councils and the Housing Finance Act

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young fabian pamphlet 31 30p

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Fabian Society, 11 Dartmouth Street, London SW1H 9BN.
October 1972 ISBN 7163 2031 2

1. introduction

The Tory Housing Finance Act has now become law. Labour's strong and fundamental objections to it have been made cogently and persuasively, and it is not the intention of this pamphlet simply to repeat or elaborate on those objections.

The next Labour government is pledged to repeal the Act. The repeal, however, will leave a void which will have to be filled, and no one pretends that the position before the Act was an ideal one that should merely be reinstated. One of the most important, and urgent, tasks which face the party is to work out Labour's positive alternative.

Indeed this must be worked out in detail before the next general election, because the repeal of the present Act and its replacement by Labour's alternative must be simultaneous, and it is imperative that Labour's pledge to repeal the Tory act should be honoured early in the lifetime of the next parliament, This pamphlet, however, sets itself a humbler, but even more immediate task, namely to examine the situation which will exist during the period just begun, between the Act coming into force and its eventual, but hopefully not long delayed, repeal and replacement, and to consider what local authorities can, and should do, in that unhappy situation for as long as it persists. The emphasis of the pamphlet is therefore very much on the situation between now and 1975. Many of the worst consequences of the Act would not be felt till after then, but only its repeal in the period between 1974 and 1976 can effectively prevent or mitigate those consequences.

Although united in its detestation of the Act, there has of course been a difference of emphasis within the Labour movement on the tactics to be adopted in relation to preventing, if possible, the Bill from becoming an Act and in relation to the increase in rents demanded by the Act in October 1972. The Bill is now an Act, and by the day this pamphlet appears, all local authorities must have decided what they will do in relation to the October increase, although not all decisions may prove to be final. This pamphlet is therefore not directly concerned with that controversy.

The question of the relation of local authorities to the Act is, however, one that continues, and it is hoped that this pamphlet will be of some help both to local authority members, caught up in their responsibilities for grappling with the situation between the Scylla of officers' apolitical reports and the Charybdis of generalised and often ill defined resolutions from every quarter, and to all those interested in understanding the framework within which local authorities will now be compelled to operate and the scope which they will, or can, have within that framework.

2. council rents

The housing statistics on housing rents as at 1 April, 1971 published by the Institute of Municipal Treasurers and Accountants show that over the three years preceding that date average rents for local authority dwellings had increased by 30 per cent and that in the year preceding that date the average rent rose by 11.2 per cent and the London average rent by 14 per cent for borough dwellings and 15 per cent for GLC dwellings. These increases were, for the most part, imposed by Conservative councils; now most of those Conservative councils have been replaced. The Conservative government, however, faced with a mass of Labour councils, wants to take over where Conservative councils left off and in areas which have throughout remained loyal to the Labour movement, by putting council rents on a level with private profit rents. The average " fair rent " determined by rent assessment committees for unfurnished private rented accommodation is almost exactly twice the average council rent, and the general standard of repair in the private sector is lower than in the public sector.

The government have made their general intention plain. The white paper claims, without any supporting evidence (paragraph 36) that " the rents of most council dwellings are at present less than the fair rent " and states (paragraph 30) that " the government proposes to apply the principle of fair rents to local authority dwellings," A government spokesman (Lord Drumalbyn) said in the House of Lords: " The whole conception of the Bill is that because rents have, in the main, been too low for too long, the sooner we get realism into the rents of local authorities, the better." The Tories have, however, been very coy as to the amount by which rents are to go up. Julian Amery has said, in the phraseology of the market place: " We are inevitably a great deal in the dark as to what fair rent levels council houses will command."

When the government first announced its proposals, informed independent commentators unanimously estimated that the application of " fair rents " to council rents would produce an average doubling in rents, involving a global increase of £1,000 million. The now well known regional estimates produced by the Department of the Environment confirmed this gloomy prognosis. However, by the time the committee stage of the Bill was well under way, Julian Amery announced further estimates from the Department of the Environment, indicating an average rise of 50 per cent rather than 100 per cent (see Table I below).

The figures of £6.50, £6.50 and £6.25 for three London boroughs contrast with the regional average for London and the South-East in the earlier estimates from the same department of £7.45. They also contrast with the fact that some months later still, just before the Bill was about to come law, for Hammersmith (current average £2.00 below future estimated average) the minister approved an average increase of 75p and for Brent (current average £2.14 below future estimated average) an average increase of 55p, to avoid " fair rents " being exceeded for a substantial number of dwellings. In Brent rents for just over a quarter of its dwellings would have exceeded £6.00 if existing rents were increased by £1.00. Incidentally, the Department of the Environment seems to assume that " fair rent " levels will go up on average by about 5 per cent per annum, that is by about 15 per cent at each triennial review.

TABLE I

DEPARTMENT OF THE ENVIRONMENT ESTIMATES OF AVERAGE RENT RISES UNDER THE HOUSING FINANCE ACT

	up from £	to £
Newcastle-upon-Tyne	2.85	4.00
Portsmouth	4.00	5,50
Liverpool	2.53	4.00
Manchester	2.48	4.00
Stockport	2.67	4.00
Leicester	2.57	4.00
Cardiff	2.88	3.40
Newport	3.00	3.85
Swansea	2.34	3.40
Brent	4.36	6.50
Hammersmith	4.50	6.50
Lewisham	4.00	6.25

" Fair rents " is a very nebulous concept, giving considerable scope for argument. As the Director of Housing for Birmingham said in his report: " the definition in clause 50 does not provide any basis for calculation, and decisions as to the level of fair rents must, therefore, tend to be a matter of professional judgment." The judgment does not, however, need to be a professional one; and indeed the fact that the new Act removes the fixing of rents from local authorities and transfers it to boards consisting of both professional and lay members does not mean that the local authority, in preparing its case on rents, must transfer the responsibility from members to officers. Moreover, in the case of *Cubes Limited v. Heaps,* reported in the *Estates Gazette* on 8 August, 1970, Lord Chief Justice Parker said, in relation to the rent assessment committees in the private sector, that they " may prefer their own general knowledge and experience to expert's opinion " and that their members " could use their own knowledge and experience within reasonable limits." The members and officers of local authorities will have much more knowledge and experience of their locality than the members of the remote rent scrutiny boards and are entitled to express this fact and expect due deference to be paid to it.

The principles for the determination of " fair rents," first set out in the Rent Act 1965 for private tenants, who, at that time, had no rent protection (see now sections 46 and 47 of the Rent Act 1968), do not make any mention of any relationship or relevance of market rents to " fair rents," although they do provide for the effects of substantial scarcity on rents to be left out of account. This was not, however, as Ashley Bramall in his commentary published soon after the Act explained, to say that " fair rents " were market rents less a discount for scarcity. However, " fair rents " have been interpreted in this way. The Francis Committee on the Rent Acts (Cmnd. 4609, page 5) states, in a classic example of *non sequitur,* " Since all the objective circumstances, except scarcity, are considered, the fair rent is, in effect, what the market value would be if there were no scarcity (since the market reflects all objective circumstances)."

In the leading case of *Tormes Property Company Limited v. Landau* (reported in 1970 in volume 3 of the All England Law Reports at p. 653), the High Court approved the following passage from *Woodfall* on *Landlord and tenant*: " Where the rent of comparable properties has been registered within a year or two previous to the determination, the best evidence of the fair rent for a dwelling house may be the rent registered for such comparable properties: the rent so registered will naturally have excluded any scarcity element. Where there is no comparable property, or no rent for it has recently been registered, the best evidence of the fair rent would seem to be evidence of the market rent for the type of dwelling house less such percentage as appears to represent the scarcity element in the rent, if it is substantial. A fair return on the landlord's capital investment may be a guide or check on rental values but it is by no means conclusive." In the same case Lord Chief Justice Parker said: " It must surely be of the essence of the whole scheme that there should be uniformity, and no doubt as the volume of registered fair rents increases in the future no one will go to market rent less scarcity, they will go straight to the enormous volume of fair rents that have been registered."

Gross values provide some basis for assessing comparability. An analysis of about 22,000 registrations of fair rents, for which case records had reached the Department of the Environment between January and September 1971, showed that the proportion of dwellings for which the fair rent exceeded 2.5 times the 1963 gross value was 10 per cent, and that the proportion for which the fair rent was less than 1.5 times gross value was 9 per cent. Analysis also revealed that in 9,980 cases the fair rent was equal to, or exceeded, twice the gross value of the dwelling concerned, but that in nearly half of these cases the fair rent was less than 2.2 times the gross value (parliamentary answer, 1 March, 1972). (See too, Francis Committee, p. 26, for some more comprehensive, but earlier figures.) Gross value is by definition, the rental value of the dwelling, but there are certain points of contrast with " fair rents." For " fair

rents " a weekly rent is determined: for rating valuation, a yearly rent is determined. In the case of " fair rents " tenants' improvements are to be ignored; in the case of rating valuation they are to be included, that is, if there are tenants' improvements then, all other things being equal, the " fair rent " will be less than the gross value because the value of the improvements will fall to be deducted.

In the case of " fair rents " there is a triennial rent review. A gross value assessment can be reviewed at any time, allowing for the tone of the list. Above all, rating valuation is made within actual market conditions, whereas " fair rents " entail a discount to the extent that the market rent is substantially inflated by scarcity, as defined. Also, gross values rest on the assumption that the landlord is responsible for internal decoration. (If the council is not, and the tenant is, then, by analogy with the appropriate factors by which gross values were multiplied in order to produce rent limits under the Rent Act 1957, the rent would be reduced by one seventh.) The 1973 valuation lists, forecasting market rental values in 1973, seem likely to produce gross values on average about 2.4 times the 1963 gross values. Therefore, " fair rents " are likely in many cases to be approximately 2.4 times the present gross value, less discount for scarcity appropriate for the area concerned. The *Family expenditure survey* for 1970 shows that local authority tenants paid more in 1970 in average weekly rates than private tenants, £0.74 as compared with £0.61 in England and Wales, and £0.99 as compared with £0.65 in Scotland. However, council properties tend to have lower gross values. This is a practice upheld by the lands tribunal, on the basis of the feeling that private properties could command a higher rent than similar council properties.

