Mr Marsh

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N.B. This is a Working Paper of the Law Commission's Working Party on the Codification of the Law of Landlord and Tenant; it is being circulated for comment and criticism, and does not represent the concluded views of the Working Party or the Law Commission.

LAW COMMISSION

Published Working Paper No.16

WORKING PARTY'S PROVISIONAL PROPOSALS RELATING TO TERMINATION OF TENANCIES

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WORKING PARTY'S PROVISIONAL PROPOSALS RELATING TO TERMINATION OF TENANCIES

NOTE

This is a Working Paper of the Law Commission's Working Party on the Codification of the Law of Landlord and Tenant. It is circulated, in the Law Commission's series of published working papers, in order to obtain comments and criticisms.

The Law Commission are most grateful to the Working Party for what is clearly a courageous and imaginative attempt to solve some of the most intractable problems in this field. At the same time the Law Commission must not be taken necessarily to subscribe in all cases to the particular solutions suggested by the Working Party. Before coming to a decision we wish to have the views of those to whom this Working Paper is circulated. We hope that readers of it will feel free not only to comment on the Working Party's proposals but also to put forward alternative solutions to any of the proposals.

We would particularly draw attention to the following matters:-

Propositions 3 and 5 It will be observed that these treat a formal surrender as surrender by agreement and the other most common type of surrender, that by delivery up and acceptance of possession with the intention of ending the tenancy, as a surrender by operation of law. Might it not be more realistic to treat both as surrenders by agreement?

Proposition 4 As regards length and expiry date of notices to quit, the Working Party propose to retain the present rules except that they would solve the problem of periodical tenancies with an unknown commencement date by requiring five quarters' notice in the case of yearly tenancies and, in the case of shorter periodical tenancies, two periods' notice to expire at the end of a calendar month. There are a number of alternative solutions. For example, in the case of yearly tenancies it might be provided that, in the absence of agreement to the contrary, the tenancy could be ended by six months notice to expire on or at any time after the expiration of the first year (or, perhaps, on any rent day thereafter). Further, it appears from Note 7 on p.6 that the Working Party envisage that the usual quarter days should sometimes be substituted for the contractual quarter days. Views on these points would be appreciated.

Proposition 9 Is this the best method of dealing with the problem of abandoned premises and is it practicable to define "abandonment" in the case, for example, of vacant land?

Proposition 10 This does away with automatic forfeiture on re-entry. As pointed out at pp.20-21, there was a division of opinion among the members of the Working Party regarding certain aspects of the suggested procedure and views on this would be welcomed.

Proposition 12 The definition of frustration suggested by the Working Party appears to be stricter than under the common law doctrine by requiring, not merely that the frustrating event has not been provided for, but also that it has not been contemplated.

It seems that the effect would be invariably to exclude what is admitted on p.32 to be "perhaps the most common type of frustrating event" - a destruction of the premises by fire. Furthermore, it is proposed that the frustrating event should not automatically end the tenancy but that a court order should be needed. Here too, there was a difference of opinion within the Working Party.

Apart from these specific questions, comments on any part of the Working Paper are invited. They should please be sent to the Law Commission prior to 20th July 1968.

3rd April, 1968.

TERMINATION OF TENANCIES

I - INTRODUCTION

1. Continuing its review of the general law of Landlord and Tenant, the Law Commission's Working Party has now reached the subject of termination of tenancies. Here it has found perhaps not the heart, but certainly the densest part, of the jungle. Parts of the present law are archaic or little used (e.g. the common law as to disclaimer of tenancies by record or act in pais, the provisions for the recovery of deserted tenements in the Acts of 1737 and 1817, and the right of a landlord to re-enter upon forfeiture without Court order). Parts of the law are beset with technicalities and uncertainties, leading often to delays and sometimes to unnecessary litigation (e.g. notices to quit and the statutory provisions controlling termination for breach of obligation by the tenant). In one respect in particular, normal commercial bargaining results in prejudice to the tenant's position, for it is usual to provide in the tenancy that a landlord can terminate the tenancy for a relatively trivial breach of obligation by the tenant, whereas a tenant cannot, even where the landlord has been guilty of a serious breach.

2. Some complexity in this branch of the law is inevitable because of the interaction of two basically different concepts, namely the concept of a term of years as a legal estate in land valid against all comers, and the concept of a contract between landlord and tenant. But the Working Party believes that many of the archaisms, uncertainties and difficulties can be removed. The provisional propositions which follow are aimed at simplifying the law, and bringing it into accord with modern needs, whilst keeping a fair balance between the interests of landlords and tenants.

3. Important features of these propositions are:-

(a) the replacement of forfeiture on re-entry by the

landlord for the tenant's breach of obligation, by termination by court order; and consequently, the abolition of the tenant's automatic rights of relief against forfeiture in certain cases;

(b) the introduction of termination by court order, on the application of the tenant, for breach of obligation on the part of the landlord;

(c) the introduction of court orders for termination of tenancies on grounds similar to those of frustration and impossibility of performance applicable to contracts;

(d) the introduction of a new summary remedy for the recovery of abandoned premises to replace the Distress for Rent Act 1737, s.16 as amended, and the Landlord and Tenant Act 1954, s.54.

4. The propositions deal with the general law, and must be read subject to overriding provisions relating to the termination of special types of tenancy such as are found in e.g. the Rent Acts, the Landlord and Tenant Act 1954 and the Agricultural Holdings Acts and in the case of registered leases, to the provisions of the Land Registration Acts 1925-1966 and the rules made thereunder. They do not deal with termination under the terms of a compulsory purchase order or upon enfranchisement (under the Places of Worship (Enfranchisement) Act 1920 or the Leasehold Reform Act 1967) because in these cases the interest is extinguished by merger in the performance of a statutory contract.

5. Propositions 10.00, 11.00, and 12,00 deal with the power of the Court to terminate a tenancy on the ground of breach of obligations or impossibility of performance. The Working Party has considered whether the Court should have a broader power to order termination of a tenancy on the ground that it would be just and equitable to do so. The Working Party is not persuaded that this further power to terminate is

justified except possibly in respect of absolute covenants against assignment, change of user and alterations and improvements. The Working Party proposes in a future paper to examine to what extent, if at all, such absolute covenants should be permitted(1), and if permitted, whether the tenant should be entitled to any relief, either by giving power to the court where appropriate to terminate the tenancy, or by giving the tenant a statutory right to surrender. In the meantime, the Working Party is particularly anxious to receive views on this matter.

6. The Working Party emphasises that the rights proposed to be given to landlords and tenants to apply for court orders terminating tenancies for breach of obligation, are in no way intended as exclusive remedies in such cases. In many cases the injured party will prefer (in default of the breach being remedied) to invoke the court's jurisdiction to grant relief other than a termination order, and the power of the court to grant such other relief, for example damages, injunction, specific performance and the appointment of receivers and managers is not limited by the propositions in this paper. Published Working Paper No.8(2) (Obligations of landlords and tenants) contains some proposals for extending the availability of such remedies.

