The Law Commission

(LAW COM. No. 68)

TRANSFER OF LAND

REPORT ON RENTCHARGES

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The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

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RENTCHARGES

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THE LAW COMMISSION

Item IX of the First Programme

RENTCHARGES

To the Right Honourable the Lord Elwyn-Jones,
Lord High Chancellor of Great Britain

A INTRODUCTION

1. At an early stage in our review of the law relating to the transfer of land, we turned our attention to the subject of legal rentcharges. Very broadly, these are annual sums charged on areas of land in which the persons entitled to the sums have no other interest. The commonest occasion of their creation today is the sale of newly-built freehold houses, the purchaser agreeing to pay as part of the purchase consideration an annual sum as well as an immediate capital sum; the annual sum is usually fairly small in amount, but payable for ever. As a species of interest in land, rentcharges have the peculiarity that they are concentrated in certain parts of the country. This is particularly true of perpetual rentcharges which were (and are still being) reserved by developers when selling houses freehold. This suggested to us that such rentcharges (and, perhaps, the system as a whole) might not be fulfilling any useful purpose today, in that it seemed that there probably existed other and more widely used methods of achieving substantially the same ends. Duplication of systems does not simplify the law and we considered that the position of rentcharges should be looked into.

2. Having conducted a preliminary investigation, we published a working paper in September 1969[1] in which we expressed the opinion that a *prima facie* case existed for the abolition of the rentcharge system. We recognised, however, that difficulties stood in the way of total abolition, for, while it might be relatively simple as a matter of mechanics to prohibit the creation of any further rentcharges, we found ourselves unable to endorse fully any of the methods of extinguishing existing rentcharges which we canvassed in the paper.

3. The working paper evoked a considerable response. Some of those who had assisted us at an earlier stage made further contributions, and several organisations sent us not only their general views but also the particular views of their members practising in areas where rentcharges are prevalent. We are also grateful to Mr. Michael Cocks, M.P. (Bristol South), who made available to us material which he had collected for the purpose of the two Bills[2] which, on his own initiative, he had presented in the House of Commons.

4. It emerged from that round of consultation that the subject of rentcharges was more controversial than our preliminary investigation had led us to expect. Because we had assumed general agreement with the proposition that no legal rentcharges should be created in the future, this first working paper concen-

[1] Working Paper No. 24.
[2] Both entitled: Rentcharge Abolition Bill.

trated on existing rentcharges and the possible means of eliminating them. We found, however, that in some quarters our assumption was not acceptable without further argument; and we were particularly struck by the fact that the majority view among members of the legal profession practising in the Manchester area (where the difficulties created by the rentcharge system are particularly acute) was against abolishing the system.

5. We therefore decided to produce a further working paper which would discuss the arguments for and against bringing the rentcharge system to an end and which would go more deeply into the question of reforming the system. This was published in April 1973[3]. Put shortly, that paper contained two messages: first, that while the positive advantages of the rentcharge system were few in number, the system was logically no worse than the long leasehold system and the consequences of abolishing one system without affecting the other could not be forecast; and second, that although substantial reforms were clearly called for, there might be no obvious need, if those reforms were carried out, to take the further step of bringing the rentcharge system itself to an end.

6. The issue of our second working paper proved to be most important. It indicated, as the first paper did not, the possibility of adopting an alternative approach, and this encouraged response from those who had in fact agreed with the tenor of our first paper but had not made this clear to us. We had useful meetings with Members of Parliament representing constituencies in the Bristol and Manchester areas, whose attention is, we found, often drawn to the problems associated with ordinary legal rentcharges on dwelling houses. These meetings made it much easier for us to evaluate both the strength of the case in favour of the approach advocated in the first working paper and the weight to be attached to the various considerations (in particular, the risk of encouraging the creation of long leaseholds) which had led us in the second paper to favour a programme of less radical reform. The second paper thus provided an opportunity for the balance of the consultation to be redressed, and we have thereby been encouraged to revert to our original views.

7. The second working paper may also have had some effect on professional opinion. At the time of our first paper, there were, we think, many solicitors who were not wholeheartedly in favour of going all the way towards stopping the creation of new rentcharges, but nevertheless recognised that some measure of reform was called for. The second paper showed in some detail what we thought to be the necessary content of an alternative, more limited, programme. With that paper before them, the majority of the members of the Manchester Law Society came to the conclusion that the creation of new rentcharges should, in general, be prohibited. The comments which were received from the Bar, and from solicitors practising in the Bristol area showed, it is true, that they were not also converted to that view; but the more extreme conveyancing problems associated with the rentcharge system are more likely to be experienced by practitioners in the north of England, and we cannot regard the fact that Manchester solicitors have moved into opposition to the creation of new rentcharges as other than highly significant. We are now of the clear opinion that the ap-

[3] Working Paper No. 49.

proach adopted in our first paper towards the creation of new rentcharges would provide a more satisfactory solution to the problems than would the piecemeal reforms outlined in the second working paper.

B THE RENTCHARGE SYSTEM

8. Our first task is to define our subject-matter and to state some general facts about rentcharges.

9. A rentcharge is an annual or periodic sum of money payable to someone who is not entitled to the reversion to the land charged with its payment. This feature distinguishes it from ordinary rent[4] payable under a lease. As a matter of history, the separate existence of rentcharges seems to have arisen in consequence of the statute *Quia Emptores* (1290). Prior to that date, a grant of freehold was apt to create a "lord and tenant" relationship between grantor and grantee in the same way as did a grant of a term of years, and it was a common law incident of such a relationship that the lord could distrain against chattels on the land for arrears of any rent reserved by the grant. The statute, however, stopped subinfeudation on the grant of freeholds, with the result that if the grantor reserved a rent the remedy of distress was no longer available to him at common law. In order to preserve the remedy, it became the practice to include in the deed a clause expressly charging the land with a distress for payment of the rent: hence the name "rentcharge"[5].

10. The use of that name is not, however, universal. In some places a rentcharge is known as a "chief rent" (or a "chief") and in others as a "ground rent". The latter name is particularly confusing since it usually means rent payable under a long lease. A "fee farm rent", commonly found in Ireland, is also a rentcharge; and in Scotland corresponding forms of rent are to be found in "feu duty" and "ground annuals"[6].

11. Rentcharges generally issue out of freehold land, but they may be reserved out of a leasehold[7] or even out of another rentcharge[8]. They may be either legal or equitable[9], and may be either "perpetual" (the commonest case) or "terminable" (that is to say, created for a term of years).

12. A rentcharge binds every part of the land out of which it issues. If A sells Blackacre to B, reserving a £20 rentcharge, the situation is straightforward and

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[4] Known to the common law as "rent service". In certain circumstances such a rent may become a rentcharge: see para. 44 below.

[5] If the clause were omitted, the rent was known at common law as a "rent seck". The distinction between such a rent and a rentcharge was effectively abolished by the Landlord and Tenant Act 1730 which extended the remedy of distress to rents seck and it has not since been customary to include an express clause in the deed. See now the Law of Property Act 1925, s. 121(2).

[6] These Scottish charges are no longer capable of creation and existing ones are in the process of being redeemed: Land Tenure Reform (Scotland) Act 1974.

[7] In practice, a leaseholder disposing of his interest in consideration of a rent is more likely to sublet for the remainder of his term less a short period, *e.g.*, one day.

[8] Law of Property Act 1925, s. 122. These are extremely rare.

[9] Settlements providing annuities for dependant members of the family not uncommonly secure them by way of rentcharges.

we will use the term "simple rentcharge" to describe a rentcharge of that kind. If B then sells the whole of Blackacre to C, the £20 payable annually to A will still be a simple rentcharge, as will also be any second rentcharge[10] reserved by B in his own favour on the sale. In the latter case, the land would be subject in C's hands to two simple rentcharges. Complications arise, however, if the land is divided. If, instead of selling the whole of Blackacre to C, B divides it into three separate plots which he sells to C, D and E, the whole of A's £20 rentcharge will be a charge on each of the plots. The legal liability for the whole of A's rentcharge falls in full on each of the purchasers and we will use the term "overriding rentcharge" to describe a rentcharge of that sort. If there have been several subdivisions, each of the resulting plots may have become subject to more than one overriding rentcharge, because it may form part of a larger area on which a second (or subsequent) rentcharge had been imposed, that area being itself part of a still larger area the whole of which is subject to a first rentcharge.

13. There are two ways of preventing an existing rentcharge from becoming an overriding one on a division of land. The first, of course, is to redeem the rentcharge altogether; and the second, essentially, is to get its owner to join in an apportionment of the rentcharge between the proposed plots (the apportioned sums then constituting simple rentcharges on the respective plots). Under such an arrangement with the rent owner, part of the land may in fact be exonerated. Rent owners, however, tend to regard such apportionment (that is, "legal apportionment") with disfavour because it is simpler and cheaper from their point of view to collect the whole sum from any one of the plot owners, and because legal apportionment tends to erode the security; a statutory procedure accordingly exists for obtaining legal apportionment without the consent of the owner of the rent.

14. If the existing rentcharge is not dealt with in one of these ways, two general courses of action are open to the landowner disposing of part of the land (or of all the land in parts). First, he can sell the land free from liability under the existing (and now overriding) rentcharge. Such a sale does not, if fact, free the land from the rentcharge because the rent owner is not a party to the exoneration, but it places on the vendor a liability, as between himself and his purchasers, to continue to discharge the rentcharge liability himself[11]. In that event, he may well impose, for his own benefit, a new simple rentcharge on each of the parts disposed of, so that he is at least not out of pocket. It is thus possible for the entirety of the land subject to a rentcharge to be sold off in parts, all the parts having the benefit of a covenant by the vendor to pay the whole of the rentcharge. That, however, would leave the vendor (usually a developer) with a continuing concern with the rentcharge liability after he has disposed of the last plot – a situation which he will normally try to avoid. The precedents which we have seen indicate that the more normal procedure is for him to exonerate all the plots except the last from the first (overriding) rentcharge, taking a second (simple) rentcharge from each of those plots; and then to sell the last plot subject to the whole of the burden of the first rentcharge, but with the benefit of the second rentcharges on the other plots. If this procedure is followed the owner of the first rentcharge will in practice look to the owner for the time being of the

[10] Sometimes referred to as an "improved rentcharge."
[11] Law of Property Act 1925, s. 77(2), and Sched. 2, Part VIII.

last plot for payment of his overriding rentcharge; the owner of that plot cannot look to any of the owners of the other plots for contributions (because each of them has the benefit of an indemnity in relation to that rentcharge) but he collects from them the second rentcharges as rent owner[12].

15. Alternatively, a vendor disposing of parts of land which is subject to a rentcharge may take indemnity covenants from his purchasers[13] (indemnifying him from the effect of his own earlier personal covenant) and apportion the overriding rentcharge between the newly-created separate plots[14]. Such an apportionment is called an "equitable" or "informal" apportionment because the owner of the overriding rentcharge is not a party to it. This procedure is on the face of it simpler than that described in the preceding paragraph, because no second rentcharges are created; but it has one disadvantage. The owner of each of the plots has covenanted to pay his equitably apportioned share of the overriding rentcharge (and to indemnify the others accordingly), but the rent owner will in practice look to one of them – it may be any one of them – for payment of the whole; and that plot owner will then have to resort to his rights of contribution from the others[15]. Inevitably, therefore, one of the plot owners will be obliged to act as a rent collector for the owner of the overriding rentcharge. When the equitable apportionment is first made, the rent owner may be invited to look to the owner of a particular plot as the "collector" (and a low apportionment may be made to that plot on that account); and thereafter the collection duties tend to attach to that plot, more as a matter of tradition than as a matter of law. It is, we believe, difficult under an apportionment scheme to make arrangements whereby the primary liability for payment of the overriding rentcharge as a whole is, as between the rent payers, permanently attached to the land of one of them.

16. We have already mentioned that perpetual rentcharges are common in certain parts of the country only. There are in fact two areas in which they can be said to be particularly prevalent – Manchester and other parts of the north-west; and the county of Avon, including Bristol. We understand that as high a proportion as 80 per cent. of owner-occupied residential property in the Bristol area may be subject to rentcharges. There is, however, a very significant difference between the two areas so far as the impact of the rentcharge system is concerned: overriding rentcharges are largely confined to the northern area. It seems that it has always been the general practice in Bristol to impose rentcharges on individual plots rather than on substantial areas of land ripe for development, so that in that part of the country the pattern is "one plot, one rentcharge". Although the same policy is, we believe, now commonly adopted in the Manchester area, the practice followed there in the past has left behind it an unhappy legacy of overriding rentcharges[16].

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[12] In these circumstances, the owner of the last plot is not in a position to ask for legal apportionment of the first rentcharge.

[13] It is not usually necessary to take these expressly: Law of Property Act 1925, s. 77(1) (A) and (B), and Sched. 2, Parts VII and VIII.

[14] Again, such apportionment may be in a nil figure, *i.e.*, exoneration.

[15] See Law of Property Act 1925, s. 190.

[16] A corresponding divergence in practice exists in the leasehold field. In the north-west of England, a builder often disposed of developed plots by way of assignment of rights under a single head lease (rather than by way of underlease), thus giving rise to a proliferation of overriding leasehold groundrents. We understand that this situation is rarely encountered elsewhere in England.

Statutory procedures for the redemption and legal apportionment of rentcharges

17. Under section 191 of the Law of Property Act 1925 (amended by the Finance Act 1962), a rent payer may apply to the Secretary of State for the Environment[17] for a certificate quantifying the statutory redemption price of a rentcharge. The price in respect of certain perpetual rentcharges is arrived at by applying a formula designed to provide the owner of the rent with the same income on the footing that he were to reinvest the money in certain prescribed Government Securities[18]. The statutory redemption price changes with the current market prices of those securities and it amounts, at present, to about seven times the sum payable annually by way of rentcharge. On proof of payment of the redemption price to the rent owner the Secretary of State will issue a further certificate, which has the desired effect of conclusively freeing the land from the rent.

18. It is often necessary to carry out an apportionment before redemption can take place – usually because the rentcharge is an overriding one and only part of the land subject to the rentcharge is being freed from the liability – and this, too, can be effected by a certificate of the Secretary of State, under subsection (7) of section 191. Apportionment under section 191 does not, however, have the same effect as a legal apportionment of the rentcharge as described in paragraph 13 above. Indeed, by itself it has no effect at all; it merely enables the redemption price to be quantified. If that price is subsequently paid, the land in respect of which the payment is made is freed from the entire rentcharge, but the apportionment has no effect if it is not followed by redemption in this way.

19. A rent payer may also have his share of an overriding rentcharge apportioned by the Secretary of State under section 20 of the Landlord and Tenant Act 1927 (extending sections 10-14 of the Inclosure Act 1854). These provisions differ from that in the Law of Property Act 1925 in several ways. In the first place, they apply to rents under leases as well as to rentcharges. Secondly, a rent payer may, under the Landlord and Tenant Act, obtain an apportionment order without his having to redeem his share of the rent (whereas, as we have seen, the Law of Property Act provides for apportionment only as a necessary preliminary to redemption). Thereafter, the rent payer will be liable only to pay his apportioned share. This proposition, however, is subject to an important qualification: the Secretary of State may, at the request of the rent owner, make his apportionment order conditional on redemption if the apportioned rent is £2 a year or less. Thirdly, the operation of the Landlord and Tenant Act procedure is subject to the Secretary of State's discretion. It is not possible to particularise the circumstances in which the Secretary of State would consider it inexpedient to make an order, but we would not expect him to act upon an application in a case, for example, where the whole of the rent was (as between the rent payers) charged on the applicant's land[19].

