STATUTORY INSTRUMENTS

1974 No. 1030

COUNTER-INFLATION

The Counter-Inflation (Business Rents) Order 1974

Made - - -	*13th June* 1974
Laid before Parliament	*20th June* 1974
Coming into Operation	*21st June* 1974

The Secretary of State for the Environment as respects England, the Secretary of State for Wales as respects Wales, the Secretary of State for Scotland as respects Scotland and the Secretary of State for Northern Ireland as respects Northern Ireland, in exercise of their powers under sections 11 and 23(2) of, and paragraphs 1 and 3 of Schedule 3 to, the Counter-Inflation Act 1973(**a**) and of all other powers enabling them in that behalf, hereby make the following order:—

Citation and commencement

1. This order may be cited as the Counter-Inflation (Business Rents) Order 1974 and shall come into operation on 21st June 1974.

Interpretation

2.—(1) The Interpretation Act 1889(**b**) shall apply for the interpretation of this order as it applies for the interpretation of an Act of Parliament.

(2) In this order, unless the context otherwise requires—

"agriculture" has the same meaning as in the Agricultural Holdings Act 1948(**c**) (as respects England and Wales) and the Agricultural Holdings (Scotland) Act 1949(**d**) (as respects Scotland);

"basic rate" has the meaning assigned to that expression in article 3;

"building lease" means a lease of land which the tenant has substantially developed by the erection of a building thereon or which the tenant is required (whether under the terms of the lease or otherwise) so to develop;

"business" includes a trade, profession or employment and includes any activity carried on by a body of persons, whether corporate or unincorporate;

(**a**) 1973 c. 9.
(**b**) 1889 c. 63.
(**c**) 1948 c. 63.
(**d**) 1949 c. 75.

"business tenancy" means any tenancy where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes but does not include a tenancy of or a right to occupy land used for agriculture or a building lease;

"rent" includes the amount of any premium rateably apportioned over the period of the tenancy, but excludes any sums payable by the tenant in respect of rates, services, repairs, maintenance or insurance;

"standard rate" has the meaning assigned to that expression in article 4 of the 1973 order;

"superior tenancy" means any tenancy (other than a business tenancy) which is an interest in reversion expectant (whether immediately or not) on the termination of the relevant business tenancy and, in relation to Scotland, means any tenancy (other than a business tenancy) where the property comprised in the tenancy consists of or includes any premises occupied by a subtenant under a business tenancy, whether or not there are other subtenancies of that property intervening between the tenancy and the subtenancy which is a business tenancy; and

"the 1973 order" means the Counter-Inflation (Business Rents) Order 1973(**a**).

(3) In this order, unless the context otherwise requires, any reference to an enactment shall be construed as a reference to that enactment as amended, extended or applied by or under any other enactment.

(4) In this order, unless the context otherwise requires, any reference to a numbered article is a reference to that article bearing that number in this order.

Basic rate

3.—(1) Subject to paragraph (2) of this article and to articles 5, 6 and 7—

(*a*) where in relation to any premises comprised in a business tenancy subsisting on 21st June 1974 there is no standard rate, the basic rate in relation to those premises means the rate at which rent was payable (whether or not then determined as to amount) under that tenancy at that date; or

(*b*) where there was no business tenancy subsisting on 21st June 1974 but a business tenancy had subsisted in respect of the premises at any time during the period commencing on 6th November 1972 and ending on 20th June 1974 and in relation to those premises there was no standard rate, the basic rate in relation to those premises means the rate at which rent was payable at the date upon which such tenancy (or, if there was more than one, the last of them) came to an end.

(2) Where in relation to the premises comprised in a business tenancy granted after 21st June 1974 a basic rate is not ascertainable by the application of paragraph (1) of this article and the premises—

(*a*) form part of larger premises in relation to which there is a basic rate, the basic rate in relation to the premises comprised in the business tenancy means a just part of the basic rate in relation to the larger premises;

(**a**) S.I. 1973/741 (1973 I, p. 2369).

(*b*) consist of two or more premises in relation to each of which there is a basic rate (and those premises together make up the whole of the premises comprised in the business tenancy), the basic rate in relation to the premises comprised in the business tenancy means a just amount based on the aggregate of the basic rates in relation to the constituent premises;

(*c*) consist of two or more premises in relation to at least one of which there is a basic rate and in relation to the remainder of which there is a standard rate (and those premises together make up the whole of the premises comprised in the business tenancy), the basic rate in relation to the premises comprised in the business tenancy means a just amount based on the aggregate of the standard rate and the basic rate in relation to the constituent premises.

