



STUDIES

***Report
on the
Economic Law
of the
United Kingdom***

VOLUME 5

A report on the economic law of the United Kingdom is a necessity: the finalization of the preceding study on economic policy from the standpoint of economic law is in effect the preparation for its completion and a more profound examination of its legal implications having regard to the functioning of the Common Market.

The report details the economic law of the United Kingdom in accordance with a certain number of broad guidelines. First of all there exists in the current phase of the development of the Common Market a growing necessity for the Member States to coordinate the objectives of their economic policies and to concert action on the instruments which may be used to achieve them.

A systematic comparative study of national economic legislations is also necessary from another important standpoint. Experience gained in the general field of approximation of laws has demonstrated that the differing framework provisions or national economic guidelines can only be understood within the general context of national economic law and that only in this functional context it is possible to determine the repercussions on the Common Market of the present differences.

Report on the economic law of the United Kingdom

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Volume 5

Notice to reader

The figures in square brackets refer to the bibliography on page 125

Foreword

This report on the economic law of the United Kingdom is part of a larger study undertaken at the request of the Commission of the European Communities by university professors who are specialists in this field. It covers the national laws of the Member States of the Community.

Given their practical value at a time when the future of the economic and monetary union is being discussed and having regard to their great scientific significance, the separate national reports together with the comprehensive report have been made public.

Hitherto there has been no comparative study of the economic law of the Member States according to the same schema. Neither has any attempt to synthesize these laws yet been undertaken.

This volume which covers United Kingdom economic law completes the volumes dealing with other economic laws and the comprehensive report. These works are to appear both in the original language and in the French and German languages.

As the analysis of the legal situation in the Member States of the European Communities is based on common criteria and a common schema the individual expositions and the comprehensive report therefore form a coherent whole.

Author's acknowledgments

The author is conscious of having accumulated many debts, both intellectual and of other kinds, in the course of preparing this report. His principal debt is undoubtedly to Elizabeth Carstairs, of the Centre of European Governmental Studies at Edinburgh University, who, as his research assistant, was responsible for researching and drafting the greater part of Chapter 5 of this report. He would also like to express his thanks:

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Without this generous and effective assistance it is certain that this work would have exhibited far more and more serious faults and shortcomings than those which presently disfigure it, and which are attributable solely to the author himself.

*Alyth, Perthshire,
February 1974*

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PART ONE

Introduction

1. Dimensions of the study

1.1. TIME

This report presents a survey of the economic law (defined below, 2) of the United Kingdom, as at 1 October 1973. Important later events have also been summarily noted, where possible. The law of the United Kingdom economy, like that economy itself, is in a state of continuing and substantial change. This may be ascribed to three reasons, the first two of which are universal, the third perhaps peculiar to the United Kingdom. They are first, the rapidity and frequency with which change may take place in the situations (such as the supply of credit) which economic law seeks to control or to palliate; second, the fact that experts may hold radically different views as to the nature of the economic policy to be applied or the manner in which a given policy is to be applied even in more stable situations such as regional economic balance; and third, the wide differences between the methods preferred by the Labour and Conservative Parties for the achievement of general economic welfare objectives. In view of this propensity to rapid change, the temporal dimension of this study is of considerable importance.

Preparation of this report has occupied a period of some eighteen months from the spring of 1972 to the autumn of 1973. At the beginning of that period, the Conservative Government elected in mid-1970 on a programme of individual self-reliance in economic matters and the limitation of government intervention in the economy had gone far towards dismantling the more 'dirigiste' elements of the economic apparatus bequeathed by its Labour predecessor: statutory prices and incomes policy, government intervention in and support for industrial restructuring, expansion of the field of activity of existing public enterprises, cash support for industrial relocation in depressed areas, hire purchase terms control, bank lending ceilings, and qualitative control on lending. Accordingly, in the interim report, stress was laid on the contribution to changes in economic law of the regular alternation of the parties in office. Since 1972, however, the same Conservative Government has reintroduced statutory prices and incomes policy, cash grants for regional development and qualitative restraints on lending, has assisted particular industrial mergers with government funds, and has tightened controls on mergers and on insurance businesses. In a sense, these mid-term reversals

of policy can be used to suggest that the first two, universal, factors mentioned above are more powerful agents for change than the alternation of parties in power. Now, however, that the present Government has adopted, if not the precise policies, at least some of the general attitudes of its predecessor, the Labour Party in opposition has produced new proposals, for implementation should it be returned to power in 1975 or earlier, which envisage further sweeping changes in economic policy in the direction of much greater government intervention in and control of the economy. All these factors for change, therefore, may continue to operate as vigorously as ever, and though the period immediately following the completion of this report may be one of relative stability for economic law — the legislative programme for 1972-73 is virtually complete, and the important elements of that for 1973-74 can be generally discussed and taken account of here — the study can still make no claim to be more than a 1973 snapshot, a still picture of an always moving subject.

1.2. SPACE

The area covered by this study is the United Kingdom, that is to say England, Wales, Scotland and Northern Ireland; it does not include the Isle of Man or the Channel Islands, which are Crown dependencies with a separate status.

The United Kingdom is ordinarily regarded as a unitary State. Within its territory, however, are to be found several distinct legal systems and a considerable degree of administrative devolution and heterogeneity. While the United Kingdom Parliament at Westminster is competent to legislate for the whole of the territory, and in economic matters often does, a distinct legislature exists in Northern Ireland. Distinct systems of courts exist for Northern Ireland, Scotland, and England and Wales. It follows that the law applicable on a particular point in Northern Ireland may differ from that applicable in England and Wales; so also may the law of Scotland, which, although it has not, since 1707, had its own legislature, sustains through its courts a distinct system of law, of very different inspiration from that of England, and is often legislated for specially by the United Kingdom Parliament to take account of this difference, even where the policies to be applied in the two jurisdictions may be similar. In consequence, although the United Kingdom may properly be regarded, for most purposes, as an economic

unit, there are some cases where economic law is not uniform over the whole United Kingdom, and many others where to portray it fully one must refer to distinct, if similar, legislation covering the various jurisdictions.

In this report, therefore, the principal reference is always to the law operating in England and Wales, the major part of the United Kingdom in terms of population, size and economic importance. We have decided to illustrate the formal diversity of United Kingdom economic law by citing distinct legislative or other legal arrangements in Scotland in the main text along with the English provisions, and indicating their content where it is substantially different from its English counterpart. Pressure of time has made it impossible to treat Northern Ireland law in the same way, and we have had to content ourselves with the following general remarks.

From 1920 to 1972 the Province possessed its own legislature, with powers, under the Government of Ireland Act 1920, to legislate on virtually all the subjects covered in this report with the exception of taxation and external trade relations. There is, therefore, distinct Northern Ireland legislation on most of the topics covered in this report, especially those in Chapter 5. Despite the fact that Northern Ireland has special economic problems of its own, and that the majority in the Northern Ireland Parliament, and hence the Northern Ireland Government, has not always been of the same political complexion as its opposite number in London, legislation for the Province has almost invariably followed legislation emanating from the Westminster Parliament in pattern and content. Differences of major importance occur mainly in the field of state aids to industry: see the Industries Development Acts (N.I.) 1966 and 1971, the Industrial Investment (General Assistance) Acts (N.I.) 1966-1971, and the Industrial Investment Grant (Variation of Rates) (Amendment) Order (N.I.) 1973, S.R.O. (N.I.) 1973/25, providing for a wider and more generous range of aids than those available in the rest of the United Kingdom.

In 1972, as a result of the civil strife in Northern Ireland, its Parliament was suspended by the Northern Ireland (Temporary Provisions) Act 1972, and the Province has since been governed directly, partly under existing Northern Ireland legislation, and partly under the broad powers delegated to him by the 1972 Act by a Secretary of State who is a member of the United Kingdom Government. The current, temporary situation in Northern Ireland is thus not dissimilar to the normal Scottish situation, in which the Secretary of State for Scotland, at the head of a Scottish office which is an integral part of the United Kingdom Government, administers, within the area of his executive competence, both relevant United Kingdom and distinctively Scottish legislation. The United Kingdom Parliament has, however, already passed legislation to confer a new constitution on Northern Ireland (the Northern Ireland Constitution Act 1973) and to provide for elections to a new Northern Ireland Assembly (the Northern Ireland Assembly Act 1973).

The Constitution will, however, not come into effect until the Secretary of State lays before the United Kingdom Parliament, and it approves, an order appointing a day for that purpose. Before this can happen, the Secretary of State must be satisfied that the Assembly can operate satisfactorily, that an effective executive can be formed, and that there is a reasonable basis for the establishment in Northern Ireland of government by consent: at the time of writing (December 1973) these criteria have not yet been satisfied.

It should be noted that even after the Constitution has come fully into effect certain matters, including taxes (below, 3.1.) and coinage and legal tender (2.4.3.) are to be excluded from the legislative competence of the Northern Ireland Assembly, and legislation in that Assembly regarding certain other matters, including offshore oil and other resources vested in the Crown (below, 5.6.5.), criminal law matters (7.1.), external trade (subject to certain exceptions) (3.2.4, 5.4.1.), civil aviation (6.4.3.), wireless telegraphy (5.6.3.), and industrial property (5.8.2.), is to be subject to the veto of the Secretary of State until Parliament assents to orders promulgated by him freeing it from such control: Northern Ireland Constitution Act 1973, ss. 2, 3, 5, Schs. 2, 3. The formal scope of the potential Northern Ireland Government for independent action in economic matters is less, therefore, than under the 1920 Act, though in practical terms the results are likely to be similar.

2. The definition of economic law [1]

The absence of any accepted or authoritative United Kingdom definition of economic law should not come as a surprise: classification and definition are not activities which commend themselves to British lawyers, even academic lawyers, who prefer to base judgment and argument on observation rather than on *a priori* intellectual constructions. This is true enough of any branch of legal studies, and is reinforced in relation to fields into which public law enters more or less largely, by a long standing tradition that lawyers need and should only interest themselves in the procedural aspects of legal relations between state and citizen. Substantive aspects, too important or difficult for lawyers, have been left to the civil service, responsible through Ministers to Parliament. This tradition is weakening, but it is only very recently that public law fields which form a day-to-day part of many lawyers' work, such as town and country planning, and welfare, have been recognized as proper fields of study and have begun to attract their own literature, covering substantive as well as procedural aspects. The subject of economic law, uncomfortably poised on the dividing line between existing legal categories like commercial law and administrative law, and whose administration is still largely a preserve of civil servants where even practising lawyers do not enter, has therefore, as one would expect, not been recognized at all.

To our knowledge, only two United Kingdom definitions of economic law have ever been offered, in each case in the context of a colloquium organized on the continent of Europe. For the Paris Round Table of 1966, Professor Schmitthoff defined economic law as 'the regulation of state interference with the affairs of commerce, industry and finance' (see [1966] *Journal of Business Law* 309 at p. 315). At the colloquium of Göttingen in 1970, the present writer offered a somewhat different, narrower definition, which stressed the purpose and character of economic law and its relationship with economic policy: the totality of legal powers, processes and rules designed or adapted to facilitate the achievement of national economic policy objectives (see Rinck, ed., *Begriff und Prinzipien des Wirtschaftsrechts*, at p. 24 [1971]). This latter definition is virtually identical with the main element of the common definition offered as the basis of this and the other country studies in this series — 'the totality of legal rules promulgated in furtherance of economic policy' — but when we add the subsidiary element of the common definition ('other rules of law having a substantial economic effect on the functioning of the Common Market or of particular importance in relation to coordination of national economic policies under the Treaty of Rome') we extend the field to a compass comparable with that suggested by Schmitthoff, taking in the topics in 5.7. (other regulation of trading behaviour) and 5.8. (public policy) below, which the present writer excluded by applying the test of purpose.

Both the United Kingdom definitions are closer to the 'narrower' view of economic law, which associates it with state action, than to the 'broad' view, most cogently expressed by Monsieur Champaud (Dalloz, 1967 *Chron.* 217), which expands the concept to cover all economic relationships, and finds in the enterprise, rather than in the State, the central figure of economic law. It is quite impossible, however, to speak of a national viewpoint in this matter, as these essays in definition have not engendered any response or reaction in academic or other legal circles in the United Kingdom.

3. The global objectives of United Kingdom economic policy

No authoritative statement of such objectives exists. The United Kingdom Government, like most others, would like to see the country enjoying sustained economic growth, stable prices, a positive balance of payments, a sound currency, low unemployment, balanced regional development, and from time to time it announces, in Ministerial speeches, White Papers, and other documents, that its policies are designed to achieve these ends, or that particular policies (e.g. counter-inflation policy, below, 5.2.1.1.) are designed to achieve particular ends (e.g. stable prices). We know well that all these objectives cannot be pursued simultaneously with the same energy, and therefore that the vital question is not what

the objectives are, but how they are ranked at any particular time. The United Kingdom position on this varies from year to year, month to month, and even from week to week, and there exists no commitment of the Government, legislative or otherwise, which requires it to observe a set order of priorities in economic policy over any period, short or long. Since, as a result, there can be no conflict between any domestic legal or conventional obligation of the Government and the obligation regarding the conduct of economic policy imposed by (e.g.) Article 104 of the Treaty of Rome, it seems pointless to recite the various utterances with which the Government has, from time to time, defined its current economic objectives. At the same time, it may be noted that there is no explicit legislative reference in the United Kingdom to the obligations imposed on the Government by Article 104 *et seq.*, because the Treaty has not been incorporated as such into United Kingdom law, but only given effect so far as it creates rights and obligations (European Communities Act 1972, s. 2).

4. Fundamental legal principles for the organization of the economy [2]

The United Kingdom law which falls within the definitions enunciated in Intro. 2 above consists very largely in legislation passed by Parliament within the last thirty years. That our economic law should be of this recent vintage is the natural result of the changeability of economic circumstances and of the fact that the Government only appreciated in the Second World War the full potential for control of the economy of the legal powers it already possessed or could assume. But the scope of that legislation, its style, content and even its very necessity, are determined by fundamental principles and tendencies of considerably greater antiquity. It is these principles and tendencies which we shall briefly examine in this section.

4.1. THE ABSENCE OF CONSTITUTIONAL LIMITATIONS

The term 'Parliamentary sovereignty' has come to be used as a convenient shorthand for two principles:

- (i) that there exists no legal limitation on the legislative competence of Parliament;
- (ii) that the courts are not competent to question any purported Act of Parliament.

These propositions have never commanded unqualified acceptance in Scotland, and there has for some years been controversy even in England as to the possibility of creating such limitations for the future and hence also such a judicial competence. Accession to the European Communities has brought a new and welcome urgency to this debate. Hitherto, however, one result of propositions about Parliamentary sovereignty on which virtually all commentators have been able to agree has been the absence of any substantive limits on Parliament's legislative competence, including its competence to legislate for

the implementation of economic policy. One result of this freedom has been the virtual absence of any legislative attempt to lay down permanent or fundamental rules for the conduct of the nation's economic affairs. Thus there has hitherto been no suggestion that there should be in the United Kingdom a legislative commitment to a five year plan on the French or Belgian pattern, or a permanent 'law of guidance for the economy' on the West German pattern.

Perhaps the most important example of an attempt at fundamental economic legislation is provided by the customs union provisions of the Treaty of Union of 1707 between England and Scotland. These Articles (IV to XVIII) were as a whole fundamental to Scottish acceptance of the Union, some of them were expressed to be operative 'for ever' (see Article VI, Uniformity of Duties and Regulations of Trade, and Article VII, Uniformity of Exercises on Excisable Liquors), and others, though not so qualified, were no less basic (see Article IV, General Freedom of Trade for all United Kingdom Subjects). Yet despite their basic character, and the fact that they form part of a treaty which itself created the United Kingdom Parliament by merger of the separate English and Scottish Parliaments, some of these customs provisions, and not only those that were clearly transitional, have been repealed or ignored. It is hard, for example, to square the regime of differential tax allowances for industrial investment in the various regions, and the differential grant schemes that superseded it (below, 3.1.1. and 3.2.1.) with the requirement of Article VI that 'all parts of the United Kingdom . . . shall have the same Allowances, Encouragements, and Drawbacks . . .' Even if the treaty is capable of operating as some kind of theoretical restriction on the legislative competence of the Parliament it created, the absence of any judicial competence to review legislation has robbed it of any practical effect on subsequent legislation.

4.2. THE ABSENCE OF INHERENT EXECUTIVE POWERS

While Parliament can, by legislation do (and undo) anything in the field of economic policy, Government by itself, through the exercise of inherent executive power (the prerogative) can do very little. Three constitutional rules ensure that there are few economic decisions that can be implemented without the legislatively express consent of Parliament. First, in 1611, the English judges gave it as their opinion, never since contested, that the common law — and the rights and duties of individuals thereby established — could be altered only by legislation. The question was whether the King could by simple proclamation prohibit new building in London, and the making of starch from wheat, and the judges held, in the *Case of Proclamations* (1611), 12 Co. Rep. 74, that he could not. Secondly, it has been established since 1689 by the Seventh Article of the Scottish Claim of Right and by Article IV of the English Bill of Rights that the levying of money from the subject without the consent of Parlia-

ment is illegal. Though taxation does involve a charge on the subject's property, the courts had held during the 17th century that taxes imposed for the purpose of regulating foreign trade, and extraordinary taxes imposed to defray naval expenses in contemplation of war, were so closely connected with the King's prerogative in foreign affairs as not to require Parliamentary consent (see *Bate's Case* [1606], 2 St. Tr. 371; *R. v. Hampden* [1637], 3 St. Tr. 825). Thirdly, since 1866 when the Exchequer and Audit Departments Act was passed, it has been clear that Government may only spend money (garnered from taxation, borrowing, or other sources like trading receipts), for the purposes, and in the amounts, approved by Parliament by way of legislation. This idea of appropriation was generally accepted long before 1866 and had occasionally been put into operation; what took so long was not the clarification of the principle, but the elaboration of the system of annual estimates, appropriation, and audit that would make it operate effectively. It will be appreciated that these three limitations on the capacity of Government to act independently in the pursuit of policy require that most phases of economic policy receive legislative approval — though there are one or two important, albeit by themselves insufficient, instruments of policy that escape the net, such as forecasting and indicative planning.

These traditional bases of legislative intervention, however, all developed at times when modern methods of economic management were unthought of, tend to confine economic legislation to the role of detailed implementation of economic decisions (in the spheres of taxation and regulation) and recording of the results of these decisions (in the spending sphere). In consequence, economic policy decisions themselves, even if they are discussed in Parliament, receive no legislative recognition or endorsement. For example, the historical separation of control over taxation and control over spending led to the development of separate annual legislative procedures for taxation and appropriation, with the consequence that no scope presently exists for a legislative judgment on the vital balance in the budget between taxation and public expenditure. The 19th century insistence, after centuries of experience of the dilatoriness of the old Exchequer, on effective and speedy appropriation audits, left us with a system of cash appropriations on a strictly yearly basis; the Appropriation Act determines only the cash that may be expended during the year (and that only by central Government departments) and says nothing about the commitments (often extending over several years) which may be entered into or continued. Thus the activities and policies which produce the expenditures approved under the Appropriation Act may escape legislative discussion, as there is strictly no need for permanent legislation to authorize their continuance (below, Chapter 3). Similarly the use of appropriated funds, via the Government's procurement and other contractual powers, to influence the behaviour of sectors of the economy, requires no special legislative sanction (below, 2.5.2.).

In summary, therefore, nothing may be done by the Government to change or interfere with the rights and duties of the individual, as established by common law, save in execution of, or under the authority of legislation; but the Government may do anything which does not affect those rights or duties, so long as it obtains the consent of Parliament to any expenditure involved.

4.3. THE ABSENCE OF BROAD DELEGATIONS OF POWER BY THE LEGISLATURE TO THE EXECUTIVE

The nature of the traditional bases of legislative intervention also militates against any broad delegation of power by the legislature to the executive. In particular, it has been all but unknown, save in time of war, for the legislature to delegate to the executive full or general powers to act, regulate, etc. for the achievement of stated objectives; for to do so would involve Parliament both in abdicating its specific responsibilities for approving changes in the legal rights and duties and tax burdens of individuals and in the expenditure programmes of Government, and in assuming a role it does not normally perform, that of defining the purposes of governmental action. The exception that proves this rule is perhaps the Supplies and Services (Transitional Powers) Act 1945, passed to permit the continued operation, for the rather different purpose of peace-time recovery, of defence regulations made under the Emergency Powers (Defence) Act 1939, a measure so out of the ordinary in appearance that King George VI expressed special concern about it to the then Prime Minister, Mr Attlee. The normal pattern of delegation varies somewhat according to whether it is rule-making power, or power to take individual decisions, that is being conferred.

Where rule-making powers are concerned — mostly in the field of regulation but occasionally in connection with the disbursement of government assistance in an orderly way (e.g. in agriculture, below, 3.3.1.) — a fairly broad delegation may be made, occasionally in association with a statement of the purpose to be served by such regulation (see, e.g. Emergency Laws (Re-enactments and Repeals) Act 1964, s. 1 (1), providing for the imposition of hire purchase terms control, below, 5.2.2.1.). Often, though, there is no explicit statement of purpose, as with the power conferred on the Treasury by the Borrowing (Control and Guarantees) Act 1946, s. 1, to 'make orders for regulating' large scale borrowing other than from banks (below, 5.2.2.2.), which may, and in this case did, permit the use of the same power for different purposes at different times. Broad or narrow, such rule-making powers are nowadays almost invariably subjected, by the terms of the enabling legislation itself, to a *posteriori* control, or at least scrutiny, by Parliament.

In the case of powers of decision in individual cases, whether of control or assistance, an express indication of the purpose of their exercise in much more unusual, but correspondingly, the powers themselves are commonly delineated in the most specific terms. The Fair Trading

Act 1973, especially in its provisions regulating monopolies and mergers, shows the elaborateness of language to which this approach can lead when conferring powers of an economic nature (below, 5.5.1.). Again, a further restriction of the powers of the executive in such cases is often provided by legislative application, in some form, of the rules of natural justice, that is to say, the idea, developed in common law by the ordinary courts, that individual decisions taken by reference to known rules and which seriously affect the liberty or property of individuals should only be taken by unbiased judges after hearing both sides of the case. Respect for this idea often leads the legislature to impose some pre-decision procedural requirements, ranging from a minimum of permitting an affected party to make representations (as in the Bank of England Act 1946, s. 4 (3), below, 5.2.2.3.) to the full panoply of a public inquiry before the Government's provisional decision can be made final (e.g. in town and country planning, see 5.6.1. below).

In both these kinds of cases, the conditions which must be present before the powers may be used will usually be defined in some detail, though often in subjective terms (for a not untypical example, see Industrial Relations Act 1971, s. 138, set out in 5.3. below). This subjective terminology, however, ('if it appears to the Minister', 'if the Minister is satisfied', etc.), and the fact that the exercise of the power is usually facultative, not compulsory, even when the conditions are fulfilled, is designed more to inhibit challenges through the courts to the exercise of governmental power than to effect any real enlargement of the scope of power conferred. The effect of such terminology on judicial review is examined in Chapter 8.

4.4. THE UNIMPORTANCE OF SUBSTANTIVE PRINCIPLES

Flexibility and pragmatism being the keynotes not only of United Kingdom economic policy (above, Intro. 3), but also of the United Kingdom constitution with its emphasis on the unfettered and unfetterable ability of Parliament to change its mind at any time (above, Intro. 4.1.), it will be appreciated that there has been little scope for the development of substantive general principles of economic law. The legislative content of economic law tends to vary with the political identity of the Government promulgating it: not only do the parties, as we have seen (above, Intro. 1.1.), maintain a continuing distance between themselves on the general question of the degree and intensity of state intervention in the economy, but they favour different legal techniques for the achievement even of common economic objectives. Thus the Labour Party sees public ownership (below, 2.5.1.) as the answer to a wide range of problems — such as control of monopolistic public utilities, industrial restructuring, and market organization — which Conservative Governments have attacked by other means such as selective procurement policy (2.5.2.), tax advantages (3.1.) or subsidies (3.2.), licensing (see especially 5.6.5, 6.4.), and

marketing boards (6.1.2.). For the encouragement of industrial investment, the Conservatives chose tax allowances (3.1.), the Labour Party cash grants, a difference which reflected an opposition of political conviction as much as of specific economic policy objectives. Labour legislation for ensuring competition among private firms (the Monopolies and Restrictive Practices (Investigation and Control) Act 1948, the Monopolies and Mergers Act 1965 and the Restrictive Trade Practices Act 1968) stresses structural solutions and broad Ministerial discretion; Conservative legislation in the same field (the Restrictive Trade Practices Act 1956, the Resale Prices Act 1964 and the Fair Trading Act 1973) emphasizes control of behaviour, clear standards and judicial enforcement (below, 5.5.1.).

If, however, we cannot bring much order into the legislative jumble, we can at least point to the common law principles which, as pointed out at the end of Intro. 4.2. above, underlie the legislation in the sense that they define the situations in which legislation is requisite for the implementation of economic policy. These principles do not shape that legislation in any save the purely formal sense, and they can be simply stated. They require the enactment of legislation for the imposition of any restriction on freedom of the person, or on the use and enjoyment of property, beyond those imposed by the common law itself, e.g. by way of the law of nuisance (cf. below, 5.8.3.1.). The respect for individual autonomy which animates these principles likewise supports the idea of the full enforcement by the courts of private contracts and, again, the requirement of legislation to displace this obligation of enforcement in any case other than those provided for by the common law itself as grounds of 'public policy'. Of these grounds the most important, for our purposes, is that which denies enforcement to contracts which are in undue restraint of trade (see further below, and 5.5.1.1.). The common law ideas permit not an absolute but a qualified individual economic freedom, but it is true that they were and have remained frozen by the stiffening of the doctrine of precedent at just about the time — the end of the 19th century — when they were being expressed by the courts in their least qualified form. Then constructive selfishness was the *mot d'ordre* of commerce and industry, and *laissez-faire* that of the state, including the courts: see *Mogul Steamship Co. v McGregor, Gow and Co.* [1892] A.C. 25; *Bradford Corporation v Pickles* [1895] A.C. 587; and *Nicol v Dundee Harbour Trustees*, 1915 S.C. (H.L.) 7; [1915] A.C. 550, for especially striking examples.

The common law, however, does more than provide, as it were, the negative through which the positive legislation of the modern, collectivist state has been printed out. It continues to affect economic law not so much in its substance on paper as in its implementation and in the control of its implementation, which we discuss in Chapters 7 and 8 respectively. Here, the relevant concepts — of title to sue (to enforce statutory obligations or to secure

review of statutory determinations), of *vires* and natural justice, and of restrictions on the enforceability of contract — are those of the common law, and the economic ideas developed over the centuries by the courts can still percolate through them. The common law, for example, has always (there is a precedent from 1410) been most reluctant to recognize any right of property in a trader's goodwill or clientele. Consequently where other jurisdictions have elaborate laws of unfair competition, United Kingdom law has only the wrong of 'passing off' one's products or services as those of another, a wrong specifically based on the element of deceit. Again the extent to which goodwill can be an article of commerce is restricted by the courts' refusal to enforce contracts for the transfer of businesses which unreasonably circumscribe the competitive opportunities of the vendor. Finally, traders will not be allowed, for the protection or furtherance of their own business interests, to enlist the aid of the courts to enforce statutory restrictions on the way their competitors conduct their business.

5. Sources

Most of the material cited in this report is statutory. United Kingdom legislation is cited by reference to the short title of the statute and the year of its enactment (which since 1964 has been an integral part of that short title). The ordinary method of publication of legislation being strictly chronological, this permits easy access to the legislation through the annual official volumes of the Public General Statutes. References to commentaries (in books or learned journals) on individual statutes have been kept to a minimum as adequate commentaries on all major (and some lesser) statutes passed since 1950 can be found in the unofficial (also chronological) publication of the statutes, *Current Law Statutes Annotated*. Legislation is also published in a different form, under subject headings, grouping statutes currently in force. An official, non-annotated compilation of this kind, the *Statutes in Force*, is in course of publication; two volumes, one covering agriculture, have so far appeared. There is also a complete, unofficial, annotated publication of this kind, *Halsbury's Statutes of England*; as its title suggests, this does not cover statutes, or provisions of statutes, in their application to Scotland.

Delegated legislation, published in the form of statutory instruments (S.I.) is cited by reference to the year of publication and to the number assigned to the instrument within that year (e.g. S.I. 1973/1174). Again, there is an official, chronological publication, collecting the year's statutory instruments into some four to eight volumes, and an unofficial, annotated publication, *Halsbury's Statutory Instruments*. This, however, is again restricted to England, and is also incomplete in that it does not reproduce the full text of many instruments (among them some quite important for our purposes).

Legislation of the Northern Ireland Parliament (1920-72), and delegated legislation made under powers conferred by such legislation, are published separately, again chronologically, as Northern Ireland Statutes and Northern Ireland Statutory Rules and Orders.

Frequent reference will also be made in the pages that follow to Command Papers, cited by series number and date (e.g. Cmnd. 3410 (1967)) and to House of Commons Papers, cited by sessional year and number (e.g. (1966-67) H.C. 246). The former include policy statements and other documents presented by the Government to Parliament on its own initiative and published;

the latter documents (such as reports of select committees) produced by the House of Commons itself or of documents produced by the Government in pursuance of a request by Parliament, expressed in statute or otherwise.

Where reference to specific judicial decisions has been necessary, the common abbreviations of the series of reports cited have been used, and may be found in such general sources as Sweet and Maxwell's Guide to Law Reports and Statutes (4th ed., 1962), the annual volumes of the Current Law Year Book, or Price and Bitner, Effective Legal Research (1952, Little, Brown and Co., Boston, USA).

PART TWO

**Analysis
of economic law**

CHAPTER 1

The legal framework of economic forecasting [3]

Short-term economic forecasting (2 years ahead) has been practised in the United Kingdom since 1941, medium-term forecasting (3-5 years ahead) occasionally since 1957 and regularly since 1962 under the name of the medium-term assessment. The former was instituted as a means of predicting demand, as a result of the war-time realization that the Budget could be used to influence total demand for resources, the latter to provide information necessary to the Government's forward planning of its public expenditure programmes (below, 2.3., 2.4.2.). The primary purpose of government forecasting has always been seen as that of aiding the formulation of government policy, rather than of guiding private action in trade and investment. This fact goes far to explain the virtual absence of any legal regulation or recognition of the forecasting process.

So far as the preparation of forecasts is concerned, even the institutional framework is sketchy in the extreme. Forecasting is the responsibility of the Treasury, attributed within that department to its National Economy Group (the other groups being the Public Sector Group and the Finance Group). (While short-term economic forecasting has always been a Treasury function, from 1962-1969, medium-term forecasting was carried out first by the National Economic Development Office (NEDO), a public body independent of the Government reporting to the National Economic Development Council (NEDC) (below, 2.1.) (1962-64) and then by the Department of Economic Affairs, which enjoyed a brief existence as a separate Government department whose main task was medium-term planning (1964-69). Preparation of forecasts is in fact an inter-departmental exercise led and coordinated by the Treasury. Interested departments, such as the Department of Trade and Industry, Department of Employment and the Treasury itself, collect their own statistics, and on this basis may prepare provisional forecasts of relevant factors, e.g. for the Department of Employment, wage settlements and claims, for the Department of Trade and Industry, industrial production. These are discussed in interdepartmental com-

mittees chaired by Treasury officials and subsequently correlated by the Treasury's forecasting team.

Statistics on which forecasts are based are drawn from diverse sources. Some are by-products of other departmental functions: thus the Department of Employment has derived employment statistics from its operation of Employment Exchanges, the Customs and Excise obtains statistics of imports and exports in course of its collection and remission of duties, the Inland Revenue gets statistics of personal income and corporate profits from scrutiny of tax returns. Others are the result of voluntary cooperation by industry in specialized inquiries, for example into investment intentions, for the purposes of the National Plan (1965). Finally, many are collected under special statutory powers. The Census Act 1920 provides for the holding of a decennial census of population; the Agriculture Act 1947, ss. 78-81 (as amended by the Agriculture Act 1972, s. 18) empowers the Minister of Agriculture, Fisheries and Food and the Secretary of State for Scotland to require the owners and occupiers of agricultural land to furnish statistical information regarding their holdings. Most important is the Statistics of Trade Act 1947.

The Act provides first (s. 1) for a general power 'for the purpose of obtaining the information necessary for the appreciation of economic trends and the provision of a statistical service for industry and for the discharge by government departments of their functions' under which government departments can require the provision by enterprises of information regarding any of the matters set out in the Schedule to the Act (amended by the Statistics of Trade Act 1947 (Amendment of Schedule) Order 1963, S.I. 1963/1329).

That is to say: 'The nature of the undertaking (including its association with other undertakings) and the date of its acquisition; the persons employed or normally employed (including working proprietors), the nature of their employment, their remuneration and the hours worked; the output, sales, deliveries, and services pro-

vided; the articles acquired or used, orders, stocks and work in progress; the outgoings and costs (including work given out to contractors, depreciation, rent, rates and taxes, other than taxes on profits) and capital expenditure; the receipts of and debts owed to the undertaking; the power used or generated; the fixed capital assets, the plant, including the acquisition and disposal of those assets and that plant, and the premises occupied.

Assets (other than fixed capital assets) and liabilities of the undertaking, including the acquisition and disposal of those assets and the incurring and discharge of those liabilities, prices of articles and services.'

Secondly, the Act provides, in ss. 2 and 3, for the holding 'for the purpose of providing at intervals general surveys of the state of trade and business' of annual censuses of production, and censuses of distribution or other services in years to be specified by the Department of Trade and Industry (DTI). At such censuses, information may be demanded from enterprises on all or any of the matters specified in the Schedule, the scope of the census being determined by orders made by statutory instrument. Protection of legitimate trading secrets is provided for under the Act by s. 9, prohibiting the disclosure of information about individual undertakings save, in accordance with directions given by the Minister in possession of the information, to another government department, or for the purposes of proceedings for offences under the Act. Stricter restrictions on disclosure may be imposed at the discretion of the DTI, as was done with the 1967 Census of Distribution (by the Census of Distribution (1967) (Restrictions on Disclosure) Order 1965, S.I. 1965/2061). The effect of this Order was to prevent individual information being passed on, even to other departments, which apparently considerably limited the value of the census for general statistical purposes.

There is no central direction of the Government's statistical services, which are organized on a departmental basis, but some coordination is assured by the Central Statistical Office, which is responsible for the compilation of basic statistical series like the national income accounts, and which is also instructed to assist government committees in their discussion of statistical matters and to make sure that as far as possible they work on facts agreed between departments. The influence the Office can thus exercise in favour of standardization and integrity of statistical methods is reinforced by its position within the Cabinet Office, where it answers directly to the Prime Minister and not to any department.

Practice regarding the publication of forecasts has varied considerably since their inception. Short-term forecasts were published on an annual basis in 1947 and for a few

years afterwards, until, perhaps discouraged by their tendency to be vitiated by unexpected events, the Treasury ceased publication and defended its decision by arguing, through successive Chancellors of the Exchequer, that the forecasts constituted advice tendered by civil servants to Ministers, so that it would be constitutionally improper to publish them. In 1968 this argument was abandoned. The Government's annual Financial Statement and Budget Report, a document containing the substance of the Chancellor's Budget Statement to the House of Commons in schematized and tabular form, has since that date also contained forecasts of percentage variations from the previous year in key quantities such as gross domestic product, public and private sector fixed investment, consumer expenditure, exports, balance of payments, tax yields etc. It would now be difficult, but not impossible, for the Government to cease or curtail publication of these short-term forecasts.

With regard to medium-term forecasts the position is still completely fluid. Medium-term forecasts have been published on a number of occasions: in 1962 (prepared by NEDO and approved and published by NEDC); in 1965, as part of the National Plan for the period to 1970 — see Cmnd. 2764 (1965); and in 1969 and 1970, abbreviated versions of the medium-term assessment, as presented to the NEDC, were published as part of a less spectacular planning exercise under the titles (respectively) of 'The Task Ahead' and 'Economic Prospects to 1972 — a Revised Assessment'. The present Government, however, holding that the medium-term assessment is not a forecast of what the Government expects to happen, but only 'one of the aids that we use in order to make sure that our plans do not run into unacceptable conditions and give us an unacceptable result', has felt that publication would only tend to mislead. Under pressure from the House of Commons' Select Committee on Expenditure it has, however, as an experiment, published in its White Paper on Public Expenditure to 1976-77, Cmnd. 5178 (1972) a table showing average annual changes in the main components of aggregate demand between 1971 and 1977, from which one can see the relative rate of growth of public expenditure according to present plans and of funds available to finance private consumption, assuming two different rates of growth and a high or low propensity to private investment.

Despite this further experiment in publication, the continuation in the Treasury of the view that forecasting is essentially an internal tool of Government suggests that it is unlikely that the public interest in forecasting will be thought sufficient to warrant the enactment in the foreseeable future of formal guarantees of objectivity and of full publication.

CHAPTER 2

State intervention in the economy: Global and indirect methods

2.1. 'Planning': the general framework [4]

Economic planning, so far as it exists in the United Kingdom, enjoys no legal basis or recognition. The reason has already been indicated (above, Intro. 4): the formulation and publication of purely indicative plans do not in themselves affect legal rights and need involve no distinct public expenditure. Within the central Government itself economic planning functions, which presently seem to be confined to forecasting, coordination of short-term measures, and medium-term planning of public expenditure, are in the hands of the Treasury. Other bodies also exist outside the central Government itself, which were set up in order to associate industry, commerce, trade unions and other interested groups with Government in pursuance of national economic policy objectives.

Chief among these is the National Economic Development Council (NEDC), established by the Conservative Government in 1961-62 with the following terms of reference:

- (i) to examine the economic performance of the nation with particular concern for the future in both the public and private sectors of industry;
- (ii) to consider together what are the obstacles to quicker growth, what can be done to improve efficiency, and whether the best use is being made of our resources;
- (iii) to seek agreement upon ways of improving economic performance, competitive power and efficiency, in other words to increase the rate of sound growth.

(See 657 H.C. Deb., cols. 968-969 (9 April 1962)).

The present composition of NEDC is three or four government representatives, all Ministers, five members from private industry, six from trade unions, one from the nationalized industries, one independent member, and the Director-General of the National Economic Development Office (NEDO), the independent office servicing the NEDC with research, reports and forecasts. The

chair at NEDC meetings is always taken by a Minister, sometimes the Prime Minister; the members, however, are not capable, because of the loose structure both of the trade union movement and of industrial representation, of in any way committing their 'sides' of industry. In its early years NEDC concentrated on indicative planning, economic forecasting and advice on policy, but with the transfer of primary planning responsibility in 1964 to the now defunct Department of Economic Affairs, and subsequent de-emphasization of planning activity, it has come to concentrate primarily on its third task of improving economic performance.

In this its principal agents have been the Economic Development Committees, tri-partite bodies designed in its image and hence often called 'little Neddies'. Most Economic Development Committees (EDCs) have been set up to carry out the general tasks of NEDC in relation to a particular industry in the private sector, but there are also committees concerned with the Post Office and with the movement of exports. Their terms of reference are:

- (i) to examine the economic performance, prospects and plans of the industry in question, assess from time to time the industry's programme in relation to the national growth objectives, and provide information and forecasts to NEDC on these matters;
- (ii) to consider ways of improving the industry's economic performance etc. and formulate reports and recommendations on these matters as appropriate.

Although employer members are nominated by the relevant trade associations, employee members by the trade unions involved in the industry concerned and official members by the industry's 'sponsoring' government department, the committees are not regarded as instances which can take decisions as to the development of their industries which all parties are bound to accept and implement; for the most part, they have confined themselves to studies of their industry's performance and prospects, and to the issuance of material of an informational and exhortatory character, for example on labour

productivity and turnover. The Government's commitment to a National Plan at the time EDCs were instituted led them to engage in forecasting of demand in their industries, an activity which only a few now continue on a regular basis. Despite their limitations, the EDCs have been effective in the promotion of collective action where this is not being done by trade associations, and have been described as a significant break away, in Government-industry relations, from simple reliance on the competitive mechanism of the market economy, and a more positive step in dealing with the weaknesses of the market economy.

A third part of the planning apparatus introduced by the Labour Government in 1964-70 which also survives despite the lack of emphasis on 'planning' now are the regional planning bodies, set up for Scotland, Wales and for each of eight English regions. Each such region is endowed with an economic planning board, consisting of the regional controllers or equivalent officers of the central Government departments concerned with the economic welfare of the region such as Environment, Trade and Industry, Education or Employment (in England); the Scottish Office, Trade and Industry, Employment (in Scotland); and so on. Its task is to seek coordination of the activities of the departments within the region and to provide information and assistance to the region's economic planning council (REPC), whose terms of reference are:

- (i) to assist in the formulation of a regional plan, having regard to the best use of the region's resources;
- (ii) to advise on the steps necessary for implementing the regional plan on the basis of information and assessments provided by the economic planning board; and
- (iii) to advise on the regional implications of national economic policies.

(See 707 H.C. Deb., cols. 609-615 (25 February 1965)).

Members of the councils are drawn from industry, commerce, trade unions, agriculture and — an important element — local authorities, and chaired by an independent member, often an academic. The Welsh and Scottish councils, however, are under the chairmanship of the respective Secretaries of State, and this, together with the multi-functional responsibilities of the Welsh and, even more, the Scottish Office, gives their work a greater cohesion and influence than that of the English councils. (A new sub-department has, indeed, recently been created within the Scottish Office with the title of the Scottish Economic Planning Department, with the objective of securing a coordinated approach to problems of oil development and of implementation of regional policy — including EEC policy — within Scotland.)

Like the NEDC, the councils now spend most of their time discussing how best to absorb the impact of the Government's general policies on the economic development of their regions. Regional planning studies are still

being made, but not always under the aegis of the regional economic planning councils: government departments, and *ad hoc* groupings of local planning authorities, often commission studies independently. It is doubtful whether the councils will survive the implementation of the reforms of local government in England and Scotland (by the Local Government Act 1972 and the Local Government (Scotland) Act 1973), which have been designed, *inter alia*, to bring local government structure more into line with patterns of employment and industrial location.

2.2. Coordination of short-term measures [5]

The conventional framework for short-term economic management is provided by the House of Commons' annual budgetary procedure. Strictly speaking, the Budget refers to the statement by which the Chancellor of the Exchequer presents to the House of Commons, some time in March, April or May, the Government's proposals for changing the mass, incidence, or detailed rules of taxation with a view to financing the public expenditure for the year and to giving the appropriate stimulus or check to demand by adjustment of the balance between revenue and expenditure. The statement initiates debate on resolutions which form the basis of the Finance Bill by which formal legislative effect is given to any changes in the tax system, and which is considered in detail by Parliament over the next few months. By convention, born of obvious convenience, the Budget statement has come to be used to announce and justify not only tax changes but also, on the basis of economic results and forecasts, the whole range of economic measures which the Government intends to take to influence the behaviour of the economy in the short term. Many of these measures are not appropriate for inclusion in the Finance Act. They may involve either the enactment of distinct new legislation (such as the Exchange Control Act 1947, below 5.4.2.), or simply the taking of administrative decisions (for example, a decision to vary the Bank of England's minimum lending rate, below, 2.4.3.). Also outwith the scope of the Finance Act are the year's totals for public expenditure, which usually figure in the Budget arithmetic as determinants rather than as variables, and which are determined and apportioned by a series of Consolidated Fund Acts, passed according to a distinct, but parallel parliamentary timetable (below, 2.4.2.1.).

That there should be an annual Budget at all is a purely conventional rule; there is no explicit statutory provision to this effect. The convention is, however, protected by legislation in that at least one of the Government's principal sources of revenue is approved each year by Parliament only for the duration of the coming fiscal year (which in the United Kingdom runs from 6 April each year to 5 April the following year): see, e.g. Finance Act 1972, ss. 62 (income tax), 64 (corporation tax). For the lawful collection of any tax, the consent of Parliament,

expressed in the form of legislation, is necessary (Bill of Rights, 1689, Article 4). Resolutions of the House of Commons are, by themselves, not enough (*Bowles v Bank of England* [1913] 1 Ch. 57). Operating by themselves, therefore, such provisions would make it necessary, if a break in the collection of taxes were to be avoided, for Parliament to pass the next year's Finance Act, authorizing the continuation of such taxes, before the end of the fiscal year for which they had already been voted. Since this would mean either unacceptable telescoping of the parliamentary timetable for the passage of the Finance Act, or an impracticably early presentation of the Budget (in, say, the November prior to the fiscal year to which it referred) the Government has been empowered, most recently by the Provisional Collection of Taxes Act 1968:

- (i) to continue collecting temporary taxes, such as income tax, for one month after their legal date of expiry (s. 2);
- (ii) if the House of Commons so resolves, to collect temporary or permanent taxes on the authority of and in terms of motions for resolutions of the House of Commons moved by the Chancellor of the Exchequer or another Minister (s. 5), and subsequently, on the authority of the resolutions themselves (s. 1).

The authority under s. 5 lasts for ten sitting days only, by which time the resolutions approving the motions must have been passed, and that under s. 1 until 5 August only (if, in the ordinary case of the annual Finance Bill, the resolutions had been passed in March or April; otherwise, for four months), and subject to the further condition that a bill to give effect to the resolutions receive its second reading (i.e. approval in principle) within twenty-five sitting days of the passing of the resolutions. From these provisions it can be calculated that while the Budget can be introduced as early in the (calendar) year as is administratively feasible, it cannot, unless taxes are to lapse, be introduced later than 5 May — in which case the Finance Bill must receive the Royal Assent not later than 5 September.

While it is not possible to avoid the annual cycle of budgetary provision without a serious departure from constitutional convention, there is, of course, no objection to the introduction of measures of a budgetary character, concerned to adjust the balance between public revenue and expenditure whether in the interest of demand management or otherwise, at other times of year; the Provisional Collection of Taxes Act makes specific provision for such an eventuality. Any collection of fiscal or non-fiscal short-term economic measures grouped together for announcement at any time of year is liable to be called a 'budget', the term having no greater significance here than in relation to the traditional annual procedure.

2.3. Coordination of medium-term measures [6]

The realization that public expenditure decisions usually involve commitments stretching several years ahead prompted the medium-term planning of public expenditure which is presently a central element of our medium-term economic policy. The basic text here is not legislative, but the report of an advisory committee appointed by the Treasury (the Plowden Committee, published as Command Paper (Cmnd.) 1432) which in 1961 recommended that regular surveys be made of public expenditure as a whole, over a period of years ahead, and in relation to prospective resources. The resulting five year expenditure programmes, when published (which the Government only undertook to do on a regular basis from 1969 onwards) form in themselves a useful element of guidance for the private sector of the economy. Their content includes broad predictions as to the rate of growth over the period covered of the productive potential of the economy, and of public expenditure both as a whole and broken down into economic categories such as purchase of resources, transfer payments, and purchase of assets, and functional categories such as spending on schools, roads, police, defence etc. It was also acceptance of the 1961 Report which created the need for the annual medium-term economic assessments, already referred to (above, Chapter 1), looking three to five years ahead, to show the total resources position against which the public expenditure programmes, in their competition for resources against private investment and consumption, have to be judged.

The assessment, the programme, and the facilities for governmental consultation with industry, trade unions and other interested parties afforded by the NEDC, the EDCs and the REPCs together constitute a complete apparatus for medium-term indicative planning, but are not presently being so used. Little information about the medium-term assessments is being published (above, Chapter 1), and the NEDC and EDCs are concentrating on non-planning tasks (above, 2.1.). They have been so used in the past: the National Plan of 1965 (Cmnd. 2764), 'The Task Ahead' of 1969, and its revised version of 1970, 'Economic Prospects to 1972 — A Revised Assessment', each represented an experiment in collaborative forecasting and mutual adjustment of plans and expectations as between Government and its partners in the economy. All these arrangements are completely extra-legal. Moreover the contours of a possible conventional obligation on the Government to consult Parliament or obtain its approval for its public expenditure programmes and other medium-term proposals are not yet well-defined. The five year expenditure programme has, in each year since regular publication started in 1969, been presented to the House of Commons as a White Paper, and 'noted' by it after a substantial general debate on the floor of the House. Disapproval of the White Paper could be expressed by a rejection of the motion to 'take note' of it, but this procedure affords no opportunities for detail-

ed amendment by Parliament, and the Government is in no way bound thereby to compliance with its own plans or with parliamentary comment. The programmes are also recognized by Parliament in that in 1971 a Parliamentary Select Committee on Expenditure was set up, in succession to the Estimates Committee, whose terms of reference include scrutiny of and comment on the format and content of the papers on public expenditure laid by the Government before the House. Continuing change in the presentation of the public expenditure programme is therefore foreseeable and was in fact inaugurated by the early abandonment, in the 1970 White Paper, of the projections of government revenue which had appeared in its 1969 predecessor. As to the planning documents, the National Plan was presented to Parliament, but not approved by it, only 'welcomed'. 'The Task Ahead' and its successor were not formally presented to Parliament at all.

2.4. Global methods of control

2.4.1. BUDGETARY POLICY

We have already referred to the fact that since 1941 the annual balance of government receipts and expenditure presented in the Budget has, so far as possible, been adjusted so as to influence total demand in the economy. That balance is nowhere presented in legislative form, only in the annual Financial Statement and Budget Report (above, Chapter 1). We have also pointed out that mid-year variations in this balance may be made to meet changing economic circumstances, by way of supplementary Finance Acts or other revenue legislation to raise new taxation or alter existing rates: see, for example, Income and Corporation Taxes (No 2) Act 1970, s. 3 (varying corporation tax rates in the course of the financial year). Since the Second World War machinery has also been introduced to facilitate mid-year variations in taxes and other sources of public revenue for the purposes of demand management by the delegation of powers to the Government.

Under the Finance Act 1961, s. 9, the Treasury was empowered, during the period expiring 30 September 1962, to increase or reduce by up to 10 % of their amount any duties falling to be paid or drawbacks or rebates falling to be received in respect of customs duties of a revenue character, excise duties (other than those payable for the issue of licences: Finance Act 1968, s. 10) or purchase tax, with a view to regulating the balance between demand and resources in the United Kingdom. (For the same purpose and initial period the Act, by s. 30, also empowered the Treasury to impose a surcharge of up to four shillings (20 new pence) per week per employee on employers, to be collected with National Insurance contributions. This regulator was never used and the power was not renewed.) The power was made exercisable by statutory instrument (Finance Act 1961, Sch. 3) and ceases to operate if the instrument has not been approved

by resolution of the House of Commons within 21 days after being presented to it. Each subsequent Finance Act has extended the power for a further year — see, most recently, Finance Act 1973, s. 3 — and from time to time such mid-year adjustments have been consolidated into the permanent rate of duty applicable (e. g. Finance Act 1967, s. 1; Finance Act 1969, s. 1). By the Finance Act 1964, s. 8, the duties subject to alteration were grouped into five classes, namely:

- (i) on tobacco,
- (ii) on alcohol,
- (iii) on oil,
- (iv) purchase tax,
- (v) other duties

and while it was provided that different percentage changes might be applied to different groups, the prescribing of different percentage changes within a group, and the increasing of one group of duties coupled with the reduction of another, were prohibited.

The impact of this power has been greatly reduced by the abolition of purchase tax (by the Finance Act 1972, s. 54), but compensation is provided by the provision of a power to vary value added tax, whose imposition commenced on 1 April 1973 (Finance Act 1972, s. 47). The Finance Act 1972, s. 9 (3) enables the Treasury to vary the rate of the tax by up to 20 % thereof, by way of statutory instrument requiring the approval of the House of Commons, and operative for one year only unless continued by a further statutory instrument. While this power is not expressed to be limited to the purpose of regulating the balance between demand and resources, there is no doubt that it could be so used, at least for as long as unilateral decisions on national VAT rates are permissible under EEC rules.

A further source of governmental power to vary elements of public revenue without immediate resort to legislation is the National Insurance Act 1965, s. 6, re-enacting the National Insurance Act 1946, s. 3. This provides that the Treasury may, with a view to maintaining a stable level of employment, vary the rates of employers' and employees' weekly national insurance contributions, fixed by Sch. 1 of the Act. The stringent conditions attached to the power — employers' and employees' contributions must be varied by the same cash amount, and the variations must be made by a statutory instrument, to be approved in draft by both Houses of Parliament and accompanied by a report of the government actuary (ss. 106, 107) — have made it unattractive and it has not been used, necessary mid-year variations being effected by legislation (e.g. Public Expenditure and Receipts Act 1968, s. 1 and Sch. 1).

On the spending side, supplementary Consolidated Fund Acts to authorize overruns on the expenditure totals specified in the annual Consolidated Fund (Appropriation) Act are always needed. Deliberate over or under-running

for economic reasons, to boost or restrain consumption or investment, is, however, rare, because of its adverse effect on cost control and the difficulty of finding expenditure projects whose introduction or deletion, or acceleration or delay, will quickly produce the right kind of effect. (See 7th Report from the Expenditure Committee, Public Expenditure and Economic Management (1971-72) H.C. 450, paras. 38-49, evid. qq. 1-81 and App. 3). Expenditure may also be incurred by the Government in advance of any parliamentary authorization by resort to the Contingencies Fund. This is an annually renewed sum of £ 200 m. (see Contingencies Fund Act 1970, s. 2), available 'for making advances in respect of urgent services in anticipation of the provision made or to be made by Parliament for those services becoming available'. (Miscellaneous Financial Provisions Act 1946, s. 3 (1)). Once such provision is made under a Consolidated Fund Act the Contingencies Fund is repaid. Money from the Fund has often been applied to urgent economic purposes, such as emergency financial assistance to unprofitable shipyards, to avoid closure and consequent unemployment, or bridging grants to building societies (see, below, 5.7.4.1.) to prevent an increase of mortgage lending rates at a politically inopportune time, and may also be used to hasten the implementation of mid-year adjustments to the budgetary balance.

2.4.2. PUBLIC EXPENDITURE

The five year programmes which presently form the real framework of public expenditure decisions have, in themselves, no legal force. The various kinds of spending which they cover, namely central Government expenditure, local authority expenditure, and capital expenditure of nationalized industries, are each subject to a different legal regime, which we describe below, and to different degrees of central Government control.

2.4.2.1. Central Government expenditure

As a preliminary it will be helpful to distinguish two main central Government funds:

A — The *National Loans Fund*, set up by the National Loans Act 1968, s. 1. This fund is a Treasury account at the Bank of England on which is charged all central Government borrowing, i.e. the 'National Debt', and from which are advanced all sums lent by the Government to public bodies under specific statutes (e.g. to nationalized industries) and to local authorities via the intermediary of the Public Works Loans Commissioners, an independent board set up in its present form by the Public Works Loans Act 1875, s. 4. Shortfalls of payments into the Fund of interest on such loans, as against payments out of the Fund for the service of the National Debt, are from time to time made good from the Consolidated Fund (National Loans Act 1968, s. 15). The accounts of the Fund, made up each year, thus show both the net borrowing requirement of the central Government for the year and the net current cost of servicing government debt.

