

DRAFT GENERAL SCHEME OF LANDLORD AND TENANT LAW REFORM BILL 2011

ARRANGEMENT OF HEADS

PART 1

PRELIMINARY AND GENERAL

HEAD

1. Short Title
2. Commencement
3. Interpretation
4. Service of notices
5. Regulations
6. Rules of court
7. Offences
8. Expenses
9. Amendments and repeals

PART 2

RELATIONSHIP OF LANDLORD AND TENANT

10. Contractual basis of relationship
11. Identification of a tenancy

PART 3

FORMALITIES

12. Tenancies to be in writing
13. Evidence in proceedings.
14. Assignments.

PART 4

SUCCESSORS IN TITLE

15. Application of Part 4
16. Position of successors
17. Positions of previous landlord or tenant
18. Apportionment on severance
19. Concurrent tenancy

PART 5

TENANT'S PROPERTY

20. Application of *Part 5*
21. Tenant's right of removal
22. Landlord's rights

PART 6

OBLIGATIONS

Chapter 1

Overriding and default obligations

- 23. Scope of Part 6
- 24. Overriding and default obligations

Chapter 2

Landlord's obligations

- 25. Good title
- 26. Possession and quiet enjoyment
- 27. Landlord's agent and contact
- 28. Residual obligation to repair
- 29. Defective premises
- 30. Buildings' Insurance

Chapter 3

Landlord's consent

- 31. Scope of Chapter 3
- 32. Unreasonable withholding of consent
- 33. Application for consent
- 34. Decision on application
- 35. Extension of time limits
- 36. Summary court orders
- 37. Landlord not known or found

Chapter 4

Tenant's obligations

- 38. Rent
- 39. Apportionment of rent
- 40. Rent review
- 41. Recovery of rent
- 42. Receipts for rent
- 43. Use and occupation
- 44. Outgoings
- 45. Repairs
- 46. Insurance

Chapter 5

Enforcement of obligations

- 47. Release or waiver
- 48. Set-off in proceedings
- 49. Deductions from rent

- 50. Damages for breach of tenant's repairing obligations
- 51. Damages for breach of landlord's repairing obligations
- 52. Condition of consent

PART 7

TERMINATION OF TENANCIES

Chapter 1

Surrender

- 53. Formalities
- 54. Implied surrender
- 55. Variation of tenancy
- 56. Renewal of head-tenancy
- 57. Surrender of head-tenancy

Chapter 2

Merger

- 58. Merger of head-tenancy
- 59. Partial merger

Chapter 3

Discharge

- 60. Frustration
- 61. Repudiation by landlord

Chapter 4

Notice of termination

- 62. Scope of Chapter 4
- 63. Notices terminating a tenancy
- 64. Period of notice
- 65. Service of notice
- 66. Subtenants

Chapter 5

Forfeiture

- 67. Scope of Chapter 5
- 68. Right of forfeiture
- 69. Forfeiture notices and counter-notices
- 70. Recovery of possession
- 71. Effect of forfeiture notice

Chapter 6

Possession proceedings

- 72. Possession order

73. Procedure
74. Application for relief
75. Order for relief
76. Abandoned premises
77. Emergency action
78. Permissive occupants
79. Further claims

PART 8

STATUTORY RIGHTS

Chapter 1

Scope of Part 8

80. General application
81. Interpretation
82. Application to State
83. Application to local authorities

Chapter 2

Right to a new tenancy

84. Entitlement
85. Occupation by others
86. Restrictions on right to new tenancy
87. Notice of intention to claim relief
88. Application for relief
89. Award of a new tenancy
90. Fixing the terms of the new tenancy
91. Rent review
92. Subsequent termination
93. Continuation of existing tenancy

Chapter 3

Compensation for disturbance

94. Entitlement
95. Termination of tenancy of obsolete buildings
96. Set-off of compensation
97. Mortgaged premises
98. Protection of trustees and others

Chapter 4

General provisions

99. Notices requiring information
100. Parties to grant
101. Termination of a head-tenancy
102. Extension of time limits

SCHEDULE 1
Reviewed Rent

SCHEDULE 2
Repeals

PART 1

PRELIMINARY AND GENERAL

Head 1: Short Title

Provide that:

This Act may be cited as the Landlord and Tenant Law Reform Act 2011

Explanatory Note

This is a standard provision.

Head 2: Commencement

Provide that:

.—This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes and different provisions

Explanatory Note

This is a standard provision. Ideally, it would be desirable to bring the entire Act into force on a specified date but provision is being made for different Parts to be brought into force at different times in case that proves necessary.

Head 3: Interpretation

Provide that:

In this Act, unless the context otherwise requires, -

“Act of 2000” means the Planning and Development Act 2000;

“Act of 2004” means the Residential Tenancies Act 2004;

“Act of 2009” means the Land and Conveyancing Law Reform Act 2009;

“consent” includes agreement, licence and permission;

“consideration” includes marriage, natural love and affection and nominal consideration in money;

“the court” means the Circuit Court;

“covenant” includes an agreement, condition, reservation, stipulation or other similar provision of a tenancy;

“deed” has the meaning given to it by section 64(2) of the Act of 2009;

“development” has the meaning given to it by section 3 of the Act of 2000;

“development plan” has the meaning given to it by section 2(1) of the Act of 2000;

“incumbrance” includes an annuity, charge, lien, mortgage, portion and trust for securing an annual or capital sum; and “incumbrancer” shall be read accordingly and includes every person entitled to the benefit of an incumbrance or to require its payment or discharge;

“instrument” includes a deed, will or other document in writing and information in electronic or other non-legible form which is capable of being converted into such a document, but not a statutory provision;

“judgment mortgage” has the meaning given to it by section 3 of the Act of 2009;

“land” has the meaning given to it by section 3 of the Act of 2009;

“landlord” means the person, including a sub-landlord, entitled to the legal estate immediately superior to a tenancy;

“lease” as a noun means the instrument creating a tenancy and includes any collateral or other agreement relating to a tenancy; and as a verb means the granting of a tenancy by an instrument;

“lessee” means the person, including a sub-lessee, in whom a tenancy created by a lease is vested;

“lessor” means the person, including a sub-lessor, entitled to the legal estate immediately superior to a tenancy created by a lease;

“Minister” means the Minister for Justice and Equality;

“mortgage”, “mortgagee” “mortgagor” have the meanings given to them by section 3 of the Act of 2009;

“obligation” in relation to a tenancy includes an obligation arising under a collateral or other agreement relating to that tenancy;

“planning authority” and “planning permission” have the meanings given to them by the Act of 2000;

“possession” includes the receipt of, or the right to receive, rents and profits, if any;

“premises” means the land which is the subject-matter of a tenancy;

“prescribed” means prescribed by regulations made under *section 5*;

“property” means any real or personal property or any part or combination of such property;

“provision” in relation to a tenancy includes a provision in a collateral or other agreement relating to that tenancy;

“rent” includes –

(i) any sum or other payment in money or money’s worth or any other consideration,

(ii) any payment specified as rent under the terms of the tenancy,

(iii) any sum payable or refundable to the landlord on a recurring or regular basis under the terms of the tenancy;

“State authority” means a Minister of the Government or the Commissioners of Public Works;

“sublease” includes a sub-sublease; and “sub-lessee” shall be read accordingly;

“sub-tenancy” includes a sub-sub-tenancy; and “subtenant” shall be read accordingly;

“tenancy” means the estate or interest which arises from the relationship of landlord and tenant however it is created but does not include a tenancy at will or a tenancy at sufferance, and "tenancy agreement" shall be construed accordingly;

“tenant” means the person, including a subtenant, in whom a tenancy is vested.

Explanatory Note

This is a standard provision containing various definitions of expressions, including references to statutes, used in the Bill.

The section has been drafted taking into account the definitions in the Interpretation Act 2005 – this includes matters such as the singular including the plural. It adopts and adapts definitions which appear in legislation being replaced (e.g., Deasy’s Act 1860, the Conveyancing Act 1881 and Landlord and Tenant (Amendment) Act 1980). It also adopts some of the definitions in the Land and Conveyancing Law Reform Act 2009.

Head 4: Service of notices

Provide that:

(1) A notice authorised or required to be given or served by or under this Act shall, subject to *subhead (2)*, be addressed to the person concerned by name and may be given to or served on the person in one of the following ways:

(a) by delivering it to the person;

(b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address;

(c) by sending it by post in a prepaid letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address;

(d) where the notice relates to a building with which the person is associated, and it appears that no person is in actual occupation of the building, by affixing it in a conspicuous position on the outside of the building or the property containing the building;

(e) if the person concerned has agreed to service of notices by means of an electronic communication (within the meaning assigned by section 2 of the Electronic Commerce Act 2000) to that person (being an addressee within the meaning assigned by that section) and provided that there is a facility to confirm receipt of electronic mail and that such receipt has been confirmed, then by that means;

(f) by sending it by means of a facsimile machine to a device or facility for the reception of facsimiles located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the sender's facsimile machine generates a message confirming successful transmission of the total number of pages of the notice;

(g) by any other means that may be prescribed.

(2) Where the notice concerned is to be served on or given to a person who is the owner, landlord, tenant or occupier of a building and the name of the person cannot be ascertained by reasonable inquiry it may be addressed to the person at that building by using the words "the owner", "the landlord", "the tenant" or "the occupier" or other like description, as the case may require.

(3) For the purposes of this section, a company shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

(4) Where a notice required or authorised to be served or given by or under this Act is served or given on behalf of a person, the notice shall be deemed to be served or given by that person.

(5) A notice served or given to the landlord's authorised agent within *Head 27* or any person collecting the rent on behalf of the landlord shall be deemed to be served on or given to the landlord.

(6) Any notice served or given under an enactment repealed by this Act shall, for the purpose of making a claim under this Act, be treated as a notice under the corresponding provision of this Act as if that provision were in force when the notice was served or given.

(7) A person shall not, at any time during the period of 3 months after the notice is affixed under *subhead (1)(d)*, remove, damage or deface the notice without lawful authority.

(8) A person who knowingly contravenes *subhead (7)* is guilty of an offence.

(9) Where a notice is to be served or given under this Act within a specified period and the last day of that period is a Saturday, Sunday or public holiday (within the meaning of the Holidays (Employees) Act 1973) it is validly served or given if received on the next following Monday or day which is not a public holiday after that last day.

Explanatory Note

This is a standard provision, except for subheads (5), (6) and (9) which have been added to clarify the position in the context of landlord and tenant law. Subhead (9) adapts provisions in section 141 of the Planning and Development Act 2000.

Head 5: Regulations

Provide that:

(1) The Minister may make regulations--

(a) for any purpose in relation to which regulations are provided for by any of the provisions of this Act,

(b) for prescribing any matter or thing referred to in this Act as prescribed or to be prescribed,

(c) generally for the purpose of giving effect to this Act.

(2) A regulation under *subsection (1)* shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation is annulled accordingly, but without prejudice to the validity of anything previously done under it.

(3)(a) If in any respect any difficulty arises during the period of 5 years from the commencement of a provision of this Act (including a provision that amends another Act) either in bringing into operation or in giving full effect to the provision or the Act as amended, the Minister may by regulations do anything which appears to be necessary or expedient for removing that difficulty.

(b) In paragraph (a) a reference to another Act is a reference to an Act falling within either paragraph (a) or (b) of the definition of "Act" in section 2(1) of the Interpretation Act 2005

(4) Regulations under *subsection (3)* may, may, in so far only as it may appear necessary for the removal of such difficulty, modify a provision referred to in that subsection provided such modification is in conformity with the purposes, principles and spirit of this Act.

(3) A regulation under this section may contain such consequential, supplementary and ancillary provisions as the Minister considers necessary or expedient.

Explanatory Note

This provision replicates a similar provision in section 5 of the Land and Conveyancing Law Reform Act 2009.

Head 6: Rules of court

Provide that:

.—The rules of court for the purposes of any enactment repealed by this Act shall, pending the making of rules of court for the purposes of this Act, apply for such purposes with such adaptations as may be necessary.

Explanatory Note

This Head adapts a provision in section 12 of the Landlord and Tenant (Amendment) Act 1980. It is particularly relevant to Part 8.

Head 7: Offences

Provide that:

(1) A person convicted of an offence under this Act is liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both.

(2) Proceedings for an offence under this Act may be instituted at any time within one year after the date of the offence.

(3) Where a person is convicted of an offence under this Act the District Court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay the costs and expenses incurred in relation to the investigation, detection and prosecution of the offence.

Explanatory Note

This is a standard provision relating to offences under the Act; for example, an offence is created by Head 4(6).

Head 8: Expenses

Provide that:

.—The expenses incurred by the Minister in the administration of this Act shall to such extent as may be sanctioned by the Minister for Finance be paid out of moneys provided by the Oireachtas.

Explanatory Note

This is a standard provision.

Head 9: Amendments and repeals

Provide that:

Each enactment specified in column (2) of Schedule 2 is repealed to the extent specified in column (3) of that Schedule.

Explanatory Memorandum

This Head and *Schedule 2* provide for repeals and amendments.

PART 2

RELATIONSHIP OF LANDLORD AND TENANT

This Part contains some fundamental provisions. They deal with the key issue of when the relationship of landlord and tenant, as opposed to some other relationship (e.g. that of licensor and licensee), exists. They will replace the provisions of section 3 of Deasy's Act 1860. In so doing, they implement the recommendations in Chapter 1 of the L&T CP.

Head 10: Contractual basis of relationship

(Deasy's Act 1860, section 3)

Provide that:

- (1) The relationship of landlord and tenant continues in all cases to be based on the express or implied agreement of the parties and not upon tenure or service.
- (2) An obligation to pay rent is necessary in all cases for creation of a tenancy.
- (3) The grant of a tenancy without a reversion after the commencement of this Part is void both at law and in equity.

Explanatory Note

This Head largely re-enacts the provisions of section 3 of Deasy's Act 1860, but would recast them with modifications as recommended by the L&T CP.

Subhead 1

Subhead (1) retains the fundamental principle in Deasy's Act that the relationship of landlord and tenant in Ireland has been based since 1860 on the parties' agreement. The word "continues" has been used to confirm that the subsection is continuing the existing position. The words "in all cases" have been inserted to clarify that this is a universal principle, as recommended in paragraph 1.17 of the L&T CP. Also used is the word "agreement" rather than "contract" – section 3 of Deasy's Act uses both. "Contract" may be confusing in that it raises the contract/grant distinction referred to in Chapter 2 of the L&T CP (paragraphs. 2.02 – 2.05).

Section 11(3) of the Land and Conveyancing Law Reform Act 2009 clarifies that a "leasehold estate" arises whenever a tenancy is created at law. Section 3 of this Bill adopts the definition of "tenancy" contained in section 3 of the 2009 Act which refers to the "estate or interest" which arises from the relationship of landlord and tenant. This implements the recommendation in paragraph 1.18 of the L&T CP that a tenancy creates an estate in the land (or an equitable interest in the case of an equitable tenancy). The definition of a "tenancy" in section 3 of the Bill also implements the recommendations in paragraphs 1.24 – 1.25 of the L&T CP that tenancies at will and at sufferance be excluded.

Subhead 2

Subhead (2) implements the recommendations in paragraph 1.23 of the L&T CP that it should be made clear that there is a universal rule that reservation of rent or other consideration is necessary to creation of the relationship. There is a definition of "rent" in section 3 which contains a wide definition of "consideration". This is wider than the definition of "valuable consideration" in the 2009 Act which excludes marriage and a nominal consideration in money.

Subhead 3

As regards the need for a 'reversion', the Law Reform Commission had originally recommended retention of a provision on the following lines: "A reversion is not necessary to the relationship." However, this was queried by the Department during preparation of this General Scheme on the grounds, firstly, that fee farm grants can no

longer be created under section 12 of the 2009 Act and, secondly, that "middlemen" grants (popular in the 19th century) were no longer desirable. The Law Reform Commission has indicated agreement with the proposed change that would require that a reversion be necessary for tenancies created after commencement of this Act.

Head 11: Identification of a tenancy

Provide that:

(1) Subject to *Head 10*, in determining whether a tenancy has been created the court shall–

- (a) give effect to any express provision relating to the matter, and
- (b) presume that each party had received independent legal advice in relation to it.

(2) Where it is established that a party had not received such advice, the court may disregard any such express provision if satisfied that to give effect to it would not reflect the true intention of that party and would prejudice that party.

Explanatory Note

This Head implements the recommendation in paragraph 1.31 of the L&T CP.

Subhead (1)

As recommended in order to clarify the position which has become extremely confused in recent years, it requires the courts in future to give effect to the parties' express agreement, provided they have each had the benefit of independent legal advice. This is made expressly subject to head 10, to make it clear that the parties in order to create a tenancy must still comply with that section, e.g., create the relationship of landlord and tenant and reserve a rent or other consideration.

Subhead (2)

It confirms that where it is established that no advice had been received, it would be open to the court to disregard an express provision, but only if satisfied that it does not reflect true intention of the party in question and that its enforcement would prejudice that party.

PART 3

FORMALITIES

This Part implements recommendations in Chapter 2 of the L&T CP. It deals, in particular, with the formalities governing the creation (grant) of a tenancy and its subsequent disposal (assignment). It replaces sections 4 and 9 of Deasy's Act 1860.

This Part does not deal with the surrender of tenancies because, since this is one method of determination of tenancies, it is included in Part 7 of the Bill (the formalities for surrender and its consequences are dealt with in Heads 53-57, which replace sections 7, 8, 40 and 44 of Deasy's Act) (See L&T CP, paragraphs 2.21–2.27).

The same applies to the subject of determination of periodic tenancies by notice (see L&T CP paragraphs 2.18- 2.20 and sections 62-66 of the Bill). For this reason, Part 3 does not contain any equivalent of sections 5 and 6 of Deasy's Act. The L&T CP also recommended that the obscure and uncertain provisions of the Leases Acts 1849 and 1850 (which purport to save leases which do not meet statutory requirements) should be repealed without replacement (see paragraph 2.17). Head 9(1) and Schedule 2 give effect to this).

It is important to note that Part 3 is not concerned with contracts for the grant of a tenancy, but only with the actual grant itself. L&T CP drew attention to the fundamental distinction between a contract and a grant, which section 3 of Deasy's Act did not abolish (see paragraphs 2.02-2.09). A contract for the grant of a tenancy, like other contracts for the grant of an interest in land, creates an equitable interest only and is not governed by section 4 of Deasy's Act. Rather such contracts are governed by section 2 of the Statute of Frauds (Ireland) 1695. Section 2 of that Statute has been replaced by section 51 of the Land and Conveyancing Law Reform Act 2009.

Head 12: Tenancies to be in writing
(*Deasy's Act 1860, section 4*)

Provide that:

(1) Subject to *subheads* (2) and (3), a tenancy shall be created at law only in a document signed by—

- (a) the landlord, or
- (b) an agent authorised in writing by the landlord.

(2) *Subhead* (1) does not apply to:

- (a) a tenancy for a recurring period not exceeding one year;
- (b) a tenancy for a fixed period not exceeding one year unless the grant includes provision for a renewal or extension which, if exercised, would result in the period, as renewed or extended, exceeding one year.

(3) *Subhead* (1) does not affect a tenancy by estoppel or the operation of equitable principles.

Explanatory Note

This Head replaces the uncertain provisions of section 4 of Deasy's Act 1860 (as recommended in L&T CP paragraphs 2.10 to 2.15). It also takes into account the provisions relating to leasehold estates in the Land and Conveyancing Law Reform Act 2009.

Subhead (1)

This retains the rule - enshrined in section 4 of Deasy's Act - that writing is needed for the creation of a tenancy, subject to some exceptions. The definition of "tenancy" in section 3 of this Bill excludes a tenancy of will and tenancy at sufferance. The Commission recommended that neither of these should in future be regarded as creating the relationship of landlord and tenant (see L&T CP paragraphs 1.24 and 1.25).

Subhead (1) is also concerned with the express creation of legal rights to a tenancy as opposed to rights which may arise from the actions of the parties or rights which fall short of legal rights and may be equitable only. Such equitable rights cannot be registered in the Land Registry and must be protected by registration of a notice or caution if they are to be enforceable against a purchaser for valuable consideration. In a similar way, such equitable rights in unregistered land are not enforceable against a bona fide purchaser of a legal interest in the same land without notice of them. They may be protected by registering a memorial of any document relating to them in the Registry of Deeds.

Subhead (1) does not refer to a 'deed' on the basis that 'writing' can take any form, including engrossment in a document intended to operate as a deed (see Schedule to

the Interpretation Act 2005). It should also be noted that the need for a seal in a deed executed by an individual has been abolished by section 64 of the Land and Conveyancing Law Reform Act 2009.

In relation to authorisation of an agent, the superfluous 'lawfully' in section 4 of Deasy's Act has been dropped in subhead (1).

Subhead (2)

This provides for exceptions to the need for writing and clarifies section 4 of Deasy's Act as recommended by L&T CP (see paragraphs 2.13-2.15). Paragraph (a) provides (i.e. as in the current law) that any periodic tenancy can be created orally provided the recurring period does not exceed one year. Periodic tenancies often arise by implication, e.g., where a fixed-term tenant 'over holds', continues to pay rent and is accepted as a tenant by the landlord.

Paragraph (b) provides that any tenancy for a fixed period not exceeding one year can also be created orally. This makes it clear that a tenancy for one year can be created orally, thereby resolving judicial uncertainty as to the effect of section 4 of Deasy's Act (see L&T CP paragraph 2.15). This does not apply, however, where exercise of an option to renew or other provision results in the combined period exceeding one year.

Paragraph (b) does not refer simply to an 'option to renew' as this might be interpreted too narrowly. The intention is to capture any provision which enables the initial term to be renewed or extended so that the combined terms exceed one year. A 'renewal' might be interpreted as confined to repetition of the same initial term, e.g., an initial grant of a term of 9 months, renewed for another 9 months. An 'extension' on the other hand can be for any term, e.g., an initial grant for 9 months extended for another 6 months.

Subhead (3)

This makes it clear that while non-compliance with subhead (1) will mean that no legal tenancy will be created as intended by the purported grant, some sort of tenancy may arise between the parties in accordance with well-established principles. Quite apart from a periodic tenancy arising by implication under the exceptions in subhead (2), a tenancy by estoppel may arise between the parties if the purported tenant goes into possession and pays rent which is accepted by the purported landlord. In this context 'estoppel' is not used in the sense of the equitable doctrine of estoppel but rather is a principle of the law of evidence: see Wylie, *Irish Landlord and Tenant Law* (2nd ed), paragraph 4.48.

Apart from that, the failed attempt to create a legal tenancy may result in the court construing the parties' actions as a contract for a tenancy which, despite the absence of written evidence, has been rendered enforceable by acts of part performance. Such a contract for a lease, under the rule in *Walsh v Lonsdale*, is almost 'as good as a lease' but it falls short of a legal lease because the interest created is an equitable one only.

Head 13: Evidence in proceedings
(*Deasy's Act 1860, sections 23 and 24*)

Provide that:

(1) In court proceedings—

(a) proof by or on behalf of any lessor of execution by the lessee of the counterpart of any lease is the equivalent of proof of execution of the original lease,

(b) where it appears that no counterpart existed or that the counterpart has been destroyed, lost or mislaid, a copy of the original lease or counterpart is sufficient evidence of the contents of the lease,

as against the lessee or any person claiming from or under the lessee.

(2) In court proceedings by, on behalf of or against any person claiming to be a successor in title to the original landlord, after proof of the original lease or tenancy it is sufficient evidence of the successor's title, as against all parties to the proceedings, to prove that—

(a) the successor has for one year at least, or

(b) the person from whom the successor immediately derives title has for one year at least and within three years before the passing of the title,

received from the person in possession the rent of the land in respect of which the proceedings have been brought.

Explanatory Note

Head 13 re-enacts the substance of sections 23 and 24 of Deasy's Act which the LRC considered were worth preserving (see L&T CP, paragraph 2.16). It was considered whether these provisions would not be more appropriate for Rules of Court but the view was taken that they are more appropriately retained in this statutory form.

Subhead (1)

This recasts the substance of section 23 of Deasy's Act. The word 'execution' has been substituted for the somewhat archaic 'perfection'.

Subhead (2)

Subhead (2) recasts the substance of section 24 of Deasy's Act. It drops the words 'prima facie' in section 24 (see L&T CP paragraph 2.16, fn 49).

Head 14: Assignments.
(*Deasy's Act 1860, section 9*)

Provide that:

- (1) Subject to *subhead (2)*, a tenancy is assignable only in a document signed by—
- (a) the assignor, or
 - (b) an agent authorised in writing by the assignor.
- (2) *Subhead (1)* does not affect—
- (a) devolution of a tenancy on the death of the tenant,
 - (b) transmission of a tenancy by act and operation of law, or
 - (c) the doctrine of estoppel or other equitable principles.

Explanatory Note

Head 14 re-enacts the substance of section 9 of Deasy's Act (as amended by section 8 and the Second Schedule of the Succession Act 1965).

Subhead (1)

This recasts section 9 of Deasy's Act. The definition of 'tenancy' in section 3 of the Bill, when read with section 12, makes it clear that subhead (1) covers both tenancies created in writing and oral tenancies (L&T CP paragraph 2.28). Subhead (1) follows the formulation of Head 12(1) so that it omits reference to a 'deed' and the word 'lawfully' in connection with authorisation of the assignor's agent. Also dropped is the somewhat misleading 'granted' in section 9.

Subhead (2)

This provides for various exceptions as did section 9 of Deasy's Act. Paragraph (a) refers to devolution of a tenancy on the death of the tenant. This is now governed by the Succession Act 1965. On this basis there is no need to refer, as section 9 does, to 'devise, bequest'. Under Part II of the 1965 Act the deceased's estate devolves on the personal representatives and is in due course vested in the deceased tenant's successor (by will or on intestacy).

