1967 No. 324 (S. 23)

LAND COMMISSION

The Betterment Levy (Tenancies and Reversions) (Scotland) Regulations 1967

Made - - - - -	*6th March* 1967
Laid before the House of Commons	*8th March* 1967
Coming into Operation - -	*6th April* 1967

In exercise of the powers conferred on me by section 98 of, and paragraph 12 of Schedule 6 and paragraph 8 of Schedule 7 to the Land Commission Act 1967 (a), and of all other powers enabling me in that behalf, I, being for the purposes of these regulations the appropriate Minister in relation to Scotland hereby make the following regulations:—

PRELIMINARY

Citation, extent and commencement

1. These regulations, which may be cited as the Betterment Levy (Tenancies and Reversions) (Scotland) Regulations 1967, apply to Scotland and shall come into operation on 6th April 1967, being the first appointed day under the Act (b).

Interpretation

2.—(1) In these regulations the following expressions have the meanings hereby assigned to them respectively, that is to say—

"the Act" means the Land Commission Act 1967, and "Schedule 4", "Schedule 5", "Schedule 6" and "Schedule 7" mean Schedule 4, Schedule 5, Schedule 6 and Schedule 7 to the Act respectively;

"the Case F Regulations" means the Case F General (Scotland) Regulations 1967 (c) and "Case F disposition" means a disposition to which regulation 3 of those regulations applies;

"the Commission" means the Land Commission;

"the chargeable interest" and "the chargeable owner" have the meanings assigned to them respectively by paragraph 2(1) of Schedule 5;

"disposition falling within the antecedent period" has the meaning assigned to it by paragraph 2(2) of Schedule 5;

"the dutiable interest" has the meaning assigned to it by paragraph 1 of Schedule 7, and "the modified value of the dutiable interest" is to be construed in accordance with paragraphs 6 to 10 of Schedule 7;

"immediate tenancy", in relation to a reversion which is the subject of a chargeable act or event, means the tenancy on the grant of which that reversion

(a) 1967 c. 1. (b) *See* S.I. 1967/146 (1967 I, p. 241). (c) S.I. 1967/492 (1967 I, p. 1631).

arose and which subsists on the date which is the relevant date for the purpose of that chargeable act or event;

"predecessor" has the meaning assigned to it by paragraph 41 of Schedule 4;

"related tenancy" means a tenancy which either—

(*a*) was created out of the chargeable interest, or

(*b*) was a tenancy such that, immediately before it was assigned as mentioned in paragraph 22(1) of Schedule 5, the chargeable interest was subject to that tenancy;

"relevant disposition" is to be construed in accordance with paragraphs 3 to 5 of Schedule 5, and "the last relevant disposition" has the meaning assigned to it by paragraph 6 of Schedule 5;

"reversion" means any interest in land (being either the estate or interest of the proprietor of the *dominium utile*, or, in relation to land not held on feudal tenure, the interest in that land of the proprietor thereof, or a tenancy) which is the interest of the landlord in land subject to a lease, or, as the case may be, the interest of the lessee of land who is the landlord under a sub-lease.

(2) Any other expression used in these regulations of which there is a definition in the Act, or in respect of which there is in the Act any provision relating to the construction thereof or of any reference thereto, has the meaning assigned to it by the Act, whether for the purpose of the Act as a whole or for the purpose only of Part III thereof or of any Schedule to the Act or any Part of any such Schedule.

(3) Any reference in these regulations to a section bearing a number is a reference to the section bearing that number in the Act and any such reference to a regulation bearing a number is a reference to the regulation bearing that number in these regulations.

(4) Except in so far as the context otherwise requires, any reference in these regulations to any provision of the Act shall be construed as a reference to that provision as amended or extended by these regulations or any other regulations made under the Act.

(5) The Interpretation Act 1889(a) shall apply for the interpretation of these regulations as it applies for the interpretation of an Act of Parliament.

EXTENSION OF SCHEDULE 5 PART III

3.—(1) Subject to the following provisions of this regulation and of regulation 9, the provisions of Part III of Schedule 5 shall have effect for the purpose of assessing levy in respect of a chargeable act or event where by a relevant disposition there was granted to the chargeable owner, or to a predecessor of his, a related tenancy which, by merger after it was granted to him, has ceased to exist before the relevant date, as they have effect for such a purpose where by a relevant disposition there was assigned to the chargeable owner a related tenancy which, by merger after it was assigned to him, has ceased to exist before the relevant date as if any reference to an assignation were a reference to a grant, the words "assigning" and "assigned" being construed accordingly.

(2) It is hereby declared that a disposition granting a related tenancy shall be treated as a disposition of that tenancy.

(3) Where the last relevant disposition of a related tenancy was the disposition

(a) 1889 c. 63.

granting that tenancy, any reference in Part III of Schedule 5 to the value which, for the purpose of assessing levy in respect of that disposition, was or is taken to be the current use value of that tenancy, shall be construed as the value which would have been taken to be the current use value of that tenancy if—

(*a*) a disposition to which section 29(1) applies had been made immediately after the disposition granting the tenancy; and

(*b*) the tenancy had been the relevant interest.

MODIFICATION OF VALUES

Calculation of value generally

4.—(1) Where for any of the purposes of Schedules 4 and 5 the value of any tenancy or reversion, or any depreciation of the value of any tenancy or reversion, falls to be calculated, the provisions of paragraph 4 of Schedule 6 shall have effect subject to the amendments required to be made by this regulation.

