PART IV

LOCAL GOVERNMENT AND PUBLIC HEALTH CONSOLIDATION COMMITTEE

SECOND INTERIM REPORT

(Cmd. 5059 of 1936)

AND

REPORT BY JOINT COMMITTEE ON PUBLIC SEWERS (CONTRIBUTIONS BY FRONTAGERS)

[As stated in the Preface the author is indebted to the Controller of H.M. Stationery Office for his courtesy in permitting the reproduction of this Report]

SUMMARY.

1. SECOND INTERIM REPORT

2. PUBLIC SEWERS (CONTRIBUTIONS BY FRONTAGERS)

INTRODUCTION.

1. Shortly after the publication of our first Interim Report in March, 1933, we learned with deep regret of the death of our Chairman, the late Viscount Chelmsford, and we desire to place on record our sense of the loss which the country sustained by his death and our appreciation of the skill and courtesy with which he presided over our deliberations.

In November, 1933, Lord Addington was appointed to be a member and Chairman of the Committee in place of Viscount Chelmsford. In consequence of changes in the office of the Parliamentary Counsel, Mr. G. R. Hill, C.B., was appointed to take the place of Sir William Graham-Harrison, K.C.B., K.C., who retired from the public service, and of Mr. L. A. J. Granville Ram, C.B. In addition, the membership of the Committee was increased by the inclusion of Mr. Joshua Scholefield, K.C., and Mr. C. L. des Forges, the Town Clerk of Rotherham. Major J. J. Llewellin, M.P., retired from the Committee in July, 1935, on his appointment as a Government Whip, and Mr. M. Petherick, M.P., was appointed in his place.

Since the Committee was thus re-constituted in November, 1933, it has held 59 meetings (*a*).

2. As pointed out in paragraph 2 of our first Interim Report, our Terms of Reference fall into two parts, the first relating to the enactments dealing with local authorities and local government, and the second with the enactments dealing with matters relating to the public health, and we were instructed "to consider under what heads these enactments should be grouped in consolidating legislation and what amendments of the existing law are desirable for facilitating consolidation and securing simplicity, uniformity and conciseness."

The first part of our task was completed with the issue of our first Interim Report (*b*) and the draft Local Government Bill which accompanied that Report.

It may be worth while recording briefly the subsequent history of the draft Bill. A Bill in identical terms, except for a few corrections made in the Schedule of Repeals, was introduced on behalf of the Government in the House of Lords by the Lord Chancellor on the 2nd May, 1933, and after the motion for Second Reading had been carried without division was referred to a Joint Select Committee of both Houses. In the meantime the Bill had been submitted by the Department to the Associations of Local Authorities and to Government Departments concerned. As a result of observations received from these bodies, a considerable number of amendments, mostly of a minor character, were submitted on behalf of the Department to the Joint Select Committee. The Committee sat for five days examining the Bill in detail and taking evidence from Sir Frederick Liddell, K.C.B., K.C., our Acting Chairman, the Parliamentary Draftsman, and the members of the Committee who represent the Ministry of Health and Home Office. Sir Harry Pritchard also gave evidence on a number of points with which the Association of Municipal Corporations were specially concerned. As a result, the proposed amendments were incorporated substantially without alteration and a few other amendments were made. The Bill as amended was reported and received a Third Reading in the House of Lords on the 26th July. It was

(*a*) The Committee then consisted of Lord Addington (Chairman), Mr. L. S. Brass, Mr. H. J. Comyns, Capt. Ernest Evans, M.P., Mr. Charles L. des Forges, Mr. Gerard Hill, C.B., Sir Frederick Liddell, K.C.B., K.C., Mr. E. J. Maude, Major J. Milner, M.C., M.P., Mr. Cecil Oakes, Mr. R. Petherick, M.P., Sir Harry Pritchard, Mr. Joshua Scholefield, K.C., Mr. C. E. Staddon and Sir Seymour Williams, K.B.E.

(*b*) Cmd. 4272.

introduced into the House of Commons on the same day, received the Royal Assent on the 17th November and came into force as the Local Government Act, 1933, on the 1st June, 1934.

Scope of Proposed Bill.

3. It will be seen on reference to paragraph 3 of our first Interim Report that in a letter addressed by Mr. Arthur Greenwood to Lord Chelmsford on the 8th December, 1930, it was indicated that the term "enactments relating to the public health" was not intended to be limited to the Public Health Acts themselves, but was to include enactments relating to analogous services such as Maternity and Child Welfare and the Welfare of the Blind. We found it necessary, therefore, at the outset to decide two questions—

(1) whether it would be more convenient to consolidate the "enactments relating to the public health" in a single Bill or in a series of Bills; and

(2) how much of the existing law, though not technically part of the public health code, could conveniently be embodied in the consolidating Bill or Bills.

As regards the first, an examination of the Public Health Acts shows that, in addition to the provisions of those Acts which deal with the structure of local government and have now been incorporated in the Local Government Act, 1933, they contain a large number of provisions not strictly of a public health nature. The various provisions of the Acts may be roughly classified under the following heads :—

(a) provisions of a strictly public health character relating to the prevention and treatment of disease, that is, as regards environment, to such matters as drains and sewers, buildings, water supply and the abatement of nuisances, and as regards personal hygiene to such matters as the provision of hospitals, maternity centres, etc.;

(b) provisions with regard to streets and building lines;

(c) provisions dealing with food;

(d) provisions dealing with public amenities—recreation grounds, open spaces, etc.;

(e) provisions as to the licensing of hackney carriages, pleasure boats, servants' registries, etc.;

(f) provisions dealing with burial and cremation;

(g) provisions of a "police" character, e.g., offences in streets and places of public resort;

(h) provisions dealing with river pollution.

4. To deal with all the subject matters grouped under these heads in a single measure would, we estimate, involve a Bill of not less than 1,000 clauses. On consideration we are satisfied that the balance of advantage lies in the direction of several Bills, each of moderate length. A disadvantage of this procedure lies in the fact that it involves either reproducing in terms, or incorporating by reference, in each Bill such provisions as are common to all. This objection is, however, to some extent met by the fact that the provisions as to acquiring land, borrowing, etc., are now comprised in the Local Government Act, 1933. On the whole, therefore, we consider that both from the point of view of local authorities and their officers, and from that of the public at large, a series of Bills the longest of which would not exceed some 350 clauses is more convenient than a single comprehensive measure. Working on this principle we have confined the present Bill to the matters in sub-paragraph (a) above. Which of the matters referred to in sub-paragraphs (b) to (h) will call for a separate Bill and which can be conveniently combined with one or more of the others in a single Bill, are questions which need not be decided at the moment.

5. Having reached this conclusion, we turned to the question what legislation other than the Public Health Acts themselves ought to be included in the present Bill. The collective short title "The Public Health Acts, 1875 to 1932" includes 16 statutes passed between those years, but there are a number of Acts, such as the Infectious Disease (Prevention) and (Notification) Acts, and the Public Health (Tuberculosis) Act, 1921, which plainly fall within the expression "enactments relating to the public health", though not technically comprised in the collective short title. These Acts must clearly be incorporated so far as they relate to the subject matter of the present Bill. On the other hand, we have felt clear that though the expression "enactments relating to the public health", if read in the widest sense, might be regarded as including Acts relating to such matters as the housing of the working classes and lunacy and mental deficiency, these Acts, which have always formed separate groups of their own, should remain distinct codes. We have accordingly left these substantially untouched, and have limited ourselves to those Acts which deal with subject matters closely akin to those provisions of the Public Health Acts themselves which fall within the terms of the Bill. On this basis we have included in the Bill the Maternity and Child Welfare Act, 1918, the Nursing Homes Registration Act, 1927, Part I of the Children Act, 1908 (as amended by the Children and Young Persons Act, 1932), the Canal Boats Acts and the Baths and Washhouses Acts, together with a number of individual sections from other Acts, e.g., Section 42 of the Burial Act, 1852, where the sections in question relate to public health and the balance of advantage lies in incorporating them into the public health code. The Blind Persons Act, 1920, on the other hand, has not been incorporated for the reason that it deals rather with the provision of training and financial assistance for the blind than with preventive or curative treatment, these latter matters being dealt with in a section of the Public Health Act, 1925, now reproduced in Clause 176 of the Bill. It is arguable that Section 14 of the Midwives Act, 1918, which imposes on county and county borough councils an obligation to pay for the services of a doctor called in by a midwife, should be included in the Bill, but the Midwives Acts, 1902 to 1926, form a code for midwives closely comparable with the Medical Acts and the Dentists Act, 1921, and we came to the conclusion that the better course was to leave that code untouched.

We also considered whether to incorporate the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883. The effect of this Act is to apply the "mining code" as enacted in the Waterworks Clauses Act, 1847, to works of sewerage, lighting and water supply. As the present Bill does not deal with lighting it would be impossible for it to repeal and re-enact the Act of 1883 as a whole; and for this reason and also for the reason that in practice the mining code only affects a small minority of local authorities, we recommend that the Act should be left as it stands.

Form of Proposed Bill.

6. In paragraph 10 of our first Interim Report we set out the reasons which led us to abandon the idea of drafting a purely consolidating Bill and expressed the hope that in dealing with the remainder of our subject matter it might prove possible to proceed on the more orthodox plan of a relatively short amending Bill, effecting such alterations in the law as might be desirable for purposes of simplification and clarification, followed by a Bill consolidating without amendment the law as so altered. The minute scrutiny of the Public Health law which our present inquiry has entailed has forced us to the conclusion that in this case also the necessary amending Bill would contain so large a mass of detailed amendments that it would be little shorter, and far less intelligible, than the draft amending and consolidating Bill which we have prepared.

As is generally known, the Public Health Acts of 1890, 1907 and 1925, which comprise in all 234 sections, are derived from, and based on,

local Act clauses. Their diversity of origin shows itself unmistakably in discrepancies of language not only between the different Acts but between different sections of the same Act. It is perhaps less generally realised that the great Public Health Act of 1875 is itself a consolidation of a large number of different and overlapping Acts, the chief being the Public Health Acts of 1848 and 1872, the Sanitary Act, 1866, the Nuisances Removal Act, 1855, and the Local Government Act, 1858. Moreover, the parent Act of 1848 was largely based on clauses which had become more or less stereotyped in local Acts in the early part of the nineteenth century. Thus, to cite a single example which is mentioned in more detail in the note which appears later on Clause 280 of the Bill, the Act of 1875, as a result of the combination of the various sources from which it was derived, contains four separate powers of entry, the language of each differing from that of the others. A Bill limited to pure consolidation would have to reproduce each of these powers *in extenso*. Many other examples could be given. Hence, while the situation which presented itself in the drafting of the Local Government Bill, namely, that each type of local authority was regulated by a different code, does not obtain here, the complete lack of uniformity in the language of the Public Health Acts would confront the framer of a purely consolidating measure with even greater difficulties than he would have experienced in dealing with the law relating to local government where each of the principal Acts of 1882, 1888 and 1894 shows the impress of a single draftsman.

Adoptive Acts.

7. Many of the provisions of the Public Health Acts operate only after they have been " adopted " by a local authority or put into force by an order of a central authority, and the procedure for bringing the various provisions into force differs widely in different Acts.

Thus the Infectious Disease (Prevention) Act, 1890, provides that a local authority may adopt all or any of the sections of that Act by a resolution passed at a meeting of the authority. Fourteen clear days' notice of the meeting and of the intention to propose the resolution must be given to every member of the authority. The resolution must be published in a local newspaper, by handbills, and otherwise in such manner as the authority think fit, and does not come into operation until at least one month after the first publication of the advertisement. Thus the Act may be adopted as a whole, or individual sections may be adopted. The whole Act has been adopted by the councils of 219 boroughs, 516 urban districts and 361 rural districts. In addition, various provisions of the Act have been adopted by the councils of 36 boroughs, 27 urban districts and 25 rural districts.

8. The Public Health Acts Amendment Act, 1890, is also an " adoptive " Act. An urban authority may adopt any Part of the Act, but they cannot " adopt " anything less than a complete Part. A rural authority may adopt Part III (with certain exceptions (*c*)), but any section of the Act, whether in Part III or elsewhere, can be put into force in a rural district, or in any part of a rural district, by an order of the Minister of Health under Section 5 of the Act. One calendar month's notice of the meeting and of the intention to propose the resolution to adopt must be given to every member, the resolution must be advertised in one or more newspapers, and notice of it affixed to the principal doors of every church and chapel in the district and published in such other manner as the authority think fit. Part III of the Act, with which alone the present Bill is concerned, has been adopted by the councils of 306 boroughs and 673 urban districts, while the councils of 398 rural districts have adopted such of its provisions as a rural authority can adopt, and the remaining

(*c*) These exceptions are, Ss. 20, 22, 23 (1) and (2), 24, 26 (1), 27 and 36 and certain sections not germane to, and therefore not reproduced in, the present Bill.

sections have been put in force in a few rural districts. In addition to the powers already mentioned, the Minister has power under Section 25 (5) of the Local Government Act, 1894, to invest rural authorities generally with any public health powers of urban authorities ; and in accordance with a recommendation of the Royal Commission on Local Government (paragraph 198 of their Final Report, Cmd. 3436) an order under that section (S. R. & O. 1931, No. 580) was issued in 1931 putting into force in all rural areas Sections 20 (1), 23 (1) and (2), 24, 26 (1) and 27. Further, Section 19 has been put into force in 19 rural areas by order under the Act of 1890 and a number of other sections of Part III have been similarly put into force in particular areas. The number of rural areas in which each section of Part III reproduced in the Bill is in operation by virtue of these various procedures is shown in Table A in the Appendix to this Report.

9. The Public Health Acts Amendment Act, 1907, proceeded on a different principle. Under this Act the Minister of Health or, in the case of certain Parts, the Secretary of State, may, on the application of a local authority, by order to be published in such manner as the Minister or the Secretary of State directs, declare any Part or any section of this Act to be in force in the district of the local authority, or where the local authority are a rural district council in any contributory place within the district of the local authority. Where a section is thus applied in a district, the application may be made subject to conditions and adaptations. Table B in the Appendix to this Report (*d*) shows the number of areas in which the provisions of this Act reproduced in the Bill have been put in force.

10. The Public Health Act, 1925, is in part an " adoptive " Act. An urban authority may adopt all or any of the sections contained in Parts II, III, IV or V of the Act, except that where the population of the the borough or district is less than 20,000 the adoption of certain provisions cannot take effect without the consent of the Minister of Health. A rural district council may adopt all or any of the provisions of Parts II, III and IV, again with certain exceptions, and the Minister may apply any of those excepted provisions or any provision of Part V to a rural district by an order made under the Act of 1875. One month's notice of the meeting and of the intention to propose the resolution must be given to every member of the authority and published in the press, and the resolution when passed must be similarly published. Further, certain provisions in Part II apply to county councils without adoption by them.

Part VI operates where Part VI of the Act of 1907 is in operation and may be applied to other areas by order of the Minister. Parts VII to IX are of general application, except some provisions of Part VIII which operate in urban areas and may be applied to rural areas by order of the Minister. Table C in the Appendix shows the number of areas in which the provisions reproduced in the Bill are at present in force.

11. Two further codes of procedure for adoption differing both from each other and from those mentioned above, are to be found in the Infectious Disease (Notification) Act, 1889, and the Notification of Births Act, 1907, but it is unnecessary to discuss these in detail as both Acts have been made general by later legislation.

We need not labour further the point that the diversity of methods for bringing into operation the " adoptive Acts " referred to above would, if preserved, immensely complicate the task of consolidation. It remains to discuss the further and more important question whether and to what extent the procedure of bringing public health provisions into operation by adoption or ministerial order is under present conditions right and necessary.

12. It will be seen that there are two main codes for " adoption " : (1) a procedure under which, apart from differences in detail, a local

(*d*) p. 445, *post*.

authority have power to adopt an Act, or a Part of an Act, or a particular section of an Act, without reference to the central Department, but only after complying with a special procedure designed to give publicity to the proposal to adopt, and (2) a procedure under which the decision whether the Act or enactment is to come into operation in any particular area lies with the Department.

There is no doubt that both procedures have in the past proved themselves, and in certain circumstances still are, convenient legislative methods. To take an example outside the Public Health code, if a council wish to take advantage of the enabling provisions of the Local Government and Other Officers' Superannuation Act, 1922, and establish thereunder a superannuation scheme for their staff, it is clearly right that a decision of such importance should not be taken by a chance majority of members attending an ordinary meeting of the council. Again, as regards the power of the Minister to bring enactments into operation by order, it is convenient in view of the widely different circumstances of different local authorities, and the wide variations in their financial resources and in the types of district under their control, that Parliament should sometimes confer powers or impose obligations in general terms, leaving it to the Minister to decide whether in any particular case the circumstances require that a particular authority should be entrusted with the discharge of the functions in question. It is also to be remembered that the public health code is largely the outcome of local experiments sanctioned by Parliament in local legislation, and that, as already pointed out, much of the present general code consists of these local Act provisions re-enacted in a generalised form. Thus, a system under which the application of the particular enactment to any given locality is left to the discretion of the Department represents a natural transition from the method—still in active operation—of Parliament itself conferring by local Act additional powers required by particular authorities.

13. None the less, when all this is said, our examination of the Acts has led us to the conclusion that the method of proceeding by way of "adoption" has in the past been overdone. Not a few cases of patent absurdity can be found, as, for example, the fact that Section 60 of the Act of 1907, which is in effect a "removal of doubts" clause, and Section 62 of the same Act, which slightly extends a provision of the Act of 1875, should require to be put in force by order. Again, there are a number of provisions which at present require adoption but might well have been framed as "enabling" clauses, operating without adoption if and in so far as the local authority think fit to exercise the powers. A good example of these may be found in Section 37 of the Act of 1925, which enables a local authority by agreement with, and at the expense of, the owner of a house to connect his premises with the sewer. The practical question, however, is not whether an unnecessary use of the procedure of adoption has been made in the past, but how far it is necessary to retain it in preparing the present Bill.

14. We have examined the figures set out in the Tables in the Appendix from this point of view. These figures show that all the provisions in question are in fact in force over very wide areas. Moreover it is to be noted that, as already indicated, nearly all these provisions were included in the general law after becoming common in local legislation. Accordingly, the figures in the Tables by no means represent the whole number of areas in which any particular provision is in force, since they do not include those in which an identical, or closely similar, provision operates by virtue of a local Act. A further consideration, though not of great importance, is worthy of mention. We understand that in the case of a number of provisions which require to be put into operation by order, the Department are so satisfied that the provision might reasonably form part of the general law that an order is made as a matter of course upon the application of any local authority. So far as this is the case, the preparation, issue and publication of a formal order bringing the provision into operation are a waste of time and energy.

These considerations have led us to the conclusion that the time has now arrived when, with certain exceptions, the adoptive provisions of the Acts of 1890, 1907 and 1925 (so far as those Acts are reproduced in the Bill) and also of the Infectious Disease (Prevention) Act, 1890, may properly be made of general application. The draft Bill has been framed accordingly, and the result is a very substantial simplification of the Public Health law. The few exceptions, which are collected in the note on Clause 13 of the Bill (*c*), represent provisions which are still appropriate only to areas of an urban character. Under that clause, which takes the place of Section 276 of the Act of 1875 and corresponding provisions of the later Acts, the Minister can invest individual rural authorities with urban powers.

Regulation-making Powers.

15. In our first Interim Report we pointed out (paragraph 12) that the whole subject of regulation-making powers had been recently examined by the Departmental Committee on Ministers' Powers (Report Cmd. 4060/1932) and that for that reason we thought it better to reproduce substantially the existing law. When the Local Government Bill was before the Joint Select Committee, the Committee, after considering certain suggestions made to them on behalf of the Minister of Health, decided upon a course of action which may be summarised as follows :—

(1) that it is unnecessary to burden Parliament with regulations concerned with details of administration, and accordingly that the requirement to lay regulations before Parliament should only be imposed in the case of those of substantial importance and of a legislative character ;

(2) that all regulations which were required to be laid before Parliament should be liable to annulment by the ordinary procedure of an Address by either House and that a uniform period—30 days—should be provided for this action. Effect was given to this decision in Section 299 of the Local Government Act, 1933 ;

(3) that the validity of all regulations, except the regulations which deal with the issue of stock and to which special considerations apply, should be liable to challenge in the Courts in the ordinary manner, and that any provisions of the existing law making regulations "have effect as if enacted in the Act" should be omitted.

The number of regulation-making powers in the present Bill is comparatively small. The powers will be found in Clauses 104, 126, 143, 161, 179, 180, 204, 250 and 277 (2) of the Bill, and in paragraph 1 of the First Schedule. In drafting these provisions we have followed the principles adopted by the Joint Select Committee. The regulation-making powers under Clause 143 (*f*) (prevention and treatment of infectious diseases) are so wide and the subject matter of such importance that we have inserted a provision requiring them to be laid before Parliament, though this represents new law. We have done the same as regards the regulations under the First Schedule prescribing the qualifications of medical officers of port health districts. This also is new, but it follows the action taken by Parliament on the Local Government Act, 1933, where for the first time regulations prescribing the qualifications of medical officers of health of boroughs and of urban and rural districts, were required to be laid before Parliament (*see* Section 108 (5) (*g*)).

Clause 311, which provides for the laying before Parliament and

(*c*) For this note, *see* p. 390, *post*. For s. 13 of the Act, *see* p. 67, *ante*.
(*f*) *See* s. 143, p. 166, *ante*.
(*g*) 26 Halsbury's Statutes 363.

annulment of regulations, follows the lines of Section 299 of the Act of 1933 (*h*).

16. As regards publication, the effect of Section 1 of the Rules Publication Act, 1893, is to make it necessary to publish in the London Gazette notice of an intention to make any regulation which is required to be laid before Parliament and to put copies of the regulation on sale. We have treated this procedure as a satisfactory substitute for the requirement in Section 130 of the Act of 1875 (Clause 143 of the Bill) that the regulations must be printed *in extenso* in the London Gazette—an expensive procedure which is now out of date—and also for the requirement in Section 9 of the Canal Boats Act, 1877, which required the Department to prescribe places in the neighbourhood of canals, and the price, at which regulations might be purchased.

None of the regulation-making powers reproduced in the Bill provides for the regulations having effect as if enacted in the Act, or otherwise purports to make the validity of the regulations unchallengeable. It will be seen, moreover, from paragraph 133 of this Report that we recommend the repeal without re-enactment of Section 295 of the Act of 1875, which makes the orders of the Minister of Health " binding and conclusive in respect of the matters to which they refer."

Penalties.

17. The enactments dealing with penalties for non-compliance, which are reproduced in the Bill, show much diversity with regard to the maximum fines which may be imposed. This is to some extent necessary, for obviously some offences, e.g. that of erecting a house without a drain, for which a maximum penalty of fifty pounds is fixed by the Act of 1875, are of a more serious character and call for a stronger deterrent than the minor offences with which the Acts deal. On the other hand, it is clear that as regards these minor offences, Parliament has not adhered strictly to any definite policy and that, while a maximum penalty of five pounds, with a daily penalty of forty shillings in the case of continuing offences, may be taken to represent the normal, there are many departures from these figures for which no good reason could be assigned and which probably have their origin in the different language of different local Acts. Thus, under Section 16 of the Infectious Disease (Prevention) Act, 1890, the maximum penalties are five pounds and forty shillings. Under Part IV of the Act of 1907—a Part dealing with the same subject matter—a maximum penalty of five pounds is to be found in Sections 53, 61 and 64, but in the remaining sections the maximum penalty is forty shillings. Again, Section 36 of the Act of 1907, which makes it an offence to use rain water pipes as soil pipes, imposes maximum penalties of five pounds and forty shillings, whereas Section 37, which forbids water pipes being used to serve as ventilating shafts to drains, provides maximum penalties of forty shillings and twenty shillings.

Throughout the Bill we have inserted five pounds and forty shillings as the maximum penalty for a first offence and for a continuing offence in all cases except those which clearly called for special treatment, and we have thought it unnecessary to call attention in the notes on clauses to cases where this policy has involved an amendment of the existing law either by way of increase or decrease. In cases where the Bill effects any amendment of more substantial penalties, attention is drawn to the point in the note on the clause in question.

Appeals.

18. The provisions of the Public Health Acts with regard to appeals from decisions of local authorities are exceedingly difficult to interpret.

(*h*) See now s. 319 of the Act, p. 267, *ante*, and for s. 299 of the Local Government Act, 1933, *see* 26 Halsbury's Statutes 464.

The Act of 1875 contains no general right of appeal against orders or requirements of local authorities, but Section 268 of the Act enables a person who is aggrieved by a decision of a local authority " in any case in which the local authority are empowered to recover in a summary manner any expenses incurred by them or to declare such expenses to be private improvement expenses " to appeal to the Minister of Health. The Act of 1890 on the other hand provides (Section 7) for an appeal to quarter sessions by any person aggrieved :—

> " (a) By any order, judgment, determination or requirement of a local authority under this Act ;
>
> (b) By the withholding of any order, certificate, licence, consent, or approval which may be made, granted or given by a local authority under this Act."

Sub-section (2) provides that the section " shall not apply in cases where there is an appeal to the Local Government Board (now the Minister) under Section 268 of the Public Health Act, 1875." It was held in *R.* v. *Essex Justices*, [1916] 2 K. B. 406 (*i*) that an appeal lies to quarter sessions against a refusal on the part of a local authority—acting under Section 169 of the Act of 1875—to grant a knacker's licence, the decision being based on the ground that the Act of 1890 is to be construed as one with the earlier Act. It may be doubted whether this was the intention of the draftsman. To apply Section 7 to every " requirement " under the Act of 1875 produces results which can hardly have been contemplated by Parliament. For example, under Section 83 of that Act the keeper of a common lodging-house has a duty " if required in writing by the local authority " to report to the authority persons resorting to the house during the preceding day or night. It is very unlikely that Parliament desired to burden quarter sessions with appeals on matters of this kind.

The terms of Section 7 of the Act of 1907 are substantially the same as those of Section 7 of the Act of 1890 ; and Section 7 of the Act of 1925 incorporates, *inter alia*, Section 7 of the Act of 1907. The position appears to be, therefore, that apart from sections which make some specific provision for other forms of appeal (e.g., Section 42 of the Act of 1907, which provides for an appeal to a court of summary jurisdiction) there is a general right of appeal to quarter sessions under the Acts of 1890, 1907 and 1925, and probably under the Act of 1875, except where an appeal lies to the Minister under Section 268 of the Act of 1875. The exact limits of the Minister's jurisdiction under Section 268 have, as is well known, been the subject of much litigation. The point need not, however, be discussed here, for if the recommendation which we make in paragraphs 61–63 below are accepted, the existing procedure will be replaced by an appeal to a court of summary jurisdiction (or in one instance to the Minister) wherever the case is one in which the local authority require the owner to incur expense in executing works or otherwise remedying a condition of things which is objectionable from the point of view of public health. Provision is made for this in Clause 283 of the Bill (*j*).

This type of requirement forms the most numerous and important class under the Bill. As regards the remainder, we feel no doubt that it would be a mistake to insert any general clause giving a right of appeal, whether to quarter sessions, courts of summary jurisdiction or the Minister, against orders, requirements, determinations, etc., of a local authority. The fact that the Bill reproduces a number of Acts which do not form part of the public health code and to which therefore the various appeal sections to which we have drawn attention above do not apply would in itself present a serious obstacle to this course. A more fundamental objection lies in the fact that not every decision of a local authority should be subject to appeal, and that it is quite impracticable by the use of general words such as " orders, judgments, determinations or requirements " to

(*i*) 38 Digest 224, *557*.

(*j*) Now s. 290 of the Act, p. 252, *ante*.

distinguish between those from which an appeal should lie and those from which it should not. Thus, to take a single example, Section 36 of the Act of 1890 provides that every building used as a place of public resort is to be substantially constructed and provided with means of ingress and egress "to the satisfaction of the urban authority." If the section had been differently drafted and had obliged the owner to comply with the "requirements" of the authority as regards ingress and egress an appeal to quarter sessions would clearly have lain under Section 7 of the Act; as the language stands, it is doubtful whether an appeal lies or not. A perusal of the Acts of 1875, 1890 and 1907 discloses many instances of the same ambiguity. We have accordingly adopted the principle of inserting a right of appeal—either expressly or by a definite reference to Clause 283 (*k*) —in every clause where, in our opinion, it should be given.

With regard to the proper appellate tribunal, we have adopted the view that, in general, the appeal should lie in the first instance to a court of summary jurisdiction. Provision is made in Clause 293 of the Bill (*l*) for a further appeal to a court of quarter sessions.

Power to break open streets.

19. The question on what conditions a right to break open streets should be exercised arises on three Parts of the Bill—in connection with drains and sewers (Part II), water pipes (Part IV) and pipes for the supply of public baths and washhouses (Part VIII).

Under the existing law, a local authority who propose to execute works of sewerage *outside* their district must give notice of their proposals in a local newspaper and serve copies of the notice on the owners, lessees and occupiers of lands affected, on the town clerk or clerk of the urban district council if the proposed works will be in an urban area, or upon the chairman of the parish council or parish meeting in a rural parish, and on the highway authority or other persons having the care of the streets affected. If objection is taken and sustained, the works cannot be commenced without the consent of the Minister, who may make such modifications in the proposals as he thinks necessary. For works *within* their district the local authority are subject to no such control.

For the laying of water mains within or without their district, local authorities are, by Section 54 of the Act of 1875, given the same powers and made subject to the same restrictions, as in the case of the laying of sewers, but this must be read together with Section 57 of the same Act which incorporates certain provisions of the Waterworks Clauses Acts, the most important of which in this connection are Sections 28 to 34 of the Act of 1847. Section 28 confers a power to break up a street under the superintendence of the persons having its control or management. Section 29 prohibits the breaking up of land not dedicated to public use except with the consent of the owners or occupiers. This last-mentioned section has in effect been superseded by Section 80 of the Act of 1925, which provides that if a local authority supply gas or water, they may lay down pipes in streets not dedicated to public use for the purpose of supplying premises in those streets. Section 30 of the Waterworks Clauses Act, 1847, requires the local authority to give three days' notice of intention to break up a street, and Section 31 requires the work to be done under the superintendence of the persons having the control or management of the street and according to a plan approved by them or, in the event of dispute, by two Justices. Sections 32 to 34 provide for reinstatement.

But in incorporating these sections of the Act of 1847, Section 57 of the Act of 1875 adds the words "where the local authority have not the control of the streets". It was held in *Hill* v. *Wallasey Local Board*, [1894] 1 Ch. 133 (*m*), that these words referred to a local authority who have

(*k*) Now s. 290 of the Act, p. 252, *ante*.
(*l*) Now s. 301 of the Act, p. 258, *ante*.
(*m*) 43 Digest 1062, *34*.

not the control of streets generally in their district, i.e. who are not a highway authority. From 1894 to 1929, therefore, this incorporation was of little importance, for both urban and rural district councils were highway authorities. Since the changes made by the Local Government Act, 1929, it has again operated to secure that a rural district council shall in laying down water mains be subject to the superintendence of the county council as highway authority.

The provision in the Bill (Clause 277 (*n*)) empowering local authorities to break up streets for the purpose of laying pipes to supply public baths and washhouses is taken from local Acts. These provide that the local authority can for the purpose break up any highway repairable by them, and break up any other highway with the consent of the authority or persons liable for its repair.

There seems no good reason why in this respect the construction of sewers, the laying of water mains, and the laying of pipes for supplying public baths should not be on the same footing. Moreover, the question whether the superintendence and control for which the incorporated sections provide should be imposed ought clearly to depend on whether the authority executing the works are the highway authority *for the street in question* and not whether they have or have not any highway functions in general. The Bill proceeds on this footing: *see* Clause 276 (*o*).

The further requirements in the case of works outside the district are dealt with in the note on Clause 16 (*p*).

20. The power of owners and occupiers of premises to break up streets also needs consideration. Section 52 of the Waterworks Clauses Act, 1847, confers such a power for the initial laying of the pipe, subject to the same control and obligations as apply to water undertakers. Local Acts commonly extend this power for purposes of examination and maintenance and repair of pipes, and the Bill follows these precedents (Clause 121 (*q*)). There is, however, no general power—at any rate no express power—to break up streets for the purposes of connecting drains to sewers, though Section 37 of the Act of 1925 empowers a local authority to do the work on behalf of the owner or occupier by agreement in a private street. The Bill makes good the omission by conferring a general power subject to the same conditions as apply in connection with water communication pipes (Clause 34 (2) (*r*)).

Savings for Statutory Undertakers.

21. The provisions of the Public Health Acts with regard to statutory undertakers present some difficulty. Sections 327 to 333 of the Act of 1875 contain elaborate savings for canal, dock, harbour and river authorities and for Commissioners of Sewers. Further, section 157 of that Act exempts from building byelaws buildings belonging to railway companies and used for the purposes of the railway and Section 33 of the Act of 1907 exempts from certain provisions of the Act and from byelaws made under them buildings (other than dwelling-houses) belonging to a railway company or harbour, pier, dock, canal or inland navigation authority and used in connection with the undertaking. Additional savings for railway companies and other undertakers are to be found in the following sections of other Acts reproduced in the Bill—Section 20 (4) of the Act of 1890 and Sections 11 and 39 (5) of the Act of 1925.

22. There are obvious advantages in shortening and simplifying the language of sections 327 to 333 and bringing the later savings into relation with these sections. In particular, it would be useful to make plain throughout any saving clauses that may be inserted, a distinction which has been drawn in the case law between the property of statutory undertakers

(*n*) See s. 227, p. 215, *ante*.
(*o*) See now, s. 279 of the Act, p. 243, *ante*.
(*p*) S. 16, p. 71, *ante*.
(*q*) S. 121, p. 152, *ante*.
(*r*) *See* p. 86, *ante*.

used for the primary purposes of the undertaking, and other property (e.g., workmen's dwellings) which Parliament has, with increasing frequency, enabled statutory undertakers to acquire for ancillary purposes. We came to the conclusion, however, that before this detailed work of drafting was attempted it would be desirable to consult the bodies representing the undertakers concerned on the general principles to be adopted, and that any negotiations could best be conducted by the Ministry of Health after the publication of the draft Bill.

23. We have accordingly reproduced the present savings substantially as they stand and have indicated by square brackets that they call for further consideration.

PART I.—LOCAL ADMINISTRATION.

Committees of Local Authorities.

24. The position with regard to committees of local authorities was discussed in paragraphs 60 to 64 of our first Interim Report. In relation to public health we have found it necessary to consider three special statutory committees, namely, the public health and housing committee of a county council, the tuberculosis committee of a county or county borough council, and the maternity and child welfare committee of a county council, borough or district council.

The existing law with regard to these committees is as follows :—

Public Health and Housing Committee.—Section 71 of the Housing, Town Planning, etc., Act, 1909 (*s*), *requires* every county council to appoint this committee. Matters relating to the discharge by the council of public health and housing functions (except the powers of precepting and borrowing) stand referred to the committee, and before discharging any such functions the council must consider the committee's report thereon, unless the matter is urgent. Further, the council may, if they wish, delegate to the committee their public health and housing functions, other than powers of precepting and borrowing and of resolving to declare district councils to be in default, and may impose restrictions or conditions on such delegation. Under Section 14 (3) of the Local Government Act, 1929 (*t*), persons who are not members of the council may be appointed to the committee, but these persons must not exceed one-third of the whole number. The committee may appoint sub-committees, and may include on these sub-committees persons who are not members of the committee.

It is to be observed that neither the Act of 1875, nor any of the succeeding Public Health Acts, placed any corresponding obligation on sanitary authorities to appoint a public health committee, though we believe that such a committee is almost invariably appointed. The difference in this respect between county councils and other authorities is no doubt accounted for partly by the difference in date between the governing statutes, and partly by the fact that county councils usually meet less frequently than borough or district councils.

Tuberculosis Committee.—By Section 4 of the Public Health (Tuberculosis) Act, 1921 (*u*), councils exercising powers under the Act, i.e., county and county borough councils, are *empowered*, but not *required*, to exercise their powers (other than levying, or precepting for, a rate, or borrowing) through a committee or a sub-committee. Power is given to the council and, subject to any directions of the council, to the committee to appoint persons who are not members of the council to be members of the committee or sub-committee up to a limit of one-third of the total membership, and these persons must be "persons (including members of insurance committees) . . . specially qualified by training or experience in matters relating to the treatment of tuberculosis."

Maternity and Child Welfare Committee.—By Section 2 of the Maternity and Child Welfare Act, 1918 (*w*), every council exercising powers under the Act is *required* to appoint a maternity and child welfare committee, but the committee may be a committee appointed for other purposes or a sub-committee of such a committee. In other respects the section is practically identical with Section 71 of the Housing, Town Planning, etc., Act, 1909, already referred to, but it provides that at least two members of the committee must be women, and that, if persons who are not members of the authority are appointed as members of the committee, they must be persons specially qualified by training or experience in subjects relating to health and maternity.

25. It will be noted that the appointment of a Public Health and Housing Committee extends only to county councils but is compulsory, that the appointment of a Tuberculosis Committee is optional, and that the Maternity and Child Welfare Committee occupies a half-way position, since though every council operating the Act is required to appoint one, it may use for the purpose some existing committee or sub-committee. There is little doubt that one of the principal objects of these provisions was to give authorities power to appoint as members of the committees persons who were not members of the council. The position of committees other than special statutory committees is now fully covered by Section 85 of the Local Government Act, 1933 (*y*), under which every type of authority has a general power to appoint committees and to place on them persons who are not members of the local authority up to a limit of one-third of the total membership.

Further, in the case of the three committees in question there is power to appoint persons who are not members of the committee as members of a sub-committee. In preparing the Local Government Bill we considered whether this power to appoint outside persons to sub-committees should be conferred generally, and reached the conclusion that if there is a power to appoint outside persons to the committee itself, the further power in the case of sub-committees is not one of substantial value.

26. The appointment of a Public Health and Housing Committee is obligatory, but the obligation applies only to county councils and not to local authorities in general, and we consider that a repeal of the provision without re-enactment would simplify and assimilate the law without throwing away anything of value. No county council is likely to attempt to discharge its public health or housing functions without the assistance of a committee, and it has been suggested to us that a combination of public health and housing in the hands of a single committee is not necessarily the most convenient course. It may well be thought that a somewhat different grouping of functions might prove more satisfactory, and we understand that at least one county council has obtained power from Parliament to vary the requirements of the Act of 1909 with regard to the Public Health and Housing Committee.

27. In the case of the Tuberculosis Committee the only effect of the repeal without re-enactment of Section 4 of the Act of 1921 would be to remove the power of appointing outside persons on sub-committees and the requirement that the appointing authority must see that the outside persons appointed on the full committee are specially qualified to deal with the subject matter in question. As regards the latter requirement, we think

(*s*) 10 Halsbury's Statutes 848. This section is now repealed and re-enacted in s. 153 of the Housing Act, 1936.
(*t*) 10 Halsbury's Statutes 891.
(*u*) 13 Halsbury's States 972.
(*w*) 11 Halsbury's Statutes 743.
(*y*) 26 Halsbury's Statutes 352.

that it may properly be assumed that if a local authority decide to appoint outside members they will—without any express direction on the point—select persons who are qualified for the position. The reference in the section to members of Insurance Committees is in any case obsolete, having been included at a time when Insurance Committees administered sanatorium benefit under the National Health Insurance Acts, a benefit which was discontinued in 1920. We are satisfied that the section may properly be repealed without re-enactment.

