The Law Commission
and
The SCOTTISH LAW COMMISSION
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Clean Air Bill

Report on the Consolidation of Certain Enactments Relating to Clean Air

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THE LAW COMMISSION AND
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Clean Air Bill

Report on the Consolidation of Certain Enactments Relating to Clean Air

To the Right Honourable the Lord Mackay of Clashfern,
Lord High Chancellor of Great Britain,
and the Right Honourable the Lord Rodger of Earlsferry, QC,
Her Majesty's Advocate

The Clean Air Bill which is the subject of this Report consolidates certain enactments relating to clean air. In order to produce a satisfactory consolidation it is necessary to make the recommendations which are set out in the Appendix to this Report.

As well as the relevant government departments, the following bodies have been consulted in connection with the consolidation: the Association of County Councils, the Association of District Councils, the Association of Metropolitan Authorities, the Association of London Metropolitan Authorities, the London Boroughs Association, the Convention of Scottish Local Authorities, the Council of Welsh Districts, the Assembly of Welsh Counties, the Association of Port Health Authorities, the Law Society, the Law Society of Scotland, the UK Environmental Law Association, the Health and Safety Executive, the Royal Commission on Environmental Pollution, the Royal Environmental Health Institution of Scotland, the Royal Society for the Promotion of Health, the Institution of Environmental Health Officers, the Local Authorities Co-ordinating Body on Trading Standards, the Confederation of British Industry, the Environment Council, the Trades Union Congress, the UK Petroleum Industries Association, the Warrant Spring Laboratory, the National Society for Clean Air, the National Society for Clean Air (Scottish Division), the Solid Smokeless Fuels Federation, the Domestic Coal Consumers Council, the Solid Fuel Advisory Service, the Combined Heat and Power Association, the Combustion Engineering Association, the Association of British Solid Fuel Applicance Manufacturers and the British Combustion Equipment Manufacturers' Association. None of the bodies consulted has objected to any of the recommendations.

Peter GIBSON,
Chairman, Law Commission

C K DAVIDSON,
Chairman, Scottish Law Commission

20 October 1992

Appendix

Recommendations

1. Penalties for continuing offences under section 3(1) and 6 of the Clean Air Act 1956

Subsections (1) to (3) of section 27 of the Clean Air Act 1956 prescribe penalties for some of the offences under that Act, and subsection (4) prescribes a fine of level 5 on the standard scale for the others. By virtue of the proviso to subsection (4), provisions about daily fines apply to all those other offences except the offence under section 8 (failure to give information to local authority).

The proviso to section 27(4) provides that where a person is convicted of an offence and "it is shown to the satisfaction of the court that the offence was substantially a repetition or continuation of an earlier offence by him after he had been convicted of the earlier offence" the offender is liable on summary conviction to a fine not exceeding level 5 on the standard scale or £50 for each day on which the offence is repeated or continued within three months of the earlier offence, whichever is greater.

The proviso is in general terms and may not in practice apply in every case of an offence to which section 27(4) applies. For the purposes of the consolidation it is necessary to identify specifically each of the offences to which the proviso applies. We consider the application of the provisions about daily fines to be inappropriate in respect of two of those offences.

(i) section 3(1)

Section 3(1) of the 1956 Act prohibits the installation of a furnace which is not, so far as practicable, capable of being operated continuously without emitting smoke when burning the fuel for which it is designed. Any person who installs such a furnace, or on whose instructions one is installed, commits an offence punishable by a fine not exceeding level 5 on the standard scale. By virtue of the proviso to section 27(4), the provisions about daily fines appear to apply to offences under section 3(1). They do not apply to the offence under section 3(3) (installing a furnace without notifying the local authority), the penalty for which is prescribed by section 27(2).

We do not, however, consider that the offence under section 3(1) is capable in practice of being a continuing offence, because the offence is complete once a furnace has been installed. Accordingly such an offence cannot be "continued" and we doubt whether in any real sense the same offence could ever be "repeated" within the meaning of the proviso. A subsequent offence by the same installer would be unlikely to be viewed as anything other than a separate offence attracting its own penalty.

In our view it is extremely unlikely that the provisions about daily fines have any practical application to offences under section 3(1), and it would be misleading for the Bill to suggest otherwise. Accordingly we recommend that the Bill should not apply the daily fines

provisions (clause 50 of the Bill) to such offences. Effect is given to this recommendation in clause 4 of the Bill.