(2) The following shall be inserted after the end of sub-paragraph (1) of the said paragraph 4—

"(1A) Where the interest in question is a tenancy, it shall be assumed that the tenant under that tenancy will exercise any option to renew that tenancy, and will not exercise any option to terminate it, then or thereafter available to him.

(1B) Where the interest in question is a reversion, it shall be assumed that the tenant under the tenancy on the grant of which that reversion arose—

(*a*) will always pay the rent payable in respect of the tenancy and will perform his other obligations under the tenancy, and

(*b*) will exercise any option to renew that tenancy, and will not exercise any option to terminate it, then or thereafter available to him.".

(3) Sub-paragraph (3) of the said paragraph 4 shall have effect as if each reference therein to sub-paragraph (1) of the said paragraph included a reference to sub-paragraphs (1A) and (1B) thereof.

Schedule 4 base value of a reversion

5.—(1) For the purpose of assessing levy in respect of a chargeable act or event of Case A, C, D, E or F where the relevant interest is a reversion, there shall be ascertained how much of the current use value of that interest represents—

(*a*) where the relevant interest is the estate or interest of the proprietor of the *dominium utile*, or, in relation to land not held in feudal tenure, the interest in that land of the proprietor thereof, the capital value, at the revelant date, of the right to receive the rent (if any) payable in respect of the immediate tenancy; and

(*b*) where the relevant interest is a tenancy (in this paragraph referred to as "the superior tenancy") the capital value, at the relevant date, of the right to receive the rent (if any) payable in respect of the immediate tenancy, reduced by the capital value at that date of a right during the period beginning with that date, and ending with the termination of the immediate tenancy, to receive the rent (if any) which is payable under the superior tenancy.

(2) In this regulation—

(*a*) the amount ascertained under paragraph (1) of this regulation is referred to as the rental element in the current use value of the relevant interest, and

(*b*) the difference between the current use value of the relevant interest and the rental element in that value is referred to as the residual element in that value.

(3) For the purpose described in paragraph (1) of this regulation the reference in paragraphs 5(*a*), 34(1)(*b*) and 38(4) of Schedule 4 to eleven-tenths of the current use value of the relevant interest shall be treated as being a reference to the rental element and eleven-tenths of the residual element in that value.

Allowable expenditure on improvements or ancillary rights (reversions)

6.—(1) For the purpose of assessing levy in respect of a chargeable act or event where—

(*a*) the chargeable interest is a reversion; and

(*b*) the immediate tenancy was granted by a disposition made on or after the first appointed day which constituted a chargeable act or event and which was or is notified in accordance with the provisions as to notification contained in Part III of the Act,

the amount of any expenditure on improvements or ancillary rights in so far as it has increased the development value of the relevant interest shall mean the following amounts and no more—

(i) the proportion attributable to the reversion of the landlord's expenditure, as defined in paragraph (2) of this regulation; and

(ii) the amount of any expenditure, incurred by the chargeable owner or a predecessor since the grant of the immediate tenancy, to which Part V of Schedule 4 applied or applies.

(2) The proportion attributable to the reversion of the landlord's expenditure means the difference between the following amounts—

(*a*) the amount of any expenditure, incurred by the grantor of the immediate tenancy or a predecessor, to which Part V of Schedule 4 applied or applies; and

(*b*) the amount which for the purpose of assessing levy on the grant of the immediate tenancy is, under paragraph 51(*b*) of Schedule 4, the amount of any expenditure on improvements or ancillary rights in so far as it has increased the development value realised by the disposition.

Schedule 5 base values of tenancies and reversions

7.—(1) The following provisions of this regulation shall have effect in the application of Part I of Schedule 5 to an assessment of levy in respect of a chargeable act or event where the chargeable interest is a tenancy for a term of years certain (whether for not less than, or less than, seven years).

(2) Any reference in that Part of that Schedule to a disposition of the chargeable interest shall include the disposition by which the tenancy was granted (in this regulation referred to as "the grant") if the grant—

(*a*) was a disposition falling within the antecedent period; or

(*b*) was made on or after the first appointed day and constituted a chargeable act or event which was or is notified in accordance with the provisions as to notification contained in Part III of the Act.

(3) The amount of the consideration given for the grant shall for the purpose of this regulation be taken to be the amount ascertained in accordance with paragraphs (5) and (6) of this regulation.

(4) Where the grant was the last relevant disposition, and was a disposition falling within paragraph 3(*b*) of that Schedule, paragraph 9 of that Schedule (adjustment for change in current use value) shall have effect as if in sub-paragraph (3) thereof a reference to Case B were substituted for the reference to Case A.

(5) For the purpose of paragraph (3) of this regulation there shall be ascertained—

(*a*) where the grant was a disposition falling within the antecedent period, the amount which would have been taken to be the amount of the consideration for the grant under paragraphs 7 and 9 of Schedule 4 (but apart from any reduction which would otherwise have fallen to be made under paragraph 8 of the said Schedule) if the first appointed day had been before the date of the grant;

(*b*) where the grant was made on or after the first appointed day—

(i) if the provisions of the said paragraph 8 were or are inapplicable, the amount of the consideration for the grant;

(ii) if the provisions of the said paragraph 8 were or are applicable, the amount which would be the amount of the consideration for the grant if that amount had been or were to be ascertained apart from the reduction referred to in sub-paragraph (*a*) of this paragraph.