(3) The just part and the just amount referred to in paragraph (2) of this article shall be such amount as may be agreed in writing between the landlord and the tenant or determined by the court under article 12.

Rate of rent

4. Subject to the provisions of this order, where in relation to any premises there is a basic rate, rent under a business tenancy (whether granted before, on or after 21st June 1974) of those premises shall not be payable in respect of any part of the time during which this order is in force at a rate exceeding the basic rate:

Provided that where the whole of the premises comprised in a business tenancy have both a standard rate and a basic rate and the standard rate exceeds the basic rate, nothing in this order shall prevent rent under a business tenancy of those premises being payable at the standard rate.

Variation in terms and change of use

5. Where in respect of a business tenancy there is any variation in the terms of the tenancy (other than terms as to the duration thereof and as to the rent payable thereunder) or any substantial change in the use of the premises comprised in the tenancy, such as to affect the amount of rent which it is reasonable to charge, compared with the terms or the use (whether in relation to that tenancy or a previous business tenancy) at the date appropriate for the purpose of establishing the basic rate in relation to those premises, the basic rate shall be increased or decreased by such an appropriate amount as may be agreed in writing between the landlord and the tenant or determined by the court under article 12.

Improvements

6. Nothing in this order shall preclude the recovery by way of increased rent of the cost of improvements to premises comprised in a business tenancy —

(*a*) in the case of a tenancy which was subsisting on 21st June 1974 the terms of which then provided for such increased rent, in accordance with those terms, or

(*b*) in all other cases, of an amount equivalent to a yearly increase not exceeding 12·5 per cent. of that cost,

and the basic rate in relation to those premises shall be increased accordingly.

Initial concessionary rents

7. In the case of a business tenancy—

(*a*) which was subsisting on 21st June 1974,

(*b*) the terms of which then provided for one or more increases of rent up to a specified amount during or on completion of the first 12 months of the tenancy, and

(*c*) where on 21st June 1974 any such increase had still to take effect,

nothing in this order shall preclude the recovery of any such increase and the basic rate in relation to the premises comprised in that tenancy shall be increased accordingly.

Superior tenancies

8. Where article 4 applies to the rent under a business tenancy and that tenancy is subject to one or more superior tenancies which were subsisting on 21st June 1974 to which article 9 of the 1973 order does not apply, rent under the superior tenancy or each of those superior tenancies (as the case may be) shall not be payable in respect of any part of the time during which this order is in force at a rate exceeding the rate at which it was payable on 21st June 1974, except to the extent that any excess is properly attributable to a variation in the terms of the tenancy or to the carrying out by a landlord under a superior tenancy of improvements to the property comprised in the tenancy.

Recovery of excess rent

9.—(1) Subject to paragraph (3) of this article, where a tenant has paid on account of rent any amount which by virtue of this order he is not liable to pay, he shall be entitled to recover that amount from the landlord who received it.

(2) Subject to paragraph (3) of this article, any amount which a tenant is entitled to recover under paragraph (1) of this article may, without prejudice to any other method of recovery, be deducted by the tenant from any rent payable by him to the landlord.

(3) No amount which a tenant is entitled to recover under paragraph (1) of this article shall be recoverable at any time after the expiry of two years from the date of payment.

10. Without prejudice to any other method of recovery, where a person receives any payment in contravention of the provisions of this order and is found guilty of an offence under section 17(1) of the Counter-Inflation Act 1973 the court by or before which such a person is found guilty may order the amount paid in excess to be repaid to the person by whom the payment was made.

Disclosure of information

11. Unless he has a reasonable excuse for not doing so—

(*a*) the landlord under a business tenancy shall, within 21 days of being so requested in writing by the tenant, supply him with a statement in writing of—

(i) the rent which was payable at the date appropriate for the purpose of establishing the basic rate in relation to the premises comprised in that tenancy;

(ii) the cost of any improvement in respect of which the landlord is requiring an increase in rent;

(*b*) the landlord under a superior tenancy to which article 8 applies shall, within 21 days of being so requested in writing by the tenant, supply him with a statement in writing of the rent payable under the tenancy on 21st June 1974.

