of the obligation of local authorities under a number of housing statutes to make contributions out of the general rate fund to the Housing Revenue Account; cf. the note "Rate fund contributions" in the General Note to s. 1, *ante*. This section deals with arrangements in force immediately before 1st April 1956 between a local authority and some other local authority, or development corporation or housing association, under which the local authority has agreed in respect of dwellings provided by the other party to make annual payments which were determined by reference to the amount of any of the former rate fund contributions. In the case of dwellings in respect of which payments were already being made on 1st April 1956, the amount being paid before that day is to continue to be paid. In the case of other dwellings in respect of which payments become payable the amount is to be equal to one-third of the annual exchequer subsidy under ss. 1 *et seq.*, *ante*, or £8, whichever is the less. This provision operates without prejudice to the power of the parties to vary the arrangements. Other provisions of this Act consequential on the abolition of compulsory rate fund contributions are contained in para. 1 (6) and (7) of the Fifth Schedule, *post*, relating to credits in the Housing Revenue Account generally and in London.

Other consequential provisions are contained in s. 9 of, and in para. 14 of the First Schedule to, the Housing Subsidies Act, 1956 (94 Statutes Supp. 48, 56; 36 Halsbury's Statutes (2nd Edn.) 382, 389). The latter provision was needed to enable the Minister to continue contributions under s. 2 (2) (a) of the Town Development Act, 1952 (77 Statutes Supp. 202; 32 Halsbury's Statutes (2nd Edn.) 1032) which formerly referred to the rate fund contributions of a receiving district under that Act and now, as substituted by the Act of 1956, authorises an annual contribution of up to £8. By s. 9 of the Act of 1956 the Minister is enabled over a period of ten years to recover, in effect, one half of the annual contribution so made under the Act of 1952 (or of similar payments under s. 12 (2) of the New Towns Act, 1946, 25 Halsbury's Statutes (2nd Edn.) 439) from the "exporting" authority.

#### Sub-s. (1).

**Arrangements.** Such arrangements could be made, for example, under s. 81, 93 or 94 of the Housing Act, 1936 (11 Halsbury's Statutes (2nd Edn.) 521, 534) (now replaced by ss. 108, 119 and 120 of the Act of 1957, Book I, *ante*). Councils of county boroughs and county districts are empowered to contribute to the expenses of a receiving district under the Town Development Act, 1952, by s. 4 of that Act (77 Statutes Supp. 204; 32 Halsbury's Statutes (2nd Edn.) 1034). These powers are extended to London authorities by s. 19 of that Act; see also ss. 8 (1) (g) and 10 (3) thereof. As to development corporations, see s. 8 (1) of the New Towns Act, 1946 (25 Halsbury's Statutes (2nd Edn.) 434) (now replaced by s. 125 of the Act of 1957, Book I, *ante*).

**1st April 1956.** *I.e.*, the date as from which the duty to make rate fund contributions to the Housing Revenue Account was terminated; see the General Note, *supra*.

**Local authority; dwelling.** For definitions, see s. 29 (1), *post*.

**Development corporation; housing association.** For meanings, see (by virtue of s. 58 (1), *post*) the Housing Act, 1957, s. 189 (1) (Book I, *ante*).

**Housing Revenue Account.** Local authorities are now required to keep this account by s. 50, *post*.

**Any enactments repealed as from the said day.** This refers to those enactments imposing obligations to make rate fund contributions which were listed in s. 8 (1) of the Housing Subsidies Act, 1956 (94 Statutes Supp. 46; 36 Halsbury's Statutes (2nd Edn.) 380), and repealed as from 1st April 1956 by s. 12 (4) of, and Part I of the Third

Schedule to, that Act. The enactments in question are: paras. 1 to 7 of the Eighth Schedule to the Housing Act, 1936 (11 Halsbury's Statutes (2nd Edn.) 603, 604); s. 6 of the Housing (Financial Provisions) Act, 1938 (11 Halsbury's Statutes (2nd Edn.) 616); s. 5 of the Housing (Financial and Miscellaneous Provisions) Act, 1946 (39 Statutes Supp. 42; 11 Halsbury's Statutes (2nd Edn.) 652); s. 18 of the Housing Act, 1949 (61 Statutes Supp. 85; 28 Halsbury's Statutes (2nd Edn.) 619); s. 8 of the Housing Repairs and Rents Act, 1954 (84 Statutes Supp. 23; 34 Halsbury's Statutes (2nd Edn.) 269); and s. 12 (1) of the Requisitioned Houses and Housing (Amendment) Act, 1955 (90 Statutes Supp. 20; 35 Halsbury's Statutes (2nd Edn.) 278).

**Subsidy . . . under this Part.** Exchequer subsidies in respect of new housing accommodation are payable in accordance with ss. 1 to 8, *ante*.

**Sub-s. (2).**

**London County Council; council of a metropolitan borough.** See the note to s. 9 (5), *ante*.

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *post*. By virtue of s. 60, *post*, the reference to s. 183 of the Act of 1957 includes a reference to s. 181 of the Housing Act, 1936 (repealed), which was the enactment in force when the duty to make rate fund contributions was terminated.

**27. Ascertainment of amount of certain annual contributions under Acts of 1919 and 1923.**—The provisions of the Third Schedule to this Act shall have effect for the purpose of the determination of the amount of the following contributions which the Minister is required or authorised to make to a local authority—

- (a) contributions payable under section seven of the Housing, Town Planning, &c. Act, 1919, other than contributions in respect of schemes for the provision of houses for persons in the employment of, or paid by, a county council, or a statutory committee thereof;
- (b) contributions payable under subsection (3) of section one of the Housing, &c. Act, 1923.

#### NOTES

**History.** This section contains provisions formerly in s. 111 of the Housing Act, 1936.

**General Note.** Section 7 of the Housing, Town Planning, etc., Act, 1919 (11 Halsbury's Statutes (2nd Edn.) 394) provided for exchequer contributions towards losses incurred by local authorities and county councils in carrying out schemes approved under the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70) (repealed), or in the carrying out of re-housing schemes in connection with schemes under the Act of 1890, or in the carrying out of schemes for the housing of county council employees. That section, which had been amended by s. 4 of the Housing (Additional Powers) Act, 1919, and affected by the Housing Act, 1921, was repealed by ss. 6 (1) and 24 (1) of, and the Third Schedule to, the Housing, etc., Act, 1923 (11 Halsbury's Statutes (2nd Edn.) 408, 409, 410), with savings for the liability of the Minister to make payments already undertaken, and for the terms and conditions of loans by the Public Works Loan Commissioners, and for the validity of, and the power to amend, regulations made, and s. 6 (2) of the Act of 1923 directed an amendment of the regulations for the purpose of altering the rate to which the Minister's payments were due to be reduced after March 1927. Contributions under s. 7 of the Act of 1919 to county councils in respect of housing schemes for their employees are determined in accordance with the County Councils (Assisted Schemes for the Housing of Employees) Regulations, 1920 (S.R. & O. 1920 No. 336), as amended by S.R. & O. 1924 No. 3 (10 Halsbury's Statutory Instruments, title Housing; *Hill's Complete Law of Housing* (4th Edn.), p. 469). Formerly the amount of the contributions payable in respect of other schemes coming within s. 7 of the Act of 1919 was also governed by regulations (*i.e.*, the Local Authorities (Assisted Housing Schemes) Regulations, 1919 (S.R. & O. 1919 No. 2047), as amended), but they were revoked by the operation of s. 99 of, and Part II of the Seventh Schedule to, the Housing Act, 1935 (which also, *pro tanto*, repealed s. 6 (1) of the Act of 1923), and were replaced by statutory provisions. These were later consolidated in the Seventh Schedule to the Housing Act, 1936 (repealed), and are now re-enacted in the Third Schedule, *post*. Special provisions as to London were contained in s. 8 of the Housing Act, 1921; these were also affected by s. 6 of the Act of 1923, and by the Act of 1935: see now para. 2 of the Third Schedule, *post*.

The Third Schedule, *post*, also governs the amount of exchequer contributions under s. 1 (3) of the Housing, etc., Act, 1923 (11 Halsbury's Statutes (2nd Edn.) 404), which conferred a further power to make contributions towards expenses incurred by local authorities in carrying out certain re-housing schemes. By virtue of ss. 26 (5) and 65 (4) of the Housing Act, 1930 (11 Halsbury's Statutes (2nd Edn.) 434, 438), this power ceased to be exercisable on 15th August 1930, but the Minister (of Housing and

Local Government) remains liable to pay contributions which the Minister of Health had undertaken to pay before that date.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*. As to the transfer of functions, in 1951, from the Minister of Health see the note "The Minister" to s. 189 (1) of the Housing Act, 1957 (Book I, *ante*). The department originally mentioned in the Act of 1919 was the then Local Government Board.

**Contributions in respect of . . . houses for persons in the employment of . . . a county council.** These contributions are determined in accordance with regulations; see the General Note, *supra*.

**Housing, Town Planning, etc., Act, 1919, s. 7; Housing, etc., Act, 1923, s. 1 (3).** As to these enactments, see the General Note, *supra*.

**28. Time and manner of payment of Government contributions.**  
—Payments to be made by the Minister to a local authority under any enactment in—

this Act or the principal Act, or  
the Housing, Town Planning, &c. Act, 1919, or  
the Housing, &c. Act, 1923, and the Housing (Financial Provisions) Act, 1924, or  
the Housing (Rural Authorities) Act, 1931, or  
the Housing Act, 1936, or  
the Housing (Financial Provisions) Act, 1938, or  
the Housing (Financial and Miscellaneous Provisions) Act, 1946,

shall be payable at such times and in such manner as the Treasury may direct, and subject to such conditions as to records, certificates, audit or otherwise as the Minister may, with the approval of the Treasury, impose.

#### NOTES

**History.** This section contains provisions formerly in s. 112 of the Housing Act, 1936, and in the definition of "the Housing Acts" in s. 188 (1) of that Act, as extended by s. 11 (2) of the Housing (Financial Provisions) Act, 1938, by s. 24 of, and para. 1 of the Third Schedule to, the Housing (Financial and Miscellaneous Provisions) Act, 1946, by s. 48 of, and para. 1 of the Second Schedule to, the Housing Act, 1949, and by s. 12 (3) of, and para. 1 of the First Schedule to, the Housing Subsidies Act, 1956.

**General Note.** The Acts of 1923, 1924, 1931, 1936, 1938 and 1946 mentioned in this section are repealed wholly or in part by s. 59 (1) and the Sixth Schedule, *post*, but existing obligations to make payments continue by virtue of s. 59 (4), *post*. The relevant provisions of the Act of 1919 had already been repealed with similar savings: an account of the amendments to, and repeal of, s. 7 of that Act is given in the General Note to s. 27, *ante*.

Before the Housing Act, 1935 (repealed), local authority houses were subject to a variety of conditions, affecting rents to be charged and other matters according to the statutory provisions under which they had been provided. The Act of 1935, s. 51, introduced unified conditions, as mentioned in the General Note to s. 111 of the Housing Act, 1957 (Book I, *ante*); and see now ss. 113 and 114 of that Act. Part III of the Act of 1935 introduced, in ss. 42-47, the present system of Housing Accounts; see now Part III of the present Act (ss. 50-53) and the Fifth Schedule, *post*. In consequence of these changes, s. 48 of the Act of 1935 introduced the provisions, as to the time, manner and conditions of the payment of exchequer contributions to local authorities (under the Acts of 1919 to 1935), which were reproduced in s. 112 of the Housing Act, 1936, and are now to be found in the present section (having been extended by the Acts of 1938, 1946, 1949 and 1956, cited in the note "History", *supra*, which were brought within the definition of the Housing Acts, and therefore came within the scope of s. 112 of the Act of 1936).

The changes introduced by the Act of 1935 were explained in Memorandum E issued by the Ministry of Health in October 1935 (printed in *Hill's Complete Law of Housing* (4th Edn.) p. 634 and in *Lumley's Public Health* (12th Edn.), Vol. VI, p. 966). Appendix I to that Memorandum set out the conditions of grant approved by the Treasury (for the purposes of the Acts of 1919 to 1935) under s. 48 of the Act of 1935. These continued to apply when the provisions of the Act of 1935 were consolidated by the Housing Act, 1936 (see s. 189 of the Act of 1936 as to the construction of references to the Acts repealed by that Act, and cf. s. 60, *post*).

The conditions approved under later Acts have been set out in circulars issued by the Ministry of Health or Ministry of Housing and Local Government; see Appendix I to Circular 1697, dated 23rd April 1938 (printed in *Lumley's Public Health* (12th Edn.) Vol. VI, p. 1072) in connection with the Act of 1938; Appendix III to Circular 118, dated 12th July 1946 (printed in *Lumley*, Vol. VI, p. 1152; and in *Hill's Complete Law*

of *Housing* (4th Edn.) p. 593) in connection with the Act of 1946, and with s. 16, *ante*, derived from that Act; Appendix IV to Circular 90/49, dated 15th September, 1949 (*Lumley*, Vol. VI, p. 1227; *Hill*, 2nd Supp. to 4th Edn., p. B258) in connection with the provisions of the Act of 1949, which are now re-enacted in ss. 9, 12 and 15, *ante*, and s. 36, *post*; Appendix III to Circular No. 55/54, dated 3rd August 1954 (*Lumley*, Vol. VIII, p. 304) as to s. 7 of the Housing Repairs and Rents Act, 1954, now replaced by s. 13, *ante*; and Appendix IV to Circular No. 33/56, dated 17th July 1956 (*Lumley*, Vol. VIII, p. 368) in connection principally with the provisions of Housing Subsidies Act, 1956, now replaced by ss. 1 *et seq.*, *ante*.

Some, but not all, the payments referred to in this section are within the definition of "exchequer payment" in s. 58 (2), *post*, and may be withheld in certain circumstances under s. 18, *ante*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *post*.

**Housing, Town Planning, etc., Act, 1919.** 11 Halsbury's Statutes (2nd Edn.) 393.

**Housing, etc., Act, 1923.** 11 Halsbury's Statutes (2nd Edn.) 401.

**Housing (Financial Provisions) Act, 1924.** 11 Halsbury's Statutes (2nd Edn.) 411.

**Housing (Rural Authorities) Act, 1931.** 11 Halsbury's Statutes (2nd Edn.) 438.

**Housing Act, 1936.** 11 Halsbury's Statutes (2nd Edn.) 444.

**Housing (Financial Provisions) Act, 1938.** 11 Halsbury's Statutes (2nd Edn.) 510.

**Housing (Financial and Miscellaneous Provisions) Act, 1946.** 39 Statutes Supp. 38; 11 Halsbury's Statutes (2nd Edn.) 648.

**29. Interpretation of Part I.—**(1) In this Part of this Act, unless the context otherwise requires—

"approved dwelling" means a dwelling approved by the Minister under section one of this Act,

"block of flats" of a given number of storeys means a building containing flats which consists of that number of storeys exclusive of any storey constructed for use for purposes other than those of a dwelling; and for the purposes of this definition a building which consists of a different number of storeys in different parts thereof shall be treated as if each of those parts were a separate building, any question as to the division of any building into such parts, or as to the number of storeys of which any such part consists, or as to the number of flats contained in any such part, being determined by the Minister;

"dwelling" means a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, outhouses and appurtenances belonging to or usually enjoyed with that building or part; so, however, that a building or part which, in the opinion of the Minister, is designed for permanent use as a single dwelling shall be treated as a single dwelling for the purposes of this Part of this Act notwithstanding that it is temporarily divided into two or more parts which are occupied or intended to be occupied as separate dwellings;

"flat" means a separate and self-contained set of premises, whether or not on the same floor, constructed for use for the purposes of a dwelling and forming part of a building from some other part of which it is divided horizontally;

"local authority" means any authority who are a local authority for the purposes of any provision of the principal Act.

(2) In this Part of this Act "authorised arrangements" means arrangements between a local authority and a housing association under section one hundred and twenty of the principal Act or between a local authority and a development corporation under the said section one hundred and twenty by virtue of section one hundred and twenty-five of the principal Act and—

- (a) references in this Part of this Act to any subsidy or contribution payable in respect of a house provided under authorised arrangements shall be construed as references to a subsidy payable in respect of such a house under section one of this Act or to a contribution payable under section ninety-four of the Housing Act, 1936 (which applies as respects certain houses provided before the commencement of this Act), and
- (b) references in this Part of this Act to any annual grant payable in respect of a house provided under authorised arrangements shall be construed as references to any annual grant payable either under section one of this Act or under the said section ninety-four.

### NOTES

**History.** This section contains provisions formerly in s. 11 (2) of the Housing Subsidies Act, 1956.

**General Note.** This section should be read with ss. 58-60, *post*. The general provisions for the interpretation of this Act, in s. 58, include definitions of some of the expressions used in this section, *e.g.*, of "the Minister", "housing association", "house", etc. The effect of s. 59 (2) is to preserve things done under repealed enactments; thus in the definition of "approved dwelling", *supra*, the reference to s. 1, *ante* will include a reference to an approval given under s. 1 of the Housing Subsidies Act, 1956. Similarly, by s. 59 (3), exchequer subsidies payable under the Act of 1956 are regarded as payable under this Act. Again, by virtue of s. 60, the reference in sub-s. (2), *supra*, to s. 120 of the principal Act, *i.e.*, of the Housing Act, 1957 (Book I, *ante*), will include a reference to s. 94 of the Housing Act, 1936 (repealed) and, it is submitted, to s. 27 of the Housing Act, 1935.

Sub-s. (1), *supra*, provides definitions which are required for the provisions as to exchequer subsidies, derived from the Housing Subsidies Act, 1956. This part of the Act (ss. 1-29) also includes provisions from other Acts, including the Housing Act, 1936, the Housing (Financial Provisions) Act, 1938, the Housing Act, 1949, and the Housing (Financial and Miscellaneous Provisions) Act, 1946; accordingly there are a number of special interpretation provisions, *e.g.*, in ss. 9 (4)-(6), 15 (4), 16 (4), 18 (4), *ante*. It may be noted also that some of the expressions defined in sub-s. (1) were also defined, somewhat differently, in these earlier Acts; see for example the definitions of "flat" and "block of flats" in s. 188 (1) of the Act of 1936, and of the latter expression in s. 11 (1) of the Act of 1938. Note also the definition of "house" in s. 25 (2) of the Act of 1946, resembling the present definition of "dwelling", *supra*; and cf. s. 23, *ante*, where the word "house" appears, although "dwelling" would have more correctly reproduced the provisions of the Act of 1946 as modified by the Act of 1956. Sub-s. (2), *supra*, refers only to "authorised arrangements" under s. 120 of the Act of 1957 (Book I, *ante*) or, as mentioned above, to the earlier corresponding provisions. It does not refer to similar arrangements, for conversions and improvements, under s. 121 of that Act, or the earlier corresponding provisions. Accordingly s. 12, *ante*, does not use the expression "authorised arrangements", but expressly refers to arrangements under s. 121 of the Act of 1957.

#### Sub-s. (1).

**Approved dwelling.** Note the saving in s. 59 (2), *post*, mentioned in the General Note, *supra*. Note also that "dwelling" is itself defined in this subsection.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Block of flats.** Note that "flat" is itself defined in this subsection.

**Separate dwelling.** See the note to s. 13 (2), *ante*.

**Outhouses.** For the meaning of "outhouse", see *Elsmore v. St. Briavells (Inhabitants)* (1828), 8 B. & C. 461, at p. 465, *per* Bayley, J., and *R. v. Haughton* (1833), 5 C. & P. 555, at p. 559, *per* Taunton, J.; also *R. v. Borley* (1944), 8 J.P. 263; and *R. v. Hammond* (1844), 3 L.T.O.S. 342; but see also *R. v. Winter* (1815), Russ. & Ry. 295; and *R. v. Janes* (1844), 1 Car. & Kir. 303; *sub nom. R. v. Jones* (1844), 2 Mood. C.C. 308. All these cases will be found in 15 Digest (Repl.) at pp. 1213, 1214.

**Appurtenances.** *Prima facie* "appurtenances" comprise something appertaining to the principal subject-matter which would normally be included in it without special mention; see *Evans v. Angell* (1858), 26 Beav. 202; 44 Digest 673, 5131. The term does not include land outside the curtilage of a house (*Lister v. Pickford* (1865), 34 Beav. 576; 17 Digest (Repl.) 385, 1898; *Trim v. Sturminster Rural District Council*, [1938] 2 All E.R. 168; Digest Supp.), though plain implication may lead to land being held to be appurtenant to other land or a messuage (*Cuthbert v. Robinson* (1882), 51 L.J. Ch. 238; 17 Digest (Repl.) 385, 1899).

**Opinion.** Cf. the note to s. 3 (2), *ante*.

**Local authority.** For the local authorities for the purposes of "the principal Act" (*i.e.*, the Housing Act, 1957; see s. 58 (1), *post*), see s. 1 of that Act and the notes thereto (Book I, *ante*).

**Sub-s. (2).**

**Housing association; development corporation.** For definitions, see (by virtue of s. 58 (1), *post*) the Housing Act, 1957, s. 189 (1) (Book I, *ante*).

**Subsidy; contribution; annual grant.** The system under the enactments mentioned is for the Minister to pay the subsidy or contribution to the local authority who, in effect, pass it on to the housing association or development corporation as an annual grant, not less in amount. The reference to s. 1, *ante*, will include a reference to s. 1 of the Act of 1956; see the General Note, *supra*. The Minister's payments under s. 1 are termed exchequer subsidies. The corresponding payments under s. 94 (3) of the Housing Act, 1936, which replaced s. 27 (3) of the Housing Act, 1935, are termed contributions: the rate of these contributions depends on the rates of contributions which were for the time being in force, for accommodation provided by local authorities themselves, under the Act of 1936, the Housing (Financial Provisions) Act, 1938, the Housing (Financial and Miscellaneous Provisions) Act, 1946, or the Act of 1946 as amended by later enactments prior to the Act of 1956.

**House.** For meaning, see s. 58 (1), *post*; and see the General Note, *supra* (as to the word "dwelling" in this Act and "house" in the Act of 1946).

**Commencement of this Act.** *I.e.*, 23rd October 1958; see s. 61 (3), *post*.

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *post*. The references to ss. 120 and 125 of that Act include references to the provisions replaced thereby (see the notes "History" to those sections) and to s. 27 of the Housing Act, 1935, by virtue of s. 60, *post*. In particular, s. 120 of the Act of 1957 replaces s. 94 (1), (2), (5) and (6) of the Housing Act, 1936.

**Housing Act, 1936, s. 94.** 11 Halsbury's Statutes (2nd Edn.) 534. Sub-s. (3) of that section provided for the payment of contributions and grants; s. 94 (3) proviso and (4) related to the withholding of such payments (see now ss. 19 (1) and 20 (1), *ante*). The repeal of s. 94 of the Act of 1936, by s. 59 (1) and the Sixth Schedule, *post*, is subject to the savings, for existing obligations to make payments, in s. 59 (4), *post*.

## PART II

### FINANCIAL ASSISTANCE FOR HOUSING ACCOMMODATION PRIVATELY PROVIDED

#### *Grants by local authorities for improvements*

**30. Power to make improvement grants.**—(1) Subject to the provisions of this Part of this Act, a local authority may give assistance in respect of—

- (a) the provision of dwellings, by a person other than a local authority or county council, by means of the conversion of houses or other buildings,
- (b) the improvement of dwellings by such a person,

by way of making a grant (hereafter in this Part of this Act referred to as "an improvement grant") in respect of expenses incurred for the purposes of the execution of works of conversion or improvement (hereafter in this Part of this Act referred to as "improvement works") if, before the improvement works are begun, an application in that behalf is made to the authority by that person (hereafter in this Part of this Act referred to as "the applicant") and approved by them.

(2) An application under this section for an improvement grant must contain full particulars of the improvement works proposed to be carried out and of the land on which those works are proposed to be carried out, together with plans and specifications of the works, and before approving the application the local authority shall satisfy themselves as to the requirements set out in the next following section.

(3) Such an application must also contain an estimate of the expenses to be incurred for the purposes of the execution of the said works which, in a case where the application relates to the provision or improvement of more than one dwelling, must specify the proportion of the estimated expenses that is attributable to each dwelling proposed to be provided or improved, and the application shall not be entertained unless—

- (a) in a case where the application relates only to the provision or improvement of a single dwelling, the amount of the expenses estimated to be incurred for the purposes of the execution of the improvement works, or
- (b) in any other case the proportion of those expenses attributable to each dwelling proposed to be provided or improved,

is not less than one hundred pounds or such other amount as may for the time being be prescribed.

(4) It is hereby declared that estimates under the last foregoing subsection as respects improvement works may include the cost of the employment in connection with the works of an architect, engineer, surveyor, land agent or other person in an advisory or supervisory capacity.

(5) Where a local authority approve an application under this section they shall notify the applicant of the amount approved by them as being the amount of the expenses which, in their opinion, are properly ascribable to the execution of the improvement works and, where the application relates to the provision or improvement of more than one dwelling, of the proportion of that amount approved by them as being attributable to each dwelling proposed to be provided or improved.

The said amount is hereafter in this Part of this Act referred to, in relation to improvement works, as the "approved expense" of executing the works, and the proportion of that amount approved under this subsection as being attributable to a dwelling is so referred to, in relation to that dwelling, as the "approved proportion" of the approved expense.

#### NOTES

**History.** Sub-ss. (1) and (2) of this section contain provisions formerly in s. 20 (1) and (2), respectively, of the Housing Act, 1949. Sub-s. (3) contains provisions formerly in s. 20 (2) of that Act and in s. 20 (4) thereof, as amended by ss. 16 (4) and 54 (4) of, and the Fifth Schedule to, the Housing Repairs and Rents Act, 1954. Sub-s. (4) contains provisions formerly in s. 16 (5) of the Act of 1954. Sub-s. (5) contains provisions formerly in s. 20 (5) of the Act of 1949. For provisions derived from s. 20 (3) of the Act of 1949, see s. 31, *post*.

**General Note.** Under ss. 9-12, *ante*, exchequer contributions may be made in respect of housing accommodation provided by conversion, or improved, by local authorities, development corporations or housing associations. The present section enables local authorities to make grants to private owners for the provision of dwellings by the conversion of houses and other buildings and for the improvement of existing dwellings.

Application for grant must:—

- (a) be made to, and approved by, the authority before work is begun (sub-s. (1), *supra*);
- (b) include full particulars of the proposed works and of the property on which the works will be carried out together with plans and specifications and an estimate of the cost (sub-ss. (2) (3), *supra*); and
- (c) where there is more than one resulting dwelling, apportion the estimated cost between the several resulting dwellings (sub-s. (3), *supra*).

The local authority must satisfy themselves that:—

- (i) the resulting dwellings will provide satisfactory housing accommodation for at least thirty years, or, where it is expedient in all the circumstances that the application should be approved, for more than fifteen years (s. 31 (1), *post*);
- (ii) the applicant has either a freehold interest in the property or a leasehold interest for an unexpired term of thirty years, or of the period for which the dwellings concerned will provide satisfactory accommodation, whichever is the shorter (s. 31 (3), *post*);
- (iii) the dwellings will conform with such requirements with respect to their construction and physical condition and the provision of services and amenities as the Minister may specify (but the local authority may, with the Minister's consent, dispense with conformity with any of these requirements in particular cases) (s. 31 (2), *post*).

An application for an improvement grant may be entertained only if the estimated cost of the work in respect of each resulting dwelling is not less than £100 or such other sum as may be prescribed by regulation (sub-s. (3), *supra*). The local authority are required to notify the applicant of the amount approved by them as the estimated cost of the improvement work, and, where there is more than one resulting dwelling, of the proportion attributable to each dwelling (sub-s. (5), *supra*).

Under s. 32 (1), *post*, the grant is not to exceed one-half of the estimated cost of the works as approved by the local authority, nor is it to exceed £400 (or such other sum as may be prescribed by regulation) in respect of each dwelling; it is provided, however, that the limit of £400 may be exceeded where the local authority, with the concurrence of the Minister, are satisfied that there is good reason for the payment of a higher amount. The grant may be paid in one sum on completion of the work or partly in instalments as the work progresses, and payment is conditional on the work being executed to the satisfaction of the local authority (s. 32 (2), (3), *post*).

The conditions to be observed in regard to any dwelling provided or improved with the aid of a grant, and the period during which those conditions apply, are laid down by s. 33 and the Fourth Schedule, *post*, and the enforcement of those conditions is provided for by s. 34, *post*. The conditions are also read into leases, agreements and tenancies, and are enforceable accordingly (s. 33 (1), *post*). Repayment of grant may be made in accordance with s. 35, *post*; and s. 36, *post*, provides for exchequer contributions towards the expenses of local authorities in making improvement grants. Other provisions relating to improvement grants will be found in ss. 37 to 42, *post*; see also, as to borrowing for the purposes of making grants, s. 54 (1), *post*, and para. 14 of the Memorandum accompanying Ministry of Housing and Local Government Circular No. 48/57, dated 20th September 1957.

#### Sub-s. (1).

**Subject to the provisions of this Part.** See ss. 31 to 42, *post*, which contain further provisions relating to improvement grants; and see the General Note to s. 38, *post*.

**Local authority.** As to who are the local authorities for the purposes of making improvement grants, see s. 41 (1) and (2), *post*; and as to the power of a county council to agree to exercise the powers of a district council, see s. 41 (3) and (4), *post*.

**Person.** This includes any body of persons corporate or unincorporate; see the Interpretation Act, 1889, s. 19 (24 Halsbury's Statutes (2nd Edn.) 222).

**Conversion.** No assistance is to be given in respect of conversion in the cases mentioned in ss. 38 (1) and 39 (1), *post*.

**House.** For definition, see s. 58 (1), *post*.

**Improvement of dwellings.** As to this expression, see s. 42 (2), *post*.

**Making a grant.** As to the amount of the grant, see s. 32 (1), *post*.

**Before the improvement works are begun.** It should be noted that no application for a grant may be made after the works are begun, but this would not necessarily bar an application in respect of other works not yet begun and separable from those already begun.

**Application.** As to the contents of the application, see sub-ss. (2) and (3), *supra*. The form of application for grant currently in use is set out in Ministry of Housing and Local Government Circular No. 45/57, dated 29th August 1957.

**Approved.** As to the requirements to be fulfilled before an application may be approved, see s. 31, *infra*. A form of approval of application is set out in the above-mentioned Circular No. 45/57. The duty of a local authority to fix rents, under s. 22 of the Act of 1949 (repealed), at the time of approving an application, was abolished by the Rent Act, 1957; see now the conditions to be observed under s. 33 and paras. 3 and 4 of the Fourth Schedule, *post*.

#### Sub-s. (2).

**Particulars of the improvement works.** These particulars with plans and specifications should show that the requirements of s. 31 (1) and (2), *post*, will be satisfied.

**Particulars . . . of the land.** These particulars should show that the interest of the applicant is sufficient to comply with s. 31 (3), *post*.

**Satisfy.** Cf. the note "Satisfied" to s. 1 (3), *ante*.

#### Sub-s. (3).

**Improved.** This expression is to be construed in accordance with s. 42 (2), *post*.

**Prescribed.** *I.e.*, prescribed by regulations under s. 49, *post*. At the time of going to press no different amount has been prescribed for the purposes of sub-s. (3).

#### Sub-s. (5).

**Opinion.** Cf. the note to s. 3 (2), *ante*. Note that under this subsection (sub-s. (5), *supra*) the local authority may revise the estimates required by sub-s. (3), *supra*, to be included in the application. The amount of expenses to be incurred, as accepted or varied by the authority, becomes the "approved expense". The proportion attributable to each dwelling, as accepted or varied by the authority, becomes the "approved proportion".

**31. Requirements as to nature of improvements.—(1)** Before approving an application for an improvement grant the local authority shall satisfy themselves—

- (a) that as respects dwellings to be provided by means of the improvement works the dwellings will provide satisfactory housing accommodation for a period of not less than thirty years from the completion of the works, and
- (b) that as respects dwellings to be improved by means of the improvement works the dwellings so improved will provide such accommodation for a period of not less than thirty years from the completion of the works:

Provided that they may approve the application if satisfied that the period for which the dwellings to be provided or improved will provide satisfactory housing accommodation is likely to be more than fifteen years and that it is expedient in all the circumstances that the application should be approved.

(2) The local authority shall also satisfy themselves that such dwellings as aforesaid will conform with such requirements with respect to their construction and physical condition and the provision of services and amenities as may be specified for the purposes of this section by the Minister:

Provided that if, in relation to all or any of the said dwellings, they are not satisfied that the dwellings or dwelling will conform with a particular requirement so specified, they may, notwithstanding that fact, with the consent of the Minister approve the application if they are satisfied that, in all the circumstances of the case, conformity with that requirement would be impracticable.

(3) The local authority shall also satisfy themselves that the applicant has, in every parcel of land on which the improvement works are proposed to be carried out (other than land proposed to be sold or leased to him under subsection (2) of section one hundred and five of the principal Act (which authorises a local authority to dispose of land for the purpose of carrying out works in connection with work on an adjoining house)) an interest constituting either an estate in fee simple absolute in possession or a term of years absolute whereof the period remaining unexpired at the date of the application is not less than—

- (a) the period for which the dwellings concerned will provide satisfactory housing accommodation, or
  - (b) a period of thirty years,
- whichever is the shorter.

#### NOTES

**History.** Sub-s. (1) of this section contains provisions formerly in s. 20 (3) (a) of the Housing Act, 1949, and in s. 16 (1) of the Housing Repairs and Rents Act, 1954. Sub-s. (2) contains provisions formerly in s. 20 (3) (b) of the Act of 1949 and in the proviso to that subsection. Sub-s. (3) contains provisions formerly in s. 20 (3) (c) of the Act of 1949, as amended by s. 16 (2) of the Act of 1954.

**General Note.** This section specifies the requirements as to which a local authority must satisfy themselves before approving an application for an improvement grant under s. 30, *ante*; see further, the General Note to that section.

**Sub-s. (1).**

**Application for an improvement grant.** *I.e.*, an application made under s. 30 (1), *ante*.

**Local authority.** As to the local authorities authorised to make improvement grants, see s. 41, *post*.

**Satisfy.** Cf. the note "Satisfied" to s. 1 (3), *ante*.

**Improvement works.** For definition, see s. 30 (1), *ante*.

**Improved.** This expression is to be construed in accordance with s. 42 (2), *post*.  
**Sub-s. (2).**

**Such requirements . . . as may be specified.** The current requirements were specified in para. 11 of Ministry of Housing and Local Government Circular No. 36/54, dated 20th April 1954 (printed in *Lumley's Public Health* (12th Edn.), Vol. VIII, pp. 293 *et seq.*), and are reproduced in the notes to s. 9 (3), *ante*; see also para. 14 of Appendix IV to Circular No. 55/54, *op. cit.*, at p. 306.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Sub-s. (3).**

Note that by s. 37, *post*, this subsection does not apply in relation to certain parsonages, almshouses, etc.

**Applicant.** For meaning, see s. 30 (1), *ante*.

**Whichever is the shorter.** The proviso to sub-s. (1), *supra* (which was added to s. 20 (3) (a) of the Act of 1949 by s. 16 (1) of the Housing Repairs and Rents Act, 1954) enables a grant to be made when the period for which a dwelling will provide satisfactory accommodation is less than 30 years. The alternative period mentioned in sub-s. (3) (a), *supra* (introduced into s. 20 (3) (c) of the Act of 1949 by s. 16 (2) of the Act of 1954) is consequential on this change.

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *post*. A local authority under Part V of that Act may acquire land under ss. 96 (e) and 97 for the express purpose of disposing of it under s. 105 (2); those provisions replace s. 9 of the Act of 1949.

**32. Amount of improvement grants.—(1)** The amount which may be paid by way of an improvement grant in respect of expenses incurred for the purposes of the execution of any improvement works—

- (a) shall be such fraction of the approved expense of executing those works, not exceeding one-half thereof, as may be determined by the local authority when they approve the application for the grant, but
- (b) shall not exceed four hundred pounds, or such other amount as may for the time being be prescribed for each dwelling provided or improved by the works:

Provided that if the local authority, with the concurrence of the Minister, are satisfied in the case of any particular application that in all the circumstances of the case there is good reason for the payment of a higher amount than the amount authorised under paragraph (b) of this subsection, the amount of the grant to be made in pursuance of the application may be increased (notwithstanding anything in this subsection) by such amount as may be determined by the authority with the consent of the Minister when they approve the application.

(2) An improvement grant in respect of expenses incurred for the purposes of the execution of improvement works may be paid either after completion of the works or partly in instalments from time to time as the works progress and as to the balance after the completion of the works:

Provided that where the grant is to be paid partly in instalments, the aggregate of the instalments paid shall not at any time before the completion of the works exceed one-half of the aggregate cost of the works executed up to that time.

(3) The payment of an improvement grant or of an instalment or the balance thereof shall be conditional upon the works or, as the case may be, the part of the works which the applicant considers will entitle him to payment of the instalment or balance, being executed to the satisfaction of the local authority.

**NOTES**

**History.** Sub-s. (1) of this section contains provisions formerly in s. 21 (1) of the Housing Act, 1949, as amended by s. 54 (4) of, and the Fifth Schedule to, the Housing Repairs and Rents Act, 1954, and in s. 16 (4) of the Act of 1954. Sub-ss. (2) and (3) contain provisions formerly in s. 21 (2) and (3), respectively, of the Act of 1949.

**General Note.** This section provides for the determination of the amount of an improvement grant under s. 30, *ante*, and its payment; see, further, the General Note to that section.

**Sub-s. (1).**

**Improvement grant; improvement works.** For definitions, see s. 30 (1), *ante*.

**Expenses incurred.** This must mean expenses to be incurred or likely to be incurred (cf. s. 9 (1), *ante*, which refers to the annual loss "likely to be incurred") because no application may be made for a grant after the improvement works are begun (see s. 30 (1), *ante*), and under sub-s. (1), *supra*, the amount of the grant must be determined when the application is approved.

**Approved expense.** For meaning, see s. 30 (5), *ante*.

**Local authority.** As to the local authorities authorised to make improvement grants, see s. 41, *post*.

**When they approve the application.** As to applications for improvement grants, and their approval, see s. 30, *ante*.

**Prescribed.** *I.e.*, prescribed by regulations under s. 49, *post*. At the time of going to press no other amount has been prescribed for the purposes of sub-s. (1) (b), *supra*.

**Improved.** This expression is to be construed in accordance with s. 42 (2), *post*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Satisfied.** Cf. the note to s. 1 (3), *ante*.

**Sub-s. (3).**

**Applicant.** For meaning, see s. 30 (1), *ante*.

**33. Conditions to be observed with respect to dwellings.—**(1) In the case of a dwelling in respect of the provision or improvement of which assistance has been given under the foregoing provisions of this Part of this Act, the conditions set out in the Fourth Schedule to this Act shall, subject to the provisions of this Part of this Act, be observed with respect to the dwelling for the period specified in subsection (2) of this section and shall, so long as they are required to be so observed, be deemed to be part of the terms of any lease, agreement for a lease or tenancy of the dwelling, and shall be enforceable accordingly.

(2) The period during which conditions are to be observed is a period of twenty years beginning with the day on which the dwelling first becomes fit for occupation after the completion of the improvement works so, however, that where the local authority approve an application for an improvement grant in respect of a dwelling which in their opinion is not likely to provide satisfactory housing accommodation for more than twenty years from the completion of the works, they may by order direct that in relation to that dwelling it shall be such shorter period as may be specified in the order.

#### NOTES

**History.** Sub-s. (1) of this section contains provisions formerly in s. 23 (1) of the Housing Act, 1949. Sub-s. (2) contains provisions formerly in s. 23 (1) of the Act of 1949 and in s. 16 (3) of the Housing Repairs and Rents Act, 1954. For provisions formerly in s. 23 (2)–(5) of the Act of 1949, see s. 34, *post*.

**General Note.** This section provides that, where an improvement grant has been made under s. 30, *ante*, in respect of a dwelling converted from a house or building or an improved dwelling, conditions must be observed, and under s. 34, *post*, a breach of those conditions may lead to a proportion of the grant being repayable by the owner for the time being of the dwelling.

The conditions must be observed with respect to the dwelling during a period of twenty years from the day when the dwelling first becomes fit for occupation after the completion of the works (or, in certain cases, such shorter period as may be specified by order of the local authority) (sub-s. (2), *supra*); and so long as they are required to be observed they are deemed to be part of the terms of any lease, agreement for a lease or tenancy of the dwelling and are enforceable accordingly (sub-s. (1), *supra*).

The conditions (which are set out in the Fourth Schedule, *post*) are as follows:—

- (i) the dwelling must not be used otherwise than as a private dwelling-house except with the written consent of the local authority;
- (ii) it must be let or kept available for letting at a rent not exceeding the limit imposed by s. 20 of the Rent Act, 1957 (103 Statutes Supp. 84; 37 Halsbury's Statutes (2nd Edn.) 571), unless it is occupied by the applicant or a member of his family, by a person who has become, by devise, or on an intestacy, beneficially entitled to the whole of, or an interest in, the applicant's interest, or the proceeds of sale thereof, or by a member of the agricultural population under a contract of service;
- (iii) the dwelling must be maintained in a state fit for human habitation;
- (iv) the owner of the dwelling must certify, when required by the local authority, that the conditions specified in (i), (ii) and (iii) are being observed, and the tenant must supply, at the request of the owner, information for this purpose;
- (v) if the tenant assigns or otherwise parts with possession of the dwelling no person may in consideration thereof make any payment other than rent nor may the tenant receive directly or indirectly such payment;

(vi) in the case of dwellings occupied in pursuance of a contract of service by a member of the agricultural population, if the contract is determined—

- (a) by less than 4 weeks' notice by the employer,
- (b) by dismissal of the employee without notice,
- (c) by death of either party,

the employee (or any person residing with him at his death) must be allowed to occupy the dwelling, free of charge, for 4 weeks from the giving of notice, or other determination of the contract.

These conditions must be registered as a local land charge under s. 15 of the Land Charges Act, 1925 (s. 34 (9), *post*).

Breach of the conditions empowers the local authority to demand repayment of a proportion of the grant according to the extent to which the period during which the conditions are to be observed remains unexpired at the date of the breach. In addition to the proportionate sum, interest thereon at the prescribed rate from the date of payment of the grant at compound interest with yearly rests is also payable. These provisions apply where the breach is in respect of a dwelling for which the grant was solely made and also in respect of a dwelling which is part only of the subject of a grant, and in this latter case the grant is apportioned to that dwelling (s. 34 (1)–(4), *post*).

Repayment on such breach is only payable on demand by the local authority and then becomes payable forthwith to them by the owner for the time being of the dwelling (s. 34 (2), *post*). It is recoverable in a county court notwithstanding any restrictions in the jurisdiction of that court, and that court may also grant injunctions restraining breaches of the conditions (s. 34 (8), *post*).

The local authority need not, however, demand repayment on a breach of conditions where they are satisfied that the breach is capable of being remedied, but may, with the consent of the Minister and subject to any conditions approved by him, suspend the operation of the above provisions so that the breach may be remedied, and if remedied direct that those provisions shall not apply to the breach (s. 34 (5), *post*). They may also direct that those provisions shall not apply when they are satisfied that the breach, though not capable of being remedied, was not due to the act, default or connivance of the owner, subject to the consent of the Minister and any conditions approved by him (s. 34 (6), *post*).

On repayment to the local authority, observance of the conditions with respect to the dwelling ceases to be requisite (s. 34 (7), *post*), though, of course, any other restrictions will still apply, such as the terms of the lease, restrictive covenants, Rent Acts and provisions as to town and country planning.

#### Sub-s. (1).

**Dwelling . . . improvement of which.** As to the construction of references to the improvement of dwellings, see s. 42 (2), *post*.

**Assistance has been given under the foregoing provisions.** That is, by an improvement grant under s. 30, *ante*.

**Subject to the provisions of this Part.** See, especially, ss. 34 (7) and 35 (1), *post* (freedom from conditions on repayment of appropriate proportion of grant); s. 38 (2), *post* (provisions as to further grants); and s. 39 (2), *post* (dwellings for rural workers).

#### Sub-s. (2).

**Fit for occupation.** This is a question of fact, and the day when the dwelling is so fit is presumably a matter of agreement between the applicant and the local authority. The period of twenty years or the shorter period specified in the local authority's order cannot, however, begin to run until after completion of the works even though the house or building is occupied while the works are being carried out.

**Improvement works; improvement grant.** For definitions, see s. 30 (1), *ante*.

**Local authority.** As to the local authorities authorised to make improvement grants, see s. 41, *post*.

**Approve an application.** As to applications for improvement grants, and their approval, see s. 30, *ante*.

**Opinion.** Cf. the note to s. 3 (2), *ante*.

**Not likely to provide . . . accommodation for more than twenty years.** As to the period for which dwellings provided or improved are to provide satisfactory housing accommodation, see s. 31 (1), *ante*.

**34. Enforcement of conditions.**—(1) The provisions of this section shall have effect in the event of a breach of any of the conditions specified in the Fourth Schedule to this Act at a time when they are required to be observed with respect to a dwelling.

(2) Where the improvement works by means of which the dwelling was provided or improved were works only for the provision or improvement of that dwelling, the appropriate proportion of any sums paid by the local authority by way of improvement grant in respect of expenses incurred for the purposes of the execution of those works, together, in the case of each such sum, with compound interest on that proportion thereof as from the date of payment of the sum, calculated at the prescribed rate and with yearly rests, shall, on being demanded by the local authority, forthwith become payable to them by the owner for the time being of the dwelling.

(3) Where the said improvement works were works for the provision or improvement of more than one dwelling the appropriate proportion of a part of any such sums as aforesaid bearing to the whole thereof the same proportion that the approved proportion of the approved expense of executing the improvement works bears to the whole of the approved expense of executing those works, together, in the case of each part of a sum, with compound interest on the appropriate proportion thereof as from the date of payment of the sum, calculated at the prescribed rate and with yearly rests, shall become payable as aforesaid.

(4) In the foregoing subsections the expression "the appropriate proportion" in relation to a sum or part of a sum means a part thereof proportionate to the extent to which the period during which conditions are required by section thirty-three of this Act to be observed with respect to the dwelling remains unexpired at the date of the occurrence of the breach.

(5) If the local authority are satisfied that the breach is capable of being remedied, they may, with the consent of the Minister, and subject to such conditions (if any) as he may approve, direct that the operation of the foregoing provisions of this section shall, in relation to the breach, be suspended for such period as appears to them to be necessary for enabling the breach to be remedied and, if the breach is remedied within that period, may direct that the said provisions shall not have effect in relation to the breach.

(6) If the local authority are satisfied that the breach, although not capable of being remedied, was not due to the act, default or connivance of the owner of the dwelling, they may, with the like consent and subject to such conditions as aforesaid, direct that the foregoing provisions of this section shall not have effect in relation to the breach.

(7) Upon satisfaction of a liability of an owner of a dwelling to make a payment under this section to a local authority, observance with respect to the dwelling of the conditions specified in the Fourth Schedule to this Act shall cease to be requisite.

(8) Notwithstanding anything to the contrary in any enactment or rule of law relating to the jurisdiction of county courts, the county court for the district in which a dwelling in respect of the provision or improvement of which assistance has been given under this Part of this Act is wholly or partly situate may, on the application of the local authority,—

(a) whether or not any other relief is claimed, grant an injunction restraining a breach or apprehended breach, in relation to the dwelling, of any of the conditions specified in the Fourth Schedule to this Act other than the condition specified in paragraph 7 of that Schedule.

(b) order the payment to the authority of any sum which by virtue of this section is payable to them in respect of the dwelling.

(9) Conditions required by the Fourth Schedule to this Act to be observed with respect to a dwelling shall be registered in the register of local land charges by the proper officer of the local authority in such manner as may be specified by rules made for the purposes of this section under subsection (6) of section fifteen of the Land Charges Act, 1925.

#### NOTES

**History.** Sub-ss. (1) to (6) of this section contain provisions formerly in s. 23 (2)

of the Housing Act, 1949. Sub-ss. (7), (8) and (9) contain provisions formerly in s. 23 (3), (4) and (5) respectively of that Act.

**General Note.** This section provides for the enforcement of the conditions which, by virtue of s. 33, *ante*, are to be observed with respect to dwellings where an improvement grant under s. 30, *ante*, has been made; see, further, the General Note to s. 33, *ante*.

For the application of this section where a further grant is made, see s. 38 (2), *post* Sub-s. (1).

**In the event of a breach.** In determining whether a breach of certain of the conditions has occurred regard must be had to s. 42 (3), *post*.

**Time when they are required to be observed.** See s. 33 (2), *ante*. On a breach of conditions and repayment of the grant under sub-ss. (2)–(4), *supra*, the owner is freed from the conditions; see sub-s. (7), *supra*. An owner or mortgagee entitled to exercise his power of sale may also, by voluntary repayment of the grant, obtain freedom from the conditions; see s. 35 (1), *post*. The short effect of sub-ss. (1)–(4), *supra*, is that the amount to be repaid is that which is referable to the unexpired part of the period, together with interest on that amount from the beginning of the period.