28. We have felt some doubt with regard to the Maternity and Child Welfare Committee. It is difficult to suppose that, after the experience which has now been gained, any authority would attempt to carry on the service without the assistance of a committee which included women and other persons having special knowledge and experience ; and for that reason we doubt whether the repeal of the section would make any practical difference. On the other hand, the establishment of such a committee is not merely optional, and, having regard to this fact and to the fact that the Act of 1918 is a relatively recent statute, we have reproduced Section 2 of the Maternity and Child Welfare Act, 1918, in Clause 201 of the draft Bill.

Joint Committees and Joint Boards.

29. The position with regard to Joint Committees and Joint Boards for public health purposes under the existing law is as follows :—

(1) Under Section 279 of the Act of 1875 (*z*), the Minister has power by provisional order to unite districts for any purpose of the Act and to constitute a joint board.

(2) Under Section 287 of the same Act (*a*) as amended by Section 3 of the Act of 1885 the Minister has power to constitute one of more local authorities or port conservators or commissioners a port sanitary authority by an order which is provisional only if opposed.

(3) Section 5 of the Public Health (Tuberculosis) Act, 1921 (*b*), enables the Minister by order to constitute joint committees of county councils and county borough councils for any of the purposes of the Act.

(4) Under Section 91 of the Local Government Act, 1933 (*c*), any local authority (including a county council and a parish council) may concur with any other local authority in appointing a joint committee for any purposes in which they are jointly interested.

(5) Under Section 112 of the same Act (*d*) the Minister has power by order to unite districts for the purpose of appointing a medical officer of health.

30. The provisions of the Act of 1875 as amended in 1885 with regard to port sanitary authorities and united districts are substantially reproduced in Clauses 2–7, 9 and 10 of the Bill (*e*). Throughout the Bill the term " port health authority " has been substituted for " port sanitary authority ". This change has been suggested to us by the Association of Port Sanitary Authorities. We agree with the Association that the new name gives a better indication of the activities of these bodies.

At the request of the Port Sanitary Authority for the Port of London the change of name has been made to extend to that body.

It will be observed that Clause 6 enables the Minister in setting up a joint board to include representatives of the county council. This is new law, but it appears to us to follow naturally from the power conferred on county councils by Section 57 of the Local Government Act, 1929 (*f*), to contribute

(*z*) 13 Halsbury's Statutes 742.
(*b*) *Ibid.*, 972.
(*d*) *Ibid.*, 366.
(*e*) See the same sections of the Act, pp. 60–66, *ante*.
(*f*) 10 Halsbury's Statutes 922.
(*a*) *Ibid.*, 745.
(*c*) 26 Halsbury's Statutes 355.

towards the expenses of district councils for public health purposes, and also from the fact that the same Act gave county councils power themselves to provide hospital accommodation. We considered whether the power to include county council representatives should be limited in terms to the case of a joint hospital board or a board towards the expenses of which the county council had undertaken to make contributions, but we came to the conclusion that it was unnecessary to impose this express limitation, since it is highly improbable that an order including county council representatives would be made except on the footing that the county council bore some share of the financial burden. The notes on Clauses 6 and 9 call attention to matters of detail in which they depart from the existing law.

31. As regards combinations of county councils and county borough councils, our attention has been called to Section 3 of the Poor Law Act, 1930 (*g*), Section 29 of the Mental Deficiency Act, 1913 (*h*), and Section 5 of the Public Health (Tuberculosis) Act, 1921 (*i*). All these provisions enable the Minister to effect combinations for the purposes of the respective Acts, and there seems to be no reason why in the region of public health the power should be limited to the treatment of tuberculosis. We have accordingly provided in Clause 8 of the Bill (*k*) that, with the consent of the councils concerned, the Minister may constitute joint committees for any of the purposes of the Bill. As in the existing legislation, the power extends to combinations, either of county councils with county borough councils, or of county councils with county councils, or of county borough councils with county borough councils. It is true that any of these bodies can combine under Section 91 of the Local Government Act, 1933 (*l*), in appointing a joint committee, but committees appointed under that section are not corporate bodies, and experience has shown that, while they are valuable for certain limited purposes, they are not appropriate bodies for discharging more important and permanent functions involving the acquisition and holding of land, the making of contracts, and borrowing.

PART II.—SANITATION AND BUILDINGS.

Vesting of sewers in local authorities.

32. The difficulties connected with the vesting of sewers in local authorities are notorious. Stated as briefly as possible, the position under the existing law is as follows :—

The Act of 1875 distinguishes between drains and sewers, defining a drain as a drain used for the drainage of one building only and made for communicating with a cesspool or sewer, and a sewer as including any other kind of drain. The Act, following the Public Health Act, 1848, then proceeds to enact that all existing and future sewers, with certain exceptions referred to below, are to vest in the local authority. It is common knowledge that the Act has never been regarded as imposing an obligation on local authorities to sewer their districts in advance of development, and as a consequence the almost universal practice has been for a developer to construct the sewers necessary for the drainage of the buildings which he is erecting. The responsibility for maintaining these sewers after their completion passes automatically to the local authority, and it has thus been a matter of financial concern to the authority whether a particular pipe is technically a sewer or a drain, since in the first case but not in the second the burden of maintenance falls on the authority. Recourse has been had to various devices to prevent developers throwing on the ratepayers as a whole the cost of maintaining pipes which, though technically sewers for the reason that they drain more

(*g*) 11 Halsbury's Statutes 969.
(*i*) 13 Halsbury's Statutes 972.
(*l*) 26 Halsbury's Statutes 355.
(*h*) *Ibid.*, 177.
(*k*) *See* s. 8 of the Act, p. 64, *ante*.

than one building, are of the character of private drains. In some cases, local authorities have insisted upon each house being served by a separate drain in circumstances where a single drain serving two or more houses would meet all sanitary requirements, and have thereby thrown unnecessary expense on owners. More commonly, the practice of requiring an owner to execute an agreement making himself and his successors in title responsible for the maintenance of the pipes, notwithstanding that they technically form a sewer, has been adopted, though the effect of some of these agreements is not free from doubt. In many areas attempts have been made to meet the situation by local legislation.

33. A clause which had frequently appeared in local Acts was finally introduced into the general law as an " adoptive " provision and now appears as Section 19 of the Act of 1890 (*m*). This section provides that where " two or more houses belonging to different owners are connected with a public sewer by a single private drain " Section 41 of the Act of 1875 (*n*) (which enables a local authority to make good a defective drain at the expense of the owner) is to apply and the authority are to be entitled to recover their expenses in suitable proportions from the owners concerned. Disputes arising on this section and on the definition of drains and sewers in the Act of 1875 have given rise to a large number of judicial decisions which need not be referred to in detail. They are, in the language of Scrutton, L.J. in *Hill* v. *Aldershot Corporation*, [1933] 1 K. B. 259, at p. 267 (*o*), " chaotic and contradictory ". The leading cases are the decision of the House of Lords in *Wood Green U.D.C.* v. *Joseph*, [1908] A. C. 419 (*p*), and of the Court of Appeal in the Aldershot case already referred to. It appears from these decisions that Section 19 is defective in at least two respects—(1) because it is limited to drains from houses " belonging to different owners ", and (2) because under the judgment of the House of Lords in the Wood Green case, as interpreted by Lawrence and Greer, L.JJ. in the Aldershot case, the section applies only if the authority can establish that the combined drain was originally constructed by reason of a requirement of the local authority made under Section 23 or 25 of the Act of 1875.

34. Attempts have been made in subsequent local legislation to improve upon Section 19, for instance, by providing for combined drainage orders. In some cases Section 41 of the Act of 1875 (*n*) has been applied in terms to a drain serving two or more houses whether owned by the same person or not, and in one instance the words " whether such drain was originally constructed in pursuance of a requirement of the Corporation or their predecessors or not " have been inserted in order to negative the view adopted by the House of Lords in the Wood Green case.

35. To deal satisfactorily with the problems to which this legislation has given rise involves going far beyond consolidation, but in view of the fact that our Terms of Reference include the making of recommendations for simplifying and clarifying the law, we feel it impossible to reproduce without amendment provisions which have provoked a large amount of litigation and have called forth the strongest judicial condemnation. " I cannot avoid pointing out," said Lord Russell, C.J. in *Bradford* v. *Eastbourne Corporation*, [1896] 2 Q. B. at p. 213 (*q*), a case turning on Section 19 of the Act of 1890, " the highly unsatisfactory state of the existing legislation relating to the question of public health, and to cognate questions of local authority under the Acts dealing with that subject. It is entirely unsystematic and most confused, and in the public interest steps ought to be speedily taken to reduce the existing chaos into system and order." Nearly 40 years later Scrutton, L.J., in the Aldershot case already referred to, used even stronger language in connection with Section 19 which he described as " a disgrace to English legislation."

(*m*) 13 Halsbury's Statutes 831.
(*n*) *Ibid.*, 642.
(*o*) Digest Supp.
(*p*) 41 Digest 38, *281.*
(*q*) *Ibid.*, 4, *77.*

36. Two methods of amending the law presented themselves to us. The first was to adopt and, if possible, improve on the various local Act provisions amending Section 19 of the Act of 1890. The second was to recommend the more radical step of abandoning altogether the principle that pipes which drain more than one building should of necessity vest in the local authority. In considering these alternatives, it was brought to our notice that when the Bill which became the Public Health Act, 1925, was before the House of Lords an amendment designed to remedy the defects of Section 19 on the lines usually adopted in local Acts was moved but was resisted by the Government on the ground that it was proposed to introduce legislation dealing with the matter " on more comprehensive lines ". We understand that at the time the Ministry of Health were considering a Public Health Bill which, amongst other things, proposed to abolish the automatic " vesting " of sewers in local authorities, but that the Bill had subsequently to give way to the more urgent matters dealt with in the Local Government Act, 1929. Moreover, it is well known that proposals on these lines had long been the subject of discussion. So long ago as 1903 Mr. Walter Long, as President of the Local Government Board, publicly expressed the view that a sewer ought not to vest in a local authority, unless it had been approved by them in every detail.

37. Apart, however, from these considerations we feel clear that tinkering with the language of Section 19 will provide no real solution of the problem, and that the time has arrived for abandoning the principle, which experience has shown to be unsound, that the responsibility for maintaining a particular pipe should depend solely on the question whether the pipe serves one or more than one building. Moreover, we are satisfied that it is not practicable to lay down a hard and fast line in an Act of Parliament, and to throw the responsibility for maintenance on the ratepayers as a whole, or to leave it with individual developers or owners, according as the pipe in question falls on one side of that line or the other. In our view the circumstances vary within such wide limits that Parliament cannot hope to do more than leave to some competent authority the duty of deciding whether or not in a particular case the responsibility for maintenance should be transferred to the local authority and indicate in the Act the kind of considerations to which that authority ought to have regard in arriving at a decision.

38. Accordingly the draft Bill repeals Section 13 of the Act of 1875 and as regards future sewers substitutes the procedure set out in Clause 17 (*r*). The salient points of this procedure are as follows :—

(1) The distinction between a drain, that is, a pipe serving one building only, and a sewer is maintained : see the definitions of these terms in Clause 332 (*rr*). We considered the question whether it would be convenient to alter the terminology and limit the word " sewer " to a sewer vested in the local authority. This course has some advantages, but we came to the conclusion that it would involve too great a departure from the ordinary meaning and use of the word " drain " if it was used to cover lines of pipes laid under streets and serving large numbers of houses. Accordingly, the term " public sewer " is used to denote a sewer vested in the local authority (Clause 20 (2)).

(2) Clause 17 applies only to sewers completed after the commencement of the Bill. The responsibility for sewers completed before that date will remain practically unaltered, that is to say, it will in general rest with the local authorities.

(3) Subsection (1) of the clause empowers a local authority to declare any sewer or sewage disposal works to be vested in them.

(4) Subsection (2) enables the owner of a sewer or sewage disposal works to apply for a declaration vesting it in the local authority.

(*r*) *See* s. 17 of the Act, p. 72, *ante.*
(*rr*) Now s. 343 of the Act, p. 280, *ante.*

(5) If the authority do not accede to the application, an appeal lies to the Minister.

(6) Considerations which should be present to the minds of the local authority and the Minister are set out in subsection (4). They are not intended to be exhaustive, and the amount of weight to be attached to each will depend on the circumstances of the particular case.

(7) Provision is made for dealing with the case of sewers or disposal works which are within the district of one authority but serve that of another.

39. We considered whether the owner of a sewer or of disposal works should have a right to appeal from a decision of the local authority to take over the sewer or works as well as from a decision not to take over. In view of the fact that sewers and disposal works nearly always represent a liability rather than an asset, we reached the conclusion that this was unnecessary.

40. The question whether the appeal under Clause 17 from a decision of the local authority declining to take over a sewer should lie to a court of summary jurisdiction or to the Minister presented some difficulty. In the present instance we were led to the conclusion that the appellate tribunal should be the Minister by the consideration that the issue is closely bound up with the question whether the local authority are adequately performing their duty of draining their district. The responsibility for enforcing the performance of this duty rests with the Minister under Section 299 of the Act of 1875 (*s*) and Section 57 of the Local Government Act, 1929 (*t*), both of which provisions are reproduced in Part XII of the Bill (*u*), and for that reason we consider that the jurisdiction to determine whether a particular sewer ought to become vested in the local authority as forming part of the general system of the district should also lie with the Minister.

41. The procedure outlined in the last three paragraphs deals with sewers completed after the commencement of the Bill. It is necessary, however, to make provision for the further and more difficult case of sewers completed before that date. These are dealt with in Clauses 20 and 24 (*w*). The former enumerates the types of sewers which are to vest, or to continue to vest, in the local authority and designates them "public sewers". The opening words of subsection (1) maintain the *status quo* by providing that all sewers and disposal works already vested in a local authority shall continue to be vested in them. Those which are not so vested, e.g., existing sewers made for profit, will remain in private ownership.

Paragraph (*a*)) of Clause 20 (1) deals with sewers which under the general law would have become vested in local authorities, but, being of the nature of private drains, are the subject of some provision in a local Act which maintains the responsibility of the owner to keep them in repair. We have come to the conclusion that as a matter of procedure the convenient course will be for these sewers to be vested in the local authority and to be known as public sewers. The liability for their maintenance is dealt with in Clause 24.

Paragraph (*b*) sufficiently explains itself; and

Paragraphs (*c*) and (*d*) deal with future sewers.

With regard to the proviso to Subsection (2), *see* the note on Clause 20.

Clause 24 defines the responsibility as between local authorities and owners for the expense of maintaining lines of pipes (including sewers falling under Clause 20 (1) (*a*) laid before the commencement of the Bill. For the reasons explained in paragraphs 32–34 above, the maintenance of these pipes has in many cases remained the responsibility of the owners, notwithstanding that the pipes are, or would under the general law be, sewers. This responsibility rests in some cases on contract, in others on local Act provisions, and in others on Section 19 of the Act of 1890, either as it stands or as amended by local

(*s*) 13 Halsbury's Statutes 750.
(*t*) 10 Halsbury's Statutes 922.
(*u*) *See* pp. 239 *et seq.*, *ante*.
(*w*) See these sections, pp. 78, 80, *ante*.

Act. The clause is based on the consideration that Parliament has enabled local authorities to adopt Section 19 of the Act of 1890, which applies both to future sewers and to sewers already in existence at the date of adoption; and further, that it has allowed the section to be amended so as to cover both the case of drains of houses in the same ownership and that of drains constructed voluntarily and not by reason of a requirement of the local authority, thus in effect reversing the Wood Green and Aldershot decisions already referred to. We have attempted to draft the clause so as to give effect to the view which we think, having regard to these considerations, the legislature may fairly be presumed to have accepted.

Subsection (1) of the clause enables the local authority to recover the expense of maintaining a public sewer of the kind to which the clause applies from the owners of the premises served by it, and provides for any necessary apportionment between different owners.

Subsection (2) deals with the not infrequent case of an authority not only maintaining, but enlarging such a sewer. In that case the authority will be required to pay the cost of enlargement, and, since an apportionment of future maintenance expenses would become increasingly difficult, as time goes on, the subsection provides that the future responsibility for maintenance is to lie with the local authority.

Subsection (3) gives the owner a right of appeal to a court of summary jurisdiction on questions arising under the clause.

Subsection (4) describes the sewers to which the clause applies. Paragraph (*a*) deals with the case in which the responsbility for maintenance has remained with the owners either under a local Act or by virtue of an agreement with the local authority. Paragraph (*b*) represents an attempt to define the kind of sewer at which Section 19, as amended by local Acts, is aimed. The sewer must be one which was not constructed at the expense of the local authority and one which lies either in the gardens or yards of the houses served by it, or in some private passage or roadway affording access to them.

Sewers made for profit.

42. Section 13 of the Act of 1875 (*y*), which provides for the vesting of sewers in the local authority, excepts "sewers made by any person for his own profit, or by any company for the profit of the shareholders."

These words have given rise to litigation and it is not easy to reconcile all the judicial decisions, but we believe that in broad outline the effect of the decisions, including an important decision recently given in the case of *Southstrand Estate Development Company* v. *East Preston R.D.C.*, [1934] 1 Ch. 254 (*z*), may be stated as follows:—

(a) whether a sewer is made for profit is a question of fact;

(b) a sewer may be made for profit though made purely for sanitary purposes and not, e.g., for securing a profit by disposing of the sewage;

(c) the fact that a sewer is made by a person developing a building estate in order to provide sanitation for the houses does not in itself constitute sufficient evidence that it was made for profit;

(d) on the other hand, if a sewer is made by a person (other than the developer of the estate) who has purchased the right to construct it with the object of turning the right to account, it is made for profit.

43. The exception of sewers made for profit dates from the Public Health Act, 1848, and probably owes its origin largely to the idea which was then current, and gave rise to the Sewage Utilisation Acts, 1865–7, that the disposal of sewage would in itself be a profitable undertaking. Whatever the future may hold in store in this respect, it cannot be gainsaid that the creation of a sewerage system with a view to profit from this source is at present unknown in this country. Thus, under existing conditions, the question

(*y*) 13 Halsbury's Statutes 631.
(*z*) Digest Supp.

whether a sewer is or is not made for profit usually depends on whether the developer recoups himself for the cost of the sewer by obtaining a larger price for his land or houses, or by levying, through the agency of some company or other body created for the purpose, charges in the nature of rates for the use of the sewer, or selling the right to levy such charges. It appears to us that the distinction between these two methods of procedure forms a very unsatisfactory ground, as a matter of equity between the developer and the general body of ratepayers, for determining whether the local authority should have a right to take over the sewer or should be required to purchase it from the developer in cases where it is found that the sewer forms an important link in the general sewerage system of the district. Accordingly we recommend that the new procedure for taking over by declaration should apply to future sewers whether made for profit or not, and Clause 17 so provides. We are fortified in the view that the distinction between sewers made for profit and those not made for profit may without unfairness be abandoned, first, by the fact that the practice of recovering the cost of the sewer in the price of the land or houses is, we believe, almost universal, and that consequently, if the Bill were to make the system of levying a charge for the use of the sewer virtually impossible, the effect on the current practice of developers would be negligible; and secondly, by the consideration that as already pointed out, the proposed procedure for taking over applies only to sewers completed after the commencement of the Bill, and that the position of existing sewers made for profit will remain unaffected.

Sewage Disposal Works.

44. The foregoing considerations apply substantially to the question of taking over sewage disposal works. There is, however, this difference between sewers and sewage disposal works, that the latter are not mentioned in Section 13 of the Act of 1875, and till recently the view was commonly held that disposal works do not automatically vest in the local authority. Doubt has been cast on this view by two recent decisions, *Clark* v. *Epsom R. D. C.*, [1929] 1 Ch. 287, and *Solihull R. D. C.* v. *Ford*, [1932] 30 L. G. R. 483 (*a*). It appears to us that whatever the intention of the earlier Acts may have been, there is no ground in principle for distinguishing, as regards works constructed in the future, between sewers and sewage disposal works, and we recommend that they should be treated on the same footing.

Trade Effluents.

45. The law with regard to the duty of a local authority to receive trade effluents into their sewers is also in an unsatisfactory state. It is to be found principally in Sections 15 and 21 of the Act of 1875 (*b*), which lay down the general duty of a local authority to make and maintain sewers and to allow owners to connect their drains with such sewers, and in Section 7 of the Rivers Pollution Prevention Act, 1876 (*c*). This last section provides in effect that a local authority must give facilities for enabling manufacturers to carry the liquids proceeding from their factories into the authority's sewers, but qualifies this obligation by excluding from the right of admission to a sewer, liquid which would be injurious " in a sanitary point of view," and also by exempting the authority from any obligation to give facilities " where the sewers of such authority are only sufficient for the requirements of their district." Section 10 of the same Act (*d*) confers a general jurisdiction on the county court to deal with contraventions and defaults under the Act and is apparently drafted in terms wide enough to cover a default by a local authority in their duty to give facilities.

46. The precise extent of the obligation under Section 7 and the relation of that section to the provisions of the Act of 1875 have given rise to much

(*a*) Digest Supp.
(*b*) 13 Halsbury's Statutes 632, 634.
(*c*) 20 Halsbury's Statutes 319.
(*d*) *Ibid.* 320.

discussion, and it is generally agreed that the law on this subject is in urgent need of revision. We understand that negotiations have been proceeding for some time between the Central Council for Rivers Protection, the Federation of British Industries and certain of the Associations of Local Authorities, that a substantial measure of agreement has been reached and indeed that a Bill has actually been drafted. In view of this, we have thought it right to reproduce the existing law substantially as it stands. If any legislation on the matter precedes the introduction of the Bill, it might without difficulty be incorporated in the general Bill (*e*). We have not thought it necessary to reproduce Section 10 of the Rivers Pollution Prevention Act, 1876, so far as it covers, or may cover, cases of default by a local authority under Section 7 of the same Act. In our view the general default procedure of the Public Health Acts which is reproduced in Part XII of the present Bill is more appropriate. The remaining sections of the Act of 1876 dealing with pollution of rivers do not fall within the scope of the present Bill.

Meaning of " house," " building " and " premises."

47. By Section 4 of the Act of 1875 (*f*) " house " was defined as including " schools, also factories and other buildings in which more than 20 persons are employed at one time." The reference to 20 persons was struck out by Section 107 of the Factories and Workshops Act, 1878, and accordingly the definition now runs: " includes schools, also factories and other buildings in which persons are employed."

The word " building " is not defined in the Act of 1875 and the word " premises " is defined as including messuages, buildings, lands, easements and hereditaments of any tenure. In some of the later Public Health Acts the draftsmen appear to have overlooked these definitions.

48. It seems probable that the extended meaning of the word " house " was adopted in the Act of 1875 principally with reference to the provisions relating to drains and sanitary conveniences, for the reason that those provisions were intended to apply to buildings which were not houses in the ordinary sense of the term. It became clear, however, as we proceeded with the drafting of the Bill that the adoption of this wide definition of " house " throughout the Bill as a whole would play havoc with many of its provisions and produce quite unexpected results, and accordingly, after trying various alternative expedients, we have come to the conclusion that the simplest course is to use the three terms " house," " building," and " premises " in their normal senses, that is, house as meaning a dwelling-house, building as covering buildings of all types, and premises as the most general term of all, covering buildings and land. In the clauses dealing with drains and sanitary conveniences the word " building " has been used for the reasons explained in the notes on these clauses.

Passing of Plans.

49. Under the existing law a local authority are under an obligation to pass the plans of a proposed building if they conform with the byelaws. The authority have no discretion in the matter. We consider it important to maintain this obligation and have drafted Clause 63 (*g*) with the object of making the position clearer than it is at present. There are, however, a number of matters throughout this Part of the Bill (*e.g.*, the provision of proper drains) in which the building owner must comply with the requirements of the local authority, and in fairness to the owner he should be informed at the earliest possible moment whether or not his proposals on these matters are acceptable. We have come to the conclusion that the best

(*e*) No such Bill has been introduced.
(*f*) 13 Halsbury's Statutes 625. For a discussion of the meaning of " house," see 1 Lumley (10th edn.) 22–26.
(*g*) Now s. 64 of the Act, p. 113, *ante*.

way to achieve this is to require the local authority to deal with the point on the submission of the plans of the proposed building and to reject the plans if their requirements are not met, the owner being given any necessary right of appeal. The clauses in which this procedure has been adopted are 25, 37, 42, 52, 53, 54 and 58 (*h*).

Sanitary conveniences.

50. Under the Act of 1875 the obligations of persons erecting buildings and of the owners of existing buildings in the matter of closet accommodation are as follow :—

(1) Under Section 35 of the Act of 1875 (*i*) it is an offence to erect a house (in the wide meaning of the term given to it by Section 4 of the Act) " without a sufficient water-closet, earth-closet or privy and an ashpit furnished with proper doors and coverings."

(2) Under Section 36 of the same Act (*i*) a local authority may require the owner or occupier of a house which is without a sufficient water-closet, earth-closet, etc., to provide the necessary convenience, and in default may execute the necessary work at his expense.

These two sections have been the subject of a number of judicial decisions which need not here be discussed in detail. It suffices to say that whereas (subject to later legislation mentioned below) an owner has a right to put into his house such type of closet or privy as he thinks fit, provided that it conforms with the byelaws, it appears from the decision in the case of *Carlton Main Colliery Company, Limited* v. *Hemsworth R. D. C.*, [1922] 2 Ch. 609 (*k*) that there may be circumstances justifying a local authority insisting under Section 36 that privies shall be replaced by water-closets.

Section 39 of the Act of 1907 (*l*), a section occupying more than two pages of the statute book, has given rise to much misunderstanding. After commencing with elaborate definitions of different types of closets, it proceeds to enact that where there are " a sufficient water supply and sewer " (this phrase being defined in the section), a local authority may require a new building to be provided with such number of sufficient water-closets and/or slop-closets as the circumstances may render necessary.

Subsection (3) empowers the local authority, if satisfied that sufficient closet accommodation is not provided in connection with an existing building, and cannot be provided by the alteration of the existing accommodation " in pursuance of this section ", to require the owner to provide the necessary number of proper and sufficient water and/or slop-closets.

Subsection (4) enables the local authority, where there are a sufficient water supply and sewer, to require the owner of a building to replace existing closet accommodation, other than a water-closet or slop-closet, with a water-closet or slop-closet, but provides for the local authority contributing half the expense. If, however, the conversion is from a pail-closet to a water-closet, the whole expenditure must be borne by the local authority.

Subsection (5) provides that the references throughout the section to slop-closets are not to have effect, unless the Minister is satisfied by the local authority that the circumstances of the district are such as to render it necessary or expedient that they should have effect and makes an appropriate order.

Section 39 of the Act of 1907 has been put into force in a large number of local government areas, and since its operation is automatically limited by the requirement that the conversion to a water carriage system can only be insisted on " where there are a sufficient water supply and sewer ", we see no reason why, subject to this limitation, it should not form part of the general law. In so far as it deals with cases in which the owner of the building can

(*h*) Ss. 25, 37, 43, 53, 54, 55, and 59 of the Act. See also s. 137.
(*i*) 13 Halsbury's Statutes 640.
(*k*) 38 Digest 228, *597*.
(*l*) 13 Halsbury's Statutes 925.

be required to take action entirely at his own expense, it clearly ought to be amalgamated with Section 36 of the Act of 1875.

51. Section 36 of the Act of 1875 and Section 39 of the Act of 1907 present an example which may be worth mention of the danger of a mere " scissors and paste " method of consolidating Acts of Parliament. The relation between these two sections was the subject of much discussion in the Carlton Main Colliery case cited above, and it was contended that the scope and effect of the earlier section was limited by the presence in the statute book of the later. This contention was rejected and observations were made from the Bench on the question of construing an earlier Act by reference to a later. Hence a consolidation which merely placed the two sections in juxtaposition in the same Act might well have unexpected consequences. The two sections are accordingly wholly rewritten.

52. As regards the erection of *new* buildings, we feel no doubt that Parliament would decline at the present date to legislate in terms of a new building being provided with a " privy and an ashpit furnished with proper doors and coverings ". Accordingly we recommend that in every case in which closet accommodation is necessary there should be an obligation to provide either a water-closet or an earth-closet, the latter being defined as a closet with a moveable receptacle. We have considered whether a water-closet should be required in every case in which a sufficient water supply and sewer are available within the meaning of Clause 89 (6) of the Bill (*m*). It is clear that the local authority should be in a position to insist upon this, and we have no doubt that in the great majority of cases they will do so. But occasionally cases may arise in which either owing to some preference on the part of an owner-occupier of a house or because notwithstanding that a water supply and sewer are available there is some technical difficulty in making a connection with the sewer (e.g. owing to the house being built on rock) it will be convenient if the local authority have power to approve an earth-closet. Provision is made in Clause 42 accordingly (*n*).

53. Sections 35 and 36 of the Act of 1875 are drafted in terms of " houses " as defined in Section 4 of the same Act and, as in the case of the obligation to construct a drain (see note on Clause 37) (*o*), the question arises to what type of building the obligations with regard to closet accommodation should extend. We have come to the conclusion that it is not practicable to define in the Act itself a class of buildings which must in all circumstances be furnished with closet accommodation, and accordingly that the proper course is to leave to the discretion of the local authority (subject to appeal to a court of summary jurisdiction) both the question whether a closet is necessary at all and, if so, the further question how many closets are required. This is provided in Clauses 42–3.

54. With regard to the type of apparatus, if the recommendation which we make in paragraph 65 below is accepted that the Minister should be able to require all local authorities to make byelaws dealing with buildings and sanitation, this matter will be governed by the byelaws in operation in the area. This will have, in our opinion, substantial advantages from the point of view of owners as compared with the present law under which the owner may be left in the dark when the house is under construction and discover too late that the local authority, and possibly the justices on appeal, do not accept his view as to what constitutes " sufficient " accommodation.

55. The position with regard to buildings *existing at the date of the commencement of the Bill* is more difficult. Many of these will contain closet accommodation constructed before any byelaws dealing with the matter were in operation in the area. Under the existing law an owner is under no obligation to alter a closet which is otherwise " sufficient ", merely because it does not conform with byelaws which were brought into force after the date

(*m*) S. 90 of the Act, p. 130, *ante*.
(*n*) S. 43 of the Act, p. 94, *ante*.
(*o*) p. 395, *post*.

of its construction and would govern its reconstruction if it were altered. Moreover, the duty to substitute a water-closet for any other type only arises—(a) if the closet is not sufficient, (b) if sufficient accommodation cannot be provided by the alteration of the closet, and (c) if there are a sufficient water supply and sewer available. An amendment of the law which imposed on owners a general duty of bringing existing closet accommodation into conformity with new byelaws, whether or not desirable in itself, would be, in our opinion, quite beyond the scope of the present Bill. We have accordingly reproduced in Clauses 43 and 44 (*p*) what we take to be the principle of the existing law.

Clause 43 deals with the case of existing buildings without sufficient closets or having closets the state of which is unsatisfactory and which cannot be put into proper condition without reconstruction. In this case the owner can be required to do what is necessary to provide additional closets or to put the existing ones into a proper condition, as the case may be. The authority are entitled under the clause to require the substitution of a water-closet for an existing earth-closet, if a sufficient water supply and sewer are available. New closets provided under the clause would have to conform with the requirements of the current byelaws.

Clause 44 deals with the case of closets which are in an unsatisfactory state, but can be put right without reconstruction. In this case the owner or occupier can be required to do what is necessary to cure the defect, but this will not necessarily involve bringing the closet up to the standard of current byelaws.

56. Clause 46 (*q*) which replaces Section 39 (4) of the Act of 1907 deals with the case in which a sufficient water supply and sewer are available, and the local authority consider that as a matter of general sanitary policy the existing closets should be replaced by water-closets, notwithstanding that they are not in themselves a nuisance or injurious to health or insufficient in number. In this case, as under the existing law, the expense is to be shared equally between the local authority and the owner.

Two amendments which the clause makes in the existing law should be mentioned :—

(1) As already stated, Section 39 of the Act of 1907, after defining a " slop-closet " as a closet comprising provision for the flushing of the receptacle by means of slops or waste liquids of the household or rain-water, enacts that the provisions as to slop-closets are not to apply, unless the Minister has declared that the circumstances of the district are such as to render it necessary or expedient that they should apply. The section was apparently framed on the view that a slop-closet is a reasonably satisfactory type of sanitary convenience, and in some circumstances might be treated as on the same footing as an ordinary water-closet. It appears that no orders have ever been made under this subsection, the Local Government Board and the Ministry entertaining considerable doubt as to what the order-making power was intended to achieve and what actual effect an order made under it would have (see Lumley's note to the subsection). We understand moreover that the practice of installing slop-closets has now been abandoned, the modern view being that this type of apparatus is wholly unsatisfactory. Accordingly, we have followed a precedent set in many modern local Acts, and have framed the clause so as to place slop-closets on the same footing as earth-closets and privies and to enable the local authority to require the owner to bear half the cost of converting them into water-closets.

(2) Under Section 39 (4) a local authority are not entitled to throw on the owner any part of the cost of substituting a water-closet for a pail-closet. This exception, which appears to have been made on the ground that the owner may on some past occasion have been required

(*p*) Ss. 44 and 45 of the Act, pp. 95, 96, *ante*.
(*q*) S. 47 of the Act, p. 97, *ante*.

by the council to substitute a pail-closet for a privy, and that it would be a hardship if he were called upon to bear even a part of the expense of a further replacement, places a practical obstacle in the way of schemes for conversion on the basis of the owner and the local authority sharing the cost. We understand that cases have arisen in which owners, on becoming aware that such a scheme is in contemplation, have at comparatively trifling expense substituted a pail-closet for a privy, and thus thrown the whole of the cost of the conversion to a water-carriage system on the rates. Such a practice is clearly in conflict with the intention of Section 39, and for this reason, and in view of the general advance in sanitary standards since 1907, we recommend that, for purposes of conversion, pail-closets should be put on the same footing as earth-closets and privies, and the owner be made liable to bear one-half of the expense. This change has already been effected by a number of local Acts and by provisional orders amending local Acts.

Sanitary accommodation in Factories, Workshops, etc.

57. The existing law with regard to sanitary accommodation in factories and other places where persons are employed in trade or business, is briefly as follows—

Under Section 38 of the Act of 1875 (*r*) a local authority may require the owner or occupier of a building, used or intended to be used as a factory or building in which persons of both sexes are employed or intended to be employed in manufacture, trade or business, to construct a sufficient number of water-closets, earth-closets, or privies and ashpits, for the separate use of each sex.

Section 22 of the Act of 1890 (*s*) requires a building used as a workshop or manufactory, or where persons are employed or intended to be employed in trade or business, to be provided with sufficient and suitable sanitary accommodation, having regard to the number of persons employed in or in attendance at the building and, where persons of both sexes are employed or in attendance, with proper separate accommodation. The section empowers the local authority to call upon the owner or occupier to make such alterations and additions in his building as may be required to give such sufficient suitable and proper accommodation. This section is " adoptive " in urban areas and may be put in force by order of the Minister in rural areas. It is in operation in 306 boroughs, 673 urban districts and 19 rural districts. Where it operates, Section 38 of the earlier Act is repealed.

It will be observed that the earlier section is, but the later is not, limited to buildings in which persons of both sexes are employed.

Further provision is made in this matter by Section 9 of the Factory and Workshop Act, 1901 (*t*). This section requires every factory and workshop to be provided with sufficient and suitable accommodation in the way of sanitary conveniences, regard being had to the number of persons employed, or in attendance, and where persons of both sexes are employed, or in attendance, with proper separate accommodation. The section also empowers the Secretary of State by special order to determine what is sufficient and suitable accommodation. The section does not, however, apply in any district in which Section 22 of the Act of 1890 is in force. Moreover, it does not apply to " men's workshops ", i.e., those not employing any woman, young person or child (see Section 157 of the Act).

Under Section 4 of the same Act the Secretary of State has power to enforce the sanitary provisions of the Public Health Acts as regards factories, workshops and workplaces, and by Section 5 a Home Office Inspector may call upon the borough or district council to take the necessary action for the purpose of enforcing these provisions.

The position is, therefore, that in any particular district *either* Section 22

(*r*) 13 Halsbury's Statutes 641.
(*s*) *Ibid.*, 833.
(*t*) 8 Halsbury's Statutes 522.

of the Act of 1890 is in force *or* both Section 38 of the Act of 1875, and Section 9 of the Factory and Workshop Act, 1901, operate.

58. It is tempting to replace the complexities of this dual system by a single code based on Section 22 of the Act of 1890. This, however, would involve the drastic step of repealing Section 9 of the Act of 1901. In this connection our attention has been drawn to the fact that since the year 1924 successive governments have had under consideration a Factories Bill which was introduced in 1924 and again in 1926, and has subsequently been the subject of prolonged consultation with the interests concerned. The policy of this Bill as regards sanitary conditions in factories has been to place in the hands of the Secretary of State the duty of prescribing and enforcing proper standards of sanitary accommodation, but to empower him to delegate the duty of enforcement to local authorities. We understand that this policy has been generally accepted and it is clear that a total repeal of Section 9 of the Act of 1901 would be inconsistent with it.

59. In view of the possibility of factory legislation on these lines in the near future, we have come to the conclusion that the proper course for us is to maintain, so far as practicable, the *status quo* and that this can best be secured by substantially reproducing Section 22 of the Act of 1890 as regards boroughs and urban districts and those rural districts, 19 in all, in which it is in force. Provision is made for this in Clause 45 (*u*), subsection (5) of which further provides that Section 9 of the Act of 1901 is not to apply to boroughs or urban districts or to rural districts in which Section 22 of the Act of 1890 is at present in force and that similarly it is not to apply to a rural district in which the powers conferred by Clause 45 are put into force by an order of the Minister under Part I of the Bill.

We think also that Section 38 should be repealed without re-enactment, and the position of rural districts in which Clause 45 (*u*) is not in force should be regulated solely by Section 9 of the Act of 1901. It is true that this will deprive these rural districts of their existing power under Section 38 of dealing with factories and workshops where both sexes are employed. We think however that this change in the law is justified on the ground that the power overlaps with those of the Secretary of State under Section 9 of the Act of 1901, and that in practice it is little more than a dead letter. Further, the change accords with the contemplated factory legislation under which the power of enforcing proper accommodation would be vested in the Secretary of State, but may be delegated by him to local authorities.

60. Reference should also be made to the question of shops. The provision of sanitary accommodation in shops has recently been dealt with by the Shops Act, 1934, which provides (Section 10 (2)) (*w*) that in every shop, other than an exempted shop, there shall be provided and maintained suitable and sufficient sanitary conveniences available for the use of persons employed in or about the shop. Subsection (6) of the same section enables the local authority to grant a certificate of exemption if satisfied " that by reason of restricted accommodation, or other special circumstances affecting the shop, it is reasonable that such a certificate should be in force with respect thereto and that suitable and sufficient sanitary conveniences . . . are otherwise conveniently available ". A right of appeal to the county court against the withdrawal of a certificate (but not against a refusal to grant a certificate) is conferred. The Act does not repeal any of the provisions of the Public Health Acts. In order to avoid overlapping jurisdiction, shops to which the Act of 1934 applies are specifically excluded from the operation of Clauses 43 to 45.

Power of local authority to require owner to execute works and in default to execute them at his expense.