Gross values must, however, be used with care. As the Director of Housing in Birmingham stated in his report: " While gross values provide a fair basis of comparison as between one dwelling and another in terms of size and amenities (such as central heating) little, if any, regard is had to differences in locality, so that similar dwellings tend to have the same gross value wherever they are situated." He also states: " The criteria used in determining a level of rents which could be recommended as fair, has led to the conclusion that a basic rent for a modernised pre-war house should be in the region of twice the 1963 gross value. From this, it follows that pre-war houses, which have not been modernised, should have a lower multiplier and recently completed dwellings to full Parker Morris standards, with central heating, a corresponding increase." Paul Channon has stated that " authorities may find it helpful to have some regard to gross values." Indeed, in dealing with applications for increases in October 1972 to be lower than £1, the government has taken into account the relationship between gross values and the rents of private properties registered in 1971.

Cost is also an indicator. " Council tenants will no longer be liable to rent increases resulting from the state of their authority's housing revenue account or the size of its house building programme. The rent of the tenant without a rebate will no longer be affected by the rebates granted to other tenants," the tenant without a rebate may simply have to pay from his rent for the rebate granted to other tenants! " Nor will it be affected by the extent to which the housing revenue account is made to bear part of the cost of slum clearance or of the community benefits connected with council housing." (This paragraph from the white paper was virtually repeated by the minister, Lord Drumalbyn, in the House of Lords.) The tenant of a pre-1960 council house, already paying a rent in excess of the cost rent for his dwelling and repeatedly, because of rent pooling, being faced with paying an increased rent to meet an increased cross subsidy to tenants in more recent, more expensive dwellings, might be forgiven for concluding that the process of enlarging the differential between the cost rent for his dwelling and the rent he is called upon to pay would now cease. There is no point in accusing the government, now that the Act is law, of being disingenuous, if one can more profitably throw back their words at their face value in the faces of the government's creatures, the rent scrutiny boards.

Under the previous legislation, namely the Housing Act 1957, local authorities were under a duty to charge reasonable rents overall, and this enabled a higher than reasonable rent to be charged for particular properties because of the operation of rent pooling. A fair rent should, by definition, not be higher than a reasonable rent, but because properties are now to be examined individually, might be lower in the case of unimproved old dwellings.

High costs should not, however, necessarily be taken into consideration. Multi-storey flats cost more to build and considerably more to manage than houses, but because there is a growing resistance to the acceptance of flats and increasing pressure from tenants to be transferred to houses, the " fair rents " of flats should, assuming all other things to be equal, be less than those of houses (although gross values are higher for flats than houses).

Again, bungalows and flats for occupation by the elderly or the physically handicapped and disabled tend to be more expensive, but because of their restricted occupation " fair rents " should, if anything, be lower.

Julian Amery had said that " in many London authorities, pooled historic cost rents are above fair rents." Peter Walker too said, on third reading, that " pooled historic cost would result, in certain places, in rents far higher than the fair rent level." If the pooled historic cost can be above the " fair rent " level (and why, on this occasion, should one disbelieve the ministers?) then the individual cost rent of the more recent, more expensive dwellings can be greatly above " fair rent " levels.

Finally, in relation to possible costs, in a context of increasing rents, existing rent structures can be of great help in indicating differentials. Labour councils will wish to endeavour to give their tenants as good value as possible for the rents they have to pay, and, in areas of housing revenue account surplus or potential surplus, to reduce tenants' other housing charges and costs, including rates, by transferring any items they can from the general rate fund or capital to the housing revenue account.

The relevance of the level of average earnings in an area should be argued, now that the government has placed itself in the position of a monopolistic landlord, and linked to that, it must be urged that rents should not be such as to result in a substantial number of tenants, including those on average earnings, being eligible for rebate. The Director of Housing in Birmingham in his report stated: " Figures have been obtained of average earnings in the region. Your department do not consider that fair rents fixed in accordance with the definition in clause 50 could be at a level where a large proportion of the tenants are forced to apply for a rebate. If the definition of fair rents in the clause implies that the market, in terms of supply and demand, is roughly in equilibrium, then the price of the rent which people would pay in these circumstances would not be at such a level that the majority would require assistance, by way of rebate, to meet it." The government has recognised (through Lord Sandford in the House of Lords debates) that the general level of earnings in an area is a relevant factor and that it can be applied as a test of some sort and may have some value. It should be borne in mind too, whom it is that local authorities are obliged, by statute, to rehouse, namely those living in slum clearance areas and those living in insanitary or over crowded conditions or having large families.

The factor upon which the government now places most reliance is comparability with the private sector. (See, for example, Paul Channon at standing committee, column 1746, and his successor, Reginald Eyre on the report stage, volume 836, column 691 and circular 75/72, paras. 7 and 28.) This is not, however, written into the Act. The Director of Housing in Birmingham comments: " Relatively few rents in the private sector have been registered and many of these cannot be used for direct comparisons with municipal houses." Paul Channon, on the other hand, has said that " there are plenty of comparables among rents registered in Birmingham to enable the authority to rely on the comparability method." In Brent, since 1965, only 7,000 rents have been registered by the rent officer, an

average of only 1,000 per annum, and of these only 3 per cent were determined by the rent assessment committee. Moreover, no clear pattern emerges when the private rents fixed are expressed as multiples of the 1963 gross values, the factor of variation being between 1.30 and 3.90. Above all, the rents fixed by the rent assessment committee, average 2.30 times the gross value, that is, about one times the average gross value in the 1973 valuation list, so that the rents registered as " fair " in the private sector have often included a substantial scarcity element, as they so closely approximate to market rents in an area of acute scarcity. In Merthyr Tydfil, where there are 6,000 council tenancies, in seven years only 54 rents have been fixed in the private sector. In Hackney, virtually the only houses in private ownership are either awaiting slum clearance or were built before the first world war by such bodies as the Peabody Trust.

Of 1.2 million regulated tenancies, estimated by the Department of the Environment to have existed at the end of 1969, only some 192,360, that is under 14 per cent, had been the subject of applications to register up to the end of June 1970. (Francis Committee, p. 11.) There is no information available as to how many of the registered rents have been fixed by the rent officer and how many are the mere recording of terms which the tenant has accepted. By the end of 1970, only 18,000 post 1919 dwellings had been registered, and all purpose built council dwellings have been built since 1919. (Francis Committee, p. 24.)

The *Local Government Review,* on 1 July, 1972, stated: " Officers advising on council house fair rents will need to be wary of registered rents in the private sector . . . To determine fair rents for housing authority dwellings is a distinct problem, and there will be considerable risk in following too closely much of the private sector rent determination." In the same issue Frank Othick, the secretary of the Rating and Valuation Association, wrote: " Registered rents may contain many which reflect tenants' bargaining weakness through severe scarcity," that is, ones based on agreements rather than fixed. He also wrote: " Any list of recommended fair rents must have regard to the overall ' market ', which of necessity can exist only where tenants can reasonably face the rents offered. It is not a bit of use submitting a list of rents palpably beyond the reach of most tenants. And at the stage of estimating fair rents, it would be quite erroneous to have regard to a possible rebate."

The inappropriateness of applying " fair rents " to local authority dwellings was recognised by the National Board for Prices and Incomes (in its report *Increases in rents of local authority housing* in 1968, paragraph 64) and indeed they are very difficult to apply in the local authority context. Unlike a private landlord, a local authority does not need a fair rent from every dwelling to cover costs of maintenance and improvement; and the principles for determining " fair rents " do not contain objective criteria. As Della Adam Nevitt has written: " In effect, the 1965 Act created arbitrated rents . . . It was the arbitration system that was designed to be ' fair ' *not* the rent." (*Fair deal for householders,* Fabian research series number 297, 25p.) On the second reading of the 1965 Act, Richard Crossman likened the rent officer to the Ministry of Labour conciliation officer in the industrial field.

Although the Francis Committee claimed that " it is the general view that the system is working well " (page 8), there is much dissatisfaction that the system has not produced the results that the Labour government intended in 1965. Indeed, the Act has in large measure been manipulated by landlords to their advantage. (Perhaps the new Act can be manipulated by local authorities in large measure to minimise the disadvantages to their tenants.) Much of the trouble arose from the procedure followed by rent assessment committees of extrapolating from rents above control, where demand was supposed to equal supply, because most could not afford to demand. The Francis Committee reports (page 13) that " there has been a large increase in recent years in the number of landlords' applications." 85 per cent of tenants' applications result in a reduction

of rent, but a majority of all applications result in increases, because 70 per cent of all applications are by landlords, and 90 per cent of their applications result in increases (page 16). Out of some 101,000 cases during the period between January 1966 and March 1970 that were analysed, 30.2 per cent of rents were reduced, 61 per cent were increased and 8.9 per cent remained unchanged. The committee concluded (page 29) that from the outset the annual combined total of increased and confirmed rents has exceeded the number of reduced rents, and since 1966 the proportion of cases where the previous rent was increased has substantially, and latterly greatly, exceeded that of cases where the rent was reduced. They further concluded that over 40 per cent of cases where the previous rent was increased, the extent of the increase was in excess of 50 per cent of the previous rent.

The new Act provides that in determining the rent for a housing revenue account dwelling " the fact that it is vested in a public body shall be disregarded." The new Act also introduces a feature not to be found in the legislation relating to private tenancies, by providing that in determining the rent, consideration must be given to the return that it would be reasonable to expect on the dwelling as an investment in any case where such consideration would be given in the case of a private dwelling. This, of course, is thoroughly obnoxious, but it is also very difficult to apply. What is to be the percentage return? 6 per cent or 8 per cent? And upon what is the return to be based, cost, current value, or what? The position could be quite horrific in an area with commercial redevelopment potential.

Moreover, the market price of houses generally is inflated by the tax relief that an owner occupier is able to obtain on his mortgage, because of the attraction of additional resources into the market, and will be further inflated by an estimated 350,000 council tenants leaving to buy because of the increased rents; and the value for sale of local authority houses would depend upon how many were put up for sale at one time. Above all, when is such consideration given in the case of a private dwelling? Although the provision is offensive in principle in the case of public dwellings, and particularly so when it is not applied in terms to private dwellings, the strategy must be to argue that the circumstances are such that consideration would not be given to the investment return in the case of a private dwelling.

Paul Channon has said that " considerations of these kinds are rarely, if ever, the main method of determining the fair rent in the private sector. Where it enters into the determination, it normally does so in a subsidiary and ancillary fashion." Again, Mr. Channon said that " given the present law it is unlikely that anyone assessing a fair rent for a council dwelling will be able to use the investment return test as the main method of assessing a fair rent. Comparability will be used as the main method." (See too, circular 75/72, paragraphs 25 and 49.) In *Crofton Investment Trust Ltd. v. Greater London Rent Assessment Committee* (reported at (1967) 2 Q.B. 95) Mr. Justice Widgery said that the rent should not go above a fair return on the capital value of the investment, that is the construction costs.