(ii) section 6

Section 6 of the 1956 Act (requirement to fit arrestment plant), as enacted, applied to furnaces of all kinds. In the Clean Air Act 1968, section 3 made new provision about the fitting of arrestment plant to furnaces to which section 2 of that Act applies. Section 3(5) of the 1968 Act provides that section 6(1) of the 1956 Act is no longer to apply to a "furnace to which subsection (1) above applies". The effect of section 3(5) is that (apart from certain furnaces installed between the commencement of the 1956 Act and the commencement of section 3 of the 1968 Act) section 6(1) of the 1956 Act now applies only to a furnace "designed solely or mainly for domestic purposes and used for heating a boiler with a maximum heating capacity of less than 55,000 British thermal units per hour". Thus two very similar prohibitions relating to the use of furnaces without arrestment plant are now imposed by section 6(1) of the 1956 Act for domestic furnaces and by section 3(1) of the 1968 Act for industrial and other furnaces.

By virtue of section 27(4) of the 1956 Act and section 3(3) of the 1968 Act, the separate offences by contravening either of these prohibitions carry the same maximum penalty, now level 5 on the standard scale. However the proviso to section 27(4) of the 1956 Act applies to the offence under section 6 of the 1956 Act, so that offence is subject to provisions about daily penalties. No such provisions apply to the offence under section 3(3) of the 1968 Act. So the surprising result of the amendments made in 1968 is that a continuing failure to fit arrestment plant attracts a daily fine if the furnace is used for domestic purposes but not if it is used for other purposes. It seems to us that this difference cannot have been intended.

In our view it is better to follow the more recent provision in the 1968 Act rather than to seek to extend the application of the provision about daily penalties in the 1956 Act. We therefore recommend that the offence under section 6 of the Clean Air Act 1956 should not attract a daily fine in the case of continuing default. Effect is given to this recommendation in clause 8 of the Bill.

2. Application of section 5 of the Clean Air Act 1968 to outdoor furnaces

Sections 5 to 8 of the Clean Air Act 1956 as enacted imposed various requirements in relation to furnaces in a building. Under section 7(2) the local authority could direct that certain furnaces should be subject to regulations requiring measurements of grit and dust from the furnace to be recorded by the occupier of the building and furnished to the authority.

Section 9 of the 1956 Act applied sections 5 to 8 to furnaces of boilers or plant which are not inside a building. The proviso to section 9 made two modifications in the provisions as applied to "outdoor" furnaces, the more important being the adaptation of references to the occupier of a building to refer to the person having possession of the boiler or plant in question.

Sections 2 to 4 of the Clean Air Act 1968 imposed further requirements in relation to furnaces in buildings and repealed section 5 of the 1956 Act. Section 5 of the 1968 Act provides as follows about the measurement of grit, dust and fumes from furnaces (the subject matter of section 7 of the 1956 Act) -

(a) subsection (1) amends, and subsection (2) provides for the amendment of, section 7(1) of the 1956 Act;

(b) subsections (3) to (6) provide that the local authority may be requested to take the measurements required by section 7(2) of the 1956 Act in place of the occupier (and so prevent owners of small furnaces having to go to the expense of providing measuring equipment themselves); and

(c) subsection (7) requires the occupier of a building to allow the local authority to be represented during any measurements he takes in pursuance of section 7(2) of the 1956 Act.

Paragraph 4 of Schedule 1 to the 1968 Act amends section 9 of the 1956 Act by including a reference to sections 2 to 4 of the 1968 Act among the provisions of the 1956 Act which section 9 applies to outdoor furnaces.

The omission from paragraph 4 of Schedule 1 of the 1968 Act of a reference to section 5 appears to be deliberate as it is referred to in paragraph 3 of that Schedule. It is conceivable, however, that the omission was simply an error.

The difficult question is whether section 5 of the 1968 Act applies to outdoor furnaces of the type referred to in section 9 of the 1956 Act. So far as section 5 actually amends section 7 of the 1956 Act there is no difficulty. But subsections (3) to (7) are free-standing provisions which modify the effect of section 7. We would have expected the whole subject matter of that section (including any modifications) to apply to outdoor furnaces, as appears to have been the intention in 1956.