(6) There shall then be determined how much of the amount ascertained under paragraph (5) of this regulation does not consist of rent to be paid under the tenancy, and the amount of the consideration given for the grant shall be taken to be the amount so determined.

8.—(1) The following provisions of this regulation shall have effect in the application of Part I of Schedule 5 to an assessment of levy in respect of a chargeable act or event where—

(*a*) the chargeable interest is a reversion;

(*b*) the immediate tenancy was granted by a disposition made on or after the first appointed day which constituted a chargeable act or event and which was or is notified in accordance with the provisions as to notification contained in Part III of the Act; and

(*c*) for the purpose of assessing levy on the grant of the immediate tenancy paragraph 16 of Schedule 5 had or has effect.

(2) The disposition by which the immediate tenancy was granted shall be treated as being also the disposition by which the reversion was created, and accordingly any reference in Part I of Schedule 5 to a disposition of the chargeable interest shall include the disposition by which the immediate tenancy was granted.

(3) The amount of the consideration given for that disposition shall for the purpose of this regulation be taken to have been the aggregate of—

(*a*) the capital value at the date of the disposition of the right to receive the rent (if any) which, in accordance with the terms of the disposition or of any contract in pursuance of which the disposition was made, was or is payable in respect of the immediately tenancy, calculated in accordance with paragraph 9 of Schedule 4, but reduced in accordance with paragraph (5) of this regulation where that paragraph is applicable; and

(*b*) the proportion attributable to the reversion of the consideration given for

the landlord's last transaction, ascertained in accordance with paragraph (6) of this regulation.

(4) Where the disposition by which the immediate tenancy was granted was the last relevant disposition, and was a disposition falling within paragraph 3(*b*) of Schedule 5, paragraph 9 of that Schedule shall have effect as if in sub-paragraph (3) thereof a reference to Case B were substituted for the reference to Case A.

(5) Where the chargeable interest is a tenancy (in this paragraph referred to as "the superior tenancy"), then the capital value described in paragraph 3(*a*) of this regulation shall be reduced by the capital value, at the date of the disposition granting the immediate tenancy, of a right, during the period beginning with that date and ending with the termination of the immediate tenancy, to receive the rent (if any) which is payable under the superior tenancy.

(6) For the purpose of paragraph (3)(*b*) of this regulation there shall be ascertained—

(*a*) the amount of the consideration for the disposition which was the last relevant disposition for the purpose of assessing levy on the grant of the immediate tenancy (or, where paragraph 14 of Schedule 5 applied, the amount of that consideration as adjusted under that paragraph); and

(*b*) the amount which, calculated in accordance with paragraph 15 of Schedule 5, is the apportioned part of the consideration referred to in sub-paragraph (*a*) of this paragraph,

and the difference between the two sums shall be taken to be the proportion attributable to the reversion of the consideration given for the landlord's last transaction.

Addition to base value derived from amount paid in respect of related tenancy

9. Where the last relevant disposition of a related tenancy was the disposition by which that tenancy was granted, the amount of the consideration for that disposition shall for the purpose of paragraphs 24(*a*), 25(*a*), 27(*a*) and 28(*a*) of Schedule 5 be ascertained in the same manner as it would be ascertained under paragraphs (5) and (6) of regulation 7 if the disposition had been a disposition of a chargeable interest.

10.—(1) The following provisions of this regulation shall have effect in the application of Part III of Schedule 5 to an assessment of levy in respect of a chargeable act or event where—

(*a*) the chargeable interest is a reversion; and

(*b*) the immediate tenancy was granted by a disposition made on or after the first appointed day which constituted a chargeable act or event and which was or is notified in accordance with the provisions as to notification contained in Part III of the Act.

(2) Where the last relevant disposition of a related tenancy was a disposition falling within the antecedent period—

(*a*) there shall be calculated the difference between the amount of the consideration given for that disposition and the amount which fell or falls to be ascertained under paragraph 27(*a*) of Schedule 5 on the assessment of levy on the grant of the immediate tenancy; and

(*b*) the amount of the base value of the relevant interest (ascertained apart from Part III of Schedule 5) shall be adjusted by adding to it the amount of that difference and by no further sum under paragraph 24 of Schedule 5.

(3) Where the last relevant disposition of a related tenancy was a disposition falling within paragraph 23(*b*) of Schedule 5—

(*a*) there shall be calculated the difference between the amount which fell or falls to be ascertained on the assessment of levy on the grant of the immediate tenancy under paragraph 28(*c*) of that Schedule and the amount which fell or falls to be so ascertained under paragraph 28(*d*) of that Schedule; and

(*b*) the amount of the base value of the relevant interest (ascertained apart from Part III of that Schedule) shall be adjusted by adding to it the amount of that difference and by no further sum under paragraph 25 of Schedule 5.

Ascertainment of amounts by reference to previous assessment of levy

11. Where any amount required to be ascertained under regulation 6, 8 or 10 was or is for the purpose of assessing levy on the grant of the immediate tenancy—

(*a*) agreed between the Commission and the grantor of that tenancy, or

(*b*) determined in proceedings between them,

the amount so agreed or determined shall be taken to be the amount ascertained under that regulation.