Paragraph (b) refers to transmission by 'act and operation of law', which includes processes such as vesting (subject to the power to disclaim onerous property) in the Official Assignee on the bankruptcy of the tenant and in a creditor on registration of a judgment mortgage against the tenant's leasehold estate (under section 117 of the Land and Conveyancing Law Reform Act 2009 registration of a judgment mortgage will operate only to entitle the judgment mortgagee to apply to the court for an order under that section or section 31 of the same Act). It also includes the process whereby the sheriff can seize a tenancy of land used wholly or partly for the purpose of carrying on a business under a writ of *fiery facias* and dispose of it in execution of a judgment against the tenant (see section 133 of the Land and Conveyancing Law Reform Act 2009 which abolishes the seizure power in respect of other tenancies). Paragraph (c) preserves the operation of equitable principles such as the doctrine of estoppel (L&T CP paragraph 2.28).

PART 4

SUCCESSORS IN TITLE

This Part implements the recommendations in Chapter 3 of the L&T CP. It deals with the position of successors in title to both the landlord and the tenant following disposal, including part disposal, of their respective interests. It also deals with the position of the landlord or tenant following such a disposal. 'Part disposal' in this context usually means severance of the landlord's or tenant's interest with respect to the land, e.g., where the tenant assigns part of the premises to another person while retaining the tenancy of the other part. Another kind of severance such as arises where the landlord grants a concurrent lease to a new tenant. The position of such a tenant is also dealt with.

This Part replaces sections 11 – 16 of Deasy's Act and the duplicate provisions in sections 10 and 11 of the Conveyancing Act 1881 (see L&T CP paragraph 3.01). In doing so it is concerned with whole or part assignments of the landlord's or tenant's interest, including involuntary assignments (such as on bankruptcy) and devolution on death of a landlord or tenant. It is not concerned with disposal of the tenant's interest by way of a subletting.

Sections 19 – 21 of Deasy's Act contain provisions on this subject which the L&T CP described as uncertain and, in so far as their effect could be ascertained, inappropriate (see paragraphs 3.22 – 3.26). It recommended that those sections should be repealed without replacement and that the general law relating to the position of sub-tenants should continue to operate. In particular the position of a sub-tenant when the head-landlord purports to forfeit the head-tenancy should remain unaffected by uncertain provisions such as those contained in sections 19 – 21.

Relief against forfeiture available to sub-tenants is dealt with in Part 7 of this Bill (see section 74).

Head 15: Application of Part 4

Provide that:

.—For the purposes of this Part, “obligations” and “provisions” are those attaching expressly or by implication to the landlord’s or tenant’s interest under a tenancy.

Explanatory Note

This Head provides that 'obligations' and 'provisions' in this Part are those which attach to the landlord’s and tenant’s interests under the tenancy. The definitions in Head 3 of the Bill make it clear that these expressions include obligations and provisions in a collateral or other agreement relating to the tenancy.

Head 16: Position of Successors

(Deasy's Act 1860, sections 12 and 13: Conveyancing Act 1881, sections 10 and 11)

Provide that:

(1) Subject to *subhead (2)*, the holder for the time being of the landlord's or the tenant's interest under a tenancy is—

- (a) entitled to enforce the benefit of all provisions,
- (b) bound by all obligations.

(2) *Subhead (1)* does not apply to—

- (a) a successor in title to the landlord or tenant in respect of the benefit of any provision or an obligation expressed to be personal to the original or another holder of the landlord's or tenant's interest, or
- (b) any obligation contained in a collateral or other agreement separate from the tenancy agreement unless the holder of the interest in question had actual knowledge of the obligation at the time the interest was acquired.

(3) It is hereby confirmed that a restrictive obligation may be enforced, by injunction or otherwise, by—

- (a) a head-landlord against a sub-tenant,
- (b) a tenant against another tenant where they hold their respective tenancies from the same landlord,

provided it was intended that such obligation should be so enforceable and the sub-tenant or tenant acquired their sub-tenancy or tenancy, as the case may be, with notice of the obligation or expressly subject to it.

(4) In so far as it relates to the enforceability of a leasehold obligation, the rule known as the rule in *Tulk v. Moxhay* is abolished and replaced by subsection (3).

Explanatory Note

Head 16 replaces the duplicate provisions in sections 12 and 13 of Deasy's Act and sections 10 and 11 of the Conveyancing Act 1881. In seeking to clarify the law (L&T CP paragraphs 3.03 to 3.06), it assimilates the position of landlord and tenant so that successors of either party are in the same position, i.e., they step fully into the position of their predecessors in title.

Subhead (1)

This states the basic principle that a successor in title to either the landlord or the tenant is entitled to enforce all provisions benefiting the landlord or tenant and is bound by all obligations attaching to the landlord's or tenant's interest. Head 15 makes it clear that this applies to all provisions and obligations whether implied under

the general law (note the provisions in Part 6 of the Bill) or contained expressly in a lease or other document relating to the tenancy (such as a collateral agreement or 'side letter': L&T CP paragraph 3.05). This is, however, subject to limitations set out in subsection (2).

Subhead (2)

This limits the general principle enshrined in subsection (1). Paragraph (a) preserves the power of landlords and tenants to include in their agreements provisions or obligations which are intended to be personal to the original parties or specified successors and are not intended to benefit or bind other successors. Paragraph (b) implements the recommendation that this should apply only where the successor had notice of the collateral agreement or side letter at the time that successor acquired the landlord's or tenant's interest.

Subhead (3)

This subsection, which did not appear in the draft LRC Bill but has been added during preparation of the General Scheme, is designed to preserve and confirm application of the substance of the rule in *Tulk v. Moxhay* in leasehold situations. It applies notwithstanding the absence of privity of contract and privity of estate between the parties. The rule was abolished in relation to freehold covenants in section 49(1) of the Land and Conveyancing Law Reform Act 2009. [Application of the rule in leasehold situations is discussed in paragraph 22.09 of Wylie's 'Irish Landlord and Tenant Law' (2nd Edition).]

Subhead (4)

This confirms that subsection (3) is intended to replace the rule in *Tulk v. Moxhay*.

Head 17: Positions of previous landlord or tenant

(Administration of Justice Act 1707, section 10; Deasy's Act 1860 sections 14 to 16).

Provide that:

(1) Subject to *subheads* (2) to (4), on the passing, whether by assignment or otherwise, of the landlord's or the tenant's interest under a tenancy, the assignor or previous holder of that interest—

(a) ceases to be entitled to enforce the benefit of provisions,

(b) is not liable for any breach of obligation which occurs after the date of such passing of the interest.

(2) *Subhead* (1)(b) does not apply—

(a) in the case of assignment of the tenant's interest unless, whether required or not by the terms of the tenancy, the consent of the landlord to the assignment has been given in writing,

(b) in all cases until notice in writing of the passing of the interest is given to the landlord or tenant, as appropriate.

(3) *Subhead* (1) does not affect—

(a) the right of an assignee or other successor in title to enforce a breach of obligation which occurred before the passing of the interest and remained unremedied at the date of such passing, or

(b) the liability of an assignee or other successor in title for the continuing breach of an obligation where the breach commenced before and continued after such passing of the interest.

(4) This section does not affect the operation of the doctrine of estoppel or other equitable principles.

(5) For the purposes of *subhead* (2)(b), a “notice in writing” shall specify—

(a) in the case of an assignment, the instrument giving effect to it, the parties to the instrument and its date,

(b) in any other case, the circumstances giving rise to the passing of the interest.

(6) In this section “passing of the interest” includes—

(a) devolution on death,

(b) transmission by act and operation of law.

Explanatory Note

This Head replaces sections 14 to 16 of Deasy's Act and both simplifies and clarifies their operation (L&T CP, paragraphs 3.08 to 3.17). It drops the distinction drawn in Deasy's Act between the original tenant and subsequent assignees of the tenant's interest. This distinction was probably significant in an age when the rent was usually paid in arrears but in modern times it is invariably payable in advance.

Subhead (1)

This retains the essential principle that upon an assignment the original tenant ceases to be liable for future breaches of obligation. This was enshrined in section 16 of Deasy's Act but, as recommended by the L&T CP, it is now extended to landlords (see paragraph 3.17). It also extends to subsequent holders of the landlord's and tenant's interests and replaces sections 14 and 15 of Deasy's Act. The subhead contains clarifications of existing law: it makes it clear that not only is the landlord or tenant relieved of liability for breach of obligation, the right to enforce provisions of the tenancy is also lost; also, the provisions apply to all tenancies (paragraph 3.13); thirdly, the provisions not only apply to assignments but to all other cases where the landlord's or tenant's interest passes, e.g., on bankruptcy or death (see section 14(2) of the Bill); fourthly, relief from liability for breach of obligation applies to future breaches only, i.e. a landlord or tenant is not relieved of liability for breaches he or she caused before the assignment or other passing of their interests.

Subhead (2)

This clarifies the operation of subhead (1). Paragraph (a) retains the provision in section 16 of Deasy's Act that a tenant is discharged from liability only where the landlord has consented to the assignment. As recommended by the L&T CP, it replaces the convoluted requirements in section 16 relating to such consent (see paragraph 3.14). It simply needs to be given in writing which may be incorporated in the instrument of assignment itself or given separately. Paragraph (a) makes it clear that such consent must be given in order to relieve the tenant, whether or not such consent is required under the terms of the tenancy (paragraph 3.16). Paragraph (b) requires notice of the assignment or other passing of the interest in question to be given to the other party in all cases if a discharge from liability for breach of obligation is to be obtained. This applies, therefore, not only in cases of an express assignment by the tenant coming within paragraph (a) (under which the landlord's consent is also needed) but to all other 'passings' of the tenant's interest and to all express assignments and other 'passings' of the landlord's interest.

Subhead (3)

Paragraph (a) makes it clear that a successor in title to the landlord or tenant can enforce a breach of obligation which occurred before the assignment or other passing of the interest to him or her if it remained un-remedied on the assignment or other passing. There is authority that this is the position under section 10 of the Conveyancing Act 1881 but it is difficult to reconcile with section 14 of Deasy's Act. Paragraph (b) makes it clear that a successor in title would remain liable for continuing breaches of obligation which occur while he or she holds the interest in question. This reflects current law: *Doyle v. Hort* (1880) 4 LR Ir 455 at 467 (per Palles CB).

Subhead (4)

This preserves the operation of equitable principles like the doctrine of estoppel. A court may take the view that, notwithstanding the failure to comply with legal requirements (such as the need for consent or the giving of notice under subhead (2)), the circumstances of the case render it unconscionable for a party to rely upon that failure. This ties in with Head 14(2)(c) of the Bill.

Subhead (5)

This specifies the information to be given in a notice of the assignment or other passing of the interest in question required by subhead (2)(b). Paragraph (a) deals with the case of an express assignment where under Head 14(1) an instrument in writing must be used. Paragraph (b) deals with cases coming within Head 14(2) where no such instrument is required. In these cases, the notice must specify the circumstances giving rise to the passing of the interest, e.g., death or bankruptcy.

Subhead (6)

This contains a definition of 'passing' for the purposes of Head 17. The Head is concerned not only with express assignments of the landlord's or tenant's interest, but also with an indirect 'passing' of the interest to another person such as occurs on the death or bankruptcy of the landlord or tenant.

Head 18: Apportionment on severance

(Law of Property Amendment Act 1859, section 3; Deasy's Act 1860, sections 11 to 13 and 44; Conveyancing Act 1881, section 12)

Provide that:

(1) Subject to *subhead (2)*, upon the landlord's or tenant's interest under a tenancy being severed, whether by assignment or otherwise, as to the premises, the rent and other payments under the tenancy and all other obligations and provisions relating to that interest are—

(a) apportioned as appropriate to the severed parts of the premises between those parts,

(b) enforceable accordingly by or against the parties in whom the severed interests or parts are vested,

as if the apportioned rents, other payments and other obligations and provisions had originally been entered into separately in respect only of each severed interest or part.

(2) Any dispute as to the application of *subhead (1)* to a particular case may be referred to the court for determination and on such application the court may order such apportionment as it thinks fit.

(3) This section—

(a) applies to tenancies whenever created,

(b) is subject to—

(i) any agreement to the contrary between the parties to the severance or other interested parties,

(ii) in the case of a severance by the tenant, any covenant relating to a necessary consent to be granted by the landlord.

Explanatory Note

This Head implements the recommendations in the L&T CP, paragraphs 3.18 to 3.21. It is designed to clarify the law and to replace the confusing and uncertain provisions currently scattered in several statutes:

- Law of Property Amendment Act 1859, section 3;
- Deasy's Act 1860, sections 11 (and 12 and 13 in so far as they may be taken to apply to the issue of severance) and 44;
- Conveyancing Act 1881, section 12.

It seeks to provide a clear set of 'default' provisions to operate, in the absence of provisions otherwise agreed by the parties, where the landlord or tenant assigns part only of his or her interest or otherwise severs it, e.g. the tenant surrendering part of the land to the landlord. The statutory provisions being replaced are concerned

primarily with severance by the landlord, but section 18 governs also severance by the tenant, as recommended by the L&T CP (see paragraph 3.21).

Subhead (1)

This provides that upon severance of either the landlord's or tenant's interest, the rent and other payments under the tenancy and all other provisions and obligations will become severed as between the severed parts of the premises and enforceable accordingly. Paragraph (a) makes it clear that the apportionment is that appropriate to the severed parts. For example, if the landlord X assigns a 40% share of the reversionary interest to Y, Y becomes entitled to 40% of the rent and X remains entitled to 60% only. They can recover those respective proportions from the tenant who becomes liable to pay those proportions to X and Y respectively. If the tenant A assigns 30% of the total area originally let to A to B, B becomes liable to pay only 30% of the rent and to perform all other covenants in so far as they can apply to the 30% of the land assigned. A remains liable to pay 70% only of the rent and to perform all other covenants in so far as they can relate to the land A has retained. Certain covenants may not relate to part only of the land, e.g., a covenant to keep a building on the land in repair would not apply to a part of the land on which no buildings have been built and is assigned by the tenant to another person.

Paragraph (b) makes it clear that the consequence of apportionment upon severance is that the various provisions and obligations become severed and enforceable only on that basis. Thus, taking the example above of tenant A assigning 30% of the land to B, upon severance the landlord will be able to recover only 70% of the rent from A and 30% from B. This is subject to the parties' agreement or the landlord's consent in the case of severance by the tenant.

Subhead (2)

This gives the court jurisdiction to resolve disputes as to severance and to determine the appropriate apportionment of rent and covenants between the severed parts.

Subhead (3)

This clarifies the scope and operation of subhead (1). Since subhead (1) to a large extent reproduces the effect, or probable combined effect, of the various statutory provisions being replaced, it is appropriate to make it apply, as paragraph (a) does, to existing tenancies. This is certainly the case with respect to severance by the landlord to which the statutory provisions mainly relate. As regards severance by the tenant, arguably sufficient safeguards for the position of existing parties exist in the provisions of paragraph (b).

Paragraph (b)(i) preserves the right of the parties to the severance or other interested parties (e.g., the landlord in the case of a severance by the tenant or vice versa) to come to some other agreement. Subparagraph (ii) preserves the right of a landlord whose consent is needed for an assignment, or other severance by the tenant, to impose conditions on the grant of such consent. For example, the landlord may wish to avoid the additional expense of collecting rent and other payments (such as service charges) from more than one tenant. So a condition of consenting to an assignment of part of the land to another tenant may be that the original tenant continues to pay the whole rent to the landlord and recovers the appropriate proportion from the other tenant.

Head 19: Concurrent tenancy

Provide that:

(1) Upon the grant of a concurrent tenancy by the landlord of premises subject to a pre-existing tenancy, the concurrent tenant becomes in relation to those premises the successor in title to that landlord during the concurrent tenancy and Heads 16 and 17 apply to the landlord, the concurrent tenant and the pre-existing tenant accordingly.

(2) Where the concurrent tenancy relates to part only of the landlord's interest in the premises, the rent and other payments under the pre-existing tenancy and all other obligations and provisions relating to that interest are apportioned and enforceable in accordance with Head 18.

(3) In this section—

“concurrent tenancy” means a tenancy of premises granted to a person other than the tenant of a pre-existing tenancy of the same premises to run concurrently with and subject to that pre-existing tenancy; and “concurrent tenant” shall be read accordingly;

“pre-existing tenancy” means a tenancy of premises to which a concurrent tenancy of the same premises is subject; and “pre-existing tenant” shall be read accordingly.

Explanatory Note

Head 19 is designed to clarify the law relating to concurrent tenancies. These are commonly created in favour of investors. For example, the landlord of a shopping centre in which the various units are already subject to occupational leases may create an interest in favour of investors by granting them a “concurrent lease”. This is a lease of the landlord's reversionary interest in the occupational leases which runs concurrently with those leases. It is to be distinguished from a 'reversionary' lease which is a lease which, although granted during the currency of an existing lease, is not to commence until the existing lease expires.

The case law on concurrent tenancies is scarce and not as clear as it might be. It would appear that a concurrent tenancy operates in effect as an assignment of the landlord's reversion in the occupational leases so that the concurrent tenant steps into the landlord's shoes and becomes landlord to the occupational lessees.

It is, however, not clear how far the provisions in Deasy's Act and the Conveyancing Act 1881 apply. Under section 9 of the Administration of Justice Act (Ireland) 1707, the need for the occupational lessees to “affirm” or acknowledge that they had become tenants of the concurrent tenant was removed. However, section 10 of the 1707 Act provides that an occupational lessee may continue to pay rent to the original landlord until given notice of the grant of the concurrent tenancy. That would remain the case under Head 17 of this Bill.

Subhead (1)

This declares what authorities seem to establish, i.e. the concurrent tenant becomes the landlord of the pre-existing (occupational) tenant or tenants. There is no need to spell this out further since sections 16 and 17 of the Bill do so.

Subhead (2)

This deals with what would probably be a rare situation but which remains a possibility, i.e., where the landlord severs the reversionary interest and grants a concurrent lease of part only. Again Head 18 spells out what happens in such a case.

Subhead (3)

This provides definitions to clarify the scope of Head 19. It is confined to a concurrent, as opposed to a reversionary, tenancy granted to a third party. If the concurrent tenancy is granted to the tenant that holds the pre-existing tenancy, this operates as a surrender of the pre-existing tenancy and substitution of the concurrent tenancy for it: see *Butler v O'Mahoney* (1898) 32 ILTR 93.

PART 5

TENANT'S PROPERTY

This Part implements the recommendations in Chapter 4 of the L&T CP which deals with the law of “fixtures”. One of the recommendations is that the new statutory provisions should apply to any property brought into the premises by the tenant (see paragraphs 4.12 and 4.19). This will help overcome the difficulty, which often arises in practice, as to whether or not an item installed by the tenant constitutes a “fixture” and, if it does, whether it comes within the category of a “tenant’s fixture”.

The provisions of this Part replace both the common law of fixtures (as it applies as between landlords and tenants) and existing statutory provisions, i.e., the Landlord and Tenant Act 1851 and section 17 of Deasy’s Act (as recommended by the L&T CP, paragraph 4.19).

Head 20: Application of Part 5

Provide that:

(1) This Part applies to any property, whether affixed or not,—

- (a) brought onto,
- (b) erected upon, or
- (c) installed in, on or under,

the premises by the tenant or the tenant's predecessor in title.

(2) In this Part such property is referred to as “the tenant's property”.

(3) Subject to this Part, ownership of the tenant's property remains vested in the tenant but without prejudice to any hiring or leasing agreement or other agreement entered into by the tenant or the tenant's predecessor with the landlord or a third party with respect to such property.

(4) The provisions of this Part replace in its entirety the common law relating to fixtures as between landlords and tenants.

Explanatory Note

This Head sets out the scope of Part 5 and implements several recommendations in Chapter 4 of the L&T CP.

Subhead (1)

This makes it clear that the new provisions apply to any property brought onto or installed on the premises by the tenant for whatever purpose (see paragraphs 4.12 and 4.19 of the L&T CP).

Subhead (3)

This reverses the common law rule that tenant's fixtures belong to the landlord so long as affixed to the premises and until the tenant exercises the right of removal (i.e. severance from the land). It is not clear whether Deasy's Act allows parties to contract out of this (see L&T CP paragraph 4.04) but it is now made clear that fixtures and any other property brought onto or erected upon the premises by the tenant remain in the ownership of the tenant (paragraphs 4.05-4.07). This is, however, subject to any hiring or leasing agreement whereby the tenant acquired the property. Under such agreements the property usually remains in the ownership of the hiring or leasing company. It is also subject to any other agreements to the contrary, including an agreement made with the landlord. This implements the recommendations in the L&T CP that the new statutory provisions should operate as 'default' provisions only (see paragraph 4.11).

Subhead (4)

This implements the recommendation that the new statutory provisions should replace the common law (see paragraphs 4.11 and 4.19). They also replace existing statutory provisions, such as section 17 of Deasy's Act (repealed in Schedule 2).

Head 21: Tenant's right of removal
(*Deasy's Act 1860, section 17; Landlord and Tenant Act 1851*)

Provide that:

- (1) Subject to the provisions of this Head, the tenant may remove the tenant's property from the premises (in this Part referred to as the "right of removal")—
- (a) at any time during the continuance of the tenancy, or
 - (b) at the latest upon vacation of the premises.
- (2) Where the tenancy is without act or default by the tenant terminated upon the happening of an uncertain event, the right of removal may be exercised—
- (a) within two months after the date of such termination, or
 - (b) upon vacation of the premises before expiry of that period.
- (3) The right of removal is subject to the tenant making good or compensating the landlord for any damage to the premises caused by its exercise.
- (4) For the purposes of *subhead (1)(a)*, "continuance of the tenancy" includes any period—
- (a) for which a tenancy has been extended or renewed,
 - (b) during which a tenancy continues subject to any variation of its terms.
- (5) This Head takes effect subject to the terms of the tenancy.

Explanatory Note

This Head provides for the general right of removal recommended as a 'default' provision by the L&T CP to replace the common law and existing statutory provisions.

Subhead (1)

This provides for a general right of removal which may be exercised at any time during the tenancy or upon vacation of the premises.

Subhead (2)

This deals with the case where a tenancy ends suddenly upon the happening of an uncertain event and the tenant may not have anticipated the precise timing of this. Paragraph (a) gives the tenant a further 2 months in which to exercise the right of removal, thereby re-enacting a provision in section 17 of Deasy's Act, but paragraph (b) makes it clear that if the tenant vacates the premises before that 2 month period expires, he must remove the property at that time (paragraph 4.16).

Subhead (3)

This requires the tenant to make good any damage caused by the removal or to pay compensation for such damage. It does not, however, include another condition suggested in the L&T CP (see paragraphs 4.14 and 4.15) that the tenant should be in compliance with tenant's obligations. The view has subsequently been taken that this might work unfairly against tenants by enabling landlords to block removal where trivial breaches have occurred.

Subhead (4)

This implements the recommendations in the L&T CP that the right of removal should be carried forward to any extension or renewal of a tenancy and should continue to apply after the terms of a tenancy have been varied (see paragraph 4.17).

Subhead (5)

As also recommended by the L&T CP, makes it clear that the new statutory provisions are 'default' provisions, i.e., they operate subject to the terms agreed by the parties (see paragraphs 4.11, 4.15, 4.17 and 4.18).

Head 22: Landlord's rights

Provide that:

(1) Where a tenant fails to exercise the right of removal within the time specified in *Head 21*, the landlord may, without any liability to the tenant,—

(a) remove the tenant's property from the premises and store it in a safe place pending collection by the tenant, or

(b) take such other reasonable steps to safeguard the property as the landlord thinks appropriate,

and shall in either case serve notice on the tenant of the removal or other steps taken and arrangements for collection.

(2) The tenant may collect such property within 14 days of service of such notice subject to—

(a) payment of any outstanding rent or other money due under the tenancy,

(b) reimbursement of all reasonable costs and expenses incurred by the landlord in making good any damage to the premises caused by the removal or in connection with such removal, storage or other steps taken.

(3) If the tenant does not collect the property within the 14-day period, the landlord—

(a) may sell it or otherwise dispose of it,

(b) subject to *subhead (4)*, shall, where disposal results in the receipt of surplus proceeds, serve within 21 days of receiving the proceeds of such disposal a notice on the tenant containing a statement of accounts relating to the disposal.

(4) The landlord may deduct from such proceeds any outstanding rent or other money due under the tenancy and costs and expenses to be reimbursed under *subhead (2)*.

(5) Surplus proceeds which the tenant does not claim within 6 months from the date of service of notice under *subhead (3)(b)* become the landlord's property.

Explanatory Note

Head 22 implements the recommendations in the L&T CP as to the landlord's rights where the tenant does not exercise the right of removal in time (paragraph 4.16).

Subhead (1)

This entitles the landlord to remove the tenant's property and put it in storage or otherwise take steps to safeguard it without liability to the tenant. It also requires the landlord in such cases to notify the tenant of the steps taken.

Subhead (2)

This gives the tenant 14 days in which to collect the property subject to paying outstanding rent or other money due under the tenancy and meeting the landlord's reasonable costs of removal, storage or other safeguarding steps as well as making good damage to the property caused by the removal.

Subhead (3)

This entitles the landlord to sell or otherwise dispose of the property where the tenant fails to collect within the 14-day period. There is no obligation on the landlord to sell the property but if there is a sale or other disposal which results in surplus proceeds after making deductions authorised by subhead (4), the landlord must account for these by serving notice on the tenant.

Subhead (4)

This authorises the landlord to deduct outstanding rent or other money due under the tenancy and all reasonable costs and expenses which the tenant would have to pay or reimburse on collection of the property under subhead (2).

Subhead (5)

This imposes a six month time-limit on a tenant coming forward to claim the surplus proceeds of sale or other disposal of the property. A failure to meet this entitles the landlord to keep them.

PART 6

OBLIGATIONS

This Part implements the recommendations contained in Chapters 5 – 11 of the L&T CP. It deals with obligations of both the landlord and tenant. As the L&T CP recommended, it introduces the concepts of “overriding” obligations imposed by statute, which the parties cannot contract-out of, and “default” obligations which would operate in the absence of an express provision or agreement to the contrary or as a variation of the statutory provisions.

Chapter 1

Overriding and default obligations

Head 23: Scope of Part 6

Provide that:

- (1) An obligation arising under this Part—
 - (a) applies only to a tenancy created after the commencement of this Part,
 - (b) replaces any obligation of the same nature which would otherwise arise by implication.
- (2) Subject to the provisions of this Part, an obligation arising under this Part—
 - (a) applies to any tenancy,
 - (b) has the same force and effect as if it were imposed as an express covenant.