B — The *Consolidated Fund*, set up by the Consolidated Fund Act 1816, as the single fund into which all government revenues would be paid and from which all its expenditures would be drawn. This strict unitary principle has been discarded, in the interest of clear accounting, by the National Loans Act 1968, but the idea that all receipts are paid into a common fund and are not to be attributed to particular services, is still central to Treasury thinking and departures from it are strongly resisted. It continues, moreover, to be the case that all central Government spending, other than that relating to public sector debt, is drawn from the Consolidated Fund.

Services on which Consolidated Fund expenditure is incurred are divided into two classes, according to the method by which the funds are withdrawn:

- (i) Consolidated Fund Standing Services are, as the name implies, financed from the Fund on a permanent basis. No annual parliamentary authorization is required. The intention is to provide either security of payment, or immunity from parliamentary criticism of the service in the discussion of estimates, or both. Salaries of judges and of the Comptroller and Auditor-General, current deficits on the National Loans Fund, and net payments by the United Kingdom Government to the Northern Ireland Government¹ under the Government of Ireland Act 1920, s. 24, Social Services (Northern Ireland Agreement) Act 1949 and other statutes, are among the most important services financed in this way.
- (ii) Supply Services include all other services, expenditure for which requires to be voted annually by Parliament. Financial authorization is by way of the annual Consolidated Fund (Appropriation) Act, which enacts the main headings of the Government's estimates of supply expenditure, together with such other Consolidated Fund Acts as may be needed to enact supplementary estimates, presented two or even three times in a financial year to cover overruns on the Appropriation Act total. Although supply expenditure includes expenditure both of a current and a capital nature, the authorizations in the Act are strictly for cash to be disbursed in the coming year: there are no 'authorisations de programme'. They are on a departmental basis, being related to the five year programmes by tables showing how the departmental expenditure covered divides up among the programmes' economic and functional categories. The Acts thus possess, in themselves, little economic significance and the formal opportunities for debate which they provide are by long tradition utilized for general discussion of policy and administration not necessarily con-

¹ Under the Northern Ireland (Temporary Provisions) Act 1972, s. 1, the Northern Ireland Government is temporarily suspended and Northern Ireland services are being administered by a Secretary of State who is a member of the United Kingdom Government.

nected with expenditure; their main function is rather to give formal approval to expenditure consequent upon policies and decisions debated on other occasions, and to provide an accounting framework against which the regularity of central Government expenditure can later be tested. There is, of course, no obligation on the Government to utilize the whole of the sums that it is legally entitled to spend; shortfalls are no less common than overruns, but equally difficult to use as regulators of demand, flexibility within annual spending programmes having been estimated at some 1.5 to 2.5 % of the total.

2.4.2.2. Local authority expenditure [7]

Local authority expenditure, both current and capital, is in law the responsibility of and under the control of local authorities themselves. Legally speaking, local authorities are independent corporate bodies which, in providing for the government of their areas, operate on their own account rather than as agents of central Government, and which are endowed by statute with powers to raise finance by local taxation of property values ('rates') and by borrowing. In practice, however, central Government control over all aspects of local authority activity is tight, and in particular, the Government has sufficient control and influence over the expenditure of local authorities, globally and individually, to make it possible for it to foresee its evolution over the five year programme period.

A — *Current expenditure*: Government influence over the general level of revenue expenditure by local authorities derives from the fact that their independent sources of income, i.e. rates and miscellaneous income such as housing rents and income of trading undertakings, account only for some 55 % of their revenue. The remainder is made up of grants from the central Government, either in aid of local authority revenues generally (the 'Rate Support Grant') or for specific services (e.g. police). Since these independent sources are relatively inelastic (rates in particular being unresponsive to changes in general price levels), variations in the level of grants will be largely determinative of variations in overall local authority revenue expenditure. The Local Government Act 1966 and Local Government (Scotland) Act 1966, which regulate the Rate Support Grant scheme in England and Wales and in Scotland respectively, provide for the total amount of grant for any year (apart from housing subsidies), and the proportion of this to be represented by specific grants on the one hand and by the Rate Support Grant on the other hand, to be determined by the respective Secretaries of State upon consideration of:

- (i) current and foreseeable future levels of prices, costs and remuneration;
- (ii) probable general fluctuations in demand for local authority services; and
- (iii) the need for developing services and the extent to which 'having regard to general economic conditions' it is reasonable to develop them.

The total Rate Support Grant is fixed by a Rate Support Order, made by the Secretary of State after consultation with local authority associations and with the consent of the Treasury, and requiring to be approved by resolution of the House of Commons. The minimum period for which an Order may be operative is two years (though the Order may fix different amounts of Rate Support Grant for different years) and to vary an order within its period of currency a fresh Order, involving the same arduous procedures of consultation and approval, is required. In this way local authorities enjoy some security and predictability so far as the inflow of grant funds is concerned, but in consequence limited scope is left for using variation in levels of grants and through them of local authority expenditure as a demand-regulating mechanism in response to short-term economic changes. Such variations as have been made within the life-span of Rate Support Orders have been designed simply to absorb the effects of inflation on local authority finances. Both central and local Government have from time to time felt that biennial settlements were too inflexible, and the Government has suggested moving to a three year settlement, of which only the first year would be confirmed. Firm settlements would therefore in effect depend on annual negotiations, situated in the context of the Government's rolling five-year expenditure programmes.

B — *Capital expenditure*: There exist a number of different powers possessed by departments of the central Government to control the capital expenditure of local authorities on specific projects:

- (i) In England and Wales, local authorities, other than the Greater London Council, may only borrow money for purposes or classes of purpose approved by the Secretary of State (for the Environment) and subject to any conditions on which such approval is given (Local Government Act 1972, Sch. 13, para. 1 (b)). This provision will come into effect on 1 April 1974, replacing s. 195 of the Local Government Act 1933, which requires the approval of the Secretary of State for any capital project to be financed by borrowing by the local authority. Currently some 80 % of local authority capital expenditure is financed by borrowing rather than out of revenue. The new 1972 provision was antedated by arrangements for the granting of 'loan sanction' announced by the Department of the Environment in 1970 in its Circular 2/70, and taking effect in 1971, and it seems to be consistent with the continuance of those arrangements which are as follows:
 - borrowing for key sector schemes, e.g. relating to education, principal roads, police, personal social services, etc., is permitted provided that the approval of the appropriate department, e.g. Department of Education and Science, Department of the Environment, Home Office,

Department of Health and Social Security respectively, is obtained;

- borrowing for the acquisition of land for certain specified purposes is permitted provided that the price of the land is not more than the value put on it by the District Valuer (who is an official of the Board of Inland Revenue);
- borrowing for housing improvement expenditure is generally permitted;
- borrowing to defray other kinds of expenditure (termed 'locally determined schemes' is permitted within a total allocated annually to the particular local authority by the Secretary of State.

The effect of these changes has been to withdraw large numbers of routine and minor capital projects from individual scrutiny, while improving the Government's ability to monitor the overall level and main trends of expenditure. Thus, for example, approvals of key sector schemes can be programmed by the relevant departments so as to ensure, as far as possible, that the local authority expenditure involved is incurred in accordance with the department's segment of the Government's five year public expenditure programme.

In Scotland, pending the introduction of local government reform under the Local Government (Scotland) Act 1973, borrowing by local authorities is regulated by provisions comparable to those contained in the Local Government Act 1973, s. 195, which are to be found in the Local Government (Scotland) Act 1947, s. 259 (2), as amended by the Local Government (Scotland) Act 1951, s. 4, and the Local Government and Miscellaneous Financial Provisions (Scotland) Act 1958, s. 11). Arrangements comparable to those set out in Circular 2/70 are in force for three major cities, Aberdeen, Edinburgh and Glasgow, but elsewhere projects continue to be individually scrutinized. The Local Government (Scotland) Act 1973, which will come into force on a date to be determined, institutes a control which is both new and distinct from the new English arrangements set out above. It requires the consent of the Secretary of State for the incurring of capital expenses (i.e. expenses met otherwise than out of current revenue) thus substituting a direct control of commitments for an indirect control over borrowing. It may be expected that within this distinct framework, a system of block allocations similar to that under Circular 2/70 will be instituted.

- (ii) The approval of the relevant department may be required for the start of work on certain major projects, e.g. new schools: Education Act 1944, s. 13 (England and Wales only).

- (iii) Certain specific types of local authority capital projects are grant-aided by the relevant central Government department. By deferring a decision on a grant, or by withholding a grant, the department can thus effectively delay or prevent the expenditure, even if the local authority decides to finance its share from revenue. The amount of the grant may be fixed by statute as a proportion of total expenditure, e.g. 75 % of approved expenditure on constructing principal roads (Highways Act 1959, s. 253; Local Government Act 1966, s. 27; Road Improvement Funds Act 1909, s. 8 (as amended) (Scotland)), or may be left to the discretion of the Secretary of State, e.g. for remedial operations on unstable tips, under the Mines and Quarries (Tips) Act 1969, s. 25.

- (iv) The borrowing, by any one local authority, of over £ 50 000 in any one year requires Treasury consent (Borrowing (Control and Guarantees) Act 1946, s. 1, as applied by the Control of Borrowing Order 1958, S.I. 1958/1208, amended, S.I. 1959/445). A general consent dated 8 July 1964 has been issued by the Treasury permitting borrowing without limitation, save for restrictions in certain cases such as borrowing under local Act powers, or the issue of bonds at a discount in excess of that authorized in the consent.

2.4.2.3. Public enterprise expenditure [8]

Under this head we are concerned essentially with capital expenditure of public enterprises, and in particular, of the nationalized industries, i.e. the state fuel and power, steel, Post Office, air and surface transport undertakings. The principal statutes constituting and regulating the nationalized industries are:

Coal:	Coal Industry Nationalization Act 1946; Coal Industry Acts 1949, 1965, 1967, 1971 and 1973;
Gas:	Gas Act 1972;
Electricity:	Hydroelectric Development (Scotland) Act 1943; Electricity Act 1947; Electricity Reorganization (Scotland) Act 1954; Electricity Act 1957;
Iron and Steel:	Iron and Steel Acts 1967 and 1969;
Post Office:	Post Office Act 1969;
Air Transport:	Airports Authority Act 1965; Air Corporations Act 1967; Civil Aviation Act 1971;
Surface Transport:	Transport Acts 1962 and 1968.

Revenue expenditure will either be financed from the normal earnings of the enterprise — in which case it escapes Government control other than such as can be operated through general or specific limitation of prices and wages and other costs — or met by Exchequer subsidies, to which the rules regarding Supply expenditure apply.

Capital expenditure of public enterprises is differently treated in the five-year expenditure programmes according to whether the enterprise is regarded as a nationalized industry or not, nationalized industry expenditure being the subject of a special section of the programme. This reflects their importance in terms of size, and a difference in the degree of control possessed by the Government. Other 'social service' public enterprises, such as new town development corporations, are subject to strict government control of investment and borrowing: see, e.g. New Towns Act 1965, ss. 4, 6, 7 and 42, New Towns (Scotland) Act 1968, ss. 4, 6, 7 and 37, requiring specific consents for land acquisition and development, making government advances the normal method of meeting capital expenditure and laying down criteria for the making of advances. The usual regime for investment by the nationalized industries, the 'commercial' public enterprises, is exemplified by s. 3 (2) of the Coal Industry Nationalization Act 1946, requiring that the National Coal Board's investment programme be drawn up on lines settled from time to time with the approval of the responsible Minister. This provision was designed to secure to the Government a power of allocation of investment as between nationalized industries and as between public and private sectors of industry, at a time when considerable emphasis was placed on this kind of rationing of investment opportunities.

At the present time the control is exercised by way of scrutiny of each industry's rolling five-year investment programme, first by its sponsoring department (Department of Trade and Industry in the case of fuel and power, steel and civil aviation, Department of the Environment or Scottish Office in the case of surface transport) and then by the Treasury. The principal objects of the scrutiny are to ensure that the industries' programmes have been thoroughly appraised, are mutually consistent, are based on assumptions about the growth of demand and make calls on national resources which are compatible with the Government's general growth expectations, and are consistent with government economic policy generally. Attempts to use acceleration or retardation of nationalized industry expenditure, as of other public expenditure, for counter-cyclical purposes, were condemned by the Plowden Committee in 1961 as likely to be counter-productive and uneconomic, but the electricity and gas industries have recently been induced to bring forward certain large investment projects for the purpose of alleviating unemployment. Recompense from central Government funds for additional costs thereby incurred,

such as interest, is provided for under the Gas Act 1972, s. 38, and the Electricity Act 1972, s. 2.

In addition, departments use their power over programmes in order to review individual projects of particular size or significance, even though they have no explicit statutory power to do so. While different departments have attached different degrees of importance to project scrutiny, it may be expected to occupy in the future a greater place in investment control generally, in the light of the White Paper, *Nationalized Industries: a review of economic and financial objectives*, Cmnd. 3437 (1967), which proclaimed the application of a predetermined test rate of discount as the most reliable method of evaluating the case for any specific nationalized industry investment project. This emphasizes the value of project scrutiny as a method of ensuring the best allocation of resources, but departments have in the past also been enabled to promote ulterior policies by this means, e.g.:

- (i) securing an orderly run-down of the coal industry denying the Central Electricity Generating Board (CEGB) permission to convert certain power stations from coal to oil burning, or by stipulating coal burning in new power stations (note that such requirements may arguably also be justified as conditions attached to Ministerial consent to the building of power stations, required under the Electric Lighting Act 1909, s. 2);
- (ii) protecting the British aircraft construction industry by requiring that the nationalized carriers, BEA and BOAC, buy British rather than foreign-made aeroplanes;
- (iii) promoting balanced regional development by requiring that new steelworks are, so far as is feasible, located in development areas (defined below, 3.2.1.A) rather than elsewhere.

The first two policies have involved the relevant nationalized industries in quantifiable losses, which it now appears to be government policy to make up: see, *Coal Industry Act 1967*, s. 6, authorizing payments to the CEGB in respect of coal burning; *Air Corporations Act 1969*, s. 1, authorizing payments to BEA in respect of extra costs of purchase of British rather than American aircraft.

It may also be noticed that the statutes regulating the nationalized industries confer on the relevant sponsoring departments and the Treasury complete power over borrowing by the industries, both temporary borrowing by way of overdraft and long-term borrowing to defray capital expenditure, and set limits to the total indebtedness of each industry, which may be raised by limited amounts by order made by the responsible Minister with the approval of the House of Commons. While the statutes make provision for the issuance of stock by the nationalized industries (and, in the case of more recent legislation, for borrowings in currencies other than sterling) most long-term nationalized industry borrowing since

1956 has been from the central Government itself, and is now a charge on the National Loans Fund.

2.4.3. MONETARY POLICY [9]

Though the United Kingdom's system for the control of the money supply and interest rates forms a single coherent whole, it seems advisable, in order to respect the general arrangement of the reports, to separate off those elements which involve direct regulation of banking activity, and to treat them under 5.2.2.3. below. Here we shall look only at the monetary authorities themselves and at those of their actions that are not regulatory in character, though it must be stressed that such actions would be economically almost meaningless in the absence of the regulatory elements elsewhere described.

The authorities in question are the Treasury and the Bank of England. The Treasury is the Government department which bears responsibility to Parliament for the conduct of monetary policy, which it discharges through its Finance Group. The functions of the Group are not executive, but rather those of counselling and giving political direction to the Bank, which:

- (i) performs certain financial services for the Treasury on an 'agency' basis; and
- (ii) as the central Bank, i.e. banker both to Government and to the private banking system, intervenes in money markets in the national interest and exercises a general supervisory and regulatory power over them.

The Bank is a corporation, founded by Royal Charter (since renewed) in 1694, whose capital was in private hands until taken over by the Government under the Bank of England Act 1946, s. 1. That Act also gave the Crown power to appoint the governing body of the Bank (s. 2), which consists of a governor and deputy governor each holding office for five years together with up to sixteen directors (of whom not more than four are to be full-time) holding office for four years (Sch. 2, paras. 1, 2 and 6). It also empowered the Treasury to give directions to the Bank (s. 4 (1)); subject to such directions, the affairs of the Bank would be managed by the court of directors in accordance with the Charter of the Bank (s. 4 (2)). In its turn, the Bank was empowered to request information from and make recommendations to 'bankers' and, with the approval of the Treasury, to give directions to them (s. 4 (3)). But the Act did not reincorporate the Bank as a statutory corporation like the Boards created to run the nationalized fuel, power, steel and transport undertakings, and it consequently provided no comprehensive statutory formulation of the Bank's activities and powers. Moreover, while s. 4 of the Act seems to provide Treasury and Bank with a virtually unrestricted power of regulation of financial institutions, it has not actually changed the basis of the Treasury — Bank relationship or of the Bank's power over financial institutions which existed prior to 1946. Relations between the Treasury and

the Bank continue to be characterized by consultation and cooperation, relating the Finance Group's task of implementing general Government economic policy through monetary policy with the Bank's expertise in monetary management and sensitivity to the situation in financial markets. No direction has ever been given by the Treasury under the 1946 Act.

A — *Agency functions* of the Bank are largely governed by statute and are as follows:

- (i) printing and issue of bank notes. By virtue of the Bank Charter Act 1844 and the Bankers Compositions Act 1856, the Bank of England has the exclusive privilege, in England, of issuing notes payable on demand. Scottish banks are entitled to issue their own notes, but since they are required to hold 100 % cover in Bank of England notes for any notes of their own that they issue, their issuing privilege is totally without significance in terms of money supply: see, Bank Notes (Scotland) Act 1845; Currency and Bank Notes Act 1928, s. 9. Similar provisions apply in relation to the issuing privilege of banks in Northern Ireland. The size of the note issue is determined by the Treasury under s. 2 of the Currency and Bank Notes Act 1954, which splits the issue into two parts: one part, now a purely token amount, equalling the amount of gold held in the Issue Department of the Bank, the other part, the fiduciary note issue (which is backed by securities held in the Issue Department of the Bank) being limited by the Act to £ 1575 m. This latter figure may be changed at the direction of the Treasury, and if the effect of such directions is to keep the size of the fiduciary issue above £ 1575 m for more than two years at a time the increase must be authorized by the House of Commons by way of statutory instrument. Since the volume of bank notes in circulation represents a very small part of the total money supply, it has been the policy of the Bank of England and the Treasury to increase the amount of bank notes in circulation whenever public convenience so demands, and the level of the fiduciary issue has consequently been kept continuously above £ 1575 m since 1954 by a series of statutory instruments promulgated at two-year intervals.
- (ii) acting as issuing house and principal registrar for all marketable securities issued in sterling by the United Kingdom Government. This includes both long- and medium-term 'gilt-edged' stocks and short-term bearer securities such as Treasury bills. The statutory sources of rules regulating the Bank's activities in this respect are as follows:
 - (a) issuance and transfer of securities: the Government Stock Regulations 1965, made under the Finance Act 1942, as extended by, *inter alia*, the Stock Transfer Act 1963;

- (b) payment of dividends: Statutory Rules made by the Bank, with the concurrence of the Treasury, under the National Debt Act 1889;
- (c) dealing in existing Government securities: Finance Act 1921, Sch. 3, and the Government Stock (Redemption) Regulations 1924 made thereunder;
- (d) conversion of existing Government securities: the Exchange of Securities (General) Rules 1963, made under the National Loans Act 1939 and continued in force by the National Loans Act 1968.

These functions form a very large part of the work of the Bank (which also acts as registrar for the stocks of nationalized industries and certain local authorities and foreign governments). In terms of monetary policy, their importance lies in the impact that operations in government debt have on the money supply and on interest rates. Traditionally the Bank, with the concurrence of the Treasury, has played a very active managerial role, seeking, by day to day market dealings, to stabilize prices and interest rates in the interest of facilitating the funding of government debt. That objective has now to be balanced against the often incompatible one of containing the growth of the money supply, and at the present time the emphasis in such open market operations is on the latter objective (below).

- (iii) exchange control (below, 5.4.2.).
- (iv) management of the exchange equalization account, that is to say, the Treasury's account at the Bank whose purpose is 'checking undue fluctuation in the exchange value of sterling' and 'the conservation or disposition in the national interest of the means of making payments abroad' (Finance Act 1932, s. 24, extended by Finance Act 1946, s. 63 (1)). The Government's gold and foreign currency reserves are held in the account and used to purchase sterling in order to maintain its exchange value. The account also holds a sterling capital, now drawn from the National Loans Fund, which may be increased without statutory limit: Currency (Defence) Act 1939, s. 1. The former purpose will predominate in times of floating exchange rates like the present and the period 1932-39; the latter at times when, in pursuance of its obligations under Article 8 of the Bretton Woods Agreement, the United Kingdom is operating a system of exchange rates which are either fixed or moving within fixed limits, as was the case up to June 1972. It should be noted that even in this latter case, the level of exchange rates is determined only by the market, as influenced by Bank of England intervention with funds from the account, and is not the result of any exercise of regulatory power.

B — *Control of money supply, etc.*: This second set of functions is essentially non-statutory. Though the Bank of England Act 1946, s. 4 provides Bank and Treasury with all the powers needed for statutory control of the monetary system, the powers are not used and the Bank's relationship with discount houses, clearing banks and other financial institutions continues to rest on its position as 'lender of last resort', an office it occupies purely on the basis of custom, and its role of manager of government debt, referred to above. The economic power which is conferred upon the Bank by these two roles has since 1970 come to be exercised primarily through open market operations in government securities which, in conjunction with new rules regarding reserve ratios and special deposits (below, 5.2.2.3.) may tend, within the constraints imposed by the need to satisfy the current government borrowing requirement, to reinforce or to restrain expansion or contraction of the lending capacity of financial institutions and upward or downward tendencies in interest rates.

In the present inflationary climate, the policy is to give pre-eminence in open market operations to keeping the increase in the money supply in line with the overall growth of the economy, and hence to severely restrict the purchases of government stock formerly used in order to support the 'gilt-edge' market and stabilize interest rates. The direct control over interest rates secured by variation of bank rate, the rate at which the Bank of England would lend 'at last resort' to members of the London Discount Market Association and to which, by convention, the clearing banks' maximum deposit rates and minimum overdraft rates were tied, was abandoned in 1971 (see (1972) 12 Bank of England Quarterly Bulletin 442-443). Its effectiveness as a determinant of interest rates had for some time been declining because of the development of more flexible practices by the Bank, which was prepared to lend to the discount houses in some circumstances at rates both above and below Bank rate, and was virtually eradicated by the abandonment, as part of the reforms of 1971, of the clearing banks' interest rate cartel (below, 5.2.2.3.) and the consequent severance of the tie with Bank rate. The present policy implies that interest rates will be left to move quite freely so as to regulate automatically the pressure of demand for credit. Under the new regime, however, the Bank of England still reserves a power to control rates of interest on deposits, as a means of regulating competition for deposits (below, 5.5.2.).

2.5. Indirect instruments of policy

2.5.1. PUBLIC ENTERPRISES [10]

The quantitative importance of public enterprise within the national economy, and its responsibility for producing or providing virtually all of the most basic goods and services makes it an obvious instrument whereby the Government might seek to control or influence certain

elements of the behaviour of the economy as a whole. We have already mentioned (2.4.2.3. above) the manipulation of its investment programmes for economic purposes; other possibilities are the imposition by the Government of policies regarding the prices charged and the wages paid by public enterprises, which may both provide a pattern for private sector decisions and, by virtue of the size of the public sector of industry, have an intrinsic inflationary or deflationary effect. The legislation establishing the principal public enterprises, which determines their constitution and powers and the Government's powers of control (above, 2.4.2.3.), makes no explicit reference to their possible use as indirect instruments of economic policy, nor does it confer on the Government any express powers to determine their prices and wages policies or to intervene in relation to particular decisions on these matters. Nationalized industries' prices have, however, always in fact been subject to effective governmental control, though the purposes of the control and the restraint with which it has been exercised have varied greatly from time to time. Methods and regimes of control have included the following:

- (i) subjection of nationalized industries to general legislation for the control of prices, i.e. the Prices and Incomes Acts 1966-68, and the current Counter-Inflation Act 1973 (below, 5.2.1.1.). Control here is common to nationalized industry and private enterprise prices and does not reflect a desire to use nationalized industries as an instrument of policy in their own right, though a stricter regime may be applied to nationalized industries. For example, under the Price and Pay Code which guides the Price Commission and Pay Board operating under the Counter-Inflation Act, loss-making private enterprises may increase prices to the extent necessary to cover costs, whereas nationalized industries in deficit may only increase prices on grounds available to profitable private enterprises.
- (ii) subjection of nationalized industries to the jurisdiction of price fixing bodies for the specific industries in which they operate, e.g. BEA and BOAC to the Civil Aviation Authority in respect of air fares (Civil Aviation Act 1971), National Bus Company subsidiaries and Scottish Transport Group subsidiaries to the Area Traffic Commissioners in respect of bus fares (Road Traffic Act 1960). Such price fixing regimes are instituted for the purpose of regulating industries in which competition is imperfect, not as an instrument of general economic management, and may in fact require to be adjusted in order to operate compatibly with legislation of type (i) above (below, 5.2.1.1. and 6.4.).
- (iii) informal government pressure on nationalized industry managements to reduce or delay proposed price increases. Though not statutorily obliged to do so, all nationalized industries have always inform-

ed their sponsoring departments of their intention to make (or, in cases covered by (ii) above, apply for) price increases, and have awaited departmental consent before proceeding. Up to 1961, and to a lesser extent since that time, Ministers occasionally used this *de facto* power to delay price increases until the economic or, one sometimes suspects, the political climate should be more propitious and in a few cases persuaded the industry concerned to seek alternative ways of raising at least some of the finance required (e.g. National Coal Board proposals in 1965, see Select Committee on Nationalized Industries, Ministerial Control of Nationalized Industries (1967-68) H.C. 371, Vol. III at App. 10, para. 3).

In 1961 the Government, after consultation with the nationalized industries, initiated a new pricing policy which was described in the White Paper, the Financial and Economic Obligations of the Nationalized Industries, Cmnd. 1437 (1961). With a view to securing a higher and more consistent rate of self-financing by nationalized industries, financial targets were set for each industry, mostly in the form of an average rate of return on net assets to be achieved over a five year period. It was accepted that Ministers should not ordinarily intervene in the individual pricing decisions of the industries, but that if they did, the industry might be 'compensated' by way of adjustment of its financial target. These arrangements, which were designed to restrict the use of nationalized industry pricing as an economic instrument and to leave the industries free to act more 'commercially', proved difficult to reconcile with the operation of the 1966-68 prices and incomes legislation and subsequently with the Government's policy of supporting the voluntary price restraint in industry generally, initiated by the Confederation of British Industry in 1971, to which nationalized industries, despite their difficult financial situation at the end of a five-year target period, were expected to conform fully.

Further, in 1967 the Government introduced a revised policy for nationalized industry pricing and investment, Nationalized Industries: A Review of Economic and Financial Objectives, Cmnd. 3437 (1967), which suggested marginal cost pricing as the normal system for determining prices, and the evaluation of individual investment projects by the application of a predetermined test rate of discount. Somewhat inconsistently, it also proposed to retain the industries' financial targets set under Cmnd. 1437, and the nationalized industries are, in theory, still expected to aim at those targets. In fact the Government's current counter-inflation legislation will prevent their operating a policy based either on the achievement of targets or on the application of marginal cost pricing.

Neither the 1961 nor the 1967 policy has any specific statutory support, save in that an obligation to charge prices which would result in a particular level of self-financing could be reinforced by the exercise of ministerial powers restricting the borrowing in which an industry might engage to finance a given level of investment (see e.g. Gas Act 1972, s. 17 (3)). Statutory limitations are also imposed on the total indebtedness of each nationalized industry (e.g. Gas Act 1972, s. 19) and in some cases on the permissible size of an industry's accumulated revenue deficit (e.g. Coal Industry Act 1971, s. 3; Transport Act 1962, s. 22 (2), repealed by Transport Act 1968, s. 41 (8)).

- (iv) use of powers of issuing general directions on matters affecting the national interest to nationalized industries. All the nationalized industry statutes contain provisions of this kind, of which the prototype is the Coal Industry Nationalization Act 1946, S. 3 (1). The power has been used on the rarest of occasions: to forbid any increase in rail fares in 1952, for technical reasons related to a transfer of assets between British Overseas Airways and British European Airways in 1947, and to restrict a proposed increase in Post Office charges in 1970 (though in this last case it has been denied that a formal directive was ever issued). The legality of using a general direction to inhibit specific price proposals is doubtful but has never been challenged in the courts. The fact that by its very rarity, the giving of a general direction has come to denote a breakdown in ordinary communications between Minister and Board means that they cannot be expected to operate as a regular mode of control of nationalized industry prices.
- (v) use, by Ministers, of powers to give directions arising out of representations made by the consumers' councils attached to the various nationalized industries. These representations may include representations about proposed price increases (see, e.g. Gas Act 1972, s. 10 (2) and (4), Iron and Steel Act 1967, Sch. 4, para. 6 (4) and (6), now repealed, European Communities Act, s. 4 and Sch. 4, Pt. IV). These are the only powers possessed by the Government to intervene in relation to specific price increases, but their value in the service of general economic policy is again limited by the fact that they are only activated by complaints by consumers' representatives.

All of these controls should be viewed in the context of the only general statutory obligation on nationalized industries in respect of their prices, which is to charge such prices as will enable the undertaking concerned to break even on revenue account taking one year with another (see e.g. Transport Act 1968, s. 41 (1)).

Governmental powers to control levels of wages and other costs in nationalized industries are even scantier,

the only statutory provisions with any possible relevance being those mentioned in paras. (iii) and (iv) above. On many occasions, however, governments have brought informal pressure to bear on nationalized industries in their wage negotiations, sometimes to reach a settlement higher than the industry might of its own accord have concluded, in the interests of industrial peace, sometimes in the contrary sense in an effort to restrain inflationary forces, sometimes, unedifyingly, first one way then the other in relation to the same set of negotiations. The attempt of the Conservative Government in 1970-71 to use the nationalized industries as the 'pilots' of a wage policy designed to restrict average wage increases to 8 % per annum, was notably unsuccessful, culminating as it did in the acceptance of a claim by mine workers whose effect on National Coal Board finances was such as to require immediate financial aid from the Government to prevent the Board's exceeding the statutory limit on its recommended revenue deficit, and a subsequent capital reconstruction, effected by the Coal Industry Act 1973.

2.5.2. PUBLIC CONTRACTS [11]

The procurement programmes of government in the United Kingdom, including central Government departments, local authorities, and nationalized industries, are sufficiently large overall — absorbing about 5 % of the entire output of manufacturing and construction industry in Britain — to make it both possible and desirable for the Government to use public contracts as a means of influencing the behaviour of enterprise in pursuance of its economic objectives. This capability for influence is greatly multiplied in relation to certain industries which are heavily dependent on contracts placed by public authorities, such as aircraft construction (Department of Trade and Industry and airways corporations) (see Report of the Plowden Committee on the Aircraft Industry, Cmnd. 2853 (1965)), pharmaceuticals (Department of Health and Social Security) (see Report of the (Sainsbury Committee of Inquiry into the Relationship of the Pharmaceutical Industry with the National Health Service, Cmnd. 3410 (1967)), heavy electrical plant (Central Electricity Generating Board), telecommunications equipment (Post Office), civil engineering (Department of the Environment and local authorities) (see Civil Engineering EDC, Contracting in Civil Engineering since Banwell (1968)), to the point where the structure and development of the relevant industry may be determined by the use which the Government makes of its purchasing power.

There exist no real legal limitations in the use of the purchasing powers of public authorities to further economic policy objectives. The power of central Government departments to enter into contracts derives from common law: any statutory powers to contract, such as those conferred by the Ministry of Supply Act 1939, s. 2 (1), will be regarded as additional to common law powers, so that there is no implied prohibition on contracting other than

for the statutory purposes. Local authorities and nationalized industries, being bodies incorporated by statute, must derive their contractual powers from statute (see, for local authorities, Local Government Act 1933, s. 266 (to be replaced, with effect from 1 April 1974, by the Local Government Act 1972, ss. 111, 135), Local Government (Scotland) Act 1947, s. 336 (likewise to be replaced under the Local Government (Scotland) Act 1973); for nationalized industries, the various general powers provisions in their constituent statutes, e.g. Coal Industry Nationalization Act 1946, s. 1 (3)). Powers are couched in broad terms, and their effect is simply to ensure that the contractual powers of these bodies shall be exercised for the purposes of their statutory functions and not for unconnected purposes. Certain general controls over local authorities and nationalized industries may have a more restrictive effect on contractual powers:

- (i) Certain transactions or activities may be subject to ministerial consent, e.g. acquisition of land by local authorities in advance of requirements: Local Government (Scotland) Act 1947, s. 157 (1); manufacturing of equipment by the Post Office: Post Office Act 1969, s. 13; and if such consent is not obtained, contracts for the purposes of these transactions or activities will be invalid as being *ultra Vires* (*Rhyl U.D.C. v Rhyl Amusements limited* [1959] 1 W.L.R. 465) unless statute provides the contrary (as does s. 28 (2) of the Transport Act 1962, in relation to transactions of the nationalized transport industries).
- (ii) Local authority contracts must be let in accordance with local authority standing orders (which ordinarily require competitive tender and which, under the Local Government Act 1972, s. 135 (3), must so require save in special circumstances). Non-compliance with standing orders will not, however, invalidate the contract (Local Government Act 1933, s. 266 (2), Local Government (Scotland) Act 1947, s. 336 (2), Local Government Act 1972, s. 135 (4)), and any local authority may at any time suspend its own standing orders: *R. v Hereford Corporation, ex parte Harrower* [1970] 3 All E.R. 460. No such legal rules apply to contracts of central Government departments or of nationalized industries. In relation to central Government, comparable rules have been developed by the Treasury and the Public Accounts Committee of the House of Commons, and given effect as internal administrative instructions; and in relation to nationalized industries the Parliamentary Select Committee on Nationalized Industries has occasionally advocated competitive tendering as the normal method of letting contracts.
- (iii) It is a principle of public law that a public authority cannot enter a contract which is incompatible with the exercise of its common law or statutory powers or duties. A contract by which, for example, a har-

bour authority sought to reduce the amount of compensation payable in respect of land compulsorily purchased from a landowner by undertaking not to use that land in such a way as would restrict the landowner's access to his remaining land would be rendered invalid by the application of this principle.

Legal restrictions on the procurement process are thus insignificant. Both the process of allocation of contracts, and the terms and conditions of contracts themselves, may thus be used as instruments of economic policy.

A — *Allocation*: Examples of the way in which the allocation process has been used in pursuit of economic aims include the following:

- (i) in pursuit of industrial efficiency or industrial development — coordination of public authorities' purchasing programmes, through a joint advisory committee of local authority associations and the Greater London Council (see Ministry of Housing and Local Government Circular 72/70, Local Authorities (Goods and Services) Act 1970) and a coordinating group of nationalized industries' purchasing officers; general development contract policy (see also 3.2.3. below), and in particular industrial support contracts for advanced technology and preproduction order support for machine tools, scientific instruments, mechanical handling and construction equipment, etc., under the Science and Technology Act 1965. Support of this kind given through procurement to specific industries, such as aviation and computers, is dealt with below, 3.3.
- (ii) in support of domestic industries — there is no general policy of support for domestic industries, but there exist isolated examples, e.g. single tender ordering of computers from International Computers Limited, the principal United Kingdom computer firm formed by merger in 1968 at the encouragement of the Government, which holds 10.49 % of the equity (below, 3.3.6.).
- (iii) in support of industrial reorganization — in 1960 the Government secured the amalgamation of the majority of British aircraft companies into five major groups (a number since reduced) by making it clear that companies refusing to cooperate in its scheme of rationalization need not expect to receive government orders in the future.
- (iv) in support of regional policy (see, generally 3.2.1. below) — firms in development areas (but not intermediate areas) enjoy two kinds of advantage in the allocation of contracts. Under the General Contracts Preference Scheme, operated by central Government departments and nationalized industries, a development area firm will be awarded a contract in preference to a non-development area firm if its tender is equally advantageous in terms of price, quality and date of delivery. Under the Spe-

cial Contract Preference Scheme, operated only by central Government departments, a development area firm unsuccessful under the General Scheme may, in the discretion of the department, be invited to re-tender for up to 25 % of the contract, which it will be awarded if the tender is such that the total cost of the contract of the department is not increased. This invitation will be extended in turn to the unsuccessful development area firms, beginning with the one with the lowest original tender, until the 25 % share has been fully taken up or all such firms have been invited. In 1971-72 the application of the Special Contract Preference Scheme resulted in the allocation of an additional £ 1 m of orders in the development areas, out of total government purchases of £ 1 354 m.

- (v) in support of policies incorporated in contractual terms and conditions, e.g. Fair Wages policy, anti-discrimination policy (below) — initial inclusion on a department's 'approved list' of contractors, from whom it customarily invites tenders, depends on the contractor's giving an assurance that he has complied with the terms of the House of Commons Fair Wages resolution for at least the last three months; a firm may be withdrawn from the list if it practises racial discrimination or is found to have breached the Fair Wages resolution. The allocation policy in this last area is in effect the sanction to ensure the observance of contractual terms.

B — *Contractual terms*: the potential of contractual terms as an indirect means of influencing economic behaviour has been appreciated at least since 1891, when the House of Commons passed their resolution urging the Government to insert clauses in all its contracts to secure the payment by its contractors of 'generally accepted' levels of wages and the observance of fair conditions of work. The Government complied, and in the next few years some 150 local authorities passed similar resolutions. The clauses giving effect to these and subsequent resolutions, by making contractors responsible for the observance of the obligations by their subcontractors, and by extending the obligations to cover all employees of contractors and subcontractors whether employed on government work or not, affected a large and ever increasing proportion of the working population and have provided a useful supplement to collective bargaining. The current resolution is the Fair Wages resolution of 1946 (published in draft, Cmnd. 6399 (1942)), which requires

the contractor to pay wages and observe hours and conditions of labour not less favourable than those established for the trade or industry in the district where the work is carried out by machinery of negotiation or arbitration to which the parties are organizations of employers and trade unions representative respectively of substantial proportions of the employers and workers engaged in the trade or industry in the district. Like its predecessors this resolution has, in itself, no legal force, but its incorporation in government contracts as the so-called Fair Wages Clause has the effect of giving some legal force to the results reached in collective bargaining even for government contractors, would-be contractors and subcontractors who may not have been parties to those negotiations. The purely contractual obligation between Government, local authority or nationalized industry and contractor constituted by the Fair Wages Clause confers, under English law at least (Scottish law is less certain on this point), no rights of action on the employees intended to be protected by it, and is commonly enforced not in the courts but by arbitration between contractor and employees on a reference by the Secretary of State for Employment. In practice the reference is always to the Industrial Arbitration Board (formerly the Industrial Court established by the Industrial Courts Act 1919, an official arbitral body placed by the Government at the disposal of parties to industrial disputes), which makes a purely declaratory ruling. Enforcement, if necessary, would be by way of exclusion from the approved list of contractors, or possibly (but this is unlikely) by legal action at the suit of the contracting department.

There also exist certain statutory provisions which make compliance with the Fair Wages resolution a condition for the obtaining and holding of a licence to carry on particular trading or commercial activities: see Sugar (Reorganization) Act 1936, Road Traffic Act 1960 (below, 6.4.).

Since 1969 a clause forbidding racial discrimination by contractors has also been included in government stores contracts, though with no special arrangements for enforcement. Perhaps surprisingly, in view of the success of the Fair Wages Clause and the absence of legal limitations, the device has never been systematically used to promote general economic policies such as prices and incomes policy. Only in isolated cases have comparable clauses (e.g. to comply with the Government's policy of dividend restraint: see Ministry of Technology Support Agreement with International Computers Limited, S.I. 1968/990, annex) been inserted.

CHAPTER 3

Financial inducements provided by the State

Any list of government measures of assistance to industry in the United Kingdom might tend to suggest, especially by reason of the bewildering variety of grants and loans that it would include, an active policy of selective intervention aimed at inciting industries and individual firms to work towards objectives already clearly defined by the Government. Such an impression would be exaggerated or even false. While much aid is given in furtherance of certain well-established general policies, such as correction of regional imbalance, industrial retraining, encouragement of exports, large numbers of measures of aid, including many of those most selective in appearance, represent reactions to crisis situations rather than steps in pursuit of a clearly formulated policy. Moreover, there continues to exist, particularly within the civil service, a resistance towards discrimination in the allocation of State resources which seriously limits their uses for the purpose of influencing the natural play of economic forces. This repugnance is particularly marked in relation to the tax system, as is indicated by the small and diminishing number of tax privileges and discriminations that we are able to cite below.

The scheme of this chapter is to divide State aids into three main categories: those that are given through the tax system (by way of preferences, allowances and exemptions) (3.1.), those that take the form of direct government spending (whether by way of grants, loans or other means such as guarantees of loans advanced by others) (3.2.), and those, of either of the above types, that are given as part of an established policy of assistance towards a particular sector of industry (3.3.). It is important, for two reasons, to distinguish between tax-based and direct State aids.

A — *Visibility*: while tax-based aids are undoubtedly less 'transparent' than grants or loans, in that the actual amounts of assistance going to particular firms cannot be accurately measured, they are, at the same time, at least in the United Kingdom, more visible. Taxation is consid-

ered to be an interference with private property rights which Parliament is zealous to keep firmly within its own hands, and we therefore find that special tax regimes are spelled out in detail in permanent tax legislation; and all the tax incentives we shall cite are those which are so spelled out. While it is a common practice of the tax authorities (that is to say, the Inland Revenue Commissioners and the Customs and Excise Commissioners) to give extra-statutory 'concessions' to particular groups or individuals who might suffer hardship from the operation of the statutory rules, such concessions are not, so far as is known, given in any systematic way with a view to encouraging enterprises to behave in a way compatible with governmental policy objectives.

Though direct government expenditure may have exactly the same economic and financial effect on an assisted firm as a tax concession, it is regarded as essentially a matter of the Government's own housekeeping, in which Parliament is interested not so much from the standpoint of the effect on individual property rights as from that of general economic management. We therefore find that government grants and loans to industry, like all the rest of central Government expenditure, may constitutionally be sanctioned simply by being covered by a heading in the annual Consolidated Fund (Appropriation legislation setting out in terms either general or specific the essential function of a department, as is the case with older departments like the Treasury and Home Office, and also where, as may be the case with departments of modern creation, there is permanent legislation which is not capable by its terms of covering the functions on which expenditure is being incurred. The Secretary of State for Trade and Industry and the Secretary of State for Environment, whose departments are the principal dis-bursers of government assistance to industry, are in an ambiguous position here, in that the office of Secretary of State is, as it were, 'at large', having no general competence attached to it by law, while at the same time each has inherited from the smaller departments absorbed into

theirs, such as the Board of Trade, Ministry of Supply, Ministry of Transport, Ministry of Housing and Local Government, a collection of specific statutory attributions.

It is the view of the Treasury, accepted by the Public Accounts Committee of the House of Commons, that expenditure on a *continuing* new departmental activity should 'normally' be authorized by new permanent legislation and not just on a year-to-year basis by Appropriation Acts. Again it is admitted by the Treasury that situations where the Appropriation Act appears to be authorizing expenditure impliedly forbidden by permanent legislation are 'anomalous' and should, for the sake of 'constitutional propriety', ordinarily be rectified by the passage of amending legislation; but at the same time the Treasury stoutly maintains that expenditure in face of implied or even express legislative prohibitions is quite *lawful* if within the ambit of a Vote in the Appropriation Act, which presumably operates as an implied repeal for the year of appropriation, of the prohibitions in the permanent legislation. These legal rules permit very great flexibility in government expenditure, and enable the Government to act with very great rapidity in industrial emergencies (such as impending liquidation of companies whose activities are important in the national interest). Descriptions of Votes in the Appropriation Act are quite general in their terms, e.g. 'for the expenditure of the Board of Trade on the promotion of trade, export and industrial efficiency, and on trading and other services, including subscriptions to international organizations and grants in aid' (Appropriation Act 1962, Sch. (B) Pt. 12, Civil, Class iv, Vote 2) (though the estimates approved by the House of Commons which form the basis of the Act provide more detail). Even if the expenditure is not covered by the wording of the Vote, or there are insufficient funds available under the Vote to defray it, it may, if genuinely urgent, be immediately defrayed in the first place from the Contingencies Fund (above, 2.4.1.) and regularized by the presentation of a supplementary estimate and passage of an additional Consolidated Fund Act at any time of year.

While, therefore, in accordance with Treasury policy, virtually all continuing programmes of financial assistance to the private sector have been authorized by permanent legislation (which may, of course, be general or specific in its terms) to which reference will be made in 3.2. below, many isolated or temporary measures may, through absorption into the Appropriation Act totals, lack any visible legislative support.

B — *Individual redress against unfavourable decisions:* It also follows from this difference in attitudes to taxation on the one hand and government spending on the other that the individual is regarded as having a right to a tax concession or exemption which is specifically conferred by legislation, whereas the receipt by an individual of direct government assistance, even under the specific

terms of permanent legislation, will normally be looked upon as a privilege rather than a right. Such legislative powers to give assistance are thus ordinarily couched in discretionary, rather than mandatory terms. Thus the enterprise which feels that it has been improperly or incorrectly denied a tax exemption or concession will ordinarily be able to appeal to the courts, both on questions of law and fact. The enterprise, on the other hand, which feels that it has been improperly denied a government grant or loan will normally, if it applies for redress to the courts, be met with the argument that the Government is under no obligation to give grants to any specific applicant, but enjoys an entire discretion in the administration of the scheme: see *British Oxygen Corporation v Minister of Technology* [1970] A.C. 610. This is the normal legal position, notwithstanding the fact that many schemes of direct assistance (such as the current scheme of regional grants, below, 3.2.1.) are administered in just as mechanistic a manner as any scheme of tax exemption.

3.1. Tax preferences, allowances and exemptions

Leaving aside our highly discriminatory excise and purchase taxes which seem to have been tolerated because their selectivity serves social and fiscal more than economic ends and the latter of which has in any event been replaced as from 1973 by a more neutral value-added tax (Finance Act 1972, Pts. I and II), the main categories of incentives given through the tax system may be classified as incentives to investment, to saving, to industrial restructuring and to scientific research.

3.1.1. INCENTIVES TO INVESTMENT

In relation to industrial, commercial and agricultural investment the groundwork is laid by the system of capital allowances, originating in the Finance Act 1918, comprising initial allowances and writing-down allowances given in respect of capital expenditure against the income or corporation tax liability of the enterprise: Capital Allowances Act 1968. While writing-down allowances vary according to the objective test of the length of time the capital asset is likely to be in service, initial allowances, which represent the consolidation of several years' writing-down allowances into the year of expenditure (though with no shortening of the total writing-down period) have been varied from time to time and as between different types of asset according to the need felt to encourage investment in particular sectors.

In relation to investment in plant and machinery by both the manufacturing and service industries, and certain kinds of expenditure on mining works (defined in s. 56, Capital Allowances Act 1968), initial allowances (now termed 'first year allowances') now amount to 100%: Finance Act 1972, S. 67 (2) (a). This allowance is obtainable for both new and secondhand equipment and regardless of the area in which the investing enterprise is

located. To the firm paying corporation tax at the current rate of 40 %, therefore, the allowance represents a contribution of 40 % of the cost of the asset, which may be viewed as an interest-free loan repaid by foregoing the writing-down allowances which would have been available over the remainder of its amortization period. A 100 % allowance is also available for certain scientific expenditure: see 3.1.3. below.

The only other initial allowance presently available is one of 40 % for investment in new industrial buildings and structures, again regardless of area: Finance Act 1972 s. 67 (2) (d).

Special tax incentives for the shipbuilding industry are dealt with separately below, see 3.3.3.

3.1.2. INCENTIVES TO SAVING

Since Part V of the Finance Act 1972 changed the basis of imposition of corporation tax so as to eliminate the discrimination in tax treatment, which had existed under the original corporation tax regime instituted by the Finance Act 1965, between retained income of companies (corporate saving) and income distributed in dividends, reliefs under this head relate primarily to personal saving. The following provisions of the Income and Corporation Taxes Act 1970 are relevant:

- (i) ss. 19-21, making a proportion of premiums paid on life insurance policies an expense deductible from taxable income;
- (ii) Part IX (ss. 208-231) providing for generally favourable tax treatment for occupational pension schemes and comparable arrangements entered into by self-employed individuals, retirement annuities, etc.;
- (iii) s. 414 (as amended, Finance Act 1971, s. 18 (2)) exempting from tax the first £ 21 of interest on certain forms of official savings deposits (with the National Savings Bank, Trustee Savings Banks and savings banks certified by the Treasury to be similar in nature, seamen's savings banks);
- (iv) s. 415, exempting from tax interest and terminal bonuses under certain schemes for regular saving through investment in government securities or building society deposits.

3.1.3. INCENTIVES TO THE RESTRUCTURING OF INDUSTRY

Two minor measures may be cited here:

- (i) certain company mergers are relieved of the stamp duty they would otherwise attract by the Finance Act 1927, s. 55, an early economic measure designed to facilitate and encourage, with a view to more efficient production, what were then called 'amalgamations'. Exemption follows auto-

matically when the merger falls within the rather narrow scope of the provisions; no Ministerial approval or discretion is involved.

- (ii) a second exemption, designed to encourage industrial rationalization and originally enacted in 1935, does by contrast depend on the exercise of Ministerial discretion: by way of exception to the rule that allowable deductions from trading profits are confined to sums laid out *wholly and exclusively* for the purposes of trade (Income and Corporation Taxes Act 1970, s. 130), enterprises may deduct the contributions they make towards schemes certified by the Department of Trade and Industry (DTI) as being primarily for the elimination of redundant works, machinery or plant, as being in the public interest and that of the industry as a whole, and as supported by a substantial part of the industry: Income and Corporation Taxes Act 1970, s. 406. No schemes under this section are presently in operation.

3.1.4. INCENTIVES TO SCIENTIFIC RESEARCH

Three tax measures may be cited as calculated to encourage scientific research:

- (i) industrial research associations approved for this purpose by the Secretary of State for Trade and Industry, and which make no distributions of profit to their members, may be assimilated to charities for tax purposes and hence exempt from income and capital gains tax: Income and Corporation Taxes Act 1970, s. 362 (see generally Report of the Bessborough Committee on Research Associations, Industrial Research and Development (1972));
- (ii) revenue expenditure by enterprises on scientific research or by way of contributions to industrial research associations, universities, colleges, research institutes or other similar institutes approved for this purpose by the Secretary of State for Trade and Industry, can, albeit not within the terms of Income and Corporation Taxes Act 1970, s. 130 (see above, 3.1.3.) be deducted in the computation of profits for income and corporation tax purposes: Capital Allowances Act 1968, s. 90;
- (iii) capital expenditure on scientific research connected with trade incurred by an enterprise or on its behalf gives rise to a 100% initial allowance against corporation or income tax, called a scientific research allowance: Capital Allowances Act 1968, s. 91.

3.2. Direct government expenditure [12]

We have already mentioned the 'low visibility' tendency of direct government assistance to industry. This characteristic is particularly marked in relation to pre-1965 measures. The accession to power of the Labour Govern-

ment in 1964 was accompanied by a commitment to systematize government support directed to the achievement by industry of specific objectives such as improved technology, rationalization, modernization of equipment, etc. This was expressed in a series of general statutes: the Science and Technology Act 1965 (below, 3.2.3.); the Industrial Reorganization Corporation Act 1966, setting up the Corporation with powers to give assistance, particularly to help the consummation of mergers, with a general view to the rationalization of industry; and the Industrial Expansion Act 1968, envisaging the making of industrial investment schemes under which government departments would give assistance to industry in the pursuance of a variety of general objectives. Under this last Act schemes were to be made by statutory instrument, which assured a certain degree of publicity and an opportunity for Parliamentary discussion. These two latter statutes were repealed, as to their main provisions, at the instance of the Conservative Government by the Industry Act 1971, at a time when that Government was convinced of the wisdom of disengagement from intervention in and support for private industry; that Government has now changed its mind and has secured the enactment, in the Industry Act 1972, of even greater and more general powers of government intervention in industry. This Act, besides reforming the system of government assistance for regional development (below, 3.2.1.) provides a general framework for selective government financial assistance for industry anywhere in the United Kingdom.

Under s. 8 of the Act, financial assistance may be given to undertakings by the Secretary of State for Trade and Industry with the consent of the Treasury for the following purposes:

- '(a) to promote the development or modernization of an industry,
- (b) to promote the efficiency of an industry,
- (c) to create, expand or sustain productive capacity in an industry, or in undertakings in an industry,
- (d) to promote the reconstruction, reorganization or conversion of an industry or of undertakings in an industry,
- (e) to encourage the growth of, or the proper distribution of undertakings in an industry,
- (f) to encourage arrangements for ensuring that any concentration of an industry proceeds in an orderly way,'

(s. 7 (2) as applied by s. 8 (1)), if it is the Secretary of State's opinion that:

- '(a) the financial assistance is likely to benefit the economy of the United Kingdom, or of any part or area of the United Kingdom, and

(b) it is in the national interest that the financial assistance should be provided on the scale and in the form and manner proposed, and

(c) the financial assistance cannot, or cannot appropriately be so provided otherwise than by the Secretary of State,'

(s. 8 (1)). The assistance may be given 'on any terms or conditions, and by any description of investment or lending or guarantee, or by making grants, and may, in particular, be:

(a) investment by acquisition of loan or share capital in any company, including an acquisition effected by the Secretary of State through another company, being a company formed for the purpose of giving financial assistance under this part of this Act,

(b) investment by the acquisition of any undertaking or of any assets,

(c) a loan, whether secured or unsecured, and whether or not carrying interest, or interest at a commercial rate,

(d) any form of insurance or guarantee to meet any contingency, and in particular to meet default on payment of a loan, or of interest on a loan, or non-fulfilment of a contract,'

(s. 7 (3) as applied by s. 8 (2)).

Certain limitations are imposed by the section.