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[17] Or, in the case of Wales, to the Secretary of State for Wales.

[18] Law of Property Act 1925, s. 191(2); Perpetual Rent Redemption (Prescribed Securities) Instrument 1960, S.I. 1960 No. 2068. This formula is obviously inapplicable to variable rentcharges, although many variable rentcharges are of the type described in s. 191(2). Doubts have, accordingly, been expressed as to whether such variable rentcharges are capable of redemption under the section. Furthermore, it appears to have been accepted for many years that rentcharges securing the repayment of capital sums with interest under, *e.g.*, the Improvement of Land Act 1864 are not within the section.

[19] In such a case an applicant for redemption under s. 191 of the Law of Property Act 1925 would have to be prepared to redeem the whole rent because the terms of s. 191(7) would exclude his obtaining an apportionment of part of the whole rentcharge in respect of his part of the land affected.

20. Comparatively little use is made of these provisions. During 1974 the Department of the Environment received 717 applications for redemption under the Law of Property Act, mostly from the Bristol and Bath areas where redemption seldom involves apportionment as well[20]. There were, in addition, 145 applications under the Landlord and Tenant Act 1927, and since these were, of course, for apportionment only, they may not have led subsequently to redemption. The number of redemptions is rather larger than those in earlier years, but even so it is plain that the present statutory procedure has no really noticeable effect on the system, having regard to the very large number of houses (and other properties) involved. The existence of the provisions may not be sufficiently widely known, but even if the rent payer is aware of them there is usually very little in them by way of incentive to their use[21]. If anything, the contrary is true. Of the various practical considerations having a bearing on the matter there is, first and foremost, the question of expense. Although the Department of the Environment does not make any charge for dealing with applications for apportionment or redemption, the requirements of the existing procedures are such that many rent payers may have difficulty in carrying them out without professional assistance. Under the present rules, moreover, the applicant will usually have to pay the fees charged by the rent owner's advisers, as well as his own. These professional charges may well amount to more than the statutory redemption price of the rentcharge itself, or of the relevant apportionable part of it. From the rent payer's financial point of view there is little to be said for redemption, because it simply converts a depreciating income liablility into an immediate capital one. And unless a rent payer is experiencing difficulty in collecting contributions from his neighbours in accordance with equitable apportionments, legal apportionment under the statutory provisions, by itself, has no financial advantage at all. Having regard to the trouble and expense involved in operating the statutory provisions it is hardly surprising that they are seldom resorted to.

21. It will be seen that the initiative under the Law of Property Act and the Landlord and Tenant Act lies with the rent payer[22]. There is no general statutory provision enabling a rent owner to enforce redemption. Exceptionally, charities have this power[23] but they rarely exercise it because in those cases in which it would now be most convenient for them to call for redemption – that is to say, cases where the rentcharges are for very small sums – too high a proportion of the redemption price would be consumed by costs.

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[20] The figure does not give any measure of the total number of perpetual rentcharges which, each year, cease to be payable. Rentcharges may be redeemed by agreement; they may be extinguished by merger (commonly as the result of the exercise of compulsory purchase powers); they may be overreached by a payment into court under s. 50 of the Law of Property Act 1925; and they may become barred under the Limitation Act.

[21] The abolition in 1963 of liability to tax under Schedule A on owner-occupied residential property has, however, made redemption more attractive than it used to be. A rentcharge on such property is not now deductible for tax purposes, but annual interest on a sum borrowed in order to pay the redemption price is.

[22] A rent owner may apply for apportionment under the Landlord and Tenant Act, but it is difficult to see how it would be to his advantage to do so and we understand that such applications are not in practice made.

[23] Charities Act 1960, s. 27.

Remedies

22. The statutory remedies for the recovery of arrears of rentcharges on land are contained in section 121 of the Law of Property Act 1925 and are (i) distress (ii) entry into possession and (iii) the right to create a term of years which may then be mortgaged or sold. We understand that distress is the only one of these remedies which is resorted to with any frequency[24]. The rent owner also has his common law right to an action in debt, and this seems to be the usual means of recovering arrears, except perhaps where the arrears are so small in amount that ordinary proceedings for the sum due would not prove economic. In such circumstances, distress is, from the rent owner's point of view, the better alternative[25]. The statutory right to take possession is, it will be noted, limited to the case where payment of the rentcharge is actually in arrears; it is not available as a means of enforcing the performance of ancillary covenants[26] designed to provide security for the rentcharge. It is, however, usual to include in the deed reserving the rentcharge a right of entry on breach of such covenants. The enforcement of such covenants may thus be provided for by agreement between the original parties.

23. For the purposes of the Limitation Act 1939 a rentcharge is "land"[27] and in the absence of any acknowledgement of the liability by the rent payer, non-payment of the rent counts as adverse possession. Time runs not from the date of a failure to pay the rent but from the date of the last payment[28] and if twelve years[29] have elapsed since the last payment the rent owner will have lost his right to the rentcharge altogether. Each annual sum, moreover, constitutes a debt due to the rent owner as it accrues due and it becomes uncollectable after six years.[29]

C CRITICISM OF THE PRESENT SYSTEM

24. A good deal of criticism of the present system comes from those who are professionally engaged in investigating titles. The complications to which rentcharges (and, in particular, overriding rentcharges) can give rise are met not only by solicitors but also by mortgage institutions, local authorities, and the Land Registry; and the fact that the existence of rentcharges can involve considerable extra work is clearly supported by the evidence provided to us by the Registry which now has very wide experience in this field[30].

25. The extra work is caused by the fact that, where land is being purchased subject to a rentcharge, deduction and investigation of title has to be more

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[24] The right to enter into possession, in particular, seems to be regarded as a remedy of last resort, reserved, for example, for cases where the land is derelict. If any remedy involves disturbance of the rent payer's actual possession of residential property, a court order for possession will be required.

[25] The Committee on the Enforcement of Judgment Debts (the Payne Committee) has recommended the abolition of this remedy generally: see (1969) Cmnd. 3909, para. 929. And *cf.* Law Com. No. 5, paras. 23–24.

[26] *e.g.*, to insure the building erected on the land subject to the rentcharge.

[27] Sect. 31(1).

[28] Sect. 31(6).

[29] Extended in certain circumstances.

[30] If the title to the land has already been registered, most of the extra work will have been done once and for all on first registration. It will, of course, have complicated the process of first registration.

extensive than would normally be the case. So far as the title to the land itself is concerned, the abstract of title will usually not have to go back much more than fifteen years; but where the contract shows that there is a rentcharge liability, the substance of the deed (however old) by which it was originally created must be considered to ensure that the legal liability is not greater than that disclosed. Furthermore, if the land being purchased is only part of that originally charged, any equitable apportionment or exoneration will have to be checked against the contents of the relevant later deeds, making apportionments or granting indemnities. The purchaser's solicitor should also consider the effect of any covenants associated with the liability. Where the property being bought is subject to a number of old rentcharges imposed at different times (usually on the occasion of successive sub-divisions of the land originally charged), some of which have been apportioned or indemnified and some not, the burden of investigation may be considerable, because the history of each of the rentcharges will have to be traced separately. This situation is not uncommon in the north of England. In a complicated case, a quite disproportionate amount of time may be taken up in making investigations relating, often, to trivial sums – which may, moreover, never actually be payable by the purchaser because there has, at some stage in the past, been an effective exoneration.

26. But far and away the most serious criticisms of the rentcharge system – at any rate so far as it applies to ordinary dwellinghouses – come from rent payers. We have been left in no doubt whatever that a high proportion of rent payers find perpetual rentcharges on freehold land conceptually unacceptable. A liability to pay rent for leasehold property is understood; and so is a liability to pay mortgage instalments to a Building Society. But a freeholder does not expect to have to pay an annual sum not readily distinguishable from a leasehold groundrent; nor, even if he appreciates that the rentcharge arose as part of a purchase consideration, does he expect to be paying *for ever* what look like instalments of some (unknown) capital amount. Indeed, if his house is subject to an old rentcharge, he is likely to contend that any unpaid capital sum must now have been paid off in full. Popular misconceptions about rentcharges are both widespread and deep rooted, largely because the absence of any obvious economic function makes them difficult to explain. We are not surprised that people feel that a liability to pay an annual sum to a former owner, together with, perhaps, a liability under covenant to give access to view, is repugnant to the concept of freehold ownership.

27. Another rent payer's criticism relates particularly to modern rentcharges on new houses. Years ago it was common enough to find land changing hands for a consideration consisting of a perpetual rentcharge alone; and after that, when it became usual for the primary consideration to consist of a capital sum, it would often be apparent that the added rentcharge was, nevertheless, a genuine element in the market price. The position today is different. Although the rentcharge imposed by a builder on the sale of a new house is undoubtedly part of the purchase price, the capital sum is overwhelmingly the major part of the price – so much so that the rentcharge (nowadays a conventional sum of £20 a year or thereabouts) tends to pass unnoticed by the purchaser when he contracts to buy his house, and it thus comes near to being a hidden extra. It is very generally suspected that the existence of such a rentcharge has no effect on the amount of the capital sum asked for; and if that is so the rentcharge system is being used

simply to give a bonus to the developer. We are inclined to the view that that suspicion is well-founded.

28. In saying that, we accept that it is not possible to demonstrate that houses subject to rentcharges are (when the rentcharges are taken into account) clearly more expensive than other comparable houses sold rentcharge-free. There are two reasons for this. First, in those areas where rentcharges are prevalent there may be few rentcharge-free houses on the market at any one time, so that there is insufficient factual material on which to base a comparative study. Secondly, the actual amounts of the rentcharges involved are very small in relation to the cash price of the property. Capitalised, they are unlikely to exceed 2 or 3 per cent. of the cash price, and they are accordingly not significant in valuation terms. This view is confirmed by the fact that Building Societies normally ignore the existence of a rentcharge when considering making an advance to a purchaser. In those circumstances we think it unlikely that house prices would be materially affected if it were no longer possible to create rentcharges. Even if, in some instances, such a prohibition led to an increase in capital prices, the unattractive suspicion that rentcharges are not justified in terms of market value would at least have been laid to rest. Purchasers would at any rate not be worse off if that happened, although it might marginally increase their immediate mortgage requirements[31].

29. A further substantial criticism of the system arises out of the collection of apportioned parts of overriding rentcharges. As we have already explained, when land subject to a rentcharge is disposed of in parts, arrangements have to be made for the continued payment of the (overriding) rentcharge; and the arrangement may take the form of an equitable apportionment between the owners of the several plots[32]. The rent owner, however, will look to one of the plot-owners for the whole sum. One of the plot-owners is thus placed in the unenviable position of being an unpaid rent collector for the rent owner – indeed, in a worse position, for he or she will personally bear any loss attributable to failure to extract from the neighbours their due contributions in accordance with the equitable apportionment. This rent-collecting is a common feature of the system in the north of England; it imposes a duty which is generally regarded as distasteful in the extreme[33]; and it is a considerable burden to the elderly. We have little doubt that a number of collectors, for one reason or another, are unable to get the contributions to which they are entitled and are thus in practice saddled with the whole of the financial liability or, at any rate, with more than their proper share of it. This constitutes an undoubted grievance and, from the social point of view, it is regarded by many of those who have put the rent payers' case to us as being enough in itself to condemn the rentcharge system.

30. We must, however, emphasise that the criticism of the system based on the collection duties which it creates is justified only in those cases where an overriding rentcharge has been apportioned (in accordance with the procedure outlined in paragraph 15 above). There is a fundamental difference between such

[31] Purchasers might even be slightly better off with an additional mortgage liability than a rentcharge because mortgage interest gives rise to an allowance for tax purposes.

[32] Para. 15 above.

[33] Not least because the collector sometimes has difficulty in explaining to the neighbours that he or she is not the rent owner, but only another rent payer like themselves.

a case and one in which the overriding rentcharge has been dealt with along the lines indicated in paragraph 14, that is to say, by way of a series of equitable exonerations coupled with second rentcharges. Superficially, the effect may appear the same to the person called upon to pay the whole of the overriding rentcharge: he pays the whole, and then collects sums from the others. But the difference is this. In the apportionment case, the choice of the "collector" may be arbitrary, and he has no means of recouping himself save by extracting contributions (in accordance with the several apportionments) from his neighbours. In the other case he pays the overriding rentcharge in full because by agreement he is not entitled to ask his neighbours for contributions towards that payment; and he then collects his own second rentcharges. Being the owner of the latter, he can bring his collection to an end by selling his rights on the market.

D OUR REVIEW

31. At no time during the lengthy period which has elapsed since we embarked on our consideration of the rentcharge system have we had any doubt but that the system required, at the very least, radical reform. The sole question has been whether we should be content with recommending reform or whether we should aim at eliminating rentcharges altogether. Our initial reaction (reflected in our 1969 working paper) was in favour of abolition, and we suggested that the creation of new rentcharges should be prohibited. Although we could not at that time think of a satisfactory way of dealing with existing rentcharges, these clearly illustrated the ills to which the system was capable of giving rise, and we were anxious to avoid the risk of the same problems arising in relation to houses not yet built.

32. Consultation on our first paper revealed the existence of certain situations in which the ability to create rentcharges was convenient. Furthermore, in some instances financial liabilities give rise to terminable rentcharges by statute. It seemed therefore that any ban on the creation of new rentcharges would probably have to be qualified. In giving further thought, moreover, to the possible consequences of prohibiting the creation of new rentcharges, it seemed to us that there was a clear risk that developers would simply turn instead to the long leasehold system[34]. There is to all intents and purposes no difference between a 999-year term subject to a small groundrent and a freehold subject to a small rentcharge, and nearly all the criticisms levelled at rentcharges can apply equally to such long leaseholds. At that stage in our review we therefore focussed our attention on reform of the rentcharge system rather than on its abolition, and we issued our second working paper, in which various reforms were discussed in detail. One of our suggestions was that the creation of new *perpetual* rentcharges should be prohibited, and that the maximum permitted term of new (terminable) rentcharges should not in any event exceed 70 years. That led us to a further suggestion that existing perpetual rentcharges might be cut down and

[34] The existence of this risk has been recognised in the Land Tenure Reform (Scotland) Act 1974. The abolition of feu duty is there coupled with severe restrictions on the creation of leasehold interests in residential property. These provisions will forestall the establishment of the long leasehold system in Scotland. That system is, however, a major feature of the land law of England and Wales despite modifications made by the Leasehold Reform Act 1967.

converted into terminable rentcharges for a similar period, after which they would simply expire. Special importance attaches to the latter suggestion because it is obviously capable of fitting into a scheme for the substantial abolition of the system as well as into a less radical scheme for reform. Indeed, we believe that it provides the solution to the problem of existing rentcharges which eluded us in 1969.

33. In issuing our second paper for consultation we knew, of course, that reform alone would not satisfy people acquiring houses in the areas where rentcharges are common. Even if a rentcharge could be created only for a limited period (say, 60 or 70 years), purchasers would still feel that it invaded the principle of freehold tenure, and it would still be suspected of being a builder's bonus. But we were anxious to test reactions to our new suggestion relating to existing rentcharges, and we wanted comments on the detailed reforms, some of which would be relevant even if, at the conclusion of our review, we came down substantially against the continuance of the rentcharge system. This was, of course, because existing rentcharges would in any event continue for a considerable period of time and it would therefore be necessary to take some steps to alleviate the problems associated with them.