Explanatory Note

This Head clarifies the scope of Part 6.

Subhead (1)

This makes it clear that the new statutory scheme of obligations applies only to future tenancies. It also makes it clear that a new statutory obligation displaces any equivalent that might otherwise arise by implication under the common law. Examples would be the landlord's obligation as regards the tenant's quiet enjoyment (see Head 26) and the tenant's right of set-off (see Head 48).

Subhead (2)

This makes it clear that, unless indicated otherwise, an obligation arising under Part 6 applies to any tenancy. In respect of several of the obligations there is a qualification, e.g., where an equivalent obligation is created for residential tenancies by the Residential Tenancies Act 2004. It is also made clear that any statutory obligation created by Part 6 operates as if it were an express covenant. Under Head 3 of the Bill 'covenant' has a wide definition which includes any stipulation or provision in a lease or part of an oral tenancy agreement.

Head 24: Overriding and default obligations

Provide that:

(1) An obligation referred to in this Part as—

(a) an “overriding obligation” applies to a tenancy notwithstanding any provision relating to the tenancy,

(b) a “default obligation” applies to a tenancy save to the extent that it is excluded or modified by any provision relating to the tenancy.

(2) In relation to any overriding obligation, any provision is void to the extent that it purports to—

(a) exclude or limit the obligation either expressly or by implication (whether by imposing a more limited obligation on the same party or by imposing an obligation on another party or otherwise), or

(b) impose on any party—

(i) any disability or penalty for enforcing or relying on the obligation, or

(ii) a liability to reimburse all or any part of the cost of performing the obligation.

Explanatory Note

Head 23 explains what is meant by the new concepts of 'overriding' and 'default' obligations introduced by the Bill.

Subhead (1)

This makes it clear that there can be no contracting out of an 'overriding' obligation. It also makes it clear that a 'default' obligation is one which will apply to a tenancy unless it is excluded altogether or modified to some extent by the terms of the lease or oral tenancy, or some collateral or other agreement such as a 'side letter' (see the definition of 'provision' in Head 3).

Subhead (2)

This underlines the status of an overriding obligation by rendering void any provision purporting to exclude it or limit its operation. It also renders void provisions designed to nullify or limit such an obligation's operation by a more indirect method, e.g., by penalising a party who enforces or relies upon the obligation.

Chapter 2

Landlord's obligations

Head 25: Good title

(Deasy's Act 1860, section 41)

Provide that:

(1) Subject to *subhead (2)*, the landlord has an overriding obligation to give at or before the grant of the tenancy good title to the tenant sufficient to support the grant of the tenancy.

(2) *Subhead (1)* does not prevent—

(a) the parties agreeing to proceed with the grant of a tenancy notwithstanding a defect in title which has been fully disclosed prior to the grant,

(b) a tenancy by estoppel from arising where a defect in title, whether or not disclosed, exists at the date of the grant.

(3) For the purposes of *subhead (2)(a)*, a defect in title is fully disclosed if all information relating to the title in the possession of the landlord is fully disclosed.

Explanatory Note

This Head modifies the recommendation in paragraph 6.03 of the L&T CP and replaces the obligation contained in section 41 of Deasy's Act. Paragraph 6.03 had recommended that the replacement of section 41 should be a 'default' obligation but the Law Reform Commission subsequently took the view that it should be an 'overriding' obligation because it is confined to giving sufficient title to support the grant of tenancy.

Subhead (1)

Under this provision, the obligation would be fulfilled according to usual conveyancing practice relating to 'good' title, e.g., if the landlord has no documents of title to furnish, a good 'holding' title may be based on long possession of the land being let. Unlike section 41 of Deasy's Act, Head 25 applies to all tenancies and is not confined to leases.

Subhead (2)

This qualifies the overriding obligation in subhead (1). Paragraph (a) preserves the right of the parties to proceed despite a defect in the landlord's title but only if it had been fully disclosed prior to the purported grant of the tenancy. Paragraph (b) preserves the doctrine of a tenancy by estoppel whereby, as between the landlord and tenant and persons claiming by or through them, a tenancy will be deemed to exist according to a purported grant even though the landlord has no title at all.

Subhead (3)

This explains what is meant by full disclosure.

Head 26: Possession and quiet enjoyment

(Deasy's Act 1860, section 41)

Provide that:

(1) Subject to *subheads (2) to (4)*, the landlord has an overriding obligation to—

(a) give the tenant possession of the premises on the day the tenancy begins or on such other day as may be agreed,

(b) ensure that the tenant enjoys peaceful possession of the premises throughout the tenancy without interruption by the landlord or any person lawfully claiming through, under or in trust for the landlord.

(2) *Subhead (1) (b)* does not apply to interruption by the landlord or any other person in the exercise of any right or the performance of any obligation conferred or imposed expressly or impliedly by the terms of the tenancy or any statutory provision.

(3) For the purposes of *subhead (1) (a)*, where a lease expresses the tenancy to begin on a day before the date of the lease, the tenancy is deemed to begin on the date of the lease.

(4) This Head does not apply to any tenancy to which the obligation arising under section 12(1) (a) of the Act of 2004 applies.

Explanatory Note

This Head incorporates the common law implied obligation by the landlord to give the tenant possession of the premises. The L&T CP did not deal with this but it has been included on the basis that it goes with the peaceful enjoyment obligation. It also replaces in a more limited form the obligation to ensure that the tenant has “quiet and peaceable enjoyment” throughout the tenancy contained in section 41 of Deasy’s Act.

Subhead (1)

This contains two overriding obligations. Paragraph (a) outlines the obligation initially to put the tenant into possession of the premises. This will be the date the tenancy begins or another agreed date. Paragraph (b) replaces the implied obligation relating to quiet enjoyment in section 41 of Deasy’s Act. As recommended in the L&T CP (paragraph 6.05), the obligation is now confined to the landlord and persons lawfully claiming through, under, or in trust for the landlord. The archaic 'quiet and peaceable' reference in section 41 of Deasy's Act is replaced by 'peaceful' (like section 12(1) (a) of the Residential Tenancies Act 2004). It also uses the traditional 'possession' rather than 'occupation' which the 2004 Act uses.

Subhead (2)

This qualifies subhead (1) (b) to make it clear that a landlord is not in breach of the peaceful enjoyment obligation where an interruption is a consequence of the exercise of a right conferred by the tenancy, e.g., the right of re-entry for breach of covenant by the tenant or right to inspect for damage. The same applies to interruption caused by performance of an obligation, e.g., entry in order to carry out maintenance or repairs for which the landlord is responsible. Also excluded is interruption by the

landlord or other persons caused by action under statutory provisions, e.g., works carried out in order to correct an environmental or public health hazard or nuisance.

Subhead (3)

This deals with the situation where no specific date for possession has been agreed and the date specified in the lease for commencement of the tenancy is earlier than the date of the lease. In such cases, the obligation to give possession arises on the date of the lease (in practice, the tenant will usually have already gone into possession under an agreement for lease).

Subhead (4)

This makes it clear that Head 25 does not apply to any residential tenancy already governed by section 12(1) (a) of the 2004 Act (paragraphs 5.04, 5.11 and 6.01 of the L&T CP).

Head 27: Landlord's agent and contact

Provide that:

(1) The landlord has an overriding obligation to—

(a) notify the tenant of the name of the person, if any, (the “authorised agent”) who is authorised to act on the landlord’s behalf in relation to the tenancy for the time being,

(b) provide the tenant with particulars of the means by which the tenant may at all reasonable times contact the landlord or the authorised agent.

(2) Nothing in *subhead (1)* affects the obligations in section 12(1) (*e*) and (*f*) of the Act of 2004.

Explanatory Note

This Head extends the obligations of landlords of dwellings under section 12(1) (*e*) and (*f*) of the 2004 Act to all other kinds of tenancy as recommended by the L&T CP (paragraph 6.22). These are the obligations to notify the tenant of the landlord’s authorised agent and to provide particulars of the means of contacting the landlord or his agent. These are intended to be overriding obligations (see section 18 of 2004 Act).

Head 28: Residual obligation to repair

Provide that:

Where in relation to any tenancy—

- (a) there is no obligation imposed on any party to repair any part of the premises, or
- (b) it is unclear whether such an obligation is imposed on any party,

the landlord has a default obligation to repair.

Explanatory Note

This Head implements the recommendations in paragraph 6.18 of the L&T CP that there should be a statutory provision to deal with cases where the tenancy agreement fails to deal exhaustively with repairs or to deal with the subject at all (and there is no common law or other statutory provision to fill the gap). Paragraph (a) deals with case where it is clear that there is a gap in provision and paragraph (b) covers cases where the position is simply unclear. In both cases, the repair obligation will rest with the landlord as a default obligation.

This default obligation will apply only where the conditions set out in paragraphs (a) or (b) exist. If there are express provisions in the tenancy agreement or repairing obligations arising under the common law or other statutory provisions (such as those in the 2004 Act or Chapter 3 of Part 6) which cover the repairing obligation in respect of any particular part of the premises, Head 28 will not apply.

Head 29: Defective premises

Provide that:

(1) Subject to *subheads* (2) to (4), the landlord has an overriding obligation on the grant of a tenancy of premises for immediate occupation or use in their existing state to take reasonable care to ensure that all persons who might reasonably be expected to be affected by defects in the state of the premises at the date of the grant (whether or not those defects have been created by the landlord) are reasonably safe from personal injuries or from damage to their property caused by such defects.

(2) In determining whether a landlord has complied with the obligation under *subhead* (1) regard shall be had to—

(a) any obligations on the landlord to repair the premises,

(b) any warning as to defects given by the landlord before the grant of the tenancy but such a warning shall not relieve the landlord of liability unless it was sufficient to draw to the attention of the person to whom it was given the risk of personal injuries or damage to property caused by the defects.

(3) *Subhead* (1) does not apply to defects—

(a) unless on the date of the grant such defects were known, or ought reasonably to have been known, to the landlord, or

(b) which, where the tenancy is a re-grant or renewal of a tenancy, arise from the act or omission (including breach of a repairing obligation) of the tenant.

(4) *Subhead* (1) does not prevent a landlord from granting a tenancy of defective premises subject to a written undertaking by the tenant to render them safe, or to carry out works so as to render them safe, as soon as is reasonably practicable after the date of the grant provided the tenant is before that date made fully aware of the defects in so far as known to the landlord and signs, no later than that date, a written acknowledgment of such awareness.

Explanatory Note

This Head partly implements the recommendation in the L&T CP that the Commission's much earlier recommendations in its Report on Defective Premises (LRC 3-1982) relating to landlords should be implemented. It covers 'physical' unfitness but does not extend to 'legal' unfitness as originally recommended by the L&T CP (see paragraph 6.19).

Subhead (1)

This imposes an overriding obligation but is subject to the qualifications set out in subheads (2) to (4). These provisions reproduce the substance of proposals in LRC 3 – 1982, but with an important exception: the 1982 proposals were intended to apply to 'disponers' of property, which included not just a landlord but also an assignor or lessee surrendering a tenancy. The Commission subsequently took the view that the

extension to the latter was going too far. The obligation covers both personal injuries and damage to property.

There are limits to the obligation. Firstly, it applies only to a tenancy of premises for immediate occupation and would not apply where the premises are to be demolished or subject to other works rendering occupation impossible. Secondly, it applies only at the date of the grant and to defects existing at that date: it does not apply to defects arising later, whatever their cause, e.g., the actions or omissions of the tenant. Thirdly, it is an obligation to take reasonable care.

Subhead (2)

This lists the matters to be taken into consideration in deciding whether there has been a breach of the obligation.

Subhead (3)

This excludes liability in two situations. The first where the defect was not, and could not reasonably have been, known to the landlord at the date of the grant. The other is where the defect has been caused by the tenant. This would arise in cases where the tenancy is a re-grant or renewal to the previous tenant who was in occupation of the premises. In such a case the defect might be a consequence of work carried out by the tenant or of a breach of repairing obligation.

Subhead (4)

This provides a saving for the not uncommon situation where the owner of defective premises grants a tenancy to a tenant who is undertaking to repair them or carry out other works which will cure any existing defects.

Head 30: Building Insurance

Provide that:

(1) From the date of the grant of a tenancy of premises which include buildings, the landlord has default obligations to—

(a) insure the buildings and landlord's property in or on the premises against the insured risks,

(b) insure the buildings—

(i) in the joint names of the landlord and the tenant or with the tenant's interest noted on the insurance policy, unless the insurer waives subrogation rights,

(ii) for the full cost of rebuilding together with incidental costs, expenses and fees, including loss of rent,

(c) increase the buildings' insurance cover where any review of cover reveals the necessity for such increase or at the request of the tenant where the tenant is liable to pay the premiums or to reimburse the cost of the insurance,

(d) notify the tenant in writing of the particulars of the building's insurance, including any increases of cover,

(e) use the proceeds of the buildings' insurance to reinstate the buildings or build equivalent alternative buildings, subject to any necessary planning permission or building consent being available.

(2) In *subhead (1)*, subject to such insurance being ordinarily and reasonably available to the landlord and to such excesses, exclusions and limitations which may be imposed by the insurer, "insured risks" includes—

(a) earthquakes, fire (including subterranean fire), flood, lightning, storm and tempest,

(b) explosion,

(c) impact by any aircraft, other aerial device or articles dropped from the air, and any road or other vehicle,

(d) civil commotion, malicious damage and riot,

(e) bursting or overflowing apparatus, pipes, radiators and water or other tanks.

(3) This Head does not apply to any landlord to which section 12 of the Act of 2004 applies.

Explanatory Note

This Head deals with the landlord's obligations with respect to insurance and implements various recommendations in Chapter 11 of the L&T CP (Head 46 deals with the tenant's insurance obligations).

Subhead (1)

This lists a series of default obligations as suggested in paragraph 11.09 of the L&T CP.

Paragraph (a) refers to buildings' insurance and the landlord's property in or on the premises (rather than 'fixtures' as in Part 5). This is a default obligation which arises only where the premises include buildings. Paragraph (b) requires, on the basis that this is a default obligation, firstly, that the buildings' insurance should be in joint names unless the insurer waives subrogation rights [this will resolve the doubt as to whether the Irish courts would regard insurance arranged by the landlord as being also for the benefit of the tenant: paragraph 11.09 (g) (fn 26)] and, secondly, that the buildings insurance be for the full reinstatement cost (paragraph 11.09 (c)).

Paragraph (c) requires an increase in cover in two circumstances: firstly, where an annual review requires an inflationary increase; secondly, where the tenant is paying for the insurance directly or indirectly and requests an increase (paragraph 11.09(c)). Paragraph (d) requires the landlord to notify the tenant of the particulars of the buildings' insurance, including any increases of cover under paragraph (c). Paragraph (e) requires the landlord to use the proceeds to reinstate the premises [this will also resolve a doubt as to the position in Irish law on this point: see paragraphs 11.05 and 11.06]. There are specified exceptions to this, i.e. where planning permission or building consent for reinstatement work is not available.

Subhead (2)

This provides a definition of 'insured risks' along the lines commonly adopted in the leases.

Subhead (3)

This contains a saving for the provisions in the 2004 Act imposing an insurance obligation on the landlord: see section 12 (1) (c).

Chapter 3

Landlord's consent

This chapter replaces Part V (Covenants in Leases of Tenements), i.e. sections 64 to 69 of the Landlord and Tenant (Amendment) Act 1980. It implements the recommendations in paragraphs 3.41 to 3.46 and 4.44 to 4.49 of the Business Tenancies CP with one exception. It does not deal with the provisions in section 65 of the 1980 Act relating to damages for breaches of covenants to repair (see paragraph 4.46) as this matter is dealt with later in the context of repairing obligations (see Head 50).

Chapter 3 seeks to consolidate in a more simple form the provisions in Part V of the 1980 Act. It supplements those provisions by incorporating provisions designed to prevent landlords from delaying unduly in dealing with requests for consent. Similar provisions were introduced in England by the Landlord and Tenant Act 1988 (Business Tenancies CP paragraph 3.46).

Head 31: Scope of Chapter 3
(Landlord and Tenant (Amendment) Act 1980, Part V)

Provide that:

(1) Subject to *subhead (3)*, this Chapter applies to any provision of a tenancy which prohibits or restricts the doing of any thing in relation to the premises by the tenant without the consent of the landlord.

(2) For the purposes of *subhead (1)* a provision which absolutely prohibits or restricts the doing of a thing by the tenant shall be treated as if it were a provision prohibiting or restricting that thing without the consent of the landlord.

(3) This Chapter does not apply to a provision—

(a) requiring compliance with any statutory provision or court order,

(b) prohibiting or restricting the tenant from carrying out works on or to the premises more substantial than an improvement.

(4) In this Chapter “improvement” means any addition to or alteration of an existing building or structure and includes any structure ancillary or subsidiary to such a building, but does not include any alteration or reconstruction of a building or structure so that it loses its original identity.

Explanatory Note

Subhead (1)

This makes it clear that Chapter 3 is dealing with the situation in which the landlord’s consent to do something in relation to the tenancy is sought by the tenant. The substantial difference from Part V of the 1980 Act is that these provisions, which are designed to prevent the landlord from acting unreasonably, will apply to any thing which the tenant wants to do in relation to the premises whereas Part V is confined to alienation, change of user and making improvements. As recommended by the Business Tenancies CP (see paragraph 3.42), these provisions are not confined to ‘leases’ (see section 64 of the 1980 Act) although in most cases they will only operate where there is a written document. Neither are they confined to ‘tenements’ (paragraph 3.43).

Subhead (2)

This retains the important provision in Part V of the 1980 Act (see sections 66(1), 67(1) and 68(1) of the 1980 Act) that the provisions requiring the landlord to act reasonably apply also to absolute prohibitions or restrictions (this is not the position in England).

Subhead (3)

This excludes the application of Chapter 3 in certain cases where the landlord can simply refuse to give consent without question and can enforce any covenant strictly against the tenant. Paragraph (a) covers a provision requiring compliance with a statutory provision such as enforcement action under planning and environmental

legislation. Paragraph (b), when read with the definition of 'improvement' in subsection (4), incorporates the substance of sections 67(2) (b) and (3) and 68(1) and (2) of the 1980 Act.¹

Subhead (4)

This provides a definition of 'improvement'. It follows the wording in the 1980 Act; it is framed in such a way as to entitle a landlord to refuse consent without question in cases where the works proposed by the tenant are so substantial that there is a risk that they might qualify the tenant to acquire the fee simple under the Ground Rent Acts.

The definition of 'consent' in Head 3 makes it clear that Chapter 3 applies to a landlord whether the 'consent' provision uses that word or some similar word such as 'agreement', 'licence' or 'permission'. The definition of 'provision' in Head 3 makes it clear that Chapter 3 applies also where the prohibition or restriction is not contained in the lease itself but rather in a separate agreement such as a 'side' letter.

¹ A provision in section 66(2)(b) of the 1980 Act excludes the need to obtain consent to an alienation in the case of a building lease for a term exceeding 40 years provided the alienation is made more than 7 years before the end of the term and notice of it is given to the landlord within a month of the alienation. The view has been taken that there is no longer any need for this provision.

Head 32: Unreasonable withholding of consent
(*Landlord and Tenant Act 1980, sections 66 to 68*)

Provide that:

- (1) The landlord has an overriding obligation not to—
- (a) unreasonably withhold or delay giving consent,
 - (b) subject to *subhead (3)*, impose—
 - (i) a sum of money, or
 - (ii) any increase of rent,
- for or in respect of the giving of consent, or
- (c) impose any other unreasonable condition to the giving of consent.
- (2) In any proceedings in which the issue of whether the landlord has complied with *subhead (1)* arises, the onus is on the landlord to prove compliance.
- (3) It is not unreasonable of the landlord to require—
- (a) payment by the tenant of a reasonable sum in respect of legal or other expenses incurred by the landlord in connection with the consent, or
 - (b) reimbursement by the tenant, recoverable as rent under the tenancy, of all expenditure incurred by the landlord by reason of the transfer or increase of any rates, taxes or other burdens to or of the landlord caused by a change of user or works more substantial than an improvement to the premises made by the tenant.

Explanatory Note

Head 32 incorporates in a more straightforward provision the basic principle that the landlord cannot unreasonably withhold or delay giving consent to things which the tenant may wish to do to the premises. It replaces the substance of sections 66 to 68 of the 1980 Act and removes the repetition of provisions to be found in them.

Subhead (1)

This restates the basic 'reasonableness' principle and incorporates the substance of sections 66(2), 67(2) and 68(2) of the 1980 Act. Since the landlord's obligation is an overriding one, there is no contracting out possibility (Head 24(1) (a)). This accords with provisions in sections 66 to 68 and with the more general one in section 85 of the 1980 Act. Under Head 23(2) (b) such an obligation has the same force and effect as if imposed as an express covenant and this means that the tenant has the usual remedies for breach of covenant by the landlord. This includes a claim for damages for any loss caused by the landlord's breach, e.g., where a prospective assignment is lost because

of the landlord's action or inaction. This implements a recommendation in the Business Tenancies CP (see paragraphs 3.46 and 4.47).

Subhead (2)

This is a new provision reversing the onus of proof concerning reasonableness. It imposes on the landlord the burden of proving that he or she has acted reasonably, as recommended in the Business Tenancies CP (see paragraph 3.46).

Subhead (3)

This incorporates other provisions in sections 66 to 68 of the 1980 Act which make it clear that certain matters do not involve unreasonableness on the part of the landlord. Paragraph (a) entitles the landlord to claim reasonable expenses (sections 66(2)(a); 67(2)(a) and 68(2)(b) of the 1980 Act) while paragraph (b) entitles the landlord to reimbursement as rent of additional burdens caused by a change of user or substantial works which the landlord has agreed to (see sections 66(2)(c) and 67(2)(c); there is no equivalent in section 68 probably because it is confined to minor improvements which would be unlikely to create additional burdens on the landlord).

Head 33: Application for consent

Provide that:

(1) A tenant seeking consent of the landlord shall serve notice in writing on the landlord—

(a) specifying the matter for which consent is sought,

(b) in the case of a proposed assignment, subletting or other alienation, giving details of the proposed assignee, subtenant or other person to be allowed into occupation, possession or use of the premises,

(c) in the case of proposed works, providing detailed specifications of any works which the tenant wishes to carry out,

(d) in the case of a change of user, providing details of the proposed new user of the premises, and

(e) providing any other information which is reasonably necessary to enable the landlord to decide whether or not to give consent.

(2) A landlord served with a notice under *subhead (1)* may within 21 days of its receipt request the tenant to furnish such further information as is reasonably necessary to enable the landlord to make a decision concerning the consent sought.

(3) The tenant shall respond in writing to such a request within 21 days of its receipt or within such other time as the parties agree.

(4) A failure by a tenant to comply with this section relieves the landlord of any obligation under *Head 32*, but without prejudice to the tenant's right to make further applications for consent.

Explanatory Note

Head 33 introduces new provisions imposing procedural requirements on the parties as recommended in the Business Tenancies CP (see paragraph 4.47(ii)).

Subhead (1)

This requires a tenant seeking consent to serve a notice in writing giving appropriate details; paragraph (a) requires the tenant to specify what it is that consent is sought for; paragraph (b) requires details of the person to whom consent to any form of alienation is sought; paragraph (c) requires detailed specifications where works are proposed by the tenant; paragraph (d) requires details where a change of user is proposed; paragraph (e) requires any other information necessary to enable the landlord to make a decision.

Subhead (2)

This entitles but does not require the landlord to request further information. The 21-day deadline may be extended by the parties by agreement or by the court under *Head*

35. Subhead (3) requires the tenant to respond to the landlord's request within 21 days.

Subhead (4)

This provides that in the event of the tenant's failure to comply with subhead (1) and subhead (3) requirements, the landlord is relieved of the Head 32 obligations and so can refuse consent without question.

Head 34: Decision on application

Provide that:

(1) Subject to *Head 35*, within 21 days, or such longer period as the parties may agree, of—

- (a) receipt of a notice under *Head 33(1)*, or
- (b) receipt of a tenant's response under *Head 33(3)*,

the landlord shall serve a notice in writing on the tenant—

- (i) granting the consent,
- (ii) granting consent subject to specified conditions, or
- (iii) refusing consent and giving the reason.

(2) A landlord who fails to serve a notice under *subhead (1)* is deemed to have granted the consent provided the tenant is not in arrears with respect to rent or in breach of any other money obligation.

Explanatory Note

Head 34 contains further procedural provisions requiring the landlord to make a decision quickly and to notify the tenant accordingly.

Subhead (1)

This imposes a time-limit of 21 days but it may be extended under section 35. This runs from the date of service of the tenant's application for consent or, if the landlord requests further information, from the date of receipt of this. Paragraphs (i) to (iii) spell out the alternative responses which the landlord can give. As regards (ii), any conditions must comply with Head 32(1) (c), i.e., they must not be unreasonable. As regards (iii), this makes it clear that the landlord must specify the reason for the refusal, which again must be reasonable under Head 32(1) (a).

Subhead (2)

If the landlord fails to comply with subsection (1), he or she will be deemed to have given the consent sought. This will not apply where the tenant is in arrears with respect to rent or is in breach of any money obligation (e.g. service charges). The tenant may seek a court declaration to this effect under Head 36.

Head 35: Extension of time limits
(*Landlord and Tenant Act 1980, section 83*)

Provide that:

Where a person fails to do any act or thing within the time provided for under *Heads 33 and 34*, the court may on such terms as it thinks proper, and shall unless satisfied that injustice would be caused, extend the time where it is shown that the failure was occasioned by—

- (a) absence from the State,
- (b) disability,
- (c) inability, despite reasonable attempt to do so, to obtain relevant information, or
- (d) any other reasonable cause.

Explanatory Note

Head 35 reproduces the substance of section 83 of the 1980 Act; the only change is the addition of the words 'despite reasonable attempt to do' in paragraph (c).

Head 36: Summary court orders

Provide that:

(1) A landlord or tenant may apply in a summary manner to the court to determine whether or not the landlord or tenant, as the case may be, has complied with an obligation created by this Chapter and the court may make such declaration or such other order as it thinks fit.

(2) An application under *subhead (1)* to the Circuit Court may be made by Motion on Notice.