**Sub-s. (2).**

**Improvement works; improvement grant.** For definitions, see s. 30 (1), *ante*.

**Improved; improvement of that dwelling.** As to the construction of these expressions, see s. 42 (2), *post*.

**Appropriate proportion.** For meaning, see sub-s. (4), *supra*.

**Local authority.** As to the local authorities authorised to make improvement grants, see s. 41, *post*.

**Prescribed rate.** *I.e.*, the rate prescribed by regulations under s. 49, *post*. The Housing (Improvement Grants) (Rate of Interest) Regulations, 1956 (S.I. 1956 No. 1466) (which have effect under s. 49 by virtue of s. 59 (2), *post*), prescribe a rate of six per cent. for the purposes of sub-ss. (2) and (3), *supra*.

**Forthwith become payable.** As to recovery of the sum in the county court, see sub-s. (8), *supra*.

Although in the words of Jessel, M.R., in *Re Southam, Ex parte Lamb* (1881), 19 Ch.D. 169, C.A., at p. 173; 4 Digest 532, 4876, "the word 'forthwith' must be construed according to the circumstances in which it is used", the test is a stringent one, as is shown by the case just cited. Indeed, there is authority for saying that the word "admits of no interval of time . . . save such as may be imposed by circumstances which cannot be avoided"; see *Re Muscovitch, Ex parte Muscovitch*, [1939] 1 All E.R. 135 C.A., at p. 139; Digest Supp.

**Owner.** For meaning, see s. 42 (1), *post*.

**Sub-s. (3).**

**Approved proportion; approved expense.** For meanings, see s. 30 (5), *ante*.

**Prescribed rate.** See the note to sub-s. (2), *supra*.

**Shall become payable as aforesaid.** That is "on being demanded by the local authority, forthwith become payable to them by the owner for the time being of the dwelling", as in sub-s. (2), *supra*.

**Sub-s. (5).**

**Satisfied.** Cf. the note to s. 1 (3), *ante*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Appears.** Cf. the note "Appear" to s. 2 (3), *ante*.

**Sub-s. (7).**

A voluntary repayment with the like effect may be made under s. 35 (1), *post*.

**Sub-s. (8).**

**Jurisdiction of county courts.** For provisions as to the jurisdiction of county courts, see the County Courts Act, 1934, ss. 40 *et seq.* (5 Halsbury's Statutes (2nd Edn.) 35 *et seq.*) and the County Courts Act, 1955, ss. 1 *et seq.* (91 Statutes Supp. 5 *et seq.*; 35 Halsbury's Statutes (2nd Edn.) 25 *et seq.*).

**Sub-s. (9).**

**Register of local land charges.** As to this register, see the Land Charges Act, 1925, s. 15 (20 Halsbury's Statutes (2nd Edn.) 1088).

**Proper officer.** The proper officer to act as local registrar is prescribed by r. 4 of the Local Land Charges Rules, 1934 (S.R. & O. 1934 No. 285) (18 Halsbury's Statutory Instruments, title Real Property (Part 2)).

By s. 20 (2) of the Rent Act, 1957 (see the note on that section to para. 4 of the Fourth Schedule, *post*), the proper officer is required to record any change in a registered

condition effected by that section; note also s. 1 (2) of that Act as to changes in the "rent limit".

**Rules made for the purposes of this section.** At the time of going to press no rules have been made by virtue of sub-s. (9), *supra*. By virtue, however, of s. 59 (2), *post*, the Housing Act, 1949 (Registration of Conditions) Rules, 1951 (S.I. 1951 No. 185) (amending the above-mentioned rules of 1934), have effect for the purposes of this subsection.

**Land Charges Act, 1925, s. 15 (6).** 20 Halsbury's Statutes (2nd Edn.) 1089.

**35. Repayment of improvement grants.**—(1) The owner of a dwelling in respect of the provision or improvement of which assistance has been given under the foregoing provisions of this Part of this Act or a mortgagee of the interest of the owner in the dwelling, being a mortgagee entitled to exercise his power of sale, may, if the local authority so agree, at any time during the period specified in subsection (2) of section thirty-three of this Act pay to the local authority the like amount as would become payable to them under the last foregoing section in the event of a breach at that time of any conditions applying to the dwelling, and, on the making of the payment, observance with respect to the dwelling of those conditions shall cease to be requisite.

(2) A sum paid under the foregoing subsection by a mortgagee shall be treated as part of the sum secured by the mortgage and may be discharged accordingly.

(3) The purposes authorised for the application of capital money by section seventy-three of the Settled Land Act, 1925, by that section as applied by section twenty-eight of the Law of Property Act, 1925, in relation to trusts for sale, and by section twenty-six of the Universities and College Estates Act, 1925, shall include the payment under subsection (1) of this section to a local authority in respect of a dwelling of the amount mentioned in that subsection.

#### NOTES

**History.** This section contains provisions formerly in s. 24 of the Housing Act, 1949.

**General Note.** This section enables the owner of a dwelling, or a mortgagee of the interest of the owner entitled to exercise his power of sale, to repay assistance given under s. 30, *ante*, for the provision of the dwelling by conversion of a house or building or for improvement of the dwelling (sub-s. (1), *supra*). Repayment may only be made if the local authority so agree, but with that agreement it may be made at any time during the period during which the conditions attached to the grant are required by s. 33 (2), *ante*, to be observed. The amount of the repayment will be proportionate to the portion of the period during which the conditions must be observed remaining unexpired at the time of payment. The effect of the repayment is to make the observance of the conditions with respect to the dwelling no longer requisite though, of course, other restrictions will still apply, such as the terms of the lease, restrictive covenants, Rent Acts and provisions as to town and country planning.

Where repayment is made by a mortgagee the sum paid is to be treated as part of the sum secured by the mortgage (sub-s. (2), *supra*).

Capital money arising under a settlement, trust for sale, etc., may be used for the purpose of repayment under the section (sub-s. (3), *supra*).

For the application of this section where a further grant is made, see s. 38 (2), *post*.  
**Sub-s. (1).**

**Owner.** For meaning, see s. 42 (1), *post*.

**Dwelling . . . improvement of which.** As to the construction of references to the improvement of dwellings, see s. 42 (2), *post*.

**Assistance has been given under the foregoing provisions.** That is, by an improvement grant under s. 30, *ante*.

**Mortgagee entitled to exercise his power of sale.** For the mortgagee's power of sale, see the Law of Property Act, 1925, s. 101 (1) (i) (20 Halsbury's Statutes (2nd Edn.) 655). The conditions of its exercise are prescribed by s. 103 of that Act.

**If the local authority so agree.** If the local authority do not agree, a breach of the conditions might force a demand for repayment under s. 34 (2) or (3), *ante*; but note the power to seek an injunction under s. 34 (8) (a). As to the local authorities authorised to make improvement grants, see s. 41, *post*. Repayments by building societies as mortgagees should not be refused without consulting the Minister; see para. 3 of Circular No. 52/55, cited in the General Note to s. 38, *post*.

**Like amount as . . . under the last foregoing section.** This is an amount in proportion to the unexpired portion of the period during which the conditions must be observed, with compound interest, from the beginning of that period, on that amount; see s. 34 (2)-(4), *ante*.

**Conditions applying to the dwellings.** See s. 33 (1), *ante*, and the Fourth Schedule, *post*.

**Sub-s. (2).**

**May be discharged accordingly.** As to the application in discharge of the mortgage money of the proceeds of sale of mortgaged property, see the Law of Property Act, 1925, s. 105 (20 Halsbury's Statutes (2nd Edn.) 668).

**Sub-s. (3).**

**Settled Land Act, 1925, s. 73.** 23 Halsbury's Statutes (2nd Edn.) 161.

**Law of Property Act, 1925, s. 28.** 20 Halsbury's Statutes (2nd Edn.) 475.

**Universities and College Estates Act, 1925, s. 26.** 8 Halsbury's Statutes (2nd Edn.) 104.

**36. Exchequer contributions towards improvement grants.—(1)** The Minister may make a contribution towards the expense incurred by a local authority in making an improvement grant under the foregoing provisions of this Part of this Act.

(2) A contribution under the foregoing subsection shall be a sum equal to three-quarters of the annual loan charges referable to the amount of the grant, payable annually for the period of twenty financial years beginning with the year in which were completed the improvement works in respect of expenses incurred for the purposes of the execution of which the grant was made:

Provided that an order under section two of this Act may, as respects improvement grants made in pursuance of applications approved by the local authorities after such date as may be specified in the order, reduce the proportion of the said annual loan charges to some other proportion, less than three-quarters but not less than two-thirds.

(3) For the purposes of this section, the annual loan charges referable to the amount of an improvement grant shall (whatever may be the manner in which the local authority have provided or intend to provide the money requisite for making the grant) be the annual sum that, in the opinion of the Minister, would fall to be provided by the local authority for the payment of interest on, and the repayment of, an amount, equal to the amount of the grant of borrowed money the period for the repayment of which is twenty years.

(4) Where the Minister has made a contribution under this section towards the expense incurred by a local authority in giving assistance in respect of the provision or improvement of a dwelling, the authority shall pay to the Minister out of any sum—

(a) recovered by them by virtue of section thirty-four of this Act in consequence of a breach of conditions required to be observed with respect to the dwelling, or

(b) paid to them under the last foregoing section in respect of the dwelling,

three-quarters of that sum, and the amount received by the Minister shall be paid into the Exchequer.

(5) Any order under the proviso to subsection (2) of this section for reducing the said proportion of the annual loan charges shall provide for reducing to a corresponding extent, in relation to improvement grants made as mentioned in that proviso, the proportion of any sum required by the last foregoing subsection to be paid to the Minister.

#### NOTES

**History.** Sub-s. (1) of this section contains provisions formerly in s. 25 (1) of the Housing Act, 1949. Sub-s. (2) contains provisions formerly in s. 25 (2) of that Act, and in s. 32 (1) thereof, as adapted by s. 12 (3) of, and para. 11 of the First Schedule to, the Housing Subsidies Act, 1956. Sub-ss. (3) and (4) contain provisions formerly

in s. 25 (3) and (4), respectively, of the Act of 1949. Sub-s. (5) contains provisions formerly in s. 32 (2) of that Act.

**General Note.** The Minister is given power by this section to make a contribution towards the expense incurred by a local authority in making improvement grants under s. 30, *ante*. Subject to the proviso to sub-s. (2), *supra*, the contribution is to amount to three-quarters of the annual loan charges, as defined in the section, referable to the amount of the grant. It is payable annually for a period of twenty years beginning with the year in which the improvement works were completed. Where a contribution has been made under this section, three-quarters of any grant repaid to the local authority, under s. 34 (2)-(4) or 35 (1), *ante*, must be paid by the local authority to the Minister. If an order is made reducing the proportion of loan charges covered by the Minister's contribution, the proportion of sums to be repaid to the Minister must be correspondingly reduced.

As to the time, manner and conditions of payment of contributions, see s. 28, *ante*.

**Sub-s. (1).**

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Local authority.** As to the local authorities authorised to make improvement grants, see s. 41, *post*.

**Improvement grant under the foregoing provisions.** See s. 30 (1), *ante*.

**Sub-s. (2).**

**Annual loan charges.** As to the "annual loan charges referable to the amount of the grant", see sub-s. (3), *supra*, and for the meaning of "loan charges", see s. 58 (1), *post*.

**For the period of twenty financial years.** Conditions are generally attached to a dwelling for twenty years from the completion of the improvement works (s. 33 (2), *ante*). During that period repayment of a proportion of the grant to the local authority may be demanded under s. 34 (1)-(4), *ante*, on a breach of condition or may be made voluntarily under s. 35 (1), *ante*.

Where the Minister has made a contribution, based on a proportion (*i.e.*, three-quarters, unless and until this proportion is reduced by order) of the assumed loan charges, and the local authority recover a proportion of their grant under s. 34 or 35, the authority must pay to the Minister under sub-s. (4), *supra*, a proportion (*i.e.*, three-quarters, unless and until this proportion is correspondingly reduced by order) of the grant repaid to them. Thus the ultimate financial liability of the local authority will not be definitely known until the end of the period. Any order under s. 2, *ante*, as applied by sub-ss. (2) and (5), *supra*, will not however affect the proportion of three-quarters, under sub-s. (2) or (4), in connection with applications approved before a date specified in the order.

As to "financial year" see the note to s. 10 (1), *ante*.

**Improvement works.** For meaning, see s. 30 (1), *ante*.

**Sub-s. (3).**

**Opinion.** Cf. the note to s. 3 (2), *ante*.

**Sub-s. (4).**

For the application of this subsection where a further improvement grant is made, see s. 38 (2), *post*.

**Improvement of a dwelling.** As to the construction of references to the improvement of dwellings, see s. 42 (2), *post*.

**Conditions required to be observed.** See s. 33 (1), *ante*, and the Fourth Schedule, *post*.

**Sub-s. (5).**

**As mentioned in that proviso.** This refers to grants made in pursuance of applications approved after a date specified in the order; see sub-s. (2), proviso, *supra*.

**37. Special provisions as to parsonages, almshouses, &c.**—Sub-section (3) of section thirty-one of this Act shall not apply in relation to—

- (a) an application for an improvement grant in respect of the residence house of an ecclesiastical benefice made, during a period when the benefice is void, by a sequestrator of the profits thereof; or
- (b) an application for such a grant in respect of a building held upon trust for use as an almshouse or as the residence of a minister of any religious denomination made by the trustees exercising the powers of management of the trust estate.

**NOTES**

**History.** This section contains provisions formerly in s. 26 (2) of the Housing Act, 1949. Other provisions relating to parsonages, almshouses, etc., which were

formerly contained in that section are now contained in para. 9 of the Fourth Schedule, *post*.

**Improvement grant.** For meaning, see s. 30 (1), *ante*.

**Residence house of an ecclesiastical benefice.** As to such residences, see 13 Halsbury's Laws (3rd Edn.) 420 *et seq*.

**Sequestrator of the profits.** As to sequestration of benefices, see 13 Halsbury's Laws (3rd Edn.) 314 *et seq*.

**Almshouse.** For a home to be an almshouse it is not necessary that the inmates should be entirely destitute or that all their wants should be supplied; see *Mary Clark Home, Trustees v. Anderson*, [1904] 2 K.B. 645; 28 Digest 13, 63.

**38. Provisions as to further improvement grants.**—(1) No assistance shall be given under the foregoing provisions of this Part of this Act in respect of the provision of dwellings by means of the conversion of dwellings with respect to which the conditions specified in the Fourth Schedule to this Act are for the time being required to be observed.

(2) Where by virtue of the giving on any occasion of assistance under this Part of this Act in respect of the improvement of a dwelling the conditions specified in the Fourth Schedule to this Act fall to be required to be observed with respect to the dwelling before the observance thereof by virtue of the giving of assistance on a previous occasion has ceased to be requisite, the provisions of sections thirty-three to thirty-five of this Act and of sub-section (4) of section thirty-six thereof shall apply in relation to the dwelling as regards each occasion on which assistance is so given as if it were the only occasion on which it were so given.

#### NOTES

**History.** This section contains provisions formerly in s. 27 of the Housing Act, 1949, but the proviso to sub-s. (2) of that section is omitted.

**General Note.** This section, by sub-s. (1), bars any further assistance under s. 30, *ante*, for the provision of dwellings by means of *conversion* so long as those dwellings for which assistance is required are subject to the observance of conditions arising out of a previous grant, and whether the previous assistance was for provision of dwellings by conversion of houses or buildings or by improvement of dwellings.

Further assistance for the *improvement* of dwellings under s. 30, *ante*, which have already been given assistance on a previous occasion, is not barred by sub-s. (1), *supra*, and may be given whether the earlier grant was for conversion or for improvement. If a further grant is made while the conditions of an earlier grant are still running (under s. 33 (2), *ante*), then s. 33, *ante*, as to conditions, ss. 34 and 35, *ante*, as to enforcement and repayment, and s. 36 (4), *ante*, as to repayment of the Exchequer contribution, will apply separately to each grant (sub-s. (2), *supra*).

Similar provision for dwellings subject to conditions under the Housing (Rural Workers) Acts, 1926 to 1942, is made by s. 39, *post*. Where assistance is being received under the Housing, etc., Act, 1923, as amended by the Housing (Financial Provisions) Act, 1924 (cf. s. 48, *post*), an improvement grant under s. 30, *ante*, should be made conditional on forgoing the existing assistance; see paras. 15–17 of Ministry of Housing and Local Government Circular No. 52/55, dated 4th October 1955 (printed in *Lumley's Public Health* (12th Edn.), Vol. VIII, at p. 337). As to problems arising where there is a building society mortgage, see paras. 3 and 4 of that Circular.

#### Sub-s. (1).

**Provision of dwellings by means of the conversion of dwellings.** Sub-s. (1), *supra*, bars further assistance only in respect of the provision of dwellings by means of conversion. It does not bar further assistance in respect of improvement which is provided for in sub-s. (2), *supra*.

Under s. 30 (1) (a), *ante*, the provision of dwellings is to be effected by means of the conversion of "houses or other buildings". If a subsequent application in respect of such houses or buildings were made after such conversion, the application would be one for "provision of dwellings by means of the conversion of dwellings", which is the expression used in sub-s. (1), *supra*.

**Conditions . . . are for the time being required to be observed.** The conditions set out in the Fourth Schedule, *post*, are to be observed for the period specified in s. 33 (2), *ante*. The conditions to which the dwelling may be subject under s. 33, *ante*, may arise out of assistance for conversion or assistance for improvement.

#### Sub-s. (2).

**Improvement of a dwelling.** As to the construction of references to the improvement of dwellings, see s. 42 (2), *post*.

**Giving of assistance on a previous occasion.** This may have been assistance for conversion or assistance for improvement; see s. 30 (1) (a), (b), *ante*. There is

no bar in sub-s. (1), *supra*, to further assistance for improvement after assistance for conversion, though assistance for conversion after assistance for either conversion or improvement is barred by that subsection.

**39. Provisions as to dwellings improved under Housing (Rural Workers) Act, 1926.**—(1) No assistance shall be given under the foregoing provisions of this Part of this Act in respect of the provision of dwellings by means of the conversion of dwellings in relation to which conditions contained in the Housing (Rural Workers) Acts, 1926 to 1942, for the time being apply.

(2) Where assistance is given under the said provisions of this Part of this Act in respect of the improvement of a dwelling in relation to which conditions contained in the Housing (Rural Workers) Acts, 1926 to 1942, apply at the time when assistance is so given, those Acts shall have effect in relation to the dwelling as if the conditions specified in the Fourth Schedule to this Act were contained in, and applicable by virtue of, subsection (1) of section three of the Housing (Rural Workers) Act, 1926, in lieu of the conditions specified therein and in section five of the Housing (Rural Workers) Amendment Act, 1938, and anything which would, or would not, constitute for the purposes of this part of this Act a breach of the conditions specified in the said Fourth Schedule to this Act shall be treated as constituting, or, as the case may be, not constituting a breach of those conditions for the purposes of the Housing (Rural Workers) Acts, 1926 to 1942.

#### NOTES

**History.** This section contains provisions formerly in s. 28 of the Housing Act, 1949.

**General Note.** This section, by sub-s. (1), bars assistance under s. 30, *ante*, for the provision of dwellings by means of the *conversion* of dwellings in relation to which conditions contained in the Housing (Rural Workers) Acts, 1926 to 1942, apply, whether those conditions apply by reason of assistance given for reconstruction or for improvement; see the Housing (Rural Workers) Act, 1926, s. 3 (11 Halsbury's Statutes (2nd Edn.) 424) (as amended and modified by the Housing Act, 1935, s. 37 (4) (11 Halsbury's Statutes (2nd Edn.) 442), the Housing (Rural Workers) Amendment Act, 1938, ss. 3, 5, 7 (11 Halsbury's Statutes (2nd Edn.) 621, 622), the Housing Act, 1949, s. 45 (61 Statutes Supp. 119; 28 Halsbury's Statutes (2nd Edn.) 639), and the Rent Act, 1957, s. 20 (103 Statutes Supp. 84; 37 Halsbury's Statutes (2nd Edn.) 571)), which imposes conditions, *inter alia*, as to income limit of the occupiers, the maximum rent, and fitness for human habitation, in the case of dwellings in respect of which assistance has been given under the Act of 1926 by way of grant.

Assistance for the *improvement* of dwellings under s. 30, *ante*, which have already been given assistance under the Housing (Rural Workers) Acts, 1926 to 1942, is not barred by sub-s. (1), *supra*, and where assistance is given under s. 30, *ante*, it may be given in respect of a dwelling which is subject to conditions for assistance under those Acts either for reconstruction or for improvement. If assistance is given under s. 30, *ante*, while the conditions attached to assistance under those Acts still apply, the conditions specified in the Fourth Schedule, *post*, are to be substituted for the conditions under those Acts, and anything which would or would not constitute for the purposes of this Part of this Act a breach of the conditions specified in the Fourth Schedule, *post*, is to be treated as constituting or not constituting a breach of the conditions for the purposes of the Acts of 1926 to 1942 (sub-s. (2), *supra*).

#### Sub-s. (1).

**Housing (Rural Workers) Act, 1926 to 1942.** *I.e.*, the Housing (Rural Workers) Act, 1926 (11 Halsbury's Statutes (2nd Edn.) 420); the Housing (Rural Workers) Amendment Act, 1931 (repealed); the Housing Act, 1935, ss. 37, 38 (11 Halsbury's Statutes (2nd Edn.) 442); the Housing (Rural Workers) Amendment Act, 1938 (11 Halsbury's Statutes (2nd Edn.) 621); and the Housing (Rural Workers) Act, 1942 (16 Statutes Supp. 14; 11 Halsbury's Statutes (2nd Edn.) 629); see s. 2 (2) of the Act of 1942. As to the conditions contained in those Acts, see the General Note, *supra*.

#### Sub-s. (2).

**Housing (Rural Workers) Act, 1926, s. 3 (1).** 11 Halsbury's Statutes (2nd Edn.) 424.

**Housing (Rural Workers) Amendment Act, 1938, s. 5.** 11 Halsbury's Statutes (2nd Edn.) 621.

**40. Provisions as to security of tenure of tenants.**—Where a dwelling in respect of the provision or improvement of which assistance has been given under section thirty of this Act is, at a time when the conditions specified in the Fourth Schedule to this Act are required to be observed with respect to the dwelling, let to a person in consequence of his employment by the lessor, the operation of section three of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (which restricts the right of a landlord to possession of a dwelling), shall not be excluded by reason of the letting being otherwise than at a rent of two-thirds or more of the rateable value of the dwelling.

#### NOTES

**History.** This section contains provisions formerly in s. 30 of the Housing Act, 1949.

**General Note.** This section gives to the tenant of an assisted house let to him in consequence of his employment the protection of s. 3 of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (103 Statutes Supp. 157; 13 Halsbury's Statutes (2nd Edn.) 1048), although the house is let for less than two-thirds of the rateable value and would otherwise be outside the Rent Acts. In consequence, the lessor must give proof of suitable alternative accommodation unless the tenant has left his employment and the lessor requires possession so as to let it to another person in his employment or unless he can bring his application within the other provisions of the First Schedule to the Act of 1933.

**Provision or improvement.** That is provision of a dwelling by conversion of a house or building, or improvement of a dwelling; see s. 30 (1) (a), (b), *ante*.

As to the construction of references to the improvement of dwellings, see s. 42 (2), *post*.

**Time when the conditions . . . are required to be observed.** The conditions set out in the Fourth Schedule, *post*, are required to be observed for the period specified in s. 33 (2), *ante*.

**Let to a person in consequence of his employment by the lessor.** Letting to an employee is not sufficient: the letting must be in consequence of the employment, but it is not necessary that the tenant should be aware that the dwelling had been let to him in consequence of his employment or that the tenancy was conditional on his remaining in that employment; see *Braithwaite & Co., Ltd. v. Elliot*, [1946] 2 All E.R. 537, C.A.; 31 Digest (Repl.) 704, 7932 (overruling *Braby (Frederick) & Co. Ltd. v. Bedwell*, [1926] 1 K.B. 456; 31 Digest (Repl.) 716, 8008). See, further, the notes to para. (g) of the First Schedule to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, in 13 Halsbury's Statutes (2nd Edn.) at p. 1064.

**Otherwise than at a rent of two-thirds or more of the rateable value.** If the assisted house is let at less than two-thirds of the rateable value the Rent Acts would be excluded by virtue of s. 12 (7) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (103 Statutes Supp. 146; 13 Halsbury's Statutes (2nd Edn.) 1014), but for the provision in this section to the contrary.

**Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, s. 3.** 103 Statutes Supp. 157; 13 Halsbury's Statutes (2nd Edn.) 1048. Under that section no order or judgment for recovery of possession of a dwelling-house to which the Rent Acts apply may be made unless the court considers it reasonable to do so, and either suitable alternative accommodation is available, or the court has power to do so under the First Schedule to that Act. Para. (g) of that Schedule enables possession to be given of a house, required by the landlord as a residence for some person engaged in his whole-time employment under contract of employment conditional on housing accommodation being provided, where the tenant was in the employment of the landlord or a former landlord and the house was let to him in consequence of that employment and he has ceased to be in that employment.

#### **41. Local authorities authorised to make improvement grants.**—

(1) The local authority for the purposes of the foregoing provisions of this Part of this Act as respects England and Wales other than the administrative County of London shall be the council of the borough, urban district or rural district.

(2) As respects the administrative County of London, other than the City of London, both the London County Council and the council of a metropolitan borough shall be local authorities for the said purposes, and as respects the City of London the Common Council shall be the local authority for those purposes.

(3) The council of a county may agree with a council of a non-county borough, urban district or rural district within the county for the exercise by the county council of the powers of the borough or district council under the foregoing provisions of this Part of this Act.

(4) An agreement made under the last foregoing subsection may contain such provisions with regard to the expenses to be incurred by the county council, including the raising of loans to meet those expenses, and such other incidental or consequential provisions as the councils think proper; and for the purposes of any such agreement the county council shall be deemed for the purposes of the foregoing provisions of this Act to be the local authority with whom the agreement is made.

#### NOTES

**History.** Sub-ss. (1), (2), (3) and (4) of this section contain provisions formerly in ss. 33 (1) and (2) and 34 (1) and (2), respectively, of the Housing Act, 1949.

**Sub-s. (1).**

**Administrative county of London; borough, urban district or rural district.** See the notes to s. 9 (4), *ante*.

**Sub-s. (2).**

**London County Council; council of a metropolitan borough.** See the notes to s. 9 (5), *ante*.

**Sub-s. (3).**

**Council of a county may agree with a council of a . . . rural district.** Cf. the power of a county council, under s. 117 of the Housing Act, 1957 (Book I, *ante*), to agree with a rural district council for the exercise by the county council of the powers of the district council under Part V of that Act.

**42. Interpretation of provisions with respect to improvement grants.**—(1) In the foregoing provisions of this Part of this Act the expression "owner", in relation to a dwelling, means the person who is for the time being receiving the rackrent of the dwelling or who, if the dwelling were let at a rackrent, would receive the rackrent of the dwelling:

Provided that if in any case the person who, by virtue of the foregoing definition, would be the owner of a dwelling is a person himself liable to pay a rackrent in respect of the dwelling or of any property comprising the dwelling to a superior landlord, that superior landlord and not the person aforesaid shall be deemed to be the owner of the dwelling for the purposes of the foregoing provisions of this Part of this Act.

For the purposes of this subsection, the expression "rackrent" has the same meaning as in the Public Health Act, 1875.

(2) References in the foregoing provisions of this Part of this Act to the improvement of dwellings shall be construed as including references to the alteration or enlargement thereof and to the execution of works of repair thereto not being works of ordinary repair, and as including also references to the execution of works of ordinary repair thereto so far, but so far only, as the execution thereof is incidental to or connected with the execution of works of improvement, alteration or enlargement or of works of repair not being works of ordinary repair, and in those provisions the expression "improved" shall be construed accordingly.

(3) In determining for the purposes of the foregoing provisions of this Part of this Act whether, as regards a dwelling in respect of the provision or improvement of which assistance has been given under section thirty of this Act, a breach has occurred of the condition required by those provisions to be observed with respect to the dwelling as to the keeping of the dwelling available for letting at a rent not exceeding the maximum rent that may be paid by an occupier of the dwelling or of the condition so required to be observed as to the rent payable by an occupier of the dwelling, any property which, in the absence of express provision, would pass upon a conveyance

of the legal estate in fee simple in the dwelling, and any yard, garden, out-house and appurtenances usually enjoyed with the dwelling, shall be deemed to form part of the dwelling.

### NOTES

**History.** This section contains provisions formerly in s. 36 of the Housing Act, 1949.

#### Sub-s. (1).

**Owner.** Cf. the definition of "person having control" contained in s. 39 (2) of the Housing Act, 1957 (Book I, *ante*), and see generally the notes on that definition.

**Rackrent.** By the Public Health Act, 1875, s. 4 (19 Halsbury's Statutes (2nd Edn.) 60), "rackrent" means rent which is not less than two-thirds of the net annual value of the property out of which the rent arises; and the full net annual value is to be taken to be the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes and tithe commutation rent-charge (if any) and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent.

#### Sub-s. (2).

**Repair.** The wording of this subsection is similar to that of s. 9 (6), *ante*; cf., also, s. 121 (1) and (3) of the Housing Act, 1957 (Book I, *ante*). As to the distinction between "improvement" and "repair", cf. the notes to s. 69 (1) of the Act of 1957.

**Condition required . . . to be observed, etc.** The conditions mentioned in sub-s. (3), *supra*, are those set out in paras. 3 and 4 of the Fourth Schedule, *post*.

**Property which . . . would pass upon a conveyance.** As to what passes on a conveyance of land having houses or other buildings thereon, in the absence of a contrary intention expressed in the conveyance, see the Law of Property Act, 1925, s. 62 (2) (20 Halsbury's Statutes (2nd Edn.) 561).

**Outhouse; appurtenances.** See the notes to s. 29 (1), *ante*.

### *Other forms of financial assistance by local authorities*

**43. Power of local authorities to make advances.**—(1) A local authority for the purposes of Part V of the principal Act or a county council may, subject to such conditions as may be approved by the Minister, advance money, subject to the provisions hereinafter contained, to any persons for the purpose of—

- (a) acquiring houses;
- (b) constructing houses;
- (c) converting into houses buildings which have been acquired by those persons or acquiring buildings and converting them into houses; or
- (d) altering, enlarging, repairing or improving houses;

whether the houses or buildings are within or without the district of the authority or council.

(2) Before advancing money under this section for the purpose specified in paragraph (a) of the foregoing subsection the local authority or county council shall satisfy themselves that the house or houses to be acquired is or are, or will be made, in all respects fit for human habitation, and before so advancing money for any of the purposes specified in paragraphs (b) to (d) of that subsection the local authority or county council shall satisfy themselves that the house or houses to be constructed, altered, enlarged, repaired or improved or into which the building or buildings is or are to be converted, as the case may be, will, when the construction, alteration, enlargement, repair, improvement or conversion has been completed, be in all respects so fit.

(3) The following provisions shall have effect with respect to an advance under this section:—

- (a) the advance, together with interest thereon, shall be secured by a mortgage of lands the subject of the carrying out of the purpose for which the advance is made;

- (b) the amount of the principal of the advance shall not exceed, in the case of a house or houses to be acquired, ninety per cent. of the value of the mortgaged security, and, in any other case, ninety per cent. of the value which it is estimated the mortgaged security will bear when the construction, conversion, alteration, enlargement, repair or improvement has been carried out;
- (c) the mortgage deed may provide for repayment being made either by instalments of principal or by an annuity of principal and interest combined, so, however, that in the event of any of the conditions subject to which the advance is made not being complied with, the balance for the time being unpaid shall become repayable on demand by the local authority or county council and that the said balance may, in any event, be repaid on one of the usual quarter days by the person for the time being entitled to the equity of redemption after one month's written notice of intention to repay has been given to the local authority or county council;
- (d) where the advance is for any of the purposes specified in paragraphs (b) to (d) of subsection (1) of this section it may be made by instalments from time to time as the works of construction, conversion, alteration, enlargement, repair or improvement progress;
- (e) the advance shall not be made except after a valuation duly made on behalf of the local authority or county council; and
- (f) no advance shall be made on mortgage of lands unless the estate therein proposed to be mortgaged is either an estate in fee simple absolute in possession or an estate for a term of years absolute whereof a period of not less than ten years in excess of the period fixed for the repayment of the advance remains unexpired on the date on which the mortgage is executed.

(4) An advance under this section shall not be made if the estimated value of the fee simple in possession free from incumbrances of the house in respect of which assistance is to be given exceeds five thousand pounds, but such an advance may be made in addition to assistance given by the local authority in respect of the same house under any other Act or any other provision of this Act.

In the case of an advance for the construction of one or more structurally separate and self-contained flats, the estimated value for the purposes of the foregoing limitation shall, as respects any flat, be the estimated value of the flat.

#### NOTES

**History.** This section contains provisions formerly in s. 4 (1) to (4) of the Housing Act, 1949, and that section replaced, in a more convenient and simple form, ss. 90 and 91 (1) (a) and (c) of the Housing Act, 1936. By virtue of ss. 4 (5) and 51 (4) of, and Part I of the Third Schedule to, the Act of 1949, s. 91 (1) (a) and (c) continued to apply as respects undertakings thereunder given before the commencement of that Act (*i.e.*, 30th July 1949), and those paragraphs now continue in force to the same extent by virtue of s. 59 (5), *post*.

**General Note.** This section enables local authorities for the purposes of Part V of the Housing Act, 1957 (Book I, *ante*), and county councils to make loans (subject to conditions approved by the Minister of Housing and Local Government, and provided that the value of the house in question does not exceed £5,000), for the acquisition or construction of houses (including flats) and for the alteration, enlargement, repair, improvement or conversion of housing accommodation.

Local authorities have comparable powers (though limited to financing the building or purchase of the borrower's own residence) under the Small Dwellings Acquisition Acts, 1899 to 1923 (11 Halsbury's Statutes (2nd Edn.) 382, 398, 408); and note also the complementary power conferred by s. 44, *post*, and the power, under s. 45, *post*, to guarantee repayment of advances by building societies. The London County Council also has power, under s. 78 of the London County Council (General Powers) Act, 1957 (37 Halsbury's Statutes (2nd Edn.) 753), to advance money to the purchaser or lessee of any land acquired or leased by him from the Council for the purpose of enabling or assisting him to build on such land or to extend or improve any existing building thereon.

The exercise by local housing authorities and county councils of their powers under the Acts of 1899 to 1923 and under s. 4 of the Housing Act, 1949 (which is now replaced by the present section), is considered in Ministry of Housing and Local Government Circular No. 42/54, dated 4th May 1954. As to borrowing for the purposes of this section, see s. 54 (1), *post*, and para. 14 of the Memorandum accompanying Circular No. 48/57, dated 20th September 1957.

#### Sub-s. (1).

**Local authority for the purposes of Part V of the principal Act.** "The principal Act" means the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *post*. For the local authorities for the purposes of Part V of that Act, see ss. 1 and 132 thereof.

**Minister; house.** For definitions, see s. 58 (1), *post*.

**Persons.** See the note "Person" to s. 30 (1), *ante*.

**Repairing.** In the above-mentioned Circular No. 42/54 the Minister suggested that advances for repairs should be limited to works of a major structural character which they require to be carried out under the powers conferred by Part II of the Housing Act, 1936 (now replaced by Part II of the Act of 1957 (Book I, *ante*)), and costing a greater sum than the owner can readily find.

#### Sub-s. (2).

**Satisfy.** Cf. the note "Satisfied" to s. 1 (3), *ante*.

**Fit for human habitation.** For the standard by which houses are judged unfit, see (by virtue of s. 58 (3), *post*) the Housing Act, 1957, s. 4 (Book I, *ante*).

#### Sub-s. (3).

**Interest.** The rate of interest is within the authority's discretion, but should not, without the Minister's approval, exceed the rate charged under the Small Dwellings Acquisition Acts, 1899 to 1923; see Appendix I to Ministry of Health Circular No. 90/49, dated 15th September 1949 (printed in *Lumley's Public Health* (12th Edn.), Vol. VI, at pp. 1203 *et seq.*, and in *Hill's Complete Law of Housing*, 2nd Supplement to 4th Edn., at pp. B236, *et seq.*). By s. 92 (2) of the Housing Act, 1935 (11 Halsbury's Statutes (2nd Edn.) 443), the rate of interest on advances under the said Acts is a rate one quarter per cent. in excess of the rate of interest which, one month before the date on which the terms of the advance are settled, was the rate fixed by the Treasury under s. 1 of the Public Works Loans Act, 1897 (16 Halsbury's Statutes (2nd Edn.) 478), in respect of loans to local authorities advanced out of the local Loans Fund for the purposes of Part III of the Housing Act, 1925 (now replaced by Part V of the Housing Act, 1957 (Book I, *ante*)). The following scale is prescribed by the Treasury (Loans to local authorities) (Interest) (No. 3) Minute, 1958 (S.I. 1958 No. 1412), to apply to all loans advanced to local authorities from the Local Loans Fund on or after 23rd August 1958:—

	Per cent.
Loans for not more than 5 years .. .. .	5½
Loans for more than 5 but not more than 15 years .. .. .	6
Loans for more than 15 years .. .. .	6

Schemes approved under the present section normally provide for a fixed rate of interest for the whole period of the loan, but the Minister of Housing and Local Government announced in November 1957 that he would be willing to consider new or revised schemes which provided for a varying rate of interest. A new scheme submitted by Hampstead Borough Council and approved by the Minister enables the Council to take account of changes in the Public Works Loan Board rates of interest by giving three months' notice to borrowers, but this does not apply to mortgages already in existence at the date of the scheme.

**Mortgage.** Where a local authority advance money on mortgage they may accept deposits of sums intended for maintenance and repair and pay interest on such sums; see s. 44, *post*. Some authorities had followed this practice for some time before it received recognition in s. 17 of the Housing Repairs and Rents Act, 1954 (which s. 44 of this Act replaces).

In Appendix I to the above-mentioned Circular No. 42/54 it was stated that advances should not be made for the purposes mentioned in sub-s. (1) (c) or (d), *supra*, in respect of a property already mortgaged otherwise than to the lending local authority, but the Minister is now prepared to agree that advances may be made in these cases if the local authority is satisfied that sufficient security is afforded for an advance on the second mortgage; see para. 12 of Circular No. 52/55. It is also recommended in Circular No. 42/54 that, where an advance is made for house purchase, the charges made to the borrower should include: (i) the authority's fee for valuing the property to be mortgaged; (ii) the authority's solicitor's charges for investigating title; (iii) Land Registry charges; and (iv) stamp duty on the mortgage and conveyance or transfer.

**Ninety per cent. of the value.** In Circular No. 42/54 the Minister criticised the practice of basing the valuation of houses on their investment value, instead of their market value, and of relating the valuation to the status and financial standing of the intending borrower. In the case of sitting tenants buying for less than market value with vacant possession, it is stated that an advance of an amount equal to the aggregate

of the purchase price plus the borrower's legal charges and stamp duties can be legitimately made, subject to the advance not exceeding 90 per cent. of the full market value. Advances for the purposes set out in sub-s. (1) (c) and (d) should not exceed 90 per cent. of the approved cost of works, and in cases where an improvement grant under s. 30, *ante*, is to be paid, the advance must be limited to that part of the cost which will not be met by the grant.

**Usual quarter days.** *I.e.*, March 25th, June 24th, September 29th and December 25th.

**One month's written notice.** "Month" means calendar month; see the Interpretation Act, 1889, s. 3 (24 Halsbury's Statutes (2nd Edn.) 207). For the meaning of "written", see s. 20 of that Act (24 Halsbury's Statutes (2nd Edn.) 222).

**Instalments.** It is stated in Circular No. 42/54 that advances for the purposes set out in sub-s. (1) (c) and (d) may properly be made by instalments as the works proceed, provided that the total of the instalments paid before the completion of the works does not exceed 80 per cent. of the value of the work already done.

**Valuation.** In Circular No. 42/54 it is stated that the services of the District Valuer are not available to local authorities for this purpose, and therefore arrangements under which (a) the services of such qualified valuers as may be employed by local authorities in the county could be shared by all of them, and, if these were not likely to suffice, (b) the services of specified surveyors in private practice in the county were collectively retained, might well be considered. A suitable fee would be recoverable from the borrower.

**Sub-s. (4).**

This subsection also applies to guarantees given under s. 45; see s. 45 (3), *post*.

**Assistance . . . under any other Act or any other provision of this Act.** *E.g.*, advances under the Small Dwellings Acquisition Acts, 1899 to 1923, or improvement grants under ss. 30 *et seq.*, *ante*.

**Flats.** Note that flats are included in the term "house" for the purposes of this Act; see s. 58 (1), *post*.

**44. Powers of local authorities in connection with advanced money on mortgage.**—A local authority by whom money has been advanced on the mortgage of a house in pursuance of any enactment shall have power, and shall be deemed always to have had power, to accept the deposit by the mortgagor of the sums estimated to be required for the maintenance or repair of the mortgaged premises, and to pay interest on sums so deposited.

NOTES

**History.** This section contains provisions formerly in s. 17 of the Housing Repairs and Rents Act, 1954; that section gave statutory authority for the practice, which some authorities had already adopted, of accepting deposits for the purposes mentioned.

**House.** For meaning, see s. 58 (1), *post*.

**In pursuance of any enactment.** *E.g.*, under s. 43, *ante*, the Small Dwellings Acquisition Acts, 1899 to 1923 (11 Halsbury's Statutes (2nd Edn.) 382, 398, 408), or the London County Council (General Powers) Act, 1957, s. 78 (37 Halsbury's Statutes (2nd Edn.) 753) (*cf.* the General Note to s. 43, *ante*).

**45. Power of local authorities to guarantee repayment of advances by building societies.**—(1) A local authority for the purposes of Part V of the principal Act or a county council may, in accordance with proposals in that behalf made by them and approved by the Minister, guarantee the repayment to a society incorporated under the Building Societies Acts, 1874 to 1939, or the Industrial and Provident Societies Acts, 1893 to 1954, of any advances, with interest thereon, made by the society to any of its members for the purpose of enabling them to build or acquire houses, whether within or without the district of the authority or council.

(2) Where, upon the submission to the Minister by a local authority or county council of proposals under this section, the Minister is satisfied that the proposed guarantee extends only to the principal of, and interest on, the amount by which the sum to be advanced by the society in question exceeds the sum which would normally be advanced by it without the

guarantee of the local authority or county council, and that the liability under the guarantee of the local authority or county council cannot be greater than two-thirds of that principal and interest, the Minister, if he approves the proposals, may, with the consent of the Treasury, undertake to reimburse to the local authority or county council out of moneys provided by Parliament not more than one-half of any loss sustained by them under the terms of the guarantee.

(3) Subsection (4) of section forty-three of this Act shall apply to guarantees given under this section with the substitution for references to advances made of references to guarantees given.

## NOTES

**History.** This section contains provisions formerly in s. 5 (1), (2) and (3) of the Housing Act, 1949, and that section replaced ss. 91 (1) (b) and 110 of the Housing Act, 1936. By virtue of ss. 5 (5) and 51 (4) of, and Part I of the Third Schedule to, the Act of 1949, those provisions of the Housing Act, 1936, continued to apply as respects undertakings thereunder given before the commencement of the Act of 1949 (*i.e.*, 30th July 1949); and they now continue in force to the same extent by virtue of s. 59 (5), *post*. Sub-s. (4) of s. 5 of the Housing Act, 1949 (which makes a consequential amendment to the Building Societies Act, 1939) is not repealed by the present Act.

**General Note.** This section enables local authorities for the purposes of Part V of the Housing Act, 1957 (Book I, *ante*), and county councils to guarantee the repayment of advances made by building societies or industrial and provident societies for the building or purchase of houses not exceeding £5,000 in value. Under sub-s. (2), where the local authority or county council propose to guarantee the principal of, and interest on, the excess of an advance made by a society over the advance it would have made without their guarantee, and the liability of the local authority or county council is limited to two-thirds of the excess principal and interest, the Minister may undertake to reimburse the local authority, or county council, up to one-half of any loss they may sustain under the guarantee.

Two schemes of guarantee under sub-s. (2), *supra*, were described in Appendix II to Ministry of Housing and Local Government Circular No. 42/54, dated 4th May 1954, but they were replaced by a single scheme set out in Appendix I to Circular No. 45/55, dated 14th September 1955 (printed in *Lumley's Public Health* (12th Edn.), Vol. VIII, at p. 330). Circular No. 45/55, also contains model forms of guarantee and of application by a building society to a local authority for a guarantee.

### Sub-s. (1).

**Local authority for the purposes of Part V of the principal Act.** "The principal Act" is the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *post*. For the local authorities for the purposes of Part V of that Act, see ss. 1 and 132 thereof.

**Minister; house.** For definitions, see s. 58 (1), *post*.

**Building Societies Acts, 1874 to 1939.** *I.e.*, the Building Societies Act, 1874 (2 Halsbury's Statutes (2nd Edn.) 623), the Building Societies Act, 1875 (2 Halsbury's Statutes (2nd Edn.) 649), the Building Societies Act, 1877 (2 Halsbury's Statutes (2nd Edn.) 649), the Building Societies Act, 1884 (2 Halsbury's Statutes (2nd Edn.) 651), the Building Societies Act, 1894 (2 Halsbury's Statutes (2nd Edn.) 652), and the Building Societies Act, 1939 (2 Halsbury's Statutes (2nd Edn.) 670); see s. 18 (2) of the Act of 1939. By s. 5 (5) of the Societies (Miscellaneous Provisions) Act, 1940 (5 Statutes Supp. 105; 2 Halsbury's Statutes (2nd Edn.) 687), the Acts of 1874 to 1939 and s. 5 of the Act of 1940 may be cited together as the Building Societies Acts, 1874 to 1940.

**Industrial and Provident Societies Acts, 1893 to 1954.** *I.e.*, the Industrial and Provident Societies Act, 1893 (12 Halsbury's Statutes (2nd Edn.) 876), the Industrial and Provident Societies Act, 1894 (12 Halsbury's Statutes (2nd Edn.) 917), the Industrial and Provident Societies (Amendment) Act, 1895 (12 Halsbury's Statutes (2nd Edn.) 918), the Industrial and Provident Societies (Amendment) Act, 1913 (12 Halsbury's Statutes (2nd Edn.) 918), the Industrial and Provident Societies (Amendment) Act, 1928 (12 Halsbury's Statutes (2nd Edn.) 921), the Industrial and Provident Societies Act, 1952 (32 Halsbury's Statutes (2nd Edn.) 279), and the Industrial and Provident Societies (Amendment) Act, 1954 (88 Statutes Supp. 82; 34 Halsbury's Statutes (2nd Edn.) 319); see s. 12 (2) of the Act of 1954.

### Sub-s. (2).

**Upon the submission . . . of proposals.** The above-mentioned Circular No. 42/54 contains a form of application by a local authority for the Minister's approval under sub-s. (2), *supra*, to the giving by the authority of guarantees; that form should now be amended to refer to Circular No. 45/55, *supra*.

**Satisfied.** See the note to s. 1 (3), *ante*.

*Miscellaneous and general*

**46. Exchequer contributions for agricultural housing accommodation.**—(1) Where the council of a county district are satisfied that in any particular case housing accommodation required for members of the agricultural population of the district could more conveniently be provided by some person other than the council, they may, subject to any conditions imposed by the Minister, make arrangements for the provision of such accommodation by that person; and if the Minister is satisfied that the arrangements are such as to secure that any house provided in pursuance thereof—

- (a) is reserved for members of the agricultural population, and
- (b) if let, is let at a rent not exceeding the limit imposed by section twenty of the Rent Act, 1957, and
- (c) is suitable in respect of its size and construction,

then, subject to the conditions set out in the following provisions of this section, the Minister may undertake to make, and may make, in respect of each new house which, with his approval, is provided in pursuance of the arrangements, payment to that council of an annual contribution of such amount not exceeding ten pounds as the Minister may determine, being a contribution payable for a period of forty years; and in that event the council shall pay by way of annual grant to the owner of the house an amount not less than the contribution paid by the Minister.

(2) It shall be a condition of the payment under this section of a contribution in respect of any house in any year—

- (a) that the conditions specified in paragraphs (a) and (b) of the foregoing subsection are observed in relation to that house throughout that year, and
- (b) that the council of the county district certify to the Minister that all reasonable steps have been taken to secure the maintenance of that house in a proper state of repair during that year.

(3) In the case of a house completed on or after the eighteenth day of April, nineteen hundred and forty-six, it shall also be a condition of the payment under this section of a contribution in respect of any house for any year during which the house is at any time occupied by a member of the agricultural population in pursuance of a contract of service and otherwise than as a tenant that if the contract of service is determined—

- (a) by less than four weeks' notice given by the employer, or
- (b) by dismissal of the employee without notice, or
- (c) by the death of either party,

the employer or his personal representative will permit the employee (or, in the case of his death, any person residing with him at his death) to continue to occupy the house free of charge from the determination of the contract until the expiration of a period of four weeks beginning with the date on which the notice is given or, if the contract is determined otherwise than by notice, with the date on which it is determined.