34. Consultation on the second working paper produced a few comments on the detailed reforms, and we have taken account of these in formulating the proposals contained in the next section of this report. But what has given us most satisfaction is the fact that our suggested means of dealing with existing rentcharges has met with comparatively little criticism notwithstanding the element of expropriation which it contains. As we show in paragraphs 57 to 61, existing rentcharges may be permitted to continue for such a period as to render that element negligible in practice. Rent payers would naturally like to see existing rentcharges expire on a "no compensation" basis at an early date; but those who have represented their interests to us acknowledge the difficulties which arise in interfering in this way with private investments, and they recognise the political unacceptability of any term of years so short as to result in a significant degree of confiscation. Indeed, they and we accept that in fixing the period weight should be attached to the interests of rent owners as well as to those of rent payers. It would be a mistake to think that private rent owners are always well-to-do; and many rentcharges are owned by non-profit making institutions and charities.

35. Our suggested solution of the problem of existing rentcharges is specifically accepted not only by the Manchester Law Society, but also by the Bristol Law Society – although the latter, as we have already indicated, do not favour an abolitionist approach to the subject generally.

36. On the other hand the Friendly Societies (who, taken together, are perhaps the largest institutional owners of rentcharges) do not favour this approach to existing rentcharges, especially in view of the fact that rent owners do not have a general right to require their rents to be redeemed, even if the rents are small in amount and are accordingly relatively expensive to collect. They say:

> "It is, in our view, a dangerous principle to restrict by means of legislation an existing right to receive a sum periodically in perpetuity, particularly where the owner is not the original creator of the charge and has purchased for investment."

We think it fair to observe that there already exists a very considerable legislative interference with the right of the owner of a perpetual rentcharge to receive an income in that form in perpetuity. For many years rent payers have had a statutory right to redeem at any time of their own choosing. Although redemption need not affect the rent owner's income, it may (and in current conditions almost certainly would) mean that if the rent owner had bought the rentcharge as an investment he has realised a substantial capital loss. The financial effect of our suggested means of dealing with existing rentcharges is not, we think, so drastic.

37. The Charity Commissioners also expressed some misgivings about the suggestion. They recognised that inflation alone is likely effectively to eliminate very small rentcharges over the next half-century, so that the formal expiry of such rentcharges 60 or 70 years from now would not be prejudicial in any practical sense. But a number of charities own rentcharges of more significant annual amounts, and may wholly or largely depend on them. Such a charity would be under an obligation to set up a sinking fund, setting aside a fraction of its income each year to replace the rentcharge source of income in due course. It was suggested to us that the accumulation of small sums over a protracted period might give rise to administrative difficulties and the Charity Commissioners asked us to consider the adoption of a special procedure for the elimination of existing rentcharges which were owned by charities (and were for sums exceeding £1 a year) namely, that the amounts should be increased in order to make accumulation easier, and that the rentcharges should expire at the end of an appropriately shorter term of years. We deal with this suggestion in paragraph 55 below.

E PROPOSALS FOR REFORM

(*a*) New rentcharges

38. We have come to the conclusion that it should no longer be possible to create the sort of rentcharges traditionally known in the north of England as "chief rents" and in the Bristol area as "ground rents". Overwhelmingly, these rentcharges are to be found on dwelling houses, and it is against the continuance of the practice of imposing these small legal charges on dwelling houses that our attention has been primarily directed. As we shall later show, however, effective legislation cannot be strictly limited in terms to legal rentcharges on residential property; and it has been found necessary, in the draft Bill appended to this report, to cast the net rather more widely, and to make specific provision by way of exception for those cases to which it is not desired that the legislation should apply.

39. It has to be appreciated that a rentcharge is a simple means of providing security for the due payment of periodical sums. It is clear from the comments on our working papers that criticism of the rentcharge system is not directed – at any rate primarily – against the fact that rentcharges cause land to be subject to encumbrances. The argument is not about security as such, or about its form; it is about the propriety of the liabilities which are being secured. The sums which are challenged are those which are, or have been, reserved on conveyances or transfers on sale of dwelling houses.

40. Time was, of course, when the practice of taking annual payments in consideration for transfers of land was not merely not challenged, but was actually welcome to all concerned. The release of land for development purposes, on rentcharge terms, was perhaps the easiest way in which a landowner could increase his income – agricultural rents produced a lower return on capital and alternative investment outlets were, in the earlier years of the last century, somewhat limited. Speculative builders in a modest way of business were thus able to acquire land without having to borrow capital and, in selling their houses, they did not have to seek more by way of immediate cash payment than was necessary to pay for the construction. In turn, they often took their profit in rentcharge form. These arrangements made obvious commercial sense, and met with general acceptance, in the days when capital financing through the banks and Building Societies was in its infancy. But that is all past history; and we are satisfied that rentcharges no longer play a useful part in financing the provision of housing. As we have already noted, the capitalised value of the sort of charge reserved on the sale of a new house in the areas where rentcharges are prevalent is unlikely to amount to more than 3 per cent. of the total consideration, and that figure speaks for itself.

41. The only substantial argument that we can see against recommending that steps be taken to break the habit of imposing rentcharges on new houses is that there exists an alternative means of charging annual sums which is as bad, or worse. There is no question but that, if rentcharges cannot in future be created on sales, developers may turn to greater use of the long leasehold system, and that system undoubtedly gives rise to the same or very similar problems. We find ourselves unable to judge the extent of the risk of this happening: some people have told us that they would expect to see a very considerable increase in the creation of long leaseholds, while others have suggested that this would not occur because of consumer resistance to leaseholds in areas where houses have traditionally been held freehold, albeit subject to rentcharges. Those who have urged us to recommend the prohibition of new rentcharges are fully aware of the drawbacks attaching to leaseholds, but they counter the argument in this way: even if there were a massive increase in resort to the leasehold system, householders would at least be subject to a system which they would understand, and which is common to the country as a whole. A long leasehold so created could normally be enfranchised, and this fact is one which is much more generally known than that rentcharges can, usually, be redeemed. On balance, we consider that this is a satisfactory answer.

42. If it were practicable, we would wish our proposed prohibition on the creation of new rentcharges to be limited to legal rentcharges affecting dwelling houses, because it is in relation to those rentcharges (and really those alone) that there is serious difficulty in justifying their existence. It would however be plainly unsatisfactory if the legislation spoke only in terms of legal rentcharges, because that would leave open the possibility for the future of creating, under hand only (that is to say, not by deed), precisely the type of rentcharge which should not be permitted. Such rentcharges would be enforceable in equity. Nor would it be practicable to restrict the legislation to rentcharges affecting dwelling houses, because once a charge is imposed upon land it will continue to affect the land irrespective of the use to which the land is put. Endless difficulty and confusion would arise if an attempt were made to suspend a rentcharge liability

for any period during which the land or any relevant part of it was in residential use. For those reasons we have come to the conclusion that the proposed prohibition on the creation of new rentcharges should be general. We have made some special enquiries as to whether such an approach would create difficulties in the commercial field, and we are satisfied that it should not do so. We therefore turn now to consider the definition of "rentcharge" for the purpose of our legislative proposals and the particular cases falling within that definition which we believe should be excepted from the general proposition that rentcharges should no longer be created.

43. The definition which we suggest should be adopted runs as follows:

"Any annual or other periodic sum charged on or issuing out of land except (*a*) rent reserved by a lease or tenancy, or (*b*) any sum payable by way of interest."

44. Rent under a lease or tenancy[35] is, of course, not a rentcharge at all, but "rent service", and we are not concerned with it in this report. There is some significance in the use of the words "reserved by a lease or tenancy", rather than the words "incident to a reversion", which are often to be found in this context. The phrases are normally interchangeable because the landlord to whom the rent is paid is also the owner of the reversion. But a landlord can dispose of one of his rights without the other (or of both, to different people) and, if that happens, the rent is no longer incident to the reversion and it is technically converted into a rentcharge. The tenant's position is not affected by this – the payments which he makes are still rent under a lease or tenancy, and the intention is that they should not be brought within the ambit of our proposals by severance of the rent from the reversion.

45. The commonest case of interest which is charged on land is mortgage interest, where the principal sum outstanding is also a charge on the land. The interest is by its nature an annual or periodic sum, but the principal is not, even if (as is often the case) it is paid off by instalments together with sums representing interest. In order to keep mortgages out of the ambit of our proposals it is therefore not necessary to refer in the definition to the capital element in any payments. So far as capital is concerned, what is charged on the land is at all times the whole sum outstanding, and not any agreed instalments individually.

46. The rentcharges which, in our view, should be excepted from the ban on future creation fall under four heads.

47. *First*, rentcharges created voluntarily or in consideration of marriage or by way of family settlement for the life of any person (or any shorter but indefinite period, such as widowhood) or for providing sums for the advancement, maintenance or benefit of any persons. At no stage in our review have we been concerned to affect the creation (or continued existence) of secured family annuities for which this exception is designed. A feature of a rentcharge of this description is that its very existence makes the land on which the payments are secured "settled land"[36] (unless it is already settled land, or is held on trust for

[35] In a mining lease, a royalty is part of the rent.
[36] Settled Land Act 1925, s. 1(1) (v).

sale); and where the land affected is settled, or is held on trust for sale, a rentcharge of this sort will often be overreached on the occasion of a sale. That means that in the purchaser's hands the land is freed from the charge, which is transferred to the purchase money in the hands of the trustees. Overreaching, however, does not always occur on a sale in these circumstances; but where land is sold subject to a family charge it is normal practice for the vendor to neutralise the effect of this by giving the purchaser the benefit of a covenant of indemnity. We recommend that in any case in which a rentcharge is created in reliance on this first exception, a subsequent purchaser of the land affected should have the benefit of such an indemnity by statute, if the charge is not overreached by the transaction.

48. *Secondly*, rentcharges forming an integral part of schemes beneficial, directly or indirectly, to the land charged. The need for this exception arises mainly in cases where a property development has produced a distinct group of separate freehold houses or where a single building is divided into separate freehold parts. In such a situation the preservation, value and enjoyment of each unit may well depend upon the observance of certain covenants by the owners of the other units. These covenants may be negative in form (such as a covenant not to carry on a trade), or they may be positive (for example, a covenant, essential in a block of flats, that each unit owner will keep his own unit in repair). In so far as they are negative, their enforceability need not give rise to legal problems: the burden of restrictive covenants can be made to run with the land under the existing law and such covenants can therefore be enforced directly against the unit owner for the time being.

49. But positive covenants do give rise to legal problems because under the present law the burden cannot, in the ordinary case, be made to run with the land affected and so such covenants cannot be enforced directly against successors in title to the original unit owner. To this rule, however, rentcharges provide an exception: not only does the liability to pay the rentcharge itself run with the land affected, but so also do the positive covenants imposed to support the rentcharge and maintain the security. Resort has therefore been had to rentcharges as a conveyancing device to improve the enforceability of positive covenants. Two schemes are in common use:

(1) Under the first scheme, which is more often used in smaller developments, a rentcharge affecting each unit will be imposed for the benefit of the other units and this rentcharge will be supported by positive covenants to repair, insure, and so on. The purpose of this scheme is not to procure the actual payment of the rentcharge – its amount may be nominal and the rent owners are unlikely to trouble very much whether it is paid or not – but to create a set of positive covenants which are actually designed to preserve the development as a whole but which are directly enforceable because they happen incidentally to support the rentcharge.

(2) Under the second scheme, which is more often employed in the larger developments, the developers or the unit owners will set up a management company to look after such things as the maintenance and insurance of the development as a whole. There is no problem here about enforcing the company's obligations: the difficulty is to ensure

that the company has funds with which to carry them out. A simple covenant by each unit owner to contribute towards the cost would necessarily be a positive covenant and so would involve the problems of enforceability to which we have referred. But a rentcharge would not, and so rentcharges are created. This scheme therefore differs from the first one, because here the actual payment of the rentcharge, so far from being unimportant, is the primary object to be achieved. Its amount will not be nominal, and it may well be variable (so that it can represent a due proportion of whatever expenditure is currently required). This scheme differs in another way also, because, whereas the purpose of the first scheme was to ensure the performance of positive covenants by the rent payer, the purpose of this scheme is to ensure performance of obligations by the rent owner.

50. Variations of these schemes are, of course, to be found in practice, but the rentcharges on which they all depend are clearly distinguishable from the ordinary vendor's rentcharge: their rationale is plain to see and they are not imposed to provide a source of pure income profit to the rent owner.

51. It is essential, in our view, that these "covenant-supporting" or "service charge" rentcharges should form an exception to our proposed ban on the creation of new rentcharges – for the time being. We add those last words because we are in the process of examining the position of positive covenants generally, as part of our work on rights appurtenant to land[37]. The need to preserve this exception will obviously fall to be reconsidered if and when any change occurs in the state of the underlying general law.

52. *Thirdly*, rentcharges created by, or in accordance with the requirements of, any court order. Such an order may well take the form of an order for payment of periodical sums, and we do not think that the court should be inhibited from causing the payments to be secured by a charge on land belonging to the person liable. In many (perhaps most) cases, the result will be a secured "family" annuity very similar to those included within the first head of exceptions, but that head may not cover the case. Whatever else may be said, it is clear that there can be no question about the legitimacy of the financial liability for which such a rentcharge provides security.

53. *Fourthly*, certain terminable rentcharges created by or under statutory provisions. For the most part, these charges are designed to enable the rent owners to recover, over a period[38], money spent on or advanced for the purpose of works of an improvement nature carried out on the land charged. Typical examples of such rentcharges are those arising under the Improvement of Land Act 1864 in favour of the Lands Improvement Company and the Agricultural Mortgage Corporation and those created by section 85 of the Settled Land Act 1925. There are others in favour of occupiers of land who have carried out works which the local authority have required to be done (so that the expense is ultimately borne by the freeholder)[39]. Rentcharges of this sort are almost

[37] See our Working Paper No. 36.
[38] Usually a maximum of 40 years.
[39] See, *e.g.*, Public Health Act 1936, s. 295. Similar rentcharges may arise under local Acts.

indistinguishable from ordinary repayment mortgages; indeed, the statutory charging provision sometimes adopts the form of a charge for a principal sum payable by instalments, rather than a rentcharge, and we do not think that we should draw a distinction between the two forms of charge for present purposes. We also comprehend under this head two other terminable statutory rentcharges: those under section 9 of the Land Drainage Act 1930 (payable by riparian owners in commutation of common law liabilities in respect of the repair of river banks), and those under paragraph 8 of Schedule 1 to the Leasehold Reform Act 1967. An underlessee enfranchising under that Act has, of course, to compensate both the freeholder and his immediate landlord, and he is in certain circumstances entitled to elect, as regards the compensation payable to his immediate landlord, between a capital sum and annual sums for the remainder of his former term. This situation has points of similarity with the severance cases discussed in paragraph 44 above.

(*b*) Existing rentcharges

54. Our second principal recommendation relates to the eventual extinguishment of existing rentcharges of the type which (if our first recommendation is accepted) will not be capable of creation in the future. Put shortly, we recommend that such rentcharges should expire at the end of a certain period (which we will for the moment take to be sixty years) at the latest; and that no provision should be made for compensating rent owners for the loss of the right to receive payments after that time. Special considerations apply to rentcharges which are in existence but which are not yet payable, and to rentcharges which are not at present for fixed sums, but, subject to particular rules relating to such cases, the period should run from the date on which the legislation comes into force. The adoption of this course would result in the total disappearance in or before the year 2036 of the vast majority of rentcharges now in existence.