Tenancies and reversions on tenancies, where deferred payment payable

12.—(1) This regulation applies to a tenancy granted by a disposition (whether made before or after the passing of the Act) the consideration payable under which, or under any contract in pursuance of which the disposition was made, included or includes a sum (in this and the next succeeding regulation referred to as a "deferred payment"), being a penalty, grassum or other sum (not being rent) which fell or falls to be paid (whether to the grantor of the tenancy or any other person) after the date of the disposition.

(2) In determining, for the purposes of Part III of the Act, what was or is the amount of the consideration given or to be given for a disposition assigning a tenancy to which this regulation applies there shall be taken into account, in addition to the purchase price (if any) and the matters specified in sub-paragraphs (*a*) to (*e*) of paragraph 1 of Schedule 6, the capital value at the date of that disposition of the right of the grantor of the tenancy or any other person to receive any deferred payment which is not payable until after that date.

(3) Where for any of the purposes of Schedules 4 and 5 the value, immediately after a disposition assigning a tenancy to which this regulation applies, or any depreciation of the value which such a tenancy had immediately before such a disposition, falls to be calculated, the tenancy shall be treated as being offered for sale free from any liability to pay any deferred payment which is not payable until after the date of such sale as well as from the sums and payments referred to in paragraph 4(2) of Schedule 6.

13.—(1) This regulation applies to a reversion which arose on the grant of a tenancy to which regulation 12 applies.

(2) In determining, for the purposes of Part III of the Act, what was or is the amount of the consideration given or to be given for a disposition of a reversion to which this regulation applies, there shall be left out of account (in addition to the matters referred to in paragraph 2 of Schedule 6) the capital value at the date of that disposition of the right of the grantor of the tenancy or any other person to receive any deferred payment which is not payable until after that date.

(3) Where for any of the purposes of Schedules 4 and 5 the value, immediately after such a disposition, or any depreciation of the value of such a reversion immediately before such a disposition, falls to be calculated, the reversion shall be treated as being offered for sale on the terms (in addition to the terms stated in paragraph 4(2) of Schedule 6) that there is or was excepted out of the sale the right to receive any deferred payment which is not payable until after the date of such disposition.

Grant of tenancy not notified

14.—(1) The following provisions of this regulation shall have effect for the purpose of assessing levy in respect of a chargeable act or event (in this regulation referred to as "the first event") where—

(*a*) the chargeable interest is a tenancy for a term of years certain (whether for not less than, or less than, seven years) granted on or after the first appointed day or is such a tenancy in so far as it subsists in the relevant land;

(*b*) the disposition granting the tenancy has not been notified in accordance with the provisions as to notification contained in Part III of the Act; and

(*c*) there has not occurred since that disposition was made and before the relevant date any chargeable act or event of Case A or B affecting the relevant interest.

(2) The provisions of Part III of the Act shall have effect—

(*a*) where the first event is a chargeable act or event of Case A, being an assignation on sale of the tenancy, as if for the purpose of paragraph 1 of Schedule 4 the market value of the relevant interest were to be taken to include, in addition to the consideration which, in accordance with the terms of the assignation or of any contract in pursuance of which the assignation is made, is to be given for the assignation, the capital value at the relevant date of the right of the grantor of the tenancy or any other person to receive any rent payable under the tenancy;

(*b*) where the first event is a chargeable act or event of Case B, being a disposition granting out of the chargeable interest a subtenancy of the whole or some part of the land comprised in the chargeable interest for a term of years certain (whether for not less than, or less than, seven years), as if for the purpose of ascertaining the amount of the consideration for the disposition paragraph 8 of Schedule 4 and the words "(Subject to the next following paragraph)" in paragraph 7 of Schedule 4 were omitted;

(*c*) where the first event is a chargeable act or event of Case C the market value of the relevant interest shall be calculated in accordance with Part III of Schedule 4 as if the words "a rent equal to the full market rent" were substituted for the words "a rent equal to the amount by which the full market rent exceeds the annual amount of the rent payable under the tenancy" in paragraph 23 of that Schedule and for the words "a rent equal to the amount by which the full market rent exceeds the annual amount of rent payable under the superior tenancy" in paragraph 24(*b*) of that Schedule.

(3) Where the first event is a chargeable act or event of Case A, being an assignation on sale of part (but not the whole) of the land comprised in the tenancy, paragraph (2)(*a*) of this regulation shall have effect subject to the apportionment of the rent payable under the tenancy, and paragraphs 14 and 15 of Schedule 6 shall apply accordingly.

(4) In each of the cases described in paragraphs (2) and (3) of this regulation the provisions of Part III of the Act shall have effect as if the value of the relevant interest for the purpose of paragraphs 3, 11 or 29 (as the case may be) of Schedule 4 were to be treated as being offered for sale free from any liability to pay rent under the tenancy as well as from the sums and payments referred to in paragraph 4(2) of Schedule 6.

(5) Where—

(*a*) the tenancy was granted for a term of years certain of not less than seven years, but the Commission are satisfied that the omission to notify the disposition granting the tenancy was due to inadvertence; or

(*b*) the tenancy was granted for a term of years certain of less than seven years,

the Commission may direct that the principal amount of levy shall be reduced by such amount as they think fit, not being an amount greater than the difference specified in paragraph (6) of this regulation.

(6) The difference referred to in paragraph (5) of this regulation is the difference between—

(*a*) what would be the principal amount of levy assessed in accordance with the provisions of Part III of the Act as modified by this regulation; and

(*b*) what would have been the principal amount of levy if this regulation did not have effect.