Explanatory Note

Head 36 gives statutory form to the common practice under the 1980 Act to seek a declaration as to whether a landlord is unreasonably withholding consent, but makes it clear that it extends to determination of any issue concerning compliance with any of the obligations created by this Chapter (e.g., whether the tenant has complied with Head 33). It also makes it clear that the court is not limited to granting a declaration and may make any other order it thinks fit (e.g. an order requiring the landlord to give consent or an injunction prohibiting the tenant from proceeding with an assignment).

Subhead (1) expressly provides for such matters to be dealt with in a summary manner. Subhead (2) makes provision for this to be done in the Circuit Court on the basis of an application by Motion on notice: see Circuit Court Rules 2001, Order 28 and Form 11 of the Schedule of Forms.

Head 37: Landlord not known or found

(Landlord and Tenant Act 1980, section 69)

Provide that:

(1) Where the tenant is unable to serve a notice under *Head 33(1)* because the landlord is unknown or cannot be found, the court may, on the application of the tenant and after the publication of such advertisements (if any) as it directs, make an order authorising the tenant to do the particular thing to which such a notice would relate.

(2) An order made by the court under *subhead (1)*—

(a) may be subject to such conditions (if any) as the court thinks fit to impose,

(b) renders it lawful for the tenant to do the thing authorised without the consent of the landlord.

Explanatory Note

Head 37 reproduces part of section 69 of the 1980 Act. Subhead (1) alters section 69 by substituting 'or' for 'and' between 'unknown' and 'cannot be found' as recommended by the Business Tenancies CP (see paragraph 4.49), i.e., it will cover cases where the landlord is unknown as well as cases where the landlord is known but not his whereabouts. Subhead (2) repeats further provisions in section 69 of the 1980 Act.

Chapter 4

Tenant's obligations

Head 38: Payment of rent (*Deasy's Act 1860, section 42*)

Provide that:

(1) The tenant has an overriding obligation to pay the rent provided for under the tenancy on the date when it falls due for payment.

(2) The tenant has a default obligation to make such payment in advance.

Explanatory Note

Head 38 and Heads 39 to 46 implement Chapter 8 of the L&T CP.

Subhead (1)

This implements the recommendation in paragraph 8.03 that the implied obligation to pay rent in section 42 of Deasy's Act should be replaced by an overriding obligation. It does not make a reference to rent 'reserved' nor is it confined to leases (both are features of section 42 of Deasy's Act). This resolves doubts as to the position where a lease may not contain a reservation as such or a covenant to pay (see paragraph 8.03). The definition of 'rent' in Head 3 includes payments specified as rent under the terms of the tenancy and other recurring or regular payments payable or refundable to the landlord such as service charges and insurance premiums.

Subhead (2)

This implements the recommendation in paragraph 8.04; it is a 'default' obligation and may be replaced by an express obligation.

Head 39: Apportionment of rent

(Deasy's Act 1860, section 42, Apportionment Act 1870 section 4, sections 2 and 7)

Provide that:

(1) The tenant has a default obligation to pay an apportioned rent in accordance with this section.

(2) Rent accrues from day to day and is apportionable accordingly.

(3) Subject to *subheads (4) and (5)*, where between the dates when rent is payable—

(a) the tenancy is assigned, the landlord is entitled to apportioned parts of the rent from the assignor and assignee respectively,

(b) the landlord's interest is assigned, the tenant remains liable to pay the entire rent only when it is due, but that rent is apportionable as between the landlord at that date and the previous landlord,

(c) the tenancy is lawfully terminated in any way by either the landlord or the tenant, the tenant is liable for an apportioned rent accruing to the date of termination.

(4) In each of the events specified in *subhead (3)* the tenant's liability to pay the apportioned or entire rent arises only on the date when the entire rent would otherwise be payable under the tenancy.

(5) *Subhead (3)* does not apply where rent is payable in advance and is already due when the event in question occurs.

Explanatory Note

Head 39 seeks to consolidate and simplify various provisions relating to apportionment of rent to be found in the Apportionment Act 1870 and Deasy's Act 1860 and implements paragraph 8.08 of the L&T CP.

Since the 1870 Act is not confined to rents, but applies to periodical payments such as annuities, interest and rentcharges, its provisions will be repealed by this Bill only in so far as they apply to rent.

Head 39 does not include all the relevant provisions in Deasy's Act: there is no replacement of section 15 which appears to impose on a tenant who assigns between gale days continuing liability for rent (and other covenants) to the next gale day. In view of its inconsistency with other statutory provisions, it is proposed to introduce a general 'default' provision for apportionment in all cases, i.e. it will be open to the parties to agree a different provision, including one like that contained in section 15. For similar reasons, Head 39 does not contain an equivalent of section 34 of Deasy's Act which allows a tenant of agricultural land to hold over in lieu of 'emblements' in certain cases ('emblements' are annual crops produced by cultivation by the tenant with the implied right for its harvest, and are treated as the tenant's property). Such

tenants are comparatively rare nowadays and it seems preferable that to leave arrangements with respect to harvesting crops to be dealt with by express agreement.

Subhead (1)

This confirms that the provisions of section 39 are 'default' provisions which may be varied by agreement between the parties.

Subhead (2)

This repeats the general rule for apportionment contained in section 2 of the Apportionment Act 1870 so far as it applies to rent.

Subhead (3)

This provides for apportionment of rent in the various circumstances where as a result of some event occurring between the dates when rent is payable different people become interested in the landlord's or tenant's interest if the tenancy is terminated. These provisions are concerned only with apportionment as regards 'time' and are not concerned with those arising where the landlord or tenant 'severs' (splits-up) his or her interest. That is dealt with in Head 18. Subsection (3) drops references to 'gale days'.

Paragraph (a) deals with the situation which arises where the tenancy is assigned between the dates when rent becomes payable. The rent is to be apportioned in accordance with subhead (2) between the assignor and assignee but each is liable to pay their respective apportioned parts only when the whole rent is next payable. This accords with the general rule in section 3 of the 1870 Act. Paragraph (b) repeats the rule enshrined in section 4 of the 1870 Act: the new landlord must recover the entire rent from the tenant when it is next due and then apportion it between himself or herself and the previous landlord (this does not apply where rent is payable in advance: see subhead (5)). Paragraph (c) consolidates in a simple form provisions to be found in section 3 of the 1870 Act and section 50 of Deasy's Act. It extends those provisions to all cases of termination by both the landlord and the tenant. Thus it covers service of a notice to quit and forfeiture and re-entry by the landlord. It also covers surrender and exercise of a break option by the tenant.

Subhead (4)

This repeats the general rule contained in section 3 of the 1870 Act.

Subhead (5)

This gives statutory effect to the rule adopted by the courts: see *Dublin Corporation v Barry* [1897] 1 IR 65; *Ellis v. Rowbotham* [1900] 1 QB 740.

Head 40: Rent review

Provide that:

(1) Subject to *subhead (3)*, where a tenancy makes provision for rent review the tenant has a default obligation to pay any reviewed rent determined in accordance with the provisions of the *Schedule*.

(2) The provisions of the *Schedule* may be amended or substituted by regulation.

(3) *Subhead (1)* does not apply to the following:

(a) a tenancy referred to in Head 91;

(b) a tenancy to which Part 3 of the Act of 2004 applies;

(b) any lease to which sections 3 and 5 of the Landlord and Tenant (Amendment) Act 1984 apply.

Explanatory Note

Head 40 implements the recommendation in paragraph 8.12 that provision should be made for a statutory model of rent review clauses to operate on a 'default' basis. These would apply largely to commercial tenancies since Part 3 of the Residential Tenancies Act 2004 has separate provisions for rent reviews. The 2004 Act does not apply to tenancies of some dwellings, particularly public housing, so Head 40 would then apply unless excluded by the tenancy agreement. The model clauses are set out in the Schedule to the Bill.

Subhead (1)

This makes it clear that it will remain open to the parties to agree provisions different from the statutory model.

Subhead (2)

This makes provision for the statutory model to be varied from time to time by regulation. This would include an entire substitution of a new model.

Subhead (3)

This contains a saving for a tenancy referred to in Head 91; residential tenancies to which Part 3 of the 2004 Act apply, as well as the provisions for rent reviews relating to reversionary and sporting leases in the 1984 Act.

Head 41: Recovery of rent

(Deasy's Act 1860, sections 45, 51 to 58, 66 and 77)

Provide that:

- (1) In so far as it survives, the remedy of distress for rent is abolished.
- (2) The landlord or other person entitled to rent may bring an action in court to recover—
 - (a) any arrears of rent still recoverable,
 - (b) where a tenancy has ended, rent up to the date of actual recovery of possession of the premises.
- (3) The doctrine of mitigation of loss does not apply where the landlord seeks to recover arrears of rent.
- (4) An action under *subhead (2)* may be brought in the District Court subject to its jurisdictional limits.
- (5) This section does not apply to a tenancy to which section 23 of the Act of 2004 applies.

Explanatory Note

Head 41 implements various recommendations made in Chapter 8 of the L&T CP (see paragraphs 8.14, 8.18 and 8.20).

Subhead (1)

This abolishes the ancient remedy of distress recognised by section 51 of Deasy's Act² (the action of ejectment governed by sections 52 to 58 of Deasy's Act will also be repealed without any replacement). However, this Head does not affect other remedies for recovery of possession which are dealt with in sections 72 to 79.

Subhead (2)

This preserves the right of action provided for by section 45 of Deasy's Act. Paragraph (b) extends the provision in section 66 of Deasy's Act to all cases where a tenancy has come to an end. It replaces the confusing provision in section 77 of Deasy's Act.

Subhead (3)

This clarifies a matter upon which there has been some doubt and which was discussed recently in the context of common law jurisdictions by the English Court of Appeal: see *Reichman v. Beveridge* [2006] All ER (D) 186 (Dec). It was held in that case that an action to recover arrears of rent is an action to recover a debt and not an action for damages for breach of contract to which the principle of mitigation of loss would apply.

² It cannot be invoked in respect of a dwelling under section 19 of the Housing (Miscellaneous Provisions) Act 1992.

Subhead (4)

This preserves the existing jurisdiction of the District Court and is included because the definition of 'court' in Head 3 is confined to the High Court and Circuit Court.

Head 42: Receipts for rent
(*Deasy's Act 1860, section 45*)

Provide that:

.—In any action or other proceeding, a receipt or acknowledgment for rent or for money paid on account of rent which fails to specify the period covered by the payment which has been accepted by the landlord is *prima facie* evidence that all rent accrued due (whether in advance or arrear) at the date specified in the receipt or, if there is no such date, at the date of the payment has been paid and accepted.

Explanatory Note

This Head re-enacts the substance of section 47 of Deasy's Act. Notwithstanding that section's apparent "imperative" form, the sanction for failure to provide a receipt specifying the date which a rental payment covers seems to be the procedural provision later in the section. Head 42 turns the provision round to reflect this. Again references to 'gales' have been dropped.

Head 43: Use and occupation

(Deasy's Act 1860, section 46)

Provide that:

(1) Where the owner of land allows or has allowed another person to hold, occupy or use it without any agreement as to rent which the parties intended should be paid, that owner may bring an action in court to recover reasonable compensation for the use and occupation of the land.

(2) *Subhead (1)* does not affect the right of an owner of land to recover compensation against a trespasser.

Explanatory Note

This section implements paragraph 8.15 of the L&T CP.

Subhead (1)

This preserves the action for 'use and occupation' provided for by section 46 of Deasy's Act. The wording of section 46 has been changed to make it clear that this provision applies only where it was the intention of the parties that rent should be paid but they have failed to specify it or how it should be fixed. The word 'compensation' has been substituted for 'satisfaction'.

[In *Harrisrange Ltd. v. Duncan* (High Court, 25 January 2002), McKechnie J. held that this provision does not apply where a tenant continues in occupation pending determination of an application for a new tenancy. He ruled that section 28 of the Landlord and Tenant (Amendment) Act 1980 means that he pays the rent under the expired tenancy.]

Subhead (2)

This has been added to implement the recommendation that the distinction between an action for use and occupation and an action for mesne profits or rates should be clearly drawn. Deasy's Act, especially section 77, seems to confuse them. The former concerns the situation where the owner of the land suffers the other person to occupy the land; the latter concerns the situation where there is no permission, express or implied, and the occupier is clearly a trespasser. The word 'compensation' is substituted for the archaic 'mesne profits or rates'.

Head 44: Outgoings

Provide that:

(1) The tenant has a default obligation to pay, when due, any outgoings applicable to the premises.

(2) In *subhead (1)* “outgoings” include—

(a) rates and other charges,

(b) electricity, gas and water charges which are the primary responsibility of the occupier,

(c) payments for provision of electronic communication, telephone, television and other facilities and services, but does not include rent coming within *Head 38*;

Explanatory Note

This Head implements paragraph 8.22 of the L&T CP and provides a 'default' obligation requiring the tenant to pay outgoings. It is intended to replace the provision in section 42 of Deasy's Act.

Subhead (1)

This makes it clear that the obligation is a 'default' provision which the parties may exclude or vary by the terms of the tenancy. The word 'applicable' in paragraph (a) means the provision applies only where relevant to the particular tenancy or premises to which it relates.

Subhead (2)

This provides a definition of 'outgoings'. No reference to service charges or insurance premiums is included because the definition of 'rent' in Head 3 includes such recurring or regular payments.

Head 45: Repairs

(Deasy's Act 1860, sections 38 and 42)

Provide that:

(1) The law of waste no longer applies to a tenant and is replaced by the provisions of this section.

(2) The tenant has default obligations to—

(a) maintain the premises in their condition at the commencement of the tenancy and to yield them up at the end of the tenancy in the same condition,

(b) carry out, as soon as is reasonably practicable, such repairs as are necessary to ensure compliance with *paragraph (a)*,

(c) notify the landlord of any defect or state of disrepair in the premises which the landlord is obliged to repair.

(3) The tenant has overriding obligations to—

(a) allow the landlord, or any person acting on behalf of the landlord, access to the premises for the purpose of—

(i) inspection of the premises on reasonable notice being given to the tenant,

(ii) enabling the landlord to carry out such repairs to the premises or to do other works which the landlord is obliged to carry out under the terms of the tenancy or any statutory provision,

(iii) enabling the landlord to carry out such repairs to the premises or to do other works which the tenant is obliged, but has failed within a reasonable time of being called upon by the landlord, to carry out under the terms of the tenancy or any statutory provision.

(b) subject to section 50(3), reimburse the landlord all reasonable costs and expenses incurred under *sub-paragraph (a) (iii)* within 21 days of the tenant's receipt in writing of their full particulars.

(4) The tenant is not liable for a breach of *subhead (2)(a)* until *subhead (2)(b)* is breached.

(5) In *subhead (2)*—

“maintain” includes doing repairs to correct any state of disrepair however it has arisen and carrying out minor tasks which it is reasonable to expect a tenant using the premises in a tenant-like manner to carry out;

“repair” includes, where it is reasonably necessary to restore any part of the premises to full effectiveness or fitness for its purpose, renewal or replacement of that part or other work which may have the incidental effect of rendering that part better than its condition at the commencement of the tenancy or which is required in order to comply with current building or repairing standards or relevant statutory requirements, but does not otherwise include improvements or any work to deal with deterioration in the condition of the premises owing to normal wear and tear which is consistent with the length of occupation and proper use of the premises by the tenant.

(6) This Head does not apply to any tenant to which section 16 of the Act of 2004 applies.

Explanatory Note

This Head implements paragraphs 10.01 to 10.10 of the L&T CP and will replace numerous provisions (sections 25 to 29 and 42) of Deasy’s Act.

Subhead (1)

This gives effect to the recommendation in paragraph 10.05 of the L&T CP that the law of waste should no longer apply as between landlords and tenants (the recommendation that sections 25 to 39 of Deasy’s Act should be repealed without replacement is given effect in Head 9 and Schedule 2).

Subhead (2)

This seeks to provide a set of default obligations in respect of maintenance and repairs (under subsection (6) it does not cover residential tenancies covered by sections 16 and 17 of the 2004 Act). Paragraph (a) covers the state of maintenance of the premises at commencement of the tenancy and yielding them up in the same condition (read with paragraph (b), subhead (4) and the definition in subhead (5), this implements the recommendations in paragraph 10.08 of the L&T CP). There is no obligation to repair above the standard of repair at the commencement of the tenancy and no strict liability, i.e. the tenant is not in breach unless he fails to take action within a reasonable time. Paragraph (b) contains the basic default obligation to repair “as soon as is reasonably practicable”. Paragraph (c) implements the recommendation in paragraph 10.10 that some of the provisions in section 16 of the 2004 Act should be given wider effect (see section 16(d) of 2004 Act).

Subhead (3)

This sets out some overriding obligations. Paragraph (a) implements paragraph 10.10 and adapts provisions in section 16(c), (e) and (g) of the 2004 Act. Subparagraph (i) gives the landlord a right of inspection on reasonable notice while subparagraph (ii) provides a right of access to enable the landlord to meet his or her repairing obligations or statutory obligations. Subparagraph (iii) gives the landlord a right of access to enable him or her to discharge obligations which the tenant has failed to discharge. Paragraph (b) places an obligation on the tenant to reimburse all reasonable expenses incurred by the landlord in exercising the right of access under subparagraph (iii). This adapts a provision in section 16(g) of the 2004 Act (there is a limitation to such recovery in certain cases covered by Head 50).

Subhead (4)

Subhead (4) makes it clear that the obligation under paragraph (a) is not breached unless paragraph (b) is breached. This gives effect to paragraph 10.08.

Subhead (5)

This seeks to clarify the operation of subhead (2) by providing useful definitions. The definition of 'maintain' reflects what has been established by case law [Warren v Keen [1953] 2 All ER 1118]. The concept of 'tenant-like' use includes unblocking sinks and toilets, turning off the stop-cock on lengthy absences in cold winters if the heating is not left on and similar sensible precautions.

The definition of 'repairs' seeks to clarify the distinction between 'repairs' and 'improvements'. It reflects the distinctions drawn in case law which recognises that repair often has the effect of 'improving', in the sense that, because of modern building techniques and materials, the item in question will normally be better than what existed before [Black J in *Groome v Fodhla Printing Co* [1943] IR 380 at 414-415]. There may also be statutory requirements which will have a similar outcome, e.g., under building regulations or environmental controls.

Head 46: Insurance

(Landlord and Tenant (Ground Rents) Act 1967, section 30)

Provide that:

(1) Where the landlord insures the buildings, under Head 30 or otherwise, the tenant has overriding obligations—

(a) not to do or permit to be done in or on the premises any thing which may cause the building's insurance to become void or voidable,

(b) where the tenant's actions or omissions result in an increase in the insurance premiums, to pay any such increase.

(2) Where the tenant has an obligation, however it arises, to insure buildings on the premises—

(a) with a specified insurer or an insurer approved or selected by the landlord or another person, or

(b) through a specified agent or an agent approved or selected by the landlord or another person,

the obligation takes effect as if it were an obligation to insure the buildings, either directly or through any agent, with an insurer who holds for the time being an authorisation under the Insurance Acts 1909 to 1989.

(3) The Head does not affect any obligation a tenant may have under section 16(i) and (j) of the Act of 2004.

Explanatory Note

This Head, taken with Head 30, implement the recommendations in Chapter 11 of the L&T CP.

Subhead (1)

This is a corollary to the landlord's default obligation under Head 30 to insure the buildings.

Paragraph (b) has been added to clarify the consequences if paragraph (a) is not complied with.

Subhead (2)

This implements the recommendation in paragraph 11.02 that section 30 of the Landlord and Tenant (Ground Rents) Act 1967 should be extended to all tenants. It reproduces the substance of section 30 while adapting the wording.

Subhead (3)

This contains a saving for the provisions in the 2004 Act relating to insurance obligations on the tenant: see 16(i) and (j).

Chapter 5

Enforcement of obligations

Head 47: Release or waiver

(Law of Property Amendment Act 1859 sections 1 and 2; Law of Property Amendment Act 1860 section 6; Deasy's Act 1860 sections 22 and 43)

Provide that:

(1) Subject to *subhead (4)*, a general release of a landlord or tenant obligation or a waiver of a particular breach of such an obligation shall be in writing signed by the party releasing or waiving or by that party's agent authorised in writing.

(2) Where—

(a) the landlord gives consent to the tenant in a particular instance to do any thing which under a tenant's obligation requires consent or which would otherwise be a breach of obligation by the tenant, or

(b) the landlord or tenant waives a particular breach of obligation by the other party to the tenancy,

such consent or waiver is confined to that particular instance or breach of obligation and is not a general release of the obligation.

(3) Where a consent or waiver coming within *subhead (2)* or a general release of an obligation by either the landlord or the tenant is—

(a) given to one or more, but not all, of the co-landlords or co-tenants of the same premises, or

(b) restricted to part only of the premises,

such consent, waiver or release does not prevent enforcement of the obligations against the other co-landlords or co-tenants or in respect of another part of the premises.

(4) *Subhead (1)* does not affect the doctrine of estoppel or other equitable principles.

Explanatory Note

This Head deals with the law of waiver and consolidates various overlapping provisions in the Law of Property Amendment Acts 1859 (sections 1 and 2) and 1860 (section 6) and Deasy's Act 1860 (sections 22 and 43). In doing so, it seeks to clarify and simplify the existing law. The case law frequently refers to a waiver generally (which means that the landlord cannot invoke the covenant in question thereafter) and waiver of a particular breach (which means that the landlord remains free to take action in respect of future breaches). In order to reflect this distinction, Head 46 refers to the former as a 'general release' and uses the term 'waiver' only in respect of the latter.

Subhead (1)

This replaces section 43 of Deasy's Act but makes it clear that the provision covers both a general release and a particular waiver [this had been in some doubt over the decades but McCracken J concluded that section 43 covered both in *Crofter Properties Ltd v Genport Ltd* (15 March 1996)]. It also extends to all landlord and tenant obligations and makes it clear that release or waiver by an agent is effective only if the agent is authorised in writing (this accords with Head 11).

Subhead (2)

This consolidates the statutory provisions referred to above.

Subhead (3)

Paragraph (a) clarifies that it applies to a consent, waiver or release given to some (not just one) but not all, of co-owners of the landlord's and tenant's interest.

Subhead (4)

This makes it clear that subhead (1) does not rule out the application of equitable principles, e.g. to ensure that a statutory provision is not used as an instrument of fraud.

Head 48: Set-off in proceedings

(Deasy's Act 1860, section 48)

Provide that:

(1) Subject to *subheads*(3) and (4), in any proceedings by the landlord or the tenant against the other for breach of any obligation under the tenancy either party may set off any sum owed by the other in connection with the tenancy.

(2) For the purposes of *subhead* (1)—

(a) “any sum owed” includes both a liquidated and, subject to *subhead* (3), an un-liquidated sum,

(b) the right of set-off applies equally where the sum owed was owed by the other party’s predecessor in title and remains un-discharged.

(3) A party seeking to set off an un-liquidated sum shall provide full particulars of the claim to that sum in the proceedings in order to avoid unnecessary delay in completion of those proceedings.

(4) *Subsection* (1) displaces any right of set-off available under the general law.

Explanatory Note

This Head replaces section 48 of Deasy’s Act and implements recommendations in paragraphs 8.16 and 8.17 of the L&T CP.

Subhead (1)

This extends the right of set-off to any proceedings for breach of obligation (not just in respect of rent). Secondly, it applies to both landlords and tenants (not just tenants). Thirdly, it confines the right of set-off to its proper context, i.e., as a defence in court proceedings (it is not to be confused with a right of deduction which can be exercised independently of court proceedings and is covered by Head 49).

Subhead (2)

This clarifies two issues with respect to the right of set-off: paragraph (a) reverses the approach taken by the Irish courts (but not the English courts in recent times) which confines the right to liquidated sums. This implements recommendation 8.17 of the L&T CP; paragraph (b) clarifies a point on which there is some doubt in Ireland. The English courts have recently held that the right of set-off is personal in respect of sums owed by the existing landlord and cannot be invoked in respect of sums owed by the previous landlord and remaining un-discharged [Edlington Properties Ltd v J H Fenner & Co Ltd [2006] 3 All ER 1200]. Paragraph (b) makes it clear that this limitation does not apply under this section.

Subhead (3)

This requires a party seeking to set off an un-liquidated sum to substantiate the claim in the proceedings without delay.

Subhead (4)

In order to ensure certainty, this makes it clear that the new statutory right also displaces any right (such as an equitable right) of set-off which may exist apart from section 48 of Deasy's Act. The existence of such a separate right has been a matter of some controversy over the years; the issue arose recently but was not resolved [The Leopardstown Club Ltd v. Templeville Developments Ltd [2006] IEHC 133.]

Head 49: Deductions from rent

(Landlord and Tenant (Amendment) Act 1980, section 87)

Provide that:

(1) Subject to *subheads* (2) and (4), where—

(a) the tenant serves a notice in the prescribed form calling upon the landlord to carry out any landlord's obligation under the tenancy,

(b) the landlord fails within 21 days of receipt of such a notice to serve on the tenant a counter notice in the prescribed form which either—

(i) specifies why there is no need to comply with the tenant's notice, or

(ii) undertakes within 14 days to comply with that notice,

(c) the tenant subsequently performs the landlord's obligation,

the tenant may, without prejudice to the right to sue the landlord for breach of obligation, make such deductions from the next and subsequent payments of rent as are necessary to recompense the tenant for any reasonable expenditure actually incurred in performing the landlord's obligation.

(2) Where the landlord fails to carry out an undertaking given in a counter notice served under *subhead* (1) (b), the counter notice may be treated by the tenant as if it had not been served.

(3) A tenant making such deductions shall serve on the landlord not less than 21 days before making the first deduction a notice in the prescribed form specifying—

(a) particulars of the expenditure actually incurred,

(b) details of the deductions proposed to be made.

(4) Where deductions are made in accordance with this section in respect of any payments of rent, the rent is to be deemed duly paid and the landlord shall issue receipts accordingly.

(5) This section takes effect subject to the terms of the tenancy.

Explanatory Note

This Head deals with the tenant's right to make deductions from rent and other payments under the tenancy, e.g. service charges, where the tenant performs an obligation which should have been performed by the landlord. It does not extend to a right to withhold rent simply because of the landlord's failure in other respects. It replaces section 87 of the Landlord and Tenant (Amendment) Act 1980 but widens its scope as recommended by paragraph 4.55 of the Business Tenancies CP.

