STATUTORY INSTRUMENTS

1974 No. 1294

COUNTER-INFLATION

The Counter-Inflation (Business Rents) (Transition) Order 1974

Made - - - -	*25th July* 1974
Laid before Parliament	*30th July* 1974
Coming into Operation	*1st November* 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) (Transition) Order 1974 and shall come into operation on 1st November 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 of the 1974 order;

"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;

"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;

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

"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;

"rent limit" means—

(*a*) in relation to a business tenancy, the rent limit determined under articles 5 and 6, and

(*b*) in relation to a superior tenancy the rent limit determined under articles 8 and 9;

"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;

"the 1972 order" means the Counter-Inflation (Business Rents) Order 1972(**a**);

"the 1973 order" means the Counter-Inflation (Business Rents) Order 1973(**b**);

"the 1974 order" means the Counter-Inflation (Business Rents) Order 1974(**c**); and

"the transition date" means—

(*a*) in relation to a business tenancy of any premises, the date ascertained under Part I of the Schedule, and

(*b*) in relation to a superior tenancy, the date ascertained under Part II of the Schedule.

3.—(1) 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.

(2) 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 and any reference to a schedule is a reference to the Schedule in this order.

Rent limit for business tenancies

4. Where in relation to any premises there is a standard rate, then, notwithstanding article 5 of the 1973 order, as from the transition date (and whether or not the rent limit hereafter mentioned was then determined as to amount) rent under a business tenancy of the premises shall not be payable in respect of any part of the time during which this order is in force at a rate exceeding—

(**a**) S.I. 1972/1850 (1972 III, p. 5370).
(**b**) S.I. 1973/741 (1973 I, p. 2369).
(**c**) S.I. 1974/1030 (1974 II, p. 3859).

(*a*) the standard rate for those premises, or

(*b*) the rent limit ascertained in accordance with articles 5 and 6,

whichever is the higher:

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

5. The rent limit in relation to a business tenancy means the rate of rent at which the premises comprised in the tenancy might reasonably be expected to have been let in the open market on 5th November 1972 by a willing lessor having regard to—

(*a*) the length of term of the tenancy, provided that where the tenancy was subsisting on the transition date the length of term shall be taken to be the unexpired residue of the term at such date, and

(*b*) all other terms of the tenancy (other than as to the rent payable or as to any premium paid or payable in respect of that tenancy but including any provisions for varying the rent periodically),

but disregarding—

(*c*) any effect on rent attributable to a failure by the tenant or his predecessors in title to comply with the terms of the tenancy,

(*d*) any effect on rent of the fact that the tenant has or his predecessors in title have been in occupation of the premises,

(*e*) any goodwill attached to the premises by reason of the carrying on thereat of the business of the tenant (whether by him or by a predecessor of his in that business),

(*f*) subject as hereafter mentioned in this paragraph, any effect on rent of any improvement carried out by a person who at the time it was carried out was the tenant, but only if it was carried out otherwise than in pursuance of an obligation to his immediate landlord, and either it was carried out during the tenancy or the following conditions are satisfied, that is to say—

(i) that it was completed not more than twenty-one years before 5th November 1972, and

(ii) that the premises or any part of them affected by the improvement have at all times since the completion of the improvement been comprised in business tenancies, and

(iii) that at the termination of each of those tenancies the tenant did not quit,

except to the extent that the improvement has been carried out by the landlord under the tenancy, or any person from whom he has derived his title,

(*g*) in the case where the premises comprise licensed premises, any addition to their value attributable to the licence if, having regard to the terms of the tenancy and any other relevant circumstances, the benefit of the licence belongs to the tenant.

Business tenancies: variations, change of use and improvements

6. Where, after a rent limit has been determined for a business tenancy—

(*a*) there is a variation in the terms of that tenancy (other than terms as to the duration thereof or as to the rent payable thereunder), or

(*b*) there is a substantial change in the use of the premises comprised in that tenancy, or

(*c*) improvements have been carried out to the premises comprised in that tenancy,

the rent limit for that tenancy shall be varied by such an amount (if any) as may be appropriate having regard to article 5.

Rent limit for superior tenancies

7. Where article 9 of the 1973 order applies to rent under a superior tenancy, then, from the transition date (and whether or not the rent limit hereafter mentioned was then determined as to amount) rent payable under that superior tenancy shall not be payable in respect of any part of the time during which this order is in force at a rate exceeding—

(*a*) the rate at which rent was payable under that tenancy immediately before 29th April 1973 together with any additional amount permitted by the 1973 order, or

(*b*) the rent limit ascertained in accordance with articles 8 and 9,

whichever is the higher.

8. The rent limit for a superior tenancy shall be the rate of rent at which the premises comprised in such superior tenancy might reasonably be expected to have been let in the open market on 5th November 1972 by a willing lessor having regard to—

(*a*) the unexpired residue of the term of that tenancy as at the transition date, and

(*b*) all other terms of that tenancy (other than as to the rent payable or as to any premium paid or payable in respect of that tenancy but including any provisions for varying the rent periodically),

but disregarding any effect attributable to a failure by the tenant or his predecessors in title to comply with the terms of the tenancy.

Superior tenancies: variations and improvements

9. Where, after a rent limit has been determined for a superior tenancy—

(*a*) there is a variation in the terms of that tenancy (other than terms as to the duration thereof or as to the rent payable thereunder), or

(*b*) there is a substantial change in the use of the premises comprised in that tenancy, or

(*c*) the landlord has carried out improvements to the premises comprised in that tenancy,

the rent limit for that tenancy shall be varied by such amount (if any) as may be appropriate having regard to article 8.

Recovery of excess rent

10.—(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.