It is possible to argue from Schedule 1 to the 1968 Act that the effect of the Act is that section 5(3) to (7) does not apply to outdoor furnaces. But it is doubtful whether that was the intention, which we would have expected to be expressed more clearly. No convincing reason has been given why those subsections might have been intended not to apply to outdoor furnaces as well as indoor ones.

It is also possible to argue that, as a matter of interpretation, section 9 of the 1956 Act applies to section 5(3) to (7). Section 5 can be regarded as amending section 7 of the 1956 Act, even though some amendments were non-textual, and so the reference in section 9 of that Act to section 7 would include a reference to that section as amended. In that event paragraph (a) of the proviso would correctly translate the references in section 5 to the occupier of the building.

Alternatively subsections (3) to (7) of section 5 may simply have been intended to apply to any furnace (whether indoors or outdoors) to which section 7(2) of the 1956 Act applies. But, if that was the case, the draftsman of the 1968 Act overlooked the need to adapt references in those subsections to the occupier of the building.

It is difficult to be sure whether subsections (3) to (7) of section 5 (which have become clauses 10(4) and 11 of the Bill) apply to outdoor furnaces and, if so, how the 1968 Act achieves that result. Accordingly, it is necessary to resolve any ambiguity. We attach considerable importance to the absence of any reason to explain why those subsections should not apply to outdoor furnaces, and so we recommend that the consolidation should proceed on the basis that they do.

Effect is given to this recommendation in clause 13(1) of the Bill.

3. Unjustified disclosure of information relating to a trade secret

There are two different provisions dealing with the unauthorised disclosure of information relating to any trade secret used in carrying on a particular undertaking. Section 26 of the Clean Air Act 1956 applies in relation to information obtained in the execution of that Act and also (by virtue of paragraph 1 of Schedule 1 to the Clean Air Act 1968) to information obtained in the execution of the 1968 Act. Section 94 of the Control of Pollution Act 1974 applies in relation to information obtained by virtue of that Act. The substantive discrepancies between these two provisions are as follows.

Section 26(a) of the 1956 Act refers to the consent of the person carrying on the undertaking concerned. Section 94(2)(a)(iii) of the 1974 Act refers to "the consent in writing of a person having a right to disclose the information". In most cases, the person carrying on the undertaking concerned will be the only person having a right to disclose the information. The more general wording of section 94 appears preferable. However it seems unnecessary to require the consent to be in writing: similar provisions in recent legislation do not do so.

Section 94(2)(b) of the Control of Pollution Act 1974 enables regulations to be made permitting the disclosure of information. No regulations have ever been made under this power. This suggests that the regulation-making power is not needed in relation to the provisions of the 1974 Act consolidated in the Bill.

We therefore recommend that a single provision about the unjustified disclosure of information relating to a trade secret should apply generally in the consolidation and that this proviso should be based on section 94(1) and (2) of the Control of Pollution Act 1974, but with the omission of section 94(2)(b) and the words "in writing" in section 94(2)(a)(iii). Effect is given to this recommendation in clause 49 of the Bill.

4. **Offences by bodies corporate and offences due to act or default of another**

Section 87(1) and (2) of the Control of Pollution Act 1974 read as follows:-

> "(1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.
>
> Where the affairs of a body corporate are managed by its members the preceding provisions of this subsection shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
>
> (2) Where the commission by any person of an offence under this Act is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of an offence by virtue of this subsection whether or not proceedings for the offence are taken against any other person."

These provisions apply to offences under Part IV of the Control of Pollution Act 1974, but no equivalent provision applies to offences under the Clean Air Acts 1956 and 1968.

(i) Liability of directors and others in case of offence by body corporate

Section 87(1) of the 1974 Act contains what is now a common form provision relating to the liability of directors etc. for the criminal offences of bodies corporate. The Clean Air Act 1956 dates from a time before a provision of this kind was regularly included in legislation. It is anomalous that in some cases express provision is made for the liability of the responsible officers of the body corporate while in other cases they must be proceeded with under the general criminal law as accomplices of the body corporate.

We therefore recommend that provision corresponding to section 87(1) of the 1974 Act is applied to all the offences consolidated in the Bill. Effect is given to this recommendation in clause 52 of the Bill.