(4) No annual grant shall be made under this section by the council to the owner of a house, if before the making of the grant the Minister is satisfied that, during the whole or the greater part of the period to which the payment of the grant is referable, the house has not been available as a dwelling fit for habitation, and where the duty of the council to make a grant is wholly or partly discharged by virtue of this subsection the Minister shall make such consequential reductions as he thinks fit in any sum payable by him to the council:

Provided that this subsection shall not apply if the Minister is satisfied that the house could not with reasonable diligence have been made available, during the whole or the greater part of the period for which the payment is referable, as a dwelling fit for habitation.

Any question as to the period to which any payment is referable shall be determined for the purposes of this subsection by the Minister.

(5) Where a house which has been provided under arrangements under this section becomes vested in the council making the arrangements—

- (a) no further sums shall, after the time of the vesting, become payable by the Minister or by the council in respect of the house under subsection (1) of this section, and
- (b) whether the conditions specified in this section are observed or not, the Minister may, if he thinks fit, pay to the council a sum equivalent to any contribution which would, after the said time, have become payable by him to the authority in respect of the house if all conditions precedent to the payment of that contribution had been at all material times observed.

(6) Where a house provided under arrangements made in pursuance of this section is let together with other land at a single rent, such proportion of that rent as the council of the county district may determine shall be deemed, for the purpose of paragraph (b) of subsection (1) of this section, to be the rent at which the house is let.

### NOTES

**History.** Sub-s. (1) of this section contains provisions formerly in s. 3 (1) of the Housing (Financial Provisions) Act, 1938, as amended by s. 7 of the Housing Subsidies Act, 1956, and by s. 26 (1) of, and para. 13 of the Sixth Schedule to, the Rent Act, 1957. Sub-s. (2) contains provisions formerly in the proviso to s. 3 (1) of the Act of 1938. Sub-s. (3) contains provisions formerly in s. 2 (3), (4) and (5) of the Housing Act, 1952. Sub-s. (4) contains provisions formerly in s. 14 (1) and (2) of, and the Second Schedule to, the Housing (Financial and Miscellaneous Provisions) Act, 1946. Sub-s. (5) contains provisions formerly in s. 15 (2) of the Act of 1946. Sub-s. (6) contains provisions formerly in s. 3 (2) of the Act of 1938.

**General Note.** This section provides for the payment of contributions by the Minister to the councils of county districts, and of grants by such councils to the owners of the houses, in respect of new houses for members of the agricultural population which are provided not by the council themselves but by other persons under arrangements made with the council. The section may be compared with s. 5, *ante*, under which increased exchequer subsidies may be paid to councils of county districts in respect of dwellings for members of the agricultural population provided by, or in pursuance of "authorised arrangements" made by development corporations or housing associations with, such councils.

The provisions of sub-s. (4), *supra*, may be compared with those of ss. 19 (2) and 20 (3), *ante*; and sub-s. (5), *supra*, may be compared with ss. 19 (3) and 21, *ante*, particularly s. 21 (1).

#### Sub-s. (1).

**County district.** *I.e.*, a non-county borough, urban district or rural district; see the Local Government Act, 1933, s. 1 (1) (14 Halsbury's Statutes (2nd Edn.) 361).

**Satisfied.** Cf. the note to s. 1 (3), *ante*.

**Agricultural population.** For meaning, see (by virtue of s. 58 (1), *post*) the Housing Act, 1957, s. 114 (5) (Book I, *ante*).

**Person.** See the note to s. 30 (1), *ante*.

**Minister; house.** For definitions, see s. 58 (1), *post*.

**Let at a rent.** In this connection, note sub-s. (6), *supra*.

**May make . . . payment.** As to the time, manner and conditions of payment, see s. 28, *ante*.

**Rent Act, 1957, s. 20.** 103 Statutes Supp. 84; 37 Halsbury's Statutes (2nd Edn.) 571. Cf. also the note to para. 4 of the Fourth Schedule, *post*.

#### Sub-s. (3).

**18th April 1946.** *I.e.*, the date of the passing of the Housing (Financial and Miscellaneous Provisions) Act, 1946. The provisions from which sub-s. (1), *supra*, is derived were amended as from this date by s. 13 of the Act of 1946. These amendments were superseded by s. 2 of the Housing Act, 1952, and, as to rents, by the Rent Act, 1957.

#### Sub-s. (4).

**Fit for habitation.** See the note to s. 19 (2), *ante*.

#### Sub-s. (5).

**Minister may . . . pay to the council, etc.** Payments by the Minister to the local authority under sub-s. (5), *supra* (but not those under sub-s. (1), *supra*), are

within the definition of "exchequer payment" in s. 58 (2), *post*. As to the reduction or withholding of payments on account of defaults, etc., see s. 18, *ante*, and as to the time, manner and conditions of payment, see s. 28, *ante*.

**47. Loans by Public Works Loan Commissioners to companies, housing associations and individuals.**—(1) The Public Works Loan Commissioners may, subject to the provisions of this section, lend money to any such person as is hereafter mentioned for the purpose of constructing or improving, or facilitating or encouraging the construction or improvement of, houses and, in the case of a housing association,—

- (a) for the purchase of houses which the association desire to purchase with a view to the improvement thereof, and
- (b) for the purchase and development of land,

and any such person may borrow from the Public Works Loan Commissioners such money as may be required for the purposes aforesaid.

(2) The persons to whom money may be so lent and who may so borrow are—

- (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 purpose 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.

(3) A loan for any of the purposes specified in subsection (1) of this section shall be secured with interest thereon by mortgage of the land and houses in respect of which that purpose is to be carried out, and of such other lands and houses, if any, as may be offered as security for the loan.

(4) Any such loan may be made whether the borrower has or has not power to borrow independently of this Act; but nothing in this section shall affect any regulation, statutory or otherwise, whereby any company may be restricted from borrowing until a definite portion of capital is subscribed for, taken, or paid up.

(5) The following conditions shall apply in the case of any such loan—

- (a) the period for repayment shall not exceed forty years;
- (b) no money shall be lent on mortgage of any land or houses, unless the estate therein proposed to be mortgaged is either an estate in fee simple absolute in possession or an estate for a term of years absolute whereof not less than fifty years are unexpired at the date of the loan;
- (c) the money lent shall not exceed such proportion as is hereinafter authorised of the value, to be ascertained to the satisfaction of the Public Works Loan Commissioners, of the estate or interest in the land or houses proposed to be mortgaged in pursuance of subsection (3) of this section, but loans may be made by instalments from time to time as the building of houses or other work on land so mortgaged progresses, so, however, that the total amount lent does not at any time exceed the amount aforesaid; and a mortgage may be accordingly made to secure such loans so to be made from time to time:

Provided that, where a loan is made under this section to a housing association for the purpose of carrying out a scheme for the provision of houses approved by the Minister,—

- (i) the maximum period for the repayment of the loan shall be fifty instead of forty years;
- (ii) money may be lent on the mortgage of an estate for a term of years absolute whereof a period not less than ten years in excess of the period fixed for the repayment of the sums advanced remains unexpired at the date of the loan.

(6) The proportion of such value as aforesaid authorised for the purpose of the loan shall be three-fourths:

Provided that—

- (a) if the loan is to be made to a housing association and payment of the principal of and interest on the loan is guaranteed by a local authority for the purposes of Part V of the principal Act, or by a county council, the said proportion shall be nine-tenths;
- (b) in any other case, if the loan exceeds two-thirds of such value as aforesaid, the Public Works Loan Commissioners shall require, in addition to such a mortgage as is mentioned in subsection (3) of this section, such further security as they may think fit.

(7) Any loan made by the Public Works Loan Commissioners in pursuance of this section, or to borrowers other than local authorities for the provision of labourers' dwellings under the Public Works Loans Act, 1875, or any Act amending that Act, shall bear interest at such rate as the Treasury may from time to time authorise as being in their opinion sufficient to enable the loan to be made without loss to the Exchequer.

(8) For the purpose of constructing or improving, or facilitating or encouraging the construction or improvement of, houses, every such company, association or society as aforesaid is hereby authorised to purchase, take and hold land, and if not already a body corporate shall, for the purpose of holding land acquired under this section and of suing and being sued in respect thereof, be nevertheless deemed a body corporate with perpetual succession.

(9) A housing association shall have power, notwithstanding anything in its rules or constitution prohibiting the payment of any interest on loan capital at a rate exceeding six per cent. per annum, to raise money on loan at a rate of interest not exceeding the rate of interest for the time being prescribed by the Treasury for the purposes of this section with respect to housing associations.

#### NOTES

**History.** This section contains provisions formerly in s. 92 of the Housing Act, 1936, as amended by ss. 1 and 51 (4) of, and the First Schedule and Part I of the Third Schedule to, the Housing Act, 1949.

**Sub-s. (1).**

**Public Works Loan Commissioners.** For the constitution, powers, etc., of the Public Works Loan Commissioners, see the Public Works Loans Act, 1875, ss. 4 *et seq.* (16 Halsbury's Statutes (2nd Edn.) 425 *et seq.*).

**House.** For definition, see s. 58 (1), *post*.

**Housing association.** For meaning, see (by virtue of s. 58 (1), *post*) the Housing Act, 1957, s. 189 (1) (Book I, *ante*).

**Sub-s. (2).**

**Dock or harbour company; company, society or association . . . for trading or manufacturing purposes.** Cf. the Housing Act, 1957, s. 127 (Book I, *ante*), which provides that dock and harbour companies, and any other company, society or association established for trading or manufacturing purposes in the course of whose business, or in the discharge of whose duties, persons of the working class are employed, may erect houses for the accommodation of such employees.

**Working classes.** As to the meaning of this expression, see especially *Green (H. E.) & Sons v. Minister of Health*, [1947] 2 All E.R. 469, cited in Chapter 3 of the Introduction to the Housing Act, 1957, at p. 16, *ante*. See also *Belcher v. Reading Corporation*, [1949] 2 All E.R. 969 at p. 984; 2nd Digest Supp.; *Re Sanders' Will Trusts*, *Public Trustee v. McLaren*, [1954] 1 All E.R. 667 at p. 669; 3rd Digest Supp.; and *Guinness Trust (London Fund) Founded 1890 Registered 1902 v. Green*, [1955] 2 All E.R. 871, C.A.; 3rd Digest Supp. Reference may also be made to *London County*

*Council v. Davis* (1897), 62 J.P. 68; 26 Digest 510, 2149; *Crow v. Davis* (1903), 67 J.P. 319; 34 Digest 588, 88; *White v. St. Marylebone Borough Council*, [1915] 3 K.B. 249; 38 Digest 216, 507; and cf. *Arlidge v. Tottenham Urban Council*, [1922] 2 K.B. 719; 38 Digest 214, 489.

**Person.** See the note to s. 30 (1), *ante*.

**Sub-s. (5).**

**Satisfaction.** Cf. the note "Satisfied" to s. 1 (3), *ante*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Sub-s. (6).**

**Loan is guaranteed, etc.** Guarantees of the kind mentioned in proviso (a) to sub-s. (6), *supra*, may be given under s. 119 (3) (c) of the Housing Act, 1957 (Book I), *ante*.

**Local authority for the purposes of Part V of the principal Act.** "The principal Act" is the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *ante*. For the local authorities for the purposes of Part V of that Act, see ss. 1 and 132 thereof.

**Sub-s. (7).**

**Interest at such rate as the Treasury may . . . authorise.** The rates authorised as respects loans advanced on or after 23rd August 1958 are set out in the Treasury (Loans to persons other than local authorities) (Interest) (No. 2) Minute, 1958 (S.I. 1958 No. 1413), which (unless it is replaced before 23rd October 1958) will have effect for the purposes of this section by virtue of s. 59 (2), *post*. In the case of loans to companies and private persons this instrument prescribes different rates for those limiting their profits to the rate for the time being prescribed and those not so limiting their profits. By Treasury Minute dated 15th August 1934 (S.R. & O. 1934 No. 914) the rate of 5 per cent. per annum was prescribed for this purpose.

The following are the rates prescribed by S.I. 1958 No. 1413 (so far as relevant for the purposes of this section):—

	<i>Per cent.</i>
(1) Loans to housing associations as defined by the Housing Act, 1957 (Book I, <i>ante</i> ):	
For any period up to 50 years . . . . .	6
(2) Loans under the Housing Acts to companies and private persons limiting their profits to the rate for the time being prescribed:	
For any period up to 40 years . . . . .	6
(3) Loans under the Housing Acts to companies and private persons not limiting their profits as aforesaid:	
For any period up to 40 years . . . . .	6½
(4) All other loans:	
For any period . . . . .	6½

**Opinion.** Cf. the note to s. 3 (2), *ante*.

**Public Works Loans Act, 1875.** 16 Halsbury's Statutes (2nd Edn.) 423.

**Sub-s. (9).**

**Rate of interest . . . for the purposes of this section.** See the first note to sub-s. (7), *supra*.

**48. Provisions with respect to grants under s. 2 of the Act of 1923.—**(1) If in the case of a house—

- (a) the construction of which was promoted by a local authority in accordance with section two of the Housing, &c. Act, 1923, and
- (b) in respect of which contributions are payable by the Minister under the Housing (Financial Provisions) Act, 1924,

the Minister is satisfied that any of the special conditions set out in paragraph 1 of the Second Schedule to this Act has not been complied with, any contribution payable in respect of the house may be discontinued or the amount thereof may be reduced, and the duration thereof may be curtailed, as the Minister thinks just.

(2) No annual sum shall be payable by a local authority by way of assistance under section two of the Housing, &c. Act, 1923, in respect of a house if, before the payment is made, the Minister is satisfied that, during the whole or the greater part of the period to which the payment is referable, the house has not been available as a dwelling fit for habitation and where the duty of a local authority to make a payment is wholly or partly discharged by virtue of this subsection, the Minister may make such consequential reductions as he thinks appropriate in any sum payable by him to the local authority:

Provided that this subsection shall not apply if the Minister is satisfied that the house could not with reasonable diligence have been made available, during the whole or the greater part of the period to which the grant is referable, as a dwelling fit for habitation.

Any question under this subsection as to the period to which any payment is referable shall be determined by the Minister.

(3) Where a house which has, with the assistance of a local authority given under section two of the Housing, &c. Act, 1923, been provided by some person other than a local authority, becomes vested in the local authority then, if at the time of the vesting the house is a house in respect of which a contribution is payable by the Minister under section one of that Act, the Minister may continue to make payments by way of that contribution as if the house had been provided by the local authority.

#### NOTES

**History.** Sub-s. (1) of this section contains provisions formerly in s. 3 (4) of the Housing (Financial Provisions) Act, 1924. Sub-s. (2) contains provisions formerly in s. 14 (1) and (2) of, and the Second Schedule to, the Housing (Financial and Miscellaneous Provisions) Act, 1946. Sub-s. (3) contains provisions formerly in s. 42 (1) of the Housing Act, 1949; s. 42 (3) of that Act excluded the more limited provisions of s. 9 of the Housing (Financial Provisions) Act, 1938, except where a house became vested in the authority before 30th July, 1949. By s. 59 (1) and (4) and the Sixth Schedule, *post*, s. 9 of the Act of 1938 is now repealed in the savings; note also para. 1 (1) (c) of the Fifth Schedule, *post*.

**General Note.** This section relates to houses provided with the financial assistance of a local authority under s. 2 of the Housing, etc., Act, 1923 (11 Halsbury's Statutes (2nd Edn.) 405), which section is not repealed by the present Act. Similar provisions as to houses provided by housing associations (see s. 3 of that Act, repealed with savings by s. 59 (1) and (4) and the Sixth Schedule, *post*) will be found in ss. 20 (2) and (3) and 21 (3), *ante*.

By s. 2 of the Act of 1924 an increased contribution was introduced, payable for to make grants and give other financial assistance to promote the building of houses. The original form of related government contribution, under s. 1 (1) (a) of that Act, was payable annually for twenty years; the period in which such contributions could be claimed was extended by s. 1 (1) (repealed) of the Housing (Financial Provisions) Act, 1924 (11 Halsbury's Statutes (2nd Edn.) 412). This form of contribution was, however, excluded by art. 3 of the Housing Acts (Revision of Contributions) Order, 1928 (S.R. & O. 1928 No. 1039) (printed in *Lumley's Public Health* (12th Edn.) Vol. VI, p. 863) as respects houses not completed before 1st October 1929.

By s. 2 of the Act of 1924, an increased contribution was introduced, payable for forty years, if the houses were subject to the special conditions in s. 3 of that Act. The special conditions in s. 3 (1) related only to local authority houses, and were repealed when the conditions affecting such houses were unified by the Housing Act, 1935 (see now, in particular, s. 113 of the Housing Act, 1957, Book I, *ante*). The special conditions affecting other houses, including those referred to in the present section, were contained in s. 3 (2) of the Act of 1924, and as amended by the Rent Act, 1957, are now contained in para. 1 of the Second Schedule, *post*. The rates of contribution under s. 2 of the Act of 1924 were affected by the above-cited order of 1928, as amended by the Housing (Revision of Contributions) Act, 1929 (11 Halsbury's Statutes (2nd Edn.) 431). Such contributions were excluded by s. 1 of the Housing (Financial Provisions) Act, 1933 (11 Halsbury's Statutes (2nd Edn.) 440), except where proposals for providing the houses had been submitted, or were treated as submitted, to the Minister before 7th December, 1932. Sub-s. (1), *supra*, re-enacts s. 3 (4) of the Act of 1924, and provides for withholding contributions if the special conditions, now contained in para. 1 of the Second Schedule, *post*, are not complied with.

One of the forms of assistance which a local authority are empowered to give, under s. 2 of the Act of 1923, is the payment of an annual sum for twenty years; sub-s. (2), *supra*, provides for withholding this sum where the house is not kept available as a dwelling fit for habitation, and empowers the Minister to reduce accordingly any sum payable by him to the local authority (cf. s. 20 (3), *ante*). Sub-s. (3), *supra*, authorises the continuance of payments by the Minister to the local authority where a house vests in the local authority (cf. s. 21 (3), which operates similarly, save that it diverts, to the authority, contributions which would otherwise have been made to a housing association). The reference, in sub-s. (3), *supra*, to s. 1 of the Act of 1923 is copied from s. 42 (1) of the Housing Act, 1949; the difference in wording from that of sub-s. (1) (b), *supra*, may be confusing, but the reference includes s. 2 of the Act of 1924 (which operated as a variation of s. 1 of the earlier Act); see s. 58 (4), *post*.

As to houses which became vested in the local authority, by reason of a default of another person, before 30th July 1949, see s. 9 of the Housing (Financial Provisions) Act, 1938 (11 Halsbury's Statutes (2nd Edn.) 618).

**Sub-s. (1).**

**House; the Minister.** For definitions, see s. 58 (1), *post*.

**Satisfied.** See the note to s. 1 (3), *ante*.

**Housing, etc., Act, 1923, s. 2.** See the General Note, *supra*. That section is not repealed by the present Act. As to the enforcement of conditions thereunder, see also *Burnham-on-Sea Urban District Council v. Channing and Osmond*, [1933] Ch. 583; Digest Supp.

**Housing (Financial Provisions) Act, 1924.** See the General Note, *supra*. The relevant provisions of that Act are repealed by s. 59 (1) and the Sixth Schedule, *post*. There is no express saving for that Act in s. 59 (4), *post* (save for the obligations of the London County Council to make supplementary contributions under s. 2 (5) thereof; cf. para. 2 (b) of the Fifth Schedule, *post*). However the saving for s. 1 of the Act of 1923 will include a saving for existing obligations to make payments under that section as amended by the Act of 1924; see s. 58 (4), *post*.

**Sub-s. (2).**

**Annual sum.** See the General Note, *supra*, and s. 2 (3) (b) of the Act of 1923. "Lump sum" assistance under s. 2 (3) (a) of that Act was excluded by s. 2 (1) proviso (ii) of the Act of 1924, where contributions were at the rates provided by the Act of 1924.

**Fit for habitation.** See the note to s. 19 (2), *ante*.

**Sub-s. (3).**

**Minister may continue to make payments.** Where payments are so continued they come within the definition of "exchequer payment" in s. 58 (2), *post*, and may be reduced, suspended or discontinued in certain circumstances under s. 18, *ante*. As to the time, manner and conditions of payment, see s. 28, *ante*.

**Housing, etc., Act, 1923, ss. 1, 2.** See the General Note, *supra*; s. 1 of that Act is repealed by s. 59 (1) and the Sixth Schedule, *post*, subject to the saving, in s. 59 (4) for existing obligations to make payments of contributions thereunder.

**49. Minister's power to make regulations.**—(1) The Minister may by statutory instrument make, with the consent of the Treasury, regulations prescribing anything required or authorised by this Part of this Act to be prescribed.

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

NOTES

**History.** This section contains provisions formerly in s. 35 of the Housing Act, 1949.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Statutory instrument.** For provisions as to statutory instruments generally, see the Statutory Instruments Act, 1946 (36 Statutes Supp. 95; 24 Halsbury's Statutes (2nd Edn.) 440). For provisions as to annulment, see ss. 5 (1) and 7 (1) of that Act; and see also the Laying of Documents before Parliament (Interpretation) Act, 1948 (56 Statutes Supp. 293; 24 Halsbury's Statutes (2nd Edn.) 448).

**Regulations under this section.** At the time of going to press no regulations have been made under this section. By virtue, however, of s. 59 (2), *post*, the Housing (Improvement Grants) (Rate of Interest) Regulations, 1956 (S.I. 1956 No. 1466), continue to have effect as if made under this section. As to these regulations, see the note "Prescribed rate" to s. 34 (2), *ante*. Note also s. 34 (9), *ante*, as to the making of rules, under that section and s. 15 of the Land Charges Act, 1925, for the registration of conditions in connection with improvement grants.

PART III

HOUSING ACCOUNTS TO BE KEPT BY LOCAL AUTHORITIES

**50. The Housing Revenue Account.**—(1) Every local authority for the purposes of Part V of the principal Act shall keep an account (to be called the Housing Revenue Account) of the income and expenditure of the authority in respect of—

- (a) all houses and other buildings which at any time after the sixth day of February, nineteen hundred and nineteen, have been provided by a local authority under the said Part V,

- (b) all houses approved by the Minister for the purposes of section thirteen of this Act and all houses purchased by a local authority under section twelve of the principal Act,
- (c) all dwellings provided or improved by a local authority in accordance with improvement proposals approved by the Minister under section nine of this Act,
- (d) all dwellings in respect of which—
  - (i) the authority have received assistance under section one of the Housing (Rural Workers) Act, 1926; or
  - (ii) the Minister has undertaken to pay a contribution to the authority under subsection (2A) of section four of that Act,
- (e) such other houses as the authority with the consent of the Minister may from time to time determine,
- (f) all land which at any time after the sixth day of February, nineteen hundred and nineteen, a local authority have acquired or appropriated for the purposes of Part V of the principal Act, or are deemed to have acquired under the said Part V by virtue of subsection (6) of section fifty-seven of that Act.

(2) Where a house is for the time being vested in a local authority by reason of the default of any person in carrying out the terms of any arrangements under which assistance in respect of the provision, reconstruction or improvement of the house has been given under any enactment relating to housing, the house shall be deemed for the purposes of this section to be a house which has been provided by the authority under Part V of the principal Act.

(3) A building provided or converted for use as a hostel and approved for the purposes of section fifteen of this Act shall not be included among the buildings to which the requirements in subsection (1) of this section relate unless the Minister on being satisfied that the building has ceased to be used for a hostel so directs.

(4) A local authority not possessing any property falling within subsection (1) of this section shall, notwithstanding that, be required to keep a Housing Revenue Account if they are entitled to receive any income arising from an investment or other use of money borrowed by them for the purpose of—

- (a) the provision of housing accommodation under Part V of the principal Act, or
- (b) the purchase by them of, or carrying out of works on, any houses approved by the Minister for the purposes of section thirteen of this Act or purchased under section twelve of the principal Act, or
- (c) the execution of works in respect of which the Minister has undertaken to make a contribution under subsection (2A) of section four of the Housing (Rural Workers) Act, 1926 or in respect of which the local authority for the purposes of that Act have given assistance thereunder.

(5) The provisions of the Fifth Schedule to this Act shall have effect as respects the keeping of the Housing Revenue Account and in that Schedule the expression "houses and other property within the account" means houses, dwellings, buildings and land falling within subsection (1) of this section.

#### NOTES

**History.** In sub-s. (1) of this section paras. (a), (d), (e) and (f) contain provisions formerly in s. 128 (a), (c), (d) and (b), respectively, of the Housing Act, 1936, para. (b) contains provisions formerly in s. 15 (1) of the Housing Repairs and Rents Act, 1954, and para. (c) contains provisions formerly in para. 5 of the Second Schedule to the Housing Act, 1949. Sub-s. (2) contains provisions formerly in s. 21 (1) of the Housing (Financial and Miscellaneous Provisions) Act, 1946. Sub-s. (3) contains provisions formerly in s. 40 (5) of the Act of 1949. Sub-s. (4) contains provisions formerly in s.

129 (4) of the Act of 1936 and s. 15 (2) of the Act of 1954. Sub-s. (5) is new but effects no change in the law.

**General Note.** The present system of housing accounts to be kept by local authorities is dealt with in Part III of this Act, comprising this section and ss. 51-53, *post*, and the related Fifth Schedule, *post*. These provisions re-enact, with additions and omissions required by later enactments, ss. 128-133 of the Housing Act, 1936, together with provisions as to London from the Tenth Schedule to that Act (*i.e.*, certain of the modifications required by s. 134 thereof, which is not itself reproduced in the present Act).

This system of housing accounts was originally introduced by the Housing Act, 1935 (repealed); ss. 42-47 and 50 of that Act were replaced by ss. 128-134 of the Act of 1936 mentioned above. Other related matters dealt with by the Act of 1935 were as follows:—

- (1) Unification of conditions affecting local authority houses: ss. 51 and 52 (replaced by s. 85 of the Act of 1936; see now ss. 113 and 114 of the Housing Act, 1957, Book I, *ante*, and the General Note to s. 111 of that Act).
- (2) A new basis of calculation for certain contributions under s. 7 of the Housing, Town Planning, etc., Act, 1919, and contributions under s. 1 (3) of the Housing, etc., Act, 1923: s. 40 and Fourth Schedule, Part II, and s. 50 and Part IV of that Schedule as to London (replaced by s. 111 and 134 of, and Seventh and Tenth Schedules to, the Act of 1936; see now s. 27 of the present Act, *ante*, and the Third Schedule, *post*).
- (3) Rate fund contributions: ss. 34 and 41 and Fourth Schedule, Part III (replaced by s. 114 of, and the Eighth Schedule to, the Act of 1936; see now the General Note to s. 1, *ante*, as to the abolition of compulsory rate fund contributions, but note the power to make voluntary contributions in para. 1 (6) of the Fifth Schedule, *post*, and the duty to meet deficits under para. 1 (5) of that Schedule).
- (4) Imposition of conditions on the disposal of property: s. 53 (replaced by s. 86 of the Act of 1936; see now s. 106 of the Act of 1957, Book I, *ante*, and s. 18 (2) of the present Act, *ante*, and note that so much of s. 86 of the Act of 1936 as related to adjustments of compulsory rate fund contributions was repealed when such contributions were abolished).
- (5) Withdrawal of government contributions on default: s. 49 (1) (replaced by s. 113 of the Act of 1936; see now s. 18 (1), *ante*); and withdrawal of county council contributions in certain cases: s. 49 (2) (replaced by s. 115 (5) of the Act of 1936; see now s. 24 (3), *ante*, and cf. ss. 23 and 24 (1) and (2), *ante*).
- (6) Time, manner and conditions of making payments: s. 48 (replaced by s. 112 of the Act of 1936; see now s. 28, *ante*).

The system of housing accounts, and other matters listed above, as dealt with in ss. 40-53 of the Act of 1935, were explained in Memorandum E, on the consolidation of housing contributions and accounts, issued by the Ministry of Health in October 1935 (cited in the General Note to s. 28, *ante*); that Memorandum must now be read subject to the changes introduced by later Acts, which have been explained in Circulars referring to these Acts issued by the Ministry (the more important of them are also cited in the General Note to s. 28, *ante*).

Among the changes made since the Acts of 1935 and 1936 are (i) the abolition of compulsory rate fund contributions to the Housing Revenue Account, as mentioned in the General Note to s. 1, *ante*; (ii) the inclusion in the scope of the account of certain additional types of property, as required by sub-ss. (1) (b) and (c) and (2), *supra*, replacing respectively provisions of the Housing Repairs and Rents Act, 1954, the Housing Act, 1949, and the Housing (Financial and Miscellaneous Provisions) Act, 1946 (see the note "History", *supra*); and (iii) the amendment of s. 132 of the Act of 1936 by s. 21 of the Act of 1946 which made the keeping of a Housing Equalisation Account a matter for the discretion of the local authority, as now provided by s. 52, *post*. The Act of 1946 also modified s. 131 of the Act of 1936, as to the minimum amount to be carried to the credit of the Housing Repairs Account; and the Housing Act, 1952, increased this amount from £4 to £8 per house, as now provided by s. 51 (1), *post*.

Buildings provided or converted as hostels, under s. 40 of the Act of 1949, now replaced by s. 15, *ante*, are excluded from the Housing Revenue Account; see sub-s. (3), *supra*. In Appendix II to Ministry of Health Circular 90/49, dated 15th September 1949, referring to ss. 7 and 8 of the Act of 1949 (see now s. 95 of the Act of 1957, Book I, *ante*, and the latter part of s. 94 and s. 122 of that Act), local authorities were advised that transactions relating to the provision of meals and refreshments, facilities for laundry and laundry services, and the sale of furniture (or its provision on hire-purchase), should not be included in the Housing Revenue Account. This advice was modified by Ministry of Housing and Local Government Circular No. 1/53, dated 15th January 1953. In terms of the present Act, that Circular requires: (i) certain expenditure on providing meals and refreshments, or laundry facilities or services, to be debited under para. 2 (1) (c) of the Fifth Schedule, *post*; (ii) certain charges to be regarded as rents and credited under para. 1 (1) (a) of that Schedule; and (iii) other items of income and

expenditure to be dealt with by direction under para. 4 of that Schedule. The advice given in Circular 1/53 would appear to be of doubtful legality, but the Minister's power to give directions under para. 4 of the Fifth Schedule (replacing s. 129 (5) of the Act of 1936) is very wide.

#### Sub-s. (1).

**Local authority for the purposes of Part V of the principal Act.** "The principal Act" is the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *post*. For the local authorities for the purposes of Part V of that Act, see ss. 1 and 132 thereof.

**House; the Minister.** For definitions, see s. 58 (1), *post*; and, as to "house", see also s. 189 (1) of the Housing Act, 1957 (Book I, *ante*).

**Provided by a local authority under the said Part V.** By virtue of s. 60, *post*, sub-s. (1) (a), *supra*, will also extend to houses and other buildings provided by a local authority under Part V of the Housing Act, 1936, Part III of the Housing Act, 1925, or Part III of the Housing of the Working Classes Act, 1890. Note also sub-s. (2), *supra*, as to houses vesting on default of another person; and s. 57 (6) and (8) in Part III of the Act of 1957 (Book I, *ante*) as to certain land in a re-development area which is deemed to have been acquired under Part V of that Act. By ss. 29 (4), 46 (5) and 48 (4) of that Act, the local authority are given the like powers in respect of certain houses retained for temporary accommodation as they have under Part V of that Act; these houses are expressly brought within the Housing Revenue Account by sub-s. (1) (b), *supra*. Cf. the General Note to s. 92 of the Act of 1957.

In connection with the Housing (Temporary Accommodation) Act, 1944 (27 Statutes Supp. 37; 11 Halsbury's Statutes (2nd Edn.) 631), which is not expressly mentioned in this section or the Fifth Schedule, *post*, arrangements were made for showing income and expenditure relating to temporary structures in the Housing Revenue Account; see the Joint Memorandum issued by the Ministries of Health and Works in November 1944 (reprinted August 1945). The present section and the Fifth Schedule do not expressly refer to the financial provisions of the Town Development Act, 1952 (77 Statutes Supp. 200; 32 Halsbury's Statutes (2nd Edn.) 1030), as amended by the Housing Subsidies Act, 1956, *e.g.*, to the Minister's contribution under s. 2 (2) of the Act of 1952, as amended, mentioned in the notes to s. 26, *ante*.

Houses and buildings provided, or improved, etc., by private persons with the assistance of the local authority, or by housing associations, etc., are not within the Account (except as mentioned in sub-s. (2), *supra*, and the note thereto, *infra*).

**Improved; improvement proposals.** These expressions are defined in s. 9 (6) and s. 9 (1), *ante*, respectively. Dwellings improved by housing associations or private persons (ss. 12 and 30, *et seq.*, *ante*) are not within the Account (except as mentioned in sub-s. (2), *supra* and the note thereto, *infra*).

**Acquired or appropriated for the purposes of Part V of the principal Act.** Cf. the note "Provided by a local authority under the said Part V", *supra*. For the purposes of Part V of the Housing Act, 1957 (Book I, *ante*), land may be acquired by virtue of s. 96 thereof, or may be appropriated by virtue of s. 99 of that Act.

**Housing (Rural Workers) Act, 1926, ss. 1, 4 (2A).** 11 Halsbury's Statutes (2nd Edn.) 421, 427; and see the note about s. 4 (2A) to s. 58 (2), *post*. Sub-s. (1) (d) (i), *supra*, refers to assistance received under s. 1 of that Act by a local authority from another local authority, the latter being the local authority as defined in s. 5 of the Act of 1926. Sub-s. (1) (d) (ii), *supra*, refers to contributions from the Minister to a local authority, as so defined, for works carried out by that authority which, if executed by another person, would have attracted a grant from them. Contributions from the Minister under s. 4 (2A) are to be credited to the Housing Revenue Account as exchequer payments; see s. 58 (2) and para. 1 (1) (b) of the Fifth Schedule, *post*. Payments under s. 1 of the Act of 1926 are required to be credited by para. 1 (1) (f) of that Schedule, which also applies to contributions by the Minister to the local authority, as defined in the Act of 1926, under s. 4 (1) thereof, in cases where a house improved, etc., by another person has become vested in that authority (cf. sub-s. (2), *supra*, and the note thereto, *infra*).

#### Sub-s. (2).

**Default of any person.** These words are reproduced from s. 21 (1) of the Housing (Financial and Miscellaneous Provisions) Act, 1946; s. 21 (2) of that Act required the local authority to carry to the credit of the Housing Revenue Account any sums paid to them, in respect of a house vested in them at the time of payment, under s. 1 (1) (a) of the Housing, etc., Act, 1923 (contributions to their expenses in promoting the provision of housing under s. 2 of that Act), under s. 4 (1) of the Housing (Rural Workers) Act, 1926 (contributions to expenses in promoting housing for rural workers), and under s. 9 of the Housing (Financial Provisions) Act, 1938 (continuation of contributions under s. 1 (1) (a) of the Act of 1923 where houses provided with assistance under s. 2 thereof vested in the local authority, by reason of a default by another person), which was limited by s. 42 (3) of the Housing Act, 1949, to houses vesting before 30th July 1949. None of these payments is an "exchequer payment" as defined in s. 58 (2), *post*, but they are expressly required to be credited to the Account by para. 1 (1) (c) and (f)

of the Fifth Schedule, *post*. (The above-mentioned provisions of the Acts of 1923 and 1938 are now repealed with savings by s. 59 (1) and (4) and the Sixth Schedule, *post*.)

The powers to continue to pay contributions, or payments in lieu of subsidies or contributions, conferred on the Minister by the present Act in cases where houses vest in, or are transferred to, the local authority are not confined to cases of default; see for example, ss. 19 (3), 21, 46 (5) and 48 (3), *ante* (which are derived from s. 15 of the Act of 1946 and s. 42 (1) of the Act of 1949, the last-mentioned subsection replacing s. 9 of the Act of 1938 mentioned above). In most of these cases the Minister's payment is within the definition of "exchequer payment" in s. 58 (2), *post*, and is required to be credited to the account by para. 1 (1) (b) of the Fifth Schedule, *post*.

**Sub-s. (3).**

**Hostel.** This is defined, for the purposes of s. 15, *ante*, in sub-s. (4) of that section.

**Satisfied.** See the note to s. 1 (3), *ante*.

**Sub-s. (4).**

**Provision of housing accommodation under Part V of the principal Act.** The principal Act is the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *post*. For the purposes of Part V of that Act, the "provision of housing accommodation" is defined in s. 92 (4) thereof. See also as to earlier Acts, the note "Provided by a local authority under the said Part V", to sub-s. (1), *supra*. As to loan charges for the purposes mentioned in this subsection (sub-s. (4), *supra*), see para. 2 (1) (a) of the Fifth Schedule, *post*.

**Housing (Rural Workers) Act, 1926.** 11 Halsbury's Statutes (2nd Edn.) 421. For the local authority for the purposes of that Act, see s. 5 thereof. Contributions under s. 4 (2A) are made to the local authority as so defined. The reference to assistance "thereunder" is to assistance under that Act (not under s. 4 (2A) thereof), *i.e.*, under s. 1 in the ways mentioned in s. 2 thereof. Cf. the notes about that Act to sub-s. (1), *supra*, and to s. 58 (2), *post*.

**Sub-s. (5).**

**Fifth Schedule.** That Schedule, *post*, replaces ss. 129 and 130 of the Act of 1936, as affected by later enactments, together with provisions from the Tenth Schedule to that Act, as to London. It requires the Housing Revenue Account to be debited with items such as the expenses of supervision and management, loan charges and taxes, and to be credited with income from rents, exchequer payments, county council contributions and certain other payments. A credit balance may be carried forward, but a deficit in any year must be met from rates; there is a quinquennial review of the account.

In any year, a credit balance may be applied to housing purposes approved by the Minister or to refunding rate fund contributions made to meet deficits in any of the previous four years (*i.e.*, what used to be called "additional" contributions, now required to be made by para. 1 (5) of the Schedule).

In an ordinary year, any balance remaining is then carried forward, but in a quinquennial year (ending in March 1960, 1965, etc.) any balance is wholly or partly to be transferred to the Housing Repairs Account, or carried forward, as determined by the local authority with the consent of the Minister, and subject to that is to be divided between the Minister and the rate fund in proportion to the exchequer payments and rate fund contributions made respectively by the Minister and the authority over the five year period.

**51. The Housing Repairs Account.—**(1) Subject to the provisions of this section, every local authority who are required to keep a Housing Revenue Account shall, for the purpose of equalising so far as practicable the annual charge to their revenue in respect of the repair and maintenance of houses, buildings and dwellings in respect of which that account is to be kept, keep an account (to be called "the Housing Repairs Account") and shall in each financial year carry to the credit of that account from the Housing Revenue Account in respect of each house, building and dwelling such amount as they may think proper, not being less than eight pounds and such amount, if any, as may be necessary to make good any deficit shown in the Housing Repairs Account at the end of the last preceding financial year.

(2) Subject to the provisions of this Act, moneys standing to the credit of the Housing Repairs Account shall be applied only in meeting expenses incurred in respect of the repair and maintenance of the houses, buildings and dwellings in respect of which the Housing Revenue Account is to be kept.

(3) If at any time it appears to the Minister, after consultation with the local authority, that the moneys standing to the credit of a Housing Repairs Account are more than sufficient for the purposes for which the account is to be kept, or that it is no longer necessary for the account to be kept, he may give such directions as he thinks proper for the reduction of the amounts to be credited to the account or the suspension of the carrying of credits thereto, or for the closing of the account and the application of any moneys standing to the credit thereof, as the case may be.

#### NOTES

**History.** This section contains provisions formerly in s. 131 of the Housing Act, 1936, as amended by s. 21 (4) of the Housing (Financial and Miscellaneous Provisions) Act, 1946 (which substituted a minimum of £4 for the former provision as to 15 per cent. of the rent of each house, etc.) and by s. 1 (3) of the Housing Act, 1952 (which raised the figure of £4 to £8).

#### Sub-s. (1).

**Local authority . . . required to keep a Housing Revenue Account.** As to this account, see s. 50, *ante*; and for the local authority who are required to keep such an account, see sub-ss. (1) and (4) of that section.

**Houses . . . in respect of which that account is to be kept.** See s. 50 (1), (2) and (3), *ante*. For the meaning of "house", see s. 58 (1), *post*, and s. 189 (1) of the Housing Act, 1957 (Book I, *ante*).

**Financial year.** Cf. the note to s. 10 (1), *ante*.

**Carry . . . from the Housing Revenue Account.** As to debiting that account, see para. 2 (1) (d) of the Fifth Schedule, *post*.

#### Sub-s. (2).

**Subject to the provisions of this Act.** See, especially, sub-s. (3), *supra*, and s. 53, *post*.

#### Sub-s. (3).

**Appears.** See the note "Appear" to s. 2 (3), *ante*.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Consultation.** As to what constitutes consultation, see especially *Rollo v. Minister of Town and Country Planning*, [1948] 1 All E.R. 13, C.A.; 2nd Digest Supp., and *Re Union of Benefices of Whippingham and East Cowes, Derham v. Church Comrs. of England*, [1954] 2 All E.R. 22, P.C.; 3rd Digest Supp.

**52. Power to keep Housing Equalisation Account.—**(1) Every local authority who are required to keep a Housing Revenue Account shall, if they think it desirable for the purpose of equalising the income of the Housing Revenue Account derived from exchequer payments and contributions from other local authorities over any period during which loan charges required to be debited to that account will be payable, keep an account (to be called "the Housing Equalisation Account") and shall, if they keep such an account, carry to the credit of that account from the Housing Revenue Account such sums, and shall apply an amount equal to the sums so credited in such manner, as may be prescribed.

(2) Where a local authority close their Housing Equalisation Account, they shall carry to the credit of their Housing Revenue Account any sums standing to the credit of their Housing Equalisation Account when it is closed.

(3) In this section "prescribed" means prescribed by regulations made by the Minister by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### NOTES

**History.** Sub-s. (1) of this section contains provisions formerly in s. 132 (1) of the Housing Act, 1936, as amended by s. 21 (5) of the Housing (Financial and Miscellaneous Provisions) Act, 1946. Sub-s. (2) contains provisions formerly in s. 21 (6) of the Act of 1946. Sub-s. (3) contains provisions formerly in ss. 176 (1) and 177 of the Act of 1936 and also reproduces the effect of ss. 1 (2) and 5 (2) of the Statutory Instruments Act, 1946. Exchequer contributions under the Act of 1946 were put on a sixty-year basis, which corresponded with the ordinary sixty-year basis for loan charges (though loan charges for housing sites are sometimes on a longer term, and for services

on a shorter-term, basis). The effect of s. 21 (5) of the Act of 1946 was to make the keeping of a Housing Equalisation Account a matter of discretion, and to repeal the more limited provisions for dispensing with such an account contained in s. 132 (2) of the Act of 1936.

**Sub-s. (1).**

**Local authority . . . required to keep the Housing Revenue Account.** As to this account, see s. 50, *ante*; and for the local authorities who are required to keep such an account, see sub-ss. (1) and (4) of that section.

**Exchequer payments.** For meaning, see s. 58 (2), *post*.

**Loan charges.** For meaning, see s. 58 (1), *post*.

**Sub-s. (3).**

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Statutory instrument.** See the note to s. 49, *ante*.

**Regulations under this section.** At the time of going to press no regulations have been made under this section. By virtue, however, of s. 59 (2), *post*, the Housing Acts (Equalisation Account) Regulations, 1947 (S.R. & O. 1947 No. 379) (10 Halsbury's Statutory Instruments, title Housing; *Lumley's Public Health* (12 Edn.) Vol. VI, p. 1165; *Hill's Complete Law of Housing* (4th Edn.), p. 553) continue to have effect as if made under this section.

The general effect of these regulations is to require an amount equal to one-seventh of the exchequer payments, and county council contributions, under certain repealed enactments to be carried to the credit of the Housing Equalisation Account. The enactments in question are all repealed with savings by s. 59 (1) and (4) and the Sixth Schedule, *post*. The exchequer contributions in question are those under s. 1 (1) (b) of the Housing, etc., Act, 1923, as amended by ss. 1 and 2 of the Housing (Financial Provisions) Act, 1924; ss. 105, 106 and 108 of the Housing Act, 1936; and ss. 1 and 2 of the Housing (Financial Provisions) Act, 1938; all these enactments are discussed in the notes to s. 58 (2), *post*. The county council contributions in question are those under s. 115 of the Act of 1936 and s. 7 of the Act of 1938. The amount of one-seventh may be varied in certain circumstances if the local authority satisfy the Minister that this is expedient; and in certain circumstances amounts may be credited in respect of any contributions under s. 1 (1) (b) of the Act of 1923 or s. 107 of the Act of 1936.

Amounts may be transferred back to the Housing Revenue Account, with the approval of the Minister, to fulfil the purposes of the present section; subject to that, moneys in the Equalisation Account must be applied or invested under s. 53, *post*.

**53. Temporary application of moneys in housing accounts.—**

(1) An amount equal to any moneys standing to the credit of the Housing Repairs Account or the Housing Equalisation Account of a local authority, and not for the time being required for the purposes for which they will ultimately be applicable, may be used by the authority for the purpose of any statutory borrowing power possessed by them subject to the conditions specified in subsection (2) of this section, and so far as not so used shall be invested temporarily in statutory securities (other than securities created by the authority) and an amount equal to any income arising from such investment shall be credited to the account.

(2) The conditions subject to which moneys may be used as mentioned in subsection (1) of this section shall be—

(a) the moneys so used shall be repaid to the account out of the general rate fund within the period, and by the methods, within and by which a loan raised under the statutory borrowing power would be repayable;

Provided that the authority shall repay to the account the moneys so used or the balance thereof for the time being outstanding, as the case may be, as and when required for the purposes of the account, and may make such repayment at any time within the period aforesaid, and in either case the repayment shall be made out of the general rate fund or out of moneys which would have been applicable to the repayment of a loan if raised under the statutory borrowing power;

(b) in the accounts of the general rate fund an amount equal to interest (calculated at such rate as may be determined by the authority to be equal as nearly as may be to the rate of interest which would be payable on a loan raised on mortgage under the statutory

borrowing power) on any moneys so used and for the time being not repaid shall be credited to the account and debited to the undertaking or purpose with reference to which the moneys are so used;

- (c) the statutory borrowing power shall be deemed to be exercised by such use as fully in all respects as if a loan for the same amount had been raised in exercise of the power, and the provisions of any enactment as to the reborrowing of sums raised under the statutory borrowing power shall apply accordingly.

(3) In this section "statutory security" has the meaning assigned to it by Part IX of the Local Government Act, 1933.

#### NOTES

**History.** Sub-ss. (1) and (2) of this section contain provisions formerly in s. 133 (1) and (2) of the Housing Act, 1936. Sub-s. (3) contains a provision formerly in s. 188 (1) of that Act.

**Sub-s. (1).**

**Housing Repairs Account.** See s. 51, *ante*.

**Housing Equalisation Account.** See s. 52, *ante*.

**Statutory borrowing power.** Examples of such powers are those contained in s. 54 (1), *post*, s. 136 (1) of the Housing Act, 1957 (Book I, *ante*), s. 195 of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 457), and s. 124 (1) of the London Government Act, 1939 (15 Halsbury's Statutes (2nd Edn.) 1130).

**Statutory securities.** See sub-s. (3), *supra*.

**Sub-s. (2).**

**General rate fund.** The keeping by a rating authority of a "general rate fund" in substitution for existing rate funds was enjoined by s. 10 (1) of the Rating and Valuation Act, 1925 (20 Halsbury's Statutes (2nd Edn.) 118). By s. 185 (1) of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 452), all receipts of a borough council are to be carried to, and all liabilities falling to be discharged by the council are to be discharged out of, the general rate fund. Similar provisions relating to the general rate funds of urban and rural district councils are contained in ss. 188 (1) and 191 (1) respectively of the same Act. See also, as to accounts, ss. 185 (2), 188 (2) and 191 (2) of that Act, and as to payments out of the general rate fund of a borough, s. 187 thereof.

As to metropolitan boroughs, see the London Government Act, 1939, ss. 121, 122 (15 Halsbury's Statutes (2nd Edn.) 1128, 1129); and for the meaning of "general rate fund" in relation to the London County Council, see s. 58 (1), *post*.

**Sub-s. (3).**

**Statutory security.** In Part IX of the Local Government Act, 1933, "statutory securities" means any security in which trustees are for the time being authorised by law to invest trust moneys, and any mortgage, bond, debenture, debenture stock, stock or other security created by a local authority, other than annuities, rentcharges, or securities transferable by delivery; see s. 218 of the Act of 1933 (14 Halsbury's Statutes (2nd Edn.) 469).

#### PART IV

##### GENERAL

#### 54. Power of local authorities to borrow for purposes of Act.—

(1) A local authority or a county council may borrow for any of the purposes of this Act other than for making annual grants to development corporations or housing associations under section one of this Act.

(2) Money borrowed under this Part of this Act by the London County Council may be borrowed in manner provided by the London County Council (Loans) Act, 1955.