II - PROPOSITIONS AND COMMENTARY

TERMINATION BY AGREEMENT

Expiry of a specific period

1.00 A tenancy granted for a specific period, shall, unless terminated earlier under the propositions below, terminate when that period expires.

Note: No new proposition of law is postulated here.

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(1) cf. the recommendations of the Jenkins Committee (1950 Cmd. 7982).

(2) This is a previous Working Paper published by the Law Commission on 31st March 1967 in which comments were invited on the Working Party's provisional propositions relating to obligations.

Termination on notice under agreed provisions

2.00 A tenancy which is terminable on notice by either party by reason of the occurrence of an event other than

(a) breach of obligation by the tenant, or

(b) bankruptcy of the tenant [or the taking in execution of the tenant's interest]

shall terminate on the expiration of such notice.

2.01 Except where the event is one within Proposition (a) or (b) above, a tenancy which apart from this proposition would terminate on or by reference to the occurrence of an event either without the act of either party or on the performance of some act other than the service of notice, shall take effect under the code as a tenancy terminable by at least one month's notice in writing after the event has occurred.

Notes: 1. Proposition 2.00 retains the present law where the parties provide expressly for termination, for example, on the exercise of an option to determine whether generally or for the purpose of building or rebuilding.

2. Proposition 2.01 covers tenancies limited conditionally, including service tenancies and tenancies determinable with life or lives or on the marriage of the lessee. Under the code they will not terminate automatically on the occurrence of the agreed event, but instead will be terminable on notice. Thus s.149 (6) of the Law of Property Act 1925 is retained; cf. also Validation of War-Time Leases Act 1944 s.1.

3. For termination for breach of obligation by the tenant or on the bankruptcy of the tenant, see Proposition 10.00 below.

4. Bankruptcy in this context includes liquidation.

5. It is doubtful whether it is now appropriate to include also "taking in execution of the tenant's interest"; see Administration of Justice Act 1956 s.34.

Surrender

3.00 A tenancy shall be terminated by surrender by express agreement of the parties.

3.01 This proposition shall be subject to the

provisions of ss.52, 53, 139 and 150 of the Law of Property Act 1925.

Notes: 1. Proposition 3.00 retains the present law in respect of express surrender.

2. Express surrender (a formal mode of termination required to be by deed or in writing, ss.52 and 53) requires the mutual agreement of the parties, for whilst it is a unilateral act on the part of the tenant, it does not operate as such unless accepted by the landlord.

3. For surrender by operation of law see Proposition 5.00 below.

Commentary

The Working Party reached the conclusion that the present law of surrender is, whilst superficially complicated, basically both sound and simple, and consider that the common law two-fold classification (i.e. "express" and "by operation of law") should be retained. It is necessary to provide for the effect of surrender, particularly upon third parties, and without being tied to the terms in which they are expressed the Working Party sees no reason to depart from the principles set out in ss.139 and 150 of the Law of Property Act 1925.

Notices to quit

4.00 Subject to express agreement to the contrary periodic tenancies shall be determinable by notice [in writing] as follows:-

(a) a yearly tenancy shall be determinable, if it is fixed in relation to quarter days, by at least two quarters' notice, or otherwise by at least six months' notice to expire in both cases at the end of a yearly period, and

(b) any other periodic tenancy based on a period of less than a year shall be determinable at the end of a period by at least one period's notice, and in any case in respect of a dwellinghouse by not less than four weeks' notice.

4.01 Provided that a notice to quit shall be valid,

regardless of whether it expires at the end of the period, if

(a) in the case of a yearly tenancy, it expires on any quarter day, and gives at least five quarters' notice, or

(b) in the case of a tenancy based on any period less than a year, it expires at the end of a calendar month, and gives at least two periods' notice, and in any case in respect of a dwellinghouse not less than four weeks' notice.

4.02 Unless a contrary intention appears, it shall be presumed that the period upon which the tenancy is based is the same as the period by reference to which rent is payable.

Notes: 1. Should notices to quit be required to be in writing?

2. Proposition 4.00 substitutes six months for a half year's notice but otherwise preserves the common law rules as to notices to quit.

3. Further, as an alternative, Proposition 4.01 provides an expiry date that is certain, to meet cases where the precise date under Proposition 4.00 is in doubt.

4. S.16 of the Rent Act 1957 is made an integral part of the propositions.

5. Proposition 4.02 is intended to resolve doubts as to the length of notice required where the period of the tenancy cannot be determined with certainty.

6. Tenancies at will or on sufferance are to be considered in the context of what species of tenancy are to be covered by the code.

7. The usual quarter days are March 25th, June 24th, September 29th and December 25th. Information about customary local variations and observations on the feasibility of standardising them are invited.

Commentary

Two main considerations influenced the Working Party in formulating the propositions on notices to quit: first, the undue technicality of the present law as to the date of service and expiration of such notices, and secondly, the absence of any general provisions covering the mode of service of notices to quit. The Working Party considered whether a

general slip-rule should be introduced whereby notices expressed to expire at the end of a period, but which fail because they give insufficient notice or expire on the wrong date, would nevertheless be effective to determine the tenancy for example at the end of the completed period next after service. That however would still leave unresolved the difficulty of ascertaining the precise date of expiry; and the Working Party prefers a rule based on calendar dates as an alternative to the common law rule. Doubts as to the length of notice required on account of the uncertainty of the period of the tenancy would be overcome by a presumption based on the period for which rent is payable. As regards service of notices to quit, it is thought that there should be a uniform body of rules governing the service of all notices under the code; and the propositions formulated by the Working Party are set out in the Appendix.

TERMINATION BY OPERATION OF LAW

Surrender

5.00 A tenancy shall be terminated by surrender where the unequivocal conduct of both parties is inconsistent with the continuance of the existing tenancy.

5.01 The proposition shall be subject to the provisions of ss.139 and 150 of the Law of Property Act 1925.

Notes: 1. Propositions 5.00 retains the common law method of termination "by operation of law"; cf. Proposition 3.00 for express surrender.

2. The surrender is implied from the conduct of the parties regardless of whether or not they have addressed their minds specifically to the termination of the current tenancy. It covers not only cases where the parties may not necessarily have considered or even intended the termination of the present tenancy (e.g. where the tenant accepts a new and valid tenancy of the same premises, or some different interest in the premises inconsistent with that under the current tenancy), but also cases where they may have done so specifically, but have not satisfied the formal requirements of ss.52 and 53 of the Law of Property Act 1925 (e.g. giving and acceptance of possession or keys).

Merger

6.00 Where a tenancy becomes vested in the owner for

the time being of the reversion immediately expectant on the tenancy the tenancy shall, subject to ss.139 and 185 of the Law of Property Act, 1925, be merged in the reversion, provided the reversion and the tenancy are held by the same person in the same right.

Notes: 1. This proposition preserves the equitable rule based on the intention of the parties (s.185)(1) and, where there is merger of a mesne tenancy, the rights and obligations of the sub-tenant are unaffected (s.139).

2. Exercise of the rights to enfranchise under s.1 of the Leasehold Reform Act 1967 operates to terminate the tenancy by merger.