(i) assistance may only be given by way of acquisition of loan or share capital in any company if the Secretary of State is satisfied that it cannot appropriately be given in any other way; the acquisition must be with the consent of the company and must not be of more than half the equity share capital of the company; and the capital acquired shall be disposed of, by the Secretary of State after consultation with the company, as soon as he thinks it reasonably practicable to do so (s. 8 (3));

(ii) payments may not be made or promised after 31. December 1977 (s. 8 (5));

(iii) the net total of sums paid or guaranteed under the section by the Secretary of State is not to exceed £ 150 m, but this figure may be increased, on not more than four occasions, by an amount of up to £ 100 m (on each occasion) by the Secretary of State with the consent of the Treasury (s. 8 (6), (7)).

Some *a priori* control by the House of Commons is provided for in that:

(i) the orders referred to in (iii) above must be approved in draft by it; and

- (ii) a payment of over £ 5 m for a project must be authorized, as to the excess over £ 5 m, by it, save in cases of urgency where it would be impracticable to obtain approval.

It is perhaps not without significance that the amount of the assistance given in one of the first cases under the section, purchase of £ 4.8 m of prior ranking preference shares in a new company resulting from the merger of Britain's two leading motor cycle manufacturers, one of which was in danger of bankruptcy, was just below the level at which specific Parliamentary approval would be required.

In the subsections that follow we classify government assistance by way of grants, loans and guarantees by reference to major objectives which correspond to particular groups of legislative provisions: regional policy, industrial employment and training, industrial research and development, exports. Assistance of varying kinds for particular sectors of the economy is discussed in 3.3.

3.2.1. ASSISTANCE IN AID OF REGIONAL POLICY [13]

Since 1934 there has been legislation in force designed to provide a framework for the disbursement of government funds to stimulate industrial investment in areas of high unemployment or declining basic industry — essentially Scotland, Wales, Northern Ireland and the north and south-west of England. The principal elements of the legislative scheme presently in force date back to 1960: the operative legislation is now the Local Employment Act 1972 as extensively amended by the Industry Act 1972.

The basic scheme is that in designated areas (called assisted areas) special measures of government assistance to industry are available and general measures may be applied on more generous terms.

A — Designation of areas: Assisted areas may be designated by order made by a statutory instrument (subject to annulment by either House of Parliament) by the Secretary of State for Trade and Industry either as special development areas, development areas, intermediate areas or derelict land clearance areas. The above order corresponds to the differences in the range and intensity of assistance offered in the various areas, special development areas being most heavily assisted, but there are no longer (as there were before the passing of the Industry Act) different statutory criteria for the designation of each of the different types of area. In regard to the first three types, the Secretary of State must simply 'have regard to all the circumstances actual and expected, including the state of employment and unemployment, population changes, migration and the objectives of regional policies' (Industry Act 1972, s. 1 (4), (5); Local Employment Act 1972, s. 1 (1), (2) as substituted by In-

dustry Act, s. 13 (1)). To designate a locality a derelict land clearance area, he must be of the opinion that the economic situation there is such that the exercise of powers of purchase and development of derelict land, and of making grants to local authorities for these purposes (enjoyed generally in relation to derelict land in other assisted areas by virtue of Local Employment Act 1972, s. 8 (1)-(4)) would be particularly appropriate with a view to contributing to the development of industry in the locality (Local Employment Act, s. 8 (6)).

These criteria for designation are now so vague that it is hard to see any real limitation on the Secretary of State's power to designate any locality as any kind of assisted area. The present pattern of designation is broadly as follows:

- (i) Special development areas: areas which have suffered heavily from the decline of basic industries, especially coal mining and shipbuilding, i.e. Teesside and Tyneside; west Cumberland; the Ayrshire coasts and south Fife; South Wales mining valleys; the Glasgow conurbation and the Scottish new towns of Livingstone and Glenrothes (these latter towns enjoy the status in return for taking 50% of their new population in 1971-72 from the west of Scotland special development area and 80% in each of the following years: see (1971-72) H.C. 442, p. 1). See generally Special Development Areas Order 1972, S.I. 1972/1234, for the areas designated.
- (ii) Development areas: areas with generally high unemployment: Cornwall and north Devon, most of Wales, the whole of Scotland except the special development areas and the Edinburgh area (below), the northern region of England and Merseyside.
- (iii) Intermediate areas: this concept was originally designed to cover areas with most of the symptoms of development areas, e.g. slow growth, low earnings, high outward migration, etc., with the exception of persistently severe unemployment: see Report of the Hunt Committee on the Intermediate Areas, Cmnd. 3998 (1969). Before they were included as assisted areas, they tended to suffer by reason of their very proximity to development areas, which through special incentives could draw off some of their labour, investment, etc. They presently cover south-eastern Wales, Flintshire, parts of North Wales, Yorkshire and Humberside, Lancashire except Merseyside (above), Edinburgh and its neighbourhood.
- (iv) Derelict land clearance areas: areas of the north Midlands, centred on Nottingham.

B — Forms of assistance.

- (i) Regional Development Grants. These are cash grants to persons incurring approved capital expenditure after 22 March 1972 in

connection with activities of manufacture, mining and construction and certain kinds of repairs (see Industry Act 1972, s. 2 for full definition) in the assisted areas, which, under Industry Act 1972, s. 1, may be paid, in the discretion of the Secretary of State, as follows:

(a) for buildings or building works:

- special development areas: 22%,
- development areas, intermediate areas: 20%,
- derelict land clearance areas before 22 March 1974: 20%;

(b) for new machinery of plant, or for mining works:

- special development areas: 22%,
- development areas: 20%.

The Secretary of State may, with the consent of the Treasury, by order made by statutory instrument vary the above percentages of grant (subject to approval of the order in draft by each House of Parliament) and also the qualifying activities in s. 2 (s. 3). It appears from s. 2 that while the determination of what are qualifying activities within the meaning of the section is left to the courts in case of dispute, jurisdiction over other questions (e.g. the nature of an asset, whether buildings are premises within which qualifying activities are carried on, etc.) is reserved to the Secretary of State. Expenditure on these grants is expected to amount to some £ 250 m in 1973-74.

(ii) Provision of industrial sites and premises.

The Secretary of State is empowered (Local Employment Act, s. 5) to purchase land (compulsorily if necessary) and build on it or carry out work on it so as to provide factories and other premises for undertakings in development areas (which term, unless the contrary is stated, includes special development areas) or intermediate areas. In practice such buildings and works, and the letting and sale of factories so built (usually known as 'advance factories') is undertaken by three public corporations, the Industrial Estates Corporations for England, Scotland and Wales, set up by the Local Employment Act 1960, s. 8 and continued by the Local Employment Act 1972, s. 10. These operate, under the direction of the Secretary of State, on land (which need not be in an assisted area) either leased to them by the Secretary of State or vested in them under the Local Employment Act 1960 as successors of earlier bodies with similar functions. The main value of the work of the Corporations lies in the Provision of factories ready for undertakings to move into, but there can also be an

element of financial assistance by way of lettings which are rent-free for up to two years. These, however, require the authorization of the Secretary of State, who may grant it 'if it appears that an undertaking is to be set up in a development area or intermediate area in circumstances which justify the giving of special assistance'. Lettings are otherwise always at market value as determined by the district valuer (an official of the Inland Revenue).

Local authorities may also be found operating industrial estates, providing factory sites etc., under general powers originally conferred by the Town and Country Planning Act 1944, and the Town and Country Planning (Scotland) Act 1945, now contained in the Town and Country Planning Act 1971 ss. 112, 119, and 124, and the Town and Country Planning (Scotland) Act 1972, ss. 102, 109, and 114, to acquire land (compulsorily or by agreement) for purposes of development, in particular, for the relocation of population or industry, and to develop and manage land for these purposes. The consent of the Secretary of State is required for the exercise of these powers. While there is no explicit prohibition against their being exercised in such a way as to provide financial assistance to industrial undertakings, for example by way of factory lettings at rates below market levels, the giving of such a subsidy might be considered by the courts or by the official local authority auditors as being *ultra vires* as an unreasonable use of the powers: see *Prescott v Birmingham Corporation* [1955] Ch. 210.

(iii) Regional employment premium.

Regional employment premium was initiated as an adjunct of selective employment tax. This was a payroll tax imposed under the Finance Act 1966, s. 44, at rates per week varying according to age and sex, in respect of all workers, but by virtue of separate legislation, the Selective Employment Payments Act 1966, refundable with a premium, in respect of all workers employed in manufacturing establishments, and without a premium, in respect of those employed in certain other non-service establishments. The Finance Act 1967, s. 26, added to the premiums a specifically regional supplement, payable only in respect of workers in manufacturing establishments in development areas. In the Finance Acts of 1968 and 1970 respectively, the selective employment tax premiums were withdrawn first in non-development areas and then in development areas, and by the Finance Act 1972, s. 122, selective employment tax has been abolished with effect from 1 April 1973, but the regional employment premium has been left untouched. The 1966 legislation has thus been completely transformed from a vehicle of dis-

crimination as between manufacturing and service industries to an instrument of subsidization of manufacturing employment in development areas. The amount of the premium is presently (per week):

- for men over 18: £ 1.50,
- for boys under 18 and women over 18: 75 p,
- for girls under 18: 47½ p (Finance Act 1972, Sch. 27, para 4).

By virtue of Finance Act 1972, s. 122 (3) the Treasury may by statutory instrument bring the payment of regional employment premium to an end, and it is the announced intention of the Government to do this, probably with effect from September, 1974.

(iv) Grants for resettlement of key workers.

See under 3.2.2: assistance in aid of employment and training.

(v) Selective assistance.

In addition to the various specific forms of assistance set out above, the Secretary of State is empowered, under s. 7 of the Industry Act 1972, to give selective assistance to undertakings in the assisted areas or Northern Ireland where that assistance is likely to provide, maintain or safeguard employment in any part of those areas. The purposes for which assistance may be given are identical with those for general assistance to industry under s. 8 (above. 3.2.) and similar conditions are imposed save that share acquisition is not limited to half a company's equity share capital; there is no time-limit on the power to make payments; no financial limit on payments; and no provision for Parliamentary scrutiny or control. This power has been used, among other ways, to subsidize private (e.g. bankers') loans to enterprises by defraying up to 75% of the interest payments due from the enterprise; to give loans on preferential terms; to give removal grants of up to 80% of costs incurred in removing to a development or intermediate area; to give grants to service undertakings moving to such areas to cover rental of premises and resettlement of existing workers. To qualify for any of these forms of assistance, the enterprise must show that its project will increase employment in the assisted areas.

(vi) Government Contracts Preference Schemes.

See above, 2.5.2.

(vii) Public expenditure.

With public investment in fixed assets accounting for some 9% of gross domestic product in 1972, and for about 45% of all such capital investment, its location is clearly of prime importance to region-

al policy. It is, however, impossible to quantify the amount of public capital investment located in assisted areas *for reasons of regional policy*; central Government itself has a policy of decentralization of office building, computer processing facilities, etc., though it has not always been enthusiastically pursued, and indications as to the degree to which public enterprise investment has been influenced by regional considerations are given above in 2.4.2.3. Central Government control of local authority expenditure may likewise be exercised by reference to regional considerations; thus, for example expenditure cuts announced on 21 May 1973, while taking £ 100 m off the 1974-75 road construction and maintenance programme of central and local Government, specifically exempted expenditure on roads necessary to support oil development in Scotland.

Special statutory Provision for public investment to aid regional development is contained in the Local Employment Act 1972. S. 7 empowers any Minister with the consent of the Treasury to make grants or loans (usually to local authorities) for the purpose of improving within a development area or intermediate area the provision of a basic service (e.g. transport, power, lighting, water, sewerage) for which his department is responsible. S. 8 gives the Secretary of State for the Environment, and the Secretaries of State for Scotland and Wales, power to make grants to local authorities for the acquisition and improvement of derelict land, and to the Secretary of State for Trade and Industry a power to acquire and do work on derelict land. In 1971-72 outstanding commitments under these two sections amounted to £ 3.3 m and £ 8.1 m respectively.

3.2.2. ASSISTANCE IN AID OF EMPLOYMENT AND TRAINING

State financial assistance in relation to the employment and training of industrial workers has since the Second World War been given within the general framework of the Employment and Training Act 1948, under which the Government has provided employment and training services such as:

- employment exchanges and other placement and information services operated by the Department of Employment (s. 2);
- training centres operated by the Department of Employment and provision of assistance to firms training or retraining their own workers (s. 3);
- grants and loans for facilitating the removal and resettlement of workers (s. 5);
- assistance to local authorities running youth employment services (advice, placement, etc.) approved by the Department of Employment (s. 10).

Powers under s. 5, normally exercisable only in relation to workers moving in order to obtain new employment, were by the Local Employment Act 1972, s. 6 extended to include workers moving with their undertaking (or a part of it) into a development or intermediate area.

To these arrangements there were added, by the Industrial Training Act 1964, arrangements for regulated self-help by industry, by way of a series of Industrial Training Boards, each set up under an Industrial Training Order made by statutory instrument by the Minister (Secretary of State for Employment) (s. 1), with powers to operate and supervise training schemes for their industries (s. 2), financed by levies imposed on employers in their industries under Levy Orders made by statutory instrument by the Secretary of State (s. 4) on the basis of proposals made by the Boards (s. 7). Provision was also made (s. 5) for the Secretary of State to make grants and loans to the Boards, up to a limit of £ 50 m, variable by statutory instrument approved in draft by each House of Parliament. Currently there are 27 such Boards, covering all major industries from agriculture, horticulture and forestry to wool, jute and flax.

While these kinds of services and assistance will continue to be provided, their legal framework has been radically changed by the passage of the Employment and Training Act 1973, repealing the 1948 Act and substantially amending the 1964 Act. Three main changes may be listed:

- (i) executive responsibility for public employment and training services, for financial assistance to those providing employment and training, and for supervision of Industrial Training Boards (other than the Agricultural Training Board) is transferred from the Secretary of State for Employment to a new public corporation, the Manpower Commission, which will include representatives of employers and trade unions, and will operate through two agencies, the Employment Services Agency and the Training Services Agency, in accordance with general proposals made by it and approved by the Secretary of State, and subject to any specific directions of his and to the consent of the Treasury in relation to the giving of financial assistance (ss. 1-3, 6);
- (ii) powers to provide services and assistance are made much more flexible than in the 1948 Act: the Commission has only the overall duty 'to make such arrangements as it considers appropriate for the purpose of assisting persons to select, train for, obtain and retain employment suitable for their ages and capacities and to obtain suitable employees (including partners and other business associates)' (s. 2 (1));
- (iii) the emphasis in the financing of industrial training under the 1964 Act is switched from levies to

government grants. The following substantial limitations on the content of Levy Orders have been introduced under s. 6 and Sch. 2 of the 1973 Act:

- (a) orders must contain appropriate exemptions for employers who have their own adequate training programmes, and for employers with small numbers of employees;
- (b) orders must not, except where special circumstances otherwise require, impose a levy exceeding 1 % of an employer's payroll.

The actual shift of levy finance to grant finance thus prepared has been retarded by reductions of public expenditure announced on 21 May 1973.

Other innovations of the 1973 Act are:

- (i) power is conferred on the Secretary of State to make arrangements (which may include payments to persons providing employment) for providing temporary employment for unemployed persons in Great Britain (s. 5);

it is made compulsory for local authorities with educational responsibilities to provide vocational guidance service for persons in higher education (s. 10).

3.2.3. ASSISTANCE FOR INDUSTRIAL RESEARCH AND DEVELOPMENT

Assistance to particular industries such as aircraft and computers is dealt with under separate sectoral headings in 3.3. below. This section will concentrate on governmental financial aid for industrial research and development which is available under schemes extending to industry generally. Two types of situation exist. First, where Government itself undertakes research, whose results it makes available to industry, or specific industries or firms, either free or for a consideration which does not cover the full cost of the research done and thus involves an element of subsidy; second, where Government financially assists research and development being done by the firms themselves.

A — *Government research.*

- (i) In research councils (i.e. Agricultural Research Council, Medical Research Council, National Environmental Research Council, Science Research Council, Social Science Research Council). These are semi-independent chartered bodies, set up under authority given or continued by the Science and Technology Act 1965, s. 1. Hitherto financed by grant from the Department of Education and Science and largely autonomous as to the research they chose to undertake or commission, the basis of operation of the first three Councils is to be changed to make them more responsive to the research needs of government departments, by

transferring a part of their funds to such 'customer' departments, which, it is expected, those departments will use to commission research from the Councils. See Civil Service Department, *A Framework for Government Research and Development*, Cmnd. 5046 (1972). The Councils have in the past undertaken little or no work directly for industry, and although such activity is expanding somewhat, assistance given via this channel will continue to consist mainly in the general gratuitous dissemination of the results of government scientific research.

- (ii) In industrial research establishments of the DTI. Three of these, the National Physical Laboratory, the National Engineering Laboratory, and the Warren Springs Laboratory, provide a variety of research services to industry, which are charged for on various bases ranging from free provision of services of a general nature to full charges for specific services for individual firms. General cover for these activities, and for miscellaneous technical, advisory and informational services operated by the department, is provided by the Science and Technology Act 1965, s. 5 (1), empowering the Secretary of State to incur expense in carrying on or supporting scientific research or the dissemination of its results, and in furthering the practical application of its results. Similar services have been provided on a similar financial basis by the Atomic Energy Authority (a statutory public corporation constituted by the Atomic Energy Authority Act 1954), both in the wider applications of nuclear energy under s. 2 (2) of the 1954 Act and, under powers conferred by the Science and Technology Act 1965, s. 4, outside the nuclear field.

B — *Government assistance for research.*

- (i) Under the Science and Technology Act, s. 5 (1) (see A(ii) above), industrial support contracts have been concluded to provide support for specified development projects which might not otherwise be undertaken because the risks were considered by industry to be too high, or because the potential benefits would be so widely diffused that no one firm would see sufficient advantage in mounting a project of its own. This section also provides the statutory authority for preproduction order support schemes for new machine tools and certain other kinds of equipment (above, 2.5.2.), and, one assumes, for DTI support by way of capital grants and income-related grants to various industrial research associations, which conduct cooperative research for their industries and whose income is for the most part drawn from membership subscriptions. These associations also enjoy a favourable tax status (above, 3.2. (i)).

- (ii) By the National Research Development Corporation (NRDC), set up by the Development of Inventions Act 1948 and now regulated by the Development of Inventions Act 1967. This is a statutory Corporation whose main tasks are (1967 Act, s. 2):

- (a) the development, exploitation and commercialization of inventions resulting from public research (e.g. by the Agricultural Research Council, Medical Research Council); and
(b) promoting and assisting research likely to lead to useful inventions.

The NRDC operates primarily by way of giving assistance to private industry, and by contracting out exploitation tasks to private industry (indeed it is required to do so except where it appears that special circumstances otherwise require: S. 2 (4); but in important cases where private interest was lacking it has carried out exploitation and development work itself, e.g. on the hovercraft, through its wholly owned subsidiary, Hovercraft Development Limited).

The NRDC is subject to the general direction of the Secretary of State for Trade and Industry (s. 3) whose specific consent is also required for all save minor operations (s. 4), and who provides it with finance, in the form of government loans, up to a statutory limit of £ 50 m (see now Industrial Expansion Act 1968, s. 11). It is required by s. 5 to break even in its operations on revenue account, so far as can be done consistently with the fulfilment of its purposes. In recent years the NRDC has achieved small surpluses on revenue account. Its usual method of financing research and development has been to contribute 50% of development costs on terms which assure its participation in any profits deriving from the project, while not requiring repayment in the event of failure. Returns from this source, together with income from patents and licences on public research inventions, make up the Corporation's income, which has been considerably supplemented by reliefs granted by the DTI, under s. 9 of the 1967 Act, on the interest payable on loans made to it. So far, on interest of £ 8.9 m paid by the NRDC, £ 8 m has been remitted in this way. The Government is currently reviewing the practice, which is based on the length of time taken for invention projects to become profitable, and considering whether there should be greater selectivity in the granting of interest reliefs.

3.2.4. ASSISTANCE IN RELATION TO EXPORTS [14]

The Government has been involved since the passage of the Overseas Trade (Credits and Insurance) Act 1920 in the finance of United Kingdom exports (for regulation see

5.4.1.) through the medium of the Export Credits Guarantee Department (ECGD), a division of the DTI now operating under the Export Guarantees Act 1968, as amended by the Export Guarantees Act 1970 and the Overseas Investment and Export Guarantees Act 1972.

The original and still the principal task of the ECGD is to provide insurance against commercial risks of non-payment by customers in export transactions where credit is extended (1968 Act, s. 1). This part of the Department's work is carried on on a commercial basis, so as to enable it to operate profitably taking one year with another (though there is no statutory obligation so to operate). Total commitments outstanding at any one time are limited to £ 6200 m (1968 Act, s. 4 (1)(a) as amended by 1972 Act, s. 4 (1)(a)). The 1972 Act extended the insurance power of the Department to cover insurance of overseas investment against non-commercial risks, like war, expropriation and restrictions on remittances (s. 1) and set a limit of £ 250 m (subject to increase by statutory instrument) on commitments under this head (s. 2).

Insurance with ECGD carries certain ancillary advantages which merge into financial assistance. First, an exporter covered by ECGD does not require to get special Bank of England permission, under the Exchange Control Act 1947, s. 23 (below, 5.4.1.) to give credit extending beyond six months. Second, an exporter covered by ECGD can obtain credit from his bank to finance the transaction at favourable rates of interest, where the ECGD guarantees to the bank the repayment of the advance it has made. The element of subsidy in this arrangement has traditionally been borne by the banks themselves, which have agreed with the Government to lend export (and shipbuilding) finance either at fixed rates or at rates varying according to a particular formula. Currently the rate for short-term finance is 0.5% over the bank's base rate of interest, and for medium- and long-term finance is a fixed rate of 6%. In the light of the clearing bank's close relationship, through the Bank of England, with the Government, and the existence of the all embracing powers of the Bank of England Act 1946, s. 4 (see 2.4.3.) there may be some basis for regarding this bank subsidy as a disguised State aid.

At the same time, there has been a clear, if indirect element of State aid in these arrangements in that as part of the bargain with the banks the Government has agreed, under arrangements dating back to 1962, to refinance a part of the credits accorded by banks under the scheme. Under new arrangements announced in 1972 (see 12 Bank of England Quarterly Bulletin 205-207) the limit of the clearing banks' commitments (for export and shipbuilding finance (below, 3.3.3.) together) has been set at 18% of their current account deposits. Credits accorded in excess of this figure will be refinanced (as to export finance) by the ECGD, under powers conferred by the 1968 Act, s. 3, empowering the Department to acquire securities, and s. 2 (as amended by the 1970 Act, s. 2),

permitting the making of arrangements for facilitating the payment of sums payable under contracts with UK exporters, e.g. by way of loans to buyers, exporters and banks. The new refinancing arrangements are also designed to permit the Government to shoulder some of the subsidy provided by the banks on the credits they continue to finance themselves. A guaranteed rate of return to the banks on export and shipbuilding finance has been agreed between the Government and banks, being the average of the yield on Treasury bills (short-term government securities) and the rate at which the banks lend to the nationalized industries, plus 1.25% which will be recalculated from month to month and may thus differ from the fixed rate at which the banks are actually providing credit against an ECGD guarantee. Any such difference, which may be in favour of the banks or the Government (but which is at the present time heavily in favour of the banks) is settled through an adjustment in the interest payable by the banks on the amounts refinanced.

A channel of more direct assistance is provided by the 1970 Act, s. 3, which empowers the ECGD to make grants in relation to transactions which it is insuring or guaranteeing to reduce the cost of interest payments by the overseas buyer. This may be done either by direct payments to the buyer or by payments to the bank financing the transaction. This was intended as a reserve power to meet the threat of further export credit subsidization by foreign Governments and not as an instrument for day-to-day use.

Finally in this section one may mention the power conferred on the Secretary of State for Trade and Industry by the 1972 Act, s. 3, to enter with the consent of the Treasury into agreements with enterprises to defray abortive exploratory expenditure relating to overseas investment.

3.3. Assistance to particular economic sectors

3.3.1. AGRICULTURE

In this section we shall discuss the measures of assistance to the agricultural industry which are not directly related to the management of the market in agricultural products. Measures which are so related, such as subsidies paid under the guaranteed price arrangements of the Agriculture Act 1957, Pt. I, and livestock subsidies, will be discussed in 6.1. below, as elements of the United Kingdom's system of management of the agricultural market.

The measures of assistance set out below have been introduced at varying times, often to meet needs which now no longer exist or are now less urgent. The common pattern since 1945 has been to enact enabling legislation which permits the giving of assistance in accordance with schemes made by the appropriate Minister (in England

and Wales the Minister of Agriculture, Fisheries and Food, often acting in conjunction with the Secretary of State for Wales, in Scotland, the Secretary of State for Scotland). These schemes operate only for a limited number of years, and it will often be found that there is no scheme presently in operation under the enabling act. The detailed classification below has been designed for this report and does not reflect any official classification of aids.

3.3.1.1. Rationalization of structure

The principal measure is the Agriculture Act 1967, ss. 26-29, as amended by the Agriculture Act 1970, ss. 32 and 33, the Agriculture (Miscellaneous Provisions) Act 1972, ss. 9 and 10 and the Agriculture Act 1967 (Amendment) Regulations 1973, S.I. 1973/1402, empowering the appropriate Ministers to make grants and loans, in accordance with a scheme made by statutory instrument, in connection with the carrying out of approved transactions in the nature of amalgamation and boundary adjustments. The present scheme, which will be in operation until 1 September 1980, is the Farm Amalgamations Scheme 1973, S.I. 1973/1404. The purpose is to encourage and assist the absorption of uncommercial or marginally commercial holdings into commercially exploitable units, and the transfer and exchange of agricultural land so as to produce more satisfactory boundaries. Under the current scheme which has been designed to conform with Directive 72/160/EEC, the Ministers may give grants toward the cost of amalgamations based on the acreage by which the size of the larger of the amalgamated holdings is increased. Payment is conditional on the approval of a corresponding outgoer's application, to be made under a separate scheme, the Farm Structure (Payments to Outgoers) Scheme 1973, S.I. 1973/1403. Under this scheme the Ministers may make grants, in the form of either a lump sum or an annuity, to persons giving up uncommercial holdings which are being amalgamated under the amalgamation scheme or ceded to the Minister for purposes of amalgamation, afforestation or adjustment of boundaries. S. 29 of the Agriculture Act 1967 gives the Ministers power to acquire and manage land for the purposes of effecting amalgamations and boundary adjustments.

Special provision is made for rural areas of hills and upland by ss. 45-55 of the 1967 Act, which provide that the Ministers may, in order to meet their special problems, establish rural development boards, local public corporations with wide powers of acquiring and managing land and farms, providing equipment, services, giving financial assistance and controlling sales of certain land. Only one such board was ever constituted, and that has now been dissolved, and it would not seem to be consistent with the policy of the present Conservative Government to make use of these powers.

3.3.1.2. Improvement of landholdings, equipment and production methods

A wide variety of specific grants for these purposes are being replaced by Farm Capital Grants given under powers conferred by the Agriculture Act 1970, ss. 28 and 29, and will be completely phased out with effect from the end of 1974 (save for hill land improvement schemes under the Hill Farming and Livestock Rearing Acts 1946-1959 in respect of which the terminal date is 5 November 1975). The grants are presently administered under the Farm Capital Grant Scheme 1970 (S.I. 1970/1759 as amended by S.I. 1971/1077 and S.I. 1972/368), operative until 31 December 1977. Under the scheme the Ministers may give grants of 30% towards approved expenditure of a capital nature in connection with the carrying on or establishment of an agricultural business or on work in respect of the matters specified in the scheme, such as buildings, drainage, land clearance, etc. They must be satisfied that the business in question is capable of yielding a sufficient livelihood to a person reasonably skilled in husbandry, or will be capable of so doing once the work has been carried out. Power to make comparable schemes for the benefit of horticultural producers is conferred by the Horticulture Act 1960, Pt. I, under which there have been made the Small Horticultural Production Business Scheme 1964, S.I. 1964/963, and the Horticulture Improvement Scheme 1970, S.I. 1970/1977.

Despite the enactment of these comprehensive measures, some specialized powers of assistance still subsist. Powers presently dormant, in that there is no scheme currently in force under the statute are:

- (i) to make grants in respect of petrol driven machines used for agricultural operations: Agriculture (Miscellaneous Provisions) Act 1950, s. 1;
- (ii) to make grants in respect of the ploughing of grassland: Agriculture (Ploughing Grants) Act 1952;
- (iii) to give subsidies in respect of the carrying out of approved works for the construction or improvement of silos: Agriculture (Silo Subsidies) Act 1956;
- (iv) to give grants to small farmers (farming not more than 150 acres of crops or grass, excluding rough grazing) in connection with Programmes of not less than three years' duration for improving the efficiency of their business: Agriculture (Small Farmers) Act 1959, s. 1 (payments may still be being made under the last scheme, applications having closed on 31 August 1970);
- (v) to give grants to small farmers supplementing the amount they receive under other grants schemes, e.g. ploughing grants: Agriculture (Small Farmers) Act 1959, s. 2;

- (vi) to give grants for renovation of grassland: Agriculture (Miscellaneous Provisions) Act 1963, s. 11;
- (vii) to give grants in respect of livestock rearing land used for growing specified crops for the winter feeding of livestock: Agriculture (Miscellaneous Provisions) Act 1963, s. 26;
- (viii) to make payments in respect of break crops (i.e. crops appropriate to a temporary change of crop, on land usually used for growing wheat or barley): Agriculture (Miscellaneous Provisions) Act 1968, s. 40.

Certain subsidies designed to encourage improvements in production methods may also be mentioned under this heading. The use of lime and other fertilizers in agriculture is encouraged respectively by the Agricultural Lime Scheme 1966, S.I. 1966/794, made under the Agriculture Act 1937, Pt. I, and by the Fertilizers (UK) Scheme 1969, S.I. 1969/776 as last amended by S.I. 1973/976, made under the Agriculture (Fertilizers) Act 1962, as extended by the Agriculture (Miscellaneous Provisions) Act 1963, s. 4. These schemes provide for a government contribution of up to three-quarters of the cost of production and transport of lime and of up to half the cost of production and transport of other fertilizers, payments being made subject to compliance with conditions imposed under the scheme, which may include registration and approval of suppliers, adherence to fixed prices, etc. A different kind of subsidy with the same overall purpose of improvement of production standards is that given under various schemes for the eradication of brucellosis, either by way of supplementation of other subsidies or of payments by Milk Marketing Boards to producers, under the Agriculture Act 1970, s. 106.

Certain other miscellaneous measures of assistance may be mentioned under this head:

- (i) the Minister may make grants for the restoration to agricultural use of land which has been mined for ironstone, in pursuance of arrangements regarding its management and farming made with its owner and occupier respectively: Mineral Workings Act 1951, s. 20 (see further below, 5.6.5.);
- (ii) the Ministers may, until 14 May 1976, give grants of up to one-third of the expense incurred in constructing, providing, or extending an important market for the sale of horticultural produce: Agriculture and Horticulture Act 1964, ss. 10 and 26.

It may be noted that in these two cases the statute directly authorizes grant payments, rather than making them subject to the terms of a scheme to be promulgated by statutory instrument.

3.3.1.3. Technical and scientific services and assistance

For general scientific research related to agriculture, carried on or supported by the Agricultural Research Council, see the Agricultural Research Act 1956, the Science and Technology Act 1965, and 3.2.3.(A) above.

A general power to provide services to agricultural producers is conferred by the Agriculture Act 1947, s. 103 (England and Wales); Agriculture (Scotland) Act 1948, s. 75) whereunder the Minister may make schemes for providing goods and services to persons managing or farming agricultural land, for the purposes of promoting efficiency in agriculture or encouraging food production.

The English Minister has made the Agricultural Services Scheme (England and Wales) Order 1972, S.I. 1972/704, under which his Ministry provides, for payment, testing, analytical, diagnostic and other like services. Other specific powers are to establish government research stations for research into artificial insemination, under the Agriculture (Artificial Insemination) Act 1946, s. 1, and the powers of the Meat and Livestock Commission, a statutory corporation, financed by a levy on the industry, with the general duty of promoting the greater efficiency of the livestock industry and livestock processing industry, to assess breeding qualities of livestock, to undertake performance testing and progeny testing, and to provide artificial insemination services, and advice and information services: Agriculture Act 1967, s. 1 and Sch. 1, Pt. I. All the services may lawfully be provided on financial terms such as to constitute an aid extended to the agricultural industry. Direct financial assistance is only available towards research into artificial insemination, under the Agriculture (Artificial Insemination) Act 1946, s. 1.

3.3.1.4. Facilitating provision of finance for agriculture

Provision of long-term credit for agricultural business has been facilitated principally through government financial support for two companies, the Agricultural Mortgage Corporation (England and Wales) and the Scottish Agricultural Securities Corporation, set up at government instigation in 1928 and 1929 respectively by consortia of banks. The function of these companies is to make loans on mortgages on agricultural land. The companies enjoy financial assistance from the Government of two kinds:

- (i) the Minister may make interest-free advances to the companies for the purpose of establishing their guarantee fund (Agricultural Credits Act 1928, s. 1 (1) (i), Agricultural Credits (Scotland) Act 1929, *ibid*). The current statutory ceiling on the total of such advances is £ 12 m for the Agricultural Mortgage Corporation and £ 2 m for the Scottish Corporation (Agriculture Act 1957, s. 63);

- (ii) the Minister may, until 31 March 1974, make payments by way of grant or loan to the Agricultural Mortgage Corporation only, currently limited to £ 100 000 per annum (Agricultural Development Act 1939, s. 32 as amended, Agricultural Mortgage Corporation Act 1958, s. 1 (b)).

The Minister is also empowered, under the Agriculture Act 1967, s. 64 (extended to 31 March 1974 by S.I. 1968/1146) to make grants to persons paying money under guarantees of bank loans made to farmers and horticulturalists for the purposes of their business.

3.3.2. FISHERIES

State aid in this sector is confined to the white fish and herring industries, which encompass all sea fishing other than for salmon or migratory trout. With one exception, it is channelled through two statutory public corporations, the Herring Industry Board and the White Fish Authority, which occupy a position in relation to their respective industries somewhat comparable with that of agricultural marketing boards in relation to producers of their product. Like the agricultural marketing boards, they have extensive marketing and regulatory functions which will for the most part be discussed in 6.2.

The Herring Industry Board was set up by the Herring Industry Act 1935, s. 1, and is now constituted under the Sea Fish Industry Act 1970, s. 29 *et seq.*; the White Fish Authority by the Sea Fish Industry Act 1951, now the Sea Fish Industry Act 1970, s. 1 *et seq.* Both the Board and the Authority provide various forms of financial assistance for members of their industries (see below) and are also empowered to provide various services and facilities such as research and the hiring out of boats, tackle, and other equipment (Herring Industry Scheme 1951, S.I. 1951/1478; Sea Fish Industry Act 1970, s. 5 (1)) and in certain circumstances, to engage in aspects of the industry themselves. Each is financed partly by a levy imposed on those operating in the industry (see the Herring Industry Scheme 1951, and the White Fish Authority (General Levy) Regulations Confirmation Order 1970, S.I. 1970/117), partly by government loans, and partly by government grants. In the case of the Herring Industry Board, grants are available under the Sea Fish Industry Act 1970, s. 36, as extended by the Sea Fish Industry Act 1973 until 31 December 1973, towards the cost of its functions of sales promotion, market development, revival of winter fisheries, purchase of vessels, research, and conversion of herring into other products. The total which may be advanced under s. 36 is presently limited to £ 4 m, a figure which may be increased by order made by statutory instrument by up to £ 500 000 at a time. In the case of the White Fish Authority, grants are available under s. 23 of the 1970 Act, likewise extended by the 1973 Act to 31 December 1973, in aid of research and expenditure on processing and ice-making plant.

In their turn, the corporations make finance available to fishermen, processors, etc. The Authority may give grants or loans for research projects, for maintenance of students in the industry, for cooperative marketing schemes (Sea Fish Industry Act 1970, s. 5 (1)), and, under a scheme approved by Ministers, administers grants made from money voted by Parliament towards expenditure incurred in the acquisition of new British-registered vessels for catching, transporting, or processing white fish: the Fishing Vessels (Acquisition and Improvement) (Grants) Scheme 1967. S.I. 1967/372, made under Sea Fish Industry Act 1970, s. 44. The present level of grant is 30 % of the cost of a vessel under 80 feet in length and 25 % of that of larger vessels, and the grants are made subject to quite stringent conditions, e.g. that for a defined period the vessel will be diligently used for fishing in a specified area. A similar scheme made under s. 45 of the 1970 Act is administered by the Herring Industry Board within its sphere of competence, the Herring Industry (Grants for Fishing Vessels and Engines) Scheme 1962, S.I. 1962/1616, and loan assistance is likewise afforded from Board funds under the Herring Industry Scheme for providing and equipping boats, processing facilities, etc., and for cooperative hiring organizations hiring out nets, gear, boats, etc.

An independent power of the Secretary of State to make loans to persons in Scotland for the building, purchase and repair of fishing boats and gear is provided by the Crofters' Holdings (Scotland) Act 1886, s. 32, as amended by the Small Landholdings (Scotland) Act 1911, s. 39.

3.3.3. SHIPBUILDING

Particularly since 1965, when the Government intervened with a payment of nearly £ 1 m to save the Fairfield Shipyard on the River Clyde in Scotland from liquidation, the shipbuilding industry in the United Kingdom has been in receipt of considerable and increasing State assistance, afforded both to the industry generally, and to individual companies in difficulties.

General aid has been offered in the following forms:

- (i) tax advantages and exemptions:
- (a) exemption from import duty is granted on any goods imported for the purpose of building, repairing or refitting ships in a registered shipbuilding yard: Import Duties Act 1958, s. 5;
 - (b) payment to shipbuilders of sums representing the average incidence of the oil duty, vehicle excise duty and purchase tax paid by shipbuilders in connection with the construction of a new ship, presently set at the rate of 2 % of the contract value of a ship of 80 tons or more built by United Kingdom yards: Finance Act 1966, s. 2 (the reference to purchase tax is prospec-

tively repealed, from a date to be appointed, by Finance Act 1972, s. 54 and Sch. 28, Pt. II);

(ii) facilitation of credit:

(a) loans to persons buying ships of over 100 tons from United Kingdom yards may be guaranteed by the DTI, under s. 10 of the Industry Act 1972; the limit of guarantee commitments under the section, in combination with continuing commitments under the Shipbuilding Industry Act 1967, s. 7, (which is replaced by the section) is set at £ 1 000 m, which may be increased by order to £ 1 400 m (s. 10 (2), (3));

(b) bank loans guaranteed under (a) are among those eligible for refinancing under the arrangements described in 3.2.4. above. Refinancing in this case is by the DTI, under s. 10 (5)-(7) of the Industry Act 1972;

(iii) construction grants:

S. 11 of the Industry Act 1972 provides for a 'tapering programme' of construction grants to builders of ships and off-shore installations of more than 100 tons in the United Kingdom, payable in respect of expenditure on the construction of ships and installations incurred in the years 1972, 1973 and 1974. The grant is calculated as a percentage of the part of the contract price notionally falling due to be paid within the relevant period, and is at the rate of 10 % for 1972, 4 % for 1973 and 3 % for 1974.

Specific aids to particular shipyards have been accorded since 1965 in various forms, especially unsecured loans and equity participation, and via various statutory channels. An indicative list is provided below, arranged according to channel:

Appropriation Act only:	<p>Fairfield (Upper Clyde) (1965) £ 940 000 loan stock £ 50 000 (50 %) equity</p> <p>(Fairfield absorbed into Upper Clyde Shipbuilders, February 1968)</p> <p>Upper Clyde Shipbuilders (1968) £ 5.5 m loan (1969) £ 825 000 (10.9 %) equity £ 12.5 m loan (UCS went into liquidation, June 1971)</p> <p>UCS (in liquidation) (1971-72) £ 8.2 m loans and grants</p> <p>Cammell Laird (Merseyside) (1970) £ 1.5 m (50 %) equity</p>
Shipbuilding Industry Board: (Established as a statutory public corporation by the Shipbuilding Industry Act 1967, wound up 1971 on expiry of Act)	<p>£ 19.2 m grants (including £ 3.5 m to Upper Clyde Shipbuilders) £ 21.6 m loan and equity subscription (including £ 3 m to Upper Clyde Shipbuilders)</p>

Industrial Reorganization Corporation: Cammell Laird (1970) £ 6 m loan
(Established as a statutory corporation by the Industrial Reorganization Corporation Act 1966, wound up by the Industry Act 1971, s. 2)

Industry Act 1972, s. 7:
(Selective assistance)

Cammell Laird (1972) £ 14 m loan
Govan Shipbuilders (successors to Upper Clyde Shipbuilders) (1972) £ 35 m in various forms

3.3.4. AEROSPACE

Government assistance has come to be accepted since the Second World War as a permanent and necessary adjunct to the successful operation of the United Kingdom aerospace industry. The giving of aid to sustain the industry is justified on the basis that:

- (i) a defence aircraft industry is essential in any case;
- (ii) the balance of payments derives essential benefits from the foreign currency earned in the world aviation market, and from import saving; and
- (iii) technological skills relative to the industry must be maintained.

A subsidiary consideration is the need to maintain employment in the industry, though there is no government commitment to keep it at any particular size.

As with shipbuilding, aid can be classified into general schemes on the one hand, and aid for specific firms or projects on the other; but the distinction is harder to draw, first because there is no general legislation covering the industry akin to that relating to shipbuilding, so that both general schemes and particular aids are for the most part administered under Appropriation Act cover, and second, because the number of firms is very small. Despite this lack of legislative provision, there has always been administrative recognition of the Government's close relationship with this sector, in the appointment of Ministers with special responsibility for it. This present Government appointed a Minister of Aviation Supply in 1970, whose Department was absorbed in 1971 into the DTI, within which a Minister for aerospace and a Parliamentary Under Secretary for aerospace have been appointed. Indirect aid is afforded through the extensive research and exploratory development programmes in respect of civil aircraft carried out or commissioned by the procurement executive of the Ministry of Defence, which is responsible for the technical and executive aspects of civil as of military aviation.

The main method of direct support afforded generally since the Second World War for civil aircraft is launching aid, i.e. an interest-free financial contribution to the launching costs of a civil aircraft or engine project, repayable as a levy on proceeds of sales and licences so far as these are achieved. Launching costs include such items as design and development costs, jigs and tooling, and

the higher labour costs incurred in the early stages of a new project, and the government contribution is an agreed proportion of these costs, usually not exceeding 50% and not subject to increase. The levy is calculated as a share of the forecast margin between the selling price and manufacturing cost, and is, again, not subject to reduction if the project should prove less profitable than anticipated. Other assistance commonly given is towards proving in service and underwriting of speculative production of new civil aircraft or engines. A lightly disguised aid has also been given by requiring the state-owned airline corporations, British European Airways and British Overseas Airways (now merged as British Airways) to buy British-made aircraft where others will be cheaper or more competitive: see 2.4.2.3. above.

Assistance is currently being given for specific projects and to particular firms in other ways, i.e.:

- (i) (with the French Government): full costs of development of the Concorde aircraft, and loans guarantees of working capital to finance its production so far as not covered by manufacturers' receipts from customer prepayments. The assistance for production, as opposed to development, is given under the special statutory authority of the Industrial Expansion Act 1968, s. 8, as amended by the Concorde Aircraft Act 1973. The limit on outstanding support is now £ 250 m, which may be raised by order to £ 350 m;
- (ii) assistance to Rolls Royce (1971) Limited, the company formed by the Government to purchase from the liquidator the aero-engine and certain other assets of the Rolls Royce Company, which went bankrupt in 1971. Funds for the purchase and carrying on of the undertaking are provided under the Rolls Royce (Purchase) Act 1971. No limit is fixed by the statute. Payments in respect of purchase amount to some £ 107.5 m, and in respect of carrying on the undertaking, £ 35 m of working capital and £ 124.7 m to finance the development and production by Rolls Royce (1971) Limited of the RB 211 engine: see, on this latter point, Rolls Royce Limited and the RB 211 Aero Engine, Cmnd. 4860 (1972);
- (iii) assistance to Short Brothers and Harland Limited, a Belfast-based aircraft manufacturing firm in which the Government holds a 69.5% shareholding, by way of advances of loans.

3.3.5. ASSISTANCE IN AID OF EXTRACTION AND PROCESSING OF MINERALS

A desire to secure greater self-sufficiency in scarce minerals and to save imports of processed products has prompted an active government policy in this sector in recent years. With the coal industry almost entirely, and

the iron and steel industry largely, in public hands (see Coal Industry Nationalization Act 1946, Iron and Steel Act 1967), and exploitation of inland and offshore oil and gas resources, vested by statute in the State (Petroleum Production Act 1934, Continental Shelf Act 1964), regulated by a licensing system, scope for the operation of a policy of state aid to private industry is somewhat limited.

Two kinds of scheme are at present in force:

- (i) under the Mineral Exploration and Investment Grants Act 1972, s. 1, the Secretary for Trade and Industry may contribute to expenditure incurred in searching for or discovering and testing mineral deposits within Great Britain or under its territorial waters or continental shelf. Total funds available are £ 25 m, which may be increased by order made by statutory instrument to £ 50 m, and the contribution in respect of any expenditure is limited to 35% thereof. Although 'mineral deposits' is broadly defined in the statute, it appears that the DTI will contribute only towards expenditure in relation to non-ferrous metals, fluorspar, barium minerals and potash. Assistance is conditional on an undertaking to communicate any geological information obtained to the Secretary of State and to the National Environmental Research Council, and is repayable with interest if the exploration leads to the extraction of deposits in commercial quantities. There is no time-limit on the scheme.
- (ii) under two industrial investment schemes made under the Industrial Expansion Act 1968 (repealed by the Industry Act 1971, s. 1 with a saving for such existing schemes), the Aluminium Industry (Invergordon Project) Scheme 1968, S.I. 1968/1875, and the Aluminium Industry (Anglesey Project) Scheme 1968, S.I. 1968/1874, the Government agreed to make long term loans of £ 30 m and £ 33 m respectively at commercial rates of interest to smelting companies, in order to enable them to construct large scale aluminium smelting capacity. The loans were applied by the companies as contributions to the capital costs of power stations constructed by the North of Scotland Hydro-Electric Board and Central Electricity Generating Board respectively. On the strength of this contribution, the Electricity Boards make power available for smelters at the specially low rate necessary to make the installation of smelting capacity a commercially viable proposition.

3.3.6. ASSISTANCE TO THE COMPUTER INDUSTRY

Assistance to the computer industry is also founded on a scheme made under the Industrial Expansion Act 1968, the Computers Merger Scheme 1968, S.I. 1968/990. (See also Industrial Investment: The Computers Merger Project, Cmnd. 3660 (1968)). This provides for Minis-

terial payments to a named company, International Computers (Holdings) Limited (ICL), by way of contribution to share capital (£ 3.5 m) and grants towards the research and development expenditure of its operating subsidiaries (£ 13.5 m) on condition that:

- (i) ICL was formed by a merger of existing United Kingdom Computer companies;
- (ii) the research and development programme was developed at a defined pace;
- (iii) Ministerial consent was obtained for certain appointments and commercial dealings of ICL; and
- (iv) the Minister was kept promptly and fully informed of the progress of the research and development programme.

The scheme also records ICL's intentions as to the content of its research and development programme. This assistance was given over the period 1968-72. Subsequent assistance (£ 14.2 m for research and development in 1972-73, £ 25.8 m in 1973-76), has been given on a basis which differs in several respects. It is authorized by the Appropriation Act, rather than a special or general statutory scheme; while conditional (on, *inter alia*, the raising of additional capital, if necessary, by the company's other shareholders) the financial agreement between Government and company has not been published; and the assistance is in the form of 'launching aid', repayable in the form of a levy on profits.

ICL has also received support through the Government's procurement policy (above, 2.5.2.) under which most computer purchasing is done on a single tender basis in favour of ICL.

3.3.7. ASSISTANCE TO THE FILM INDUSTRY

Since 1949 the British film industry has been in receipt of State assistance designed principally to enable it to maintain a place for its output in face of foreign competition. The arrangements here described form a whole with the elaborate system of film quotas discussed below, 5.6.3.

Direct assistance is afforded through the National Film Finance Corporation, a statutory public corporation with members appointed by the Secretary of State for Trade and Industry, established by the Cinematograph Film Production (Special Loans) Act 1949, s. 1, and empowered until 1980 (see Films Act 1970, s. 1) to make loans or give guarantees for financing the production or distribution of films, or for enabling rights to be acquired or for preproduction work, to persons with reasonable expectations of being able to arrange production or distribution on a commercially successful basis. The Corporation is financed by advances from the DTI, again up to 1980, and to a limit of £ 11 m, and has been relieved with effect from March 1970 of interest falling due on advances made between 1953 and 1965: Films Act 1970, ss. 2, 3.

An indirect source of assistance to makers of British Films (defined according to the Films Acts 1960 to 1970) is provided by the produce of a levy imposed on film exhibitors under the Cinematograph Films Act 1957, which is collected from them and distributed to film makers by the British Film Fund Agency, another statutory public corporation, again with members appointed by the Secretary of State for Trade and Industry, according to regulations made by him, which, *inter alia*, define the classes of British film in respect of which payments may be made: see Cinematograph Films (Collection of Levy) Regulations 1968, S.I. 1968/1077; Cinematograph Films (Distribution of Levy) Regulations 1970, S.I. 1970/1146. Again, these arrangements last until 1980 (Film Act 1970, s. 4).

3.3.8. HOUSING

State financial assistance for encouraging the provision of housing has taken the form not of special direct aids or incentives to the construction industry but rather of substantial public sector building programmes, carried through principally by local authorities and by New Town Development Corporations (see New Towns Act 1965) and subsidized by central Government contributions (see Housing Finance Act 1972, ss. 1-11, Housing (Financial Provisions) (Scotland) Act 1972, ss. 1-14). Aid for the private sector has been directed rather to owner/occupiers (or potential owner/occupiers) encouraging them either to get their houses built or to improve existing houses so as to extend their useful life or raise their standards of accommodation.

Measures affecting individuals are directed primarily to making it easier to find finance for house purchase or improvement, e.g. tax relief on mortgage interest (Income and Corporation Taxes Act 1970, s. 57); and a parallel scheme for direct subsidization of mortgages of those who, because they do not have enough income to pay tax at the standard rate, would not benefit from tax relief (Housing Subsidies Act 1967, Pt. II); local authority loans, by way of mortgage, for house construction, purchase, alteration, enlargement, repair, etc. (Small Dwellings Acquisition Act 1899, Housing (Financial Provisions) Act 1958, Housing (Financial Provisions) (Scotland) Act 1968, ss. 49, 50, Housing Act 1969, s. 74). Grant aid is also provided by local authorities for improvements and for the provision of dwellings by conversion, under the Housing Act 1969, ss. 1-27, and the Housing (Financial Provisions) (Scotland) Act 1968, grants are payable to cover the cost of installation of standard amenities (running water, sinks, etc.) in houses previously without them, and discretionary grants for other purposes. These latter grants are normally 50% of approved expenditure, but in development and intermediate areas will, until 23 June 1974, be at the rate of 75% (Housing Act 1971, s. 1, as extended by Housing (Amendment) Act 1973).

Besides these aids given generally to house owners, legislative policy favours, with assistance, a particular form of private enterprise in house provision, the housing association or society. A housing association is any body for constructing or improving houses (or for encouraging or facilitating this) which is either non-profit-making or whose distribution of profits is limited according to statutory formulae. A housing society is a non-profit-making body registered under the Industrial and Provident Societies Act 1965, constructing houses for letting or for occupation by its own members. These bodies enjoy:

- (i) central Government subsidies to cover initial losses on new building schemes approved by the Secretary of State, and certain costs of existing schemes: Housing Finance Act 1972, s. 72 *et seq*, Housing (Financial Provisions) (Scotland) Act 1972, ss. 51-57;
- (ii) (England and Wales only): government subsidies for approved schemes for provision of hostel accommodation: Housing Finance Act 1972, s. 92;
- (iii) advances from the central Government for approved schemes under which accommodation will be made available for letting: Housing Act 1961, s. 7; Housing (Financial Provisions) (Scotland) Act 1968, s. 23;
- (iv) grants for offsetting tax chargeable on the association in respect of its functions of providing or maintaining housing accommodation for letting or hostels, or activities incidental thereto: Finance Act 1965, s. 93;
- (v) favourable tax treatment for housing societies approved by the appropriate Ministers which provide accommodation only to their own members: Income and Corporation Taxes Act 1970, s. 341; and
- (vi) loans from the Housing Corporation, a statutory public corporation, financed by government advances, set up under the Housing Act 1964 to promote and assist the development of housing societies: Housing Act 1964, s. 2; Housing Finance Act 1972, s. 77.



CHAPTER 4

‘Contrats de programmation’

The three schemes made under the Industrial Expansion Act 1968 (described above, 3.3.5. and 3.3.6.) seem, so far as can be judged, to be comparable in form and scope with the arrangements which in France and Belgium go under the name of ‘contrats de programmation’ but, as we have pointed out, the general part of that Act has been repealed, which means that while these schemes can remain in operation, no further schemes of this kind can be made. Moreover, while comparable schemes might be made, either under the powers of the Industry Act 1972, or simply under the cover of the Appropriation Act, it does not appear to be the policy of the present Government to enter into formal and detailed arrangements of

this kind. This is not to say that the ‘contractual method’ is entirely eschewed in the United Kingdom; but its chief application is in the regulatory sphere, in the shape of *informal* — and probably unenforceable — agreements entered into between Government and enterprises as an alternative to the invocation of formal regulatory powers. This is particularly important in the fields of monopoly and merger control (below, 5.5.1.) and control of foreign investment (5.6.2.). Overall, therefore, it does not seem appropriate to regard ‘contrats de programmation’ as a recognizable or even emergent legal category in the United Kingdom.

CHAPTER 5

Regulations of general application

5.1. Institutional regulation

5.1.1. COMPREHENSIVE ARRANGEMENTS

No such form of regulation exists in the United Kingdom. As we have said above (2.1.), the National Economic Development Council, which acts as a general forum of consultation between Government, trade unions and industrialists, is established on a purely administrative basis and enjoys no legal recognition, let alone regulatory powers. Similarly, the Economic Development Committees which have been established under the aegis of the NEDC for individual industries, have no statutory or executive powers; in order to achieve the objective of improving the industry's economic performance, competitive power and efficiency, it is necessary to obtain the consent of the three parties involved.