(3) The maximum period which may be sanctioned as the period for which money may be borrowed by the London County Council or the Common Council of the City of London for the purposes of this Act shall, notwithstanding the provisions of any Act of Parliament, be eighty years, and in the proviso to subsection (1) of section one hundred and thirty-four of the London Government Act, 1939 (which, as amended by the principal Act, provides that the term for the repayment of sums borrowed by metropolitan borough councils under the principal Act may be up to eighty years),

the reference to the purposes of the principal Act shall include a reference to the purposes of this Act.

(4) Where a loan is made by the Public Works Loan Commissioners to a local authority for the purposes of this Act or to a county council for the purposes of section forty-three or forty-five of this Act—

(a) the loan shall be made at the minimum rate allowed for loans out of the Local Loans Fund applicable to the period for which the loan is made, and

(b) the period for which the loan is made may exceed the period allowed under any enactment limiting the period for which loans may be made by the Commissioners, but shall not exceed eighty years.

(5) The provisions of sections one hundred and thirty-eight and one hundred and forty of the principal Act (which relate to the issue of housing bonds and the lending by county councils of money to local authorities within their area) shall apply as if references therein to the purposes of that Act included references to the purposes of this Act.

#### NOTES

**History.** Sub-ss. (1) and (5) of the section contain provisions formerly in s. 47 (1) of the Housing Act, 1949. Sub-ss. (2) and (3) contain provisions formerly in s. 119 of the Housing Act, 1936, as amended by s. 207 of, and the Eighth Schedule to, the London Government Act, 1939, and extended by s. 47 (1) of the Act of 1949. Sub-s. (4) contains provisions formerly in s. 123 (2) of the Act of 1936, as amended by s. 6 (c) of the Local Authorities Loans Act, 1945, and extended by s. 47 (1) of the Act of 1949. For provisions derived from s. 47 (2) of the Act of 1949, preserving certain borrowing powers in connection with repealed provisions, see s. 59 (6), *post*.

**General Note.** The Housing Act, 1949, s. 47 (1), provided borrowing powers for local authorities and county councils for the purposes of that Act, and applied ss. 119, 122, 123 and 124 of the Housing Act, 1936, relating respectively to borrowing by the London County Council and the Common Council of the City of London, housing bonds, loans by the Public Works Loan Commissioners, and loans by county councils. The effect of these provisions is preserved by the present section.

Sub-s. (1), *supra*, confers the borrowing power for the purposes of the present Act, and may be compared with s. 136 (1) of the Housing Act, 1957 (Book I, *ante*). Sub-ss. (2) and (3) relate to London, and may be compared with s. 136 (2) and (3) of the Act of 1957. Sub-s. (4) corresponds with s. 139 of that Act, as to loans by the Public Works Loan Commissioners; and sub-s. (5) applies ss. 138 and 140 of that Act, as to housing bonds and loans by county councils. Sub-s. (3) has no counterpart for authorities outside London, because the Act of 1949 made no such provision, *i.e.*, it did not affect the Eighth Schedule to the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 531).

#### Sub-s. (1).

**Local authority . . . may borrow, etc.** Cf. the second note to the Housing Act, 1957, s. 136 (1) (Book I, *ante*). As to the temporary application for this purpose of moneys standing to the credit of the Housing Repairs Account or the Housing Equalisation Account, see s. 53, *ante*; and as to the procedure for obtaining the Minister's consent to borrowing, see Part III of the memorandum accompanying Circular No. 48/57, dated 20th September 1957.

**Development corporation; housing association.** For definitions, see (by virtue of s. 58 (1), *post*) the Housing Act, 1957, s. 189 (1) (Book I, *ante*). Annual grants, under s. 1 (2) (b), *ante*, in effect pass on to the corporation or association an amount not less than the exchequer subsidy under that section.

#### Sub-s. (2).

**London County Council.** See the note to s. 9 (5), *ante*.

**London County Council (Loans) Act, 1955.** 4 & 5 Eliz. 2 c. xxvi.

#### Sub-s. (3).

**London Government Act, 1939, s. 134 (1).** 15 Halsbury's Statutes (2nd Edn.) 1135. That subsection, as amended by s. 190 of, and the Tenth Schedule to, the Housing Act, 1957 (Book I, *ante*), makes provision for repayment of housing loans by metropolitan borough councils, the maximum period being 80 years. Similar provision, for authorities outside London, contained in the Eighth Schedule to the Local Government Act, 1933, as applied to the Act of 1957 by s. 190 thereof, and the Tenth Schedule thereto, is not extended to the present Act; but loans may be obtained for up to 80 years under sub-s. (4), *supra*. Cf. the notes to s. 136 of the Act of 1957 and to the Tenth Schedule thereto.

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *post*.

**Sub-s. (4).**

**Public Works Loan Commissioners.** Cf. the note to s. 139 of the Housing Act, 1957 (Book I, *ante*). For the power of the Commissioners to lend to housing associations and companies, etc., see s. 47, *ante*.

**Minimum rate allowed, etc.** See the note to s. 139 of the Housing Act, 1957 (Book I, *ante*).

**Sub-s. (5).**

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *post*. As stated in the present subsection, ss. 138 and 140 of that Act relate to housing bonds and loans by county councils.

**55. Application of provisions of principal Act.—**(1) The following provisions of the principal Act—

- (a) section one hundred and fifty-six (which relates to the reference of housing matters to a local authority's committees),
- (b) sections one hundred and seventy-one to one hundred and seventy-six (which relate to powers exercisable on the default of a local authority), and
- (c) subsection (1) of section one hundred and eighty-seven (which relates to the reference of housing matters to the committees of the common council of the City of London)

shall apply as if references therein to that Act included references to this Act.

(2) Subsection (1) of section one hundred and eighty-one and section one hundred and eighty-two of the principal Act (which relate to the powers exercisable by the Minister) shall apply as if references therein to that Act included references to Part III of this Act.

**NOTES**

**History.** Sub-s. (1) of this section applies provisions formerly in ss. 153, 169 (1), (2), (4), 170, 171, 172 (1), 173, 174 and 184 of the Housing Act, 1936, and s. 18 of the Housing Repairs and Rents Act, 1954, and also contains provisions formerly in paras. 7 to 10 of the Second Schedule to the Housing Act, 1949. Sub-s. (2) applies provisions formerly in ss. 178 (1) and 180 of the Act of 1936.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *post*. Sections 181 (1) and 182 of that Act (local inquiries and arrangements with other Government Departments) are applied also by s. 18 (3), *ante*.

**56. Payments out of Exchequer.—**Any payment required or authorised to be made by the Minister under this Act, but excluding any sum payable as a loan under section seventeen of this Act, shall be made out of moneys provided by Parliament.

**NOTES**

**History.** Provisions similar to this section were formerly contained in s. 4 of the Housing (Financial Provisions) Act, 1938, s. 23 (1) of the Housing (Financial and Miscellaneous Provisions) Act, 1946, and s. 10 (1) of the Housing Subsidies Act, 1956.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Sum payable as a loan.** Special provisions for financing loans by the Minister to certain housing associations under s. 17 (3), *ante*, is made by s. 17 (5) to (8); those provisions do not apply to grants under s. 17 (1), which are not excluded from the present section.

**57. Application to Scilly Isles.—**(1) The Minister shall have power, exercisable by statutory instrument, to make an order directing that the provisions of this Act specified in subsection (3) of this section shall, subject to such exceptions, adaptations and modifications as may be specified in the order, extend to the Isles of Scilly, but except as so extended, those provisions shall not extend to the Isles of Scilly.

(2) The power conferred by this section to make an order shall be construed as including a power exercisable in the like manner to vary or revoke the order.

(3) The said provisions of this Act are—

sections nine to twelve,  
sections fourteen and fifteen,  
section twenty-two,  
the provisions of Part II except sections forty-six and forty-seven.

#### NOTES

**History.** This section contains provisions formerly in s. 51 (3) of the Housing Act, 1949.

**General Note.** For other provisions as to the Isles of Scilly, see s. 134 of the Housing Act, 1957 (Book I, *ante*), derived from the Housing (Financial and Miscellaneous Provisions) Act, 1946, and the Housing Subsidies Act, 1956. The present section is derived from s. 51 (3) of the Housing Act, 1949, which provided for the application of the provisions of that Act to the Isles, by order of the Minister. This power is now slightly more narrowly expressed, as the enactments in this Act listed in sub-s. (3), *supra*, do not include all the provisions of this Act derived from the Act of 1949, and some of the provisions of that Act now find their place in the Act of 1957; see the Table of Repeals and Replacements (Appendix I, *post*).

**Sub-s. (1).**

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *post*.

**Statutory instrument.** For provisions as to statutory instruments generally, see the Statutory Instruments Act, 1946 (36 Statutes Supp. 95; 24 Halsbury's Statutes (2nd Edn.) 440).

**Sub-s. (2).**

**Power . . . to vary or revoke the order.** Special power to revoke or vary an order is given by sub-s. (2), *supra*, because the general power contained in s. 32 (3) of the Interpretation Act, 1889 (24 Halsbury's Statutes (2nd Edn.) 226), covers only rules, regulations and byelaws.

**Order under this section.** At the time of going to press no order has been made under this section.

**58. Interpretation.**—(1) In this Act, unless the context otherwise requires—

"agricultural population" has the same meaning as in section one hundred and fourteen of the principal Act;

"development corporation" has the same meaning as in the principal Act except that in sections eleven, fourteen and fifteen of this Act it does not include a development corporation established by an order under section sixteen of the New Towns Act, 1946 (which relates to orders for the combination and transfer of functions of development corporations);

"general rate fund" in relation to the London County Council means the county fund;

"house" includes any yard, garden, outhouses and appurtenances belonging thereto or usually enjoyed therewith, and any part of a building which is occupied or intended to be occupied as a separate dwelling including, in particular, a flat;

"housing association" and "housing trust" have the same meaning as in the principal Act;

"loan charges" means, in relation to any borrowed moneys, the sums required for the payment of interest on those moneys and for the repayment thereof either by instalments or by means of a sinking fund;

"the Minister" means the Minister of Housing and Local Government;

"the principal Act" means the Housing Act, 1957.

(2) In this Act "exchequer payment" means any payment which the Minister is required or authorised to make to a local authority under—

section seven of the Housing, Town Planning, &c. Act, 1919;  
paragraph (b) of subsection (1) of section one of the Housing, &c. Act, 1923 (as originally enacted);  
paragraph (b) of subsection (1) of section one of the Housing, &c. Act, 1923 (as amended by sections one and two of the Housing (Financial Provisions) Act, 1924);  
subsection (3) of section one of the Housing, &c. Act, 1923;  
subsection (2A) of section four of the Housing (Rural Workers) Act, 1926;  
section one of the Housing (Rural Authorities) Act, 1931;  
sections one hundred and five to one hundred and eight of the Housing Act, 1936;  
sections one and two of the Housing (Financial Provisions) Act, 1938;  
the provisions of the Housing (Financial and Miscellaneous Provisions) Act, 1946, with respect to annual exchequer payments within the meaning of that Act;  
section eleven of the Requisitioned Houses and Housing (Amendment) Act, 1955;  
paragraph (a) of subsection (2) of section one of this Act,  
section nine of this Act,  
section thirteen of this Act,  
section sixteen of this Act,  
section twenty-one of this Act,  
subsection (5) of section forty-six of this Act,  
subsection (3) of section forty-eight of this Act.

(3) Section four of the principal Act (which prescribes the standard by which houses are judged fit for human habitation for the purposes of that Act) shall apply as if references therein to that Act included references to this Act.

(4) Save where the context otherwise requires, references in this Act to any enactment shall be construed as references to that enactment as amended by or under any other enactment.

#### NOTES

**History.** Sub-s. (1) of this section contains provisions formerly in (i) s. 115 (2) of the Housing Act, 1936, as applied by s. 188 (1) of that Act, by s. 11 (2) of the Housing (Financial Provisions) Act, 1938, by s. 25 (1) of the Housing (Financial and Miscellaneous Provisions) Act, 1946, and by s. 11 (2) of the Housing Subsidies Act, 1956; (ii) s. 188 (1) of the Act of 1936, as amended by s. 1 of, and the First Schedule to, the Housing Act, 1949, and by the Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No. 1) Order, 1951 (S.I. 1951 No. 142), and the Minister of Local Government and Planning (Change of Style and Title) Order, 1951 (S.I. 1951 No. 1900), and as applied by s. 25 (1) of the Act of 1946, and s. 11 (2) of the Act of 1956; (iii) s. 188 (3) of the Act of 1936; (iv) para. 6 of the Tenth Schedule to the Act of 1936; (v) s. 50 (1) of the Act of 1949; and (vi) s. 11 (2) of the Act of 1956.

Sub-s. (2) contains provisions formerly in s. 188 (1) of the Housing Act, 1936, as extended by s. 4 of the Housing (Financial Provisions) Act, 1938, by s. 24 of, and para. 2 of the Third Schedule to, the Housing (Financial and Miscellaneous Provisions) Act, 1946, by s. 48 of, and para. 2 of the Second Schedule to, the Housing Act, 1949, by s. 7 (5) of the Housing Repairs and Rents Act, 1954, by s. 12 (3) of the Requisitioned Houses and Housing (Amendment) Act, 1955, and by s. 12 (3) of, and para. 2 of the First Schedule to, the Housing Subsidies Act, 1956.

Sub-s. (3) contains provisions formerly in para. 11 of the Second Schedule to, the Housing Act, 1949, and applies provisions formerly in s. 9 of the Housing Repairs and Rents Act, 1954.

**General Note.** The definition of "house", in sub-s. (1), *supra*, is a blend of three definitions, namely those in s. 188 (1) and (3) of the Housing Act, 1936 (repealed) and in s. 50 (1) (not repealed) of the Housing Act, 1949; see further the note, *infra*, to sub-s. (1).

Sub-s. (2), *supra*, defines the term "exchequer payment", used in this Act as a collective term for a large number of different types of exchequer subsidies and contributions and other payments. The definition is of importance in connection with s. 18, *ante* (power to reduce, suspend or discontinue such payments on default of the

local authority, and on certain disposals of property) and with s. 50, *ante*, and para. 1 (1) (b) of the Fifth Schedule, *post* (as to crediting the Housing Revenue Account).

The common feature of the enactments listed in sub-s. (2) is that they all provide for payments by the Minister to a local authority in respect of accommodation provided, or improved, etc., by the local authority themselves; or in certain cases in respect of houses which have become vested in the authority, where payments are continued, in effect, as if the houses had been provided by the authority. For example, the list refers to payments under s. 1 (2) (a), *ante*, to a local authority (exchequer subsidies in respect of dwellings provided by them) and not to payments under s. 1 (2) (b), *ante* (exchequer subsidies, payable to the local authority, in respect of dwellings provided by a housing association or development corporation under "authorised arrangements"). If a dwelling becomes vested in the local authority as mentioned in s. 21 (1), *ante*, the exchequer subsidy under s. 1 (2) (b) ceases to be payable, but the Minister may then make a payment to the authority under s. 21 (1) (b); this latter payment comes within the definition of "exchequer payment". Similarly, the list of enactments in sub-s. (2) includes s. 1 (1) (b) and (3) of the Housing, etc., Act, 1923, and omits s. 1 (1) (a) of that Act, which related to contributions towards the expenses of local authorities in giving financial assistance to promote the building of houses under s. 2 of that Act. When a house provided with such assistance becomes vested in the local authority, s. 48 (3), *ante*, provides for the continuing of payments, which will then come within the definition of "exchequer payment".

One omission from the list calls for comment. Hostels provided with contributions under s. 15, *ante* (derived from s. 40 of the Housing Act, 1949) do not come within the Housing Revenue Account (see s. 50 (3), *ante*, derived from s. 40 (5) of the Act of 1949), and s. 15 is not among the enactments listed in sub-s. (2), *supra*. Exchequer contributions for conversions and improvements by local authorities (see ss. 9 and 10, *ante*, derived from ss. 15-17 of the Act of 1949) are, however, "exchequer payments" and s. 9, *ante*, is included in the list.

#### Sub-s. (1).

**Agricultural population.** See s. 114 (5) of the Housing Act, 1957 (Book I, *ante*) and the note "History" to that section.

**Development corporation.** By s. 189 (1) of the Housing Act, 1957 (Book I, *ante*), "development corporation" means a development corporation established under the New Towns Act, 1946 (25 Halsbury's Statutes (2nd Edn.) 427). Sections 11, 14 and 15, *ante*, are derived from the Housing Act, 1949; the definition of "development corporation" in s. 50 (1) of that Act refers only to a corporation established under s. 2 of the Act of 1946 and fails to mention s. 16 thereof: cf. s. 125 proviso of the Act of 1957 (Book I, *ante*) and the reference thereto in the notes to s. 12 (1) of the present Act, *ante*.

**General rate fund.** See the note to s. 53 (2), *ante*. As to the London County Council, see the note to s. 9 (5), *ante*; and as to the county fund, see the London Government Act, 1939, ss. 118, 119 (15 Halsbury's Statutes (2nd Edn.) 1127, 1128).

**House.** So much of this definition as requires the inclusion of any yard, garden, outhouses and appurtenances is derived from s. 188 (1) of the Housing Act, 1936 (repealed). For the purposes of the provisions of that Act relating to the provision of accommodation the expression "house" included any part of a building which was occupied or intended to be occupied as a separate dwelling, unless the context otherwise required, by virtue of s. 188 (3). See now paras. (a) and (b) of the definition in s. 189 (1) of the Housing Act, 1957 (Book I, *ante*) and the notes thereto.

These definitions applied for the purposes of the Housing (Financial Provisions) Act, 1938, by virtue of s. 11 (2) thereof (11 Halsbury's Statutes (2nd Edn.) 619); and s. 11 (1) of that Act expressly included a reference to a flat (without prejudice to s. 188 (3) of the Act of 1936). A definition similar to that in s. 188 (3) of the Act of 1936 was provided by s. 25 (2) of the Housing (Financial and Miscellaneous Provisions) Act, 1946 (11 Halsbury's Statutes (2nd Edn.) 669) with the addition of a proviso resembling the latter part of the definition of "dwelling" in s. 29 (1), *ante*; and again a flat was expressly within the definition of "house".

The present definition is intended, for the purposes of this Act, to replace those in the Act of 1936, together with that in s. 50 (1) (not repealed) of the Housing Act, 1949, under which "house" includes any part of a building, being a part which is occupied or intended to be occupied as a separate dwelling, and in particular includes a flat. "Flat" is now defined for the purposes of Part I, *ante*, in s. 29 (1), *ante*; apart from the addition of the words "whether or not on the same floor", this definition is the same as the definition of "flat" in s. 188 (1) of the Act of 1936 (but the definition of "block of flats" is now different from those in the Acts of 1936 and 1938, being derived from the Housing Subsidies Act, 1956).

**Housing association; housing trust.** These expressions are defined in s. 189 (1) of the Housing Act, 1957 (Book I, *ante*); see also the notes to those definitions.

**Loan charges.** As to sinking funds, see the Local Government Act, 1933, ss. 213, 214 (14 Halsbury's Statutes (2nd Edn.) 465, 466), and the London Government Act, 1939, ss. 136, 137 (15 Halsbury's Statutes (2nd Edn.) 1135, 1137).

**The Minister.** Cf. the note to the definition in s. 189 (1) of the Housing Act, 1957 (Book I, *ante*).

**New Towns Act, 1946, s. 16.** 25 Halsbury's Statutes (2nd Edn.) 443.

**Housing Act, 1957.** See Book I, *ante*.

**Sub-s. (2).**

**Exchequer payment.** The enactments, here listed, from the Acts of 1919 to 1936, were included in the definition of "exchequer contribution" in s. 188 (1) of the Act of 1936 (11 Halsbury's Statutes (2nd Edn.) 586). The other enactments listed are, or replace, those brought within that definition by later Acts, cited in the note "History", *supra*.

The list may be compared with that in s. 28, *ante*, which relates to the time, manner and conditions of making certain payments. That list is more general in that it extends to payments which are not "exchequer payments" but at the same time more limited in that it does not extend to the Housing (Rural Workers) Act, 1926, or the Requisitioned Houses and Housing (Amendment) Act, 1955.

**Housing, Town Planning, etc., Act, 1919, s. 7.** 11 Halsbury's Statutes (2nd Edn.) 394. That section was repealed with savings by ss. 6 (1) and 24 (1) of, and the Third Schedule to, the Housing, etc., Act, 1923; see further s. 27, *ante*, and the notes thereto. The payments to public utility societies and housing trusts under s. 19 of the Act of 1919 (see s. 20, *ante*, and the notes thereto) are not "exchequer payments" within the present definition.

**Housing, etc., Act, 1923, s. 1 (1) (b), (3).** 11 Halsbury's Statutes (2nd Edn.) 402, 404. Section 1 (3) of that Act was repealed with a saving by s. 26 (5) of the Housing Act, 1930. The remainder of that section is repealed by s. 59 (1) and the Sixth Schedule, *post*, with savings for existing obligations in s. 59 (4), *post*.

Contributions under s. 1 (1) (b) of the Act of 1923, as originally enacted, were payable for twenty years towards the provision of houses by the local authority themselves, when the authority satisfied the Minister that this was the more appropriate method of meeting the needs of the area. The last mentioned requirement was removed by s. 1 (2) of the Housing (Financial Provisions) Act, 1924. By s. 1 (1) of that Act the period in which such contributions might be claimed was extended, but contributions were excluded by the Housing Acts (Revision of Contributions) Order, 1928 (S.R. & O. 1928 No. 1039) (printed in *Lumley's Public Health* (12th Edn.), Vol. VI, p. 863) as respects houses not completed before 1st October 1929. By s. 2 of the Act of 1924 increased contributions were payable for forty years if the houses were subject to the special conditions in s. 3 (1) of that Act (repealed by the Housing Act, 1935, which unified conditions affecting local authority houses; see now in particular s. 113 of the Housing Act, 1957, Book I, *ante*). The rates of these contributions were affected by the above-cited Order of 1928, as amended by the Housing (Revision of Contributions) Act, 1929; and contributions of this kind were excluded by s. 1 of the Housing (Financial Provisions) Act, 1933, except where proposals had been submitted, or were treated as having been submitted, to the Minister before 7th December 1932.

Contributions under s. 1 (3) of the Act of 1923, towards losses on re-housing schemes, were superseded by the system of government contributions, under s. 26 of the Housing Act, 1930, towards slum clearance and re-housing, which were payable for forty years when the authority undertook to observe the special conditions in s. 27 of that Act. (Section 27 was repealed, as respects local authority houses, by the Act of 1935 as part of the unification of conditions effected by that Act; as it applied to public utility societies, etc., in respect of accommodation provided before the Act of 1935, it is repealed by the present Act and replaced by para. 2 of the Second Schedule, *post*.) Section 26 of the Act of 1930, as extended by s. 35 of the Act of 1935, was repealed (except for the saving in s. 26 (5)) by the Housing Act, 1936, and replaced by s. 105 of that Act. By virtue of s. 189 (2) of the Act of 1936 (repealed) the reference in the present subsection to s. 105 of the Act of 1936 appears to include a reference to s. 26 of the Act of 1930. Contributions still payable under s. 1 (3) of the Act of 1923, by virtue of the saving in s. 26 (5) of the Act of 1930, are now governed by s. 27, *ante*, and the Third Schedule, *post*.

The Act of 1923 also contained provisions, in ss. 1 (1) (a) and 3, respectively, for contributions to local authorities, in respect of expenses in promoting the provision of houses by giving financial assistance under s. 2 of that Act, and to public utility societies, etc.; see the notes to ss. 48 and 20, *ante*. These contributions are not within the definition of "exchequer payment". See, however, ss. 48 (3) and 21 (3), *ante*, under which, where houses vest in the local authority, the Minister may make payments to the local authority; such payments come within the definition. As to crediting the Housing Revenue Account with sums payable to the authority under s. 1 (1) (a) of the Act of 1923 in certain circumstances, see para. 1 (1) (c) of the Fifth Schedule, *post*. That provision covers also payments under s. 9 of the Housing (Financial Provisions) Act, 1938; that section contained an earlier and more limited power resembling that in s. 48 (3), *ante*, mentioned above, and is repealed with savings by s. 59 (1) and (4) and the Sixth Schedule, *post*.

**Housing (Financial Provisions) Act, 1924, ss. 1, 2.** 11 Halsbury's Statutes (2nd Edn.) 412. These sections are repealed by s. 59 (1) and the Sixth Schedule, *post*. For their effect on s. 1 (1) (b) of the Act of 1923, see the note as to that Act, *supra*. The savings in s. 59 (4), *post*, for the Act of 1923 will extend to that Act as amended by the Act of 1924; see sub-s. (4), *supra*. The only express saving in s. 59 (4) for the Act of 1924 is for s. 2 (5) thereof (London County Council supplementary contributions; cf. para. 1 (2) (b) of the Fifth Schedule, *post*). For other provisions affected by ss. 1 and 2 of the Act of 1924, which are not here relevant, see ss. 1 (1) (a) and 3 of the Act of 1923, mentioned in the notes to ss. 20, 21 and 48, *ante*.

**Housing (Rural Workers) Act, 1926, s. 4 (2A).** 11 Halsbury's Statutes (2nd Edn.) 427. Section 1 of that Act provided for the making by local authorities, as defined in s. 5 of that Act, of schemes for improving buildings to provide dwellings for agricultural and other rural workers, with the financial assistance of the local authority by way of grant or loan (as mentioned in s. 2 and subject, in the case of grants, to the conditions in s. 3). Contributions towards the expenses of the local authority in making grants were payable by the Minister under s. 4 (1). (These provisions were the fore-runners of the system of improvement grants under the Housing Act, 1949; see now ss. 30-42, *ante*. Applications for assistance under the Act of 1926, as extended, had to be made to the local authority before 30th September 1945.) By s. 4 (2A) of the Act of 1926, inserted by s. 38 (2) of the Housing Act, 1935, government contributions became payable to a local authority, as defined in s. 5 of the Act of 1926, who themselves proposed to carry out works which would have attracted a grant from them if executed by someone else. It is this latter type of government contribution which comes within the present definition of "exchequer payment".

The following further points may be noted:—

- (1) There have been certain amendments to the Act of 1926, *e.g.*, in the definition of local authority in s. 5 thereof, and in the conditions in s. 3 thereof (*e.g.*, the limit on rent is now that imposed by s. 20 of the Rent Act, 1957).
- (2) A local authority for the purposes of Part V of the Housing Act, 1957 (Book I, *ante*) may be receiving assistance under s. 1 of the Act of 1926 from the local authority for the purposes of that Act; or may have become entitled, as the local authority under that Act, to government contributions under s. 4 (2A) thereof. In such cases any sums payable to them under s. 1 must be credited to the Housing Revenue by virtue of para. 1 (1) (f) of the Fifth Schedule, *post*; any contribution to them under s. 4 (2A) must be credited (as an "exchequer payment") by virtue of para. 1 (1) (b) of that Schedule. Furthermore if the local authority gave assistance to some other person under s. 1 of the Act of 1926, but the house has become vested in them, the original form of government contribution under s. 4 (1) of the Act of 1926 must also be credited under para. 1 (1) (f) of that Schedule.
- (3) In the case of local authority houses (when the authority received assistance under s. 1 of the Act of 1926, or a government contribution under s. 4 (2A), and also in other cases) the conditions in s. 3 of the Act of 1926 are displaced by ss. 113 (6) and 114 (4) of the Housing Act, 1957 (Book I, *ante*). See also the notes to s. 24, *ante* (withdrawal of certain county council contributions on failure to reserve houses for the agricultural population or other persons, *i.e.*, other rural workers). Certain provisions to prevent conflict with the system of improvement grants under the Housing Act, 1949 (see now ss. 30-42, *ante*) were contained in s. 28 of that Act (see now s. 39, *ante*); under these provisions the conditions in s. 3 of the Act of 1926 may be excluded, and replaced by those in the Fourth Schedule, *post*.
- (4) The conditions of payment of government contributions are determined by the Minister, with the approval of the Treasury, under s. 4 of the Act of 1926 (not s. 28, *ante*); they were nevertheless dealt with in Memorandum E, cited in the notes to s. 28, *ante*, issued by the Ministry of Health in connection with the consolidation of housing contributions and accounts by the Housing Act, 1935.

**Housing (Rural Authorities) Act, 1931, s. 1.** 11 Halsbury's Statutes (2nd Edn.) 438. That section, which is repealed by s. 59 (1) and the Sixth Schedule, *post*, subject to the saving in s. 59 (4), *post*, provided for contributions by the Minister to rural district councils towards the provision of houses for agricultural workers and others in a similar economic condition. Applications were to be made before 30th November 1931, and contributions are payable over forty years. They were additional to any contributions under the Act of 1924 (*supra*) or any county council contributions. For provisions formerly in ss. 2 and 3 of the Act of 1931, see s. 118 of the Housing Act, 1957 (Book I, *ante*) (power of the Minister to erect houses on behalf of the rural district council).

**Housing Act, 1936, ss. 105-108.** 11 Halsbury's Statutes (2nd Edn.) 541-545. So much of the Act of 1936 as was not already repealed, *i.e.*, principally by the Housing Act, 1957 (Book I, *ante*), is now repealed by s. 59 (1) and the Sixth Schedule, *post*, subject to the savings in s. 59 (4), *post*. Broadly speaking, ss. 105-108 of the Act of 1936 provided respectively government contributions (i) for slum clearance, etc.;

(ii) towards the provision of flats on sites of high value; (iii) to certain "poor" authorities facing an undue financial burden; and (iv) towards the provision of accommodation for agricultural workers to abate overcrowding in a rural district. Somewhat similar types of contribution have been provided under later Acts: cf. ss. 3, 7, 6, and 5, *ante*.

The Act of 1936 was a major consolidating Act; the present definition of "exchequer payment" is an extension of the definition of "exchequer contribution" in s. 188 (1) of that Act. The present reference to s. 105 will presumably include a reference to the corresponding provision of the Act of 1930 (as mentioned in the note about the Act of 1923, *supra*).

Payments to local authorities in respect of accommodation provided under "authorised arrangements" with a housing association, under s. 94 (3) of the Act of 1936 (see the definitions in s. 29 (2), *ante*), are not within the present definition of "exchequer payment"; but, where houses become vested in the local authority, the Minister may continue under s. 21, *ante*, to make payments, and these come within the definition. (As to county council contributions, under s. 115 of the Act of 1936, which is repealed with savings by s. 59, *post*, note the power to withdraw exchequer payments, under s. 18, *ante*, and the effect of this under s. 24 (3), *ante*).

**Housing Act, 1938, ss. 1, 2.** 11 Halsbury's Statutes (2nd Edn.) 611, 613. That Act is repealed by s. 59 (1) and the Sixth Schedule, *post*, subject to the savings in s. 59 (4), *post*. Contributions under s. 1 were for slum clearance, re-development, and the abatement of overcrowding, with special provision for flats on expensive sites, and for "poor" authorities facing an undue financial burden; s. 2 related to housing accommodation provided by the local authority for the agricultural population. (For the provisions formerly in s. 3 of that Act, see now s. 46, *ante*. As to county council contributions under s. 7, which is repealed with savings by s. 59, *post*, note the power to withdraw exchequer payments, under s. 18, *ante*, and the effect of this under s. 24 (2), *ante*).

Contributions payable under the Act of 1923 (*supra*) by virtue of s. 9 of the Act of 1938, which is repealed with savings by s. 59, *post*, and which related to houses vesting in a local authority before 30th July 1949 (see the notes to s. 48, *ante*) on the default of another person, are not within the present definition of "exchequer payment"; they are nevertheless to be credited to the Housing Revenue Account; see para. 1 (1) (c) of the Fifth Schedule, *post*. In the case of such houses vesting after 29th July 1949, payments by the Minister might be continued by virtue of s. 15 of the Housing (Financial and Miscellaneous Provisions) Act, 1946 (*infra*), now reproduced for this purpose in s. 48 (3), *ante*; such payments are within the present definition.

Payments to local authorities of contributions at the rate provided by the Act of 1938 in respect of houses provided under "authorised arrangements" with housing associations under s. 94 of the Act of 1936 (as amended by s. 8 of the Act of 1938) are not within the present definition of "exchequer payment", but where a house vests in the local authority, s. 15 of the Act of 1946, reproduced in this connection in s. 21 (1), *ante*, provided for the continuation of payments by the Minister to the local authority, and these are within the definition. Similarly payments by the local authority under s. 46 (1), *ante*, or under s. 3 (1) of the Act of 1938 reproduced therein (cf. s. 59 (3), *post*), are not within the definition; but where a house vests in the local authority s. 15 of the Act of 1946, reproduced in this connection in s. 46 (5), *ante*, provided for the continuation of payments by the Minister, and these are within the definition.

**Housing (Financial and Miscellaneous Provisions) Act, 1946.** 39 Statutes Supp. 38; 11 Halsbury's Statutes (2nd Edn.) 613. Contributions by the Minister to the local authority under that Act were called "annual exchequer contributions" (as mentioned in s. 59 (4) *post*; not "payments" as in sub-s. (2), *supra*), and were payable for sixty years. There was a "general standard amount" (s. 2), and a "special standard amount" (s. 3) for accommodation for the agricultural population, or to relieve undue burden on "poor" authorities; and provisions (s. 4) for flats on expensive sites. Further provision for poor, *i.e.*, heavily rated, areas was made by s. 7, and additional contributions were available under s. 6 to meet the cost of measures against subsidence (see now s. 8 (1), *ante*). Transitional provisions as to the introduction of the rates of contribution under the Act of 1946 were contained in ss. 9 and 10 thereof, and were to some extent retrospective. All these provisions are repealed by s. 59 (1) and the Sixth Schedule, *post*, subject to the savings in s. 59 (4), *post*.

Variations in the contributions under the Act of 1946 were made by later enactments, *e.g.*, by s. 39 of the Housing Act, 1949 (see now s. 8 (2), *ante*), and by the Housing Act, 1952 (cf. the General Note to s. 1, *ante*); and such contributions were excluded by the Housing Subsidies Act, 1956, where that Act applied (see the note "History" to s. 1, *ante*). References to the Act of 1946 are to that Act as amended; see sub-s. (4), *supra*.

The Act of 1946 provided a number of other forms of contribution in special cases, *e.g.*, the contributions to local authorities using government war buildings; see s. 12, re-enacted in s. 16, *ante*; these contributions are within the present definition of "exchequer payment". Section 15 of the Act of 1946, as already mentioned in the notes to the present subsection, provided for the continuing of payments by the Minister where certain houses vested in a local authority: see now ss. 21 (1), 46 (5) and 48 (3), *ante*, and note the reference to these provisions in the present definition. For other

provisions of this Act derived from the Act of 1946, see the Table of Repeals and Replacements (Appendix I, *post*). County council contributions under s. 8 (1) of that Act are saved by s. 59 (4), *post*; so far as these relate to agricultural accommodation, note the power to withhold exchequer payments, under s. 18, *ante*, and the effect of s. 24 (1), *ante*.

**Requisitioned Houses and Housing (Amendment) Act, 1955, s. 11.** 90 Statutes Supp. 19; 35 Halsbury's Statutes (2nd Edn.) 277. That section relates to contributions by the Minister in respect of houses leased or, if need be, purchased to provide accommodation for persons occupying requisitioned houses. Provisions about the Housing Revenue Account were made by s. 12 of that Act (repealed by the Housing Subsidies Act, 1956, s. 12 and Third Schedule, Part I, so far as it provided for rate fund contributions, and now wholly repealed by s. 59 (1) and the Sixth Schedule, *post*), and by s. 12 (3) the contributions were brought within the former definition of "exchequer contribution", which the present definition replaces.

**Sections 1 (2) (a), 9, 13, 16, 21, 46 (5) and 48 (3) of this Act.** These sections, *ante*, replace provisions from the Housing (Financial and Miscellaneous Provisions) Act, 1946, the Housing Act, 1949, the Housing Repairs and Rents Act, 1954, and the Housing Subsidies Act, 1956. By virtue of s. 59 (3), *infra*, the references to the sections of this Act will include references to the provisions which they replace (which are cited in the note "History" to the relevant sections).

**Sub-s. (3).**

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I, *ante*); see sub-s. (1), *supra*. Note that the reference here is only to s. 4 of that Act (not s. 5).

**59. Repeals and savings.**—(1) The enactments and instruments set out in the Sixth Schedule to this Act shall be repealed to the extent specified in the third column of that Schedule.

(2) The repeal by this section of any enactment shall not affect—

- (a) any regulation, rule, order or other instrument made or having effect as if made under that enactment, or
- (b) any agreement, application, approval, condition, determination, undertaking or other thing made, given, imposed or done, or having effect as if made, given, imposed or done, under that enactment,

and any such instrument (not being an instrument itself revoked by this section) or other thing shall, if in force at the commencement of this Act, continue in force and so far as it could have been made, given, imposed or done under this Act, have effect as if made, given, imposed or done under the corresponding provision of this Act.

(3) The repeal by this section of any enactment re-enacted in this Act shall not affect any existing undertaking or other liability to make a periodical or other payment after the commencement of this Act, and the provisions of this Act shall apply so as to require that payment to be made under the corresponding provision of this Act.

(4) The repeals made by this section shall not affect any liability to make a payment in respect of housing accommodation provided before the commencement of this Act under any of the enactments specified in this subsection (all of which had ceased to have effect at some time before the commencement of this Act except so far as they required or authorised the making of payments in respect of housing accommodation which had already been provided before that time).

The said enactments are—

- sections one and three of the Housing, &c. Act, 1923;
- subsection (5) of section two of the Housing (Financial Provisions) Act, 1924;
- section one of the Housing (Rural Authorities) Act, 1931;
- sections ninety-four, one hundred and five to one hundred and eight, and one hundred and fifteen of the Housing Act, 1936;
- sections one, two, seven and nine of the Housing (Financial Provisions) Act, 1938;

the provisions of the Housing (Financial and Miscellaneous Provisions) Act, 1946, as to annual exchequer contributions and section eight of that Act as it applies to county council contributions for houses in respect of which annual exchequer contributions are payable; subsection (2) of section eight of the New Towns Act, 1946.

(5) Section ninety-one of the Housing Act, 1936 (which authorised local authorities to give undertakings for the purpose of increasing housing accommodation), and section one hundred and ten of that Act (which authorised the Minister to contribute to losses sustained by local authorities giving such undertakings) shall continue to apply as respects undertakings given before the commencement of the Housing Act, 1949.

(6) The provisions of Part VI of the principal Act relating to borrowing shall apply as if the said section ninety-one of the Housing Act, 1936, were contained in Part V of the principal Act and for the purposes of so much of the said Part VI as authorises county councils to borrow for the purposes of that Act section one hundred and fifteen of the Housing Act, 1936, and section seven of the Housing (Financial Provisions) Act, 1938, shall be treated as included in the principal Act.

(7) Any Act or other document referring to any enactment repealed by this Act, the Housing Act, 1936, or the Housing Act, 1925, shall, so far as may be necessary to preserve the effect of that document, be construed as referring to the corresponding provision of this Act.

#### NOTES

**History.** Sub-ss. (1) to (4) and (7) of this section are new. Sub-s. (5) contains provisions formerly in ss. 4 (5) and 5 (5) of the Housing Act, 1949. Sub-s. (6) contains provisions formerly in s. 47 (2) of the Act of 1949, and s. 120 (1) of the Housing Act, 1936.

**General Note.** This section contains repeals and consequential provisions. Sub-ss. (5) and (6), *supra*, in effect preserve the savings for earlier provisions made by the Housing Act, 1949, when that Act introduced, in ss. 4 and 5, the provisions now to be found in ss. 43 and 45, *ante*. Sub-ss. (2) and (7) are common form savings; cf. s. 191 (2) and (4) of the Housing Act, 1957 (Book I, *ante*). Sub-ss. (3) and (4) preserve obligations to make payments under repealed enactments; sub-s. (3) applies to enactments which are re-enacted in this Act, and sub-s. (4) applies to those which are not.

Accordingly, the position as to earlier financial provisions appears to be as follows:

- (1) Some are not repealed by this Act, *e.g.*, those of the obsolescent Housing (Rural Workers) Act, 1926, and s. 11 of the Requisitioned Houses and Housing (Amendment) Act, 1955. See, however, the reference to those Acts in s. 58 (2), *ante*, and the notes thereto.
- (2) Some are repealed and consolidated in this Act, and come within sub-s. (3), *supra*, *e.g.*, the provisions as to exchequer subsidies in the Housing Subsidies Act, 1956 (see ss. 1-8, *ante*) and the provisions about improvements and improvement grants in the Housing Act, 1949 (see ss. 9-12, and 30-42, *ante*).
- (3) Some are repealed and not replaced, *e.g.*, the provisions about rate fund contributions which were repealed by the Act of 1956: see the General Note to s. 1, *ante*. The present Act contains certain consequential provisions, *e.g.*, in s. 26, *ante*, and paras. 1 (6) and 5 (3) of the Fifth Schedule, *post*.
- (4) Some were repealed by earlier Acts with savings, *e.g.*, the provisions of the Housing, Town Planning, etc., Act, 1919; cf. the notes to s. 20, 27 and 58 (2), *ante*.
- (5) Some were repealed and consolidated by the Housing Act, 1936, and appear to be covered by references to that Act, *e.g.*, the provisions of s. 26 of the Housing Act, 1930, and s. 27 of the Housing Act, 1935, which were consolidated in ss. 105 and 94 of the Act of 1936. Note in this respect s. 189 (2) of the Act of 1936 (repealed) which somewhat resembled the effect of sub-s. (3), *supra*, and s. 60, *post*.
- (6) Some are repealed and not replaced by this Act but are within the saving in sub-s. (4), *supra*.

The payments under the repealed enactments, or under this Act, are of six main types: (i) payments by the Minister to local authorities, usually called exchequer contributions, in respect of housing accommodation provided or improved, etc., by them, (ii) payments made directly by the Minister to public utility societies, housing trusts, or development corporations, (iii) payments by local authorities, to housing associations or development corporations under arrangements with them, called annual grants, (iv) payments to private persons, *e.g.*, improvement grants under Part II of

this Act, by the local authority, (v) contributions to the local authority by county councils in certain cases, and (vi) payments by the Minister to local authorities towards their expenses under (iii) and (iv), above.

**Sub-s. (4).**

**Commencement of this Act.** *I.e.*, 23rd October 1958; see s. 61 (3), *post*.

**Housing, etc., Act, 1923, ss. 1, 3.** 11 Halsbury's Statutes (2nd Edn.) 401, 407. See also the notes to ss. 20, 21, 27, 28 and 58 (2), *ante*. Section 2 of the Act of 1923 is not repealed by this Act; see also s. 48, *ante*.

**Housing (Financial Provisions) Act, 1924, s. 2 (5).** 11 Halsbury's Statutes (2nd Edn.) 413. That subsection related to supplementary contributions by the London County Council; see further para. 1 (2) (b) of the Fifth Schedule, *post*. Other provisions of ss. 1 and 2 of the Act of 1924 are in effect preserved by the savings for ss. 1 and 3 of the Act of 1923, *supra*; see the notes to ss. 20 and 58 (2), *ante*.

**Housing (Rural Authorities) Act, 1931, s. 1.** 11 Halsbury's Statutes (2nd Edn.) 438; cf. the note to s. 58 (2), *ante*.

**Housing Act, 1936, ss. 94, 105-108, 115.** 11 Halsbury's Statutes (2nd Edn.) 534, 541-545, 547. As to s. 94, see the notes to s. 120 of the Housing Act, 1957 (Book I, *ante*) and to s. 29 (2) of the present Act, *ante*. As to ss. 105-108, see the note to s. 58 (2), *ante*. As to s. 115, note sub-s. (6), *supra*, and see the notes to s. 114 (2) of the Act of 1957 (Book I, *ante*) and to s. 24 (3) of the present Act, *ante*. Those provisions related to "authorised arrangements" with housing associations, to government contributions, and to county council contributions.

**Housing (Financial Provisions) Act, 1938, ss. 1, 2, 7, 9.** 11 Halsbury's Statutes (2nd Edn.) 611, 613, 617, 618. Cf. the note to s. 58 (2), *ante*, as to ss. 1 and 2 of that Act (relating to government contributions) where ss. 7 and 9 are also mentioned.

**Housing (Financial and Miscellaneous Provisions) Act, 1946.** 39 Statutes Supp. 38; 11 Halsbury's Statutes (2nd Edn.) 648; and cf. the note to s. 58 (2), *ante*. The reference to county council contributions is to those under s. 8 (1) of that Act, and not to the voluntary contributions which might be made under s. 8 (2) thereof (replaced by s. 126 of the Local Government Act, 1948, and now by s. 56 of the Local Government Act, 1958).

**New Towns Act, 1946, s. 8 (2).** 25 Halsbury's Statutes (2nd Edn.) 434. That subsection provided for the payment of sums, not exceeding the current rates for exchequer contributions, direct to the development corporation of a new town; see now s. 1 (1) (b) and (2) (a), *ante*, and note also s. 19 (3), *ante*.

**Sub-s. (5).**

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *ante*.

**Housing Act, 1936, ss. 91, 110.** 11 Halsbury's Statutes (2nd Edn.) 529, 545. Those sections were repealed, except as respects undertakings given before the commencement of the Housing Act, 1949, by ss. 4 (5), 5 (5) and 51 (4) of, and Part I of the Third Schedule to, the Act of 1949; see now ss. 43 and 45, *ante*. As to s. 91, see also sub-s. (6), *supra*.

**Housing Act, 1949.** 61 Statutes Supp. 66; 28 Halsbury's Statutes (2nd Edn.) 604. That Act came into force on 30th July 1949 upon receiving the Royal Assent.

**Sub-s. (6).**

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *ante*. For the provisions of Part VI of that Act relating to borrowing, see ss. 136-140. County councils are authorised to borrow by s. 136 (1) of that Act.

**Housing Act, 1936, ss. 91, 115.** 11 Halsbury's Statutes (2nd Edn.) 529, 547. As to s. 91, see also sub-s. (5), *supra*; and as to s. 115, see also sub-s. (4), *supra*.

**Housing (Financial Provisions) Act, 1938, s. 7.** 11 Halsbury's Statutes (2nd Edn.) 617. As to this section, see also sub-s. (4), *supra*.

**Sub-s. (7).**

**Housing Act, 1936.** 11 Halsbury's Statutes (2nd Edn.) 444. For the enactments repealed by that Act, see s. 190 thereof, and the Twelfth Schedule thereto, 11 Halsbury's Statutes (2nd Edn.) 591, 610.

**Housing Act, 1925.** 15 & 16 Geo. 5 c. 14. That Act was repealed by the Housing Act, 1936; for the enactments repealed by it, see s. 136 (1) thereof, and the Sixth Schedule thereto.

**60. Construction of references to this Act and to enactments repealed.**—Without prejudice to subsection (2) of the last foregoing section, any reference in any provision of this Act to, or to things done or falling to be done under, any provision of this Act or the principal Act shall, in so far as the context permits, be construed as including, in relation to times,

circumstances and purposes in relation to which the corresponding provision in the enactments repealed by this Act, by the principal Act, by the Housing Act, 1936, or by the Housing Act, 1925, had effect, a reference to, or to things done or falling to be done under, that corresponding provision.

#### NOTES

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *ante*. For the enactments repealed by that Act, see s. 191 (1) and the Eleventh Schedule.

**Housing Act, 1936; Housing Act, 1925.** See the notes to s. 59 (7), *ante*.

**61. Short title, extent and commencement.**—(1) This Act may be cited as the Housing (Financial Provisions) Act, 1958.

(2) This Act shall not extend to Scotland or Northern Ireland.

(3) This Act shall come into force at the expiration of a period of three months beginning with the date on which it is passed.

#### NOTE

**Date on which it is passed.** *I.e.*, 23rd July 1958, the date of the Royal Assent. The period of three (calendar) months begins with this date, and expires on 22nd October 1958; this Act accordingly comes into force at the first instant of 23rd October 1958.

### SCHEDULES

#### Section 7

#### FIRST SCHEDULE

##### PROVISIONS FOR ASCERTAINING THE VALUE OF CERTAIN SITES

1. For the purposes of section seven of this Act, the cost of a site as developed shall be taken to be—

(a) in the case of a site purchased by a local authority under any enactment relating to housing, the expenditure incurred by the local authority in purchasing the site; and

(b) in any other case the value of the site as certified by the Minister,

plus, in either case, a sum representing—

(i) any such expenses as in the opinion of the Minister have been or will be properly incurred for making the site suitable for the purpose of providing the buildings erected or to be erected thereon, being expenses incurred or to be incurred by the local authority, development corporation or housing association providing those buildings for the construction or widening of streets, the construction of sewers, or the execution of any special works rendered necessary by the physical characteristics of the land; and

(ii) any such expenses which have been, or in the opinion of the Minister will be, incurred in respect of other matters as the Minister, with the consent of the Treasury, may determine to be expenses properly forming part of the cost of making the site suitable for the said purpose.

2. In determining for the purposes of the foregoing paragraph the amount of any such expenses as are therein mentioned, the Minister shall have regard to any estimate of those expenses submitted to him by the local authority, development corporation or housing association, as the case may be; and for the purposes of sub-paragraph (b) of that paragraph, the value certified in the case of a site in relation to which any such expenses have been incurred shall be the value of that site in the condition in which it would be if those expenses had not been incurred.