61. A considerable number of the enactments reproduced in this Part, and a few of those reproduced in other Parts, of the Bill provide in effect that

(*u*) See s. 46 of the Act, p. 96, *ante*.

(*w*) 27 Halsbury's Statutes 235.

the local authority may serve notice on the owner (or in some cases on the owner or the occupier) of premises calling upon him to execute works in order to remedy some defect, and that if the person served fails to do so, the authority may do the work themselves and recover the expense from him. These enactments are scattered over the various Public Health Acts and, as might be expected, substantial differences both of form and of substance are to be found. In some cases, for example, the obligation on the owner to do the necessary work is imposed by the statute itself and a failure renders him immediately liable to a penalty. In others, the liability arises only if the authority serve notice requiring the works to be done and the notice is disregarded. Again, in some cases the statute requires the notice to specify the works to be done and the time within which they are to be completed. In other cases the authority is merely required to call upon the owner to do what is necessary. Further, as already explained in paragraph 18 of this Report the position under the existing law with regard to the owner's right of appeal is obscure and unsatisfactory.

62. We feel no doubt that for the sake of simplicity and clarity the procedure throughout the Bill for requiring an owner to remedy defects and enabling him to appeal should be uniform, and further, that before incurring the expense of executing the necessary works in default of the owner, the local authority should be in a position to know whether their requirements can be successfully challenged as excessive or unreasonable or as being for any reason *ultra vires*. We have accordingly made provision in Clause 283 of the Bill (*y*) for a uniform procedure on the following lines :—

(1) The local authority will be empowered to serve notice on the owner (or in some cases on the owner or occupier) requiring him to execute within a stated time the works indicated in the notice. In our opinion the authority should be under an obligation to indicate the works which they require, but not to incorporate in the notice a detailed " specification ", in the technical sense of the term, and we have accordingly avoided the use of the word " specify " in this connection.

(2) Within 21 days the owner may appeal to a court of summary jurisdiction, with a further right of appeal to quarter sessions. An appeal will lie on one or more of the several grounds stated in subsection (3) of the clause.

(3) If the local authority have power to impose the requirement *either* on the owner *or* the occupier, the person actually served with the notice (whether owner or occupier) may appeal on the ground that the obligation should have been imposed, wholly or partly on the other party. In that case he must serve a copy of the notice of appeal on the other party and the court will decide between them. In reaching a decision as between owner and occupier the court are required to have regard to the terms of the tenancy and the nature of the works required. Similarly, if the works are for the joint benefit of two or more houses the owner of one can appeal on the ground that the expense ought to fall wholly, or in a greater degree, on some other owner.

(4) Subject to the right of appeal, if the person served with the notice makes default, the local authority may do the work and recover the reasonable expenses from him. In addition, he is liable to a fine for failure to comply with the authority's requirements.

(5) Whether the right of appeal is exercised or not, an issue which might be raised on appeal cannot be taken by way of defence in proceedings brought by the local authority for recovery of the expense.

63. It may be objected to the procedure that, if the local authority have a right to do the work in default and to recover the expense from the owner, nothing further is required, and that to give them the additional right of taking proceedings for penalties is unnecessary and harsh. On this two

(*y*) S. 290 of the Act, p. 252, *ante*.

comments may be made. In the first place, a right to do the work in default and/or to proceed for penalties is common not only throughout the Public Health Law but in similar codes. Secondly, if it is conceded that the obligation to keep his premises in sanitary repair rests primarily with the owner and only secondarily with the local authority, it follows that the authority must have some weapon which will enable them to induce the owner to perform his duty. In practice, the institution of proceedings for a penalty, or a notice that they are about to be instituted, constitutes a most effective weapon for this purpose. If proceedings are taken, it is common for the court to accept an undertaking on the part of the defendant to execute the works, and to adjourn the case to enable this undertaking to be carried out. If the works are duly completed, the information is usually dismissed without a fine.

Byelaws with respect to Buildings and to Sanitation.

64. The existing enactments on this subject are to be found in Sections 157 to 159 of the Act of 1875 (*z*), Section 23 of the Act of 1890 (*a*), Section 24 of the Act of 1907 (*b*), and Section 101 of the Housing Act, 1925 (*c*). Apart from the last-mentioned section, which enables unreasonable byelaws in certain circumstances to be revoked, the original provisions of the Act of 1875 have remained substantially unchanged, for the provisions in the Acts of 1890 and 1907 are in the main directed to extending in certain respects the scope of the byelaw-making powers. But the subject of building byelaws has given rise to so much controversy and litigation (Lumley's note on Section 157 extends over some 23 pages) that we should hesitate merely to recommend a re-enactment of the existing law as it stands. Fortunately, however, the whole matter has been the subject of an exhaustive enquiry made by a Departmental Committee appointed by the President of the Local Government Board in 1914, which, after being in abeyance during the War, made a Report (Cd. 9213) in 1918. This Report contains a number of recommendations for amending the law, and while some of these relate to streets and are for that reason outside the scope of the present Bill, there is a substantial residue of which any Bill dealing with building byelaws must necessarily take account.

65. In the notes on Clauses 60 to 69 (*d*) we call attention to a number of points in which effect has been given to the recommendations of this Committee. In addition to these there are some matters of greater importance which may be mentioned here.

The Departmental Committee recommended that byelaw-making powers should be given to all local authorities alike and that every district should be required to have at least a minimum code (Report, paragraph 109). At the date when their report was issued there were some 450 rural authorities without byelaws. On 1st October, 1935, the number of rural districts in which no building byelaws were in operation had been reduced to 60.

The considerations which led (*dd*) the Departmental Committee to recommend the general application of a system of building byelaws are set out in their report, and the course of events since the report was published, in particular the widespread development to which the growth of motor transport has given rise, lends additional weight to their recommendations. Moreover, the widely extended powers conferred by the Town and Country Planning Act, 1932, on all local authorities are a recognition of the fact that scarcely any area is free from the possibility of development; and it is difficult to contend that a local authority who have been entrusted by Parliament with the elaborate task of preparing a planning scheme are not to be relied upon to perform the simpler operation of framing and administering a code of byelaws. Further, the fact that the number of areas without byelaws is now less

(*z*) 13 Halsbury's Statutes 689–691.
(*a*) *Ibid.*, 833.
(*b*) *Ibid.*, 919.
(*c*) *Ibid.*, 1058, now repealed and replaced by s. 141 of the Housing Act, 1936.
(*d*) pp. 399–403, *post*.
(*dd*) *Sic* in original.

than a seventh of the number in 1918 makes the proposed change much less revolutionary. We are satisfied that the time has now come when it should be made.

66. We need only add that in our view the universal adoption of a minimum code of building byelaws would be to the advantage of property owners as well as in the interests of good administration. To take a single example, which attracted the attention of the Departmental Committee, the right conferred by Section 21 of the Act of 1875 (*e*) on an owner to cause his drains to empty into a public sewer, is qualified by the requirement that he must comply with the regulations of the local authority, and that the work must be subject to the control of the authority's representative superintending the making of the communication. The right is further curtailed by Section 38 of the Act of 1907 (*f*), which forbids the communication being made until the surveyor has decided that the drain may properly be connected with the sewer—a decision from which there is apparently no right of appeal. We believe that in actual practice these provisions work well enough, but they leave the owner entirely at the mercy of the surveyor and of "regulations" which do not require the approval of any central department; and it is clear that the owner has much less protection from arbitrary requirements than would be the case if he were required to comply with byelaws publicly made by the authority and confirmed by the Minister of Health. Further, in a number of the clauses (e.g., Clause 42 (*g*) reproducing Section 39 (2) of the Act of 1907) we have found it necessary to provide a procedure which assumes the existence of byelaws requiring the deposit of plans of proposed buildings and in the absence of byelaws these provisions would prove unworkable. This is more than a technical difficulty, for unless the local authority are placed in a position to make their requirements, e.g., with regard to the drainage of the building, at the earliest possible stage (that is, on the submission of plans), the building owner may be put to quite unnecessary expense in having to comply with these requirements at a stage when compliance may involve an expensive alteration of his building.

67. It does not follow that areas of sparse population require a byelaw code of anything like the complexity appropriate to urban areas. The practice adopted by the Ministry of Health of issuing three model codes—an urban, a rural and an intermediate code—indicates the proper procedure, and it will be seen from Clause 60 of the draft Bill (*h*), which imposes the obligation to make byelaws that the authority are not bound to do more than make byelaws with respect to any particular matter "if required by the Minister."

68. Further, the Departmental Committee attached great importance to securing that building byelaws should not be allowed to become obsolete, and made two recommendations for this purpose:—

(a) They suggested that Section 44 of the Housing and Town Planning, etc., Act, 1909, which gave the Local Government Board power in certain circumstances to require the repeal of an existing byelaw, should be strengthened and extended: (Report, paragraph 35). Effect was given to this recommendation by Section 13 of the Housing, etc., Act, 1923, which was reproduced as Section 101 in the Consolidating Act of 1925 (*i*) and now appears in an unaltered form in Clause 68 of the draft Bill (*k*);

(b) They further recommended that a time limit on the continuance of byelaws should be imposed, a period of ten years being suggested (Report, paragraph 36). This recommendation is carried out in Clause 67 (*l*), which, however, will allow the Minister to extend the period

(*e*) 13 Halsbury's Statutes 634.
(*f*) *Ibid.*, 924.
(*g*) Now s. 43 of the Act, p. 94, *ante*.
(*h*) Now s. 61 of the Act, p. 109, *ante*.
(*i*) 13 Halsbury's Statutes 1058.
(*k*) Now s. 69 of the Act, p. 118, *ante*.
(*l*) Now s. 68 of the Act, p. 117, *ante*.

during which a byelaw is to remain in force. This latter provision does not conflict with the general principle, since the decision to extend the life of a byelaw would compel consideration of the question whether the byelaw was still appropriate. The clause provides for a normal life of ten years, but in view of the changes which the Bill would effect we consider that local authorities would be well advised to reconsider their existing byelaws within a much shorter period than this from the passing of the Bill, and we have tentatively suggested three years for this purpose. The principle of a ten year period has been adopted also as regards byelaws with respect to water fittings (Clause 132) (*m*).

69. In addition to the recommendations of the Departmental Committee, we have had our attention drawn to the fact that, notwithstanding the criticism that has been directed against the byelaw system, Parliament has never hesitated to extend byelaw-making powers in the widest fashion by means of local legislation. Typical clauses from local Acts of recent date which we have examined contain provisions, extending over two or three pages, enlarging the powers of Section 157 of the Act of 1875 (*n*) and Section 23 of the Act of 1890 (*o*). We have felt it impossible to ignore the attitude taken by Parliament in local legislation, but we have been reluctant to encumber a general Act with the great mass of detail which has been included in many local Acts, and we believe that any attempt at exhaustive enumeration will defeat its purpose by leading to a narrow construction being placed on the general words of the clause. An examination of the common form clauses suggests that these detailed provisions have been thought necessary largely owing to certain restrictive words in Section 157. Thus, the power to make byelaws with respect to the structure of walls, foundations, roofs and chimneys, is qualified by the words " for securing stability and the prevention of fires and for the purposes of health," and a similar power with regard to sufficiency of space around buildings is qualified by the words " to secure a free circulation of air." We have come to the conclusion that the omission of both these phrases would render it possible to make byelaws covering most, if not all, of the matters which Parliament has conceded in local legislation, without the necessity for enumerating these matters at length ; and further, that the omission of the restrictive words will not unduly enlarge the scope of byelaws. It may be objected that the omission of the words " for securing stability and the prevention of fires and for the purposes of health," would enable byelaws to be made controlling the structure and materials of buildings from the point of view of amenity, and that this is outside the scope of public health legislation. The practical answer to this objection appears to be that Parliament has, in the Town and Country Planning Act, 1932, already given ample powers to control building from this point of view and that for that reason local authorities are unlikely to desire, and the Minister unlikely to permit them, to deal with the matter in byelaws. On the other hand, the removal of the limiting words would make it possible for byelaws to deal with materials of buildings from the point of view of the transmission of noise, and it is thought that reasonable control in this matter would be generally welcome.

70. Reference should be made to certain byelaw-making powers in the existing law which we have designedly excluded from the Bill—

(1) Section 157 of the Act of 1875 enables byelaws to be made with respect to the " closing of buildings or parts of buildings unfit for human habitation and to prohibition of their use for such habitation." This matter is so amply dealt with in housing legislation that the byelaw-making power has become obsolete.

(2) Section 23 of the Act of 1890 enables byelaws to be made with respect to the paving of yards and open spaces in connection with dwelling-houses. This power is for practical purposes superseded by the provisions of Section 25 of the Act of 1907 (*p*) as amended by

(*m*) Now s. 132 of the Act, p. 159, *ante*.
(*n*) 13 Halsbury's Statutes 689.
(*o*) *Ibid.*, 833.
(*p*) *Ibid.*, 920.

Section 20 of the Act of 1925, which are reproduced in Clause 55 of the draft Bill (*q*).

(3) Section 23 of the Act of 1890 (*r*) also provides for byelaws with respect to the provision of secondary means of access for the removal of house refuse. This is a matter which can be more simply dealt with in the statute itself, and, following many local Act predecents, we have replaced the byelaw-making power by Clause 54 of the Bill (*s*).

Temporary Buildings.

71. Section 27 of the Act of 1907 (*t*), which has been put in force in 651 boroughs and urban districts and 115 rural districts, provides that before erecting a temporary building a person must apply to the local authority for permission. The authority may grant or refuse permission as they think fit, and, if permission is granted, may attach conditions with regard to the sanitary arrangements, ingress and egress, protection against fire, and the period during which the building may stand. Under Section 7 of the Act there is a right of appeal to quarter sessions. The term " temporary building " is not defined, but certain types of building, including those expressly exempted from the operation of the Public Health Acts and building byelaws, are excluded from the section.

The section, which has given rise to a good deal of litigation, represents, like other sections of the Act of 1907, a generalisation of a succession of local Act clauses. It appears to owe its existence to the fact that neither the Public Health Act, 1875, nor the original byelaws made under it adequately provided for the construction of buildings of so slight or temporary a kind that the full application of the " new buildings " code to them would be unduly rigorous. As a consequence, local authorities, confronted with cases in which the application of the Act and byelaws would produce harsh and absurd results, tended to fall back on the doctrine that the particular structure under consideration was not a building at all within the meaning of the Act, and some, though not all, of the judicial decisions on the subject lent support to this theory. At a later stage the objection to leaving these so-called temporary buildings free from all control became apparent and as a result clauses on which Section 27 is based became common in local Acts.

72. It is common knowledge that resort is frequently had to the procedure under Section 27 in the case of buildings which are not temporary in any strict sense. Judging from the experience of some members of the Committee, we believe that the commonest type of building to which consent is given under the section is that of private garages. Other buildings of the most diverse descriptions, including sports pavilions, Sunday schools and tool sheds, were mentioned to us as having been dealt with under the section. The usual practice is for the authority to grant an annual licence, and these licences are generally renewed indefinitely so long as the condition of the building remains satisfactory and other circumstances, in particular the proximity of the building to other buildings, do not alter.

73. An examination of the Ministry's model byelaws shows that these byelaws, which form the basis of practically all the byelaw codes throughout the country, exempt altogether from byelaw control a number of buildings of a minor character, including garages which are of less than specified dimensions and are placed at a specified minimum distance from other buildings. It is clear, therefore, that the effect of Section 27, as administered at least in some areas, is to create an intermediate class of buildings between those which are subject to full byelaw control and those which are exempt ; and further, that this intermediate class is quite undefined, the word " temporary " being a misnomer. In effect, therefore, the section is treated as enabling a local authority to waive their own byelaws in any case in which

(*q*) Now s. 56 of the Act, p. 104, *ante*.
(*r*) 13 Halsbury's Statutes 833.
(*s*) Now s. 55 of the Act, p. 103, *ante*.
(*t*) 13 Halsbury's Statutes 920.

they think it desirable. To re-enact the section for this purpose would not only conflict with Clause 62 (*u*) which enables byelaws to be waived, but only subject to the observance of strict conditions, but would also go far to destroy the very objects which the byelaw system is designed to secure, namely, that of certainty and impartiality between owner and owner.

74. For the foregoing reasons we are satisfied that it would not be right to re-enact the section in its present terms, and still less to extend it in those terms to the country as a whole. We gave much consideration to various alternative courses. One possible solution was to redraft the section so as to limit it to buildings which are temporary in fact as well as in name. This could be secured by providing that consent under the section should operate for a limited period only, and that after the end of the period the building must be pulled down or altered to meet byelaw requirements. We recognised, however, that if this course were adopted, building owners, either relying on the reluctance of local authorities to take the extreme course of ordering the demolition of the building or because, as often happens, they genuinely think that they will shortly be in a position to replace a temporary building by something more permanent, would make use of the procedure in cases to which it eventually turned out to be inappropriate; and that local authorities, faced with the prospect of having to order the demolition of a building which had been kept in good repair and was in fact just as little open to objection as when it was erected, would probably decline to put their powers into operation.

75. Another and more logical course would be to repeal the section without re-enactment and to rely on modern byelaw codes dealing sufficiently with all types of buildings other than those which they expressly exempt. We rejected this course for two reasons: first, we doubted whether it would obtain acceptance from local authorities in general and, secondly, it takes no account of a factor which in our view experience has shown to be important and with which the byelaws themselves cannot deal, namely, the legitimate life of a building. There is no doubt that a provision on the lines of Section 27 has been rendered less necessary by the great elaboration of byelaws since 1907 and that many of the points which the section is designed to cover by way of conditions could be adequately dealt with in the byelaws themselves. But there is a case for permitting, in certain circumstances and subject to a considerable degree of control, certain types of buildings which should not be allowed to stand as of right for an indefinite period, for the reason that the materials of which they are constructed are either liable to rapid deterioration unless specially preserved, or are inherently unsuitable for permanent buildings. Some, though by no means all, types of wooden buildings fall within the former class. There is no reason why the byelaw code should not lay down the general conditions to which these buildings must conform, but the circumstances are so various that it is necessary to reserve to the authority, subject to an appeal to a court of summary jurisdiction, the right to veto the building altogether if, having regard to the locality or for other special reasons, its erection would be undesirable, or alternatively to impose a limitation on the life of the building with power to extend from time to time. Clause 52 of the Bill has been drafted to give effect to this proposal.

Buildings.

76. We have felt some doubt whether the various provisions of the Public Health Acts relating to buildings would more conveniently be reproduced in the present Bill or be combined in a separate Bill with provisions relating to streets. We have come to the conclusion that on the whole the former is the more convenient course, for the reason that in the byelaw-making powers conferred by Section 157 of the Act of 1875 (*w*) and—what is more important—in the codes of byelaws actually in operation throughout the country, the

(*u*) Now s. 63 of the Act, p. 112, *ante*.

(*w*) 13 Halsbury's Statutes 689.

structure and materials of buildings are closely linked with drains, sewers and sanitary conveniences. To divorce these two subjects by dealing with them in separate legislation would, we think, cause an unnecessary disturbance in the day-to-day routine of public health administration. We have accordingly reproduced in Clauses 53 to 59 (*y*) the provisions of the general public health law which deal with buildings other than those, such as the Public Health (Buildings in Streets) Act, 1888, which are concerned with buildings specifically in their relation to streets, and have also added some further provisions based on clauses which Parliament has freely accepted in local Acts.

House and Trade Refuse.

77. Under Section 42 of the Act of 1875 (*z*) every local authority may, and, when required by an order of the Minister, must, undertake or contract for the removal of house refuse. Under Section 48 of the Act of 1907 (*a*)—where that section is in force—if a local authority are required by the owner of premises to remove trade refuse, they are bound to do so and the owner must pay a reasonable sum, to be settled in case of dispute by a court of summary jurisdiction. If a question arises as to what is to be considered trade refuse, the question may be decided by a court of summary jurisdiction. whose decision is final.

In connection with these sections, a letter was addressed to us by the Association of Municipal Corporations expressing the view that it would be desirable that the expressions "house refuse" and "trade refuse" should be clearly defined.

In the corresponding provisions of the Public Health (London) Act, 1891 (*b*), both these terms are defined, but in spite of this and of a considerable amount of case law on the subject (e.g., *London and Provincial Laundry Company* v. *Willesden L. B.*, [1892] 2 Q. B. 271 (*c*); *St. Martins Vestry* v. *Gordon*, [1891] 1 Q. B. 61 (*d*); *Westminster Corporation* v. *Gordon Hotels, Ltd.*, [1906] 2 K. B. 39 (*e*) there is still considerable difficulty in determining in London whether particular refuse falls into one category or the other. The broad effect of the London definitions as judicially interpreted seems to be that in deciding whether refuse is to be treated as house refuse the character rather than the origin of the refuse must be looked at. The matter was considered by a Departmental Committee on London Cleansing, who made a Report in 1930 (Cmd. 3613). In paragraph 12 of this Report the Committee state:—

> ". . . the situation is complicated by the decisions of the Courts that the refuse of hotels and restaurants is mainly house and not trade refuse. We are of opinion that payment at cost should be made for collecting the refuse arising from the carrying on of any trade or business, except where it is collected from small premises with the house refuse and is negligible in quantity. Regarding the matter from this point of view, the preferential treatment accorded to hotels and restaurants in consequence of the judicial decisions is difficult to defend. We consider that they should be placed on the same footing as other businesses."

78. We gave much consideration to this matter, and in particular to the question whether an attempt should be made to draft a definition which would secure that whatever the character of the refuse it should be treated as trade refuse, if it resulted from trading or industrial processes. In this connection we considered various local Act definitions. We arrived, however, somewhat reluctantly at the conclusion that none of the various attempts at definition to which our attention was drawn is free from serious difficulty and that, if any alteration is to be made in the existing law, it should probably be

(*y*) Now ss. 54–60 of the Act, pp. 102–109, *ante*.
(*z*) 13 Halsbury's Statutes 643.
(*a*) *Ibid.*, 929.
(*b*) I.e., ss. 30–36; 11 Halsbury's Statutes 1044–1047.
(*c*) 38 Digest 235, *648*.
(*d*) *Ibid.*, 235, *647*.
(*e*) *Ibid.*, 235, *645*.

on more fundamental lines than would be justifiable in the present Bill. Accordingly, the terms "house refuse" and "trade refuse" are used in Clauses 71 and 72 of the Bill (*f*), as they are in the existing Acts, without definition.

References to reports and certificates of specified officers.

79. Throughout the sections reproduced in this Part of the Bill we have found, in a great variety of forms, references to reports or certificates to be given by a specified officer of the local authority, usually the medical officer of health but sometimes the surveyor or sanitary inspector, as a condition precedent to the local authority taking action. For examples, reference may be made to Sections 16, 36 and 38 of the Act of 1875 (*g*), Section 22 of the Act of 1890 (*h*), and Sections 45, 46 and 49 of the Act of 1907 (*i*).

In our view it should in general be unnecessary in the present condition of local government to encumber the statute book with provisions requiring local authorities to act on the advice of their own officers. It may fairly be assumed that as responsible bodies they will seek the appropriate advice before taking action. This Part of the draft Bill accordingly omits these references except in Clauses 82, 83 and 84 (*k*). These clauses enable a local authority to take drastic action for dealing with verminous premises, articles and persons, and it is reasonable that these powers should not be put into operation except on a certificate of the responsible officer.

PART III.—NUISANCES AND OFFENSIVE TRADES.

80. The task of fitting the "Nuisance" provisions of the Public Health Acts into the Bill has proved a difficult one. In reading the Act of 1875 one is struck by the fact that the sections dealing with Nuisances (Sections 91–111) (*l*) substantially overlap other provisions of the Act, and that the procedure for remedying nuisances laid down in these sections differs *in toto* from the procedure for dealing with similar matters under other parts of the Act. Thus, under Section 91 (2) a drain which is so foul or in such a state as to be a nuisance or injurious to health may be dealt with by means of a notice calling upon the person in default to abate the nuisance, followed by proceedings before justices and an order of justices for abatement. Under Section 41 of the same Act a precisely similar state of affairs may be dealt with by the local authority calling upon the owner to do the necessary work, doing it themselves on his default, and recovering the cost summarily or as private improvement expenses, the owner having a right of appeal to the Minister under Section 268 of the Act as soon as the demand for expenses is made. Apart from differences in many points of detail, the major distinction between the two procedures is that under the first, but not under the second, the local authority have no power, in the absence of an order of the justices, to take actual steps to remedy the nuisance, except where the person causing the nuisance cannot be found.

This overlapping and diversity of procedure is due to historical causes. The nuisance provisions originated in the Nuisances Removal Act, 1846, which was a temporary Act. This measure preceded the first general Public Health Act of 1848 and consequently at the date of its passing there was no general system of public health authorities. The Act of 1846 was enforced by town councils, trustees or commissioners for drainage or similar purposes, and the guardians of the poor, and it was probably owing to the diverse character of these enforcing authorities that Parliament left it to the justices to direct executive action. The second Nuisances Removal Act (the first

(*f*) Now ss. 72, 73 of the Act, pp. 120, 121, *ante*.
(*g*) 13 Halsbury's Statutes 633, 640, 641.
(*h*) *Ibid.*, 833.
(*i*) *Ibid.*, 928, 930.
(*k*) Now ss. 83–85 of the Act, pp. 126–128, *ante*.
(*l*) 13 Halsbury's Statutes 661–670.

permanent measure) was passed in 1848, and it is significant that the Act did not apply where the Public Health Act, 1848, was in force, unless the General Board of Health so directed. This was due to the fact that the Public Health Act, 1848, gave local boards of health powers of dealing with many of the offensive conditions dealt with in the Nuisances Removal Acts without invoking the aid of justices, powers which were largely reproduced in the Public Health Act of 1872 and the consolidating Act of 1875. Meanwhile, however, for reasons which are not apparent the Nuisances Removal Act, 1855 (a consolidating and amending measure), conferred the nuisance powers generally on public health authorities, and these powers are reproduced in the nuisance provisions of the Act of 1875. Thus the two streams of legislation became combined in a single code with a consequent overlapping.

81. In connection with Part II of the Bill, we have already recommended a uniform procedure under which a person who is served with a notice requiring him to execute works will have a right to appeal to a court of summary jurisdiction. This recommendation, if adopted, would substantially reduce the difference between the procedure under Part II and the nuisance procedure under Sections 91–111 of the Act of 1875, since in either case before the person served with a notice can be saddled with any expense he has the right to have the whole issue between him and the local authority determined by a court. For this reason, and with the general object of shortening and simplifying the law, we considered whether the nuisance procedure might not be wholly abandoned and replaced by the procedure under Part II of the Bill. With some reluctance we have come to the conclusion that this would involve too drastic an alteration of the law, and in particular of the important provisions with regard to smoke nuisances contained in the recent Public Health (Smoke Abatement) Act, 1926. Another factor which has weighed with us is the necessity for retaining the right of an aggrieved person to institute proceedings (Section 93 of the Act of 1875). The procedure under Part II of the Bill is not suitable for this purpose. A further provision which it is important to retain as regards some nuisances is the right of the local authority to take proceedings in respect of nuisances outside their district.

We have accordingly reproduced in this Part of the Bill the substance of Sections 91–111, with some alterations in detail to which attention is called in the notes on clauses.

PART IV.—WATER SUPPLY.

82. The existing law as regards the supply of water by local authorities under the Public Health Acts is to be found mainly in Sections 51 to 70 of the Act of 1875 (*m*), the Public Health (Water) Act, 1878 (*n*), an Act specially directed to the supply of water in rural areas, and the Supply of Water in Bulk Act, 1934 (*o*). Section 57 of the Act of 1875 incorporates thirty-eight sections of the Waterworks Clauses Act, 1847, and the whole of the Waterworks Clauses Act, 1863. Thus, apart from the short Act of 1934, the object of which is to empower water undertakers, whether local authorities or companies, to supply each other with water in bulk, the legislation has remained substantially unaltered for over 60 years, and much of it was originally passed nearly 90 years ago. It is not surprising, therefore, that a number of amendments and additional provisions have become common in local legislation and, as will be seen from the notes on clauses, some of these have been incorporated in the draft Bill.

83. Much attention has been directed in recent years to the subject of water supply, and in 1923 the then Minister of Health established an Advisory Committee on Water. This Committee has issued several reports which contain a large number of recommendations, some directed to administrative

(*m*) 13 Halsbury's Statutes 647–654.
(*n*) 20 Halsbury's Statutes 240.
(*o*) 27 Halsbury's Statutes 729.

action, others to amending legislation. Of the latter, one of the most important, namely the conferment of a power on rural district councils to contribute from the district rate towards the cost of supplying water to a contributory place within the district, has been carried into effect by Section 56 of the Local Government Act, 1929 (now Section 190 (4) of the Local Government Act, 1933) (*p*). Section 57 of the Local Government Act, 1929 (*q*), enables a part of the cost to be spread over a still wider area by means of a contribution from the county council.

84. A number of the recommendations in the Second Report of the Legislation Sub-Committee of the Advisory Committee relate to the amendment of the Waterworks Clauses Acts. Many of these are of an uncontroversial character, and we considered whether they might properly be incorporated in the draft Bill. As, however, the Bill is necessarily limited to water undertakers who are local authorities, such an incorporation would create differences between the code applying to these undertakers and that applying to statutory water companies. This would be unfortunate, and we have accordingly been forced to the conclusion that these amendments must be left to a Bill dealing with water undertakers of both classes.

85. For somewhat similar reasons we have come to the conclusion that the balance of convenience lies in the direction of not incorporating in the Bill the Supply of Water in Bulk Act, 1934. The Act deals both with local authorities and with other water undertakers, and though it would be possible to extract from the Act such portions as relate to local authorities and to leave the remainder outstanding, we think that this course is likely to lead to difficulties. We have, accordingly, inserted in Clause 116 (*r*) a reference to the Act which will serve as a pointer, and have left the Act untouched.

Obligation of Owners to secure Water Supply.

86. The reproduction of the law relating to the obligation of an owner of a house to secure a supply of water gives rise to some difficulty.

Section 62 of the Act of 1875 (*s*) provides, in effect, that, where it appears to a local authority that any house within their district is without a proper supply of water, and that such a supply can be furnished at a cost not exceeding the authorised water rate in the district, or if there is no authorised rate at a cost not exceeding 2d. a week, or at such other cost as the Minister may determine to be reasonable, the authority shall require the owner to obtain a supply, and on his default may do the necessary work at his expense. Section 8 of the Public Health (Water) Act, 1878 (*t*), enables the Minister, if application is made to him under Section 62 of the Act of 1875, to determine what is a reasonable cost and for that purpose to fix a general scale of charges for the whole or any part of the district.

Under Section 3 of the Act of 1878 (*u*), it is the duty of every rural district council to see that every occupied dwelling-house has within a reasonable distance an available and sufficient supply of wholesome water; and, where it appears to them that any occupied dwelling-house has not such a supply within a reasonable distance, and they are of opinion that such a supply can be provided at a reasonable cost, and that the expense of providing a supply ought to be paid by the owner, the authority may require the owner to execute the necessary works, and on his default may themselves do the work at his expense. "Reasonable cost" is defined as being a cost not exceeding a capital sum the interest on which at the rate of 5 per cent. per annum would amount to 2d. per week, or such other cost not exceeding a capital sum the interest on which at the rate of 5 per cent. per annum would amount to 3d. per week, as the Minister may determine to be reasonable. Where two or more houses are concerned, joint works may be provided, with an apportionment of the expenses, so long as no greater cost would be occasioned thereby.

(*p*) 26 Halsbury's Statutes 409.
(*q*) 10 Halsbury's Statutes 922.
(*r*) S. 116 of the Act, p. 148, *ante*.
(*s*) 13 Halsbury's Statutes 651.
(*t*) 20 Halsbury's Statutes 245.
(*u*) *Ibid.*, 241.

Sections 4 and 5 of the Act of 1878 (*w*) provide for appeals by owners against these requirements and against apportionments of expenses respectively.

87. It is to be observed that while Section 62 of the Act of 1875, and Section 3 of the Act of 1878, deal with substantially similar cases, the earlier section protects the owner of a house by limiting his obligation to secure a supply of water to cases in which it can be supplied at a reasonable *annual* charge, that is, by reference to *continuing* cost, whereas Section 3 of the later Act imposes a limit in terms of the *capital* cost of the works. The difference in this respect between the two sections is to some extent obscured by the fact that in the later section the capital sum is defined by reference to a sum on which interest at 5 per cent. would amount to 2d. a week. This method of defining the sum appears however to be purely fortuitous and the sum might more simply have been described as a sum of £8 13s. 4d. The reason why in the Act of 1875 a limiting factor was fixed in terms of continuing cost, but in the Act of 1878 in terms of capital cost, is no doubt that in the earlier Act Parliament had in contemplation the linking of the house to a piped water supply, whereas in the later it was concerned with the digging of wells or the execution of similar works.

88. The joint effect of the two sections is far from clear, and to reproduce them substantially as they are in juxtaposition would create confusion. Moreover, the procedure of Section 3 of the Act of 1878 is cumbersome and out-of-date, and the Advisory Committee on Water have recommended (Second Report of the Legislation Sub-Committee, paragraph 190) that it should be shortened and simplified, and further that the limits of cost imposed by the Act should be raised so as to correspond with the change in the value of money.

89. We have come to the conclusion that the proper course is to merge the two codes and to protect the owner by placing a limit both on the capital cost of the works and on the annual charges which may be made for the supply of water. The Advisory Committee recommended that the maximum capital cost should be fixed at £17 6s. 8d. We consider that it should be raised to £20 in view of the fall in the rate of interest which has occurred since the date of their Report: and we have provided, as under Section 62 of the Act of 1875, that if the supply is provided by water undertakers, the annual cost is not to exceed the water charges prevailing in the district.

These provisions are to be found in Clauses 138 and 139 (*y*).

The following other points should be noted in connection with these clauses of the Bill:—

(1) The complicated provisions of paragraphs (2) and (3) of Section 3 of the Act of 1878 with regard to a first and second notice are omitted in accordance with the recommendations of the Advisory Committee, and replaced by the ordinary procedure of a notice requiring the owner to do the necessary work, with power for the authority (subject to the owner's right of appeal) to do the work at his expense in case of his default.

(2) Paragraph (5) of Section 3 of the Act of 1878 provides that where the owners of two or more houses have failed to execute the necessary works the authority may, if satisfied that no greater expense would be occasioned thereby, execute works for the joint supply of water to the houses and apportion the expenses. This provision sufficiently meets the case in which, if separate works were executed for each house, the expense in each case would not be more than reasonable. Our attention was, however, drawn to the fact that cases occur in which, if separate works were executed, the expense would be more

(*w*) 20 Halsbury's Statutes 242–244.
(*y*) Ss. 138–139 of the Act, p. 162, *ante*.

than reasonable and therefore outside the limits of the section, as regards some or all of the owners, but where the execution of joint works would effect so substantial a saving that the cost, if fairly apportioned amongst the owners, would in no case exceed £20 per house. Clause 138 (2) has been inserted to meet this type of case.

(3) A clause is commonly allowed in local Acts enabling the local authority to make a requisition for a supply of water from statutory undertakers under Section 35 of the Waterworks Clauses Act, 1847 (*z*), on behalf of owners and occupiers of premises. A provision on these lines has been included in sub-section (4) of Clause 138, as one of the methods by which a local authority can enforce a supply.

Supply within the limits of other water undertakers.

90. Clauses 113, 116 (2) and 117 (*a*) deal with the conditions under which a local authority may supply water within the limits of supply of other statutory undertakers. Section 52 of the Act of 1875 (*b*) prohibits such supply if and so long as the undertakers are "able and willing" to supply water proper and sufficient for all reasonable purposes for which it is required by the local authority; and disputes on this point are to be settled by arbitration. It seems that the undertakers do not show themselves unable and unwilling to supply, unless they fail to comply with a requisition made under Section 35 of the Waterworks Clauses Act, 1847 (*z*), as incorporated in their Act. This section requires undertakers to lay down mains and provide a supply on a requisition of such number of occupiers and owners of property that the annual water rates payable by them will be not less than one-tenth part (frequently amended in local Acts to one-eighth part) of the expense of providing and laying the mains, if the occupiers or owners bind themselves to take the supply for three years at least.

Section 52 of the Act of 1875 (*b*) has given rise to considerable difficulty. It may well be, for example, that the expense which the undertakers would incur in complying with such a requisition would be much greater than the cost of a local supply provided by the local authority. Moreover, in little-developed areas, which may nevertheless be urgently in need of water, sparsity of population may make it impossible to satisfy the conditions for a requisition.

The point is discussed in paragraph 177 of the Second Report of the Legislative Sub-Committee of the Advisory Committee on Water and their recommendation, which was endorsed by the full Committee, is that the Minister should be empowered to make an order removing the area in question from the limits of supply of the undertakers.

91. We considered whether we should recommend this somewhat drastic amendment of the law, but we came to the conclusion that it would be preferable to follow more closely the procedure which Parliament has frequently adopted in local Acts. Under this procedure undertakers may be empowered by order of the Minister to furnish a supply in an area which is within the limits of some other undertakers, but is not in fact being supplied by them, with the consent of the latter undertakers. But consent must not be unreasonably refused, and there is a right of appeal to the Minister on the question of the reasonableness of a refusal. This provision is usually accompanied by a further provision to the effect that if at any time the original undertakers are able and willing to supply and give notice to that effect, the order shall cease to operate on repayment by them of the expenses incurred by the other undertakers in affording the interim supply. The precedents in local legislation all relate to such a supply being given by undertakers *outside* their district, but if the principle of the clause is sound, we see no reason why it should not apply to an area within the district.

(*z*) 20 Halsbury's Statutes 198.
(*a*) See these sections of the Act, pp. 147, 148, 150, *ante*.
(*b*) 13 Halsbury's Statutes 648,

Clauses 116 (2) and 117 (*c*) of the Bill, which take the place of Section 52 have been drafted accordingly.

The ordinary case dealt with in the local Acts, of supply outside the district, is provided for in Clause 113 (*cc*).

Provisions repealed without re-enactment.

92. We may call attention to the following sections of the Act of 1875 relating to the supply of water which are not reproduced in the Bill.

Section 66 (*d*) is left outstanding, since, although it forms one of the water clauses in the Act of 1875, it appears more appropriate to a Bill dealing with the prevention of fire.

Section 67 (*d*) enables the Corporations of Oxford and Cambridge to supply water to Colleges and Halls on terms to be agreed. We believe that the section owes its existence to the fact when it was originally enacted in 1848 that buildings divided into sets of chambers were uncommon, and it was thought that in the absence of the section it would be necessary to demand water rates from the occupiers of individual chambers. We understand that the Corporation of Oxford, who supply water in the borough, no longer attach any importance to the section, and that agreements have not in fact been made under it, the Colleges being supplied with water by meter. The Corporation of Cambridge do not supply water, the borough being supplied by other water undertakers, and as it appears highly improbable that the Corporation would themselves become undertakers without obtaining Parliamentary powers, the prospect of the section ever being of value in that town is remote.

Section 37 of the Act of 1875 (*e*) provides that if any contract or enactment requires a supply of water to be furnished to a water-closet in a house, and if an earth-closet is, with the approval of the local authority, in use in the house, the authority may on agreed terms relieve the person required to provide the supply of his obligation. We have not succeeded in tracing any case in which this section has been used, and we are satisfied that at the present day it may be regarded as obsolete.

PART V.—PREVENTION, NOTIFICATION AND TREATMENT OF DISEASE.

