STATUTORY INSTRUMENTS

1972 No. 1852 (S. 142)

COUNTER-INFLATION

The Counter-Inflation (Rents) (Scotland) Order 1972

Made - - - -	1*st December* 1972
Laid before Parliament	1*st December* 1972
Coming into Operation	1*st December* 1972

In exercise of the powers conferred upon me by sections 2(4) and 10(2) of and paragraphs 1, 2 and 4 of the Schedule to the Counter-Inflation (Temporary Provisions) Act 1972(**a**) and of all other powers enabling me in that behalf, I hereby make the following order:—

Citation, Extent and Commencement

1. This order, which may be cited as the Counter-Inflation (Rents) (Scotland) Order 1972 applies to Scotland, and shall come into operation on 1st December 1972.

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 otherwise expressly provided or the context otherwise requires—

" the Counter-Inflation Act " means the Counter-Inflation (Temporary Provisions) Act 1972 ;

" the Rent Act " means the Rent (Scotland) Act 1971(**c**) ;

" the Housing Act " means the Housing (Financial Provisions) (Scotland) Act 1972(**d**) ;

" housing association tenancy " means a tenancy to which sections 60 to 66 of the Housing Act apply ;

" rent agreement " means a rent agreement with a tenant having security of tenure within the meaning of section 42(1) of the Housing Act or an agreement within the meaning of section 41(3) of that Act or a rent agreement wiithin the meaning of section 44A(9) of the Rent Act ;

" standstill period " means that part of the period during which section 2 of the Counter-Inflation Act is in force occurring after the coming into operation of this order,

and any expression used in this order which is also used in the Rent Act or in the Housing Act shall have the same meaning in this order as it has in the Rent Act or in the Housing Act.

(**a**) 1972 c. 74. (**b**) 1889 c. 63. (**c**) 1971 c. 28. (**d**) 1972 c. 46.

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

(4) Any reference in this order to a numbered article or to a numbered paragraph in relation to such an article is a reference to the article bearing that number in this order, or, as the case may be, to the paragraph bearing that number in such an article.

Definitions

3. For the purposes of this order the following expressions used in section 2(4) of the Counter-Inflation Act are defined as follows:—

" preventing increases " shall include preventing increases which took effect on or after 6th November 1972 from continuing to have effect during the standstill period and preventing increases consequent upon the conversion of a controlled tenancy to a regulated tenancy by postponing the date of such conversion ;

" rent payable before 6th November 1972 " shall, in relation to a regulated tenancy, have the meaning ascribed to it in article 6(6), and shall, in relation to a housing association tenancy and a tenancy to which article 8 applies, have the meaning ascribed to it in article 7(5), and shall, in relation to a tenancy to which article 9 applies, be construed in accordance with the provisions of that article, and

" rent " shall include, in relation to a controlled or regulated tenancy or a housing association tenancy, any sum payable by the tenant to the landlord for the use of furniture or for services, which would be treated as rent for any of the purposes of the Rent Act.

Modifications and adaptations of enactments relating to rent

4. During the standstill period, the Rent Act and the Housing Act shall have effect subject to the modifications and adaptations specified in this order.

Controlled Tenancies

5.—(1) In section 34(2)(*a*) of the Housing Act (Conversion of controlled tenancies: general decontrol) for the reference to 1st January 1973, there shall be substituted a reference to the day following the expiration of the standstill period and, in relation to a dwellinghouse to which this article applies, any reference in Part V of that Act to the date applicable to such a dwellinghouse or to the date of conversion shall be construed accordingly.

(2) Nothing in this article shall invalidate an application for the registration of a rent for a dwellinghouse to which this article applies which is made (whether before, on, or after the date of coming into operation of this order) under section 40 of the Rent Act by virtue of section 38 of the Housing Act (early application for registration of rent) but, where a rent is registered on an application so made, section 38(3) of the Housing Act, as modified by the provisions of paragraph (1) of this article, shall apply to that registration accordingly.