3. For the purposes of the said section seven and of this Schedule, any question—

(a) as to what constitutes a separate site; or

(b) as to the portion of such a site on which any building has been erected; or

(c) as to how much of any expenditure incurred by a local authority in purchasing land is to be attributed to any site forming part only of that land,

shall be determined by the Minister.

4. For the purposes of any determination under sub-paragraph (a) or (b) of the last foregoing paragraph—

(a) where two buildings are contiguous to each other, or are separated from each other by a street only, the two buildings shall, if the Minister thinks proper, be deemed to be on the same site; and

(b) where any land has been purchased in connection with the provision of a building and has been or is to be used for the purpose of a new street to which the building is or will be contiguous, that land shall be deemed to form part of the site of the building.

(5) For the purposes of the last foregoing paragraph—

(a) the expression "building" includes any land appertaining to a building and any land appropriated for the purposes of a building which has not been erected; and

(b) the expression "street" includes any court, alley, passage or square, whether a thoroughfare or not, and includes a public highway.

### NOTES

**History.** This Schedule contains provisions formerly in the Second Schedule to the Housing Subsidies Act, 1956.

**General Note.** Section 7, *ante*, requires the Minister to pay subsidies in respect of certain expensive sites. In order to attract a subsidy under s. 7, the cost of the site as developed must exceed £4,000 per acre. The basic rate of annual subsidy is £60 per acre, which may increase at the rate of £34 per acre for every £1,000, or part of £1,000, by which the cost per acre exceeds £5,000. Paras. 1 and 2 of the present Schedule provide for the determination of the cost of a site as developed. The cost is arrived at by adding certain authorised expenses to the expenditure incurred by the local authority in purchasing the site. If the site was not purchased by a local authority under any enactment relating to housing, then the authorised expenses are added to the value of the site as certified by the Minister. In certifying the value, the Minister must disregard the effect of any authorised expenses which have been incurred.

Para. 3 enables the Minister to determine (i) what constitutes a separate site; (ii) the portion of a site on which a building has been erected (only that portion will qualify for a subsidy); and, (iii) if the site forms only part of a piece of land purchased by a local authority, the portion of the expenditure thus incurred which is to be attributed to the site. For the purposes of (i) and (ii), para. 4 provides (a) that the Minister may treat two buildings as being on the same site if they are contiguous, or are only separated by a street; (b) that land which has been purchased for the purpose of providing a new street to which a building is or will be contiguous, is to be treated as part of the site of the building. Para. 5 defines "building" and "street" for the purposes of para. 4.

#### Para. 1.

**Local authority.** For definition, see s. 29 (1), *ante*.

**In any other case.** These words, in para. 1 (b), *supra*, will apply to sites purchased by housing associations and development corporations; and to sites appropriated by local authorities from other uses, *e.g.*, under s. 99 of the Housing Act, 1957 (Book I, *ante*).

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *ante*.

**Opinion.** Cf. the note to s. 3 (2), *ante*.

**Development corporation; housing association.** For definitions, see (by virtue of s. 58 (1), *ante*) the Housing Act, 1957 (Book I, *ante*), s. 189 (1).

**Special works rendered necessary by the physical characteristics.** *E.g.*, extra deep foundations.

**Expenses . . . incurred in respect of other matters, etc.** In Ministry of Housing and Local Government Circular No. 33/56, dated 17th July 1956, Appendix V, para. 36 (printed in *Lumley's Public Health* (12th Edn.), Vol. VIII, at p. 366), it is stated that the Minister, with the consent of the Treasury, is prepared to approve the following additional classes of expenditure under para. 1 (ii):—

- (1) Legal expenses and arbitration costs in connection with the purchase of the site.
- (2) Compensation and removal expenses properly paid to tenants displaced from the site.
- (3) The net cost of clearing the site and stopping existing streets and services.
- (4) The cost of supervision and technical fees incurred in connection with the survey and the construction of roads and sewers.

#### Para. 2.

**Minister shall have regard.** Cf. the note to the words "Regard shall be had" in s. 39 (1) of the Housing Act, 1957 (Book I, *ante*).

**Para. 4.**

**Building; street.** For meanings, see para. 5, *supra*.

**Para. 5.**

**Public highway.** For the meaning of "highway" at common law, see 19 Halsbury's Laws (3rd Edn.) 12-15.

Sections 20, 48

SECOND SCHEDULE

CONDITIONS ATTACHING TO CERTAIN EXCHEQUER CONTRIBUTIONS UNDER ACTS  
OF 1924 AND 1930

1. The special conditions applying to houses in respect of which contributions are payable by the Minister under the Housing (Financial Provisions) Act, 1924, being houses which were provided by a housing association or the construction of which was promoted by a local authority under section two of the Housing, &c. Act, 1923, are—

- (a) that the houses shall be let for occupation to tenants who intend to reside therein;
- (b) that it shall be a term of every such letting that the tenant shall not assign, sub-let or otherwise part with the possession of the house, or any part thereof, except with the consent in writing of the housing association (in the case of houses provided by them) or of the local authority or some person authorised by them in that behalf (in the case of the other houses), and that such consent shall not be given unless it is shown that no payment other than rent has been or is to be received by the tenant in consideration of the assignment, sub-letting or other transaction;
- (c) that no house shall be sold or (save by such lettings as aforesaid) otherwise disposed of except with the consent of the Minister, which may be absolute or subject to such reasonable stipulations as the Minister thinks proper, including, if the Minister thinks fit, stipulations for the reduction of the amount or the curtailment of the duration of any contribution payable by the Minister in respect of the house, or for both reduction and curtailment;
- (d) that the rent charged in respect of any house shall not exceed the limit imposed by section twenty of the Rent Act, 1957, and that no fine, premium or other like sum shall be taken in addition to the rent.

2.—(1) The special conditions applying to houses in respect of which contributions are payable by the Minister under section twenty-nine of the Housing Act, 1930 (which related to houses provided by a housing association) are—

- (a) that the houses shall be let for occupation to tenants who intend to reside therein;
- (b) that it shall be a term of every such letting that the tenant shall not assign, sub-let or otherwise part with the possession of the house, or any part thereof, except with the consent in writing of the housing association or some person authorised by them in that behalf, and that such consent shall not be given unless it is shown to the satisfaction of the association that no payment other than a rent which is in their opinion a reasonable rent has been or is to be received by the tenant in consideration of the assignment, sub-letting or other transaction;
- (c) that the total amount of the rents payable in respect of the houses in any year, after deducting the amount of any rebates granted to tenants, shall not exceed an amount ascertained by deducting from the estimated average annual expenses incurred in connection with the provision and maintenance of the houses (calculated by reference to a period of sixty years)—
  - (i) the annual equivalent (calculated in the like manner) of the contributions payable by the Minister towards the expenses, and
  - (ii) the annual equivalent (calculated in the like manner) of a sum of three pounds fifteen shillings per house deemed to be provided annually for a period of forty years;
- (d) that no fine, premium or other like sum shall be taken in addition to the rent.

(2) In the case of a new house intended for occupation as a lodging house, the special conditions shall be such as the Minister may in any particular case consider it necessary to impose.

### NOTES

**History.** Para. 1 of this Schedule contains provisions formerly in s. 3 (2) of the Housing (Financial Provisions) Act, 1924, as amended by s. 26 (1) of, and para. 11 of the Sixth Schedule to, the Rent Act, 1957. Para. 2 contains provisions formerly in s. 27 (1) and (2) of the Housing Act, 1930, as applied by s. 29 (repealed) of that Act.

**General Note.** This Schedule contains the conditions now required to be observed by ss. 20 (2) and 48 (1), *ante*. Para. 1 applied where exchequer contributions at a higher rate and for a longer period were provided by s. 2 of the Housing (Financial Provisions) Act, 1924, amending ss. 1 and 3 of the Housing, etc., Act, 1923. In the case of houses provided by housing associations (public utility societies) or, with the assistance of the local authority under s. 2 of the Act of 1923, by private persons, those increased contributions were subject to the observance of the special conditions in s. 3 (2) of the Act of 1924, now re-enacted with amendment in para. 1, *supra*.

Further provision for housing associations was made by s. 29 of the Housing Act, 1930, the statutory conditions being those of s. 27 of that Act, now re-enacted in para. 2, *supra*. There are no statutory conditions affecting houses provided by housing associations under arrangements with the local authority under later statutes, *i.e.*, under s. 27 of the Housing Act, 1935, s. 94 of the Housing Act, 1936, or s. 120 of the Housing Act, 1957; and statutory conditions under earlier enactments may be displaced, by a scheme, for the unification of conditions, under s. 123 of the Act of 1957 (Book I, *ante*); see also the notes to s. 20, *ante*.

#### Para. 1.

**House; the Minister.** For definitions, see s. 58 (1), *ante*.

**Housing association.** For meaning, see (by virtue of s. 58 (1), *ante*) the Housing Act, 1957, s. 189 (1) (Book I, *ante*).

**Housing (Financial Provisions) Act, 1924.** 11 Halsbury's Statutes (2nd Edn.) 411. Section 2 of that Act provided for the increase and extension of exchequer contributions under the Housing, etc., Act, 1923, in certain cases and subject to the conditions in s. 3 of the Act of 1924. The conditions relevant for present purposes were those of s. 3 (2) of that Act, re-enacted in the present paragraph (para. 1, *supra*). Section 2 of that Act is repealed by s. 59 (1) and the Sixth Schedule, *post*; but by virtue of s. 58 (4), *post*, the savings in s. 59 (4) for ss. 1 and 3 of the Act of 1923 are sufficient to preserve the obligation to make payments under those sections as amended by the Act of 1924.

**Housing, etc., Act, 1923, s. 2.** 11 Halsbury's Statutes (2nd Edn.) 405. That section, which is not repealed by the present Act, provided for the promotion of house-building by private persons by grants and other financial assistance from the local authority: see the notes to s. 48, *ante*. The related exchequer contributions, under s. 1 (1) (a) of that Act were increased and extended by s. 2 of the Act of 1924, *supra*, subject to the observance of the special conditions in s. 3 (2) of that Act. As to houses provided by housing associations, see s. 3 of the Act of 1923 and the General Note, *supra*; the contributions to the association were similarly increased and extended by s. 2 of the Act of 1924.

**Rent Act, 1957, s. 20.** 103 Statutes Supp. 84; 37 Halsbury's Statutes (2nd Edn.) 571; and see the note to para. 4 of the Fourth Schedule, *post*.

#### Para. 2.

**Satisfaction.** Cf. the note "Satisfied" to s. 1 (3), *ante*.

**Opinion.** Cf. the note to s. 3 (2), *ante*.

**Lodging house.** *I.e.*, a house not occupied as a separate dwelling; cf. the Housing Act, 1957, s. 112 (2) (Book I, *ante*).

**Housing Act, 1930, s. 29.** That section was repealed by ss. 27 (6) and 99 of, and the Seventh Schedule to, the Housing Act, 1935, with a saving for any liability under any undertaking given before 2nd August 1935. Houses provided by a housing association under arrangements with the local authority under later Acts are not subject to statutory conditions; see the General Note, *supra*.

### THIRD SCHEDULE

Section 27

#### DETERMINATION OF AMOUNT OF CERTAIN CONTRIBUTIONS UNDER ACTS OF 1919 AND 1923

##### Preliminary

1. For the purposes of this Schedule—

(a) a scheme under the Act of 1919 means a scheme to which section seven of the Housing, Town Planning, &c. Act, 1919 (hereinafter referred

to as "the Act of 1919"), applies, other than a scheme for the provision of houses for persons in the employment of, or paid by, a county council or a statutory committee thereof;

- (b) all schemes and parts of schemes under the Act of 1919 which for the time being are administered by a local authority shall be deemed to be a single scheme carried out by the authority.

*Contributions under Act of 1919*

2.—(1) Notwithstanding anything in any enactment, the amount of the exchequer contribution for any financial year under section seven of the Act of 1919 towards the loss resulting from the carrying out of a scheme under the Act of 1919 by a local authority other than the London County Council and other than a metropolitan borough council, shall be the amount, if any, by which the estimated loss for that year in respect of the scheme exceeds the amount equal to the produce of a rate of one penny in the pound for that year levied in the area chargeable with the expenses of the scheme.

(2) Notwithstanding anything in any enactment, the amount of the said exchequer contribution towards the loss resulting from the carrying out of the scheme under the Act of 1919 by the London County Council shall be the amount, if any, by which the aggregate of—

- (a) the estimated loss for that year in respect of the carrying out of any such scheme by the London County Council, and
- (b) the amount of the sums payable by the London County Council to metropolitan boroughs under the following provisions of this paragraph for that year,

exceeds an amount equal to the produce of a rate of one penny in the pound for that year levied in the administrative county of London other than the City of London.

(3) Notwithstanding anything in any enactment, no such exchequer contribution shall be payable to a metropolitan borough council but the London County Council shall pay to the council of a metropolitan borough for each financial year an amount equal to the estimated loss, if any, which may be incurred for that year by the metropolitan borough council in carrying out a scheme under the Act of 1919.

*Contributions under s. 1 (3) of Act of 1923*

3. Notwithstanding anything in any enactment, the amount of the exchequer contribution for any financial year under subsection (3) of section one of the Housing, &c. Act, 1923, towards the expenses incurred by a local authority in carrying out a scheme to which that subsection applies shall be an amount equal to one half of the estimated loss for that year incurred in carrying out the scheme.

*Ascertainment of estimated loss, etc.*

4. The following provisions shall apply in determining the amount of any contribution under the foregoing paragraphs of this Schedule:

Provided that in their application for the purpose of the determination of contributions under subsection (3) of section one of the Housing, &c. Act, 1923, they shall have effect subject to such modifications as the Minister with the approval of the Treasury may determine to be necessary having regard to the date of the completion of the operations or expedient in all the circumstances.

5. The estimated loss for any financial year shall be the amount by which the estimated expenditure for that year in respect of the scheme exceeds the estimated income for that year.

6. The estimated income for any financial year shall be the sum of the estimated annual rent income (that is to say an amount equal to the aggregate weekly rents of the houses provided or acquired by the authority under the scheme which, as at the thirty-first day of March, nineteen hundred and thirty-five, were accepted by the Minister for the purpose of the determination of the exchequer contribution payable in respect of the scheme, multiplied by fifty-two and one-sixth) and any other items of income which, in the opinion of the Minister, may properly be taken into account.

7. The estimated expenditure for any financial year shall be determined in the following manner:—

(1) There shall be ascertained—

- (a) the aggregate amount of the charges during the five years ending on the thirty-first day of March, nineteen hundred and thirty-five, in respect of supervision and management, repairs, unoccupied houses and irrecoverable rents, accepted by the Minister for the purpose of the determination of the exchequer contribution payable in respect of the scheme, exclusive of expenditure, if any, incurred during the said five years on repairs of an abnormal and non-recurring nature and of sums, if any, written off during the said five years in respect of arrears of rents which had occurred in exceptional circumstances;
- (b) the aggregate amount of the gross estimated rent income during the five years ending on the thirty-first day of March, nineteen hundred and thirty-five, as accepted by the Minister for the purpose of the determination of the exchequer contribution payable in respect of the scheme;
- (c) the aggregate of, first, the amount which bears the same proportion to the estimated annual rent income as the amount ascertained under head (a) of this sub-paragraph bears to the amount ascertained under head (b) thereof and, secondly, an amount equal to two per cent. of the estimated annual rent income;
- (d) the aggregate amount of loan charges for the year in respect of money borrowed for the purposes of the scheme, reduced by the amount, if any, of loan charges for the year relating to expenditure not approved by the Minister for the purpose of the determination of the exchequer contribution payable in respect of the scheme;
- (e) any other items of expenditure which, in the opinion of the Minister, may properly be taken into account:

Provided that, where moneys borrowed for the purposes of the scheme are repaid by means of a reborrowing, the rate of interest by which the loan charges in respect of those moneys are to be determined for the purposes of head (d) of this sub-paragraph shall, unless the Minister otherwise directs, be the rate at which the moneys are reborrowed, or the rate which, at the date of reborrowing, was the rate fixed by the Treasury under section one of the Public Works Loans Act, 1897, in respect of loans to local authorities advanced out of the Local Loans Fund for the purposes of Part V of the principal Act, whichever is the less.

- (2) The estimated expenditure for the financial year shall be the sum of the amounts ascertained under heads (c), (d) and (e) of the foregoing sub-paragraph.

8. If and to the extent to which an agreement made before the first day of April, nineteen hundred and thirty-five, by a local authority with the Minister under regulations made in pursuance of subsection (2) of section forty-five of the Housing Act, 1930, provides for the determination of the estimated annual loss resulting from the carrying out of a scheme under the Act of 1919 or of any item of estimated income or expenditure, that matter shall be determined in the manner provided in the agreement and not in the manner provided in the foregoing provisions of this Schedule.

9. Where, after the thirty-first day of March, nineteen hundred and thirty-five, the number of dwellings included in a scheme under the Act of 1919 is changed by reason of the sale of houses, closing or demolition of huts or other temporary dwellings, alterations of boundaries, or otherwise, the Minister may make such adjustments of the amounts of the estimated losses in respect of periods subsequent to the date of change as he may deem equitable.

10. In relation to a scheme under the Act of 1919, the produce of a rate of one penny in the pound for any financial year levied in any area shall be an amount ascertained in accordance with the following provisions:—

- (1) the produce of a rate for any period shall be deemed to be the amount actually realised during that period by the collection of rates in that area.
- (2) the produce of a rate of one penny in the pound shall be deemed to be that proportion of the produce of a rate which one penny bears to the total amount in the pound of the rate.
- (3) where it is desired to ascertain the amount of the produce of a rate of one penny in the pound levied in any area comprising two or more parts which are differentially rated, the said amount shall be separately ascertained in respect of each of those parts in accordance with the foregoing sub-paragraphs, and the sum of the amounts so ascertained shall be the produce of a rate of one penny in the pound levied in the said area.

## NOTES

**History.** Paras. 1 and 2 (1) of this Schedule contain provisions formerly in paras. 1 and 2, respectively, of the Seventh Schedule to the Housing Act, 1936. Para. 2 (2) and (3) contain provisions formerly in para. 1 (1) and (3) of the Tenth Schedule to the Act of 1936. Paras. 3 and 4 contain provisions formerly in para. 9 of the Seventh Schedule to the Act of 1936. Para. 5 contains provisions formerly in para. 3 of the Seventh Schedule to the Act of 1936 and para. 1 (2) of the Tenth Schedule to that Act. Paras. 6 to 10 contain provisions formerly in paras. 4 to 8, respectively, of the Seventh Schedule to the Act of 1936. The Seventh and Tenth Schedules to the Act of 1936 were in turn derived from Parts II and IV of the Fourth Schedule to the Housing Act, 1935; cf. the General Note to s. 50, *ante*.

### Para. 1.

**House.** For meaning, see s. 58 (1), *ante*.

**Housing, Town Planning, etc., Act, 1919, s. 7.** 11 Halsbury's Statutes (2nd Edn.) 394. As to that section, see the General Note to s. 27, *ante*.

### Para. 2.

**Financial year.** See the note to s. 10 (1), *ante*.

**Scheme under the Act of 1919.** For meaning, see para. 1, *supra*.

**London County Council; metropolitan borough council; administrative county of London.** See the note to s. 9 (4) and (5), *ante*.

**Estimated loss.** As to the determination of the estimated loss, see paras. 5-9, *supra*.

**Produce of a rate of one penny in the pound.** As to the determination of this amount, see para. 10, *supra*.

**Act of 1919.** *I.e.*, the Housing, Town Planning, etc., Act, 1919; see para. 1 (a), *supra*.

### Para. 3.

**Estimated loss.** As to the determination of the estimated loss, see paras. 5-7, *supra*; and note the proviso to para. 4, *supra*.

**Housing, etc., Act, 1923, s. 1 (3).** 11 Halsbury's Statutes (2nd Edn.) 404. As to that subsection, see the General Note to s. 27, *ante*.

### Para. 4.

**Minister.** *I.e.*, the Minister of Housing and Local Government; see s. 58 (1), *ante*.

### Para. 5.

**Estimated expenditure; estimated income.** See, respectively, paras. 7 and 6, *supra*.

### Para. 6.

**Opinion.** Cf. the note to s. 3 (2), *ante*.

### Para. 7.

**Loan charges.** For meaning, see s. 58 (1), *ante*.

**Rate fixed . . . in respect of loans . . . for the purposes of Part V of the principal Act.** The rates of interest applying to loans advanced to local authorities from the Local Loans Fund on or after 23rd August 1958 are set out in the note "Interest" to s. 43 (3), *ante*.

**Local Loans Fund.** This Fund was established by s. 7 of the National Debt and Local Loans Act, 1887 (16 Halsbury's Statutes (2nd Edn.) 464).

**Public Works Loans Act, 1897, s. 1.** 16 Halsbury's Statutes (2nd Edn.) 478.

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *ante*.

Para. 8.

**Scheme under the Act of 1919.** For meaning, see para. 1, *supra*.

**Housing Act, 1930, s. 45 (2).** That section was repealed by s. 99 of, and the Seventh Schedule to, the Housing Act, 1935; saving provisions corresponding to the present paragraph were contained in para. 6 in Part II of the Fourth Schedule to the Act of 1935.

Para. 9.

**Dwelling.** For meaning, see s. 29 (1), *ante*.

FOURTH SCHEDULE

Sections 33, 34,  
38, 39, 40

CONDITIONS TO BE OBSERVED BY OWNERS OF DWELLINGS IN RECEIPT OF  
IMPROVEMENT GRANTS

1. The conditions to be observed in pursuance of section thirty-three of this Act in the case of any dwelling are those set out in this Schedule.

2. The dwelling shall not be used for purposes other than those of a private dwelling-house except with the consent in writing of the local authority, and then only for such further purposes and to such extent as may be mentioned in that consent.

3. The dwelling shall, at all times at which it is not occupied—

- (a) by the applicant for the improvement grant or a member of his family,  
or
- (b) by a person who on the death of the applicant has (whether or not in consequence of a disposition by will) become beneficially entitled to, or to an interest in, the interest of the applicant in the dwelling or the proceeds of sale thereof, or
- (c) by a member of the agricultural population in pursuance of a contract of service and otherwise than as a tenant,

be let or kept available for letting at a rent not exceeding the maximum rent that, by virtue of the next following paragraph, may be paid by an occupier of the dwelling.

4. The rent payable by the occupier of the dwelling shall not exceed the limit imposed by section twenty of the Rent Act, 1957, and no fine, premium or other like sum shall be taken in addition to the rent.

5. If the dwelling is occupied for the time being by a member of the agricultural population in pursuance of a contract of service and otherwise than as a tenant and that contract of service is determined—

- (a) by less than four weeks' notice given by the employer, or
- (b) by dismissal of the employee without notice, or
- (c) by the death of either party,

the employer or his personal representative will permit the employee (or, in the case of his death, any person residing with him at his death) to continue to occupy the dwelling free of charge from the determination of the contract until the expiration of a period of four weeks beginning with the date on which the notice is given or, if the contract is determined otherwise than by notice, with the date on which it is determined.

6. All reasonable steps shall be taken to secure the maintenance of the dwelling so as to be fit for human habitation.

7. The owner of the dwelling shall, on being required so to do by the local authority, certify that the conditions specified in paragraphs 2, 3, 4 and 6 of this Schedule are being observed with respect to the dwelling, and any tenant of the dwelling shall, on being so required in writing by the owner, furnish to him such information as he may reasonably require for the purpose of enabling him to comply with this condition.

8. In the event of a tenant assigning, or otherwise parting with the possession of, the dwelling, it shall not be lawful for any person in consideration thereof to make any payment other than rent or for the tenant to receive, directly or indirectly, any such payment.

9.—(1) In relation to a residence house of a see or ecclesiastical benefice paragraph 3 of this Schedule shall have effect subject as follows—

- (a) sub-paragraphs (a) and (b) shall be omitted, and

(b) the condition in that paragraph shall not apply at any time at which, during the tenure of the see or benefice by the bishop or incumbent, it is occupied by him.

(2) Paragraph 3 of this Schedule shall not apply to a dwelling held upon trust for use as an almshouse or as a residence of a minister of any religious denomination, so long as it is occupied or kept available for occupation as an almshouse or, as the case may be, by a minister of that denomination.

#### NOTES

**History.** Para. 1 of this Schedule contains provisions formerly in the opening words of s. 23 (1) of the Housing Act, 1949. Para. 2 contains provisions formerly in s. 23 (1) (a) of that Act. Para. 3 contains provisions formerly in s. 23 (1) (b) of the Act of 1949, as amended by s. 2 (2) and (5) of the Housing Act, 1952, and s. 16 (7) of the Housing Repairs and Rents Act, 1954. Para. 4 contains provisions formerly in s. 23 (1) (c) of the Act of 1949, as amended by s. 26 (1) of, and para. 14 of the Sixth Schedule to, the Rent Act, 1957. Para. 5 contains provisions formerly in s. 2 (3), (4) and (5) of the Act of 1952. Para. 6 contains provisions formerly in s. 23 (1) (d) of the Act of 1949, as amended by s. 54 (4) of, and the Fifth Schedule to, the Housing Repairs and Rents Act, 1954. Paras. 7 and 8 contain provisions formerly in s. 23 (1) (e) and (f), respectively, of the Act of 1949. Para. 9 (1) and (2) contain provisions formerly in s. 26 (1) and (2) of the Act of 1949.

#### Para. 2.

**Local authority.** For meaning, see s. 41, *ante*.

#### Para. 3.

**Dwelling.** As to what is comprised in a dwelling for the purpose of determining whether there has been a breach of the condition contained in para. 3 or that contained in para. 4, *supra*, see s. 42 (3), *ante*.

**Applicant; improvement grant.** For meanings, see s. 30 (1), *ante*.

**Member of his family.** Cf. the note "Member of the occupier's family" to s. 78 (2) of the Housing Act, 1957 (Book I, *ante*).

**Agricultural population.** For meaning, see (by virtue of s. 58 (1), *ante*) the Housing Act, 1957, s. 114 (5) (Book I, *ante*).

#### Para. 4.

**Dwelling.** See the note to para. 3, *supra*.

**Rent Act, 1957, s. 20.** 103 Statutes Supp. 84; 37 Halsbury's Statutes (2nd Edn.) 571. That section amended s. 23 of the Housing Act, 1949, and a number of other housing enactments, so as to substitute references to the "rent limit", under s. 1 of the Act of 1957, for the limits on rent under those enactments, with certain savings for conditions already imposed and fixing a higher limit. The section also provided for modifying entries in the local land charges register, where the effect of any condition is modified by that section; and makes special provision in the case of tenancies falling within s. 33 (1) (c) or (d) of the Housing Repairs and Rents Act, 1954 (which exclude from the Rent Acts certain tenancies where the interest of the landlord belongs to a housing association or a housing trust). Other provisions of the present Act applying s. 20 of the Rent Act, 1957, are s. 46 (1) (b), and para. 1 (d) of the Second Schedule, *ante*; see also s. 104 (3) of the Housing Act, 1957 (Book I, *ante*).

#### Para. 6.

**Fit for human habitation.** For the standard by which houses are judged unfit for human habitation, see (by virtue of s. 58 (3) *ante*) the Housing Act, 1957, s. 4 (Book I, *ante*).

#### Para. 7.

**Owner.** For definition, see s. 42 (1), *ante*.

#### Para. 9.

For other special provisions relating to parsonages, almshouses, etc., see s. 37, *ante*.

**Residence house of a . . . ecclesiastical benefice; almshouse.** See the notes to s. 37, *ante*.

#### Section 50

#### FIFTH SCHEDULE

#### THE HOUSING REVENUE ACCOUNT

1.—(1) In each financial year a local authority who are required to keep a Housing Revenue Account shall carry to the credit of the account amounts equal to—

(a) the income of the authority for that year from rents (exclusive of any amounts included therein in respect of rates or water charges) in respect of houses and other property within the account;

- (b) the exchequer payments (as defined in Part IV of this Act), if any, payable to the local authority for that year,
  - (c) the sums, if any, paid to the local authority for that year in respect of any house which, at the time when the payment is made, is vested in the local authority, being payments made under paragraph (a) of subsection (1) of section one of the Housing, &c. Act, 1923, or that paragraph as extended by section nine of the Housing (Financial Provisions) Act, 1938;
  - (d) the contributions, if any, payable for that year to the local authority by the county council under section twenty-three of this Act, section one hundred and fifteen of the Housing Act, 1936, section seven of the Housing (Financial Provisions) Act, 1938, or section eight of the Housing (Financial and Miscellaneous Provisions) Act, 1946;
  - (e) the contributions, if any, payable for that year to the local authority by the county council towards expenses falling to be debited to the account, being contributions in pursuance of any agreement made under section one hundred and twenty-six of the Local Government Act, 1948, or any undertaking given under subsection (4) of section one hundred and fifteen of the Housing Act, 1936, or subsection (2) of section eight of the Housing (Financial and Miscellaneous Provisions) Act, 1946;
  - (f) the sums, if any, payable to the authority for that year by way of assistance under section one of the Housing (Rural Workers) Act, 1926, or in the case of a house vested in the local authority at the time of payment, under subsection (1) of section four of that Act.
- (2) The Common Council of the City of London and a metropolitan borough council who are required to keep a Housing Revenue Account shall also carry to the credit of that account amounts equal to—
- (a) the payments, if any, made to them for the financial year by the London County Council under paragraph 2 of the Third Schedule to this Act,
  - (b) the supplementary contributions, if any, made to them for that year by the London County Council under subsection (6) of section one of the Housing, &c. Act, 1923, or under subsection (5) of section two of the Housing (Financial Provisions) Act, 1924.
  - (c) the contributions, if any, towards expenses incurred by them in relation to matters in respect of which the account is kept made to them for that year by the London County Council or otherwise under section eighty-nine or section one hundred and eighty-three of the principal Act.
- (3) Where any house or other property within the account has been sold or otherwise disposed of, an amount equal to any income of the local authority arising from the investment or other use of capital money received by the authority in respect of the transaction shall, unless the Minister otherwise directs as respects the whole or any part of such income, be carried to the credit of the account in like manner as if it had been income from rents.
- (4) An amount equal to any income of the local authority arising from an investment or other use of borrowed moneys in respect of which the authority are required under the following provisions of this Schedule to debit loan charges to the account shall be carried to the credit of the account in like manner as if it had been income from rents.
- (5) Where in any financial year a deficit is shown in the account, the local authority shall carry to the credit of the account for that financial year a contribution of an amount equal to the deficit.
- (6) In any financial year the local authority may carry to the credit of the account, in addition to the amounts required by the foregoing provisions of this Schedule, such further amounts, if any, as they may think fit.
- (7) So much of any contribution paid by the London County Council into their Housing Revenue Account under sub-paragraph (5) of this paragraph as may fairly be regarded as attributable to the cessation on the first day of April, nineteen hundred and fifty-six, of the liability to credit sums to the Housing Revenue Account under paragraphs (1) to (3) of the Eighth Schedule to the Housing Act, 1936, shall be defrayed as expenses incurred by the London County Council for special county purposes.

2.—(1) In each financial year the local authority shall debit to the account amounts equal to—

- (a) the loan charges which the local authority are liable to pay for that year in respect of moneys borrowed by a local authority for the purpose of—
  - (i) the provision by them after the sixth day of February, nineteen hundred and nineteen, of housing accommodation under Part V of the principal Act,
  - (ii) the purchase by them of, or the carrying out of works on, any houses approved by the Minister for the purposes of section thirteen of this Act or purchased under section twelve of the principal Act,
  - (iii) the execution of works in respect of which the Minister has undertaken to make a contribution under subsection (2A) of section four of the Housing (Rural Workers) Act, 1926, or in respect of which the local authority for the purposes of that Act have given assistance thereunder;
- (b) rents, taxes and other charges (except rates and water charges) which the authority are liable to pay for that year in respect of houses and other property within the account,
- (c) the expenditure of the authority for that year in respect of the supervision and management of houses and other property within the account,
- (d) the contribution, if any, required to be made by the authority for that year to a Housing Repairs Account kept in accordance with the provisions of this Act, and
- (e) the contribution, if any, required to be made by the authority for that year to a Housing Equalisation Account kept in accordance with the provisions of this Act.

(2) The London County Council shall also debit to their Housing Revenue Account an amount equal to any payments made by them for the financial year in respect of the losses incurred by metropolitan borough councils carrying out schemes under the Housing, Town Planning, &c. Act, 1919.

3. Where any functions of the local authority in respect of any houses or other property within the account are being exercised for the time being by a Housing Management Commission the foregoing provisions of this Schedule shall have effect in relation thereto subject to such modifications as the Minister may direct.

4. Where it appears to the Minister that amounts in respect of any incomings or outgoings other than those mentioned in the foregoing provisions of this Schedule ought properly to be credited or debited to a Housing Revenue Account, or that amounts in respect of any of the incomings and outgoings aforesaid which ought properly to have been credited or debited thereto have not been so credited or debited, or that any amounts have been improperly credited or debited to that account, he may give directions for the appropriate credits or debits to be made, or for the rectification of the account, as the case may require.

5.—(1) Any surplus shown in a Housing Revenue Account at the end of a financial year may be applied by the local authority in whole or in part—

- (a) for any purpose which the Minister may approve, being a purpose connected with the provision of housing accommodation,
- (b) subject to that, in making good to the general rate fund account any contributions credited to the account under sub-paragraph (5) of paragraph 1 of this Schedule in any of the four last preceding financial years,

and, so far as not so applied,—

- (i) if the financial year ends in the year nineteen hundred and sixty or any fifth succeeding year, shall be dealt with in accordance with sub-paragraph (2) of this paragraph,
- (ii) in any other case shall be carried forward in the account to the next financial year.

(2) Subject to the foregoing provisions of this paragraph, any surplus shown on the thirty-first day of March in the year nineteen hundred and sixty or in any fifth succeeding year may, as the local authority with the consent of the

Minister may determine, be applied, in whole or in part, in either of the following ways or partly in one of those ways and partly in the other, that is to say—

- (a) by transferring it to the Housing Repairs Account, or
- (b) by carrying it forward in the Housing Revenue Account to the next financial year,

and, in so far as not so applied, shall be divided into two parts in proportion to—

- (i) the amount credited to the Housing Revenue Account under this Schedule during the period of five years ending with the date on which the surplus is shown in respect of exchequer payments (as defined in Part IV of this Act), and
- (ii) the amount so credited in respect of contributions under sub-paragraph (5) of paragraph 1 of this Schedule less any amounts made good to the general rate fund account under sub-paragraph (1) of this paragraph,

and an amount equal to the first of those parts shall be paid to the Minister and an amount equal to the other part shall be credited to the general rate fund account.

(3) As respects the financial year ending on the thirty-first day of March, nineteen hundred and fifty-six, the reference in paragraph (ii) of the last foregoing sub-paragraph to contributions under sub-paragraph (5) of paragraph 1 of this Schedule (which reproduces paragraph 8 of the Eighth Schedule to the Housing Act, 1936), shall include a reference to any other contributions under the said Eighth Schedule.

### NOTES

**History.** In para. 1 of this Schedule, sub-para. (1) (a) and (b) contain provisions formerly in s. 129 (1) (a) and (b) of the Housing Act, 1936; sub-para. (1) (c) contains provisions formerly in s. 21 (2) (a) and (c) of the Housing (Financial and Miscellaneous Provisions) Act, 1946; sub-para. (1) (d) contains provisions formerly in s. 129 (1) (c) of the Act of 1936, s. 7 (4) of the Housing (Financial Provisions) Act, 1938, and s. 8 (4) of the Act of 1946, as amended by para. 6 of the First Schedule to the Housing Subsidies Act, 1956; sub-para. (1) (e) contains provisions formerly in s. 126 (3) and (4) (b) of the Local Government Act, 1948; and sub-para. (1) (f) contains provisions formerly in s. 129 (1) (d) of the Act of 1936, and 21 (2) (b) of the Act of 1946. Para. 1 (2) contains provisions formerly in para. 1 of the Seventh Schedule and para. 4 of the Tenth Schedule to the Act of 1936. Para. 1 (3) and (4) contain provisions formerly in s. 129 (3) and (4) of the Act of 1936. Para. 1 (5) contains provisions formerly in s. 129 (1) (e) of the Act of 1936, and para. 8 of the Eighth Schedule to that Act. Para. 1 (6) and (7) contain provisions formerly in s. 8 (1) and (3) (c), respectively, of the Housing Subsidies Act, 1956.

In para. 2, sub-para. (1) contains provisions formerly in s. 129 (1) (i)–(v) of the Housing Act, 1936, and in s. 15 (2) of the Housing Repairs and Rents Act, 1954; and sub-para. (2) contains provisions formerly in para. 5 of the Tenth Schedule to the Act of 1936.

Paras. 3 and 4 contain provisions formerly in s. 129 (2) and (5), respectively, of the Housing Act, 1936.

In para. 5, sub-para. (1) contains provisions formerly in s. 130 (1) of the Housing Act, 1936, and s. 21 (3) of the Housing (Financial and Miscellaneous Provisions) Act, 1946; sub-para. (2) contains provisions formerly in s. 130 (2) of the Act of 1936; and sub-para. (3) is new but it affects no change in the law.

**General Note.** The general effect of this Schedule is given in the note to s. 50 (5), *ante*. It provides for credits and debits to the Housing Revenue Account and for the disposal of balances. Certain transactions not expressly mentioned in this Schedule are in practice recorded in the Account, *e.g.*, those under the Housing (Temporary Accommodation) Act, 1944 (27 Statutes Supp. 37; 11 Halsbury's Statutes (2nd Edn.) 631) which related to the provision of temporary structures for housing purposes; and note the Minister's powers under para. 4, *supra*.

The Account relates primarily to houses and other property provided, or improved, etc., by the local authority themselves; see the reference to "exchequer payments" in para. 1 (1) (b), *supra*, and the notes to s. 58 (2), *ante*. Houses provided, etc., by housing associations by arrangement with the authority or by private persons with the financial assistance of the authority do not normally come within the scope of the Account. Where, however, a house so provided vests in the local authority, certain payments then made by the Minister are within the definition of "exchequer payment" in s. 58 (2), *ante*, and must be credited under para. 1 (1) (b), *supra*. In certain other cases where a house has vested in the local authority, and payments are made by the Minister, the payments are not within that definition, but are expressly required to be credited by para. 1 (1) (c) and the latter part of para. 1 (1) (f), *supra* (derived from s. 21 (2) of the Housing (Financial and Miscellaneous Provisions) Act, 1946).

Where the local authority are receiving assistance from the local authority as defined for the purposes of the Housing (Rural Workers) Act, 1926, sums received from that authority must be credited under para. 1 (1) (f). County council contributions, whether compulsory or voluntary, are to be credited by virtue of para. 1 (1) (d) and (e), or a corresponding provision in the Local Government Act, 1958 (mentioned in the note, *infra*, about the Local Government Act, 1948). Contributions under s. 4 (2A) of the Act of 1926 are credited as "exchequer payments" under para. 1 (1) (b).

Payments by the London County Council to other authorities in London are to be credited by these authorities under para. 1 (2), *supra*. This relates to certain contributions under the Housing, Town Planning, etc., Act, 1919, and the Housing, etc., Act, 1923 (both repealed with savings), and under ss. 89 and 183 of the Housing Act, 1957 (Book I, *ante*) (contributions for the relief of overcrowding; and under agreements as to the exercise of certain powers under that Act).

The obligation to meet a deficit in any year is now to be found in para. 1 (5), *supra*; contributions of this kind were formerly called "additional contributions" because they were additional to the compulsory rate fund contributions, now abolished as mentioned in the General Note to s. 1, *ante*; see also para. 1 (6) as to making voluntary contributions. The extent of these contributions from the rates depends to some extent on the sums credited by way of rents under para. 1 (1) (a), *supra*. Under s. 111 in Part V of the Housing Act, 1957 (Book I, *ante*), the local authority may make such reasonable charges for the tenancy or occupation of their houses as they may determine, and under s. 113 of that Act rents must be reviewed from time to time; see further the notes to these sections, and in particular the note to s. 113 (4) of that Act.

The major items on the debit side of the Account are loan charges (para. 2 (1) (a)). The matters to be debited as expenditure of supervision and management, under para. 2 (1) (c), cover a diversity of expenses such as salaries, wages, insurance against fire, and heating and lighting. In practice certain expenses in connection with the provision of meals and refreshments and laundry facilities and services (under s. 95 of the Act of 1957, Book I, *ante*) are debited under this heading; cf. the General Note to s. 50, *ante*. Provision is made for these matters in the official form of statement as to the Account, which is required by the Ministry (under Memorandum E and the Circulars cited in the notes to s. 28, *ante*).

#### Para. 1.

**Financial year.** Cf. the note to s. 10 (1), *ante*.

**Local authority who are required to keep a Housing Revenue Account.** See s. 50 (1), (4), *ante*.

**Rents.** See the General Note, *supra*.

**Houses and other property within the account.** For meaning, see s. 50 (5), *ante*; and for definition of "house", see s. 58 (1), *ante*.

**Exchequer payments.** See s. 58 (2), *ante*, and the notes thereto, and cf. the General Note, *supra*.

**Metropolitan borough council; London County Council.** Cf. the notes to s. 9 (5), *ante*.

**Minister; loan charges.** For meanings, see s. 58 (1), *ante*.

**Housing, etc., Act, 1923, ss. 1 (1) (a), (6).** 11 Halsbury's Statutes (2nd Edn.) 401, 405. That section is repealed by s. 59 (1), *ante*, and the Sixth Schedule, *post*, subject to the saving in s. 59 (4), *ante*, for existing obligations to make payments. Payments under s. 1 (1) (a) of that Act are contributions by the Minister towards the expenses of local authorities in promoting the building of houses under s. 2 (not repealed by the present Act); see the General Note to s. 48, *ante*. Section 9 of the Act of 1938, referred to in para. 1 (1) (c), *supra*, provided for the continuation of payments where a house vested in the local authority, on default of another person; this was superseded by the Housing Act, 1949 (see now s. 48 (3), *ante*) except as to houses which vested before 30th July 1949. Payments continued in respect of houses vesting after 29th July, 1949, are "exchequer payments" and must be credited by virtue of para. 1 (1) (b), *supra*.

Payments under s. 1 (6) of the Act of 1923 mentioned in para. 1 (2) (b), *supra*, are supplementary contributions from the London County Council to a metropolitan borough council, and were payable for not more than twenty years. Where government contributions were excluded by the Housing Acts (Revision of Contributions) Order, 1928 (S.R. & O. 1928 No. 1039), art. 6 (2) of that Order (printed in 11 Halsbury's Statutes (2nd Edn.) 431 in the note to s. 1 of the Housing (Revision of Contributions) Act, 1929) excluded London County Council contributions under s. 1 (6) of the Act of 1923. That Order, by art. 6 (1), as amended by the Act of 1929, also varied the rate of contributions under s. 2 (5) of the Act of 1924 (also mentioned in para. 1 (2) (b), *supra*). When the Minister's contributions under the Act of 1923 as amended by the Act of 1924 were excluded by s. 1 of the Housing (Financial Provisions) Act, 1933 (11 Halsbury's Statutes (2nd Edn.) 440), supplementary contributions were also excluded.

**Housing (Financial Provisions) Act, 1938, ss. 7, 9.** 11 Halsbury's Statutes (2nd Edn.) 617, 618. The whole Act is repealed by s. 59 (1), *ante*, and the Sixth Schedule, *post*, subject to the savings in s. 59 (4), *ante*. As to s. 9, see the note about the Act of 1923 (*supra*). Section 7, mentioned in para. 1 (1) (d), *supra*, related to county council contributions, for agricultural houses and in other cases, when government contributions were payable at special rates under s. 2, or s. 1 (3) and (4), of that Act.

**Housing Act, 1936, s. 115, Eighth Schedule, paras. 1-3.** 11 Halsbury's Statutes (2nd Edn.) 547, 603. Section 115 (4), which is specifically mentioned in para. 1 (1) (e), *supra*, was repealed by s. 147 (1) of, and Part V of the Second Schedule to, the Local Government Act, 1948; see further the note about that Act, *infra*. County council contributions under s. 115 (2) and (3) of the Act of 1936 were towards the provision of accommodation for the agricultural population of a rural district, in accordance with proposals of the district council, or in cases where a government contribution was payable under s. 108 of that Act; cf. s. 114 (2) of the Housing Act, 1957 (Book I, *ante*), and the note thereto.

Paras. 1-3 of the Eighth Schedule to the Act of 1936 related to contributions by the local authority in respect of schemes under the Housing, Town Planning, etc., Act, 1919, or s. 1 (3) of the Housing, etc., Act, 1923, or houses attracting government contributions under s. 1 (1) (b) of the latter Act, as originally enacted. The duty to make compulsory rate fund contributions was abolished as mentioned in the General Note to s. 1, *ante*. Para. 1 (5), *supra*, however requires a local authority to meet a deficit in the Account for any year; in practice an amount corresponding to, or greater or less than, the former compulsory rate fund contribution may have to be credited. Where the London County Council have to meet a deficit in this way, para. 1 (7), *supra*, allows any such amount, so far as related to the former rate fund contributions under paras. 1-3 of the Eighth Schedule to the Act of 1936, to be defrayed in the same way as the former compulsory contributions under those paragraphs, *i.e.*, as expenses for "special county purposes": for the meaning of this expression, see the London Government Act, 1939, s. 115 (1) (b) (15 Halsbury's Statutes (2nd Edn.) 1126). Para. 1 (7) thus broadly preserves the position under s. 14 (2) (a) of the Housing Act, 1949; cf., also s. 135 (3) of the Housing Act, 1957 (Book I, *ante*), which is derived from s. 14 (2) (b) of the Act of 1949.

Paras. 1-3 of the Eighth Schedule to the Act of 1936 were among the provisions repealed, as from 1st April 1956, by s. 12 (4) of, and Part I of the Third Schedule to, the Housing Subsidies Act, 1956; the whole of the Act of 1936 is now repealed by s. 59 (1), *ante*, and the Sixth Schedule, *post*, subject to the savings in s. 59 (4), *ante*.

For a more general reference to the Eighth Schedule to the Act of 1936, see para. 5 (3), *supra*.

**Housing (Financial and Miscellaneous Provisions) Act, 1946, s. 8.** 39 Statutes Supp. 44; 11 Halsbury's Statutes (2nd Edn.) 654. Section 8 (1) of that Act related to county council contributions in cases where the exchequer contribution was of the "special standard amount" under s. 3 of that Act, relating to accommodation for the agricultural population and other special cases, and was slightly adapted by the Housing Act, 1949, s. 48 and Second Schedule, Part II. Section 8 (2) provided for voluntary contributions by the county council, and s. 8 (3) excluded the corresponding but more limited provision of s. 115 (4) of the Act of 1936 (*ubi supra*). Section 8 (2) and (3) were repealed by s. 147 (1) of, and Part V of the Second Schedule to, the Local Government Act, 1948; see further the note about that Act, *infra*. Section 8 (4) of the Act of 1946 required the crediting of these contributions to the Housing Revenue Account, and is now re-enacted in para. 1 (1) (d), *supra*, or (as superseded by the Local Government Act, 1948) in para. 1 (1) (e), *supra*; but see also the note about the Local Government Act, 1948, *infra*.

**Local Government Act, 1948, s. 126.** 52 Statutes Supp. 339; 14 Halsbury's Statutes (2nd Edn.) 672. That section contained a power for a county council, in certain circumstances, and with the consent of the Minister (of Housing and Local Government) to contribute a sum equal to any expenses incurred by a county district council, *i.e.*, the council of a non-county borough, urban district or rural district (see s. 1 of the Local Government Act, 1933, 14 Halsbury's Statutes (2nd Edn.) 361), including expenses incurred by a county district council in contributing to a joint board. Where the expenses fell to be debited to the county district council's Housing Revenue Account, the county council's contribution to those expenses was required, by s. 126 (3) of the Act of 1948, to be credited to the Account. (A reference in that subsection to adjustments of the former compulsory rate fund contributions was repealed by the Housing Subsidies Act, 1956, which abolished such contributions, as mentioned in the General Note to s. 1, *ante*.)

Section 126 (4) (a) of the Act of 1948 excluded any further undertakings under s. 8 (2) of the Housing (Financial and Miscellaneous Provisions) Act, 1946 (*ubi supra*); and s. 126 (4) (b) required undertakings under s. 8 (2) of the Act of 1946 or s. 115 (4) of the Housing Act, 1936 (*ubi supra*) to be treated as agreements under s. 126 of the Act of 1948 in respect of any period on or after 24th March 1948. As mentioned in the notes,

*supra*, about those earlier provisions, they were repealed (subject to above savings) by s. 147 (1) of, and Part V of the Second Schedule to, the Act of 1948.