93. The provisions reproduced in this Part of the Bill are taken in the main from the Public Health Acts of 1875, 1890, 1896, 1907, 1913 and 1925, the Infectious Disease (Notification) Acts of 1889 and 1899, and the Infectious Disease (Prevention) Act, 1890.

Definition of Infectious Disease, etc.

94. One of the principal difficulties in framing this Part of the Bill has been the use, throughout the statutes which it reproduces, of a large number of expressions denoting infectious disease. Thus the Act of 1875 uses the terms "infectious disease", "fever or other infectious disease", "infectious disorder", "dangerous infectious disorder" and "dangerous infectious disease", all without definition. One or more of these expressions occur in several of the other Acts without definition. The Customs Consolidation Act, 1876, introduces yet another term, also undefined, "highly infectious distemper". In the Infectious Disease (Notification) Act, 1889, the expression "infectious disease" is defined as meaning "any of the following diseases, namely smallpox, cholera, diphtheria, membranous croup, erysipelas, the disease known as scarlatina or scarlet fever, and the fevers known by any of the following names :—typhus, typhoid, enteric, relapsing,

(*c*) See these sections of the Act, pp. 148–150, *ante*.
(*d*) 13 Halsbury's Statutes 653.
(*cc*) See s. 113, p. 147, *ante*.
(*e*) *Ibid.*, 641.

continued or puerperal"; and the expression also includes, as respects any particular borough or district, any infectious disease to which the Act has been applied by an order made by the local authority and confirmed by the Minister. The Infectious Disease (Prevention) Act, 1890, provides that the Act is to apply to the diseases specifically mentioned in the Act of 1889 "and may be applied to any other infectious disease in the same manner as that Act (i.e., the Act of 1889) may be applied to such disease." The Isolation Hospitals Act, 1893, similarly provides that the term "infectious disease" is to have the same meaning as in the Act of 1889, but enables a county council to apply the Act to other infectious diseases. The Act of 1907 defines the term as meaning any infectious disease to which the Act of 1889 for the time being applies within the borough or district of the local authority. Section 60 of the Act of 1925 provides that for the purposes of Sections 57, 58 and 59 of that Act (*f*) the expression "dangerous infectious disease" means any infectious disease named in Section 6 of the Act of 1889 (*g*), but enables the Minister of Health to make orders declaring other infectious diseases to be dangerous infectious diseases for any of those purposes.

The position is further complicated by the fact that the Local Government Board and Minister of Health have from time to time made regulations under Section 130 of the Act of 1875 (*h*), of which the Public Health (Tuberculosis) Regulations are the best known, requiring various diseases not specified in the Act of 1889 to be notified under a procedure set out in the regulations. The regulations do not have the effect of bringing these diseases within the scope of the Act of 1889 and technically they do not become notifiable diseases under that Act.

95. It would be impossible to leave this variety of language in a Bill designed to simplify and clarify the law, and we have come to the conclusion that a substantial simplification can be effected, without any radical or controversial amendment, by using throughout the Bill two expressions only, namely:—(1) "infectious disease", which, as under the Act of 1875, is left undefined, and (2) "notifiable disease" which is defined (Clause 332 (*i*)) as meaning the particular diseases specified in the Act of 1889, and any other disease which is for the time being compulsorily notifiable under those provisions of the Bill which reproduce Section 7 of the Act of 1889 (*k*). Diseases such as tuberculosis, for the notification of which provision may be made by regulations, will remain on the same footing as before, but Clause 143 (2) (*l*) provides that the regulations may, so far as is expedient, apply to them any of the provisions of Part V of the Act relating to notifiable diseases.

Notification of Diseases.

96. The Infectious Disease (Notification) Act, 1889, provides that the diseases mentioned in paragraph 94 above shall be notifiable throughout the country.

We have had the advantage of the views of the technical advisers of the Ministry of Health on the question whether this list needs revision. We understand that continued fever is an old term intended to include undiagnosed cases of typhoid, paratyphoid, typhus and other long continued pyrexias which might conceivably be of epidemiological importance, but that it has little or no significance to-day, and might, with advantage, be omitted.

97. Puerperal fever falls within the wider class of cases known as puerperal pyrexia, and required to be notified by regulations made by the Minister in 1926 (S. R. & O. 1926, No. 972). In view of the inclusion of puerperal fever

(*f*) 13 Halsbury's Statutes 1140 *et seq.*
(*g*) *Ibid.*, 813.
(*h*) *Ibid.*, 678.
(*i*) Now s. 343 of the Act, p. 280, *ante*.
(*k*) I.e., s. 147, p. 170, *ante*.
(*l*) Now s. 143 (1) of the Act, p. 166, *ante*.

in the Act of 1889, the regulations were drafted so as to apply to all cases of febrile condition occurring at childbirth except those required to be notified as puerperal fever under the Act. For administrative simplicity, as well as on medical grounds, it would be convenient that puerperal fever should be omitted from the statutory list, so that all cases of puerperal pyrexia can be brought within the fuller requirements of the regulations. The words "continued or puerperal" have accordingly been omitted from the definition of "notifiable disease" in Clause 332 (*m*).

Local Act Provisions.

98. There are few subjects as respects which the general law has been extended and amplified by local Acts more freely than it has as respects infectious disease. We considered whether it would be desirable to insert a number of clauses dealing with such matters as the exclusion of children from places of public entertainment or from Sunday Schools. We came to the conclusion, however, that these provisions raise medical issues on which, without hearing expert evidence, we are not qualified to express an opinion and that, if there is a case for strengthening the law, the necessary changes should be effected by separate amending legislation.

PART VI.—HOSPITALS, NURSING HOMES, ETC.

Isolation Hospitals.

99. This Part of the Bill reproduces the sections of the Public Health Acts of 1875, 1907 and 1925, relating to hospitals, the Nursing Homes Registration Act, 1927, and certain provisions of the Local Government Act, 1929.

The chief difficulty which the consolidation of the law on this matter presents is the treatment of the Isolation Hospitals Acts, 1893 and 1901. The first of these Acts, which originated in a Private Member's Bill, was passed at a time when the problem of making proper provision for the isolation and treatment of smallpox was attracting much public attention; and its main object was to enable the newly constituted county councils to play a part in the establishment of isolation hospitals in their counties. The Act provides for the establishment of hospitals governed by isolation hospital committees consisting either:—

(a) of representatives of the county council; or

(b) of representatives of the county council and of the county district councils; or

(c) of representatives of the county district councils only.

The procedure laid down in the Act for the constitution of committees is cumbersome. The Act has, however, been used on a fairly substantial scale, and 70 isolation hospital committees are at present in existence, four of these consisting wholly of representatives of county councils. The Act of 1893 contains 26, and the amending Act of 1901 9 sections. Both Acts deal in great detail with matters which it would now be regarded as unnecessary to mention, e.g., they empower an isolation hospital committee not only to provide buildings, but to acquire "tents, wooden houses or other places for the reception of patients," and require that every hospital shall "so far as practicable be connected to the telegraph system." Other provisions of the Act of 1893, such as the power to provide ambulances (Section 13) (*n*) and to train nurses (Section 15) (*o*) are within the powers of local authorities under other legislation reproduced in the Bill.

(*m*) Now s. 343 of the Act, p. 280, *ante*.
(*n*) 13 Halsbury's Statutes 865. See s. 197, p. 198, *ante*.
(*o*) *Ibid.*, 866.

100. Since 1901 the position of county councils in regard to hospitals has been radically altered, first by the fact that county councils are empowered by the Local Government Act, 1929, to provide hospitals themselves, and secondly by the provision in Section 63 (*p*) of the same Act requiring every county council to make a scheme for the provision of hospitals for the treatment of infectious disease. Further by Clause 6 (*q*) of the draft Bill a county council may become a constituent member of a joint hospital board and by Clause 8 (*r*) it may combine with county borough councils for hospital purposes. For these reasons there can be no doubt that as regards the future, the machinery of the Isolation Hospitals Acts enabling county councils to combine with county district councils for the provision of isolation hospitals will be unnecessary. Moreover, we understand that the existence of committees under these Acts has created some embarrassment in the formulation of schemes under Section 63 of the Act of 1929 (*p*), since it is doubtful whether such schemes can properly impose duties on these isolation hospital committees.

In these circumstances four courses are possible :—

(a) to incorporate the Isolation Hospitals Acts as they stand in this Part of the Bill, a course which would involve an addition of some ten pages ;

(b) to leave the Acts outstanding on the ground that their structure and language are so different from those of the Public Health Acts that they form an excrescence which cannot usefully be brought into the main code ;

(c) to repeal them as regards the constitution of isolation hospital committees in the future, with a suitable saving for existing committees (this would involve leaving the Acts outstanding on the Statute Book) ;

(d) to repeal them without re-enactment, after a short interval, and to provide a procedure for converting in the interval the existing committees into joint hospital boards under Part I of the Bill, or, in the few cases in which the committees consist of county council representatives only, for dissolving the committees and transferring the hospitals to the county councils.

We recommend the adoption of the last of these courses and are satisfied that while it will secure a very substantial simplification of the law, nothing of any value will be lost by the repeal of these Acts. Accordingly, following the principle adopted by Parliament in Section 293 of the Local Government Act, 1933 (*s*), we have provided in Clause 307 (*t*) that the Minister should be required, within two years from the commencement of the Bill, to make orders to give effect to this proposal.

Recovery of Expenses of Maintenance of Patient in Hospital.

101. Section 132 of the Act of 1875 (*u*) provides that the expense of maintaining in any hospital—whether for infectious or for other diseases—a patient who is not a pauper is to be a debt from the patient to the local authority, and may be recovered within six months of the date of his discharge from the hospital, or if he dies therein, within six months from the date of his death. In order to remove doubts which had arisen, Section 60 of the Public Health Acts Amendment Act, 1907 (*v*), provided that nothing in the earlier section should *require* the local authority to recover the cost of maintenance from a patient who was not a pauper, where they had satisfied themselves that the circumstances of the case were such as to justify the remission of the debt.

(*p*) 10 Halsbury's Statutes 925.
(*q*) Now s. 6 (2) of the Act, p. 63, *ante*.
(*r*) Now s. 8 of the Act, p. 64, *ante*.
(*s*) 26 Halsbury's Statutes 461.
(*t*) Now s. 315 of the Act, p. 265, *ante*.
(*u*) 13 Halsbury's Statutes 679.
(*v*) *Ibid.*, 933.

102. Section 16 of the Local Government Act, 1929 (*w*), draws a distinction between persons who become inmates of institutions for the purpose of receiving treatment for infectious disease and those who become inmates for other purposes. As regards infectious patients, the section made no alteration in the law. As regards non-infectious patients, it imposed a duty on all local authorities (including county councils) to recover the expenses of maintenance from the patient or from any person legally liable to maintain him. This duty is, however, subject to the qualification that if the authority are satisfied that the persons from whom the expenses are recoverable cannot reasonably be required to pay the whole, they are to recover such part, if any, of the expenses as the patient or his relatives are able to pay. The term " institution " is defined in Section 16 of the Local Government Act, 1929 (*w*), as including hospitals, maternity homes and other institutions provided under the Public Health Acts, the Local Government Acts and the Maternity and Child Welfare Act, 1918.

103. We feel no doubt that, while the distinction drawn by the Act of 1929 between infectious and non-infectious patients must be maintained, the various provisions of the existing law ought, for the sake of clarity, to be combined in a single clause, but this assimilation of the provisions of the Acts of 1875 and 1929 introduces some slight amendments of the law to which attention should be called :—

(a) Clause 184 (*x*) for the first time confers on county councils a power (which local authorities have had since 1875), but not a duty, to recover the cost of maintenance in cases of infectious disease. It is clearly anomalous that the question whether the patient should be maintained at public expense without a right of recovery from him or his relatives should depend on whether the hospital is maintained by one type of local authority or by another.

(b) Under the existing law, which is referred to in detail in the note on Clause 197, a reasonable charge may be made for the use of an ambulance in conveying a person on discharge from a hospital or in conveying a sick person not suffering from infectious disease. No provision is made for the recovery of expenses in other cases. The question of charging for the cost of removal by ambulance whether to or from hospital ought in our view to be on the same footing as that of charging for maintenance in hospital, and we have secured this by including removal charges in the definition of " expenses " in Clause 184 (2) (b) (*y*).

(c) The clause similarly confers on local authorities (including county councils) a power, but not a duty, to recover the cost of maintaining an infectious patient not only from the patient but from his relatives. Here again, a situation under which in the case of non-infectious disease the relatives may be charged, but not in the case of an infectious disease, appears to have no justification. The removal of anomalies such as these was recommended by the Committee on Local Expenditure (Report Cmd. 4200, paragraph 191).

(d) The clause imports two features of the Act of 1875—a right to recover from the estate in the event of the patient dying in hospital, and a short time limit for recovery. Section 16 of the Act of 1929 (*z*) is narrower in that it provides only for recovery from the patient or from a person legally liable to maintain, but is less restricted in that it makes no reference to a time limit, although in a dissenting judgment in *Allen* v. *Waters & Co.* (1934), 152 L. T. 182 (*a*), Goddard, J., expressed the view that a time limit of six months does in fact apply. Instead of six months, as provided in the Act of 1875, the Bill proposes a limit of twelve months, and it provides for recovery from the estate of a

(*w*) 10 Halsbury's Statutes 893.
(*x*) Now s. 184 of the Act, p. 189, *ante*.
(*y*) Now s. 184 (2), (b) of the Act, *ibid.*
(*z*) 10 Halsbury's Statutes 893.
(*a*) Digest Supp.

person who has died after leaving the hospital as well as from the estate of a person whose death occurred in hospital.

Laboratories.

104. There is no statutory provision expressly enabling local authorities to provide a laboratory for general purposes, but under Section 10 of the Milk and Dairies (Consolidation) Act, 1915 (*b*), a local authority may "provide, or arrange for the provision of, bacteriological or other examination of milk." Moreover, regulations made under Section 130 of the Public Health Act, 1875 (*c*), with respect to the treatment of diseases have authorised authorities to provide facilities, including pathological facilities, necessary for the diagnosis and treatment of certain diseases, e.g., tuberculosis, cerebro-spinal fever, venereal disease, puerperal fever, etc. We understand that applications by local authorities for sanction to raise a loan for the provision of a laboratory have in some cases been granted by the Ministry of Health on the principle that an authority charged with specific functions which necessitate laboratory work have an implied power to provide a laboratory for the purpose, but this point is not entirely free from doubt. We accordingly recommend that local authorities (including county councils) should be given express power to provide a laboratory for the diagnosis and treatment of diseases and for the making of bacteriological and other examinations and Clause 196 (*d*) has been inserted for this purpose.

PART VII.—NOTIFICATION OF BIRTHS; MATERNITY AND CHILD WELFARE, AND CHILD LIFE PROTECTION.

105. This part of the Bill re-enacts the Notification of Births Acts of 1907 and 1915, the Maternity and Child Welfare Act, 1918, and Part I of the Children Act, 1908, as amended by the Children and Young Persons Act, 1932. It also includes certain sections of the Local Government Act, 1929.

Local authorities for the purposes of these services.

106. The Notification of Births Act, 1907, could be adopted by borough and district councils and by county councils, with a power for the Minister on application to transfer the functions from one authority to another. The Act of 1915 which applied the Act of 1907 to the whole country provided that where the earlier Act had not already been adopted by the county council, it should take effect as if it had been adopted by the borough or district council. Under the Children Act, 1908, Boards of Guardians were responsible for infant life protection. The Maternity and Child Welfare Act, 1918, provided that any local authority within the meaning of the Notification of Births Act, 1907, might make arrangements under the Act.

Before the Local Government Act, 1929, it was therefore possible in any district for the notifications made under the Notification of Births Acts to be sent to a different authority from that which actually provided health visitors and the other services relating to maternity and child welfare under the Act of 1918, while the responsibility for infant life protection was nowhere in the hands of the authority undertaking other child welfare services. It was also possible under the Act of 1918 for a county district council to establish maternity and child welfare services, notwithstanding that services under the Act were already provided in the district by the county council and *vice versa*, although in practice the requirement that arrangements should be sanctioned by the Ministry was sufficient to prevent serious duplication.

(*b*) 8 Halsbury's Statutes 870. (*c*) 13 Halsbury's Statutes 678.
(*d*) Now s. 196 of the Act, p. 198, *ante*.

The Act of 1929 transferred the responsibility for infant life protection to the councils of counties and county boroughs, except that, if a county district council had established a maternity and child welfare committee, the functions in that district were to be discharged by the county district council instead of by the county council. The Act also enabled the Minister of his own motion to transfer the powers of the Notification of Births Act from the district council to the county council, or *vice versa* (Section 61) (*e*), and further enabled him, on application, to transfer the responsibility for services under the Act of 1918 to the local education authority for elementary education (Section 60) (*f*). We understand that, as a result of an order made under Section 61 in 1930 affecting 266 districts, together with several subsequent orders, there is now no area in which the responsibility for health visiting under the Notification of Births Act, 1907, is not in the hands of the authority also responsible for the principal other services under the Act of 1918, and that, with minor exceptions in a few areas, the maternity and child welfare services are administered by a single authority in each borough or district. Thus in substance the three services—notification of births, maternity and child welfare and infant life protection—are now in every case in the same hands.

107. The Bill is accordingly drafted on the lines of defining the local authority for the purposes of this Part, that is to say, for all three services, as being the authority which administered these services when the Act became law, with a power for the Minister (reproduced from Section 60 of the Local Government Act, 1929), on representations made to him, to transfer these services to the authority responsible in the area for elementary education.

108. The Bill thus ensures that in any area only one authority shall be responsible for these services, and it will bring to an end such duplication as still remains. Further, the area of charge for expenses incurred by a county council will be the area for which the county council are the authority, excluding autonomous districts; and the proviso to Section 3 of the Act of 1918 (*g*) with regard to the levy of such expenses as expenses for general county purposes with a refund to district councils providing a similar service has been omitted as unnecessary. There is no object in the county precepts for amounts of the size now required for these services being first levied by the county council on autonomous districts and then refunded, and Clause 202 (*h*) of the Bill therefore provides that in a county containing autonomous districts these expenses of the county council shall be expenses for special county purposes.

PART VIII.—BATHS, WASHHOUSES AND BATHING PLACES.

109. This Part which consists of 13 clauses, reproduces the Baths and Washhouses Acts of 1846, 1847, 1878, 1882 and 1899, together with some provisions of the Public Health Acts of 1875, 1907 and 1925. The number of sections which the Part is intended to replace is 68, and it will be seen that a very substantial curtailment and simplification has been effected.

110. The Baths and Washhouses Acts are "adoptive". Under the Act of 1846 adoption was effected by the council of a borough or by the vestry of a parish not within a borough. Where adoption took place, the Act was carried into effect in a borough by the borough council and elsewhere by commissioners appointed by the vestry under the terms of the Act. Section 10 of the Act of 1875 (*i*), transferred the power of adoption in urban districts from vestries to urban district councils and made these councils responsible for carrying out the Act. In the case of a rural parish a similar transfer was effected by the Local Government Act, 1894 (*k*),

(*e*) 10 Halsbury's Statutes 925. (*f*) *Ibid.*, 924.
(*g*) 11 Halsbury's Statutes 743. (*h*) Now s. 202 of the Act, p. 202, *ante*.
(*i*) 13 Halsbury's Statutes 630. (*k*) S. 7; 10 Halsbury's Statutes 779.

from the vestry to the parish meeting, and if the parish had a parish council the latter were made responsible for carrying the Act into effect. Thus, the only areas in which commissioners may still be necessary are the small rural parishes without parish councils. In fact, the Baths and Washhouses Acts are not in force in any of these parishes and no commissioners exist.

111. The provision of baths and washhouses was originally envisaged as a mainly urban problem. The situation has now been altered by the increasing popularity of open-air swimming baths. We understand that a number of rural district councils have been anxious to provide open-air baths in and as part of their recreation grounds, and that the Ministry of Health, relying on the authority of *A.-G.* v. *Sunderland Corporation* (1876), 2 Ch. D. 634 (*l*), have accepted the view that such baths can be provided as conducive to the better enjoyment of the recreation ground. It is clearly unsatisfactory that the power to provide a swimming bath should depend on its being an adjunct of a recreation ground, and apart from this point we understand that there are difficulties connected with the power to charge fees. In our opinion a substantial simplification of this branch of the law can and should be effected by abolishing the system of adoption and of *ad hoc* commissioners, and by simply empowering a borough, urban or rural district council to provide baths, washhouses and bathing places. We suggest also that a parish council should be given concurrent powers. It is not, we think, necessary to make specific provision for the case of a rural parish without a council. The needs of these small parishes can be met by action on the part of the rural district council who could, if it were thought convenient, appoint a parochial committee for the purpose under Section 87 of the Local Government Act, 1933 (*m*). Alternatively, it would be possible for the county council to make an order under Section 273 (*n*) of that Act conferring on a parish meeting a power to provide baths, etc., and the latter under Section 90 (*o*) could appoint a committee to make the necessary arrangements.

Provisions repealed without re-enactment.

112. In addition to the simplification effected by the abolition of commissioners, we are satisfied that a number of the provisions of the earlier Acts might properly be repealed without re-enactment as being unnecessary or obsolete. Examples of these are Section 33 of the Act of 1846 (*p*), which enacts that the general management and regulation of baths, etc., provided under the Act is to be vested in the baths authority, and Section 4 (*q*) of the same Act which requires the authority to keep a separate Public Baths and Washhouses Account. Again, Section 36 (*r*) of the same Act, as amended by Section 5 of the Act of 1847 (*s*), provides in effect that the number of baths and washing tubs for the working-classes is not to be less than twice the number of baths or washing tubs "of any higher class". We understand that the interpretation of these provisions formerly gave rise to a good deal of doubt and difficulty, and that they were repealed in London by Section 62 of the London County Council (General Powers) Act, 1930 (*t*). It also appears that washing tubs are no longer to be found in modern washhouses. We have accordingly omitted these provisions as unnecessary.

PART IX.—COMMON LODGING-HOUSES.

113. The principal provisions reproduced in this Part of the Bill are to be found in Sections 76 to 89 of the Act of 1875 (*u*), Sections 69 to 75 of the Act of 1907 (*v*), and Sections 58, 59 and 60 of the Act of 1925 (*w*).

(*l*) 36 Digest 251, *33*.
(*m*) 26 Halsbury's Statutes 353.
(*n*) *Ibid.*, 451.
(*o*) *Ibid.*, 354.
(*p*) 13 Halsbury's Statutes 529.
(*q*) *Ibid.*, 521.
(*r*) *Ibid.*, 530.
(*s*) *Ibid.*, 599.
(*t*) 23 Halsbury's Statutes 367.
(*u*) 13 Halsbury's Statutes 657–660.
(*v*) *Ibid.*, 936–938.
(*w*) *Ibid.*, 1140, 1141.

114. The first question which presented itself to us was whether the term "common lodging-house" should be defined. A long history attaches to this. By Section 116 of the Towns Improvement Clauses Act, 1847 (*x*), every house is deemed a *public* lodging-house "in which persons are harboured or lodged for hire for a single night, or for less than a week at one time, or any part of which is let for any term less than a week." The Common Lodging-Houses Acts of 1851 and 1853 provided for the registration of common lodging-houses but did not define the term. These Acts were extended to Ireland by the Common Lodging-Houses (Ireland) Act, 1860, Section 3 of which defined the term "common lodging-house" as meaning "a house in which persons are harboured or lodged for hire for a single night, or for less than a week at a time, or any part of which is let for any term less than a week." The English Acts of 1851 and 1853 were amended by the Sanitary Act, 1866, and the Sanitary Law Amendment Act, 1874, but no definition of the term "common lodging-house" was included. The Public Health Act, 1875, reproduced the provisions of the Acts of 1851, 1853, 1866 and 1874, and repealed them except in so far as they related to the Metropolitan Police District. Again, however, no definition of the term was given.

115. In 1853 the Law Officers of the Crown (Sir A. E. Cockburn and Sir W. P. Wood) advised as follows on the Act of 1851 :—

> "It may be difficult to give a precise definition of the term 'common lodging-house,' but looking to the preamble and general provisions of the Act it appears to us to have reference to that class of lodging-house in which persons of the poorer class are received *for short periods* and, though strangers to one another, are allowed to inhabit one common room. We are of opinion that it does not include hotels, inns, public houses, or lodgings let to the upper and middle classes."

They later advised in the following terms :—

> "Our obvious intention was to distinguish lodgers promiscuously brought together from members of one family or household. We are of opinion that the period of letting is unimportant in determining whether a common lodging-house comes under the Act now in question."

116. The meaning of the term has been discussed in several judgments. It is unnecessary to refer in detail to the earlier cases, *Langdon* v. *Broadbent* (1877), 42 J. P. 56 (*y*); *Logsdon* v. *Booth*, [1900] 1 Q. B. 401 (*z*); *Logsdon* v. *Trotter*, [1900] 1 Q. B. 617 (*a*); but it may be mentioned that in the course of his judgment in the last-mentioned case, Bucknill, J., expressed the view that the Legislature had acted very wisely in omitting any definition of the expression "common lodging-house." A curious situation arose in the case of *Parker* v. *Talbot*, [1905] 2 Ch. 643 (*b*). This case dealt with a charitable institution in which "deserving destitute poor" were received without charge. The case went to the Court of Appeal, and when the Court were about to deliver a reserved judgment, their attention was called to Section 3 of the Common Lodging-Houses (Ireland) Act, 1860, referred to above. After further argument the Court held that the definition in Section 3 applied equally to the interpretation of the English Acts of 1851 and 1853, and maintained this view notwithstanding the fact that their attention was drawn to the subsequent repeal of the Irish Act of 1860 by the Public Health (Ireland) Act, 1878.

In *London County Council* v. *Hankins*, [1914] 1 K. B. 490 (*c*), it was held that in order to constitute a common lodging-house there must be community of accommodation for either sleeping or eating. "In my opinion," said Atkin, J., "the law as to the meaning of the expression 'common lodging-house' was definitely settled in *Logsdon* v. *Booth* and

(*x*) 13 Halsbury's Statutes 569.
(*y*) 38 Digest 210, *440*.
(*z*) *Ibid.*, 210, *449*.
(*a*) *Ibid.*, 211, *449*.
(*b*) *Ibid.*, 210, *441*.
(*c*) *Ibid.*, 210, *442*.

Logsdon v. *Trotter* (*d*), in which the Court adopted the definition given by the Law Officers. The effect of *Parker* v. *Talbot* (*e*) was not to displace that definition but only to add to it two more terms; first it adds the term that the lodgings are to be lodgings for hire, and secondly it defines the short period mentioned in the Law Officers' opinion as being a single night or less than a week."

Finally, in *Daley* v. *Lees*, [1926] 1 K. B. 40 (*f*), it was held that the decision in *Parker* v. *Talbot* (*e*) applies not only to London where the Common Lodging-Houses Acts, 1851 and 1853, are still in force, but also to places outside London in which the Public Health Act, 1875, is in force. Lord Hewart, C.J., began his judgment in this case by saying that the case "raises a question of no little public importance, a question which may be thought worthy of the attention of the Legislature."

117. We have come to the conclusion that the advantage of a statutory definition based on the law as declared in these cases will probably outweigh the disadvantages, and we are fortified in this view by the fact that Parliament has inserted a number of definitions in local Acts. The definition inserted in Clause 234 (*g*) of the Bill has been framed accordingly, but it should be noted that it contains no reference to the lodgings being "for hire." The omission of this reference accords with local Acts, and it appears to us to be reasonable that lodging-houses intended for the reception of persons of this class should be liable to registration and inspection whether or not any charge is made to the inmates.

Provisions repealed without re-enactment.

118. It may be convenient to refer here to certain provisions of the Act of 1875, which the draft Bill repeals without re-enactment.

(1) Section 90 (*h*) of that Act enables a local authority to make bye-laws with regard to various matters in respect of houses let in lodgings or occupied by members of more than one family. The section (which was extended by Section 8 of the Housing of the Working Classes Act, 1885) (*i*) was substantially re-enacted by Section 26 of the Housing, Town Planning, etc., Act, 1919 (*k*), now replaced by Sections 6 and 7 of the Housing Act, 1925 (*l*). These two sections have now been amended and their scope extended by Section 68 of the Housing Act, 1935 (*m*). Except in two respects the powers conferred by these provisions of the Housing Acts are more comprehensive than those of Section 90 of the Act of 1875 and virtually supersede them. The exceptions are as follows:—

(a) the reference in Section 90 (6) to the giving of notices and the taking of precautions in case of any infectious disease is reproduced in the Act of 1925 only as regards London;

(b) Section 6 of the Act of 1925 is limited to houses "intended or used for occupation by the working-classes".

As regards (a), byelaws on this matter have been rendered unnecessary by the Acts dealing with the notification of infectious disease, now reproduced in Part V of the Bill. As to (b), we understand that in practice the Department's Model Byelaws under Section 90 have always been limited to houses of the working-class type. (*See* the prefatory Memorandum to the Model Byelaws XIIIB 1934).

During the passage through Parliament of the Bill which became the Housing Act, 1935, the point was raised whether under modern conditions the byelaw-making powers ought to be extended to houses other than those for the working classes. Such an extension of the Housing code would be

(*d*) *Supra*.
(*e*) *Supra*.
(*f*) 38 Digest 210, *443*.
(*g*) Now s. 235 of the Act, p. 218, *ante*.
(*h*) 13 Halsbury's Statutes 660.
(*i*) *Ibid.*, 808.
(*k*) Not printed in Halsbury's Statutes.
(*l*) 13 Halsbury's Statutes 1006–1008.
(*m*) 28 Halsbury's Statutes 245–247.

outside the scope of the present Bill. If at any future time it is made, it will be a question whether the powers ought not to be retransferred to the Public Health code.

(2) Sections 71 to 75 of the Act of 1875 (*n*) deal with occupation of cellar dwellings. Section 71 makes it an offence to let or occupy a cellar dwelling built after the passing of the Act or not lawfully let or occupied at that date. This section replaces a corresponding section in the Public Health Act, 1848, and consequently its effect is that no cellar built since 1848 can be lawfully occupied. Section 72 lays down an elaborate set of requirements which must be complied with if a cellar is to be occupied as a dwelling. Since under the previous section the occupation of cellars built since 1848 is absolutely barred, the section in effect only applies to cellars let or occupied before that year. Section 73 provides penalties, Section 74 contains a definition of occupying a cellar as a dwelling, and Section 75 provides that the cellar may be closed by order of the court, if two convictions relating to it have taken place within three months.

These sections are in our opinion no longer required in view of Section 18 of the Housing Act, 1925 (*o*), and Section 84 of the Housing Act, 1935 (*p*). The former section, as amended by the Fifth Schedule to the Housing Act, 1930 (*r*), provides in effect that a room habitually used as a sleeping place the floor of which is more than three feet below the adjoining street, or below any ground within nine feet of the room, is to be deemed unfit for human habitation, unless the room is on average at least seven feet in height and complies with regulations prescribed by the local authority, with the consent of the Minister, for securing proper ventilation and lighting and protection against dampness, effluvia or exhalation.

Model regulations under this section have been issued by the Ministry (Series XXII). These regulations cover substantially the same points as are mentioned in Section 72 of the Act of 1875 (*s*). Section 84 of the Housing Act, 1935 (*s*), enables the local authority to secure the closing of the room by means of a closing order, if it does not comply with the necessary requirements and extends Section 18 of the Act of 1925 to underground rooms which are not used for sleeping.

PART X.—CANAL BOATS.

119. This Part of the Bill reproduces with slight alterations the provisions of the Canal Boats Acts, 1877 and 1884, except certain sections relating to the education of children on canal boats, which were incorporated in the Education Act, 1921, and Section 12 of the Canal Boats Act, 1877 (*t*), which, although not incorporated in the education code, empowers companies and associations who own canal boats to establish schools, and has no relation to the present Bill.

120. The second and third paragraphs of Section 3 (*u*) of the Act of 1877 and Section 7 of the Act of 1884 (*v*), all of which relate to the lettering, marking and numbering of canal boats, have not been reproduced as separate sections, since the subject is fully covered by the power to make regulations with regard to lettering, marking and numbering contained in Section 2 (*w*) of the Act of 1877 and reproduced in Clause 250 (*x*).

121. Section 7 of the Act of 1877 (*y*), provides that a registration authority in respect of canal boats is to be such one or more of the sanitary authorities having districts abutting on a canal as may be prescribed by the Local

(*n*) 13 Halsbury's Statutes 655–656.
(*o*) *Ibid.*, 1013.
(*p*) 28 Halsbury's Statutes 252.
(*r*) 23 Halsbury's Statutes 442.
(*s*) *Supra*.
(*t*) 13 Halsbury's Statutes 792.
(*u*) *Ibid.*, 789.
(*v*) *Ibid.*, 804.
(*w*) *Ibid.*, 789.
(*x*) Now s. 251 of the Act, p. 225, *ante*.
(*y*) 13 Halsbury's Statutes 791.

Government Board. In the General Order made under this Act and dated 20th March, 1878, the Board did not in fact prescribe registration authorities but merely provided that the owner of a canal boat should apply to a registration authority having a district abutting on a canal. The Order has in this respect remained unchanged to the present date. Clause 248 (*z*) simplifies the procedure by dispensing with the necessity for an Order and provides in terms that a local authority, or, if a number of local authorities are combined to form a port health authority, the port health authority, whose district includes or abuts on some part of a canal is to be the registration authority.

122. Section 8 of the Act of 1884 (*a*), which provides that fines recovered in prosecutions at the instance of registration of sanitary authorities shall be paid to these authorities and applied towards the expenses of executing the Acts, has not been reproduced. Special appropriations of court fines such as these are contrary to modern practice as giving the prosecuting authority an undesirable financial interest in the success of the prosecution, as well as complicating the administration of the business of the court.

PART XI.—MISCELLANEOUS.

123. Most of the provisions relating to watercourses are drawn from the Act of 1925, and all of them were enacted before the passing of the Land Drainage Act, 1930, which enabled a drainage board to be constituted for any area requiring drainage and removed the limitation on the activities of drainage boards to the drainage of land used for agricultural purposes. This later legislation has diminished the need for some of these provisions in the Public Health Acts, and has given rise to the possibility of a conflict of jurisdiction between sanitary authorities and drainage boards. We understand that, in consenting to the adoption of these sections of the Act of 1925 in urban districts with a population less than 20,000, and in putting them in force by order in rural districts, the Minister usually imposes the condition that works shall not be executed without the consent of any land drainage authority having jurisdiction over the watercourse. The larger urban authorities can, however, adopt these provisions of the Act of 1925 without the necessity for the Minister's consent.

124. In view of the general establishment of drainage boards under the Act of 1930, as well as of the powers conferred on county and county borough councils by that Act, it seems reasonable that the powers of all local authorities under Clauses 258–263 (*b*) should be co-ordinated with the activities of drainage boards. At the same time these provisions are principally designed to prevent danger to health, and it seems undesirable that a drainage board should be in a position to impose an absolute veto on proposals which a sanitary authority have found necessary on grounds of health. Instead of requiring the *consent* of the drainage board, Clause 265 (*c*) therefore provides for prior *consultation*, and this requirement is extended to all local authorities.

PART XII.—GENERAL.

The points arising on the clauses in this Part of the Bill are dealt with in the notes on clauses. Mention may here be made of a number of provisions of the public health law which are either repealed without re-enactment or are left outstanding.

(*z*) Now s. 249 of the Act, p. 224, *ante*.
(*a*) 13 Halsbury's Statutes 804.
(*b*) Now ss. 259–264 of the Act, pp. 229-232, *ante*.
(*c*) Now s. 266 of the Act, p. 233, *ante*.

Public Health Act, 1875.

Section 206 (*d*).

125. This section requires local authorties to make annual reports in such form and at such time as the Minister may direct of all works executed and of all sums received and disbursements made by them under the Act during the previous year. We understand that neither the Local Government Board nor the Minister has ever given any direction with regard to the form of the report or the time at which it must be made, and consequently the obligation has never come into force. The returns made by local authorities under the Local Taxation Returns Acts (now Part XI of the Local Government Act, 1933) cover a large part of the field, and it is one of the statutory duties of the medical officer of health to make a report on the matters with which he is concerned. We believe that some authorities adopt a practice of issuing a report of their activities covering the report of their medical officer of health, and this practice might with advantage become more common; but, in view of the fact that the section has remained a dead letter for 60 years, it has been omitted from the Bill.

Sections 213–215 (*e*).

Private Improvement Rates.

126. In substance these sections provide that where an urban authority have incurred certain types of expenditure (e.g., on the provision of drains or the conversion of closets) they may levy on the occupier of the premises concerned a private improvement rate. The occupier is entitled to deduct a certain proportion of this rate from his rent, the proportion varying according as he pays a rackrent or something less than a rackrent. Provision is made for the redemption of the rate on payment of a lump sum.

Our experience leads us to think that this procedure is very seldom used, and this view is borne out by the Ministry of Health. In view of this and of the fact that the alternative procedure in Section 257 of the Act of 1875 (*f*) (reproduced in Clause 284 (*g*) of the Bill) enables expenses to be recovered either in a lump sum or by instalments over a period not exceeding 30 years, we are satisfied that the system of private improvement rates can properly be abandoned as respects subject-matters covered by the Bill. The procedure which it provides for apportioning burdens between the owner and the occupier, will be secured by the Bill in another, and, as we think, more equitable manner by enabling the local authority and on appeal a court of summary jurisdiction to determine in the light of the considerations which are set out in Clause 283 (*h*) of the Bill whether a particular charge should be borne by the owner or the occupier, or, if by both, in what proportions.

Section 233 (*i*).

127. The last two paragraphs of this section (which relates to the borrowing powers of local authorities) were repealed by the Local Government Act, 1933. The first paragraph was left standing, but, having regard to the language of Section 195 (*k*) of that Act, we are satisfied that the paragraph is no longer required and should be repealed with re-enactment.

Section 234 (*l*).

128. The whole of this section except the last paragraph was repealed by the Local Government Act, 1933. The last paragraph provides, in effect, that where a local authority borrow for expenses chargeable on a part of the

(*d*) 13 Halsbury's Statutes 713.
(*e*) *Ibid.*, 715, 716.
(*f*) *Ibid.*, 732.
(*g*) Now s. 291 of the Act, p. 253, *ante*.
(*h*) Now s. 290 of the Act, p. 252, *ante*.
(*i*) 13 Halsbury's Statutes 722.
(*k*) 26 Halsbury's Statutes 412.
(*l*) 13 Halsbury's Statutes 723.

district only they must, so far as they can, make good the borrowed money out of rates levied on that part of the district. In view of the language of Clause 11 (2) (*m*) of the Bill this provision is no longer required.

Section 256 (*n*).

129. The object of this section was to provide a summary method of recovering rates made under the Act. If private improvement rates are abolished, the only rate to which the section could now apply would be a water rate made under Part IV of the Bill and, as Section 74 of the Waterworks Clauses Act, 1847 (*o*), which is incorporated in the Bill contains a procedure for summary recovery of water rates, the section becomes unnecessary as respects subject matters covered by the Bill.

Section 262 (*p*).

130. This section provides that no rate, order, conviction or thing made or done or relating to the execution of the Act is to be vacated, quashed or set aside for want of form, and, further, that unless otherwise expressly provided by the Act, no such rate, order, etc., is to be removed by a certiorari or other writ into any of the superior courts.