(7) Nothing in this regulation shall affect the calculation, for the purpose of assessing levy on a subsequent chargeable act or event affecting the chargeable interest, or any land in which the chargeable interest subsists, of the consideration which is to be treated as having been given for any previous disposition.

Premature termination of a tenancy

15.—(1) The following provisions of this regulation shall apply for the purpose of assessing levy in respect of a chargeable act or event (in this regulation referred to as "the chargeable act or event") affecting an interest in land where—

(*a*) the land was prior to the event described in sub-paragraph (*b*) of this paragraph subject to a tenancy (in this regulation referred to as "the tenancy") for a term of years certain (whether granted before, on or after the first appointed day);

(*b*) the tenancy has on or after the first appointed day been terminated by notice (whether given by the landlord or the tenant) or has been terminated by the landlord otherwise than by notice, whether by enforcement of irritancy or in any other way, and (in any such case) has been so terminated in such circumstances that, in accordance with Schedule 5, account would have been taken of that termination if it had been a surrender of the tenancy to the chargeable owner or a predecessor of his for valuable consideration; and

(*c*) the chargeable interest is either the landlord's interest or an interest in part of the land in which the landlord's interest subsists and would have been the landlord's interest if it had extended to the whole of the land.

(2) The amount of the base value of the relevant interest or, in Case B, the amount of the base value realised by the disposition, shall be adjusted by adding to it an amount (in this regulation referred to as "the supplement") calculated in accordance with paragraphs (3) to (5) of this regulation.

(3) There shall first be ascertained what would have been the current use value of the landlord's interest under paragraph 3 of Schedule 4 for the purpose of assessing levy if—

(*a*) a disposition to which section 29(1) applies had been made immediately before the termination of the tenancy;

(*b*) the landlord's interest had been the relevant interest; and

(*c*) it had to be assumed that the tenancy would terminate by expiry of time and in no other manner.

(4) There shall then be ascertained what would have been the current use value of the landlord's interest under paragraph 3 of Schedule 4 for the purpose of assessing levy if—

(*a*) a disposition to which section 29(1) applies had been made immediately after the termination of the tenancy; and

(*b*) the landlord's interest had been the relevant interest.

(5) There shall then be calculated the amount (if any) by which the amount ascertained under paragraph (3) of this regulation exceeds the amount ascertained under paragraph (4) of this regulation, and

(*a*) where the chargeable interest is the landlord's interest, the amount of that excess (if any) shall be taken to be the supplement; and

(*b*) where the chargeable interest is an interest in only part of the land in which the landlord's interest subsists, the amount of the excess (if any) shall be apportioned as between the relevant land and the remainder of the land in which the landlord's interest subsists in such manner as may be appropriate in the circumstances, and the amount apportioned to the relevant land shall be taken to be the supplement.

(6) Where the tenancy was granted by a disposition made on or after the first appointed day and constituted a chargeable act or event which was or is notified in accordance with the provisions as to notification contained in Part III of the Act, and for the purpose of assessing levy on the grant of the tenancy paragraph 16 of Schedule 5 had or has effect—

(*a*) that disposition shall for the purpose described in paragraph (1) of this regulation be treated as a previous disposition of the chargeable interest; and

(*b*) the amount of the consideration given for that disposition shall be ascertained in accordance with paragraphs (3) to (5) of regulation 8 in like manner as if the chargeable interest were a reversion to which regulation 8 applies.

(7) In this regulation "the landlord's interest" means the interest (whether the estate or interest of the proprietor of the *dominium utile*, or, in relation to land not held on feudal tenure, the interest in that land of the proprietor thereof, or a tenancy) which subsisted in the whole of the land subject to the tenancy and out of which that tenancy was granted as that interest subsisted or subsists on or at any time before the relevant date.

Modified value of a dutiable interest

16.—(1) The following provisions of this regulation shall have effect for the purpose of determining, in accordance with Schedule 7, the modified value of the dutiable interest in relation to a chargeable act or event where the chargeable interest is—

(*a*) a tenancy to which regulation 7 applies, and in accordance with that regulation the last relevant disposition was the grant of that tenancy; or

(*b*) a reversion to which regulation 8 applies, and in accordance with that regulation the last relevant disposition was the grant of the immediate tenancy.

(2) For the purpose of sub-paragraphs (*a*) and (*c*) of paragraph 7 of Schedule 7 the amount of the consideration given for the last relevant disposition shall be calculated in accordance with regulation 7 or 8, whichever is applicable, and paragraphs 8 and 9 of Schedule 7 shall have effect accordingly.

Application to chargeable acts or events subsequent to a Case F disposition

17.—(1) This regulation shall have effect for the purpose of assessing levy in respect of a chargeable act or event (in this regulation referred to as "the subsequent chargeable act or event") where—

(*a*) the chargeable interest is a tenancy or a reversion and where, in the case of a tenancy, that tenancy and, in the case of a reversion, the immediate tenancy, was, prior to the subsequent chargeable act or event, the subject of a Case F disposition; or

(*b*) there was granted to the chargeable owner, or to a predecessor of his, a related tenancy which since the grant thereof has been the subject of a Case F disposition and which, by merger after it was granted to him, has ceased to exist before the relevant date.