3. The proposition does not cover merger of satisfied terms under the Law of Property Act 1925 s.5. But is it necessary at the present time to retain this special provision?

Enlargement

7.00 Provisions in respect of enlargement of the residue of a long term at a rent having no money value into a fee simple estate along the lines of s.153 of the Law of Property Act 1925, shall be retained.

Note: On enfranchisement, see Introduction, para. 4 and Proposition 6.00 note 3 above.

Commentary

From the little information we have as to how much use is made of the provisions of s.153, it would appear that it is mainly confined to long leases granted around the time of Elizabeth I, and it is clear that the conditions to be satisfied are extremely restrictive. It has been suggested that the section offers a device to overcome the difficulties of enforcing positive covenants; but it is described as "untried and artificial" in paragraph 8 (vi) of the Wilberforce Report (1965 Cmnd.2719), and will in any case cease to have any significance once legislation to give effect to the recommendations of that Committee is enacted. Assuming that it is retained, the Working Party considers that it would

(1) See Golden Lion Hotel (Hunstanton) Ltd. v. Carter [1965] 1 W.L.R. 1189.

be useful to widen the scope of s.153, and invites views on the suggesti that the conditions as to time, rent and otherwise should be amended, so that enlargement would be possible for example:-

(a) where the term as originally granted was for not less than 100 years (i.e. to exclude 99-year leases), and

(b) where at least 50 years of the term have expired, and

(c) where a rent not exceeding £5 per annum has not been collected or paid for at least 20 years, and

(d) whether or not the term is liable to be determined by re-entry for conditions broken.

Further, views are invited upon whether there is any practical benefit in retaining these long terms at rents of no money value say of more than 100 years.

Disclaimer

8.00 Note: The Working Party is now examining the law of disclaimer in bankruptcy and liquidation as it affects the landlord and tenant relationship, and will publish provisional proposals on this subject in a later Working Paper. As a concept, however, disclaimer has an impact on the law of landlord and tenant in two other cases; firstly, as affecting the rights of persons on attaining their majority to disclaim equitable interests flowing from agreements made during minority; secondly, where disclaimer "by matter of record" or by "act in pais" on the part of a tenant takes effect as a forfeiture of a tenancy. Anticipating that following upon the report of the Latey Committee 1967, Cmnd. 3342, legislation will be introduced to deal with the proprietary and contractual rights of infants, the Working Party has considered it inappropriate in the present paper to deal with the former. As regards the latter, the Working Party has taken the view that in so far as disclaimer taking effect as a forfeiture is not already obsolete(1), it does not differ in principle from, and is almost invariably accompanied by, other breaches of obligation on the part of tenants, so that the cases to which it might continue to apply can be adequately contained within Proposition 10.00 which deals with termination of tenants' breaches of obligation.

Recovery of abandoned premises

9.00 Where (a) the premises let have been abandoned, and

(b) the tenant is in arrears with the rent,

the landlord shall have a statutory right to

(1) See Lord Denning in Warner v. Sampson [1959] 1 Q.B. at pp.312-317.

re-enter, the exercise of which will terminate the tenancy.

Note: Proposition 9.00 provides a new summary remedy for the recovery of abandoned premises.

Commentary

(1) The provisions of s.16 of the Distress for Rent Act 1737 as amended[1] appear to be little used, probably because the procedure is cumbersome and out-dated, and s.54 of the Landlord and Tenant Act 1954 is of very limited application. The Working Party therefore considers that these provisions should be replaced by a new summary remedy based on abandonment of the premises and arrears of rent. It is arguable however that there would be no need to provide a special remedy in addition to the others proposed in this paper, since (a) abandonment will usually be accompanied by breach of obligations for which a remedy will already be available under Proposition 10.00 below, and (b) our propositions on the service of notices (see the Appendix of this paper) will make service possible even though the tenant has abandoned the premises.

(2) It may be felt that even if a special remedy is required a self-help remedy such as this is no longer acceptable, and that in conformity with our proposals in Proposition 10.00 it should be available only on the order of the court, but that being a summary remedy it should be automatic (i.e. that the court should have no discretion to refuse an order for termination once the conditions in respect of abandonment and arrears of rent have been satisfied). Views are invited therefore on these particular points.

TERMINATION BY ORDER OF THE COURT

Termination for breach of obligation and on the bankruptcy of the tenant

10.00 The right of a landlord to terminate a tenancy, either by forfeiture or by re-entry, shall be abolished except in the case provided under Proposition 9.00. In future termination for

(1) By the Deserted Tenements Recovery Act 1817.

breach of obligation or upon insolvency on the part of a tenant will be dependent upon an order of the court in accordance with the following propositions.

10.01 The court shall have power on the landlord's application to terminate the tenancy (subject to the further provisions under this heading):-

(1) where the tenant is in breach of a tenancy obligation (including an obligation imposed by the code), and

(2) where the tenancy provides that it is terminable on the bankruptcy or liquidation of the tenant.

Notes: 1. Proposition 10.00 abolishes re-entry and hence the common law doctrine of forfeiture. Thus, the combined effect of Propositions 2.01 and 10.00 is that under the code a tenancy will not terminate by re-entry except in the limited circumstances under Proposition 9.00.

2. Conditions as to bankruptcy of the tenant have been excluded from Proposition 2.01 above and included specifically here to make provision for the rights of relief under s.146 (10) of the Law of Property Act 1925.

3. It is doubtful whether it is now appropriate to include also "taking in execution of the tenant's interest"; cf. Administration of Justice Act 1956 s.34.

4. This and the propositions below are intended to assimilate as far as possible proceedings in all cases where forfeiture is now normally available, whether based upon non-payment of rent or breach of some other obligation.

Operative Date

10.02 Where proceedings for termination are instituted, the tenancy shall continue and, subject to the powers of the court to make interim orders pending determination of the proceedings, the rights and obligations of the parties under the tenancy shall remain enforceable,

unless and until the court orders it to be terminated.

Notes: 1. This proposition follows from Proposition 10.00 and overcomes the difficulty as regards preservation and enforcement of tenancy obligations pending the outcome of proceedings.

2. On interim relief see Proposition 10.08 below.

3. On rights relating to assignments and sub-lettings made after the service of the writ and rights accruing under Part II of the 1954 Act after service of the writ, see Proposition 10.09 below.

Institution and Stay of Proceedings

10.03 Where proceedings for termination are instituted, no prior notice of intention to commence proceedings shall be required, but:-

(1) the landlord shall in his writ or summons specify with particularity the breach or event upon which he intends to rely;

(2) the tenant shall be entitled to apply for a stay on the ground that continuance of the proceedings (for the time being) would be oppressive because:-

(a) he has taken or is taking steps to remedy the breaches; or

(b) the damage to the reversion is or would be trivial; or

(c) in all the circumstances, termination would be unreasonable;

(3) where in proceedings for termination for breach of repairing obligations the tenant shows that at the date of service of the writ three or more years of the term remain unexpired (i.e. that the conditions at present in the Leasehold Property (Repairs) Act 1938, apply) he shall be entitled (without proof of any of the matters in

sub-paragraph (2) above) to a stay of proceedings unless the landlord proves one of the factors in s.1 (5) (a)-(e) of the Leasehold Property (Repairs) Act 1938.