We considered this section in the course of our preparation of the Local Government Bill, since it is clear that if the section is useful in connection with public health matters it would be equally useful in connection with other local government services. We felt, however, such doubt as to its utility that we did not recommend its insertion in an extended form in that Bill. Further consideration has convinced us that the section might properly be abandoned.

As regards rates, it would have no effect in the present Bill except in the matter of a water rate. A provision that orders, etc., are not to be set aside for want of form may be valuable in cases where, as is usually the case under the Public Health Acts, the form of the order is scheduled to the Act. Under the present Bill it is proposed that these forms should be prescribed, and Clause 277 (*q*) of the Bill enables a prescribed form or a form of substantially the like effect to be used. This appears to us to give the necessary elasticity.

As regards the provision that orders, etc., should not be removable by certiorari, we consider that the ordinary principles upon which in certain cases decisions of subordinate tribunals can be removed to the High Court by this process should be applicable to public health matters no less than in other spheres. These principles have been in recent years elaborately discussed in the courts: *see*, e.g., *R.* v. *Electricity Commissioners*, [1924] 1 K. B. 171 (*r*).

Section 292 (*s*).

131. This section provides for the manner in which port sanitary authorities and joint boards are to raise within the district of a defaulting authority any sum which may be due to them. Its place is now taken by Section 13 of the Rating and Valuation Act, 1925 (*t*).

Section 294 (*u*).

132. This section, which enables the Minister to make orders as to the costs of proceedings instituted by, or of appeals to, him under the Act is virtually superseded by Section 290 (4) (*v*) of the Local Government Act, 1933, which, by virtue of Clause 310 (*w*) of the Bill will apply to inquiries held under the Bill.

(*m*) Now s. 11 (2) of the Act, p. 66, *ante*.
(*n*) 13 Halsbury's Statutes 732.
(*o*) 20 Halsbury's Statutes 210.
(*p*) 13 Halsbury's Statutes 734.
(*q*) Now s. 283 of the Act, p. 247, *ante*.
(*r*) 20 Digest 197, 7.
(*s*) 13 Halsbury's Statutes 747.
(*t*) 14 Halsbury's Statutes 637.
(*u*) 13 Halsbury's Statutes 748.
(*v*) 26 Halsbury's Statutes 459.
(*w*) Now s. 318 of the Act, p. 266, *ante*.

Section 295 (*x*).

133. This section provides that orders made by the Minister under the Act are to be binding and conclusive, and shall be published in such manner as the Minister may direct. The effect of the first part of the section is not altogether certain, but it is well established that the words do not preclude a court from considering the question whether an order is *intra vires*. That being so, it appears that the words effect little or nothing, and might with advantage be repealed. The latter part of the section requiring the publication of orders in such manner as the Minister may direct appears to us also to be unnecessary.

Section 303 (*y*).

134. This section, which has been left outstanding, enables the Minister on the application of the local authority of a district by provisional order to repeal, alter or amend any local Act affecting the district, other than an Act for the conservancy of rivers, or an Act conferring powers or privileges on any person for his own pecuniary benefit. The section is widely used. We considered whether we should not re-enact it in the Bill as regards matters covered by the Bill and subsequently include a similar clause in each of the further Public Health Bills which are contemplated. It appears, however, that if this plan were adopted there would remain a number of subjects covered by the section but not by any of the new Public Health Bills, and that it would consequently be necessary to keep the section on foot for these residuary purposes. Examples of purposes for which the section is from time to time employed, but which are not within the scope either of the present Bill or any of the proposed Bills, are the acquisition of land for purposes other than public health or in advance of any specific purpose having been determined, also superannuation and finance. Some of these purposes could more appropriately be dealt with in a Local Government Act than a Public Health Act, while the splitting up of the provision in this way between a number of Bills would be certain to lead to difficulties. In the circumstances we have come to the conclusion that the best course would be to leave the section outstanding in the Act of 1875, but by Clause 309 (*z*) to make the purposes of the Bill purposes for which the section can be used. At a future date it might be transferred to the general Local Government Code.

Section 304 (*a*).

135. This section enables the Minister to settle differences arising out of the transfer of the powers, duties, liabilities and property effected under the Act or under provisional orders made thereunder. The present Bill makes no provision for an automatic transfer of any such powers, duties, etc., and, as regards orders made under the Bill, there is ample power for the order itself to contain any necessary consequential provisions with regard to the settlement of differences, etc.: *see* Clause 9 (1) (*b*).

Section 340 (*c*).

136. This section provides that where there is a local Act in force providing for purposes similar to those of the general Act, proceedings may be instituted under either, but that no person is to be punished for the same offence under both, and that the local authority are not to be exempt from any obligation imposed by the general Act. The last mentioned provision has been covered by extending Clause 320 (*d*) of the Bill to duties as well as to powers. The remainder of the section is unnecessary in view of Section 33 of the Interpretation Act, 1889 (*e*).

(*x*) 13 Halsbury's Statutes 748.
(*y*) *Ibid.*, 752.
(*z*) Now s. 317 of the Act, p. 266, *ante*.
(*a*) 13 Halsbury's Statutes 753.
(*b*) Now s. 9 (1) of the Act, p. 65, *ante*.
(*c*) 13 Halsbury's Statutes 763.
(*d*) Now s. 328 of the Act, p. 273, *ante*.
(*e*) 18 Halsbury's Statutes 1004.

Housing of the Working Classes Act, 1885.

Section 7 (f).

137. This section provides that it shall be the duty of every council entrusted with the execution of the laws relating to local government and public health to exercise as occasion may arise the powers with which they are invested so as to secure the proper sanitary conditions of all premises within their area. The provision in the main applies only to Parts II to IV of the Bill and it has been omitted in view of the opening words of Clause 1 (*g*) placing upon local authorities, county councils and certain special authorities the duty of carrying the Act as a whole into execution.

Local Government Act, 1888.

Section 19 (h).

138. This section requires the medical officer of health of a county district to send a copy of his report to the county council, and further provides that, if it appears to the county council from such report that the Act of 1875 has not been properly put in force in the district, or that any other matter affecting the public health requires to be remedied, they may cause a representation to be made to the Minister. This duty is no doubt an important one, but as the primary duty to make the report is based on regulations made under Section 108 (1) (a) of the Local Government Act, 1933 (*i*), and as the regulation-making power is amply wide enough to cover the point, we think the duties should be imposed by regulation rather than by statute. The power which the section confers on a county council to make representations to the Minister, is in effect covered by Clause 315 of the Bill (*k*).

139. The foregoing paragraphs deal with the major points on which, for the reasons indicated, we recommend that the law should be amended. The notes on clauses, which appear in the Appendix, deal with a number of minor amendments which we recommend, and to which effect is given in the draft Bill.

CONCLUSION.

140. The reception of the Local Government Bill and its smooth and speedy passage through Parliament encourage the hope that the present Bill may similarly find its way to the statute book without substantial amendment. The alterations of the law which we recommend in this Report and incorporate in the Bill are not in our opinion more numerous or drastic than those accepted by Parliament in the Local Government Bill with two possible exceptions, namely, the proposals with regard to the vesting of sewers in local authorities and those relating to byelaws. These points are dealt with more particularly in paragraphs 32–44 and 64–70 of the Report. In both Bills we have felt ourselves at liberty to suggest the inclusion in the general law of powers commonly conferred by Parliament in local legislation and in this connection we may again refer to the report of the Select Committee of the House of Commons on Private Bill Procedure (H. C. 158 of 1930) to which we drew attention in paragraph 106 of our first Report. The recommendation that a Public Bill should be introduced every five years to make general the provisions usually inserted in local Acts has not been carried out in the sphere of public health legislation, no doubt owing to the claims on Parliamentary time of other and more urgent matters. It would in our view be a matter for

(*f*) 13 Halsbury's Statutes 808.
(*g*) Now s. 1 of the Act, p. 59, *ante*.
(*h*) 10 Halsbury's Statutes 699.
(*i*) 26 Halsbury's Statutes 363.
(*k*) Now s. 321 of the Act, p. 267, *ante*.

regret if the present opportunity were not taken to make good at least some of the arrears of legislation in this respect.

141. In concluding these general observations we may add that we are conscious that mistakes will have been made in an attempt to reduce to order a singularly difficult and complicated branch of the statute law, and that both the draft Bill and the commentary contained in this Report might be improved if we could devote further time to them. We realise, however, that unless the Bill and Report are published early in the year there can be no prospect of legislation reaching the Statute Book in the present Session, and for that reason we have thought it better to make an earlier Report at the risk of some errors and omissions which further deliberation might have avoided. In particular, the schedule of repeals will require further careful examination. If it is decided to proceed with our proposals, these defects can be repaired before the introduction of the Bill or while it is under discussion in Parliament. We realise also that while the Local Government Bill was concerned for the most part with the machinery of local government, the present Bill touches at many points the interests of individuals. In this matter we have tried to hold the scales evenly between public and private interests, and while the Bill in some respects extends the powers and duties of local authorities, we entertain no doubt that in many ways it provides more effective remedies than does the existing law against arbitrary action on the part of a local authority.

As before, we have throughout proceeded on the footing that our task is not to frame an ideal law of public health, but to reproduce the existing law with such amendment only as is in our opinion both desirable in itself and also likely to command general assent.

Hardly had we embarked on the branch of our task which is covered by this Report when we were deprived of the services of Mr. G. J. Cole, who had acted as our Secretary throughout the preparation of the Local Government Bill, and to the value of whose assistance we called attention in our first Interim Report. Mr. F. L. Edwards of the Ministry of Health was appointed as Mr. Cole's successor, and we desire to place on record our high appreciation of his services. By his industry and devotion to the task in hand he has appreciably lightened our labours and made possible the publication of the Report at a date compatible with the introduction of the Bill in the present session.

We are, Sir,

Your obedient Servants,

ADDINGTON, *Chairman*.
L. S. BRASS.
HENRY J. COMYNS.
ERNEST EVANS.
C. L. DES FORGES.
GERARD R. HILL.
F. F. LIDDELL.
E. J. MAUDE.
J. MILNER.
CECIL OAKES.
MAURICE PETHERICK.
HARRY G. PRITCHARD.
JOSHUA SCHOLEFIELD.
C. ERIC STADDON.
SEYMOUR WILLIAMS.

F. L. EDWARDS, *Secretary*.
10th January, 1936.

APPENDIX

NOTES ON CLAUSES

PART I.—LOCAL ADMINISTRATION.

Clause 1 (*l*).—The term "local authority" is defined as meaning the council of a borough, urban district, or rural district. It thus has the same meaning as throughout the Public Health Acts. In the Local Government Act, 1933, the term is used to cover county councils and parish councils as well, and it may be thought in some respects inconvenient to give it a different meaning in the present Bill. But though county councils and parish councils have certain public health functions, the part that they play is so different from that of the ordinary "sanitary authority" that a single expression to cover all five types of authorities would in the present Bill serve no useful purpose, and on the whole the most convenient course seems to be to use the term to denote urban and rural authorities.

The powers of a parish council under the Bill will be found in Clauses 125, 198, 230 and 259 (*m*).

Clause 2 (*n*).—This clause substantially reproduces the existing law with regard to port sanitary districts, but the following points of difference may be noted—

(1) The provision in Section 287 of the Act of 1875 (*o*), enabling two or more riparian authorities to be combined but without the constitution of a joint board has not been reproduced. In no instance has such a combination been made, and it would be impracticable for the combination to function effectively.

(2) Subsection (4) follows precedents such as Section 146 (3) (*p*) of the Local Government Act, 1933, in requiring notice to be given to the riparian authorities concerned of the proposal to make the order, thus giving them an opportunity of taking objection before the form is finally settled.

(3) The third paragraph of Section 287 (*o*), which enables the Minister to make a temporary order, has not been reproduced. The power has never been exercised since 1885, and for practical purposes was rendered unnecessary by the Public Health (Ships, etc.) Act of that year, which enabled orders to which no objection had been taken to become effective without confirmation by Parliament.

(4) The clause provides in terms for the incorporation of the joint board, and thereby assimilates the position of these boards to joint boards constituted under Clause 6 (*q*). Under the existing law incorporation can be, and is, effected by applying Section 280 (*r*) of the Act of 1875.

Clause 5 (*s*).—See paragraph 30 of the Report.

Clause 6 (*t*).—Subsection (1) of the clause in reproducing Section 279 (*u*) of the Act of 1875, omits the reference in paragraphs (1) and (2) of that section to specific purposes—supply of water, etc. These paragraphs serve no useful purpose, and under present conditions are somewhat misleading, since by far the commonest type of joint board is a board for the provision and maintenance of hospitals—a purpose not referred to. The simplest

(*l*) Now s. 1 of the Act, p. 59, *ante*.
(*m*) Now ss. 125, 198, 230 and 260 of the Act, pp. 154, 198, 215, 230, *ante*.
(*n*) Now s. 2 of the Act, p. 60, *ante*.
(*p*) 26 Halsbury's Statutes 384.
(*r*) 13 Halsbury's Statutes 742.
(*t*) Now s. 6 (1) of the Act, p. 62, *ante*.
(*o*) 13 Halsbury's Statutes 745.
(*q*) Now s. 6 of the Act, p. 62, *ante*.
(*s*) Now s. 5 of the Act, p. 62, *ante*.
(*u*) 13 Halsbury's Statutes 742.

course is to provide that a joint board may be created for any purpose of the Act.

The reference in Section 280 (*v*) to ex-officio members has not been reproduced. It appears that the view has been held in the Local Government Board and the Ministry of Health that the section does not compel the inclusion of ex-officio members, and the practice of including them has, we understand, been abandoned. No provision for ex-officio members is to be found in any of the more modern codes for constituting joint boards or joint committees.

Section 282 (*w*) and Schedule I (*x*) of the Act are not reproduced. The first half of the Schedule was repealed by the Local Government Act, 1933. We recommend the repeal without re-enactment of the second half, which sets out rules of procedure for joint boards, on the ground that these rules are more appropriate to the order constituting the board than to the statute itself, and that the necessary power to make such rules is found in Section 293 of the Local Government Act, 1933 (*y*), which enables the provisions of that Act to be applied to joint boards with any necessary modifications.

We have considered the question whether orders constituting these joint boards should in all circumstances require confirmation by Parliament. In this connection recent legislation displays great variety. Thus—

(1) Under Section 287 of the Act of 1875 (*z*), as amended by Section 3 of the Public Health (Ships, etc.) Act, 1885 (*a*), two or more riparian authorities can be combined to form a port sanitary authority by an order which requires Parliamentary confirmation only if objection is taken to it.

(2) A similar procedure is to be found in Section 29 of the Mental Deficiency Act, 1913 (*b*), under which a joint board may be constituted by order and Parliamentary confirmation is required only where one or more of the councils object.

(3) Under Section 3 of the Poor Law Act, 1930 (*c*), the Minister has power by order to combine two or more councils whether or not application has been made for the purpose, but unless all the councils assent a local inquiry must first be held. In any case the order must be laid before Parliament and is liable to annulment by Address.

(4) Under Section 5 of the Public Health (Tuberculosis) Act, 1921 (*d*), the Minister may constitute a joint committee by order but only with the consent of all the councils concerned.

(5) Under Section 112 of the Housing Act, 1925 (*e*), the Minister may constitute a joint committee by order whether with or without consent.

(6) Under Section 4 of the Town and Country Planning Act, 1932 (*f*), a combination may be formed by order, but unless all the councils consent a local inquiry must first be held.

In our view the proper course is to adopt the same procedure as in the case of port health authorities, and to enable authorities to be combined by a simple order except where one or more of them raise objection, in which case the order should not have effect until confirmed by Parliament. This is effected by subsection (4) of the clause.

Clause 8 (*g*).—See paragraph 31 of the Report.

Clause 9 (*h*).—In view of Section 293 (*i*) of the Local Government Act, 1933, the language of Section 281 (*k*) of the Act of 1875 has been much shortened and simplified. The clause follows well-established Parliamentary

(*v*) 13 Halsbury's Statutes 742.
(*x*) *Ibid.*, 765.
(*z*) 13 Halsbury's Statutes 745.
(*b*) 11 Halsbury's Statutes 177.
(*d*) 13 Halsbury's Statutes 972.
(*f*) 25 Halsbury's Statutes 474.
(*h*) Now s. 99 of the Act, p. 65, *ante*.
(*k*) 13 Halsbury's Statutes 743.
(*w*) *Ibid.*, 743.
(*y*) 26 Halsbury's Statutes 461.
(*a*) *Ibid.*, 806.
(*c*) 12 Halsbury's Statutes 969.
(*e*) *Ibid.*, 1063.
(*g*) Now s. 8 of the Act, p. 64, *ante*.
(*i*) 26 Halsbury's Statutes 461.

precedents in enabling the Minister to insert in the order such supplementary and consequential provisions as he considers necessary. Provisions enabling these orders to deal with the transfer of property and liabilities and with transfer, compensation and superannuation of officers will be found in Clauses 312 and 313 (*l*).

In Section 135 of the Local Government Act, 1933 (*m*), the principle is recognised that a scheme may be revoked or amended notwithstanding that it has received Parliamentary confirmation, and that the question whether the revoking or amending scheme should itself require Parliamentary confirmation ought to depend not on whether the original scheme was provisional but on whether objection is taken to the revoking or amending scheme. The same principle is adopted in subsection (2) of the clause.

Clause 12 (*n*).—The term " special purpose area " has been substituted for " special drainage district." The purposes for which these areas are formed are not limited to drainage and the existing title is in many cases a misnomer.

The clause omits the provision in Section 270 (3) of the Act of 1875 (*o*) that if a loan has been raised the district can be dissolved only by provisional order. This was obviously intended as a protection to the lenders. It has now become unnecessary, since by virtue of Section 197 (1) of the Local Government Act, 1933, the loan, whether contracted before or after the commencement of that Act, is now charged on the whole of the revenues of the district council.

Clause 13 (*p*).—Under Section 276 of the Act of 1875 (*q*) the Minister is empowered to make an order on the application " of persons rated to the relief of the poor, the assessment of whose hereditaments amounts at the least to one-tenth of the net rateable value of such district, or of any contributory place therein ". In reproducing this provision we have followed the precedent of the Local Government Act, 1933, and have substituted for the words quoted above a reference to " local government electors for the district or any contributory place therein, not being less than one hundred or one-third of the total number of those electors, whichever is the less ".

The " urban powers " to which this clause applies will be found in the following clauses of the Bill (*r*) :—

Clause 40.—Notice of intention to alter or reconstruct drains.
45.—Sanitary conveniences in factories, etc.
78.—Removal of noxious matter.
79.—Periodical removal of manure, etc., from stables.
108.—Offensive trades.
109.—Byelaws as to certain trades.
262.—Watercourses not to be culverted except in accordance with approved plans.
263.—Power to require cleansing and repair of culverts.

PART II.—SANITATION AND BUILDINGS.

Clause 14 (*s*) takes the place of Section 15 of the Act of 1875 (*t*). The words " to provide such public sewers as may be necessary for effectually draining their district for the purposes of this Act ", reproduce almost verbatim the language of that section. The language is of a wide and general character and we considered the possibility of defining in the clause more

(*l*) See s. 326 of the Act, p. 270, *ante*.
(*m*) 26 Halsbury's Statutes 377.
(*n*) Now s. 12 of the Act, p. 66, *ante*.
(*o*) 13 Halsbury's Statutes 738.
(*p*) Now s. 13 of the Act, p. 67, *ante*.
(*q*) 13 Halsbury's Statutes 741.
(*r*) Now ss. 41, 46, 79, 80, 107, 108, 263, 264 of the Act, *ante*.
(*s*) Now s. 14 of the Act, p. 70, *ante*.
(*t*) 13 Halsbury's Statutes 632.

exactly the scope of a local authority's obligations in this respect. We came to the conclusion, however, that to draft a new formula might well do more harm than good and that the better course is to re-enact the language of the existing law, leaving the content of the obligation to be gathered from the general tenor of this Part of the Bill.

The Act of 1875 contains no express duty to provide sewage disposal works, but empowers local authorities to do so in Section 27 (*u*). The provision of the necessary works has always, however, been recognised as a duty, and in Section 57 (3) of the Local Government Act, 1929 (*v*), which enables the Minister to transfer public health duties of a district council to the county council in case of default, the provision of a sewerage system and of sewage disposal works are treated as being on the same footing.

Clause 15 (*w*).—Subsection (1) (*x*) of this clause reproduces the opening words of the first paragraph of Section 14 of the Act of 1875 (*y*). Modern legislation has so largely diminished the class of owners who are under disability to sell that we have thought it unnecessary to reproduce the latter part of the paragraph.

Section 16 of the Act of 1875 (*z*), which is also re-enacted in the clause, enables a local authority to acquire land outside their district. The clause omits the words *for the purpose of outfall or distribution of sewage*. Experience has shown that it is sometimes necessary to lay sewers, other than outfall sewers, outside the district on account of contours or irregular boundaries.

Subsection (2) of the clause reproduces Section 16 (3) of the Local Government Act, 1894 (*a*), but varies it slightly by requiring the district council to give the parish council notice of their proposals at an earlier stage. Under the existing law notice need not be given until the district council " have determined to adopt plans for the sewerage . . . of any contributory place ". This is too late a stage in the proceedings for the parish council to have any real opportunity of making their views felt.

Clause 16 (*b*).—In reproducing Sections 32 to 34 of the Act of 1875 this clause simplifies the procedure and assimilates it to that laid down in Section 161 of the Local Government Act, 1933 (*c*), in connection with a compulsory purchase of land.

The clause reproduces the existing right of the local authority and owners to object to the proposal and the power of the Minister to decide, but makes one exception, namely, where the works merely consist in the laying of pipes in a highway repairable by the inhabitants at large and the consent of the local authority has been obtained. In that case (which is dealt with in subsection (3)) the necessity of public advertisement and local inquiry is dispensed with.

Clause 17 (*d*).—*See* paragraphs 32 to 44 of the Report.

Clause 18 (*e*) is a new provision intended to be ancillary to the procedure of taking over sewers provided in the previous clause. It will frequently be convenient both to the local authority and the developer to arrange at the time when the sewer is constructed that it shall be taken over at some future date or upon the happening of a future event, e.g., some further development which makes the sewer a link in the general system of the district. In the absence of a provision of this kind doubts may arise how far the local authority can commit itself in advance (cf. *York Corporation* v. *Leetham (Henry) and Sons*, [1924] 1 Ch. 557) (*f*).

Clause 19 (*g*) reproduces and slightly extends Section 40 of the Act of 1925 (*h*). That section enables a local authority to require a developer who

(*u*) 13 Halsbury's Statutes 637.
(*v*) 10 Halsbury's Statutes 923.
(*w*) Now s. 15 of the Act, p. 70, *ante*.
(*x*) Now sub-s. 1 (3), *ibid*.
(*y*) 13 Halsbury's Statutes 632.
(*z*) *Ibid*., 633.
(*a*) 10 Halsbury's Statutes 788.
(*b*) Now s. 16 of the Act, p. 71, *ante*.
(*c*) 26 Halsbury's Statutes 394.
(*d*) Now s. 17 of the Act, p. 72, *ante*.
(*e*) Now s. 18 of the Act, p. 76, *ante*.
(*f*) 21 Digest 274, *976*.
(*g*) Now s. 19 of the Act, p. 77, *ante*.
(*h*) 13 Halsbury's Statutes 1133.

is constructing a sewer to make it larger than is necessary for his own purposes, the authority paying the additional cost. The clause widens this power so as to enable the authority, if satisfied that the proposed sewer is needed to form part of the general sewerage system, to require it to be constructed in a different manner as regards material, size of pipes, depth, etc. The clause further provides that the authority are to pay not only the additional expense involved in the construction of the sewer but also any additional cost of maintenance, and imposes a penalty on the developer if he fails to comply with the requirements of the local authority.

Clause 20 (*i*).—*See* paragraphs 32 to 44 of the Report.

The proviso to subsection (2) is intended to deal with the case of municipal housing estates and other property in connection with which the local authority may own sewers otherwise than as the sewerage authority.

Clause 21 (*k*), which is new, has been inserted to meet a difficulty which has become more acute by reason of the transfer of roads to county councils effected by the Local Government Act, 1929. Under Section 29 (2) (*l*) of that Act all drains belonging to roads for which the county council are made responsible vest in the council. Where, as is frequently the case, a highway drain or sewer is also used for conveying surface water from buildings or streets not vested in the county council, the local authority responsible for the drainage of buildings and streets may find themselves under the necessity of constructing a new sewer unless they can secure access on reasonable terms to the highway drain or sewer. The object of the clause is to enable this to be done.

The clause also deals with the converse case of arrangements under which surface water from county roads may be admitted into sewers belonging to local authorities.

Clause 22 (*m*).—The proviso to Section 18 of the Act of 1875 is omitted from this clause and reproduced in more general terms in Clause 31 (*n*).

Clause 24 (*o*).—*See* paragraph 41 of the Report.

Clause 25 (*p*).—Section 26 of the Act of 1875 (*q*), which is partially replaced by this clause, makes it an offence to erect a building over any sewer of an urban authority without the consent of the authority. The section was extended to rural areas by a general order (S. R. & O. 1931, No. 580) (*r*). The clause adopts the procedure discussed in paragraph 49 of the Report, under which the local authority's decision is given in terms of passing or rejecting plans. The restriction on the right to build is limited to the case of sewers of which the building owner is or can without difficulty make himself aware, and accordingly the sewers are defined by reference to the map which is required to be kept under Clause 32 (*s*) (*see* note on that clause).

Paragraph (2) of Section 26, which relates to cellars under the carriageway of a street, is left unrepealed as not being appropriate to the present Bill.

Clause 26 (*t*) reproduces Section 7 of the Rivers Pollution Prevention Act, 1876 (*u*). Proviso (a) to the clause is new and is required to meet the case of separate foul and surface water sewers.

The concluding words of the section "nor where such facilities would interfere with any order of any court of competent jurisdiction respecting the sewage of such authority" have been omitted as being unnecessary. As regards the general question of trade effluents *see* paragraphs 45 and 46 of the Report.

(*i*) Now s. 20 of the Act, p. 78, *ante*.
(*k*) Now s. 21 of the Act, p. 79, *ante*.
(*l*) 10 Halsbury's Statutes 903.
(*m*) Now s. 22 of the Act, p. 79, *ante*.
(*n*) Now s. 31 of the Act, p. 85, *ante*.
(*o*) Now s. 24 of the Act, p. 80, *ante*.
(*p*) Now s. 25 of the Act, p. 82, *ante*.
(*q*) 13 Halsbury's Statutes 637.
(*r*) 24 Halsbury's Statutes 262.
(*s*) Now s. 32 of the Act, p. 85, *ante*.
(*t*) Now s. 26 of the Act, p. 83, *ante*.
(*u*) 20 Halsbury's Statutes 319.

Clause 27 (*v*) represents a combination of Sections 16 and 17 (*w*) of the Act of 1890 and Section 41 of the Act of 1925 (*x*). The provisions of the three sections with regard to penalties have been assimilated.

Clause 28 (*y*) reproduces the first portion of Section 28 of the Act of 1875 (*z*). The words of that section, "or, in the case of dispute, may be settled by the Local Government Board," have been omitted. The section did not enable the Board to compel one authority to allow the sewers of another authority to communicate with its own. In the absence of such a power of compulsion a power to settle the terms upon which the communication is to be made is ineffective, since the authority who are invited to permit the communication can avoid the jurisdiction of the Department by declining to entertain the proposal at all, unless the terms suggested are wholly to their satisfaction.

On the other hand there is, of course, nothing to prevent two local authorities agreeing to submit any outstanding point for the determination of the Minister, and no express power for this purpose is necessary.

The proviso to the section has also been omitted as unnecessary. It deals with matters which should clearly form part of the agreement between the two authorities.

The clause extends to London so as to put the metropolitan sewerage authorities in a position to make arrangements with adjoining authorities.

Clause 32 (*a*).—Section 20 of the Act of 1875 (*b*) empowers, but does not require, an urban authority to provide a map of their sewerage system. The section was extended to rural areas by a general order (S. R. & O. 1931, No. 580) (*c*). Section 3 of the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883 (*d*), by incorporating Sections 19–21 of the Waterworks Clauses Act, 1847 (*e*), places an obligation on local authorities to provide a map of their sewers, to make it available to all persons interested, and to keep it up to date. We doubt whether this obligation has been widely observed outside the mining areas. A map is important for two reasons—

(1) a prohibition against building over sewers cannot reasonably be imposed unless persons desiring to build can ascertain the existence and location of the sewers;

(2) in view of the practice which has grown up since 1875 of providing separate sewers for surface water and foul water, the public may fairly expect to know whether such a separate system has been adopted and, if so, which sewers are available for either purpose.

On the other hand, it is generally recognised that in the older urban areas there may well be sewers built by private persons before the days of byelaws, the exact position of which is not accurately known, and it would in our opinion be unreasonable to put ratepayers to the expense of a special survey for the purpose of ascertaining their whereabouts. The clause accordingly requires local authorities to keep a map of their public sewers, but in the case of an existing sewer only if it is reserved for foul or for surface water. Where the double system has been adopted and a particular sewer has been appropriated for one purpose or the other, it can be assumed that the sewer can without difficulty be marked on the map. In addition, sewers which are about to be taken over as public sewers must be shown on the map (Subsections (1) paragraphs (b) and (c)) and the map must distinguish between surface water and foul water sewers (Subsections (2)). It is *permissible* under the clause for a local authority to mark on the map public sewers other than those that they are *required* to mark.

Clause 34 (*f*).—Section 21 of the Act of 1875 (*g*) entitles the owner or occupier

(*v*) Now s. 27 of the Act, p. 83, *ante*.
(*w*) 13 Halsbury's Statutes 830.
(*x*) *Ibid.*, 1133.
(*y*) Now s. 28 of the Act, p. 84, *ante*.
(*z*) 13 Halsbury's Statutes 638.
(*a*) Now s. 32 of the Act, p. 85, *ante*.
(*b*) 13 Halsbury's Statutes 634.
(*c*) 24 Halsbury's Statutes 262.
(*d*) 13 Halsbury's Statutes 798.
(*e*) 20 Halsbury's Statutes 193.
(*f*) Now s. 34 of the Act, p. 86, *ante*.
(*g*) 13 Halsbury's Statutes 634.

of premises to cause his drains to communicate with a sewer, but requires him to give the local authority notice of his intention, to conform with their regulations as to mode of communication, and to carry out the work subject to the control of the person appointed by the authority to superintend it. Under Section 38 of the Act of 1907 (*h*) the authority may require the whole drain to be laid open for examination and the communication may not be made until their surveyor has certified that the drain may properly be made to communicate with the sewer. The two sections as they stand are unsatisfactory, since the right conferred on the owner by the opening words of Section 21 is largely whittled down by Section 38 of the later Act which gives the surveyor the power (apparently not subject to appeal) to refuse to allow communication to be made.

Further, the earlier section has given rise to difficulties over the question whether a local authority can prohibit an owner from connecting a surface water drain with a foul water sewer, and it is not easy to reconcile all the cases, of which the following may be cited:—*Ainley* v. *Kirkheaton L. B.* (1891), 60 L. J. Ch. 734 (*i*); *Brown* v. *Dunstable Corporation*, [1899] 2 Ch. 378 (*k*); *Kinson Pottery Company* v. *Poole Corporation*, [1899] 2 Q. B. 41 (*l*); *Wilkinson* v. *Llandaff, etc., R. D. C.*, [1903] 2 Ch. 695 (*m*); and *Matthews* v. *Strahcan*, [1901] 2 K. B. 540 (*n*).

In view of the growing practice of having separate systems for the disposal of foul water and surface water, we are satisfied that any reproduction of these sections must clear up this point. The clause accordingly provides that where there is a separate system, foul water may not be discharged into a surface water sewer, and that surface water may only be discharged into a foul water sewer with the approval of the local authority. This latter provision has been inserted to meet the common case where the authority, with a view to saving the owner the expense of laying separate pipes, permits the surface water from the yard at the rear of the house and from the back of the roof to be drained into the foul water sewer.

Subsection (3) of the clause safeguards the position of owners by providing an appeal against the refusal of a local authority to permit the communication, and defining the ground, namely, that the communication would be prejudicial to the authority's drainage system, on which permission may be refused.

Section 21 of the Act of 1875 (*o*) requires the owner in connecting his drain with the sewer to comply with the "regulations" of the local authority. This requirement has been omitted, since the position will be governed by the authority's byelaws. (*See* paragraph 66 of the Report and paragraph 22 of the Report of the Departmental Committee on Building Byelaws.)

As regards subsection (2) *see* paragraph 20 of the Report.

Clause 35 (*p*) takes the place of Section 22 of the Act of 1875 (*q*), which provides that the owner or occupier of premises without the district of a local authority may cause his sewer or drain to communicate with the sewer of the authority on terms to be agreed or, in case of a dispute, settled by a court of summary jurisdiction or by an arbitrator. In effect the new clause places the owner or occupier of premises without the district of a local authority in the same position as the owner or occupier of premises within the district (i.e., it enables him to have a connection made subject to the control of the local authority as set out in the previous clause), but with the additional requirement that he may be called upon to make to the authority a reasonable payment or periodical payments, the amount being determined, if necessary, by a court of summary jurisdiction or by an arbitrator.

In view of the large degree of control which local authorities have over communications between drains and sewers in the case of premises within

(*h*) 13 Halsbury's Statutes 924.
(*k*) *Ibid.*, *306*.
(*m*) *Ibid.*, 7, *40*.
(*n*) *Matthews* v. *Strachan*, 41 Digest 37, *270*.
(*p*) Now s. 35 of the Act, p. 88, *ante*.
(*i*) 41 Digest 42, *305*.
(*l*) *Ibid.*, 11, *75*.
(*o*) 13 Halsbury's Statutes 634.
(*q*) 13 Halsbury's Statutes 635.

their district, the only additional power which it is necessary to confer on them in the case of premises outside the district is a power to call on the owner to make a reasonable contribution towards the expenses of their drainage system. Effect is given to this by the proviso to subsection (1), and subsection (2) of the clause.

Subsection (3) is new. It enables the local authority of the district in which the premises are situate to contribute towards any expense incurred by the owner under the clause. Experience has shown that it may well be to the advantage of a local authority to assist the owner of premises on the borders of their district in securing a connection with sewers outside the district, rather than to have the expense of themselves providing a sewer for his needs.

Clause 36 (*r*).—Section 18 of the Act of 1890 (*s*) provides that where the owner or occupier of premises is entitled to cause a drain to communicate with one of the local authority's sewers, the authority shall, at the request of the owner or occupier, and upon having the cost paid in advance, execute the necessary works. Section 38 of the Act of 1925 (*t*) replaces this provision in areas where the section is in force by a provision substantially similar but conferring on the local authority instead of on the owner or occupier of the premises the option to carry out the works. The latter section has been widely put into operation and is substantially reproduced in the clause. For the protection of owners the clause requires the local authority to give notice within 14 days.

Section 38 (5) of the Act of 1925 (*u*), which enables the local authority to agree with the owner or occupier of premises to make or alter drains or sewers, or to effect connections which he is required or desires to make, alter or effect, has little connection with the remainder of the section and is reproduced in a generalised form in Part XII of the Bill (Clause 272) (*v*).

Subsection (4) is new. It will enable the local authority to insist upon executing themselves any work which entails breaking up the highway.

Clause 37 (*w*).—The obligations at present imposed on owners of existing buildings and persons erecting new buildings in regard to drains and cesspools must be ascertained from several sections of the various Public Health Acts. They may be summarised as follows:—

(1) Section 23 of the Act of 1875 (*x*) enables a local authority to require the owner of a house which is without a sufficient drain to make a drain emptying into a sewer, if there is one within 100 feet or, if not, into a cesspool. The section empowers the authority to do the work on default and recover the expenses.

(2) Section 25 (*z*) of the same Act makes it illegal to erect a new house, unless a suitable drain has been constructed, and contains similar provisions with regard to the drain emptying into a sewer if there is one within 100 feet, and otherwise into a cesspool. The section imposes penalties for contravention, and by Section 36 of the Act of 1925 (*a*) the court is empowered in the case of a person convicted of constructing a drain in contravention of the earlier section to make an order requiring the drain to be relaid. If the order is not complied with, the local authority may do the work and recover the expense. Section 25 is limited to houses in boroughs and urban districts.

(3) Section 41 of the Act of 1875 (*b*) deals with drains, water-closets, earth-closets, privies, ashpits and cesspools. As amended by Section 34 of the Act of 1907 (*c*), it empowers the local authority on 24 hours' notice, or in emergency without notice, to enter and examine premises if they have reason to think that any drain, cesspool or sanitary convenience on the premises is

(*r*) Now s. 36 of the Act, p. 88, *ante*.
(*t*) *Ibid.*, 1132.
(*v*) Now s. 275 of the Act, p. 241, *ante*.
(*x*) 13 Halsbury's Statutes 635.
(*a*) *Ibid.*, 1131.
(*c*) *Ibid.*, 924.
(*s*) 13 Halsbury's Statutes 830.
(*u*) *Ibid.*
(*w*) Now s. 37 of the Act, p. 89, *ante*.
(*z*) *Ibid.*, 636.
(*b*) *Ibid.*, 642.

a nuisance or injurious to health. The section enables the authority to require the necessary work to be done, and in default to do it at the expense of the owner or occupier.

(4) Section 49 of the Act of 1907 (*d*) deals with the provision of proper sinks and drains and other necessary appliances for carrying off refuse water, and enables a local authority to require the owner or occupier of a building to provide these appliances and on default to provide them themselves at his expense.

In attempting to amalgamate these provisions we were met by the difficulty that Section 25 of the Act of 1875 (*e*) on the one hand is limited to boroughs and urban districts, and on the other imposes an absolute obligation on the person erecting a "house" to provide a drain. It is generally recognised that in a matter of this kind a hard and fast distinction between urban and rural areas is unsatisfactory, and that while there are many rural districts in which the section might properly form part of the general law, there are, on the other hand, areas of a rural character in urban districts and even in boroughs where a requirement that every house without exception must have a drain may well be unnecessary. That being so, the right course, it appears to us, is to abandon the distinction and to make the provision which takes the place of Section 25 a matter of general law applicable to the country as a whole.

The question to what type of building the requirement of a drain should extend presents a further difficulty. The word "house" as used in Sections 23 and 25 of the Act of 1875 (*f*) may cover cases e.g., that of a barn in which agricultural labourers are at times at work, where a drain may be quite unnecessary. On the other hand, it does not cover buildings, e.g., cinemas, where persons assemble for purposes other than those of work. Moreover, at the time when the decision whether or not to insist on a drain must be reached by the local authority the building is still in the future and its character can be judged only by the plans and statements submitted by the person proposing to erect it.

The clause is accordingly made to apply to the country as a whole and to all buildings, but instead of imposing an absolute obligation to provide a new building with drains, it requires the local authority, on examination of the plans of the proposed building, to insist upon satsifactory provision for drainage, unless in a particular case they consider that drainage may properly be dispensed with, the building owner being given a right of appeal to a court of summary jurisdiction on this point.

Subsection (3) follows the existing law in protecting the owner against being compelled to connect his drain with a sewer unless there is a sewer within 100 feet, and slightly elaborates the law by making it clear that the sewer must be one with which both physically and legally he is able to make a connection.