(ii) Offences due to fault of other person

Section 87(2) of the 1974 Act contains a provision that is often included in Acts which create offences that include offences of strict liability. It applies only to such offences created by those Acts as are offences of strict liability; and, where it applies, mens rea is not required of the third party [*Lindley v George W Horner [1950] 1 All ER 234].*

The offences in Part IV of the 1974 Act to which section 87(2) applies are similar to some of those in the Clean Air Acts 1956 and 1968 to which it does not apply.

We therefore recommend that provision corresponding to section 87(2) of the 1974 Act is applied to all the offences consolidated in the Bill. Effect is given to this recommendation in clause 53 of the Bill.

5. Duty of local authorities to enforce legislation

Section 29(1) of the Clean Air Act 1956 provides that "It shall be the duty of the local authority to enforce the provisions of this Act". By virtue of paragraph 1 of Schedule 1 to the Clean Air Act 1968, the reference in section 29(1) to the 1956 Act is to be construed as including a reference to the 1968 Act.

Although Part IV of the Control of Pollution Act 1974 contains specific provisions about the enforcement of sections 75 and 76, there is no general duty to enforce the provisions of Part IV. So in order to reproduce the present law it would be necessary to provide that a local was to be under a duty to enforce the provisions of the consolidation derived from the Clean Air Acts 1956 and 1968, but not those derived from Part IV of the Control of Pollution Act 1974. This would suggest a distinction between the enforcement of the offence-creating provision derived from section 78 of the 1974 Act (cable burning) and the enforcement of similar prohibitions elsewhere in the Bill which does not appear to us to be explained by any underlying difference of legislative policy.

Of the other provisions of Part IV of the 1974 Act, sections 79 to 82 confer powers on local authorities and section 83 enables the Secretary of State to give directions to local authorities, so a duty to enforce these provisions would not be appropriate.

We recommend that section 29(1) of the Clean Air Act 1956 should apply in relation to section 78 of the Control of Pollution Act 1974 as it applies in relation to the 1956 Act. Effect is given to this recommendation in clause 55(1) of the Bill.

6. Rights of entry and inspection

There are two sets of provisions conferring rights of entry:-

> section 287 of the Public Health Act 1936 and section 18 of the Public Health (Scotland) Act 1897 (which are applied for the purposes of the Clean Air Act 1956, subject to paragraph 1 and Part III of Schedule 3 to the 1956 Act, by section 31(1) and (7) of the 1956 Act and which, by virtue of paragraph 1 of Schedule 1 to the Clean Air Act 1968, also apply for the purposes of the 1968 Act); and
>
> sections 91 and 92 of the Control of Pollution Act 1974 (which apply for the purposes of that Act).

These are the following differences of substance between section 287 and the 1936 Act and section 18 of the 1897 Act on the one hand and sections 91 and 92 of the 1974 Act on the other:-

(a) section 91(1)(b) gives a power to carry out "inspections, measurements and tests" on the land or of any articles on it and to take away samples of the land or articles, while section 287 and section 18 do not;

(b) section 287 (as modified by paragraph 1 of Schedule 3 to the Clean Air Act 1956) and section 18 (as modified by Part III of that Schedule) do not apply to private dwellings (except in relation to work under section 12(2) of the 1956 Act), while section 91 does apply to private dwellings, subject to the provisions of section 92(3);

(c) section 91(3)(a), unlike section 287(2) and section 18, refers to the giving of seven days notice of an intended entry;

(d) section 92(2) enables a person authorised under section 91 to take with him on to the land "such other persons and such equipment as may be necessary", while section 287(3) and section 18 refer only to other persons;

(e) section 92(5) contains a provision for the payment of compensation, while section 287 and section 18 do not; and

(f) there are references to an emergency in sections 91(3)(b) and 92(3) and section 92(7) defines what is meant by an emergency, but although section 287(2) refers to "a case of urgency" that expression is not defined for the purposes of section 287.

Some of the express provisions in sections 91 and 92 of the 1974 Act may already be included in section 287 of the 1936 Act and section 18 of the 1897 Act by necessary implication. If the Bill reproduced both sets of provisions as they stand it might change the meaning of the provisions reproducing section 287 and section 18.

We recommend that a single power of entry reproducing sections 91 and 92 of the 1974 Act should apply for the purposes of the Bill but that, in relation to private dwellings, the power should be limited as in paragraph 1 of Schedule 3 to the 1956 Act. Effect is given to this recommendation in clauses 56 and 57 of the Bill.