Notes: 1. This proposition accords with the view of the majority of the Working Party. The minority view is set out in the commentary at p.20 below where the arguments are indicated.

2. Here the aim is to eliminate the difficult problems which at present often arise concerning the steps preparatory to forfeiture whether under the Common Law Procedure Act 1852 or s.146 of the Law of Property Act 1925. Whilst the requirement of a formal notice is dispensed with, the most important contents of such a notice, (i.e. the breach upon which the landlord intends to rely) must be specified "with particularity" in the writ or summons. Under this simplified procedure, the landlord will not be troubled, for example, with the questions that arise at present under s.146 (1) of the Law of Property Act 1925, i.e. whether or not the breach is remediable, whether or not he has allowed a reasonable time between service and proceedings, and the question of compensation. But the conduct of the landlord and the tenant will be a factor to be taken into account by the court in deciding whether or not to grant a stay of proceedings under Proposition 10.03 (2) or to order termination (see Proposition 10.05).

3. In disposing with the requirement of formal notice, it is not intended that the landlord should be able to pursue proceedings without giving the tenant a reasonable opportunity of remedying the breach, and Proposition 10.03 (2) affords him such an opportunity by enabling him to apply for a stay of proceedings.

4. Proposition 10.03 (3) in effect preserves the provisions of s.1 of the Leasehold Property (Repairs) Act 1938, in proceedings for termination for breach of repairing obligations but operates conversely to Proposition 10.03 (2), i.e. the landlord must prove that a stay would be unreasonable.

10.04 The court may, in granting or in refusing a stay under Propositions 10.03 (2) or (3) impose such terms and conditions on the parties as it may think fit.

Note: This gives the court the wide power to put the parties on terms (cf. s.1 (6) of the Leasehold Property (Repairs) Act 1938).

Order for Termination

10.05 In deciding whether or not to order termination, the court shall have regard to all the circumstances including:-

(a) whether the landlord acted reasonably in

instituting proceedings, and in particular the question whether he informed the tenant of the breach;

(b) whether the tenant has had a reasonable opportunity or has taken reasonable steps to remedy the breach if remediable; and

(c) whether the tenant has continued during the currency of the proceedings to observe his obligations under the terms of the letting.

Note: This is intended to protect the tenant against unreasonable haste on the part of the landlord in bringing termination proceedings. Thus, whilst the landlord is under no obligation to serve a formal prior notice of intention to bring proceedings (Proposition 10.03), the conduct of the parties from the time of the breach relied upon until the hearing will influence the court's decision to grant or refuse an order for termination.

10.06 In proceedings for termination for non-payment of rent, notwithstanding that the arrears of rent and costs have been paid to the landlord or into court before the hearing, the court may in its discretion order termination if the tenant has been repeatedly in arrears, provided that on accepting payment of arrears and costs or withdrawal of them from court, the landlord has notified the tenant that the action will not thereby abate.

Notes: 1. This sweeps away ss.210-212 of the Common Law Procedure Act, 1852 and s.191 of the County Courts Act, 1959 as extended by the Administration of Justice Act 1965, and postulates that relief should not be automatic upon payment of arrears and costs by the tenant within the time-limits there laid down. It will give the landlord a satisfactory remedy against tenants who regularly wait until a writ is served before paying rent.

2. It is felt however that the tenant should on payment of arrears and costs in order to get relief, be warned if the landlord still intends to continue his proceedings for termination.

Third Parties - Notices

10.07 (1) The landlord shall give notice of the proceedings:-

(a) to any person in occupation of the premises either by name or by description as "occupier"; and

(b) to any other person who to his knowledge or belief has or may have an interest in the tenancy likely to be affected by an order in the proceedings, and shall also serve notice on the tenant of the persons to whom he has given such notice.

(2) The tenant shall within a fixed period after service of the writ or summons on him notify the landlord of any person not specified in the landlord's notice to him, who, on the date of service of the writ or summons, had such an interest as is described in paragraph (1) above.

(3) The landlord shall give notice of the proceedings to any person specified in the tenant's notice under paragraph (2) above.

(4) The court shall have power to order that notice of the proceedings be given to any person whose interest might be so affected and who has not been given notice.

Notes: 1. It is important that all third parties whose interests might adversely be affected by termination should receive notice of the proceedings, and since they are not necessarily known to the landlord, the tenant must be put under an obligation to notify the

landlord of them.

2. This is intended to include all persons within s.146 (4) and (5) of the Law of Property Act, 1925.

Interim Orders

10.08 The court shall have power pending final determination of the proceedings to make such order as to suspension or variation of the performance of the obligations of the parties to the tenancy inter se or vis-a-vis third parties who have joined in the proceedings, as from the date of the service of the writ or summons as in all the circumstances may be just.

Third Parties - Rights

10.09 Where the court orders termination of the tenancy:-

(1) all interests derived out of the tenancy or any sub-tenancy shall thereupon cease, and

(2) any agreement or application for a new tenancy or sub-tenancy made under Part II of the Landlord and Tenant Act 1954, shall be of no effect,

subject to the grant of relief under Proposition 10.10.

Notes: 1. The tenancy itself and hence interests created out of the tenancy are preserved until the order for termination. When the tenancy goes, all other interests dependent upon it must go too, subject to relief.

2. Rights which have accrued under Part II of the 1954 Act demand special consideration, for even though termination proceedings are pending, the tenant may have to start proceedings under that Act for a new tenancy so as not to be out of time if relief should ultimately be granted. If, on the other hand, the tenancy should be terminated, any rights under the 1954 Act should be of no effect.

10.10 (1) Any person

(a) whose interest was created before service of the writ or summons, and

(b) who could apply under the present law,

shall be entitled to apply for a vesting order as under s.146 (4) of the Law of Property Act, 1925.

Provided that where the landlord has offered a sub-tenant of part of the premises a tenancy of that part on the same terms as he held previously the sub-tenant should not be entitled to claim a vesting order in respect of any greater part of the premises than he had before. But if the landlord has not made such an offer, the court shall have a discretion (as at present) to order the sub-tenant to take the whole of the premises as a condition of relief.

(2) In making a vesting order the court shall have complete discretion as to the terms and conditions of the relevant tenancy, and where such order is made in respect of a part of the premises may include any ancillary rights formerly enjoyed by the sub-tenant which it considers necessary for the reasonable use and enjoyment of that part.

(3) The relief which the court may award to a mortgagee of a tenancy which is

terminated under this procedure shall include a vesting in the mortgagee of a term free from the equity of redemption of the tenant.

Notes: 1. Proposition 10.10 (1) limits the right to apply for relief to third parties whose interests were created before service of the writ to prevent the creation of cognizable interests thereafter, and gives an opportunity to the landlord to limit the clain of those entitled to apply for a vesting order to no greater part of the premises than they hold at present, if he so wishes, in contrast to s.146 (4) of the Law of Property Act 1925.