Subhead (1)

This both extends and tightens up section 87 of the 1980 Act. It now applies to any landlord's obligation, not just the repairing obligation. Paragraph (a) requires the tenant to serve a prescribed notice on the landlord before carrying out the landlord's obligation. Paragraph (b) allows the landlord to serve a counter notice either explaining why the tenant's notice is inappropriate or undertaking to comply with the tenant's notice. The tenant's right to make deductions arises only if the landlord does not serve a counter notice or, if one is served, the landlord fails to honour an undertaking given in it. Under paragraph (c), deductions can only be made where the tenant carries out the landlord's obligation. It is also made clear, as recommended in paragraph 4.55 of the Business Tenancies CP, that the deductions must be made from the next payments of rent due and relate to actual expenditure.

Subhead (2)

This spells out the consequences where the landlord fails to honour an undertaking given in a counter notice.

Subhead (3)

This clarifies section 87 by requiring the tenant to notify the landlord both of the actual expenditure and the proposed deductions.

Subhead (4)

This reproduces the substance of a provision in section 87 of the 1980 Act.

Subhead (5)

This permits the right of deduction to be excluded or varied by the terms of the tenancy.

Head 50: Damages for breach of tenant’s repairing obligations
(*Landlord and Tenant (Amendment) Act 1980, section 65*)

Provide that:

(1) Damages recoverable by the landlord in any proceedings for breach of any obligation by the tenant to do repairs shall not in any case exceed—

- (a) the amount by which the value of the landlord’s interest in the premises is diminished by the breach, or
- (b) the cost of repairs actually carried out by the landlord,

whichever is the greater.

(2) Save where the disrepair is shown to be due wholly or substantially to the deliberate and intentional action or omission of the tenant, no such damages are recoverable if it is shown that—

- (a) having regard to the age and condition of the premises, their repair in accordance with the tenant’s obligation is physically impossible, or
- (b) having regard to the age, character, condition and situation of the premises, their repair in accordance with the tenant’s obligation would involve expenditure which is excessive in proportion to their value, or
- (c) having regard to the character and situation of the premises, they could not when so repaired be profitably used or could not be profitably used unless rebuilt, reconstructed or structurally altered to a substantial extent.

(3) This section applies so as to exclude or restrict reimbursement of the landlord’s costs under *Head 45(3)(b)* as it applies to recovery of damages for breach of the tenant’s obligation to do repairs.

Explanatory Note

This Head replaces section 65 of the Landlord and Tenant (Amendment) Act 1980 and implements recommendations in paragraph 4.46 of the Business Tenancies CP.

Subhead (1)

This reproduces the substance of section 65(1) and (2) of the 1980 Act but with various modifications recommended in paragraph 4.46: firstly, the provision is no longer confined to 'tenements' but applies to all tenancies; secondly, it applies to a tenant’s obligation to repair however that obligation arises; thirdly, the definition of 'premises' in Head 3 (meaning the land which is the subject-matter of the tenancy) makes it clear that the diminution in value includes the value of the site (a matter on which the courts have expressed conflicting views in relation to section 65: see *Groome v Fodhla Printing Co Ltd* [1943] IR 380; *Gilligan v Silke* [1963] IR.1).

Subhead (1) also recognises that diminution in the value of the landlord’s interest may not be an accurate reflection of the damage or cost to the landlord of the tenant’s

failure to repair in particular cases. It provides for the other measure frequently adopted by the courts, the cost of doing repairs which the landlord may incur.

Subhead (2)

This contains the substance of section 65(3) of the 1980 Act with appropriate modifications, e.g. substitution of 'obligation' for 'covenant' and of 'premises' for 'tenement'.

Subhead (3)

This implements the recommendation in paragraph 4.46 of the Business Tenancies CP that a landlord should not be able to circumvent the provision by doing repairs that the tenant should have done and suing to recover the expenditure incurred (see section 45(3)(b)). The English courts have held that such an action is a suit to recover a debt and not an action to recover damages for breach of covenant (and so outside the scope of the equivalent provision in the English Leasehold Property (Repairs) Act 1938: see *Jervis v Harris* [1996] 1 All ER 303).

Head 51: Damages for breach of landlord's repairing obligations

Provide that:

.—Where the tenant continues in occupation of the premises despite a breach of any obligation by the landlord to do repairs, the tenant may recover general damages for losses suffered as a consequence of the breach.

Explanatory Note

This Head implements the recommendation in paragraph 10.15 of the L&T CP that there should be a statutory right to damages in such circumstances. It had been a matter of some doubt whether a tenant who 'soldiered on' and continued to occupy the premises could seek damages for annoyance, disruption or inconvenience. In more recent times the courts have been prepared to award damages in such circumstances: see, e.g., *Jiminez v. Morrissey* [2005] IEHC 251, [2006] IEHC 18. This Head now seeks to settle the matter.

Head 52: Condition of consent

Provide that:

(1) Where the tenant is in breach of any obligation under the tenancy, the landlord may make it a condition of giving consent for any thing coming within *Chapter 3* of this Part that either—

- (a) the tenant complies with the obligation before that thing takes effect, or
- (b) the proposed assignee or sub-tenant rectifies the breach within a reasonable time specified by the landlord.

(2) For the avoidance of doubt it is hereby provided that the imposition of such a condition does not constitute an unreasonable withholding of consent for the purposes of *Head 32*.

Explanatory Note

This Head implements paragraph 10.14 of the L&T CP. Subhead (1) gives the landlord the option to require either the tenant or the incoming assignee or sub-tenant to rectify the breach of obligation. Subhead (2) provides the clarification recommended by paragraph 10.14 of the L&T CP.

PART 7

TERMINATION OF TENANCIES

This Part deals with the various ways in which a tenancy may be terminated. It implements the recommendations largely contained in Chapters 12 – 16 of the L&T CP.

Chapter 1

Surrender

Head 53: Formalities (*Deasy's Act 1860, section 7*)

Provide that:

.—Subject to *Head 54*, a tenancy shall be surrendered at law only in writing signed by the tenant or the tenant's agent.

Explanatory Note

This Head contains the substance of section 7 of Deasy's Act as recommended by paragraph 2.21 of the L&T CP. The exception for "act and operation of law" is covered by Head 54. The wording of this Head corresponds with that in Head 11 (which deals with the grant of a tenancy) except that there is no requirement for the tenant's agent to be authorised in writing.

Head 54: Implied surrender

Provide that:

.—Notwithstanding *Head 53*, an implied surrender takes effect in law where—

- (a) the tenant surrenders the keys and vacates the premises or otherwise signifies yielding up possession to the landlord with the acceptance or agreement of the landlord,
- (b) the landlord grants a new tenancy to the tenant or, with the agreement of the tenant, to a third party with the intention of displacing the existing tenancy,
- (c) there is continued occupation or use of the premises by the tenant as a caretaker or licensee or in some other capacity inconsistent with that of a tenant, or
- (d) other circumstances arise or the relationship between the landlord and tenant alters so as to indicate that the relationship of landlord and tenant no longer exists.

Explanatory Note

This Head deals with implied surrender or, as commonly described and referred to in section 7 of Deasy's Act, surrender by 'act and operation of law'. It seeks to give guidance as recommended in paragraph 2.22 of the L&T CP. Paragraphs (a) to (c) refer to the sort of circumstances where the voluminous case law establishes that such a surrender takes place. Paragraph (d) is a 'catch-all' provision to cover cases not falling exactly within (a) to (c).

Head 55: Variation of tenancy

Provide that:

(1) The landlord and tenant may make a variation of the tenancy in writing or by way of an endorsement on or attachment annexed to any lease relating to the tenancy without the need for a surrender of the tenancy and the re-grant of a new tenancy.

(2) A variation under this section may comprise:

- (a) an addition or subtraction of land to or from the premises or other alterations of the premises;
- (b) an extension or reduction of the term originally granted under the tenancy or as subsequently varied;
- (c) an addition, alteration, deletion or other modification of any provision of the tenancy;
- (d) any other variation agreed by the landlord and tenant to take effect without a surrender and re-grant;

and may include such consequential adjustments to the other terms of the tenancy as the landlord and tenant consider appropriate.

(3) Upon the making of such a variation the tenancy otherwise continues in operation as varied.

Explanatory Note

This Head deals with the controversial subject of how far a variation of a lease triggers a surrender and re-grant of a new lease. It implements the recommendations in paragraph 2.24 of the L&T CP.

Subhead (1)

This introduces flexibility for parties to a tenancy. Use of the word 'may' indicates that it will remain open to the parties to have a surrender and re-grant if they wish.

Subhead (2)

As indicated by paragraph 2.24, this would considerably extend the existing law by enabling the parties to make a wide range of variations without having to bring about a surrender of the existing tenancy and to execute a new grant of the tenancy as varied. This applies in particular to paragraph (b). The last part of the subsection covers things such as altering the rent or service charges to reflect the addition or subtraction of land to or from the premises.

Subhead (3)

This confirms that a variation results in the existing tenancy continuing as varied.

Head 56: Renewal of head-tenancy

(Deasy's Act 1860, section 8)

Provide that:

(1) A head-tenancy may be surrendered for the purpose of its renewal or substitution without the need to surrender any sub-tenancies granted out of it.

(2) Subject to *subhead (3)*, upon such a renewal or substitution the head-landlord, head-tenant, and subtenants have the same rights and obligations in respect of each other as they would have had if no surrender had taken place.

(3) *Subhead (2)* does not affect any new rights and obligations created by the renewal or substitution of the head lease and enforceable as between the head-landlord and head-tenant only.

Explanatory Note

This Head replaces section 8 of Deasy's Act, as recommended by paragraph 2.25 of the L&T CP.

Subhead (1)

This re-enacts the provision in section 8 of Deasy's Act that a head-tenancy may be surrendered without surrendering sub-tenancies where the purpose is to renew the head-tenancy. The words 'or substitution' have been added to extend the scope of the provision (the word 'renewal' suggests 'more of the same' whereas 'substitution would cover something different).

Subhead (2)

This preserves the position of the parties upon such a renewal or substitution but makes it clear now that the position of the subtenants is also preserved, as recommended by paragraph 2.25 of the L&T CP.

Subhead (3)

This makes it clear that notwithstanding the general provision in subhead (2), the renewed or substituted head-tenancy may alter the position of the head-landlord and head-tenant but only as between themselves.

Head 57: Surrender of head-tenancy

(Real Property Act 1845, section 9)

Provide that:

(1) Upon the surrender of a head-tenancy the head-landlord becomes the landlord of any sub-tenancy granted out of it and all rights and obligations created by the sub-tenancy remain enforceable as between the head-landlord and subtenant accordingly.

(2) *Subhead (1)* does not affect the operation of *Head 101*.

Explanatory Note

This Head replaces section 9 of the Real Property Act 1845 as recommended by paragraphs 2.26 and 12.04 of the L&T CP.

Subhead (1)

This recasts section 9 of the Real Property Act 1845 in simple language. It also extends its provisions to all tenancies as recommended by paragraph 12.04 of the L&T CP (section 9 of the 1845 Act also applied to mergers so an equivalent provision for mergers is included in Head 58).

Subhead (2)

This is a saving for the replacement of section 78 of the Landlord and Tenant (Amendment) Act 1980 which is in Part 8 (now Head 101).

Chapter 2

Merger

Head 58: Merger of head-tenancy
(*Real Property Act 1845, section 9*)

Provide that:

.—Upon the merger of a head-tenancy in a superior interest the owner of that interest becomes the landlord of any sub-tenancy granted out of the head-tenancy and all rights and obligations created by the sub-tenancy remain enforceable as between that owner and the subtenant accordingly.

Explanatory Note

This Head is the equivalent for mergers of Head 57 relating to surrenders of a head-tenancy. The position of sub-tenants following both surrenders and mergers was covered by section 9 of the Real Property Act 1849. This provision operates only where a merger actually occurs. Often none will occur because there is a declaration of non-merger. Under section 28(4) of the Judicature (Ireland) Act 1877 merger will not take effect if there is a contrary intention expressed in the document vesting the two estates or interests in the same person.

Head 59: Partial merger

Provide that:

(1) For the avoidance of doubt it is hereby declared that it is, and always has been, possible to merge in the reversion immediately expectant on a lease an inferior interest in part of land held under the same lease.

(2) Such a partial merger does not affect the enforcement of rights and obligations as between the owner of that reversion and lessees of other parts of the land.

Explanatory Note

This Head is designed to resolve a doubt as to whether there can be a 'partial' merger of a leasehold interest. This has long been a controversial issue in relation to the application of the ground rents legislation to so-called 'pyramid' titles. It implements the recommendation for clarification made by the Law Reform Commission some time ago: see Report on Land Law and Conveyancing Law: (1) General Proposals (LRC 30 – 1989), paragraphs 10 to 12.

Subhead (1) confirms that it has always been possible to have a partial merger of a leasehold interest, while subhead (2) confirms the effect of a partial merger.

Chapter 3

Discharge

Head 60: Frustration (*Deasy's Act 1860, section 40*)

Provide that:

—For the avoidance of doubt it is hereby provided that the doctrine of frustration of contract applies and always has applied to a tenancy.

Explanatory Note

This Head replaces section 40 of Deasy's Act (a controversial provision as explained by paragraphs 11.03 to 11.07 and 12.12 to 12.13 of the L&T CP). Some of the recommendations have been implemented by Head 30 (Building insurance) but the view has been taken that section 40 of Deasy's Act has outlived its usefulness and should be regarded as replaced by the general doctrine of frustration of contract as developed by the courts. It had been a matter of controversy over the years how far that doctrine applies to tenancies but the view eventually emerged that it does in exceptional circumstances: see the House of Lords decision in *National Carriers Ltd v Panalpina (Northern) Ltd* [1981] AC 675, the reasoning of which was accepted by the Supreme Court in *Neville & Sons Ltd v Guardian Builders Ltd* [1995] 1 ILRM 1.

Head 60 is designed to resolve this doubt, as been done in other common law jurisdictions like Canada (e.g., the British Columbia Commercial Tenancy Act 1996, section 30; Ontario Tenant Protection Act 1997, section 10; New Brunswick Residential Tenancies Act 1975, section 11). The Head does not attempt to specify the circumstances where the doctrine would apply because it is considered that this is best left to the courts to apply to the circumstances of particular cases.

Head 61: Repudiation by landlord

Provide that:

.—For the avoidance of doubt it is hereby declared that the doctrine whereby a party may be discharged from a contract owing to a repudiatory breach or breach of a fundamental term may be, and always has been capable of being, invoked by a tenant against the landlord.

Explanatory Note

This Head resolves a doubt as to whether a recent development in English applies here. A number of recent English cases have held that the contractual doctrine whereby a party may treat himself or herself as discharged from any further performance of contract where the other party has clearly repudiated the contract or been guilty of a fundamental breach may be invoked by a tenant against the landlord: see *Hussein v Mehlman* [1992] 2 EGLR 83; *Chartered Trust plc v Davies* [1997] 2 EGLR 83; *Nynehead Developments Ltd v RH Fibreboard Containers Ltd* [1999] 1 EGLR 7; *Petra Investments Ltd v Jeffrey Rogers plc* [2000] 3 EGLR 120.

There has been no Irish case on the subject but it could be argued that the grounding of the relationship of landlord and tenant on contract in section 3 of Deasy's Act means that there is no reason why the doctrine could not have been invoked. This Head makes the position clear (it does not apply to landlords since they already have adequate remedies such as the right of forfeiture).

Chapter 4

Notice of termination

Head 62: Scope of Chapter 4

Provide that:

This Chapter:

- (a) applies to any tenancy other than a tenancy to which the Act of 2004 applies;
- (b) displaces the common law in so far as it conflicts with any provision in this Chapter;
- (c) subject to *Head 66*, does not affect the operation of a break option or other method of termination by notice expressly provided for by the terms of the tenancy.

Explanatory Note

This Head clarifies the scope of Chapter 4 which implements the recommendations in Chapter 13 of the L&T CP.

Paragraph (a) contains a saving for the extensive provisions governing termination of residential tenancies in Part 5 of the Residential Tenancies Act 2004. Paragraph (b) makes it clear that the statutory provisions in Chapter 4 displace any common law rules in so far as they relate to any matter covered by the Chapter. They will also replace the provisions in the Landlord and Tenant (Ireland) Act 1870 and Notices to Quit (Ireland) Act 1896, both of which Acts will be repealed in Schedule 2. Paragraph (c) makes it clear that the new statutory provisions do not apply to 'break' options or other express provisions which may be contained in the lease, apart from Head 66.

Head 63: Notices terminating a tenancy

Provide that:

(1) A tenancy for any recurring period may be terminated by the landlord or the tenant serving a notice (in this Chapter referred to as a “notice of termination”) on the other in accordance with this Chapter.

(2) A notice of termination shall—

- (a) be in writing,
- (b) be signed by the party serving it, or that party’s agent,
- (c) specify the minimum period of notice required under *Head 64*,
- (d) specify a date for termination of the tenancy, and
- (e) sufficiently describe the premises and tenancy being terminated so as not to mislead the other party.

Explanatory Note

This Head contains basic provisions for notices served by landlords or tenants to terminate a periodic tenancy. It avoids use of the term 'notice to quit' and instead uses the expression 'notice of termination'. It also sets out the minimum requirements for an effective notice as recommended by paragraph 13.07 of the L&T CP.

Head 64: Period of notice

(Deasy's Act 1860, section 5)

Provide that:

(1) Subject to *subheads* (2) and (3), the minimum period of notice is the recurring period of the tenancy.

(2) The minimum period for termination of a yearly tenancy is 6 months.

(3) Where the recurring period of a tenancy is uncertain or unknown, the minimum period is 3 months.

(4) For the purpose of calculating the minimum period of notice—

(a) the period runs from the date of service of the notice,

(b) the period may—

(i) include the day of service and specified date for termination,

(ii) end on any day provided the minimum period has expired.

Explanatory Note

This Head specifies the minimum period of notice required to be given and clarifies certain aspects of the common law.

Subhead (1)

This retains the general common law rule that the period should equate to the recurring period of the tenancy, e.g., a week's notice for a weekly tenancy and a month's notice for a monthly tenancy.

Subhead (2)

This retains the common law rule for yearly tenancies.

Subhead (3)

This introduces a new statutory rule which will replace the common law presumption of a yearly tenancy in such cases (which also arises under section 5 of Deasy's Act) as recommended by paragraph 13.07 of the L&T CP.

Subhead (4)

Paragraph (a) makes it clear that the period runs from the date of service (Head 65 deals with 'service' by supplementing the general provisions in Head 4). Paragraph (b)(i) provides that the period can include the day of service and specified date for termination (this appears to be the common law rule). Subparagraph (ii), on the other hand, may reverse the common law position.

Head 65: Service of notice

Provide that:

(1) Subject to the terms of the tenancy a notice of termination may be served at any time during the tenancy.

(2) Such a notice—

(a) if served by or on one or more joint landlords, is effective to terminate the tenancy,

(b) if served by or upon one or more, but not all, joint tenants is not effective to terminate the tenancy.

(3) Where the landlord or tenant has died, the notice may be served by addressing it to the deceased's "personal representative" whether or not a grant of representation has issued.

Explanatory Note

This Head deals with service of a notice of termination. Since the provisions in Head 4 apply to service of notices terminating a tenancy, this Head contains supplementary provisions only. These are designed to simplify the common law.

Subhead (1)

This abolishes complicated rules under the common law as to when a notice to quit may be served. In all cases the rule in future will be that a notice of termination can be served at any time during the tenancy unless the parties have agreed otherwise.

Subhead (2)

This clarifies the law where there are joint landlords or joint tenants. It makes it clear that service of a notice by one or more joint landlords is effective, but not service by one or more (but not all) joint tenants. This accords with the rule under the Residential Tenancies Act 2004 as regards tenancies coming within the scope of that Act, section 73(3) of which provides:

“Any rule of law that a notice of termination served by any of 2 or more multiple tenants under a periodic tenancy of a dwelling without the concurrence of the other or others, or without the knowledge of the other or others, is effective to terminate that tenancy is abolished.”

Subhead (3)

This seeks to clarify the position where the landlord or tenant has died. It seeks to introduce a simple rule to be used in applying Head 4. It adapts the procedure for agricultural and pastoral tenancies in section 4 of the Notices to Quit (Ireland) Act 1876. It means that the landlord will be able to send a notice to the premises addressed to the tenant's (naming him or her) 'personal representatives' (without naming them).

Head 66: Sub-tenants

Provide that:

(1) Subject to *subhead (3)*, where a head-tenancy is terminated by—

(a) a notice of termination, or

(b) exercise of a break option or other method of termination by notice expressly provided for by the terms of the tenancy,

any subtenant holding under it may apply to the court for relief as if the head-tenancy had been forfeited by the head-landlord under Chapter 5.

(2) In considering what relief (if any) to grant, the court shall take into consideration the potential loss of statutory rights which the subtenant might suffer as a consequence of termination of the head-tenancy.

(3) *Subhead (1)* does not affect any other statutory rights to which the head-landlord or sub-tenant may be entitled.

Explanatory Note

This section deals with the position of sub-tenants which would appear to be precarious as explained in paragraph 13.08 to 13.11 of the L&T CP. Unlike sub-tenants given statutory protection in the case of surrenders or mergers (see Heads 57 and 58), or under equitable jurisdiction or statutory provisions in the case of forfeiture (see Head 74), there is no general statutory protection under current law. It is also doubtful whether statutory rights under the Landlord and Tenant (Amendment) Act 1980 are protected: see paragraph 13.11 of the L&T CP.

Subhead (1)

This implements the recommendation in paragraph 13.10 of the L&T CP that sub-tenants should be entitled to apply to the court for relief analogous to equitable relief in the case of forfeiture of the head tenancy. Such relief is dealt with in Head 74. Unlike the other provisions of Chapter 4, this provision also applies to termination of a fixed-term head tenancy by exercise of a break option or other notice procedure expressly provided for. It would appear that under current law there is no protection for sub-tenants in such cases either: see paragraph 13.09 of the L&T CP.

Subhead (2)

This implements another recommendation in paragraph 13.11 of the L&T CP to address the likelihood that section 78 of the 1980 Act probably does not apply to cases of termination by notice.

Subhead (3)

This implements another recommendation in paragraph 13.10 of the L&T CP.

Chapter 5

Forfeiture

Head 67: Scope of Chapter 5

Provide that:

This Chapter—

(a) applies to any tenancy other than a tenancy to which section 27(1) of the Landlord and Tenant (Ground Rents) (No. 2) Act 1978 or the Act of 2004 applies,

(b) replaces any express provisions in a lease relating to forfeiture or re-entry by the landlord other than a provision excluding a right of forfeiture or of re-entry.

Explanatory Note

This Head defines the scope of Chapter 5.

Paragraph (a) retains the restriction contained in the 1978 Act and the more recent provisions in the Residential Tenancies Act 2004. However, the effect of this Bill is to extend section 27(1) of the 1978 Act to protect any other lessee who is entitled to acquire the fee simple or to the grant of a reversionary lease under Part III of the Landlord and Tenant (Amendment) Act 1980. The view has been taken that such persons also hold such a substantial interest in the premises that it is equally inappropriate that they should be at the risk of forfeiture for non-payment of what will usually be a very small rent. Otherwise, as recommended by paragraph 14.06 of the L&T CP, the new statutory provisions apply to all tenancies. Paragraph (b) implements the various recommendations for simplification of the law, i.e., in future any forfeiture would be governed by Chapter 5.

Head 68: Right of forfeiture

Provide that:

(1) Subject to *subhead (2)* and any provision excluding a right of forfeiture or of re-entry, the landlord may forfeit the tenancy in accordance with this Chapter for breach of any of the tenant's obligations under the tenancy.

(2) For the avoidance of doubt it is hereby declared that section 49 of the Bankruptcy Act 1988 and sections 217 to 219 of the Companies Act 1963 apply to any forfeiture under this Chapter.

Explanatory Note

This Head implements the recommendations for a unified right of forfeiture applicable to all types for breach of the tenant's obligations: see L&T CP paragraph 14.06.

Subhead (1)

This contains the general right subject to the two exceptions mentioned. There are also the statutory restrictions mentioned in Head 67(a).

Subhead (2)

This implements the recommendation in paragraph 14.03 of the L&T CP that the position in cases of insolvency should be clarified. The provisions in the 1988 and 1963 Act are designed to protect an insolvent tenant's assets for the benefit of creditors but there is doubt as to their scope.

Head 69: Forfeiture notices and counter-notices

Provide that:

(1) Subject to *subhead (9)*, a landlord wishing to forfeit a tenancy shall serve on the tenant a notice in the prescribed form (in this Chapter referred to as a “forfeiture notice”).

(2) A forfeiture notice shall:

(a) specify the breach of obligation by the tenant upon which the landlord relies;

(b) call upon the tenant to remedy that breach or if the landlord considers it more appropriate to pay damages within a time specified in accordance with *subhead (3)*;

(c) warn the tenant that a failure so to remedy the breach or pay damages may result in the landlord seeking to recover possession by way of forfeiture.

(3) For the purposes of *subhead (2)(b)* the time to be specified in the forfeiture notice is as follows:

(a) where the breach of obligation is non-payment of rent or other monetary sums, not less than 14 days;

(b) in the case of any other breach to be remedied other than by payment of damages, such period as gives the tenant a reasonable opportunity to remedy it;

(c) where the forfeiture notice calls upon the tenant to pay damages, not less than 14 days.

(4) A tenant who disputes—

(a) whether there has been the breach of obligation specified in the forfeiture notice,

(b) whether the time specified for its remedy accords with *subhead (3)(b)*, or

(c) any other aspect of the forfeiture notice,

shall serve on the landlord, within the time prescribed by *subhead (5)*, a counter-notice in the prescribed form setting out the ground of dispute.

(5) A counter-notice under *subhead (4)* shall be served—

(a) in a case coming within *subhead (3)(a)* within 14 days,

(b) in a case coming within *subhead (3)(b)*, within 28 days, or

(c) in a case coming within *subhead (3)(c)*, within 14 days,
of service of the forfeiture notice.