In relation to services, Paul Channon said: " This clause (clause 58) means that the local authority, in the first instance, and the rent scrutiny board subsequently, must look at the values of dwellings, including services. If services are provided, the fair rent represents the fair rental value of the dwelling with those services. The value of a service may, in one case, allow for reasonable profit in the cost of providing the service. In another case, it may be considerably less than the cost of providing the service itself . . . In a new council flat in a tall block, the fair rent will often be less than the cost rent." All services are potentially significant for " fair rent " purposes, whether or not the service charge is reckonable for rebate. The " fair rent " may be variable according to the cost of the service.

In many areas it will be crucial for the scarcity element to be stressed by local authorities, who know much better than any Whitehall appointees about the shortage of accommodation in their area. The

Francis Committee stated (page 62) that as far as registered rents were concerned, they could probably conclude, " generally speaking, that registered rents are, on the average, about 20 per cent lower than the related market rents." The committee found, however, that it was much greater in areas of stress, for example, 40 per cent in Notting Hill. Harry Samuels, chairman for 21 years of the Islington and East London Rent Tribunal, wrote in a letter to *The Times* on 20 June, 1972: " The allowance for scarcity of 20 per cent average now being given, has little relevance to a market which is soaring daily." He then cites an example where " the true scarcity value " was well over 50 per cent.

The Institute of Rent Officers told the Francis Committee: " Essentially it is a matter for opinion whether a rent is inflated by an excess of demand, and, if so, to what extent." The committee commented (page 58): " Certainly, it is now generally, if not universally, accepted that it is not possible to quantify the scarcity element directly. Initially a practice arose of assessing the scarcity element in terms of a percentage of the market rent, such as 5, or 15, or 33⅓, or 40 per cent ; but this practice has long since been abandoned."

The committee also pointed out that " very little evidence is submitted to rent officers and rent assessment committees on the issue of scarcity. Such evidence is hardly ever presented by tenants or individual landlords . . . The result is that rent officers and rent assessment committees have to rely a great deal on their own knowledge of the locality. Rent officers will often be better informed about local conditions than members of rent assessment committees, and no doubt the latter for this reason will attach much weight to the rent officer's views on scarcity. It is obviously desirable, however, that at least one member of the rent assessment committee should be reasonably familiar with housing conditions in the locality " (page 59). In assessing scarcity, regard will have to be had to the size of the council's waiting list, the degree of homelessness, the prevalence of over crowding or multi-occupation, or of the displacement of a large number of furnished tenants, etc.

One of the most vexed questions in considering scarcity is distinguishing between excess demand, which is generated by a shortage of rented accommodation, from excess demand which is attributable to " amenity." Difficulty arises from the use of the same word " locality " both as a circumstance to be considered in determining the rent and in relation to the shortage of rented accommodation. The Francis committee explained (page 61) that " the word ' locality ' in subsection 2 [the substantial scarcity discount provision] has been interpreted by rent assessment committees in a sense much wider than that to be normally attributed to the same word in subsection 1 [the circumstances to which regard must be had in determining the rent provision]. ' Locality ' in subsection 1 will normally, though not always, mean the immediate locality, because as a rule only the character of the immediate neighbourhood is likely to affect the value of the house. It is reasonable to infer, however, that the word ' locality ' in subsection 2 is used in a much more extensive sense." The London panel of the rent assessment committee had told the Francis Committee that they had taken the word " locality " in subsection 2 to mean, not the mere vicinity, but the area within which persons likely to occupy this class of accommodation, having regard to their requirements and work, would be able to dwell. This interpretation seemed to the Francis Committee to be absolutely right, but they continued that, even so, " the difficulty must then remain of determining how much of the demand arises from ' amenity ', and indeed of what is meant by ' amenity ' in this context."

3. implementation

It should by now be apparent both that "fair rents" is a very malleable concept and that there is considerable ammunition available to local authorities in disputes over rent levels. The review of rents also provides, incidentally, an opportunity for ironing out anomalies in the structure, and for a detailed liaison with tenants over the setting of their rents. Councils, in applying the criteria contained in sections 50 and 57 of the Act in relation to provisional assessments, will no doubt wish to have before them locality maps, displaying subject properties in relation to local amenities, and information in respect of individual properties as to the address, age of the property, gross and rateable values, the description (for example, third floor flat), the form of construction, the site details, the manner of heating, the general state of repair, the superficial area of the house, the present rent, and the initial costs of site acquisition, of construction and of subsequent major improvements.

In six years rent officers and rent assessment committees have registered approximately 200,000 private rents. The total cost of administering rent regulation since 1966 has been £5,154,162 in respect of 224,012 dwellings, that is approximately £24 per dwelling. The Department of the Environment expects each rent officer to deal with about five properties per week. 407 officers in England and Wales registered 50,421 dwellings in the first half of the financial year 1971/1972, an average of one fair rent for one dwelling per working day. Local authorities will now be expected to assess provisionally over five and a half million rents in the six months up to 9 February, 1973, that is, at a speed 300 times greater than has applied in the private sector. The GLC alone has 200,000 properties. London boroughs have 400,000. Birmingham has 160,000 properties, of which 30,000 to 40,000 are individually acquired properties. Manchester has 80,000 properties. In Sheffield, since March 1966, three rent officers have received 2,500 applications in respect of private properties, of which 1,700 have been assessed. Sheffield council will have six months in which to assess the rents of 74,000 council tenants.

The government's answer is interesting. They say that six months is an adequate period for local authorities because they are not comparable with rent officers, and the reason why the government say they are not so comparable is that the local authorities already know their properties. In disputes with the rent scrutiny boards local authorities should thus emphasise strongly that they know their properties whereas the boards do not. The government has in mind that local authorities will consider differentials as between tenants, and that the rent scrutiny boards will harmonise the level of rents with rents outside, that is with rents proposed by neighbouring authorities for their tenants and with private registered rents in the authority's own area. Lord Drumalbyn has said (in the House of Lords debate) that "it is the local authority that will judge what the relativities are".

The rent scrutiny boards are not given a specific time limit for their part of the operation, which starts ten months after the Act becomes law (the six months given to local authorities for their provisional assessment, plus the four months given to them for receiving and reconsidering all their provisional assessments in the light of tenants' representations), but the government clearly anticipates that they should not take more than six months either, after which a local authority whose proposals have not been accepted has two months in which to make representations. Paul Channon has said that "the fair rents of dwellings covered by the assessment might not be finally determined until 18 months after the date of the coming into force of the Bill." Julian Amery has said that "the very latest date at which fair rents could be determined would be the beginning of 1974," and "the determination of fair rents will have been fixed, I should have thought, in 90 per cent of cases, in the course of 1973." If local authorities make out strong cases, based on a broadly common approach and their own local knowledge, it is doubtful to what extent rent scrutiny boards will be able to achieve very much more than ensuring comparability as between different authorities. In other words there could be a major differ-

ence depending upon whether the initiative is taken by local authorities in making out reasoned cases, taking into account the representations of their tenants, to which the rent scrutiny boards have to respond, or whether the local authorities leave a vacuum resulting in the initiative being taken by a monopoly pricing structure in the form of rent scrutiny boards.

When the Bill was presented to parliament these bodies were called rent scrutiny committees, by analogy no doubt with the rent assessment committees in the private sector, but the term " committee " has now been replaced by the word " board." This was as a result of representations made by the council on tribunals, who " expressed strong objections to some features of the department's original proposals for giving rent assessment committees the responsibility for scrutinising the application of the ' fair rent ' principle to local authority housing in England and Wales. We considered that, if rent assessment committees were to play this part in the determination of these rents, it was essential that they should follow a judicial procedure and hear both sides fairly. To use them in the one sided manner proposed by the department would in our view be likely to compromise their reputation as impartial adjudicators and discredit the whole ' fair rent ' system of adjudication." Julian Amery pointed out that rent assessment committees were " under the direct supervision of the council of tribunals by virtue of paragraph IX of schedule I of the Tribunals and Inquiries Act 1971. However, the two types of body will operate under different types of procedure. As a result, the council on tribunals presided over by Baroness Burton has told the government that their title should be made quite significantly different . . . The rent scrutiny boards will not be subject to the council on tribunals in the way that rent assessment committees will be. They are administrative and executive rather than judicial." Another minister, Lord Sandford, has described their rôle as a " valuation exercise." This is strange, as the number of professional valuers on the rent assessment panels from whom the membership of the boards will be chosen, is restricted to one third.

The Law Society's *Gazette* commented (December 1971): " This procedure contrasts vividly with the procedure in the private sector. Although informal, the latter retains the element of natural justice at all stages . . ." The Act plainly states that the rent scrutiny board shall not be obliged to consider individually the rent of any particular dwelling to which an assessment relates and shall not be required to have regard to any representations made to them (for instance, by tenants) with respect to provisional assessments which have been submitted to them; and the government can give a rent scrutiny board directions as to which properties it is to consider and which properties it can " be taken to have considered " although it has not in fact considered them. Julian Amery has stated that " if the rent scrutiny boards had to have regard to representations from tenants, it would be able to test the validity of those representations only by inviting the local authorities concerned to comment on them, and by giving the authority and the tenants an opportunity of appearing before it, as happens in the private sector. That would result in proceedings between tenants and the local authorities before the rent scrutiny board. The whole procedure of the rent scrutiny board would change from its administrative character into something which would make it difficult for it to complete the determination of fair rents without serious delay."

The government, in pursuit of its aim of comparability of public rents with private rents, is anxious for local authorities to consult rent officers, but the Institute of Rent Officers considers that " a ' consultant ' rôle of this nature could be incompatible with our status and function under the rent Act."

" Fair rents," therefore, in the public sector are fundamentally different from fair rents in the private sector. Fair rents in the private sector were introduced as an adjunct to the granting of security of tenure to private tenants and to give some measure of protection to tenants who at that time enjoyed none, whilst recognising that private landlords should receive an

income to cover their costs and give a modest return. Rents are arbitrated against the background of the prevailing market, and the ceiling is the amount the landlord demands, which may, however, be reduced. " Fair rents " in the public sector for the first time introduces the element of profit into local authority housing and the concept is designed to ensure that higher rents should be charged than the landlord seeks or is willing to impose.

Private tenants and landlords are both entitled to make representations to a rent fixing body, namely the rent officer, and both enjoy a right of appeal. In the public sector there is no right of appeal for either party, and the body that fixes the rents, namely the rent scrutiny board, is not obliged to hold a hearing or to receive representations from the tenant. The tenant can merely make representations to his landlord, who is deprived of decision making power. The council tenant, unlike his private counterpart, is not to have his case considered with individual care, and indeed time is not allowed for that.