Clause 38 (*g*).—This clause deals with the drainage of existing buildings and follows the general principles of the previous clause. If the building is without the necessary drainage system, the local authority can require the owner to make satisfactory provision for drainage and the work would, of course, have to be done in conformity with the current byelaws. If on the other hand, the question is one of lack of repair, or a drain becoming stopped up, the obligation to do the necessary work may be placed either on the owner or on the occupier, as the authority think proper. (*See* paragraph 62 of the Report.)

In either case a right of appeal to a court of summary jurisdiction is conferred.

Clause 39 (*h*).—In reproducing Section 36 of the Act of 1907 (*i*) in subsection (1) of the clause, we have added the words "or sink." Neither

(*d*) 13 Halsbury's Statutes 930.
(*e*) *Supra.*
(*f*) 13 Halsbury's Statutes 635, 636.
(*g*) Now s. 39 of the Act, p. 91, *ante*.
(*h*) Now s. 40 of the Act, p. 92, *ante*.
(*i*) 13 Halsbury's Statutes 924.

Section 36 nor Section 37 (*k*) of the Act of 1907 deals specifically with sinks, as does Section 49 (*l*) of the same Act, but we understand that it is generally recognised that to connect a sink with a rain water pipe is contrary to modern sanitary practice.

Clause 40 (*m*) re-enacts Section 39 of the Act of 1925 (*n*), but adds the word "repair" in subsection (1) (a). This word was in the Bill for the Act of 1925, but was moved out when the Bill was before the House of Lords. Parliament has, however, since approved of the insertion in a number of local Acts of a clause amending Section 39 by the insertion of the word "repair."

Clause 41 (*o*) reproduces Section 24 of the Act of 1875 (*p*) but extends it to the case of a drain communicating with a cesspool.

Clauses 42, 43 and 44 (*q*).—*See* paragraphs 50 to 55 of the Report.

Clause 45 (*r*).—*See* paragraphs 57 to 59 of the Report.

Clause 46 (*s*).—*See* paragraph 56 of the Report.

Subsection (3) of Clause 46 makes good a small defect in Section 39 of the Act of 1907 (*t*). That section provides for the local authority bearing half the expense if, and only if, they themselves do the work in default of the owner. It is plainly right that an owner who is willing to do the work himself should not thereby be placed in a worse position, and the subsection accordingly provides for this case. Subsection (4) is also new and enables the local authority and the owner to come to an understanding on the footing of the authority paying not more than half the cost in a case where the owner himself takes the initiative and the machinery of subsection (1) is not put into operation.

Clause 47 (*u*) reproduces the combined effect of Section 41 of the Act of 1875 (*v*) and Sections 34 and 45 of the Act of 1907 (*w*) in so far as these sections relate to the testing of drains, etc. The provisions of the sections requiring the owner to remedy defects are reproduced in Clause 38 (*x*).

For the omission of the references to reports of medical officers of health, surveyors and sanitary inspectors, *see* paragraph 79 of the Report.

Section 45 (1) excludes a test "by water under pressure." This protection to owners is slightly widened in the clause by omitting the words "by water."

Section 45 (3) is covered by Clause 281 (*y*) in Part XII of the Bill which deals with obstruction generally.

Clause 49 (*z*).—This clause replaces Section 47 (3) of the Act of 1875 (*a*). That subsection, which applies to urban areas only, makes it an offence to allow the contents of any water-closet, privy or cesspool to overflow or soak away. The reference to water-closets and privies has been omitted on the ground that if the condition of a closet or privy were such as to allow of overflow or soakage, the case could be dealt with under Clause 43 or Clause 44 (*b*). The problem of the cesspool is more difficult. The distinction between urban and rural districts in a matter of this kind is highly artificial, since it is notorious that the latter comprise many built-up areas and the former many patches of countryside. We were at first disposed to apply the section to the country as a whole, but to limit it to overflow or soakage which is "prejudicial to health or a nuisance." This qualification would, however, rob the section of much of its value in the case of a leaking cesspool, since such a

(*k*) 13 Halsbury's Statutes 924.
(*l*) *Ibid.*, 930.
(*m*) Now s. 41 of the Act, p. 93, *ante*.
(*n*) 13 Halsbury's Statutes 1132.
(*o*) Now s. 42 of the Act, p. 94, *ante*.
(*p*) 13 Halsbury's Statutes 636.
(*q*) Now ss. 43–45 of the Act, pp. 94–96, *ante*.
(*r*) Now s. 46 of the Act, p. 96, *ante*.
(*s*) Now s. 47 of the Act, p. 97, *ante*.
(*t*) 13 Halsbury's Statutes 925.
(*u*) Now s. 48 of the Act, p. 98, *ante*.
(*v*) 13 Halsbury's Statutes 642.
(*w*) *Ibid.*, 924, 928.
(*x*) Now s. 39 of the Act, p. 91, *ante*.
(*y*) Now s. 288 of the Act, p. 251, *ante*.
(*z*) Now s. 50 of the Act, p. 99, *ante*.
(*a*) 13 Halsbury's Statutes 645.
(*b*) Now ss. 44 and 45 of the Act, pp. 95, 96, *ante*.

cesspool may well be a potential source of danger to water supply, notwithstanding that it is impossible to secure legal evidence of nuisance or prejudice to health. We have found no way out of this difficulty except by introducing an element of discretion. The clause is accordingly drawn so as to cover both urban and rural areas, but an offence is only committed if the person responsible fails to take such steps to prevent leakage or overflow as the local authority or, on appeal, a court of summary jurisdiction, consider reasonable. This procedure will enable the authority and the court to have regard to the whole circumstances of the area, including the question whether reasonable facilities for having cesspools emptied are available. It may be added that the problem is a narrower one than in 1875, since the byelaws of nearly all authorities require cesspools to be constructed so as to be impervious. As regards soakage, therefore, the clause is required mainly to meet the case of cesspools made before the byelaws were in operation.

In Section 47 the local authority are entitled to recover the expenses of executing the necessary works from the *occupier* of the premises. The clause substitutes for the occupier the person responsible for the soakage or overflow, who will no doubt normally be the occupier.

Clause 50 (*c*).—Under Section 21 of the Act of 1890 (*d*) which is reproduced in this clause the person in default becomes liable to a penalty if a sanitary convenience is *in the opinion of the authority or the sanitary inspector or medical officer of health* in such a state as to be a nuisance. The words italicised, which would apparently prevent the defendant arguing that the alleged condition did not obtain, have been omitted on the ground that the court should have power to deal with this issue.

Clause 52 (*e*).—*See* paragraphs 71 to 75 of the Report.

Clause 53 (*f*) reproduces Section 25 of the Act of 1890 (*g*). In subsection (2) the provision with regard to a continuing penalty will operate subject to Clause 289 (*h*) of the Bill, which enables the court to fix a date from which the penalty is to take effect. As regards the procedure *see* paragraph 49 of the Report.

Clause 54 (*i*).—Under Section 23 of the Act of 1890 (*k*) the byelaw-making powers of Section 157 of the Act of 1875 (*l*) are extended to cover (*inter alia*) " the provision in connection with the laying out of new streets, of secondary means of access where necessary for the purpose of the removal of house refuse, and other matters ".

As stated in paragraph 70 of the Report, we think that it is more convenient that this should be a substantive enactment. We have also considered whether, following a number of recent local Acts, the obligation to provide access should be in general terms and not limited to the purpose of the removal of refuse. We have come to the conclusion, however, that this would be too wide an extension of the law for the present Bill but that the limiting words " in connection with the laying out of new streets " which, we understand, have given rise to difficulties, might with advantage be omitted. As regards the procedure *see* paragraph 49 of the Report.

Subsection (2) which follows the lines of local Act provisions is necessary in order to secure that the means of access once provided shall continue.

Clause 56 (*m*) reproduces Section 26 of the Act of 1907 (*n*). The second paragraph of that section, which exempts from the operation of the section courts which are by reason of their situation, use, architectural features, or other characteristics, either wholly or in part necessary for, or ancillary to, the ornament or amenity of any land or premises, has been omitted on the ground that the language is so vague as to be almost impossible to apply.

(*c*) Now s. 52 of the Act, p. 100, *ante*.
(*d*) 13 Halsbury's Statutes 832.
(*e*) Now s. 53 of the Act, p. 101, *ante*.
(*f*) Now s. 54 of the Act, p. 102, *ante*.
(*g*) 13 Halsbury's Statutes 834.
(*h*) Now s. 297 of the Act, p. 256, *ante*.
(*i*) Now s. 55 of the Act, p. 103, *ante*.
(*k*) 13 Halsbury's Statutes 833.
(*l*) *Ibid.*, 689.
(*m*) Now s. 57 of the Act, p. 105, *ante*.
(*n*) 13 Halsbury's Statutes 920.

On the other hand, it is evident that the section is intended to prevent obstruction to proper ventilation of *houses*, and in order to make this clear the word " court " has been qualified by the words " on which any two or more houses front or abut ".

Clause 57 (*o*) represents a combination of Sections 75 to 78 of the Towns Improvement Clauses Act, 1847 (*p*), and of common local Act provisions. Under Section 160 of the Act of 1875 (*q*) the provisions of the Towns Improvement Clauses Act, 1847, " with respect to ruinous or dangerous buildings " are incorporated. These provisions are long and complicated, extending over some two pages of the Statute Book. In effect, they provide that if a building or wall in a borough or urban district is in a ruinous state and dangerous to passengers or to occupiers of neighbouring buildings, the owner or occupier may be required to take down or repair the building or wall. If he fails to take the necessary action, an order may be obtained from justices directing him to do so. If the owner cannot be found, the local authority are entitled to take the building or land, on making compensation to the owner, and to reimburse themselves the cost of pulling the building down out of the proceeds of sale. In a number of local Acts Parliament has granted somewhat similar powers in the case of buildings which are so far dilapidated as to be unfit for use or occupation and are in a structural condition prejudicial to the property in, or the inhabitants of, the neighbourhood. Other local Act provisions deal with the case of a building where its use (e.g., the use of the upper storeys of an old dwelling-house for storing heavy goods) might well be dangerous. The clause combines these various provisions and enables a court of summary jurisdiction, on the application of a local authority, to restrict the use of a building, if satisfied that its existing use is dangerous, and to direct the owner of a building to take the necessary steps, whether by demolition or repair, where the condition of the building is dangerous, or it is so ruinous or dilapidated as to be a source of annoyance to the occupants of neighbouring houses or seriously detrimental to the amenities of the neighbourhood. In the event of demolition the owner may be required to clear up the site, though not to remove all the materials.

Provisions dealing with buildings dangerous to passengers in streets are not included in this Bill, *see* paragraph 76 of the Report.

Clause 58 (*r*) takes the place of Section 36 of the Act of 1890 (*s*), but is extended in accordance with the provisions common in local Acts to cover shops, stores and warehouses to which the public are admitted and in which more than 20 persons are employed, and clubs registered under the Licensing (Consolidation) Act, 1910 (*t*).

Clause 59 (*u*) enables a local authority to require the owner of a building to which the clause relates to provide means of escape from each storey more than 20 feet from the ground. Under Clause 283 of the Bill (*v*) the owner will have the usual right of appeal to a court of summary jurisdiction against these requirements and, subject to this right, the local authority will be entitled, if necessary, to do the work and recover the expenses from him. Similar provisions have been included in a number of local Acts.

Clause 60 (*w*).—The general effect of this clause is discussed in paragraphs 64–70 of the Report. The following points may be noted on subsection (1) :—

Paragraph (a).—This takes the place of Section 157 (2) of the Act of 1875 (*x*) as extended by Section 23 (1) of the Act of 1890 (*y*). The term " construction of buildings " is used to include the various parts of buildings—walls, foundations, roofs, floors, hearths and staircases—

(*o*) Now s. 58 of the Act, p. 105, *ante*.
(*p*) 13 Halsbury's Statutes 544–546.
(*q*) *Ibid.*, 691.
(*r*) Now s. 59 of the Act, p. 106, *ante*.
(*s*) 13 Halsbury's Statutes 838.
(*t*) S. 91 (9 Halsbury's Statutes 1036).
(*u*) Now s. 60 of the Act, p. 108, *ante*.
(*v*) Now s. 290 of the Act, p. 252, *ante*.
(*w*) Now s. 61 of the Act, p. 109, *ante*.
(*x*) 13 Halsbury's Statutes 689,
(*y*) *Ibid.*, 833,

enumerated in those sections. The paragraph is also intended to cover the structure of chimney shafts for the furnaces of steam engines, breweries, etc., referred to in Section 24 of the Act of 1907 (*z*).

The term "materials" is introduced for the first time, though it frequently occurs in local Acts. It appears never to have been doubted that byelaws may properly deal with the materials of buildings.

Paragraphs (b) and (c) represent Section 157 (3) (*a*), the reference to height of chimneys and buildings being taken from Section 24 of the Act of 1907 (*b*). The word "lighting" appears in many local Acts, but not in the general law and, similarly, a power to make byelaws dealing with the dimensions of rooms intended for human habitation is common in local Acts, though Section 23 of the Act of 1890 (*a*) refers only to the height of such rooms.

Paragraph (d) represents a portion of Section 157 (4) (*a*). The power in Section 23 of the Act of 1890 (*a*) to make byelaws with respect to keeping water-closets supplied with sufficient water for flushing, has not been reproduced as this point is adequately met by the general power under Clause 44 of the Bill to compel the keeping of closets in a proper condition.

Paragraph (e) is taken from Section 157 (4) (*a*).

Paragraph (f) is new. The proper construction of wells is not less important, as a matter of public health, than that of drains and cesspools.

Paragraph (g) represents provisions which are common in local Acts, enabling byelaws to control such matters as stoves, gas fires, etc.

Paragraph (h) is new: *see* note on Clause 34.

Clause 61 (*c*).—This clause deals with the difficult question of the retrospective effect of byelaws. The existing law on this point is obscure. Subsection (2) of Section 157 (*a*) is limited to new buildings, but no such limitation appears in subsections (3) and (4), the distinction probably being accidental. The section as a whole is limited by the proviso to buildings erected after the Local Government Acts came into force in the area, or, in the case of a district which was not an urban sanitary district in 1875, to buildings erected after it became such a district. This proviso is plainly defective, since while it protects the older buildings, it gives no corresponding protection to a building erected after 1875 against a byelaw made at some later date. Section 23 of the Act of 1890 (*a*) provides that byelaws with regard to the drainage of buildings and to sanitary conveniences in general may be made so as to effect buildings erected before the times mentioned in the proviso to Section 157 (*a*). There can be little doubt that the general principle should be that a byelaw which deals with the *structure* of a building must not affect buildings standing at the date when it is made, so long as the building continues to be used for the purpose for which it was erected, since this would involve wholesale pulling down and reconstruction. On the other hand byelaws affecting particular appliances, such as sanitary conveniences, should operate whenever the appliance is replaced by a new one, notwithstanding that the building itself may have been in existence before the byelaws were made.

The effect of subsections (1) and (2) of the clause are to prohibit byelaws under paragraphs (a), (b) and (c) applying to existing buildings except in the cases mentioned in subsection (1), i.e., where structural alterations or extensions take place or there is a material change in the purpose for which the building is to be used. "Material change" is defined by subsection (2) so as to cover the use for dwelling purposes of a building not constructed for those purposes, the occupation by several families of a building constructed as a single house, and any change from one class of user to another which has the effect of bringing the building, or any part of it, under a

(*z*) 13 Halsbury's Statutes 919.
(*b*) 13 Halsbury's Statutes 919.
(*a*) *Supra*.
(*c*) Now s. 62 of the Act, p. 111, *ante*.

different byelaw, e.g., it is not unreasonable that the conversion of a room in a house into a garage should make it subject to byelaws with regard to the use of fire-proof materials.

Clause 62 (*d*) enables a local authority, with the consent of the Minister, to relax or dispense with a byelaw if its application to the particular case before them would be unreasonable. The authority are required to publish notice of their intention to exercise the power, and the Minister must, before consenting, take into consideration any objections received by him. It has long been the accepted view that byelaws must not themselves contain dispensing powers, and accordingly the only method of dealing with such a situation as is contemplated in the clause has been for the authority to make a special byelaw limited in terms to the case under consideration. This procedure is open to objection as constituting a kind of *privilegium* and as being, at any rate in form, a clumsy method of meeting the difficulty. It has, however, substantial advantages in that it involves publicity and enables the central department to keep in touch with the matter. The clause secures the same result by means of a simpler procedure.

Clause 63 (*e*) takes the place of Section 158 of the Act of 1875 (*f*). The original language has been altered so as to make it clear that the duty of the local authority is to pass the plans of proposed buildings which conform with the byelaws, subject to the qualification that under certain other provisions of the Bill (*see* Clauses 25, 37, 42, 52, 53, 54 and 58) (*g*) the authority must reject the plans if their requirements, e.g., in the matter of drains, are not complied with. The words "approval or disapproval" of the intended work, which appear in Section 158, lend some countenance to the common misconception that local authorities have a discretion to approve proposals or not as they think fit. The proviso to the subsection secures that the passing of a plan will not be regarded as an approval or consent for other purposes. We believe that this will help to avoid the misunderstandings which not uncommonly arise under the existing law. Under paragraph (ii) of subsection (2) a local authority are required to give notice of the limited effect of their passing of the plans under the Act.

Subsection (3), which enables a dispute whether the proposed work would contravene a byelaw or not to be determined by a court of summary jurisdiction, is new. We regard it as of importance from the point of view both of local authorities and owners that it should be made possible to obtain a decision on this point speedily and without the necessity for the authority to take some action which may eventually be held to amount to a trespass.

Under Clause 66 (*h*) a somewhat wider jurisdiction is conferred on the Minister but only with the consent of both parties.

Section 158 (*f*) requires the authority to signify their approval or disapproval within one month after the plans have been submitted. It has been brought to our notice that this time limit frequently creates an awkward situation in the case of councils who meet at monthly intervals, since plans may be deposited at so short an interval before the meeting of the council that it is not practicable to put them before the council at that meeting and more than a month from the date of deposit will elapse before the next. While fully appreciating the importance of not hampering development by any substantial extension of this period, we have provided in subsection (4) that a slight extension may be permitted by byelaw to meet this particular difficulty.

Subsection (5) reproduces Section 16 of the Act of 1907 (*i*) but modifies the section by enabling byelaws to require the submission of plans in dupli-

(*d*) Now s. 63 of the Act, p. 112, *ante*.
(*e*) Now s. 64 of the Act, p. 113, *ante*.
(*f*) 13 Halsbury's Statutes 690.
(*g*) Now ss. 25, 37, 43, 53–55 and 59; see also s. 137.
(*h*) Now s. 67 of the Act, p. 117, *ante*.
(*i*) 13 Halsbury's Statutes 916.

cate. This is a common local Act provision and, by saving the additional time and expense involved in copying plans as compared with preparing an extra copy in the first instance, is of advantage both to the building owner and to the ratepayers as a whole.

Clause 64 (*k*).—The existing law with regard to the pulling down of contravening buildings and works is unsatisfactory in two respects. Under Section 158 (*l*) the authority is not at liberty to pull down a contravening work, if the plans have been approved or if notice of disapproval was not given within one month from the deposit of the plans. On the other hand, under Section 157 (*m*) the byelaws themselves may provide for the pulling down of contravening works and that section contains no such time limit. Thus the protection to owners given by Section 158 can be rendered nugatory by the byelaws. Moreover, irrespective of the action of the local authority in approving or delaying to disapprove a plan, there is nothing to prevent the Attorney-General on the relation of an interested party taking proceedings to enforce compliance with the byelaw by way of mandatory injunction. It is clearly not in the public interest that a building which seriously contravenes the byelaws should be for ever secured against demolition owing to some mistaken action or inaction of the local authority; and it is not less clear that an owner whose plans had been passed or had not been rejected within the prescribed period would have a legitimate grievance if he found himself compelled to demolish the building without compensation.

A further difficulty of the existing law lies in the fact that the remedy provided by Section 158 is for the authority themselves to pull down a contravening work. It follows that, if they proceed mistakenly, they are liable to an action for trespass, and have no opportunity of testing in advance the question whether there is in fact a contravention of the byelaws. The Departmental Committee on Building Byelaws draw attention to this point in paragraph 40 of their Report.

In order to meet these difficulties the clause has been framed on the following lines :—

(1) In place of the local authority having power to pull down or alter the contravening work themselves, they are enabled to give notice to the owner requiring him to do so.

(2) Subsection (1) further provides that the power to require demolition or alteration is not to be exercised after the expiration of twelve months from the completion of the work, and that it must not be exercised at all if the plans were passed (or not rejected within the prescribed period) and if the work has been executed in accordance with the plans.

(3) Subsection (2) preserves the right of a local authority to take action under any one of the various clauses mentioned in the note on Clause 63 (*n*) above, under which they have power to reject plans if their requirements are not complied with.

(4) Subsection (3) on the other hand preserves the right of the local authority or of other interested parties under the general law to apply for a mandatory injunction for the removal or alteration of the work, but empowers the court to order the local authority to compensate the owner, if his plans were passed (or not rejected within the prescribed period) and the work conforms with the plans.

Clause 66 (*o*).—The general effect of this clause is to secure that where a question arises between the local authority and the building owner as to whether the plans conform with the byelaws, or the work has been executed in accordance with the plans, the parties may jointly submit the question for the determination of the Minister. The usual provision is inserted empowering the Minister to state a case for the opinion of the court and

(*k*) Now s. 65 of the Act, p. 114, *ante*.
(*l*) 13 Halsbury's Statutes 690.
(*m*) *Ibid.*, 689.
(*n*) Now s. 64 of the Act, p. 113, *ante*.
(*o*) Now s. 67 of the Act, p. 117, *ante*.

enabling either party to apply to the court for a direction to the Minister to do so. This clause, which is not in the existing law, was recommended by the Departmental Committee in paragraph 40 of their Report, and will, we believe, be welcomed.

Clause 67 (*p*).—*See* paragraph 68 of the Report.

Clause 69 (*q*).—It is a matter of frequent complaint that whereas local authorities are required to print their byelaws and place them on sale, there is no corresponding obligation as regards provisions of the nature of byelaws in local Acts, and consequently that in areas in which a large number of unconsolidated local Acts are in operation, a building owner and his advisers have no ready means of ascertaining the nature and extent of their obligations. We think that there is substance in this complaint and that it is not unreasonable that local authorities should be required to append to their printed byelaws the relevant sections of local Acts. The clause accordingly makes provision for this and empowers the Minister to determine the question whether any particular section of a local Act ought to be so appended.

The clause also requires—

(a) every rural district council to append a statement of any urban powers in force within the district; and

(b) every local authority to append a statement whether, and, if so, at what date, certain provisions of the Public Health Acts came into operation within their area. It will be seen from Clauses 25 (3), 58 (5), and 65 (2) (*r*) that the date on which each of these provisions came into operation affects the powers of the local authority and the consequent obligations of owners under the Bill.

Clause 71 (*s*).—On the question of "house refuse" *see* paragraphs 77–8 of the Report.

Subsection (1) reproduces a part of Section 42 of the Act of 1875 (*t*). The part of that section relating to the cleansing of streets is reproduced in Clause 76 (*u*), and the provisions enabling the local authority to sell the refuse collected appear in a generalised form in Clause 273 (*v*). The proviso to the last paragraph of Section 42 (*t*) is replaced by subsection (3) (e) of this clause which enables byelaws to be made prohibiting the removal of any matter by the owner, unless he intends it for sale or his own use and keeps it so as not to be a nuisance. Paragraphs (b) and (c) of the same subsection reproduce provisions common in local Acts.

Clause 72 (*w*) replaces Section 48 of the Act of 1907 (*x*) but enables a local authority instead of adopting the section as a whole, to undertake to remove either all trade refuse or any specified kind of such refuse. The clause also makes it clear that a local authority may as a matter of policy decide to bear the whole or part of the expense of the removal of trade refuse themselves. As regards "trade refuse" *see* paragraphs 77–8 of the Report.

Clause 73 (*y*) enables a local authority by agreement with the occupier of premises (1) to remove refuse or cleanse cesspools, etc., in a case where the authority have not undertaken these obligations under Clauses 71 and 72 (*z*), and (2) in a case where they have undertaken such obligations, to carry out the task at more frequent intervals than they are under any legal obligation to do, and in either case to make a charge. Reference may be made to *Whitbread and Co., Ltd.* v. *The Staines R.D.C.*, [1925] Ch. 89 (*a*).

(*p*) Now s. 68 of the Act, p. 117, *ante*.
(*q*) Now s. 70 of the Act, p. 118, *ante*.
(*r*) Now ss. 25 (3), 59 (5) and 66 (2).
(*s*) Now s. 72 of the Act, p. 120, *ante*.
(*t*) 13 Halsbury's Statutes 643.
(*u*) Now s. 77 of the Act, p. 123, *ante*.
(*v*) Now s. 276 of the Act, p. 241, *ante*.
(*w*) Now s. 73 of the Act, p. 121, *ante*.
(*x*) 13 Halsbury's Statutes 929.
(*y*) Now s. 74 of the Act, p. 121, *ante*.
(*z*) Now ss. 72 and 73.
(*a*) 38 Digest 237, *661*.

Clause 74 (*b*) follows the general line of numerous local Act provisions. Subsections (1) and (2) enable a local authority who remove refuse to require the provision of proper dustbins, subject to the right of any person aggrieved by the requirement to appeal to a court of summary jurisdiction.

Subsection (3) provides an alternative course of action. Following a number of local Act precedents it enables the local authority themselves to provide and maintain dustbins and make an annual charge not exceeding 2s. 6d. for each dust bin.

Clause 75 (*c*) reproduces Section 45 of the Act of 1875 (*d*), but makes it clear that a local authority can provide refuse destructors or other apparatus for treating or disposing of refuse.

Clause 76 (*e*).—There has always been some doubt as to whether the function of cleansing and watering streets is a "sanitary" function or a "highway" function. Where a local authority are both the sanitary authority and the highway authority, it matters little whether they water and cleanse streets in one capacity or the other, but since county councils have become highway authorities in rural areas and in respect of many roads in urban areas the question has become one of some importance. In our opinion the proper course is for the watering and cleansing of streets to be performed by the sanitary authority subject to a contribution towards the cost thereof by the highway authority, and the clause provides accordingly. Any dispute as to the amount of the contribution to be made is to be settled by the Minister.

Subsection (3) of this clause is new.

The provision in Section 44 of the Act of 1875 (*f*) enabling a local authority who do not themselves undertake the cleansing of footways and pavements to make byelaws imposing the duty of such cleansing on the occupiers of premises has been omitted as obsolete.

Clause 78 (*g*) reproduces Section 49 of the Act of 1875 (*h*) except the provision with regard to the sale of manure, etc., which is covered by Clause 273 (*i*) of the Bill.

Following the existing law, the clause does not confer on the owner or occupier of the premises any express right of appeal from the decision of the sanitary inspector, but differs from the existing law in so far as it leaves it open to the defendant if proceedings are taken, to challenge the reasonableness of the inspector's action.

Clause 82 (*k*) reproduces the combined effect of Section 46 of the Act of 1875 (*l*) and Section 46 of the Act of 1925 (*m*). A similar provision to Section 46 of the Act of 1875 is to be found in Section 41 of the Metropolitan Police Courts Act, 1839 (*n*), which applies throughout the whole of the Metropolitan Police District. There appears to be no reason why this duplicate provision should remain on the Statute Book and the Bill accordingly repeals that section except so far as it applies to the Administrative County of London.

Clause 83 (*o*) combines Section 56 of the Act of 1907 (*p*) and Section 45 of the Act of 1925 (*q*).

Clause 84 (*r*) reproduces Section 48 of the Act of 1925 (*s*). Under the Cleansing of Persons Act, 1897 (*t*), a local authority or a board of guardians were given powers to provide for the cleansing of verminous persons, but the Act of 1925 provided that any local authority who adopted Section 48

(*b*) Now s. 75 of the Act, p. 122, *ante*.
(*c*) Now s. 76 of the Act, p. 123, *ante*
(*d*) 13 Halsbury's Statutes 645.
(*e*) Now s. 77 of the Act, p. 123, *ante*.
(*f*) 13 Halsbury's Statutes 644.
(*g*) Now s. 79 of the Act, p. 124, *ante*.
(*h*) 13 Halsbury's Statutes 646.
(*i*) Now s. 276 of the Act, p. 241, *ante*.
(*k*) Now s. 83 of the Act, p. 126, *ante*.
(*l*) 13 Halsbury's Statutes 645.
(*m*) *Ibid.*, 1135.
(*n*) *Ibid.*, 516.
(*o*) Now s. 84 of the Act, p. 127, *ante*.
(*p*) 13 Halsbury's Statutes 932.
(*q*) *Ibid.*, 1134.
(*r*) Now s. 85 of the Act, p. 127, *ante*.
(*s*) 13 Halsbury's Statutes 1136.
(*t*) *Ibid.*, 874.

of that Act should cease to be a local authority for the purposes of the Act of 1897. The powers of boards of guardians under the Act of 1897 were transferred to county councils by the Local Government Act, 1929. In these circumstances we have extended this clause to county councils and the Bill provides for the repeal of the Act of 1897 without re-enactment.

That part of Section 48 (6) of the Act of 1925 (*u*) which provides that any cleansing, etc., done under the section is not to be treated as poor relief has been omitted as unnecessary. Section 5 of the Local Government Act, 1929 (*v*), makes it clear that services rendered under the Public Health Acts are not poor relief.

The clause enables the sanitary inspector of a local authority, as well as the medical officer of health, to report the case.

Clause 86 (*w*) reproduces part of Section 20 of the Act of 1890 (*x*), together with Section 47 of the Act of 1907 (*y*), but subsection (1) of the former (*yy*) section has been extended to sanitary conveniences erected by a county council. Prior to the Local Government Act, 1929 (*z*), a county council had no power to erect a convenience in a highway.

Clause 89 (*a*).—Subsection (2) follows generally the language of Section 23 (a) and (e) of the Act of 1907 (*b*). But the subsection, unlike Section 23, provides that the definition is not to govern byelaws except in so far as the byelaws themselves may provide. This follows a recommendation made by the Departmental Committee on Building Byelaws in paragraph 16 of their report where they refer to the difficulty which arose in the case of *Repton School* (*Governors of*) v. *Repton R.D.C.*, [1918] 2 K. B. 133 (*c*). We feel no doubt that the recommendation of the Committee in this matter was right and that the byelaws must themselves define the circumstances in which any particular byelaw dealing with the erection of a building is to apply to some operation which is not erection in the ordinary sense of the term.

The remaining paragraphs of Section 23 defining other operations which are to be regarded as the erection of a new building are sufficiently covered by the clauses in the Bill which deal with this matter (*see* Clauses 25, 37, 42, 52, 53, 54 and 58) (*d*).

PART III.—NUISANCES AND OFFENSIVE TRADES.

Clause 91 (*e*) is based on Section 91 of the Act of 1875 (*f*), together with certain provisions of the Factory and Workshop Act, 1901. Part of paragraph 2 of Section 91, relating to offensive ditches and watercourses, has been transferred to the group of clauses dealing with watercourses and appears in Clause 258 (*g*). The remainder of paragraph 2, relating to offensive privies, urinals, cesspools, drains and ashpits has been omitted as unnecessary in view of paragraph (c) of the clause, reproducing paragraph 4 of Section 91, and of the provisions of Clauses 38 (*h*) and 43 (*i*) of the Bill as to drains, cesspools and closets. Paragraphs 7 and 8 of Section 91, as extended by the Public Health (Smoke Abatement) Act, 1926, appear among the provisions relating to smoke nuisances (Clause 100) (*k*). Paragraph 5 of Section 91, relating to overcrowding has been omitted in view of the provisions now contained in the Housing Act, 1935.

Paragraph (d) is based on Section 114 of the Act of 1875 (*l*). That

(*u*) *Supra*.
(*v*) 10 Halsbury's Statutes 885.
(*w*) Now s. 87 of the Act, p. 128, *ante*.
(*x*) 13 Halsbury's Statutes 831.
(*y*) *Ibid.*, 929.
(*yy*) For "former" read "latter."
(*z*) Ss. 30, 31, etc., 10 Halsbury's Statutes 904, 905.
(*a*) Now s. 90 of the Act, p. 130, *ante*.
(*b*) 13 Halsbury's Statutes 919.
(*c*) 38 Digest 196, *324*.
(*d*) Now ss. 25, 37, 43, 53–55 and 59.
(*e*) Now s. 92 of the Act, p. 132, *ante*.
(*f*) 13 Halsbury's Statutes 661.
(*g*) Now s. 260 of the Act, p. 230, *ante*.
(*h*) Now s. 39 of the Act, p. 91, *ante*.
(*i*) Now s. 44 of the Act, p. 95, *ante*.
(*k*) Now s. 101 of the Act, p. 139, *ante*.
(*l*) 13 Halsbury's Statutes 671.

section provides that where any business or manufacture causing effluvia is certified to be a nuisance or injurious to health the local authority may make a complaint to a court of summary jurisdiction. Unless the court is satisfied that the best practicable means are being used to avoid nuisance, the person offending is liable to penalties. This procedure, though not identical with the Nuisance procedure, is for practical purposes the same. The section has therefore been replaced by a provision making a nuisance of this nature a statutory nuisance. The saving in Section 114 as regards the best practicable means of avoiding nuisance is reproduced in subsection (5) of Clause 93. At the same time the provision has been widened to cover dust as well as effluvia.

Paragraph (e) is based on paragraph 6 of Section 91 and Sections 1 (2), 2 (1) and 2 (2), of the Factory and Workshop Act, 1901 (*m*). The paragraph applies to all places where persons are employed otherwise than in domestic service, except factories to which Section 1 of the Factory Act and, so far as ventilation is concerned, shops to which the Shops Act, 1934, apply—*see* subsection (2). The excepted factories are subject in these matters to the Factory code, and ventilation in shops has been dealt with in the Shops Act, 1934. The paragraph involves a slight extension of the law, since (a) the "effluvia" provision probably does not apply at present to "domestic factories", and (b) under the existing law the requirement as to ventilation in the case of "domestic factories", "domestic workshops", "men's workshops" and "workplaces" is somewhat more limited, since they are only required to be ventilated so as to render harmless impurities generated in any process carried on therein. There appears no sufficient reason for keeping these complicated minor distinctions, and we think that the paragraph should apply alike to all places, not being places covered by other codes, where persons are employed otherwise than in domestic service. As regards the definition of workplace, *see* the note on Clause 332 (*n*).

Clause 93 (*o*).—Section 96 of the Act of 1875 (*p*) requires the Court to give directions as to the payment of all costs incurred up to the time of the hearing or the making of the order for abatement. The object of this provision is no doubt to prevent a local authority being put to needless expense by persons who take no steps to comply with the nuisance notice until after the authority have commenced proceedings. Subsection (3) is drafted so as to make it clear that the defendant will in such a case be liable to pay the local authority's reasonable costs.

Clause 94 (*q*).—Section 98 of the Act of 1875 (*r*) provides for a daily penalty not exceeding ten shillings for failing to obey an order to comply with a nuisance notice, and a daily penalty not exceeding twenty shillings for knowingly and wilfully acting contrary to an order of prohibition. In the clause the more usual form is adopted of a maximum fine of five pounds for any contravention of an order, with a further penalty of forty shillings for each day on which the offence continues after conviction.

Clause 95 (*s*) reproduces the first two paragraphs of Section 104 of the Act of 1875 (*t*), but the proviso to the first paragraph, which provides that the expenses that may be recovered from the owner are not to exceed one year's rackrent of the premises, has been omitted. The cases in which the expense of abating a nuisance exceeds a year's rackrent are likely to be few, but where such a case does occur there seems no good reason why the excess over the year's rent should fall on the ratepayers as a whole rather than on the owner in default.

The third paragraph of the section is omitted for the reason that where the person in default is the owner, Clause 284 (*u*) of the Bill makes the sum

(*m*) 8 Halsbury's Statutes 517, 518.
(*n*) Now s. 343 of the Act, p. 280, *ante*.
(*o*) Now s. 94 of the Act, p. 135, *ante*.
(*p*) 13 Halsbury's Statutes 664.
(*q*) Now s. 95 of the Act, p. 136, *ante*.
(*r*) 13 Halsbury's Statutes 664.
(*s*) Now s. 96 of the Act, p. 136, *ante*.
(*t*) 13 Halsbury's Statutes 666.
(*u*) Now s. 291 of the Act, p. 253, *ante*.

recoverable a charge on the land and the local authority can, if necessary, recover it by instalments from the owner or occupier of the premises for the time being.

Clause 96 (*v*).—This clause reproduces Section 255 of the Act of 1875 (*w*). The last paragraph of that section provided that nothing in the section should prevent persons proceeded against from recovering contribution in any case in which they would have been entitled to contribution by law. Until the passing of the recent Law Reform (Married Women and Joint Tortfeasors) Act, 1935 (*x*), the effect of such a negative provision was very doubtful in view of the general principle of law against contribution among tortfeasors. The similar provision of the Public Health (London) Act, 1891 (Section 120) (*y*), meets the point by providing affirmatively that where some only of the persons by whose act or default any nuisance has been caused have been proceeded against they shall, without prejudice to any other remedy, be entitled to recover from the other persons who were not proceeded against a proportionate part of the expenses of abating the nuisance and of any fines and costs ordered to be paid by the court. Subsection (3) of the clause follows the language of the London Act.

Clause 97 (*z*).—Subsection (2) reproduces the provision in Section 108 of the Act of 1875 (*a*) extending the powers of local authorities to nuisances caused by acts or defaults committed within the administrative county of London. The converse power for nuisance authorities in London to take proceedings in respect of acts or defaults outside the administrative county is unnecessary in view of Section 14 of the Public Health (London) Act, 1891 (*b*), and has been omitted.

Clause 100 (*c*).—Section 91 (7) of the Act of 1875 (*d*) uses the words "any fireplace or furnace which does not as far as practicable consume the smoke arising from the combustible used therein". The Public Health (Smoke Abatement) Act, 1926 (*e*), extended the definition of "smoke" so as to include soot, ash, grit and gritty particles. In reproducing the earlier provision in paragraph (a) of the clause the language has been slightly altered. The mechanism for preventing the emission of grit and gritty particles does not usually form part of the furnace.

Clause 102 (*f*).—*See* note on Clause 94. In the case of smoke nuisances, the Public Health (Smoke Abatement) Act, 1926 (*e*), increases the maximum penalties recoverable under Section 98 of the Act of 1875 (*g*) from ten shillings to forty shillings, and from twenty shillings to five pounds. In view of the gravity of the offence and of the large interests that are frequently involved, we think that a maximum penalty of ten pounds for a contravention of an order, with a daily penalty of five pounds, would not be excessive, and the clause so provides.

Clause 106 (*h*).—Section 334 of the Act of 1875 (*i*), which is one of the general saving clauses in Part XI of the Act, provides that nothing in the Act is to be construed to extend to mines so as to interfere with their working, nor to the smelting of ores and minerals, nor the treatment of iron and other metals. In *Re Dudley Corporation* (1881), 8 Q. B. D. 86 (*k*) it was held by the Court of Appeal that in spite of the generality of the language of Section 334 the section applies only to nuisances.