(2) These regulations shall have effect, subject to the following provisions, as if the Case F disposition had taken effect in the manner described in sub-paragraphs (*a*) and (*b*) of paragraph (4) of regulation 3 of the Case F Regulations.

(3) Any reference in these regulations to the amount of the consideration given for a disposition shall, in relation to a Case F disposition, be construed as a reference to the amount which would have been the amount of the consideration for that disposition if the Case F disposition had taken effect in the manner described in paragraph (2) of this regulation and that amount had been adjusted as required by paragraph (4)(*c*) of regulation 3 of the Case F Regultions.

(4) Any regulation made for the purpose of assessing levy, or in relation to the assessment of levy, in respect of a chargeable act or event where the chargeable interest is a tenancy or a reversion shall have effect as if the reference to the tenancy or (as the case may be) the immediate tenancy were a reference to the tenancy which would have been granted if the Case F disposition had taken effect in the manner referred to in paragraph (2) of this regulation, and as if any reference to paragraph 16 of Schedule 5 having effect for that purpose were a reference to the fact that that paragraph would have had effect if the Case F disposition had taken effect in that manner.

William Ross,
One of Her Majesty's Principal Secretaries of State.

St. Andrew's House,
Edinburgh, 1.
6th March 1967.

EXPLANATORY NOTE

(*This Note is not part of the regulations.*)

These regulations adapt the provisions of the Land Commission Act 1967 relating to betterment levy to meet the special circumstances affecting tenancies and reversions.

Regulation 3 extends the provisions of Part III of Schedule 5 to the Act. Part III provides for an addition to be made to base value where a levy-payer has paid for development value on the acquisition of a related tenancy. However, it only applies where the related tenancy has been acquired by assignation. Regulation 3 extends its application to the case where the related tenancy is acquired on the grant of that tenancy.

Regulation 4 introduces certain assumptions in the valuation of tenancies and reversions. These are that it is to be assumed that the tenant will meet all his obligations and will exercise all rights available to him to stay in the property let to him as long as he can. The regulation thus removes any doubts on these points about the basis of ascertainment of the current use value of such interests.

Regulation 5 adapts the provisions of Schedule 4 to the Act, which derive the base value of an interest from its current use value, to make allowance for the fact that the Schedule 4 base value of a reversion comprises, not only a true current use element, viz. the right to enjoy the land in question on current use terms at the end of the tenancy, but also an element which may reflect development value, viz. the capital value of the right to the rent payable during the tenancy. This regulation provides for the 10 per cent. addition allowed by the Act to be added only to the former element.

Regulation 6 deals with the allowance to be made to the owner of a reversion in respect of his expenditure on improvements or ancillary rights on an assessment for levy affecting the reversion. The provisions of Part V of Schedule 4 to the Act would entitle the owner to claim the whole of the expenditure which qualifies for allowance. This regulation therefore provides for adjustment in a case where the tenancy on which the landowner's interest is reversionary (which is defined in regulation 2(1) as the immediate tenancy) was granted on or after the first appointed day, this being a case where the landowner will already have received an allowance in respect of part of this expenditure, viz. on the Case B assessment made on the grant of that tenancy. Under paragraph 51 of Schedule 4 the landowner's expenditure up to the date when the immediate tenancy was granted will have been apportioned between the tenancy and the reversion in proportion to the amount appropriate to the tenancy (T) and the amount appropriate to the reversion (R). If T is the amount of the consideration given for the grant of the tenancy and R (which is described in Schedule 4 paragraph 12 as the reversionary value of the chargeable interest) is the value of the grantor's right to enjoy the land free from the tenancy after its termination then the amount of the landowner's expenditure which is taken into account on the grant of the tenancy may then be expressed as $\frac{T}{T+R}$, so that $\frac{R}{T+R}$ is left to be brought into account on an assessment of levy on a subsequent chargeable act or event affecting the reversion. This is the proportion referred to in regulation 6(1)(i). Where the tenancy was granted before the first appointed day, since no assessment for levy will have been made on that occasion, no allowance for part of the landlord's expenditure will have been made, and accordingly no adjustment of Part V of Schedule 4 is made to deal with that case.

The owner of the reversion may also have incurred expenditure since his reversion came into existence, i.e. since the grant of the immediate tenancy. Since no part of this expenditure will have been taken into account on the Case B assessment on the grant of that tenancy, the whole of it is allowed under regulation 6(1)(ii).

Regulations 7 and 8 make provision to ensure that a levy-payer receives on his assessment of levy on the first chargeable act or event affecting a tenancy or reversion after its creation an allowance to cover development value which he has paid for. Normally a levy-payer receives this allowance by the operation of

paragraphs 7 and 9 of Schedule 5 which provide for his base value being derived from the last relevant disposition affecting his interest. On the first chargeable act or event affecting a tenancy or a reversion after its creation the last transaction which is relevant for this purpose is the disposition creating that interest. Regulation 8 provides that the grant of a tenancy is to be treated as creating, not only the tenancy, but also the reversion on that tenancy. The reason for this is that the grant of a tenancy is a part-disposal of the grantor's interest, which has the effect of severing that interest into two parts. It therefore creates, not only the tenancy, but also the reversion, which before the grant of the tenancy had no existence as a reversion.

The next point dealt with is the calculation of the consideration given for the grant. In the normal case the consideration given for a last relevant disposition is calculated in the same way as that consideration was calculated for the purpose of assessing levy on the disposition in respect of which it was paid (see paragraph 1 of Schedule 6 to the Act).