55. In coming to that conclusion we have necessarily discarded two other possible means of dealing with existing rentcharges which were canvassed in the course of our review. We mention them here because they still appear to be favoured in some quarters. The first is that an existing rentcharge should go on until the occurrence of some defined event (for example, a sale of the subject land for value), when it would become compulsorily redeemable. On this basis, many rentcharges would disappear in a relatively short time, but some clearly would not, and we would prefer to adopt an approach which would normally enable one to say of any particular rentcharge that it will come to an end (at the latest) at some known future date. But to our minds, the conclusive argument against relying on the redemption of existing rentcharges on the happening of some defined event is that it would add further complication and could cause delays in buying and selling houses. In effect, a freeholder would not be able to sell his house without making the rent owner directly or indirectly a party to the transaction; and, if the land affected by the proposed transaction was not the whole of the land subject to the rentcharge, a formal legal apportionment would have to be obtained. The second alternative (but discarded) method of dealing with existing rentcharges would be to convert them into terminable rentcharges of relatively short duration, increasing the amounts payable by an appropriate percentage to provide the necessary compensation. In our second

working paper we expressed the view that increases would be unpopular with rent payers, and that the likely result of adopting a redemption scheme along those lines would be to cause the benefit of the compensatory increases to be swallowed up in administrative and collection costs. That view appears to be generally accepted. It is, nevertheless, a scheme of that sort which the Charity Commissioners have asked us to consider in relation to certain rentcharges owned by charities[40]. We do not recommend the adoption of a special scheme for charities. In the first place, we suspect that the anticipated administrative advantages would prove to be short-lived: in time, a £2 rentcharge may be in no better condition than a 50p. rentcharge is now. Secondly, the charities' argument is applicable to rentcharges now held by trustees of any sort, and we can see no case for discrimination in favour of charitable trusts only. We do not think that a special statutory regime could be applied to a rentcharge now held by non-charitable trustees. The regime would have to continue if the rentcharge ceased to be held by trustees, but it would no longer be apparent from the ownership that the rentcharge was one to which the regime applied and it might become difficult to tell whether it was or not. (If our proposals are adopted any trustee, whether of a charitable or of a non-charitable trust, will, we think, have to review the desirability of retaining any rentcharge among the investments.) Finally, charities are already in the privileged position of being entitled to call for redemption of rentcharges owned by them[41], and any charity foreseeing administrative difficulty in building up a sinking fund over a long period can avail itself of this power.

56. The proposal that existing rentcharges should, even if created in perpetuity, expire after a period of time without compensation is obviously one which calls for detailed explanation.

57. It is a truism that the difference in value between a perpetual and a terminable rentcharge diminishes as the term lengthens and we are told by the Government Actuary that the difference in actuarial value between a perpetual rentcharge and one for 70 years is rather less than one-half of 1 per cent.[42] That would represent the cost to the rent owner of cutting his perpetual rentcharge down to one for 70 years without compensation, and it seems to us that, taking a term of that order, the cost can fairly be described as negligible.

58. We also asked the Government Actuary to state how much of each £1 of rentcharge income received annually by a rent owner during a given period would have to be set aside by him and accumulated in a sinking fund in order to provide a full £1 a year in perpetuity after the period had elapsed, independently of the rentcharge. His answer is set out in the following table, which shows the amounts (in pence) per £1 of rent assuming accumulation in the sinking fund at two different rates of interest, namely 8 per cent. and 10 per cent.:

Years	20	30	40	50	60	70	80	90
Amount in pence (8%)	27	11	4.8	2.2	1.0	0.46	0.21	0.10
(10%)	17.5	6.1	2.3	0.86	0.33	0.13	0.049	0.019

[40] See para. 37, above.
[41] Charities Act 1960, s. 27.
[42] This figure is based on an annual interest rate of 8%. If a higher yield is assumed the difference in value is even smaller.

59. The first thing that appears from that table is that if existing rentcharges were to be extinguished over a relatively short term some form of compensation to rent owners would clearly be expected as a feature of the scheme. This would probably take the form of an increase in the annual payments for the duration of the term. As is well known, tithe liabilities are in the process of being eliminated on the basis of increased payments but the tithe redemption scheme is rather special in that the State became (in effect) the sole tithe owner and all the former owners were compensated at the outset, so that they have not been concerned with the collection of the increased sums payable under the scheme. Any scheme involving increases in the amounts payable under rentcharges is certain to be unpopular with rent payers; and (since we do not consider that it would be practicable to recommend that the tithe precedent be followed in full) we believe that such a scheme would, in the majority of cases, be unsatisfactory from the rent owners' point of view. We have little doubt that individual rent owners (or their collectors) would meet with resistance at the point of collection of any increases, and the result of higher collection costs would be to deprive the rent owner of at least part of the compensation which such a scheme would be designed to provide. Clearly, any such scheme would create problems where there were equitable apportionments of overriding rentcharges and would add to the difficulties of rent payers collecting contributions.

60. If, however, one looks at the figures in the table under the heading '60 years', an altogether different picture emerges. A compensation scheme involving the payment of increased annual sums during such a term would, on those figures, be self-defeating. The increases would normally be so small that it would hardly be economic for rent owners even to notify their rent payers of them, let alone actually to attempt their collection. Even if they were collected, the net additional sums would often be so small that the rent owner would not bother to apply them in the manner intended, namely the establishment of a fund to replace the rentcharge source of income in due course.

61. In determining the number of years at the end of which existing rentcharges should expire without compensation, the crucial question is, what term would render compensation provisions meaningless in practice? On the figures set out in the table, it seems that that point may be reached at 50 years, and is clearly arrived at by the time the period is extended to 70 years. On the whole, bearing in mind that in a matter of this sort the benefit of the doubt should go to rent owners, we are inclined to think that 60 years would be appropriate. But we cannot be dogmatic about that because the choice depends on the relevance of the evidence provided by the table at the date when the legislation is expected to come into force. We have no present reason to question the propriety of making a judgment on the assumption that interest rates will average 8–10 per cent. during the term; but if interest rates were to fall back to 5 per cent., for example, a very different picture would present itself and a correspondingly longer term would be called for[43]. In any event, we regard the acceptance of the principle that existing rentcharges should ultimately expire without compensation as more

[43] This is because a rent owners' sinking fund would accumulate at a slower rate, and a larger capital sum would be required at the end to produce an income equal to the amount of the rentcharge. Interest rates were low in 1936 when a 60-year term was adopted for the scheme for eliminating tithes, so that scheme had to include provision for compensation.

important than the actual period chosen, and the final decision as to the period is a matter for political decision[44].

62. In paragraph 54 above we indicated that special considerations applied to two classes of rentcharge, namely those which are not yet payable, and those which are for sums which may vary. The proposition that charges for annual sums may be extinguished without compensation, after a period of time which (in actuarial terms) is practically equivalent to perpetuity, is, in our view, one that can be defended on financial grounds; and we put it forward as the only practical means of winding up those many old perpetual rentcharges which are, if nothing else, a blot on the conveyancing scene. But the proposition is justified by demonstrating that the cost to the rent owner is minute. We have shown that the proportion of current rentcharge income which would have to be set aside to provide the *same* income in sixty years' time is small enough to be ignored. But that proportion is necessarily increased if the term of years is effectively reduced by reason of the fact that, although time is running, annual payments are not yet coming in; or if the sinking fund is required to provide at the end of the term an income which, by reason of the existence of a provision allowing the amount of the rentcharge to vary from time to time, may be higher than the current rentcharge income[45]. In either event it is clear that it cannot be demonstrated that a sixty-year (or any other fixed) term, running from the date on which legislation comes into force, would be fair. We accordingly suggest that, in the case of an existing but postponed rentcharge for a fixed annual amount, time should run from the date on which it first becomes payable; and that in the case of a variable rentcharge, it should run from the date when (if at all) it ceases to be capable of further variation. We appreciate that on this footing some variable rentcharges would not disappear, in accordance with our proposals, for a very long time and that others (that is to say, those which are designed to remain variable indefinitely) will be effectively exempted from our proposal relating to the extinguishment of existing rentcharges. This exemption would not, however, be very extensive in practice. We understand that ordinary rentcharges created in conveyances on sale are still normally for fixed sums; variable rentcharges are usually in the nature of service charges[46], and would accordingly be outside the scope of our extinguishment proposal anyway.

(*c*) The collection of equitably apportioned overriding rentcharges

63. Since existing rentcharges, at least, will continue to be payable for quite a long time we have been obliged to consider ways and means of alleviating the worst of the immediate problems. Without doubt the most serious is that of the collection of old, overriding (and often relatively small) rentcharges which have been equitably apportioned between several plots of land. On the one hand, there are the difficulties which beset the particular rent payer to whom the rent owner looks for payment of the whole of the rentcharge – difficulties which form the basis of a major criticism of the present law[47]. At the same time we bear

[44] In the draft Bill appended to this report, the suggested term is accordingly placed within square brackets.

[45] In many cases, variation is expressed in terms of fixed amounts at pre-determined intervals. But it may be expressed in terms of a formula (*e.g.*, a proportion of the rateable value of the premises at certain future dates), so that it would be quite impossible for the rent owner to forecast accurately what his sinking fund should aim at.

[46] See para. 49, above.

[47] See para. 29, above.

in mind that the rent owner's collection problems would be considerably increased (and the value of his investment correspondingly reduced) if the overriding rentcharge were fragmented by legal apportionment among the several parts of the land charged leaving the rent owner to collect even smaller sums from a much larger number of people.

64. This conflict of interest is not easily resolved because there is, in our view, only one means of eliminating the difficulty faced by a rent payer collecting equitably apportioned parts of an overriding rentcharge, and that involves legal apportionment. However, since legal apportionment operates as a benefit to the rent payer and is liable to cause inconvenience (or worse) to the rent owner if a very small simple rentcharge emerges, we consider that the rent owner should in certain cases be entitled to require such an apportioned charge to be immediately redeemed. A provision along those lines already exists in section 20(1) of the Landlord and Tenant Act 1927, but we think that, in adopting the principle of that provision, any new legislation relating to rentcharges should, at least, bring it up to date. We discuss this further in paragraphs 87 to 89 below.

65. Apportionment procedures already exist[48] but in our view there is considerable room for improvement. It has, in fact, been suggested to us that there need be no procedures, as such, at all, but that existing equitable apportionments (and exonerations) should be given the force of legal apportionments (or releases) by statute. We cannot recommend the adoption of that simple course, although we accept that the rent owner's ultimate security would not often be affected thereby[49]. If a rent owner were to be entitled to call for redemption of any small rentcharge emerging from a legal apportionment, we have no doubt that that entitlement would arise immediately in an enormous number of cases if all existing equitable apportionments were suddenly converted into legal ones. This would create an administrative problem of considerable dimensions and we do not think that many rent payers would welcome compulsory redemption on this basis. Furthermore we are of the firm opinion that it would be wrong in principle automatically to convert equitable exonerations into legal exonerations if (as is often the case) most of the land charged is equitably exonerated: sometimes that could have the effect of undermining the rent owner's security in a very serious manner.

66. We have a number of recommendations to make in relation to the procedure whereby rent payers (and, in particular, "collectors") may obtain legal apportionment of their liability under which overriding rentcharges have been equitably apportioned. Since that procedure shares many of the features of the procedure whereby redemption may be obtained, it may be more convenient to deal with both together. This we do in the following section of this report; and we confine ourselves at this stage to saying that the recommendations which we there make are aimed in the main at simplifying (and, we hope, cheapening) the procedure whereby a rent payer who has only an equitable apportionment may

[48] The statutory provisions are summarised in paras. 17–19.

[49] Even if the existing equitable arrangements between the several houseowners were such that the whole liability was cast on one of them, the annual value of that house would generally exceed the whole rentcharge.

obtain an apportionment which will bind the rent owner. This should ease the path of a rent payer who wishes to be released from collection duties.

(*d*) Redemption and apportionment procedures

(i) *The scope of our proposals: redemption*

67. There are five types of rentcharge for which, in our view, the recommended redemption procedure should not be available. These are as follows:

(1) Rentcharges of uncertain amount or duration. If the procedure is to be simple, the redemption price must be capable of calculation by reference to a formula, and the adoption of a formula means that, in every case to which it is to apply, there must be no elements of uncertainty in the essential data. In particular, the amount of the rentcharge being redeemed, and the period for which it is payable, must be fixed. Of necessity, therefore, our redemption proposals cannot cover rentcharges for amounts which might vary from time to time, or ones payable, for example, during the rent owners' lives only. Indeed, it seems to us that any procedure for compulsory redemption (however sophisticated the method of valuation) would in the case of rentcharges of uncertain amount or duration be inherently capable of producing very inaccurate (and therefore very unfair) results.

(2) Family charges (of the type discussed in paragraph 47 above) and charges created by or under court orders (paragraph 52 above). If a settlor, or a court, makes a provision for an individual by way of regular income payments rather than by way of lump sum, we do not think that the person liable to make the payments should be entitled unilaterally to frustrate any specific purpose there may have been in making the provision in that form. We would add that many (perhaps most) of the rentcharges of this kind would be outside the scope of our redemption proposals anyway, because they would be for life, or widowhood, or some such indeterminate period.

(3) Rentcharges, of the type discussed in paragraphs 48 to 51 above, supporting positive covenants or financing services in relation to land. The very existence of charges of this nature is justified only by the special purposes for which they are created and it seems to us irrational to declare our support for those purposes and, simultaneously, to facilitate their defeat. Again, many of the rentcharges of this kind would in any event be outside the scope of our redemption proposals, this time on the ground of their variability.

(4) Rentcharges for terms of years created under statutory provisions (other than ones under the Leasehold Reform Act 1967). Nearly all the statutory rentcharges referred to in paragraph 53 above exist for the purpose of paying (or repaying) specific capital sums over a period of time, and it is perhaps purely fortuitous that they take the form of charged annual payments rather than of charged capital sums payable by instalments (like Building Society mortgages). Where there is a capital sum in the background, it seems to us that premature redemption is a matter for agreement between the parties. There should not be

difficulty in reaching agreement if the owner of the land charged is prepared to pay the balance of the capital sum outstanding. But it would not appear natural, in a situation of this sort, to arrive at the figure which he should pay by capitalising the amount of the rentcharge (or annual instalment) by reference to a formula capable of producing different answers from day to day, depending on the state of the gilt-edged market[50].

(5) Annual liabilities having their origin in tithes. Parliament has already made special provision for their redemption and there seems to be no reason for making further provision.

(ii) *The scope of our proposals: apportionment*

68. Apportionment presents a different picture. The reasons set out in paragraph 67 for excluding the rentcharges falling under heads (1) to (4) from the scope of any new redemption procedure do not apply to the question of their apportionability. It appears, however, that it is very unusual for the terminable statutory rentcharges (head (4)) to become overriding rentcharges during their relatively short lives, and we understand that the Department of the Environment is not in practice asked to apply the existing apportionment procedure to them. There is accordingly no need for such rentcharges to be within the purview of the revised apportionment procedure; and the same applies to annual liabilities having their origins in tithes. We accordingly exclude these two types of rentcharge from the apportionment provisions in the draft Bill appended to this report.