7. Local inquiries in Scotland

Section 3(1) of the Clean Air Act 1956 applies for the purposes of the operation of that Act in England and Wales certain of the provisions of the Public Health Act 1936, including section 318 which provides for local inquiries to be held in certain circumstances. Section 31(7) makes provision for the application in Scotland of provisions having effect similar to those mentioned in section 31(1). However, there is in fact no equivalent to section 318 in the Scottish public health legislation, and there is no other provision in the 1956 Act enabling local inquiries to be held in Scotland in connection with that Act.

Paragraph 1 of Schedule 1 to the Clean Air Act 1968 provides inter alia that references in section 31 of the 1956 Act to that Act are to be construed as including references to the 1968 Act, and so secures the same result, that is that local inquiries may be held in England and Wales, but not in Scotland. Section 96 of the Control of Pollution Act 1974, on the other hand, enables a local inquiry to be held in Scotland, as it may be held in England and Wales, for the purposes of that Act.

There seems no good reason why local inquiries may be held in Scotland for the purposes of the 1974 Act but not for the purposes of the 1956 Act or the 1968 Act. Moreover, it seems clear that the general intention of section 31(7) of the 1956 Act was to provide Scottish equivalents to the provisions of the Public Health Act 1936 applied by subsection (1) of that section for the operation of that Act in England and Wales. We therefore believe that the omission of provisions to enable local inquiries to be held in Scotland in connection with the 1956 and 1968 Acts was an oversight and we recommend that this omission should be rectified.

Effect is given to this recommendation in clause 59 of the Bill.

8. Default powers of the Secretary of State

There are two different sets of provisions conferring default powers on the Secretary of State -

> Sections 322, 324 and 325 of the Public Health Act 1936 (which are applied for the purposes of the Clean Air Act 1956 by section 31(1) of the 1956 Act and which, by virtue of paragraph 1 of Schedule 1 to the Clean Air Act 1968, also apply for the purposes of the 1968 Act) and, for Scotland, section 329 of the Housing (Scotland) Act 1987 (which derives from sections 169 and 170 of the Housing (Scotland) Act 1950 by way of sections 193 and 194 of the Housing (Scotland) Act 1966 and which applies to the application of section 31 of the 1956 Act to Scotland by virtue of subsection (7)(a) of that section); and
>
> Section 97 of the Control of Pollution Act 1974 (which applies for the purposes of that Act).

The differences of substance between sections 322, 324 and 325 of the 1936 Act and section 329 of the 1987 Act, and section 97 of the 1974 Act, are as follows -

(a) section 97(5) of the 1974 Act provides that any expenses of the Secretary of State which are required to be paid by the defaulting authority "shall be defrayed by the authority in the like manner, and shall be debited to the like account, as if the functions had not been transferred and the expenses had been incurred by the authority in performing them", while section 324 of the 1936 Act and section 329 of the 1987 Act contain no such provision and thus require an accounting treatment of any such expenses which is different from the accounting treatment required by section 97(5);

(b) section 97(6) provides that an order transferring functions of the defaulting authority may "provide for the transfer to the Secretary of State of such of the property, rights, liabilities and obligations of the authority as he considers appropriate" and then allows provision to be made with respect to any property etc. where an order is revoked, while section 325 of the 1936 Act and section 329 of the 1987 Act deal only with the case where an order is revoked; and

(c) section 329(5) of the 1987 Act contains provision for the transfer by the Secretary of State to the authority of "property, debts or liabilities acquired or incurred by him in exercising the powers of the authority", a provision which is apt for the type of problems which may arise in housing cases (for which section 329 is principally designed), rather than for the type of situation which may arise under the clean air legislation, and which we see no reason, therefore, to repeat for the purposes of this Bill.

We recommend that a single provision conferring default powers on the Secretary of State should apply for the purposes of the Bill and that in these respects the provision should follow section 97 of the 1974 Act.

Effect is given to this recommendation in clause 60 of the Bill.

9. Joint boards constituted under section 6 of the Public Health Act 1936

Section 31(1) of the Clean Air Act 1956 provides:-

> "Parts I and XII of the Public Health Act 1936 (which contain provisions relating to the local administration and general and supplementary provisions) shall, so far as applicable and subject to the modifications and supplementary provisions contained in Part I of the Third Schedule to this Act, have effect in relation to this Act as if the provisions of this Act (other than the provisions amending the Alkali, &c. Works Regulation Act 1906) were provisions of the first mentioned Act."