Functions associated elsewhere with comprehensive institutional regulation are, in fact, performed in the United Kingdom by unofficial voluntary bodies. The British Chambers of Commerce, unlike their European counterparts, are voluntary organizations quite independent of the State, relying for their revenue solely on the subscriptions of their members. Although some Chambers have been incorporated by royal charter, the majority of incorporated Chambers have been constituted under the various Companies Acts from 1862 onwards as companies limited by guarantee. (The difference in the mode of incorporation does not, however, result in any difference in the scope or extent of powers.) These Chambers of Commerce are governed by a council or board of directors; they usually have several permanent committees dealing with such matters as national and local taxation, transport, commercial law and legislation, tariffs and overseas trade, and trade sections to look after the interests of important industries in their areas. They can deal with any subject which affects the business community, but they take no part in labour disputes nor in wages questions or party politics.

All local Chambers of Commerce are affiliated to the Association of British Chambers of Commerce (ABCC) which also includes representatives of interested bodies such as the British Bankers' Association, the National Farmers' Union, and the Federation of Commonwealth and British Empire Chambers of Commerce. The General Purposes Committee of the ABCC controls all expenditure, making recommendations to the Council in relation to finance, functions and administration. Three standing committees deal with finance and taxation, overseas trade, and home affairs. Subcommittees and panels are appointed to deal with education, rating and valuation, local government finance, patents and designs, etc.

The ABCC, representing manufacturers and merchants, exporters and importers, is often consulted by the Government before measures affecting commercial and industrial interests are enacted. So too is the Confederation of British Industries, another consultative body governed by royal charter. Within recent months, there have been proposals regarding the status and functions of both the CBI and the ABCC. The latter organization has published a consultation paper recommending the establishment of 'public law' status for Chambers of Commerce. This would mean that all businesses would be required by law to join a Chamber, and contribute, by subscription or through taxation, to what would, in effect, be statutory representative bodies. These proposals were put forward in the light of British entry into the EEC, and, more particularly, of the ABCC's acceptance of an invitation to join the 'Conference Permanente des Chambres de Commerce et d'Industrie de la CEE'. It was felt that if British Chambers of Commerce were to play a useful role within the Conference, public law status was necessary in order for them to be able to claim the overall representational capacity and to deploy the material

resources which in Common Market Chambers are automatically provided by such status. The most important feature of full public law status would be to put those Chambers who benefit from it in a position to represent all commercial and industrial undertakings in the country. The introduction of such a system in the UK would impose a basic measure of rationalization upon the total Chamber of Commerce and trade association structure, with the effect of establishing a completely representative organizational network, which would be especially important for those British firms which do not at the moment choose to join a voluntary Chamber or other trade organization. Under the present arrangements, these firms do not have a voice in Community affairs. Moreover, given the new government effort in the regions (above, 3.2.1.), the ABCC feels that a failure to advance to public law status would lead to a rapid decline in the influence and usefulness of existing non-government organizations. As regards resources of public law Chambers, a system of total representation linked to assured operational funding would eliminate the on-costs of building up and retaining membership which are inevitable under the present British voluntary system. Furthermore, pressures from 'compulsory' members for efficiency and effectiveness should tend to ensure a uniformly high return in service and activity from the income placed in the hands of any new public law status bodies, and should increase membership participation, thereby improving the reality of representation.

The second report is that of the Devlin Commission on Industrial Representation (1972), in which a merger between the CBI and the Chambers of Commerce is advocated. The report recommended the creation of a Confederation of British Business to represent the interests of the whole business community at the highest levels in a single organization; a restructuring of the CBI, eventually leading to a situation where 50% of its income comes from associations and 50% from large companies; and a major reduction in the number of trade associations and employers' organizations from 2000 to 100.

No official action has yet been taken, nor comment made, on these radical proposals.

5.1.2. SPECIFIC TRADES AND PROFESSIONS

Looking at matters on a sectoral or trade by trade basis, we find that representation and regulation is, again largely carried on by informal means. Trade associations enjoy no statutory recognition or regulatory powers, and today fulfil few, if any, regulatory functions. Their rules are, by the Restrictive Trade Practices Act 1956, s. 6, liable to be treated as trading agreements which must not be or be used in a manner restrictive of trade, which leaves little scope for regulatory activity: see *Re British Waste Paper Association's Agreement* (1965) L.R. 4 R.P. 1; [1965] 2 All. E.R. 417; *Re British Furniture Manufac-*

turers' Federated Associations' Agreement (1966) L.R. 6 R.P. 185; [1967] 1 All E.R. 465. The principal exceptions to the informal pattern of organization of economic activity are to be found in agriculture, where marketing of some of the main agricultural products is controlled by producer cooperatives organized under the Agricultural Marketing Act 1958 (see 6.1. below), and in the liberal professions, many of which are governed by bodies established by or recognized by statute, with statutory powers to regulate entry to or the exercise of the profession. See, for:

<i>Profession</i>	<i>Relevant legislation</i>	<i>Governing body</i>
Architects	Architects (Registration) Acts 1931 and 1938	Architects Registration Council
Solicitors (Eng.)	Solicitors Act 1967	Law Society
Solicitors (Scot.)	Legal Aid and Solicitors (Scotland) Act 1949, Solicitors (Scotland) Act 1958	Law Society of Scotland
Veterinary Surgeons	Veterinary Surgeons Act 1966	Council of Royal College of Veterinary Surgeons
Opticians	Opticians Act 1958	General Optical Council
Dentists	Dentists Act 1957	General Dental Council
Doctors	Medical Acts 1956 and 1969	General Medical Council
Chemists	Pharmacy Acts 1852 and 1954	Council of the Pharmaceutical Society of Great Britain
Medical Auxiliaries	Professions Supplementary to Medicine Act 1960	Power to establish Councils for Chiropodists, Dietitians, etc.

For the control exercised by these bodies over entry into the various professions, see 5.6.4., below.

5.2. Regulation related to short-term economic policy

5.2.1. PRICES AND INCOMES

5.2.1.1. Counter-inflation policy [15]

One of the first acts of the incoming Conservative Government in July 1970 was to renounce any idea of a statutory, legally-binding prices and incomes policy. Accordingly it refused to operate the existing prices and incomes legislation, the Prices and Incomes Act 1966, wound up its chief operating agency, the National Board for Prices and Incomes, and terminated the appointment of its members. In December 1972, however, after a long period of vacillation, the same Government decided that a statutory prices and incomes policy was essential in order to contain the disturbingly fast inflation being experienced in the United Kingdom economy. Accordingly it formulated a programme in three stages or phases, and

secured the passage of legislation for its implementation. It first imposed a temporary stand-still on prices and incomes (Phase One) by way of the Counter-Inflation (Temporary Provisions) Act 1972, and subsequently introduced a longer-term regime of prices and incomes control, along the same broad lines as that of its Labour predecessor, in the Counter-Inflation Act 1973, which is to provide support for Phase Two and Three of progressively relaxing controls. The stand-still imposed by the 1972 Act ceased to operate in relation to pay on 1 April 1973, and in relation to prices, charges and rents on 29 April 1973, and we shall accordingly deal here exclusively with the 1973 Act. The scope of the Act itself is extremely wide. It renders subject to control 'any prices or charges for the sale of goods or the performance of services in the course of business' (s. 6 (2)), 'any kind of remuneration' (s. 7 (2)), the payment of dividends by companies (s. 10) and rents (s. 11). The Act does not contain blanket prohibitions of or restrictions on increases in prices, remuneration, dividends and rents, but instead empowers various authorities to take decisions prohibiting or restricting particular increases or kinds of increases. The principal authorities involved are two public statutory corporations (referred to in the Act as 'agencies' (s. 1)), the Price Commission and the Pay Board, empowered respectively to restrict the prices, charges and remunerations referred to in ss. 6 (2) and 7 (2). This very broad power is limited by ss. 6 (1) and 7 (1), which require the Price Commission and the Pay Board to exercise their powers 'in such way as appear to them appropriate for the purpose of ensuring that [the Price and Pay Code is] implemented'. This code, which contains the substance of the counter-inflation policy, is, under s. 2, drawn up by the Treasury and promulgated as a statutory instrument. The Phase Two version of the Code, which one may expect to be substantially amended, in line with proposals set out in the Price and Pay Code for Stage Three: A Consultative Document, Cmnd. 5444 (1973) when Phase Three comes into operation late in 1973, was published as S.I. 1973/658. It is addressed not only to the Price Commission and Pay Board, but also, as practical guidance, to all those concerned with price and pay determination, but it should be stressed that the Code is not a source of legal obligation for the subject, and that failure to observe its provisions is neither a criminal offence nor a civil wrong.

The main features of the Code presently in force are as follows:

- (i) Certain prices are excluded from control by the Price Commission: the most important exclusions are — exports; imports; auction sales; commodity market sales; secondhand goods; international transport and communication charges; prices under certain government contracts and agreements; fresh foodstuffs; interest rates.

Also excluded are prices controlled by other bodies, namely: certain taxi fares: Home Secretary; insur-

ance premiums: Secretary of State for Trade and Industry, under Counter-Inflation Act, s. 9; milk: Minister of Agriculture, Fisheries and Food and Secretary of State for Scotland, under Emergency Laws (Re-enactments and Repeals) Act 1964, s. 6 (see 6.1. below); various charges fixed by statutory bodies, where made subject to an order under s. 8 of the Counter-Inflation Act, requiring such bodies to observe the Code in exercising their functions, e.g. bus fares (see Counter-Inflation (Modification of Transport Enactments) Order 1973, S.I. 1973/675, and 6.4. below).

- (ii) increases in controlled prices are in general to be restricted to the amount of allowable cost increases (e.g. labour, materials, rent, rates, interest charges) subject to variation if this formula produces unacceptably low or high profit margins, or losses;
- (iii) increases in pay are in general not to take place at intervals of less than 12 months, and are not to represent, as an average per head of the group to whom the increase is to be paid, more than 4 % of pay during the previous 12 months, plus £ 1 per week per head; nor should any consequent increase for any individual exceed £ 250 per annum.

(Stage Three proposal: 7 % or £ 2.25 per week per head, with certain additions for special circumstances; individual limit £ 350).

It will be seen from this outline that the Code is drafted in terms of individual enterprises and pay groups, and that the Price Commission and Pay Board are not expected, save in certain special situations (see, e.g., paragraph 34, on industries involving many small businesses) to impose any blanket restrictions. They proceed rather on the basis of scrutiny of individual increases, which they may either allow, restrict or prohibit. In so doing, it has become clear that though the agencies are not in terms required by statute to apply the Code without discretion, this is in fact what they are doing. Increases come under the scrutiny of the Price Commission and Pay Board by three routes:

- (i) Prenotification: firms with annual sales of over £ 50 m (Stage Three proposal, £ 5 m) (Manufacturing), or £ 20 m (services other than distribution) are required to give advance notification of most proposed price increases to the Price Commission and are forbidden to give effect to the increases pending Commission scrutiny; pay settlements involving 1 000 or more employees (not necessarily in a single undertaking) must likewise be prenotified to the Pay Board and await its approval: see Counter-Inflation (Notification of Increase in Prices and Charges) Order 1973, S.I. 1973/664; Counter-Inflation (Notification of Increases in Remuneration) Order 1973, S.I. 1973/662. Moreover, any price increase (but not any pay settlement) which would not be consistent with the Code must be prenotified.

- (ii) Reporting: firms with annual sales of £ 5 m to £ 50 m (manufacturing), over £ 10 m (distributive trades, construction), £ 5 m to £ 20 m (other services), over £ 0.5 m (professional services) are required to report to the Price Commission on total sales, profit margins and price increases; on a similar basis, settlements affecting 100 to 1 000 employees are to be reported, but do not require approval before implementation: see Counter-Inflation (Prices and Charges) (Information) Order 1973, S.I. 1973/778; Counter-Inflation (Returns and Records of Remuneration) Order 1973, S.I. 1973/683.
- (iii) Record keeping: firms with annual sales of £ 1 m to £ 5 m (manufacturing), £ 0.25 m to £ 10 m (distributive trades), £ 0.1 m to £ 0.5 m (professional services), £ 0.25 m to £ 5 m (other services), £ 1 m to £ 10 m (construction), and firms employing more than 10 workers, are required to keep such records as will enable the Price Commission and Pay Board respectively to ascertain compliance with the Code from spot checks: see S.I. 1973/778 and 1973/663 respectively. Smaller enterprises are not subject to any of the above forms of control.

If the Price Commission or Pay Board decides that an increase which it has considered should be prohibited or limited, it must give the party or parties concerned the opportunity to make written representations, before formally restricting that price or remuneration in terms of ss. 6 or 7 of the Act. There is no provision for appeal from an adverse decision, and the discretion formally vested in the agencies under ss. 6 and 7 is so broad as to make a successful invocation of judicial review an unlikely prospect, but under Schedule 2, paragraph 6, an appropriate Minister may consent to an increase which the Price Commission or Pay Board would not have allowed. Implementing a prenotified increase or settlement before decision by the Commission or Board, or any increase or settlement after an adverse decision by the Commission or Board, or contravening any order or notice made by appropriate Ministers in the cases of insurance premiums, dividends, or rents (see below), is a criminal offence leading to a fine of up to £ 400 on summary conviction and without limit on conviction on indictment (s. 17). It is to be noted also that it is an offence for organizations of workers to bring pressure on employers by strike or similar action to contravene the provisions of the Act regarding pay (s. 17 (2), (3)), and that enforcement of price control, is, in the first instance, confided to local weights and measures authorities, using their powers under the Weights and Measures Act 1963 (see 5.7.3., below). Actions in contravention of the Act which, under s. 17, constitute a criminal offence, do not at the same time constitute a civil wrong (s. 17 (8)), but the transaction concerned may be wholly or partly vitiated in terms of the Counter-Inflation (Validity of Trans-

actions) Order 1973, S.I. 1973/660, made under Sch. 3, paragraph 3. The general tenor of this Order is to preserve the validity of the transaction as a whole while making it possible for any excess over what is permitted to be recovered, if paid as a price, or withheld, if owed as a remuneration (but not recovered, if already paid as a remuneration).

In addition to the exclusions contained in the Price and Pay Code, there are certain other exceptions to the ordinary procedure of scrutiny by the two agencies.

Company dividends are directly controlled by the Treasury (s. 10). While the Act leaves the method open, blanket control has in this case been preferred to a case-by-case approach. Under the Counter-Inflation (Dividends) Order 1973, S.I. 1973/659, ordinary dividends may not be increased by more than 5 % over the previous financial year's total. Comparable distributions are also covered, and exceptions made for special cases such as new companies and newly quoted companies.

Rents (business, domestic and agricultural) (s. 11) are directly controlled by Ministers, by order: see Counter-Inflation (Agricultural Rents) Order 1973, S.I. 1973/682, Counter-Inflation (Business Rents) Order 1973, S.I. 1973/741, both imposing a standstill on the rents referred to. For the control of domestic rents, however, the Government is presently relying on its power under other legislation, the Housing Finance Act 1972 and the Housing (Financial Provisions) (Scotland) Act 1972 (see 6.5. below).

The Act expires three years after its coming into force, that is to say on 31 March 1976 (s. 4). The Government's policy provides, however, for an early move from a compulsory to a 'voluntary' prices and incomes policy, and provision is therefore made in s. 4 for the operation of the Act to be terminated before that date and, if subsequently necessary, to be reactivated again.

5.2.1.2. Permanent controls over prices

Besides all-embracing controls designed as counter-inflationary measures, which in the United Kingdom have, despite the chronic character of inflation, always been short-term and temporary (and ineffective), there exist permanent powers of control over certain specific prices and charges, in relation to which market forces are not considered to work satisfactorily. We have already noted the adaptation of some of these powers to take account of the objectives of the counter-inflation legislation, and most of the powers fall to be considered in detail in 6.1. (agriculture), 6.4. (transport) and 6.5. (rented housing) below. Here we may mention in addition, for completeness, the power conferred on Ministers under the Emergency Laws (Re-enactments and Repeals) Act 1964, ss. 4 and 5, to control the prices of welfare foods and of medical supplies for the National Health Service. These provi-

sions, which are not at present in use, put on a permanent basis powers first conferred by defence regulations made during the Second World War.

5.2.1.3. Permanent controls over wages [16]

Certain permanent controls of wages likewise exist, again in order to cover situations in which the ordinary machinery of free collective bargaining is inadequate or inappropriate. In certain sectors of industry where trade union organization is weak or has been weak in the past, the Secretary of State for Employment has set up, under the Wages Councils Act 1959, s. 1, Wages Councils composed of representatives of employees and employers and some independent members. These Councils may make proposals for minimum wages and for holiday entitlements in their industry which must be implemented by the Secretary of State by statutory order (s. 11). Once so implemented, such minimum wages and other benefits are to be accorded by all employers in the industry to their employees. Agricultural Wages Boards have been set up for the agricultural industry by the Agricultural Wages Act 1948 and the Agricultural Wages (Scotland) Act 1949; they differ from Wages Councils in that they make their own orders, without reference to the Minister.

It should be noted that outside the sectors for which Wages Councils or Boards have been established, collective bargaining is unregulated, at least as to substance (certain procedural rules are imposed by the Industrial Relations Act 1971, Pt. III: see 5.5.3. below). This means, for example, that there is no statutory minimum wage over industry as a whole, and also that results reached in collective bargaining bind only the parties to that bargaining (and then only if they choose to be so bound (see Industrial Relations Act 1971, s. 34)), and cannot, by the operation of any form of State regulation, be made to bind others not parties to the collective agreement. The only legal avenue through which the operation of collective agreements may influence or determine the pay and conditions conceded by firms not parties to them is the Fair Wages Clause of government contracts and sub-contracts, under which, it will be recalled (2.5.2.), the contractor (or would-be contractor) undertakes to pay wages and observe conditions not less favourable than those established in his district by collective bargaining. The statutory procedures for wage determination laid down by the Wages Councils Act, Agricultural Wages Acts, and also by the Remuneration of Teachers Act 1965 (covering a case in which ordinary collective bargaining machinery was not thought to be appropriate) have been adapted to the exigencies of the Counter-Inflation Act not by requiring the responsible bodies to implement or have regard to the Price and Pay Code, but by making their decisions subject to the scrutiny and appraisal of the Pay Board before they can be implemented. The relevant Acts have been amended in this sense by statutory

instruments made under powers conferred by the Counter-Inflation Act 1973, s. 8.

5.2.2. CONTROL OF CREDIT

5.2.2.1. Hire purchase terms control [17]

Under the Emergency Laws (Re-enactments and Repeals) Act 1964, s. 1, the Secretary of State for Trade and Industry may by order provide for imposing, in respect of the disposal, acquisition or possession of articles under hire purchase or credit sale agreements, or the hiring of articles under simple hiring agreements, such prohibitions and restrictions as he thinks necessary for restricting excessive credit. In the past, orders under this section have required, in the case of hire purchase and credit sale agreements for certain goods, payment in advance of a defined proportion of the total cost and the repayment of the balance within a defined maximum period, and in the case of simple hirings, payment in advance of a defined number of weeks' hire, percentages and periods varying according to the type of goods and the stringency of credit restrictions. The most recent of such Orders, which consolidated and amended a number of earlier ones, were the Control of Hiring Order 1969, S.I. 1969/1307, and the Hire Purchase and Credit Sale Agreements (Control) Order 1969, S.I. 1969/1308. On the basis that such terms control tended to restrict the production of the specified goods as much as it restricted credit, and that the consequent damage to the productive potential of the economy outweighed the gain in credit control, these orders were revoked by the present Government, by way of the Control of Hiring (Revocation) Order 1971, S.I. 1971/1146, and the Hire Purchase and Credit Sale Agreements (Control) (Revocation) Order 1971, S.I. 1971/1147. Though, therefore, no regulation of this kind is now in force, it may be helpful to outline the structure of the 1969 orders, as this is probably the form in which such regulation would be reintroduced should circumstances demand it.

The Control of Hiring Order 1969, Sch. 2, placed upon the person disposing of the goods certain requirements in respect of the hiring agreement. The agreement was to be in writing and to be for a definite period of not less than a minimum hire period prescribed by the Order or for an indefinite period. The terms of the agreement were to be such that the periods in respect of which the rentals were payable were either weekly, monthly, quarterly or yearly periods; that the first such period commenced on the date on which the agreement was entered into; that no rental payable in respect of any period after the expiry of the minimum hire period was greater than the smallest rental payable in respect of any period during the said hire period; that the total amount of the rentals payable under the agreement in respect of each period was ascertainable at the date on which the agreement was entered into; that no rental payable in respect of any period was

less than 25 % of the highest rental payable in respect of any other period. Furthermore, before the agreement was entered into, actual payment must have been made in respect of the goods comprised in the agreement of not less than the aggregate of (a) all the rentals payable for the hire of those goods in respect of the minimum hire period, and (b) all the charges payable for or in connection with any services to be performed in relation to those goods during the minimum hire period. The minimum period of hire prescribed was usually 36 or 42 weeks, depending on the product; the products involved consisted of certain durables such as television sets, domestic appliances and motor cars.

The Hire Purchase and Credit Sale Agreements (Control) Order 1969, imposed comparable requirements. The agreement was to be in writing, a prescribed deposit was to be paid before the agreement was entered into, and the balance due under the agreement was to be payable by approximately equal instalments at equal intervals spread over not more than a prescribed period, or alternatively, in relation to hire purchase agreements, by one payment to be made within 3 months. The deposit had to be paid by the person who actually entered into the agreement as the hirer or buyer. The agreement was to be in writing and to contain in respect of each description of goods a statement of the cash price of the goods of that description comprised in the agreement and of any amount payable by instalments under the agreement for the installation or maintenance of those goods. The prescribed minimum deposit had to be paid before the person in possession entered into the first such agreement under which he held the goods, and the current agreement had to provide for the payment of the balance due in respect of each description of goods comprised therein. Again, the Order imposed a requirement on the hirer or buyer to pay in advance a varying minimum percentage of the cash price, and laid down a maximum repayment period for the balance of the price (24-48 months). For most articles, a minimum percentage of 33% of the cash price had to be paid in advance, and the remainder repaid over not more than 24 months.

Unlike the Control of Hiring Order, this Order made it an offence to fail to comply with any of the requirements laid down by the Order, whether the failure was committed by the person disposing of the goods or by the person in possession of them under the agreement. Article 5 provided that where a dealer sold goods to a finance house to be let on hire purchase to the customer who had signed the hire purchase agreement, the dealer would be guilty of an offence if he failed to take the prescribed deposit from the customer before selling the goods to the finance house, even though he might have obtained the deposit before the agreement became operative. It has been established that non-compliance with any provision of such an Order renders the agreement void for illegality; the results of non-compliance are even more severe than for a breach of the formal requirements of the Hire Purchase

Act 1965, and regulations made thereunder (which renders the agreement unenforceable against the hirer). This Act, which is a permanent measure designed for consumer protection rather than economic regulation, will be discussed in 5.7.2.6. below.

5.2.2.2. Statutory control of borrowing [18]

Terms control had its origins in wartime defence regulations: so too did the general control over large-scale borrowing now contained in the Borrowing (Control and Guarantees) Act 1946, s. 1, under which the Treasury may make orders for regulating borrowings (other than ordinary bank borrowings) of over £ 10 000 by one person in any twelve-month period, the raising of money in Great Britain by the issue of shares in a company, the issue of certain kinds of security by companies and foreign governments, and the circulation of offers of securities issues of foreign companies and governments. Various borrowing powers subsequently conferred by statute on public corporations like electricity boards, have been expressed to be subject to this section.

This sweeping control was quite intensively operated in the immediate post-war period, alongside measures for the allocation of raw materials, capital equipment, etc., but was never very effective in its objective of favouring borrowing for economically desirable purposes. Scrutiny of applications was very summary, no attempt was made to follow up the uses to which funds were put, and no overall ceiling was imposed on the amount of consents to be given in a particular period. The original objectives of the system were consequently abandoned at about the time of the Radcliffe Report on the Monetary System (1958). Though the Act and a general implementing order remain in force, substantial exemptions have been introduced which leave a very small range of transactions subjected to control. This control is presently operated largely by the Bank of England on behalf of the Treasury, and with the objective of securing the most favourable operation for the market in government securities.

The principal order is the Control of Borrowing Order 1958, S.I. 1958/1208, as amended, whose scheme is now highly confusing. Part I lists the transactions which require Treasury consent. Broadly, these are borrowing above certain limits, raising money by the issue of shares, certain other issues of shares, circulation of offers for subscription of certain securities, raising money by the issue of units in Unit Trusts. Part II goes on to list exceptions. Again broadly, these are Part I transactions totalling less than £ 50 000 in any 12 months (Article 8), transactions by building, industrial and provident societies (Article 9), and profit-sharing schemes (Article 10). But in 1970, by the Control of Borrowing (Amendment) Order 1970, S.I. 1970/708, a new Article (8 A) was introduced into Part II, which exempts from the need for consent *all* transactions covered by Part I, but then goes on to introduce, by way of exceptions to this exemption,

new categories of transaction in respect of which consent may be required. These are cases where:

- '(a) the transaction is effected by or on behalf of a person resident outside the United Kingdom, and is not a transaction consisting of or including the issue of non-sterling securities; or
- (b) the transaction is effected by or on behalf of an investment trust company resident in the scheduled territories but outside the United Kingdom; or
- (c) the transaction is effected by a local authority.'

In these cases, therefore, consent will be required if such a transaction falls within the categories of Part I and does not fall within the exceptions of Part II. A general consent has been given by the Treasury to borrowing by local authorities: see 2.4.2.2.

Two further restrictions on the exemption are designed to facilitate Bank of England control of the money market. First, the exemption is not to apply to the issue of any securities mentioned in paragraphs 1-5 of Pt. II of Sch. 1 to the Trustee Investments Act 1961 (which covers what are commonly known as 'gilt-edged' securities), unless the terms on which the securities are to be issued have, before the making of the issue, been approved by the Bank of England on behalf of the Treasury. Second, the exemption is not to apply to the issue of *any* sterling securities where the amount of money to be raised by the issue is not less than £ 1 m, unless such an issue has already been approved by the Bank on behalf of the Treasury.

5.2.2.3. Control of bank lending [19]

Borrowing from banks is excluded from the Borrowing (Control and Guarantees) Act 1946 because 'bankers' lending policies are subject to recommendations by the Bank of England and, with the authorization of the Treasury, to directions by the Bank to give effect to such recommendations.

S. 4 (3) of the Bank of England Act 1946 provides that:

'The Bank, if they think it necessary in the public interest, may request information from and make recommendations to bankers, and may, if so authorized by the Treasury, issue directions to any banker for the purpose of securing that effect is given to any such request or recommendation, provided that:

- (a) no such request or recommendation shall be made with respect to the affairs of any particular customer of a banker; and
- (b) before authorizing the issue of any such directions the Treasury shall give the banker concerned, or such person as appears to them to represent him, an opportunity of making representations with respect thereto.'

No such recommendations or directions have ever been given nor has the term 'banker' ever been defined by Treasury order as provided by s. 6 of the Bank of England Act. nor is any sanction envisaged for failure to comply with directions. It is, therefore, more realistic to treat the detailed rules by which the Bank of England regulates lending by banks and certain other financial institutions as based not on the threat of implementation of s. 4, but on the conventional relationship outlined in 2.4.3. above.

The detailed rules were completely revised by the Bank in 1971, after consultation with those concerned, i. e. the London and Scottish clearing banks, the London Discount Market Association and the Finance Houses Association, and are to be found principally in the following documents:

- (i) Competition and Credit Control, published in (1971) 11 Bank of England Quarterly Bulletin (B. of E.Q.B.) 169;
- (ii) Reserve Ratios and Special Deposits, published in (1971) 11 B. of E.Q.B., Supplement;
- (iii) Reserve Ratios: Further Definitions, published in (1971) 11 B. of E. Q.B. 482;
- (iv) Competition and Credit Control, Further Developments, published in (1973) 13 B. of E. Q.B. 51.

They represent a radical change in the methods of control of credit practised in the United Kingdom. The larger part to be played by variation in interest rate levels as a regulator of demand for credit has already been discussed (above, 2.4.3.). Here we deal with direct controls on bank lending. Whereas, in the past, the Bank had pursued the practice of issuing requests to the banks to limit their lending by reference to arbitrary 'ceilings', the new control is designed to limit the banks lending capacity without artificially restricting their use of that capacity.

The rules apply in principle to all banks in the United Kingdom. Special arrangements have, however been made for the Northern Ireland banks (see Competition and Credit Control, Future Developments) to accommodate the fact that they also operate branch banks in the Republic of Ireland, and separate arrangements apply to the London Discount Market (see Competition and Credit Control: the Discount Market (1971) 11 B. of E. Q.B. 314) and to finance houses (below). The rules do not, however, say specifically what is to be understood by 'banks in the United Kingdom'. Moreover, although banks and bankers enjoy certain privileges and exemptions from various schemes of statutory regulation (see e.g., below, 5.7.4.), there exists no statutory definition of these terms either general or for particular purposes. In this situation, the approach of the Bank of England has been to apply the rules to all those institutions traditionally regarded by it as within its sphere of influence, namely the London, Scottish and Northern Ireland banks, together with the foreign banks, merchant banks

and accepting houses. In the more difficult case of the hire purchase finance houses, the Bank of England has treated them as being within the rules if they obtained recognition as banks by way of certificate from the DTI under the Protection of Depositors Act 1963, s. 25, as amended by the Companies Act 1967, s. 127 (see below, 5.7.4.1.). If they are not so recognized they fall to be treated according to the separate rules regarding finance houses. The principal elements of the rules are as follows:

- (i) The imposition of a reserve ratio whereunder each bank must keep a specified minimum percentage of defined sterling liabilities ('eligible liabilities') in the form of specified liquid assets ('eligible assets'). Eligible liabilities comprise:
 - (a) all sterling deposits, of an original maturity of 2 years or under, from United Kingdom residents (other than banks) and from overseas residents (other than overseas offices), and all funds due to customers and third parties which are temporarily held on suspense accounts (other than credits in course of transmission);
 - (b) all sterling deposits — of whatever term — from banks in the United Kingdom, less any sterling claims on such banks;
 - (c) all sterling certificates of deposit issued — of whatever term — less any holdings of such certificates;
 - (d) the bank's net deposit liability, if any, in sterling to its overseas offices;
 - (e) the bank's net liability, if any, in currencies other than sterling; less
 - (f) 60% of the net value of transit items in the bank's balance sheet.

Reserve assets consist of:

- (a) balances at the head office or branches of the Bank of England (other than Special Deposits);
- (b) British Government and Northern Ireland Government Treasury bills,
- (c) company tax reserve certificates;
- (d) money at call with the London money market;
- (e) British government stocks and nationalized industries' stocks guaranteed by the Government, with one year or less to final maturity;
- (f) local authority bills eligible for rediscount at the Bank of England;
- (g) commercial bills eligible for rediscount at the Bank of England up to a maximum of 2% of the total eligible liabilities.

Under the rules as they presently stand, the total of a bank's reserve assets must be at least 12.5% of

its eligible liabilities; there are no restrictions (other than the limitation on commercial bill holdings) on the distribution of funds between the particular categories of assets.

- (ii) A power in the Bank of England to call upon banks to make interest-bearing deposits with it (known as Special Deposits), expressed as a percentage of eligible liabilities but not counting, for reserve ratio purposes, as eligible assets. The need for a call for Special Deposits is determined by the authorities, in the light of monetary conditions generally, including the behaviour of total sterling lending by all banks, and the intention of the authorities to maintain adequate control. When called, Special Deposits are, with one exception, a uniform percentage across the banking system, normally of each bank's total eligible liabilities. The exception is for Northern Ireland banks, which, because of the economic conditions prevailing in the province, have been exempted from the last three calls for Special Deposits. The amount of Special Deposits to be placed with the Bank of England may be calculated by reference to all or only some of the bank's liabilities to which the reserve ratio would be applied. In particular, a call may be related to domestic or overseas deposits, or the rate of call may be different for domestic and overseas deposits. Special arrangements for such differential calls are set out in 'Competition and Credit Control: Further Developments'. Even in such cases, however, the rate (s) of call are the same for all banks and all deposits called bear interest at a rate equivalent to the Treasury bill rate which the Bank is free to determine day by day.
- (iii) As part of the new arrangements, the London and Scottish clearing banks have abandoned their collective agreements on interest rates. Provision may be introduced, if necessary, for limiting the terms offered by banks for savings deposits, to protect the position of savings banks and building societies in face of competition by banks for deposits: below, 5.5.2.

Finance houses which are not recognized as banks are subjected to a scheme similar to that for banks, with the same calls for Special Deposits normally being made, but with their reserve ratio set at a lower figure (10%). Finance houses having eligible liabilities of less than £ 5 m are exempt so long as they remain below this limit. The eligible liabilities of finance houses, as for banks, exclude deposits having an original maturity of over 2 years; as the finance houses remain outside the banking system, amounts borrowed from banks are also excluded, so that the liability to hold reserve assets and make Special Deposits is not applied twice to the same funds. Although the minimum reserve asset ratio for finance houses is 10%, instead of 12.5% the definition of eligible

assets is the same. Furthermore, the calls for Special Deposits should normally be at the same rate as calls on the banks; but the Bank of England retains the right in certain defined circumstances to call Special Deposits from finance houses at a higher rate. In no circumstances, however, will the total of reserve assets and Special Deposits represent a higher proportion of eligible liabilities for finance houses than for the banks.

The Bank expects to continue to give qualitative guidance to the banking system, for example, that certain priorities should be observed in lending, or that personal loans for the purchase of goods subject to hire purchase terms control (when in operation — see 5.2.2.1.) should not be on conditions easier than those statutorily fixed for agreements subject to terms control.

All these arrangements being extra-legal, it is hard to be specific about such matters as sanctions. Such is the prestige of the Bank of England that in the past an expression of the Governor's concern has almost invariably been enough to secure rectification of aberrant conduct by a bank. On one occasion, prior to 1971, however, the clearing banks refused (or at least failed) to comply with the lending ceiling set by the Bank of England, which 'punished' them by halving the rate of interest they received on their Special Deposits with it for as long as the ceiling was exceeded. There seems to be no reason why such a sanction should not be applied again as necessary.

In law, all these constraints, under the 1971 policy or otherwise, would appear to have been voluntarily accepted by the banks. Recourse to the courts by a bank dissatisfied with the workings of the control is all but unimaginable and could, in the absence of any legal obligation to submit to that control, bring no positive result.

5.3. Regulations for times of economic crisis [20]

Besides a common law or prerogative power in the Government to deal with national emergencies falling short of war, whose scope is so uncertain that it is unlikely ever to be resorted to, there exist various statutory powers specifically designed for situations of economic crisis. Most important is the Emergency Powers Act 1920, as amended by the Emergency Powers Act 1964, which was originally passed to deal with strikes in essential services, but subsequently broadened in application.

Under s. 1 (1), the Queen, acting on the advice of the Government, may proclaim a state of emergency if it appears to her: 'that there have occurred, or are about to occur, events of such a nature as to be calculated, by interfering with the supply and distribution of food, water, fuel and light, or with the means of locomotion, to deprive the community, or any substantial portion of the community, of the essentials of life'.

Such a proclamation is valid for only one month, but may be renewed. In a state of emergency and for so long as it continues, such regulations may be made by Order in Council as are deemed necessary for securing and regulating the supply and distribution of the necessities of life, for preserving the peace and other essential purposes (s. 2 (1)). These are very general words, but some of the most drastic measures which might be construed as permitted by them for dealing with strikes, such as compulsory military service or industrial conscription, are expressly excluded by provisos to the section.

All of the states of emergency actually declared since 1920, the last two in 1970 and 1972, have been occasioned by strikes or other crippling industrial action. The most recent of the regulations issued under the 1920 Act were the Emergency Regulations 1972, S.I. 1972/157, and the Emergency Regulations (No 2) 1972, S.I. 1972/1164 issued to deal with the emergencies created by the miners' strike and the dock workers' strike respectively. The regulations, which were in similar terms in each case:

- (i) conferred important powers on the Secretary of State for Employment to make directions for the control of port traffic and the regulation of employment in ports (suspending any obligations of employers under dock labour schemes or under s. 1 of the Docks and Harbours Act 1966);
- (ii) permitted the relaxation of restrictions as to the use of road vehicles, suspending the usual requirements regarding goods vehicle licences, road service licenses, public service vehicle licenses, drivers' hours and licences, excise licences and third-party insurance;
- (iii) suspended certain statutory obligations of carriage and supply imposed on public transport and other public utilities;
- (iv) empowered Ministers to fix maximum prices for food and animal feedingstuffs, to regulate transport services, to requisition goods and take possession of land, and to control and conserve the supplies and distribution of gas, electricity, water, and solid and liquid fuel;
- (v) listed a number of offences — sabotage, trespassing and loitering, interference with Her Majesty's forces, constables and other persons performing essential services, inducing persons to withhold services; and
- (vi) empowered constables to arrest without warrant any person reasonably believed to be guilty of an offence under the Regulations. It was not an offence, however, simply to take part in, or to peacefully persuade any other person(s) to take part in, a strike.

The actual use of powers under these Regulations has in recent years been relatively insignificant. Various orders were made under the first set of 1972 Regulations restricting electricity consumption; none were made under the second set. The Emergency Regulations themselves are subject to strict Parliamentary control: Parliament must be recalled if not in session, and the Regulations must be confirmed by an affirmative resolution of both Houses of Parliament within seven days of being made (s. 2(2)).

A more direct power to deal with threatened or existing industrial action likely to be gravely injurious to the national economy (or to threaten national security, public order or safety) has been conferred on the Secretary of State for Employment by the Industrial Relations Act 1971, ss. 138 and 139. S. 138 provides:

(i) Where it appears to the Secretary of State:

- (a) that in contemplation or furtherance of an industrial dispute, industrial action consisting of a strike, any irregular industrial action short of a strike, or a lock-out, has begun or is likely to begin;
- (b) that the condition specified in the next following subsection is fulfilled; and
- (c) that, having regard to all the circumstances of the industrial dispute, it would be conducive to a settlement of it by negotiation, conciliation or arbitration if the industrial action were discontinued or deferred;

the Secretary of State may apply to the Industrial Court for an order under the next following section.

(ii) The condition referred to . . . is that the industrial action in question has caused or . . . would cause an interruption in the supply of goods or in the provision of services of such a nature, or on such a scale, as to be likely:

- (a) to be gravely injurious to the national economy, to imperil national security, or to create a serious risk of public disorder; or

to endanger the lives of a substantial number of persons, or expose a substantial number of persons to serious risk of disease or personal injury.'

These criteria, it may be noted, are different from, and in some respects wider than, those for the declaration of a state of emergency under the Emergency Powers Act 1920. Under s. 139, the Industrial Court, if satisfied that the action is injurious as alleged and that a postponement may assist a settlement of the dispute, must grant an order postponing the action for up to sixty days,

and specifying the area of employment in respect of which it is to have effect, the persons to be bound by it, the date on which it is to take effect, and the period for which it is to remain in force. S. 139 (6) provides that the persons specified in the order are required to take steps to secure that the industrial action is discontinued or deferred during the period for which the order remains in force. No penalty is specified for a failure to obey an order; such failure would constitute a contempt of court and might therefore be punished by fine or imprisonment.

Under ss. 141-145, the Secretary of State may, given the prevalence of the conditions in s. 138 (2) (above), or of the condition 'that the effects of the industrial action on a particular industry are, or are likely to be, such as to be seriously injurious to the livelihood of a substantial number of workers employed in that industry' (s. 141 (2)), apply to the Industrial Court for an order requiring a secret ballot to be taken, if 'there are reasons for doubting whether the workers who are taking part or, are expected to take part in the strike or other industrial action, are or would be taking part in it in accordance with their wishes, and whether they have had an adequate opportunity of indicating their wishes in this respect . . .' (s. 141 (1) c)).

While, on such an application, the Industrial Court must satisfy itself as to the prevalence of the conditions referred to, it cannot, if so satisfied, refuse the Secretary of State's application unless he could not reasonably have reached his conclusion that there were grounds for doubt as to the true wishes of the workers: *Secretary of State v ASLEF* (No 2) [1972] 2 Q.B. 455 (Court of Appeal).

Finally, one may mention provisions specifically designed to cope with situations of food shortage: under s. 95 of the Agriculture Act 1947 (and s. 35 of the Agriculture (Scotland) Act 1948), the Minister of Agriculture (or his Scottish equivalent) may give himself power, for a period of a year, to direct farmers as to the use to be made of their land, the work to be done on it and the kind of crops to be grown, when it appears necessary to do so in the interests of the national supply of food or other agricultural products. This power, a remnant of the elaborate system of supervision of agriculture set up during the Second World War and maintained in force for some time after it, has never been used in peace time.

5.4. Imports, exports and exchange control

5.4.1. IMPORTS AND EXPORTS [21]

The source of the power enjoyed by the Department of Trade and Industry to regulate, for economic and other ends, all imports and exports of goods, is the Imports, Exports and Customs Powers (Defence) Act 1939, s. 1. The Act, which empowers the DTI to make such provi-

sion as it thinks expedient for regulating imports and exports of all goods, or goods of any specified description, was passed on the outbreak of war as a temporary measure valid only for the duration of the emergency which gave rise to it, but as no order has been made, under s. 9 (3), to declare the end of the emergency in relation to this Act, it has remained in force ever since.

By virtue of Article 1 of the Import of Goods (Control) Order 1954, S.I. 1954/23, made under the Act, all goods are prohibited to be imported into the United Kingdom, except, according to Article 2, under the authority of a licence granted by the DTI; most imports are now covered by an Open General Import Licence, revised from time to time, individual licences being required for others. The present Open General Import Licence of 30 June 1971 which came into operation on 19 July 1971, revoking the General Licence of 28 December 1966, provides that all goods which are not included in either of the two Schedules may be imported under the Licence. The goods comprised in Schedule 1 may be imported under the authority of the Licence except in certain cases where an individual import licence will be required. The goods in this Schedule are further distinguished according to the place from which they originated or were consigned: these may be goods which may not in any circumstances be imported under the Licence ('W'), goods which may not be imported under the Licence if they are from the Dollar Area ('D'), of from the Eastern Area ('E'), goods which may not be imported from Japan unless consigned under the authority of the Japanese government ('J'), similarly with respect to goods from Romania ('R'), and, lastly, goods which may not be imported if they do not originate from, or are not consigned from, the Scheduled Territories ('NST'). The goods in Schedule 2 (cotton textiles) may be imported under the Licence subject to the conditions of Article 4 of the Licence.

The main goods covered by Schedule 1 are meat and meat products, fruit and vegetables, whether fresh, chilled, frozen or dried, coffee, herbs, oils, dairy products, petroleum oils and gases, beet and cane sugar, yarns (metallized, cotton), textile products, foot and head wear, clothes, tableware, ornaments, pottery, aluminium, rum, cigars, transistorized radio and television broadcast receivers, aircraft of an all-up weight exceeding 4500 lb, clocks and watches, firearms and ammunition (not including airguns and antique firearms).

The amendments to date have either enabled certain goods to be imported under the Licence, notwithstanding that they come from the Eastern or Dollar Areas (e.g. dead poultry, cheese, salami, certain textile fabrics), or have added other goods to the list of those which may not be imported from any source under the authority of the Licence (e.g. Amendment 3 — 20 January 1972 — furskins, rugs and coverlets made from the skins of leopard, vicuna, tiger and cheetah; this amend-

ment, it should be said, was made not so much for economic reasons as for the protection of the world environment).

Under the Export of Goods (Control) Order 1970, S.I. 1970/1288, specified categories of exports are prohibited save under licence, the prohibitions varying according to the destination of the goods. Article 4 of this Order prohibits:

- (i) the export of certain goods listed in Schedule 1;
- (ii) the export of certain other goods in Schedule 1 other than to the Commonwealth, Ireland, South Africa and the USA; and
- (iii) the export of any goods to Southern Rhodesia.

Article 5 (1) provides exceptions from those prohibitions: paragraph (a) provides that goods may be exported under the authority of licences granted by the DTI; paragraph (b) lists specific exemptions such as samples, aircraft, hovercraft, firearms and ammunition (if authorized to be held by a valid certificate issued under the Firearms Act 1968), live cattle, sheep and swine (under licence granted under Article 9 (1)(a) of the Exported Animals Protection Order 1964, S.I. 1964/704 made under the Diseases of Animals Act 1950), and strategic goods (under licence from the DTI under the Control of Goods (Import Certificates) Order 1951, S.I. 1951/1016). Paragraph (2) of Article 5 provides, however, that: 'Nothing in paragraph (1) of this Article shall be taken to permit the export from the United Kingdom to any destination in Southern Rhodesia, of any goods the export of which is prohibited by the Southern Rhodesia (UN Sanctions) (No 2) Order 1968, S.I. 1968/1020, as from time to time amended'.

Schedule 1 itself has nine groups which cover: aircraft and arms etc.; atomic energy materials; electrical, electronic and scientific appliances; certain chemicals; certain minerals and metals; engineering products; large transport trailers; miscellaneous items, including cattle, eggs and artificial graphite; and valuables, including antiques.

Other controls include the Strategic Goods (Control) Order 1967, S.I. 1967/983, made under s. 3 of the Emergency Laws (Reenactments and Repeals) Act 1964, which prohibits the export of arms, etc. (goods corresponding to the first seven categories in Schedule 1 to the 1970 Order (S.I. 1970/1288)) to certain Eastern Zone countries.

The above Orders, coupled with the nature of the goods subject to control, show that the main purpose of export regulation is today strategic rather than economic, though exports of some goods of primarily economic importance — metals, cattle, certain foodstuffs — do fall within the Order and have been controlled for economic purposes. For example, on several occasions during

1971, the DTI has imposed increasingly severe controls on the export of ferrous scrap, for which individual licences, granted subject to stringent conditions, are now required. This control has been imposed because of strong demand by British foundries and steelworks, in order to protect the home steel industry.

Overseas trading transactions are also regulated by the Exchange Control Act 1947, ss. 21 and 22 of which require Treasury permission for the import and export of gold, United Kingdom and scheduled territories' currency, and certificates of title to securities, the Import, Export and Customs Powers (Defence) Act 1939 applying only to goods. S. 23 of the 1947 Act requires the consent of the Treasury (which acts through the Bank of England) for the export of goods unless the Commissioners of Customs and Excise are satisfied:

- (a) that payment for the goods has been made to a person resident in the United Kingdom in such a manner as may be prescribed in relation to goods of that class exported to a destination in that territory, or is to be so made not later than six months after the date of exportation; and
- (b) that the amount of the payment that has been made or is to be made is such as to represent a return for the goods which is in all circumstances satisfactory in the national interest.'

A general consent has been given to exporters extending credit insured by the Export Credits Guarantee Department (above, 3.2.4.).

The Act further imposes a duty (in ss. 24 and 25) on United Kingdom residents to collect foreign currency debts promptly and not to delay the sale or importation of goods unduly.

5.4.2. EXCHANGE CONTROL [22]

These provisions of the Exchange Control Act are supplementary to its principal purpose and effect of giving the Treasury, which operates through the agency of the Bank of England, control over all transactions in gold or foreign currency in the United Kingdom or involving United Kingdom residents, and over all financial transactions between United Kingdom residents and persons resident outside the 'scheduled territories' (see S.I. 1972/930: Scheduled Territories now consist only of the United Kingdom, the Channel Islands, the Isle of Man, and the Republic of Ireland). So sweeping are the powers conferred by the Act for this purpose that it has required only one minor extension in the twenty-six years of its operation: see Finance Act 1968, s. 55, widening its definition of securities (s. 42) to include sterling certificates of deposit. The scheme of the Act is to forbid all such transactions, except with Treasury con-

sent. Under s. 1, except with such permission, no person, other than an authorized dealer (see below) may, in the United Kingdom, and no person resident in the United Kingdom other than an authorized dealer may, outside the United Kingdom, buy or borrow any gold or foreign currency from, or sell or lend any gold or foreign currency to, any person other than an authorized dealer. By the Exchange Control (Authorized Dealers and Authorized Depositories) Order 1969, S.I. 1969/517, the Treasury have appointed the Bank of England and two named private firms as authorized dealers in gold, and a number of banks (other than the Bank of England) as dealers in gold and in all foreign currencies.

Certain Orders have been issued which provide exemptions to the requirement of Treasury permission:

- Exchange Control (Traders in Coin) Order 1947, S.R. & O. 1947/2050;
- Exchange Control (Gold Coins Exemption) Order 1966, S.I. 1966/438;
- Exchange Control (Purchase of Foreign Currency) Order 1970, S.I. 1970/789.

This last Order exempts from s. 1 (1) of the 1947 Act the purchase outside the United Kingdom and the Channel Islands by travellers resident here of foreign currency:

- (i) with sterling or sterling currency notes which they may export on their persons or in their baggage; or
- (ii) by the encashment of sterling cheques if the traveller holds a cheque card issued by a bank specified in the Schedule and the cheque is drawn within the limits imposed on the use of the cheque card.

Both exemptions are subject to conditions limiting the use to which such foreign currency may be put to travel expenditure, and limiting the period for which it may be retained to one month after the traveller's return. Applications for permission, in cases not falling within the above exemptions, are made through the banks, to whom the Bank of England, in its turn, has substantially delegated the operation of the controls imposed by the Act (see below).

S. 2 requires the surrender of gold and foreign currency to authorized dealers, unless the Treasury consents to the retention and use thereof, or to the disposition thereof to any other person; in such circumstances, the person retaining, using or disposing of such gold or foreign currency must comply with such conditions as may be prescribed by the Treasury. Further, where a person has become bound to offer any gold or specified currency for sale to an authorized dealer, he shall not be deemed to comply with that obligation by an offer made by him, if the offer is an offer to sell at a price exceeding that au-

thorized by the Treasury or without payment of any usual or proper charges of the authorized dealer (s. 2 (4)).

The price authorized by the Treasury under this subsection in relation to foreign currencies (all of which are now specified: see S.I. 1967/556) is in fact the current market rate in the official foreign exchange market. In periods when fixed parities have been in operation, this rate has been maintained within the limits set by the Articles of Agreement of the International Monetary Fund only by Bank of England support through the Exchange Equalization Account (above, 2.4.3.). The Treasury may also direct, where a person has become bound to offer any gold or specified currency for sale to an authorized dealer and has not complied with that obligation, that that gold or currency shall vest in the Treasury, free from any mortgage, pledge or charge.

Pt. II of the Act prohibits, except with Treasury permission, the making of any payments to (or for the credit of) certain persons (although the Act contains no definition of 'payment'). It is certain, however, that the handing over of money is caught by the Act not only if the intention is to discharge a debt, but also if the transaction constitutes a loan, deposit, bailment or gift. The Act envisages three types of payment: under S. 5, no person may, in the United Kingdom (without Treasury permission):

- (a) make any payment to or for the credit of a person resident outside the scheduled territories; or
- (b) make any payment to or for the credit of a person resident in the scheduled territories by order or on behalf of a person resident outside the scheduled territories; or
- (c) place any sum to the credit of any person resident outside the scheduled territories.'

This last paragraph, it should be noted, does not prohibit the acknowledgement or recording of a payment where a person resident outside the scheduled territories has paid a sum in or toward the satisfaction of a debt due from him.

There are two main exceptions to s. 5:

- (i) certain payments *in cash* may be made in the United Kingdom to persons resident outside the scheduled territories. Such persons may be paid by a resident of these territories up to £ 10 in value; by a British banker unlimited amounts out of moneys standing to the recipient's credit with that banker; by a person resident outside the scheduled territories unlimited amounts, if such payment is made with money legally imported into this country or withdrawn from the payer's account with a British bank (Article 3 of Exchange Control (Payments) Order 1950, S.I. 1950/1072);

- (ii) payments by bank transfer: a transfer by a resident to the sterling account of a non-resident is subject to permission, but amounts standing to the credit of the sterling account of a person resident outside the scheduled territories with a United Kingdom bank may be freely transferred to the sterling account of any person with a United Kingdom bank; the residence of the transferee does not matter (Exchange Control (Payments) Order 1952, S.I. 1952/1515).

S. 6 relates only to residents of the United Kingdom, and makes it illegal for them to make any payment outside the United Kingdom to a person resident outside the scheduled territories. S. 6 (2) provides that this prohibition does not apply to foreign currency obtained or retained in accordance with the Act.

S. 7 relates to compensation deals and prohibits a payment to a resident of the scheduled territories if it is made in consideration for or in association with the receipt of a payment or the acquisition of property outside the scheduled territories. Again, nothing in this section shall prohibit the making of any payment in accordance with the terms of a permission or consent granted under the Act.

It can be seen that the Act applies to all persons, whether or not they are in the United Kingdom or are British subjects (s. 42 (5)), thus absence from the United Kingdom or foreign nationality does not necessarily exempt a person from the obligations and prohibitions imposed by the Act. The Act gives the Treasury power (but probably not absolute discretion) under s. 41 (2) to determine the residence of a (physical or legal) person, and to treat an emigrant as a resident (s. 40); the personal representative is treated as a resident in the country of the deceased's residence (s. 41 (1)). A British branch of a foreign bank is treated as a resident, but, otherwise, a branch or head office of a business is treated as if it were a body corporate resident where the branch or head office is situated.

Securities are covered by ss. 8-20 (see 5.6.2.); shares in a partnership, undivided shares in joint property, interests in trust funds and interests in foreign corporations in respect of which a certificate of title has not been issued, do not come within the definition of securities, and are affected by the Act only if and in so far as they confer at least a future or contingent right to receive specified currency or to receive sterling from a person resident outside the scheduled territories. In that event, s. 24 applies, and they are treated in the same way as debts.

With regard to the enforcement and administration of the Act, the Treasury have power, under s. 34 (2), to delegate and authorize the delegation of their powers under s. 37 (4), and it is on this basis that the control is worked. The Exchange Control at the Bank of England

operates the whole system under the Treasury. Large powers are subdelegated to certain banks who are appointed authorized dealers in foreign currency for the purpose of ss. 1 and 2, and authorized depositaries of securities for the purpose of ss. 15 and 16, and who are also empowered to approve various forms for the purchase of foreign exchange, the opening of credits, the payment into non-resident sterling accounts, the transfer of securities, and the issue of permits to export under Pts. I-IV of the Act. Certain powers and duties are conferred on other bodies and persons, such as the bullion brokers who are authorized as dealers in gold under ss. 1 and 2, and the Customs authorities, under s. 23, with respect to payments for exports.

The Bank of England issues numbered Notices to banks, etc. in connection with the operation of the Act and orders thereunder. Through these Notices, or by way of specific communication to particular banks, it exercises by delegation the Treasury's power, under s. 34 (2), to give directions to persons entrusted with duties under the Act; for example, by imposing a day by day limit of £ 50 000 on each bank's net open position in foreign currencies, and of £ 100 000 on its spot currency balances covering forward liabilities: see E.C. Notice 54, paragraph 7.