2. A new interest or estate is created by the vesting order, and the rent ordered to be paid is not limited to the rent due but should be a fair rent between the parties; Ewart v. Fryer [1901] 1 Ch. 499 C.A. The The sub-tenant's proper remedy in respect of any premium paid to the tenant and his costs in obtaining relief will be against the tenant; see Obligation L2A (c), Published Working Paper No. 8.

3. Proposition 10.10 (2) widens the power of the court to grant ancillary relief; see Re No. 1, Albermarle Street [1959] Ch. 531.

4. Proposition 10.10 (3) represents a change in the law, cf. Chelsea Estates Investment Trust Co. Ltd. v. Marche [1955] Ch. 328.

Costs

10.11 Where the court finds that there has been a breach of the obligations of the tenancy, but does not order the termination of the tenancy,

(1) the normal order for costs shall be that the tenant will pay the landlord's costs, but

(2) the court shall have a discretion as to costs, and in particular may make an award against the landlord, if, having regard to all the circumstances, it thinks that the landlord has acted unreasonably or with unreasonable haste.

Note: Proposition 10.11 (2) permits the court to take into account the landlord's conduct in awarding costs (see also Proposition 11.04).

No Relief after Order

10.12 Subject to Proposition 10.13 below and the retention of the provisions of s.16 of the Landlord and Tenant Act 1954 there shall be no right to apply for or obtain relief after an order for termination is made. If proceedings are brought in the county court against a tenant entitled to protection under the Rent Acts, and the breach relied on is one that entitles the landlord to possession, no further proceedings for possession will be necessary.

Note: This does not prejudice a landlord's right to seek an injunction or damages under s.11 of the Agricultural Holdings Act 1948, or a tenant's right to claim compensation for improvement under s.47 (3) of the Landlord and Tenant Act 1954.

Stay of Execution

10.13 The court may in its discretion stay execution upon an order for termination:-

(a) for a period not longer than [ ] months; and

(b) if an appeal is contemplated, on terms.

Commentary

(1) As indicated in Paragraph 3 (a) of the Introduction, the Working Party proposes to replace forfeiture on re-entry for breach of tenants' obligations by termination by court order regulated by the same broad principles, whatever the character of the tenant's breach. This change would have far reaching consequences. The elimination of re-entry provisions related to tenants' breaches or bankruptcies involves sweeping away the different sets of statutory provisions which relate to forfeiture for non-payment of rent (Common Law Procedure Act 1852 ss.210-212, Judicature Act 1925, s.46, and the County Courts Act 1959 s.191, as amended by the Administration of Justice Act 1965 s.23), on the one hand, and forfeiture for other breaches, on the other (Law of Property Act

1925, s.146 as amended, and the Leasehold Property (Repairs) Act 1938). At the same time, the right of relief on bankruptcy is preserved (s.146 (10) of the Law of Property Act 1925). A further direct consequence of the adoption of Proposition 10.00 is the abolition of the automatic rights to relief on the part of tenants in non-payment of rent cases, which have, in practice, given rise to substantial abuses.

(2) An important change in the legal position resulting from the acceptance of Proposition 10.00 is that instead of re-entry, actual or notional (i.e. by issue or service of a writ for possession) bringing the tenancy to an end, the rights and obligations of the parties to the tenancy will persist until the court's order of termination becomes operative (Proposition 10.02). This will overcome the difficulties which, at present, arise as to the "suspended" or uncertain character of those rights and obligations pending the decision of the court in forfeiture proceedings or the expiration of the time during which tenants are entitled to relief where actual re-entry has been effected by landlords. Proposition 10.05 (c) is designed to provide a sanction for the tenant's liability to perform his obligations pending the outcome of termination proceedings and Proposition 10.09 safeguards the landlord against third party and other rights which the tenant might have attempted to create or exercise pending their outcome.

(3) Close consideration has been given to the question whether notice should be prerequisite to the landlord's institution of proceedings for termination. Proposition 10.03 represents a majority view of the Working Party in favour of dispensing with the requirements of formal notice under s.146 (1) of the Law of Property Act 1925. Formal notice it is argued, results in unnecessary delay and leaves too great a field for disputes as to whether or not a "reasonable time" has elapsed between service of the notice and the institution of proceedings and as to the form of the notice. Moreover, its elimination would be unlikely to encourage landlords to act oppressively, for it is unusual in practice under the present law

and hardly conceivable under the proposals unless the tenant has disappeared that proceedings for breach would be instituted without prior communication in some form between landlord and tenant. It is thought that sufficient safeguards have been provided in this respect in Propositions 10.03 (1), (2) and (3) (tenant's right to apply for a stay), 10.05 (a) and (b) (reasonableness of the landlord's conduct) and 10.11 (provisions as to costs). The elimination of formal notice would also overcome the often difficult decisions which a landlord has at present initially to make as to whether or not a particular breach is remediable and as to claiming compensation. This particular object could, it is true, be achieved without dispensing altogether with the requirement of written notice prior to the institution of proceedings which might be wholly unacceptable in view of the history of s.146 (1) of the Law of Property Act 1925. The minority view is that a formal notice requiring remediable breaches to be remedied serves the very useful purpose of getting agreement between the parties and the breach remedied often without a writ ever having to be served and should be retained. Views on the retention of the notice requirement of s.146 (1) of the Law of Property Act 1925 are invited.

(4) Special reference is required to the Leasehold Property (Repairs) Act 1938, the more so since it was enacted to counter what was commonly regarded as oppressive conduct by landlords in situations to which its provisions were made to apply. What, however, is particularly unsatisfactory about the 1938 Act is the duplication of proceedings which it involves in many cases of breaches of repairing covenants. Proposition 10.03 (3) is designed, in the context of termination proceedings to retain the protection afforded to tenants by the 1938 Act whilst reducing that duplication.

(5) It will be observed that Propositions 10.07, 10.08 and 10.10 deal, in some detail, with the protection of third parties having interests derived under the tenant. This has been necessary, first, because the present law is considered to be inadequate as to notification

of proceedings to such third parties; and, secondly, to deal with areas of uncertainty as to the terms of vesting orders in particular situations.

(6) Clearly, procedural provisions will be required to ensure that all third parties with an interest likely to be affected by an order in the proceedings should be given notice of the proceedings and an opportunity to be heard before any order is made, and especially if Proposition 10.09 is accepted. In one respect, it has been thought desirable to restrict the sub-tenant's right to claim a vesting order of any greater part of the premises than he had before. It has been suggested that when a vesting order is made, the principle that the landlord should be put back in the same position as he was in before termination (see Chatham Empire Theatre (1955) Ltd. v. Ultrans Ltd. [1961] 1 W.L.R. 817) can work injustice if a substantial premium has been paid in respect of the sub-tenancy, but not in respect of the head tenancy. In such a case the sub-tenant would be likely to have his rent increased proportionately. However, as between the new parties, it cannot be thought right to take into account a premium paid by the sub-tenant to the tenant; his proper remedy would lie against the tenant under Obligation I.2. (c) of Published Working Paper No. 8.