(iii) *The scope of our proposals: general*

69. In the two preceding paragraphs we have, of course, been discussing special cases. The great majority of rentcharges will fall within the scope of the revised procedures which we propose, both for redemption and for apportionment. In proposing new and simplified procedures we are, we think, offering an acceptable solution to the most significant problems that have to be faced during the period of time that remains, if our main proposals are accepted, before the majority of existing rentcharges expire. Those problems relate, as we have said, to the collection of overriding rentcharges (generally old and often small in amount) which have been equitably apportioned between several plots of land. We do not know if there are comparable problems in relation to rentcharges that have not been equitably apportioned, though we think it unlikely. But if there are, the new procedures we recommend would become available once an equitable apportionment had been secured.

70. The reasons which we gave in paragraph 67 above for excluding certain classes of rentcharge from the scope of the proposed new redemption procedure apply with equal force, in our opinion, to redemption under the existing procedure contained in section 191 of the Law of Property Act 1925. We accordingly recommend that that section be amended to exclude applications under that

[50] Rentcharges arising under para. 8 of Sched. 1 to the Leasehold Reform Act 1967 are exceptional because, although they are substitutes for capital sums, those sums are themselves calculated by capitalising annual sums. There is no reason in their case, therefore, for regarding redemption by reference to a capitalising formula as in any way inappropriate.

procedure in respect of such rentcharges. Subject to that (and to a small amendment to section 20 of the Landlord and Tenant Act 1927 recommended in paragraph 87 below), we think that the existing procedures for redemption and apportionment should remain formally intact. Although this will mean that a rent payer will, in almost every case, be faced with a choice between the old and new procedures, we are confident that he will in practice opt for the new. A total repeal of the relevant provisions of the Law of Property Act 1925, the Inclosure Act 1854 and the Landlord and Tenant Act 1927 is out of the question at this stage because they operate also in the leasehold field; and it may be premature to disapply those provisions to rentcharges generally. We think it may be advisable to wait until after the new procedures we recommend have been implemented (if they command support) to see whether any useful purpose is served by retaining the existing provisions in so far as rentcharges are concerned.

(iv) *Administration*

71. We consider it important that the actual procedures for the redemption and for the apportionment of rentcharges should be as simple as possible, in order to minimise the need for professional assistance and the incurring of costs. The existing legislation recognises this by providing executive rather than judicial procedures and we are sure that that is the right approach. Nevertheless, the present procedures are not as simple as they might be, and we think that many rent payers would in fact have difficulty in handling an application unaided.

72. We have therefore considered the administration of the system, and this immediately raises the question as to who should be the person or body to whom applications should be made, and who should be responsible for dealing with them. Originally, the statutory functions were carried out at the Ministry of Agriculture and Fisheries; then at the Ministry of Land and Natural Resources; then at the Ministry of Housing and Local Government; and now at the Department of the Environment or the Welsh Office. We have heard no criticism of the way in which these Government departments have, in turn, carried out their functions, but we think that these functions could now with great advantage be transferred to local authorities. In the nature of things, most of the applications come from areas in which rentcharges are prevalent, and the officials of the local authorities in those areas are likely to have had greater general experience of rentcharges than have the officials in London. We are inclined to think that a transfer of these functions to District Councils would, moreover, have one special advantage. District Councils are more readily accessible to applicants in person and we have little doubt that advice and assistance in completing the forms would be forthcoming. This would, we think, help to remove the psychological barrier in relation to technical legal matters to which mayn people are subject, although we recognise that there will always be some cases in which it may be necessary for professional assistance to be obtained. Some of our correspondents, while agreeing that the statutory functions should be devolved onto local authorities, have expressed a preference for County Councils over District Councils. In our view, the advantages of devolution lie in bringing the operation of the procedures down to the immediate local level and we have no reason to believe that the new District Councils would not be able to carry out the duties assigned to them under the procedure which we envisage.

(v) *Redemption procedure*

73. The rent owner is not, even under the present law, entitled to raise any objection to redemption. We do not propose any change in that respect and we see no necessity for the rent payer to notify the owner that he is applying for a certificate of the amount of the redemption price[51]. In conformity with the views which we have already expressed, we recommend that that certificate should be issued by the District Council[52]; and that redemption should be effected by a further certificate issued by the Council, following payment of the redemption price to the Council (rather than, as at present, to the rent owner). The Council would then notify the person named by the rent payer in his application as the rent owner (or his agent) that the rent had been redeemed; and would subsequently pay the amount of the redemption price to the rent owner on proof of his right to receive the money. For this purpose a statutory declaration should suffice, as at present. A procedure along these lines would ensure that the owner of the rent could not cause redemption to be held up; and the cost of proving his title (which would probably be small) would fall on him and not on the rent payer. We think this not unreasonable as the redemption price will usually be higher than the market value of the rent[53]. The second half of the procedure would of course not have to be gone through if the District Council were itself the owner of the rent in question.

(vi) *Apportionment procedure*

74. Legal apportionment is a more complicated matter. By definition, it binds the rent owner and so is capable of affecting his security. Where there is an existing equitable apportionment, legal apportionment may not alter the rights and liabilities as between the applicant and his fellow rent payers (save to the extent to which the applicant's liability under the equitable apportionment will be discharged by his taking on an exclusive liability for a part of the whole rent). Nevertheless, an application for legal apportionment is likely to create a situation in which the interests of the applicant (on the one hand) and his fellow rent payers (on the other) are in conflict. In all probability, the applicant will be the "collector" of the rent; he will want legal apportionment in order to limit his liability towards the rent owner to the proportion of the whole rentcharge appropriate to his own land, so that he will no longer be in the position of having to pay the whole rent and collect contributions from his neighbours. For this purpose he will want a procedure which is as simple, cheap and swift as possible. On the other hand, since legal apportionment in respect of one part of the land leaves the rest of the land subject to the balance of the rentcharge, the rent owner will in all probability proceed thereafter to demand the whole of that balance from one of the other rent payers, who would thus, in effect, become the new "collector". Legal apportionment may solve the applicant's collection

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[51] At present, in making his application, the rent payer does not have to substantiate the figure claimed by him to be the amount of the rentcharge to be redeemed. The procedure which we suggest below should avoid the making of errors.

[52] The redemption price will be calculated by the Council by reference to a formula set out in clause 9 of the draft Bill appended to this report.

[53] This is because costs are likely to be incurred in collecting rentcharges, but not in receiving interest on 2½% Consols. (on the price of which the redemption price is based). In order to obtain the same net yield, therefore, an investor has to seek a gross yield higher than that provided by Consols., and accordingly pays relatively less for a rentcharge.

problem, but it will be unlikely to solve the general problem – that one of the rent payers will always be saddled with the duty of collecting for the rent owner.

75. We have already rejected one suggestion that has been made to us that would avoid this difficulty: we do not think that it would be convenient, or necessarily considered desirable by the other rent payers (even including a prospective new "collector"), to convert all existing equitable apportionments into legal apportionments automatically, by statutory provision[54]. It would be necessary to couple such a provision with compulsory redemption of all resulting separate rentcharges below a certain amount; but any individual rent payer might prefer to collect contributions from his neighbours rather than to pay out a capital sum on redemption. So, too, it would, in our view, be wrong to force all the rent payers into legal apportionment simply because one of their number had made an application.

76. One of the weaknesses of the present procedure for obtaining a legal apportionment is, we think, that it does not succeed in striking a satisfactory balance between giving the applicant what he wants and at the same time affording a measure of protection to his fellow rent payers against the risk of their becoming the collector in his stead. The Government department operating the procedure has always taken steps positively to encourage as many of the other rent payers as possible to join in the application. The current regulations accordingly require the applicant to set out in his application particulars of all persons interested in the rest of the land affected by the overriding rentcharge and to notify all such persons of his application. Unfortunately, it may not always be easy for a rent payer to satisfy these requirements (especially in those cases where he has not previously been the collector of the rent); legal costs may be incurred in making the necessary enquiries; and delay in disposing of the application arises while correspondence is in progress between the Department of the Environment and the applicant's fellow rent payers. We are satisfied that the cost and complexity of the present procedure has contributed to the fact that relatively little use has been made of it.

77. We have found it extremely difficult to decide whether the balance should be shifted more in favour of the individual applicant; and, if so, how far. By way of extreme contrast with the present approach to the problem, one could rely on the fact that legal apportionment regulates only the relationship between the applicant and the rent owner (and does not interfere with existing arrangements between the rent payers themselves). Accordingly one might adopt a procedure which ignored the existence of the other rent payers altogether; this would expedite the handling of the application, but would almost certainly result in one of the other rent payers being unexpectedly called upon to act as collector. It is true that this is something which, as a matter of law, may happen to any of the rent payers at any time – the rent owner may decide to look to a new collector for reasons unconnected with apportionment. Nevertheless the newly-nominated collector would, understandably, resent having been put into that unenviable position without an early warning of the special risk of its happening, and with no opportunity to consider whether he wanted to run that risk.

[54] See para. 65, above.

78. It seems to us that it would not be right, in revising the apportionment procedure, to continue to adopt the present approach which, by formally involving all the other rent payers, puts obstacles in the way of obtaining legal apportionment. At the same time we cannot agree that nothing need be done to alert the other rent payers. Efforts must be made to minimise the risk of another rent payer being taken by surprise when he is subsequently asked to pay the unapportioned balance of the overriding rentcharge.

79. We have come to the conclusion that in settling the formal requirements of the apportionment procedure – and in particular those relating to the making of applications – the convenience of the applicant should be the paramount consideration. The applicant's fellow rent payers should not be involved at any stage in the actual handling of the case. This puts a premium on achieving, wherever possible, a legal apportionment in the same figure as that of the applicant's existing equitable apportionment – otherwise, the applicant will have, in addition to his exclusive liability to the rent owner for the amount of his apportionment, a balancing liability towards (or right against) his former fellow rent payers, based on the equitable arrangements between them. The significance of making sure that the legal apportionment is the same as (or at any rate not less than) the amount of the equitable apportionment is, if anything, even greater if the apportioned rent is subsequently redeemed: on redemption, the land owner will want his land to be effectively released from *all* liabilities in relation to the rentcharge.

80. We accordingly recommend that the procedure should, in outline, be as follows. The rent payer would make his application to the District Council who would draw up a draft order in line with the existing equitable apportionment to the applicant's land, as appearing from his documents of title. This draft order would then be served on the rent owner or on the agent to whom the rent is paid. This would give the rent owner an opportunity, within a limited time, to object to the proposed apportionment on the ground that it would provide inadequate security for that (or the remaning) part of the rentcharge, and to state his reasons for so believing. One can, for example, imagine a case in which a legal apportionment based on existing equitable arrangements would leave part of the entire rent charged exclusively on a portion of the land which was derelict, or was so situated as not to be separately marketable. In an appropriate case, the rent owner would also, at this point, lodge his requirement that the final order be made conditional on redemption[55]. Any representations made by the rent owner relating to the security issue would be submitted by the District Council to the District Valuer. He is qualified to judge the merits of the rent owner's case, and he is independent of the local authority (which might itself be the rent owner in question). If the District Valuer recommends that the draft order be varied, the District Council would inform the applicant who may then withdraw his application[56]. Subject to that, the Council would proceed to make the order final, incorporating the amendments (if any) recommended by the District Valuer; and copies would be served on the applicant and the rent owner (or his agent). The order might, of course, be conditional on redemption.

[55] See paras. 87 *et seq.*, below.

[56] If the applicant is not the "collector" of the entire rent, he may well not wish to obtain a legal apportionment in an amount greater than his existing equitable apportionment. He would be left to collect the difference from his fellow rent payers.

81. We recommend that the District Council's order should have the formal effect of a release of the applicant's land from so much of the entire rentcharge as is not apportioned to it. A rent payer whose land has the benefit of an equitable exoneration might not often wish to take advantage of the statutory procedure in relation to his legal liability; but if he did, the draft order (following his equitable liability) would propose exoneration at law: a complete release[57]. We think that in a significant number of cases the order would be finalised in that form, either because the rent owner was prepared to rely on the rest of the land for his security, or because he was unable to satisfy the District Valuer that the loss of the applicant's land would leave him without sufficient security.

82. In paragraph 80 we outlined the formal aspects of the procedure; we now revert to the point which we made in paragraph 78, namely that efforts must be made to notify the other rent payers of the fact that a legal apportionment is being effected, and to draw their attention to the possible consequences to themselves. It will be clear from what we have already said that no obligation should be cast on the applicant to notify his fellow rent payers: indeed, the removal of such an obligation is a major feature of our proposals in this field. The District Council should, however, be able to see from the applicant's documents of title which are the other properties subject to the overriding rentcharge, and it would normally be practicable for them to address a notice to the occupants of the premises affected. We do not propose that a legal duty should be imposed on District Councils formally to notify all the applicant's fellow rent payers, but we strongly recommend the issue of a Departmental Circular urging them to use their best endeavours to bring the existence of the application for apportionment to the notice of the other rent payers, so that they are given a clear opportunity of making simultaneous applications on their own account. We think it would probably be desirable to have a standard form of informal notice; its terms could be set out in the Circular. We do not, however, wish this notification procedure to cause delay in dealing with the application in hand, nor do we intend that it should impose a marked administrative burden on the local authority involved. We do not, for example, suggest that the District Council should be under any obligation to follow up the notification. But, quite apart from the general desirability of letting as many as possible of the other rent payers know that an application is going forward, we think that District Councils might find that the giving of informal notice would save them work in the long run: it should be simpler to deal with several applications relating to the same rent more or less simultaneously than to deal with a trickle of applications over the years.

(vii) *Forms of application*

83. One of the features of the present procedure (whether for redemption or for apportionment) is that it is carried out without inspection of the applicant's title documents. The facts stated in the application are assumed to be accurate if they are not challenged by the rent owner or the other rent payers with whom the Department enters into correspondence.

[57] Under the present law the view is taken that this result cannot be achieved, because some amount (however small) must be apportioned to the applicant's land. A quite unnecessary complication is thus introduced into the equitable arrangements between the rent payers.

This helps to explain why, at present, an applicant is always required to give a great deal of information at an early stage. Nevertheless, it is not unknown for errors to be discovered at a very late stage – even after the issue of the relevant certificate.

84. Local authorities are not unaccustomed to examining documents of title on occasions other than their own property transactions. For example, they often do so before making improvement grants. We recommend that every application for redemption or apportionment should be accompanied either by the applicant's documents of title[58] or, if they are in the custody of a mortgagee, the name and address of the mortgagee. In the latter case, the mortgagee should be placed under an obligation to transmit the documents to the District Council on demand, subject to reasonable terms as to indemnity and so forth.

85. If the District Council has the documents of title, the application forms could be greatly simplified. The Council would require to know:

(i) whether the application is for redemption, or apportionment;

(ii) the name and address of the rent owner or his agent; and

(iii) the amount of the rent actually paid by the applicant each year. This would normally be the amount appearing from the title deeds as the sum payable.

In addition, if the rent payer is applying for apportionment of the rent between different parts of his own land (in contemplation perhaps of a part disposal) he should be required to give a description (preferably by reference to a plan) of the relevant parcels, and to suggest how the apportionment should be made.