The effect of the repeals, etc., intended to be made by the present Act was as follows. By s. 59 (1), *ante*, and the Sixth Schedule, *post*, s. 126 (3) (so far as not already repealed by the Act of 1956) and (4) (b) of the Act of 1948 were to be repealed as from the commencement of the present Act on 23rd October 1958; those provisions would be replaced in effect by para. 1 (1) (e), *supra*, so far as concerns the requirement of crediting the Account. Section 126 (1) and (2) of the Act of 1948 containing the power to make contributions, would be left in force; s. 126 (4) (a) would still exclude any further undertakings to contribute under the Act of 1946, and the power to give undertakings under s. 115 (4) of the Act of 1936, would not be revived. But, as a result of the repeal of s. 126 (4) (b) of the Act of 1948, existing undertakings under those former provisions would no longer be deemed to be agreements under s. 126 of the Act of 1948.

However, the position is complicated by the Local Government Act, 1958, which was passed, *i.e.*, received the Royal Assent, on the same day as the present Act, on 23rd July 1958. By ss. 56 (1) and 67 of, and Part I of the Ninth Schedule to, that Act, s. 126 of the Act of 1948 was wholly repealed on 23rd July 1958. Section 56 (1) of that Act now provides that a county council may make any contribution the council think fit to expenditure of the council of a county district in the county; and s. 56 (3) provides that where an amount equal to the expenditure to which any contribution is made, under s. 56 (1), falls to be debited to the Housing Revenue Account of the council of the county district, that council shall carry to the credit of the Account, in addition to the amounts which they are required to carry to the credit of the Account under s. 129 of the Housing Act, 1936 (now largely replaced by this Schedule), an amount equal to the contribution under s. 56 (1) of the Act of 1958. (Section 56 (2) makes provision for contributions to parish councils, etc.)

The purpose of s. 56 of the Local Government Act, 1958, appears to be to simplify the making of contributions by county councils, *e.g.*, there is no reference to an "agreement" for the purpose, and the consent of the Minister is not required. The section, however, does not state what effect it may have on existing agreements under s. 126 of the Local Government Act, 1948, or on undertakings originally given under s. 115 (4) of the Act of 1936 or s. 8 (2) of the Act of 1946 (which were deemed to be agreements under s. 126 of the Act of 1948). Several interpretations seem possible. One view is that existing agreements will continue in force; if so, contributions thereunder will be credited to the Account by virtue of para. 1 (1) (e), *supra*, and contributions under the Local Government Act, 1958, will also be credited by virtue of s. 56 (3) of that Act in conjunction with s. 38 (1) of the Interpretation Act, 1889 (24 Halsbury's Statutes (2nd Edn.) 517) (printed in the notes to s. 191 of the Housing Act, 1957, Book I, *ante*).

On the other hand, it may be observed that there are no express savings for agreements under s. 126 of the Act of 1948, or for undertakings under the earlier powers. When s. 115 (4) of the Act of 1936 and s. 8 (2) of the Act of 1946 were repealed, express savings were made by s. 126 (4) (b) of the Act of 1948; those savings were repealed as part of the repeal of that section by the Local Government Act, 1958. The savings for the Acts of 1936 and 1946 in s. 59 (4), *ante*, do not apply (for the reason, among others, that the relevant provisions of those Acts were not repealed by the present Act) and the saving for agreements and undertakings in s. 59 (2), *ante*, will not apply (for the same reason). It is therefore arguable that the Local Government Act, 1958, abrogated earlier agreements and undertakings by county councils to make contributions, and that such contributions may now be made only under s. 56 of that Act; if so, para. 1 (1) (e), *supra*, will have no operation, but contributions will be credited to the Account as required by s. 56 (3) of that Act. Yet another view is that, by virtue of the Interpretation Act, 1889 (*ubi supra*), the references in this Act to s. 126 of the Local Government Act, 1948, will include a reference to that section as re-enacted with modification in s. 56 of the Local Government Act, 1958; if so, s. 59 (1), *ante*, and the Sixth Schedule, *post*, might be read as repealing s. 56 (3) of that Act, and para. 1 (1) (e), *supra*, might be read as including a reference to contributions under that section.

**Housing (Rural Workers) Act, 1926, ss. 1, 4 (1).** 11 Halsbury's Statutes (2nd Edn.) 421, 427. The sums payable under s. 1 of that Act are sums payable to the local authority keeping the Housing Revenue Account by the local authority as defined for the purposes of the Act of 1926 in s. 5 thereof: cf. s. 50 (1) (d) (i), *ante*, as to the inclusion of dwellings in the Account where such assistance has been received. The sums payable under s. 4 (1) of that Act are the Minister's contributions to the local authority, as defined in the Act of 1926, towards the expense of assistance given by the local authority under s. 1 thereof: such contributions are to be credited under para. 1 (1) (f), *supra*, when a house is vested in the authority at the time of payment; cf. para. 1 (1) (c), *supra*, containing other provisions derived from the same source (s. 21 (2) of the Housing (Financial and Miscellaneous Provisions) Act, 1946). Contributions under s. 4 (2A) of the Act of 1926 are credited, as "exchequer payments" under para. 1 (1) (b), *supra*.

**Housing (Financial Provisions) Act, 1924, s. 2 (5).** 11 Halsbury's Statutes (2nd Edn.) 413. As originally enacted, that subsection provided for supplementary

contributions, to a metropolitan borough council or the common council of the City of London, in cases where the special conditions in s. 3 of that Act were to be observed; the special conditions and the requirement to observe them were repealed by the Housing Act, 1935, as part of the unification of conditions, as to local authority houses, effected by that Act (cf. the General Note to s. 50, *ante*). The London County Council contributions supplemented those made by the Minister, and fresh contributions were excluded when the Minister's contributions were excluded by the Housing (Financial Provisions) Act, 1933. See also the note about the Housing, etc., Act, 1923, *supra*. Section 2 (5) of the Act of 1924 is repealed by s. 59 (1), *ante*, and the Sixth Schedule, *post*, subject to the saving in s. 59 (4), *ante*, for existing obligations to make payments.

**Principal Act.** *I.e.*, the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *ante*. Sections 89 and 183 thereof relate to London County Council contributions for the relief of overcrowding; and to payments under agreements as to the exercise of certain powers under that Act between local authorities in London.

**Para. 2.**

**Loan charges.** For meaning, see s. 58 (1), *ante*.

**Provision . . . of housing accommodation under Part V of the principal Act.** Cf. s. 50 (4), *ante*. The "principal Act" is the Housing Act, 1957 (Book I, *ante*); see s. 58 (1), *ante*. The "provision of housing accommodation" is defined, for the purposes of Part V of that Act, in s. 92 (4) thereof. By virtue of s. 60, *ante*, para. 2 (1) (a) (i), *supra*, will extend to housing accommodation provided under Part V of the Housing Act, 1936, Part III of the Housing Act, 1925, or Part III of the Housing of the Working Classes Act, 1890.

**Supervision and management.** See the General Note, *supra*.

**Housing Repairs Account; Housing Equalisation Account.** See, respectively, ss. 51 and 52, *ante*.

**Housing (Rural Workers) Act, 1926, s. 4 (2A).** 11 Halsbury's Statutes (2nd Edn.) 427. For the local authorities for the purposes of that Act, see s. 5 thereof (11 Halsbury's Statutes (2nd Edn.) 429). Contributions by the Minister, under s. 4 (2A) of that Act (inserted by the Housing Act, 1935, s. 38) relate to works carried out by the local authority, as so defined, which would have attracted a grant from them, under s. 1 of the Act, if carried out by another person. The reference to assistance "thereunder", in para. 2 (1) (a) (iii) *supra*, is to assistance under the Act of 1926 (not under s. 4 (2A) thereof), *i.e.*, to assistance under s. 1 in the manner provided by s. 2 thereof.

**Housing, Town Planning, etc., Act, 1919.** 11 Halsbury's Statutes (2nd Edn.) 393. The schemes referred to in para. 2 (2), *supra*, are those under s. 7 of that Act (11 Halsbury's Statutes (2nd Edn.) 394). As to that section, see s. 27, *ante*, and the notes thereto. By para. 2 of the Third Schedule, *ante*, any exchequer contribution is paid to the London County Council, who in turn make any necessary contribution to the metropolitan borough council. The latter council are required to credit such contributions under para. 1 (2) (a) of this Schedule, *supra*.

**Para. 3.**

**Housing Management Commission.** These Commissions may be established under s. 115 of the Housing Act, 1957 (Book I, *ante*).

**Para. 4.**

**Appears.** See the note "Appear" to s. 2 (3), *ante*.

**Incomings or outgoings . . . ought . . . to be credited.** These words confer a power on the Minister to direct that transactions not mentioned in this Schedule shall nevertheless be recorded in the Housing Revenue Account; cf. the notes to s. 50, *ante*. The remainder of para. 4, *supra*, is concerned with ensuring that proper credits and debits are made and that improper entries are not made.

**Para. 5.**

**Financial year.** See the note to s. 10 (1), *ante*, and note the provision for quinquennial review in para. 5 (2), *supra*, in the years ending 31st March 1960, 1965, etc.

**General rate fund account.** This account is required to be kept by s. 185 (2) or 188 (2) of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 452, 454), or by s. 121 (2) of the London Government Act, 1939 (15 Halsbury's Statutes (2nd Edn.) 1128); cf. also s. 191 (2) of the Act of 1933, and s. 118 (2) of the Act of 1939. See also the note "General rate fund" to s. 53 (2), *ante*, and for the meaning of "general rate fund" in relation to the London County Council, see s. 58 (1), *ante*.

**Housing Act, 1936, Eighth Schedule.** 11 Halsbury's Statutes (2nd Edn.) 603. Para. 8 of that Schedule required the making of contributions (there called "additional" contributions) from rates, to meet a deficit in the Account for any year; see now para. 1 (5), *supra*. Under para. 5 (2) (ii), *supra*, an amount proportionate to rate fund contributions may be repayable to the general rate fund on the quinquennial review in 1960; and the year ending March 1956 will be one of the relevant years. In that year contributions from rates will have included the former compulsory rate fund contributions (mentioned in the General Note to s. 1, *ante*). Para. 5 (3), *supra*, therefore

provides for taking them into account. The reference to the Eighth Schedule to the Act of 1936 will, by virtue of s. 58 (4), *ante*, include a reference to the provisions of later Acts which were deemed to be included in that Schedule for the purposes of ss. 129 and 130 of the Act of 1936: see further s. 6 (5) of the Housing (Financial Provisions) Act, 1938 (11 Halsbury's Statutes (2nd Edn.) 616); s. 24 of, and para. 5 of the Third Schedule to, the Housing (Financial and Miscellaneous Provisions) Act, 1946 (11 Halsbury's Statutes (2nd Edn.) 668, 672); and s. 48 of, and para. 6 in Part I of the Second Schedule to, the Housing Act, 1949 (28 Halsbury's Statutes (2nd Edn.) 640, 646). See also, as to a consequential provision on the repeal of paras. 1-3 of the Eighth Schedule to the Act of 1936, the note about that Act to para. 1 of the present Schedule, *supra*. The whole of the Eighth Schedule to the Act of 1936, except para. 8, was repealed by the Housing Subsidies Act, 1956; para. 8 is repealed in the general repeal of the remaining portions of the Act of 1936 by s. 59 (1), *ante*, and the Sixth Schedule, *infra*.

## Section 59

## SIXTH SCHEDULE

## REPEALS

Session and Chapter	Short Title	Extent of Repeal
13 & 14 Geo. 5 c. 24	The Housing, &c. Act, 1923	Section one.
14 & 15 Geo. 5 c. 35	The Housing (Financial Provisions) Act, 1924	Sections three and four. Sections one to eleven. Section fourteen. In section fifteen the words "under this Act and". The First Schedule. In the Second Schedule the amendment of section one of the Housing, &c. Act, 1923.
20 & 21 Geo. 5 c. 6	The Housing (Revision of Contributions) Act, 1929	The whole Act.
20 & 21 Geo. 5 c. 39	The Housing Act, 1930	Section twenty-seven.
21 & 22 Geo. 5 c. 39	The Housing (Rural Authorities) Act, 1931	Sections forty-three to forty-six. Section one. In section five the words "the Minister of Health and" and the words "the Minister or, as the case may be,"
26 Geo. 5 & 1 Edw. 8 c. 51	The Housing Act, 1936	The whole Act.
1 & 2 Geo. 6 c. 16	The Housing (Financial Provisions) Act, 1938	The whole Act.
2 & 3 Geo. 6 c. 31	The Civil Defence Act, 1939	Section thirty-four.
2 & 3 Geo. 6 c. 40	The London Government Act, 1939	In section one hundred and twenty-six, in subsection (6) the words "section one hundred and thirty-three of the Housing Act, 1936, and by".
7 & 8 Geo. 6 c. 33	The Housing (Temporary Provisions) Act, 1944	The whole Act.
9 & 10 Geo. 6 c. 48	The Housing (Financial and Miscellaneous Provisions) Act, 1946	Sections one to thirteen. Sections fifteen to twenty-four. In section twenty-six, in subsection (1) the words from "and the Housing Acts" to the end of the subsection. The First Schedule. In the Second Schedule each entry except that relating to the Housing (Rural Workers) Act, 1926.
		The Third Schedule.

Session and Chapter	Short Title	Extent of Repeal
9 & 10 Geo. 6 c. 68	The New Towns Act, 1946	Section eight. In section twenty-four, paragraph (b).
11 & 12 Geo. 6 c. 26	The Local Government Act, 1948	In section one hundred and twenty-six, subsection (3) and paragraph (b) of subsection (4).
12, 13 & 14 Geo. 6 c. 60	The Housing Act, 1949	Section one. Section four. In section five, subsections (1), (2), (3) and (5). Parts II and III. Sections forty-seven to forty-nine. In section fifty-one, subsections (3) and (4). The Schedules. The whole Act.
15 & 16 Geo. 6 & 1 Eliz. 2 c. 53	The Housing Act, 1952	
2 & 3 Eliz. 2 c. 53	The Housing Repairs and Rents Act, 1954	Part I, except section nineteen and subsection (1) of section twenty-two.
3 & 4 Eliz. 2 c. 24	The Requisitioned Houses and Housing (Amendment) Act, 1955	Section twelve.
4 & 5 Eliz. 2 c. 33	The Housing Subsidies Act, 1956	Sections one to eight. In section ten, subsection (1). In section eleven, subsection (1) and in subsection (2) all the definitions save those of "development corporation", "dwelling", "local authority" and "the Minister". In section twelve, subsections (2) and (4). In the First Schedule, paragraphs 1 to 12. The Second and Third Schedules.
5 & 6 Eliz. 2 c. 25	The Rent Act, 1957	In the Sixth Schedule, paragraphs 11, 13 and 14.
Statutory Instrument, 1956, No. 2015	The Housing Subsidies Order, 1956	The whole Order.

Section of the Housing Act, 1958	Section of the Housing Act, 1958	Section of the Housing Act, 1958
Section 1 (1) and (2)	Section 1 (1) and (2)	Section 1 (1) and (2)
Section 2 (1) and (2)	Section 2 (1) and (2)	Section 2 (1) and (2)
Section 3 (1) and (2)	Section 3 (1) and (2)	Section 3 (1) and (2)
Section 4 (1) and (2)	Section 4 (1) and (2)	Section 4 (1) and (2)
Section 5 (1) and (2)	Section 5 (1) and (2)	Section 5 (1) and (2)
Section 6 (1) and (2)	Section 6 (1) and (2)	Section 6 (1) and (2)
Section 7 (1) and (2)	Section 7 (1) and (2)	Section 7 (1) and (2)
Section 8 (1) and (2)	Section 8 (1) and (2)	Section 8 (1) and (2)
Section 9 (1) and (2)	Section 9 (1) and (2)	Section 9 (1) and (2)
Section 10 (1) and (2)	Section 10 (1) and (2)	Section 10 (1) and (2)
Section 11 (1) and (2)	Section 11 (1) and (2)	Section 11 (1) and (2)
Section 12 (1) and (2)	Section 12 (1) and (2)	Section 12 (1) and (2)
Section 13 (1) and (2)	Section 13 (1) and (2)	Section 13 (1) and (2)
Section 14 (1) and (2)	Section 14 (1) and (2)	Section 14 (1) and (2)
Section 15 (1) and (2)	Section 15 (1) and (2)	Section 15 (1) and (2)
Section 16 (1) and (2)	Section 16 (1) and (2)	Section 16 (1) and (2)
Section 17 (1) and (2)	Section 17 (1) and (2)	Section 17 (1) and (2)
Section 18 (1) and (2)	Section 18 (1) and (2)	Section 18 (1) and (2)
Section 19 (1) and (2)	Section 19 (1) and (2)	Section 19 (1) and (2)
Section 20 (1) and (2)	Section 20 (1) and (2)	Section 20 (1) and (2)
Section 21 (1) and (2)	Section 21 (1) and (2)	Section 21 (1) and (2)

# APPENDIX I

## TABLE OF REPEALS AND REPLACEMENTS

This table shows in column (1) the enactments repealed by the Housing Act, 1957 (Book I, *ante*), and the Housing (Financial Provisions) Act, 1958 (Book II, *ante*), and in columns (2) and (3), respectively, the provisions of those Acts corresponding thereto.

In certain cases the enactment in column (1), though having a corresponding provision in column (2) or (3), is not repealed as it is still (or is still partly) required for purposes of other legislation.

(1)	(2)	(3)
Public Health Act, 1875 (c. 55)	Housing Act, 1957 (c. 56)	Housing (Financial Provisions) Act, 1958 (c. 42)
ss. 295, 298†	s. 180	
Housing, etc., Act, 1923 (c. 24)		
ss. 1, 3 s. 4		See s. 59 (4) Not required
Housing (Financial Provisions) Act, 1924 (c. 35)		
ss. 1, 2 s. 3 (1) (2) (3) (4) ss. 4-7 s. 8 9 ss. 10, 11 s. 14 (1) (2) Sch. I	184	See s. 59 (4) Rep., 1935 (c. 40), ss. 52, 99, Schs. V, VII, Pt. I Sch. II, para. 1 Rep., 1957 (c. 25), s. 26 (3), Sch. VIII, Pt. I ss. 20 (2), 48 (1) Not required Rep., 1936 (c. 51), s. 190, Sch. XII See s. 59 (4) Not required Not required Not required
Housing (Revision of Contributions) Act, 1929 (c. 6)		
ss. 1, 2 } Sch. }		See s. 59 (4)
Housing Act, 1930 (c. 39)		
s. 27 (1), (2) (3) ss. 43, 44 s. 45 46		Sch. II, para. 2 s. 20 (2) Not required Rep., 1936 (c. 51), s. 190 Sch. XII See s. 59 (4)
Housing (Rural Authorities) Act, 1931 (c. 39)		
s. 1 ss. 2, 3	118 (1), (2)	See s. 59 (4)

†Not repealed.

(1)	(2)	(3)
Housing Act, 1935 (c. 40)	Housing Act, 1957 (c. 56)	Housing (Financial Provisions) Act, 1958 (c. 42)
s. 62 (1) (2)	Rep., 1936 (c. 51), s. 190, Sch. XII Spent	
Housing Act, 1936 (c. 51)		
s. 1 (1) (2) 2 3 (1) (2) 4 5 ss. 6-8	ss. 1 (1), 36 (5) 1 (2), 36 (5), 90 (7) s. 6 7 Not required s. 8 3 (1) Rep., 1954 (c. 53), s. 54 (4), Sch. V	
s. 9 (1), (2) (3), (4) 10 (1), (2) (3) (4) (5) (6), (7) 11 (1) (2), (3) (4) 12 (1) (2) 13 14 15 (1)  (2)  (3) (4) (5) 16 (1) (2) (3), (4) 17 18 19 (1) (2) 20 21 22 23 24 25 (1), (2) (3) 26 27 28 29 30 31 32	s. 9 (1), (2) 39 (1), (2) 10 (1), (2) (3), (6) (4) (5), (6) (7), (9) 16 (1), (2) (3), (4) ss. 17 (1), 19, 21 18 (1), 19, 27 (1), (2) s. 18 (2) 23 ss. 16 (6), 27 (1) 11 (1), (2), 20 (1), (2), 27 (3), (4), 30 (5), 36 (2), 72 (3), 90 (3) 11 (3), 20 (3), 30 (5), 36 (2), 72 (3), 90 (3) 38 (1), 90 (3) 38 (2), 90 (3) 37 (1), (2), 90 (3) s. 12 (1), (3) (1), (2) (1), (4) 25 32 33 (1) ss. 33 (2), 74 (6) s. 14 15 5 ss. 9 (3), 16 (7) 3 (2), 41 s. 42 (1), (2) 43 (1) 44 43 (2) 49 43 (3)-(5) 47 50 51	

# APPENDIX I TABLE OF REPEALS AND REPLACEMENTS

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(1)	(2)	(3)
Housing Act, 1936 (c. 51)	Housing Act, 1957 (c. 56)	Housing (Financial Provisions) Act, 1958 (c. 42)
s. 33	s. 52	
34	55 (1), (2)	
35	56	
36	57	
37	58	
ss. 38, 39	Not reproduced	
s. 40	s. 59	
41 (1)	Schs. III, Pt. I, paras. 3 (4), 5 (3); V, para. 5 (3)	
(2)	III, Pt. I, paras. 3 (5), 5 (4); V, para. 5 (4)	
42 (1)	s. 60 (1)	
(2)	Sch. II, paras. 2 (1), 3 (1)	
(3)	s. 60 (2)	
(4)	Sch. II, para. 3 (2)	
43	s. 67	
44 (1)	ss. 32, 63 (1)	
(2)	s. 63 (2)	
45 (1)	42 (3)	
(2)	55 (3)	
46	64	
47	Rep., 1953 (c. 46), s. 168 (1), Sch. X	
48	s. 66	
49	65	
50	68	
51	69	
52	70	
53	71	
54	72 (1), (2), (4), (5)	
55 (1)-(4)	74 (1)-(4)	
(5)	ss. 33 (1), 72 (3), 74 (5), (6)	
56	s. 75	
57	76	
58	77	
59	78	
60	79	
61	80	
62	81	
63	82	
64	83	
65 (1)	84	
(2)	Rep., 1957 (c. 25), s. 26 (3), Sch. VIII, Pt. I	
66	s. 85	
67	86	
68	87	
69	88	
70	89	
71	91	
72 (1)	92 (1)	
(2)	ss. 92 (2), 94	
(3), (4)	s. 92 (3), (4)	
73	96	
74 (1), (2)	97 (1), (2)	
(3)	Sch. VII, para. 2	
(4)	Rep., 1946 (c. 49), s. 10, Sch. VI	
75	}	
76		
	s. 99	

(1)	(2)	(3)
Housing Act, 1936 (c. 51)	Housing Act, 1957 (c. 56)	Housing (Financial Provisions) Act, 1958 (c. 42)
s. 77	s. 102	
78	103	
79 (1)	ss. 104 (1), 105 (1), 107	
(2)	s. 107	
(3), (4)	105 (3), (4)	
(5)	ss. 104 (6), 105 (5)	
(6)	104 (7), 105 (6)	
80	s. 93	
81 (1)	108 (1)	
(2)	109 (1)	
(3)	108 (2)	
(4)	109 (4)	
82	110	
83	111	
84 (1), (2)	112 (1), (2)	
(3)	Not reproduced	
(4), (5)	s. 112 (3), (4)	
(6)	Rep., 1939 (c. 40), s. 207, Sch. VIII	
85 (1), (2)	s. 113 (1), (2)	
(3)	114 (3)	
(4)	(2)	
(5)-(7)	113 (3)-(5)	
(8)	ss. 113 (6), 114 (4)	
86	s. 106	s. 18 (2)
87	115	
88	116	
89 (1)	117 (1)	
(2)	(2)	25 (1)
(3)		25 (1)
90		Rep., 1949 (c. 60), ss. 4 (5), 51 (4), Sch. III
91		See s. 59 (5); rep., 1949 (c. 60), ss. 4 (5), 5 (5), 51 (4), Sch. III
92		s. 47
93 (1), (2)	119 (1), (2)	
(3)	(3), (4)	
(4)	(5)	
94 (1), (2)	120 (1), (2)	
(3)		See s. 59 (4)
(3) proviso, (4)		ss. 19 (1), 20 (1)
(5), (6)	120 (3), (4)	
95	123	
96	124	
97	126	
98	127	
99	128	
100	129	
101	130	
102	131	
103	132	
104 (1)	133 (1)	
(2)	131 (2)	
105 (1)-(6)		See s. 59 (4)
(7)-(9)	118 (2)-(4)	See s. 59 (4)
(10)		See s. 59 (4)
ss. 106-108		See s. 59 (4)
s. 109		Rep., 1946 (c. 48), s. 16 (7)

# APPENDIX I TABLE OF REPEALS AND REPLACEMENTS

491

(1)	(2)	(3)
Housing Act, 1936 (c. 51)	Housing Act, 1957 (c. 56)	Housing (Financial Provisions) Act, 1958 (c. 42)
s. 110		See s. 59 (5); rep., 1949 (c. 60), ss. 5 (5), 51 (4), Sch. III
111		s. 27
112		28
113		18 (1)
114		Rep., 1956 (c. 33), s. 12 (4), Sch. III, Pt. I
115 (1)		See s. 59 (4)
(2)	s. 114 (5)	s. 58 (1); and see s. 59 (4)
(3)		See s. 59 (4)
(4)		Rep., 1948 (c. 26), s. 147 (6), Sch. II, Pt. V
(5)		s. 24 (3)
116	135 (1), (2)	
117 (1)	Not reproduced	
(2)	Rep., 1949 (c. 60), s. 51 (4), Sch. III	
118	s. 136 (1)	
119	136 (2), (3)	54 (2), (3)
120 (1)	136 (1)	59 (6)
(2)	Rep., 1946 (c. 81), s. 76, Sch. X, Pt. II	
121	s. 137 (1), (2)	
122	138	
123 (1)	Not reproduced	
(2)	s. 139	54 (4)
124	140 (1)	
125	140 (2)	
126	141	
127	142	
128 (a)		50 (1) (a)
(b)		(f)
(c)		(d)
(d)		(e)
129 (1)		s. 50 (4); Sch. V, paras. 1 (1), (5), 2 (1)
(2)		Sch. V, para. 3
(3)		1 (3)
(4)		(4)
(5)		4
130 (1)		Sch. V, para. 5 (1)
(2)		(2)
131		s. 51
132 (1)		52 (1)
(2)		Rep., 1946 (c. 48), s. 21 (5)
133 (1)		s. 53 (1)
(2)		(2)
134		Not reproduced
135	143	
136	Rep., 1949 (c. 60), s. 51 (4), Sch. III	
137	s. 144	
138 (1), (2)	145 (1), (2)	
(3)	(1)	
(4)	(3)	
(5)	(1)	
139	145 (4)	

(1)	(2)	(3)
Housing Act, 1936 (c. 51)	Housing Act, 1957 (c. 56)	Housing (Financial Provisions) Act, 1958 (c. 42)
s. 140 (1)-(4)	s. 147 (1)-(4)	
(5)	ss. 146, 147 (5)	
141	s. 148 (1), (2)	
142	149 (1), (2)	
143	150	
144	149 (3)	
145 (1)	Sch. III, Pt. II, para. 9	
(2)	ss. 62, 101	
(3)	62 (1), 101 (1); Sch. III, Pt. II, para. 9	
146	s. 133 (2); Schs. I, para. 1 (3); III, Pt. II, para. 8 (7); VII, para. 1 (3)	
147	Schs. I, para. 1 (2); III, Pt. II, para. 8 (3); VII, para. 1 (2)	
148	s. 151	
149	152	
150	153	
151	154	
152	155	
153	156	s. 55 (1) (a)
154 (1)	157 (5)	
(2)	(1), (2)	
(3)	(3)	
155 (1)	ss. 22 (1), (2), 45 (2), (3), 73 (1), (2)	
(2)	22 (3), 45 (4)	
(3)	22 (4), 45 (5), 73 (3)	
156 (1)	16 (5), 22 (5), 27 (5), 45 (6), 57 (9), 73 (4), 158 (1)	
(a)	73 (4), 158 (1)	
(b)	Not reproduced	
(c)	s. 59 (9)	
(d)	16 (5)	
(e)	27 (5)	
(2)	158 (2)	
157	159	
158	160	
159 (a), (b)	161	
(c)	Not reproduced	
160	s. 162	
161	163	
162	164	
163	165	
164	166	
165	167	
166	168	
167	169 (1)	
168	170	
169 (1)	171 (1)	55 (1) (b)
(2)	(4)	55 (1) (b)
(3)		25 (2)
(4)	(5)	55 (1) (b)
170	172	55 (1) (b)
171	173 (1), (2)	55 (1) (b)
172 (1)	174	55 (1) (b)

# APPENDIX I TABLE OF REPEALS AND REPLACEMENTS

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(1)	(2)	(3)
Housing Act, 1936 (c. 51)	Housing Act, 1957 (c. 56)	Housing (Financial Provisions) Act, 1958 (c. 42)
s. 172 (2)	s. 175	s. 25 (2)
173	176	55 (1) (b)
174	177 (1)-(3)	55 (1) (b)
175	178 (1)	52 (3)
176 (1)	179 (1)	
(2)	(2)	
(3)	178 (2)	52 (3)
177	181 (1)	ss. 18 (3), 55 (2)
178 (1)	180	
(2)	181 (2)	
179	182	18 (3), 55 (2)
180	183	s. 28
181	185	
182	Rep., 1939 (c. 40), s. 207, Sch. VIII	
183 (1)	s. 186	
(2), (3)	187 (1)	55 (1) (c)
184	187 (2), (3)	
185	Rep., 1939 (c. 40), s. 207, Sch. VIII	
186	s. 188	
187	ss. 15 (1) (b), 131, 157 (4), 189 (1)	ss. 28, 53 (3), 58 (1), (2)
188 (1)	36 (5), 90 (7), 189 (2)	
(2)	s. 189 (1)	s. 58 (1)
(3)	Rep., 1954 (c. 53), ss. 9 (3) (a), 54 (4), Sch. V	
(4)	See s. 191 (2)-(6)	See s. 59 (2)-(7)
189	Rep., 1950 (c. 6), s. 1, Sch. I	
190	Not reproduced	
191 (1)	Rep., 1950 (c. 6), s. 1, Sch. I	
(2)	s. 193 (3)	s. 61 (2)
(3)	Sch. III, Pt. I, para. 1 (1), Pt. II, para. 7 (1)	
Sch. I, para. 1	Pt. II, para. 8 (1), (2), (5), (6), (8)	
2	Pt. I, para. 2 (1)	
3	3 (1)-(3), (6)	
4	5 (1), (2)	
5	paras. 4 (1), 6	
6	Pt. II, para. 7 (2)	
7	Pt. I, para. 2 (1), Pt. II, para. 8 (4)	
8	Pt. I, para. 1 (2), 4 (2)-(4)	
9	2 (1)	
paras. 10-12	6	
para. 13	Sch. IV	
14	s. 45 (1); Sch. V, para. 1	
II	Sch. V, paras. 2, 3 (1), 5 (1), (2), 6	
III, para. 1	Schs. III, Pt. III; VII, para. 2	
paras. 2-6	Sch. III, Pt. III	
IV, paras. 1-4	Schs. III, Pt. III; VII, para. 2	
para. 5	Sch. VI	
6		See s. 59 (4)
V		
VI		

(1)	(2)	(3)
Housing Act, 1936 (c. 51)	Housing Act, 1957 (c. 56)	Housing (Financial Provisions) Act, 1958 (c. 42)
Sch. VII, para. 1 2 paras. 3-8 para. 9 VIII, paras. 1-7, 9 para. 8 IX X, para. 1 (1) (2) (3) paras. 2, 3 para. 4 5 6 XI XII	Sch. VIII         Sch. IX Rep., 1950 (c. 6), s. 1, Sch. I	Sch. II, para. 1; Sch. V, para. 1 (2) II, para. 2 (1) paras. 5-10 3, 4 Rep., 1956 (c. 33), s. 12 (4), Sch. III, Pt. I Sch. V, para. 1 (5) III, para. 2 (3) 5 2 (2), (3) Rep., 1956 (c. 33), s. 12 (4), Sch. III, Part I V, para. 1 (2) 2 (2) s. 58 (1)
Housing (Financial Provisions) Act, 1938 (c. 16)		
s. 1 2 (1), (3) (2) 3 (1) proviso (2) 4 5 6  7 (1), (2) (3) (4) 8  9 10 11 (1) (2) 12 Sch.	s. 114 (1)         Rep., 1949 (c. 60), s. 51, Sch. III, Pt. II	See s. 59 (4) See s. 59 (4)  s. 46 (1) (2) (6) ss. 56, 58 (2) Rep., 1946 (c. 48), s. 16 (7) Rep., 1956 (c. 33), s. 12 (4), Sch. III, Pt. I See s. 59 (4) s. 24 (2) Sch. V, para. 1 (1) (d)  See s. 59 (4) No longer required No longer required ss. 28, 58 (1) No longer required See s. 59 (4)
Civil Defence Act, 1939 (c. 31)		
s. 34		See s. 59 (4)
Housing (Temporary Provisions) Act, 1944 (c. 33)		
ss. 1-3		Spent
Local Authorities Loans Act, 1945 (c. 18)		
s. 6 (c)	s. 139	s. 54 (4)

# APPENDIX I TABLE OF REPEALS AND REPLACEMENTS

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(1)	(2)	(3)
Housing (Financial and Miscellaneous Provisions) Act, 1946 (c. 48)	Housing Act, 1957 (c. 56)	Housing (Financial Provisions) Act, 1958 (c. 42)
ss. 1-4		See s. 59 (4)
s. 5		Rep., 1956 (c. 33), s. 12 (4), Sch. III, Pt. I
6		s. 8 (1); and see s. 59 (4)
7		Rep., 1956 (c. 33), s. 12 (4), Sch. III, Pt. I
8 (1)		s. 23; and see s. 59 (4)
(2), (3)		Rep., 1948 (c. 26), s. 147 (6), Sch. II, Pt. V
(4)		Sch. V, para. 1 (1) (d)
9 (1), (2)		No longer required
(3)		Rep., 1950 (c. 6), s. 1, Sch. I
ss. 10, 11		See s. 59 (4)
s. 12		s. 16
13 (1)		Spent
(2)		Rep., 1957 (c. 25), s. 26 (3), Sch. VIII, Pt. I
(3)		Rep., 1952 (c. 53), s. 2 (1)
14 (1)†, (2)†		ss. 19 (2), 20 (3), 46 (4), 48 (2)
15 (1)		s. 21 (1)
(2)		46 (5)
ss. 16, 17		No longer required
s. 18		s. 17 (1)-(7)
19 (1), (2)	s. 114 (1)	24 (1)
(3)		Spent
20		s. 50 (2)
21 (1)		Sch. V, para. 1 (1) (e), (f)
(2)		5 (1)
(3)		Spent
(4)		s. 52 (1)
(5)		(2)
(6)		
22	134	56
23 (1)		17 (8)
(2), (3)		Not reproduced
24		s. 58 (1)
25 (1)†		Not reproduced
26 (1) (part)		See s. 59 (4)
Sch. I		ss. 19 (2), 20 (3), 46 (4), 48 (2)
II (part)		s. 28
III, para. 1		58 (2)
2		25 (1), (2)
paras. 3, 4		No longer required
para. 5		
Acquisition of Land (Authorisation Procedure) Act, 1946 (c. 49)		
s. 1 (1)†	See Schs. I, para. 1 (1); VII, para. 1 (1)	
(4) (b)	Not reproduced	
Sch. II, para. 2 (b) (part)	Schs. I, para. 1 (2); VII, para. 1 (2)	
IV (part)	Spent	

† Not repealed.

(1)	(2)	(3)
New Towns Act, 1946 (c. 68)	Housing Act, 1957 (c. 56)	Housing (Financial Provisions) Act, 1958 (c. 42)
s. 8 (1) (2) (3) 24 (b)	s. 125	s. 19 (1), (2) See s. 59 (4) s. 19 (3) Not required
Local Government Act, 1948 (c. 26)		
s. 126 (3), (4) (b)		Sch. V, para. 1 (1) (e)
Lands Tribunal Act, 1949 (c. 42)		
s. 1 (3) (a)†	65 (6)	
Housing Act, 1949 (c. 60)		
ss. 1, 2	Spent	
s. 3 (1) (2) (3) (4)	ss. 17 (3), 19, 27 (1) 26, 27 (1) s. 27 (2) ss. 20 (1), 27 (3), 32, 33, 162 (1)	
4 (1)-(4) (5)		s. 43 59 (5) 45 59 (5)
5 (1)-(3) (5)		
6	s. 100	
7 (1), (2) (3) (4)	95 (1) Not required s. 95 (2) ss. 94, 122 s. 96	
8	105 (2), (3), (5) (6)	
9 (1) (2) (3)	Rep., 1954 (c. 53), s. 54 (4), Sch. V	
10	s. 165	
11	109 (2) (3)	
12 (1) (2), (3) (4) (5)	Spent Not required s. 132 (4)-(6) Not reproduced s. 135 (3)	
13		s. 9 (1) (2), (3)
14 (1) (2)		10 (1) 10 (2)
15 (1) (2)		ss. 10 (2), 12 (3) s. 10 (3)
16		Rep., 1956 (c. 33), s. 12 (4), Sch. III, Pt. I
17 (1) (2) (3)		s. 11 30 (1) (2), (3)
18		31 (1)
19		
20 (1) (2) (3) (a)		

† Not repealed.

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† Not repealed.

(1)	(2)	(3)
Housing Act, 1949 (c. 60)	Housing Act, 1957 (c. 56)	Housing (Financial Provisions) Act, 1958 (c. 42)
Sch. I		ss. 47 (1), (2), 58 (1)
Sch. II, para. 1		s. 28
2		58 (2)
3		Rep., 1956 (c. 33), s. 12 (4), Sch. III, Pt. I
4		25 (1)
5		50 (1) (c)
6		Spent
7	s. 156	s. 55 (1) (a)
8	171 (1)	ss. 25 (2), 55 (1) (b)
9	ss. 173 (1), (2), 174	25 (2), 55 (1) (b)
10	s. 187 (1)	s. 55 (1) (c)
11		58 (3)
paras. 12, 13		Not required
para. 14		Rep., 1956 (c. 33), s. 12 (4), Sch. III, Pt. I
paras. 15, 16		Not required
Sch. III		Spent
Industrial and Provident Societies Act, 1952 (c. 17)		
s. 1 (1) (d)	119 (4)	
Housing Act, 1952 (c. 53)		
s. 1 (1) (a), (b)		See s. 59 (4)
(c)		Rep., 1956 (c. 33), s. 12 (4), Sch. III, Pt. I
(d)		s. 23; and see s. 59 (4)
(e), (2)		See s. 59 (4)
(3)		s. 51 (1)
2 (1)		Spent
(2)		Sch. IV, para. 3
(3), (4)		s. 46 (3); Sch. IV, para. 5
(5)		46 (3); Sch. IV, paras. 3, 5
3 (1)	s. 105 (3)	
(2), (3)	104 (2), (3)	
(4)	(1)	
(5)	106	18 (2)
4 (1)	104 (4)	
(2)	Rep., 1957 (c. 25), s. 26 (3), Sch. VIII, Pt. I	
(3)	s. 104 (5)	
5	96 (c)	
ss. 6, 7		Not reproduced
Sch.		See s. 59 (4)
Local Government (Miscellaneous Provisions) Act, 1953 (c. 26)		
s. 10 (1)	ss. 17 (1) proviso, 27 (1)	
(2)	s. 19	
(3)	28	

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(1)	(2)	(3)
Local Government (Miscellaneous Provisions) Act, 1953 (c. 26)	Housing Act, 1957 (c. 56)	Housing (Financial Provisions) Act, 1958 (c. 42)
s. 10 (4) (a) (b) (c) (d) (e) (f) (5) 11 (1) (2) (3)	s. 27 (2) (1) ss. 20 (1), 27 (3) s. 32 33 27 (5) 162 (1) Spent s. 35 (1) ss. 32, 35 (1), (2)	
Electoral Registers Act, 1953 (c. 8)		
Sch. (part)	Not required	
London County Council (General Powers) Act, 1953 (c. xliii)		
s. 40	s. 166 (2) proviso (b)	
Finance Act, 1954 (c. 44)		
Sch. V, para. 4†		s. 17 (8)
Housing Repairs and Rents Act, 1954 (c. 53)		
s. 1 (1), (2) (3)-(5) 2 (1), (2) (3) (4) (5) 3 (1) (2) (3) (4) (5) 4 5 6 (1)-(4) (5) (6) (7) 7 (1)-(4) (5) (6) 8  9 (1) (2) (3) (a) (b)	Spent s. 2 (1)-(3) 48 (1), (2) (3) 54 (1) 53 (5) 17 (2) 29 (3) ss. 19, 20 (1), (2) s. 29 (1); Sch. I, para. 1 (1) 29 (2) 40 (1)-(4) 24 ss. 34 (1)-(4), 53 (1)-(4) s. 34 (5) ss. 53 (5), 54 (2) 34 (6), 53 (6)  s. 4 (1) See s. 5 (1) Not required s. 4 (2)	13 (1) (a)          13 (1)-(4) 58 (2) 13 (5) Rep., 1956 (c. 33), s. 12 (4), Sch. III, Pt. I s. 58 (3)

† Not repealed.

(1)	(2)	(3)
Housing Repairs and Rents Act, 1954 (c. 53)	Housing Act, 1957 (c. 56)	Housing (Financial Provisions) Act, 1958 (c. 42)
<p>s. 10</p> <p>11 (1) (2), (3) (4) (5)</p> <p>12 (1), (2) (3), (4) (5) (6) (7)</p> <p>13</p> <p>14 (1) (2) (3)</p> <p>15 (1) (2)</p> <p>16 (1) (2) (3) (4) (5) (6) (7) (8)</p> <p>17</p> <p>18 (1) (2)</p> <p>20</p> <p>21 (1) (2), (3)</p> <p>22 (2) (3)</p> <p>33 (7)</p> <p>50 (1)†</p> <p>(2) (a), (b)</p> <p>51† Sch. I, para. 1</p> <p>2 (1)</p> <p>(2)</p> <p>3</p>	<p>s. 13</p> <p>ss. 36 (1), 39 (2)</p> <p>s. 36 (3), (4) (2)</p> <p>Not reproduced</p> <p>s. 90 (1), (2) (4), (5)</p> <p>ss. 90 (3), 159</p> <p>s. 90 (6)</p> <p>Not reproduced</p> <p>s. 10 (8)</p> <p>Not reproduced</p> <p>s. 43 (3) 98; Sch. I, para. 3; Sch. III, Pt. II, para. 10</p> <p>s. 171 (3) (2)</p> <p>ss. 29 (4), 46 (5), 48 (4)</p> <p>s. 2 (4)</p> <p>Spent</p> <p>ss. 17 (2), 34 (1), 166 33 (1), 36 (5), 90 (7), 135 (1), 166; Sch. I, para. 1 (2), (3)</p> <p>s. 104 (3) 56 (3); Schs. III, Pt. I, para. 2 (3); V, para. 3 (3)</p> <p>56 (3); Sch. V, para. 3 (3)</p> <p>Schs. I, para. 2; III, Pt. I, para. 2 (2); V, para. 3 (2)</p> <p>Schs. III, Pt. I, para. 3 (3); V, para. 5 (2)</p> <p>III, Pt. I, para. 3 (4), (5); V, para. 5 (3), (4)</p> <p>s. 62 (1), Sch. III, Pt. II, para. 9</p>	<p>s. 50 (1) (b) (4); Sch. V, para. 2 (1)</p> <p>ss. 9 (2), 31 (1)</p> <p>s. 31 (3) 33 (2)</p> <p>ss. 30 (3), 32 (1)</p> <p>s. 30 (4)</p> <p>Rep., 1957 (c. 25), s. 26 (3), Sch. VIII, Pt. I</p> <p>Sch. IV, para. 3</p> <p>Rep., 1957 (c. 25), s. 26 (3), Sch. VIII, Pt. I</p> <p>s. 44</p> <p>55 (1) (b)</p> <p>55 (1) (b)</p> <p>13 (2)</p>

† Not repealed.

# APPENDIX I TABLE OF REPEALS AND REPLACEMENTS

501

(1)	(2)	(3)
Requisitioned Houses and Housing (Amendment) Act, 1955 (c. 24)	Housing Act, 1957 (c. 56)	Housing (Financial Provisions) Act, 1958 (c. 42)
s. 12 (1), (2), (4) (3)		Rep., 1956 (c. 33), s. 12 (4), Sch. III, Pt. I s. 58 (2)
Housing Subsidies Act, 1956 (c. 33)		
s. 1 (1) (2) (3)		1 (1), (3) (2) Not required
2 (1), (2), (3) (4)		s. 2 Not required
3 (1) (2) (3) (4)		s. 3 (1) 4 (1), (2), (5) 3 (2) (3)
4 (1) (2) (3)		5 23 8 (1), (2) 6 7 46 (1)
5 6 7 8 (1) (2) (3) (a) (b) (c)		Sch. V, para. 1 (6) s. 26 (1) Spent s. 26 (2) Sch. V, para. 1 (7) s. 56 3 (4) ss. 29 (1), (2), 58 (1) Not required Spent
10 (1) 11 (1) (2) (part) 12 (2) (4) (5)	s. 134 (4)	s. 28 58 (2) 25 (1), (2) ss. 19 (1), 20 (1) s. 8 (1), (2) 23; Sch. V, para. 1 (1) (d) ss. 19 (2), 20 (3) s. 21 (1) 24 (1) 19 (3) ss. 10 (1), 12 (1), 36 (2) s. 8 (2) Sch. I Spent
Sch. I, para. 1 2 3 4 5 6  7 8 9 10 11 12	114 (1)	
Sch. II Sch. III		
Slum Clearance (Compensation) Act, 1956 (c. 57)		
s. 1 (1)† (2), (3)† (4), (5)† 2†	Sch. II, para. 4 (1), (2), (4) (3), (5) 5 (1), (2) Sch. II, para. 6 (1)-(4)	

† Repealed as it applies to a house purchased compulsorily under the powers contained in the Housing Act, 1957 (Book I, ante).

(1)	(2)	(3)
Slum Clearance (Compensation) Act, 1956 (c. 57)	Housing Act, 1957 (c. 56)	Housing (Financial Provisions) Act, 1958 (c. 42)
s. 3 (1) (2) (3) (4) 4 (1)  (2) (part)  6 (1) (part)	Sch. II, paras. 2 (1), 3 (1) s. 30 (1)–(3) (4), (5) Sch. II, para. 2 (2) s. 30 (6); Sch. II, para. 7 (1) ss. 30 (1)–(3), (7), 35 (2); Sch. II, paras. 4 (2), (6), (7), 6 (5), 7 (2), (3) Not reproduced	
Rent Act, 1957 (c. 25)		
Sch. VI, para. 11 13 14 22	s. 6 (1) (c)	Sch. II, para. 1 (d) s. 46 (1) (b) Sch. IV, para. 4
Housing Subsidies Order, 1956 (S.I. 1956 No. 2015)		
Arts. 1, 2 3 (1) (2) (3)		Not reproduced s. 4 (3) (2) (4)

## APPENDIX II

### THE HOUSING (PRESCRIBED FORMS) REGULATIONS, 1957

DATED 25TH OCTOBER 1957, MADE BY THE MINISTER OF HOUSING AND LOCAL GOVERNMENT UNDER SECTION 178 OF THE HOUSING ACT, 1957.

[S.I. 1957 No. 1842]

#### PRELIMINARY NOTE

These Regulations, which were made on 25th October 1957 and laid before Parliament on 31st October 1957, came into operation on 1st December 1957. The forms in the Second Schedule to the Regulations, or forms substantially to the like effect, are prescribed for use under the Housing Act, 1957, *ante*, and (see Forms 32 and 33) in connection with para. 9 of the Fifth Schedule to the Town and Country Planning Act, 1944 (48 Statutes Supp. 276; 25 Halsbury's Statutes (2nd Edn.) 420) which applies the "site value" compensation provisions of Part III of the Housing Act; see the note "Cross-references" to s. 59, *ante*.

The present Regulations revoke the Housing Act (Form of Orders and Notices) Regulations, 1937 (S.R. & O. 1937 No. 78), as amended. Those Regulations had been amended, principally to take account of amendments to the Housing Act, 1936, introduced by the Housing Act, 1949, the Housing Repairs and Rents Act, 1954, and the Slum Clearance (Compensation) Act, 1956. The 1937 Regulations had been continued in force, after the coming into force of the Housing Act, 1957, on 1st September 1957, by s. 191 (2) of that Act, *ante*. That subsection similarly preserves orders, notices, etc., made or served in the old form before that date. Orders, notices, etc., made in the old form before 1st December 1957 are preserved by reg. 3 of the present Regulations, *infra*.