(7) Whilst it is intended that the present rule as to orders for costs should apply, the Working Party felt that power to order costs against a landlord would be a further safeguard against unreasonable haste or conduct on his part in bringing proceedings.

(8) Finally, the decision to equate termination for non-payment of rent with termination for other breaches, taken with the abolition of automatic rights to relief in non-payment of rent cases, has led to the adoption of Proposition 10.06 and 10.11. The former enables the court to order termination against tenants who have been "repeatedly in arrears" (cp. s.30 (1) (b) of the Landlord and Tenant Act 1954); the latter precludes the tenant from obtaining relief, by payment of arrears &c., once a termination order has been made (cf. s.191 (1) (b) and (c) of the County Courts Act 1959 as amended).

Termination for breach of landlord's obligation

11.00 The court shall have power on the tenant's application to terminate the tenancy on the ground that the landlord is in breach of an obligation under the tenancy.

Note: Proposition 11.00 introduces a right on the part of the tenant (corresponding to that of the landlord under Proposition 10.01) to proceed for termination for serious breaches of the landlord's obligations under the tenancy.

Operative Date

11.01 (1) Where proceedings for termination are instituted by the tenant, the tenancy shall continue, and hence the rights and obligations of the parties under the tenancy remain enforceable, unless and until the court orders it to be terminated. Where, however, the effect of the breach is to dispossess the tenant entirely of the subject-matter of the tenancy, the tenant's obligations shall be suspended from the service of the writ or summons. This suspension will be without prejudice to any right of set-off or to damages that have accrued from the time of dispossession to the time of service; and

(2) where the effect of the breach is to dispossess the tenant of part of the subject-matter of the tenancy, the court shall have power to grant interim relief to the tenant.

Notes: 1. Proposition 11.01 (1) lays down the basic rule as in Proposition 10.02 that the tenancy continues until termination by the court subject to an exception in the case of total dispossession (whether of occupation or receipt of rent and profits) where the tenancy

obligations are suspended.

2. Where dispossession is only partial, Proposition 11.01 (2) makes provision for interim relief.

Institution and Stay of Proceedings

11.02 Where the proceedings for termination are instituted by the tenant, no prior notice of intention to commence proceedings shall be required, but

(1) the tenant shall in his writ or summons specify with particularity the breach upon which he intends to rely; and

(2) the landlord shall except where the obligations of the tenancy have been suspended, be entitled to apply for a stay on the grounds that continuance of the proceedings (for the time being) would be oppressive because:-

(a) he has taken or is taking steps to remedy the breaches; or

(b) in all the circumstances, termination would be unreasonable.

Note: cf. Proposition 10.03 (1) and (2).

Order for Termination

11.03 In deciding whether or not to order termination, the court shall have regard to all the circumstances of the case including:-

(a) whether the tenant acted reasonably in instituting proceedings, including the question whether the landlord had knowledge of the breach, and

(b) whether the landlord has had a reasonable opportunity or has taken or is taking reasonable steps to remedy the breach if remediable, and

(c) whether the tenant or any person claiming

under him has been or is likely to be deprived of occupation (including receipt of rents and profits) or seriously restricted in the beneficial use of the premises.

Notes: 1. cf. Proposition 10.05.

2. In determining whether the tenant acted reasonably in instituting proceedings for termination (Proposition 11.03 (a)) the court would consider what alternative remedies were available to him.

Third Parties - Notices

11.04 (1) The tenant shall give notice of the proceedings

(a) to any person in occupation of the premises either by name or description as "occupier"; and

(b) to any other person who to his knowledge or belief has or may have an interest in the tenancy likely to be affected by an order in the proceedings,

and shall also serve notice on the landlord of the persons to whom he has given such notice.

(2) The court shall have power to order that notice of the proceedings be given to any person whose interest might be so affected and who has not been given notice.

Notes: 1. It is important that all third parties whose interest might be affected by an order should receive notice of the proceedings; cf. Proposition 10.07 (1). Procedural provisions will be required to ensure that as far as possible this is done.

2. This is intended to include all persons within s.146 (4) of the Law of Property Act 1925.

Third Parties - Rights

11.05 Where the court orders termination of the tenancy, all interests created in respect of the tenancy or any sub-tenancy shall thereupon cease, subject to Proposition 11.07 (rights of relief).

Note: cf. Proposition 10.09.

Interim Orders

11.06 The court shall have power pending final determination of the proceeding to make such order as to suspension or variation of the performance of the obligations of the parties to the tenancy inter se or vis-à-vis third parties who have joined in the proceedings, as from the date of the service of the writ or summons as in all the circumstances may be just.

Note: cf. Proposition 10.08.

Vesting Orders

11.07 Any person having an estate or interest in the whole or part of the premises under Proposition 11.04 shall be entitled to apply for a vesting order as under Proposition 10.10.

Note: This form of relief in the case of a landlord's breach is necessarily going to be available less frequently than under Proposition 10.10, since the breach itself is likely to have arisen from, e.g. a defect in the landlord's title which will prevent him giving possession to a sub-tenant.

Costs

11.08 Where the court finds that there has been a breach of the landlord's obligations under the tenancy, but does not order termination of the tenancy,

(1) the normal order for costs shall be that the landlord will pay the tenant's costs,

but

(2) the court shall have a discretion as to costs, and so may make an award against the tenant if, having regard to all the circumstances, it thinks that the tenant acted unreasonably or with unreasonable haste.

Note: cf. Proposition 10.11.

Commentary

(1) Propositions 10.00-10.13 have been drafted to deal with breaches of tenants' obligations. Published Working Paper No. 8 (Obligations of Landlords and Tenants), and especially the commentary to Proposition L2A shows that the Working Party contenplates the existence of situations in which the landlord is guilty of so serious a breach of his obligations to the tenant that the tenant should be entitled to treat the tenancy at an end. But under the present law not even the worst possible conduct by a landlord, i.e. wrongfully evicting his tenant, gives the tenant the right to end the tenancy. This is thought to be unsatisfactory, and in any case in respect of serious breaches, both landlord and tenant should be exposed to the same consequences.

(2) Mutatis mutandis, the propositions are designed to run parallel with the relevant parts of Propositions 10.00 to 10.11. Applications based upon trivial or technical breaches are sought to be discouraged by conferring the right upon the landlord to apply for a stay (Proposition 11.02 (1) and (2)), introducing the effects of the breach, the reasonableness of the tenant's institution of proceedings and of the landlord's opportunity to remedy the breach, as specific factors affecting the exercise of the court's power to order termination (Proposition 11.03) and dealing with the discretion as to costs (Proposition 11.08). In considering whether the tenant acted reasonably in instituting proceedings it is implicit in Proposition 10.05 (a) that the court will take into account what alternative remedies are available to the tenant.

(3) In dealing with the landlord's application for termination orders the Working Party's propositions proceed upon the basis that the rights and

obligations of the parties continue (subject to interim relief) until an order for termination is made. Whilst this is the basic rule under Proposition 11.01 in the case of tenant's applications, it is felt necessary to deal differently with the specific case in which the effect of a landlord's breach is to preclude a tenant from enjoying the benefits of the tenancy; an exception has been introduced accordingly, but it will be recognised that this amounts to little more than a restatement of the present law that the eviction of a tenant suspends his tenancy obligations.