(viii) *Appeals against apportionment*

86. Bearing in mind that the cost of an appeal against an order apportioning a rentcharge at law (or releasing part of the subject land altogether) would, in most cases, be wholly disproportionate to the amount at stake, the question arises as to whether any rights of appeal should be provided. Since the order will not prejudice the existing arrangements between the rent payers, there is no need to provide for an appeal by any of the applicant's fellow rent payers. Furthermore, since the applicant cannot object to an order which is in line with his equitable liability, and would be given an opportunity to withdraw his application if the District Council (on the District Valuer's recommendation) proposes to make an order in any other figure, he would seldom be interested in having a right of appeal either. The rent owner may, however, be aggrieved by the District Valuer's failure to accept his objections to the draft order, and we do not think that he should be precluded from arguing his case fully before a tribunal. Conversely, an applicant rent payer might be aggrieved by the District Valuer's acceptance of the rent owner's objections. In our opinion the Lands Tribunal is the proper forum for such appeals, and the respondent thereto should be the

[58] In the case of an *unregistered* title, these will consist of the conveyance to the applicant and the originals or abstracts of the earlier documents including the instrument creating the rentcharge and those effecting any apportionments or exonerations. Where the title is *registered*, they will consist of the Land or Charge Certificate or an office copy of the entries in the register and filed plan.

applicant or the rent owner (as the case may be) rather than the District Council (or the District Valuer).

(ix) *Apportionment conditional on redemption*

87. Our main purpose in simplifying the procedure for obtaining apportionments is to help the payers of an overriding rentcharge to escape from their legal liability to pay the whole amount of the rentcharge. A necessary corollary, as we said in paragraph 64, is a provision entitling a rent owner to call for redemption if a small apportioned rent emerges. The existing provision on these lines (the proviso to section 20(1) of the Landlord and Tenant Act 1927) entitles the rent owner to request that any legal apportionment in the figure of £2 a year or less should be made conditional on the immediate redemption of the rent. Comment on our working papers was not adverse to the suggestion that this figure should now be raised to £5; and we recommend not only that that figure be adopted for the purpose of our proposals but also that the 1927 Act be correspondingly amended. We further recommend that the Secretary of State be empowered to adjust both figures in the future by Statutory Instrument. One or two of our correspondents took the view that £5 was already too low a figure, and it is, of course, true that it is, in real terms, lower than £2 was in 1927. We are, however, anxious that this provision should not have the effect of discouraging rent payers from applying for apportionment. Its sole purpose is to protect rent owners from being left with rents which would be scarcely worth collecting and we do not think that a rent of more than £5 can, at present, be so described. But it would be unrealistic to suppose that that will hold true indefinitely, and we think that the figure should be capable of adjustment without having to resort to primary legislation.

88. The feature of the present provision which gives rise to greater difficulty is the discretion which the Secretary of State has to make the small apportionment unconditionally, notwithstanding the rent owner's expressed wish that any resulting small simple rentcharge be redeemed. In our opinion it would be simpler, and more satisfactory from the rent owners' point of view, if this discretion did not exist. At the same time, we recommend that the rent owner's right to call for redemption should not apply to *any* small rentcharge emerging as a result of an apportionment, but should be limited to the small sum or sums apportioned to land belonging to the applicant. If an overriding rentcharge affects only two plots (belonging to A and B respectively), an application for apportionment by A will inevitably have the effect of apportioning B's liability as well; and we do not consider that B should be at risk of having to redeem the share of the overriding rentcharge apportioned to him just because A decides to apply for apportionment for his own convenience.

89. There remains one further point of considerable practical importance under this head. If the rent owner is entitled to call on the applicant for redemption of his small apportioned rent, the applicant will – unless something is done about it – have to find an immediate capital sum if he is to have his apportionment[59]. Some people would find this difficult, and they are likely to be the very

[59] The size of the sum will depend on the amount of the apportioned rentcharge, the length of time for which it would otherwise remain payable, and the current yield from $2\frac{1}{2}\%$ Consols. For practical purposes, it would appear safe to regard £100 as an absolute maximum, but on present yields the maximum would be nearer £50.

people who are most anxious to obtain an apportionment in order to be released from collection duties. In order to meet this problem we suggested in our second working paper[60] that, if an apportionment were conditional on redemption and the rent payer could satisfy the Secretary of State that the condition imposed hardship on him, the small apportioned rent should be redeemed by the District Council itself. We have, however, been told by the Department that it would be very difficult for the Secretary of State to deal with "hardship" applications, and, on reconsideration, we agree that it would be inappropriate to involve him in this way. We recommend instead that if a small apportionment is made conditional on its redemption (because the rent owner has so required), any applicant rent payer who falls within certain prescribed categories[61] should be entitled to require the District Council to advance to him the amount of the redemption price. There would be no element of discretion. The sum so advanced should be a local land charge, and might be made repayable by instalments. In all the circumstances we suggest that the advance should be interest free. A provision along those lines would, we think, dispose of most of the problem – in a manner, moreover, that does not involve enquiry into need in individual cases.

(*e*) Miscellaneous points arising out of apportionment or redemption

90. The primary effect of an order under the apportionment procedure is (unless it releases the applicant's land altogether) to convert a liability to an overriding rentcharge into a liability to a simple rentcharge, so that (in the absence of any additional covenants) the owner of the land in question is no longer concerned with so much of the original rentcharge as is not apportioned to his land. A timely apportionment can also prevent an existing simple rentcharge from becoming an overriding one on the subdivision of the subject land. In our second working paper[62] we discussed at some length the possibility of introducing a provision having the effect of making legal apportionment compulsory in the circumstances just mentioned. While that suggestion has certain theoretical attractions, consultation has tended to confirm our suspicion that any such provision would cause more trouble than it was worth, especially as the life of the existing rentcharge neared its end. We have discarded the idea that existing rentcharges might be brought to an end by compelling their redemption on the first sale of the land, because of the added complication that it would introduce into the process of buying and selling houses[63]: the same considerations arise in the present connection, and we have decided not to recommend the introduction of a compulsory apportionment provision.

91. Redemption (or a total release of the applicant's land under the apportionment procedure) brings the legal liability to an end. When this happens, questions may arise as to the continued enforceability by the former rent owner of

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[60] Working Paper No. 49, para. 103.

[61] We suggest that the prescribed categories should, broadly speaking, cover those persons who have in recent years become entitled to a bonus pension at Christmas (under, *e.g.*, the Pensioners' Payments Act 1974) and those drawing supplementary benefits.

[62] Working Paper No. 49, paras. 74 to 80.

[63] Para. 55, above. The enforcement of compulsory provisions would clearly create complications. We note the procedure which the Land Tenure Reform (Scotland) Act 1974 has had to adopt in connection with the compulsory redemption of feu duties.

certain covenants other than the covenant to pay the rentcharge. These questions arise as much on the termination of a rentcharge by effluxion of time (or in any other way) as on redemption and they accordingly arise from time to time under the present law. But if our recommendations are accepted there will be many covenants the position of which will have to be considered immediately after the future day when the vast majority of existing rentcharges will cease to exist. A conveyance which incorporates a rentcharge is likely to contain a few more covenants (both restrictive and positive) than one that does not, and some of the covenants would not usually be found but for the presence of a rentcharge[64]. While it is clear that any covenant taken solely for the security of a rentcharge ceases to be enforceable as soon as the charge itself disappears, it is sometimes not easy to tell which of the covenants (other than the covenant to pay the rentcharge) falls within this principle. We have considered the possibility of introducing some statutory presumptions into this area of the law, but have come to the conclusion that no useful purpose would be served thereby. It will only be in borderline cases that any genuine difficulty will arise on redemption (or extinguishment) and we think that in such cases justice requires that the covenant in question should be considered on its own merits and in its own context, untrammelled by presumptions.

92. In our second working paper[65] we suggested that an application under the apportionment procedure ought to cause pending collection proceedings to be stayed, and that the order, when made, should act retrospectively on the rent owner's right to collect arrears. After further consideration we have decided to omit these suggested changes in the law from our recommendations. The right of a rent payer to apply for apportionment is not new and we think that there is no sufficient justification for allowing an application made now (or in the future) to affect the rent owner's accrued rights in relation to simple debts. Furthermore, it is not easy to see how any such provisions should operate in a case where the order is conditional on redemption and it is not known when (or whether) the condition will be complied with. The order releasing the applicant's land from part or all of the legal liability will take effect (subject to any condition as to redemption) when the time for appealing has expired or when any appeal has been determined; and the rent payer's liability in respect of the then current rentcharge period should be determined on a time basis in accordance with the Apportionment Act 1870.

F ENFORCEMENT AND REMEDIES

93. The liability to pay a rentcharge is a debt which is directly enforceable not only against the original covenantor, but also against the freehold owner for the time being,[66] and the latter is naturally the person to whom the rent owner looks. But associated positive covenants do not run with the ownership of the land in the same way; and it has been usual, therefore, to renew them (in effect) in a chain of indemnity covenants as the subject land has passed from owner to owner. We do not now think (as our second working paper suggested[67]) that all

[64] *e.g.*, covenants to repair, to insure, and to grant access to view.
[65] Working Paper No. 49, para. 104.
[66] *Thomas* v. *Sylvester* (1873) L.R. 8 Q.B. 368.
[67] Working Paper No. 49, para. 109.

existing associated covenants should be treated as having run with the land, thereby rendering them directly enforceable against the present owners (and their successors). To do that might be to make directly enforceable against current owners some covenants which (as a result of a break in the indemnity chain) are not now even indirectly enforceable against them. Nor do we think that original covenantors who have parted with the subject land should be released from their existing continuing liability to the covenantee (or his successors), because the covenantee may have relied on the personal qualities of the original covenantor as a valuable element in his security. We have, however, considered whether the law should be changed as respects covenants securing rentcharges to be created in the future, enabling them to run with the land in exoneration of the original covenantor. On the whole, we think that little purpose would be served by this. If our recommendations are accepted, rentcharges created in the future will be relatively few in number. Furthermore, only those covenants clearly associated with rentcharges would be involved, and the draftsman of a conveyance would have to provide in the traditional manner for the continuance of any other positive covenants. It would only complicate the law to have two classes of positive covenants, one running with the land and the other not.

94. We do not propose any alteration to the range of remedies available to a rent owner for the purpose of enforcing payment. We are at one with the Payne Committee[68] in thinking that the remedy of distress should be replaced by some other recovery procedure which would not involve court costs on the present scale; but until such an alternative is established we accept the practical necessity of retaining the existing remedy. As a matter of detail, we have noted certain differences between distress for arrears of rentcharges and distress for ordinary rent[69], and we have considered whether such differences should be eliminated. We have come to the conclusion, however, that alignment of the law would be of no practical utility and that it would be better to leave things as they stand. The truth is that goods are seldom actually distrained upon for rentcharge arrears: the threat of it is generally enough to produce payment. Even if the rent payer lets matters go so far that the bailiff arrives, the impending levy can be stopped instantly by tendering the sum due, and it is better that that sum should not be increased by court costs.

G APPLICATION TO THE CROWN

95. The present redemption and apportionment procedures under the Law of Property Act 1925 and the Landlord and Tenant Act 1927 bind the Crown; and we are of the opinion that all the provisions contained in the draft Bill appended to this report should do so. The draft does not contain a Crown application clause, but attention will have to be given to this matter before legislation is introduced.

H SUMMARY OF RECOMMENDATIONS

96. (*a*) Subject to (*c*) below, no further rentcharges should be created (paragraphs 38 to 42 of the report; clause 2(1) and (2) of the draft Bill).

[68] *Report of the Committee on the Enforcement of Judgment Debts* (1969), Cmnd. 3909.

[69] The Law of Distress Amendment Act 1908 (which protects some third parties in the event of distress levied by a landlord) has no rentcharge counterpart; and in very many cases the Rent Restriction Acts prevent a landlord distraining without leave of the county court.

(*b*) Also subject to (*c*) below, all existing rentcharges should (if they have not come to an end in the meantime) be extinguished without compensation at the end of a period which we indicate might be 60 years (paragraphs 54 to 62; clause 3(1)).

(*c*) The following classes of rentcharge are excepted from the recommendations above:

(i) Rentcharges (typically in the nature of family annuities) which cause the land charged therewith to be settled land (for the purposes of the Settled Land Act 1925) or which affect settled land or land held on trust for sale.

(ii) Rentcharges created (typically in connection with freehold flat developments) for the purpose either of making positive covenants enforceable against successors in title or of financing the provision of common services.

(iii) Rentcharges created by or in accordance with court orders.

(iv) Rentcharges created by or under certain statutory provisions.

(Paragraphs 46 to 53; clauses 2(3), (4) and (5), and 3(3) (*b*)).

To these are added, in relation to the extinguishment of existing rentcharges only:

(v) Rentcharges having their origins in tithe liabilities.

(vi) Rentcharges which are for variable amounts, so long as they remain variable.

(Paragraph 62; clause 3(3) (*a*), (4) and (5)).

(*d*) Where land subject to a rentcharge of the kind described in (*c*) (i) above is disposed of for value, and the charge is not thereby overreached, the vendor or lessor should be required to give the purchaser or tenant an indemnity in respect of the rentcharge (paragraph 47; clause 12).

(*e*) There should be changes in the law and practice relating to the apportionment and redemption of rentcharges (Part E, (*d*); clauses 4 to 11). The new procedures would apply to all existing perpetual rentcharges for fixed sums; but there are other cases in which it is inappropriate to provide a procedure for redemption at the request of one party only, and there are some in which it is unnecessary to provide a new apportionment procedure (paragraph 67; clauses 4(3) and 8(4) and (5)).

(*f*) The salient features of the new apportionment and redemption procedures should be:

(i) the carrying out of administrative functions by District Councils, through which all steps should be conducted (paragraph 72);

(ii) a strong presumption that apportionment binding the rent owner should be in accordance with existing liabilities binding the rent payers between themselves (but not the rent owner) (paragraphs 79 and 80);

(iii) no direct involvement of the applicant's fellow rent payers (paragraphs 79 and 80, but see also paragraphs 78 and 82);

(iv) an immediate increase from £2 to £5 in the amount of an apportionment which, by reason of its smallness, entitles the rent owner to require apportionment to be made conditional on redemption; and this financial limit should be variable by Statutory Instrument (paragraph 87);
and

(v) the right of prescribed categories of rent payers (for example, those drawing certain social security benefits) to call on the District Council for a loan to enable them to redeem rentcharges in cases where apportionment is conditional on redemption (paragraph 89).

(*Signed*) SAMUEL COOKE, *Chairman.*
AUBREY L. DIAMOND.
STEPHEN EDELL.
DEREK HODGSON.
NORMAN S. MARSH.

J. M. CARTWRIGHT SHARP, *Secretary.*

30 *July* 1975.

APPENDIX I

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APPENDIX II

Draft Rentcharges Bill

ARRANGEMENT OF CLAUSES

DRAFT

OF A

B I L L

TO

A.D. 1975

PROHIBIT the creation, and provide for the extinguishment, apportionment and redemption, of certain rentcharges.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Prohibition and extinguishment

Meaning of "rentcharge"

1. For the purposes of this Act "rentcharge" means any annual or other periodic sum charged on or issuing out of land, except—

(*a*) rent reserved by a lease or tenancy, or

(*b*) any sum payable by way of interest.

EXPLANATORY NOTES

Clause 1
This definition clause is discussed in paragraphs 43–45 of the report.

Creation of rentcharges prohibited.

2.—(1) Subject to the provisions of this section, no rentcharge may be created, whether at law or in equity, after the passing of this Act.

(2) Any instrument made after the passing of this Act shall, to the extent that it purports to create a rentcharge the creation of which is prohibited by this section, be void.

(3) This section does not prohibit the creation of a rentcharge—

(*a*) which has the effect of making the land on which the rent is charged settled land by virtue of section 1(1)(*v*) of the Settled Land Act 1925;

1925 c. 18.