As the old forms may be encountered in practice for a number of years, it is thought convenient to list the Regulations which had amended the 1937 Regulations and to provide the Comparative Table which appears below. The amending Regulations were:

- (1) The Housing Act (Form of Orders and Notices) (Amendment) Regulations, 1939 (S.R. & O. 1939 No. 30). These regulations substituted a revised Form 4 with an additional paragraph, warning the recipient of the time limit for making offers under s. 11 of that Act (cf. s. 16 (1) and (3) of the Act of 1957, *ante*). The substituted form was amended by the 1950 Regulations, *infra*, and the added paragraph was changed, as a result of the Act of 1954 and the Local Government (Miscellaneous Provisions) Act, 1953, by the 1954 Regulations, *infra*.
- (2) The Housing Acts, 1936-1949 (Form of Orders and Notices) (Amendment) Regulations, 1950 (S.I. 1950 No. 363). In consequence of s. 1 of the Housing Act, 1949, references to the working classes were deleted.
- (3) The Housing (Form of Orders and Notices) (Amendment) Regulations, 1954 (S.I. 1954 No. 1632). These amended certain existing forms and added Forms 2A, 2B, 5B, 5C, 13A, 13B and 22A. The added forms and some of the amendments were required because of the Act of 1954; other amendments corrected references to the effect of the County Court Rules.
- (4) The Housing (Form of Orders and Notices) (Amendment) Regulations, 1956 (S.I. 1956 No. 1198). These added references to the Slum Clearance (Compensation) Act, 1956, to several forms. They also added Forms 52 and 53, corresponding with Forms 33 and 32 of the present Regulations; and revoked the Housing (Declaration of Unfitness) Regulations, 1955, which had previously made similar provision. The added Form 52 contained the appropriate references to the 1956 Act.

In connection with purchases under Part II or Part V of the Housing Act, 1957, *ante*, reference should be made to the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 4; 3 Halsbury's Statutes (2nd Edn.) 1064). That Act and the Compulsory Purchase of Land Regulations, 1949 (S.I. 1949 No. 507) made thereunder, are printed in *Hill's Complete Law of Housing* (4th Edn.) p. 653, and in the Second Supplement thereto, p. B182, respectively. In connection with closing orders on houses of architectural or historic interest (Act of 1949, s. 3, replaced by ss. 17 (3) and 26 of the Housing

Act, 1957, ante), no forms were prescribed, but Model Forms suggested for use were printed as the appendix to Ministry of Health Circular 54/50, dated 15th May 1950. These forms may be referred to in the above-mentioned Supplement to *Hill*, p. B260, or in *Lumley's Public Health* (12th Edn.), Vol. VIII, pp. 271-273.

# COMPARATIVE TABLE OF FORMS

Section in 1957 Act	New Form No. S.I. 1957/1842	Old Form No. S.R. & O. 1937/78	Remarks
<i>Repairs notice procedure</i>			
9	2	2	Old form amended, S.I. 1950/363; 1954/1632.
10 (5)	5	3	Old form amended, S.I. 1954/1632.
12 and Sch. 1	—	38 to 41	Old forms lapsed; Acquisition of Land (Authorisation Procedure) Act, 1946. See now S.I. 1949/507.
<i>Part II demolition orders, etc.</i>			
16 (1)	6	4	Old form substituted, S.R. & O. 1939/30, which was amended, S.I. 1950/363; 1954/1632.
17 (1)	7	5 & 5A	Old forms both amended, S.I. 1950/363; 1954/1632; 1956/1198.
17 (1), proviso	14	—	New form is closing order where demolition would be inexpedient.
17 (2), 19	11	5B & 5C	Both old forms added, S.I. 1954/1632 and amended, 1956/1198.
18 (1) (applying 16 (1))	12	9	Old form amended, S.I. 1950/363.
18 (1)	13	10	Old form amended, S.I. 1950/363; 1954/1632.
22 (1)	10	8	—
25, or 25 & 44 (7)	8 & 9	6 & 6A	—
27 (2)	—	11 & 12	Old form 12 amended, S.I. 1954/1632. Both forms continued to 30th November 1957, but not replaced.
28 (see 17 (1)) 35 (see 17 (1) proviso)	—	—	—
<i>Houses let in lodgings</i>			
36	3	2A	Old form added, S.I. 1954/1632.
<i>Part III purchases (clearance areas)</i>			
43 & Sch. 3	24	22 & 26	Old form 22 amended, S.I. 1950/363; 1954/1632.
	25	23 & 27	
	26	24 & 28	Old form 28 amended, S.I. 1954/1632. Old form 24 amended thereby, and by S.I. 1956/1198.
43 & Sch. 4	27	25 & 29	—
<i>Clearance orders</i>			
44 & Sch. 4	21	16	—
44 & Sch. 5	15	13	Old form amended, S.I. 1950/363; 1954/1632.
	17	14	Old form amended, S.I. 1954/1632; 1956/1198.
	18	15	—

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**APPENDIX II**  
**THE HOUSING (PRESCRIBED FORMS) REGULATIONS, 1957**

Section in 1957 Act	New Form No. S.I. 1957/1842	Old Form No. S.R. & O. 1937/78	Remarks
<i>Clearance orders—cont.</i>			
44 (7) (see 25)			—
45 (2)	22	17	—
46 & Sch. 5	16	13A	Old form added, S.I. 1954/1632.
	19	—	Old form 14 was used.
	20	—	Old form 15 was used.
46 (4)	23	13B	Old form added, S.I. 1954/1632.
<i>Part III purchases (cleared sites, etc.)</i>			
51 & Sch. 3	28	30	—
	29	31	—
	30	32	Old form amended, S.I. 1954/1632.
51 & Sch. 4	31	33	—
54 & 43	—	22A	Old form added, S.I. 1954/1632. Continued until 30th November 1957 but not replaced.
<i>Improvement areas (obsolete)</i>			
—	—	34 to 37	Provisions lapsed; not reproduced in 1957 Act.
<i>Re-development areas</i>			
55-57	—	42 to 51	Old form 46 amended, S.I. 1956/1198. All old forms continued until 30th November 1957, but not replaced.
<i>Obstructive buildings</i>			
72-74	—	4A, 7 & 8A	Old form 7 amended, S.I. 1954/1632. All old forms continued to 30th November 1957, but not replaced.
<i>Overcrowding</i>			
90	4	2B	Old form added, S.I. 1954/1632.
<i>Part V purchases</i>			
96	—	18 to 21	Old forms lapsed 1946. Formally revoked, S.I. 1950/363. See now S.I. 1949/507.
<i>Inspection</i>			
159	I	I	—
<i>Town and Country Planning Act, 1944, Sch. 5, para. 9</i>			
	32, 33	53, 52	Old forms added, S.I. 1956/1198.

1.—(1) These regulations may be cited as the Housing (Prescribed Forms) Regulations, 1957, and shall come into operation on the first day of December, 1957.

(2) The Interpretation Act, 1889, applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

2. The forms set out in the second schedule hereto (of which a list is set out in the first schedule hereto) or forms substantially to the like effect shall be the forms to be used for the purposes of the Housing Act, 1957.

3. The regulations comprised in the Housing (Form of Orders and Notices) Regulations, 1937 to 1956, are hereby revoked, but this revocation shall not affect the validity of any order, notice, advertisement or other document made or used in a form prescribed by the said regulations before the coming into operation of these regulations.

FIRST SCHEDULE

LIST OF FORMS

FORM NO.

1. Notice before entry for the purpose of inspection, etc.
2. Notice requiring execution of works.
3. Notice requiring execution of works or reduction of number of occupants of house let in lodgings.
4. Notice to abate overcrowding in house let in lodgings.
5. Order declaring expenses of execution of works to be payable by instalments.
6. Notice of time and place for consideration of condition of house liable to be made subject to demolition or closing order.
7. Order for demolition of a house.
8. Notice of intention to cleanse building to which a demolition order or clearance order applies.
9. Notice to proceed with demolition after a building has been cleansed.
10. Notice to occupier to quit house after demolition order has become operative.
11. Notice of determination by local authority to purchase house in lieu of making a demolition order where no undertaking to do works has been accepted or on breach of an undertaking accepted.
12. Notice of time and place for consideration of condition of part of a building liable to be made subject to closing order.
13. Closing order in respect of part of a building.
14. Closing order in lieu of demolition order in respect of a house.
15. Clearance order.
16. Clearance order providing for postponement of demolition.
17. Personal notice of the making of a clearance order for demolition of buildings.
18. Advertisement of the making of a clearance order for demolition of buildings.
19. Personal notice of the making of a clearance order for demolition of houses but postponing demolition.
20. Advertisement of the making of a clearance order for demolition of houses but postponing demolition.
21. Advertisement and personal notice of clearance order confirmed by the Minister of Housing and Local Government.
22. Notice to occupier to quit building after clearance order has become operative.
23. Notice requiring demolition of house the demolition of which has been postponed under a clearance order.
24. Compulsory purchase order in respect of land comprised in a clearance area and land surrounded by or adjoining the area.
25. Advertisement of the making of a compulsory purchase order in respect of land comprised in a clearance area and land surrounded by or adjoining the area.
26. Personal notice of the making of a compulsory purchase order in respect of land comprised in a clearance area and land surrounded by or adjoining the area.
27. Advertisement and personal notice of compulsory purchase order confirmed by the Minister of Housing and Local Government in respect of land comprised in a clearance area and land surrounded by or adjoining the area.
28. Compulsory purchase order in respect of land cleared of buildings in accordance with a clearance order.
29. Advertisement of a compulsory purchase order in respect of land cleared of buildings in accordance with a clearance order.
30. Personal notice of the making of a compulsory purchase order in respect of land which has been cleared of buildings in accordance with a clearance order.
31. Advertisement and personal notice of compulsory purchase order confirmed by the Minister of Housing and Local Government in respect of land cleared of buildings in accordance with a clearance order.
32. Declaration of unfitness order.
33. Notice of the making of a declaration of unfitness order.

Section 159.

SECOND SCHEDULE

FORM NO. 1

HOUSING ACT, 1957

NOTICE BEFORE ENTRY FOR THE PURPOSE OF INSPECTION, ETC.

(Note:—Notice must be given to the occupier, and also to the owner, if known.)

To \_\_\_\_\_ of \_\_\_\_\_, being the [occupier]  
[owner] of the [house] [premises] [building] known as \_\_\_\_\_

Take Notice that in pursuance of section 159 of the Housing Act, 1957, I  
\_\_\_\_\_, being a person duly authorised in  
writing by the \_\_\_\_\_ Council, intend on

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

Signature _____	}	of person authorised to enter
Description _____		
Residence or Place of Business _____		

FORM NO. 2

## NOTICE REQUIRING EXECUTION OF WORKS

Section 9.

Take Notice that—

(2) the Council are not satisfied that it cannot be rendered fit at reasonable expense;

(3) in pursuance of subsection (1) of section 9 of the Housing Act, 1957, the Council require you within a period of \_\_\_\_\_ days ending on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, to execute the following works, which will in the opinion of the Council render the house fit for human habitation, namely

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
Signed \_\_\_\_\_  
Clerk of the Local Authority.

\* See section 39 (2). Notices may also be served on the persons referred to in section 9 (2).

† The time allowed must be reasonable, and in any event not less than twenty-one days.

## NOTES

A person aggrieved by this notice may appeal against it to the County Court. If there is no appeal, and this notice is not complied with, then, after the expiration of the time specified in the notice, the local authority may themselves do the work required by the notice to be done.

On appeal the Court may quash the notice or may confirm the notice, with or without variation. If the notice is confirmed, with or without variation, the local authority cannot exercise their power to do the work until the expiration of 21 days from the final determination of the appeal or of such longer period as the Court may have fixed.

If a person on whom a demand for the recovery of expenses incurred by the local authority in doing the work is aggrieved thereby, he may appeal against the demand to the County Court. He may similarly appeal against an order made by the local authority declaring any such expenses to be payable by instalments.

Any appeal must be brought within 21 days after the date of service of the notice, demand or order, to the County Court within the jurisdiction of which the premises to which the notice, demand or order relates are situate, and no proceedings may be taken by the local authority to enforce any notice, demand or order against which there is an appeal, until the appeal has been finally determined or withdrawn. On an appeal against a demand or order, no question can be raised which might have been raised on an appeal against the original notice requiring the execution of works.

The County Court Rules provide that an appeal shall be brought by requesting the Registrar of the County Court having jurisdiction in the matter to enter the appeal. A copy of this notice (or in the case of a demand or order, a copy of the demand or order) must at the same time be filed in the Court Office, together with an additional copy of the request to the Registrar for service on the local authority.

The County Court Rules further provide that the request to the Registrar for entry of the appeal shall be in accordance with the form prescribed by the rules, with such variations as the circumstances may require.

A lessee who, or whose agent, has incurred expenditure in executing works required by this notice, or in defraying expenses incurred by the local authority in doing so, is entitled to recover from the lessor such part (if any) of that expenditure as the lessor may agree or as may, in default of agreement between the parties, be determined by the County Court. This procedure does not apply if there is in force a charging order made by the local authority charging on the house expenses incurred by an owner in executing the works, or if there is an application from him for an order awaiting decision by the local authority.

## FORM NO. 3

Section 36.

HOUSING ACT, 1957

NOTICE REQUIRING EXECUTION OF WORKS OR REDUCTION OF NUMBER OF OCCUPANTS OF  
HOUSE LET IN LODGINGSTo \_\_\_\_\_ of \_\_\_\_\_, being the person having  
control\* of the house known as \_\_\_\_\_

Take Notice that—

(1) it appears to the \_\_\_\_\_ Council that the above-mentioned house  
[part of the above-mentioned house, namely \_\_\_\_\_] is, with respect to the  
matters specified in the first schedule to this notice, so far defective having regard to the  
number of [individuals] [individuals and households] [households] accommodated  
therein, as not to be reasonably suitable for occupation by those [individuals] [individuals  
and households] [households];(2) in the opinion of the Council the works specified in the second schedule to this  
notice are required for rendering the premises suitable for such occupation as aforesaid;(3) you are required, in default of the execution of the said works within  
[weeks] [months] from the date of this notice, to take such steps as are reasonably  
open to you (including if necessary the taking of legal proceedings) for securing that  
[the number of individuals accommodated is reduced to \_\_\_\_\_] [the number of  
individuals accommodated is reduced to \_\_\_\_\_] and the number of households  
accommodated is reduced to \_\_\_\_\_ [the number of households accommodated is  
reduced to \_\_\_\_\_].Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_  
Signed \_\_\_\_\_

Clerk of the Local Authority.

\* See section 39 (2).

## FIRST SCHEDULE

## DEFECTS AS TO SUITABILITY FOR OCCUPATION

(Insert description of defects under each of the headings which  
is material)

1. Natural lighting.
2. Ventilation.
3. Water supply.
4. Drainage and sanitary conveniences.
5. Facilities for storage, preparation and cooking of food, and for the disposal of  
waste water.

## SECOND SCHEDULE

## SPECIFICATION OF WORKS

(Insert detailed specification of works to be executed)

## NOTES

A person aggrieved by this notice may appeal against it to the County Court. The appeal must be brought within 21 days after the date of the service of this notice to the County Court within the jurisdiction of which the premises are situate, and if an appeal is brought no proceedings may be taken by the local authority to enforce this notice before the appeal has been finally determined or withdrawn.

The County Court rules provide that an appeal shall be brought by requesting the Registrar of the County Court having jurisdiction in the matter to enter the appeal. A copy of this notice must at the same time be filed in the Court Office together with an additional copy of the request to the Registrar for service on the local authority.

The County Court Rules further provide that the request to the Registrar for entry of the appeal shall be in accordance with the form prescribed by the rules, with such variations as the circumstances may require.

The Rent Acts do not prevent an application being made to the County Court for an order for possession of the house or part of the house, where this is required for the purposes of complying with paragraph (3) of this notice.

A person who fails to comply with any requirement of this notice is guilty of an offence and liable on summary conviction to a fine not exceeding £5; and if the failure continues after conviction he is guilty of a further offence and liable on summary conviction to a fine not exceeding £2 for every day on which the failure continues.

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**APPENDIX II**  
**THE HOUSING (PRESCRIBED FORMS) REGULATIONS, 1957**

FORM NO. 4  
HOUSING ACT, 1957

NOTICE TO ABATE OVERCROWDING IN HOUSE LET IN LODGINGS Section 90.

To \_\_\_\_\_ of \_\_\_\_\_, being the [occupier]  
[person having the control and management] of the premises known as \_\_\_\_\_

Take Notice that—

(1) it appears to the \_\_\_\_\_ Council that excessive numbers of persons are being accommodated in the above-mentioned premises having regard to the rooms available;

(2) in the opinion of the Council the rooms on the premises described in the first schedule to this notice are unsuitable to be occupied as sleeping accommodation, and the rooms described in the second schedule to this notice are unsuitable to be occupied as sleeping accommodation by more than the number of persons therein specified;

(3) you will be guilty of an offence under subsection (4) of section 90 of the Housing Act, 1957, if, after this notice has become operative—

(a) you cause or knowingly permit any room described in the first schedule to this notice to be occupied as sleeping accommodation or any room described in the second schedule to this notice to be occupied by more than the number of persons specified in that schedule; or

(b) you cause or knowingly permit to be accommodated on the premises such a number of persons that it is not possible without contravening sub-paragraph (a) of this paragraph, or using as sleeping accommodation some part of the premises not described in the schedules to this notice, to avoid persons of opposite sexes and over the age of 12 years (other than persons living together as husband and wife) occupying sleeping accommodation in the same room.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

Signed \_\_\_\_\_

Clerk of the Local Authority.

**FIRST SCHEDULE**

(ROOMS UNSUITABLE TO BE OCCUPIED AS SLEEPING ACCOMMODATION)

**SECOND SCHEDULE**

(ROOMS UNSUITABLE TO BE OCCUPIED AS SLEEPING ACCOMMODATION BY MORE THAN THE NUMBER OF PERSONS SPECIFIED)

*Rooms*

*Number of persons\**

\* Special maxima can be prescribed in a case where some or all of the persons occupying a room are under such an age as may be specified.

**NOTES**

A person aggrieved by this notice may appeal against it to the County Court. The appeal must be brought within 21 days after the date of service of this notice to the County Court within the jurisdiction of which the premises to which this notice relates are situate, and if an appeal is brought, no proceedings may be taken by the local authority to enforce the notice before the appeal has been finally determined or withdrawn.

The County Court Rules provide that an appeal shall be brought by requesting the Registrar of the County Court having jurisdiction in the matter to enter the appeal. A copy of this notice must at the same time be filed in the Court Office, together with an additional copy of the request to the Registrar for service on the local authority.

The County Court Rules further provide that the request to the Registrar for entry of the appeal shall be in accordance with the form prescribed by the rules, with such variations as the circumstances may require.

If no appeal is brought within the 21 days referred to above this notice will become operative. If this notice becomes operative and a person commits such an offence as is mentioned in this notice, he will be liable on summary conviction to a fine not exceeding £5, and where the offence of which he was convicted continues after conviction, to a further fine not exceeding £2 for every day on which the offence continues.

FORM NO. 5  
HOUSING ACT, 1957

Section 10 (5).

ORDER DECLARING EXPENSES OF EXECUTION OF WORKS TO BE PAYABLE BY INSTALMENTS

To \_\_\_\_\_ of \_\_\_\_\_, being the [owner] [occupier]  
of the house known as \_\_\_\_\_

Whereas the \_\_\_\_\_ Council have incurred expenses amounting to the sum of £ \_\_\_\_\_ in doing work to the above-mentioned house which was required to be done by a notice duly served under section 9 of the Housing Act, 1957, on the person having control of the house, being work which he failed to do:

Now therefore the Council, by this order, in pursuance of subsection (5) of section 10 of the said Act of 1957, declare that the said expenses amounting to the sum of £ shall be payable by instalments of £ within a period of \* years with interest at the rate of £ per cent. per annum until the whole amount is paid.

The common seal of the Council was hereunto affixed this day of , 19 , in the presence of

\* Not exceeding 30 years.

#### NOTES

The local authority may make the expenses payable by weekly or any other periodic instalments they may consider appropriate, and the rate of interest to be charged is fixed by the Minister of Housing and Local Government with the approval of the Treasury.

Any sum due under this order may be recovered summarily as a civil debt from any owner or occupier of the house, and if recovered from the occupier may be deducted by him from the rent of the house.

A person aggrieved by this order may appeal against it to the County Court. The appeal must be brought within 21 days after the date of the service of the order to the County Court within the jurisdiction of which the house is situate, and if an appeal is brought, no proceedings may be taken by the local authority to enforce the order until the appeal has been finally determined or withdrawn. On an appeal no question can be raised which might have been raised on an appeal against the original notice requiring the execution of works.

The County Court Rules provide that an appeal shall be brought by requesting the Registrar of the County Court having jurisdiction in the matter to enter the appeal. A copy of this order must at the same time be filed in the Court Office, together with an additional copy of the request to the Registrar for service on the local authority.

The County Court Rules further provide that the request to the Registrar for entry of the appeal shall be in accordance with the form prescribed by the rules, with such variations as the circumstances may require.

#### FORM NO. 6

##### Section 16.

##### HOUSING ACT, 1957

##### NOTICE OF TIME AND PLACE FOR CONSIDERATION OF CONDITION OF HOUSE LIABLE TO BE MADE SUBJECT TO DEMOLITION OR CLOSING ORDER

To of , being the person having control\* of the house known as , and to of , being the owner[s] of the said house, and to of , being the mortgagee[s] of the said house.

Take Notice that the Council are satisfied that the above-mentioned house is unfit for human habitation and is not capable of being made fit at reasonable cost, and that the condition of the house, and any offer with respect to the carrying out of works, or the future use of the house, which you may wish to submit will be considered by the Council at on the † day of , 19 , at o'clock when you will be entitled to be heard.

If you intend to submit an offer with respect to the carrying out of works, you are required to serve notice in writing upon the Council stating your intention within 21 days from the date of service of this notice on you, and if you give such notice you will be required before the meeting mentioned above to submit a list of the works which you offer to carry out.

##### If you fail either—

- (a) to notify the Council within the period of 21 days referred to above of your intention to make an offer to carry out works, and within such reasonable period as the Council may allow submit to them a list of the works which you offer to carry out; or
- (b) to make an offer before or at the meeting mentioned above as to the future use of the house,

the Council will be bound to make an order for the demolition or closing of the house or to purchase it for providing temporary housing accommodation.

Dated this day of , 19 .

Signed  
Clerk of the Local Authority.

\* See section 39 (2).

† In any case at least 21 days from date of service of notice, but later if necessary to ensure a reasonable period for submission of list of works in the event of notice of intention to submit an offer being served on the Council.

FORM NO. 7

HOUSING ACT, 1957

ORDER FOR DEMOLITION OF A HOUSE

Section 17 (1).

Whereas the Council, being satisfied that the house known as \_\_\_\_\_ is unfit for human habitation and is not capable of being made fit at reasonable cost, have complied with the provisions of section 16 of the Housing Act, 1957, in relation to the house;

[And Whereas no such undertaking in relation to the house as is mentioned in the said section 16 has been accepted:]

[And Whereas such an undertaking in relation to the house as is mentioned in the said section 16, which was accepted on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, has been broken:]

Now Therefore the Council in pursuance of section 17 of the Housing Act, 1957, hereby order as follows:—

(1) the house shall be vacated within \_\_\_\_\_ \*days from the date on which this order becomes operative;

(2) the house shall be demolished within six† weeks from the expiration of the last-mentioned period, or, if it is not vacated before the expiration of that period, within six† weeks from the date on which it is vacated.

The common seal of the \_\_\_\_\_ Council was hereunto affixed  
this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in the presence of \_\_\_\_\_

\* This period must not be less than 28 days.

† A longer period may be allowed.

NOTES

A person aggrieved by this order may appeal against it to the County Court. The appeal must be brought within 21 days after the date of the service of the order to the County Court within the jurisdiction of which the house is situate, and if an appeal is brought, no proceedings may be taken by the local authority to enforce the order until the appeal has been finally determined or withdrawn. An appeal cannot be brought by a person in occupation of the house under a lease or agreement of which the unexpired term does not exceed three years.

The County Court Rules provide that an appeal shall be brought by requesting the Registrar of the County Court having jurisdiction in the matter to enter the appeal. A copy of this order must at the same time be filed in the Court Office together with an additional copy of the request to the Registrar for service on the local authority.

The County Court Rules further provide that the request to the Registrar for entry of the appeal shall be in accordance with the form prescribed by the rules, with such variations as the circumstances may require.

This order will become operative 21 days after the date of the service of the order unless an appeal has been brought against it. If an appeal is brought, the order will not become operative until the appeal is finally determined or withdrawn.

A person who knowing that this order has become operative enters into occupation of the house to which it applies, or any part thereof, after the date by which the order requires the house to be vacated, or permits any other person to enter into such occupation after that date, is liable on summary conviction to a fine not exceeding £20, and to a further fine of £5 for every day, or part of a day, on which the occupation continues after conviction.

If the owner of the house to which this order relates submits proposals to the local authority for the execution by him of works designed to secure the reconstruction, enlargement or improvement of the house, or of any buildings of which the house is one, and the local authority are satisfied that the result of the works will be the provision of one or more houses fit for human habitation, the authority have power to extend for such period as they may specify the time within which the owner of the house is required to demolish it in order that he may have an opportunity of carrying out the works. The authority have a discretionary power of further extending the time. If the works are completed to the satisfaction of the authority, they must revoke this order. This will not prevent them from commencing proceedings subsequently in relation to the making of a demolition order if the house again becomes unfit for human habitation.

*Compensation*

If a person interested in the house to which this order applies thinks that notwithstanding its unfitness the house has been well maintained by him or at his expense, he may within three months after the service of a copy of the order on persons interested make a representation to the local authority accordingly. A form of representation may be obtained at the Council Offices. A person on whom a copy of this order is served who has a tenant on a monthly or lesser tenancy or a statutory tenant in occupation of the house or any part of it is requested to bring this paragraph to the notice of any such occupier.

Unless the local authority notify a person making a representation that they do not consider that the house has been well maintained, he will, on the vacation of the house, be entitled to a payment from them in accordance with section 30 of the Housing Act, 1957. If the local authority give him notice that no payment falls to be made to him, and he is aggrieved by that notice, he can within 21 days after the date of its service on him appeal to the County Court within the jurisdiction of which the house is situate, unless he agrees with the local authority to submit the matter to arbitration. (See the second and third paragraphs of these Notes as to the requirements of the County Court Rules.)

If this order becomes operative, and the house has been occupied for business purposes, compensation may become payable on the vacation of the house in pursuance of the order, provided that certain conditions are fulfilled. Broadly these are that the house must have been wholly or partly occupied for business purposes by a person having a freehold interest or a leasehold interest for more than a year at the date of the making of the order and either on 13th December, 1955, or at all times during the ten years preceding the date of the making of the order.

Compensation may also become payable if the house is vacated in pursuance of the order before 13th December, 1965, and has been occupied as a private dwelling, provided that certain other conditions are fulfilled. Broadly these are that the house must have been wholly or partly occupied as a private dwelling on 13th December, 1955, by a person having an interest of the kind mentioned in the preceding paragraph or a member of his family, and must have been purchased by that person on or after 1st September, 1939, and before 13th December, 1955 (members of the armed forces posted away, or persons changing their place of employment or occupation being treated in certain cases as having continued in occupation).

Any person on whom a copy of this order is served who thinks that if the order becomes operative he may have a claim to compensation on the vacation of the house should notify the clerk of the local authority in writing of the facts on which he relies, as it is important to establish the facts relating to ownership or occupation as soon as possible.

The compensation if it becomes payable is the market value for its existing use of the interest of the person entitled to compensation, less the value of his interest in the site, which he retains after the demolition of the house. A person who is entitled to such compensation cannot also receive a payment for good maintenance.

## FORM NO. 8

Sections 25 and 44 (7).

## HOUSING ACT, 1957

NOTICE OF INTENTION TO CLEANSE BUILDING TO WHICH A DEMOLITION ORDER OR  
CLEARANCE ORDER APPLIES

To\* of , the owner of  
the building known as , being premises to which a  
[demolition order made] [clearance order confirmed] on the day of  
, 19 , applies.

Take Notice that the Council in pursuance of their  
powers under [section 25] [sections 25 and 44 (7)] of the Housing Act, 1957, intend to  
cleanse the above-mentioned premises from vermin before they are demolished.

Date this day of , 19 .

Signed  
Clerk of the Local Authority.

\* To be served between date on which order is made or confirmed and date on which it becomes operative.

## NOTE

After the service of this notice the demolition of the premises must not be begun, or, if begun, be continued until the local authority have served a further notice authorising the demolition to proceed. At any time after the order has become operative and the premises have been vacated the local authority may enter and carry out such work as they think requisite for the purpose of destroying or removing vermin. If at any time after the premises have been vacated the local authority have not done this, the owner can serve notice in writing on them requiring them to carry out the work within 14 days, at the end of which period he will be free to proceed with the demolition whether the work has been completed or not.

## FORM NO. 9

Sections 25 and 44 (7).

## HOUSING ACT, 1957

NOTICE TO PROCEED WITH DEMOLITION AFTER A BUILDING HAS BEEN CLEANSED

To of , being the owner  
of the premises known as

Take Notice that—

(1) the Council have completed the cleansing of the above-mentioned premises which are subject to a [demolition order] [clearance order] which

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**APPENDIX II**  
**THE HOUSING (PRESCRIBED FORMS) REGULATIONS, 1957**

became operative on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
and in relation to which a notice of intention to cleanse was served upon you by the  
Council on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_;

(2) you are hereby authorised to proceed with the demolition of the said premises  
in accordance with the said order; and

(3) you are accordingly required to proceed with the demolition and to complete  
it within six weeks from the date of the service of this notice on you or such longer  
period (if any) as may have been allowed by the said order.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Signed \_\_\_\_\_  
Clerk of the Local Authority.

FORM NO. 10

HOUSING ACT, 1957

Section 22.

NOTICE TO OCCUPIER TO QUIT HOUSE AFTER DEMOLITION ORDER HAS BECOME OPERATIVE

To \_\_\_\_\_, the occupier of the house known as \_\_\_\_\_

Take Notice that—

(1) on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the  
Council duly made a demolition order which requires—

(a) the above-mentioned house to be vacated within \_\_\_\_\_ days from the  
date on which the order becomes operative; and

(b) the said house to be demolished within \_\_\_\_\_ weeks from the end of  
the period mentioned in (a) above, or if the house is not vacated before the  
end of that period, within \_\_\_\_\_ weeks from the date on which it is vacated;

(2) the demolition order became operative on the \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_;

(3) in pursuance of section 22 of the Housing Act, 1957, you are hereby required to  
quit the said house before the \_\_\_\_\_\* day of \_\_\_\_\_, 19\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Signed \_\_\_\_\_  
Clerk of the Local Authority.

\* 28 days from service of this notice or end of period mentioned in demolition order, if later.

**NOTES**

If at any time after the date on which this notice requires the house to be vacated  
any person is in occupation of the house, or of any part thereof, the local authority  
or any owner of the house may complain to a magistrates court, who are thereupon  
required to order vacant possession of the house to be given to the person making the  
complaint.

A person who knowing that the demolition order has become operative enters into  
occupation of the house to which it applies, or any part thereof, after the date by which  
the order requires the house to be vacated, or permits any other person to enter into  
such occupation after that date, is liable on summary conviction to a fine not exceeding  
£20, and to a further fine of £5 for every day, or part of a day, on which the occupation  
continues after conviction.

FORM NO. 11

HOUSING ACT, 1957

Section 17 (2).

NOTICE OF DETERMINATION BY LOCAL AUTHORITY TO PURCHASE HOUSE IN LIEU OF MAKING  
A DEMOLITION ORDER

To \_\_\_\_\_ of \_\_\_\_\_, being the owner of the house known as \_\_\_\_\_

Take Notice that—

(1) the \_\_\_\_\_ Council, having been satisfied that the above-mentioned house  
was unfit for human habitation and was not capable of being rendered fit at reasonable  
expense, and having complied with the provisions of section 16 of the Housing Act,  
1957, in relation to the house, [have not accepted any such] [accepted such an] under-  
taking as is mentioned in the said section [the terms of which have been broken];

(2) it appears to the Council that the house is or can be rendered capable of providing  
accommodation which is adequate for the time being; and

(3) the Council have accordingly determined to purchase the house under subsection  
(2) of section 17 of the Housing Act, 1957, in lieu of making a demolition or closing  
order in respect thereof.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Signed \_\_\_\_\_  
Clerk of the Local Authority.

## NOTES

A person aggrieved by this notice may appeal against it within 21 days after the date of the service of the notice to the County Court within the jurisdiction of which the house is situate. An appeal cannot be brought by a person in occupation of the house under a lease or agreement of which the unexpired term does not exceed three years.

The County Court Rules provide that an appeal shall be brought by requesting the Registrar of the County Court having jurisdiction in the matter to enter the appeal. A copy of this notice must at the same time be filed in the Court Office together with an additional copy of the request to the Registrar for service on the local authority.

The County Court Rules further provide that the request to the Registrar for entry of the appeal shall be in accordance with the form prescribed by the rules, with such variations as the circumstances may require.

This notice will become operative 21 days after the date of the service of the notice unless an appeal has been brought against it. If an appeal is brought, the notice will not become operative until the appeal is finally determined or withdrawn. When the notice has become operative the local authority may purchase the house by agreement or may be authorised by the Minister of Housing and Local Government to purchase it compulsorily.

*Compensation*

If the house is purchased compulsorily, the compensation payable is the value of the land as a site cleared of buildings and available for development in accordance with the requirements of the building byelaws for the time being in force in the district.

If any person interested in the house to which this notice relates thinks that notwithstanding its unfitness the house has been well maintained by him or at his expense, he may, within three months after the service of this notice make a representation to the local authority accordingly. A form of representation may be obtained at the Council Offices. A person on whom this notice is served who has a tenant on a monthly or lesser tenancy or a statutory tenant in occupation of the house or any part of it is requested to bring this paragraph to the notice of any such occupier.

Unless the local authority notify a person making a representation that they do not consider that the house has been well maintained, he will be entitled to a payment from them in accordance with section 30 of the Housing Act, 1957. If the local authority give him notice that no payment falls to be made to him, and he is aggrieved by that notice, he can within 21 days after the date of its service on him appeal to the County Court within the jurisdiction of which the house is situate, unless he agrees with the local authority to submit the matter to arbitration. (See the second and third paragraphs of these Notes as to the requirements of the County Court Rules.)

Compensation based on market value may become payable if the house has been occupied for business purposes, provided that certain conditions are fulfilled. Broadly these are that the house must have been wholly or partly occupied for business purposes by a person having a freehold interest or a leasehold interest for more than a year at the date of the making of the compulsory purchase order and either on 13th December, 1955, or at all times during the ten years preceding the date of the making of the order.

Compensation based on market value may also become payable if the house is purchased in pursuance of the order before 13th December, 1965, and has been occupied as a private dwelling, provided that certain other conditions are fulfilled. Broadly these are that the house must have been wholly or partly occupied as a private dwelling on 13th December, 1955, by a person having an interest of the kind mentioned in the preceding paragraph or a member of his family, and must have been purchased by that person on or after 1st September, 1939, and before 13th December, 1955 (members of the armed forces posted away, or persons changing their place of employment or occupation being treated in certain cases as having continued in occupation).

If a person thinks that, if this notice becomes operative, he may have a claim to this further compensation on the compulsory purchase of the house, he should notify the clerk of the local authority in writing of the facts on which he relies, as it is important to establish the facts relating to ownership or occupation as soon as possible.

The further compensation, if it becomes payable, is the market value for its existing use of the interest of the person entitled to compensation, less site value. A person entitled to such compensation cannot also receive a payment for good maintenance.

## FORM NO. 12

## Section 18.

## HOUSING ACT, 1957

NOTICE OF TIME AND PLACE FOR CONSIDERATION OF MATTERS RELATING TO THE MAKING  
OF A CLOSING ORDER IN RESPECT OF PART OF A BUILDING

To \_\_\_\_\_ of \_\_\_\_\_, being the person  
having control\* of the part of the building known as \_\_\_\_\_,  
which comprises \_\_\_\_\_, and to  
of \_\_\_\_\_, being the owner[s] of the premises, and to  
\_\_\_\_\_ of \_\_\_\_\_, being the mortgagee[s] of  
the premises.

Take Notice that the Council are satisfied that the above-mentioned part of the said building [which is used, or is suitable for use, as a dwelling] [which is an underground room such as is referred to in subsection (2) of section 18 of the Housing Act, 1957,] is unfit for human habitation and is not capable of being rendered fit at reasonable expense, and that the condition thereof, and any offer with respect to the carrying out of works, or the future use thereof, which you may wish to submit, will be considered by the Council at a meeting at on the                      † day of                      , 19                      , at                      o'clock when you will be entitled to be heard.

If you intend to submit an offer with respect to the carrying out of works, you are required to serve upon the Council notice in writing stating your intention within 21 days from the date of service of this notice on you, and if you give such notice you will be required before the meeting mentioned above to submit to them a list of the works which you offer to carry out.

If you fail either—

(a) to notify the Council within the period of 21 days referred to above of your intention to make an offer to carry out works, and within such reasonable period as the Council may allow submit to them a list of the works which you offer to carry out; or

(b) to make an offer before or at the meeting mentioned above as to the future use of the part of the building to which this notice relates,

the Council will be bound to make an order for the closing thereof.

Dated this                      day of                      , 19                      .  
Signed

Clerk of the Local Authority.

\* See section 39 (2).

† In any case at least 21 days from date of service of notice, but later if necessary to ensure a reasonable period for submission of list of works in the event of notice of intention to submit an offer being served on the Council.

#### FORM NO. 13

#### HOUSING ACT, 1957

#### Section 18.

#### CLOSING ORDER IN RESPECT OF PART OF A BUILDING

Whereas the Council, being satisfied that the part of the building known as                      , which comprises                      , and [which is used, or is suitable for use, as a dwelling] [which is an underground room such as is referred to in subsection (2) of section 18 of the Housing Act, 1957,] is unfit for human habitation and is not capable of being rendered fit at reasonable expense, have complied with the provisions of section 16 of the Housing Act, 1957, in relation to the premises; [And Whereas no such undertaking in relation to the premises as is mentioned in the said section 16 has been accepted:]

[And Whereas such an undertaking in relation to the premises as is mentioned in the said section 16, which was accepted on the                      day of                      , 19                      , has been broken:]

Now Therefore the Council in pursuance of section 18 of the Housing Act, 1957, by this order prohibit the use of the above-mentioned [part of the said building] [room] for any purpose other than a purpose approved by the Council and hereby approve the following purpose[s], namely as

The common seal of the Council was hereunto  
affixed this                      day of                      , 19                      , in the  
presence of                     

#### NOTES

A person aggrieved by this order may appeal against it to the County Court. The appeal must be brought within 21 days after the date of the service of the order to the County Court within the jurisdiction of which the premises to which the order relates are situate, and if an appeal is brought no proceedings may be taken by the local authority to enforce the order until the appeal has been finally determined or withdrawn. An appeal cannot be brought by a person who is in occupation of the premises under a lease or agreement of which the unexpired term does not exceed three years.

This order will become operative 21 days after the date of the service of the order unless an appeal has been brought against it. If an appeal is brought, the order will not become operative until the appeal is finally determined or withdrawn.

After this order has become operative, the local authority must not unreasonably refuse their approval of a proposed use of the premises to which it relates, and a person aggrieved by a refusal may within 21 days after the refusal appeal to the County Court within the jurisdiction of which the premises are situate.

The local authority must determine this order if at any time after it has become operative they are satisfied that the premises to which it relates have been rendered

fit for human habitation. A person aggrieved by their refusal to determine the order (except a person in occupation of the premises under a lease or agreement of which the unexpired term does not exceed three years) may within 21 days after the refusal appeal to the County Court.

The County Court Rules provide that an appeal shall be brought by requesting the Registrar of the County Court having jurisdiction in the matter to enter the appeal. A copy of this order (and in the case of a refusal, a copy of the refusal) must at the same time be filed in the Court Office together with an additional copy of the request to the Registrar for service on the local authority.

The County Court Rules further provide that the request to the Registrar for entry of the appeal shall be in accordance with the form prescribed by the rules, with such variations as the circumstances may require.

A person who knowing that this order has become operative uses the premises to which it relates in contravention of the terms of the order, or permits them to be so used, is liable on summary conviction to a fine not exceeding £20 and to a further fine of £5 for every day or part of a day on which he so uses them or permits them to be so used after conviction.

## FORM NO. 14

Proviso to section 17 (1). HOUSING ACT, 1957

## CLOSING ORDER IN LIEU OF DEMOLITION ORDER IN RESPECT OF A HOUSE

Whereas the Council, being satisfied that the house known as \_\_\_\_\_, is unfit for human habitation and is not capable of being made fit at reasonable cost, have complied with the provisions of section 16 of the Housing Act, 1957, in relation to the house;

[And Whereas no such undertaking in relation to the house as is mentioned in the said section 16 has been accepted;]

[And Whereas such an undertaking in relation to the house as is mentioned in the said section 16, which was accepted on \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, has been broken;]

And Whereas the Council would be required, apart from the provisions of the proviso to subsection (1) of section 17 of the said Act, to make an order for the demolition of the house, but the Council consider it inexpedient to make a demolition order having regard to the effect of the demolition of the house upon other houses or buildings:

Now Therefore the Council in exercise of the power conferred on them for that purpose by the proviso to subsection (1) of section 17 of the Housing Act, 1957, by this order prohibit the use of the above-mentioned house for any purpose other than a purpose approved by the Council and hereby approve the following purpose[s], namely as

The common seal of the Council was hereunto  
affixed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in the  
presence of \_\_\_\_\_

## NOTES

A person aggrieved by this order may appeal against it to the County Court. The appeal must be brought within 21 days after the date of the service of the order to the County Court within the jurisdiction of which the house is situate, and if an appeal is brought, no proceedings may be taken by the local authority to enforce the order until the appeal has been finally determined or withdrawn. An appeal cannot be brought by a person in occupation of the house under a lease or agreement of which the unexpired term does not exceed three years.

This order will become operative 21 days after the date of the service of the order unless an appeal has been brought against it. If an appeal is brought the order will not become operative until the appeal is finally determined or withdrawn.

After this order has become operative, the local authority must not unreasonably refuse their approval of a proposed use of the house to which it relates, and a person aggrieved by a refusal may within 21 days after the refusal appeal to the County Court within the jurisdiction of which the house is situate.

The local authority must determine this order if at any time after it has become operative they are satisfied that the house to which it relates has been rendered fit for human habitation. A person aggrieved by their refusal to determine the order (except a person in occupation of the house under a lease or agreement of which the unexpired term does not exceed three years) may appeal to the County Court.

The County Court Rules provide that an appeal shall be brought by requesting the Registrar of the County Court having jurisdiction in the matter to enter the appeal. A copy of this order (and in the case of a refusal a copy of the refusal) must at the same time be filed in the Court Office together with an additional copy of the request to the Registrar for service on the local authority.

The County Court Rules further provide that the request to the Registrar for entry of the appeal shall be in accordance with the form prescribed by the rules, with such variations as the circumstances may require.

This order may at any time be revoked by the local authority, who may then make a demolition order without prior notice. A copy of any such order made will be served upon interested persons.

A person who knowing that this order has become operative uses the house to which it relates in contravention of the terms of the order, or permits it to be so used, is liable on summary conviction to a fine not exceeding £20 and to a further fine of £5 for every day or part of a day on which he so uses it or permits it to be so used after conviction.

### *Compensation*

If a person interested in the house to which this order applies thinks that notwithstanding its unfitness the house has been well maintained by him or at his expense, he may within three months after the service of a copy of the order on persons interested make a representation to the local authority accordingly. A form of representation may be obtained from the Council Offices. A person on whom this order is served who has a tenant on a monthly or lesser tenancy or a statutory tenant in occupation of the house or any part of it is requested to bring this paragraph to the notice of any such occupier.

Unless the local authority notify a person making a representation that they do not consider that the house has been well maintained, he will on the vacation of the house be entitled to a payment from them in accordance with section 30 of the Housing Act, 1957. If the local authority give him notice that no payment falls to be made to him, and he is aggrieved by that notice, he can within 21 days after the date of its service on him appeal to the County Court within the jurisdiction of which the house is situate, unless he agrees with the local authority to submit the matter to arbitration. (See the seventh and eighth paragraphs of these Notes as to the requirement of the County Court Rules.)

If this order becomes operative, compensation may become payable if the house is vacated in pursuance of the order before 13th December, 1965, and the house has been occupied as a private dwelling, provided that certain conditions are fulfilled. Broadly these are that the house must have been wholly or partly occupied as a private dwelling on 13th December, 1955, by a person having a freehold interest or a leasehold interest for more than a year, or a member of his family, and must have been purchased by that person on or after 1st September, 1939, and before 13th December, 1955 (members of the armed forces posted away or persons changing their place of employment or occupation being treated in certain cases as having continued in occupation).

Any person on whom a copy of this order is served who thinks that if the order becomes operative he may have a claim to compensation on the vacation of the house should notify the clerk of the local authority in writing of the facts on which he relies, as it is important to establish the facts relating to ownership or occupation as soon as possible.

The compensation if it becomes payable is the market value for its existing use of the interest of the person entitled to compensation, less the value of his interest in the site, which he retains after the closing order becomes operative. A person entitled to such compensation cannot also receive a payment for good maintenance.

### FORM NO. 15

### HOUSING ACT, 1957

#### CLEARANCE ORDER

#### Section 44.

Whereas by a resolution passed on the                      day of                      , 19                      , the Council declared a certain area which they had duly caused to be defined on a map to be a clearance area;

And Whereas by a resolution passed on the                      day of                      , 19                      , the Council determined to order the demolition of the buildings hereinafter referred to which are situate within the said clearance area:

Now Therefore the Council, in pursuance of their powers under section 44 of the Housing Act, 1957, hereby order as follows:—

1. The buildings specified in the schedule hereto and delineated and shown [coloured pink] on a map marked "Map referred to in the                      Clearance Order, 19                      ", sealed with the common seal of the Council and deposited at the offices of the Council, shall be demolished.
2. For the purposes of demolition each such building shall be vacated on or before the expiration of the period specified in the sixth column of the schedule hereto opposite the number and description of that building in columns 1 and 2.
3. This order may be cited as the                      Clearance Order, 19                      .

SCHEDULE

Reference numbers on map	Description of buildings	Owners or reputed owners	Lessees or reputed lessees	Occupiers (except tenants for a month or less)	Period from the date when the order becomes operative within which the building is to be vacated*
(1)	(2)	(3)	(4)	(5)	(6)

\* A period must be entered in this column even for a building known to be vacant.

The Common seal of the Council was hereunto affixed this day of , 19 , in the presence of

FORM NO. 16

Section 46 (1), (2) and (3). HOUSING ACT, 1957

CLEARANCE ORDER PROVIDING FOR POSTPONEMENT OF DEMOLITION

Whereas by a resolution passed on the day of , 19 , the Council declared a certain area which they had duly caused to be defined on a map to be a clearance area;

And Whereas by a resolution passed on the day of , 19 , the Council determined to order the demolition of buildings in the said clearance area, including the [house] [houses] hereinafter referred to;

And Whereas the Council are of opinion that the [house is] [houses are] or can be rendered capable of providing accommodation which is adequate for the time being, and that the [house] [houses] ought not to be demolished for the time being but ought to be retained for temporary use for housing purposes;

And Whereas the Council [have acquired] [are satisfied that by the time this order becomes operative they will have acquired] such rights under [a tenancy] [tenancies] of the [house] [houses] as will enable them to retain the [house] [houses] for use for housing purposes until they determine that [it is] [they are] no longer required for such use and to deal with [it] [them] in all respects as if [it was a house] [they were houses] on land in a clearance area belonging to them:

Now Therefore the Council, in pursuance of their powers under section 46 of the Housing Act, 1957, hereby order as follows:—

1. The [house] [houses] specified in the schedule hereto and delineated and shown [coloured pink] on a map marked " Map referred to in the Clearance Order, 19 " , sealed with the common seal of the Council and deposited at the offices of the Council, shall be demolished.
2. The demolition of the [house] [houses] shall be postponed until the Council determine that the [house is] [houses are] no longer required for use for housing purposes.
3. This order may be cited as the Clearance Order, 19 .

SCHEDULE

Reference number on map	Description of houses	Owners or reputed owners	Lessees or reputed lessees	Occupiers (except tenants for a month or less)
(1)	(2)	(3)	(4)	(5)

The common seal of the Council was hereunto affixed this day of , 19 , in the presence of

FORM NO. 17

HOUSING ACT, 1957

Paragraph 3 (1) (b) of  
Fifth Schedule.

PERSONAL NOTICE OF THE MAKING OF A CLEARANCE ORDER FOR DEMOLITION OF BUILDINGS

To \_\_\_\_\_ of \_\_\_\_\_

Take Notice that—

(1) the \_\_\_\_\_ Council, in pursuance of their powers under section 44 of the Housing Act, 1957, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, made the Clearance Order, 19\_\_\_\_, which is about to be submitted to the Minister of Housing and Local Government for confirmation, ordering the demolition of the buildings described in the schedule to this notice;

(2) copies of the order and of the map referred to therein and a map of the clearance area have been deposited at \_\_\_\_\_, and may be seen at all reasonable hours;

(3) the buildings included in the clearance area to which the clearance order relates in which you are interested as [owner] [mortgagee] [lessee] [occupier] are \_\_\_\_\_;

(4) the order requires that for the purpose of demolition these buildings shall be vacated within \_\_\_\_\_ [weeks] [months] after the order becomes operative;

(5) any objection to the order stating the grounds of the objection must be made in writing to the Minister of Housing and Local Government, Whitehall, S.W.1, before the \_\_\_\_\_ \*day of \_\_\_\_\_, 19\_\_\_\_.