Moreover, in the private sector no prejudgment is made as to the decision, whereas in the public sector the government writes into the Act the assumption that the great majority of rents are more than £1.50 a week below the " fair rent " level. (That is, both the £1.00 a week increase in October 1972 and the 50p a week increase in October 1973 will have been imposed, before " fair rents " will have been determined.)

Indeed, ministers have said that in most cases it is unlikely that the increases towards the " fair rents " which will take place before the " fair rents " are determined will result in rents above the " fair rents," and that the question of a repayment, because a higher rent than the " fair rent " is paid, will not be likely to arise in many cases on the basis of the definition of " fair rents " in the Act (see, for example, House of Lords debates, volume 332, columns 719 and 720). The views of ministers, however, are not what local authorities or rent scrutiny boards have to consider, but merely the terms of sections 50 and 57.

Conversely, however, since " fair rents " are to be revised triennially, even though the level is determined by the rent scrutiny board and not the minister himself, any reduction by the minister of the £26 average increase per dwelling in the first financial year, as well as setting a more satisfactory context for the deliberations of the rent scrutiny boards, augurs well for an even lower average increase (if any) in the second and third years than in the first. (If consistency is assumed, an average increase in the first year of 55p, rather than £1, in Brent, means an average increase of 12½p rather than 50p, in the second year.)

In other words, local authorities obtaining a reduction in October 1972, have an advantage that should reverberate through the first determination of " fair rents " and the second and third stages of progression to " fair rents ", an advantage that should be pressed home. Justified pique at being deprived of the ultimate responsibility (subject to the district auditor) for fixing reasonable rents should not blind local authorities to the fact that they still have a significant, albeit reduced rôle, in the fixing of rents, and that if they opt out of that rôle the results are likely to be even less to their taste and the taste of their tenants than if they pursued an interventionist policy. This has already been demonstrated by the successes achieved in obtaining reduced increases for 1972/73, and that is only the first stage.

Fixed term tenancies granted before 19 July, 1971 (the date of publication of the white paper) and property acquired with a life expectation of not more than ten years are no longer subject to the increases. In the case of dwellings outside the housing revenue account (for instance, dwellings bought under the Education Act or the Town and Country Planning Act) authorities may wish to bring them within the housing revenue account, if there is likely to be a substantial advantage in terms of rising costs subsidy, but otherwise to exclude them from that account and thus, however anomalously, from the aegis of the rent scrutiny boards and the considerations inherent in " fairness " as distinct from reasonableness.

The triennial review is subject to the duty of an authority to determine a new rent in case of change of circumstances, and care must be taken to consider all the implications in relation to any alteration in obligations, for example, in respect of repairs or decoration (see, for example, Paul Channon at standing committee, column 2785). No authority can impose a new lodger charge but any lodger charge existing when the Act came into force is treated as part of the rent for the purpose of the " progression to fair rents," even if the lodger subsequently vacates. As regards the apportionment of increases between dwellings before " fair rents " are determined this is a matter for the local authority. If a local authority declines to collect a mandatory increase then any deficit on the housing revenue account will thereby be increased and thereby the amount of government subsidy payable *prima facie* increased, but power has been taken by the government in section 99 of the Act to enable them to avoid having to pay a larger subsidy than they would have paid if the increase had been collected.

Therefore, the amount of any increase foregone would entail a rate fund contribution to the housing revenue account (entailing no doubt, unless budgeted for, a supplementary rate) or a severe cut in expenditure, or both. To the extent to which a rate fund contribution was involved, the question of surcharge would arise, under section 228 of the Local Government Act, 1933; and an extraordinary audit might be directed by the secretary of state relating to the current year of account. It appears that if a surcharge were to recoup the loss then a commissioner, if one were to be appointed, could not recoup the loss from the tenants, but that if, on the other hand, the commissioner were to recoup the loss before a surcharge were made, there would not be a surcharge. In practice, surcharge would be almost inevitable for any councillors responsible for sustained outright defiance. There could be a loss of income which the commissioner could not make good (and to the extent to which he did make it good, nothing would have been achieved for the tenants) and that loss would entail an inevitable partial loss of subsidy (theoretically in the event of non-compliance, all subsidies could be withdrawn—a very formidable sanction), in addition to which there would be the expenses of the commissioner. It would be entirely up to the government whether it chose to appoint a commissioner and if so, when it chose to set the machinery in motion. (If a commissioner is appointed, the elected members are simply replaced as the housing authority, into whose shoes the commissioner steps.) The existence of the default powers would not exempt an authority from the consequences of default.

Under section 95 of the Act the secretary of state first makes informal enquiries. Then he notifies the authority in question that he is considering placing a default order upon it. Next a month elapses for representations by the authority. Finally, the secretary of state may make a default order " after such inquiry as he may think fit." It is not obligatory upon him to hold a public enquiry, as, for example, is provided for in the default powers under the Housing Act 1957, which the government used as a precedent. Once a default order is made, the government has a choice of sanctions open to it, for example, the appointment of a commissioner, conferring upon him the housing management functions of the authority, and/or withdrawal of subsidies and/or *mandamus*.

The section enables the secretary of state to confer upon a commissioner not only the functions in respect of which the local authority has defaulted (for example, the imposition of a mandatory rent increase, the provisional assessment of " fair rents " or the charging of " fair rents " once determined) but also any other functions of the authority which he considers necessary or expedient to enable the commissioner to discharge the functions in respect of which there is a default. The determination and collection of rents is a central matter of housing management, bound up with the granting of rebates and the responsibility for maintaining and improving the dwellings, and capable of being bound up in a Tory mind with policies in relation to allocation of tenancies, selling council houses and the council's future house building programme. Responsibility for

one aspect of housing can lead on to wishing to assume responsibility for other aspects, which are to some degree inter-dependent and inter-related, financially, administratively or otherwise. What, perhaps, must be borne in mind even more than what a commissioner might do that a socialist council would not, is what a commissioner would neglect to do that an enterprising socialist council would do.

Just as the construction of the Act does not enable a local authority to implement parts of the Act, such as obtaining full subsidies, and avoid the implementation of other parts, such as mandatory increases, so too a local authority which washes its hands of one feature of its legal obligations under the Act is liable to find that it is deprived of other housing responsibilities and powers which its tenants and prospective tenants would prefer it to retain, or at any rate would very soon come to wish it had retained, once they had experienced a taste of a Tory commissioner.

Implementation was not a once and for all question solely in relation to the October 1972 increase. It is a question that will arise in relation to future mandatory increases, in relation to rents for new dwellings and in relation to the determination and ultimate charging of "fair rents." Also, it arises in relation to the collection of increased rents. Increasing the rents is one matter; the tenants paying them is another. An authority passing the appropriate resolution in relation to an increase, may encounter difficulty in collecting it, and in the secretary of state's judgment may be in default in not pursuing the matter significantly energetically. On the other hand, the only real sanction available is that of eviction, and where an authority is both housing and social services authority and has to cope with the consequences of its own evictions, it may very well have nowhere to accommodate recalcitrant tenants other than in the accommodation they already occupy. Moreover, the financial consequences of eviction are inevitably more drastic than the loss of a rent increase or even of a total rent, particularly where children have to be taken into care.

One of the most important matters that will arise is the rents to be charged for newly completed dwellings. All dwellings already in the housing revenue account on the date when the Act came into force (10 August, 1972) fall to be included in the first provisional assessment. Dwellings which are either built or acquired by the local authority after that date will be included in the authority's next provisional assessment, which will take place at the triennial review. Until then, however, one of two positions may apply.

During the period between when the dwellings become dwellings in the housing revenue account and when the determination is made in respect of their first provisional assessment (that is, during the period before any "fair rents" have been determined by the rent scrutiny board for any of the authority's dwellings) the local authority is under a duty to charge a rent not less than the rent actually being paid for the comparable dwellings which they already have. Once "fair rents" have been determined in the first provisional assessment, the authority must itself without reference to the rent scrutiny board, "as soon as reasonably possible" determine the "fair rents" for dwellings more recently built or acquired (preferably after considering any representations from any tenants already in occupation) on the principles under sections 50 and 57 and, in accordance with the "firm guide line" levels set by the rent scrutiny board in dealing with the provisional assessment.

If the "fair rent" exceeds the rent level of comparable dwellings (because the current rents for those dwellings were higher than "fair rents" turn out to be) a refund must be made. If, however, the "fair rent" proves to be higher, then the authority has an option. It could, if it wished, put the rent straight up to the "fair rent" level, at any rate if the dwelling is built or acquired after the rent scrutiny board's determination on dwellings included in the first provisional assessment, when the "fair rent" level would be known. Alternatively, whether the dwelling was acquired or built during the interval between the coming into operation of the Act, which fixes the

dwellings to be included in the first provisional assessment, and the determination by the rent scrutiny boards, when the "nearest comparable dwelling" principle must be applied, or whether the dwelling was acquired or built after the rent scrutiny board's first determination but before the second provisional assessment on the first triennial review, when the option is open to a Tory council or to a commissioner of proceeding straight to "fair rents," a Labour local authority is able, provided it does not exceed the "fair rent," to charge, or continue to charge, a rent fixed in relation to the nearest comparable dwelling in its stock. Thereby new, as well as existing, tenants have the benefit of the phasing provisions.

The importance of this option remaining in the hands of any local authority with a substantial waiting list and/or slum clearance, redevelopment and rehabilitation schemes can scarcely be exaggerated. In other words, there is a floor below which rents for new dwellings cannot be charged; they cannot be less than that of the most nearly comparable dwellings. There is also a ceiling; they cannot be higher than the level of "fair rents." Although Julian Amery has said that: "in most, though not in all cases, the fair rent of newly built dwellings is likely to be less than their cost as reflected in the housing revenue account," nonetheless, in all cases of new dwellings where the "fair rent" exceeds the rent of comparable existing dwellings a Labour council, if it has not relinquished control of the situation, can opt for the floor, and not for the ceiling. The floor may well be one which many prospective tenants will not be able to contemplate with equanimity. All the more reason to avoid the ceiling. The Act very much circumscribes the decision making powers of local authorities. It is in their hands whether those powers which they retain are to be exercised by them for the benefit of their residents or are to be at the mercy of a Tory government appointee. Of course, the level of current rents for comparable existing properties will depend on the extent, if any, to which the local authority has been successful in obtaining a reduction in the average increase in October 1972 and how it apportions such average increase, and indeed how it apportions any average increases in October 1973 and October 1974.