Section 1 (1) (e) of the Public Health (Smoke Abatement) Act, 1926 (*e*), extends the list of processes mentioned in Section 334 of the Act of 1875 (*i*)

(*v*) Now s. 97 of the Act, p. 137, *ante*.
(*w*) 13 Halsbury's Statutes 731.
(*x*) 28 Halsbury's Statutes 473.
(*y*) 11 Halsbury's Statutes 1090.
(*z*) Now s. 98 of the Act, p. 137, *ante*.
(*a*) 13 Halsbury's Statutes 668.
(*b*) 11 Halsbury's Statutes 1034.
(*c*) Now s. 101 of the Act, p. 139, *ante*.
(*d*) 13 Halsbury's Statutes 661.
(*e*) *Ibid.*, 1157.
(*f*) Now s. 103 of the Act, p. 140, *ante*.
(*g*) 13 Halsbury's Statutes 664.
(*h*) Now s. 107 of the Act, p. 141, *ante*.
(*i*) 13 Halsbury's Statutes 762.
(*k*) 36 Digest 182, *262*.

and empowers the Minister by provisional order to vary the list. The Act of 1926 is, however, as the name implies, confined to smoke nuisances, and it appears, therefore, that whereas the processes mentioned in Section 334 (smelting, etc.) are exempted from liability to proceedings for nuisance in general, the exemption conferred on the processes mentioned in the 1926 Act (re-heating, annealing, etc.) relates only to proceedings on the ground of smoke nuisance.

The reason for this appears to be that the exemption for smelting, etc., has in practice always been regarded as applying only to smoke nuisances, and in combining Section 334 with the provision in the Act of 1926 we have so treated it. Accordingly the present clause exempts the various processes mentioned in the two Acts from proceedings for smoke nuisance. The wider exemption of mining operations from nuisance proceedings in general is dealt with in Clause 107.

Clause 107 (*l*).—Section 112 of the Act of 1875 (*m*) prohibits the establishment in a borough or urban district without the written consent of the authority of certain specified trades and "any other noxious or offensive trade, business or manufacture." Section 51 of the Act of 1907 (*n*), where adopted, replaces these general words by the words "any other trade, business, or manufacture, which the local authority declare by order confirmed by the Minister, and published in such manner as the Minister may direct, to be an offensive trade." This section has been widely adopted and we have included it in the Bill in preference to the 1875 provision. We have also added in subsection (1) (a) the following trades not mentioned in the Act of 1875 which have since been commonly included in orders confirmed by the Minister, namely :—

> Blood drier, fat extractor, fat melter, glue maker, gut scraper, leather dresser, rag and bone dealer, size maker, and tanner.

We understand that the Ministry take the view that the trade of fish frying if properly conducted need not be offensive but that it requires regulation by byelaw, and we have extended the byelaw-making power in Clause 109 (*o*) to cover this case. The further adoptive provisions of Section 44 of the Act of 1925 (*p*), enabling consent to be given for a limited period and defining more closely the establishment of a trade, are reproduced in subsections (4) and (6) of the clause. The opportunity has been taken to amend the wording slightly so as to enable a declaration of an offensive trade to be made for a part only of a district, and the maximum penalty for a continuing offence has been increased from forty shillings to the more adequate figure of five pounds.

Section 7 of the 1907 Act (*q*) provides for an appeal to quarter sessions against any requirement, etc., of a local authority and against any withholding of consent. On the general question of appeals under the Bill *see* paragraph 18 of the Report. Subsection (5) of this clause provides for an appeal to a court of summary jurisdiction against refusal to consent to the establishment of an offensive trade, or against any time limit attached to a consent or against a refusal to extend a time limit.

Clause 108 (*r*).—Paragraph (b) of this clause is new. It is designed to afford control over travelling trades and businesses which if established on premises would fall within Clause 108. Paragraph (c), enabling byelaws to be made with respect to fish frying, is also new and will give a necessary measure of control : *see* note on Clause 108.

Clause 109 (*s*).—*See* note on Clause 106.

(*l*) Now s. 108 of the Act, p. 143, *ante*.
(*m*) 13 Halsbury's Statutes 670.
(*n*) *Ibid.*, 930.
(*o*) Now included in s. 108 of the Act, p. 143, *ante*.
(*p*) 13 Halsbury's Statutes 1134.
(*q*) *Ibid.*, 913.
(*r*) See s. 108 (2) (b), p. 144, *ante*.
(*s*) Now s. 109 of the Act, p. 145, *ante*.

PART IV.—WATER SUPPLY.

Clause 111 (*t*).—Under Section 3 of the Public Health (Water) Act, 1878 (*u*), it is the duty of every *rural* district council to see that every occupied dwelling-house within their district has within a reasonable distance an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the house. The section also confers certain powers upon *rural* authorities to secure the provision of an adequate supply at the cost of the owner, where the circumstances are not such as to require the authority themselves to make provision under the Public Health Acts. Under Section 7 of the Act of 1878 (*v*), it is the duty of every *rural* district council to take such steps as may be necessary to ascertain the condition of the water supply within their district, and under Section 11 the Minister may invest an urban authority with any of the powers and duties given by the Act to rural authorities. There appears to be no reason why these provisions should not be made of general application and the clause has been drafted accordingly.

Clause 113 (*w*).—*See* paragraphs 90–1 of the Report.

Clause 115 (*x*) reproduces the first part of Section 55 of the Act of 1875 (*y*). The latter part of the section, which provides that where a local authority lay pipes for the supply of water to any inhabitants, the water may be constantly laid on at such pressure as will carry the same to the top storey of the highest dwelling-house supplied has been omitted. This provision does not *require* the water to be laid on at such a pressure, but is merely enabling and as such unnecessary.

Clauses 116 and 117 (*z*).—Section 51 (2) of the Act of 1875 (*a*) enables a local authority, with the sanction of the Minister of Health, to purchase any waterworks. It has always been open to doubt whether this provision enables a local authority to acquire a right of supplying water beyond the limits of their district, or to acquire an undertaking to which was attached an obligation to furnish such a supply. The difficulty has been surmounted in some instances by a joint purchase of the undertaking by all the local authorities into whose districts the limits of supply extend. To meet cases in which joint purchase is not practicable we have provided in Clause 116 (5), following a recommendation of the Advisory Committee on Water (paragraph 174 of the Second Report of the Legislation Sub-Committee), that a local authority proposing to acquire an undertaking the limits of supply of which extend into the district of other local authorities shall obtain the consent of each of those authorities, but that consent is not to be unreasonably withheld.

As regards subsection (2) and Clause 117, *see* paragraphs 90–1 of the Report.

Subsection (3) provides that a local authority shall not construct any works for taking water, unless the works are authorised by the Minister. This is new law as regards Public Health Act undertakings, but a provision on these lines is now usual in local Acts, and is included in the House of Lords Model Bills and Clauses as amended in 1922. Its object is to prevent works being done to the prejudice of the water supply of another area, e.g., by digging wells and thus affecting other sources of supply. We consider that this measure of control should now extend to the local authorities supplying water under the Public Health Acts.

A difficulty has been brought to our notice where a local authority have acquired an undertaking operated under an order made under the Gas and

---

(*t*) Now s. 111 of the Act, p. 146, *ante*.
(*u*) 20 Halsbury's Statutes 241.
(*v*) *Ibid.*, 244.
(*w*) Now s. 113 of the Act, p. 147, *ante*.
(*x*) Now s. 115 of the Act, p. 148, *ante*.
(*y*) 13 Halsbury's Statutes 649.
(*z*) Now ss. 116 and 117 of the Act, pp. 148–150, *ante*.
(*a*) 13 Halsbury's Statutes 647.

Water Works Facilities Acts, 1870 and 1873, and wish to secure the amendment of the order. Local authorities are not empowered to apply for amending orders under those Acts, which relate only to undertakings promoted by companies and persons, and as a consequence their only course is to adopt the expensive procedure of a local Act. It is clearly reasonable that in this matter the acquiring authority should be in the same position as the original undertakers and we have accordingly inserted a provision in subsection (6), Clause 116, enabling them to apply for the necessary order.

Clause 118 (*b*) reproduces Section 53 of the Act of 1875 (*c*) as amended by Section 78 of the Act of 1925 (*d*), but has been assimilated to other provisions of the Bill by specifying the particulars to be included in the notices required to be given under the clause.

The provisions in Section 53 empowering the Department to appoint an inspector to hold a local inquiry are unnecessary in view of Section 290 of the Local Government Act, 1933 (*e*), and have been omitted.

We considered the question whether the recent Reservoirs (Safety Provisions) Act, 1930 (*f*), ought to be regarded as in any way superseding Section 53. In view, however, of the fact that that Act is limited to reservoirs holding more than five million gallons of water and is concerned only with matters of safety, we came to the conclusion that the provisions of Section 53 are still necessary.

Clause 120 (*g*) reproduces Section 57 of the Act of 1875 (*h*) with the following amendments of detail :—

(a) Sections 28–34 of the Act of 1847, with respect (where the local authority have not the control of the streets) to the breaking up of streets for the purpose of laying pipes, are not incorporated in this clause in view of Clause 276 (*i*) of the Bill : *see* paragraph 19 of the Report.

(b) Section 57 of the Act of 1847 and Section 15 of the Act of 1863 are replaced by the general provision on powers of entry in Part XII (Clause 280) (*k*) and are therefore not incorporated ;

(c) Section 72 of the Act of 1847 is not incorporated under this clause. It is frequently extended by local Acts, and as thus extended, is reproduced in Clause 129 (*l*).

Clause 121 (*m*).—*See* paragraph 20 of the Report.

Clause 123 (*n*) is new. It has been a matter of doubt whether a local authority have power under the Public Health Acts to guarantee payment to persons supplying water as a consideration for the provision of a water supply. Express power for this purpose has been conferred in a number of local Acts, and the clause follows these precedents.

Clause 124 (*o*).—Under Section 64 of the Act of 1875 (*p*), all *existing* public cisterns, etc., used for the gratuitous supply of water to the inhabitants of the district, vest in and are under the control of the local authority. The meaning of the word " existing " in this context is not free from doubt, and it has been omitted from the clause.

The clause slightly extends the existing law (1) by making it clear that where the local authority are satisfied that the water obtained from any such works is polluted and that it is not reasonably practicable to remedy the pollution, they may close those works, or restrict their use, without substituting other works ; and (2) by dealing with the case of wells, etc., which though not polluted are no longer required.

(*b*) Now s. 118 of the Act, p. 150, *ante*.
(*c*) 13 Halsbury's Statutes 648.
(*d*) *Ibid.*, 1151.
(*e*) 26 Halsbury's Statutes 459.
(*f*) 23 Halsbury's Statutes 755 *et seq.*
(*g*) Now s. 120 of the Act, p. 151, *ante*.
(*h*) 13 Halsbury's Statutes 649.
(*i*) Now s. 279 of the Act, p. 243, *ante*.
(*k*) Now s. 287 of the Act, p. 249, *ante*.
(*l*) Now s. 129 of the Act, p. 157, *ante*.
(*m*) Now s. 121 of the Act, p. 152 *ante*.
(*n*) Now s. 123 of the Act, p. 153, *ante*.
(*o*) Now s. 124 of the Act, p. 154, *ante*.
(*p*) 13 Halsbury's Statutes 652.

Clause 125 (*q*) reproduces part of Section 8 of the Local Government Act, 1894 (*r*). In the proviso to subsection (1) words have been added to avoid any conflict in jurisdiction with the powers of a local authority under Clause 124 (*rr*).

Clause 126 (*s*).—Under Section 77 of the Local Government Act, 1929 (*t*), where the gross value or net annual value of any premises supplied with water is not entered in the valuation list, that value is to be determined by " two justices of the peace in like manner as disputes are determined under Section 68 of the Waterworks Clauses Act, 1847." The Waterworks Clauses Acts, however, as incorporated in the Public Health Acts, provide for the substitution of a court of summary jurisdiction for the reference to two justices in the Waterworks Clauses Act, 1847. " A court of summary jurisdiction " has therefore been substituted for " two justices of the peace " in subsection (1).

Section 56 of the Act of 1875 (*u*) confers a wide discretion on local authorities as to the charges to be levied for water supplied. In recent years, however, it has been the practice of Parliament not to allow in local Acts extra charges by way of water rate on a house for the first water-closet or the first bath (other than a bath of an unusually large capacity). Following these precedents subsection (3) enables extra charges to be made for the use of water in any water-closet beyond the first, or in any fixed bath beyond the first or having a capacity greater than fifty gallons. The subsection also authorises extra charges to be made for the use of water for horses or for washing vehicles where a hose-pipe or similar apparatus is used. This provision, which was recommended by the Advisory Committee on Water, also has received the approval of Parliament in local Acts.

Section 10 of the Public Health (Water) Act, 1878 (*v*), makes it incumbent on a local authority to charge water rates on the application of any ten ratepayers in an urban district or any five ratepayers in a contributory place of a rural district. The Advisory Committee on Water, in paragraph 183 of the Second Report of the Legislation Sub-Committee, pointed out that this provision was defective in that it does not ensure that any water rates so levied are adequate in amount, and recommended that the Minister should be empowered on the application of ratepayers, to make such order in the matter as appears to be reasonable. Subsection (4) gives effect to this recommendation by empowering aggrieved ratepayers to appeal to the Minister either against the refusal of the local authority to make such charge, or against the amount of the charges imposed.

Clause 127 (*w*) is new. Local Acts commonly provide that, in the absence of agreement between the undertakers and the consumer to pay a fixed quarterly sum, the undertakers may require that all water supplied for refrigerating and other similar apparatus shall be taken by meter. It is also commonly provided that where the supply is to premises partly used for trade or business, or where the use of the premises is not wholly for domestic purposes, the undertakers may require similarly that the supply shall be taken by meter. In these cases the local Acts fix the maximum charges for such supplies by meter. It is not possible in a general Act of this nature to fix meter charges in view of the widely varying costs of supply. The clause, therefore, provides that the undertakers may require the whole supplies to be supplied by meter, on the lines of the local Acts, but only if the Minister has, on their application, fixed the maximum charges to be made for such supplies.

Clause 128 (*x*) reproduces Section 9 of the Act of 1878 (*y*), but extends that section to urban authorities and to water supplied from a well or cistern.

(*q*) Now s. 125 of the Act, p. 154, *ante*.
(*r*) 10 Halsbury's Statutes 780.
(*rr*) Now s. 124 of the Act, p. 154, *ante*.
(*s*) Now s. 126 of the Act, p. 154, *ante*.
(*t*) 10 Halsbury's Statutes 933.
(*u*) 13 Halsbury's Statutes 649.
(*v*) 20 Halsbury's Statutes, 245.
(*w*) Now s. 127 of the Act, p. 155, *ante*.
(*x*) Now s. 128 of the Act, p. 157, *ante*.
(*y*) 20 Halsbury's Statutes 245.

The latter amendment is in accordance with a recommendation of the Advisory Committee on Water in paragraphs 22 and 31 of the Report on Rural Water Supplies.

Clause 130 (*z*) is new but is based on local Acts. Subsection (1), providing that local authorities may make water rates payable half-yearly, subject to the safeguard that no such instalment shall be recoverable till two months of the half year have elapsed, facilitates the joint collection of water rates and other rates. Subsection (2) relieves an occupier of liability for the rate in respect of any period for which he was not in occupation. Under the Waterworks Clauses Act an outgoing occupier is liable for payment up to the end of the quarter.

Clause 131 (*a*) is also new. By providing that any variation of the net annual value of premises shall have effect so as to require an adjustment of water rates from the same date as applies in the case of other rates, the clause further facilitates the joint collection of these charges.

Clause 132 (*b*) is also new but is commonly allowed in local Acts. As regards subsection (5), *see* paragraph 68 of the Report.

Clause 133 (*c*) reproduces the second half of Section 58 of the Act of 1875 (*d*) and confers power to test meters, etc. The power of entry into premises for this purpose contained in the section is covered by Clause 280 (*e*).

Clause 135 (*f*) reproduces Section 60 of the Act of 1875 (*g*), but following the recommendation of the Advisory Committee on Water (paragraph 76 of the Second Report of the Legislation Sub-Committee) the penalty for injuring meters or fraudulently altering the index has been increased from £2 to £5.

Clause 136 (*h*).—Subsection (3) is new and follows Section 23 of the Gas Undertakings Act, 1934 (*i*).

Clauses 137–9 (*k*).—*See* paragraphs 86 to 89 of the Report. Following the recommendation of the Advisory Committee on Water, Clause 137 is extended to urban areas, and provision is made for a maximum penalty of 40s. a day for a continuing offence.

Clause 140 (*l*) reproduces Section 70 of the Act of 1875 (*m*), but words have been inserted to make it clear that the clause does not apply to wells, etc., vested in the local authority.

Further, in accordance with a recommendation in paragraph 188 of the Second Report of the Legislation Sub-Committee of the Advisory Committee on Water, the clause has been widened so as to apply (1) to water used not only for drinking or domestic purposes but also in the preparation of food or drink; and (2) to cases in which water is likely to become so polluted as to be prejudicial to health.

PART V.—PREVENTION, NOTIFICATION AND TREATMENT OF DISEASE.

Clause 143 (*n*) reproduces the substance of Section 130 of the Act of 1875 (*o*) and of Section 1 of the Act of 1896 (*p*). It omits the special reference in Section 130 to cholera, a reference due to the fact that the section, which originally appeared in the Sanitary Act, 1866, was designed principally

(*z*) Now s. 130 of the Act, p. 158, *ante*.
(*a*) Now s. 131 of the Act, p. 158, *ante*.
(*b*) Now s. 132 of the Act, p. 159, *ante*.
(*c*) Now s. 133 of the Act, p. 160, *ante*.
(*d*) 13 Halsbury's Statutes 650.
(*e*) Now s. 287 of the Act, p. 249, *ante*.
(*f*) Now s. 135 of the Act, p. 160, *ante*.
(*g*) 13 Halsbury's Statutes 651.
(*h*) Now s. 136 of the Act, p. 161, *ante*.
(*i*) 27 Halsbury's Statutes 321.
(*k*) Now ss. 137–139 of the Act, pp. 161–164, *ante*.
(*l*) Now s. 140 of the Act, p. 165, *ante*.
(*m*) 13 Halsbury's Statutes 684.
(*n*) Now s. 143 of the Act, p. 166, *ante*.
(*o*) 13 Halsbury's Statutes 678.
(*p*) *Ibid.*, 871.

to meet the epidemics of cholera familiar in this country in the middle of the nineteenth century.

We have not thought it necessary to reproduce Section 134 of the Act of 1875 (*q*), a section which came from the Diseases Prevention Act, 1855, and enabled the Local Government Board to make regulations "whenever any part of England appears to be threatened with or is affected by any formidable epidemic, endemic or infectious disease," for dealing with a number of matters, including the speedy interment of the dead and house to house visitation. Though the language of the section differs in many respects from that of Section 130, the substance differs but little, and regulations under the section have not been made for many years.

Paragraphs (b) and (c) of subsection (1) have been drafted so as to make clear what we believe to be the intention and effect of Section 1 of the Public Health Act, 1904 (*r*), namely that the words "so far as may be necessary or expedient for the purpose of carrying out any treaty, convention, arrangement, or engagement with any foreign country" qualify and limit the regulation-making power so far as regards the prevention of the conveyance of infection by means of vessels *sailing from* any port, but not so far as regards vessels *arriving at* any port. If the section is read in this sense, it virtually supersedes Section 234 of the Customs Consolidation Act, 1876 (*s*), a section which enables the Minister to make orders detaining persons on board ships which come from foreign ports where he has reason to think that yellow fever or other highly infectious distemper prevails. We understand that no orders have been made under this section for many years, and it is accordingly repealed without re-enactment.

Subsection (3) reproduces certain provisions of the Act of 1913 (*t*). Section 61 (1) of the Act of 1925 (*u*) (a "removal of doubts" section) is repealed without re-enactment on the ground that since the Local Government Act, 1929, the power of a county council to provide hospital accommodation is undoubted. Section (*uu*) (2) of that section is reproduced in Clause 186 (*v*) of the Bill.

The proviso to Section 1 of the Act of 1913 (*t*), which requires the Minister, except in case of emergency, to obtain the consent of each county council before requiring it to enforce regulations under the Act, has been omitted. In view of the health functions conferred on county councils by the Local Government Act, 1929, there is no good ground for distinguishing between these councils and other health authorities in this respect. We understand that, except in case of emergency, it is the invariable practice of the Department to consult the various local government associations with regard to proposed regulations affecting their constituent authorities.

In connection with this clause it should be noted that Section 138 of the Act of 1875 (*w*) is repealed without re-enactment. This section provides for the recovery from shipowners of charges made by poor law medical officers and other doctors who attend patients on board ship in compliance with regulations made under Section 130 of the same Act (*x*). We understand that the section has for long been a dead letter.

The clause extends the existing law by enabling the Minister to take steps to prevent the spread of disease by aircraft as well as by ships, and thus to give effect to the provisions of the International Sanitary Convention for Aerial Navigation which was signed on behalf of His Majesty's Government in April, 1933.

Regulations made under this clause extend to London and provision is made for enabling regulations to be made to have effect in Northern Ireland, the Channel Islands and the Isle of Man.

Clause 144 (*y*).—Section 4 (3) of the Infectious Disease (Notification) Act,

(*q*) 13 Halsbury's Statutes 680.
(*r*) *Ibid.*, 893.
(*s*) 16 Halsbury's Statutes 353.
(*t*) 13 Halsbury's Statutes 953 *et seq.*
(*u*) *Ibid.*, 1141.
(*uu*) For "Section" read "Subsection."
(*v*) Now s. 186 of the Act, p. 192, *ante*.
(*w*) 13 Halsbury's Statutes 681.
(*x*) *Ibid.*, 678.
(*y*) Now s. 144 of the Act, p. 168, *ante*.

1889 (*z*), which provides that where there are two or more medical officers of health a certificate under the Act is to be sent to the officer in charge of the area in which the patient is or to such other officer as the local authority may direct has not been reproduced in this clause. Only rural district councils are permitted to appoint two or more medical officers of health and with the increasing replacement of part-time by whole-time officers, the case of more than one medical officer is becoming a rarity.

The provisions of Section 8 (2) of the Act with regard to service of notices on medical officers of health are reproduced in a generalised form in Clause 279 (*a*) of the draft Bill.

Clause 147 (*b*) reproduces Section 7 of the Infectious Disease (Notification) Act, 1889 (*c*). One of the requirements of the section is that special notice of any proposal to extend in an area the list of notifiable diseases shall be given to every member of the authority fourteen clear days at least before the meeting, but that in case of emergency the notice shall be sufficient if given three clear days before the meeting, in which event the order shall be temporary. It has been represented to us that special requirements of this kind as to notice of business produce much inconvenience in the conduct of local authorities' proceedings, and the requirement has been omitted in favour of the ordinary procedure (now contained in Parts II and III of the Third Schedule of the Local Government Act, 1933) (*d*) requiring three clear days' notice.

The clause also omits the requirement that the local authority shall send a copy of the notice to every registered medical practitioner who is found to be *residing* in the district as well as to those who *practise* there. It is not easy to ascertain the names of those who reside but do not practise and there seems to be no advantage in sending a notice to a non-practising doctor.

Clause 148 (*e*) reproduces Section 126 of the Act of 1875 (*f*) (as amended by Section 62 of the Act of 1907) (*g*) except as regards public conveyances, which are dealt with in Clause 159 (*h*). For reasons indicated in paragraph 95 of the Report it is drafted in terms of notifiable disease and not, as in the original section, in terms of dangerous infectious disease.

The words " wilfully exposes himself without proper precautions against spreading the disease " have been replaced by " exposes other persons to the risk of infection by his presence or conduct ", and a reference to places of entertainment and assembly has been added.

In drafting Clauses 148–170 of the Bill we found that in some of the sections reproduced an offence is only committed if the defendant acted *knowingly*, whereas in others this limitation does not appear. We could discover no good ground for the distinction and have accordingly introduced the element of " knowledge " into all these clauses. The change is likely to prove to be a slight one in practice.

Clause 152 (*i*).—Subsections (1) and (2) of this clause represent Section 55 of the Act of 1907 (*k*). Subsection (3), which requires the occupier of a building in which there is a person suffering from a notifiable disease to furnish, on request, the medical officer of health with the name and address of any laundry to which articles from the house are sent, is common in local Acts and has been added to the clause as a necessary ancillary power.

Clause 153 (*l*) reproduces Section 110 of the Factory and Workshop Act, 1901 (*m*). The central administration of this and certain other provisions of the Act was transferred to the Minister of Health from the Home Office

(*z*) 13 Halsbury's Statutes 812.
(*b*) Now s. 147 of the Act, p. 170, *ante*.
(*d*) 26 Halsbury's Statutes 497–499.
(*f*) 13 Halsbury's Statutes 676.
(*h*) Now s. 159 of the Act, p. 176, *ante*.
(*k*) 13 Halsbury's Statutes 931.
(*m*) 8 Halsbury's Statutes 574.
(*a*) Now s. 285 of the Act, p. 248, *ante*.
(*c*) 13 Halsbury's Statutes 814.
(*e*) Now s. 148 of the Act, p. 171, *ante*.
(*g*) *Ibid.*, 934.
(*i*) Now s. 152 of the Act, p. 173, *ante*.
(*l*) Now s. 153 of the Act, p. 173, *ante*.

by an Order in Council (S. R. & O. 958, 1921) made under the Ministry of Health Act, 1919, and the subject matter of Section 110 makes it more appropriate for public health than for factory legislation. (*See also* Clause 205 (*n*) in Part VII.)

Subsection (3) of Section 110 has been omitted in view of the general power conferred on local authorities by Section 85 of the Local Government Act, 1933 (*o*), to appoint a committee for any such purpose as in the opinion of the local authority would be better regulated and managed by means of a committee.

The clause as drafted sufficiently covers the cases of scarlet fever and small-pox which are specially dealt with in Section 109 of the Factory and Workshop Act, 1901 (*p*), and that section has accordingly been repealed without re-enactment.

Clause 154 (*q*) substantially reproduces Section 73 of the Act of 1925 (*r*), with the following alterations :—

(1) The section prohibits the sale or distribution " from any cart, barrow or other vehicle used for the collection of rags, bones, or similar articles, or in or from any shop or premises used for or in connection with the business of a rag and bone merchant ". It has been brought to our notice that the reference to a cart, barrow or other vehicle has given rise to difficulties and that summonses have been dismissed on the ground that the actual sale or distribution took place not from a vehicle but from a bag which the dealer carried in his hand and replenished from his cart. To avoid this difficulty we have substituted the more general language of the clause.

(2) The question whether the words " or other toy " includes such things as school exercise books, pencils, children's necklaces, and so forth, has been raised and has been the subject of litigation. The object of the section seems to be two-fold—partly to prevent the sale to anyone of articles of food, since contaminated food is specially dangerous, and partly to prevent the sale of articles likely to be bought by children, for the reason that children are naturally less discriminating in these matters than adults. It is not practicable to enumerate exhaustively these latter articles, and we think that the true intention of the section is best secured by prohibiting in the circumstances mentioned (a) the sale or distribution to *anyone* of articles of food or drink, and (b) the sale or distribution to a *child* under the age of 14 of any article whatever.

Clause 155 (*s*) reproduces Section 59 of the Act of 1907 (*t*) but reverses the order of subsections (4) and (5) and limits the latter subsection (now subsection (4) of the clause) to a contravention of the *foregoing* provisions. It was clearly not the intention of the section that a failure on the part of a local authority to cause a book to be disinfected should render them liable to a prosecution (*u*) as regards Section 59 (4), relating to compensation, *see* the note on *Clause* 275 (*v*).

Clause 158 (*w*) reproduces part of Section 7 of the Infectious Disease (Prevention) Act, 1890 (*x*). The maximum fine has been increased from ten pounds to twenty pounds, which corresponds with the maximum provided in Section 128 of the Act of 1875 (*y*) (Clause 157 (*z*) of the Bill), and in the case of a person knowingly making a false answer to a question the penalty of imprisonment for a period not exceeding one month has been inserted following the similar provision in Section 129 (*a*) of the same Act (Clause 157 (*z*) of the Bill).

(*n*) Now s. 205 of the Act, p. 204, *ante*.
(*p*) 8 Halsbury's Statutes 574.
(*r*) 13 Halsbury's Statutes 1149.
(*t*) 13 Halsbury's Statutes 933.
(*u*) *Sic* in original. There should be a new sentence here.
(*v*) Now s. 278 of the Act, p. 242, *ante*.
(*x*) 13 Halsbury's Statutes 820.
(*z*) Now s. 157 of the Act, p. 175, *ante*.
(*o*) 26 Halsbury's Statutes 352.
(*q*) Now s. 154 of the Act, p. 174, *ante*.
(*s*) Now s. 155 of the Act, p. 174, *ante*.
(*w*) Now s. 158 of the Act, p. 176, *ante*.
(*y*) *Ibid.*, 677.
(*a*) 13 Halsbury's Statutes 677.

Clauses 159 and 160 (*b*) which deal with the conveyance of infectious persons in vehicles, replace Section 126 (*c*) (in part) and Section 127 (*d*) of the Act of 1875, and Sections 62 to 64 of the Act of 1907 (*e*). The first clause absolutely prohibits a person suffering from a notifiable disease entering a public conveyance used for the carriage of persons at separate fares, and prohibits his entry into any other public conveyance without previous notice of the disease to the owner or driver.

The second absolutely prohibits the owner, driver or conductor of a public conveyance knowingly carrying an infectious person in a conveyance used for the carriage of persons at separate fares, and confers on him a right to refuse to carry an infectious passenger in other public conveyances without a deposit to cover loss or expenses of disinfection. It further imposes on him a duty to give notice to the local medical officer of health and to have the vehicle disinfected.

Clause 161 (*f*) reproduces Section 9 (b) of the Registration of Births and Deaths Act, 1927 (*g*). We understand that no regulations have as yet been made under the section.

Clause 162 (*h*) reproduces Section 10 of the Infectious Disease (Prevention) Act, 1890 (*i*). The earlier code relating to the removal of bodies (Section 142 of the Act of 1875) (*k*) is repealed without re-enactment. The reference in Section 10 of the Act of 1890 (*i*) to the bodies of persons who have died from infectious disease has been omitted on the ground that, whether the death has occurred from infectious disease or not, the real ground for ordering the removal of the body is that of danger to the health of other persons. For similar reasons the reference to a period of 48 hours after death has been omitted.

A reference to cremation has been inserted.

The clause provides for an order being made on a *certificate* of the medical officer of health and not necessarily on his *application*. This more convenient procedure was adopted in Section 89 of the Public Health (London) Act, 1891 (*l*).

Clause 163 (*m*).—Section 9 of the Infectious Disease (Prevention) Act, 1890 (*n*), uses the words " in order to prevent the risk *of communicating any infectious disease or* of spreading infection ". The words in italics have been omitted as having the same meaning as " spreading infection ".

Clause 166 (*o*).—Section 122 of the Act of 1875 (*p*) enables a local authority to provide " attendance ". The word is omitted here and in other similar passages in the Bill on the ground that under Part IV of the Local Government Act, 1933, local authorities have a general power to employ the necessary officers and servants.

Clause 167 (*q*) represents a combination of part of Section 46 of the Act of 1875 (*r*) (the remainder of the section being reproduced in Part II of the Bill), Sections 120 and 121 (*s*) of the same Act, Sections 5 and 6 of the Infectious Disease (Prevention) Act, 1890 (*t*), and Section 66 of the Act of 1907 (*u*).

On the question of the payment of compensation, *see* the note on Clause 275 (*v*).

(*b*) Now ss. 159 and 160 of the Act, pp. 176, 177, *ante*.
(*c*) 13 Halsbury's Statutes 676.
(*d*) *Ibid.*, 677.
(*e*) *Ibid.*, 934.
(*f*) Now s. 161 of the Act, p. 177, *ante*.
(*g*) 15 Halsbury's Statutes 771. (The date of the Act referred to should be 1926.)
(*h*) Now s. 162 of the Act, p. 178, *ante*.
(*i*) 13 Halsbury's Statutes 821.
(*k*) *Ibid.*, 682.
(*l*) 11 Halsbury's Statutes 1074.
(*m*) Now s. 163 of the Act, p. 178, *ante*.
(*n*) 13 Halsbury's Statutes 820.
(*o*) Now s. 166 of the Act, p. 179, *ante*.
(*p*) 13 Halsbury's Statutes 675.
(*q*) Now s. 167 of the Act, p. 180, *ante*.
(*r*) 13 Halsbury's Statutes 645.
(*s*) *Ibid.*, 674, 675.
(*t*) *Ibid.*, 818, 819.
(*u*) *Ibid.*, 935.
(*v*) Now s. 278 of the Act, p. 242, *ante*.

Clause 169 (*w*) reproduces Section 124 of the Act of 1875 (*x*), but the language has been to some extent assimilated to that of Clause 172 (*y*) which reproduces Section 62 of the Act of 1925 (*z*) dealing with the removal of persons suffering from tuberculosis. The wide distinction between tuberculosis and other infectious diseases as regards length of treatment makes it necessary to retain the two separate provisions. Following the existing law, the clause differs from the provision relating to tuberculosis patients in not enabling patients to be detained under the removal order.

Clause 170 (*a*).—Section 12 of the Infectious Disease (Prevention) Act, 1890 (*b*), provides that a justice of the peace " acting in and for the district of the local authority " may make an order directing the detention in hospital " at the cost of the local authority " of an infectious patient whose discharge might be dangerous. This apparently enables a justice in any part of the country to make an order directed to a patient and to a hospital in any other part of the country. This jurisdiction would be unsatisfactory, if not impracticable, and the clause accordingly provides that the justice must be one acting in and for the district in which the hospital is situate.

It is not clear under the original section upon what local authority the cost is to fall. If the home of the patient and the hospital are in the same district, no difficulty arises. If, as will often be the case, the patient lives in a county and the hospital is in a neighbouring county borough, the application for detention may be made either by the county or by the county borough authorities. Subsection (1) of the clause places the financial responsibility on the applying authority, but the proviso secures that this is not to affect any contractual arrangements made between the two councils. Thus, if the patient whose home is in the county is, by arrangement, accommodated in a hospital belonging to the county borough, the liability of the county or district council will continue notwithstanding that the application to the justice is made by the county borough council.

Clause 171 (*c*).—Section 1 of the Act of 1921 (*d*), which is reproduced in this clause, contains an elaborate provision designed to secure that arrangements made with the approval of the Minister prior to the commencement of the Act (including in the case of Wales arrangements made with the King Edward VII Welsh National Memorial Association) are to be regarded as adequate arrangements for the purposes of the Act. It further contains a special default power enabling the Minister, if not satisfied that the arrangements in any area are adequate, to make the necessary arrangements himself and recover the expenses from the council.

We are satisfied that in view of the time which has elapsed since the passing of that Act both the special saving and the special default power may now be regarded as unnecessary. Moreover the beneficent work of the King Edward VII Welsh National Memorial Association is so well known that it is superfluous to state that arrangements may be made with it under the Act. The clause has accordingly been drawn in a much shorter and simpler form than the original section.

Clause 172 (*e*) reproduces Section 62 of the Act of 1925 (*f*), with the substitution of the phrase " tuberculosis of the respiratory tract " for " pulmonary tuberculosis ". The former phrase is that used in the Public Health (Prevention of Tuberculosis) Regulations, 1925.

Under subsection (4) of this section, if an order is made for the removal to hospital of a tuberculous patient, the local authority or county council *must* bear the cost of his removal and maintenance. Further, the local authority or council may, and, if required by the court, must, make such contribution towards the maintenance of the patient's dependants as the

---

(*w*) Now s. 169 of the Act p. 181, *ante*.
(*x*) 13 Halsbury's Statutes 675.
(*y*) Now s. 172 of the Act, p. 183, *ante*.
(*z*) 13 Halsbury's Statutes 1142.
(*a*) Now s. 170 of the Act, p. 182, *ante*.
(*b*) 13 Halsbury's Statutes 821.
(*c*) Now s. 171 of the Act, p. 182, *ante*.
(*d*) 13 Halsbury's Statutes 971.
(*e*) Now s. 172 of the Act, p. 183, *ante*.
(*f*) 13 Halsbury's Statutes 1142.

authority or council think fit or as the court may direct. On the other hand, under Clause 184 (*g*) of the Bill a local authority or county council maintaining a tuberculous patient in a hospital or sanatorium have power to recover from him or the persons liable to maintain him, the whole or such part of the costs of maintenance as is reasonable in view of his or their financial resources. Thus Section 62 of the Act of 1925 (*h*) places a patient who is *compelled* to enter a hospital in a much more favourable position than one who enters voluntarily, since in the former case the authority are required to pay the cost of the maintenance of the patient and may be called upon to maintain his relatives, whereas in the latter they have power to recover from him or his relatives the cost of his maintenance. This curious situation no doubt arises from the fact that in framing Section 62 (which was based on local legislation) Parliament was impressed by the consideration that the patient would in the public interest be deprived of his liberty and earning power, and accordingly considered that the public should pay. It seems hardly possible, however, to reproduce in the same Bill provisions the joint effect of which is to put at a plain disadvantage the person who recognises that his proper course is to enter a sanatorium. Accordingly, in order to reduce the inconsistency, Clause 172 is drafted so as to place the cost of removing and maintaining a person who is compelled to enter a sanatorium on the same footing as the contribution towards the maintenance of dependants, that is, to leave the matter to be dealt with by the order of the court or, if the court prefers not to deal with it, to the discretion of the local authority or county council.

Clause 174 (*i*).—Section 3 of the Public Health (Prevention and Treatment of Disease) Act, 1913 (*j*), enables, but does not require local authorities and county councils to make such arrangements as may be sanctioned by the Minister for the treatment of tuberculosis. We understand that since the replacement of the percentage grant by the block grant provided under the Local Government Act, 1929, the Department do not attach importance to the power of sanctioning arrangements, and it has accordingly been omitted. The requirement of Ministerial approval of institutions for the treatment of tuberculosis is retained in Clause 171 (*k*).

Clause 175 (*l*), which reproduces Section 7 of the Act of 1921 (*m*), has been slightly redrafted, as the governing body of the seamen's pension fund, constituted under Section 64 of the National Health Insurance Act, 1924 (*n*), as amended by the National Health Insurance Act, 1928 (*o*), no longer comprises representatives of approved societies. It has therefore been necessary to omit the provision that this governing body are to appoint " from among their own members " representatives of such societies.

Clause 176 (*p*).—For the reason indicated in the note on Clause 174 (*i*) the words " with the consent of the Minister " have been omitted.

Clause 177 (*q*) reproduces Section 133 of the Act of 1875 (*r*). The words " or contract with any person to provide " have been omitted as unnecessary in view of Section 266 of the Local Government Act, 1933 (*s*). Apart from this, the language of the section has been reproduced unaltered, notwithstanding that the section, and in particular the word " temporary," has given rise to some difficulties of interpretation. Any attempt to redraft the section would necessarily involve large problems of medical policy.

Clause 179 (*t*) reproduces Section 67 of the Act of 1925 (*u*), a reference to cinematograph films being added.

(*g*) Now s. 184 of the Act, p. 189, *ante*.
(*h*) 13 Halsbury's Statutes 1142.
(*i*) Now s. 173 of the Act, p. 184, *ante*.
(*j*) 13 Halsbury's Statutes 953.
(*k*) Now s. 171 of the Act, p. 182, *ante*.
(*l*) Now s. 175 of the Act, p. 185, *ante*.
(*m*) 13 Halsbury's Statutes 973.
(*n*) 20 Halsbury's Statutes 528.
(*o*) *Ibid.*, 577 *et seq.*
(*p*) Now s. 176 of the Act, p. 186, *ante*.
(*q*) Now s. 177 of the Act, p. 186, *ante*.
(*r*) 13 Halsbury's Statutes 679.
(*s*) 26 Halsbury's Statutes 447.
(*t*) Now s. 179 of the Act, p. 187, *ante*.
(*u*) 13 Halsbury's Statutes 1145.