(6) In any subsequent proceedings—

(a) by the landlord for forfeiture, or

(b) by the tenant for relief against forfeiture,

no breach of obligation or ground of dispute shall be relied upon unless it is established to the satisfaction of the court that there was good reason why such breach or ground was not specified in the forfeiture notice or counter notice, as the case may be.

(7) *Subheads (2) and (3) of Head 65* apply to a forfeiture notice and counter notice served under this section as they apply to a notice served under that section.

(8) Upon the application of the landlord or tenant the court may, provided it is satisfied that no prejudice has or will occur to any party, order that a forfeiture notice or counter notice which has been served is valid notwithstanding a failure to comply strictly with this section.

(9) This section does not apply where the landlord applies to re-enter under *Head 76* or takes action under *Heads 77 or 78*.

Explanatory Note

This Head provides for the modified procedure for all cases of forfeiture as recommended by paragraphs 14.07 to 14.15 of the L&T CP. The effect of following this procedure is dealt with by Head 71.

Subhead (1)

This provides for use of a prescribed form of forfeiture notice to be served on the tenant. As recommended by paragraph 14.14 it is envisaged that the prescribed form will greatly simplify the requirements of section 14 of the Conveyancing Act 1881 warning the tenant of the intention to forfeit and identifying the breach of obligation relied upon. This procedure does not apply where the landlord wishes to resume possession of abandoned premises (Head 76) or takes emergency action to protect premises (Head 77).

Subhead (2)

It sets out the basic requirements of the prescribed form.

Subhead (3)

It seeks to bring a degree of certainty as to the time to be allowed to a tenant to remedy a breach before the landlord can put forfeiture into effect.

Subhead (4)

This enables a tenant to challenge a forfeiture notice by serving a counter notice.

Subhead (5)

This sets out the time limits for a tenant serving a counter notice.

Subhead (6)

This prevents a landlord or tenant from subsequently relying on a breach or ground of dispute not specified in the forfeiture notice or counter notice, unless the court can be convinced that there is a good reason for it.

Subhead (7)

This incorporates the provisions dealing with joint landlords or joint tenants and service of notices in the case of death.

Subhead (8)

It provides that a Court may order that a forfeiture notice or counter notice is valid in cases where minor non-compliance has arisen.

Subhead (9)

This preserves the right of the landlord to take quick action without having to follow the notice procedure in certain cases.

Head 70: Recovery of possession

Provide that:

Where the tenant—

- (a) fails to remedy the breach of obligation or to pay the damages within the time specified in the forfeiture notice,
- (b) fails to serve a counter-notice within the time specified by *Head 69(5)*, or
- (c) serves a counter-notice within that time, but the landlord rejects its substance,

the landlord may apply for a possession order under *Chapter 6*.

Explanatory Note

This Head entitles the landlord to put forfeiture into effect where the tenant does not respond appropriately to a forfeiture notice. This involves invoking the new provisions for summary possession proceedings set out in Chapter 6. These will replace the ejection provisions in Deasy's Act and set out the circumstances in which the landlord can initiate possession proceedings.

This Head is concerned with putting a forfeiture notice into effect. It does not deal with abandoned premises or emergency situations because Head 68(9) excludes such cases from that notice procedure.

Head 71: Effect of forfeiture notice

Provide that:

(1) Subject to *subhead (2)*, where the landlord serves a forfeiture notice, the tenancy is not forfeited and all obligations and provisions under it remain in full force unless and until the landlord recovers actual possession under a possession order made under *Chapter 6*.

(2) *Subhead (1)* does not prejudice the landlord's right to recover from the tenant damages for losses resulting from forfeiture, including—

- (a) costs and expenses reasonably incurred in re-letting the property, and
- (b) compensation for loss of rental income.

Explanatory Note

This Head clarifies the effect of a forfeiture notice as recommended by paragraph 14.26 of the L&T CP.

Subhead (1)

This puts in place a straightforward rule that forfeiture does not occur until the landlord obtains actual possession under a court order under Chapter 6. This reverses the current position whereby the tenancy is deemed to be forfeited upon issue of possession proceedings: see *Moffat v Frisby* [2007] IEHC 140.

Subhead (2)

This qualifies the general rule in subhead (1) that recovery of possession puts an end to the relationship of landlord and tenant and thereby releases them from obligations to each other. The right to recover rent up to the date of actual recovery of possession is confirmed by Head 41(2)(b) of the Bill. This implements paragraph 14.26 of the L&T CP and will replace the ejectment provisions in Deasy's Act.

Chapter 6

Possession proceedings

Head 72: Possession order
(*Deasy's Act 1860, sections 52 to 102*)

Provide that:

(1) Subject to *subhead(8)*, the landlord or owner of premises may recover possession by applying for an order (referred to in this Chapter as a “possession order”), where—

(a) the tenant has over-held following expiry of—

(i) the term of the tenancy,

(ii) the date when a surrender of the tenancy or vacation of the premises under a surrender was to take effect,

(iii) a valid notice of termination served under *Chapter 4*, or

(iv) a valid break or other notice terminating the tenancy in accordance with its provisions,

or

(b) the landlord seeks to forfeit the tenancy under *Chapter 5*, or

(c) the landlord or owner seeks to recover occupation or possession of —

(i) abandoned premises under *Head 76*, or

(ii) premises from permissive occupants under *Head 78*.

(2) Such application may be made to the District, Circuit or High Court (and in this Chapter and *Chapter 5* “the court” shall be read accordingly) subject to their respective jurisdictional limits.

(3) Such an application—

(a) where made to the High Court or Circuit Court, shall be by motion,

(b) where made to the District Court, shall be by summary proceedings,

and the court when considering the matter may make such interim or interlocutory order (if any) as it considers appropriate.

(4) Where prior to such an application the tenant has applied for relief under *Part 8*, the Circuit Court may also hear an application under this Chapter in relation to the same premises and, if an application in such case under this Chapter is made to the

High Court, the High Court may remit that application to the Circuit Court to which the application for relief under Part 8 was made.

(5) *Subhead (3)* does not apply where there is a dispute on a point of substance or other substantive issue which in the opinion of the court renders proceedings in accordance with that subsection inappropriate.

(6) Where the landlord applies for an order under *subhead (1)(a)*, the tenant remains liable for payment of rent and performance of all other obligations as if the tenancy continues in force until the landlord recovers actual possession under the order.

(7) Where any such payment relates to services to be provided by the landlord or comprises reimbursement of expenses incurred by the landlord in relation to the premises, the landlord's obligations in relation to those matters also continue in force.

(8) *Subhead (1)* does not—

(a) apply to any tenancy to which section 27(1) of the Landlord and Tenant (Ground Rents) (No. 2) Act 1978 or the Act of 2004 applies,

(b) prejudice any statutory rights to continue in occupation or possession vested in the tenant.

(9) Where a person is entitled to—

(a) acquire the fee simple in premises other than a dwellinghouse by virtue of Part II of the Landlord and Tenant (Ground Rents)(No 2) Act 1978, or

(b) a reversionary lease in respect of any premises under Part III of the Landlord and Tenant (Amendment) Act 1980,

a covenant giving the lessor a right to re-enter and take possession of the premises where rent is in arrears is not enforceable but this does not affect any other civil remedy of the lessor.

Explanatory Note

This Head and the following Heads replace the numerous provisions in sections 52 to 102 of Deasy's Act and implement the recommendations for simplification contained in Chapter 15 of the L&T CP.

Subhead (1)

This lists the various cases where in future the new simplified possession proceedings could be used. The alternative references to 'owner' and 'occupation' are necessary because there is no relationship of landlord and tenant in the case of caretakers, licensees, etc and such persons have 'occupation' or 'use' rather than 'possession' (which remains in the owner, licensor, etc.)

Subhead (2)

This implements the recommendation that the summary procedure should be available in all courts: see paragraph 15.10 of the L&T CP.

Subhead (3)

This emphasises the summary nature of the new procedure and adapts the provision in section 160 of the Planning and Development Act 2000 for planning injunctions.

Subhead (4)

This is designed to prevent a multiplicity of actions. If the Circuit Court is already seised of an application for relief under Part 8, it should also deal with any possession proceedings.

Subhead (5)

This provides for an exception to the summary procedure where there is a dispute or other substantive issue which requires a full hearing.

Subhead (6)

This makes it clear that wherever a tenant over-holds after termination of the tenancy he or she remains liable for the rent and performance of other obligations until the landlord recovers actual possession. This accords with the rule for forfeiture cases set out in Head 71.

Subhead (7)

This confirms that the landlord will also remain obliged to perform or meet other obligations which the over-holding tenant pays for directly or indirectly.

Subhead (8)

Paragraph (a) is the same saving as contained in Head 67(a). Paragraph (b) preserves rights such as a tenant has under the Landlord and Tenant (Amendment) Act 1980 to remain in occupation pending a decision on new tenancy rights (see Head 93).

Subhead (9)

This extends the provision in section 66(a) of the 1967 Act to other situations where it is considered that the tenant's interest in the premises is so substantial that the landlord should not be able to forfeit the lease for non-payment of what is usually a very small rent.

Head 73: Procedure

Provide that:

(1) Notice of an application for a possession order shall be served on the specified persons and any other person in actual possession or occupation of the premises.

(2) For the purposes of *subhead (1)*, the “specified persons” are:

(a) in a case coming under *Head 72(1)(a)*, the tenant and any subtenant who may be entitled to claim relief under *Head 66*;

(b) in a case coming under *Head 72(1)(b)*, any person who may be entitled to claim relief under *Head 74*;

(c) in a case coming under *Head 72(1)(c)(i)*, the tenant who has abandoned the premises;

(d) in a case coming under *Head 72(1)(c)(ii)*, the permissive occupant.

(3) In a case coming under *Head 72(1)(b)*, the landlord shall furnish in the proceedings a copy of the forfeiture notice served under *Head 69* upon which the landlord relies and of any counter-notice served by the tenant in accordance with that section.

Explanatory Note

This Head requires that notice of an application for a possession order be given to relevant parties. It also requires the lodging in court of the forfeiture notice and any tenant’s counter-notice served under *Head 69* in forfeiture cases.

Head 74: Application for relief

(*Conveyancing Act 1880, section 14; Conveyancing Act 1892, sections 4 and 5*)

Provide that:

(1) Where the landlord applies for a possession order under *Head 72(1)(b)* the following persons may, subject to *subheads (2) and (3)* but not otherwise, apply in those proceedings for relief under *Head 75*:

(a) any sub-tenant of the premises;

(b) any mortgagee of the tenant;

(c) any other person deriving title from or under the tenant including an interest under an enforceable contract for the assignment of the tenancy or the grant of a sub-tenancy.

(2) Any person coming within *subhead (1)* and not a party to the landlord's proceedings may also seek relief by a separate application to the court dealing with the landlord's application at any time before expiry of 28 days from that application.

(3) Any persons who can establish that the failure to comply with the 28-day limit in *subhead (2)* was due to circumstances beyond their control or otherwise not their fault may recover damages from the tenant for loss occasioned by the failure.

(4) Nothing in this section affects the operation of *Head 101*.

Explanatory Note

This Head implements recommendations for simplification and clarification of the law relating to relief against forfeiture in paragraphs 14.21 to 14.25 of the L&T CP.

Subhead (1)

Paragraphs (a) to (c) replicate the substance of the provisions in sections 4 and 5 of the Conveyancing Act 1892. The definition of 'mortgagee' in Head 3 includes a chargee and so implements the recommendation in paragraph 14.24 of the L&T CP. Paragraph (c) clarifies that a person deriving title from or under the tenant includes someone which has entered into an enforceable contract with the tenant. This accords with the view of Costello J in *Enoch v Jones Estates Ltd* [1983] ILRM 532. The words "not otherwise" are intended to make it clear that relief must in future be based on this statutory jurisdiction, i.e., there will be no separate equitable jurisdiction.

Subhead (2)

This provides additional protection for subtenants, mortgagees, etc by enabling such interested persons to make a separate application for relief but only within a 28-day time limit. As recommended by paragraph 14.22, the application must be made to the same court as is dealing with the landlord's application for possession.

Subhead (3)

This implements the recommendation in paragraph 14.23 of the L&T CP.

Subhead (4)

This replaces section 78 of the Landlord and Tenant (Amendment) Act 1980.

Head 75: Order for relief
(*Conveyancing Act 1892, section 4*)

Provide that:

- (1) Upon an application for relief under *Head 74* the court may direct whatever inquiries and make whatever order it thinks fit in the circumstances of the case.
- (2) Without prejudice to the generality of *subhead(1)*, such an order may include an order:
- (a) confirming the landlord's right to forfeiture and granting an order for possession to the landlord;
 - (b) dismissing the landlord's proceedings;
 - (c) continuing any sub-tenancy as if the tenancy had not been forfeited subject to such modifications of terms as the court thinks fit;
 - (d) vesting the tenancy in or granting a new tenancy or mortgage to a person coming within *Head 74(1)*;
 - (e) combining any such orders.
- (3) Where the court makes an order under *subhead (2)(c)* or *(d)* it may, subject to the parties' agreement:
- (a) extend the term of any tenancy, sub-tenancy or mortgage continued or vested in a person and vary any of its provisions;
 - (b) specify the term and fix the provisions of any new tenancy or mortgage vested in a person.

Explanatory Note

This Head implements the recommendations in paragraph 14.25 for clarification of what relief the court can grant. Because section 74 contemplates applications for relief in the landlord's proceedings and possibly after the landlord has obtained possession, the nature of the relief will vary from case to case.

Subhead (1)

This confirms the general discretion the court will have in dealing with applications for relief. It covers applications by sub-tenants and mortgagees who may be applying after the landlord has obtained an order for possession.

Subhead (2)

This lists the various orders the court could make, but without prejudice to the general discretion under subhead (1). It implements the recommendations in paragraph 14.25 of the L&T CP. Paragraph (a) confirms that the court may refuse relief while paragraph (b) confirms that the landlord may fail in the possession proceedings so the status quo is maintained.

Paragraphs (c) and (d) deal with the different sorts of relief that subtenants and mortgagees might obtain and clarifies that there is a wide discretion as recommended by paragraph 14.25. Paragraph (e) allows a combination of orders to be made, e.g., vesting the tenancy in a sub-tenant, but subject to a charge over it held by the head-tenant's mortgagee

Subhead (3)

This resolves doubts as to the extent of the court's discretion under section 4 of the Conveyancing Act 1882 and again implements the recommendations for clarification in paragraph 14.25 of the L&T CP.

Head 76: Abandoned premises
(*Deasy's Act 1860, sections 78 and 79*)

Provide that:

(1) In any case where the landlord has reasonable grounds for believing that the premises have been abandoned by the tenant, the landlord may make an *ex parte* application to the court for an order permitting the landlord immediately to re-enter the premises.

(2) Such an application:

(a) may be made in the same way as an application under *Head 72* and, subject to this section, the provisions of that section apply accordingly;

(b) shall specify the grounds for the landlord's belief and give such other particulars of evidence of abandonment as are available.

(3) The court may grant an order under this section upon such terms and conditions as it thinks fit.

(4) Without prejudice to the generality of *subhead (3)*, the court may require the landlord to give an undertaking to safeguard any tenant's property left in, on or under the premises for such period and on such terms as the court thinks fit.

(5) The court may authorise the landlord to sell such tenant's property and to use the proceeds to defray any arrears of rent, other liquidated or un-liquidated sums owing under the tenancy and reasonable costs and expenses incurred in connection with the application under this section or such sale.

(6) Re-entry of premises under an order made under this section has the same effect as a forfeiture of the tenancy under *Chapter 5* and *Head 74* applies accordingly as it applies to an application for a possession order under *Head 72(1)(b)*.

(7) Nothing in this section prejudices the right of the landlord to re-enter premises under *Head 77* without a court order.

Explanatory Note

This Head deals with abandoned premises and implements the recommendations in paragraph 15.05 of the L&T CP. It replaces the convoluted provisions in sections 78 and 79 of Deasy's Act and is designed to facilitate speedy action without the notice.

Subhead (1)

This will facilitate an *ex parte* application for permission to re-enter.

Subhead (2)

This requires the landlord to furnish evidence of the abandonment and also to safeguard tenant's property left on the premises.

Subhead (3)

This enables the courts to impose terms and conditions, e.g. as to how re-entry can be made.

Subhead (4)

This enables the court to order the landlord to safeguard tenant's property.

Subhead (5)

This enables the court to authorise the landlord to sell that property and use the proceeds to defray rent arrears etc.

Subhead (6)

This specifies the effect of re-entry in such cases.

Subhead (7)

This preserves the right to re-enter without a court order under Head 77.

Head 77: Emergency action

Provide that:

(1) Notwithstanding the other provisions of this Chapter, the landlord or owner may re-enter the premises without first applying for a possession order or an order under *Head 76* in any case where it is necessary to—

(a) deal with an emergency which puts—

- (i) the premises,
- (ii) its occupants, or
- (iii) property in, on or under the premises,

at risk of substantial damage, or

(b) protect by immediate action the premises or the landlord's or owner's interest in them from substantial damage caused by—

- (i) abandonment of the premises by the tenant or permissive occupants, or
- (ii) unauthorised or illegal activity in or on the premises by the tenant or others.

(2) Such re-entry shall not terminate any tenancy of the premises unless and until the landlord obtains an order under this section.

(3) A landlord who has re-entered premises under *subhead (1)* may apply to the court for an order authorising the landlord to retain possession of the premises (in this section referred to as a “retention order”).

(4) Such an application:

(a) may be made in the same way as an application under *Head 72* and, subject to this section, the provisions of that section apply accordingly;

(b) shall specify the grounds upon which the landlord re-entered the premises and any other relevant circumstances.

(5) Notice of such an application shall be served on the tenant and any persons who would come within *Head 73* if the landlord were seeking a possession order under *Head 72(1)(b)*.

(6) The court may grant an order under this section upon such terms and conditions as it thinks fit and, without prejudice to that generality, *subheads (4) and (5) of Head 76* apply as they apply to an application under that section.

(7) A retention order has the same effect as recovery of actual possession under an order made under *Head 72(1)(b)* and *Heads 71, 74 and 75* apply accordingly.

Explanatory Note

This Head provides an important exception to the general rule under Chapter 6 that the landlord must obtain a court possession order to terminate a tenancy where the tenant is unwilling to vacate the premises. It preserves the right to make a “peaceable re-entry” in certain circumstances.

Subhead (1)

This specifies the circumstances in which the landlord can re-enter without a possession order.

Subhead (2)

This makes it clear that re-entry in such circumstances does not by itself terminate any tenancy in the premises. For this to happen, the landlord or owner of the premises must obtain a retention order from the court.

Subhead (3)

This makes provision for obtaining a retention order.

Subhead (4)

It provides that the same summary procedure as applies to obtaining a possession order applies to applications for a retention order.

Subhead (5)

This is designed to protect persons who, in addition to the tenant, might be entitled to claim relief against what, in effect, amounts to a forfeiture of the tenancy.

Subhead (6)

This confers a wide discretion on the court as to the terms and conditions of a retention order and applies the provisions of *Head 76* relating to tenant’s property in or on the premises.

Subhead (7)

This makes it clear that it is the making of the retention order which terminates any tenancy of the premises, having the same effect as forfeiture (as prescribed by *Head 71*). On that basis the provisions relating to relief against forfeiture in *Heads 74 and 75* will also apply.

Head 78: Permissive occupants
(*Deasy's Act 1860, sections 78 and 79*)

Provide that:

(1) Where the owner of premises wishes to recover occupation or possession from a permissive occupant, the application for a possession order shall confirm that the permission to occupy or use the premises has been withdrawn in accordance with the agreement relating to permission or the terms upon which it was given.

(2) For the purposes of *subhead (1)*, “permissive occupant” includes any caretaker, licensee or other person permitted to occupy or use the premises other than as a tenant.

Explanatory Note

This Head replaces the provisions relating to a 'caretaker's summons' contained in sections 84 to 86 of Deasy's Act while dropping the provisions relating to 'cottier tenants' (paragraph 15.06 of the L&T CP).

Subhead (1)

This requires the landlord to make it clear that permission has been withdrawn and that this is consistent with what was agreed or the terms upon which it was granted.

Subhead (2)

This provides a wide definition of 'permissive occupant' as recommended by paragraph 15.06 of the L&T CP (Deasy's Act refers only to 'servant, herdsman or caretaker').

Head 79: Further claims

Provide that:

(1) The landlord may include in any application for a possession order a claim for damages for breach of any tenant's obligation.

(2) Where an application for a possession order is brought in the Circuit Court the tenant may claim a new tenancy or other statutory rights by way of counterclaim provided a notice has been served under *Head 87*.

Explanatory Note

This Head is designed to facilitate parties making further claims in the same action.

Subhead (1)

This enables the landlord to include in an application for a possession order a claim for damages against the tenant.

Subhead (2)

This implements the recommendation in paragraph 15.10 that a tenant entitled to claim statutory rights should not have to issue a new civil bill.

PART 8

STATUTORY RIGHTS

This Part is intended to replace the provisions in Part II (but note the saving in Head 84(3)) and parts of Parts I, IV and VI of the Landlord and Tenant (Amendment) Act 1980 (as amended by later Acts).

It deals essentially with the right to a new tenancy and to compensation for disturbance where a new tenancy is not granted for certain reasons. It does not deal with reversionary leases, as that subject, like the related subject of the right to acquire the fee simple, is outside the scope of this Bill. Nor does it include provisions relating to compensation for improvements (also dealt with by Part IV of the 1980 Act). The other subject dealt with by the 1980 Act (see Part V), covenants in leases, is covered by Part 6, Chapter 3 of this Bill.

Part 8 implements the recommendations in the Consultation Paper on Business Tenancies (LRC CP 21-2000) (the “BTCP”).

Chapter 1

Scope of Part 8

Head 80: General application

(Landlord and Tenant Act 1980, section 5)

Provide that:

This Part:

- (a) applies to tenancies arising or granted after the commencement of this Part;
- (b) does not apply to a tenancy—
 - (i) granted and expressed to be granted for or dependant on the tenant's continuance in any office, employment or appointment or provision of any service for or on behalf of the landlord, provided the nature of the office, employment, appointment or service is stated in the lease or other instrument relating to the tenancy,
 - (ii) where the tenant has renounced in writing, whether for or without valuable consideration, entitlement to a new tenancy under this Part and has received independent legal advice in relation to the renunciation.

Explanatory Note

This Head replaces parts of section 5 of the 1980 Act (other parts are dealt with in Head 85) and implement the recommendations in paragraphs 3.14 to 3.16 and 4.09 of the Business Tenancies CP. As with the provisions relating to covenants in Part 6, Chapter 3 (replacing Part V of the 1980 Act), this Part drops the concept of 'tenement'. It will apply to tenancies generally subject to specific restrictions such as those in paragraph (b) and imposed later (e.g., confining the right to a new tenancy largely to business tenancies – see Head 84).

As recommended in paragraph 3.16 of the Business Tenancies CP, the Head drops the need to have buildings on the land and thereby avoids the distinction which is often difficult to draw between land which is subsidiary and ancillary to buildings and land which is not. In future, a tenant who runs a business on land without buildings (such as a car park or farming activities) will be entitled to statutory rights provided other conditions are met. They include holding a tenancy and not some other interest (e.g. a licence to use land or a conacre or agistment arrangement) and continuous occupation for the relevant period (see Head 84). The recommendation in paragraph 3.18 concerning the need for statutory criteria for a tenancy is implemented by Head 11.

The recommendation in paragraph 3.10 that there should be scope for general contracting-out of the right to a new tenancy (and not just in the case of office premises) has been implemented in section 47 of the Civil Law (Miscellaneous

Provisions) Act 2008. This extends the provision introduced by section 4 of the Landlord and Tenant (Amendment) Act 1994.

The expression 'arising or granted' in paragraph (a) is intended to be wide enough to cover any method whereby a tenancy comes into existence (there seems, therefore, no need to repeat the phrase 'express or implied or arising by statute' used in sections 5(2) and (3)(a) and 6(b) of the 1980 Act).

Paragraph (b)(i) implements the recommendation in paragraph 4.09 of the BTCP that the requirement to state the nature of a temporary convenience should apply also in the case of tenancy granted in connection with an office, etc. Paragraph (b)(i) drops the reference to temporary convenience lettings since this category no longer seems necessary in view of the general contracting-out provision in paragraph (b)(ii).

Other important provisions in section 5 of the 1980 Act, such as those in subsections (2) (State bodies) and (3) and (4) (relating to companies), are to be found later in Chapter 2, as they relate to who is entitled to claim the statutory rights (see Head 85).

Head 81: Interpretation
(*Landlord and Tenant Act 1980, section 3*)

Provide that:

In this Part, unless the context otherwise requires—

“business” means:

- (a) any trade, profession or business, whether or not it is carried on for gain or reward;
- (b) any activity for providing cultural, charitable, educational, social or sporting services;
- (c) the public service;
- (d) the carrying out of any of their functions by any statutory body.

"the Court" means the Circuit Court;

“predecessors in title”—

- (a) when used in relation to a tenant, means all previous tenants under the same tenancy or any tenancy of which that tenancy is or is deemed to be a continuation or renewal,
- (b) when used in relation to a landlord, means all previous landlords.

Explanatory Note

This Head supplements Head 3 which contains several definitions for terms covered by section 3 of the 1980 Act, e.g., 'covenant', 'development', 'development plan', 'landlord', 'lease', 'lessee', 'lessor', 'Minister', 'planning authority' 'planning permission', 'prescribed' and 'state authority'.

Head 81 adds a few definitions specific to Part 8. The definition of 'business' relates to Head 83. Paragraph (d) widens the provision in section 3 of the 1980 Act to cover any statutory body. The definition of 'predecessors in title' also relates to Head 83.

Head 82: Application to State
(Landlord and Tenant Act 1980, section 4)

Provide that:

(1) This Part applies to the State both as landlord and tenant save where the appropriate State authority is satisfied that it would not be in the public interest for a particular tenant to be entitled to invoke Chapter 2 or Chapter 3 and so certifies in writing.

(2) Where a State authority so certifies, it shall furnish a copy of the certification to:

(a) the tenant to whom it applies;

(b) any sub-tenant of that tenant.