4. rebates and allowances

The only authoritative survey on the incomes of council tenants was that carried out by the National Board for Prices and Incomes in its report published in 1968 (*Increases in rents of local authority housing ;* Cmnd. 3604), which surveyed 20 local authorities in Great Britain. It found that non-earning pensioners and tenants drawing supplementary benefits below pensionable age comprised no less than 35.3 per cent of all tenants. A further 5 per cent were drawing national insurance, sickness or unemployment benefit during the week of the survey. In income terms 1.3 per cent of husband and wives had a joint income of over £40 per week, while 50 per cent had a joint income of less than £20 per week. According to a minister (Lord Sandford) the average *household* income on a council estate in October 1969 was, based on the recent family incomes survey, £28.60 a week. Yet at 31 March, 1971 only about 64 per cent of local authorities in England and Wales operated rent rebate schemes. This does not, however, mean that those authorities that did not operate such schemes were necessarily backward. On the contrary, many have maintained rent levels which have not required rebates. At the moment about 10 per cent of local authority tenants receive rebates. However, such are the levels of rents likely to prove to be under the Housing Finance Act that the government estimates that by 1975/76 about 40 to 45 per cent of all council and new town tenants in England and Wales might receive rent rebates and about 30 per cent of all private tenants rent allowances.

With Brent council's existing rebate scheme and current rent levels, rebate and social security cases are approximately 75 per cent of lettings of post 1968 properties let at Tory rent levels, and the new Act provides both for rent increases and for a rebate scheme that is likely to be more generous initially in about two thirds of cases. In Camden, from a sample of 581 rebated tenancies, it was estimated that two thirds of tenants will be treated more favourably under the new national scheme. More precisely the sample analysis showed that 191 tenants would suffer an increase in rent by operation of the proposed scheme with an average increase of 65p; and, although existing tenants are protected by the no detriment provision, the circumstances in which rebates will be less favourable under the new national scheme are particularly important in the case of new tenants, because the Camden report showed that for rents of £10 per week (and "fair rents" are estimated at £25 per week for Branch Hill in Camden) the rebated rents would all be considerably in excess of those under the existing Camden scheme, to the extent that rent plus rates could represent as much as 58 per cent of income. The most important factor in which the new national scheme differs from many existing rebate schemes is in tying the rebate not only to the tenant's financial circumstances, but also to the rent for the property, so that if the tenant's financial circumstances remain the same and the rent for the property increases in accordance with the basic philosophy of the Act, the tenant pays more in rent even after rebate.

In effect the Act provides for two rebate schemes. If the gross income (including family allowances and Family Income Supplement, FIS) is equal to or exceeds the needs allowance then the tenant pays 40 per cent of the "fair rent," plus 17 per cent of all income above this level until the "fair rent" level is reached. In other words for each pound that a person's income exceeds the needs allowance he will pay an extra 17p towards his rent. In addition, of course, tax and national insurance contributions take about 33 per cent of each additional £1 earned. If on the other hand the total income is less than the needs allowance, the 40 per cent of the "fair rent" level will be reduced by 25 per cent of the difference between the needs allowance and the income. A low earner first loses Family Income Supplement. Then he starts to pay income tax. Next he pays graduated national insurance contribution. Finally, he loses rebates on school meals, prescription charges, general rates and now rents. A man with two children earning £18 a week who makes another £1.50 in overtime could find himself after the reduction of his rent rebate or allowance and other benefits keeping only 8p of it.

The Act defines the concept of "minimum weekly rent" as £1.00 or 40 per cent of the weekly rent, whichever is the greater. The national average weekly rent as at 1 April, 1971, according to the statistics published by the Institute of Municipal Treasurers and Accountants, was £2.48 and the Act's alternatives of £1 or 40 per cent correspond at that point (£2.50). (The South East regional average at the same date was £3.14 and the GLC average £3.56). In the white paper it was assumed that one sixth of income represented a reasonable proportion to be applied in payment of net rent; and Paul Channon said in standing committee on 20 January, 1972 that a family "should not be called upon to pay more than 10 per cent of their income in rent, where their income equals the needs allowance." However, a minimum rent of 40 per cent may cause hardship on the criteria stated by the minister. In the case of a husband and wife and one child occupying two bedroom accomodation, the needs allowance £13.50 plus £2.50, equals £16, and therefore 10 per cent of the needs allowance is £1.60, which represents 40 per cent of a rent of £4.00 per week, so that any rent of over £4.00 per week would cause hardship. In the case of a husband and wife and two children occupying three bedroom accomodation, the needs allowance is £13.50 plus £5, equals £18.50, and therefore 10 per cent of the needs allowance is £1.85, which represents 40 per cent of a rent of £4.62 per week, so that any rent of over £4.62 per week would cause hardship. In the case of a husband and wife and five children occupying five bedroom accommodation, the needs allowance is £13.50 plus £12.50, equals £26, and therefore 10 per cent of the needs allowance is £2.60, which represents 40 per cent of a rent of £6.50, so any rent of over £6.50 would cause hardship.

Under section 20(5) of the Act the secretary of state, may, on the application of an authority, authorise a lower minimum rent (or a higher maximum rebate or allowance). Paul Channon said in standing committee (column 739, repeated by Julian Amery at columns 934 and 935): "I should therefore like to give some assurance to the committee which I hope will meet the fears of honourable members. In considering applications for authorisations under clause 20(5) it will be the aim of the government to ensure that families with one or more dependent children, living in the typical dwellings of the authority concerned, should not be called upon to pay more than about 10 per cent of their income in rent, where that income equals the needs allowance." 40 per cent of many rents, particularly of new dwellings, could be very high, and such applications are of great importance.

In addition, authorities can improve on the national scheme provided that the cost is not increased by more than 10 per cent, although this 10 per cent tolerance does not attract subsidy and therefore involves two calculations being made. The 10 per cent tolerance can well be used to cover exceptional hardship cases on an *ad hoc* basis and to exclude from gross income such items as superannuation contributions, family allowances, and/or £2 of the income of any single person with a dependent child or children. Alternatively, the minimum rent provision can be reduced, or the scheme may be adapted so that as far as possible, all other things being equal, a tenant who is called upon to pay more in rates (rate rebates being less generous than rent rebates and allowances) will have a higher rebate in rent, so as to move towards those of equivalent financial circumstances paying the same amount in terms of gross rent, or transitional rebates and allowances can be improved.

A matter of importance in particular in connection with new developments is that the service charge element in rents is not always rebateable. What services will constitute part of the rebateable rent and which services will be a non-rebateable addition to the rent is a matter for the secretary of state to determine by regulations. The provision of lifts in multi-storey flats, the lighting and other services for common parts and areas, the provision of caretakers, the removal of refuse and the upkeep of communal gardens are likely to be rebateable, while master aerials, laundry services and community rooms are not likely to be rebateable.

Where the letting of a dwelling includes a garage, that is where the tenant takes the garage as part of the tenancy, and the provision of the garage is included in the rent payable under the tenancy, then whether or not the garage is physically incorporated in or attached to the house or flat in question, the whole rent, including the proportion attributable to the provision of the garage, will be eligible for rebate or allowance. Where, on the other hand, the tenant takes the garage on an optional basis, and it is let to him on a separate tenancy agreement, then no rebate or allowance would be available in respect of the rent payable under separate tenancy agreement for the garage.

The allowance scheme for private tenants (effective from not later than 1 January, 1973) must be identical to the rebate scheme for council tenants (effective from not later than 1 October, 1972). The main problem in the private sector is likely to be that of take up. Family Income Supplement has a take up rate of under 50 per cent after a publicity campaign costing £½ million. Birmingham has had a rent allowance scheme in operation for 18 months applicable to its 60,000 privately rented houses, and has so far had 250 successful applications. Lord Brooke of Cumnor, better known as Henry Brooke, the architect of the Tory Rent Act of 1957, made the extraordinary statement, in the debate in the House of Lords, that as far as he knew "the Birmingham scheme has been working well. Advantage of it has not yet been taken on a large scale . . . " Local authorities have important duties in relation to publicity. Private landlords too are under duties under the Act, which it will be up to local authorities to enforce. A landlord who grants a new tenancy of a dwelling to a private tenant on or after 1 January, 1973 must furnish to the tenant in writing and in a convenient form the statutory particulars of the allowance scheme currently operated by the local authority in whose area the dwelling is situated. Where a landlord is under a duty to provide for a private tenant a rent book, that is, in the case of a weekly tenancy, the landland must insert the statutory particulars of the allowance scheme in the rent book issued to the tenant. He must insert them in any rent book issued to the tenant after 1 January, 1973 before issuing it to the tenant. If the rent book was issued to the tenant before 1 January, 1973 the landlord must insert the statutory particulars in it not later than 30 June, 1973.

Furnished tenancies are excluded from rent allowances. The Francis Committee (page 29) stated that "the general picture regarding rents in the furnished sector is one where the furnished sector pays higher rents for inferior accommodation as measured by gross annual value and particularly in the stress areas." Table 29 of their report shows that the average rent, exclusive of rates, for furnished accommodation in the London area was £3.93 and that one third of the total income of the average furnished tenant was going in rent. The median rent for furnished tenants of £290 per annum compared with median rents for unfurnished tenants of £169 per annum, whereas the median income for furnished tenants of £870 compared with over £900 in the unfurnished sector. A local authority who wishes to provide a tenant with furniture may, under section 94 of the Housing Act 1957, grant an unfurnished letting (subject to rebate), and enter into a separate agreement in relation to the furniture.

Authorities may treat as if he were a private tenant any person occupying a dwelling let by them, other than a housing revenue account dwelling, and who would be entitled to a rebate if he occupied a housing revenue account dwelling and accordingly may provide in their allowance scheme for the grant to any such person of a rebate from his rent equal in amount to the allowance which they would have granted if he had been a private tenant. Local authorities are faced with a greatly extended administrative burden. For the first time they will provide allowances for private tenants whose rents will be increased by machinery which does not involve the local authority. The increases in council rents and the extension of means testing will increase the number of council tenants eligible for rebates. All rebates and allowances now have to be reviewed every six months.