But, where the first chargeable act or event affecting a tenancy is in question, that is, where the last relevant disposition is the grant of the tenancy, the amount which under paragraph 7 of Schedule 4 would be taken as the amount of the consideration for that grant on the Case B assessment would, if the provisions of Schedule 5 were not adapted, include, not merely any capital sum which the tenant paid on the grant, but also a capital sum representing rent which he has not then paid (see section 30(3) and paragraph 7(*a*) of Schedule 4 to the Act). Regulation 7 therefore restricts the base value of the interest under a tenancy to the amount of the consideration for the grant less any amount representing rent.

The restriction of Schedule 5 base value in this way moreover confines it to the same components which will be found in the corresponding market value. The market value of a tenancy, i.e. the price it will fetch in the open market, will be a sum arrived at after taking into account the liability to which the purchaser will be subject, viz. his liability as tenant to pay rent. The value of the tenancy as a saleable asset will lie in its worth over and above the value represented by the rent payable. In so far as that excess value consists of development value it may comprise both development value paid for on the grant of the tenancy by way of lump sum and development value which has accrued since the grant of the tenancy. Regulation 7 ensures that only the latter is subject to levy by including in Schedule 5 base value the development value which the tenant paid for by way of lump sum.

The adaptations made to Schedule 5 in relation to a reversion arise from the fact that in law the reversion is the same interest (though now subject to another interest) as existed before the grant of the tenancy. The last relevant disposition of that interest is therefore the transaction by which the chargeable owner acquired it before that grant. But, where the tenancy is granted after the first appointed day, an assessment of levy will have been made, and, as in the case of expenditure on improvements or ancillary rights, the proportion $\frac{T}{T+R}$ of the consideration given for that disposition will have been allowed as his Schedule 5 base value on the Case B assessment on the grant of the tenancy. Accordingly only $\frac{R}{T+R}$ of that consideration remains to be taken into account on an assessment of levy affecting the reversion, and this is provided for by regulation 8(3)(b).

In order to bring the Schedule 5 base value of a reversion into line with Schedule 4 base value and also with market value regulation 8(3)(*a*) provides for the inclusion in Schedule 5 base value of the capital value of the right to receive

the rent under the immediate tenancy. By contrast a lump sum paid on the grant of the immediate tenancy, being something which will bring a purchaser of the reversion no benefit, will not be reflected in either the market value or the current use value of the reversion, and accordingly Schedule 5 base value is not adjusted to take it into account.

Regulations 9 and 10 concern related tenancies. Regulation 9 may affect assessments of levy on any chargeable act or event whatever the chargeable interest may be (whether or not a tenancy or a reversion). It is consequential on regulation 3, which extends the provisions of Part III of Schedule 5 to grants of related tenancies, and regulation 7, which provides for the calculation of the consideration for the grant where account has to be taken of it as a last relevant disposition. The relevant provisions of regulation 7 are applied so as to give a landowner credit for development value he has paid for on the grant to him of a related tenancy.

Regulation 10 adapts the provisions of Part III of Schedule 5, in relation to assessments of levy where the chargeable interest is a reversion. Development value paid for on the acquisition of a related tenancy is dealt with in the same way as the consideration paid for the last relevant disposition of the interest out of which the immediate tenancy is granted. Where the immediate tenancy was granted after the first appointed day, the levy-payer will have received an allowance equal to the proportion $\frac{T}{T+R}$ of the development value paid for in respect of the immediate tenancy. Regulation 10 therefore restricts the addition to his base value under this head on an assessment of levy in respect of a subsequent chargeable act or event affecting the reversion to $\frac{R}{T+R}$ of the development value paid for. Where the immediate tenancy was granted before the first appointed day, there will have been no assessment of levy in Case B, so that no adjustment falls to be made: the levy-payer will be entitled to add to his base value the full amount for the related tenancy.

Regulation 11 provides in effect that, where any amount which is required to be ascertained for the purpose of a Case B assessment made on the grant of a tenancy has been determined by agreement or in proceedings between the Land Commission and the levy-payer, the determination shall be binding for the purpose of any succeeding assessment relating to the reversion on that tenancy, the parties to each assessment being the same.

Regulations 12 and 13 make adjustments to deal with the case where a tenancy is granted in consideration of a deferred payment in the nature of a lump sum and on a disposition of either that tenancy or the reversion on that tenancy the deferred payment has not been paid. Regulation 7 establishes the general pattern for a Schedule 5 base value of a tenancy on the first chargeable act or event affecting it. By virtue of regulation 7 Schedule 5 base value is on that occasion derived from any lump sum paid for the grant of the tenancy, and this will include any deferred payment. But, if at the time of the first chargeable act or event affecting a tenancy any deferred payment has not yet become payable, the price which the seller of the tenancy will be able to obtain will be reduced on account of the liability to pay that lump sum. In order to make market value and Schedule 5 base value on this occasion comparable therefore regulation 12(2) adds to market value an appropriate amount to take into account that liability. At the same time regulation 12(3) makes Schedule 4 base value which, like market value, would otherwise be reduced by the amount of the liability for the deferred payment, comparable to market value and Schedule 5 base value. The effect of regulation 12(2) is not limited to the assessment of

levy on the first chargeable act or event affecting the tenancy, because on the next chargeable act or event the Schedule 5 base value of the tenancy will be derived from the amount which, by virtue of regulation 12, is treated as having been paid on the previous disposition. Regulation 12(3) also applies to future assessments of levy.