Explanatory Note

This Head replaces section 4 of the 1980 Act and implements the recommendation in paragraph 3.13 of the Business Tenancies CP that the State should no longer have blanket exemption as a landlord. It adapts, as recommended, the certification system for individual cases introduced by section 70 of the 1980 Act in relation to the right to acquire the fee simple. It also implements the recommendation in paragraph 4.07 that there should be an obligation on the State to notify inferior tenants of such certification.

Head 83: Application to local authorities
(Landlord and Tenant Act 1980, section 6)

Provide that:

Where premises were or are provided, or deemed to be provided, by a housing authority under the Housing Act 1966, the following provisions have effect, unless the premises, or a part of it, are let for the purpose of carrying on a business:

- (a) if the premises are held by the housing authority in fee simple, this Part does not apply to the premises;
- (b) if the premises are held by the housing authority under a tenancy, the housing authority shall be deemed for the purposes of that Part to be the tenant and to be in exclusive occupation of them.

Explanatory Note

This Head largely re-enacts section 6 of the 1980 Act. A few minor modifications have been made to make it conform to the rest of the Bill.

Chapter 2

Right to a new tenancy

Head 84: Entitlement

(Landlord and Tenant Act 1980, sections 13 and 16)

Provide that:

(1) A tenant is entitled to a new tenancy under this Chapter, beginning on the termination of the previous tenancy, provided—

(a) subject to *subhead (2)* and *Head 85*, the premises have been continuously occupied by the tenant as tenant or the tenant's predecessors in title and *bona fide* used wholly or partly by them for the purposes of carrying on a business during the whole of a minimum period of 5 years immediately prior to that termination, or

(b) the tenant has, without any breach of the terms of the tenancy, made improvements to the letting value of the premises which, at that termination, are worth not less than one-half the letting value of the premises as improved.

(2) For the purposes of *subhead(1)(a)*:

(a) a temporary break in the use of the premises shall be disregarded if the court considers it reasonable to disregard it;

(b) occupation by the tenant—

(i) includes occupation by others in accordance with *Head 85*,

(ii) remains such occupation where the tenant permits occupation or use by a franchisee, licensee or other person not occupying under a tenancy.

(3) This Head does not affect the operation of section 192 of the Act of 2004.

Explanatory Note

This Head defines the terms of entitlement to a new tenancy and replaces the provisions in sections 13 and 16 of the 1980 Act. It implements recommendations made in paragraph 3.24 to 3.25, 3.30 to 3.31 and 4.11 to 4.14 of the BTCP. It should be read together with Head 85 which implements other recommendations.

Subhead (1)

Paragraph (a) deals with the so-called “business equity”. The following points should be noted—

(i) In conformity with other provisions in the Bill, it drops the reference to tenements.

(ii) It requires continuous occupation and business use by the tenant (including predecessors in title) as tenant during the whole of the qualifying period – see paragraph 3.24 of the BTCP.

(iii) The BTCP suggested the possibility of this to, say, 10 years, but the ultimate conclusion was to retain the 5-year qualification period.

(iv) Paragraph (a) makes it clear that qualification (entitlement) is linked to the date of termination of the previous tenancy (from when the new tenancy runs).

This reflects the majority view of the Supreme Court in *Twil Ltd v Kearney* – see paragraphs 4.11 to 4.14 of the BTCP. This does not prevent a tenant applying for relief before that date and obtaining a conditional order, but it will be conditional on the tenant qualifying under paragraph (a) at the termination date (e.g., a tenant who appeared to qualify at the date of application because the minimum period of occupation for business purposes has been met by then, may cease to qualify by the termination date because the business has ceased or a breach of covenant has occurred or circumstances have arisen which entitle the landlord successfully to oppose a new tenancy). See further Head 88.

Paragraph (b) retains the 'improvement' equity, as recommended in paragraph 3.31 of the BTCP. It has been recast to reflect the fact that the provisions in the 1980 Act relating to compensation for improvements have been dropped – see paragraphs 3.38 to 3.40.

Subhead (2)

Paragraph (a) re-enacts the provision in section 13(2) of the 1980 Act. Paragraph (b) adds clarification- subparagraph (ii) again follows *Twil Ltd v Kearney*.

Subhead (3)

This contains a saving for the provision in section 192 of the Residential Tenancies Act 2004, which concerns the “long occupation” equity: see paragraph 3.30 of the BTCP.

Head 85: Occupation by others
(*Landlord and Tenant Act 1980, section 5*)

Provide that:

(1) For the purposes of *Head 84(1)*, where the tenant is a State authority that authority shall be deemed to be in exclusive occupation of the premises notwithstanding that they may be occupied for the purposes of another State authority.

(2) Where a subtenant of part of the premises held under a tenancy comes within *Head 84(1)* the headlandlord may, in any application by the subtenant for relief under *Head 88* or by separate application, seek an order under *subhead(6)*.

(3) Subject to *subhead (5)*, the following are entitled to a new tenancy under *Head 84(1)*:

(a) where the premises are used with the tenant's permission, by a private company for the purpose of carrying on a business which the tenant carried on in the premises up to the time when it began to be carried on by the private company, that private company;

(b) where the premises are used for the purposes of carrying on a business by an individual who is the majority shareholder of the company which is the tenant, that individual;

(c) where the premises are so used by a subsidiary company of which the tenant is the holding company, that subsidiary company;

(d) where the premises are so used by a holding company of which the tenant is a subsidiary company, that holding company;

(e) where the premises are so used by a subsidiary company of a holding company of which the tenant is also a subsidiary company, the subsidiary company so using the premises.

(4) In *subhead (3)* the expressions "private company", "company", "subsidiary company" and "holding company" have the meaning given to them by the Companies Acts.

(5) The landlord may in any application by an individual or any company coming within *subhead (3)* or by separate application seek an order under *subhead (6)*.

(6) On an application by the landlord under *subheads (2) or (5)*, the court may order that—

(a) any new tenancy should be granted to—

(i) the head-tenant in respect of the whole of the premises comprised in the head-tenancy, but subject to a sub-tenancy of part of those premises, or

(ii) the sub-tenant in respect of the whole of the premises comprised in the head-tenancy,

(b) any new tenancy should be granted to—

(i) the tenant rather than the individual or any company coming within *subhead (3)*, or

(ii) the individual or any such company but subject to a guarantee given by the tenant or other person,

and in any such case the court may impose such other terms and conditions as it thinks fit.

Explanatory Note

This Head deals with various situations where the premises are occupied or used by someone other than the 'paper' tenant.

Subhead (1)

This re-enacts section 5(2) of the 1980 Act.

Subhead (2)

This is a new provision designed to protect landlords from fragmentation of their property in the case of sub-tenants qualifying for new tenancies. It implements the recommendation in paragraph 3.27 of the BTCP.

Subhead (3)

This re-enacts the substance of section 5(3) and (4) of the 1980 Act, modified as recommended in paragraph 3.20 to 3.22 of the BTCP. Paragraph (a) re-enacts the provision in section 5(3)(c)(i), with the addition of the reference to a purported assignment without consent (as recommended in paragraph 3.21 of the BTCP). Paragraph (b) is a new provision and fills a gap in section 5(3)(c), as recommended by paragraph 3.21 of the BTCP. Paragraph (c) re-enacts section 5(3)(c)(ii); paragraph (d) re-enacts section 5(3)(c)(iii), and paragraph (e) re-enacts section 5(3)(c)(iv).

Subhead (4)

This re-enacts section 5(4) of the 1980 Act.

Subhead (5)

This provides protection for landlords where the trading person or company is not the “paper” tenant, as recommended in paragraph 3.22 of the BTCP.

Subhead (6)

This gives the court discretion to order an arrangement that might suit the landlord better in cases where there is a sub-letting or trading by an entity other than the “paper” tenant. It implements the recommendations in paragraphs 3.22 and 3.27 of the BTCP.

Head 86: Restrictions on right to new tenancy
(*Landlord and Tenant Act 1980, section 17*)

Provide that:

(1) A tenant is not entitled to a new tenancy under this Chapter in the following cases:

- (a) the tenancy has been terminated as a consequence of action or default by the tenant;
- (b) the tenant has renounced in writing, whether for or without valuable consideration, entitlement to a new tenancy in the premises and has received independent legal advice in relation to the renunciation,
- (c) the landlord establishes to the satisfaction of the court a good and sufficient reason for refusing to renew the tenancy,
- (d) where the landlord is a planning authority, it requires possession in furtherance of the objectives of its development plan;
- (e) where the landlord is a local authority, it requires possession within five years after termination of the existing tenancy for any purpose for which the local authority is entitled to acquire property compulsorily;
- (f) where the landlord is any other statutory authority, it requires possession, within five years after termination of the existing tenancy, in order to carry out its functions.

(2) For the purposes of *subhead (1)(a)* action or default by the tenant includes:

- (a) action involving a surrender or merger of the tenancy, discharge from the tenancy or service of a notice of termination, break notice or other method of termination by the tenant;
- (b) breach of any obligation by the tenant which results in a forfeiture of the tenancy;
- (c) action leading to the landlord obtaining a possession order under *Head 76* or a retention order under *Head 77*.

(3) For the purposes of *subhead (1)(c)*, but without prejudice to the court being satisfied on other relevant grounds at the date of the court hearing, any of the following are a good and sufficient reason:

- (a) the landlord's intention to resume possession of the premises for occupation by the landlord or the landlord's agents, employees or other persons claiming under the landlord;
- (b) the landlord's intention or agreement to pull down and rebuild or to reconstruct any building or part of a building included in the premises;

(c) the landlord's intention to carry out a scheme of development of property which includes the premises and requires vacant possession;

(d) the creation of a new tenancy would not be consistent with good estate management.

(4) In evaluation of the intention of the landlord for the purposes of *subhead (3)(b)* or (c) the court may take into account whether the landlord has applied for or obtained planning permission for the work in question.

(5) Where the court is satisfied that—

(a) the landlord has established a good and sufficient reason based on any of the circumstances specified in *subhead (3)(b)* or (c), but

(b) the landlord will not require possession for the purposes in question until after the expiration of a period of six months from the date of termination of the tenancy or date of the order of the court, whichever is the later,

the court may, if the tenant requests it, continue the existing tenancy until that continued tenancy is terminated by the landlord for the purposes in question by service of six months' previous notice in writing, but subject to the condition that the continuation of the tenancy is without prejudice to the right of the tenant to relief under this Chapter on the termination of the continued tenancy.

(6) Where, in a case in which—

(a) the tenant has been induced not to apply for relief under this Chapter by a representation by the landlord that such an application would be opposed under *subhead (1)(b)* and in reliance upon any circumstances specified in *subhead (3)(a)* to (c), or

(b) the court has refused the tenant relief under *subhead (1)(b)*.

it appears to the court that the intention or agreement in question has not been carried out by the landlord within a reasonable time, the court may order the landlord to pay the tenant damages for misrepresentation.

Explanatory Note

This Head replaces section 17 of the 1980 Act, including the amended 'contracting-out' provision in section 47 of the Civil Law (Miscellaneous Provisions) Act 2008, and recasts its provisions as recommended in paragraphs 3.32 to 3.33 and 4.16 to 4.25 of the BTCP.

Subhead (1)

Paragraphs (a) to (f) implement the recommendation in paragraph 3.33 of the Business Tenancies CP that the other restrictions in section 17 of the 1980 Act should be re-cast into two broad categories – default or voluntary action by the tenant and an overriding need by the landlord. These concepts are further explained in subheads (2)

and (3). They adopt provisions in the 1980 Act, but paragraph (f) is an extension of the paragraph (d) and (e) categories.

Subhead (2)

This sets out all the circumstances which may involve action or default by the tenant depriving him or her of the right to a new tenancy. It seeks to clarify the provisions in section 17 of the 1980 Act as recommended in paragraphs 4.16 – 4.25 of the BTCP.

Subhead (3)

This sets out the 'good and sufficient reason' factors and incorporates various provisions in section 17 of the 1980 Act, plus a new one in paragraph (a). It should be read with subhead (4).

Subhead (4)

This implements the recommendation in paragraph 4.22 of the BTCP that in future the issue of planning permission should simply be one of factors to be taken into account in determining whether a good and sufficient reason has been established to the satisfaction of the court.

Subhead (5)

This re-enacts the substance of section 17(4) of the 1980 Act. It clarifies a couple of doubts about that provision. It makes it clear in paragraph (b) from what date the six months period the landlord does not need possession should be calculated from. It will either be from the date of the court order or, if the existing tenancy is still running then, from the date of its termination: see paragraph 4.24 of the BTCP.

Subhead (6)

This replaces section 17(4) of the 1980 Act and introduces a less draconian sanction, as recommended in paragraph 4.25 of the BTCP. It also covers now where the landlord induces the tenant not to apply for relief by invoking the provisions in question.

Head 87: Notice of intention to claim relief
(*Landlord and Tenant Act 1980, section 20*)

Provide that:

(1) A tenant wishing to claim relief under this Chapter shall, within the time limited in *subhead (2)*, serve on each person against whom the claim is intended to be made a notice of intention to claim relief in the prescribed form.

(2) Such a form may be served:

(a) in the case of a tenancy terminating by the expiration of a term of years or other certain period or by any other certain event—

(i) not more than two years before the termination of the tenancy, or

(ii) subject to the landlord serving on the tenant (not earlier than three months before the termination of the tenancy) a notice in the prescribed form of the expiration of the term or period or the happening of the event, at any time after that termination but before the expiration of three months after service of the notice;

(b) in the case of a tenancy terminating by the happening of any uncertain event, subject to the landlord serving on the tenant a notice in the prescribed form of the happening of the event, at any time after that event but before the expiration of three months after service of the notice;

(c) in the case of a tenancy which is terminable by notice of termination under Chapter 4 of Part 7, at any time before the expiration of three months after service of the notice.

(3) A notice served under *subhead (1)* shall specify the duration of the new tenancy, if less than 10 years is sought, and may include a claim in the alternative for compensation under Chapter 3.

(4) This Head does not prejudice the right of the landlord and tenant to agree to refer the fixing of the terms of the new tenancy to arbitration.

(5) Where there is such an agreement, but subject to its terms—

(a) the arbitrator shall fix the terms of the new tenancy on the same basis as the court may do under this Chapter,

(b) the arbitrator's award in such case has the same effect as a court order under this Chapter,

and *Heads 89 to 93* apply accordingly with such modifications as may be appropriate.

Explanatory Note

This Head re-enacts the substance of section 20 of the 1980 Act, but with some textual modifications.

Subhead (1)

This substitutes references to 'tenant' for 'claimant'.

Subhead (2)

The text of paragraph (a) has been put in more positive form. Paragraph (b) drops the reference to “fall of a life” because of section 14 of the Land and Conveyancing Law Reform Bill. Part 8 of this Bill applies only to tenancies arising or granted in the future – see Head 80(a). In paragraph (c) such termination in future would be governed by Chapter 4 of Part 7 – under Head 63(2)(d) the notice of termination must specify a date for termination. This implements the recommendation in paragraph 3.29 of the BTCP to deal with the point raised in *Mealiffe v Walsh Ltd*.

Subhead (3)

This is a new provision designed to implement the recommendation in paragraph 4.28 of the BTCP.

Subhead (4)

This is also a new provision designed to encourage parties to use arbitration instead of going to court.

Subhead (5)

This further encourages use of arbitration by adapting the Bill’s provisions to such a process.

Head 88: Application for relief

(Landlord and Tenant Act 1980, sections 16, 19 and 21)

Provide that:

(1) In default of agreement as to the grant or as to the appointment of an arbitrator, or terms of a new tenancy or compensation under Chapter 3, a tenant who has served a notice under *Head 87* or the landlord may, at any time not less than one month after such service, apply to the court to determine the right to relief and, as the case may be, to fix the terms of the new tenancy or the amount of compensation to which the tenant is found to be entitled.

(2) An application under this section may be made, heard and determined either before (but not more than two years before) and in anticipation of or after the termination of the tenancy.

(3) The court shall determine an application under this section on the basis of the tenant's rights at the date of the termination of the tenancy.

(4) Where the court hears an application in anticipation of the termination of the tenancy it may make such conditional or interim order as it thinks fit.

(5) If the notice served under *Head 87* did not include a claim in the alternative for compensation under Chapter 3, the court may, on the application of the tenant, amend the notice in such terms as the court thinks fit by inserting in it such an alternative claim and deal with that claim in accordance with *subhead (1)*.

Explanatory Note

This Head largely re-enacts section 21 (and elements of sections 16 and 19) of the 1980 Act, but adds some new provisions.

Subhead (1)

This modifies some of the language of section 21 (and the superfluous provision in section 19(a)) of the 1980 Act to accord with other parts of the Bill.

Subhead (2)

This re-enacts the provision in section 21(3) of the 1980 Act but inserts a two-year limit to early applications.

Subhead (3)

This implements the recommendation in paragraph 4.14 of the BTCP to clarify the position in line with the majority Supreme Court view in *Twil Ltd v Kearney*.

Subhead (4)

This also implements a recommendation in paragraph 4.14 of the BTCP.

Subhead (5)

This incorporates elements of section 19 of the 1980 Act, but modifies its language to conform to the rest of the Bill.

Head 89: Award of a new tenancy
(*Landlord and Tenant Act 1980, section 18*)

Provide that:

(1) Where on an application under *Head 88* the court finds that a tenant is entitled to a new tenancy, it shall—

(a) fix the terms of the new tenancy in accordance with *Heads 90* and *91*,

(b) make an order requiring the landlord, and any superior landlord whose joinder may be necessary, to grant or join in the grant of, and the tenant to accept, a new tenancy accordingly.

(2) Such person or persons shall grant or join in the grant of, and the tenant shall accept, a new tenancy on the terms specified in the order, commencing on the termination of the previous tenancy.

(3) A tenant awarded a new tenancy is not entitled to compensation under Chapter 3.

(4) If any dispute, failure or question arises or occurs in the carrying out of an order made under *subhead (1)(b)*, the court may, on the application of any person concerned, make such an order as it thinks fit.

Explanatory Note

This Head re-enacts section 18 of the Landlord and Tenant Act 1980, but with some modifications.

Subhead (1)

This merges subsections (1) and (2) of section 18.

Subhead (2)

This re-enacts section 18(3).

Subhead (3)

This re-enacts the substance of section 18(4).

Subhead (4)

This re-enacts the substance of section 18(5).

Head 90: Fixing terms of new tenancy by court

(Landlord and Tenant Act 1980, section 23; Landlord and Tenant Act 1994, section 5)

Provide that:

(1) Where the court awards a new tenancy under *Head 89* it shall fix the duration of the tenancy at ten years or such less term as the parties may agree.

(2) The rent payable by the tenant under the new tenancy shall be not less than (as the case may require)—

(a) the rent payable by the landlord in respect of the premises, or

(b) such proportion of the rent payable by the landlord in respect of the premises and other property as is in the opinion of the court fairly apportionable to the premises.

(3) Subject to *subhead (2)*, the rent shall be the gross rent reduced, where appropriate, by the allowance for improvements provided for by *subhead (5)*.

(4) The gross rent shall be the rent which in the opinion of the court a willing tenant not already in occupation would give and a willing landlord would take for the premises on the basis of—

(a) vacant possession being given,

(b) having regard to—

(i) the terms of the new tenancy,

(ii) the letting values of premises (if any) of a similar character to the premises and situate in a comparable area,

(c) without regard to any goodwill which may exist in respect of the premises.

(5) The allowance for improvement shall be such proportion of the gross rent as is, in the opinion of the court, attributable to improvements made by the tenant or the tenant's predecessors in title without any breach of obligation of the tenancy.

(6) The tenancy shall be subject to such other terms as the parties may agree but, in the absence of such agreement, the court shall fix the terms on the basis of the terms (apart from rent) of the previous tenancy, but subject to such modifications as the court thinks reasonable in all the circumstances of the case.

(7) The court may, as one of the terms of the new tenancy, require the intended tenant, within such time as the court thinks fit, to carry out, or expend a specified sum of money in the execution of, specified repairs (including painting for the purposes of preservation but not painting for the purposes of mere decoration) to the premises.

(8) Where the court makes a requirement under *subhead (7)*—

(a) it may authorise postponement of the grant of the new tenancy until the requirement has been complied with,

(b) if the intended tenant fails or refuses to comply with the requirement, it may declare the tenant to be no longer entitled to a new tenancy and discharge any award made under *Head 89*.

(9) In fixing the terms of the new tenancy, the court may include provision for rent reviews on a basis other than that which applies under *Head 91*.

Explanatory Note

This Head re-enacts section 23 of the 1980 Act, with some modifications recommended by the BTCP.

Subhead (1)

This modifies section 23(1) and (2) of the 1980 Act (as amended by section 5 of the Landlord and Tenant (Amendment) Act 1994). As recommended in paragraph 3.25 of the BTCP the maximum duration is reduced to 10 years rather than 15 (from the 20 years set by the 1994 Act). It also changes the 1994 Act to provide that in future anything less than 10 years would have to be agreed by both parties; both have a stake in this and it is not clear why the tenant alone should have a power to nominate a lesser term (albeit subject to a 5-year minimum unless the landlord agrees otherwise).

Subhead (2)

This re-enacts the substance of section 23(3) of the 1980 Act.

Subhead (3)

This re-enacts section 23(4) of the 1980 Act.

Subhead (4)

This re-enacts section 23(5), but with some modifications (e.g. dropping the reference to “tenement”).

Subhead (5)

This modifies section 23(6) of the 1980 Act to take account of the fact that there is no equivalent of the provisions for compensation in the 1980 Act in this Bill.

Subhead (6)

This modifies section 23(9) of the 1980 Act to implement the recommendation in paragraph 4.30 of the BTCP that the basis upon which the court fixes the “non-rent” terms should be clarified.

Subhead (7)

This re-enacts most of section 23(7) of the 1980 Act, modified to clarify that the court can order specified repairs as an alternative to ordering expenditure of money on repairs, as recommended by paragraph 4.31 of the BTCP.

Subhead (8)

This re-enacts the rest of section 23(7) and the provision in section 23(8) of the 1980 Act. The wording of the latter has been modified in paragraph (b): reference to 'forfeiture' is confusing, given the technical meaning that concept has in the context of landlord and tenant law. The new wording reflects what it means in the present context.

Subhead (9)

This has been added for clarification, as recommended in paragraph 4.32 of the BTCP. This enables the parties to argue for rent review provisions other than those which would otherwise apply under Head 91.

Head 91: Review of rent by court

(Landlord and Tenant Act 1980, section 24; Landlord and Tenant (Amendment) Act 1984, s.15)

Provide that:

(1) Where—

(a) the terms of a new tenancy provide that the rent shall be reviewed by the court in accordance with this section, or

(b) the terms of a new tenancy are fixed under *Head 90* without any provision for rent reviews,

the landlord or the tenant may have the rent reviewed in accordance with this section.

(2) The person seeking the review shall serve notice of intention to have the rent reviewed on the other party.

(3) The notice may be served—

(a) for the first review not more than six months before the fifth anniversary of the date of commencement of the new tenancy, and

(b) for subsequent reviews not more than six months before each subsequent successive fifth anniversary of that date.

(4) In default of agreement on the rent, the person seeking the review may apply to court to have it reviewed not earlier than one month after service of the notice under *subhead (2)*.

(5) On such a review the rent shall be fixed in accordance with the relevant provisions of *Head 90* as the case may be, by reference to the fifth or subsequent fifth anniversary of the date of commencement of the new tenancy and the reviewed rent is payable from that anniversary.

Explanatory Notes

Subhead (1)

This modifies section 15(1) of the 1984 Act by inserting the provision in paragraph (a) to implement the recommendation in paragraph 4.32 of the BTCP.

Subhead (2)

This re-enacts section 15(2) of the 1984 Act (dropping 'his').

Subhead (3)

This modifies section 15(3) to implement the recommendation in paragraph 4.32 of the BTCP, which referred to an earlier Commission recommendation to make review dates accord more with commercial practice (LRC 44 – 1992, pages 20-21).

Subhead (4)

This re-enacts section 15(4), with the addition of the last words for clarification.

Subhead (5)

This modifies section 15(5) and (6) again as recommended by LRC 44-1992.

Head 92: Subsequent termination
(*Landlord and Tenant Act 1980, section 26*)

Provide that:

--Where following the making of an order under *Head 89* the existing tenancy is terminated in such manner that the tenant would under *Head 86(1)* not be entitled to a new tenancy—

(a) the obligation to grant the new tenancy becomes void,

(b) where a new tenancy has been granted under an order made under *Head 88(5)*, that new tenancy becomes void.

Explanatory Note

This Head re-enacts section 26 of the 1980 Act.

Head 93: Continuation of existing tenancy
(*Landlord and Tenant Act 1980, sections 27 and 28*)

Provide that:

(1) Except where *Head 86(1)(a)* applies, where a tenant has served a notice under *Head 87* the existing or previous tenancy shall, subject to *subhead (2)*, continue in force until any application under *section 88* is determined by the court or, in the event of an appeal, by the final appellate court.

(2) Any tenancy continued under *subhead (1)* or *Head 86(5)* or any new tenancy granted under this Chapter, is or is deemed to be, for the purposes of this Act, a continuation of the tenancy previously existing and a graft upon that tenancy.

(3) The interest of the tenant under such a continued tenancy is subject to any equities or rights arising from its being such a graft.

Explanatory Note

This Head amalgamates sections 27 and 28 of the 1980 Act and makes various modifications as recommended by paragraph 4.34 and 4.35 of the BTCP.

Subhead (1)

This introduces the following changes:

1. the exception now covers all cases of renunciation of rights and disqualification by the tenant's own actions or default – see paragraph 4.35(ii) of the BTCP;
2. the tenant's rights run from the date of service of the notice to claim relief, rather than the date of application for relief – see paragraph 4.35(iv);
3. the existing or previous tenancy continues, not just a right of occupation – see paragraph 4.35(i) [this was a dubious distinction, as illustrated by the recent ruling by Finlay Geoghegan J in *Crofter Properties Ltd v Genport* [2007] IEHC 80 that a tenant continuing in occupation is still subject to the terms of the tenancy and so the landlord can invoke the right of re-entry for breach of covenant and seek an injunction to stop the defaulting tenant continuing in occupation pending determination of his or her application];
4. the continuation is automatic rather than 'if the tenant so desires' – see paragraph 4.35(iii);
5. the reference to 'any' application includes a landlord's application under section 89(2) – see paragraph 4.35(iv).