By s. 31, any provision of the Act imposing an obligation or prohibition is to be subject to such exemptions as may be granted by order of the Treasury; any such exemption may be absolute or conditional. Apart from that section, the provisions of the Act imposing obligations or prohibitions are in general expressed to be subject to Treasury consent or authority to dispense with such obligations or prohibitions (s. 37 (1)). In practice, in addition to the orders granting exemptions under s. 31, and to permissions granted in particular cases, various more general permissions, consents and authorities, not in statutory instrument form, are granted from time to time, sometimes by Notices and instructions to bankers and others, sometimes in the form of printed memoranda for guidance.

Contraventions of the Act, namely the carrying out of any relevant transaction without the permission of the Treasury, or in defiance of conditions attached to such permission, are criminal offences, punishable either summarily or on indictment by fine or imprisonment. It may be noted that the normal privilege of silence for an accused person in criminal proceedings is in this case displaced by statute (Sch. 5, paragraph 1 (1), which permits the Treasury to require any person in, or resident in the United Kingdom, to furnish information required for the purpose of securing compliance with, or detecting evasion of the Act: see *D.D.P. v Ellis* [1973] 2 All E.R. 540); and that common law protection against illegal search is likewise displaced (Sch. 5, Paragraph 3 (1)) by authorizing authorities enforcing the Act to retain, for a certain time, articles (however come by) reasonably be-

lieved to be evidence of an offence against the Act. Such statutory provisions are most unusual.

Civil liability, essentially in contract, arising out of the operation of the Act, is regulated by s. 33, which reads into contracts an implied condition forbidding performance so far as contrary to the Act. The operation of this section may be displaced if it appears to be contrary to the intention of the parties, in which case the normal rules regarding illegal contracts will apply, and the whole contract, or the relevant part of it, if severable from the rest, will be unenforceable.

5.5. Regulation of industrial structure

British Governments have always hesitated to impose by regulation their views as to what structures of industry might be desirable in the national interest. Indeed, save in relation to those sectors — transport, energy, steel — in which the post-war Labour Government carried through programmes of nationalization, and other public utilities such as water (see Water Act 1973, Water (Scotland) Act 1967), they have seldom held views firm enough to be capable of imposition in this way. One finds, therefore, that even in cases where cartelization and elimination of competition have been as the remedy for national or sectoral economic ills, legislation has gone no further than to provide for rationalization by agreement (the Coal Mines Act 1930, largely ineffective), to implement agreements already reached (the Sugar Industry (Reorganization) Act 1936), or exceptionally, in the case of the cotton industry, to impose levies towards the cost of compensation payments for the agreed elimination of excess capacity under reorganization schemes (Cotton Industry Act 1959). Non-regulatory methods adopted for the same purpose include pressure through procurement policy (above, 2.5.2.) and the incentive of grants and tax advantages for approved reorganization schemes (above, 3.1.3. and see Shipbuilding Industry Act 1967, now expired). In consequence the only general statutory regulation relating to industrial structure is that designed to reinforce competitive behaviour while controlling merger and monopoly movements in the national interest.

5.5.1. REINFORCEMENT OF COMPETITION [23]

5.5.1.1. Background and objectives of the general law

For several hundred years, until about the middle of the nineteenth century, the attitude of the common law in the United Kingdom, based on a clear medieval legislative policy, was hostile to restraints on competition. Conspiracies, by competitors or others, to injure a man in his trade, were sanctioned as civil wrongs, and contractual provisions which were unduly restrictive of trade would not be enforced by the courts. In the second half of the nineteenth century and in the first part of the twentieth, however, this common law apparatus both

fell into disuse, as a result of judicial withdrawal from any attempt to lay down norms of competitive behaviour, and became outmoded, being incapable of attacking the informal, multilateral restraints on competition such as cartels which were commonplace, indeed officially encouraged, during the inter-war period. Competition law therefore had to make a fresh start through legislation after 1945. It is this statutory post-1945 law on which we therefore concentrate, though it may be pointed out that there has in recent years been a recrudescence in the common law regarding contracts in restraint of trade, which has assumed some importance in relation to long-term sole agency agreements.

The principal objective of modern United Kingdom competition law was originally the improvement of the United Kingdom's economic performance. Competition is first mentioned in a government statement on employment policy in 1944 (Cmd. 6527), and it appears, from this context and from the debates on the original competition legislation, the Monopolies and Restrictive Practices (Inquiry and Control) Act 1948, that the main evil which it was thought might flow from an absence of competition was artificial restriction of production leading to loss of employment opportunities and under-use of productive potential. The 1948 Act did not assert that this consequence would follow, nor even that it would always outweigh any advantages, such as market stability, to be derived from restrictions on competition; it merely set up machinery for the investigation and, if necessary, the eradication of anti-competitive activities and arrangements shown to have deleterious effects on the national economy. These investigations soon showed that the original viewpoint, while not incorrect, was unduly coloured by pre-war cartel experience and the erroneous expectation of post-war depression, rather than the inflation which actually followed. At the same time, they made it clear that anti-competitive activities and arrangements could, and certain types of arrangements almost certainly would, produce other evils such as high prices, lack of technical innovation, and inability to compete in international markets. In the Restrictive Trade Practices Act 1956, a presumption therefore appeared against certain kinds of restrictive trading agreement; but the general objective continued to be one of securing optimum economic performance. In the last ten years, however, increasing stress has been laid on preserving a proper balance between the interests of the various parties to trading transactions, and in particular in redressing the balance of market power which is often tilted against the buyer, usually the ultimate consumer. The Monopolies and Mergers Commission (see below) has come to devote a large part of its inquiries and recommendations towards abuses of market power and the consequent detriments to consumers and (to a much smaller extent) competitors, rather than to dismantling the situations that confer such power. The Resale Prices Act 1964 was specifically designed to eradi-

cate anti-competitive arrangements between individual producers and retailers, which affect the consumer most directly. Finally, the latest revision of our competition legislation, the Fair Trading Act 1973, is impregnated with 'consumerism' and makes a new permanent official, the Director-General of Fair Trading, responsible in large measure not only for the operation of the legislation concerning monopolies, mergers, and restrictive trading agreements, but also for operating new machinery designed for the general protection of consumers. The extent of the shift in this direction can be judged by comparing s. 14 of the 1948 Act with s. 84 (1) of the 1973 Act, each of which sets out the criteria of public interest to which the Monopolies and Mergers Commission is to have regard in preparing reports. S. 14 is concerned with meeting market requirements, with industrial efficiency, with full use of capacity and with expansion of markets. It mentions neither competition as such nor consumers. S. 84 (1), in contrast, puts 'effective competition' and 'the interests of consumers, purchasers and users' first and second among the concerns of the Commission.

5.5.1.2. Scope of the general law

The United Kingdom's current competition legislation is largely contained in four statutes: the Fair Trading Act 1973 (repealing and replacing the Monopolies and Restrictive Practices (Inquiry and Control) Act 1948 and the Monopolies and Mergers Act 1965), the Restrictive Trade Practices Acts 1956 and 1968, and the Resale Prices Act 1964. Together they cover four kinds of situation or arrangement:

- (i) The monopoly situation (Fair Trading Act, ss. 6-11). This is a situation in which:
 - (a) one-quarter or more of the supply of defined goods or services within the United Kingdom or a particular part of it is afforded by or to one person, one group of companies, or (a 'complex monopoly situation') two or more persons who, whether by agreement or not, act together so as to distort competition; or
 - (b) arrangements are in force whereby defined goods or services are not supplied at all in the United Kingdom or a particular part of it; or
 - (c) in relation to exports of defined goods either generally or to a particular market, where one-quarter of the production of such goods in the United Kingdom is in the hands of one person or one group of companies, or ('complex monopoly situation') where there are agreements restricting the export of, or competition in the export of, such goods and operating in respect of one-quarter or more of those goods produced in the United Kingdom.

The existence of such a situation is a precondition for the invocation of the procedures of reference, investigation, report and order provided for in relation to monopolies under the Fair Trading Act — see below.

(ii) The merger situation (Fair Trading Act, ss. 62-68): where two or more enterprises cease to be distinct either by being brought under common ownership or control, or by one of them being discontinued in pursuance of an arrangement for eliminating competition between them, either:

- (a) with the result that a simple monopoly situation is created or made worse; or
- (b) where the assets taken over in the merger exceed £ 5 m (or such other figure as may be substituted by order made by the Secretary of State by statutory instrument).

This is likewise the precondition for reference and investigation, etc. under the merger provisions of the Fair Trading Act — separate provisions, however, apply to newspaper mergers: below, 5.5.1.5.

(iii) The restrictive trading agreement (Restrictive Trade Practices Act 1956, ss. 6-8; Restrictive Trade Practices Act 1968, ss. 1-5; Restrictive Trade Practices (Information Agreements) Order 1969, S.I. 1969/1842; Fair Trading Act 1973, ss. 95-101, 107-115). This is an agreement or arrangement, whether legally enforceable or not, between two or more persons producing, supplying, or manufacturing goods in the United Kingdom, or between two or more persons supplying in the United Kingdom services of a description brought under control by order of the Secretary of State (*Note*: no such orders have yet been made), under which either:

- (a) certain specified restrictions of trading (e.g. regarding prices, terms of supply, production quantities, availability of services) are accepted by two or more parties; or
- (b) provision is made for the furnishing of specified kinds of trading information (at present, under the 1969 Order, regarding prices and terms of sale of goods only) by two or more parties to each other or to others.

This definition is subject to a variety of limitations and exceptions, of which the most important are the following:

- (a) agreements (or terms in agreements) about standards (of quality, performance, etc.);
- (b) agreements expressly authorized by, or by schemes, orders, etc. made under, any enactment;

- (c) purely bi-lateral exclusive dealing agreements or know-how agreements;
- (d) licensing agreements other than patent or design pooling agreements;
- (e) trade-mark agreements;
- (f) agreements in which the restrictions or provisions for the furnishing of information relate exclusively to the export of goods from the United Kingdom or the supply of services outside the United Kingdom;
- (g) agreements expressly exempted by the Secretary of State for Trade and Industry as being in the national interest on defined grounds of importance and advantage to the national economy;
- (h) agreements relating to the supply of defined professional services (e.g. legal, medical, dental, surveying, accountancy, education, etc.);
- (j) agreements of various cooperative organizations (wholesale, agricultural, fishery, etc.).

Agreements falling within this definition and outwith the above exceptions (and certain other minor exceptions) are required (unless they are collective resale price maintenance agreements) (see below) to be registered in the Register of Restrictive Trading Agreements, thereby becoming subject to the scrutiny of the Restrictive Practices Court. Collective resale price maintenance is, however, simply illegal; it does not give rise to criminal sanctions, but may give rise to an action by any affected party for damages (or to action by the Crown or such a party for injunction or (Scotland) interdict to prevent the continuance of such conduct).

- (iv) Individual resale price maintenance (Resale Prices Act 1964, ss. 1-3). This consists either in:
 - (a) the insertion of terms in contracts or agreements for the sale of goods by a supplier to a dealer providing for minimum of prices to be charged on any resale of goods in the United Kingdom; or
 - (b) the refusal to supply goods otherwise than subject to such terms; or
 - (c) notification to dealers, or publication, of prescribed minimum resale prices; or
 - (d) refusal to supply dealers on the ground that they have sold or are likely to sell the supplier's goods at less than such a minimum resale price, or to sell them to other persons who have so resold or are likely so to resell them.

These practices are unlawful, giving rise to civil liability, and the terms are void, unless the supplier claims exemption for his goods, in which case the goods will be registered and the case examined by the Restrictive Practices Court.

5.5.1.3. Procedures for the application of the general law

The procedures applicable on the one hand to situations (i) and (ii) above and on the other hand to situations (iii) and (iv) above, are quite different and were, until 1973, also quite separate: on the one hand the procedure of reference by the Secretary of State to the Monopolies Commission, followed, if necessary, by a statutory order to enforce its recommendations; on the other hand that of registration and bringing of the agreement or reference before the Restrictive Practices Court for a decision as to its compatibility with the public interest. The Fair Trading Act 1973 institutes a strong link, and hopefully a new coordination, between these procedures, in the person of the Director-General of Fair Trading (ss. 1, 2). While the Secretary of State continues, as do certain other Ministers, to have the power to refer monopoly situations to the Commission (s. 51) and is the only person who can refer a merger situation to the Commission (s. 64), the Director is also empowered to refer monopoly situations (unless they involve the services or goods of a nationalized industry or certain other regulated products and services, e.g. sugar, water, port facilities (s. 50 and Schs. 5 and 7)), and is under a duty to keep merger developments under review and advise the Secretary of State regarding possible references (s. 76). At the same time he has taken over the duties of the Registrar of Restrictive Trading Agreements (s. 94), which involve maintaining a Register, making sure that all registrable agreements are in fact registered, and bringing such agreements before the Restrictive Practices Court. These functions, together with his broad task of consumer protection (Fair Trading Act, Pts. II and III) (below, 5.7.2.1.) give the Director a unique ability to secure the coordinated implementation of regulatory powers over commercial behaviour. It may be noted that the Director is a semi-independent public official, who while subject to the general directions of the Secretary of State (s. 12) and to certain specific controls, e.g. the Secretary of State's power to veto monopoly references by the Director (s. 50 (6)) is not in a direct hierarchical relationship with him. A degree of 'depoliticization' of the reference process in monopoly and merger situations, akin to that already prevailing in relation to restrictive trading agreements, is therefore to be expected.

In monopoly and merger situations, therefore, the procedure starts with a reference, by a Minister or the Director, to the Monopolies and Mergers Commission. It may be noted that the referring authority has complete discretion as to the choice of the relevant geographical and functional market (ss. 10 and 68), and that in mo-

nopoly situations the reference may be limited to establishing only the facts of the situation, or may also invite the Commission, guided but not bound by the criteria already mentioned (5.5.1.1., at end), to indicate whether the facts found operate against the public interest (ss. 48 and 49). The time within which the Commission's investigation must be completed is fixed in the reference itself (ss. 55, 70) and in the case of a merger reference it is also subject to an overall time limit of six months. The legislation has always been silent on the procedure to be followed by the Commission (save for giving it powers to require production of documents, information, etc. (s. 85)), but it has in fact customarily divided its procedure into a first stage of general investigation and a second stage in which it confronts enterprises under investigation with questions regarding the public interest, formulated on the basis of the first stage results. This second stage tends to have a judicial atmosphere, with the parties (but not the Commission) being represented by counsel. In the future this stage may, indeed, take on an adversary character if the Director chooses to take an active part in the proceedings before the Commission. The Commission submits its findings and recommendations (if any) to the Secretary of State or other referring Minister, and in normal cases transmits a copy to the Director. An adverse report by the Commission may be followed either by the giving of undertakings by the firms concerned to the Minister for the purpose of remedying or preventing the adverse effects specified in the report (s. 88) or by the making, by the Minister, of an order which may require various kinds of remedial or preventive measures to be taken (which need not necessarily be those recommended by the Commission). These measures are specified in Sch. 8; Pt. I includes such things as discontinuance of agreements, prohibitions of tie-in sales, discrimination, etc., publication of price lists, prohibition or restriction of takeovers; Pt. II provides for divestiture and division of existing businesses. Such orders are to be made by statutory instrument after giving affected persons the opportunity to make representations, and in the case of orders requiring divestiture, require to be approved in draft by both Houses of Parliament. Their extraterritorial effect is limited by s. 90 (3).

In the case of restrictive trading agreements and resale price maintenance, once the agreement or claim for exemption has been registered the next step is for the Director to bring it before the Restrictive Practices Court. This Court is a superior Court of the United Kingdom, which consists partly of judges of the English High Court, the Scottish Court of Session and the Northern Ireland Supreme Court, and partly of non-legal members with knowledge of or experience in industry, commerce or public affairs. Besides considering questions of the registrability of agreements, the Court has the task of deciding:

- (i) In relation to a restrictive trading agreement, whether the restrictions in it are contrary to

the public interest, or justified by reference to criteria set out in the Restrictive Trade Practices Act 1956, s. 21, as added to by the Restrictive Trade Practices Act 1968, s. 10 and as adapted for agreements relating to services by the Fair Trading Act 1973, s. 116. The original criteria as enacted in 1956 present more or less specific compensating advantages which may be secured by restrictions, such as protection of the public against injury, specific and substantial benefits to purchasers, consumers or users, benefit to exports, avoidance of unemployment, etc. Those who wish to continue to operate a restriction must prove the existence of one or more of the specified advantages and that such advantage outweighs the disadvantages presumed to result from the restriction; or, since 1968, they may prove that the restrictions do not directly or indirectly restrict or discourage competition to any material degree. Failure to prove this will lead to the agreement being declared contrary to the public interest and void in respect of these restrictions, and in addition, either to the giving of a satisfactory undertaking to discontinue the offending parts of the agreement or, where this is not forthcoming or is inappropriate, to an order by the Court to do so.

- (ii) In relation to resale price maintenance, whether the goods referred to it by the Registrar should be exempted from the prohibition on resale price maintenance on the ground that its removal would result in one of a number of detriments to the public as consumers or users, such as reduction of quality, number of outlets or services, increase of price or risk of injury to health (Resale Prices Act 1964, s. 5). Unless the Court exempts the goods on one of these grounds the ordinary prohibitions of ss. 1-3 (above) apply.

5.5.1.4. Sanctions

The various sanctions necessary to the efficient operation of competition policy in the United Kingdom arise in different ways and at different stages of the procedure. In relation to monopoly and merger situations, no question of sanction can arise (apart from those necessary to enforce the powers of the Monopolies and Mergers Commission to demand information and documents) until an order has been made to enforce, or an undertaking given to implement, the measures considered to be necessary as a result of an adverse Commission report. The Director has the general duty of keeping under review any such order or undertaking, and advising the Secretary of State what action to take if it is not being observed, or needs to be varied (s. 88). Non-compliance with an order cannot give rise to criminal sanctions, but may give rise to civil liability to persons injured thereby (by way of actions for breach of statutory duty), and may also be stopped or prevented by injunction or interdict sought

by such a person or by the Crown (s. 93). Non-compliance with an undertaking cannot give rise to any liability unless the undertaking is in the form of a legally binding contract between the enterprise or enterprises concerned and the Crown (which is unlikely) and in any event cannot be made the basis of a civil action by third parties. It should however be stressed that, to date, informal undertakings have been the almost invariable method by which the findings of the Commission have been enforced, so much so that resort to a statutory order without first inviting the enterprises concerned to enter into an undertaking has recently been complained of as unfair.

In the case of restrictive trading agreements the situation is more complex. Liability may first arise by virtue of failure to register a registrable agreement. To continue to operate such an agreement is unlawful (Restrictive Trade Practices Act 1968, s. 7), and may give rise to proceedings similar to those applying in case of breach of an order in relation to monopoly and merger situations. Moreover the agreement is void. Furthermore, although the legislation is silent on the point, the operation, pending a decision by the Restrictive Practices Court, of an agreement which has been registered may in some circumstances give rise to civil liability to third parties (e.g. for the civil wrong of interference with trade by unlawful means: *Brekkes v Catell* [1971] 1 All E.R. 1031) if the court is satisfied that there is no reasonable doubt that the restriction will be held void in due course by the Restrictive Practices Court. The status of a registered agreement pending scrutiny is thus uncertain, and the Fair Trading Act 1973, s. 105, seeks to alleviate this difficulty by making provision for interim orders by the Restrictive Practices Court against restrictions that appear *prima facie* unsupportable. Finally, disobedience to an order of the Restrictive Practices Court requiring discontinuance of an agreement in respect of restrictions held to be void as against the public interest will lead, in the ordinary way, to a summons for contempt of court, which may result in fines or imprisonment.

Finally, the sanctions for continuing to operate resale price maintenance in respect of non-exempt goods are similar to those applying to breach of monopolies and mergers orders, or failure to register a registrable agreement.

5.5.1.5. Newspaper mergers

There are special rules relating to newspaper mergers, whose strictness in comparison with merger situations generally is accounted for by the specially high value placed on the public interest in free dissemination of information and opinion, which undue concentration of newspaper ownership might severely inhibit. A newspaper merger is defined as a transfer of a newspaper or newspaper assets to a proprietor whose newspapers have an average circulation per day, over a six month period,

amounting with that of the newspaper concerned in the transfer to 500 000 or more copies (or such other number as may be substituted by order made by the Secretary of State): Fair Trading Act 1973, Pt. V. Such a transfer is unlawful and void and those knowingly participating in it will be guilty of a criminal offence, unless it has received the conditional or unconditional consent of the Secretary of State.

The Secretary of State must not give his consent until he has referred the merger to, and received a report on it from, the Monopolies and Mergers Commission, unless:

- (i) the newspaper concerned in the transfer cannot survive as a going concern on its own, and:
 - (a) urgently needs to be transferred if it is to survive as a separate newspaper, or
 - (b) is not intended to continue as a separate newspaper anyway; or
- (ii) the newspaper has an average circulation per day of not more than 25 000 copies (or such other number as may be substituted by order of the Secretary of State); or
- (iii) the application for consent is conditional on no reference being made; or
- (iv) the Monopolies and Mergers Commission has not made its report within the time laid down by the Act (s. 60).

The Commission is required to consider whether the transfer would operate against the public interest, having particular regard to the need for accurate presentation of news and free expression of opinion.

5.5.1.6. Bank mergers

Bank mergers are subject to control through the Monopolies and Mergers Commission procedure in the ordinary way but, in addition, require the consent of the Bank of England. This is an 'informal' control, in the sense that it is not referred by the Bank to any explicit statutory basis — indeed, the rules under which the Bank operated the control were not made public until November 1972 — and can be seen as an aspect of the Bank's general supervision of the banking system (above, 2.4.3. and 5.2.2.3.). In the last resort, however, it could perhaps be enforced by way of the power of direction under s. 4(3) of the Bank of England Act 1946.

The present rules, which came into operation on 1 January 1973, appear to be designed to prevent undue concentration in the banking sector, and in particular, to control the expansion of clearing banks into other banking activities (e.g. accepting house business) and to restrict participation by foreign banks to an acceptable level.

The rules are contained in a press notice, set out at (1972) 12 B. of E. Q.B. 452, and leave much to be desired from the point of view of clarity, but their apparent purport can be summarized as follows:

- (i) the taking of any participation exceeding 15 % by one bank' in another (for the difficulties of defining 'bank' see above, 5.2.2.3.) requires the consent of the Bank of England;
- (ii) in such cases, the Bank must be consulted at an early stage and before any formal negotiation takes place;
- (iii) general requirements for consent are the existence of amicable agreement between the parties, and the satisfaction of (unspecified) tests relating to capital, management, reputation, and future intentions;
- (iv) particular requirements include:
 - (a) in the case of participations in accepting houses, that the alliance will give proper weight to the skills and talents on each side;
 - (b) in the case of participations by EEC banks, consideration of the authorities' attitude elsewhere in the Community to participation by a British bank;
- (v) it would appear that the Bank is not favourable to the taking of participations in British banks by third-country banks.

While a proposal which has been turned down by the Bank of England will not be pursued further, and would almost certainly be rejected under the Fair Trading Act if it were, the Bank's consent does not guarantee that the Monopolies and Mergers Commission and the Government, looking at the merger from a broader viewpoint which also takes account of the interest of the user, will permit it; for an example see Monopolies Commission, Barclays Bank Ltd., Lloyds Bank Ltd., and Martins Bank Ltd.: A Report on the Proposed Merger (1967-68) H.C. 319.

5.5.1.7. Other kinds of merger

A power comparable to that which the Bank of England exercises over mergers in the banking sector might be exercised by authorities (particularly central Government departments) empowered to operate the systems of 'quality' licensing discussed in 5.6.4. below. The power to refuse a licence to an enterprise which is not controlled by a fit and proper person (as under the new Insurance Companies Amendment Act 1973) can, in other words, be used to prevent mergers which are undesirable from the qualitative rather than the quantitative (market structure) point of view.

5.5.2. REGULATION OF COMPETITION

Legislative restriction of normal (as opposed to predatory) competitive behaviour in the United Kingdom is almost as rare as legislative alteration of industrial structure. The examples are to be found in the regulated industries such as agriculture (compulsory marketing schemes under the Agricultural Marketing Act 1958, below, 6.1.) and transport (fixing of compulsory fares and charges under, e.g. the Civil Aviation Act 1971 and the Road Traffic Act 1960, below, 6.4.).

Outside this sector, two isolated and highly disparate examples may be cited:

- (i) Solicitors: provision is made in the Solicitors Act 1967, s. 56 (England and Wales) for the fixing of fees for non-contentious business by order made by statutory instrument by a committee of judges and others; in Scotland, on the other hand, it is solicitors' fees for litigation that are fixed, by Acts of Sederunt made by statutory instrument by the Court of Session under powers conferred by the Administration of Justice (Scotland) Act 1933, s. 16(g) and the Sheriff Courts (Scotland) Act 1907, s. 40.
- (ii) Deposit-taking by banks: while breaking up the clearing banks' interest rate cartel as part of the arrangements announced in Competition and Credit Control (1971) 11 B. of E. Q.B. 169, the Bank of England retained reserve powers (paragraph 15) to restrict the rate of interest on deposits which might be offered by banks, largely for the purpose of securing a continuing flow of deposits to building societies. Such societies, which are the main source of private housing finance, borrow short and lend long, and are therefore highly susceptible to unrestrained competition for deposits. This reserve power was invoked in September 1973, with the imposition on banks of a limit of 9.5 % on deposits under £ 10 000.

5.5.3. ADAPTATION OF THE INTERNAL STRUCTURE OF ENTERPRISES: THE ENTERPRISE AND ITS WORKFORCE [24]

Regulation of the internal structure of enterprises promulgated with an economic purpose has concentrated on the enterprise's use of, and relationship with, its workforce.

The Industrial Relations Act 1971 marked a radical departure from the principle, established since the beginning of the century, that there should be no legislative interference with the operation of collective bargaining within the enterprise, between management and workforce (or trade unions on their behalf). With the general purpose of improving the United Kingdom's economic performance, the Act sets out to promote good industrial

relations in accordance with principles recited in s. 1 — of free collective bargaining and orderly settlement of disputes by negotiation, in each case with due regard to the general interests of the community, of free association of workers and employers in representative, responsible and effective trade unions and employers' associations and of freedom and security for workers. The Act comprehensively regulates workers' rights in relation to employers and trade unions, regulates trade union structure and industrial behaviour, and institutes a new jurisdiction, the National Industrial Relations Court, and a new advisory body, the Commission for Industrial Relations, to administer the substantive body of new laws thereby created. The part of most relevance here is Pt. III, on collective bargaining, which, in summary:

- (i) creates a presumption, rebuttable by the parties, that collective agreements are legally enforceable, and provides special procedures in the event of their breach (ss. 34-36);
- (ii) provides for remedial action where procedure agreements are non-existent or defective (ss. 37-43);
- (iii) provides for the recognition of trade unions as sole bargaining agents for individual groups of workers, and for adjudication by the National Industrial Relations Court in the event of dispute as to sole bargaining rights (ss. 44-60).

Here it may be appropriate to say a little more about ss. 37-43, which, like the emergency provisions for cooling-off periods and ballots (ss. 138-145, above, 5.3.) point up the economic finality of the Act by giving the Government important powers of initiative. S. 37 (1) provides for application to the National Industrial Relations Court by the Secretary of State, as by the employer or trade union(s) concerned, for a legally enforceable procedure agreement where none exists or one is defective. Such application may be made if the Secretary of State or any of the other parties mentioned thinks that, in relation to a particular work unit, there is no procedure agreement or none suitable for the prompt and fair settlement of disputes, or that industrial action is often taken contrary to the terms of an existing agreement. If the Court thinks (s. 37 (5)) that one or other of these conditions exists and that, therefore, the development and maintenance of orderly industrial relations have been seriously impeded, or that there have been substantial and repeated losses of working time in the particular unit of employment, it must refer to the Commission for Industrial Relations the question whether the unit does suffer from one or both of these defects, and, if so, what remedy (if any) in accordance with s. 40 of the Act is to be recommended. Under s. 40 the Commission must prepare a report, in accordance with provisions agreed upon by the parties, but also including any further rec-

ommendations of the Commission, setting out such new or revised provisions as in their opinion are required and will be capable of having effect as a legally enforceable contract. S. 41 provides for an application to the Court for an order:

- (i) defining the unit of employment to which the provisions are to apply; and
- (ii) specifying the parties on whom they are binding:

and directing that, on and after a date specified in the order and so long thereafter as the order remains in force, those provisions should have effect as a legally enforceable contract, as if a contract consisting of those provisions had been made between the parties.

The dramatic inroad made by these sections into the principles of free collective bargaining needs to be viewed against the general position of trade union hostility to the whole Act and the unwillingness of employers, by making full use of its coercive provisions, to exacerbate the consequently delicate industrial situation. One therefore finds that many agreements concluded since 1971 have been expressed not to be legally enforceable, that, according to the Commission for Industrial Relations, employers and trade unions have shown no interest in making application to the Court under s. 37, and that the Secretary of State has not himself done so to date.

Elements of regulation also appear in two other statutes concerned with employment: the Industrial Training Act 1964 and the Redundancy Payments Act 1965. We have already described (3.2.2. above) the system introduced by the former Act of financing industrial training by way of levy schemes imposed on employers in the industry concerned, and the restriction of the role of levy finance in favour of government grant finance to be effected under the Employment and Training Act 1973. The Redundancy Payments Act 1965 seeks to promote the smooth redeployment of labour by imposing on employers an obligation to make terminal payments to employees who become redundant after more than two years' service, and by creating a fund, financed by weekly contributions from employers in respect of each worker, from which payments (called 'rebates') are made in ordinary circumstances to employers who have had to make redundancy payments (the rebate amounts to about 70 % of the redundancy payment), and also to employees whose employers have refused or been unable to make the redundancy payment required by the Act.

5.6. Regulation of investment and of access to markets

5.6.1. INDUSTRIAL LOCATION [25]

The policy of influencing the location of new industrial development by the granting of various kinds of financial assistance, from cash grants to assistance in the rehous-

ing of key workers, has been described above in 3.2.1. The stick that accompanies the carrot of these incentives is the power of the Secretary of State for Trade and Industry, under town planning legislation, to prohibit any industrial development in respect of which planning permission is necessary. The purpose of this control, which has been operating since 1948, is to encourage potentially mobile projects to go to areas of greatest employment need (DTI memorandum to the Trade and Industry Subcommittee of the House of Commons Expenditure Committee, Annex D (1971-72) H.C. 508-i, p. 27). Planning permission, granted by local planning authorities is required for any development of land, that is, building operations on land or any material change of use of buildings or land (Town and Country Planning Act 1971, s. 22, Town and Country Planning (Scotland) Act 1972, s. 19) (these Acts will henceforward be referred to respectively in this section as the '1971 Act' and the '1972 Act'. Development without planning permission or contrary to any conditions imposed in a grant of planning permission are grounds for the service of an enforcement notice, which may require reinstatement of the land (including demolition of buildings); failure to comply with such a notice is a criminal offence (1971 Act, Pt. V, 1972 Act, Pt. V).

An application for planning permission for the erection of an industrial building, or for the change of use of premises so as to become an industrial building, is of no effect unless the Secretary of State for Trade and Industry has certified, having regard to the need for providing appropriate employment in development areas (for definition see 3.2.1. above) that the development in question can be carried out consistently with the proper distribution of industry (1971 Act, s. 67, 1972 Act, s. 65). The certificate delivered by the Secretary of State is called an Industrial Development Certificate (IDC). This control is subject to certain exceptions, by reference to area, and size of development, as follows:

- (i) no IDC is required for development in a development area or special development area: Town and Country Planning (Industrial Development Certificates) Regulations 1972, S.I. 1972/904, Town and Country Planning (Industrial Development Certificates) Regulations 1973, S.I. 1973/149;
- (ii) no IDC is required in the south-eastern economic planning region (excepting the Isle of Wight) where the floor space involved in the development does not exceed 10 000 sq. ft.; and
- (iii) no IDC is required in the rest of Great Britain where the floor space involved in the development does not exceed 15 000 sq. ft.: Town and Country Planning (Industrial Development Certificates: Exemptions) (No 2) Order 1972, S.I. 1972/996.

No compensation is payable for refusal of an IDC, nor is there any statutory provision for appeal from a decision to refuse an IDC. Initial decisions, however, save in relation to very large projects, will be taken by local officials of the DTI, so that an informal hierarchical appeal within the department is usually possible. A successful invocation of judicial review of a refusal of a certificate is hard to imagine: the DTI has been advised that a 'proper distribution', in terms of the Act, is that distribution which is in accord with the Government's policy for distribution at the material time, and it is likely that the courts would also take this view.

The policy of the Government in implementing IDC control is, of course, to steer development to the development areas, and also to intermediate areas, and as a lesser priority, to new and expanding towns elsewhere. Development areas, are, as we have seen, exempt, and intermediate areas are also effectively so, since, with one or two exceptions in the Birmingham area, IDCs are freely available there. In non-assisted areas 'IDCs are generally available for schemes of factory modernization which involves only a small increase in the number of employees and for projects which the Department is satisfied could not reasonably be undertaken in one of the assisted areas'. (DTI Memorandum, (1971-72) H.C. 508-i, p. 33). The effect of the policy is much less than the severity of this statement might suggest. In 1971, development areas accounted for only 29 % of square footage authorized: south-east England by itself accounted for 28 %. Of 633 applications in the south-east in that year, involving 19.34 million sq. ft., only 42, involving 1.49 million sq. ft., were refused. Even allowing for the deterrent effect of the control, and the results that can be obtained through negotiation with firms leading to withdrawal of applications, it can be seen that the total redistributive effect of the control is small.

A similar scheme for the control of office development was introduced by the Control of Office and Industrial Development Act 1965, subsequently re-enacted for England and Wales by the 1971 Act, ss. 73-86, and for Scotland by the 1972 Act, ss. 71-83. By virtue of the Control of Office Development (Designation of Areas) Order 1966, S.I. 1966/888 (as varied) and the Control of Office Development (Exemption Limits) Order 1970, S.I. 1970/1824, an office development permit granted by the Secretary of State for Trade and Industry is a prerequisite of a valid application for planning permission in respect of an office development of 10 000 sq. ft. or more in London or the south-east of England. The original legislation was limited to expire on 4 August 1972 in both England and Wales and in Scotland. It has been allowed to expire in Scotland, but has been continued in force in England and Wales until 4 August 1977 by the Town and Country Planning (Amendment) Act 1972, s. 5.

Once a certificate has been granted, there is still no guarantee that the local planning authority will, in the first instance, grant planning permission, even in a case where the Secretary of State for Trade and Industry sees the development as positively desirable. National industrial location policy can, however, always prevail in that by virtue of various provisions of the Town and Country Planning Act, the planning Minister, i.e. in England the Secretary of State for the Environment, in Scotland the Secretary of State for Scotland, in Wales the Secretary of State for Wales, or some other Minister (e.g. the Secretary of State for Trade and Industry himself) is always in a position to take the final decision. Thus:

- (i) the developer may appeal to the planning minister from an adverse decision of the local planning authority: 1971 Act, s. 36, 1972 Act, s. 33;
- (ii) the planning Minister may 'call up' any application for decision by himself in the first instance: 1971 Act, s. 35, 1972 Act, s. 32;
- (iii) the need for planning permission may be dispensed with by direction of a government department if the development is by a local authority or a statutory undertaker (i.e. person authorized by statute to carry on public utilities, such as surface transport, docks and harbours, fuel and water supply) and requires the consent of and is actually authorized by that department: 1971 Act, s. 40, 1972 Act, s. 37. Such authorization may consist not only in the giving of a formal consent (e.g. by the Secretary of State for Trade and Industry to the construction of overhead electric power lines, under the Electric Lighting (Clauses) Act 1899, Sch., s. 10 (b)), but also by departmental confirmation of the compulsory purchase of the land required for the development, by departmental consent to the appropriation or acquisition of land by agreement for the purposes of the development (e.g. by the Department of the Environment, in relation to such acquisitions by the British Railways Board or the British Waterways Board, under the Transport Act 1968, s. 49 (4)), by departmental consent to the borrowing of money for the development (e.g. under the loan sanction arrangements of local authorities, above, 2.4.2.2.), or by a departmental undertaking to pay a statutory grant in respect of the development (e.g. for local authority construction of principal roads, under the Highways Act 1959, s. 253). In these cases, the planning decision is in effect taken out of the hands of the planning Minister and put into those of the Minister responsible for the particular kind of development (who may, however, in many cases — transport, local authority developments — be the planning Minister himself).

In cases of development of operational land by statutory undertakers which requires planning permission and in respect of which either 1971 Act, s. 40 and 1972 Act, s. 37 do not apply, or do apply but no direction dispensing with planning permission has been given, any appeal, or first instance decision by way of the 'calling up' procedure, is to be dealt with jointly by the planning Minister and (if different) the Minister responsible for the particular kind of development: 1971 Act, s. 225, 1972 Act, s. 214.

For each of the above cases (i), (ii) and (iii), the 1971 Act, ss. 47-49 and the 1972 Act, ss. 44-47, provide an optional special procedure, that of the Planning Inquiry Commission. In each such case, and also in the case of proposals that development should be carried out by or on behalf of a government department, the matter may be referred to such a Commission consisting of a chairman and two to four other members, if the Minister or Ministers concerned think that a special inquiry is necessary, by virtue of considerations of national or regional importance, or of unfamiliar technical or scientific aspects of the proposed development. The task of the Commission on such a reference is to identify and investigate the considerations relevant to, or the technical or scientific aspects of, that matter, which they believe are relevant to the question whether the proposed development should be carried out, and to assess the importance to be attached to such considerations or aspects. They may also be asked to consider alternative sites for the proposed development. As with appeals made to the Secretary of State, the applicant (or appellant) and the local planning authority may if they wish appear before and be heard by the Commission. After completing the investigations, the Commission reports back to the Secretary of State. In this way, economic as well as purely physical planning arguments may be put forward by applicants and objectors and properly considered.

5.6.2. CONTROL OF FOREIGN INVESTMENT [26]

As outlined in the Bank of England's Guide to Exchange Control in the United Kingdom (January 1972), control over securities seeks to protect official reserves and to prevent any unauthorized transfer of United Kingdom assets to non-residents. Controls over dealings in sterling securities are mainly concerned with ensuring that:

- (i) additions to non-resident holdings of such are paid for in sterling from an External Account, in funds eligible for credit to an External Account, or in sterling arising from the sale of foreign currency in the official foreign exchange market, thereby obtaining the proper balance of payments benefit from non-resident investments;

- (ii) interest, dividends and capital payments on such securities are not remitted outside the scheduled territories unless the holdings have been properly acquired by non-residents;
- (iii) purchases of such securities on behalf of non-residents on Stock Exchanges do not frustrate the rules for inward direct investment in United Kingdom companies.

Control is secured through the Exchange Control Act 1947. Under s. 8 (1) of this Act, Treasury permission is required for the issue, in the United Kingdom or elsewhere, of securities registered in the United Kingdom, unless two conditions are fulfilled, namely:

- (a) neither the person to whom the security is to be issued nor the person, if any, for whom he is to be a nominee is resident outside the scheduled territories; and
- (b) the prescribed evidence is produced to the person issuing the security as to the residence of the person to whom it is to be issued, and that of the person, if any, for whom he is to be a nominee.

S. 9 also requires Treasury permission for the transfer of securities and coupons where either the transferor or transferee is resident outside the scheduled territories. Treasury consent is further required in respect of the issue, outside the United Kingdom, of bearer certificates or coupons (s. 10), the substitution of securities and certificates of title outside the United Kingdom (s. 11), and the payment outside the United Kingdom of capital moneys payable on a security registered in the United Kingdom (s. 12). Under s. 30 (2) of the 1947 Act, no person resident in the United Kingdom may, without Treasury permission, do any act whereby a body corporate which is by any means controlled, directly or indirectly, by persons resident in the United Kingdom ceases to be so controlled s. 30 (3) imposes a requirement of Treasury consent for the lending of money, Treasury bills or securities to any body corporate resident in the scheduled territories which is by any means controlled, directly or indirectly, by persons outside these territories. These powers are such as to permit complete control over both foreign portfolio investment and inward direct investment involving the use of a United Kingdom subsidiary company or the raising of any finance from United Kingdom sources.

Control over portfolio investment is ensured by two Bank of England Exchange Control Notices, E.C. 10 and 11, which set out the procedure to be followed in the United Kingdom by persons concerned with the issue and registration of securities and the recording of mandates. A permission is included which, with certain exceptions, enables the issue of securities to be made in the

United Kingdom without specific reference to the Bank of England. Issues for which specific consent is still required include issues of securities payable in foreign currencies, of United Kingdom-registered securities outside the United Kingdom, and of securities in the United Kingdom on behalf of non-residents. Moreover, consent is also required if the issue might involve the acquisition by or for a non-resident:

- (i) of securities not quoted on a United Kingdom Stock Exchange;
- (ii) of quoted securities, unless it is:
 - (a) an ordinary public offer for subscription of shares;
 - (b) a rights issue;
 - (c) a capitalization issue;

or the acquisition of securities in a United Kingdom company by or for a non-resident (or by a company, wherever resident, controlled by a non-resident) who holds, before or as a result of this acquisition, 10 % or more of the voting rights in the company.

The basic rules for inward direct investment through a United Kingdom subsidiary are laid down in Notices E.C. 4 and E.C. 18. Under E.C. 4 (3rd issue, 2 May 1968), the general rule is that the non-resident shareholders' stake in a United Kingdom company is to be maintained at a level sufficient to cover such shareholders' *pro rata* share of the fixed assets; provided this position is maintained, permission will normally be given for the raising of working capital in the United Kingdom. Different considerations apply to companies whose business does not depend primarily on the acquisition of fixed assets, such as financial, importing and distributing companies; such companies have to provide all their funds by putting in foreign currency or sterling from an External Account. Where a project is judged to be highly beneficial to the United Kingdom economy, for example, because it may make a significant contribution to the balance of payments or provides employment in a development area, the company concerned may be permitted to raise a part of the non-resident shareholders' *pro rata* share of fixed capital as well as its working capital in the United Kingdom.

Although the specific permission of the Bank of England must be obtained before any money, Treasury bills or securities are lent by residents of the United Kingdom to bodies corporate and branches resident in the scheduled territories which are by any means controlled, whether directly or indirectly, by non-residents, this provision is not extended to lending to banks. Permission is not required to grant accommodation or to give facilities to banks in the United Kingdom which are either bodies corporate controlled by non-residents, or branches of bodies corporate resident outside the scheduled territories.

E.C. 18 (28 January 1972) relates to the financing of inward direct investment. Exchange Control permission is necessary not only for such investment by persons resident outside the scheduled territories, but also for those investments by persons, wherever resident, which involve the loss of control by United Kingdom residents of existing United Kingdom companies.

Permission given for direct investment in the United Kingdom by non-residents are normally subject to conditions:

- (i) that the subscription or consideration moneys are paid in sterling from an External Account, or in foreign currency;
- (ii) that, unless otherwise agreed with the Bank of England, any subsequent finance is provided in foreign currency at least in proportion to the non-resident interest in the equity of the company.

Non-residents investing in new projects in the United Kingdom are normally required to finance from non-resident sources that proportion of the fixed assets of the company or branch which is attributable to the non-resident interest, after taking into account any loan or assistance provided by the DTI or Northern Ireland Government Departments for fixed assets financing. Provided that this formula is satisfied, permission is freely given for sterling borrowing for working capital requirements.

If an inward direct investment promises substantial benefits to the United Kingdom economy, which are additional to the initial cash injection, the Bank of England may allow a percentage of the non-resident share of the fixed assets to be financed by sterling borrowing in the United Kingdom. For example, for projects which promise a substantial degree of import saving or export promotion, the percentage will be, at most, 30 %, and for investments in development and intermediate areas, the figure may be as much as 50 % for an initial period of three years.

At all times, it should be noted, the non-resident funds employed, wherever raised, must be sufficient to cover the appropriate percentage of the non-resident share of the fixed assets net of depreciation and government grant or loan assistance.

Two supplements of 22 March 1972 amended the above Notices to allow, on application to the Bank of England, unlimited sterling borrowing in the United Kingdom by any United Kingdom company controlled by residents of the EEC Member States, or for *new* expenditure in the special development, development and intermediate areas or Northern Ireland by companies controlled by *other* non-residents.

In a few cases in the nineteen-sixties involving the takeover of United Kingdom companies by large international concerns, the Government used its power to control

foreign investment to extract from the companies undertakings as to the conduct of the United Kingdom subsidiary thus acquired, e.g. maintenance or expansion of production, use of the parent's international marketing organization, and maintenance of a certain proportion of exports. This practice has now, it seems, been abandoned as ineffective, because the customary speed of the Exchange Control procedure leaves the Government inadequate time to assess the long-term implications of a given project for United Kingdom economic interests, and because the continuing powers the Government enjoys under the 1947 Act, outlined above, are too clumsy to permit the Government to ensure that the operations and policies of the parent company and its United Kingdom subsidiary confer the maximum benefit on the national economy. Comparable undertakings taken under the Fair Trading Act 1973 or its predecessors (where the assets or market share conditions are fulfilled (above, 5.5.1.2.)) may, however, prove more effective.

5.6.3. LIMITING ACCESS TO MARKETS: QUANTITATIVE CRITERIA [27]

Licensing which has as its object the limitation of the numbers of enterprises engaging in a particular activity, whether for economic or other reasons (e.g. moral, in the case of liquor licensing) is rare in the United Kingdom. When found, it usually forms only one element of a comprehensive system of regulation designed largely to supplant the market mechanism in such sectors as agriculture, energy and transport, dealt with in Chapter 6 below.

Outside those sectors, licensing of this kind is mostly in the hands of local authorities. Now local authorities exercise a vast range of licensing powers, over trades and professions, both under national legislation and under local legislation peculiar to particular localities: this latter kind of legislation is particularly common and important in Scotland — each of the major cities, Aberdeen, Dundee, Edinburgh and Glasgow has its own comprehensive local code — but is also found in relation to major English cities like Manchester. For the most part, such provisions are designed for the protection of the public, whether as customers or otherwise, as a means for ensuring the maintenance of standards of competence, cleanliness, honesty, etc., and these will be dealt with under 5.6.4. below (qualitative criteria). In some cases, however, licensing powers are conferred whose exercise is not tied to the satisfaction by the licensee of any particular standards; and in others, the licensing authority is instructed, expressly or impliedly, to have regard to the numbers of licences it is issuing, and their adequacy in relation to the needs of the area. It is examples of the latter two types of power that we shall mention here, though it should be noted that save in cases where a licence must be granted to persons satisfying the prescribed standards, 'quality' licensing may also be used for the purpose of restricting the numbers of those operating in a particular activity.

Local authority licensing powers which make explicit reference to numbers or need include:

- (i) liquor outlets (for consumption either on or off the premises):
 - (a) in war-damaged areas: Licensing Act 1964, Pt. VII (England and Wales only);
 - (b) in new towns: Licensing Act 1964, Pt. VI: Licensing (Scotland) Act 1959, Pt. IV;
- (ii) gaming casinos: Gaming Act 1968, Sch. 2, paragraph 18 (see also 5.6.4.);
- (iii) taxi-cabs: Town Police Clauses Act 1847, s. 37 as amended, Public Health Act 1875, s. 275; various local acts, e.g. Dundee 1969, s. 19, Edinburgh 1967, s. 389;
- (iv) window cleaners, chimney sweeps, etc.: various local acts, e.g. Dundee 1957, s. 458, Edinburgh 1967, s. 409.

Those with only implicit reference, or no reference to numbers or need include:

- (i) liquor licences generally: Licensing Act 1964, Licensing (Scotland) Act 1959;
- (ii) cinemas: Cinematograph Acts 1909 and 1952;
- (iii) theatres: Theatres Act 1968, s. 12; various local acts, e.g. Dundee 1957, s. 416, Edinburgh 1967, s. 364;
- (iv) night cafés: Late Night Refreshment Houses Act 1969 (England and Wales); various local acts, e.g. Manchester 1967, s. 44;
- (v) street trading: various local acts, e.g. Manchester 1967, ss.15-29, Edinburgh 1967, s. 406, Dundee 1957, s. 447;
- (vi) pleasure boats: Dundee 1957, s. 307.

In this section we must also mention an unusual and complex system of regulation instituted under the Films Act 1960-70 and designed for the protection of the film-making industry in the United Kingdom. This complements and reinforces the system of aid described in 3.3. above. Under the Acts no film may be rented or exhibited unless registered with the DTI. Films must be registered as either British, foreign or Community films (see European Communities Act 1972, s. 8, under which Community films are for most purposes, including quota arrangements, assimilated to British films). Eligibility for registration as a British film depends on the nationality of the maker, the location of the studio, the proportion of labour costs attributable to payments to British subjects, the display in the film of the studio or the maker's name and address, etc. (Films Act 1960,

s. 16). With certain exceptions, British (and now Community) films, and only such films, can and must be registered as quota films. At cinemas where registered full-length films are exhibited, first feature films must on at least a prescribed percentage of days in the year, be quota films. The current prescribed percentage is 30. Subject to the various exceptions and reliefs provided in the Act, failure to observe the quota requirements, otherwise than through circumstances beyond the exhibitor's control, is a quota offence attracting a fine of up to £ 400 on summary conviction and unlimited fine on conviction on indictment. For the more effective enforcement of this system, film renters and exhibitors are prohibited to operate without a licence from the DTI, which the Department is bound to issue save on certain specified grounds of which the most important is the commission of repeated quota offences (Films Act 1960, s. 45).

Quantitative licensing is also used for the regulation of broadcasting and wireless telegraphy generally, by reason of the need, especially pressing in relation to long-distance transmissions, to allocate a limited number of available broadcasting frequencies. The Wireless Telegraphy Act 1949 provides the Minister of Posts and Telecommunications with comprehensive powers to regulate wireless telegraphy, and forbids the operation of wireless telegraphy stations or other apparatus (which includes ordinary receiving sets) save under a licence granted by him (s. 1). Licences can and do restrict the uses to which the station or apparatus may be put (e.g. to prohibit the public, as holders of radio and television receiving licences, from receiving police radio messages and other such official communications).

Licences to broadcast to the public are in fact conferred only on the two official broadcasting organizations, the British Broadcasting Corporation (BBC), set up as a chartered public corporation by Royal Charter in 1926, and presently constituted under the Charter dated 1964, Cmnd. 2385, and the Independent Broadcasting Authority (IBA), a statutory public corporation, first set up under the name of the Independent Television Authority in 1954 and now constituted under the Independent Broadcasting Authority Act 1973, s. 1. For the current licence of the British Broadcasting Corporation, see Cmnd. 4095 (1969). The BBC is subject by its licence, and the IBA by ss. 21 and 22 of the 1973 Act, to certain governmental directives in relation to hours of broadcasting and content of programmes. While the BBC produces its own programmes for its national radio and television and local sound radio networks and is financed by the proceeds of fees for radio and television licences under s. 1 of the Wireless Telegraphy Act 1949, the IBA discharges its duty to provide television and local sound radio programmes by concluding contracts, on a competitive basis, with programme companies, and is financed by rental payments from those companies, which derive their profits from advertising spots in and between their

programmes: see Independent Broadcasting Authority Act 1973, ss. 12-20, 25-31. Special sanctions for unlicensed public broadcasting are provided by the Marine, etc. Broadcasting (Offences) Act 1967, aimed particularly at broadcasting from 'pirate' radio ships.

Freedom of operation in the telecommunications field is further restricted by the monopoly conferred on the Post Office, now a statutory public corporation, before 1969 a central Government department, by the Post Office Act 1969, s. 24. This gives the Post Office the exclusive privilege of running systems for the conveyance, through the agency of electric, magnetic, electromagnetic, electrochemical or electromechanical energy of:

- (i) speech, music and other sounds;
- (ii) visual images;
- (iii) signals serving for the impartation of matter in other forms;
- (iv) signals serving for the activation or control of machinery or apparatus.

This definition, it may be noted, is wide enough to include all wireless telegraphy under the 1949 Act. A specific exception to the Post Office's privileges, for licensed broadcasting, is provided by the Post Office Act 1969, s. 26. Apart from certain other minor exceptions, relating essentially to communications purely within private premises or organizations (s. 25), a licence granted by the Post Office with the consent of or under a general authority given by the Minister is therefore necessary for any private telecommunications business (s. 27), in addition to any licence which may be required under the 1949 Act. In practice the Post Office grants licences freely for certain types of installation, but does not license any activity which competes with services it itself provides. The Post Office has a similar, older, exclusive privilege of conveying letters (but not parcels): see Post Office Act 1953, s. 3 (1). Unlicensed infringement of the Post Office's privileges constitutes a criminal offence.

One form of licensing which does not, save incidentally, operate either as a quantitative or as a qualitative restriction on access to commercial activities is that known as excise licensing, which, as the name suggests, is designed either for the raising of revenue — as with pawnbrokers', money lenders', and betting excise licences, granted automatically on production of the necessary fee and relevant certificate of fitness (see below, 5.6.4.2.) — or for protecting the national revenue by permitting a strict control of the trade in excisable products. Thus the Customs and Excise Act 1952 requires licences for the carrying on of the activities of:

- (i) manufacturing spirits (s. 93);

- (ii) manufacturing or dealing in methylated spirits (s. 116);
- (iii) brewing beer (s. 125);
- (iv) making British wines for sale (s. 139);
- (v) growing or manufacturing tobacco (ss. 175, 178, Sch. 5);
- (vi) manufacturing matches (s. 219);
- (vii) manufacturing mechanical lighters (s. 221);

and comprehensively regulates the wholesale and retail trade in these products. The Hydrocarbon Oil (Customs and Excise) Act 1971, Sch. 3, Pt. I prohibits the production of hydrocarbon oil and production of or dealing in petrol substitutes except by persons holding a licence issued, as under the Customs and Excise Act, by the Commissioners of Customs and Excise. The manufacture of gunpowder also requires a licence under the Explosives Acts 1875 and 1923.