Regulation 13 makes an adjustment in the opposite direction to that made by regulation 12. Under regulation 8, which establishes the general pattern for a Schedule 5 base value of a reversion on the first chargeable act or event affecting it, the Schedule 5 base value on the first chargeable act or event does not include the capital value of any lump sum. This produces consistency between that value and market value, because any lump sum payable in respect of a tenancy will normally have been paid on the grant of the tenancy and will not therefore be reflected in the market value of the reversion as it exists after that time. Where a lump sum remains to be paid, however, the right to receive this will be reflected in the price the reversion will fetch, i.e. in its market value, and regulation 13(2) makes an adjustment to ensure that the value is brought into line with the Schedule 5 base value. It does this by requiring market value to be reduced by the value of the right to receive the deferred payment. Regulation 13(3) treats in a similar way the Schedule 4 base value of the reversion, which would otherwise reflect the value of this right. As with regulation 12, regulation 13 has its effect in relation to assessments of levy on subsequent chargeable acts or events.

Regulation 14, which is consequential on regulation 7, makes special provision for one particular case. The provisions of Part III of the Act make provision to ensure that the Land Commission obtain due notice of every chargeable act or event, so that they are in a position to assess levy as soon as any development value is realised. In the ordinary way they can rely on the grantee under a disposition giving notice of it as required by the Act. They can do this, since in the normal case a grantee will have an incentive to give notice. He will only obtain a Schedule 5 base value, i.e. he will only be able to obtain an allowance on his assessment of levy in respect of the development value which he has paid for after the first appointed day, if he gives notice of the disposition so as to enable the Commission to assess levy in respect of that development value on the person who realised it. There is, however, one case in which he will not have this incentive unless special provision is made. Under regulation 7 a tenant will, on the first chargeable act or event affecting his tenancy, derive his Schedule 5 base value from any lump sum he paid on the grant of his tenancy. But, if he paid no lump sum, all the consideration for the grant being taken by way of rent, he will not be able to derive any Schedule 5 base value from the grant of the tenancy and may fail to give notice of it. If he should do so, the Commission may lose the opportunity to assess levy on that grant. Regulation 14 accordingly provides for the tenant having his own assessment of levy increased by an amount broadly equivalent to the levy lost as the result of his failure to perform his statutory duty. It does this by increasing his market value, or, in Case B, the amount of the consideration for the disposition, on the first chargeable act or event affecting the whole of his land by such an amount.

Regulation 15 makes provision for the case where the assumption on which an assessment of levy is made in Case B has in the event been proved wrong. In Case B development value is taken to be realised on the grant of the tenancy, and the assessment is made on the whole of the consideration for that grant, including the capital value of the rent payable under the tenancy. The assumption is that the tenancy will run its course and that the landlord will receive all the consideration in respect of which he is assessed to levy. If, however, the tenancy is prematurely determined, e.g. by irritancy before development has begun, and he (the former landlord) disposes of the land again or himself begins to develop,

his base value would not include the development value reflected in rent which would not fall due until after the determination of the tenancy; and in respect of this rent he would have already paid levy. He could therefore find himself on a subsequent chargeable act or event paying levy on much of the development value in respect of which he had been assessed to levy on the grant of the determined tenancy. Moreover, where the tenancy was granted before the first appointed day, he could find himself paying levy on development value which would otherwise have escaped assessment.

To prevent such a situation arising regulation 15 makes provision for adding to the landowner's base value on an assessment for levy on a future chargeable act or event an amount which will reflect the capitalised value of the rent he failed to obtain during the tenancy which has been determined. It provides first for the calculation of the current use value of the landlord's interest as it existed before the termination of the tenancy. This will reflect the capital value of all the rent which has not yet been received. From this has to be subtracted the current use value of the land after the termination of the tenancy. The remainder will then represent the amount of unrealised development value on which levy was paid on the grant of the tenancy. Regulation 15 provides for an addition to be made to the landowner's base value on the next chargeable act or event of that remainder or, if the landowner's interest is a reversion in a tenancy granted after the first appointed day, of $\frac{R}{T+R}$ of it. This will result in the assessment of levy being reduced accordingly.

Regulation 16, which is consequential on both regulations 7 and 8, modifies the provisions of Schedule 7 to the Act (allowance in respect of estate duty). The allowance is calculated by reference to the duty paid on the difference between two values—the gross principal value of the dutiable interest and the modified value of that interest. The latter corresponds broadly to base value; and accordingly, where on an assessment of levy in respect of a chargeable act or event affecting a tenancy or a reversion, a Schedule 5 base value is applicable and is derived from the consideration paid for the grant of the tenancy, the same modifications which are made in regulations 7 and 8 for the purpose of calculating base value need to be applied in the calculation of the modified value of the dutiable interest. This is provided for by regulation 16.

Regulation 17 is concerned with Case F. Regulation 3 of the Case F General (Scotland) Regulations 1967 provides that, wherever a tenancy is renewed or extended, or varied by the release or modification of an obligation or agreement restricting development, the transaction is to be treated as a surrender of the existing tenancy and the grant of a new tenancy on the same terms subject to the renewal, extension or variation. Regulation 17 provides for these regulations applying as if the transaction had in fact been carried out in that way.

The regulations apply to Scotland.