(3) Nothing in this article shall invalidate any rent agreement to which section 43 of the Housing Act (Rent agreements : special provisions following conversion) applies, which is made (whether before, on, or after the date of coming into operation of this order) with respect to a dwellinghouse to which this article applies, or any proceedings taken in pursuance thereof, but any

such agreement which is expressed to take effect before the end of the standstill period shall be regarded, for the purposes of the said section 43, as being expressed to take effect on the expiration of that period.

(4) This article applies to a dwellinghouse which is let on a protected tenancy or subject to a statutory tenancy which, in either case, is a controlled tenancy, where the rateable value of the dwellinghouse, for the purposes of section 34 of the Housing Act, is £50 or more on 27th August 1972.

Regulated Tenancies

6.—(1) Where no rent is registered for a dwellinghouse under a regulated tenancy (whether granted before, on, or after the date of coming into operation of this order), the rent recoverable in respect of the standstill period, for any contractual or statutory period of that tenancy, shall not exceed the rent payable before 6th November 1972, and, accordingly, the amount of any excess shall, notwithstanding anything in any agreement, be irrecoverable from the tenant:

Provided that nothing in this article shall prevent the rent recoverable in respect of the standstill period being increased above the rent payable before 6th November 1972 on account of any adjustments made under section 20 (except subsection (4) thereof) or section 22 or 24 of the Rent Act or section 36(2) of the Housing Act (which provide for adjustments before a rent is registered).

(2) Any rent agreement, which is made (whether before, on, or after the date of coming into operation of this order) with respect to a dwellinghouse under a regulated tenancy and which takes effect before the end of the standstill period, shall not operate to increase the rent recoverable in respect of the standstill period above the rent payable before 6th November 1972 (with any adjustment made before the said agreement takes effect, by virtue of any of the provisions mentioned in paragraph (1) of this article), but shall not otherwise be rendered ineffective by reason only of the provisions of this article, and, accordingly, the amount of any excess shall, notwithstanding anything in any agreement, be irrecoverable from the tenant:

Provided that, where such a rent agreement is made, nothing in this article shall prevent the rent recoverable in respect of the standstill period being increased above the rent payable before 6th November 1972 on account of rates or on account of a rent agreement to which section 44 of the Housing Act applies.

(3) Where, during the period beginning on 6th November 1972 and ending on the expiration of the standstill period, a rent is registered for a dwellinghouse under a regulated tenancy (whether granted before, on, or after the date of coming into operation of this order), the rent recoverable in respect of the standstill period, for any contractual or statutory period of that tenancy, shall not exceed the rent payable before 6th November 1972 (with any adjustment made before the date of the said registration, by virtue of any of the provisions mentioned in paragraph (1) of this article), and, accordingly, the amount of any excess shall, notwithstanding anything in any agreement or in any enactment, be irrecoverable from the tenant:

Provided that, where section 43(2) of the Rent Act (which makes provision where rates are borne by the landlord) applies, nothing in this paragraph shall prevent any sum being recoverable in respect of rates.

(4) Any notice of increase under section 21(2)(*b*) of the Rent Act (which permits the rent to be increased up to the registered rent), which is served on

or after the date of coming into operation of this order, and which specifies, as the date from which any increase consequent upon the registration mentioned in paragraph (3) of this article is to take effect, a date earlier than the date following the expiration of the standstill period, shall be of no effect and shall not be subject to amendment under section 25(4) of the Rent Act, and any such notice of increase consequent upon the said registration, which is served before the date of coming into operation of this order and which takes effect before that date or which would, apart from the provisions of this article, have taken effect before the end of the standstill period, shall not operate to increase the rent payable in respect of the standstill period above the rent payable before 6th November 1972, but shall not otherwise be rendered ineffective by reason only of the provisions of this article.

(5) In ascertaining for the purposes of this article whether there is any difference with respect to rents between one rental period and another (whether of the same tenancy or not) or the amount of any such difference, where any rates in respect of the dwellinghouse are borne by the landlord, the amount of those rates for any rental period, ascertained in accordance with Schedule 4 to the Rent Act, shall be taken into account in comparing an unregistered rent with a registered rent, where otherwise the comparison would not be of like with like.