Moreover, the Supplementary Benefits Commission will in future pay an allowance only sufficient to cover the minimum rent after the first eight weeks. The council will give a rebate or rent allowance of the difference between the minimum rent (40 per cent of the full rent) and the full rent. In 1968/69 allowances from the Supplementary Benefits Commission (SBC) amounted to £105 million for local authority tenants and £65 million for private tenants, a total of £170 million, £50 million more than the total of housing subsidies to local authorities in that year. The rent allowance subsidy will be 100 per cent from 1972/73 until 1975/76, but will then go down to 80 per cent from 1976/77 until 1981/82. The rent rebate subsidy will be 90 per cent in 1972/73, 85 per cent in 1973/74, 80 per cent in 1974/75 and 75 per cent in 1975/76 and thereafter until 1981/82. The cost of council and private rents hitherto met by the Supplementary Benefits Commission will therefore be met in future in part by ratepayers, and in some cases in part by local authority tenants, because when housing revenue accounts are in surplus as a result of "fair rents" (which may be the case over about half the country in the first year) and if the surplus is sufficient to cover them, it will be expected to meet the cost of rent rebates and even of private rent allowances, including much of the cost now falling on the Supplementary Benefits Commission (SBC). Where the housing revenue account is in deficit the rates will have to meet part of the cost of paying rebates, and after 1975 will also meet 20 per cent of the cost of rent allowances, again in substantial measure a cost now falling on the Supplementary Benefits Commission.

Local authorities will have a number of important discretions to exercise, of a kind similar to, but in some instances much more obnoxious and far reaching than those exercised by the Supplementary Benefits Commission. Where discretions are involved, rather than mandatory provisions, a Labour controlled authority can operate them or not operate them beneficially; assuming that it is a Labour council, rather than a Tory commissioner, who is in the saddle.

Under section 21 of the Act an authority may grant to a person to whom their rebate or allowance scheme applies a rebate or allowance of a greater amount than they would grant in strict conformity with the standard scheme if they consider that his personal or domestic circumstances are exceptional. It is for the local authority to determine, for the purpose of the rebate or allowance scheme, whether the tenant's rent includes any (non-rebateable) sum payable in respect of rates or for the use of furniture or for services, or as to the amount so payable; and indeed the authority has to determine the vexed question of whether a given tenancy is or is not a furnished tenancy, a question that perplexes many County Court judges. The mere fact of the rent book or a tenancy agreement being marked "furnished" is not conclusive, nor that the tenant has been to the rent tribunal. The test broadly is whether or not a substantial proportion of the rent is attributable to furniture or services, regard being had to the value of the same to the tenant.

Under schedule 3 paragraph 5(1), if some person, for example an adult child, who resides in the dwelling occupied by the tenant appears to an authority to have a higher income than the tenant, and the authority have (unspecified) grounds for considering that in *the special circumstances of the case* it would be *reasonable* to make their rebate or allowance calculations by reference to the income of that other person and not of the tenant, then they *may* treat that other person as the tenant and make such payments of rebate or allowance, if any, as ought to be made on that basis. Authorities with reasonable prospects of continuing Labour control will, no doubt, wish this discretion to be exerciseable at member level. It is also for the authority to determine for the purposes of the rebate or allowance scheme whether a person is a sub-tenant of the tenant or a non-dependant.

Under schedule 3 paragraph 17(2) it *shall be the duty* of every local authority, for the purpose of computing the amount of a rent allowance in respect of privately rented property, *if they consider* that the

tenant is in occupation of a dwelling larger than he *reasonably* requires, *or if they consider* that, by virtue of the location of the tenant's dwelling, its rent is *exceptionally* high by comparison with the rent payable under *comparable* private tenancies of *similar* dwellings in the authority's area, to *consider* whether they ought in *all the circumstances* to treat the rent as reduced by an *appropriate* amount, and if *in their opinion* they ought to treat it as reduced, to grant an allowance only in respect of the rent so reduced. This provision could be used in a wicked way, either against those who have remained in areas where they have lived for many years but which are fast becoming middle class colonies or against those who are being impertinent enough to stray from the ghetto. On the other hand, a Labour council, without in any way fettering its discretion or failing to go through the appropriate motions, can maintain a humane attitude as to what is reasonable. " All the circumstances " which are to be taken into account could include the difficulty or impossibility of the tenant obtaining reasonably suitable alternative accommodation. Other judgments which local authorities have to make in relation to rebates and allowances are contained in schedule 4, namely paragraphs 1(3), 2(2), 3(2), 3(4), 6(1), 12(1) (2) and (3) and 14(1)(c).

5. private tenants

Much of the attention focussed on the Tory Housing Finance Act has concentrated on the implications for existing council tenants. Private tenants, however, are no less hard hit. To a degree this is a matter of which local authorities must take account. The government made its intentions clear in its white paper *Fair deal for housing* (Cmnd. 4728): "For many years rent legislation has been unbalanced. Landlords . . . have been discouraged by the burden of rent restriction . . . The government intends to redress the balance of rent legislation" (paragraphs 22 and 23). The tenants of approximately 1.3 million controlled properties are to be decontrolled. Controlled tenants have by definition lived in their present homes for more than 15 years. In the case of houses which have already come out of rent control, increases have on average produced rents 2.6 times the previous rent. Houses will be decontrolled in groups at six monthly intervals from 1 January, 1973 to 1 July, 1975. The minister of housing, Julian Amery, said in parliament that "the timing proposed by the government is as rapid as can administratively be handled." Moreover, the rent increases consequent upon decontrol will be phased over only two years.

This is the context in which rent allowances have been introduced for private tenants. The then under secretary, Paul Channon, stated that what was "incontestably true is that the introduction of rent allowances will enable the period of phasing of rent increases consequent upon transfer from controlled to regulated to be shortened." Again, the government's approach is clear from the white paper: "Those who cannot afford the fair rent will be helped by a rent allowance from the community instead of a subsidy from their landlord." However, because of the provision for maximum rent allowances, some tenants will not be able to afford to continue to live in areas where they have lived all their lives in houses built for working class families.

Decontrol will occur regardless of whether or not one or more of the basic amenities are lacking, as is the case with 2.9 million dwellings (parliamentary answer, 23 May, 1972). This figure, of course, includes many dwellings already decontrolled under the notorious 1957 Tory Rent Act. The decontrol provision is the enemy of the provisions introduced by Labour's Housing Act of 1969 to encourage improvements to dwellings. Decontrol will occur regardless of the state of repair, unless the house has come up for formal classification as unfit as a result of one of the statutory procedures. Even the existence of a certificate of disrepair from the local authority will make no difference. The qualification certificates introduced by the 1969 Act will disappear also as block decontrol proceeds. In Lambeth, in 81 per cent of cases, qualification certificates have had to be refused on first inspection, because basic repairs needed to be carried out.

benefits for the landlord

Thus the government is withdrawing instruments in the hands of local authorities which are useful to raise and maintain standards. The new Act on the one hand, withdraws the tenant's right (subject in most cases, to the court ruling that the tenant is reacting reasonably) to veto improvements, where his means are such that he would not be able to meet the consequent increase in rent. On the other hand, the provisions for block decontrol, irrespective of the condition of the dwelling, will substantially reduce such pressure as there is upon a landlord to improve and maintain his properties. There will be a huge diversion of cash from tenants and from taxpayers into the pockets of the landlords, without any likelihood of improvement in the number of lettings (following the 1957 Rent Act, there was a *loss* of a million in the available number of lettings) and without anything to ensure basic improvements are made or necessary major repairs carried out. No longer will landlords have to wait until their properties are brought up to standard before they may increase their rents. When a local authority announces a general improvement area, or steps up its improvement effort, the private landlords will be able to reply that they can get a rent increase anyway.

It therefore becomes even more imperative that the main acting agents in the rehabilitation of old existing dwellings should be the local authority and responsible housing associations. Unfortunately and inevitably, the Act has contributed to an increase in values, and, where local authorities are able to purchase, the landlords will again benefit from the public purse. Speculation is rife. With sales and resales and property investors out to make a quick profit buying at inflated prices, never have the powers of prosecution conferred upon local authorities by the Labour government in its 1965 Rent Act (in consequence of an earlier period of Tory inspired Rachmanism) been more necessary. Moreover, where a local authority acquires, and the rent and the tenants' means remain the same, the local authority, in paying out the same amount in rent rebate as it had been in rent allowance, will be involved in a higher rate fund contribution, because rent rebates carry a lower exchequer subsidy than rent allowances.

In future, rents of tenants at present controlled, will be fixed by rent officers in accordance with the levels set by rent assessment committees. The membership of these committees consists of 366 surveyors and lawyers and 232 laymen. Of the London chairmen only five are laymen as against 57 valuers and lawyers. The Act provides that where a tenancy is decontrolled, the landlord must serve the local authority with particulars of the rent agreement; and, in any case, the local authority can refer the rent of a private tenancy to the rent officer, irrespective of any initiative on the part of the tenant, and bring to bear the expert evidence of its public health inspectors on the question of repair (which is one of the factors to be taken into account). There cannot, however, be a reference to the rent officer of a prospective rental before a letting has been made. Moreover, some enquiry as to the individual dwelling and its rent must be made by the local authority before it makes an application to the rent officer.

Intervention by local authorities in the matter of the fixing of rents of private dwellings becomes all the more important because of the removal by the Act of the provision in Labour's legislation that rents cannot be increased until the increase is approved by a rent officer. Rent increase agreements unsanctioned by the rent officer will now be possible in three situations: first, for the tenancy which comes out of control; second, for the tenancy already out of control for which no fair rent has been registered (under the previous law, the current rent cannot be increased unless a fair rent is first registered); and third, for the tenancy for which a fair rent has been registered and has been in force for three years. The tenant can still apply to the rent officer, but if he does not the rent can be increased without the rent officer being involved. "If the 'freezing' provision were to be repealed, there would be nothing to deter the landlord from demanding a higher rent and the tenants least able to resist authority (the old, the very young and the inadequate) would be driven by fear of the landlord to 'agree' the rent demanded. It is most improbable that those tenants most in need of help would apply to the rent officer for a fair rent to be fixed, or to any of the social agencies for advice."

Although controlled tenants are those most obviously and most drastically affected, those tenants already out of control are adversely affected also. Their rents are tied to the market and go up with the market, and the Act gives a savage twist to the inflationary spiral, not least by the precipitate decontrol provisions. The repeal of the "freezing" provision will mean that some rents will be lawfully charged, which will be higher than a rent officer would approve and these rents will influence those that rent officers do fix. In practice, the existence of rent allowances will without doubt lead to an escalation in rents. Moreover, it is by comparability with private rents that the government now seeks to have council rents set. The tenants who already pay the highest rents and who are the most exploited, namely the furnished tenants, will continue to have neither rent allowances, nor, much more important, security of tenure; and local authorities will continue to have to grapple with the consequences in terms of homelessness and other social problems.