Subhead (2)

This re-enacts the substance of section 27 of the 1980 Act but seeks to clarify its provisions as recommended in paragraph 4.34 of the BTCP. Thus it makes it clear that the provision is now confined to continuation provisions and new tenancies granted under the Act. It drops the confusing reference in section 27 of the 1980 Act to “for all purposes”.

Subhead (3)

This re-enacts the remaining provision in section 27 of the 1980 Act.

Chapter 3

*Compensation for disturbance*³

Head 94: Entitlement

(*Landlord and Tenant Act 1980, section 58*)

Provide that:

(1) A tenant who would otherwise be entitled to a new tenancy and whose application under *Head 88* fails under any of the grounds specified in *Head 86(1)(b) to (e)*, may, in default of agreement with the landlord, apply to the court to assess compensation to be paid by the landlord on the tenant giving up clear possession of the premises.

(2) The measure of compensation is the pecuniary loss, damage or expense which the tenant incurs or sustains or will sustain by reason of giving up the premises and which is a direct consequence of that giving up.

(3) In assessing the compensation the court shall take into account as it thinks fit—

(a) the availability and cost to the tenant of alternative premises suitable to the tenant's business, and

(b) any efforts the tenant has made to find such alternative premises and otherwise to mitigate loss.

(4) Subject to *Head 95*, the compensation is payable on—

(a) the expiration of one month from the date of the agreement or assessment by the court as to its amount, or

(b) the giving to the landlord by the tenant of clear possession of the premises,

whichever is the later.

(5) A landlord who fails to pay compensation within the time limited by *subhead (4)* is guilty of an offence under this Act, but without prejudice to the obligation to pay the compensation.

Explanatory Note

This Head replaces section 58 of the 1980 Act with various modifications (paragraph 3.34 to 3.37 and 4.37 to 4.39 of the Business Tenancies CP).

Subhead (1)

³ This Chapter deals with compensation for disturbance and replaces sections 58 to 63 of the 1980 Act; current provisions governing compensation for improvements, i.e., sections 45 to 57 of the 1980 Act, are to be repealed without replacement as recommended in paragraphs 3.38 to 3.40. Transitional provisions may be required so that compensation for improvements already made when the legislation is enacted can continue to be payable.

This re-enacts the entitlement to compensation where a new tenancy is refused on a ground without default by the tenant.

Subhead (2)

This re-enacts, with slight changes to the wording, section 58(2) of the 1980 Act.

Subhead (3)

This is a new provision adding factors to be taken into account (paragraph 3.36 of the BTCP). The provision in section 58(3) of the 1980 Act relating to decontrolled dwellings has been dropped.

Subhead (4)

This re-enacts, with minor adjustments, section 58(4) of the 1980 Act.

Subhead (5)

This replaces section 58(5) of the 1980 Act with a new criminal sanction (paragraph 3.37 of BTCP). Offences are dealt with generally by Head 7 of the Bill.

Head 95: Termination of tenancy of obsolete buildings
(*Landlord and Tenant Act 1980, section 60*)

(1) Where—

(a) a tenancy includes a building which—

(i) is situated in an area to which an integrated area plan relates, or

(ii) having regard to its age, character and condition could only be repaired through expenditure which would be excessive in relation to the value of the premises or could not profitably be used unless it were altered or reconstructed to a substantial extent or rebuilt,

and

(b) the landlord has a scheme for the development of property which includes the premises, being development for which planning permission has been granted,

the court, subject to *subhead (2)*, may, by order made on the application of the landlord on at least six months' notice in the prescribed form to the tenant, terminate the tenancy if it considers it reasonable to do so: provided that the unexpired term of the tenancy, at the time such notice is served, is not less than 3 and not more than 25 years.

(2) Upon the making of an order under *subhead (1)*—

(a) the tenant becomes entitled to compensation to be assessed in accordance with *subhead (3)* and paid by the landlord,

(b) the tenancy continues in full force until the later of –

(i) expiration of one year from the day on which the order is made, or

(ii) the day on which the compensation is paid.

(3) The measure of compensation is primarily the pecuniary loss, damage or expense which the tenant incurs or sustains or will incur or sustain by reason of giving up the tenancy or which is a direct consequence of such giving up, but there shall be added such amount as the Court considers reasonable for—

(a) the pecuniary benefit accruing to the landlord which is referable to recovery of possession earlier than the landlord was entitled to under the tenancy, and

(b) any further hardship which the tenant sustains as a consequence of the order made under *subhead (1)*.

(4) In this section “integrated area plan” has the meaning given to it by section 7 of the Urban Renewal Act 1998.

(5) This section does not apply where the tenant is entitled to a reversionary lease under Part III of the Landlord and Tenant (Amendment) Act 1980 or would be so entitled but for section 33 of that Act.

Explanatory Note

This Head re-enacts the substance of section 60 of the 1980 Act, but with modifications to reflect the dropping of the concept of 'tenement' from the Bill.

Subhead (1)

This re-enacts the provision in section 60(2) of the 1980 Act. As recommended in paragraph 4.41 of the BTCP, subparagraph (a)(ii) refers to the value of the 'premises', i.e. the whole land comprised in the tenancy.

Subhead (2)

This recasts section 60 (3) and (4) of the 1980 Act and, in conformity with Head 93 of the Bill, continues the tenancy, rather than confers a right to continue occupancy subject to the terms of the tenancy.

Subhead (3)

This recasts section (5) of the 1980 Act.

Subhead (4)

This re-enacts the amendment to section 60 of the 1980 Act made by section 199 of the Residential Tenancies Act 2004.

Subhead (5)

This repeats the exclusion contained in section 60(6) of the 1980 Act.

Head 96: Set-off of compensation
(*Landlord and Tenant Act 1980, section 61*)

Provide that:

(1) Where compensation is payable by a landlord to a tenant under *Head 95* and money is due and owing to the landlord by the tenant under or in respect of the tenancy or the tenant's interest in the premises, either party may set off the one amount against the other.

(2) Where a landlord claims that money is due and owing under *subhead (1)*, but—

- (a) the claim is disputed by the tenant, or
- (b) the amount is disputed or un-liquidated.

the landlord may pay the compensation into court pending a determination under *subhead (3)*.

(3) Where compensation is paid into court under *subhead (2)*, the court shall, on the application of either party, determine—

- (a) the validity of the claim, or
- (b) the amount disputed or un-liquidated,

and may make such other order in relation to those matters or the compensation as it thinks fit.

Explanatory Note

This Head re-enacts section 61 of the 1980 Act but with some recasting.

Subhead (1)

This re-enacts the substance of section 61(1) of the 1980 Act.

Subhead (2)

This recasts section 61(2) and, in so doing, clarifies the court's jurisdiction as recommended by paragraph 4.42 of the BTCP.

Subhead (3)

This sets out the power of the court and, in particular, makes it clear that it can settle a dispute over the money payable.

Head 97: Mortgaged premises
(*Landlord and Tenant Act 1980, section 62*)

Provide that:

(1) Where the tenant's interest in the premises is subject to a charge or mortgage, that charge or mortgage attaches and extends to any compensation payable to the tenant under this Chapter.

(2) A landlord by whom such compensation is payable who has actual notice of such a charge or mortgage shall do one of the following:

(a) with the consent of the tenant, pay the compensation to the owner of the charge or mortgage;

(b) with the consent of that owner, pay the compensation to the tenant;

(c) where that owner and the tenant direct that the compensation be paid in a particular manner, pay it in that manner;

(d) where no such consent or direction is given, pay the compensation into court.

(3) Where the compensation is paid into court the court may, on the application of any person interested, make such order in regard to it as it thinks fit.

Explanatory Note

This Head re-enacts section 62 of the 1980 Act, but with some textual modifications.

Head 98: Protection of trustees and others
(*Landlord and Tenant Act 1980, section 63*)

Provide that:

Where the landlord's interest in premises is vested in a person otherwise than for that person's own benefit (in this section referred to as a "trustee") the following provisions apply to money payable as compensation under this Chapter or for charges, costs or expenses associated with a court order relating to such compensation:

(a) the money is not recoverable personally against the trustee nor is the trust under any liability to pay it, but the trustee may, either before or after having paid the money, obtain from the court a charge on the premises and any other property held on the same trusts or in the same character as the premises to the amount of the money and of all costs properly incurred in obtaining the charge or raising the money;

(b) if the trustee refuses or fails to pay the money within one month of the tenant delivering possession of the premises, the tenant may obtain from the court a similar charge to the amount of the money or so much of it as is then unpaid and of all costs properly incurred in obtaining the charge or in raising the money.

Explanatory Note

This Head recasts section 63 of the 1980 Act to clarify its provisions as recommended by paragraph 4.43 of the BTCP. The redraft makes it clear that the provision is confined to trustees or other persons in whom the landlord's interest is vested (e.g., a personal representative or liquidator): see paragraph 4.43(i) of the BTCP.

It also makes it clear that the costs, etc are confined to those associated with a court order for compensation: see paragraph 4.43(ii). Paragraph (a) amalgamates section 63(i)(a) and (b) of the 1980 Act and makes it clear that the trustee must apply for the charge (as the tenant must under paragraph (c)): see paragraph 4.43(iii) of the BTCP.

The somewhat obscure provision in section 63(2) is being dropped.

Chapter 4

General provisions

Head 99: Notices requiring information

(Landlord and Tenant Act 1980, section 84)

Provide that:

(1) A tenant seeking a new tenancy under this Chapter may, in order to secure joinder of all necessary parties in the grant, serve—

(a) a notice in the prescribed form upon the immediate landlord requiring information as to the nature and duration of the landlord's reversion and the name and address of the person for the time being entitled to the next superior interest,

(b) a similar notice on each other person holding a superior interest.

(2) Where a person on whom a notice is to be served under *subhead (1)* cannot be ascertained or found, a notice in the prescribed form may be served on the person receiving the rent for the premises requiring the name and address of the person to whom the rent is paid by the person on whom the notice is served and any other information reasonably necessary for the purpose specified in *subhead (1)*.

(3) A person on whom a notice is served under this section shall, within one month of the service, give or send in writing such required information as is in that person's possession or procurement.

(4) Where a person served with a notice under this section fails or refuses to provide the information required the person who served the notice may apply to court for an order compelling the former to provide the information and such other order as the court thinks fit.

Explanatory Note

This Head re-enacts section 84 of the 1980 Act with a few minor modifications.

Head 100: Parties to grant
(*Landlord and Tenant Act 1980, section 76*)

Provide that:

- (1) Where a necessary party is, by reason of having a fiduciary capacity or by reason of the restrictive terms of that party's tenancy, unable to comply with a requirement the court may, on the application of any person concerned, empower that party to do so.
- (2) Where a necessary party is under some other incapacity or cannot be found or fails or refuses to grant or join in the grant of a new tenancy, the court may, on the application of any person concerned, appoint and empower an officer of the court to grant or join in the grant on behalf of the necessary party.
- (3) Where, in relation to a tenancy, a necessary party is unascertained or unknown, the court may, on the application of any person concerned, appoint any person who is receiving the rent in respect of the applicant's interest in the premises, or such other person as the court may think fit, to represent such unascertained or unknown person in all proceedings in connection with the grant of a new tenancy and may appoint and empower an officer of the court to grant the new tenancy or join in the grant on behalf of the necessary party.
- (4) Where an officer of the court is appointed under *subhead (2)* or *(3)* the court may order the rent payable under the tenancy to be paid into court or make such an order or give such direction in regard to the rent as it thinks fit.
- (5) Where a person on whom a notice under this Chapter is required to be served cannot be ascertained or found, that person is deemed to be a necessary party for the purposes of this section and its provisions apply accordingly with the necessary modifications.
- (6) A power conferred on the court by this section shall be exercised in relation to a ward of court only by leave of the court of which that person is a ward.
- (7) In this section—

“necessary party” means a person who is required under this Chapter to grant or join in the grant of a new tenancy;

“requirement” refers to anything required of a person under this Chapter.

Explanatory Note

This Head re-enacts section 76 of the 1980 Act with some minor modifications.

Head 101: Termination of a head-tenancy

(Landlord and Tenant Act 1980, section 78)

Provide that:

(1) Where a tenancy is terminated by—

- (a) surrender,
- (b) merger,
- (c) discharge, or
- (d) forfeiture,

any sub-tenancy granted out of that tenancy and subsisting at the date of termination continues for the purpose of preserving rights acquired or in the course of being acquired under this Part and the headlandlord becomes the landlord of the sub-tenancy.

(2) Subject to *subhead (3)*, all other rights and obligations created by the sub-tenancy remain enforceable as between the head-landlord and sub-tenant.

(3) The rent payable by the sub-tenant under the continued sub-tenancy is the greater of—

- (a) the rent payable under the sub-tenancy, or
- (b) such portion of the rent payable under the head-tenancy as is fairly attributable to the premises occupied by the sub-tenant.

(4) Any dispute as to the apportionment of rent under *subhead (3)* may, on the application of either the head-landlord or sub-tenant, be determined by the court.

Explanatory Note

This Head recasts section 78 of the 1980 Act and clarifies its operation as recommended in paragraph 13.11 of the L&T CP and paragraphs 4.04, 4.05 and 4.52 of the BTCP.

Subhead (1)

This makes it clear that a sub-tenancy continues automatically under this section only in the situations specified in paragraphs (a) – (d). A termination by notice (to quit) or exercise of a break option is covered by section 66(2) of the Bill (i.e., no automatic continuation, but discretion in the court). This implements the recommendation in paragraph 13.10 of the L&T CP. The wording now makes it clear that this provision is designed to preserve statutory rights which a subtenant might have acquired or was in the course of acquiring when the head tenancy is terminated

Subhead (2)

This recasts in much simpler language the effect of section 78 of the 1980 Act.

Subhead (3)

This re-enacts the substance of section 78(2). The reference to the 'premises occupied' also makes it clear that the sub-tenancy is continued only in respect of premises in respect of which the subtenant could claim a new tenancy under Part 8. Head 84 requires continuous occupation. Thus if the subtenant has created a sub-sub-tenancy of part of the premises comprised in the sub-tenancy, the sub-tenancy is continued only in respect of the part remaining in the occupation of the subtenant. The rent payable under that continued sub-tenancy must reflect that part so remaining.

Subhead (4)

This introduces a mechanism for resolution of disputes as to apportionment of rent.

Head 102: Extension of time limits
(*Landlord and Tenant Act 1980, section 83*)

Provide that:

.—Where a person fails to do any act or thing provided for by or under this Part, the court may, on such terms as it thinks fit (and shall unless satisfied that injustice would be caused), extend the time where it is shown that the failure was occasioned by disability, mistake, absence from the State, inability to obtain requisite information or any other reasonable cause.

Explanatory Note

This Head re-enacts section 83 of the 1980 Act.

SCHEDULE 1

REVIEWED RENT

**PART 1
GENERAL PROVISIONS**

1.- In this Schedule –

“the assessor” means an arbitrator or expert nominated under *paragraph 5*;

“the determination” means the determination of the reviewed rent in accordance with this Schedule and of any matter incidental or relevant to that or referred to the assessor in connection with it;

“the Institute” means the Irish Auctioneers and Valuers Institute;

“the Law Society” means the Law Society of Ireland;

“the President” includes another officer endowed with the functions of that office holder;

“the review date” means each of the first day of the sixth, and, as appropriate, the eleventh and subsequent 5-yearly anniversary years of the term and any additional date notified under *paragraph 13*; and “relevant review date” shall be construed accordingly;

“review period” means the period during which a reviewed rent is payable;

“reviewed rent” means the rent agreed or determined in accordance with this Schedule;

“the Society” means the Society of Chartered Surveyors;

“the term” means the term of years granted by and commencing on the date the tenancy was created.

2.- The rent under the tenancy shall be reviewed at each review date in accordance with this Schedule.

3.- From and including each review date the rent shall be as agreed or determined in accordance with *paragraph 4*.

4.- Subject to *paragraph 3* the reviewed rent –

(i) may be agreed at any time by the landlord and tenant, or

(ii) in the absence of such agreement, may be determined not earlier than the relevant review date by an assessor agreed or nominated under *paragraph 5* and in accordance with Part 2.

5.- An assessor shall be nominated in accordance with the following provisions -

(i) an application for nomination shall be made –

(a) by the landlord but, if the landlord fails to make an application within 28 days of being requested in writing to so by the tenant, by the tenant,

(b) not more than 2 months before or at any time after the review date;

(ii) the application shall be for nomination of either an arbitrator or an independent expert as –

(a) specified by the terms of the tenancy, or

(b) if not so specified, agreed by the landlord and tenant at the date of the application;

(iii) in the absence of agreement, the nomination shall be of an arbitrator;

(iv) unless the terms of the tenancy specifies, or the landlord and tenant agree, otherwise, the application shall be made for nomination, at the discretion of the party entitled to make the application, by the President of either –

(a) the Institute, or

(b) the Law Society, or

(c) the Society;

(v) if the said President is unable or unwilling to make the nomination, it may be made by the next senior officer of the body in question who is so able and willing;

(vi) any arbitrator nominated under this paragraph shall be subject to the provisions of the Arbitration Act 2010;

(vii) any expert nominated under this paragraph–

(a) is not an arbitrator and any determination on matters of fact only by the expert is conclusive and final as between the landlord and tenant,

(b) shall give notice in writing of the nomination to both the landlord and the tenant,

(c) shall afford both the landlord and the tenant a reasonable opportunity of making, on such terms as the expert may stipulate, representations on any matter relevant to the determination,

(d) shall consider any such representations but, subject to such consideration, shall make the determination in accordance with the expert's own judgment,

(e) may, as often as is reasonably necessary to the determination, enter the premises for the purpose of examination and inspection,

(f) may obtain advice on any matter which the expert reasonably considers relevant to the determination,

(g) may fix the expert's reasonable fees in relation to the determination;

(h) may determine in what proportion a party should be liable for payment of the expert's fees and all costs and expenses incurred by the expert and any party in relation to the determination.

6.- If any assessor nominated under *paragraph 5* –

(i) relinquishes or resigns from the nomination,

(ii) is removed from office by a court order, or

(iii) for any other reason becomes unable, unfit or unwilling, or fails to complete the determination,

a substitute may be nominated under that paragraph as if it were a first nomination and its provisions apply accordingly.

7.- If the reviewed rent for any review period is not agreed or determined by the relevant review date, the following provisions apply-

(i) the rent payable immediately before that date continues to be payable until the next date for payment of rent succeeding the date when the reviewed rent is agreed or its determination is notified in writing to the tenant;

(ii) where the reviewed rent is greater than the rent payable immediately before that date, within 7 days of such agreement or notification the tenant shall pay to the landlord the appropriate instalment of the reviewed rent together with –

(a) any shortfall between the aggregate rents actually paid for any part of the review period and rent at the rate of the reviewed rent for the interval between the relevant review date and the next succeeding date referred to in sub-paragraph (i),

(b) interest, computed on a day to day basis, at the prescribed rate on that shortfall.

(iii) where the reviewed rent is less than the rent payable immediately before that date, the landlord shall –

(a) credit against the next payment of rent any overpayment of rent made from that date, plus interest, computed on a day-to-day basis, at the prescribed rate on such overpayment,

(b) within 7 days of such agreement or notification notify the tenant in writing of the credit to be made in the next payment of rent.

8.- In the case of a determination by an expert, the expert shall give notice in writing to both the landlord and tenant of the reviewed rent within such time as may be stipulated by the terms of the expert's nomination or, if there is no such stipulation, within 6 months of acceptance of the nomination, but such notice may be deferred until such times as the expert's fees and expenses in relation to the determination have been fully paid.

9.- The landlord or the tenant may pay any fees or expenses which, as a consequences of the assessor's decision, are the responsibility of the other party and, if that is done, may recover from that other on demand the amount so paid as a simple contract debt.

10.- Upon agreement or determination of any reviewed rent the landlord shall draw up a memorandum specifying that rent for signature by both the landlord and tenant and attachment to or endorsement on the lease and any counterpart relating to the tenancy.

11.- The parties shall each bear their own costs and expenses in relation to the said memorandum.

12.- For the purposes of this Schedule time is not of the essence.

13.- If at any review date the landlord's right to collect, increase or otherwise review rent as from that date is modified or restricted by law, but the modification or restriction is subsequently relaxed or removed, the following provisions apply –

(i) the landlord may, by giving not less than 7 days' notice in writing to the tenant, specify an additional review date;

(ii) the additional review date shall be the date at expiration of the notice or such other later date as is specified in the notice;

(iii) the reviewed rent payable on such additional review date shall otherwise be agreed or determined in accordance with this Schedule.

PART 2
DETERMINATION OF REVIEWED RENT BY ASSESSOR

14.- The assessor shall determine the rent which represents on the review date the open market rent for the premises on the basis that –

- (i) the premises are let by a willing landlord to a willing tenant –
 - (a) as a whole,
 - (b) without a fine or premium,
 - (c) with vacant possession,
 - (d) for a term, commencing on the review date, equal to the greater of 15 years or the residue then unexpired of the term,
 - (e) subject to the terms of the tenancy (other than as to the amount of the rent payable at the commencement of the tenancy);
- (ii) the assumptions set out in *paragraph 15* are made;
- (iii) regard is had to other open market rental values insofar as the assessor may deem them to be relevant to the determination;
- (iv) the matters set out in *paragraph 16* are disregarded.

15.- The assumptions are that–

- (i) all covenants by the tenant have been fully complied with up to and on the review date;
- (ii) in the event that the premises have been damaged or destroyed without having been fully repaired, reinstated or rebuilt, as the case may be, such damage or destruction had not occurred.

16.- There shall be disregarded any effect on letting value of –

- (i) the fact that the tenant is or has been in occupation of the premises or any part of them;
- (ii) any goodwill which has attached to the premises by reason of the business carried on by the tenant at in or on them;
- (iii) any works executed by and at the expense of the tenant at, in, on, to or in respect of the premises, other than required works.

17.- For the purposes of *paragraph 16* –

(i) “the tenant” includes any predecessor in title of the tenant and any subtenant or other person lawfully occupying the premises or any part of them under the tenant;

(ii) “required works” means works executed by the tenant under an obligation imposed on the tenant by –

(a) the tenancy or any previous tenancy of which the tenancy is a renewal (but excluding works required to be executed under an obligation arising from or under any statutory provision or imposed under powers conferred on any authority or court of competent jurisdiction), or

(b) an agreement for the granting of the tenancy or any previous tenancy of which the tenancy is a renewal, or relating to the premises,

(c) any licence or variation of the terms of the tenancy.

Schedule 2

Repeals

PART 1

Pre-Union Irish Statutes

Session and chapter (1)	Short title (2)	Extent of repeal (3)
9 Hen. 7 [Analecta Hibernica No.10]	Distress Act 1493	The whole Act
10 Chas 1 sess.3 c.13	Forcible Entry Act 1634	The whole Act
7 Will.3 c.22	Distress for Rent Act 1695	The whole Act
6 Ann c.10	Administration of Justice Act 1707	Sections 9 and 10
11 Ann. c.8	Distress for Rent Act 1712	The whole Act
4 Geo.1 c.2	Distress for Rent Act 1717	The whole Act
8 Geo.1 c.5	Distress for Rent Act 1721	The whole Act
15 Geo 2 c.8	Distress for Rent Act 1741	The whole Act
25 Geo 2 c.13	Distress for Rent Act 1751	The whole Act
36 George 3 c.38	Distress Act 1796	The whole Act

PART 2

Statutes of England

5 Ric. 2 St.1 c.7	Forcible Entry Act 1381	The whole Act
-------------------	-------------------------	---------------

PART 3

Statutes of United Kingdom of Great Britain and Ireland 1801 to 1922

57 Geo 3 c.93	Distress (Costs) Act 1817	The whole Act
7 Geo 4 c.29	Assignment and Sub-Letting of Land Act 1826	The whole Act

4&5 Will 4 c.22	Apportionment Act 1834	The whole Act
8&9 Vict c.106	Real Property Act 1845	Section 9 [only remaining section following repeal of 2-6 and 8 in 2009 Act?]
8&9 Vict c.124	Leases Act 1845	The whole Act
9&10 Vict c.111	Ejectment and Distress (Ireland) Act 1846	The whole Act
9&10 Vict c.112	Leases (Ireland) Act 1846	The whole Act
12&13 Vict c.110	Leases Act 1849	The whole Act
13&14 Vict c.17	Leases Act 1850	The whole Act
14&15 Vict c.25	Landlord and Tenant Act 1851	The whole Act
19&20 Vict c.65	Cottier Tenant (Ireland) Act 1856	The whole Act
23&24 Vict c.154	Landlord and Tenant Law Amendment Act, Ireland 1860	The whole Act
33&34 Vict c.35	Apportionment Act 1870	The whole Act in so far as rent is concerned [Head 39]
39&40 Vict c.63	Notices to Quit (Ireland) Act 1876	The whole Act
43 Vict c.4	Relief of Distress (Ireland) Act 1880	The whole
43&44 Vict c.14	Relief of Distress (Ireland) Amendment Act 1880	The whole Act
44&45 Vict c.41	Conveyancing Act 1881	Sections 10, 11, 12, 13, 14, (and 65)
45&46 Vict c.39	Conveyancing Act 1882	Section 11
51&52 Vict c.47	Law of Distress and Small Debts (Ireland) Act 1888	The whole Act
54&55 Vict c.57	Redemption of Rent (Ireland) Act 1891	The whole Act

55&56 Vict	Conveyancing and Law of Property Act 1892	Sections 2, 3, 4 and 5
56&57 Vict c.36	Law of Distress and Small Debts (Ireland) Act 1893	The whole Act
8 Edw 7 c.53	Law of Distress Amendment Act 1908	The whole Act
1&2 Geo 5, c.37	Conveyancing Act 1911	Section 11

PART 4

Acts of the Oireachtas

Number and Year (1)	Enactment (2)	Extent of Repeal (3)
No. 10 of 1980	Landlord and Tenant (Amendment) Act 1980	Sections 4 to 6, Part II (14, 15, 29?), Part IV, Part V, sections 76, 77, 78, 83, 84, 87.
No. 2 of 1989	Landlord and Tenant (Amendment) Act 1989	The whole Act