(6) In this article, " rent payable before 6th November 1972 " means, in relation to any dwellinghouse—

(*a*) where a regulated or a controlled tenancy was subsisting on 5th November 1972, the rent recoverable on that date, or

(*b*) where sub-paragraph (*a*) does not apply, but a regulated or a controlled tenancy had subsisted in respect of that dwellinghouse on or after 5th November 1971, the rent recoverable under that tenancy (or, if there was more than one, the last of them) for the last rental period thereof,

and the expression " recoverable rent ", in relation to a regulated tenancy, shall have the same meaning as in section 36(1) of the Rent Act, and, in relation to a controlled tenancy, shall have the same meaning as in section 69(1) of that Act.

Housing association tenancies

7.—(1) The rent recoverable in respect of the standstill period under a housing association tenancy of a dwellinghouse (whether or not a rent has been registered for the dwellinghouse under Part IV of the Rent Act, and whether or not the tenancy was granted before, on, or after the date of coming into operation of this order) shall not exceed the rent payable before 6th November 1972, and accordingly the amount of any excess shall, notwithstanding anything in any agreement, be irrecoverable from the tenant :

Provided that nothing in the foregoing provisions of this paragraph shall—

(*a*) prevent a notice of increase in rent being served on or after the date of coming into operation of this order on any tenant which, according to its terms, would effect an increase in rent taking effect not later than 31st December 1972, or

(*b*) prevent a new tenancy being granted on or after the date of coming into operation of this order and before 1st January 1973 at a rent higher than the rent payable before 6th November 1972.

(2) Where any such notice as is referred to in paragraph (1)(*a*) of this article is served on a tenant, or where a notice in like terms was served before

the date of coming into operation of this order, that notice shall, for the purposes of sections 60 to 66 of the Housing Act, be deemed to have effected that increase before 1st January 1973, notwithstanding that, in respect of the standstill period, any increase in rent above the amount of the rent payable before 6th November 1972 which is attributable to that notice shall not be payable, and, accordingly, the amount of any excess shall, notwithstanding anything in any agreement, be irrecoverable from the tenant.

(3) Where any such tenancy as is referred to in paragraph (1)(*b*) of this article is granted, the rent recoverable under that tenancy for the purposes of section 62(3)(*a*) of the Housing Act shall be the full rent payable under that tenancy (as varied only by any agreement made before 1st January 1973):

Provided that in respect of any part of the standstill period any increase in rent above the amount of the rent payable before 6th November 1972 shall, notwithstanding anything in any agreement, be irrecoverable from the tenant.

(4) Nothing in this article shall prevent any sum being recoverable in respect of rates.

(5) In this article, " rent payable before 6th November 1972 " means, in relation to a dwellinghouse—

(*a*) where a housing association tenancy was subsisting on 5th November 1972, the rent payable on that date (taking into account only variations in the terms of the tenancy made on or before that date), or

(*b*) where sub-paragraph (*a*) above does not apply, but a housing association tenancy had subsisted in respect of that dwellinghouse on or after 5th November 1971, the rent payable under that tenancy (or, if there was more than one, the last of them) for the last rental period thereof,

and this paragraph shall apply for the purposes of article 8 as if for any reference to a housing association tenancy there were substituted a reference to a tenancy to which that article applies.

Tenancies of high rateable value dwellinghouses

8.—(1) This article applies to a tenancy of a dwellinghouse, whether granted before, on, or after the date of coming into operation of this order, which would, but for section 1(1)(*a*) of the Rent Act, be a protected tenancy.

(2) The rent recoverable in respect of the standstill period under a tenancy of a dwellinghouse to which this article applies shall not exceed the rent payable before 6th November 1972, and, accordingly, the amount of any excess shall, notwithstanding anything in any agreement, be irrecoverable from the tenant.

(3) In ascertaining for the purposes of this article whether there is any difference with respect to rents between one rental period and another (whether of the same tenancy or not) or the amount of any such difference, there shall be excluded from such comparison any sums payable by the tenant in respect of rates, services, repairs, maintenance or insurance.

(4) In this article, " rent payable before 6th November 1972 " shall have the same meaning as in article 7.