11. 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

12. Unless he has a reasonable excuse for not doing so a landlord under a business tenancy or a superior tenancy to which article 9 of the 1973 order applies shall, within 21 days of being so requested in writing by the tenant, supply him with a statement in writing of—

(*a*) the transition date for the premises comprised in that tenancy;

(*b*) any rent limit previously determined in respect of that tenancy.

Jurisdiction

13. Subject to section 17 of the Counter-Inflation Act 1973, the rent limit in relation to any tenancy to which this order applies shall be determined by or pursuant to an agreement in writing between the landlord and the tenant or by the court.

14.—(1) Subject to section 17 of the Counter-Inflation Act 1973 and to article 13, 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 any transition date,

and the jurisdiction conferred by this sub-paragraph or by article 13 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;

(a) 1954 c. 56.

(*b*) the court shall have jurisdiction to determine any question referred to in sub-paragraph (*a*) or in article 13 where that question arises in the course of any proceedings relating to the premises.

(2) Subject to section 17 of the Counter-Inflation Act 1973 and to article 13, 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 transition date, or

(*d*) as to the rent limit in relation to any tenancy to which this order applies,

and section 123(1) of the Rent (Scotland) Act 1971**(a)** shall apply to any 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 such determination;

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

Agreements, etc.

15. Nothing in this order shall render unlawful or invalid any agreement, determination or notice relating to a rent to which this order applies but, 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 except to the extent provided for by this order.

Supplemental

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

Transitional

17. 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.

(a) 1971 c. 28.
(b) 1949 c. 25.
(c) 1964 c. 50.

Application to Northern Ireland

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

(*a*) in article 2(2)—

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

(ii) in the definition of "the 1972 Order" for from "Counter-Inflation" onwards, substitute "Part II of the Counter-Inflation (Northern Ireland) Order 1972"**(b)**;

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

(*c*) in article 14(1), after "Wales", insert "or Northern Ireland" and in sub-paragraph (*a*) omit "and the jurisdiction" onwards;

(*d*) in article 16, after "1964", insert "and the Business Tenancies Act (Northern Ireland) 1964"**(c)**; and

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

SCHEDULE

Article 2

PART I

THE TRANSITION DATE FOR PREMISES COMPRISED IN A BUSINESS TENANCY

For the purposes of this order the transition date for premises comprised in a business tenancy to which article 4 applies shall be—

(*a*) the date given by column 2 of the following Table where the dates in column 1 are the dates on or between which any part of the rent under a business tenancy of the whole of any part of those premises first became not payable by virtue only of the 1972 or the 1973 order (and, if there was more than one such business tenancy, the first of them), or

(*b*) in any other case, 1st March 1976.

TABLE

1	2
Dates on and between which any part of the rent under a business tenancy first became not payable by virtue only of the 1972 or 1973 order	Transition date
1st December 1972—31st March 1973	1st June 1975
1st April 1973 —31st July 1973	1st July 1975
1st August 1973 —30th November 1973	1st August 1975
1st December 1973 —31st March 1974	1st September 1975
1st April 1974 —31st July 1974	1st October 1975
1st August 1974 —30th November 1974	1st November 1975
1st December 1974 —31st March 1975	1st December 1975
1st April 1975 —31st July 1975	1st January 1976
1st August 1975 —30th November 1975	1st February 1976
1st December 1975 —29th February 1976	1st March 1976

(a) 1949 c. 2. (N.I.).
(b) S.I. 1972/1913 (1972 III, p. 5695).
(c) 1964 c. 36. (N.I.).

PART II

THE TRANSITION DATE FOR A SUPERIOR TENANCY

For the purposes of this order the transition date for a superior tenancy to which article 9 of the 1973 order applies shall be—

(*a*) the date given by column 2 in the following Table where the dates in column 1 are the dates on or between which any part of the rent under that superior tenancy first became not payable by virtue only of the 1973 order, or

(*b*) in any other case, 1st March 1976.

TABLE

1	2
Dates on or between which any part of rent under the superior tenancy first became not payable by virtue only of the 1973 order	Transition date
29th April 1973 —31st July 1973	1st July 1975
1st August 1973 —30th November 1973	1st August 1975
1st December 1973 —31st March 1974	1st September 1975
1st April 1974 —31st July 1974	1st October 1975
1st August 1974 —30th November 1974	1st November 1975
1st December 1974 —31st March 1975	1st December 1975
1st April 1975 —31st July 1975	1st January 1976
1st August 1975 —30th November 1975	1st February 1976
1st December 1975 —29th February 1976	1st March 1976

25th July 1974.

Anthony Crosland,
Secretary of State for the Environment.

25th July 1974.

John Morris,
Secretary of State for Wales.

25th July 1974.

William Ross,
Secretary of State for Scotland.

25th July 1974.

Merlyn Rees,
Secretary of State for Northern Ireland.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes provision to release to a new rent limit rents of business tenancies of premises which have been restricted under the Counter-Inflation (Business Rents) Order 1972, Part II of the Counter-Inflation (Northern Ireland) Order 1972 or the Counter-Inflation (Business Rents) Order 1973.

The rent limit relates to a business tenancy of premises and is ascertained on the basis of the open market rent as at 5th November 1972. Provision is made for variation of the rent limit to take into account variation in the terms of a tenancy, changes in use of the premises and improvements carried out to the premises.

The release is to take effect in stages commencing on 1st June 1975. The first group of tenancies to be released are those where any rent under a business tenancy of any part of the premises first became not payable by virtue of the 1972 or 1973 orders on or between 1st December 1972 and 31st March 1973. Subsequent groups are given later release dates. The final date by which all premises are to be released is 1st March 1976.

Similar provision is made to release to a new rent limit rents of superior tenancies to which the 1973 order applies.

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