5.6.4. LIMITING ACCESS TO MARKETS: QUALITATIVE CRITERIA

5.6.4.1. Restrictions referring to individuals

Some restrictions on access impose qualifications as the condition of the performance of an activity by a person, whatever his economic status in relation to the activity: self-employment, salaried employment, or head of a business undertaking. This is certainly the case with the rules regulating entry to the liberal professions, many of which are laid down in statutory form. Most of these statutes set up Registration Councils which require prospective members of the relevant professions to have passed certain examinations, gained the prescribed amount of working experience, or to belong to recognized bodies before they can be registered as members of the particular profession: see Architects (Registration) Acts 1931 and 1938; Dentists Act 1957; Medical Acts 1956 and 1969; Opticians Act 1958; Professions Supplementary to Medicine Act 1960 (with respect to the registration of chiropodists, dietitians, medical laboratory technicians, occupational therapists, physiotherapists, radiographers and remedial gymnasts); Solicitors Act 1967 (England and Wales); and Solicitors (Scotland) Acts 1933, 1949 and 1958. All these statutes make it an offence for unregistered persons to use practitioners' titles and/or to practise the relevant profession; the qualifications which they demand relate chiefly to standards of technical competence, obtained largely through examinations approved by the relevant Councils, although the Solicitors (Scotland) Act 1958, s. 1, provides that the Council of the Law Society of Scotland must also be satisfied that the applicant is a fit and proper person to be a solicitor.

There are other professions besides these which require their members to have passed certain examinations; a distinction must be drawn between those professions in which the passing of examinations is necessary before the person is recognized as being a fully-qualified member of the profession (e.g. chartered accountants, chartered surveyors), and those professions in which the passing of examinations is not a prerequisite for the carrying on of the business, but is a means of achieving promotion within that profession (e.g. banking). Even in the former category, however, the professional body cannot, in the absence of statutory powers, effectively exclude unqualified persons from the practice of the profession.

The exception to the rule is the Bar, which enjoys a common-law monopoly of audience before the superior courts of the United Kingdom. Neither the English nor the Scottish Bar is established on a statutory basis. The Faculty of Advocates, in Scotland, is, by prescriptive right, an autonomous corporation. Admission is by election after the inrant has petitioned the Court of Session, paid certain fees, and satisfied the Faculty Examiners as to his qualifications in both general scholarship and in law. The Dean, and the Council of senior members of the Faculty, exercise strict control over the professional discipline and etiquette of all members of the Faculty, and they may censure or even disbar a member guilty of professional or other serious misconduct.

In England, the four Inns of Court collectively make up 'the Bar'; these are voluntary unincorporated societies of equal rank and status, which have each a similar constitution and are bound by the same rules. New rules are agreed by the Joint Committee of the four Inns of Court, but they must receive the approval of each Inn before becoming effective. In so far as conditions governing call to the Bar and control over their own members are concerned, the Inns are independent of the State; they are also outside the jurisdiction of the courts but are subject to the visitatorial jurisdiction of the judges. The Inns of Court comprise benchers, barristers and students; the benchers are the governing body who alone have the power to fill up vacancies in or to add to their own number, to admit persons as students, to call students to the Bar and to exercise a disciplinary jurisdiction over the members of the society. The four Inns have agreed on certain regulations which govern the admission of students and the calling of barristers (Consolidated Regulations of the four Inns of Court, June 1952, as revised from time to time); the call by the bench of the Inn is not completed by, or dependent on, any judicial act, or legislative order.

Outside the liberal professions, statutory qualifications for individuals are rare: examples can be found in the field of transport (below, 6.4.) and under the Mines and Quarries Act 1954, s. 4, which requires the manager of a mine employing 30 or more persons to hold a first-class certificate of competency, be at least 26 years of age, and

satisfy any other conditions that may be prescribed by Ministerial regulations. See also the Hairdressers (Registration) Act 1964, under which registration is merely an attestation of competence.

5.6.4.2. Restrictions referring to business

The other type of restriction, which is perhaps more important in the context of economic law, is that which lays down qualifications for the carrying on of certain types of business by reference either to personal qualities, premises or facilities. The few restrictions of this kind operated by central Government departments are found mainly in the sphere of financial business.

The Prevention of Fraud (Investments) Act 1958 requires all dealers in securities to be licensed, but this requirement does not extend to members of recognized Stock Exchanges or of recognized associations of dealers in securities, to the Bank of England, any statutory or municipal corporation, any exempted dealer or any industrial and provident, or building society, or to any person acting in the capacity of manager or trustee under an authorized unit trust scheme. Such licences may be refused or revoked on the basis of a conviction under the Act, or under rules made under the Act, or for fraud, or by reason of any other circumstances which might lead the licensing body (the DTI) to consider that the applicant or holder is not a fit and proper person to hold a licence.

The Insurance Companies Act 1958, extended by the Companies Act 1967 and the Insurance Companies Amendment Act 1973, provides that no person may carry on an insurance business of the classes specified in the 1958 Act (other than industrial assurance business) except companies, incorporated under the Companies Act 1948 or otherwise, which are authorized under the 1967 and 1973 Acts to carry on business of that class, industrial or provident societies registered to carry on such business, unincorporated bodies authorized by the Act to carry on such business, bodies registered as friendly societies or trade unions, and members of approved associations of underwriters. S. 59 of the 1967 Act lists the classes of insurance business to which the Act relates: industrial assurance; liability insurance; ordinary long-term insurance (commonly known as 'life insurance'); marine, aviation and transit insurance; insurance of motor vehicles and property; and insurance against pecuniary loss and personal accident. The Act applies to all companies and societies, whether established within or outside Great Britain, which carry on such business in Great Britain.

Control of access to this business was stiffened in 1967, and made very severe by the Insurance Companies Amendment Act 1973, enacted in the aftermath of the collapse of one of Britain's largest motor insurers. The

authorization of the DTI is necessary in order to engage in any of the classes of business specified in the 1967 Act, s. 59 (and a special authorization is required for industrial assurance business: 1967 Act, s. 60). For authorization the enterprise must have sufficient financial strength and resources, attested by its meeting the requirements as to margin of solvency and minimum paid-up share capital laid down by the 1967 Act, s. 62, and variable by order under the 1973 Act, s. 1. The Secretary of State must not authorize any enterprise if it appears to him that any director, person having control of the enterprise, or manager of it, is not a fit and proper person; 1967 Act, s. 61 and 1973 Act, s. 2. Where an enterprise has already been authorized, it must still notify the Secretary of State of any intention to appoint a new managing director or chief executive, and must not proceed in the appointment if he objects to it on the ground that the proposed appointee is not a fit and proper person (1973 Act, s. 33); he may likewise object to any change of control of the company (1973 Act, s. 34). Furthermore, one of the grounds on which the Secretary of State may exercise the powers of control over an insurance enterprise's business conferred by the 1973 Act, ss. 13-21 (below, 5.7.4.3.) is that he is not satisfied as to the fitness of any director, controller or manager of the enterprise. In all these cases, the person concerned may make written and oral representations to the Secretary of State against the giving of a notice of objection.

Also in the financial sphere, in a sense, is the gaming industry. Here, while control of numbers of establishments is exercised, area by area, by local bodies (above, 5.6.3.), control over the persons operating or controlling them is exercised by a specially constituted public corporation, the Gaming Board, set up under the Gaming Act 1968, which determines application by reference to criteria of fitness, set out in Sch. 2, paragraph 4 of the Act; see also the Pool Competitions Act 1971.

One non-financial activity which is controlled by way of central Government licensing is the manufacture and sale of medicinal products. Under the Medicine Act 1968, Pt. II, a licence, to be granted by the Ministers responsible for health and agriculture, is necessary in order to engage in the manufacture or wholesaling of medicinal products. The licensing authority is to consider such points as the equipment, premises and qualifications of supervising personnel. Transitional exemptions are provided for persons already engaged in these activities at the time the Act came into force. In addition to the abovementioned licences, the Act also provides for the licensing of individual medicinal products (below, 5.8.1.1.) and a manufacturer's licence is only effective in relation to the making of licensed products. The Act, in ss. 74-78, also provides for the registration of pharmacies (i.e. premises for the retail sale of medicinal products) provided they satisfy such standards as may be prescribed by regulation under s. 66.

Far more numerous and varied are the restrictions operated by local authorities, usually under powers conferred by legislation of country-wide application. These restrictions sometimes operate as preconditions for the grant of a licence that is necessary for the lawful carrying on of a particular kind of enterprise sometimes as standards of performance, facilities, etc. imposed on enterprises through a system of compulsory registration and inspection. The effects are similar, and we do not distinguish the two types in the illustrative lists that follow. Activities regulated in this way include:

- (i) riding establishments: Riding Establishments Act 1964;
- (ii) animal boarding establishments: Animal Boarding Establishments Act 1963;
- (iii) pet shops: Pet Animals Act 1951;
- (iv) slaughter houses: Food and Drugs Act 1955, s. 63; Slaughter of Animals Act 1958, as amended by the Agriculture (Miscellaneous Provisions) Act 1972, s. 5;
- (v) premises and vehicles for the sale of food: Food and Drugs Act 1955, ss. 16, 21;
- (vi) agencies supplying nurses: Nurses Agencies Act 1967; Nurses (Scotland) Act 1951;
- (vii) employment agencies: Employment Agencies Act 1973;
- (viii) adoption societies: Adoption Act 1958;
- (ix) betting offices, betting agencies, betting tracks and pools promoters: Betting, Gaming and Lotteries Act 1963;
- (x) pawnbrokers: Pawnbrokers Act 1872;
- (xi) money lenders: Moneylenders Act 1927;
- (xii) liquor outlets: Licensing Act 1964; Licensing (Scotland) Act 1959;
- (xiii) hairdressers: local acts, e.g. Dundee 1957, s. 385.

Finally, opportunities exist for non-statutory, but effective regulation of entry by existing enterprises in activities which depend on access to specific premises, e.g. the Stock Exchanges, insurance underwriting at Lloyds. (Private attempts to restrict access in any other circumstances are likely to constitute restrictive agreements prohibited under the Restrictive Trade Practices Acts 1956 and 1968 and the Fair Trading Act 1973 (above, 5.5.1.)). Of greatest importance in this respect are the rules and regulations of the Federated Stock Exchange, laid down by the Stock Exchange Council. In effect these operate as a substitute for statutory regulation, since the Prevention of Fraud (Investment) Act 1958 and the rules made thereunder contain an exemption for deal-

ings on the Stock Exchange. Initial election is the biggest obstacle to membership of the Stock Exchange; members are elected by the Council for one year at a time, but once elected, re-election is thereafter only refused on disciplinary grounds. A prospective member must be a British-born subject, or a naturalized citizen of five years' standing (rule 21 (3)); he must be at least 21 years of age (rule 31 (1) (a)). He must either have acquired a nomination from a retiring or deceased member, or must pay £ 1 000 to the Trustees of the Nomination Fund (rule 25); he must be proposed and seconded, by members of at least four years' standing who have at least two years' knowledge of the candidate. Neither the candidate nor his wife may be a principal or an employee in any business other than that of the Stock Exchange, without the consent of the Council (rule 27); he must have had three years' training, including three months on the floor of the Exchange, and, as of 1 August 1971, he must have passed the examinations of the Federated Stock Exchange (rule 31 (1)(b)). Finally, the candidate must be elected by the Council, pay an entrance fee of 1 000 guineas, and an annual subscription of 250 guineas.

5.6.5. MINING RIGHTS

The regimes for the exploitation of mineral resources of the United Kingdom vary according to the situation and nature of the minerals.

5.6.5.1. Minerals under the mainland of Great Britain

A — *Generally*: At common law, the property in minerals beneath the surface of the land vests in the owner of the land. Certain exceptions have been created by statute (see below in respect of oil and gas, and coal), and a further exception is recognized by the common law itself, under which deposits of gold and silver (actually of minimal importance) vest in the Crown. Landowners who do not themselves wish to exploit the mineral resources of their land may of course sell or lease the mining rights to others. The Mines (Working Facilities and Support) Act 1966 (in this section henceforward referred to as the 1966 Act) (consolidating legislation dating back to 1923), has been enacted to meet the cases where landowners are unwilling or unable to agree to the exploration for and exploitation of minerals under their land, where such exploitation is desirable in the national interest. In such situations the court (the High Court in England, the Court of Session in Scotland) may grant certain rights to persons wishing to exploit minerals, and compensation to those whose rights are thereby expropriated or limited.

The court may grant a right to search for and work any minerals, other than coal (see below), but save in the case of certain metallic and other ores, listed in s. 1, Table, paragraph 1 of the 1966 Act,¹

¹ For special rules relating to minerals from which atomic energy may be produced see below, 6.3.4.

- (i) there must be a danger of the minerals being left permanently unworked because of legal restrictions, or the need for concurrence by two or more persons, or the fact that the minerals are owned in inconveniently small parcels; and
- (ii) the applicant for the right must have an interest in the minerals (or where the minerals are in small parcels, in adjacent minerals) (s. 1, Table, paragraph 2).

Further, in relation to any minerals, the court may grant any ancillary right required for the proper and convenient working of the minerals, e.g. a right to let down the surface, erect washeries, coke ovens, railways, etc., obtain a water supply (s. 2). No right will be granted unless the court is convinced that it is expedient in the national interest, and it is shown that it is not reasonably practicable to obtain it by private arrangement because the potential grantors are numerous, have conflicting interests, are untraceable, have not the necessary legal power, unreasonably refuse or are prepared to deal only on unreasonable terms.

Applications for the grant of a right to go to the DTI, setting out the circumstances alleged to justify the grant. Unless the Department, which may consult with the parties involved, thinks that a *prima facie* case is not made out, it refers the matter to the court under s. 4. The court may grant the right on such terms, conditions and for such period as it thinks fit, to enable the minerals to be fully worked. It may also order compensation or consideration (in default of agreement) to be paid by the applicant to such persons as the court holds entitled to it: s. 5. It should be noted that 'national interest' is not defined in the Act, but obviously could include economic and strategic factors. Where land is designed for mining in any local development plan, the courts have been directed, by regulations made under the Town and Country Planning Act 1971, s. 265 and the Town and Country Planning (Scotland) Act 1972, s. 252, to regard its working as expedient in the national interest; and may also disregard the restrictions on the grant of rights imposed by the 1966 Act, s. 1, Table, paragraph 2.

In addition to rights to search for and work minerals, the mining enterprise may also require planning permission for any development involved. In this connection a distinction should be drawn between exploration for, and exploitation of, minerals. The actual working of minerals is subject to planning permission according to the general principles of the Town and Country Planning Acts. S. 2 of the 1971 Act (1972 Act, s. 19) defines development as 'the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use of any buildings or land'. Mining, therefore, obviously constitutes 'development' and requires planning per-

mission. The Town and Country Planning (General Development) Order 1973, S.I. 1973/31, Sch. 1, Class XIX, grants automatic permission subject to conditions, for certain ancillary mining operations, without the need for a specific planning application in relation to them.

However, the application of the definition of development to preliminary mineral exploration is not clear. Such exploration may involve a material change in the use of the land, even if only a temporary one. If, however, the 'use' does not continue for more than 28 days in a calendar year, permission is automatically granted by the 1973 General Development Order. Exploratory drilling may amount to an 'engineering operation'; equally, a 'building operation' may be involved if structures are erected on the land for the purpose of exploration. Whether there is an operation, and thus development, will depend on the nature of the structures, and whether or not the physical character of the land is altered. It is therefore impossible for a mining company to know with certainty whether permission for drilling operations is required in any particular case. However, the 1971 Act, s. 53, and the 1972 Act, s. 51, do provide a procedure whereby an applicant may obtain a determination from the local planning authority whether permission is required in his case.

As regards security in mining operations, the Mines and Quarries Act 1954 sets out a general code for the regulation of mines and quarries for ensuring safety. The Mines and Quarries (Tips) Act 1969 provides for regular examination of tips by appointed inspectors.

B — *Oil and gas*: By virtue of the Petroleum (Production) Act 1934, s. 1, property in petroleum (which includes natural gas but not oil shale) is vested in the Crown, as is the exclusive right of searching and boring for and getting petroleum. Exploration and production licences may be granted by the DTI to such persons, for such consideration and subject to such conditions as the Department thinks fit (s. 2). A person possessing a licence under the Act has a right to work minerals under the terms of the 1966 Act, any may therefore be eligible for the grant of ancillary rights referred to in s. 2 of that Act. In relation to petroleum, those rights are by s. 3 of the 1934 Act extended to include making bore holes, and the use and occupation of land for the buildings, pipes and other works required for 'searching and boring for and getting, carrying away, storing, treating and converting petroleum'.

Regulations regarding applications for the grant of licences, and prescribing model clauses, may be made by the Department under s. 6 of the 1934 Act: see Petroleum (Production) Regulations 1966, S.I. 1966/898, as amended in respect of production licences in landward areas by the Petroleum (Production) (Amendment) Regulations 1972, S.I. 1972/1522. The regulations make provision for separate sets of model clauses in respect of

exploration licences (usually limited to three years), production licences in landward areas and production licences in seaward areas (in each case for six years, continuable for a further 40 years).

So far, resources of petroleum and natural gas in landward areas in the United Kingdom have proved unimportant.

C — *Coal*: All rights in coal in the United Kingdom are vested by the Coal Act 1938 and the Coal Industry Nationalization Act 1946, s. 1 in the National Coal Board, the statutory public corporation set up to operate the nationalized coal industry by the Coal Industry Nationalization Act 1946. These rights include an exclusive right of production, but not of supply and as the Act does not seek to control imports (see 5.4.1. above) there is room for *de facto* competition in the supply of coal by wholesale and retail. The National Coal Board is empowered by the 1946 Act, s. 36 (2), to grant licences for the working of coal in very small mines (employing less than 30 persons) or when purely ancillary to other mineral extractions. Such private production is not presently of any economic importance.

Special provision for the National Coal Board is made by s. 1, Table, paragraph 3 of the 1966 Act, which empowers the conferment on the Board of a right to search and bore for coal, or to work it free from irksome conditions in an existing mining lease. The provisions of the 1966 Act regarding ancillary rights apply to the National Coal Board as to other mineral undertakers. Under the Town and Country Planning (General Development) Order 1973, Sch. 1, Class XX the Board enjoys a special limited dispensation from the need to obtain planning permission, which is, however, in similar terms to that accorded by Class XIX to mineral undertakers generally. Finally, the Opencast Coal Act 1958, which applies to the National Coal Board only, because of its exclusive rights over coal, provides a special system of regulation for the working of opencast coal to secure amenity and proper compensation in connection with compulsory acquisition by the Board of rights over land.

D — *Ironstone*: While ironstone is included among the metallic ores covered by s. 1, Table, paragraph 1 of the 1966 Act, its working is also subject to special regulation by the Mineral Workings Acts 1951 and 1971. The 1951 Act establishes a fund to finance the restoration of land (in England only) used for the working of ironstone by opencast operations. Contributions to the fund (as varied by the Mineral Workings Act 1971) are paid by the operator to the Department of the Environment at a 'full rate' per ton (fixed by order), or at a reduced rate where there was, before 15 February 1971, a full restoring lease. An operator who carries out work for levelling previously worked ironstone land or for restoring fertility to it, being work required by conditions im-

posed in a planning permission, shall be entitled to recover payment from the Department of the Environment (1951 Act, s. 9). The payment is the difference between the actual cost and a 'standard rate' fixed by the Department under the 1971 Act, s. 3, assuming the operator works efficiently with the plant he could be expected to use. The Act also provides for grants for the restoration of ironstone land to agricultural use (above, 3.3.1.2.).

The Town and Country Planning (Ironstone Areas Special Development) Order 1950, S.I. 1950/1177, grants automatic permission for specified classes of ironstone operations subject to the conditions laid down (in relation to the restoration of the ground and respreading of surface soil).

5.6.5.2. Minerals under the Continental Shelf

All rights to minerals and other resources exercisable by the United Kingdom outside territorial waters are vested, by the Continental Shelf Act 1964, s. 1 in the Crown, with the exception of coal, which vests in the National Coal Board. Areas (of the west European Continental Shelf) in which such rights are exercisable are designated by Her Majesty by Order in Council under s. 1 (7) of the Act: see Continental Shelf (Designated Areas) Order 1964, S.I. 1964/697, as added to by S.I. 1965/1531, 1968/891. Specific provision with regard to the granting of concessions to search for and exploit minerals is made only with respect to petroleum (including natural gas): ss. 1 (3) and (4) of the 1964 Act apply the licensing regime of the Petroleum (Production) Act 1934 (above, 5.6.5.1.B) to petroleum in the designated areas. The Petroleum (Production) Regulations 1966, S.I. 1966/898 have been amended with regard, *inter alia* to production licences for seaward areas by the Petroleum (Production) (Amendment) Regulations 1971, S.I. 1971/814. These amendments make provision for the initiation of a system of competitive tendering for production licences, operated in relation to the applications invited in 1971, and for the compulsory surrender of at least half the area comprised in each licence at the end of the initial six-year period of validity. Payment for licences, by way of initial sums, annual payments, and/or royalties, is by agreement between the DTI and the licensee. For the special rules regarding the marketing of natural gas found under the Continental Shelf (1964 Act, s. 9) see below, 6.3.

The application to the Continental Shelf of the 1934 Act also entails the application of the Mines (Working Facilities and Support) Act 1966. This may be of importance in regard to ancillary rights (above, 5.6.5.1.B) since the extended ancillary rights granted by s. 3 of the 1934 Act in relation to constructional work would appear to be exercisable over land other than that which minerals are found, and therefore to be applicable in respect of on-shore terminals and other facilities for the reception and

first processing of Continental Shelf oil and gas. With regard to other minerals, it may be assumed that the Crown is free, under municipal law at least, to concede rights to search for and exploit them on such terms and conditions as it thinks fit.

The Mineral Workings (Offshore Installations) Act 1971 provides for the safety, health and welfare of persons on installations concerned with the underwater exploitation and exploration of mineral resources in the waters in or surrounding the United Kingdom.

5.7. Regulation of market behaviour

Until the passing of the Restrictive Trade Practices Act 1956, and the Resale Prices Act 1964 (above, 5.5.1.) the law tolerated a high degree of self-regulation by trade associations, backed up by trade courts, blacklisting, boycotts and other collective measures, but never, save in the agricultural sector (below, 6.1.) and certain of the liberal professions (above 5.1.2. and 5.6.4.) provided for official action of this kind. Most restraints on methods of trading therefore go no further than the prevention of fraudulent, imprudent or oppressive trading, which we discuss under heads 2 to 4 in this section, and the protection of the health and safety of the consumer, which seems better treated under 5.8.

5.7.1 HOURS OF OPENING [28]

An exception is provided by the Shops Act 1950 as amended by the Shops (Early Closing Days) Act 1965, which seeks:

- (i) to limit, largely in the interests of the small shopkeeper, competition in the provision of retail services by imposing a measure of uniformity in regard to holidays and opening hours; and
- (ii) to ensure adequate rest and recreation periods for employees in retail trade.

Generally, all shops must close not later than 1 pm on one day each week; s. 1 of the 1965 Act provides that a shopkeeper may choose his own early closing day. The local authority may exempt any particular class of shop in the area from the requirement of half-day closing if satisfied that a majority of the shopkeepers within the class are in favour of this. Sch. 1 to the 1950 Act lists a number of businesses exempt from the half-day closing requirement (e.g. sale of refreshments, newspapers, confectionery, tobacco, medicines and articles of a perishable nature). Power is given to local authorities, by order confirmed by the Secretary of State for Home Affairs or for Scotland, as appropriate, to withdraw any class from the lists of exemptions, again, if satisfied that at least two-thirds of the shopkeepers within that class approve.

The act specifies general closing hours, but enables an authority to substitute, by order, earlier hours, either generally or in relation to shops of a particular class or in a particular area; such orders may not be made to apply to transactions such as the sale of meals, tobacco, newspapers and newly-cooked provisions. A later closing hour may be fixed for tobacco shops; the general closing hours and closing orders may be altered on special occasions (e.g. Christmas) and during exhibitions. Under the Shops (Airports) Act 1962, the weekly half-day closing provisions and the general closing hours do not apply to shops at certain airports designated by statutory instrument.

Sunday trading is prohibited, subject to various exceptions such as Jewish butchers, the sale of milk and cream, and station bookstalls; this prohibition is not applicable in Scotland, where only hairdressing is generally prohibited on Sundays.

Ss. 17 to 39 lay down conditions of employment, and are primarily designed to protect shop workers against unduly long hours and arduous conditions. S. 17 provides a statutory half-holiday each week for shop assistants; s. 19 makes provision for meal times. Ss. 22 and 23 (which are not applicable in Scotland) cover Sunday employment, and require that some additional or compensatory holiday must be given. The total hours which persons under 18 may work in any week are restricted; generally, young persons between 16 and 18 years of age may work a maximum of 48 hours per week, with variations in respect of the catering trade, or the sale of motor and motor cycle accessories. Persons under 16 may work no more than 44 hours per week, with variations again in respect of the Christmas period.

5.7.2 METHODS OF TRADING [29]

It might first of all be noted that the objective of consumer protection, and the redress of inequalities of bargaining power as between the consumer and the manufacturer or retailer of goods, depend as much on the principles of the law of contract as applied to sales as on special regulation of trading methods. Contract in its application to sales was codified in the Sale of Goods Act 1893, which assumed an equality of bargaining power between seller and buyer. Two recent Acts have shifted this balance in transactions involving consumers, or non-trading parties.

The Misrepresentation Act 1967 improves the position of parties who have been induced by a misrepresentation to enter into a contract, and also makes minor alterations in the Sale of Goods Act in favour of the buyer. The Supply of Goods (Implied Terms) Act 1973 makes far more sweeping changes, by reading certain implied conditions into contracts of sale, and limiting the ability of sellers to displace these implications by express terms

in the contract. In particular, where goods are sold in the course of a business, there is, in most cases, an implied condition that they are of merchantable quality, and that they are reasonably fit for the purpose for which the buyer tells the seller he wishes to use them (s. 3). In the case of a sale to a consumer (i.e. a non-trading customer), an express term seeking to displace such an implied condition is void; and in any other case, it is unenforceable in so far as it is shown (to the court) that it would not be fair and reasonable to allow reliance on the term, having regard to factors such as the relative bargaining strength of buyer and seller, or whether the buyer knew of the term or received an inducement to accept it (s. 4). This restriction of the effect of express terms does not apply in international sales (s. 6). The Act also extends to hire purchase transactions (below, 5.7.2.6.) the same rules with regard to implied terms as those applying under the 1893 Act and the 1973 Act to sales of goods.

5.7.2.1. Methods of trading generally

For the purpose of protecting the interests of consumers generally, the Fair Trading Act 1973, Pts. II and III, has introduced two new methods of protection against unfair or fraudulent trading. These two methods parallel, in relation to the consumer interest, the methods under monopolies and restrictive trade practices legislation for the protection of the general economic interest.

Under the first method, a Minister, or the Director-General of Fair Trading (see above, 5.5.1.) may refer to a new advisory body, the Consumer Protection Advisory Committee (ten to fourteen members, appointed by the Secretary of State for Trade and Industry, with expertise in retail trade, enforcement of existing legislation in favour to consumers, and consumer protection activity) any consumer trade practice (ss. 14-16). These are defined as practices in connection with the supply of goods or services to consumers, which relate to terms and conditions (or information about them), advertising, promotion, salesmanship, packaging, and methods of securing or demanding payment. Certain professional services (above, 5.5.1.2.), are excluded altogether from this arrangement, and practices of nationalized industries and similar statutory organizations can only be referred with the consent of the responsible Minister. References by the Director may include proposals for recommendations by the Committee as to rectificatory action, if he thinks that the practice may be misleading or confusing, create undue pressure on consumers, or cause the transaction to be inequitable (s. 17). In cases where proposals for recommendations are not made, the Committee's role is purely investigatory. If such proposals are made, the Committee is to say whether it finds the referred practice to operate against the economic interests of the consumers, and if it endorses the proposed recommendations, with or without modification (s. 21). If it does so,

then the Secretary of State may, if he thinks fit, make an order by statutory instrument (to be approved in draft by both Houses of Parliament), of a kind comparable to orders made in relation to monopoly or merger situations, which may prohibit or restrict the practice complained of, or take other suitable steps (see, for examples, Sch. 6). In contrast to monopoly and merger orders, contravention of an order is a criminal offence, yet does not affect the validity of associated contracts for the supply of goods or services, nor does it confer a right of action in civil proceedings (s. 26). Enforcement is in the hands of local weights and measures authorities (ss. 27-32).

The second method consists in proceedings by the Director before the Restrictive Practices Court (or in minor cases not involving questions of principle, before a County Court in England and Wales and Northern Ireland, and the Sheriff Court in Scotland) against persons persisting in a course of conduct which is detrimental to the interests, economic or otherwise, of consumers, and is unfair to them in the sense that it involves the contravention of enactments enforceable by criminal proceedings, or breaches of duties, contractual or otherwise, enforceable by civil proceedings, where such persons refuse to give, or fail to observe, assurances to refrain from such courses of conduct in future (ss. 34-35). If the court finds that the allegations as to the course of conduct are made out, that the trader is unwilling to give an acceptable undertaking to desist, and that he is likely to continue with that course of conduct or something similar, it may make an appropriate order to prohibit it, breach of which will, in the ordinary way, constitute contempt of court, and be punishable by fine or imprisonment (s. 37). It is doubtful if much use will be made of this provision: procedure is likely to be halted, in most cases, with the giving of an assurance to the Director, or failing that, an undertaking to the Court.

Prior to the enactment of the 1973 Act, controls over trading terms and methods existed only piecemeal: some of these are examined below. Contravention of the undermentioned statutes may be grounds for the reference to the Restrictive Practices and other courts envisaged under the Fair Trading Act 1973, Pt. III above.

5.7.2.2. Pyramid selling

Pt. XI of the Fair Trading Act 1973 (ss. 118-123) Provides for the control, by regulations made by the Secretary of State, of pyramid selling and similar trading schemes. See Pyramid Selling Schemes Regulations 1973, S.I. 1973/1740. Under these schemes, abuse of which caused substantial public concern in the United Kingdom in 1972-73, goods are sold through a network of agents, who buy the goods from the promoter together with a non-exclusive 'franchise' to sell them. Agents achieve advancement and profit mainly by recruiting

sub-agents, a process which may go through several stages until the rewards for those lowest and latest in the scheme are small or non-existent, and the outlays — in stock and payment of ‘franchise’ — high. The regulations, under s. 119, may be made:

- (i) to control the advertising of schemes, and
- (ii) generally to prevent participants in such schemes from being unfairly treated.

Regulations under this latter head may include provision for enabling persons who have made payments under such schemes to recover their money.

Contravention of such regulations constitutes a criminal offence punishable by fine or imprisonment, but will not, according to the operation of the United Kingdom rules regarding alternative remedies, give rise to civil liability.

5.7.2.3. Door-to-door selling

With the repeal of statutory regulation of hawkers in 1966, door-to-door selling is now regulated only by the Trading Representations (Disabled Persons) Acts 1958 and 1972. These Acts prohibit the making of representations (in door-to-door, direct mail or telephone selling) that blind or disabled persons are engaged in the production of or benefit from the sale of the goods involved, unless the business is being carried on:

- (i) by a local authority,
- (ii) by a fund or institution registered or exempted from registration under the War Charities Act 1940,
- (iii) by a company or body providing facilities under s. 15 of the Disabled Persons (Employment) Act 1944, or
- (iv) by any body or persons exempted by the Secretary of State for Employment from the operation of the prohibition, being a body carrying on business without profit to its members, or
- (v) where the person carrying on the business is substantially disabled and all goods, articles or things with respect to which the representation is made, were produced by his own labour.

Contravention of the Act is a criminal offence punishable by fine or imprisonment.

5.7.2.4. Unsolicited goods and services

By virtue of the Unsolicited Goods and Services Act 1971, it is an offence:

- (i) to demand or make threats designed to secure payment for unsolicited goods (s. 2);

- (ii) to demand or make threats designed to secure payment for unsolicited notices in trade directories (s. 3);
- (iii) to issue or deliver unsolicited publications ‘which describe or illustrate human sexual techniques’ (s. 4).

The Act also relieves the recipient, providing certain formalities are fulfilled, of liability to pay for unsolicited goods not collected by the sender within a certain period (s. 1) and makes comparable provision for directory entries to which the person concerned has not expressly assented.

5.7.2.5. Sales with gifts

Though various types of sales with gifts have in recent years become common in the United Kingdom, in particular the promotional ‘free offers’ attached to petrol sales from time to time, the most important, and the only one to be specifically regulated, is the sale with trading stamps. Such stamps are sold by the promoters of schemes to retailers who give them to customers in proportion to the size of their purchases. Once collected in sufficient numbers, they may be redeemed for ‘gifts’ chosen from a range stocked by the promoters. The schemes are regulated by the Trading Stamps Act 1964 with the object of protecting those customers and retailers against exploitation by unscrupulous promoters.

The Act:

- (i) permits only companies and industrial and provident societies to carry on schemes;
- (ii) requires stamps to show their monetary value and the business or registered name of the promoter;
- (iii) requires stamps to be redeemable for cash, and nullifies any contrary agreement;
- (iv) safeguards recipients of ‘free gifts’ against defects in the promoters’ title to them; and
- (v) regulates advertising and publicity material in connection with stamp schemes.

5.7.2.6. Hire purchase and credit sales [30]

We have seen (above, 5.2.2.1.) that control over the financial terms of hire purchase and credit sales transactions is not at present used for the purpose of restricting overall consumer demand. There exists, however, permanent control over such transactions, enacted in the interests of the consumer with the purpose of countering the inequality ‘resulting from the fact that one party draws up terms of contract as a result experience, long consideration, and expert advice, while the other party has no more than a hasty opportunity to scrutinize the

terms'. (Friedmann, *Law in a Changing Society*, p. 132 (2nd ed., 1972).) The relevant legislation is contained in the Hire Purchase Act 1965, and the Advertisements (Hire Purchase) Act 1967.

The Hire Purchase Act 1965 regulates hire purchase and kindred forms of selling in the interests of consumers, by regulating the content and procedure of hire purchase transactions. The owner or seller is not entitled to enforce the agreement unless it has been signed by the hirer or buyer, and by or on behalf of all other parties to the agreement (s. 5 (1)). Before the agreement is made, certain requirements as to the cash price must have been observed: it must have been stated to the hirer or buyer by the owner or seller, otherwise than in the agreement; or, if the hirer or buyer inspected the goods or like goods, then, at the time of this inspection, tickets or labels must have been displayed with the goods clearly stating the cash price; if the goods were described in a mail order catalogue, price list or advertisement, the cash price must have been clearly stated (s. 6). The agreement must also contain a statement of the hire purchase price or total purchase price, the amount of each instalment to be paid, and of the date on which each instalment is payable; it must contain a list of the goods to which the agreement relates sufficient to identify them, must comply with DTI regulations (which are exercisable by statutory instrument — s. 57) regarding the form of the agreement (position of signature, etc.) and the legibility of documents, and must contain a notice setting out the conditions under which the hirer or buyer may terminate the agreement. These conditions, contained in Schs. 1 and 2, stipulate that the hirer or buyer must give notice of the termination in writing, must pay any instalments which are in arrears at the time when he gives notice, and must pay the owner or seller for any damage to the goods caused by the hirer or buyer having failed to take reasonable care of them.

The Advertisements (Hire Purchase) Act 1967 requires that any description of hire purchase terms in advertisements for goods so obtainable should be accurate and full; the information to be contained in such advertisements must include details of the necessary deposit (if any), of the amount of instalments payable, the length of the period in respect of which each instalment is payable, and, if any instalments are payable before the delivery of the goods, the number of instalments so payable. Persons who contravene the provisions of the Act shall be guilty of an offence and liable on summary conviction to a fine.

The present Government is preparing proposals for comprehensive new legislation on consumer credit, which will cover hire purchase as well as other kinds of credit transaction and whose passage will involve the repeal of the above statutes.

5.7.3. LABELS, DESCRIPTIONS, GRADES, ADVERTISEMENTS [31]

In this section we are concerned with legislation designed to ensure that descriptive material relating to goods or services is accurate and honest, and not such as intentionally or otherwise to mislead the consumer. Certain laws falling within this general category are, it is thought, better dealt with elsewhere: labelling and other comparable requirements imposed in the interests of the health and safety of the consumer in 5.8.1. below; provisions relating to specific kinds of advertisements in the section appropriate to the relevant trade or method of trade, e.g. 5.7.2.5. (trading stamps), 5.7.2.6. (hire purchase), 5.7.4. (insurance, deposit-taking, etc.); provisions dealing exclusively with agricultural produce are omitted. Here, therefore, we concentrate on measures in this field designed for the protection of the economic interests of the consumer, in fact, on two general measures, the Trade Descriptions Acts 1968 and 1972, and the Weights and Measures Act 1963.

The Trade Descriptions Act 1968 imposes, in the interests of consumers, penalties for the false labelling or description of goods, services, accommodation and facilities provided *in the course of trade* (s. 1). The prohibition also extends to false or misleading indications as to the price of goods (s. 11) and to false or misleading representations or statements as to royal awards (s. 12), or as to the supply of goods or services (ss. 13, 14). S. 16 prohibits the importation of goods bearing a false indication of origin, while s. 17 restricts the importation of goods bearing infringing trade-marks. In addition, the Trade Descriptions Act 1972 requires the country of origin to be clearly marked on certain imported goods; in relation to United Kingdom names or marks, or names or marks likely to be taken as United Kingdom names or marks, where the goods in question have actually been manufactured or produced outside the United Kingdom, the name or mark must be accompanied by a conspicuous indication of the country of origin (s. 1 (1) and (2)). S. 1 (5) provides that the Secretary of State may give directions for excluding or relaxing this rule.

Enforcement of the Act is in the hands of the local weights and measures authorities (that is, the county and borough councils in their capacity as implementers of the Weights and Measures Act 1963 — see below), but the Act confers power on the DTI to require the marking of products in particular ways; it can define the terms used and require the display of certain information. Apart, however, from the special circumstances envisaged in the 1972 Act, no foreign origin markings may be required unless necessary for consumer protection in the United Kingdom, and then only if no breach of international obligations is involved (s. 10). Contraventions of the provisions of the Act are punishable by criminal prosecution; there is no provision for civil actions for breaches of statutory duty. S. 35 provides, moreover, that a contract for the supply of goods shall not

be void or unenforceable by reason only of a contravention of any provision of the Act. Services are not specifically mentioned.

Secondly, the Weights and Measures Act 1963 establishes the units of measurement which are to be lawful, and the standards for determining these. It should be noted that although metric units are permitted and metric standards described, both the metric and imperial systems may operate side by side. S. 10 prohibits the use of any unit of measurement of length, area, volume, capacity, mass or weight not specified in the Schedule to the Act. Pt. IV regulates certain transactions in goods and draws a distinction between prepacked and non-prepacked goods. Wherever possible, goods must be sold by net weight; a large range of goods, if prepacked, are to be sold only if made up in certain net weights, and the containers must be marked with an indication of the quantity of the net weight. The Act makes it an offence to give short weight, or to sell by some unauthorized weight, measurement or length.

The Act also provides for a system of inspection, empowering weights and measures inspectors to make test purchases, to inspect and test weighing and measuring equipment, and to demand the production of any document which the Act requires to be carried, the unloading from a vehicle of the goods to which that document relates and the vehicle check-weighed. The inspectors referred to are appointed from time to time by the local weights and measures authorities, under s. 41; s. 42 requires all such inspectors to hold certificates of qualification, obtained by the passing of examinations set by the DTI.

The importance of this system of inspection, and the related powers of enforcement enjoyed under the Act, is increased by its adoption for the purposes of other statutes, such as the Counter-Inflation Act 1973 (above, 5.2.1.1.), the Trade Descriptions Act 1968 (above), and the Fair Trading Act 1973, Pt. II (above, 5.7.2.1.).

5.7.4. SPECIAL RULES FOR FINANCIAL TRANSACTIONS

Regulation of trading of a specifically financial character, as by deposit takers, moneylenders and insurance companies, has been designed to protect the interests of the clients of such undertakings by ensuring, or by conferring on the DTI powers to ensure, that they trade honestly, fairly and also prudently — for the penalty of imprudence may fall far more heavily on the clients than on the undertaking itself.

5.7.4.1. Regulation of borrowing [32]

The prevention of Fraud (Investments) Act 1958 not only provides for the licensing of securities' dealers and the prohibition of unlicensed dealing other than by exempt persons such as members of Stock Exchanges (see

5.6.4.), but also empowers the DTI to make rules for the conduct of such business (s. 7 — see the Licensed Dealers (Conduct of Business) Rules 1960, S.I. 1960/1216). Such rules may, for example, determine the class of persons in relation to whom any holder of a licence may deal in securities, may prescribe the forms of contracts which may be used under the authority of a licence, prescribe the books, accounts and other documents which must be kept by a licence holder in respect of any dealing in securities made under the authority of such a licence. Further, the Act imposes criminal penalties for fraudulently inducing persons to invest money (s. 13), and places restrictions on the distribution of circulars relating to investment, contravention of which renders the offender liable to up to two years' imprisonment or to a fine, or both.

The Protection of Depositors Act 1963 prohibits fraudulent inducements to invest on deposit (s. 1); it restricts and regulates the issue of advertisements inviting deposits (ss. 2, 3), but allows widely drawn exemptions from the general prohibition in the issue of such advertisements if certain conditions are complied with. For example, permitted advertisements include those for deposits which will be trustee investments (i.e. deposits with local authorities and trustee savings banks), those issued by building societies, friendly societies, and industrial and provident societies, and those issued by banks and discount houses recognized as such by the DTI under Companies Act 1967, s. 127. Lastly, permission may be granted to advertisements issued by companies incorporated, or having an established place of business, in Great Britain, if the DTI determines that the company has complied with the special requirements of the Act regarding the contents and submission to the DTI of accounts, and the advertisements contain the information required by the Protection of Depositors (Contents of Advertisements) Regulations 1963, S.I. 1963/1398. Contraventions of ss. 1-3, and of the provisions regarding accounting obligations and the production of documents, again render the offender liable to criminal prosecution; s. 23 (1) specifically provides that no proceedings for an offence under the Act shall be instituted in England or Wales except by or with the consent of the Director of Public Prosecutions or the DTI.

Organizations whose advertisements are exempted from control under the Protection of Depositors Act are, as one would expect, subject to specific regulations, though not necessarily of the same type. The observance by banks of fixed liquidity ratios, the practice from which the present system of credit controls has been developed (above, 5.2.2.3.), originated as a guideline to prudent dealing for the protection of depositors, and is continued by banks for this purpose. Borrowing by building societies (that is to say, societies established for the purpose of raising, by the subscriptions of their members, a stock or fund for making advances to members out of the funds of the society, upon security by way of mortgage of freehold

or leasehold estate) is regulated under the Building Societies Act 1962, which sets out the general legal regime of building societies, and confers powers on the Chief Registrar of Friendly Societies, a government official, to suspend, with the consent of the Treasury, borrowing by societies if expedient in the interests of investors and depositors, and to control advertising (Building Societies Act 1962, Pt. IV). The constitution and activities of friendly societies and industrial and provident societies, mutual organizations which exist for a variety of purposes, most commonly small-scale insurance and savings and the operation of clubs, are regulated under the Friendly Societies Acts 1896 to 1968 and the Industrial and Provident Societies Act 1965, as amended, and are placed under the general supervision of the Chief Registrar of Friendly Societies.

5.7.4.2. Regulation of lending

Two forms of lending have traditionally been regulated: by moneylenders and by pawnbrokers. Here we look only at the former, the latter being of minimal economic significance at the present stage: see Pawnbrokers Act 1872.

The Moneylenders Acts of 1900 and 1927 rigidly regulate the operations of moneylenders. 'Moneylenders' include every person whose business is that of money-lending, but do not include pawnbrokers, building societies, statutory lending corporations, any corporation exempted by regulations of the DTI, or bona fide banking or insurance businesses. The DTI may certify that they are satisfied for the purposes of these Acts that a person is bona fide carrying on a banking business (Companies Act 1967, s. 123); if they do, the certificate is conclusive evidence. Ss. 1-3 of the 1927 Act require moneylenders to take out excise licences for which they must produce a certificate given by justices. They are required (for the grant of a certificate) to produce satisfactory evidence of good character and absence of disqualification. The nature and content of moneylending transactions are also regulated: s. 4 (3) prohibits the issue of circulars implying a banking business, s. 5 imposes restrictions on moneylending advertisements, prohibits the employment by moneylenders of agents and canvassers, and requires the rate of interest to be shown on documents published by moneylenders. The Act also provides for a maximum reasonable rate of interest, prohibiting compound rates of interest (s. 7), imposing an obligation on moneylenders to supply information as to the state of the loan (s. 8), and laying down that the interest is excessive if above 48% per annum. S. 10 also empowers the courts to hold the interest excessive even though it does not exceed 48% per annum. Finally, s. 72 imposes a prohibition on moneylenders against charging expenses on loans. As with the other Acts in this section, contraventions of the provisions of the Moneylenders Acts are punishable by criminal prosecution only; there is no

provision for a civil action to enforce their provisions, though a moneylender who is unlicensed, or in breach of the requirements of the Acts, will be unable to recover sums he may have advanced.

The Report of the Crowther Committee on Consumer Credit, Cmnd. 4596 (1971), recommended much more general controls on lending, and the Government has promised to introduce legislation with this objective. Its principles have been set out in a White Paper, Reform of the Law on Consumer Credit, Cmnd. 5427 (1973). The main features include:

- (i) the institution of a single general regime to govern all forms of consumer credit; this involves the repeal and replacement of existing hire purchase legislation (above, 5.7.2.6.) and the Pawnbrokers and Moneylenders Acts (above), though the Building Societies Act 1962 will continue to cover the mortgage lending of building societies;
- (ii) the licensing of all grantors of credit on a 'fit person' basis, as a means of control and sanction; however, no powers to restrict the issue of licences in order to regulate competition will be conferred;
- (iii) comprehensive rules to regulate credit transactions, e.g. on truth in lending, advertisements, canvassing, form and content of agreements;
- (iv) the appointment of a Consumer Credit Commissioner, responsible to the Secretary of State for Trade and Industry, to discharge the licensing and supervisory functions created by the Act, advise the Secretary of State, and advise and educate consumers in the use of credit.

Until these proposals become law, probably some time in the 1973-74 Parliamentary Session, those lending to consumers (e.g. banks, through personal loan schemes, second mortgage companies, and others) have accepted a voluntary code drawn up by the Government. It requires lenders, *inter alia*, to state clearly the cost of the loan and to include a confirmation clause in any contract involving a mortgage on the borrower's house, giving him time to consider the obligation and then withdraw without charge if he so wishes.

Mention may also be made in this section of the provisions of the Building Societies Act (ss. 21-24, as amended by the Building Societies (Special Advances) Order 1971, S.I. 1971/1067) which restrict the proportion of a building society's funds which may be laid out in advances to bodies corporate or in loans of over £ 13 000 to individuals. The aim of this provision, which will remain in force after the enactment of the new general legislation, is to favour the buyers of smaller houses, who may be more in need of mortgage finance.

5.7.4.3. Regulation of insurance business [33]

We have already referred (in 5.6.4. above) to the stringent new controls on entry into and continuance in the insurance business imposed by the Insurance Companies Amendment Act 1973. That Act also adds new and restrictive rules (in ss. 3-11) to existing rules for the conduct of insurance business laid down by a variety of Acts, in particular the Industrial Assurance Act 1923 (which relates mainly to small-scale life and sickness assurance), the Insurance Companies Act 1958 and the Companies Act 1967, Pt. II. It also, largely in substitution for existing, less sweeping powers in the 1958 and 1967 Acts, gives remarkable powers of intervention in the affairs of insurance enterprises to the Secretary of State for Trade and Industry where one of a number of grounds exists (s. 12), namely:

- (i) the need for protection of policyholders or potential policyholders against a risk that the enterprise may be unable to meet its liabilities, or, in the case of life business, may disappoint policyholders' reasonable expectations;
- (ii) failure by the insurance enterprise to comply with obligations under the 1958, 1967 or present Act;
- (iii) furnishing by the insurance enterprise of misleading or inaccurate information required under those Acts;
- (iv) absence of adequate arrangements for the reinsurance of risk;
- (v) presence in office of unfit persons (see above, 5.6.4.);
- (vi) evidence of insolvency.

Most of the powers are also exercisable, even in the absence of such grounds, within five years of the first authorization or of a change of control of an insurance enterprise (s. 12 (4)). The powers are:

- (i) to impose restrictions on the undertaking of new business;
- (ii) to control the investment policy of the enterprise in question;
- (iii) to require the maintenance of assets of a certain amount in the United Kingdom;
- (iv) to require such assets, or some of them, to be held by a person approved by the Secretary of State as trustee for the enterprise;
- (v) to limit an enterprise's premium income;
- (vi) to require actuarial investigation of long-term (life) business;

- (vii) to accelerate the deposit of information required under the audit provisions of the 1958 Act;
- (viii) to require the production of information and documents;
- (ix) to require the enterprise to take any other such action as appears to the Secretary of State necessary, in addition to or apart from that under heads (i) to (viii) above, for the protection of policyholders or potential policyholders.

The Secretary of State is required to state the specific ground for the exercise of these powers, either when exercising them, or by notice prior to their exercise. Successful challenge in the courts seems virtually impossible, as the grounds are, without exception, specified in terms of the subjective opinion of the Secretary of State.

5.8. Public policy

5.8.1. PROTECTION OF THE HEALTH AND SAFETY OF THE CONSUMER

5.8.1.1. Specific measures [34]

Most of the legislation in this category is specific to particular products or types of products. The range is very wide, and we shall here cite, by way of illustration, just three major and a few minor examples.

The Road Traffic Act 1960 empowers the making of regulations, in the form of statutory instruments, as to the construction, weight, equipment and use of motor vehicles, requires the carrying out of tests to ascertain the satisfactory condition of such vehicles, and that all motorists should carry obligatory test certificates in respect of their vehicles, and prohibits the sale of vehicles which are in an unroadworthy condition. The Act imposes criminal penalties for using motor vehicles which do not comply with the relevant regulations (s. 64), for not possessing the obligatory test certificate (s. 66), and for selling vehicles in an unroadworthy condition (s. 68). The regulations referred to above include the Motor Vehicles (Tests) Regulations 1968, S.I. 1968/1714, as amended by S.I. 1969/1171; Motor Vehicles (Production of Test Certificates) Regulations 1969, S.I. 1969/418; Motor Vehicles (Construction and Use) Regulations 1969, S.I. 1969/321; and Motor Vehicles (Rear Markings) Regulations 1970, S.I. 1970/1700.

The Food and Drugs Act 1955 prohibits the sale of adulterated foods (s. 1), and empowers the Minister to make regulations as to the composition (s. 4) and labelling (s. 7) of food and drugs; the Act also provides for the examination and seizure of suspected food (s. 9), and for a system of public sampling and analysis (ss. 89-99). All offences under the Act, and regulations and by-laws made thereunder, such as the preparation and sale of in-

jurious foods and adulterated drugs, and the false labelling or advertisement of food and drugs, are punishable on summary conviction by a fine of £ 100 or three months' imprisonment, or both; s. 106 also provides for a fine of £ 5 for each day that the offence continues. S. 109 gives a limited right to government departments (the Ministry of Agriculture, Fisheries and Food and the Departments of Social Security and of Trade and Industry) and local authorities to institute proceedings. Comparable provisions are contained in the Food and Drugs (Scotland) Act 1956.

Thirdly, the Medicines Act 1968 controls the manufacture and wholesaling of medicines by way of a system of 'product licences', which is in addition to the licensing of manufacturers and wholesalers and the registration of pharmacies discussed above in 5.6.4. Such licences are granted by a body consisting of all the Ministers responsible for health and agriculture matters (the Act also covers medicinal products for administration to animals), and are necessary for any manufacture or import of medicinal products, and also for their sale, otherwise than through pharmacies, or sales by doctors, dentists, nurses and veterinary surgeons of medicines compounded specially for individual patients. The control therefore strikes essentially at the manufacturing stage. Licences are granted on the advice of a specialized committee set up for the purpose, or failing the constitution of such a committee, of the Medicines Commission, a statutory expert body, and by reference to factors such as safety, efficiency and quality. The price of medicines is specially excluded from the consideration of the licensing body (s. 20 (2)). Conditions may be attached to licences for the import of medicines, giving the licensing body powers of inspection and control of the manufacturer's activities (s. 19 (3)). Manufacture, import, or sale of a medicinal product without a product licence, is a criminal offence punishable by fine or imprisonment.

Minor examples include the Gun Barrel Proof Acts 1868 and 1950, which require in the interests of public safety that all guns be examined by a proof house and bear a proof mark; the Rag Flock and Other Filling Materials Act 1951, which regulates the purity and cleanliness of filling used in cushions, upholstery and mattresses; and the Fabrics (Misdescriptions) Act 1913, under s. 1 of which the Secretary of State for Trade and Industry may make regulations prescribing standards of non-inflammability to which textile fabrics represented to be non-inflammable shall conform; see Fabrics (Misdescriptions) Regulations 1959, S.I. 1959/616.

5.8.1.2. General measures

The Consumer Protection Acts 1961 and 1971 are completely general in scope, and empower the Secretary of State to impose by regulations safety requirements as to the composition or contents, design, construction, fin-

ish or packing of any class of goods, components or accessories, and as to the instructions or warnings to be marked on or issued with them. The Acts impose a prohibition on the sale or offer for sale of goods which do not comply with such regulations (s. 1); a breach of the duty not to sell goods which do not comply with regulations (s. 2) is civilly actionable under s. 3, and a breach of s. 2 also renders the offender liable, on summary conviction, to a fine of £ 100 or three months' imprisonment, or both. (The fine is £ 250 for subsequent offences.)

Examples of regulations imposing safety requirements are the Heating Appliances (Fireguards) Regulations 1953, S.I. 1953/526; Oil Heaters Regulations 1966, S.I. 1966/588; Nightdresses (Safety) Regulations 1967, S.I. 1967/839; Toys (Safety) Regulations 1967, S.I. 1967/1157; and the Electrical Appliances (Colour Code) Regulations 1969, S.I. 1969/310.

5.8.2. PROTECTION OF INDUSTRIAL, COMMERCIAL AND INTELLECTUAL PROPERTY [35]

Different legal regimes apply to inventions, to industrial and commercial designs and to literary, musical and artistic works.

5.8.2.1. Inventions

Inventions are protected under the Patents Act 1949; grants of patents are made by the Comptroller-General of Patents, Designs and Trade-marks, the examination of applications being carried out by the Patent Office. Anyone may apply for a patent who claims to be the 'true and first inventor' of a particular invention, its assignee or its owner. The British patent system provides both:

- (i) for a provisional specification of the invention, which describes the invention in very general terms and is effective to fix the priority date of the patent claim (i.e. the date which establishes the applicant's claim to patent protection over that of any other claimant) and to entitle the applicant to publish and use his invention without prejudicing the subsequent grant of patent (1949 Act, s. 52 (1)) and
- (ii) for a complete specification on which all other rights are contingent.