Local Authority Tenancies

9.—(1) Subject to the provisions of this article, any charges payable in respect of the tenancy or occupation of—

(*a*) any house to which the housing revenue account relates, or

(*b*) any house provided by a local authority but to which the housing revenue account does not relate,

shall not, in respect of the standstill period, exceed the charges payable for that house on 5th November 1972 and, accordingly, the amount of any excess shall, notwithstanding anything in any agreement, be irrecoverable from the tenant.

(2) Where a local authority are required by any provision of Part IV of the Housing Act to increase standard rents, during the period beginning on 6th November 1972 and ending on the expiration of the standstill period, nothing in the provisions of this article shall—

(*a*) prevent any notice requisite to give effect to such increase being served on or after the date of coming into operation of this order, or

(*b*) prevent any new tenancy being granted at the increased rent on or after the date of coming into operation of this order,

but, where any such notice is served or any such new tenancy is granted, or where, before the date of coming into operation of this order, any such notice has been served or any such new tenancy has been granted, it shall not operate to increase the standard rent of any house in respect of the standstill period above the standard rent of that house on 5th November 1972, but shall not otherwise be rendered ineffective by reason only of the provisions of this article.

(3) Notwithstanding the provisions of paragraph (2) of this article, any increase in standard rents shall be deemed, for the purposes of section 28(3) of the Housing Act, to have been made when it would, apart from the provisions of this article, have been so made.

(4) Nothing in this article shall apply to any increase in standard rents which a local authority make in respect of the standstill period in order to—

(*a*) discharge any function under Part IV of the Housing Act which they were required to discharge on or before 1st October 1972, or

(*b*) comply with any duty imposed upon them by any default order.

(5) In this article,—

"default order" means a default order made by the Secretary of State in exercise of his powers under section 356 of the Local Government (Scotland) Act 1947(**a**), as having effect for the purpose of section 195 of the Housing (Scotland) Act 1966(**b**) (as amended by sections 72 and 79 of and paragraph 11 of Schedule 9 to the Housing Act) and under the said section 195, as so amended,

and other expressions used in this article which are also used in Part IV of the Housing Act shall have the same meaning in this article as they have in that Part.

Offences

10.—(1) Any person who requires or accepts any payment or serves any notice in contravention of any of the provisions of this order shall be liable—

(*a*) on summary conviction to a fine not exceeding £400, and

(*b*) on conviction on indictment to a fine, and

(**a**) 1947 c. 43. (**b**) 1966 c. 49.

without prejudice to any other method of recovery, the court by which a person is found guilty of an offence under this paragraph may order the amount paid in excess to be repaid to the person by whom the payment was made.

(2) If without reasonable excuse, a landlord who has received such a request as is referred to in article 12(3)—

(*a*) fails to supply the statement referred to in that paragraph within twenty-one days of receiving the request, or

(*b*) supplies a statement which is false in any material particular,

he shall be liable on a first conviction to a fine not exceeding £50 and, on a second or subsequent conviction, to a fine not exceeding £100.

(3) Where an offence is alleged to have been committed under this order by any organisation, being an unincorporated body—

(*a*) proceedings for the offence shall be brought in the name of that body (and not in that of any of its members),

(*b*) for the purpose of any such proceedings any rules of court relating to the service of documents shall have effect as if that body were a corporation, and

(*c*) any fine imposed on conviction shall be payable out of the funds of that body.

(4) Where an offence mentioned in paragraph (3) of this article is an offence punishable on conviction on indictment, section 40 of the Criminal Justice (Scotland) Act 1949 (proceedings on indictment against bodies corporate) shall have effect as if the said body were a body corporate.

(5) Where an offence under this order committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Recovery of excess rent

11.—(1) Where a tenant has paid on account of rent any amount which, by virtue of this order, is irrecoverable by the landlord then, subject to paragraph (3) of this article, the tenant who paid it shall be entitled to recover that amount from the landlord who received it or his personal representatives.

(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.