(*b*) which would have that effect but for the fact that the land on which the rent is charged is already settled land or is held on trust for sale;

(*c*) which is an estate rentcharge;

(*d*) under any Act of Parliament providing for the creation of rentcharges in connection with the execution of works on land (whether by way of improvements, repairs or otherwise) or the commutation of any obligation to do any such work;

(*e*) by, or in accordance with the requirements of, any order of a court; or

1967 c. 88.

(*f*) under paragraph 8 of Schedule 1 to the Leasehold Reform Act 1967.

(4) For the purposes of this section "estate rentcharge" means (subject to subsection (5) below) a rentcharge created for the purpose—

(*a*) of making covenants to be performed by the owner of the land affected by the rentcharge enforceable by the rent owner against the owner for the time being of the land; or

(*b*) of meeting, or contributing towards, the cost of the performance by the rent owner of covenants for the provision of services, the carrying out of maintenance or repairs, the effecting of insurance or the making of any payment by him for the benefit of the land affected by the rentcharge or for the benefit of that and other land.

(5) A rentcharge of more than a nominal amount shall not be treated as an estate rentcharge for the purposes of this section unless the amount of the rentcharge represents a reasonable payment in relation to the performance by the rent owner of any such covenants as are mentioned in subsection (4)(*b*) above.

Clause 2

Subsections (1) *and* (2) implement the Commission's recommendation (paragraph 38 of the report) forbidding the creation of new rentcharges. The remaining subsections relate to the exempted classes of rentcharges which are discussed in the report as follows:—

Subsection (3) (*a*) *and* (*b*): paragraph 47

Subsection (3) (*c*) (together with subsections (4) and (5)): paragraphs 48–51

Subsection (3) (*d*): paragraph 53

Subsection (3) (*e*): paragraph 52

Subsection (3) (*f*): paragraph 53

Subsection (5) is designed to ensure that the amount of any "estate rentcharge" created in the future shall not exceed an amount reasonably necessary for the purpose for which the rentcharge is created. If the sole purpose falls within subsection (4) (*a*), a rentcharge of nominal amount only is required. If the rentcharge is created wholly or partly for the purposes set out in subsection (4) (*b*), it will fail if the amount is unreasonably large in relation to the anticipated expenditure on the part of the rent owner.

Extinguishment of rentcharges.

3.—(1) Subject to the provisions of this section, every rentcharge shall (if it has not then ceased to have effect) be extinguished at the expiry of the period of [60] years beginning—

(*a*) with the passing of this Act, or

(*b*) with ~~the~~ date on which the rentcharge first became payable, whichever is the later; and accordingly the land on which it was charged or out of which it issued shall, at the expiration of that period, be discharged and freed from the rentcharge.

(2) The extinguishment of a rentcharge under this section shall not affect the exercise by any person of any right or remedy for the recovery of any rent which accrues before the rentcharge is so extinguished.

(3) This section shall not have the effect of extinguishing any rentcharge—

(*a*) which is, by virtue of any enactment or agreement or by custom, charged on or otherwise payable in relation to land wholly or partly in lieu of tithes; or

(*b*) which is of a kind referred to in subsection (3) of section 2 above (disregarding subsection (5) of that section).

(4) Subsection (1) above shall not apply to a variable rentcharge; but where such a rentcharge ceases to be variable, subsection (1) above shall apply as if the date on which the rentcharge first became payable were the date on which it ceased to be variable.

(5) For the purposes of subsection (4) above a rentcharge is (at any time) to be treated as variable if at any time thereafter the amount of the rentcharge will, or may, vary in accordance with the provisions of the instrument under which it is payable.

Clause 3

Subsection (1) implements the Commission's recommendation relating to the extinguishment of existing rentcharges, discussed in paragraphs 54–62 of the report. The reason for leaving the term of 60 years in square brackets at this stage is stated in paragraph 61.

Subsection (3) (*a*) exempts liabilities having their origin in tithes, the extinguishment of which is governed by other legislation. Most of these liabilities are due to disappear in or before 1996, under the Tithe Act 1936.

Subsection (3) (*b*) exempts from extinguishment existing (and future) rentcharges of the kinds which may continue to be created after the enactment comes into force. Existing rentcharges of the type described in clause 2(4) ("estate rentcharges") will not be extinguished even if they are for amounts beyond the limits allowed for new rentcharges of that sort. In fact, most of the existing rentcharges within this paragraph are not perpetual in nature and are likely to terminate within 60 years in any event.

Subsections (4) *and* (5) exempt variable rentcharges from extinguishment so long as they remain variable: see paragraph 62 of the report.

Apportionment

Application for apportionment.

4.—(1) The owner of any land which is affected by a rentcharge which also affects land which is not in his ownership may, subject to the provisions of this section, apply to the local authority for any area in which any part of the land to which the application relates is situated for an order apportioning the rentcharge between that land and the remaining land affected by the rentcharge.

(2) The owner of any land which is affected by a rentcharge which only affects land in his ownership may apply to the local authority for an order apportioning the rentcharge between such parts of his land as may be specified in the application.

(3) No application for apportionment may be made under this section in respect of—

(*a*) a rentcharge of a kind mentioned in section 2(3)(*d*) or 3(3)(*a*) above, or

(*b*) in respect of land affected by a rentcharge which also affects other land, if the whole of that other land is exonerated or indemnified from the whole of the rentcharge by means of a charge on the first mentioned land.

(4) No application for apportionment may be made under subsection (1) above in respect of any rentcharge which has not been equitably apportioned as between the land to which the application relates and other land affected by the rentcharge.

Clause 4

Subsection (1), together with the corresponding clause 8(1), implements the recommendation that the administrative functions in connection with apportionments (and redemption) under the Bill should be carried out by District Councils (paragraph 72 of the report). "Local authority" is defined in clause 14.

Subsection (2) permits apportionment of a rentcharge in anticipation of subdivision of the land affected thereby. If this is done, collection problems will not subsequently arise as between the owners of the several parts of the land. An applicant may propose that as to part of the land no sum should be "apportioned" to it: see the definition in clause 14.

Subsection (3): There are certain rentcharges for which an apportionment procedure under this Bill would serve no useful purpose; these are accordingly excluded from the scope of the provision. As to paragraph (*a*), see paragraph 68 of the report. Paragraph (*b*) follows the existing law (see the Law of Property Act 1925, section 191(7)).

Subsection (4): The aim of the procedures under clause 5 is to produce, wherever possible, a legal apportionment which is in line with the applicant's existing liability (if any) to contribute towards payment of the whole. In this way, not only is his liability towards the rent owner fixed for the future, but also his equitable liability towards his co-rentpayers is cancelled out. This presupposes that the applicant's land has the benefit of an existing equitable apportionment or exoneration. In the rare case where no such agreement exists, an intending applicant for legal apportionment will have first to obtain one.

(5) Where an applicant's documents of title are in the custody of a mortgagee the mortgagee shall, if requested to do so by the local authority for the purpose of an application made under this section, deliver those documents to the authority on such terms as to their custody and return as he may reasonably require.

(6) Every application—

(*a*) under subsection (1) above, shall specify the amount equitably apportioned to the applicant's land, and

(*b*) under subsection (2) above, shall specify the applicant's proposal for apportioning the rentcharge between the parts of his land specified in the application.

(7) Subject to subsection (6) above, every application under this section shall be in such form and shall contain such information and be accompanied by such documents as may be prescribed by regulations which may, in particular, require the application—

(*a*) to give the name and address of the rent owner or of his agent or, where the applicant does not know the name and address of either the rent owner or his agent, the name and address of the person to whom the rent is paid;

(*b*) to be accompanied by the applicant's documents of title (including, in the case of registered land, an authority to inspect the register) or by such other evidence of his title as may be prescribed by the regulations;

(*c*) where the applicant's documents of title are in the custody of some other person, to give the name and address of that other person.

Clause 4 (*continued*)
Subsections (5), (6) *and* (7) relate to the information and evidence to be provided in connection with an application for apportionment, to enable the District Council to carry out the duties assigned to it. See paragraphs 83 to 85 of the report. In large part these matters will fall to be particularised in regulations to be made after the Bill has become law.

Apportionment.

5.—(1) Where an application for apportionment is made under section 4 above, the local authority concerned shall, unless they consider that further evidence of title or other information ought to be furnished by the applicant, prepare a draft order for apportionment of the rentcharge in accordance with the equitable, or proposed, apportionment specified in the application.

(2) A copy of the draft order shall be served by the authority on the rent owner or on his agent.

(3) Where a draft order is served under subsection (2) above, the rent owner may, within 21 days of the receipt of the draft order by him or, as the case may be, his agent (or within such longer period, not exceeding 42 days, as the authority may in a particular case allow)—

(*a*) object to it on the ground that such an apportionment would provide insufficient security for any part of the rentcharge;

(*b*) make an application to the effect that in the event of the apportionment not exceeding the sum for the time being mentioned in section 7(2) below, a condition should be imposed under that section.

Any objection or application under this subsection shall be made in writing.

(4) Any objection duly made to the authority in accordance with subsection (3)(*a*) above shall be referred by them to the district valuer, who shall consider the objection and report on it to the authority.

(5) Where the district valuer has considered an objection referred to him under subsection (4) above and is satisfied that the draft order concerned should be modified in order to preserve for the rent owner sufficient security for the payment of each apportioned part of the rentcharge, he shall make the necessary recommendation in his report.

Clause 5
This clause sets out the procedure to be followed by the District Council (paragraph 80 of the report).

Subsection (1) provides that the draft order will in every case follow either the applicant's existing liability (if any) as between himself and his co-rentpayers (if the rentcharge is already an overriding one) or the figure proposed by him in his application (if the relevant land has not yet been divided).

Subsection (2) may involve the District Council in making enquiries, because the applicant may have been able to provide only the name and address of the other rent payer to whom he has customarily paid his equitably apportioned share. The mere fact that that other rent payer may have had to collect contributions does not make him the rent owner's agent.

Subsection (3) (*a*): an apportionment in line with an existing equitable apportionment might be open to objection under this paragraph if, for example, it left part of the rent charged exclusively on a portion of the land which was not separately marketable, so that the rent owner's statutory remedies in the event of non-payment (Law of Property Act 1925, section 121) would be ineffective.

Subsections (3) (*b*) *and* (6) (*ii*): The condition is that the apportioned share of the rentcharge be redeemed. See paragraphs 87 and 88 of the report.

(6) Where—

(*a*) the period of 21 days mentioned in subsection (3) above (or, where the authority have allowed a longer period, that period) has expired without any objection having been duly made by the rent owner, or

(*b*) an objection has been duly made, and the district valuer has reported to the authority,

the authority shall, if the applicant has not then withdrawn his application, make an order (an "apportionment order") in the form of the draft but incorporating—

(i) any modifications recommended by the district valuer in accordance with subsection (5) above, and

(ii) where appropriate, a condition imposed by virtue of section 7(2) below.

(7) Immediately after making an apportionment order the authority shall serve copies of the order on the applicant and on the person on whom the draft order was served under subsection (2) above.

(8) In a case where modifications have been recommended by the district valuer, under subsection (5) above, the authority shall not make an apportionment order without giving the applicant an opportunity to withdraw his application.

Subsection (8): An applicant may prefer to forgo his right to an apportionment as against the rent owner, if it means that he will get one which is out of line with the existing position as between himself and his co-rentpayers. If the proposed legal apportionment exceeds his equitable liability, he will be left with having to recover the difference from the others. He should not be forced to choose between accepting an apportionment he does not want and taking his chance on an appeal to the Lands Tribunal.

Appeal against apportionment order.

6.—(1) Where the applicant, or the rent owner, is aggrieved by the terms of an apportionment order he may, before the expiration of the period of 28 days beginning with the day on which the order is made, appeal to the Lands Tribunal.

(2) Where an appeal has been duly made to the Lands Tribunal under this section, the Tribunal shall—

(*a*) confirm the order, or

(*b*) set it aside, and, subject to section 7(2) below, make such other order apportioning the rentcharge as it thinks fit.

EXPLANATORY NOTES

Clause 6

See paragraph 86 of the report.

Effect of apportionment order.

7.—(1) An apportionment order shall, subject to subsection (2) below, have effect—

(*a*) on the expiration of the period of 28 days beginning with the day on which it is made, or

(*b*) where an appeal against the order has been duly made under section 6 above, on such day as the Lands Tribunal shall specify.

(2) If—

(*a*) in the case of an application under section 4(1) above, the part of the rentcharge apportioned to the applicant's land, or

(*b*) in the case of an application under section 4(2) above, any apportioned part of the rentcharge,

does not exceed the annual sum of £5, it shall, where an application has been duly made under section 5(3)(*b*) above, be made a condition of the apportionment order that it shall have effect only for the purpose of the redemption of that part of the rentcharge in accordance with the following provisions of this Act.

(3) In the case of an application under section 4(1) above, the effect of an apportionment order shall (subject to subsection (2) above) be to release the applicant's land from any part of the rentcharge not apportioned to it and to release the remaining land affected by the rentcharge from such part (if any) of the rentcharge as is apportioned to the applicant's land.

(4) In the case of an application under section 4(2) above, the effect of an apportionment order shall (subject to subsection (2) above) be to release each part of the applicant's land from any part of the rentcharge not apportioned to it.

(5) The Secretary of State may by regulations substitute, for the sum for the time being mentioned in subsection (2) above, such larger annual sum as he considers appropriate; and any such regulations may provide for the same larger annual sum to be substituted for that for the time being mentioned in section 20(1) of the Landlord and Tenant Act 1927 (which provides for the compulsory redemption of apportioned rents below a certain amount).

1927 c. 36.

Clause 7

Subsections (2) *and* (5): The redemption condition (discussed in paragraphs 87 and 88 of the report) follows the pattern of the existing law (Landlord and Tenant Act 1927, section 20) under which the figure is fixed at £2. Having regard to the collection costs resulting from fragmentation of an overriding rentcharge, the provision is necessary for the protection of rent owners.

Subsections (3) *and* (4): It will be noted that under clause 14 "apportionment" and "equitable apportionment" may, in relation to any particular part of the land, include a nil amount or equitable exoneration. A legal apportionment under the statutory procedure may accordingly have the effect of wholly releasing part of the land affected by the rentcharge (the burden of the entire rentcharge falling on the remainder of the land).

Redemption

Application for redemption.

8.—(1) Subject to the provisions of this section, the owner of any land affected by a rentcharge may apply to the local authority for any area in which any part of the land is situated for a determination of the redemption price of the rentcharge.

(2) Every application under this section shall be in such form and shall contain such information and be accompanied by such documents as may be prescribed by regulations.

(3) Regulations under subsection (2) above shall, in particular, require any application which relates to a legally apportioned part of a rentcharge to be accompanied by such evidence of the legal apportionment as may be prescribed by the regulations.

(4) No application may be made under this section in respect of a rentcharge of a kind mentioned in section 2(3)(*a*) to (*e*) or 3(3) (*a*) above.

(5) An application under this section may only be made—

(*a*) if the period for which the rentcharge concerned would remain payable if it were not redeemed is ascertainable, and

(*b*) in the case of a rentcharge which has at any time been a variable rentcharge, if it has ceased to be variable at the time of making the application.

For the purpose of this section a rentcharge is (at any time) to be treated as variable if at any time thereafter the amount of the rentcharge will, or may, vary in accordance with the provisions of the instrument under which it is payable.