By virtue of paragraph 1 of Schedule 1 to the Clean Air Act 1968, references in section 31 of the 1956 Act to the 1956 Act are to be construed as including references to the 1968 Act. But Part IV of the Control of Pollution Act 1974 does not apply any of the provisions of Part I of the Public Health Act 1936.

The provisions of Part I of the 1936 Act relating to port health authorities were consolidated in Part I of the Public Health (Control of Disease) Act 1984. Section 3(1)(b) of the 1984 Act

(which consolidated section 3(1)(b) of the 1936 Act as amended by the Local Government (Miscellaneous Provisions) Act 1982) provides that an order constituting a port health district may assign to the port health authority any of the functions, rights and liabilities of a local authority under any enactment relating to public health, waste disposal or "the control of pollution". The Clean Air Acts 1956 and 1968 and Part IV of the Control of Pollution Act 1974 can all be regarded as enactments concerned with the control of pollution and the express application of the provisions about port health authorities is therefore no longer required. Of the remaining provisions of Part I of the 1936 Act, section 1 (local authorities for purposes of Act) was superseded for the Clean Air Acts 1956 and 1968 by section 180 of the Local Government Act 1972. So the only provisions of Part I of the 1936 Act that are still capable of applying to the Clean Air Acts 1956 and 1968 are sections 6, 7, 9 and 10, which deal with joint boards established for united districts consisting of all or part of the districts of two or more local authorities.

In order to reproduce the present effect of the provisions applying Part I of the 1936 Act to the Clean Air Acts 1956 and 1968 it would be necessary to apply these provisions about joint boards to the provisions of the consolidation derived from the Clean Air Acts 1956 and 1968, but not to those derived from Part IV of the Control of Pollution Act 1974. Since the functions under Part IV of the 1974 Act are closely related to those under the 1956 and 1968 Acts, it is difficult to see why they should be treated differently.

We therefore recommend that sections 6, 7, 9 and 10 of the Public Health Act 1936 should apply in relation to Part IV of the Control of Pollution Act 1974 as they apply in relation to the Clean Air Acts 1956 and 1968. Effect is given to this recommendation in clause 61(1) of the Bill.

The Local Government (Miscellaneous Provisions) Act 1982 and the Public Health (Control of Disease) Act 1984 do not extend to Scotland, so the provisions of section 31(1) and (7) of the Clean Air Act 1956 have to be reproduced in full for Scotland. The relevant Scottish provision concerned with port local authorities which is applied by these provisions, section 172 of the Public Health (Scotland) Act 1897, does not apply to Part IV of the 1974 Act, and we recommend that it should do so. Effect is given to this recommendation in clause 61(2) of the Bill.

10. Provisions that may be included in orders and regulations

Section 104(1)(a) of the Control of Pollution Act 1974 provides that (subject to certain exceptions which are not relevant to the consolidation) any power conferred by the Act to make an order or regulations "includes power to make different provision by the order or regulations for different circumstances and to include in the order or regulations such incidental, supplemental and transitional provisions as the person making the order or regulations considers appropriate in connection with the order or regulations". No such provision applies in relation to the corresponding powers to make orders and regulations under the Clean Air Acts 1956 and 1968.

In order to reproduce the existing law, the consolidation would have to provide that the extended powers given by section 104(1)(a) of the 1974 Act applied only in relation to provisions of the consolidation derived from the 1974 Act and not in relation to other provisions. If the consolidation did so provide, it might produce an inadvertent change in the law by impliedly restricting any implied power to include provisions of the kind

mentioned in section 104(1)(a) in orders and regulations made under powers derived from the Clean Air Acts 1956 and 1968.

We therefore recommend that a provision reproducing section 104(1)(a) of the Control of Pollution Act 1974 should apply generally in the consolidation. Effect is given to this recommendation in clause 63 of the Bill.

11. Definition of "owner"

Section 343(1) of the Public Health Act 1936 (which has effect for England and Wales in relation to the Clean Air Acts 1956 and 1968 by virtue of section 31 of the 1956 Act and paragraph 1 of Schedule 1 to the 1968 Act) contains the following definition of "owner":-

> ""owner" means the person for the time being receiving the rackrent of the premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if those premises were let at a rackrent;".