6. future building programmes and subsidies

The government is threatening to send in commissioners to put up the rents; socialists are rather more concerned with putting up houses. The Tory chairman of the GLC has estimated that there is a crude shortage of dwellings in Greater London of 348,000; thousands of families are on the waiting list in every London borough. For many of the tenants living in over crowded and/or insanitary conditions in the private sector, or rendered homeless, the only hope of decent housing that they may be able to afford is the prospect of a council home. Yet, in many boroughs, the size of the waiting list is 15 or more times the annual number of available relets or casual vacancies in existing estates. Many areas are still in need of either comprehensive clearance or rehabilitation, involving a substantial degree of decanting to eliminate multi-occupation and secure environmental improvement. New building on an unprecedented scale is vital.

Tory Party policies

However, starts in the public sector of housing are now lower than at any time for over a decade. This is the immediate consequence of the election in the late 'sixties of Tory local authorities in most areas. This is in line too, with the views of the present government. The Secretary of State for the Environment, Peter Walker, said at the conference of Conservative housing representatives in August 1969, that he hoped councils would " resist the temptation to go on building more council houses for all sorts of seemingly good purposes." He also said in the same year, at the Housing Research Centre conference that " the ratio of council housing is much too high at the present level of wages." Although, in many areas, availability of land poses an increasingly acute problem, basically whether or not a local authority has had a vigorous house building programme has depended on whether or not it has had the will to have one, at any rate since Labour legislation has made available the financial wherewithal. Southwark, facing great difficulties in site acquisition, has about 20 times more dwellings under construction than wealthy Croydon with fewer land problems.

The Housing Finance Act does nothing to try to ensure that more council homes are built. On the contrary, it is designed to reduce the public investment in local authority housing. In 1970/1971, exchequer housing subsidies amounted to about £157 million and rate fund contributions to housing revenue accounts totalled about £60 to £65 million. For the same year, the value of tax relief provided in respect of interest paid on loans for house purchase was estimated to be about £300 million (parliamentary answer, 17 May, 1971). The total payments of subsidies, including improvement contributions to local authorities, new towns and housing associations in Britain amounted to £203 million in 1970/1971 (parliamentary answer, 21 December, 1971). The mortgage interest tax relief of £300 million, works out at approximately £60 per mortgaged house per annum. (A man in the highest surtax bracket borrowing at 8 per cent pays less than 1 per cent net in interest after tax relief.) The combination of exchequer subsidies and rate fund contributions amounts to approximately £39 per local authority dwelling per annum. The number of owner occupiers buying on mortgage, as distinct from those who already own outright, is about the same as the number of public sector tenants.

In 1969/1970, total subsidies credited to housing revenue accounts, in respect of new council house building, amounted to £128 million. The global sum debited to all housing revenue accounts, in respect of interest, was £450 million (parliamentary answer, 22 December, 1971). The equivalent of the income tax concession to owner occupiers on that sum is £135 million. About 80p in every £1.00 of rent paid by council tenants goes in interest. The cost of tax relief on mortgage interest paid by owner occupiers has risen from £75 million in 1962/63 (number benefiting 3.9 million), to £90 million in 1963/64 (4.0 million), £110 million in 1964/65 (4.1 million), £135 million in 1965/66 (4.2 million), £155 million in 1966/67 (4.4 million), £180 million in 1967/68 (4.5 million), £195 million in 1968/69 (4.6 million), £234 million in 1969/70 (4.7 million), £300 million in 1970/71 (4.9 million). In other words, it has quadrupled in eight

years and it is provisionally estimated at £340 million in 1971/72 with five million families benefiting.

Of the subsidies paid for local authority housing, about 2½ per cent are paid under pre-1946 Acts, about 20 per cent under Labour's Act of 1946, about 7½ per cent under the Tory Acts of 1956 and 1958, about 10 per cent under the Tory Act of 1961 and about 60 per cent under the Labour's Act of 1967. Under this latter Act, the cost to the exchequer of subsidies would have risen from the present cost of £157 million to about £370 million by the middle of the decade. The Tory member for Hemel Hempstead (James Allason) referred on the third reading of the Housing Finance Act to "the great difficulty which lies in the fact that housing subsidies under the 1967 Act are likely to increase to a quite unacceptable level." It evidently does not concern him or his colleagues that mortgage interest tax relief is rising at an ever steeper rate from a higher base, and will increase even more rapidly as prices soar. A borrower taxed on earned income is assisted to the extent of 38.75 per cent (the standard rate) minus two ninths (earned income relief) on the interest element in repayments, that is 30.25 per cent. A borrower with unearned income, taxable in full, has relief to the extent of the full 38.75 per cent. (Someone not liable for income tax at all is given 2.5 per cent relief on 8.5 per cent by the option mortgage scheme introduced in 1967.) A mortgage repayable in full at maturity, covered by an insurance policy, gives even greater tax concessions; because repayment is normally on the annuity method, the interest element and therefore the tax relief is greatest in the early years, whereafter the borrower has the advantage of historic cost.

Of the total of £157 million government subsidies in 1970/71, about 10 per cent went to cover the cost of rebates. As compared with £370 million in 1975/76 under Labour's 1967 Act (including the cost of rebates) the total of housing subsidies under the Tory's Housing Finance Act in 1975/76, excluding rent rebate and rent allowance subsidy, is estimated at £100 million. This is made up of £5 million residual subsidy, £10 million transition subsidy, £15 million operational deficit subsidy, £15 million slum clearance subsidy and £55 million rising costs subsidy. The government anticipates that, as a result of the provisions of the Act total subsidies will reduce after 1975/76 (see the financial memorandum to the Bill), having remained at about their present level until then. The residual and transition subsidies will disappear by definition and the others are likely to abate as under the Act rent income increases and housing revenue account deficits disappear or diminish. Even allowing for the increase in rebates, consequent for the most part on the increase in rents, and the introduction of rent allowances to meet in large part rent increases in the private sector, by 1975/76 there will already have been a cut in subsidies of about £200 million a year. The saving roughly equals the cost of cutting 2½p off income tax.

No subsidies under existing legislation will be given for completions after 31 March, 1972. Under previous legislation, each successive change in subsidies has applied only to houses built after its introduction, whilst subsidies on existing houses have remained unaltered. Since 1946, local authority subsidies have been paid over a 60 year period; the period before that was 40 years. In other words, from the year in which a new building is completed, a fixed annual sum was payable for 60 years. Under the 1949 Act and until the Housing Subsidies Act 1956, local authorities were required to contribute to their housing revenue accounts £1 for every £3 contributed by the exchequer as subsidy. Under the 1967 Act, local authorities were subsidised on new house building for all interest payments above 4 per cent.

Under the new Act, all existing subsidies are to be swept away, and during the transitional period to be replaced by the residual subsidy. The residual subsidy is a vehicle for phasing out existing subsidies to which housing authorities were entitled for 1971-72. If the phasing out is not offset by extra income from the increases of rents under part VI of the Act, and there is in consequence a deficit in the authority's housing revenue account, then from

70 to 90 per cent of that deficit is met by the transition subsidy, assuming that the increases required under the Act have been imposed. Thus, an authority, for which the minister has approved a lower mandatory increase than the statutory norm, suffers the same phasing out of existing subsidies as an authority subject to the full increase, but picks up on the transition subsidy the loss of revenue occasioned by the reduction in the amount of the increase. If there is a deficit in the housing revenue account as a result of an increase in expenditure, occasioned, for example, because of an expansion of the house building programme or increased costs in connection with it, then the rising costs subsidy meets 75 per cent or more of that deficit. If an authority goes into the new system of finance with a deficit which has arisen under the existing system, the operational deficit subsidy, broadly speaking, relieves the authority of half the deficit.

The residual subsidy is reduced by an amount which is related each year to the so called withdrawal factor, which in 1972/73 is £20 per dwelling. This £20 is related to the £26 mandatory rent increase (the £6 balance was represented in the original draft of the Bill by a £6 threshold before rising costs not covered by increased rents ranked for subsidy). The minister has made very clear (see for example his letter to the Association of Municipal Corporations, AMC, of 18 April, 1972) that the withdrawal factor of the residual subsidy is directly related to the mandatory rent increases. He was not prepared to modify subsidy arrangements because he was not prepared to tamper with rent increases. Indeed, the range of estimates for the new subsidies assumes average unrebated rent income increased by £26 per dwelling for 1972/73, declining (relatively) to £14 per dwelling annual average increase for 1975/76. The relative decline is based on the assumption that the rents of an increasing number of dwellings will have reached the "fair rent" level only after 1972/73, but before 1975/76. According to Lord Sandford, the first two years of the change over are expected to yield an increase in income on the housing revenue account of a great majority of authorities of £26 per dwelling, per annum.

The withdrawal factor is particularly important for authorities with large housing stocks. While a proportion of their stocks is new dwellings which therefore carry high subsidies, nevertheless, because the calculation of the withdrawal rate is based on every dwelling in the housing revenue account, the effect is that even cities such as Liverpool, Manchester and Birmingham will lose the bulk of their existing subsidies by April 1974.

The new system makes the payment of subsidies dependent upon the housing revenue account being in deficit. Slum clearance subsidy meets 75 per cent of the loss incurred by a local authority in connection with the exercise of their slum clearance functions, and enables a local authority to clear slums *without* building houses on the site. The other two main subsidies are the operational deficit subsidy and the rising costs subsidy. Entitlement to the former outside London will be limited, while rising costs subsidy is payable on a ten year (later a five year) basis, when the subsidies will cease unless extended by order on a reduced scale.

The principle of payment of subsidies for limited periods is based upon the assumption underlying the entire Act that either subsidies will no longer be necessary, because housing revenue account deficits will have been eliminated by repeated rent increases, or that the amounts payable should be reviewed downwards.

The rate of rising costs subsidy (initially 90 diminishing to 75 per cent) compares favourably with existing subsidies for house building. However, the amount of rising costs subsidy depends not only on the rate, but also on the amount of "reckonable expenditure." After the first two years, what will qualify for rising costs subsidy will be the difference in reckonable expenditure between one year and the next. (During the first two years, all expenditure debited to the housing revenue account which exceeds expenditure debited in 1971/72 counts, with two exceptions relating to patched houses and the fact that the housing repairs account is abolished.) "Reckonable expenditure" is defined as "so much of the expenditure

debited to the authority's housing revenue account as the secretary of state may from time to time determine as being reasonable and appropriate having regard to all the circumstances." A number of items may qualify for reckonable expenditure which do not qualify for any subsidy under the old system, for example, expenditure incurred on expensive sites will count for subsidy from the time when it is incurred (rather than upon completion of the dwellings with the consequential increase in future loan charges.)