TERMINATION FOR IMPOSSIBILITY OF PERFORMANCE

The Qualifying Event

12.00 Where an event or change of circumstances has occurred which has brought about a situation outside the contemplation of the parties at the time when they entered into the tenancy (or when the terms thereof were subsequently varied) and that the situation is such that the purposes for which the tenancy was granted can no longer be fulfilled in accordance with the intentions of those parties, the landlord or the tenant may apply to the court for an order terminating the tenancy.

Note: Following the view of the majority of the Working Party, Proposition 12.00 introduces, in contrast to the common law doctrine of frustration, the right to apply to the court for termination of the tenancy on the occurrence of a "qualifying event" and sets out the test which the court should apply to determine whether such an event has occurred.

Powers of the Court

12.01 If the court is satisfied that such a situation has arisen it shall make an order for the termination of the tenancy unless the principal parties to the application (i.e. the landlord and tenant) ask the court to make an order varying the tenancy terms, in which case

the court may make such order upon such varied terms as may be just and such order shall take into account and provide for the protection or disposal of the interests in the tenancy of third parties.

Note: This follows the view of the majority of the Working Party that the court must make a termination order unless the original parties to the proceedings both apply for variation. The minority view is given in the commentary at p.34 below where the arguments are stated.

Operative Date

12.02 Subject to the powers of the court to make interim orders pending determination of the application, the rights and obligations of the parties under the tenancy terms will continue until the operative date of the court's final order. That date will be the date of the order or such later date as may in the circumstances be appropriate.

Third Parties

12.03 (1) The applicant for an order shall give notice of the proceedings

(a) to any person in occupation of the premises either by name or by description as "occupier"; and

(b) to any other person who to his knowledge or belief has or may have an interest in the tenancy likely to be affected by an order in the proceedings, and shall also serve notice on the respondent of the persons to whom he has given such notice.

(2) The respondent shall within a fixed period after service of the application on him, notify the applicant of any

person not specified in the applicant's notice to him, who, on the date of the service of the application had such an interest as is described in paragraph (1) above.

(3) The applicant shall give notice of the proceedings to any person specified in the respondent's notice under paragraph (2) above.

(4) The court shall have power to order that notice of the proceedings be given to any person whose interest might be so affected and who has not been given notice.

(5) Any third party so served or any third party who satisfies the court that he has such an interest shall be entitled to join in the proceedings and shall be heard upon all issues therein.

(6) The order of the court upon the application shall make provision as to the interests of third parties who join in the proceedings as may in the circumstances be just including an order for the termination or variation of their interests upon terms.

(7) The effect of an order of termination shall be to extinguish all third party interests which did not exist at the time of the application as well as the interests of those third parties who did not join in the proceedings.

Notes: 1. As regards third parties, the only viable solution seems to be to make provision for the joinder in the proceedings (Proposition 12.03 (5)) of those persons who are so entitled by virtue of Propositions 12.03

(1)-(4), i.e. those brought within s.146 (4) of the Law of Property Act 1925 by s.146 (5) so that their interests may be protected. cf. also Propositions 10.07 and 11.04 above.

2. Variation under Proposition 12.03 (6) may include a vesting order.

Interim Orders

12.04 The court shall have power pending the final determination of an application for a termination order to make such order as to suspension or variation of the performance of the obligations of the parties to the tenancy inter se or vis-a-vis third parties who have joined in the proceedings, as from the date of the application as in all the circumstances may be just.

Note: This follows from Proposition 12.02.

Ancillary Relief

12.05 In its final order the court shall have power to grant such ancillary relief as may be just including:-

(a) any variation or discharge of any tenancy obligations provided to take effect on the termination of the tenancy,

(b) an order providing for the removal of tenants' fixtures after the operative date of termination upon such terms as to payment of money or otherwise as may be just,

(c) an order for the repayment in whole or part of money which has been paid to or for the benefit of any party to or joined in the proceedings in respect of or pursuant to the tenancy or any tenancy obligations or third party

interest, and

(d) an order for the payment of compensation to any party who has incurred any expenditure or made any payment in respect of or pursuant to the tenancy or its obligations or third party interest.

Commentary

(1) Having particular regard to the differing views expressed in the House of Lords in Cricklewood Property Trust v. Leighton Investment Trust [1945] A.C. 221, the Working Party concluded that it was uncertain under the present law whether the common law doctrines of frustration and impossibility of performance apply to tenancies. They observed that it was not uncommon for longer leases to make specific provisions regulating the consequences of destruction by fire of the premises let (perhaps the most common type of "frustrating event") and considered that, fire apart, the situations in which tenancies could be regarded as defeated by frustration or impossibility of performance would be rare. They nevertheless concluded that propositions should be formulated to deal with these unusual situations. The principal proposition advanced, therefore, is aimed, with the rubric "the qualifying event", at formulating the test which the court should apply to determine the question which arises in these cases, following the views of Lords Reid and Radcliffe in Davies Contractors Ltd. v. Farnham U.D.C. [1956] A.C. 696 at pp.720-721 and 726-729.

(2) The first problem which faced the Working Party here was to decide whether, as by the operation of the common law principles upon contracts, the occurrence of the event giving rise to frustration or impossibility should take effect automatically to terminate the tenancy, or whether termination should be dependent upon some subsequent happening. The latter solution was preferred by the majority of the Working Party for two main reasons; in the first place, whether or not a tenancy has been defeated by the occurrence

of events would generally be a more difficult question to answer than in the case of a commercial contract; secondly, since one is concerned in this area with legal estates in land in which there are often third party interests, it is highly desirable that any terminating event should have clearly recognisable characteristics. The Working Party considered two situations, the one in which the parties to the lease were in agreement that its purposes had been defeated by some "qualifying event" or change of circumstances, the other in which they were in disagreement upon this. In the former case the parties, being in agreement, would be in a position to effect a surrender of the lease and such surrender would have no greater nor lesser effect than any other type of surrender. In the latter case, the parties' dispute could only be resolved by the court. Considering then that provision need only be made for the disputed case, the majority of the Working Party concluded that termination must await the court's order.

(3) An allied question concerns the operative date of termination in these circumstances. But once the Working Party decided that, in the disputed case, termination would depend upon the court's order, it followed that unless other factors led to a different conclusion, the operative date must be the date of the court order or such later date as it specified. There are, of course, arguments to the contrary, particularly that, in many cases to which Proposition 12.00 applies, it would be unfair and indeed impracticable, to hold the parties to the tenancy to their obligations as to rent and repairs, for example, pending the court order. But it was considered that these problems could be solved by provisions for interim relief, and accordingly Proposition 12.02 has been so formulated. The ruling consideration on this point has been the Working Party's view that in default of an agreed surrender the date of termination of a tenancy must be ascertainable by reference to a definite identifiable and public act. It is only a court order that possesses these characteristics.

