

1972 No. 1850

COUNTER-INFLATION

The Counter-Inflation (Business Rents) Order 1972

<i>Made - - - -</i>	<i>1st December 1972</i>
<i>Laid before Parliament</i>	<i>1st December 1972</i>
<i>Coming into Operation</i>	<i>1st December 1972</i>

The Secretary of State for the Environment (as respects England, except Monmouthshire) the Secretary of State for Wales (as respects Wales and Monmouthshire) and the Secretary of State for Scotland (as respects Scotland), in exercise of their powers under sections 2(4) and 10(2) of and paragraphs 1, 2 and 4 of the Schedule to the Counter-Inflation (Temporary Provisions) Act 1972(a) hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Counter-Inflation (Business Rents) Order 1972 and shall come into operation on 1st December 1972.

Interpretation

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

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

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

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

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

“rent” means the rent payable under a business tenancy, and includes the amount of any premium rateably apportioned over the period of the tenancy, but excludes any sums payable by the tenant in respect of rates, services, repairs, maintenance or insurance;

“standard rate” in relation to any premises means—

(i) where a business tenancy was subsisting on 5th November 1972 the rate at which rent was payable (whether or not then determined as to amount) under that tenancy at that date;

(a) 1972 c. 74.

(b) 1889 c. 63.

(c) 1948 c. 63.

(d) 1949 c. 75.

- (ii) where there was no business tenancy subsisting on 5th November 1972 but a business tenancy had subsisted in respect of the premises on or after 5th November 1971, the rate at which rent was payable at the date upon which such tenancy or, where there were successive tenancies, the last such tenancy came to an end ;

“ the standstill period ” means the period during which section 2 of the Counter-Inflation (Temporary Provisions) Act 1972 remains in force after this Order has come into operation.

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

Rate of Rent

3. Rent shall not be payable in respect of the standstill period at a rate exceeding the standard rate and, where the terms of any tenancy provide for an increase of rent on or after 6th November 1972, the amount of that increase shall not be payable in respect of the standstill period.

4. Where a business tenancy comes to an end on or after 6th November 1972 and the premises are re-let (whether to the previous tenant or not) the rate at which rent is payable in respect of the standstill period shall not exceed the standard rate, except to the extent that any such excess is properly attributable to a variation in the terms of the tenancy.

Improvements

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

- (a) where the tenancy was subsisting on 5th November 1972, in accordance with the terms of that tenancy or any agreement subsisting on that date ;
- (b) in all other cases, of an amount in respect of the standstill period equivalent to a yearly increase not exceeding 12.5 per cent. of that cost.

Recovery of Excess Rent

6.—(1) Subject to sub-paragraph (3) below, where a tenant has paid on account of rent any amount which by virtue of this Order he is not liable to pay, he shall be entitled to recover that amount from the landlord who received it or his personal representatives.

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

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

Disclosure of Information

7. A landlord shall, on being so requested in writing by the tenant, supply him with a statement in writing of the rent which was payable for the rental period appropriate for the purpose of establishing the standard rate.

Offences

8.—(1) Any person who requires or accepts any payment in contravention of the provisions of this Order shall be liable—

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

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

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

(2) If without reasonable excuse a landlord who has received such a request as is referred to in paragraph 7 above—

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

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

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

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

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

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

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

(4) Where an offence under this Order alleged to have been committed by a body such as is mentioned in sub-paragraph (3) above is an offence punishable on conviction on indictment, section 33 of the Criminal Justice Act 1925(a) and Schedule 2 to the Magistrates' Courts Act 1952(b) and (as respects Scotland) section 40 of the Criminal Justice (Scotland) Act 1949(c) shall have effect as if the said body were a corporation or, as the case may be, a body corporate.

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

(6) Proceedings for an offence under this Order shall not be instituted in England or Wales except by or with the consent of the Attorney General.

Jurisdiction

9. Subject to paragraph 8 above, any question arising under this Order in relation to rent of premises situated in England or Wales may be determined by the court and the jurisdiction conferred by this paragraph shall be exercised in accordance with section 63 of the Landlord and Tenant Act 1954(d) as if the jurisdiction were conferred by Part II of that Act.

(a) 1925 c. 86.

(b) 1952 c. 55.

(c) 1949 c. 94.

(d) 1954 c. 56.

Agreements, etc.

10. Subject to the provisions of this Order relating to rent payable in respect of the standstill period, nothing in this Order shall render unlawful or invalid any agreement, determination or notice relating to rent.

Transitional and Supplemental

11. (1) Without prejudice to paragraph 3 of the Schedule to the Counter-Inflation (Temporary Provisions) Act 1972, any right acquired or liability, obligation or penalty incurred by virtue of any of the provisions of this Order shall not be affected by section 2 of that Act ceasing to be in force, and accordingly any investigation, legal proceeding or remedy in respect of any such right, liability, obligation or penalty may be instituted, continued or enforced as though the said section 2 had continued in force.

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

Geoffrey Rippon,
Secretary of State for the Environment.

1st December 1972.

Peter Thomas,
Secretary of State for Wales.

1st December 1972.

Gordon Campbell,
Secretary of State for Scotland.

1st December 1972.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order, which applies to England and Wales and Scotland, makes provision for preventing increases in business rents for the period during which section 2 of the Counter-Inflation (Temporary Provisions) Act 1972 is in force.

(a) 1949 c. 25.

(b) 1964 c. 50.

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