Section 105(1) of the Control of Pollution Act 1974 contains a similar definition of "owner" (for England and Wales) for the purposes of that Act. The only difference between the two definitions is that section 343(1) of the 1936 Act also contains a definition of "rackrent" by reference to the amount of rent, while section 105(1) of the 1974 Act contains no definition of that term. In the provisions consolidated the expression "rackrent" will appear only in the definition of "owner". In theory a person who fell outside the first limb of the definition of owner by virtue of the definition of rackrent need not always be the person who would be identified as owner by the second limb. We think that it would complicate the law unnecessarily to retain such minor difference as there is, as a result of the definition of rackrent, between the definition of owner for the purposes of provisions of the Bill deriving from the Clean Air Acts 1956 and 1968 and those derived form the 1974 Act.

We recommend that the definition of "owner" from the 1936 Act is consolidated without any accompanying definition of rackrent.

Effect is given to this recommendation in clause 64(1) of the Bill.

12. Definition of "private dwelling"

Section 34(4) of the Clean Air Act 1956 contains the following definition of "private dwelling":-

> "(4) In this Act, except so far as the context otherwise requires, "private dwelling" means any building or part of a building used or intended to be used as such, and a building or part of a building shall not be deemed for the purposes of this Act to be used or intended to be used otherwise than as a private dwelling by reason that a person who resides or is to reside therein is or is to be required or permitted to reside therein in consequence of his employment or of holding an office; and "dwelling" shall be construed accordingly."

This definition also applies to the provisions of the Clean Air Act 1968 by virtue of section 13(1) of that Act.

Section 84(1) of the Control of Pollution Act 1974 provides that in Part IV of that Act "private dwelling" has the same meaning as in Part I of that Act. The definition in section 30(1) for the purposes of Part I is:-

> ""private dwelling" means -
>
> (a) a hereditament or premises used wholly for the purposes of a private dwelling or private dwellings as determined in accordance with Schedule 13 to the General Rate Act 1967, and
>
> (b) a caravan as defined in section 29(1) of the Caravan Sites and Control of Development Act 1960 (disregarding the amendment made by section 13(2) of the Caravan Sites Act 1968) which usually and for the time being is situated on a caravan site within the meaning of that Act;".

Section 30(2) then provides that in the application of Part I to Scotland:-

> ""private dwelling" means -
>
> (a) lands and heritages used wholly or mainly for the purposes of a private dwelling or private dwellings; and
>
> (b) a caravan as defined in section 29(1) of the Caravan Sites and Control of Development Act 1960 which usually and for the time being is situated on a caravan site within the meaning of that Act:".

The inconsistencies between the 1956 definition and the 1974 definitions are the different wording of the main provision describing private dwellings and the inclusion of caravans by paragraph (b) of the 1974 definitions.

In the Clean Air Act 1956, references to a "private dwelling" or to a "dwelling" appear in sections 12(1) and (2), 13(1), 14(1) and (2), 15(3), 16(2) and 27(1), and paragraph 1(a) and Part III of the Third Schedule. Since sections 1(1) and 11(2) of the 1956 Act refer to the emission of smoke from any chimney of a building, these references must relate only to dwellings which consist of a building or part of a building. So references to caravans could have no possible relevance. In the Clean Air Act 1968 there are no references to private dwellings. In Part IV of the Control of Pollution Act 1974, references to a private dwelling appear only in sections 79(2) and 80(2). In both cases the context is such that paragraph (b) of the 1974 definitions referring to caravans (which appears to have been included primarily for the purpose of Part I of the 1974 Act) appears to be of possible relevance. So the effect of paragraph (b) has to be reproduced on consolidation in clauses 35(1) and 36(2).

In order to produce a satisfactory consolidation it is however desirable to remove the inconsistencies between the definition of "private dwelling" in the Clean Air Act 1956 and paragraph (a) of the equivalent definitions in section 30(1) and (2) of the 1974 Act.

We therefore recommend that, in reproducing the definitions of "private dwelling" from section 30 of the Control of Pollution Act 1974, the fuller wording used in 34(4) of the Clean Air Act 1956 should be substituted for the existing paragraph (a) of the definitions. Effect is given to this recommendation in clause 64(4) of the Bill.