Even the then Tory controlled (AMC) Association of Municipal Corporations, however, was moved to protest that " on the calculation of the rising costs subsidy, the association [was] extremely concerned by the unlimited power of the secretary of state to define ' reckonable expenditure ' for the purpose of the rising costs subsidy." How much working balance will be allowed in the calculation? What services and amenities may be excluded? What limit of expenditure on repairs and management will be set? Above all, what limitation will there be, for subsidy purposes, on site and development costs?

future financial problems

There are three main financial problems likely to be met in connection with future housing development. First, there is the possible high level of non-reckonable expenditure for rising costs subsidy purposes, that is excess costs over yardstick. This will be a particularly acute problem in the case of fluctuating, rather than fixed price building contracts, where tender sums are already up to yardstick. Expenses up to yardstick will count as reckonable expenditure, but not beyond, not even the 10 per cent tolerance. Moreover, the average increase in the cost of houses built by local authorities is at present rising at almost 11 per cent per annum (parliamentary answer, 14 June, 1972). The average *construction* cost per dwelling in tenders approved in 1970 by local authorities in England and Wales, excluding the Greater London area, was £3,400 for two storey 5 person houses and £4,110 for flats in 5 or more storeys.

Second, there is the high level of future rents for new dwellings and the abolition of rent pooling. Most prospective tenants will be faced with rents so high that they will be involved in a means test, and the few paying in full may be paying as much as if they were buying. In the Stonebridge estate in Brent one of the last actions of a now departed Tory council was to fix rents at a level where 90 per cent of the tenants obtained a rebate.

Under the new rebate scheme the higher the rent goes the more the tenant has to pay, regardless of any improvement in financial circumstances, because of the 40 per cent minimum rent provision in connection with rebates. There is also the provision for maximum rebates.

Third, there is the likely high level of future rates, both in the sense of the high rates the tenant of a new dwelling will be called upon to pay, rebateable on a more restrictive scale than the net rent, and in the sense of the rate fund contribution that will be required to many housing revenue accounts in order to support an energetic house building programme. The housing committee of the AMC on 7 September, 1971, during its period of Tory control, reported that their " overall reaction to the new subsidies [was] that, coupled with the other proposals, they may make inevitable for some authorities a new or increased burden on rates which they will be unable to avoid. The proposals are intended to help authorities with the worst problems and we welcome this intention. Nevertheless, for at least some of them, we seriously doubt whether this intention will be fulfilled."

Crawley, for example, expects its rate fund contribution to increase from £30,000 in 1972/73 to over £200,000 in 1975/76. The leader of the Labour group on Crawley Urban District Council has pointed out that " not only will council rents have to be increased substantially over a period to achieve fair rents but there will also be a very considerable increased burden placed on Crawley ratepayers, including, of course, the tenants who will be facing increased rents."

The new legislation for Scotland does not require rents there to go up to "fair rent" level at this stage. Authorities are merely expected to balance their housing revenue accounts. In England and Wales, however, it is the object of the exercise for a surplus to be produced. Over most of the country not only will most tenants be paying more than the cost rent for their own dwelling; total rents will exceed the pooled costs of all dwellings in the area.

Now, under the new Tory Act, loss of income due to rebates (the relief of poverty) is made good from exchequer subsidies and/or rate fund contributions only insofar as it leads to a deficit in the housing revenue account. So if the tenants by their high rents produce a surplus then this goes first to relieve public funds of the cost of rebates. Julian Amery estimates that about 35 per cent of council tenants (including those eligible for supplementary benefit) will be on rebate in 1972/73, and about 40 per cent by 1975/76, so that about twice as many will need rebates after the Act comes into operation as did before. The total amount of rebates is estimated at £140 to £170 million in 1972/73 of which about £90 to £100 million would give rise to housing revenue account deficits, and at £230 to £260 million in 1975/76, giving rise to deficits of £140 to £180 million.

If there is still a surplus from council tenants' rents after rebates have been covered in full, then it is applied next to relieve taxpayers and ratepayers of making any contribution to rent allowances for poorer private tenants. By 1975/76 the government expects the cost of rebates and allowances to be met to the extent of £100 million by council tenants out of their "fair rents." The total payments made for the relief of poverty and need and the maintenance of incomes in 1975/76 will amount to £380 million. £80 million will be covered by the Supplementary Benefits Commission (as against £170 million now), £120 million by the rent rebate subsidy, £40 million by the rent allowance subsidy and £40 million out of the rates, leaving a deficit of £100 million to be met by council tenants out of their rents.

Even after that the government still expects there to be a surplus (of some £30 million in 1975/76) such is to be the profit element in the new level of rents, and this surplus is to be divided 50/50 between the general rate fund of the local authority in question and the exchequer. Council tenants are now to be double rated and double taxed. Yet over the last eleven years, whereas the cost of living index went up from 100 to 164 the cost of housing increased from 100 to 222. The government is seeking to impose overall what the worst Tory controlled local authorities did during their brief periods of control. In Brent between May 1968 and May 1971 rents rose by 39.75 per cent, as against a rise of 22.7 per cent in the cost of living and a rise of 34.7 per cent in average earnings.

Surpluses are not likely to arise in high land cost areas which still need to maintain vigorous building programmes, but the likely high rents, even after rebate, of new dwellings, will present considerable management problems, particularly in connection with decanting from areas of old housing in "action areas." Under the old system, subsidies were payable only in respect of dwellings added to a local authority's housing stock by new building, either on housing gain sites or on demolition sites in redevelopment areas, and the subsidies covered both acquisition and assembling of the site and the construction cost. No subsidies were payable on the purchase of existing properties for retention, apart from grants for improvement. Moreover, the improvement grants available to local authorities were less generous than the subsidies available on new development, so there was a financial incentive for local authorities to place the emphasis on new or replacement building rather than rehabilitation. Under the new system, the redevelopment and improvement and indeed the purchase of existing fit properties will be on a par so far as eligibility for subsidy is concerned, because the availability of subsidies depends primarily on the state of the housing revenue account. Expenditure on improvements which is not met by a government or related rate fund contribution, will count as reckonable expenditure.

7. conclusions

1. The Act sets out the circumstances of which account is to be taken in assessing " fair rents." It does not explain how all the relevant circumstances are to be translated into figures. The exercise is one of judgment. The judgment should be exercised at member level, and should give due weight to members' knowledge of their area and of their properties and to their experience of housing matters in their locality, and to the fact that their existing rents, under the Housing Act 1957, are within the bounds of reasonableness.

In the case of post-1960 dwellings " fair rents " should be below cost rents, often substantially so, and in all cases cost should be borne in mind in determining maxima. So too, the 1973 gross value, suitably discounted, in particular to a substantial extent where acute shortage is involved and in the case of flats, should be regarded as a ceiling. Again, rents can be argued to be too high if, having regard to the general level of earnings of those whom the council is under a duty to rehouse (namely those families who have not been able to afford anything better than slum areas or insanitary or over crowded conditions) a substantial proportion of tenants would be eligible for rebates. Arguments based on a comparison with private rents should be treated with great wariness, as should any suggestions as to the relevance in any case of return on investment.

The Department of the Environment's own predictions as to the likely levels of fair rents should be regarded as unreliable.

2. Local authorities should put forward *their* figures to the rent scrutiny boards. They should involve their tenants in the process of arriving at, and justifying, these figures as far as possible. Councils must take care to ensure, to the greatest extent feasible, that there are fair differentials between different properties. As regards levels of rent, authorities for comparable areas should endeavour to adopt a common front.

3. If any question may arise of the rent scrutiny board seeking to increase a council's assessment then not only, of course, must the council's case be forcibly argued, and the contrary arguments and figures of the board be exposed and criticised, but it must be demanded that the board go beyond (though not contrary to) their legal obligations and adopt " fair " procedures, involving a full public hearing, at which both council and tenants can be heard, comparable to those procedures prevailing in the private sector, which the government, in its propaganda, persists in arguing is the precedent for " fair rents " in the public sector.

4. Where the secretary of state has approved an increase of less than £1 in October 1972, it must be stressed to rent scrutiny boards that *prima facia* a substantial proportion of dwellings in the area of the authority are already at or above the fair rent level.

5. In the light of their own provisional assessments (upon which by the material time the rent scrutiny boards will not be able to have passed judgment, since they will not receive them until June 1973), and in the light of any direction the secretary of state made under section 62 (4) in respect of October 1973, councils should make application to the secretary of state under section 62 (4) to reduce, or cancel, the October 1973 increase.

6. Councils should endeavour to improve their service for tenants who are being called upon to pay more rent.

7. For dwellings completed after 10 August, 1972, and therefore not included in the first provisional assessment (and one hopes the only one, as a general election must intervene before the date of the next one), rents should be fixed on the basis of the existing rents of the nearest comparable dwellings, unless the " fair rents " for those comparable dwellings are less than the existing rents.

8. Council should, from time to time, make application under section 20 (5) for reductions in the 40 per cent minimum rent provision in relation to rebates and allowances and for increase, where necessary, in the amount of the maximum rebate and allowance.

9. Advantage should be taken of the 10 per cent tolerance in relation to rebates and allowances.

10. The discretions in relation to the rebate and allowance schemes should be kept in mind by members and, of course, be operated beneficially.

11. Full publicity must be given to the allowance scheme in particular; and the obligations upon private landlords must be enforced.

12. Local authorities must scrutinise carefully rent agreements submitted to them in respect of properties coming out of control, and agreed rents in the case of other regulated tenancies, and where appropriate, refer them to the rent officer.

13. Although much slum clearance and redevelopment is still necessary, in future the emphasis will be more on improvement, but it is important that the improvements should be made by local authorities wherever possible, rather than by private landlords.

14. Councils should, despite the difficulties, press ahead with the enormous amount of new building that is required, taking advantage of the rising costs subsidy, and also acquire existing dwellings.

young fabian group

The Young Fabian Group exists to give socialists not over 30 years of age an opportunity to carry out research, discussion and propaganda. It aims to help its members publish the results of their research, and so make a more effective contribution to the work of the Labour movement. It therefore welcomes all those who have a thoughtful and radical approach to political matters.

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The group publishes pamphlets written by its members, arranges fortnightly meetings in London, and holds day and weekend schools.

Enquiries about membership should be sent to the Secretary, Young Fabian Group, 11 Dartmouth Street, London, SW1H 9BN; telephone 01-930 3077.

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Cover design by Dick Leadbetter. Printed by Civic Press Limited (TU), Civic Street, Glasgow G4 9RH.

ISBN 7163 2031 2

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