Supplemental

12.—(1) In ascertaining for the purposes of this order whether there is any difference with respect to rents between one rental period and another (whether of the same tenancy or not), or the amount of any such difference,

any necessary adjustment shall be made to take account of periods of different lengths ; and for the purposes of such an adjustment a period of one month shall be treated as equivalent to one-twelfth of a year and a period of a week as equivalent to one fifty-second of a year.

(2) In ascertaining, for the purposes of this order, the amount of any rent which is, by virtue of any of the provisions of this order, irrecoverable from the tenant, any necessary adjustment shall be made to take account of rental periods which either begin before the standstill period and end on or after that period or begin during the standstill period and end after that period.

(3) Where the rent payable before 6th November 1972 is required to be ascertained, for the purposes of articles 6, 7, or 8, by reference to the rent specified in paragraph (6)(*b*) of article 6, or, as the case may be, paragraph 5(*b*) of article 7, the landlord shall, on being so requested in writing by the tenant, supply him with a statement in writing of the rent which was recoverable, or, as the case may be, payable for the last rental period of the other tenancy referred to in the relevant paragraph.

(4) Nothing in this order shall render invalid any rent agreement or tenancy to which it applies, but any such agreement or tenancy shall have effect during the standstill period subject to the provisions of this order.

(5) The jurisdiction of the sheriff under section 122 of the Rent Act (Jurisdiction and Procedure) shall be extended to enable him, either in the course of any proceedings relating to a dwellinghouse or on an application made for the purpose by the landlord or the tenant, to determine any question—

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

(*b*) as to the amount of rent recoverable in respect of the standstill period under a tenancy to which this order applies or as to the amount of rent which is, by virtue of this order, irrecoverable from the tenant.

Transitional

13. Without prejudice to paragraph 3 of the Schedule to the Counter-Inflation Act, any right acquired or liability, obligation or penalty incurred by virtue of any of the provisions of this order shall not be affected by section 2 of that Act ceasing to be in force, and accordingly any investigation, legal proceeding or remedy in respect of any such right, liability, obligation or penalty may be instituted, continued or enforced as though the said section 2 had continued in force.

Gordon Campbell,
One of Her Majesty's Principal Secretaries of State.

St. Andrew's House,
Edinburgh.
1st December 1972.

EXPLANATORY NOTE

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

1. This Order, which applies to Scotland and is made under section 2(4) of, and the Schedule to, the Counter-Inflation (Temporary Provisions) Act

1972, makes provision for preventing rent increases over rent payable before 6th November 1972 in relation to the following classes of case—

(*a*) controlled tenancies of dwellinghouses which would under section 34 of the Housing (Financial Provisions) (Scotland) Act 1972 (" the Housing Act ") have become converted to rent regulation on 1st January 1973 (as their rateable value on 27th August 1972 was £50 or more) ;

(*b*) regulated tenancies ;

(*c*) tenancies of housing associations and the Housing Corporation to which sections 60 to 66 of the Housing Act applies ;

(*d*) tenancies of dwellinghouses of high rateable value which for this reason fall outside the protection of the Rent (Scotland) Act 1971 ; and

(*e*) tenancies of houses let by a local authority.

(2) In relation to class (*a*) above, the Order postpones the date of conversion from rent control to rent regulation until the end of the standstill period, but saves existing applications for registration of a rent and rent agreements (which will not however take effect until the dwellinghouse ceases to be subject to a controlled tenancy).

3. In relation to class (*b*) above, the Order prohibits rent increases where no rent has been registered (subject to certain adjustments), provides that any rent agreement not relating to improvements is not to operate to increase the rent payable during the standstill period, and prohibits any rent increase in respect of that period which is consequent upon the registration of a fair rent on or after 6th November 1972.

4. In relation to classes (*c*) and (*d*), the Order prohibits rent increases during the standstill period.

5. In relation to class (*e*), the Order prohibits any increase in rent during the standstill period but provides that this should not apply to any rent increases which are made during the standstill period and which were required to take place on or before 1st October 1972 or which are required in order to comply with any default order.

6. The Order makes it a criminal offence to contravene any provision of the Order and provides for the recovery of any rent which is made irrecoverable by the Order.

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