(4) A further problem of great difficulty is whether the court's

jurisdiction to order termination in these cases should be discretionary once a qualifying event has been established. In support of the view that once the court has decided that a qualifying event has occurred, an order for termination should automatically follow (the view taken by the majority of the Working Party), it is argued that any discretion to refuse termination would create uncertainty as to the final outcome of proceedings, and that the hardships likely to be caused as a result of automatic termination could be mitigated by spelling out those matters which should be the subjects of ancillary relief (see Proposition 12.05). On the other view, in favour of a discretion, it is argued that the undue rigidity of automatic termination is likely to preclude the court from arriving at an equitable solution in many cases, where for example the parties are prepared to enter into new arrangements, or where the court itself forms the view that variation of the terms of the tenancy would best meet the requirements of justice.

(5) In the first example, there is no difficulty in providing for new arrangements agreed by the parties even on the basis that an order for termination would be automatic (see Proposition 12.01). In the second, however, a serious question arises if the discretionary remedy is accepted, namely, whether the court should have a discretion to refuse an order for termination, or should have power to impose terms on the parties even where the parties do not agree to them. The conferment of such powers to impose terms is not without precedent, since in specified cases, e.g. under the Housing Acts, the County Court does have such a power, and in cases under the Landlord and Tenant Act 1954 Part II, the tenant alone can resile from a new tenancy on terms decided by the court. But these examples operate only in precisely defined situations, in which the quality of the imposed terms is reasonably predictable in any given case. It is doubtful whether such a power would be acceptable here.

(6) Whilst for the purposes of this paper the propositions have been formulated on the basis that unless the parties agree to substituted terms the court should have no discretion to refuse an order for

termination if it is satisfied that a qualifying event has occurred. Comments on the two possible approaches are invited.

Orders under the Housing Acts

14.00 A tenancy shall be terminated by order made in the exercise of housing authorities' statutory powers under the Housing Acts.

Notes: 1. See the Housing Act 1957 ss.162 and 164, and the Housing Act 1946 s.88.

2. The Working Party consider that these provisions do not properly fall within the law of landlord and tenant, but that the code should contain a cross-reference to them.

3rd April, 1968.

A P P E N D I X

METHODS OF GIVING NOTICES

1. A notice is duly given to a landlord if:-

(a) it is addressed to the landlord by name or by the description of "landlord" of the premises (identifying them); and

(b) it is served:-

(i) by delivering it personally to the landlord or to the landlord's agent, or

(ii) by leaving it at the usual or last known place of abode of the landlord or his agent, or

(iii) by sending it by post in accordance with paragraph 9 below.

2. For the purpose of paragraph 1, the person who receives the rent of the premises is deemed to be the landlord's agent.

Notes: 1. Landlords' Obligations L3A and L5A and Tenants' Obligation T104A in Published Working Paper No.8 require giving notices.

2. Service on the landlord's solicitor will be valid only if that solicitor is acting as the landlord's agent. It is intended that such service should only be valid if the solicitor is acting for the landlord at that time in regard to the premises and is authorised to accept service. Views are invited on this question.

3. A notice is duly given to a tenant if:-

(a) it is addressed to the tenant by name or by the description of "the tenant" of the premises (identifying them); and

(b) it is served:-

(i) by delivering it personally to the tenant or to the person who pays or last paid the rent, or

(ii) by leaving it at the usual or last known place of abode of the tenant, or

(iii) by sending it by post in accordance with paragraph 9 below, or

(iv) if it is not reasonably practicable to give

notice in accordance with the foregoing provisions and the address of the tenant cannot after reasonable enquiry be ascertained, by leaving the notice at or affixing it to some conspicuous part of the premises to which it relates.

4. Where, unknown to the person giving notice, the person to whom the notice is addressed is dead, the notice will be deemed to have been duly given if:-

(a) it is addressed to the landlord or tenant (as the case may be) by name or by the description of "landlord" or "tenant" of the premises (identifying them); and

(b) it is served:-

(i) by leaving it at the usual or last known place of abode of the landlord or the tenant, or

(ii) by sending it by post in accordance with paragraph 9 below, or

(iii) in the case of service on a tenant if it is not reasonably practicable to give notice in accordance with (i) or (ii) above and the last address of the tenant cannot after reasonable enquiry be ascertained, by leaving the notice at or affixing it to some conspicuous part of the premises to which it relates.

Note: Death automatically revokes agency and so in such a case service on the landlord's agent will be ineffective.

5. Where, to the knowledge of the person giving a notice, the person to whom the notice is addressed is dead, and whether or not a grant of representation has been made, the notice will be deemed to have been duly given if:-

(a) it is addressed to the personal representatives of the landlord or tenant (as the case may be) either by name or by description as "personal representatives" of the

landlord or tenant (naming him); and

(b) it is served:-

(i) by delivering it personally to the personal representatives, or

(ii) by leaving it at the usual or last known place of abode of the deceased or the personal representatives, or

(iii) by sending it by post in accordance with paragraph 9 below.

6. A notice is not duly given by being given to the Probate Judge notwithstanding anything in s.9 of the Administration of Estates Act 1925.

Note: Where the landlord or the tenant has died testate his executors may take the necessary steps on the receipt of a notice before probate has been granted. But on an intestacy no-one has authority to act until letters of administration have been granted. It is thought, however, that a tenant or a landlord should not lose the right to serve a notice because of the intestacy of the landlord or the tenant. It is also thought that even when letters of administration have not been granted service on the premises of the intestate is more likely to reach the hands of an interested party than service on the Probate Judge. Views are invited on this problem.

7. Any notice to be given to two or more persons as landlord or tenant will be duly given to them if it is addressed to them in accordance with the foregoing provisions but is served in accordance with those provisions upon any one of them.

Note: The position of any notice to be given by two or more persons will be governed by the general law.

8. Any notice to be given to a body corporate will be duly given by delivering it to the secretary or clerk or other proper officer of the company or body at its registered or principal office or by sending it by post addressed to the secretary or clerk or other proper officer in accordance with paragraph 9 below.

9.(a) A notice shall be validly served if sent by post in a registered letter or by recorded delivery or if sent by ordinary post.

(b) Where a notice is served by post in a registered letter or by recorded delivery, service shall be deemed to have been effected at the time at which the letter would be delivered in the ordinary course of such post unless the letter is returned through the Post Office undelivered.

(c) Where a notice is served by ordinary post by properly addressing, prepaying and posting a letter containing the notice, then, unless the contrary is proved, service shall be deemed to have been effected at the time at which the letter would be delivered in the ordinary course of the post according to the class of mail used.

Notes: 1. It is thought that requiring a particular mode of post would be a trap for the unwary.

2. Proof of registered post or recorded delivery will be conclusive proof of service unless the letter is returned undelivered through the Post Office. This follows s.196 (4) of the Law of Property Act 1925. It must be noted that other enactments, such as s.23 of the Landlord and Tenant Act 1927, for example, do not contain the proviso as to non-delivery. Views are invited upon which course should be followed.

3. Where a notice is sent by ordinary post a presumption of service arises which may be rebutted by evidence to the contrary. This incorporates s.26 of the Interpretation Act 1889.

4. Views are particularly sought on service by post.