The complete specification has two functions:

- (i) to describe the invention itself, which defines the area of monopoly; and
- (ii) to itemize the method by which it is best performed.

The inventions covered by the Act comprise any manner of manufacture and any new method or process of testing applicable to the improvement or control of man-

ufacture. 'Manner of manufacture' includes both the process and product of the manufacture. There must be something definite and material about this manner of manufacture: an article or substance that can be made and sold; an industrial process for making such an article or substance; or a machine or apparatus for use in such a process. Furthermore, the inventiveness of the thing patented must lie in its mechanism, and not merely in some idea for a new way of using it.

It should be noted that the fact that a specification has been examined and accepted is no guarantee of its validity as a proper patent complying with the terms of the Act. Validity can only be determined when the matter is brought to trial (s. 11 (3)).

Once a patent has been granted, however, the patentee has the sole right to make, use, exercise and sell the invention for a period of 16 years. The patent remains in force for four years from its 'date', which is the date of filing of the complete specification; it may then be renewed annually so as to be kept in force for up to 16 years from that date. A patent may voluntarily be endorsed 'licences of right' (s. 35 (1)); this enables anybody who wants to take out a licence on a patent to do so as of right, on terms which are settled by the parties or by the Comptroller in default of an agreement.

The grant of a patent gives to the owner only the right to stop other people using the particular device that is the subject of the patent. In an action for infringement of a patent, two questions must be decided: whether the patent is a valid one, and whether the monopoly given by it is wide enough to cover the alleged infringement. It makes in general no difference whether infringing goods were copied from those of the owner of the patent, or the makers of the infringements worked entirely on their own; even if the 'infringer' did not know of the existence of the patent concerned, this will not make any difference to the giving of an injunction against him, nor in most cases to his liability to pay damages.

5.8.2.2. Literary, dramatic and artistic works

The protection given by the Copyright Act 1956 is to make it unlawful, as an infringement of copyright, to reproduce or copy any 'literary, dramatic, musical or artistic work' without the consent of the owner of the copyright in that work. It is works that are protected and not ideas; if ideas can be taken without copying a 'work', the copyright owner cannot interfere. The main function of the copyright system is to provide a legal foundation for transactions in 'rights'. Copyright, in this country, comes into existence automatically without need for formalities (i.e. no requirement for registration), and belongs in the first place to the author of the work concerned. There are two exceptions to this general rule: where the work is an engraving, photograph or

portrait, or a sound-recording, and is commissioned by someone who pays or agrees to pay for it, there being no agreement to the contrary, the copyright belongs to the person who gives the commission. Secondly, when the author of a work is in the employment of some other person 'under contract of service or apprenticeship', and the work is made 'in the course of his employment' the copyright belongs to the employer. Copyright in ordinary literary, dramatic, musical and artistic works lasts during the author's life and until the end of the fiftieth year after that in which the author dies. Literary, musical and dramatic works and engravings will have an even longer copyright if they are not exploited whilst the author is alive; in that case, the fifty-year period begins at the end of the year of first exploitation. Copyright in a work will be infringed if the work is copied without the consent of the owner of the copyright. It is an infringement of the copyright in a literary or dramatic work to make or reproduce an 'adaptation' of it; adaptation includes translation as well as conversion of a literary into a dramatic work, and vice versa. If a work is unpublished, it will be a separate act of infringement to publish it (in the sense of issuing copies of the work to the public) without consent. Furthermore, it is an infringement of copyright to perform a work in public without consent. As with infringements of patents and industrial designs, an action for an infringement of copyright is brought in the courts (in England, normally the High Court). The owner of the right usually asks for an injunction against further infringement; if infringement has already taken place, the successful plaintiff will be entitled to damages for what has already occurred as well as to an order for the future. In some cases, where there is a possibility of delay, the court may be asked to act at once, and to grant an interlocutory injunction, lasting until the trial of the action.

5.8.2.3. Designs

The Registered Designs Act 1949 provides for the registration of new and original industrial designs, that is, for the artistic element in manufactured products. Such designs are defined by s. 1 (3) as being 'features of shape, configuration, pattern or ornament applied to an article by any industrial process or means, being features which in the finished article appeal to and are judged solely by the eye'. By providing for registration, the Act protects designs of artistic merit but specifically excludes functional designs. Where designs are registered, the question, in any action for infringement, is not one of copying, but merely of resemblance; the court has to consider whether the registered design and the defendant's design are in substance the same or not. There is also the question of novelty; the registration is invalid unless the design shows substantial novelty over its predecessors. (Since the design must be novel when registered, registration must be applied before the article is marketed.) A design registration lasts for five years in the first in-

stance, and may be renewed for two further periods of five years each.

There is a considerable amount of overlap with the Copyright Act of 1956. In order to acquire copyright in a work which is an industrial design, it is necessary to register the work as a design at the Patent Office under the 1949 Act and the Design Rules of 1949; apart from the rights derived from registration of his design under these statutory provisions, the owner of an industrial design or potential industrial design may possess certain limited rights by virtue of the 1956 Act, which is framed to cover drawings, works of sculpture, works of artistic craftsmanship and architectural works of art which can all also be designs within the meaning of the Registered Designs Act.

These overlaps are provided for under s. 10 of the Copyright Act which, as amended by the Design Copyright Act 1968, allows a 15-year protection under the 1956 Act against infringing articles, in spite of the fact that the owner of the copyright has exploited it industrially. Hitherto, such exploitation had meant loss of copyright protection in the industrial field, the principle being that manufacturers wishing to protect industrial designs should register them under the Registered Designs Act, and establish that they are novel. Under the 1968 Act, when an artistic work is used commercially it does not lose its copyright in the industrial field until 15 years have lapsed; all artistic works are therefore effectively copyright protected when used as designs for industrial articles. Moreover, under this Act, functional devices may be entitled to a period of copyright protection equivalent to the life of the author plus 50 years, whilst other devices — those capable of registration under the 1949 Act — are only entitled to 15 years' protection.

5.8.2.4. Trade-marks

In relation to commercial dealings, the Trade-marks Act 1938 provides for the registration of trade-marks, which gives the proprietor the exclusive right to the use of that trade-mark in relation to the goods in question. The trade-mark is required for this registration to be distinctive (ss. 9, 10) and must not be deceptive (s. 11) or identical to other trade-marks (s. 12). Applications to register a trade-mark must be made to the Registrar of Trade-marks, whose office is at the Patent Office, which he administers under his alternative title of Comptroller-General of Patents, Designs and Trade-marks. The office is part of the DTI. Applications are normally made by trade-mark agents who are usually, but not always, patent agents too. The Registrar may object to an application on the ground that the mark concerned is inherently not distinctive; may demand evidence that it is distinctive; may object that the specification of goods that the registration is to cover is too wide; may object that the mark is immoral, illegal, improper, scandalous or

misleading; or may object that the mark is too like others on the register or in use.

Registration may either be under Pt. A or under Pt. B of the Act; the protection afforded by Pt. A registration is far greater than under Pt. B, and for this reason, the standards for the former registration are much more stringent. The standard of distinctiveness under Pt. B is lower; a Pt. B mark need not be distinctive when registered, so long as it is capable of becoming distinctive in use. It seems that a mark that for any reason is just on the borderline of registration in Pt. A will usually be accepted by the Registrar for Pt. B. Pt. A registration not only gives the owner greater statutory rights to stop infringements and simplify the bringing of infringement actions, but it also helps to make his ownership more secure, for once a Pt. A mark has been registered for seven years the question of whether it was properly registered can only be reopened on certain limited grounds such as fraud, illegality or immorality.

In relation to an unregistered trade-mark, no action under the statute is available (s. 2), but the trader may fall back on his common law action in 'passing-off' against any competitor who represents his goods to be these of the trader, in a manner calculated to deceive the public and with the intention of diverting his business. A successful passing-off action may lead to the award of damages or an injunction (interdict in Scotland).

5.8.2.5. Business and company names

The Registration of Business Names Act 1916 requires the registration, by the Registrar, an officer of the DTI, of business names which do not consist of the true surnames of the partners, or the corporate names of all partners who are corporations, without any addition other than the true first names of individual partners or the initials of such first names. Registration is automatic, save that s. 14 prohibits the registration of misleading business names, such as 'British', which might suggest that the business is under British management or control when in fact it is not. This, and the date of the measure, suggest that it was prompted by xenophobic considerations, but it has continued as a useful instrument of information.

Finally, the Companies Act 1948, s. 17, lays down that no company shall be registered by a name which, in the opinion of the DTI, is undesirable. Undesirable names include those which are too similar to existing company names. There is no appeal, other than within the Department, from adverse decisions under s. 14 of the 1916 Act and s. 17 of the 1948 Act.

5.8.3. PROTECTION OF THE ENVIRONMENT [36]

We deal here with the subjects that may properly be brought under the umbrella heading of 'Pollution' and with the rules of law which are particular to those subjects.

5.8.3.1. Pollution generally

There exists a general remedy for pollution, in the hands of the individual adversely affected, in the shape of the law of nuisance. Nuisance may in its nature be either public, i.e. causing damage to the interests of the public generally, being so widespread or indiscriminate in its effects that it becomes a public rather than a private concern, in which case it is punishable as a crime, or private, causing damage to particular individuals, who may obtain redress by way of injunction, (or, in Scotland, interdiction) to prevent its continuance, or if this is not appropriate, damages. In some circumstances, the same nuisance may give rise to both kinds of liability. An action for private nuisance is limited to persons with an interest in land adversely affected by the nuisance, e.g. to quote the examples given in Bell's *Principles of the Law of Scotland*, paragraph 974 (9th ed., 1889) 'by stench (as the boiling of whale blubber), by noise (as a smithy on an upper floor), or by indecency (as a brothel next door)'. 'An individual may, however, also bring an action in respect of public nuisance, in Scotland simply as a member of the public, in England only when he can show he has sustained, by virtue of the nuisance, particular loss beyond that occasioned to the public at large.

This common law liability is of wide scope, is capable of covering virtually all forms of pollution, and is, by reason of the sanction available of judicial orders to cease the activity which is causing the nuisance, an important factor to be taken into account in the planning, siting, etc. of industrial and commercial installations.

The law of nuisance has also been put on a statutory basis by the Public Health Act 1936, Pt. III, and the Public Health (Scotland) Act 1897, Pt. II, which classify as statutory nuisances a large number of actions and activities which may have effects injurious or dangerous to health. The Acts give local authorities powers of inspection and entry, and of requiring the discontinuance of nuisances, and provide also for judicial enforcement of local authority discontinuance orders by way of summary proceedings in the Sheriff or County Court.

Where development of land (for definition see above, 5.6.1.) is involved, the Town and Country Planning Acts 1971 and (Scotland) 1972, provide an additional means of control. It is possible for the local planning authority to attach reasonable conditions to the grant of planning permission, and this power can be used to ensure that the development does not have a pollutant effect, particularly where visual amenity is concerned, e.g. a condition as to screening and landscaping. Comparable provision may be made with regard to noise. The responsible departments (Environment, Scottish Office, Welsh Office) have however discouraged local planning authorities from imposing conditions which merely duplicate specific controls under other legislation or common law, on the ground that this causes undesirable duplication,

and confusion where sanctions are different, so that in relation to most forms of pollution which are already regulated (e.g. emission, discharge and deposit of noxious wastes), planning control may have a rather small impact: see Ministry of Housing and Local Government and Welsh Office Circular 5/68, 'The Use of Conditions in Planning Permission'.

5.8.3.2. Pollution by noise

At common law, excessive noise and vibration causing damage may constitute a nuisance and give rise to a civil remedy. Noise has also been put on the same statutory basis as the other nuisances covered by the Public Health Act 1897 and 1936 by the Noise Abatement Act 1960 (s. 1), which also prohibits the use of loud speakers save at certain times (s. 2). Statutory undertakers are, however, exempt from the provisions of s. 1, and where noise is caused in the course of trade or business, it is a defence to prove that the best practicable means have been used for preventing or counteracting it. An attempt to control noise emission from motor vehicles is made by the Motor Vehicles (Construction and Use) Regulations 1969, S.I. 1969/321. Noise and other damage to property from overflying aeroplanes at a reasonable height is specifically excluded from the operation of the law of nuisance by the Civil Aviation Act 1949, s. 40 (1). So also is noise from:

- (i) aircraft on aerodromes, where an order to regulate such noise has been made by the Secretary of State: Civil Aviation Act 1949, s. 41; see the Air Navigation (General) Regulations 1972, S.I. 1972/322, Regulation 12, made under the Air Navigation Order 1972, S.I. 1972/129, Article 73;
- (ii) hovercraft, where an order to regulate hovercraft noise has been made: Hovercraft Act 1968, s. 1 (1); no such order has yet been made.

The Secretary of State for Trade and Industry also has Powers, under the Airports Authority Act 1965, and the Civil Aviation Act 1971, s. 29, to require the restriction of noise at airports or the mitigation of its effect. These powers are presently exercised only with regard to the four major airports owned by the British Airports Authority, Heathrow, Gatwick, Stanstead and Prestwick, and other British Airports Authority airports, and airports owned by other bodies such as local authorities, are not yet affected.

5.8.3.3. Emission, discharge and deposit of noxious waste

General measures for the control of air pollution are contained in the Clean Air Acts, 1956 and 1968; these Acts prohibit the emission of dark smoke from chimneys, industrial and trade premises, locomotives and

vessels in certain territorial waters. They do not cover motor vehicles, for which provision is made in the 1969 Construction and Use Regulations (above). The Acts further require that new furnaces shall, so far as practicable, be smokeless, that grit and dust from furnaces shall be minimized, and that all new furnaces shall be fitted with plant to arrest such grit and dust; the 1968 Act provides for the making of regulations prescribing the limits on the quantities of grit, dust and fumes which may be emitted from furnace chimneys. Both Acts confer on Ministers and local authorities the power to make orders creating smoke control areas, in which any emission of smoke, other than from 'authorized fuels', will be an offence. The 1968 Act in fact empowers the Minister to require local authorities to create smoke control areas, and prohibits the acquisition and sale of unauthorized fuel in such areas. Local authorities are also required to approve the height of new chimneys. Enforcement of the Acts is in the hands of local authorities; contraventions of the Acts are punishable by criminal prosecution only, the penalties varying according to whether the offence was committed by the owner of a private dwelling or of industrial premises.

Special provisions for works producing noxious and offensive acid gases are contained in the Alkali, etc., Works Regulation Act 1906. Though specifically prompted by the dirtiness of nineteenth-century processes of soda manufacture, the Act, as extended under the Alkali, etc. Works Regulation (Scotland) Act 1951 and the Clean Air Act 1956, now regulates emissions from a wide variety of chemical, metal, gas and electricity works. This Act seeks not only to prevent the discharge of such noxious gases, but also to separate acids and other substances from alkali waste, to secure the best practicable means of preventing a nuisance from the deposit or discharge of alkali waste, and to prevent any nuisance arising from alkali waste already deposited or discharged. S. 9 of the Act requires the registration of all alkali, etc. works, and ss. 10-14 set out a system for the regular inspection of such works, the inspectors being appointed by and responsible to the local authorities. Again, contraventions of the Act are liable to criminal prosecution, with the amount of the penalty increasing for subsequent offences.

Control over the disposal of poisonous waste on land has recently been enacted in the Deposit of Poisonous Waste Act 1972 which sets out a general prohibition on such deposits 'where the waste is of a kind which is poisonous, noxious or polluting and its presence on the land is liable to give rise to an environmental hazard' (s. 1). 'Environmental hazard' is defined as being such as to subject persons or animals to material risk of death, injury or impairment of health, or as to threaten the pollution or contamination of any water supply. Not only is it an offence to deposit such poisonous waste, but where any damage is caused by such a deposit, the person who

deposited it, or caused or permitted it to be deposited, is liable for the damage except where this damage was due wholly to the fault of the person who suffered it, or was suffered by a person who voluntarily accepted the risk thereof. Local authorities and regional water authorities must be notified of any intention to remove any waste (other than those specified by order by the Secretary of State) from premises or to deposit it on land, and must keep records of such movements. Local authorities in England, but not in Scotland (because of the different system of criminal prosecution, below, 5.7.) are empowered to institute proceedings for offences under the Act.

Pollution of inland water is dealt with in three ways: first, by the common law; second, incidentally, in legislation regulating water supply and sewerage; third, as the main purpose of river purification legislation.

Under the common law in Scotland, rivers are divided into private and public (i.e. navigable). In respect of a private river, each riparian proprietor is free to do as he likes with the water as it passes through his land, provided that he allows it to pass on to the lower proprietors 'undiminished in quantity and unimpaired in quality'. Failure to do so will make him liable to an action in nuisance. This formula excludes the discharge into a river of pollutant matter. In respect of a public river, riparian owners have no such rights as to the condition of the water they are to receive, but owners of fishing rights in the river may still, by injunction or interdict, prevent superior proprietors from polluting even public, navigable and tidal rivers. The distinction between private and public rivers is not recognized in England, where all riparian proprietors enjoy the rights associated only with private rivers in Scotland.

Water supply is dealt with, in England, principally by the Water Act 1945, the Water Resources Act 1963, and the Water Act 1973, in Scotland by the Water (Scotland) Acts 1946 and 1967. Responsibility for water supply is, in England, in the hands of regional water authorities, responsible to and under the general supervision of the Secretary of State for the Environment. These authorities have a general power to make by-laws for protecting and conserving water supplied by them (including the prevention of pollution): Water Act 1945, ss. 17 and 18; they also have specific powers to control discharges of effluents or other noxious matter into underground strata (Water Resources Act 1963, s. 72). Such discharges require the consent of the appropriate authority, which may attach conditions relating to the nature, composition and volume of effluent to be discharged, the measures to be taken for protecting the water contained in any other underground strata through which any well, borehole or pipe containing the effluent will pass, and facilities for inspection. Discharge without consent is an offence punishable by fine. The comparable Scottish authorities are, under the Local Govern-

ment (Scotland) Act 1973, to be the all-purpose regional councils set up by the Act, to which will be transferred the powers of the regional water boards established by the Water (Scotland) Act 1967. These boards have powers to make by-laws (Water (Scotland) Act 1946, ss. 60 and 61), which may be superseded by regulations made for the same purpose by the Secretary of State under the 1967 Act, s. 30. There are no provisions regarding underground strata, but it is an offence, under s. 64 of the 1946 Act, as under s. 22 of the English 1945 Act, to pollute any spring, well, or adit whose water may be used for human consumption.

Statutory responsibility for the collection and disposal of sewage rests in Scotland on local authorities (now to be the regional councils) under the Sewerage (Scotland) Act 1968 (which came into force only in May 1973), in England on the regional water authorities set up by the Water Act 1973, applying the Public Health Act 1936, Pt. II, the Public Health (Drainage of Trade Premises) Act 1937, and the Public Health Act 1961, Pts. II and V. The duty is qualified generally by a rider that the sewerage authority need not do anything which is not practicable at a reasonable cost, and in relation to trade premises, by the power of the authority to refuse to permit, or permit only subject to conditions (e.g. as to quantity or nature of effluent) any discharge of trade effluent which either commenced or was substantially varied in quality or quantity since the coming into force of the Act, namely May 1973 in the case of Scotland, March 1937 in the case of England. Appeal lies from an adverse decision of the authority to the Secretary of State. It appears to be the intention of the Government also to bring under control trade discharges established before these dates, by way of an Environmental Protection Bill promised for 1974.

The principal special measures against the pollution of watercourses are the Rivers (Prevention of Pollution) Acts 1951 to 1961 (England and Wales), and their Scottish counterparts, the Rivers (Prevention of Pollution) (Scotland) Acts 1951 and 1965. The authorities administering these Acts used to be distinct river authorities, but are now, by virtue of the Water Act 1973 and the Local Government (Scotland) Act 1973, the English and Scottish regional water authorities, also responsible for water supply and sewerage. The Acts impose a general prohibition on the discharge into streams of polluted matter, on impeding the proper flow of water, and on depositing, on land, solid refuse which falls or is carried into a stream, save with the consent of, or with exemption from the need to obtain the consent of, the water authorities. This prohibition originally applied only to rivers, but has been extended to include most estuaries and tidal waters. The 1951 Acts required consent to the creation of new or the substantial change of existing discharges of polluted matter into streams and any tidal waters to which the Acts were extended by designations of

the Secretary of State. The 1961 and 1965 Acts also required consent to the maintenance of existing discharges in streams and already designated tidal waters, and the 1965 (Scotland) Act provides for the further designation of tidal waters in respect of which new discharges will require consent. Consent may be accompanied by conditions as to, *inter alia*, the nature, composition, temperature, volume or rate of discharge of effluent, the provision of facilities for taking samples of effluent, and as to the provision and maintenance of inspection chambers and boreholes. These conditions must be reasonable, and consent must not be unreasonably refused; appeal on questions of reasonableness lies to the Secretary of State, and from him on a point of law to the High Court in England, or the Court of Session in Scotland. Since the all-purpose water authorities will, in their capacity as sewerage authorities, themselves be discharging large quantities of pollutant matter into the streams for whose cleanliness they are responsible, the Water Act 1973 and the Local Government (Scotland) Act 1973 require them to consult with the Secretary of State about any new discharges they propose, and ultimately for his control over such discharges. Discharges without his consent, or contrary to the conditions attached to a consent, is an offence punishable by fine, and, in the case of repeated offences, by imprisonment.

These measures do not apply to pollution of the sea, nor does the law of nuisance afford such protection, save perhaps to the interests of owners of foreshore. Control for the purposes of protecting fishing may be exercised by local Sea Fisheries Committees which can make by-laws for the prevention of pollution to the detriment of sea fish within the three-mile limit of territorial waters (see Sea Fisheries Regulation Act 1966, s. 5 (1)(c), Sea Fisheries Regulation (Scotland) Act 1895, s. 8 (1)(f)). Otherwise, the only form of pollution of sea water subject to control is oil pollution. Under the Prevention of Oil Pollution Act 1971, consolidating measures passed in implementation of the International Convention for the Prevention of Pollution of the Sea by Oil 1954, discharges of oil or oil mixtures into the sea or other waters navigable by sea-going ships are prohibited within United Kingdom territorial waters, and by United Kingdom registered ships anywhere (s. 2). Discharges from pipelines, or as the result of exploration or exploitation of the seabed in an area designated under the Continental Shelf Act 1964, s. 1 (above, 5.6.5.2.) are also prohibited (s. 3). Offences are punishable on summary conviction by a fine of up to £ 50 000 and by unlimited fine on indictment. The Act also empowers the Secretary of State to make regulations requiring British ships registered in the United Kingdom to be fitted with equipment for preventing discharges of oil (and see the Petroleum (Production) Regulations 1966, above, 5.6.5.2., for model clauses in exploration licences likewise designed for the prevention of pollution), and requiring the keeping of oil record books; to inspect oil-carrying vessels (including

those registered in any State party to the 1954 Convention), to give directions to those in charge of a United Kingdom registered ship, or any ship in the United Kingdom territorial waters, in emergencies where there is a risk of pollution on a large scale, and if necessary, to take steps himself, e.g. the sinking or destruction of the ship. The Act also lays down strict rules (ss. 8-11) governing the discharge or taking on of oil in harbours (see also Harbours Act 1814, ss. 11-13; Harbours, Docks and Piers Clauses Act 1847, ss. 73, 83). Strict civil liability for pollution by oil from tankers (but not from other ships or installations) is provided for

under the Merchant Shipping (Oil Pollution) Act 1971. Miscellaneous measures against pollution which may be mentioned here include the Cemeteries Clauses Act 1847, ss. 20-22 (fouling of waters by cemetery companies); the Diseases of Animals Act 1950, ss. 78-79 (carcasses of diseased animals in rivers); the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951, s. 4, and the Salmon and Freshwater Fisheries Act 1923, ss. 8 and 59 (poisoning of freshwater fisheries); and the Radioactive Substances Act 1960 (control of disposal of radioactive waste).

CHAPTER 6

Economic sectors subject to comprehensive regulation

It will have been appreciated from Chapter 5 that general regulations of the economy are restricted in their nature to controls of specific kinds operating at various specific points, so that the essentially free market character of the United Kingdom economy remains unaffected. In some sectors, however, this free market mechanism has been wholly or partially displaced by a system of regulation of access to the market and of behaviour within it. It is these sectors — agriculture, fisheries, energy, inland transport, and rented housing — which we discuss in this chapter. Within these sectors (particularly agriculture) there also exists a great amount of specialized regulation, comparable to the general provisions discussed in 5.7. and 5.8. above, which has a discernible economic effect but was not promulgated with economic objectives. This we omit, concentrating on regulations with an economic purpose: in particular, control of prices and of access to markets.

6.1. Agriculture

The intention here is to describe the domestic law relating to regulation of agricultural markets. Only operative, as opposed to prospective, changes on account of the progressive implementation of the Common Agricultural Policy will be considered here.

6.1.1. PRICE CONTROL AND PRICE SUPPORT

Stability of agricultural prices in the United Kingdom is assured by way of the following different statutory mechanisms:

- (i) Fixing of guaranteed prices for specific products, and payment, by the Government to farmers, by way of subsidy, of any amount by which actual prices prevailing fall short of guaranteed prices, under the Agriculture Act 1957, Pt. I. Products in respect of which these powers may be exercised are wheat, barley, oats, rye, potatoes, fat cattle, fat

sheep, fat pigs, liquid cows' milk, hen and duck eggs in shell (until 31 March 1974), wool: Agriculture Act 1957, Sch. 1. Any product may, in the light of the implementation of the Common Agricultural Policy, be deleted from Sch. 1 by order made by statutory instrument; but no such orders have yet been made: European Communities Act 1972, s. 6 (7). Provision for the application of the guaranteed price regime is made in respect of any product listed in Sch. 1 by order made by statutory instrument under s. 1 of the Act, but the order does not itself fix the price; this is done at the annual review of agricultural prices, conducted under and in accordance with s. 2 (1) of the Agriculture Act 1947 by the agricultural Ministers (the Minister of Agriculture, Fisheries and Food and the Secretary of State for Wales acting jointly in respect of England and Wales, the Secretary of State for Scotland in respect of Scotland). The Minister's ability to vary guaranteed prices of individual products, and the general level of guarantees, in their annual reviews, is restricted within narrow limits in the interests of stability and predictability of farmers' income by reference to formulae contained in ss. 2 and 3 of the 1957 Act.

- (ii) Certain other specific subsidies warrant inclusion here rather than in 3.3.1., because of their close relationship with prices. Subsidies are given for the raising of calves, under the Agriculture (Calf Subsidies) Act 1952, as amended (see the Calf Subsidies (UK) Scheme 1971, S.I. 1971/500); of beef cows, under the Agriculture Act 1967, s. 12 (see the Beef Cow (England and Wales) and (Scotland) Schemes 1972, S.I. 1972/727 and 779); and of hill sheep and hill cattle, under the Hill Farming Act 1946, s. 13, and numerous orders made thereunder. Under a scheme made under the Agriculture (Miscellaneous Provisions) Act 1968, s. 38, for the purpose of avoiding undue fluctuations in

the income of bacon curers in the United Kingdom, the Bacon Curing Industry Stabilization Scheme 1970, S.I. 1970/553, extended by S.I. 1973/339 to 31 May 1973, the Ministers may make payment to bacon curers if their returns from bacon sales are not sufficient to cover the cost of production. In return, a levy is payable by bacon curers when returns exceed production costs.

- (iii) Minimum import prices may be fixed for commodities designated under s. 1 of the Agriculture and Horticulture Act 1964. Designated commodities are cereals, eggs in shell, beef and veal, milk and certain milk products and poultry meat. When such a price has been fixed, a levy may be imposed on imports in the interest of ensuring stable prices in the United Kingdom market. In the case of each commodity, separate orders made by statutory instrument are necessary:
 - (a) to designate it as subject to provisions of the Act;
 - (b) to fix the minimum import price;
 - (c) to provide for arrangements for imposing a levy; and
 - (d) to impose the levy.

Levies have in fact been imposed only in respect of cereals, eggs, and milk and milk products. They are collected through the machinery of the customs and excise.

- (iv) Liquid milk prices may be fixed under powers originally conferred by defence regulations and now made permanent by the Emergency Laws (Re-enactments and Repeals) Act 1964, s. 6. This power, exercisable by statutory instrument, was used in 1972 to effect a reduction in the price of milk (for which, of course, farmers were effectively compensated by an increase in subsidy payable under the guaranteed price arrangements of the Agriculture Act 1957, Pt. I) in the hope of creating an atmosphere favourable to price restraint generally: Milk (Great Britain) (Amendment) Order 1972, S.I. 1972/367.
- (v) Special arrangements exist in relation to sugar prices: see Sugar Act 1956, as amended, European Communities Act 1972, s. 7 (3) and Sch. 3, Pt. II.

6.1.2. MARKETING SCHEMES

Certain agricultural markets are subject to a much more thoroughgoing regulation, through the medium of producers' cooperatives set up under statute and enjoying coercive statutory powers over marketing and, in some

cases, other economic aspects of production (e.g. control of acreages). Such cooperatives, known as marketing boards, are constituted under marketing schemes which now have effect under the Agricultural Marketing Act 1958, consolidating a series of Acts beginning in 1931. Products presently regulated by marketing schemes are:

- (i) wool: see the British Wool Marketing Scheme (Approval) Order 1950, S.I. 1950/1326, last amended by S.I. 1966/828;
- (ii) hops: see Hops Marketing Scheme (Approval) Order 1932, S.R. and O. 1932/505, last amended by S.I. 1972/1427;
- (iii) milk: see Milk Marketing Scheme (Approval) Order 1933, S.R. and O. 1933/789, last amended by S.I. 1969/1812: Scottish Milk Marketing Scheme (Approval) Order 1933, S.F. and O. 1933/479, last amended by S.I. 1968/391;
- (iv) potatoes: Potato Marketing Scheme (Approval) Order 1955, S.I. 1955/690, last amended by S.I. 1971/711.

The Act provides for schemes to be submitted to the appropriate agricultural Minister by persons substantially representative of the interests of the producers, and promulgated by him, after considering objections, as statutory instruments (ss. 1, 2.). It goes on to regulate the content of schemes, and to lay down certain powers and duties of the Minister in relation to the scheme.

Schemes must:

- (i) constitute a marketing board, on which a majority of members are to be appointed by producers, a minority (one-fifth) by the Minister (s. 3);
- (ii) require the registration of producers of the relevant product with the board, with appropriate exemptions, e.g. for very small producers (ss. 4, 5, 8);
- (iii) provide that only registered and exempt producers may sell the relevant product (s. 6);
- (iv) provide for the imposition of disciplinary penalties on producers who contravene the scheme and for arbitration where producers are aggrieved by the decisions of the board or its disciplinary committee (s. 9).

Schemes may in addition:

- (i) confer on the board power to control and organize in all respects the market in the product, e.g. by regulating what quantities registered producers may produce, to whom they may sell and so on (s. 6);
- (ii) empower the board itself to trade in the product (as, for example, do the English and Scottish Milk Marketing Boards) (s. 7).

The Minister must appoint, in relation to each scheme, a consumers' committee and a committee of investigation, the latter to study reports from the consumers' committee and other complaints, referred by the Minister, that are inappropriate for the consumers' committee (e.g. that the scheme is operating unfairly as between producers in different parts of the country: see *Padfield v Minister of Agriculture, Fisheries and Food* [1968] A.C. 997) (s. 19). He may give directions to a board, where the committee of investigation finds that the scheme is not operating in the interest of consumers, or is operating neither in the interest of other persons affected by it (e.g. producers, wholesalers) nor in the public interest (s. 19). He may also give directives otherwise than on the basis of a committee report, where the acts of the board result in restrictions, limitations, or prices which are or will be contrary to the public interest (s. 20).

Where marketing schemes exist, Ministers also enjoy certain additional powers to ensure that the market in that product is not disturbed by external factors. The Secretary of State for Trade and Industry may by order regulate imports of agricultural products in order to safeguard the operation of marketing schemes (s. 43). Most of the orders made under this power, originally conferred by the 1931 Act, have been superseded by the Import of Goods (Control) Order 1954 (above, 5.4.1.), but it has on occasion been used since 1954: see Hops (Import Regulations) Order 1961, S.I. 1961/2251. Further, where this power, or any other power to regulate imports of agricultural products has been exercised (e.g. by way of the Import of Goods (Control) Order, above), the agricultural Ministers may control sales of domestic production of the products so regulated, if it will be conducive to the efficient reorganization or organized development, or is necessary to secure the economic stability, of any branch of agriculture (s. 44). This power has never been used.

6.1.3. OTHER MARKETING BODIES

Statutory corporations, wholly appointed by the agricultural Ministers, exist in certain branches of agriculture and fulfil, (or may fulfil) certain of the functions of marketing boards.

The Eggs Authority, set up by the Agriculture Act 1970, Pt. I, is such a corporation, with a general duty of improving the marketing of eggs, and powers:

- (i) to deal in eggs in order to reduce fluctuations in prices;
- (ii) under a scheme brought into force by ministerial Order, to require egg producers to register with it and provide information, to test and grade eggs for sale by wholesale, and to raise levies from producers to defray its expenses. No such scheme has been made.

Somewhat similarly, the Meat and Livestock Commission (see above, 3.3.1.3.) may be empowered, by a Livestock Development Industry Scheme made by ministerial Order, to provide facilities and services to those engaged in the industry, to take measures for its rationalization or concentration, or to impose systems of licensing or production quotas. Again, no use has been made of this power.

Finally, we may mention another statutory corporation, the Home Grown Cereals Authority, set up by the Cereals Marketing Act 1965, with the function of improving the marketing of home grown cereals. This function is performed principally by making bonus payments, under schemes approved by Ministers, in respect of forward contracts for sales of home grown cereals, and for deliveries of cereals at specified times of year. If so empowered by the Ministers, it may also trade in cereals, but this power has not so far been exercised. The Authority is financed by a levy imposed on cereal growers.

6.2. Fisheries

'a pattern of regulation comparable to that obtaining in agriculture can be observed here also, with regulations operated directly by Ministers existing alongside the regulatory powers of special statutory bodies: the same Ministers are concerned as in the agricultural sector, but their powers relate to conservation rather than to prices (though there is a price-related subsidy, below, 6.2.1.), and the statutory bodies are not marketing boards, but the Herring Industry Board and White Fish Authority, whose role in providing financial and other assistance to the fishing industry has been discussed above, 3.3.2.

6.2.1. SUBSIDIES

A subsidy related specifically to ensuring a favourable market in white fish and herring is provided for under the Sea Fish Industry Act 1970, s. 49, as extended (by the removal of time-limits on the subsidy) by the Sea Fish Industry Act 1973, s. 1. The section empowers the Ministers to make schemes (the White Fish (Inshore Vessels) and Herring Subsidies (UK) Scheme 1972, S.I. 1972/1171, and the White Fish Subsidy (Deep Sea Vessels) (UK) Scheme 1971, S.I. 1971/1953), under which they may pay grants to owners or charterers of United Kingdom-registered vessels for catching, processing or transporting white fish or their products, with the general purpose of promoting the landing in the United Kingdom of a continuous and plentiful supply of white fish. An important feature of the schemes is that they provide an incentive to fish by subsidizing the cost of each voyage for that purpose.

6.2.2. CONSERVATION POWERS

The principal measure is the Sea Fish (Conservation) Act 1967, which confers on Ministers the following powers:

- (i) to fix by order minimum sizes below which fish must not be sold in the United Kingdom (s. 1); and minimum sizes of mesh in fishing nets (s. 3);
- (ii) to institute by order a requirement that British-registered fishing boats (and certain other boats in the case of fishing for salmon and migratory trout) possess a licence in order to fish in designated areas, provided that they (the Ministers) are satisfied that substantially equivalent measures are being taken by other Governments interested in the area. Such orders may be limited to particular kinds of fish, methods of fishing, seasons or periods. This licensing power may be used so as to limit the number of British fishing boats, or any class of such boats, in any area or fishing for any description of fish, if this is necessary or expedient preventing over-fishing; though this power must be exercised so as to avoid undue hardship (s. 4); a number of licensing orders have been made, but none with the effect of restricting numbers of British boats;
- (iii) to restrict fishing where necessary or expedient for giving effect to international conventions (e.g. the North-West and North-East Atlantic Fisheries Convention) (s. 5); and
- (iv) to prohibit by order the landing in the United Kingdom of sea fish caught in certain areas during certain seasons (s. 6).

Criminal penalties are imposed for breach of these orders. Comparable powers in relation to the taking of shellfish are contained in the Sea Fisheries (Shellfish) Act 1967.

These measures are capable of operating indifferently on British and foreign fishermen in the interests of conservation of stocks from which British fishermen draw their supplies. The Sea Fisheries Act 1968, s. 6, may likewise be viewed as a conservation measure, but operates a discrimination between British and foreign-registered fishing boats by permitting only the former to fish within the twelve-mile limit around British coasts, subject to specific exceptions within the outer (six- to twelve-mile) zone in favour of boats from particular foreign countries designated under s. 1 of the Fishery Limits Act 1964.

6.2.3. MARKETING SCHEMES

The Herring Industry Board possesses, in the sphere of herring fishing, curing, kippering, processing and sale, regulatory powers and functions comparable in extent and purpose with those of an agricultural marketing board. By virtue of provisions dating from 1935 which

have been re-enacted as the Sea Fish Industry Act 1970, ss. 31 and 57, either the Board or the Ministers, may, after considering objections, promulgate a scheme for the reorganization, development and regulation of the herring industry. The scheme is to be made by statutory instrument and requires the approval of Parliament. The operative scheme, made by the Minister, is the Herring Industry Scheme 1951, S.I. 1951/1478. It provides for both financial assistance by the Board (discussed above)(3.3.1.2.), and for comprehensive regulatory powers including:

- (i) power to make rules as to (e.g.) the grading, packing and cleanliness of herrings;
- (ii) power to give directions in response to temporary or seasonal conditions, e.g. restricting fishing generally, or from any particular port, restricting numbers of boats or hours of fishing;
- (iii) power to make schemes for the exclusive purchase by the Board of fresh or cured herring;
- (iv) power to impose levies (any general levy being limited in amount to approximately 5 % of the value of the annual catch); and
- (v) power to impose systems of licensing for fishing, first or second sales of herring, curing, kippering, processing, and exporting. Licensing procedures are left to the discretion of the Board.

The regulatory powers of the White Fish Authority are fewer, but cover a wider area, i.e. all stages of the white fish industry (excluding herring) from fishing through to fish frying. Under the Sea Fish Industry Act 1970, it may make regulations on a variety of subjects listed in s. 6, e.g. on the handling of fish, the timing of landings, the conditions of sale (but not including prices), and standards of quality. Regulations have to be confirmed by statutory instrument made by the Minister, and may be made the subject of a public inquiry if there are objections to them. Under the same conditions the Authority may by regulations impose a levy to finance its activities: see the White Fish Authority (General Levy) Regulations Confirmation Order 1970, S.I. 1970/117, made under s. 17 of the 1970 Act. Lastly, the Authority may, under s. 7, submit a scheme for the reorganization, development or regulation of the industry or any section of it, which the Minister may confirm by order made by statutory instrument, if satisfied that the scheme is expedient in the interest of consumers and of the section of the industry affected. An example is the White Fish Authority Publicity Scheme Confirmation Order 1970, S.I. 1970/451, authorizing the Authority to provide publicity for the industry, financed by a special levy.

These powers under the Sea Fish Industry Act 1970 may be supported by the use of the power of the Department of Trade and Industry, under the Sea Fish (Conserva-

tion) Act 1967, s. 8, to regulate by order landings in the United Kingdom of foreign-caught sea fish. The Department must, in exercising this power, have regard to the interest of consumers, and to relations with foreign governments, and be satisfied that all practicable and necessary steps are being taken for the efficient reorganization in the United Kingdom of the particular branch of sea fishing or fish curing affected by the restrictions. No order under this section has yet been made.

6.3. Energy

The energy sector in the United Kingdom is largely the responsibility of nationalized industries. Of the five major fuels — coal, gas, electricity, atomic energy, and oil — only oil is produced and distributed essentially by private enterprise. Even here, the largest British company, British Petroleum, is half owned by the Government. The shareholding was originally taken to ensure security of supply on the switch from coal- to oil-firing of British naval vessels. The Government enjoys, under the Company's Articles of Association, a power of veto, exercisable through its nominees on the Board, of any decision of the British Petroleum Board, but it has never used this power and treats BP exactly as it were a wholly private company. Moreover, the Government has not used its massive proprietary stake in the energy sector as a whole to impose any kind of coordinated energy policy through control of prices, markets or production. It has left the initiative with the public corporations it has created to run the separate industries, and has contented itself with guiding their policies through the general mechanisms described above, in 2.4.2.3. and 2.5.1. It has given free rein to competition between the nationalized industries, intervening only by way of exhortation to suspend competition, for instance, during times of fuel shortage, and (exceptionally) through the agency of the Monopolies and Mergers Commission (above 5.5.1.) to resolve a long standing argument between the electricity and gas industries on the proper method of calculating connection charges. The Government has, however, been forced out of this passive policy stance by the combined effects of the Arab oil embargo and industrial action by miners at the end of 1973, and has responded by securing the passage of the Fuel and Electricity (Control) Act 1973. This Act, valid until 30 November 1974 and capable of being continued or revived thereafter for a further period of one year by order, confers on the Secretary of State comprehensive powers of control over the production, sale and use of petroleum and its products, other fuel substances and electricity, including power to dispense with statutory requirements (e.g., as to licences for public service vehicles, below, 6.4.2.1.) and to relax contractual obligations (e.g., of suppliers of fuel). Powers to control prices and to direct supplies are among those specifically conferred. Contraventions of the Act or of orders or requirements made under it are criminal offences

punishable, on summary conviction only, by maxima of three months' imprisonment or a fine of £ 400. The Act is perhaps best viewed as a measure to meet an emergency in a particular sector over an extended period of time, which is drafted and is being operated in the general style and spirit of regulations under the Emergency Powers Act 1920 (above, 5.3.), and may be assimilated to them for the purposes of this study.

In this section, therefore, what we deal with are, for the most part, the rules which restrict private entry into the fields in which nationalized industries are in operation.

6.3.1. COAL

The National Coal Board enjoys a monopoly of coal production in Great Britain, by virtue of the Coal Industry Nationalization Act 1946, s. 1 (1). It also owns all deposits of coal under the mainland of Great Britain, and under the Continental Shelf (above, 5.6.5.). The Board may, however, grant licences to others to work small mines employing not more than 30 persons, or to get coal in the course of working other minerals: Coal Industry Nationalization Act 1946, s. 36 (2). These licences include conditions as to the markets in which and the prices at which the products of these workings may be sold. The National Coal Board has no monopoly of supply, so that wholesalers and retail merchants are free to supply coal obtained from abroad; but until 1970 it was the policy of the Government to use its powers under the Import of Goods (Control) Order 1954, S.I. 1954/23 (above, 5.4.1.) so as to prevent the importation of coal other than by the Board itself. This policy has now been relaxed, and coal is covered by the Open General Import Licence.

6.3.2. GAS [37]

The regulatory position in relation to gas is more complex, essentially because it may be manufactured by diverse methods and from the different sources of coal and oil, and may also, as methane, be found, or imported, in its natural state. The relevant legislation, the Petroleum (production) Act 1934, s. 4, the Continental Shelf Act 1964, s. 9, and the Gas Act 1972, s. 29, thus gives to the British Gas Corporation a monopoly in the supply of gas (other than bottled gas) to the public, rather than in its production. The extent to which exceptions from this monopoly may be permitted in law varies according to the nature of the gas, natural or manufactured.

Natural gas extracted under a production licence under s. 2 of the Petroleum (Production) Act 1934, as applied, in relation to the Continental Shelf, by the Continental Shelf Act 1964, s. 1 (3), may be supplied to the public only if the Minister (i.e. the Secretary of State for Trade and Industry) consents, being satisfied either:

- (i) that the supply is for a non-fuel purpose (this applies in relation to Continental Shelf gas only, see Petroleum (Production) Act 1934, s. 4, Continental Shelf Act 1964, s. 9); or
- (ii) that the supply is for use as an industrial fuel and the gas has been offered to the British Gas Corporation at a reasonable price, and the British Gas Corporation has declined to purchase it. The statute gives no guidance as to how the Minister is to satisfy himself of the reasonableness of the price involved.

It may be noted that the consent of the Minister (but not the satisfaction of conditions (i) or (ii)) is necessary even for the use of the gas by its producer for his own purposes (Continental Shelf Act 1964, s. 9 (2)).

Manufactured gas and other natural gas (e.g. imported methane) may be supplied to the public only with the consent of and subject to conditions imposed by the British Gas Corporation: Gas Act 1972, s. 29 (1). The Corporation may not refuse to consent when the supply is for a non-fuel purpose. Where the application for consent is made by a person producing gas as a by-product of an industrial process, an appeal lies from an adverse decision of the British Gas Corporation to the Secretary of State for Trade and Industry: s. 29 (4). The Corporation may require a producer to sell to them any gas excess to his own requirements; in return, it may be required by him to purchase any such gas.

6.3.3. ELECTRICITY

The supply monopoly of the public corporations in the nationalized electricity industry, that is the Central Electricity Generating Board and the Area Electricity Boards in England and Wales, the North of Scotland Hydroelectric Board and the South of Scotland Electricity Board in Scotland, is secured by the Electric Lighting Act 1909, s. 23, which (as amended in 1947) forbids any person other than an Electricity Board to commence to supply or distribute electricity. There is, however, a proviso whereunder a supply can be given by any company or person whose business is not primarily that of electricity supply. Electricity Boards consequently face substantial competition from consumer self-supply by reason of the fact that many large industrial undertakings operate their own generating plant, and may even be exposed to competition in supply to third parties, in that (for example) landlords may lawfully supply electricity to their tenants, as an activity ancillary to their main business of managing land.

6.3.4. ATOMIC ENERGY

In the post-war years, research and development in atomic energy has been entrusted first to the Government itself (under the Atomic Energy Act 1946) and

subsequently to a statutory public corporation subject to especially close governmental supervision, the Atomic Energy Authority, set up by the Atomic Energy Authority Act 1954. Under the Atomic Energy Authority Act 1971, the commercial functions of the Authority, in the production of nuclear fuels and radio-chemical material, have been 'hived off' to limited companies, in which the Authority maintains a stake but into which private capital may also be introduced; and under the Atomic Energy Authority (Weapons Group) Act 1973, the functions of that group have been transferred to the Ministry of Defence. Despite the sensitivity of the sector, these public bodies have never been given a formal statutory monopoly in the production of atomic energy. At present, however, the factual position is that only the Atomic Energy Authority (for experimental purposes) and the Electricity Boards with generating responsibilities (for electricity supply purposes: above, 6.3.3.) are producing atomic energy in significant quantities, and the need for regulation does not arise. A statutory monopoly could, however, be conferred, or competition (if there were any) in the supply of atomic energy could be otherwise regulated, by the exercise by the Secretary of State of powers conferred by the Atomic Energy Act 1946 s. 10, to make orders to prohibit, save under licence, the working of minerals or the acquisition, production, treatment, possession, use, disposal, export or import of material or plant for the production or use of atomic energy. The Atomic Energy Authority, it should be noted, but not its successor companies under the 1971 Act, is exempted from the operation of this section (see Atomic Energy Authority Act 1954, Sch. 3, Atomic Energy Authority Act 1971, s. 24 (6)). No order has been made under these sections. In addition, it may be noted (also with reference to 5.6.5. above) that under the Atomic Energy Act 1946, ss. 6 and 7, the Secretary of State may exercise, for himself, or on behalf of the Atomic Energy Authority, special powers of compulsory acquisition of rights to mine materials productive of atomic energy, and to confer upon himself or the Authority the exclusive right to mine such materials. The materials in question are those from which prescribed substances (uranium, thorium, plutonium, neptunium or compounds thereof, or any other substance described by order) may be obtained. These powers have never been used, and in 1970 the Secretary of State announced that he would not in the future use them to deprive mining companies of the opportunity of working any uranium which they might find.

The important operative control over the atomic energy sector is in fact imposed essentially in the interest of safety and national security under the Nuclear Installations Act 1965. That Act imposes comprehensive safety and security requirements and regulates civil liability in respect of nuclear installations, and also provides that no person other than the Atomic Energy Authority or a government department may use any site for the pur-

pose of installing or operating a plant for the production or use of atomic energy or for certain ancillary processes unless a nuclear site licence has been granted by the Secretary of State in respect of the site: s. 1 (1). A licence may be granted only to a body corporate, is not transferable, and must have attached to it such conditions as appear to the Secretary of State to be necessary and desirable in the interests of safety: s. 4 (1). Contravention of the obligation to obtain a licence, or of conditions attached thereto, is a criminal offence.

6.3.5. OIL

With the exception of the Government's 'sleeping partnership' in British Petroleum Limited, there exists no public ownership in this sector, nor any general scheme of market regulation. General legislative measures affecting commercial operations in oil are confined to such licensing and other regulatory arrangements as are necessary to ensure:

- (i) the collection of the substantial customs and excise duties on hydrocarbon oil imposed for, *inter alia*, the protection of the domestic coal industry (see Hydrocarbon Oil (Customs and Excise) Act 1971, and 5.6.3. above); and
- (ii) safety in the handling of petroleum (see Petroleum (Consolidation) Act 1928).

Powers relating to the market in oil and petroleum products may, however, be exercisable under other, more general legislation. The market in imported crude oil and its products may be governed by the attachment of appropriate conditions to the import licences which may be required under the Import of Goods (Control) Order 1954, S.I. 1954/23, Article 2 (above, 5.4.1.), though so far as is known, this power has not been exercised so as to regulate in any significant way the free market in oil and oil products in the United Kingdom. It is, however, not unlikely that in times of fuel shortage, the corresponding powers under the Export of Goods (Control) Order 1970, S.I. 1970/1288, might be exercised to prevent or restrict the export from the United Kingdom of oil and oil products. In relation to oil from the Continental Shelf, the Petroleum (Production) Regulations 1966, S.I. 1966/898, Article 3, require the insertion in exploration and production licences for seaward areas of the model clauses set out in Sch. 4. Clause 21 requires that all petroleum won from a licensed area shall be delivered on-shore in the United Kingdom, unless the Minister consents to some other place for delivery. Conditions as to price, place of delivery, manner of payment, and requiring payment to a person resident in the United Kingdom, may be attached to such consent. This provision does the minimum necessary to assure security of supply from the Continental Shelf fields, and adequacy of revenue from any oil exported from this source.

6.4. Inland transport [38]

We deal here in turn with the regulation of the various modes of transport within the United Kingdom. There is substantial public ownership in this sector, through nationalized industries run by public corporations (British Railways Board, National Bus Company, Scottish Transport Group, National Freight Corporation, British Airports Authority, British Airways Board, British Waterways Board, British Transport Docks Board), through special local public corporations (such as the London Transport Executive and other local Passenger Transport Executives with the responsibility for coordinating all passenger transport in their areas), and through local authorities, many of which continue to operate their own bus, airport and harbour undertakings. We omit any consideration of powers of governmental control of the operation of this sector which derive from public ownership, and concentrate on the kinds of regulation that are intended to supplement or supplant the imperfect operation of the market mechanism therein. Relationships of the central Government with the nationalized industries in the transport sector conform to the general pattern of influence and control described above, in 2.4.2.3. and 2.5.1.; local authority powers deriving from ownership of transport undertakings are insignificant in economic terms.

The permanent powers of regulation of charges mentioned below, it should be remembered, are presently exercised subject to the requirements of the Counter-Inflation Act 1973, above, 5.2.1.1.

6.4.1. RAIL TRANSPORT

The law relating to rail transport has undergone a continuous and almost complete transformation in the years since 1930 — from extensive regulation of monopolistic private railway companies to virtually complete freedom of operation (subject to the constraints of public ownership) for the British Railways Board, which, while possessing an almost complete *de facto* monopoly of railway operation, is subject to fierce competition for passenger and freight traffic from road, air and water transport: see Kahn-Freund, *op. cit. supra*, pp. 66-85 and App. I. Railway operations not carried on by the British Railways Board include only a few hundred miles of line operated as tourist or industrial amenities, and underground railways in a few major cities operated as part of integrated local transport undertakings, the most important of these being the London Underground. None of these offers British Railways any competition. British Railways enjoy no statutory monopoly, but in view of the need for parliamentary sanction for the compulsory purchase of land which would be essential to any new railway construction operation, such statutory provision is hardly necessary.

Two continuing restraints on British Railways' freedom of commercial operation may be mentioned, as deriving

rather from its monopoly position in certain respects than from its public character:

(i) If any user, body representing users, or affected Passenger Transport Executive objects to a proposal by British Railways completely to withdraw services from any line or station, the Board may not proceed without the consent of the Minister which may only be given:

(a) after the Minister has received and considered a report — on the hardship which may be caused by the proposed withdrawal of services — from the Area Transport Consultative Committee, a permanent advisory body appointed by the Minister with the general remit of making recommendations with respect to matters affecting the services and facilities provided by the Board; and

(b) after the Minister has invited and considered representations by or on behalf of affected employees of the Board;

and may be subject to conditions such as the provision of a satisfactory alternative service, e.g. a bus service by subsidiaries of the National Bus Company or Scottish Transport Group: see Transport Act 1962, s. 56, Transport Act 1968, s. 54. This position applies, *mutatis mutandis*, to the railway services provided by local bodies such as the London Transport Executive.

(ii) Where there is competition between British Railways and coastal shipping (e.g. for long-distance freight haulage), the Minister may, on complaint by coastal shipping interests, direct the Board to quote reasonable rates for necessary rail carriage of goods to or from harbours for coastal shipment (Transport Act 1962, s. 53); and further, may after inquiry give appropriate directions to the Board where coastal shippers complain of British Railways' rates in competition with theirs, if the special committee of railway and coastal shipping representatives set up to deal with such complaints cannot resolve the matter (Transport Act 1968, s. 150).

6.4.2. ROAD TRANSPORT

6.4.2.1. Road transport of passengers [39]

Passenger road transport is subject to several licensing systems, of which only the road service licence system, under ss. 134-140 of the Road Traffic Act 1960, is relevant here. Other licences, the public service vehicle drivers' and conductors' licences under s. 144 of the 1960 Act, and the licences required for public service vehicles themselves (i.e. buses and coaches) under ss.

127-133 of the Act, are awarded as of right on the satisfaction of standards of competence and of construction and repair respectively, rather than as a means for the regulation of competition in the industry, and thus represent regulations of the type dealt with above in 5.6.4. and 5.8.1. respectively. All the types of licence, however, are awarded by special authorities called Traffic Commissioners, appointed by the Secretary of State for the Environment (in Scotland as well as in England and Wales). The Commissioners, three for each of eleven areas of Great Britain, with a full-time chairman in each area, act under the general direction of the Secretary of State and in accordance with procedural rules laid down by him.