(6) Where an applicant's documents of title are in the custody of a mortgagee the mortgagee shall, if requested to do so by the local authority for the purpose of an application made under this section, deliver those documents to the authority on such terms as to their custody and return as he may reasonably require.

Clause 8
This clause deals with applications for redemption. The cases to which the procedure will not apply, set out in *Subsection* (4) *and* (5) are discussed in paragraph 67 of the report.

Subsection (6) corresponds with clause 4(5).

Redemption.

9.—(1) Where an application has been duly made under section 8 above, the local authority shall calculate the redemption price in accordance with the provisions of subsection (2) below and shall notify the applicant of the price so calculated.

(2) The redemption price shall be calculated by applying the formula:

$$P = £\frac{R}{Y} - \frac{R}{Y(1 + Y)^n}$$

where:—

P = the redemption price;

R = the annual amount of the rentcharge to be redeemed;

Y = the yield, expressed as a decimal fraction, from $2\frac{1}{2}$ per cent. Consolidated Stock; and

^{n} = the period, expressed in years (taking any part of a year as a whole year), for which the rentcharge would remain payable if it were not redeemed.

In calculating the yield from $2\frac{1}{2}$ per cent. Consolidated Stock, the price of that stock shall be taken to be the middle market price at the close of business on the last trading day before the day on which notification of the redemption price is issued in accordance with subsection (1) above.

(3) Where, under subsection (1) above, the local authority have notified the applicant of the redemption price, the applicant may (within the prescribed period) pay the amount of the redemption price to the authority.

In this subsection "prescribed period" means the period prescribed for the purposes of this section by regulations.

(4) Where the applicant pays the amount of the redemption price to the local authority, in accordance with subsection (3) above, the authority shall—

(*a*) issue a certificate (in this Act referred to as a "redemption certificate") certifying that the rentcharge has been redeemed, and

(*b*) serve copies of the redemption certificate on the applicant and on the rent owner or his agent.

(5) Where a redemption certificate has been issued under this section—

(*a*) it shall have the effect of releasing the applicant's land from the whole or, as the case may be, part of the rentcharge concerned, but

(*b*) it shall not affect the exercise by the rent owner of any right or remedy for the recovery of any rent which accrues before the date on which it was issued.

Clause 9

Subsection (2): The first half of the formula $(£\frac{R}{Y})$ capitalises the annual amount of the rentcharge to produce a sum which, if invested in $2\frac{1}{2}\%$ Consols, would provide by way of income an annual sum in perpetuity equal to the amount of the rentcharge. (This is, in effect, the formula now used for redeeming perpetual rentcharges under section 191 of the Law of Property Act 1925). But every rentcharge to which the redemption provisions of the Bill apply will, under clause 3, have ceased to be perpetual, and the redemption price must be progressively reduced as the rentcharge approaches extinction at the end of the term. The standard method of calculating such a reduction is provided by the second half of the formula. As the life expectation of the rentcharge (^{n}) decreases, the sum produced by the second half of the formula increases until, eventually, it almost equals the sum from which it is to be deducted.

In adopting $2\frac{1}{2}\%$ Consols as the yield base the formula follows the most recent precedent in this field (feu duty redemption under the Land Tenure Reform (Scotland) Act 1974).

Subsection (3): Since the redemption price is capable of varying from day to day (according to the market price of $2\frac{1}{2}\%$ Consols), redemption on the basis of a particular notified price must be effected (if at all) within a reasonably short period after its calculation.

Release by local authority of redemption money.

10.—(1) Where a redemption certificate has been issued under section 9(4) above, the local authority shall not release the redemption money except in accordance with the provisions of this section and on the receipt of a claim made—

(*a*) by the rent owner or the mortgagee, in a case where the rentcharge was subject to a mortgage; or

(*b*) by the rent owner, in any other case.

(2) A claim under this section shall be accompanied by a statutory declaration in such form, and containing such information, as may be prescribed by regulations.

(3) Where a claim has been duly made under this section, the local authority shall release the redemption money—

(*a*) in a case where the rentcharge was subject to a mortgage, to the mortgagee or, if there is more than one mortgagee, to the first mortgagee;

(*b*) in a case where the rentcharge was not subject to a mortgage but was settled land or was subject to a trust for sale, to the trustees;

(*c*) in any other case, to the claimant.

(4) If, after the expiry of the period of 6 months beginning with the date on which the redemption money was received by them, the local authority are not satisfied that they are entitled to release the redemption money in accordance with the preceding provisions of this section, they may—

1959 c. 22.

(*a*) if the amount of the redemption money does not exceed the amount for the time being mentioned in section 39(2) of the County Courts Act 1959 (general jurisdiction in actions for recovery of debts) pay the redemption money into the county court, or

(*b*) in any other case, pay the redemption money into the High Court.

(5) In this section "redemption money" means the amount paid to the authority by way of the redemption price, in accordance with section 9(3) above.

Clause 10

By this stage in the procedure the rentcharge (or the relevant part of it) will have been redeemed, and this clause is concerned only with the destination of the redemption money. Note the definition of "rent owner" in clause 14, which includes trustees (who are capable of giving the District Council an absolute discharge for the capital money).

Under *subsection* (1) where the rentcharge was subject to a mortgage, the mortgagee may be a claimant (in addition to the rent owner). The statutory declaration under *subsection* (2) will require a claimant who was the beneficial owner of the rentcharge to disclose the existence of any mortgage or trust. *Subsection* (3) places claimants in an order of priority.

Advances to enable redemption in certain cases.

11.—(1) Where—

(*a*) by virtue of section 7(2) above, it is made a condition of an apportionment order that it shall have effect only for the purpose of the redemption of the part of the rentcharge concerned; and

(*b*) the applicant for the order qualifies for an advance in accordance with regulations under subsection (2) below,

the local authority shall, if the applicant so requires, advance the amount of the redemption price to him.

(2) Regulations under this section shall provide—

(*a*) for the persons in respect of whom advances are to be available;

(*b*) for any advance to be free of interest and to be repayable by instalments; and

(*c*) for any advance to be charged on the applicant's land.

(3) Any charge arising under regulations made by virtue of subsection (2)(*c*) above shall be binding on successive owners of the land and shall be a local land charge.

Clause 11

This provision is discussed in paragraph 89 of the report. If a landowner's apportionable share of an overriding rentcharge is £5 or less, he may not be able to obtain a release from his legal liability for the whole (in practice, from his liability to act as a rent collector) without redeeming his share altogether. It is anticipated that under this provision advances will be made available to recipients of social security benefits similar to those which have, in recent years, formed the basis of entitlement to a special payment at Christmas (under, for example, the Pensioners' Payments Act 1974).

Miscellaneous and general

Implied covenants.

12.—(1) Where any land affected by a rentcharge created after the passing of this Act by virtue of section 2(3)(*a*) or (*b*) above—

(*a*) is conveyed for consideration in money or money's worth (otherwise than by way of mortgage), and

(*b*) remains affected by the rentcharge or by any part of it,

the following provisions of this section shall have effect in place of those of section 77 of the Law of Property Act 1925, in respect of the covenants deemed to be included and implied in the conveyance.

1925 c. 20.

(2) In addition to the covenants implied under section 76 of the Law of Property Act 1925, there shall be deemed to be included and implied in the conveyance covenants by the conveying party or joint and several covenants by the conveying parties (if more than one) with the grantee (or with each of the grantees) in the following terms:—

(*a*) that the conveying party will at all times from the date of the conveyance duly pay the rentcharge (or part of the rentcharge) and keep the grantee and those deriving title under him and their respective estates and effects indemnified against all claims and demands whatsoever in respect of the rentcharge; and

(*b*) that the conveying party will (at his expense), in the event of the rentcharge (or part of the rentcharge) ceasing to affect the land conveyed, furnish evidence of that fact to the grantee and those deriving title under him.

(3) The benefit of the covenants deemed to be included and implied in a conveyance, by virtue of subsection (2) above, shall be annexed and incident to and shall go with the estate or interest of the implied convenantee and shall be capable of being enforced by every person in whom the estate or interest is from time to time vested.

(4) Any stipulation which is contained in an agreement and which is inconsistent with, or designed to prevent the operation of, the said covenants (or any part of them) shall be void.

Clause 12
This provision implements a recommendation contained in paragraph 47 of the report.

Interpretation.

14.—(1) In this Act—

"apportionment", in relation to a rentcharge, includes an apportionment which provides for the amount apportioned to any part of the land affected by the rentcharge to be nil;

"apportionment order" means an order made under section 5(6) above, or where appropriate, an order made by the Lands Tribunal under section 6(2)(*b*) above;

1925 c. 20.

"conveyance" has the same meaning as in the Law of Property Act 1925;

"district valuer", in relation to any land, means any officer of the Commissioners of Inland Revenue for the time being appointed to be the district valuer and valuation officer for the area which includes that land or any part of it;

"land" has the same meaning as in the Law of Property Act 1925;

"legal apportionment" and "equitable apportionment" in relation to a rentcharge mean, respectively—

(*a*) any apportionment of the rentcharge which is binding on the rent owner, and

(*b*) any apportionment or exoneration of the rentcharge which is not binding on the rent owner;

"local authority" means—

(*a*) as respects any district, the council of the district;

(*b*) as respects any London borough, the council of the borough; and

(*c*) as respects the City of London, the Common Council;

"owner", in relation to any land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion, and includes a person holding or entitled to the rents and profits of the land under a lease or agreement;

"redemption certificate" means a certificate issued under section 9(4) above;

"redemption money" has the meaning given to it by section 10(5) above; and

"rent owner", in relation to a rentcharge, means the person entitled to the rentcharge or empowered to dispose of it absolutely or to give an absolute discharge for the capital value thereof.

(2) The provisions of this Act relating to the redemption and apportionment of rentcharges shall apply equally to the redemption and further apportionment of legally apportioned parts of rentcharges.

(3) Subject to section 3(4) above, a rentcharge shall be treated for the purposes of this Act as becoming payable on the first day of the first period in respect of which it is to be paid.

Amendments, repeals and transitional provisions.

15.—(1) The enactments mentioned in Schedule 1 to this Act shall have effect subject to the amendments specified in that Schedule.

(2) The enactments mentioned in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(3) Nothing in section 2 above shall prohibit the creation of any rentcharge—

(*a*) in pursuance of an agreement entered into before the passing of this Act; or

(*b*) in the case of land subject to compulsory purchase before that date, in pursuance of section 24 of the Compulsory Purchase Act 1965,

1965 c. 56.

and notwithstanding the repeal of the said section 24 by Schedule 2 to this Act, the provisions of that section shall (in a case falling within paragraph (*b*) above) continue to have effect in relation to the creation of any rentcharge by virtue of this subsection.

(4) Nothing in this Act shall affect any application for apportionment or redemption made, before the coming into force of Schedule 1 or 2 to this Act, under any enactment amended or repealed thereby; and any such application shall continue to be dealt with in accordance with the provisions of the enactment under which the application was made.

Clause 15

Subsections (1) *and* (2) introduce the Schedules of consequential amendments and repeals.

Subsections (3) *and* (4) are transitional provisions.

Short title etc.

16.—(1) This Act may be cited as the Rentcharges Act 1975.

(2) The following provisions shall come into force on the passing of this Act, that is to say:—

(*a*) sections 1 to 3;

(*b*) sections 13, 14, 15 (2) to (4) and this section

and the remaining provisions of this Act shall come into force on such day as the Secretary of State may by order appoint.

(3) This Act does not extend to Scotland or Northern Ireland.

Clause 16

Subsection (2): The "remaining provisions" are those relating to the new procedures for apportionment and redemption. These are dependent on regulations which cannot usefully be settled before enactment of the legislation. Furthermore, District Councils (and in particular those in areas where rentcharges are prevalent) will need some time in which to make administrative preparations.

SCHEDULES

Section 15(1).

SCHEDULE 1

MINOR AND CONSEQUENTIAL AMENDMENTS

1860 c. 106. *Lands Clauses Consolidation Acts Amendment Act* 1860

1. In section 2 of the Lands Clauses Consolidation Acts Amendment Act 1860 (power to sell lands for rentcharges), for the words from the beginning to "such rentcharge" there shall be substituted "The powers to recover any rentcharge".

1925 c. 20. *Law of Property Act* 1925

2. In section 191 of the Law of Property Act 1925 (apportionment and redemption of rents), in subsection (12) there shall be inserted at the end the words "or to a rentcharge of a kind referred to in section 2(3) of the Rentcharges Act 1975 or of a kind excluded from redemption under that Act by virtue of section 8(5)".

1927 c. 36. *Landlord and Tenant Act* 1927

3. In section 20(1) of the Landlord and Tenant Act 1927 (apportionment of rents) for the words "two pounds" there shall be substituted "£5".

1967 c. 88. *Leasehold Reform Act* 1967

4.—(1) In section 8(4)(*b*) of the Leasehold Reform Act 1967 (conveyance or enfranchisement to be subject to certain encumbrances) for the words from "rentcharges" to "1925" there shall be substituted the words "any annual or other periodic sum charged on or issuing out of the land (not being rent reserved by a lease or tenancy or any sum payable by way of interest)".

(2) In section 11 of the said Act of 1967 (exoneration from, or redemption of, rentcharges etc.)—

(*a*) in subsection (1) for the words from "rentcharge" to "1925" there shall be substituted "annual or other periodical sum charged thereon";

(*b*) in subsection (4) for the words from "for any reason" to "redemption price" there shall be substituted "in the case of redemption under section 191 of the Law of Property Act 1925 difficulty arises in paying the redemption price, for any reason mentioned in subsection (4) of that section,";

(*c*) in subsection (7) after the word "then" there shall be inserted "in the case of redemption under section 191 of the Law of Property Act 1925";

(*d*) in subsection (8) for the words from "rentcharges" to "within" there shall be substituted "rents redeemable under the Rentcharges Act 1975 or".

Schedule 1

Paragraph 1. This amendment to the Lands Clauses Consolidation Acts Amendment Act 1860 removes a reference to a power to transfer land in consideration of a rentcharge. This will have become a spent provision.

Paragraph 2. This amendment to the Law of Property Act 1925 implements a recommendation contained in paragraph 70 of the report. The redemption provisions contained in section 191 of that Act (the procedure under the care of the Department of the Environment or the Welsh Office) otherwise remains unaffected.

Paragraph 3. This amendment to the Landlord and Tenant Act 1927 implements a recommendation contained in paragraph 87 of the report. The existing apportionment procedure under the care of the Department of the Environment or the Welsh Office is not otherwise affected.

Paragraph 4. These amendments to the Leasehold Reform Act 1967 are designed to add references to this legislation to existing references to section 191 of the Law of Property Act 1925.

Section 15(2).

SCHEDULE 2

REPEALS

Chapter	Short Title	Extent of Repeal
8 & 9 Vict. c. 18.	The Lands Clauses Consolidation Act 1845.	Section 10, both as originally enacted and as incorporated in any Act or other instrument.
9 & 10 Geo. 5. c. 59.	The Land Settlement (Facilities) Act 1919.	Section 7. Section 9(1) to (4).
12 & 13 Geo. 5. c. 51.	The Allotments Act 1922.	Section 9.
16 & 17 Geo. 5. c. 52.	The Small Holdings and Allotments Act 1926.	In Schedule 1, the entry relating to section 7 of the Land Settlement (Facilities) Act 1919.
1965 c. 56.	The Compulsory Purchase Act 1965.	Section 24.

Schedule 2

This Schedule repeals provisions for transferring land in consideration of rentcharges. They will have become spent.

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