Jurisdiction

12.—(1) In relation to any premises situated in England and Wales—

(*a*) the court shall have jurisdiction on an application made for the purpose by the landlord or the tenant of the premises, to determine any question arising under this order—

(i) as to the application of this order to those premises or to any tenancy of those premises or as to any matter which is or may become material for determining any such question, or

(ii) as to the amount of rent which is payable under any tenancy of those premises by virtue of this order, or

(iii) as to the matters upon which jurisdiction is conferred upon the court by paragraph (3) of article 3 or by article 5,

and the jurisdiction conferred by this sub-paragraph shall be exercised in accordance with section 63 of the Landlord and Tenant Act 1954 (**a**) as if the jurisdiction were conferred by Part II of that Act;

(*b*) the court shall have jurisdiction to determine any question referred to in sub-paragraph (*a*) above where that question arises in the course of any proceedings relating to the premises.

(2) In relation to any premises situated in Scotland, the sheriff shall have jurisdiction, either in the course of any proceedings relating to those premises or on an application made for the purpose by the landlord or the tenant of the premises, to determine any question arising under this order—

(*a*) as to the application of this order to those premises or to any tenancy of those premises or as to any matter which is or may become material for determining any such question, or

(*b*) as to the amount of rent which is payable under any tenancy of those premises by virtue of this order, or

(*c*) as to any matter upon which jurisdiction is conferred upon the court by paragraph (3) of article 3 or by article 5,

and section 123(1) of the Rent (Scotland) Act 1971 (**b**) shall apply to any

(**a**) 1954 c. 56. (**b**) 1971 c. 28.

application to the sheriff under this paragraph as it applies to any such application as is referred to in that section.

(3) Any determination under paragraphs (1) and (2) of this article—

(*a*) may be made so as to relate to any time after the date of commencement of this order and before the date of the determination;

(*b*) shall, subject to the provisions of this order, have effect with respect to any time after the date of the determination during which this order is in force.

Agreements, etc.

13. Nothing in this order shall render unlawful or invalid any agreement, determination or notice relating to a rent to which this order applies but, subject to the provisions of this order, where any such agreement, determination or notice provides for an increase of rent in respect of any part of the time during which this order is in force, the amount of that increase shall not be payable in respect of that period.

Supplemental

14. Part II of the Landlord and Tenant Act 1954 and the Tenancy of Shops (Scotland) Acts 1949**(a)** and 1964**(b)** shall have effect subject to the provisions of this order.

Transitional

15. Without prejudice to paragraph 4 of Schedule 3 to the Counter-Inflation Act 1973, any right acquired or liability or obligation incurred by virtue of any of the provisions of this order shall not be affected by Part II of that Act ceasing to be in force, and accordingly any legal proceedings or remedy in respect of any such right, liability or obligation may be instituted, continued or enforced as though the said Part II had continued in force.

Application to Northern Ireland

16. In the application of this order to Northern Ireland—

(*a*) in article 2(2), in the definition of "agriculture" after "Scotland)" insert "and the Agriculture Act (Northern Ireland) 1949**(c)** (as respects Northern Ireland)";

(*b*) in article 2(3), "enactment" includes an enactment of the Parliament of Northern Ireland;

(*c*) in article 12(1), after "Wales", insert "or Northern Ireland" and in sub-paragraph (*a*) omit from "and the jurisdiction" onwards;

(*d*) in article 14, after "1964", insert "and the Business Tenancies Act (Northern Ireland) 1964" **(d)**; and

(a) 1949 c. 25.
(b) 1964 c. 50.
(c) 1949 c. 2. (N.I.).
(d) 1964 c. 36. (N.I.).

(*e*) for any reference to the court there shall be substituted a reference to the Lands Tribunal for Northern Ireland.

Anthony Crosland,
13th June 1974. Secretary of State for the Environment.

John Morris,
13th June 1974. Secretary of State for Wales.

William Ross,
13th June 1974. Secretary of State for Scotland.

Merlyn Rees,
13th June 1974. Secretary of State for Northern Ireland.

EXPLANATORY NOTE

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

This Order imposes a standstill on rents of business premises where no standard rate of rent is ascertainable under the Counter-Inflation (Business Rents) Order 1973, but where a business tenancy either subsists on 21st June 1974 or has subsisted at some time between 6th November 1972 and that date. As in the 1973 order, building leases are excluded from the standstill, and provision is made for rents to be varied to take account of variations in the terms of tenancies, change of use of the premises, the cost of improvements or certain increases from concessionary levels. The standstill extends to rents under superior tenancies in cases where a business tenancy is subject to the standstill.

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