Outside the London area where the London Transport Executive, a local public corporation subject to the control of the Greater London Council, enjoys a direct statutory monopoly (Transport (London) Act 1969, s. 23), a road service licence is required for any carriage of passengers in a public service vehicle at separate fares. Three types of carriage are recognized — stage carriage (scheduled short-distance services), express carriage (scheduled long-distance services), and excursion or tour carriage, which is self-explanatory and, unlike the others, does not involve any obligation on the operator to run the services at a particular time or indeed at all. Stage carriage is almost entirely in the hands of public authorities, either local authority undertakings or the local subsidiaries of the National Bus Company or Scottish Transport Group, express carriage is largely in the hands of the express subsidiaries of the National Bus Company or Scottish Transport Group. Only in excursion and tour work do private operators have a substantial stake.

The Commissioners are required to consider, on an application for a road service licence, the suitability of the route proposed, the extent to which the proposed service is necessary or desirable in the public interest, and the needs of the area as a whole in relation to traffic. If they decide to grant a licence, they may attach conditions as to stopping places, carriage of baggage, and other related matters, and most important, as to the fares to be charged. (Fares in London are not subject to the jurisdiction of the Traffic Commissioners or any other licensing authority.) Proceedings before the Commissioners usually take on an adversary character, as persons who already provide transport services along or near the proposed routes, and local authorities, have and freely exercise a right of making representations.

Appeal from their decisions on road service licences lies to the Secretary of State, who exercises this function by appointing an independent inspector, who holds a public inquiry. Operation of road services without or otherwise than in accordance with conditions attached to the requisite licence is a criminal offence.

6.4.2.2. Road transport of goods

Until the passage and partial implementation of Pt. V of the Transport Act 1968, road haulage was controlled by a 'quantity licensing' system for goods vehicles under ss. 164-182 of the Road Traffic Act 1960. Licences, classed 'A' (for carriage by professional road hauliers), 'C' (for carriage of goods for or in connection with another trade or business, but not for hire or reward), or 'B' (including characteristics of 'A' and 'C', but subject to stringent limitations) were granted by the licensing authority — the chairman of the Traffic Commissioners for each area, sitting alone — on the basis of the operator's fitness and conduct and, in the case of 'A' and 'B' licenses, of the need for services which the vehicles were to provide. As with road service licences for public service vehicles, hearings of 'A' and 'B' licence applications took on an adversary character, with existing licence-holders and carriers by other modes (e.g. railways, waterways) intervening to argue lack of need. The effectiveness of the system, as a mode of regulating carriage, was increasingly sapped by the rapid growth in the number of 'C' licences, granted without regard to economic considerations, to the point where the number of 'C' licensed vehicles was more than seven times the number in the other two categories. This kind of licensing was therefore repealed, with effect from 1 December 1970, by orders made under the Transport Act 1968, s. 94(8).

The 1968 Act envisaged the substitution of a dual system, a system of 'fit person' licensing for operators of goods vehicles (whether for hire or in connection with their trade or business), and a system of special authorizations for the employment of heavy goods vehicles on long journeys in which they would be in competition for traffic with the railways and waterways — again, whether for hire or in connection with the operator's main trade or business. The first part of this system has been brought into effect. Operators are required to satisfy the licensing authority of such factors as their general fitness, financial resources, safety of their vehicles, maintenance arrangements, and must at each depot employ (or themselves be) a person holding a transport manager's licence attesting competence and fitness: ss. 60-70 and Sch. 9. The second part (ss. 71-80) had not been brought into effect on the change of Government in 1970, and being contrary to Conservative policy regarding road/rail competition, is unlikely to be brought into effect under a Conservative Government (or, for that matter, in its present form, by a future Labour Government either).

Appeal from decisions of the licensing authority in relation to operators' licences lies not to the Minister but to the Transport Tribunal, a specialized jurisdiction composed of five members of which the president is an experienced lawyer who enjoys a tenure comparable to that of a High Court judge: Transport Act 1962, Sch. 10.

The nationalized road haulage undertaking, in the hands of the National Freight Corporation, accounts for a very small proportion of the industry as a whole.

6.4.3. AIR TRANSPORT

The United Kingdom domestic air transport licensing system is comparable, in its legal outline, with that for passenger road transport. In addition to licences for pilots and aircrew, and aircraft air-worthiness certificates, designed essentially for safety purposes, the operative legislation, the Civil Aviation Act 1971, demands the possession of an air-transport licence for the operation of any aircraft for the carriage of passengers or goods for hire or reward. As with road service licences, a distinction is drawn in practice (though is not mentioned in the Act) between scheduled services on the one hand and unscheduled, or charter, services on the other.

The licensing authority is a statutory public corporation, the Civil Aviation Authority, which in addition to this regulatory function has various executive roles transferred to it, under the 1971 Act, from the Government itself, such as the operation of certain aerodromes and the running, with the Secretary of State for Defence, of the national air traffic control services. Both the fitness and financial resources of the operator, and the state of the market for air transport services, are relevant to the decision by the Civil Aviation Authority whether to grant a licence to a particular operator in regard to a particular route or service. However, while conditions as to fitness and finances are set out in the Act (s. 22), the economic criteria are mentioned in only the vaguest terms (s. 3 (1) (a) and (b)) and it is left to the Minister to lay down detailed rules by way of 'guidance' under s. 3 (2). This guidance requires to be approved in draft by each House of Parliament: see, for the guidance presently in force, Cmnd. 4899 (1972).

Present policy for the award of air transport licences being implemented by the Civil Aviation Authority reflects the conclusions of the Departmental Committee's report, *British Air Transport in the Seventies*, Cmnd. 4018 (1969), that there should be two principal British airlines, one publicly, one privately owned, which should have equal opportunities in the scheduled and charter markets alike, with other private airlines being restricted essentially to charter work. As a result of the regime of statutory monopoly in scheduled services for the nationalized airlines, British European Airways and British Overseas Airways Corporation (now merged under the title of British Airways) which prevailed under legislation in force from 1946 to 1960 and which was hardly affected by the operation of the licensing regime introduced under the previous air transport regulation statute, the Civil Aviation (Licensing) Act 1960, the current guidance calls for 'positive discrimination' in favour of British Caledonian, the principal privately

owned airline, in the licensing of scheduled services and certain charter operations, and a general preference in favour of British Caledonian and British Airways over all others.

As with road service licences, the licensing authority may impose conditions on the grant of licences, and these usually (and always in relation to domestic services) include specification of or limits on the fares or rates which may be charged, and may also govern such matters as frequency of flights, number of stops, etc. Appeal from the decisions of the Civil Aviation Authority lies to the Minister, who has complete discretion as to the decision he renders, even to the point of departing from the terms of the guidance he has given the Civil Aviation Authority. The whole application may therefore be re-argued before an inspector appointed by him.

Airports, whether in the hands of the British Airports Authority, local authorities, or private enterprises, are not subject to any special regulations of an economic kind.

6.4.4. WATER TRANSPORT

6.4.4.1. Inland waterways

Most, but not all, inland waterways are presently vested in the British Waterways Board. Under the Transport Act 1968. Pt. VIII and Sch. 12 the Board's waterways are divided into commercial, cruising and other waterways, and they are under a duty to maintain waterways of the first two categories in a state fit for the appropriate traffic. The Minister may dispense them from performance of this duty, but only by order made by statutory instrument after the elaborate procedures of consultation of users and public inquiry into objections set out in Sch. 13. Most waterway traffic is carried by privately owned canal carrying companies, but the Board also operates barges in competition with these companies. Neither the tolls for making use of the Board's waterways, nor the charges for carriage of goods by canal, are any longer subject to statutory regulations.

6.4.4.2. Coastal shipping

Coastal shipping is an industry in private hands and is free from regulation of an economic kind; its special protection against competition and undue discrimination by the British Railways Board has already been described above, 6.4.1.

6.4.4.3. Docks and harbours

Ownership of the United Kingdom's docks and harbours is divided among the British Transport Docks Board, the British Waterways Board, in respect of waterway docks,

local authorities, special local harbour trusts and boards, and private undertakings. This sector of the transport industry is placed by the Harbours Act 1964 under the general guidance of National Ports Council (s. 1) appointed by the Minister (s. 2), and financed by the proceeds of a levy imposed on harbour authorities (s. 4). Harbour authorities are subject also to the following specific controls:

- (i) development of harbours (save by way of individual projects costing less than £ 500 000 or such other figure as may be substituted by the Minister by statutory instrument) may by order be made subject to the authorization of the Minister, to be granted or refused after consultation with the National Ports Council (s. 9);
- (ii) the constitution, powers and functions of harbour authorities may be varied by order made by the Minister, either on the application of the authority itself or of persons interested in the operation of the harbour, e.g. users (s. 14 *et seq.*);
- (iii) the management of groups of harbours may be merged, or otherwise reorganized, by harbour reorganization orders made by the Minister on application by all or any of the authorities involved or by the National Ports Council (s. 18);
- (iv) ship, passenger and goods dues may be charged by harbour authorities in their discretion, but must be given full publicity by being kept at the harbour office open to inspection without charge, and may be the subject of objections by users to the National Ports Council, which can give directions to the harbour authority on the exercise of its charging powers. Moreover, the Council may submit, and the Minister confirm, a scheme for the revision of the ship, passenger and goods dues charged at any harbour (ss. 26, 28-39); and
- (v) other dues imposed by harbour authorities must be reasonable (s. 27).

6.5. Rents [40]

We deal under this heading only with rents for dwelling-houses, furnished or unfurnished. Tenancies of agricultural holdings and business premises are also subject to considerable statutory regulation, essentially with the purpose of ensuring reasonable security of tenure for enterprises carried on on rented property, together with compensation for dispossession where appropriate. Agricultural and business rents are (with the not unimportant exception of rent for small Scottish land holdings under the Crofters Holdings (Scotland) Act 1886 — see Paton and Cameron, *op. cit. supra*, Ch. XIX) not directly controlled, save under counter-inflation and prices and incomes legislation (above, 5.2.1.1.).

Control of domestic rents was originally introduced during the First World War, by the Increase of Rent and Mortgage Interest (War Restrictions) Act 1915, to prevent undue exploitation of the shortage of residential accommodation which had then arisen. This 1915 Act and its successors applied only to unfurnished property. Control over the rents obtained for furnished property was first introduced, on a quite different administrative pattern, by the Furnished Houses (Rent Control) Act 1946. Both these schemes of legislation have now been consolidated into the Rent Act 1968 (England and Wales) and the Rent (Scotland) Act 1971, which, as subsequently amended, constitute the bulk of the present law on the subject. The systems of control of rents for furnished and unfurnished properties remain none the less distinctive. The elements of these extremely complex systems of control can here be sketched only in their broadest outlines.

6.5.1. UNFURNISHED PROPERTY

Control here has two elements. First, the 1968 and 1971 Acts provide security of tenure, in respect of tenancies (called *protected* tenancies) of unfurnished private domestic premises of a rateable value (notional annual rental) of not more than £ 400 in Greater London or £ 200 in the rest of Great Britain. Security is afforded first, by the automatic statutory continuance of the contractual period of any protected tenancy, so long as the tenant continues in possession, and second, by making the recovery of possession by the landlord subject to the obtaining of a court order, which may be obtained only on certain limited grounds, and whose issuance is to be based in most cases on a weighing of the interest and convenience of the landlord and the tenant. These security of tenure provisions do not apply to property leased by the Crown, local authorities, and bodies like the Scottish Special Housing Association and other housing associations. Second, the Acts contain provisions for restricting the rent which may be demanded by the landlord. At present there exist two main types of restriction which, under legislation passed in 1972, the Housing Finance Act and the Housing (Financial Provisions) (Scotland) Act, are gradually to be merged. The rents of *controlled* tenancies, which may subsist in relation to older dwellings which are small, have few amenities and are therefore of low annual value, are fixed according to formulae contained respectively in s. 52 and Sch. 8 of the 1968 Act and s. 48 and Sch. 8 of the 1971 Act. The amount so fixed is the maximum recoverable. In relation to all other protected and statutory tenancies, known for this purpose as *regulated* tenancies, either landlord or tenant, or both together, may apply for the registration of a rent to the rent officer, who is an officer of the local authority. The rent so registered, termed the 'fair rent', will be the maximum payable under the tenancy, and will be determined by the rent officer, taking into

account the size, character and locality of the property, its state of repair, and all other relevant circumstances except for personal circumstances, and discounting any scarcity value attaching to the property (i.e. it is to be assumed that the supply and demand for similar property in the locality are approximately equal). Either party may appeal from the rent officer's decision to a local rent assessment committee, a committee composed of lawyers and lay people appointed in England and Wales jointly by the Lord Chancellor and the Secretary of State for the Environment, in Scotland by the Secretary of State for Scotland, which may either confirm the rent officer's decision or fix some other fair rent. Where no rent is registered, the amount payable is now (by virtue of repeals effected by the Housing Finance Act 1972, s. 42 and the Housing (Financial Provisions) (Scotland) Act 1972, s. 41, left to the free determination of the parties.

This 1972 legislation also provides:

- (i) over a period ending in mid-1975, for the gradual conversion of existing controlled tenancies into regulated tenancies, the registration of fair rents for such tenancies and the phasing of any consequent increase from the previous controlled rent to the new fair rent: see Pt. IV of the English Act, Pt. V of the Scottish Act;
- (ii) for the charging by local authorities and other public housing authorities of rentals based on the fair rent principle, to which they previously did not adhere; and
- (iii) for the institution of rent rebate and rent allowance schemes by local authorities (following a standard pattern laid down in the legislation) for granting respectively to their tenants and to tenants of privately-owned unfurnished property in their areas, rebates of rent or grants towards their rent calculated by reference to their needs and resources.

6.5.2. FURNISHED PROPERTY

The system for control of furnished lettings is now contained in Pt. VI of the 1968 Act and Pt. VII of the 1971 Act. The same upper limits of rateable value apply as for the definition of protected tenancies. Parties to a contract for the letting of furnished property may freely determine the rent to be paid, but either party may refer the contract to a local rent tribunal, consisting of a chairman and two other members appointed by the Secretary of State for the Environment, or, in Scotland, the Secretary of State for Scotland, which after hearing the parties, may approve the rent payable, reduce it, or dismiss the reference. In certain limited circumstances the tribunal may increase the rent payable. Where a contract has been referred to a rent tribunal, no notice to quit given by the landlord after the reference has been

made can be effective until six months after the date of decision of the tribunal, unless the reference is withdrawn or a shorter period substituted by the tribunal. The tribunal may also, in certain circumstances, extend this period. The lessee may be deprived of this security of

tenure in cases where the letting is by an owner occupier who requires to re-occupy the house as his residence, or where the lessee is in breach of contract, is guilty of conduct causing a nuisance, or has caused the value of the property to deteriorate by his act or neglect.

CHAPTER 7

The enforcement of economic law

An examination of the methods of enforcement of economic law in the United Kingdom must obviously focus principally on the ordinary legal sanctions afforded by the criminal and civil law (7.1. and 7.2.). In addition to these orthodox sanctions, however, economic law also relies heavily — perhaps more heavily than other branches of law — on other sanctions of an administrative or even informal nature, and these we examine in a third section of this chapter (7.3.). Within the first two groups of sanctions too, we shall see that the special needs of law for the regulation of the economy have prompted the development of criteria, penalties and procedures which, while by no means forming a coherent group, depart in various ways from established norms. The dominating factor here is the hit-or-miss character of legal regulation of the economy, which may so easily miss the mark or overshoot that the tightest possible control of the enforcement process by the authorities responsible for the conduct of policy is seen to be desirable. Besides shaping the way in which particular types of sanction are operated, this factor also seems to influence the incidence of the different types of sanction. Enforcement through criminal law, which offers the authorities both the widest discretion in the commencement and continuance of proceedings and the most vigorous effect, is preferred in almost all cases (control of restraints on competition being the only significant case where the remedies in the hands of the *public authorities* are predominantly civil in character: above, 5.5.1.), and civil enforcement by private individuals is only permitted to the extent that it is strictly necessary for the protection of their legitimate interests and is not liable to jeopardize the attainment of the policy objectives of the regulation in question.

7.1. Criminal sanctions [41]

In the United Kingdom, criminal offences are classified, according to their seriousness, for the purpose of determining what procedures — from summons or arrest for-

ward — are appropriate, or what court is competent to try them, but not for the purpose of determining who may create them.

In England, the broad distinction of this nature is into offences triable on indictment (judge and jury) and summarily (before a bench of lay magistrates, or a single professional magistrate); in Scotland, the comparable distinction is between solemn procedure (judge and jury) and summary procedure (lay or professional judges sitting without juries). Either kind of offence may be created either by statute or by Ministers, or other persons, exercising powers delegated by statute. In this latter connection it should be noted:

- (i) that the courts will be reluctant, in the absence of extremely clear indications to the contrary, to find that Parliament intended to delegate the power to create criminal offences in cases where it has not expressly said so, and is therefore likely to find such a purported exercise of power to be a nullity;
- (ii) that in those cases where Parliament expressly confers on, say, a Minister the power to promulgate statutory instruments which involve the imposition of criminal penalties, it will usually stipulate the upper limits of severity of those penalties, and may sometimes also add other procedural requirements: see, for example, Harbours Act 1964, s. 16 (6) (harbour empowerment orders); Emergency Laws (Re-enactments and Repeals) Act 1964, s. 13 (hire purchase control and other orders).

It is quite clear that Parliament is jealous of its prerogatives in the criminal law sphere. Without Parliamentary intervention in some form, no new offences may be created, whether by Government — see the *Case of Proclamations* (1611) — or by the courts. While, however, the courts claim never to be doing more than interpreting the existing criminal law, the existence, in Eng-

land, of the catch-all offence of creating (or conspiring to create) a public mischief, and the comparable Scottish doctrine that the High Court of Justice has inherent power to punish any act which is obviously of a criminal nature (whose present force is discussed in Gordon, *The Criminal Law of Scotland*, at pp. 21-42 (1967)) gives the courts a real power to punish reprehensible conduct which does not always fall squarely within the prohibitions of the established criminal law. This power has occasionally been used to punish conspiracies damaging to the economic interests of the country, as in *R. v Newland* [1954] 1 Q.B. 158. There, traders who by fraudulent means secured and sold on the home market decorated domestic pottery which, by reason of the Domestic Pottery (Manufacture and Supply) Order 1947, was reserved for export, and thereby deprived the country of export earnings, were convicted of conspiracy to effect a public mischief.

The normal case, therefore, for economic as for other criminal offences, is that of creation by statute, specifying the class of offence and the maximum penalty imposable. Each regulatory Act (e.g. Counter-Inflation Act 1973, Prevention of Fraud (Investments) Act 1958) will create and contain detailed provisions regarding offences against its provisions; there is no general statute on economic criminal offences to which reference can be made. Where economic criminal law distinguishes itself from criminal law as a whole is in the fact that it is less concerned with subjective questions of blame and culpability than with the objective task of ensuring the efficient operation of the legislative scheme (whether of regulation or, less commonly, assistance) that it seeks to protect. Three indications of this 'instrumental' character of criminal sanctions are:

- (i) Many offences are 'objective' in character, that is, no *mens rea* (guilty intent) is required in the offender, or may be committed vicariously, that is, through the act of the defendant's agents (e.g. the directors of the defendant company) or servants, likewise without *mens rea* on his part. Legislation discussed in Chapters 5.6. to 5.8. and 6.4. is particularly rich in such offences. Gordon points out (in *The Criminal Law of Scotland*, Chapter 8, especially at pp. 240-242) that this objective character is invariably a matter of judicial interpretation as opposed to express statutory declaration, and that most early cases of this type arose in relation to licensed trades where offences were treated rather as breaches of the licence carrying a penalty, i.e. quasi-criminal, than as crimes.
- (ii) Prosecutions are kept under the complete control of the department generally responsible for the legislative scheme or of the central or local government prosecution authorities. It should be explained that in ordinary English criminal law pro-

secutions can be commenced by any person, the police being the most usual prosecutors in relation to the general run of minor criminal offences, but purely private prosecutions (e.g. for offences such as assault) being not unknown. To avoid the risk of such private prosecutions which might be politically inopportune or economically counter-productive, it has been usual to provide by statute that prosecution for economic offences shall in England be commenced only by or with the consent of the appropriate department (for example, the Department of Trade and Industry) or the Attorney-General or his Deputy, the Director of Public Prosecutions, or by the appropriate local authority or officer (e.g. weights and measures authorities): see, for examples, Emergency Laws (Re-enactments and Repeals) Act 1964, s. 14; Counter-Inflation Act 1973, s. 17 (9) (Attorney-General only); Borrowing (Control and Guarantees) Act 1946, Sch., paragraph 3 (1); Exchange Control Act 1947, Sch. 5, Pt. II, paragraph 2 (1), etc. In Scotland, this precaution is unnecessary, because with very minor exceptions all criminal prosecutions must be brought by the Lord Advocate (the principal Scottish legal officer) or, in the case of lesser offences, by local procurator-fiscals who form part of his department, unless, in the case of a statutory offence, the statute specifically provides otherwise. In neither jurisdiction does the individual who may have suffered loss as a result of or in connection with the offence have the possibility of associating himself with the criminal prosecution as *partie civile*, a procedure unknown in the United Kingdom. The English courts have, however, possessed since 1972, under the Criminal Justice Act 1972, s. 1, the power to order a convicted offender to compensate, up to a limit of £ 400 in magistrates courts (summary procedure), persons who have suffered loss as a result of the offence. An earlier, isolated example of this power in the economic field is provided by s. 12 of the Wages Councils Act 1959, requiring the payment of compensation to workers by employers breaking Wages Councils Orders. (For the possibility of basing a civil action on a breach of a legislative prohibition attracting a criminal sanction, see below, 7.2.)

- (iii) Sufficient flexibility is left in the specification of penalties to give prosecutors a wide discretion. It is common to make the same offence triable according either to solemn (indictment) or summary procedure, with different penalties. Prosecutors can then deal appropriately with defenders of different economic strength (e.g. large companies as against small individual enterprises) or differing degrees of culpability. The idea of transaction or compromise as between prosecutor and defender is not officially accepted in United Kingdom criminal

procedure, but is in fact commonly practised, in the economic as in other spheres, and the decisions of prosecutors to compromise or withdraw proceedings are not subject to judicial review. In cases where prescribed penalties prove to be insufficient to prevent the repeated commission of economic offences (e.g. where the fine payable is less than the profit obtainable from continued transgression), the Attorney-General may, in England, apply at the request of the prosecutor or of a private party for a civil injunction against the commission of further offences, disobedience to which will be punishable by imprisonment as a contempt of court (below, 7.2.). The Lord Advocate does not have a comparable power in Scotland and the ability of local authorities and private individuals themselves to obtain interdict for this purpose would seem to be governed by the general rules regarding civil actions for breach of statutory duty below, 7.2.).

In conclusion, we may mention the fact that in the economic sphere, as in other branches of criminal law, special difficulties of enforcement may produce special provisions which derogate from the basic liberties and freedoms assured by ordinary criminal procedure (e.g. the privilege against self-incrimination). See 5.5.2. above (exchange control) for an example of this, and compare, from another sphere, the Official Secrets Act 1920, s. 6, likewise apparently displacing the privilege against self-incrimination.

7.2. Civil sanctions

The enforcement of economic law through civil sanctions demonstrates even more clearly than enforcement through criminal sanctions the desire of the Government to retain a tight but flexible control over the enforcement process. Economic law, as we have reiterated on a number of occasions, is very largely a creation of statute, and two essential questions therefore arise:

- (i) whether particular duties imposed by statute either on public or private persons are civilly enforceable and if so, by whom;
- (ii) to what extent the conclusion of a contract in contravention of statutory prohibitions renders that contract unenforceable.

The first question may conveniently be regarded as one of positive enforcement, the second as one of negative enforcement, and we shall deal with them in that order.

7.2.1. 'POSITIVE' ENFORCEMENT [42]

In cases where Parliament has imposed a statutory duty — with or without attaching some criminal or administrative sanction to its breach or non-performance — and

not specified whether it is to be civilly enforceable or by whom, the general approach of the United Kingdom courts when confronted with an action for civil remedy has been to seek to ascertain the unexpressed intention of Parliament in this regard. In general terms, they ask, did Parliament, in imposing this duty, intend to create a correlative right to its due performance in the plaintiff (or pursuer)? This purported quest for legislative intention dissembles a substantial, though perhaps often unconscious exercise in judicial policy-making, whose results are not entirely predictable. For example, there has been a tendency — it can be put no higher — for courts to argue that the imposition of a criminal or administrative sanction in relation to a new statutory duty is evidence of the legislative intention that it should only be enforced in that prescribed manner, hence that civil enforcement is excluded. Numerous exceptions can however be found, particularly in the sphere of factory legislation. In some fields one can, however, discern, from study of the decisions, certain fairly constant policy trends, e.g. as to which interests are most worthy of protection, what kinds of duties are most appropriately enforced in this way. For example, doubtless as a result of nineteenth century judicial acceptance of *laissez-faire* philosophy (above, Intro. 4.4.) courts are reluctant to allow traders to sue to restrain breaches of statutory duty by their competitors or to recover damage for losses suffered in consequence thereof. Likewise, Fleming (*Law of Torts*, at p. 125) notes that the primary reason for 'the entrenched policy against construing positive duties imposed on public authorities (e.g. to construct roads or drains . . .) as intended for the benefit of citizens as individuals . . . is undoubtedly an unwillingness to impede the exercise of administrative functions and a fear of unduly taxing limited budgets'. But the application of even these fairly firm policies in individual cases is always unpredictable (see for exceptions to the first of the trends cited, *Smith v London Transport Executive* [1951] A.C. 555 and *Charles Roberts & Co. Ltd. v British Railways Board* [1965] 1 W.L.R. 396, and for exceptions to the second, *Dutton v Bognor Regis UDC* [1972] 1 Q.B. 373 and *Ministry of Housing and Local Government v Sharp* [1970] 2 Q.B. 223), and it is therefore not surprising that in certain cases in the economic field the legislator should have preferred to indicate precisely what civil remedies are available for breaches of statutory duty and to whom. We have already adverted to the danger that unsystematic or uncontrolled enforcement of economic law by private parties by way of civil sanctions may be counter-productive in economic terms, and there is also a risk that it may create political side effects with the same ultimate result. This latter danger is vividly illustrated by the difficulties arising out of the use by the National Industrial Relations Court (above, 5.3. and 5.5.2.) at the instance of private employers, of its power to punish workers defying its orders by imprisonment for contempt of court. On one occasion in 1972 the exercise of this power all but produced a national dock strike: see

Churchman v Joint Shop Stewards Committee of the Workers of the Port of London [1972] 3 All E.R. 603. (Compare the situation in the Restrictive Practices Court, likewise a judicial agency for the direct application of economic law, where contempt proceedings are effectively under the control of the Director-General of Fair Trading.) In consequence we sometimes find that this specification of civil sanctions available is restrictive in character, that is, excludes or restricts a civil remedy even where the application of the courts' general principles of interpretation might suggest that one would probably be available. Examples are afforded by the Counter-Inflation Act 1973, s. 17 (8) (all civil enforcement excluded), Fair Trading Act 1973, s. 26 (exclusion of civil enforcement of orders forbidding unfair consumer trade practices) (compare s. 93 (2), preserving civil enforcement of orders regarding monopoly and merger situations), and, outside the strictly regulatory context, by provisions of nationalization statutes imposing affirmative duties on the public corporations set up to run the industries (e.g. Transport Act 1962, s. 3 (4) (civil enforcement excluded)).

Examples of statutory specification of civil remedies which on general principles might exist anyway are afforded by the Restrictive Trade Practices Act 1968, s. 7 (loss caused by operation of unregistered restrictive trading agreement), Resale Prices Act 1964, s. 4 (loss caused by operation of resale price maintenance).

7.2.2. 'NEGATIVE' ENFORCEMENT [43]

It is a general principle of the common law in England and Scotland that the courts will not lend their aid to the enforcement of a contract which is tainted with illegality. Such illegality may stem from different sources: contravention of common law principles, known as rules of public policy, which prohibit (for example) agreements to commit a crime or civil wrong, or to perpetrate a fraud, agreements intending to injure the public service or abuse the legal process, and most important from the economic point of view, agreements in restraint of trade (above, 5.5.2. and Intro. 4.4.); or, what concerns us directly here, agreements whose existence, mode of conclusion, terms or manner of performance are contrary to statute. A simple refusal to take any cognisance of such an agreement might, however, create considerable injustice as between the parties, for example, where one party is ignorant of the facts constitutive of the illegality, or where the parties are for other reasons not equally culpable, and the courts have attempted to prevent this by tempering the strictness of the rule in cases other than those where a statute explicitly forbids the conclusion of the contract in question. For example, where the illegality is the product of the mode of performance chosen by one of the parties, they will not leave the innocent party without a remedy for breach (*Anderson Ltd. v Daniel* (1924) 1 K. B. 138; *Marks v Phillip Trent and Sons Ltd.* [1954]

1 Q.B. 29), especially where the statutory prohibition infringed was designed for the innocent party's protection (*Bonnard v Dott* [1906] 1 Ch. 740 (Moneylenders Acts), though compare *Anderson, Benson, Pease and Co. Ltd. v A. V. Dawson Ltd.* [1973] 2 All E.R. 856); where the statutory prohibition infringed is not designed for the protection of the parties (e.g. statutory speed-limits for goods lorries) they will allow even the culpable party the benefit of the contract (*St. John Shipping Corporation v Joseph Rank Ltd.* [1957] 1 Q.B. 267); where the pursuer or plaintiff, though party to an illegal contract with the defendant, does not need to rely on it, they will permit recovery (*Bowmakers Ltd. v Barnet Instruments Ltd.* [1945] K.B. 65; *Belvoir Finance Co. Ltd. v Harold G. Cole and Co. Ltd.* [1969] 2 All E.R. 904 — both cases arising in connection with hire purchase agreements contrary to credit restrictions, above, 5.2.2.1.); where possible, they will sever illegal clauses in a contract from legal ones and give effect to the latter.

As with positive enforcement, however, these rules, which rely hardly less heavily, where statutory illegality is concerned, on ascertaining the presumed intention of the legislature, can lead to results too unpredictable for the effective operation of law as an instrument of economic regulation. Thus we find numerous explicit statutory provisions such as the Counter-Inflation (Validity of Transactions) Order 1973, S.I. 1973/660 (limited validity of transactions contrary to the Counter-Inflation Act), Exchange Control Act 1947, s. 33 (statutory implication of condition that exchange contracts are not to be performed if contrary to the Act), Resale Prices Act 1964, s. 4 (explicit nullification of resale price maintenance terms), Restrictive Trade Practices Act 1968, s. 7 and Restrictive Trade Practices Act 1956, s. 20 (explicit nullification of unregistered restrictive trading agreements and of restrictions contrary to the public interest in registered restrictive trading agreements, respectively), Fair Trading Act 1973, Pt. V (explicit nullification of illegal newspaper mergers), Hire Purchase Act 1965, s. 5 and Registration of Business Names Act 1916, s. 8 (restrictions on enforceability of agreements by offending parties), Fair Trading Act 1973, s. 26 and Trade Descriptions Act 1968, s. 35 (explicit preservation of validity of contracts whose conclusion has been accompanied by an unfair consumer trade practice or false trade description, respectively).

7.3. Other sanctions

Outside the ordinary penalties and liabilities provided for under the criminal and civil law, the most important technique for the enforcement of economic law is undoubtedly the withdrawal or non-renewal, or the threat thereof, of the licences which are essential to the prosecution of so many economic activities (see in particular 5.6.3., 5.6.4., and 6.4.). Powers to withdraw, or refuse to renew, licences are normally vested in the licensing

authorities, and the legislative terms in which they are couched vary from those which admit a broad discretion in the authority, as to the nature, range and evaluation of the facts it takes into account and the procedure it follows, to those which specify criteria in detail and provide for special procedures, rights of appeal, etc. Examples of the first kind of power are provided by the Import of Goods (Control) Order 1954, S.I. 1954/23, Article 5, the Wireless Telegraphy Act 1949, s. 1, the Post Office Act 1969, s. 27, the Coal Industry Nationalization Act 1946, s. 36 (2), and the Town and Country Planning Acts 1971 and 1972, ss. 67 and 65 respectively. Examples of the second type of provision are afforded by the Gaming Act 1968, Sch. 2, paragraphs 20, 21; the Prevention of Fraud (Investments) Act 1958, s. 5, and the Medicines Act 1968, s. 28. The extent to which the courts can review decisions taken in the exercise of such powers, is considered in general terms in Chapter 8.

It should be noted that a number of variants exist on what might be termed the orthodox pattern of licensing by public authorities operating under powers conferred by statute. Statutory power to grant or withdraw licenses may be conferred on semi-public or corporative bodies, especially in relation to access to the liberal professions: see, e.g. Medicines Act 1968, s. 80 *et seq.* (deregistration of pharmacists by the statutory committee of the Pharmaceutical Society of Great Britain), and see also 5.6.4. above for the *common law* power of the Faculty of Advocates (Scotland) and Inns of Court (England) over

advocates and barristers, which extends to their disbarment; alternatively the control exercisable by the governing body of a profession may be utilized as a substitute for orthodox licensing provisions, as in the case of the Stock Exchange in relation to the Prevention of Fraud (Investments) Act 1958. Finally one may draw attention to the cases in which public authorities utilized their economic, as opposed to their legal power, to operate a system tantamount to licensing, i.e. the Bank of England's system of informal control over financial institutions (whose ultimate sanction could be exclusion from the market by way of the Bank's withdrawal of its rediscount, recognition and support facilities), and the enforcement of the Fair Wages and other policies through government contract allocation, where the sanction is exclusion from the Government's list of approved contractors.

Outside the sphere of licensing the only non-criminal, non-civil sanctions to which special attention might be drawn are the disciplinary powers of agricultural marketing boards (see Agricultural Marketing Act 1958, s. 9, subjecting them to quite stringent control, and 6.1.2. above). These are paralleled, in the liberal professions, by the comparable disciplinary powers, often statutory, of professional bodies (above, 5.1.2.), and also have affiliations with the numerous 'strict liability' offences referred to in 7.1. above which have been explained as administrative, or quasi-criminal, sanctions for breach of licence conditions.

Judicial control of administrative action in the sphere of economic law

8.1. Judicial review: general considerations [44]

We have already noted that the principle of Parliamentary sovereignty, which has had an important influence on the shaping of our economic law (above Intro. 4.1.) has hitherto precluded any possibility of judicial review of legislation. It is, of course, possible that the accession of the United Kingdom to the European Communities and the consequent need to accept Community legislation as binding may cause British judges, like the Belgians before them, to reverse their attitude and hold domestic legislation inapplicable in so far as in conflict with Community obligations: but speculation as to the possibility and effect of such a judicial revolution is beyond the scope of this study. We are therefore concerned only with judicial control of administrative action, a term whose common acceptance in the United Kingdom includes not only individual administrative acts but also administrative rule-making under the authority, and subject to the control, of Parliament (delegated legislation). In the nineteenth and the early part of the twentieth centuries, the courts were clearly in some doubt as to whether to assimilate such delegated legislation, which had received the express or tacit approval of Parliament, to legislation proper or to administrative action. The latter course was eventually chosen, and both general and individual administrative acts are therefore subject to control by the courts by reference to the general principle of *vires*; that is to say, the courts will examine administrative action with a view to ensuring that it falls within the scope of the power delegated by Parliament. This general principle applies over the whole field of judicial review, but that field encompasses a bewildering variety of remedies, differing as between Scotland and England and each with its own evidentiary and other peculiarities, which it is beyond the scope of this work to consider even in outline. For this the reader is referred to standard works such as that of Professor de Smith, or for Scotland, the Scottish Law Commission Memorandum. Here, we shall confine ourselves to exploring the appli-

cation of these principles and methods in the sphere of economic law, and pointing out certain problems specific to this sphere.

First, while delegations of power to the executive in the United Kingdom are customarily specific in terms, as to the action which may be taken if not as to the purpose to be achieved thereby, (above, Intro. 4.3.) they still tend to be broader in relation to economic matters than in relation to other fields of government policy, largely because of the changeability of economic circumstances, but to some extent also perhaps because many powers in this field were first taken in wartime when broader delegations of power were more acceptable (e.g. hire purchase and borrowing control, exchange control, control of imports and exports). The use of vague phraseology (e.g. 'development consistent with a proper distribution of industry': see 5.6.1.) or subjective terminology (e.g. as in relation to the power of the Secretary of State for Trade and Industry to grant petroleum production licences 'to such persons, and subject to such terms and conditions, as he thinks fit': see 3.6.5.) or both in combination ('the Secretary of State may by order provide for imposing [in respect of hire purchase sales, etc.] such prohibitions or restrictions as appear to him to be required for restricting excessive credit': see 5.2.2.1.), leaves the literal-minded British courts less room than usual to deploy their powers of review based on *vires*. In the United Kingdom, more than elsewhere, the statutory language effectively determines the scope of review in that while the concept of 'general principles of law' which administrative action must respect is not foreign to United Kingdom law, it only operates vigorously in relation to the procedural aspects of decision-making, not to substantive criteria. Parliament frequently makes detailed provision in legislation regarding fair pre-decision procedures (above, Intro. 4.3.), but even where the legislation is silent, strongly rooted ideas of 'natural justice' (i.e. procedural fairness and absence of bias) operate effectively as presumptions of statutory interpretation

by reference to which the courts may invalidate decisions unfairly arrived at. But other principles commonly encountered in European jurisdictions, such as equality, proportionality, non-retroactivity, freedom of commerce and industry or of property, are either undeveloped (such as equality and proportionality) or debilitated (as with freedom of commerce or property) or blurred into a general requirement of 'reasonableness' or 'good faith'. The fact that Parliament, defining often in considerable detail the powers exercisable by the executive in specific situations, has shown on numerous occasions that it does not want to respect the principle of equality, non-retroactivity, fair compensation for the taking of property and so on, has made it all but impossible for the courts to use the rationale of statutory interpretation to build up their own set of 'general principles of law' for the good administration of the economy.

In any event, there is no sign that the courts were ever anxious to do this. Until quite recently highly suspicious of and restrictive in their attitude to the exercise of powers of physical planning and environmental policy, they have, to judge from reported cases, been much more shy of interfering with the operation of instruments of economic policy, such as the requisitioning of businesses (*Carltona Ltd. v Commissioners of Works* [1943] 2 All E.R. 560), state assistance to industry (*British Oxygen Corporation v Minister of Technology* [1971] A.C. 610), control of harbour development (*R. v Port of London Authority, ex parte Kynoch* [1919] 1 K.B. 176) or the expansion of activities of nationalized industries (*Charles Roberts and Co. Ltd. v British Railways Board* [1965] 1 W.L.R. 396). In this latter case the judge expressed what seemed to be a widely shared judicial feeling when he said: 'In general, judges are not qualified to decide questions of economic policy, and such questions are by their nature not justiciable'.

'Questions of economic policy' here bears a very broad sense, in that what the judge was refusing to do was to consider the economic circumstances surrounding the enactment of the statutory provision whose meaning was in dispute, as an aid to its interpretation.

There has in fact been remarkably little reported litigation on the exercise of the Government's powers of economic regulation, which suggests that the subjects of economic law themselves attach little importance to judicial review as a method of redress, preferring to place reliance on negotiation, intra-departmental appellate procedures, or Parliamentary techniques of redress, such as the intervention of Members or of the Parliamentary Commissioner for Administration (below, 8.3.).

8.2. Statutory appeals

It has been laid down as a general rule by the Tribunals and Inquiries Act 1971, s. 13 (re-enacting an Act of 1958), that appeal should lie on points of law from statutory tribunals to the High Court of Justice (Court of Session in Scotland). Such appeal offers rather wider possibilities of review than those remedies which are based on the principle of *vires*. Statutory tribunals, however, play a lesser role in relation to economic law than to other branches, such as planning law, and social security law. Statutory tribunals and other jurisdictions operating in our field from which appeal lies to the courts on points of law include.

- (i) the General and Special Commissioners of income tax, who hear appeals from assessment to income and corporation tax, which may be based, *inter alia*, on denial of the exemptions described in 3.1. above;
- (ii) industrial tribunals, which hear appeals from, *inter alia*, assessments of industrial training levy (3.2.2.) and redundancy payment entitlement decisions (5.5.3.);
- (iii) discipline or comparable committees of certain statutory professional bodies (5.1.2. and 5.6.4.1.) (appeal here lies to the Judicial Committee of the Privy Council, a court whose principal jurisdiction is over Commonwealth appeals);
- (iv) the Secretary of State for the Environment or for Scotland, in relation to decisions in planning matters (not including IDC or ODP control) (5.6.1.), or appeals from decisions of sewerage and river purification authorities (5.8.3.3.);
- (v) the Patents Appeal Tribunal, which hears appeals from the decisions of the Controller of Patents (5.8.2.1.);
- (vi) the Secretary of State for the Environment, as appellate authority from decisions of area Traffic Commissioners on passenger road transport licensing (6.4.2.1.) (though note that there is no appeal from the not dissimilar decisions of the Secretary of State for Trade and Industry who hears appeals on air transport licensing matters from the Civil Aviation Authority (6.4.3.);
- (vii) the Transport Tribunal, which hears appeals from the licensing authority for goods vehicle operators (6.4.2.2.); and
- (viii) rent assessment committees and furnished rent tribunals (6.5.).

Statutory appeals from many licensing decisions of local authorities (see especially 5.6.3. and 5.6.4.) also lie to lesser courts, such as the Crown Court in England and

the Sheriff Court in Scotland. Such appeals normally take the form of a reconsideration of all questions relevant to the decision, of fact as well as of law; the courts here act, in a sense, as an administrative authority, and are not necessarily bound by ordinary rules of civil or criminal procedure, e.g. as to the kinds of evidence they may consider: see *Kavanagh v Chief Constable of Devon and Cornwall* [1973] 3 All E.R. 657. From this rather scanty list it can be seen that neither statutory tribunals, nor the ordinary courts in the exercise of their appellate capacity, play a very significant part in the review of economic decisions, save in relation to limited fields, such as taxation, occupational licensing, and restrictions on land use.

8.3. The Parliamentary Commissioner for Administration [45]

The Parliamentary Commissioner for Administration, an officer of Parliament enjoying a tenure similar to that of a High Court Judge, does not provide a true judicial control of administrative action. He does not pronounce judgments which determine disputes; under his constituent statute, the Parliamentary Commissioner for Administration Act 1967, he simply investigates and makes reports to Parliament on complaints, forwarded to him by Members of Parliament, of injustice caused by maladministration on the part of central Government departments. If the Commissioner finds that maladministration productive of injustice has occurred, he may recommend redress for the complainant, whether by way of monetary compensation, specific performance, or otherwise. Findings of maladministration are relatively rare; when they occur Government normally implements the Commissioner's recommendations, but if it chooses not to, the only sanctions are political, by way of the Select Committee on the Parliamentary Commissioner for Administration, a small non-partisan investigatory committee of the House of Commons, which follows up his reports, and ultimately in debate and vote in the House of Commons itself. The political control exercisable by the Government over the House means that in the last resort it is not too difficult for it to resist any recommendation of the Parliamentary Commissioner which it finds unpalatable. So far, however, the Commissioner's recommendations have been acted upon, and he has been able to build up something in the nature of a *jurisprudence* of proper administrative behavior.

Although the Commissioner's jurisdiction is restricted to investigating the activities of central Government de-

partments — local authority and nationalized industry activities are excluded — and within that restricted range, is further limited by the exclusion of the employment and other contractual relationships of those departments, his activities still seem more relevant to the field of economic law than do those of the courts, largely because of the lack of formal or precise legal criteria governing the activities of departments in this field, and the consequent emphasis on informality and negotiation in the relationships between departments and those subject to their powers. We consequently find that the Commissioner's assistance is not infrequently invoked in economic matters, most often by persons who have been refused grants of various kinds by government departments. Examples culled from recent copies of his reports of his investigations, which he now submits quarterly to the House of Commons, and which are published as House of Commons papers, include complaints regarding investment grants (3.2. above), grants under the Winter Keep and Farm Outgoers Schemes (3.3.1.1. and 3.3.1.2. above), grants for training of employees (3.2.2. above) and grants under the White Fish and Herring Subsidies Schemes (6.2.1. above).

For the reasons mentioned in the introduction to Chapter 3, the courts offer little prospect of redress to persons dissatisfied with grant decisions, but the intervention of the Commissioner, unfettered in his inquiries by statutory language, has on a number of occasions led to the satisfaction of the complainant's claims, after such things as inconsistent application of criteria, excessively rigid interpretation of eligibility rules, misconstruction of relevant facts or furnishing of misleading information to the complainants have been pointed out to departments. But seemingly because of the prohibition (in the Parliamentary Commissioner for Administration Act 1967, s. 12 (3)) on questioning the merits of any decision arrived at without maladministration, the Commissioner is reluctant to question any deliberate decision by departments to discriminate, withhold information, etc. In consequence we find that though he is undoubtedly applying a set of standards by which to identify and judge maladministration (equality, openness, fairness, etc.), inadvertent departures from these standards are more likely to provoke redress than deliberate ones.

Other relevant areas of administration referred to in recent reports include exchange control (5.4.2.), agricultural services (3.3.1.3.), wireless telegraphy licensing (5.6.3.), and enforcement of legislation relating to monopolies (5.5.1.3.), and protection of depositors (5.7.4.1.).

Bibliography

- [1] SCHMITTHOFF. 1966. The Concept of Economic Law. *Journal of Business Law*. 309.
DAINTITH. 1971. Some Characteristics of Economic Law in the United Kingdom in Rinck, ed. *Begriff und Prinzipien des Wirtschaftsrechts* 21-42.
- [2] DAINITH. 1974. Public Law and Economic Policy. *Journal of Business Law*. 1.
- [3] *Estimates Committee, 4th Report*. 1966-67. Government Statistical Services. H.C. 246.
BRITTAN. 1971. *Steering the Economy: The Role of the Treasury*. 91-85.
- [4] VAUGHAN. 1971. Economic Development Committees. 49. *Public Administration*. 363.
FRASER. 1967. Economic Development Committees — A New Dimension in Government-Industry Relations. 4. *Journal of Management Studies*. 154.
SMITH. 1969. *Advising Ministers*.
PAINTER. 1972. The Repercussions of Administrative Innovation: The West Midlands Economic Planning Council. 50. *Public Administration*. 467.
The New Planning Machinery. 1965. *Action Society Trust, Regionalism*. 3.
- [5] BRITTAN. *op. cit.* 128-143.
ERSKINE MAY. 18th ed., 1971. *Parliamentary Practice*. Chs. 26, 27, 30.
- [6] BRITTAN. *op. cit.*, Ch. 3.
GOLDMAN. 1970. The Presentation of Public Expenditure Proposals to Parliament. 48. *Public Administration*. 247.
Public Expenditure: A New Presentation. 1969. Cmnd. 4017.
Expenditure Committee, Seventh Report, Public Expenditure and Economic Management. 1971-72. H.C. 450.
- [7] HEPWORTH. 1970. *The Finance of Local Government*.
CROSS. 1971. *Principles of Local Government Law*. 4th ed., especially chapters 7-9 and App. vii.
The Future Shape of Local Government Finance. 1971. Cmnd. 4741.
- [8] Select Committee on Nationalized Industries. *Ministerial Control of the Nationalized Industries*. 1967-68. H.C. 371, Vol. I, Chs. X and XI, and Appendix.
- [9] *Report of the (Radcliffe) Committee on the Working of the Monetary System*. 1959. Cmnd. 827.
Select Committee on Nationalized Industries. *Report on the Bank of England*. 1969-70. H.C. 258.
Bank of England, Competition and Credit Control. 1971.
- [10] Select Committee on Nationalized Industries. *Ministerial Control of the Nationalized Industries*. 1967-68. H.C. 371.
- [11] TURPIN. 1972. *Government Contracts*. Especially Chapter 9.
MITCHELL. 1954. *The Contracts of Public Authorities*.
- [12] Report of the Trade and Industry Subcommittee of the House of Commons Expenditure Committee. 1971-72. H.C. 347. *Public Money in the Private Sector*.
- [13] Report from the Trade and Industry Subcommittee of the House of Commons Expenditure Committee. 1972-73. *Regional Policy*. H.C. 42 (Evidence).
- [14] SCHMITTHOFF. 5th ed., 1969. *The Export Trade*. Ch. 22.
- [15] BRACEWELL-MILNESS. 1973. *Pay and Price Control Guide. A Programme for Controlling Inflation: The Second Stage*. 1973. Cmnd. 5205.
The Counter-Inflation Programme: The Operation of Stage Two. 1973. Cmnd. 5267.
The Price and Pay Code for Stage Three: A Consultative Document. 1973. Cmnd. 5444.
- [16] WEDDERBURN. 2nd ed., 1971. *The Worker and the Law*. 207-211.
Halsbury's Laws of England. 3rd ed., 1962 and supplements, Vol. 38, pp. 431-444.
- [17] DIAMOND. ed. 1970. *Instrument Credit*. Ch. 6.
GOODE. 1970. *Hire Purchase Law and Practice*. Ch. 46.
GUEST. 1966, suppl. 1969. *The Law of Hire Purchase*. Ch. 19.
- [18] PENNINGTON. 1968. *The Investor and the Law*.
- [19] Bank of England, Competition and Credit Control. Articles from the *Bank of England Quarterly Bulletin*. Vol. 11. 1971.
- [20] DE SMITH. *Constitutional and Administrative Law*. 520-522. 2nd ed. 1973.
SELWYN. 1971. *Guide to the Industrial Relations Act 1971*. Ch. 6.
- [21] SCHMITTHOFF. *The Export Trade*. Pt. 4. 5th ed., 1969.
- [22] MANN. 1972. *The Legal Aspect of Money*. Pt. III. 3rd ed. *A guide to the United Kingdom Exchange Control*. 1972. Bank of England.
- [23] WILBERFORCE, CAMPBELL and ELLES. *The Law of Restrictive Trade Practices and Monopolies*. 2nd ed., 1966, with supplement 1969.

- [24] SELWYN. 1971. *Guide to the Industrial Relations Act 1971*, especially Ch. 4.
HEATH. 1971. *A Guide to the Industrial Relations Act 1971*. Especially Ch. 4.
- [25] HEAP. *Encyclopedia of the Law of Town and Country Planning*. Pt. I, especially paragraphs 1-121 to 1-145.
Trade and Industry Subcommittee of the House of Commons Expenditure Committee. *Regional Policy*. 1972-73. H.C. 42.
- [26] PENNINGTON. 1968. *The Investor and the Law*. Ch. 15.
Bank of England. 1972. *A guide to United Kingdom Exchange Control*.
- [27] HART. *Introduction to the Law of Local Government and Administration*. Ch. XXVIII. 9th ed., 1973.
- [28] *Halsbury's Laws of England*. 3rd ed., 1956 and Supplements. Vol. 17, pp. 194-210.
- [29] ATIYAH and TREITEL. 1967. Misrepresentation Act 1967. 30. *Mod. Law Rev.* 369.
CARR. 1973. The Supply of Goods (Implied Terms) Act 1973. 36. *Mod. Law Rev.* 519.
- [30] GOODE. 1970. *Hire Purchase Law and Practice*.
GUEST. 1966, Suppl. 1969. *The Law of Hire Purchase*.
Report of the (Crouther) Committee on Consumer Credit. 1971. Cmnd. 4596.
- [31] O'KEEFE. 1968. *The Trade Descriptions Act 1968*.
SHIPLEY. 1971. The Trade Descriptions Act in Practice. *Crim. L.R.* 637.
O'KEEFE. 1966, Suppl. 1973. *The Law of Weights and Measures*.
- [32] PENNINGTON. 1968. *The Investor and the Law*. Chs. 6 and 16.
- [33] MACGILLIVRAY. 1961. *Insurance Law*. 5th ed. Chs. 1 and 2.
- [34] BURKE. Ed. *Encyclopedia of Road Traffic Law and Practice*.
BELL and O'KEEFE. 1966. *Sale of Food and Drugs*. 14th ed.
- [35] *The Patents Acts 1949-1961*. 2nd ed., 1968. Chartered Institute of Patent Agents.
The British Patent System. 1970. Cmnd. 4407. Report of the (Banks) Committee.
COPINGER and SKONE JAMES. 1971. 11th ed. *Copyright*.
Kerly's Law of Trade-marks and Trade-names 1966. 9th ed.
- [36] KELBIE. 1973. Law and Pollution in Scotland. 18. *Journal of the Law Society of Scotland*. 48, 78, 114, 141, 174.
BIGHAM. 1973. *The Law and Administration Relating to Protection of the Environment*.
GARNER and CROW. 1969. *Clean Air — Law and Practice*. 3rd ed.
- [37] DAM. 1970. The Pricing of North sea Gas in Britain. 13. *Journal of Laws and Economics*. 11.
- [38] KAHN-FREUND. 1965. *The Law of Carriage by Inland Transport*. 4th ed.
- [39] HIBBS. 1971. *Transport for Passengers*. 2nd ed.
- [40] HILL and REDMAN. 1970. *Law of Landlord and Tenant*. 15th ed.
LEWIS and HOLLAND. 1968. *Landlord and Tenant*.
PATON and CAMERON. 1967, with supplement. 1968. *The Law of Landlord and Tenant in Scotland*.
- [41] DICKENS. 1973. Control of Prosecutions in the UK. 22. *International and Comparative Law Quarterly*. 1.
RENTON and BROWN. 1972. 4th ed. *Criminal Procedure According to the Law of Scotland*.
GORDON. 1968. Institution of Criminal Proceedings in Scotland. *Northern Ireland Law Quarterly*. 250.
LAWSON. 1972. *Remedies of English Law*.
- [42] FLEMING. 1971. *Law of Torts*. 4th ed. 121-132.
WINFIELD and JOLOWICZ. 1971. *Tort*. 9th ed. Ch. 8.
WALKER. 1970. *Principles of Scottish Private Law*. Vol. 2, pp. 1041-1045.
- [43] *Anson's Law of Contract*. 1969. 23rd ed. 304-373.
WALKER. 1969. *Principles of Scottish Private Law*. Vol. 1, pp. 481-497.
- [44] DE SMITH. 1973. *Judicial Review of Administrative Action*. 3rd ed.
Remedies in Administrative Law. Scottish Law Commission. Memorandum No. 14, 1971.
- [45] STACEY. 1972. *The Ombudsman*.

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