SCHEDULE

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Signed \_\_\_\_\_

Clerk of the Local Authority.

\* A reasonable period should be allowed, and in any case not less than 14 days from date of service of notice.

NOTES

If no objection is duly made by any of the persons upon whom notices are required to be served, or if all objections are withdrawn, the Minister may, if he thinks fit, confirm the clearance order with or without modification; but in any other case he is required, before confirming the order, to cause a public local inquiry to be held or to afford the objector an opportunity of appearing before and being heard by a person appointed by him for that purpose, and to consider any objection not withdrawn and the report of the person who held the inquiry or the person appointed to hear the objector, and he may then confirm the order with or without modification.

If this order is confirmed by the Minister of Housing and Local Government it will become operative at the expiration of six weeks from the date on which notice of its confirmation is published in accordance with the provisions of the Housing Act, 1957, but if proceedings in the High Court are commenced within that period for questioning the validity of the order, the court may, if satisfied that the order is not within the powers of the Act or that the interests of the applicant have been substantially prejudiced by any requirement of the Act not having been complied with, quash the order either generally or in so far as it affects any property of the applicant.

If this order becomes operative, the owner or owners of any building to which the order applies will have to demolish that building before the expiration of six weeks from the date on which the building is required by the order to be vacated or, if it is not vacated until after that date, before the expiration of six weeks from the date on which it is vacated. In either case the period of six weeks may be extended by the local authority.

*Compensation*

If the order is confirmed the Minister of Housing and Local Government may direct the local authority to make a payment in accordance with section 60 of the Housing Act, 1957, in respect of a house to which the order will apply if he is satisfied that notwithstanding its unfitness it has been well maintained. If a person who has an interest in the house thinks that the house has been well maintained by him or at his expense, he should make a representation in writing to the Minister of Housing and Local Government, Whitehall, S.W.1, before the end of the objection period specified in paragraph (5) of this notice. A form of representation may be obtained from the Council Offices. Persons on whom this notice is served who have tenants on a monthly or lesser tenancy or statutory tenants in occupation of houses in respect of which the notice is served are requested to bring this paragraph to the notice of those occupiers.

If this order becomes operative, and a house to which the order applies has been occupied for business purposes, compensation may become payable on the vacation of the house in pursuance of the order, provided that certain conditions are fulfilled. Broadly these are that the house must have been wholly or partly occupied for business

purposes by a person having a freehold interest or a leasehold interest for more than a year at the date of the making of the order and either on 13th December, 1955, or at all times during the ten years preceding the date of the making of the order.

Compensation may also become payable if the house is vacated in pursuance of the order before 13th December, 1965, and has been occupied as a private dwelling, provided certain other conditions are fulfilled. Broadly these are that the house must have been wholly or partly occupied as a private dwelling on 13th December, 1955, by a person having an interest of the kind mentioned in the preceding paragraph or a member of his family, and must have been purchased by that person on or after 1st September, 1939, and before 13th December, 1955 (members of the armed forces posted away, or persons changing their place of employment or occupation being treated in certain cases as having continued in occupation).

Any person on whom this notice is served who thinks that if the order becomes operative he may have a claim to compensation on the vacation of the house should notify the clerk of the local authority in writing of the facts on which he relies. The question whether any compensation will be payable will not be settled at this stage, but it is important to establish the facts relating to ownership or occupation as soon as possible.

The compensation if it becomes payable is the market value for its existing use of the interest of the person entitled to compensation, less the value of his interest in the site, which he retains after the order becomes operative. A person who is entitled to such compensation cannot also receive a payment for good maintenance.

#### FORM NO. 18

Section 44 and paragraph HOUSING ACT, 1957  
3 (1) (a) of ADVERTISEMENT OF MAKING OF CLEARANCE  
Fifth Schedule. ORDER FOR DEMOLITION OF BUILDINGS

Notice is hereby given that the Council in pursuance of their powers under section 44 of the Housing Act, 1957, on the day of 19, made the Clearance Order, 19, which is about to be submitted to the Minister of Housing and Local Government for confirmation, ordering the demolition of the buildings described in the schedule to this notice and their vacation within the periods respectively specified in the order.

Copies of the said order and of the map referred to therein, and a map of the clearance area have been deposited at , and may be seen at all reasonable hours.

#### SCHEDULE

Dated this day of Signed, 19 .  
Clerk of the Local Authority.

#### FORM NO. 19

Section 46 and paragraph HOUSING ACT, 1957  
3 (1) (b) of PERSONAL NOTICE OF MAKING OF CLEARANCE  
Fifth Schedule. ORDER FOR DEMOLITION OF HOUSES BUT POSTPONING  
DEMOLITION

To of .  
Take Notice that—

(1) the Council, in pursuance of their powers under section 46 of the Housing Act, 1957, on the day of 19, made the Clearance Order, 19, which is about to be submitted to the Minister of Housing and Local Government for confirmation, ordering the demolition of the houses described in the schedule to this notice;

(2) copies of the order and of the map referred to therein and a map of the clearance area have been deposited at , and may be seen at all reasonable hours;

(3) the [house] [houses] to which the order relates in which you are interested as [owner] [mortgagee] [lessee] [occupier] [is] [are]

(4) the order requires the demolition of the houses but provides that the demolition of the [house] [houses] shall be postponed until the Council determine that [it is] [they are] no longer required for use by them for housing purposes. When this happens the Council will serve notice of the period (not being less than six weeks) within which the house is required to be demolished;

(5) any objection to the order stating the grounds of the objection must be made in writing to the Minister of Housing and Local Government, Whitehall, London, S.W.1, before the \* day of 19 .

SCHEDULE

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
Signed \_\_\_\_\_  
Clerk of the Local Authority.

\* A reasonable period should be allowed, and in any case not less than 14 days.

NOTES

If no objection is duly made by any of the persons upon whom notices are required to be served, or if all objections are withdrawn, the Minister may, if he thinks fit, confirm the order with or without modification; but in any other case he is required, before confirming the order, to cause a public local inquiry to be held or to afford the objector an opportunity of appearing before and being heard by a person appointed by him for that purpose, and to consider any objections not withdrawn and the report of the person who held the inquiry or the person appointed to hear the objector and he may then confirm the order with or without modification.

If the order is confirmed by the Minister it will become operative at the expiration of six weeks from the date on which notice of its confirmation is published in accordance with the provisions of the Housing Act, 1957, but if proceedings in the High Court are commenced within that period for questioning the validity of the order, the Court may, if satisfied that the order is not within the powers of the Act or that the interests of the applicant have been substantially prejudiced by any requirement of the Act not having been complied with, quash the order either generally or in so far as it affects any property of the applicant.

*Compensation*

If the order is confirmed the Minister of Housing and Local Government will have power to direct the local authority to make a payment in accordance with section 60 of the Housing Act, 1957, in respect of a house to which the order will apply on the order becoming operative if notwithstanding its unfitness he is satisfied that it has been well maintained. If a person who has an interest in the house but who will not be entitled to compensation thinks that the house has been well maintained by him or at his expense, he should make a representation in writing to the Minister of Housing and Local Government, Whitehall, S.W.1, before the end of the objection period specified in paragraph (5) of this notice. A form of representation may be obtained from the Council Offices. Persons on whom this notice is served who have tenants on a monthly or lesser tenancy or statutory tenants in occupation of houses or parts of houses in respect of which the notice is served are requested to bring this paragraph to the notice of those occupiers.

If this order becomes operative, and a house to which the order applies has been occupied for business purposes, compensation may become payable on the vacation of the house in pursuance of the order, provided that certain conditions are fulfilled. Broadly these are that the house must have been wholly or partly occupied for business purposes by a person having a freehold interest or leasehold interest for more than a year at the date of the making of the order and either on 13th December, 1955, or at all times during the ten years preceding the date of the making of the order.

Compensation may also become payable if the house is vacated in pursuance of the order before 13th December, 1965, and has been occupied as a private dwelling, provided that certain other conditions are fulfilled. Broadly these are that the house must have been wholly or partly occupied as a private dwelling on 13th December, 1955, by a person having an interest of the kind mentioned in the preceding paragraph or a member of his family, and must have been purchased by that person on or after 1st September, 1939, and before 13th December, 1955 (members of the armed forces posted away, or persons changing their place of employment or occupation being treated in certain cases as having continued in occupation).

Any person on whom this notice is served who thinks that if the order becomes operative he may have a claim to compensation on the vacation of the house should notify the clerk of the local authority in writing of the facts on which he relies. The question whether any compensation will be payable will not be settled at this stage, but it is important to establish the facts relating to ownership or occupation as soon as possible.

The compensation if it becomes payable is the market value for its existing use of the interest of the person entitled to compensation, less the value of his interest in the site, which he retains after the order becomes operative. A person who is entitled to such compensation cannot also receive a payment for good maintenance.

FORM NO. 20

HOUSING ACT, 1957

ADVERTISEMENT OF MAKING OF CLEARANCE ORDER  
FOR DEMOLITION OF HOUSES BUT POSTPONING  
DEMOLITION

Section 46 and  
paragraph  
3 (1) (a) of Fifth  
Schedule.

Notice is hereby given that the \_\_\_\_\_ Council, in pursuance of their  
powers under section 46 of the Housing Act, 1957, on the \_\_\_\_\_ day of \_\_\_\_\_,

19 , made the Clearance Order, 19 , which is about to be submitted to the Minister of Housing and Local Government for confirmation, ordering the demolition of the houses described in the schedule to this notice, but postponing their demolition until the Council determine that they are no longer required for use by them for housing purposes.

Copies of the said order and of the map referred to therein and a map of the clearance area have been deposited at , and may be seen at all reasonable hours.

#### SCHEDULE

Dated this                      day of                      , 19 .  
Signed                      Clerk of the Local Authority.

#### FORM NO. 21

Paragraph 1 of  
Fourth  
Schedule.

#### HOUSING ACT, 1957 ADVERTISEMENT AND PERSONAL NOTICE OF CLEARANCE ORDER CONFIRMED BY THE MINISTER OF HOUSING AND LOCAL GOVERNMENT

To\*

of

Notice is hereby given that the Minister of Housing and Local Government in pursuance of the powers vested in him by the Housing Act, 1957, on the day of , 19 , confirmed [with modifications] the Clearance Order, 19 , made by the Council under section 44 of the said Act of 1957 on the day of , 19 , and submitted to him by them on the day of , 19 , ordering the demolition of the buildings described in the schedule to this notice [and their vacation for that purpose within the periods respectively specified in the order] [but postponing their demolition].

Copies of the confirmed order and of the map referred to therein and a map of the clearance area have been deposited at , and may be seen at all reasonable hours.

The order will become operative at the expiration of six weeks from [the date of publication of this notice] [the day of , 19 , on which a notice in like terms to this notice was published in the press], but if proceedings in the High Court are commenced within that period for questioning the validity of the order, the Court may, if satisfied that the order is not within the powers of the Housing Act, 1957, or that the interests of the applicant have been substantially prejudiced by any requirement of the Act not having been complied with, quash the order either generally or in so far as it affects any property of the applicant.

#### SCHEDULE

Dated this                      day of                      , 19 .  
Signed                      Clerk of the Local Authority.

\*Name and address of objector who supported his objection at local inquiry (to be omitted from advertisement).

#### FORM NO. 22

Section 45 (2).

#### HOUSING ACT, 1957

#### NOTICE TO OCCUPIER TO QUIT BUILDING AFTER CLEARANCE ORDER HAS BECOME OPERATIVE

To , being the occupier of the building known as

Take Notice that—

(1) by the Clearance Order, 19 , made by the Council in pursuance of their powers under section 44 of the Housing Act, 1957, and confirmed by the Minister of Housing and Local Government on the day of , 19 , it was ordered that the above-mentioned building be demolished and for the purposes of demolition be vacated within [weeks] [months] from the date of the order becoming operative;

(2) the said clearance order became operative on the day of , 19 ;

(3) in pursuance of subsection (2) of section 45 of the Housing Act, 1957, you are required to quit the said building before the \* day of , 19 .

Dated this                      day of                      , 19 .  
Signed                      Clerk of the Local Authority.

\* 28 days from service of the notice or the end of the period mentioned in clearance order, if later.

#### NOTES

If at any time after the date on which this notice requires the building to be vacated any person is in occupation of the building, or of any part thereof, the local authority or any owner of the building may complain to a magistrates court, who are thereupon

required to order vacant possession of the building or of the part thereof to be given to the complainant.

A person who, knowing that this clearance order has become operative and applies to the building, enters into occupation of the building, or of any part thereof, after the date by which the order requires the building to be vacated, or permits any other person to enter into such occupation after that date, is liable on summary conviction to a fine not exceeding £20 and to a further fine of £5 for every day or part of a day on which the occupation continues after conviction.

FORM NO. 23

HOUSING ACT, 1957

Section 46 (4).

NOTICE REQUIRING DEMOLITION OF HOUSE THE DEMOLITION OF WHICH HAS BEEN  
POSTPONED UNDER A CLEARANCE ORDER

To \_\_\_\_\_ of \_\_\_\_\_,  
being the owner of the house known as \_\_\_\_\_.

Take Notice that—

(1) the \_\_\_\_\_ Council have determined that the above-mentioned house (the demolition of which has been postponed under the \_\_\_\_\_ Clearance Order, 19 \_\_\_\_\_, which duly became operative) is no longer required by them for use for housing purposes; and

(2) you are hereby required to demolish the said house within a period of six\* weeks from the date of this notice.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

Signed \_\_\_\_\_  
Clerk of the Local Authority.

\* A longer period may be allowed.

FORM NO. 24

HOUSING ACT, 1957

Section 43 (3).

COMPULSORY PURCHASE ORDER IN RESPECT OF LAND COMPRISED IN A CLEARANCE AREA  
AND LAND SURROUNDED BY OR ADJOINING THE AREA

Whereas by a resolution passed on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, the \_\_\_\_\_ Council declared a certain area which they had duly caused to be defined on a map to be a clearance area, that is to say, an area to be cleared of all buildings in accordance with the provisions of Part III of the Housing Act, 1957;

And Whereas by a resolution passed on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, the Council in pursuance of their powers under subsection (1) of section 43 of the said Act of 1957 determined to purchase the lands hereinafter mentioned which are comprised in the said clearance area and themselves to undertake or otherwise to secure the demolition of the buildings thereon;

And Whereas by a resolution passed on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, the Council in pursuance of their powers under subsection (2) of the said section 43 determined to purchase other lands hereinafter mentioned as being land surrounded by or adjoining the said clearance area:

Now Therefore the Council, in pursuance of their powers under subsection (3) of section 43 of the Housing Act, 1957, hereby make the following order:—

1. Subject to the provisions of this order, the Council are hereby authorised to purchase compulsorily for the purposes of the provisions of Part III of the Housing Act, 1957, relating to clearance areas the following lands, namely—

- (a) the lands described in Part I of the schedule to this order and shown [coloured pink] on a map marked "Map referred to in the \_\_\_\_\_ Compulsory Purchase Order, 19 \_\_\_\_\_", sealed with the common seal of the Council and deposited at the offices of the Council, which said lands were included in the said clearance area on the ground that the houses thereon were unfit for human habitation;
- (b) the lands described in Part II of the said schedule and shown [coloured pink hatched yellow] on the said map, being lands which were included in the said clearance area on the ground only that the buildings thereon by reason of their bad arrangement in relation to other buildings or the narrowness or bad arrangement of the streets were dangerous or injurious to the health of the inhabitants of the area;
- (c) the lands described in Part III of the said schedule and [coloured grey] on the said map, which said lands are outside the said clearance area.

(2) Subject to any necessary adaptations the provisions of—

- (a) the Lands Clauses Acts (except sections 127 to 133 of the Lands Clauses Consolidation Act, 1845);
- (b) the Acquisition of Land (Assessment of Compensation) Act, 1919, as amended by the Town and Country Planning Acts, 1947 to 1954; and

- (c) section 77 of the Railways Clauses Consolidation Act, 1845, and sections 78 to 85 of that Act as originally enacted and not as amended for certain purposes by section 15 of the Mines (Working Facilities and Support) Act, 1923,

as modified by the provisions of Part II of the Third Schedule to the Housing Act, 1957, are hereby incorporated in this order and the provisions of those Acts shall apply accordingly.

3. The sums agreed upon or awarded for the purchase of any land comprised in this order which is glebe land or other land belonging to an ecclesiastical benefice or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or injury affecting the land, shall not be paid as directed by the Land Clauses Acts, but shall be paid to the Church Commissioners to be applied by them as money paid to them upon a sale, under the provisions of the Ecclesiastical Leasing Acts of land belonging to a benefice.

4. This order may be cited as the

Compulsory Purchase Order,

19 .

#### SCHEDULE

Reference numbers and colouring on map	Description of lands	Owners or reputed owners	Lessees or reputed lessees	Occupiers (except tenants for a month or less)
LANDS WITHIN THE CLEARANCE AREA				
PART I				
PART II				
LANDS OUTSIDE THE CLEARANCE AREA				
PART III				

The common seal of the  
affixed this  
presence of

day of

Council was hereunto  
, 19 , in the

FORM NO. 25

HOUSING ACT, 1957

ADVERTISEMENT OF THE MAKING OF A COMPULSORY PURCHASE ORDER IN RESPECT OF LAND COMPRISED IN A CLEARANCE AREA AND LAND SURROUNDED BY OR ADJOINING THE AREA	Paragraph 2 (1) (a) of Third Schedule.
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Notice is hereby given that the \_\_\_\_\_ Council, in pursuance of their powers under section 43 of the Housing Act, 1957, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, made an order which is about to be submitted to the Minister of Housing and Local Government for confirmation, authorising them to purchase compulsorily the lands described in the schedule to this notice, being lands in an area declared to be a clearance area by a resolution of the Council dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and also lands surrounded by or adjoining the said area.

Copies of the said order and of the map referred to therein and of the map of the clearance area have been deposited at \_\_\_\_\_, and may be seen at all reasonable hours.

The order distinguishes the following classes of lands namely—

- (a) lands included in the clearance area on which there are—
  - (i) houses unfit for human habitation; and
  - (ii) buildings which by reason only of their bad arrangement in relation to other buildings, or the narrowness or bad arrangement of the streets, are dangerous or injurious to the health of the inhabitants of the area; and
- (b) lands outside the clearance area.

SCHEDULE

Signed \_\_\_\_\_  
Clerk of the Local Authority.

FORM NO. 26

HOUSING ACT, 1957

PERSONAL NOTICE OF THE MAKING OF A COMPULSORY PURCHASE ORDER IN RESPECT OF LAND COMPRISED IN A CLEARANCE AREA AND LAND SURROUNDED BY OR ADJOINING THE AREA	Paragraph 2 (1) (a) of Third Schedule.
--	---

To \_\_\_\_\_ of \_\_\_\_\_

Take Notice that—

(1) the \_\_\_\_\_ Council, in pursuance of their powers under section 43 of the Housing Act, 1957, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, made the \_\_\_\_\_ Compulsory Purchase Order, 19\_\_\_\_, which is about to be submitted to the Minister of Housing and Local Government for confirmation, authorising the Council to purchase compulsorily the lands described in the schedule to this notice;

(2) the lands included in the order are—

- (a) lands in an area declared to be a clearance area by a resolution of the Council dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, which lands the Council have determined to purchase for securing the clearance thereof by themselves undertaking or otherwise securing the demolition of the buildings thereon;
- (b) lands which the Council have determined to purchase as being [lands surrounded by the clearance area the acquisition of which is reasonably necessary for the purpose of securing a cleared area of convenient shape and dimensions] [and] [lands adjoining the clearance area the acquisition of which is reasonably necessary for the satisfactory development or user of the cleared area];

(3) copies of the order and the map referred to therein and a map of the clearance area have been deposited at \_\_\_\_\_, and may be seen at all reasonable hours;

(4) the order distinguishes the following classes of lands, namely—

- (a) lands included in the clearance area on which there are—
  - (i) houses unfit for human habitation;
  - (ii) buildings which by reason only of their bad arrangement in relation to other buildings or the narrowness or bad arrangement of the streets are dangerous or injurious to the health of the inhabitants of the area; and
- (b) lands outside the clearance area;

(5) the [land] [lands] in which you are interested as [owner] [mortgagee] [lessee] [occupier] [is] [are] included in the [class] [classes] mentioned at of paragraph (4) above;

(6) any objection to the compulsory purchase order stating the grounds of your objection must be made in writing to the Minister of Housing and Local Government, Whitehall, S.W.1, before the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

## SCHEDULE

Dated this

day of

, 19 .

Signed

Clerk of the Local Authority.

\* A reasonable period should be allowed, and in any case not less than 14 days.

## NOTES

If no objection is duly made by any of the persons upon whom notices are required to be served, or if all objections are withdrawn, or if the Minister is satisfied that every objection duly made relates exclusively to matters which can be dealt with by the tribunal by whom the compensation is to be assessed, the Minister may if he thinks fit confirm the order with or without modification, but in any other case he is required before confirming the order to cause a public local inquiry to be held or to afford the objector an opportunity of appearing before and being heard by a person appointed by him for that purpose, and to consider any objection not withdrawn and the report of the person who held the inquiry or the person appointed to hear the objector, and he may then confirm the order with or without modification.

The Minister is required, if he comes to the conclusion that land included in the clearance area ought not to have been included, to modify the order so as to exclude that land for all purposes from the clearance area, but if he nevertheless considers that the land may properly be purchased by the local authority as being land surrounded by the clearance area the acquisition of which is reasonably necessary for the purpose of securing a cleared area of convenient shape and dimensions, or as being land adjoining the clearance area the acquisition of which is reasonably necessary for the satisfactory development or use of the cleared area, he is required further to modify the order so as to authorise the authority to purchase the land as land outside the clearance area.

If the order is confirmed by the Minister it will become operative at the expiration of six weeks from the date on which notice of its confirmation is published in accordance with the provisions of the Housing Act, 1957, but if proceedings in the High Court are commenced within that period for questioning the validity of the order, the Court may, if satisfied that the order is not within the powers of the Act or that the interests of the applicant have been substantially prejudiced by any requirement of the Act not having been complied with, quash the order either generally or in so far as it affects any property of the applicant.

## COMPENSATION

If the order becomes operative, the compensation payable for land, including any buildings thereon, which is purchased under the order will be as follows.

*For land falling within the class mentioned in paragraph 4 (a) (i) of this notice, the compensation will be its value as a site cleared of buildings and available for development in accordance with the requirements of the building byelaws for the time being in force in the district.*

The Minister of Housing and Local Government may on confirming the order direct the local authority to make a payment in accordance with section 60 of the Housing Act, 1957, in respect of a house on land to which the order will apply on the order becoming operative if he is satisfied that notwithstanding its unfitness it has been well maintained. If a person interested in the house thinks that the house has been well maintained by him or at his expense, he should make a representation in writing to the Minister of Housing and Local Government, Whitehall, S.W.1, before the end of the objection period specified in paragraph (6) of this notice. A form of representation may be obtained from the Council Offices. Persons on whom this notice is served who have tenants on a monthly or lesser tenancy or statutory tenants in occupation of houses on lands in respect of which this notice is served are requested to bring this paragraph to the notice of those occupiers.

Compensation based on market value may be payable in respect of a house which has been occupied for business purposes, provided that certain conditions are fulfilled. Broadly these are that the house must have been wholly or partly occupied for the business purposes by a person having a freehold interest or a leasehold interest for more than a year at the date of the making of the order and either on 13th December, 1955, or at all times during the ten years preceding the date of the making of the order.

Compensation based on market value may also become payable if the house is purchased before 13th December, 1965, and it has been occupied as a private dwelling, provided that certain other conditions are fulfilled. Broadly these are that the house must have been wholly or partly occupied as a private dwelling on 13th December, 1955, by a person having an interest of the kind mentioned in the preceding paragraph or a member of his family, and must have been purchased by that person on or after 1st September, 1939, and before 13th December, 1955 (members of the armed forces posted away, or persons changing their place of employment or occupation being treated in certain cases as having continued in occupation).

Any person on whom this notice is served who thinks that if the order becomes operative he may have a claim to this further compensation on the compulsory purchase

of the house should notify the clerk of the local authority in writing of the facts on which he relies. The question whether any compensation will be payable will not be settled at this stage, but it is important to establish the facts relating to ownership or occupation as soon as possible.

The further compensation, if it becomes payable, is the market value for its existing use of the interest of the person entitled to compensation, less site value. A person who is entitled to such compensation cannot also receive a payment for good maintenance.

*For land falling within the classes mentioned in paragraph 4 (a) (ii) and (b) of this notice, the compensation will be the market value for its existing use of the interest of the person entitled to compensation, subject to the rules in Part III of the Third Schedule to the Housing Act, 1957.*

FORM NO. 27

### HOUSING ACT, 1957

ADVERTISEMENT AND PERSONAL NOTICE OF COMPULSORY PURCHASE ORDER CONFIRMED BY THE MINISTER OF HOUSING AND LOCAL GOVERNMENT IN RESPECT OF LAND COMPRISED IN A CLEARANCE AREA AND LAND SURROUNDED BY OR ADJOINING THE AREA Paragraph 1 of Fourth Schedule.

To\* of  
Notice is hereby given that the Minister of Housing and Local Government, in pursuance of the powers vested in him by the Housing Act, 1957, on the day of , 19 , confirmed [with modifications] the Compulsory Order, 19 , submitted to him by the Council, authorising them to purchase compulsorily under section 43 of the said Act the lands described in the schedule to this notice, which lands are lands in an area declared to be a clearance area by a resolution of the Council dated the day of , 19 [ and also lands surrounded by and/or lands adjoining the said clearance area].

Copies of the confirmed order and of the map referred to therein and a map of the said clearance area have been deposited at , and may be seen at all reasonable hours.

The order distinguishes the following classes of lands to be purchased compulsorily, namely—

(a) lands included in the clearance area on which there are—

- (i) houses unfit for human habitation;
- (ii) buildings which by reason only of their bad arrangement in relation to other buildings, or the narrowness or bad arrangement of the streets are dangerous or injurious to the health of the inhabitants of the area; and

(b) lands outside the clearance area.

The order will become operative at the expiration of six weeks from [the date of publication of this notice] [the day of , 19 , on which a notice in like terms to this was published in the press], but if proceedings in the High Court are instituted within that period for questioning the validity of the order, the Court may, if satisfied that the order is not within the powers of the Act or that the interests of the applicant have been substantially prejudiced by any requirement of the Act not having been complied with, quash the order either generally or in so far as it affects any property of the applicant.

### SCHEDULE

Dated this day of , 19 .

Signed  
Clerk of the Local Authority.

\* Name and address of objector who supported his objection at local inquiry (to be omitted from advertisement).

FORM NO. 28

### HOUSING ACT, 1957

Section 51 (2).

COMPULSORY PURCHASE ORDER IN RESPECT OF LAND CLEARED OF BUILDINGS IN ACCORDANCE WITH A CLEARANCE ORDER

Whereas pursuant to the provisions of the Housing Act, 1957, the Clearance Order, 19 , made by the Council and confirmed by the Minister of Housing and Local Government, became operative on the day of , 19 ;

And Whereas by a resolution passed on the day of , 19 ,

the Council in pursuance of their powers under subsection (1) of section 51 of the said Act of 1957 determined to purchase the lands hereinafter described as being lands which have been cleared of buildings in accordance with the said clearance order and which at the date of the passing of the said resolution had not been, or were not in process of being, used for building purposes, or otherwise developed in the manner stated in the said subsection (1):

Now Therefore the Council, in pursuance of their powers under subsection (2) of section 51 of the Housing Act, 1957, hereby make the following order:—

1. Subject to the provisions of this order, the Council are hereby authorised to purchase compulsorily for the purposes of subsection (5) of the said section 51 the lands described in the schedule hereto, which lands are shown coloured on a map marked "Map referred to in the Compulsory Purchase Order, 19 ", sealed with the common seal of the Council and deposited at the offices of the Council.

2. Subject to any necessary adaptations the provisions of—

(a) the Lands Clauses Acts (except sections 127 to 133 of the Lands Clauses Consolidation Act, 1845);

(b) the Acquisition of Land (Assessment of Compensation) Act, 1919, as amended by the Town and Country Planning Acts, 1947 to 1954; and

(c) section 77 of the Railways Clauses Consolidation Act, 1845, and sections 78 to 85 of that Act as originally enacted and not as amended for certain purposes by section 15 of the Mines (Working Facilities and Support) Act, 1923,

as modified by the provisions of the Part II of the Third Schedule to the Housing Act, 1957, are hereby incorporated in this order and the provisions of those Acts shall apply accordingly.

3. The sums agreed upon or awarded for the purchase of any land comprised in this order which is glebe land or other land belonging to an ecclesiastical benefice or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or injury affecting any such land, shall not be paid as directed by the Lands Clauses Acts but shall be paid to the Church Commissioners to be applied by them as money paid to them upon a sale, under the provisions of the Ecclesiastical Leasing Acts of land belonging to a benefice.

4. This order may be cited as the

Compulsory Purchase Order, 19 .

#### SCHEDULE

Reference numbers on map	Description of lands	Owners or reputed owners	Lessees or reputed lessees	Occupiers (except tenants for a month or less)

The common seal of the  
affixed this  
presence of

day of Council was hereunto  
, 19 , in the

FORM NO. 29

Paragraph

HOUSING ACT, 1957

2 (1) (a)

of Third  
Schedule.

ADVERTISEMENT OF A COMPULSORY PURCHASE ORDER IN  
RESPECT OF LAND CLEARED OF BUILDINGS IN ACCORDANCE  
WITH A CLEARANCE ORDER

Notice is hereby given that the Council, in pursuance of their powers under section 51 of the Housing Act, 1957, on the day of , 19 , made the Compulsory Purchase Order, 19 , which is about to be submitted to the Minister of Housing and Local Government for confirmation, authorising them to purchase compulsorily the lands described in the schedule to this notice, being lands which the Council by a resolution dated the day of , 19 , determined to purchase as being lands which have been cleared of buildings in accordance with the Clearance Order, 19 , and which at the date of the passing of the said resolution had not been, or were not in process of being, used for building purposes or otherwise developed in the manner stated in subsection (1) of the said section 51.

Copies of the said order and of the map referred to therein have been deposited at , and may be seen at all reasonable hours.

SCHEDULE

Dated this                      day of                      , 19                      .  
Signed                      Clerk of the Local Authority.

FORM NO. 30

HOUSING ACT, 1957  
PERSONAL NOTICE OF THE MAKING OF A COMPULSORY                      Paragraph  
PURCHASE ORDER IN RESPECT OF LAND CLEARED OF                      2 (1) (b)  
BUILDINGS IN ACCORDANCE WITH A CLEARANCE ORDER                      of Third  
Schedule.

To                      of                      .  
Take Notice that—

- (1) the                      Council, in pursuance of their powers under section 51 of the Housing Act, 1957, on the                      day of                      , 19                      , made the                      Compulsory Purchase Order, 19                      , which is about to be submitted to the Minister of Housing and Local Government for confirmation, authorising them to purchase compulsorily the lands described in the schedule to this notice;
- (2) the lands included in the order are lands which the Council by a resolution dated the                      day of                      , 19                      , determined to purchase as being lands which have been cleared of buildings in accordance with the                      Clearance Order, 19                      , and which at the date of the passing of the said resolution had not been, or were not in process of being, used for building purposes or otherwise developed in the manner stated in subsection (1) of the said section 51;
- (3) copies of the said order and of the map referred to therein have been deposited at                      , and may be seen at all reasonable hours;
- (4) any objection to the order stating the grounds of objection must be made in writing to the Minister of Housing and Local Government, Whitehall, London, S.W.1, before the                      \* day of                      , 19                      .

SCHEDULE

Dated this                      day of                      , 19                      .  
Signed                      Clerk of the Local Authority.

\* A reasonable period should be allowed, and in any case not less than 14 days from date of service of notice.

NOTES

If no objection is duly made by any of the persons upon whom notices are required to be served, or if all objections are withdrawn, or if the Minister is satisfied that every objection duly made relates exclusively to matters which can be dealt with by the tribunal by whom the compensation is to be assessed, the Minister may, if he thinks fit, confirm the order with or without modification, but in any other case he is required before confirming the order to cause a public local inquiry to be held or afford the objector an opportunity of appearing before and being heard by a person appointed by him for that purpose, and to consider any objection not withdrawn and the report of the person who held the inquiry or the person appointed to hear the objector, and he may then confirm the order either with or without modification.

FORM NO. 31

HOUSING ACT, 1957  
ADVERTISEMENT AND PERSONAL NOTICE OF COMPULSORY                      Paragraph 1  
PURCHASE ORDER CONFIRMED BY THE MINISTER OF HOUSING                      of Fourth  
AND LOCAL GOVERNMENT IN RESPECT OF LAND CLEARED OF                      Schedule.  
BUILDINGS IN ACCORDANCE WITH A CLEARANCE ORDER

To\*                      of                      .  
Notice is hereby given that the Minister of Housing and Local Government, in pursuance of the powers vested in him by the Housing Act, 1957, on the                      day of                      , 19                      , confirmed [with modification] the                      Compulsory Purchase Order, 19                      , submitted to him by the                      Council, authorising them to purchase compulsorily under section 51 of the said Act the lands described in the schedule to this notice as being lands which had been cleared of buildings in accordance with the                      Clearance Order, 19                      , but which at the date of the passing

of the resolution of the Council determining to purchase the said lands had not been, or were not in process of being, used for building purposes or otherwise developed in the manner stated in subsection (1) of the said section 51.

Copies of the confirmed order and of the map referred to therein have been deposited at \_\_\_\_\_, and may be seen at all reasonable hours.

The order will become operative at the expiration of six weeks from [the date of publication of this notice] [the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, on which a notice in like terms to this notice was published in the press], but if proceedings in the High Court are commenced within that period for questioning the validity of the order, the Court may, if satisfied that the order is not within the powers of the Act, or that the interests of the applicant have been substantially prejudiced by any requirement of the Act not having been complied with, quash the order either generally or in so far as it affects any property of the applicant.

#### SCHEDULE

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ Signed \_\_\_\_\_  
Clerk of the Local Authority.

\* Name and address of objector who supported his objection at local inquiry (to be omitted from advertisement).

FORM NO. 32

#### HOUSING ACT, 1957

TOWN AND COUNTRY PLANNING ACT, 1944, AS AMENDED BY THE TOWN AND COUNTRY PLANNING ACT, 1947

#### DECLARATION OF UNFITNESS ORDER

Whereas the \_\_\_\_\_ Council are a local authority for the purposes of Part III of the Housing Act, 1957;

And Whereas the [house] [houses] described in the schedule hereto and shown coloured pink on the map annexed hereto [is] [are] situate on land in the area of the Council;

And Whereas the land [is designated by a development plan under the Town and Country Planning Act, 1947, as subject to compulsory acquisition] [is proposed to be acquired compulsorily under [subsection (2) of section 37] [subsection (2) of section 38] of the Town and Country Planning Act, 1947];

And Whereas the said [house is] [houses are] in the opinion of the Council unfit for human habitation and not capable at reasonable expense of being rendered so fit:

Now Therefore the Council, in pursuance of their powers under paragraph 9 of the Fifth Schedule to the Town and Country Planning Act, 1944, as amended by the Town and Country Planning Act, 1947, by this order declare the said [house] [houses] to be unfit for human habitation and not capable at reasonable expense of being rendered so fit.

This order may be cited as the  
(Declaration of Unfitness) Order, 19\_\_\_\_.

#### SCHEDULE

The common seal of the \_\_\_\_\_ Council was hereunto  
affixed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in the  
presence of \_\_\_\_\_

FORM NO. 33

#### HOUSING ACT, 1957

TOWN AND COUNTRY PLANNING ACT, 1944, AS AMENDED BY THE TOWN AND COUNTRY PLANNING ACT, 1947

#### NOTICE OF THE MAKING OF A DECLARATION OF UNFITNESS ORDER

To \_\_\_\_\_ of \_\_\_\_\_,  
being the [owner] [mortgagee] of \_\_\_\_\_.

Take Notice that—

(1) the \_\_\_\_\_ Council, in pursuance of their powers under paragraph 9 of the Fifth Schedule to the Town and Country Planning Act, 1944, as amended by the Town and Country Planning Act, 1947, made on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and are about to submit to the Minister of Housing and Local Government for confirmation the \_\_\_\_\_ (Declaration of Unfitness) Order, 19\_\_\_\_, declaring to be unfit for human habitation and not capable at reasonable expense of

being rendered so fit the [house] [houses] described in the first schedule to this notice [and shown coloured pink on the map annexed to the order], being [a house] [houses] on [land] [lands] [designated by a development plan under the Town and Country Planning Act, 1947, as subject to compulsory acquisition] [proposed to be acquired compulsorily under [subsection (2) of section 37] [subsection (2) of section 38] of the Town and Country Planning Act, 1947];

(2) the principal grounds upon which the Council are of opinion that the [house is] [houses are] unfit for human habitation and not capable at reasonable expense of being rendered so fit are set out in the second schedule to this notice;

(3) any objection to the order, stating the grounds of the objection, must be made in writing to the Minister of Housing and Local Government, Whitehall, S.W.1, before the \* day of , 19 .

### FIRST SCHEDULE

### SECOND SCHEDULE

Dated this                      day of                      Signed                      , 19 .  
Clerk of the Local Authority.

\* A reasonable period should be allowed, and in any case not less than 14 days from date of service of notice.

### NOTES

If no objection is duly made by any of the persons on whom notices are required to be served, or if all objections are withdrawn, the Minister of Housing and Local Government may, if he thinks fit, confirm the order, but in any other case he is required before confirming the order to consider any objection not withdrawn and, if either the person by whom the objection was made or the local authority so desire, he must afford that person and the authority an opportunity of appearing before and being heard by a person appointed by him for the purpose, and may then, if he thinks fit, confirm the order.

If the unfitness order is confirmed, the compensation payable for a house to which the order applies if it is purchased compulsorily under a compulsory purchase order confirmed under Part IV of the Town and Country Planning Act, 1947, either before or within two years after the confirmation of the unfitness order will be the value of the land on which the house stands as a site cleared of buildings and available for development in accordance with the requirements of the building byelaws for the time being in force in the district.

If a person interested in the house thinks that the house has been well maintained by him or at his expense, he must make a representation in writing to the Minister of Housing and Local Government, Whitehall, S.W.1, not later than three months after his first becoming aware that a notice to treat for the purchase of any interest in the house has been served. A representation should, however, be made as soon as possible after a compulsory purchase order is made. On receiving such a representation the Minister may direct the local authority to make a payment in accordance with section 60 of the Housing Act, 1957, if he is satisfied that notwithstanding its unfitness the house has been well maintained. A form of representation may be obtained from the Council Offices. A person on whom this notice is served who has a tenant on a monthly or lesser tenancy or a statutory tenant in occupation of the house or any part of it is requested to bring this paragraph to the notice of any such occupier.

Compensation based on market value may become payable, if the house has been occupied for business purposes, provided that certain conditions are fulfilled. Broadly these are that the house must have been wholly or partly occupied for business purposes by a person having a freehold interest or a leasehold interest for more than a year at the date of the making of the compulsory purchase order and either on 13th December, 1955, or at all times during the ten years preceding the date of the making of the order.

Compensation based on market value may also become payable if the house is purchased in pursuance of the compulsory purchase order before 13th December, 1965, and it has been occupied as a private dwelling, provided that certain other conditions are fulfilled. Broadly these are that the house must have been wholly or partly occupied as a private dwelling on 13th December, 1955, by a person having an interest of the kind mentioned in the preceding paragraph or a member of his family, and must have been purchased by that person on or after 1st September, 1939, and before 13th December, 1955 (members of the armed forces posted away, or persons changing their

place of employment or occupation being treated in certain cases as having continued in occupation).

The further compensation, if it becomes payable, is the market value for its existing use of the interest of the person entitled to compensation, less site value. A person who is entitled to such compensation cannot also receive a payment for good maintenance.

Any person on whom this notice is served who thinks that if the unfitness order is confirmed and his interest is purchased compulsorily he may have a claim to this further compensation should notify the clerk of the local authority in writing of the facts on which he relies. The question whether any compensation may be payable will not be settled at this stage, but it is important to establish the facts relating to ownership and occupation as soon as possible.

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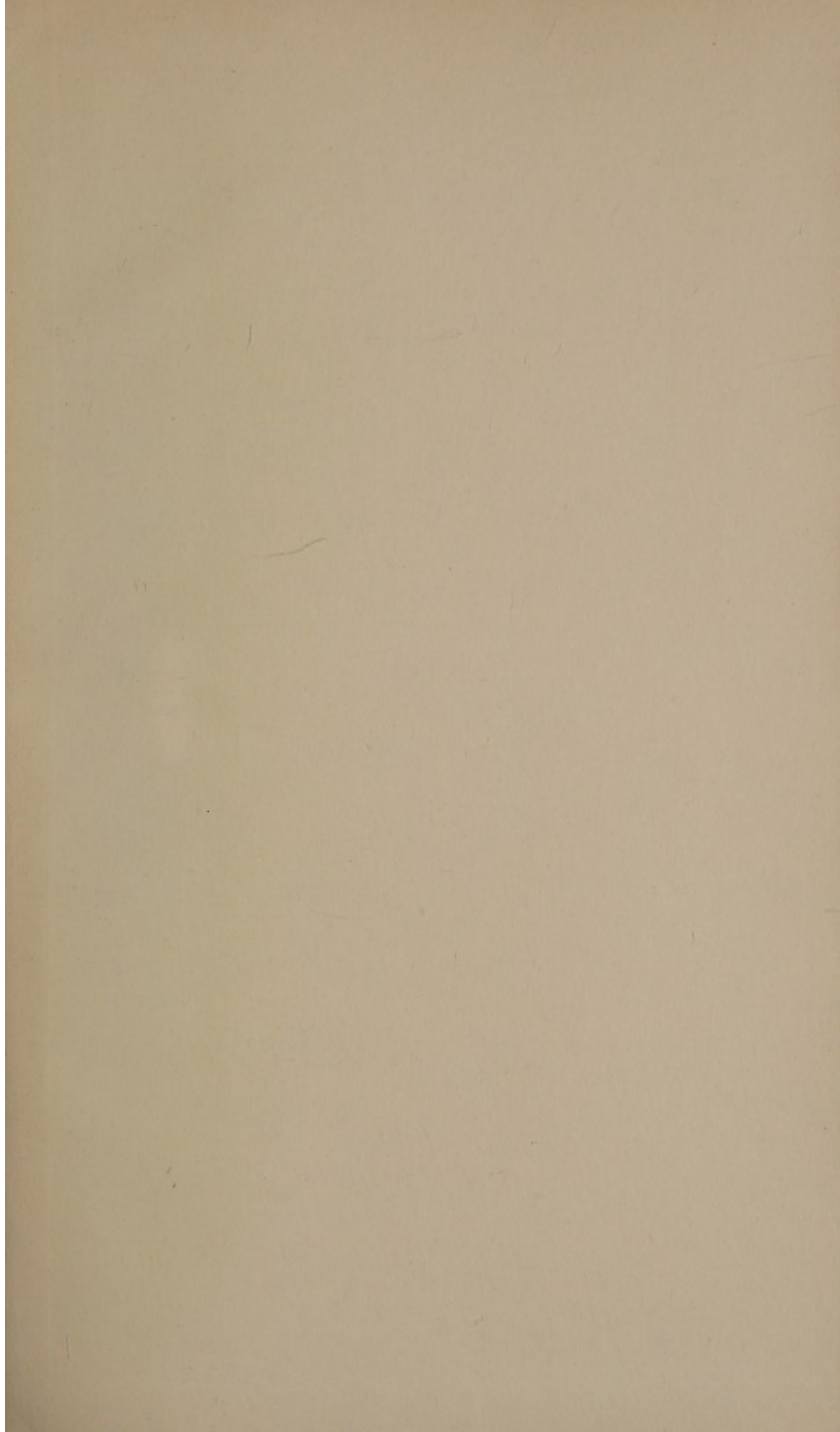
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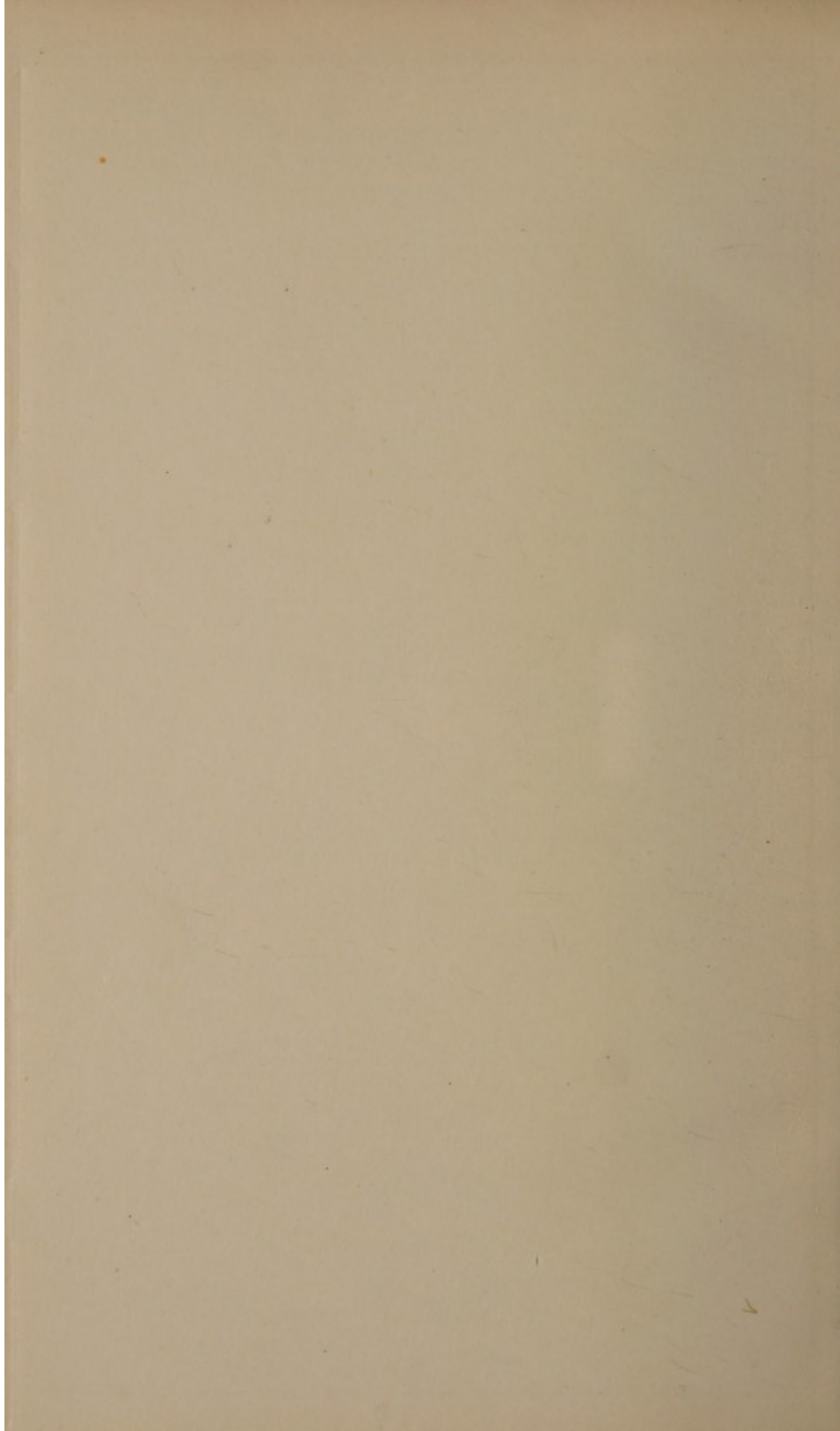
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WATER SUPPLY. The importance of water supply is self-evident. It is the basis of life and health. In the United States, the water supply is generally adequate, but in some areas it is deficient. The government should take steps to improve the water supply in these areas. This can be done by building new water works, improving existing ones, and conserving water. The government should also encourage the use of water-saving devices in homes and businesses. In addition, the government should monitor the water supply in areas where it is deficient and take action to improve it as soon as possible. The water supply is a public resource and it is the responsibility of the government to ensure that it is available to all citizens. The government should also take steps to protect the water supply from pollution. This can be done by regulating the discharge of pollutants into water bodies and by enforcing laws that prohibit the discharge of pollutants. The water supply is a vital resource and it is the responsibility of the government to ensure that it is available to all citizens. The government should also take steps to protect the water supply from pollution. This can be done by regulating the discharge of pollutants into water bodies and by enforcing laws that prohibit the discharge of pollutants. The water supply is a vital resource and it is the responsibility of the government to ensure that it is available to all citizens. The government should also take steps to protect the water supply from pollution. This can be done by regulating the discharge of pollutants into water bodies and by enforcing laws that prohibit the discharge of pollutants.







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