Clause 180 (*v*).—Section 59 of the Act of 1929 (*w*) which is reproduced in this clause does not provide for the regulations being laid before Parliament. For the reasons stated in paragraph 15 of the Report we have inserted this requirement.

PART VI.—HOSPITALS, NURSING HOMES, ETC.

Clause 181 (*x*) reproduces Section 131 of the Act of 1875 (*y*), with certain later amendments and extensions of that section. The following points should be noted—

(a) The words " the inhabitants of their district " have been replaced by a reference to persons in the district. The meaning of the word " inhabitant " has given rise to a good deal of doubt, and in our opinion the power to provide hospital accommodation should be granted in terms of the persons who are for the time being within the district, whether inhabitants or not. We believe that in general this will bring the law into conformity with practice, since it is well known that in seaside resorts and other places which at times have a large non-resident population, no distinction is made in this matter between residents and non-residents. We understand that in a few areas, notably those frequented by hop-pickers, some difficulties have arisen, and that to meet these an order has recently been made under Section 130 of the Act of 1875 (*z*) (S. R. & O. 1934, No. 674), the effect of which is to place residents and non-residents on the same footing in the matter of accommodation for infectious disease. The present clause which applies to hospitals of all kinds carries this principle slightly further. It will not affect the further and more important question, which we understand is now under consideration, whether the existing law of settlement should be altered as regards the *duty* of public assistance authorities to give relief by way of institutional treatment.

(b) The words " temporary places for the reception of the sick," which have given rise to a good deal of misunderstanding, have been replaced by a reference to clinics, dispensaries and out-patient departments. We understand that the view was adopted by the Local Government Board, and has since been maintained without challenge, that the powers of Section 131 of the Act of 1875 (*a*) are sufficiently wide to cover not only hospitals in the ordinary sense but also out-patient centres or clinics where persons attend for diagnosis and treatment.

(c) Subsection (3) reproduces Section 64 of the Act of 1925 (*b*), but without the words :—

> " if the local authority are satisfied that by so doing they will maintain or extend or increase the efficiency of hospital accommodation for the sick inhabitants of their district."

It need not be anticipated that a local authority will make a subscription, unless they are satisfied that it is advantageous to do so, and the words have accordingly been omitted as unnecessary.

(d) The latter half of subsection (3) of the clause represents Section 64 (2) of the Act of 1925 (*b*), as amended by Section 75 of the Local Government Act, 1929 (*c*). Orders under the latter section must be laid before Parliament and are subject to annulment by resolution. In considering an identical provision with respect to the expenses of parish councils and parish meetings, the Joint Select Committee on the Local Government Bill of 1933 struck out the provision requiring orders of this type to be laid before Parliament on the ground that the orders were executive rather than legislative in character. Following this principle we have omitted the similar requirement.

(*v*) Now s. 180 of the Act, p. 187, *ante*.
(*w*) 10 Halsbury's Statutes 924.
(*x*) Now s. 181 of the Act, p. 188, *ante*.
(*y*) 13 Halsbury's Statutes 678.
(*z*) *Ibid.*
(*a*) *Ibid.*
(*b*) *Ibid.*, 1143.
(*c*) 10 Halsbury's Statutes 932.

Clause 182 (*d*).—Section 13 of the Local Government Act, 1929 (*e*), provides that "The council of every county or county borough shall, when making provision for hospital accommodation in *discharge of the functions transferred to them under this Part of this Act*, consult such committee or other body as they consider to represent both the governing bodies and the medical and surgical staffs of the voluntary hospitals providing services in or for the benefit of the county or county borough as to the accommodation to be provided and as to the purposes for which it is to be used." The functions transferred to counties and county boroughs under Part I of the Act of 1929 related to poor law, infant life protection and vaccination. Of these functions, hospitals are required for poor law purposes only, but the section was in fact repealed so far as it related to poor law functions, by the Poor Law Act, 1930, and reproduced in that Act. In these circumstances it appears that, strictly speaking, Section 13 could be repealed as spent. Our attention was, however, drawn to the following extract from the Circular on the Act of 1929 issued by the Ministry of Health in April, 1929 :—

> "The provisions of Section 13 of the Act have been designed . . . to secure that by consultation between the local authorities and local bodies representing voluntary hospitals the provision and use of hospital accommodation in every area is not achieved to the accompaniment of any unnecessary and wasteful competition between public and voluntary bodies . . .
>
> "It is the confident hope and expectation of the Minister that as procedure under Section 13 becomes established and regular, it may lead to wider arrangements for the fullest consultation between the local authority and the medical profession, not merely in regard to institutional accommodation and its use, but also in regard to those numerous developments in the health provision of the people which are implicit in the new organisation laid down by the Act."

In view of this expression of opinion, we have thought it right to include in the Bill a provision requiring consultation with hospital authorities whenever a local authority or county council propose to provide hospital accommodation, except where the accommodation is required for the treatment of infectious disease. As voluntary hospitals make little or no provision for infectious diseases, consultation in this case appears to be unnecessary.

Clause 183 (*f*) reproduces Section 65 of the Act of 1925 (*g*), but enlarges it by conferring the power on county councils as well as on local authorities. This is not a substantial extension of the law, since county councils have a general power under Section 72 of the Housing Act, 1925 (*h*), to provide accommodation for any of their employees. It may, however, be convenient in some cases that the accommodation should be provided, not under the Housing Acts, but as part of the expenses of the provision of the hospital.

Clause 184 (*i*).—*See* paragraphs 101–3 of the Report.

Clause 189 (*k*) reproduces Section 3 of the Nursing Homes Registration Act, 1927 (*l*), but omits from subsection (3) the provision with regard to an appeal from a court of summary jurisdiction, since the matter is dealt with in the general Part of the Bill (*see* Clause 293) (*m*).

Clause 194 (*n*) reproduces Section 9 of the Nursing Homes Registration Act, 1927 (*o*), in a somewhat amplified form so as to make it clear that if a county council delegate their powers under the Act to the council of a county district, the powers of the county medical officer of health under the Act are transferred to the medical officer of health of the district.

(*d*) Now s. 182 of the Act, p. 188, *ante*.
(*e*) 10 Halsbury's Statutes 891.
(*f*) Now s. 183 of the Act, p. 189, *ante*.
(*g*) 13 Halsbury's Statutes 1144.
(*h*) *Ibid.*, 1041.
(*i*) Now s. 184 of the Act, p. 189, *ante*.
(*k*) Now s. 189 of the Act, p. 195, *ante*.
(*l*) 11 Halsbury's Statutes 786.
(*m*) Now s. 301 of the Act, p. 258, *ante*.
(*n*) Now s. 194 of the Act, p. 197, *ante*.
(*o*) 11 Halsbury's Statutes 788.

Clause 196 (*p*).—*See* paragraph 104 of the Report.

Clause 197 (*q*).—Under Section 123 of the Act of 1875 (*r*), local authorities are empowered to provide ambulances for persons suffering from infectious disorders, and to pay the expense of conveying such persons to a hospital or other destination. Section 50 of the Act of 1907 (*s*), enables a local authority to provide an ambulance for use in the case of accidents or other sudden or urgent disability, and to allow it to be used by other local authorities or persons on terms to be agreed. Section 13 of the Isolation Hospitals Act, 1893 (*t*), requires an isolation hospital to be provided with an ambulance for conveying patients to the hospital. Section 63 of the Act of 1925 (*u*), enables ambulances provided either under the Act of 1875 or the Act of 1893 to be used for the conveyance of persons discharged from a hospital, and also for the conveyance of sick persons not suffering from infectious disease, and enables reasonable charges to be made for their use for these purposes. This clause replaces these provisions with a power in general terms and extends it to county councils.

Clause 198 (*v*).—Under Section 141 of the Act of 1875 (*w*), a local authority may, and if required by the Minister of Health shall, provide and fit up a mortuary, and may make byelaws with respect to the management, and charges for the use, of the mortuary. They are also empowered to provide for the decent and economical interment of any dead body received in the mortuary.

Under Section 143 (*x*) of the Act of 1875 a local authority may provide a proper place (otherwise than at a workhouse or at a mortuary) for the reception of dead bodies during the time required to conduct a post-mortem examination ordered by a coroner or other duly constituted authority, and may make regulations with respect to the management of such place.

As regards mortuaries, Section 42 of the Burial Act, 1852 (*y*), provides that—"It shall be lawful for any burial board, with the approval of the vestry, and subject to the provisions of this Act and the regulations to be made thereunder, and for the churchwardens and overseers of the poor of any parish . . . for which a burial board shall not have been appointed under this Act, by the direction of the vestry and subject as aforesaid, to hire, take on lease, or otherwise to provide fit and proper places in which bodies may be received and taken care of previously to interment, and to make arrangements for the reception and care of the bodies to be deposited therein." The operation of this section was extended throughout the country by Section 7 of the Burial Act, 1853 (*z*).

In many urban areas, the borough or district council are the burial board, and in rural parishes having a parish council the parish council are the burial board. Moreover, under the Overseers Order, 1927, the powers of the churchwardens and overseers under Section 42 of the Act of 1852 were transferred to the rating authority in urban areas, and to the parish council in rural parishes having a parish council.

It will be seen therefore that mortuaries can be provided—

(a) in boroughs and urban districts, by the borough or district council either (i) under the Public Health Acts, or (ii) as burial board under the Burial Acts, or (iii) as rating authority under the Burial Acts, if there is no burial board for the borough ;

(b) in rural districts, by the district council under the Public Health Acts ;

(c) in rural parishes having a parish council, by the parish council either as burial board or as successors to the overseers under the Burial Acts ;

(*p*) Now s. 196 of the Act, p. 198, *ante*.
(*q*) Now s. 197 of the Act, p. 198, *ante*.
(*r*) 13 Halsbury's Statutes 675.
(*s*) *Ibid.*, 930.
(*t*) *Ibid.*, 865.
(*u*) *Ibid.*, 1143.
(*v*) Now s. 198 of the Act, p. 198, *ante*.
(*w*) 13 Halsbury's Statutes 682.
(*x*) *Ibid.*, 683.
(*y*) 2 Halsbury's Statutes 204.
(*z*) *Ibid.*, 213.

(d) in rural parishes not having a parish council, by the burial board under the Burial Acts.

This clause, so far as it relates to mortuaries, amalgamates the provisions of the Act of 1875 and those of the Burial Act, 1852, by enabling a local authority or a parish council to provide a mortuary, and requiring them to do so, if directed by the Minister of Health. Section 42 of the Burial Act, 1852 (*a*), will remain in force for elected burial boards only.

As regards post-mortem rooms, the clause reproduces Section 143 of the Act of 1875 (*b*), subject to the following alterations :—

(a) a power to provide a post-mortem room is conferred on a parish council ;

(b) the local authority or parish council may be required by the Minister of Health to provide a post-mortem room.

(c) a power to charge for the use of a post-mortem room is conferred ;

(d) a power to make byelaws is substituted for a power to make regulations ;

(e) the words " otherwise than at a workhouse or mortuary " are omitted. The most convenient place for a post-mortem room is at a mortuary, and provided that the room is properly separated from the rest of the mortuary there appears to be no good reason why it should not form part of the same building.

PART VII.—NOTIFICATION OF BIRTHS ; MATERNITY AND CHILD WELFARE AND CHILD LIFE PROTECTION.

Clause 200 (*c*).—*See* paragraph 106 of the Report. The provisions in Section 60 of the Local Government Act, 1929 (*d*), with regard to transfer of property and liabilities, and transfer, superannuation and compensation of officers are not reproduced in the clause as they are covered by general provisions (Clauses 312 and 313) (*e*) in Part XII of the Bill.

Clause 201 (*f*).—*See* paragraph 28 of the Report.

Clause 202 (*g*).—*See* paragraph 108 of the Report.

Clause 203 (*h*).—Under Section 1 (2) of the Notification of Births (Extension) Act, 1915 (*i*), a district medical officer of health is required to send duplicates of notices to the county medical officer of health only in cases where the Notification of Births Act, 1907, came into force by virtue of the Act of 1915. Thus, medical officers of health of county districts which had voluntarily adopted the earlier Act were exempted from this duty. We understand that there are about 60 cases to which this exemption applies. Whatever the ground for inserting this exemption may have been in 1915, we are clear that at the present day it would be unfortunate to maintain an arbitrary distinction between authorities which adopted the earlier Act voluntarily, and those which did not, and accordingly subsection (6) of the clause which re-enacts Section 1 (2) of the Act of 1915 (*i*) omits the limiting words and imposes the duty on the medical officer of health of every county district.

Clause 204 (*j*).—The combination of Section 2 (1) of the Notification of Births (Extension) Act, 1915 (*k*), and Section 1 of the Maternity and Child Welfare Act, 1918 (*l*), presents some difficulty. Under the earlier section a local authority is empowered, for the purpose of the care of expectant

(*a*) 2 Halsbury's Statutes 404.
(*b*) 13 Halsbury's Statutes 683.
(*c*) Now s. 200 of the Act, p. 200, *ante*.
(*d*) 10 Halsbury's Statutes 924.
(*e*) Now ss. 326, 327 of the Act, pp. 270–272, *ante*.
(*f*) Now s. 201 of the Act, p. 201, *ante*.
(*g*) Now s. 202 of the Act, p. 202, *ante*.
(*h*) Now s. 203 of the Act, p. 202, *ante*.
(*i*) 15 Halsbury's Statutes 767.
(*j*) Now s. 204 of the Act, p. 203, *ante*.
(*k*) 15 Halsbury's Statutes 767.
(*l*) 11 Halsbury's Statutes 742.

mothers, nursing mothers and young children, to exercise any powers which a sanitary authority has under the Public Health Acts, 1875 to 1907. Under the later section a local authority is empowered to make such arrangements as may be sanctioned by the Minister for attending to the health of expectant mothers and nursing mothers, and children who have not attained the age of five years and are not being educated in schools recognised by the Board of Education. The earlier section uses the word " care ", which appears to be wider than " health " in the later section, but limits the power by reference to the powers of the Public Health Acts. Further, the earlier section, unlike the later, does not require any sanction or approval on the part of the Minister.

We understand that Section 2 (1) (*ll*) was inserted in the Act of 1915 mainly to enable local authorities to exercise the powers of the Public Health Acts for providing *premises* for maternity work, and for that purpose acquiring land, borrowing money, etc. The Act of 1918 which confers a general power to make such arrangements as may be sanctioned by the Minister is probably wide enough for these purposes, and accordingly if it were not for the use of the word " care " the section might safely be repealed without reproduction. We understand, however, that a good deal of importance has been attached to the distinction between this word and the word " health ", and that for that reason the mere repeal of the section might give rise to difficulties.

It has also been brought to our notice that since the abolition of the percentage grants for maternity and child welfare work and their replacement by the block grant provided under the Local Government Act, 1929, the policy of the Ministry has been to relax the minute control of maternity and child welfare arrangements which had previously been in operation. To meet these points we have redrafted the provisions by omitting Section 2 (1) of the Act of 1915 (*ll*) as a separate power and slightly altering the language of the Act of 1918 so as to empower a local authority or county council, subject to the *general* approval of the Minister, to make such arrangements as they think fit for the care of expectant and nursing mothers and of the children referred to in that Act.

Section 59 of the Act of 1929 (*m*) which is reproduced in this clause does not provide for the regulations being laid before Parliament. For the reasons stated in paragraph 15 of the Report we have inserted this requirement.

Clause 205 (*n*) reproduces Section 61 of the Factory and Workshop Act, 1901 (*o*). The central administration of this provision was transferred to the Ministry of Health from the Home Office by an Order in Council (S. R. & O. 958, 1921) made under the Ministry of Health Act, 1919, and its subject matter makes it more appropriate for public health than for factory legislation. (*See also* Clause 153 (*p*) in Part V.)

In incorporating the provision in the Bill the opportunity has been taken to substitute a maximum for a minimum penalty in respect of a second offence, while the distinction between offences committed during the day and during the night has been abandoned.

Clause 206 (*q*) reproduces Section 1 of the Children Act, 1908 (*r*), and Section 65 of the Children and Young Persons Act, 1932 (*s*).

The preceding clauses in this Part dealing with maternity and child welfare relate to mothers and to children under five. This and the following clauses reproduce provisions of the Children Acts, 1908 and 1932, which are in terms of *infant* life protection though they apply to persons under the age of nine. In reproducing them in the Bill " child " has been substituted for " infant ".

(*ll*) Now s. 204 of the Act, p. 203, *ante*.
(*m*) 10 Halsbury's Statutes 924.
(*n*) Now s. 205 of the Act, p. 204, *ante*.
(*o*) 8 Halsbury's Statutes 551.
(*p*) Now s. 153 of the Act, p. 174, *ante*.
(*q*) Now s. 206 of the Act, p. 204, *ante*.
(*r*) 9 Halsbury's Statutes 795.
(*s*) 25 Halsbury's Statutes 252.

The provision that it shall be a good defence against a charge of failure to give the required notice to prove that the child was received upon an emergency and that notice was given within *twelve* hours thereafter has been amended so as to allow of such emergency notices being given within *twenty-four* hours.

Our attention was called to the fact that occasionally children to whom this Part of the Bill applies are lodged in one house by day and in another by night, and that doubts have been expressed whether under the present law the notice must state the address of both premises. Subsection (2) of the clause introduces words to make this point clear.

Clause 209 (*t*).—Section 2 (3) of the Children Act, 1908 (*u*), which empowers welfare authorities to combine, has been omitted as being unnecessary in view of the general powers conferred by Section 91 of the Local Government Act, 1933 (*v*), and by Clause 270 of the Bill (*w*).

Clause 215 (*x*).—The section reproduced in this clause makes it an offence to advertise that a person will undertake the nursing and maintenance of a child *under* 9 *years of age* without publishing the advertiser's name and residence. It has been brought to our notice that the section can be and sometimes is evaded by the publication of advertisements which indicate plainly enough that the advertiser keeps a home of the kind at which the section is aimed but do not in terms mention the age of the children. We have accordingly omitted the italicised words. The effect will be slightly to widen the section, but the requirement that the advertiser shall publish his name and address is not an onerous one, even in the case of a home intended to receive older children.

Clause 216 (*y*).—The provision in Section 8 of the Act of 1908 (*z*) specifying the manner in which notice is to be given to a welfare authority is omitted in view of the general provision with regard to notices to local authorities in Section 286 of the Local Government Act, 1933 (*a*). In the case of notice to a coroner the obligation to send notice by *registered* letter has been replaced in the general Clause 279 (*b*) by an obligation to send it by *prepaid* letter. This accords with the procedure of Section 286.

Clause 217 (*c*).—Section 98 (1) of the Children and Young Persons Act, 1933 (*d*), enables proceedings to be taken for offences under that Act or under Part I of the Children Act, 1908, either by the welfare authority or the poor law authority. Part I of the Act of 1908 is reproduced in this Part of the Bill, and accordingly the subsection so far as it relates to Part I should, on a true consolidation, be reproduced here. It seems, however, that offences under Part I of the Act of 1908 are of a kind that cannot conveniently be dealt with by any authority other than the welfare authority, and for this reason the reference to Part I in Section 98 (1) is repealed by the Bill without re-enactment.

Section 9 of the Children Act, 1908 (*e*), provides that a person guilty of an offence under the provisions reproduced in the Bill shall be liable to imprisonment for a term not exceeding six months *or* to a fine not exceeding twenty-five pounds. The clause, following the usual modern practice, provides, as maximum penalty, that a person guilty of an offence shall be liable both to imprisonment *and* to a fine.

The clause omits the requirement that fines shall be paid to the welfare authority. On this point see paragraph 122 of the Report.

Clause 218 (*f*).—This clause is new. It seems reasonable that the welfare authority should be empowered to defray the expenses of maintenance of child removed to a place of safety.

(*t*) Now s. 209 of the Act, p. 206, *ante*.
(*u*) 9 Halsbury's Statutes 796.
(*v*) 26 Halsbury's Statutes 355.
(*w*) Now s. 272 of the Act, p. 240, *ante*.
(*x*) Now s. 215 of the Act, p. 209, *ante*.
(*y*) Now s. 216 of the Act, p. 209, *ante*.
(*z*) 9 Halsbury's Statutes 798.
(*a*) 26 Halsbury's Statutes 457.
(*b*) Now s. 285 of the Act, p. 248, *ante*.
(*c*) Now s. 217 of the Act, p. 209, *ante*.
(*d*) 26 Halsbury's Statutes 234.
(*e*) 9 Halsbury's Statutes 799.
(*f*) Now s. 218 of the Act, p. 209, *ante*.

Clause 219 (*g*).—Paragraph (c) excepts from the provisions of this Part voluntary homes under the Children and Young Persons Act, 1933, provided that they are supported wholly *or mainly* by voluntary contributions. Under the Children and Young Persons Act, 1932, the exception extends to a voluntary home supported wholly *or partly* by voluntary contributions. This was an amendment of the earlier law which provided for exception only of institutions "conducted in good faith for religious or charitable purposes." We understand that since the passing of the Children and Young Persons Act, 1932, instances have come to light where homes which are in fact conducted on a commercial basis have been able to register themselves as voluntary homes, and thus escape control, by proving that they have received a trifling number of voluntary contributions. The substitution of the words "or mainly" for the words of the Act of 1932 is designed to prevent this evasion.

Clause 220 (*h*).—The provisions in the Bill relating to child life protection have been amended by bringing within the definition of "relative" persons who are relatives by adoption under the Adoption of Children Act, 1926.

PART VIII.—BATHS, WASHHOUSES AND BATHING PLACES.

Clause 221 (*i*).—Under Section 24 of the Baths and Washhouses Act, 1846 (*k*), the baths authority were empowered to purchase or lease land *in* the area of the authority, and under Section 27 of the same Act (*l*) trustees were empowered to sell or lease to a baths authority baths *in* the area of the authority. The Act of 1882 extended these powers by inserting the words "or in the immediate neighbourhood of". For the reasons indicated in the note on Clause 271 references to the area of the authority have been omitted.

The words "either open or covered" have been inserted in paragraph (b) of the clause in order to make it clear that open-air baths can be provided whether as forming part of a recreation ground or not; see paragraph 111 of the Report.

Clause 222 (*m*) reproduces Section 85 of the Public Health Act, 1925 (*n*), but adopting the more modern and less expensive procedure replaces an obligation to publish the proposed scale of charges in a local newspaper by an obligation to deposit it and advertise the place where it may be inspected.

Clause 223 (*o*) reproduces the existing byelaw-making powers for the regulation of baths and washhouses, but slightly extends them by enabling byelaws to be made providing for the exclusion from baths of undesirable persons. This power is common in local Acts and is advisable on grounds of public health.

Clause 225 (*p*) represents provisions common in local Acts enabling the local authority to close baths temporarily for the use of clubs and schools and for regattas and the like, and to make charges for admission to, or for the use of, the baths at these times.

The local Act clauses frequently limit the periods during which the bath may be closed to the public, e.g. for not more than three hours in the day. The number of baths belonging to different authorities, and other circumstances, differ so widely that it would be unnecessarily hampering to insert any such limit in a general Act.

Clause 226 (*q*) reproduces Section 2 of the Baths and Washhouses Act, 1899 (*r*), and Section 87 of the Public Health Act, 1925 (*s*). Section 3 of

(*g*) Now s. 219 of the Act, p. 210, *ante*.
(*h*) Now s. 220 of the Act, p. 211, *ante*.
(*i*) Now s. 221 of the Act, p. 212, *ante*.
(*k*) 13 Halsbury's Statutes 526.
(*l*) *Ibid.*, 527.
(*m*) Now s. 222 of the Act, p. 212, *ante*.
(*n*) 13 Halsbury's Statutes 1153.
(*o*) Now s. 223 of the Act, p. 213, *ante*.
(*p*) Now s. 225 of the Act, p. 213, *ante*.
(*q*) Now s. 226 of the Act, p. 213, *ante*.
(*r*) 13 Halsbury's Statutes 880.
(*s*) *Ibid.*, 1154.

the former Act, which provides that in places in which the Disorderly Houses Act, 1751, is in force a licence for music or dancing under that Act may be granted to the baths authority, is repealed without re-enactment. The Act of 1751 applied only to the Cities of London and Westminster, and to places within 20 miles thereof. The combined effect of the Music and Dancing Licences (Middlesex) Act, 1894 (*t*), Part VI of the Surrey County Council Act, 1925 (*u*), and the Home Counties (Music and Dancing) Licensing Act, 1926 (*v*), appears to be to repeal the licensing provisions of the Act of 1751 except in so far as they relate to London itself.

In providing that swimming baths may be closed during the winter and when so closed may be used for entertainments, Section 87 of the Act of 1925 (*w*) restricts the type of entertainments which may be provided by a local authority, *inter alia*, to cinematograph films illustrative of *questions relating to health or disease*. In reproducing this provision the phrase *functions of the local authority* has been substituted.

Clause 227 (*x*).—*See* paragraph 19 of the Report.

Clause 229 (*y*) reproduces Section 28 of the Baths and Washhouses Act, 1846 (*z*), but with the addition of a reference to electricity undertakers.

Clause 230 (*zz*).—*See* paragraph 111 of the Report.

Clause 231 (*a*) reproduces provisions of the Towns Police Clauses Act, 1847 (which are incorporated in the public health law by Section 171 of the Act of 1875, as extended by Section 92 of the Act of 1907) (*b*). In paragraphs (b) and (c) of the clause references to bathing huts and tents have been added.

PART IX.—COMMON LODGING-HOUSES.

Clause 234 (*c*).—*See* paragraphs 114–7 of the Report.

Clause 235 (*d*).—Proviso (a) of this clause is new. By continuing for three months after the commencement of the Bill the registration of any person registered at that date it will allow a necessary interval for registration to be effected under the provisions of Clause 236.

Clause 237 (*e*).—Subsections (1) and (2) of this clause combine Section 78 of the Act of 1875 (*f*) and Section 69 of the Act of 1907 (*g*) together with local Act extensions of these sections. Under the earlier Act a house must before registration be inspected and approved, and the local authority may refuse registration, if the applicant does not produce a certificate of character signed by three persons having a specified property qualification. Registration, if effected, continues indefinitely during the life of the lodging-house keeper, but if he is convicted of a third offence, the court may decide that he is not to keep a common lodging-house within five years without the licence of the local authority.

Under Section 69 of the later Act the local authority may at their discretion refuse to register a person as a common lodging-house keeper, unless satisfied of his character and his fitness for the position. The registration remains in force for a period, not exceeding one year, to be fixed by the authority, but may be renewed. The latter provision, however, only applies to persons newly registered " after the commencement of this section," i.e. after the date when the section is put in force in the district. Under Section 72 (*h*) of the same Act on a third conviction the court may cancel the registration.

(*t*) 19 Halsbury's Statutes 349.
(*u*) Not printed in Halsbury's Statutes.
(*v*) 19 Halsbury's Statutes 363.
(*w*) 13 Halsbury's Statutes 1154.
(*x*) Now s. 227 of the Act, p. 215, *ante*.
(*y*) Now s. 229 of the Act, p. 215, *ante*.
(*z*) 13 Halsbury's Statutes 528.
(*zz*) Now s. 230 of the Act, p. 215, *ante*.
(*a*) Now s. 231 of the Act, p. 216, *ante*.
(*b*) 13 Halsbury's Statutes 946.
(*c*) Now s. 235 of the Act, p. 218, *ante*.
(*d*) Now s. 236 of the Act, p. 218, *ante*.
(*e*) Now s. 238 of the Act, p. 219, *ante*.
(*f*) 13 Halsbury's Statutes 657.
(*g*) *Ibid.*, 936.
(*h*) *Ibid.*, 937.

While Section 69 of the Act of 1907 (*i*) placed the registration of keepers on an annual basis, it made no change in the registration of the houses ; and under the Act of 1875 these, when once registered, continue on the register without renewal, save that the local authority may suspend registration until a proper supply of water is provided. In local Acts, however, it is commonly provided that the registration of a house shall be for a period not exceeding a year. The clause combines the sections of the Acts of 1875 and 1907 with these local Act precedents. It also assimilates the language to that of Clauses 187 to 195 of the Bill which reproduce the Nursing Homes Registration Act, 1927, a more modern code, by providing for the registration of a specified person in respect of a specified common lodging-house and enacting that this single registration of both keeper and house shall be for a period not exceeding a year. It also provides for the registration of any deputy keeper.

Local Acts usually make it a condition of registration that the house shall be suitably equipped. Sections 81 of the Act of 1875 (*k*) and 74 of the Act of 1907 (*l*) contain detailed provisions with regard to the supply of water and to sanitary conveniences. These latter provisions can without loss be shortened and simplified, and they are replaced by proviso (b) (ii) to subsection (1) of the clause. A reference to means of escape in case of fire has been added and for this reason common lodging-houses have not been included in Clause 59 of the Bill.

Subsection (3) which requires the local authority to state the grounds of their refusal to register, if called upon to do so, follows local Act precedents and also corresponds with the Nursing Homes code.

Clause 238 (*m*).—No right of appeal against a refusal to grant or renew registration is expressly conferred by the sections in the Acts of 1875 and 1907 dealing with this subject, but as regards the latter Act it would appear that the case falls under Section 7 (1) (b), and that an appeal lies to a court of quarter sessions. The clause, following the precedent of Section 3 (3) of the Nursing Homes Registration Act, 1927 (*n*) (Clause 189 of the Bill (*o*)) provides for an appeal to a court of summary jurisdiction. The further right of appeal to quarter sessions conferred by that subsection is omitted from the present clause and dealt with generally in Clause 293 (*p*) of the Bill.

Clause 239 (*q*).—Under Section 80 of the Act of 1875 (*r*) there is an absolute obligation on every local authority to make byelaws relating to common lodging-houses. There are many districts in which no such houses exist, and the clause following the principle adopted in other parts of the draft Bill, imposes an obligation only if the Minister so requires.

Paragraph (b) takes the place of Section 82 of the Act of 1875 (*s*). Details as to lime washing can be more conveniently dealt with by byelaw than in the statute itself.

Clause 246 (*t*).—The power to cancel the registration of the keeper of a common lodging-house is taken from Section 72 of the Act of 1907 (*u*). A provision has been added enabling the court to disqualify the keeper for such period as it thinks fit for further registration. In the absence of this provision it would be possible for the local authority under Clause 237 (*v*) to register again a person whose previous registration had immediately before been cancelled.

(*i*) 13 Halsbury's Statutes 936.
(*k*) *Ibid.*, 660.
(*l*) *Ibid.*, 937.
(*m*) Now s. 239 of the Act, p. 220, *ante*.
(*n*) 11 Halsbury's Statutes 786.
(*o*) Now s. 189 of the Act, p. 195, *ante*.
(*p*) Now s. 301 of the Act, p. 258, *ante*.
(*q*) Now s. 240 of the Act, p. 220, *ante*.
(*r*) 13 Halsbury's Statutes 658.
(*s*) *Ibid.*
(*t*) Now s. 247 of the Act, p. 223, *ante*.
(*u*) 13 Halsbury's Statutes 937.
(*v*) Now s. 238 of the Act, p. 219, *ante*.

PART X.—CANAL BOATS.

Clause 250 (*w*).—Section 9 of the Act of 1877 (*x*) provides that *before coming into operation* regulations must be laid before Parliament for 40 days. In so far as this requirement is aimed at giving the public reasonable notice of the regulations before they take effect it has virtually been superseded by Section 1 of the Rules Publication Act, 1893 (*y*), which provides that in the case of regulations which are required to be laid before Parliament, 40 days' notice must be given of the Department's intention to make the regulations, and the draft regulations must be made available to the public during that period. The clause is accordingly limited to the requirement that the regulations shall be laid before Parliament.

Section 9 further requires the Local Government Board to take steps for enabling persons interested in the Regulations under the Act to obtain copies at such places in the neighbourhood of canals as the Board prescribe on payment of a prescribed sum not exceeding 6d. In view of the fact that all regulations of general application are now required to be put on sale this provision has been omitted as unnecessary.

Clause 251 (*z*).—Subsection (3) reproduces the provision in Section 3 of the Act of 1877 (*a*) that the master of the boat is to have the custody of one of the certificates of registration, but elaborates it by providing that if he ceases to be master, or if the boat ceases to be registered, he must hand over the certificate to the owner. This was no doubt the intention of the Act of 1877, which refers in Section 10 (*b*) to the case of the master of a boat illegally detaining a certificate.

Subsection (5) of the clause, which confers a right of appeal to a court of summary jurisdiction, is new, but follows the precedent of the provisions relating to common lodging-houses : *see* the note on Clause 238.

Clause 254 (*c*).—In addition to the provisions reproduced in this clause, Section 4 of the Canal Boats Act, 1884 (*d*), requires the Local Government Board to present an annual report to Parliament as to the execution of the Canal Boats Acts and also to cause enquiries to be made by inspectors appointed for the purpose. We understand that for a number of years the Ministry of Health have included this report in the annual report of the Department, though it would appear that as the latter is a Command Paper this procedure does not fulfil the literal requirements of the section. However that may be, it seems clearly convenient that the report dealing with canal boats should form part of the more general document, and we are satisfied that the requirements of the Act of 1884 with regard to a special report and special investigation are no longer necessary.

Clause 257 (*e*).—By Section 14 of the Act of 1877 (*f*) " canal boat " was defined as meaning any vessel used for the conveyance of goods along a canal except ships registered under the Merchant Shipping Acts. Section 10 of the Act of 1884 (*g*) enabled the Local Government Board to make orders applying the Acts to classes of vessels which would, if not registered under the Merchant Shipping Acts, have been within the scope of the Canal Boats Acts. In 1922 owing to the increasing practice of registering under the Merchant Shipping Acts vessels which were in fact plying on canals, the Minister of Health made an order under the last-mentioned section (Canal Boats Order, 1922 ; S. R. & O. 1923, No. 451) bringing within the scope of the Acts all vessels registered under the Merchant Shipping Acts which would otherwise have fallen within the definition of canal boats except seagoing ships and Thames sailing barges.

(*w*) Now s. 251 of the Act, p. 225, *ante*.
(*y*) 18 Halsbury's Statutes 1016.
(*a*) 13 Halsbury's Statutes 789.
(*c*) Now s. 255 of the Act, p. 227, *ante*.
(*e*) Now s. 258 of the Act, p. 228, *ante*.
(*g*) *Ibid.*, 804.
(*x*) 13 Halsbury's Statutes 791.
(*z*) Now s. 252 of the Act, p. 226, *ante*.
(*b*) *Ibid.*, 791.
(*d*) 13 Halsbury's Statutes 803.
(*f*) 13 Halsbury's Statutes 792.

The present definition gives effect to this Order but, in order to make it abundantly clear that the code is only intended to apply to commercial vessels, adds to the excluded classes vessels used for pleasure purposes only.

In the circumstances it has been thought unnecessary to re-enact Section 10 of the Act of 1884.

PART XI.—MISCELLANEOUS.

Clause 258 (*h*).—Paragraph (a) of this clause reproduces paragraph 2 of Section 91 of the Act of 1875 (*i*), but without the reference to privy, urinal, cesspool, drain, or ashpit. If any of these are so foul or in such a state as to be prejudicial to health or a nuisance, action can and should be taken under Clause 38 or 44 or (so far as ashpits are concerned) under Clause 91 (1) (a) or (c).

Clause 259 (*k*) reproduces part of Section 8 of the Local Government Act, 1894 (*l*), a provision conferring powers on parish councils. It is complementary to other powers possessed by local authorities to prevent conditions arising in connection with watercourses which may be prejudicial to health, and it has therefore been extended so as to apply to local authorities as well as to parish councils.

Clause 261 (*m*) reproduces Section 51 of the Act of 1925 (*n*). Under Section 7 of the Act of 1907 (*o*) (as applied by the Act of 1925) there is an appeal against any requirement made under this provision to quarter sessions. In accordance with the general principle adopted in the Bill this appellate jurisdiction has been given in the first instance to a court of summary jurisdiction, with a further right of appeal to quarter sessions. The clause does not apply Clause 283 (*p*) of the Bill, as the procedure under that clause of the local authority executing the works in default and recovering the expense from the owner would be inappropriate. If the owner omits to do the required works, the only necessary sanction is that building operations begun in the absence of the works will expose him to a penalty.

Clause 263 (*q*) reproduces Section 53 of the Act of 1925 (*r*) but provides for an appeal against the notice in accordance with the general appeal machinery of the Bill. *See* paragraphs 61 to 63 of the Report.

Clause 265 (*s*).—*See* paragraphs 123–4 of the Report.

Clause 266 (*t*) replaces Section 110 of the Act of 1875 (*u*) and the whole of the Public Health (Ships, etc.) Act, 1885 (*v*), which extends a number of sections of the Act of 1875 to ships. The provisions of subsection (3) of the clause, applying certain clauses of Part II of the Bill to ships, are taken from Section 50 of the Act of 1925 (*w*).

Under Section 2 of the Infectious Disease (Notification) Act, 1889 (*x*), a port health authority could adopt the Act. When the Act was made of general application by the amending Act of 1899, a port health authority became one of the authorities for administering the Acts. Thus a port health authority derives its functions in the matter of notification of infectious disease direct from the Acts of 1889 and 1899 and not from the order by which it is constituted. The position in this respect is the same in London.

The provisions of the Acts of 1889 and 1899 are now replaced by Clauses 144–7 of Part V of the Bill, and it has been thought convenient to treat them in the same way as other public health functions and to enable them

(*h*) Now s. 259 of the Act, p. 229, *ante*.
(*k*) Now s. 260 of the Act, p. 230, *ante*.
(*m*) Now s. 262 of the Act, p. 230, *ante*.
(*o*) *Ibid.*, 913.
(*q*) Now s. 264 of the Act, p. 232, *ante*.
(*s*) Now s. 266 of the Act, p. 233, *ante*.
(*u*) 13 Halsbury's Statutes 669.
(*w*) *Ibid.*, 1137.
(*i*) 13 Halsbury's Statutes 661.
(*l*) 10 Halsbury's Statutes 780.
(*n*) 13 Halsbury's Statutes 1137.
(*p*) Now s. 290 of the Act, p. 252, *ante*.
(*r*) 13 Halsbury's Statutes 1137.
(*t*) Now s. 267 of the Act, p. 233, *ante*.
(*v*) *Ibid.*, 806.
(*x*) *Ibid.*, 812.

to be assigned to a port health authority by order. It is, however, to be noted that the Acts have been largely superseded, so far as port health authorities are concerned, by the Port Sanitary Regulations, 1933, made under Section 130 of the Act of 1875.

Clause 267 (*y*) reproduces a number of enactments relating to tents, vans, sheds and similar structures used for human habitation.

Subsection (3) of the clause is new and has been inserted to meet a practical difficulty arising from the doubt whether proceedings in respect of a nuisance arising from the use of a tent or van could successfully be instituted against the occupier of the land on which the tent or van is placed. The subsection provides in effect that where a nuisance is caused by the occupier of a tent, van, etc., proceedings may be instituted against the occupier of the land on which the tent or van is pitched or standing, but that it is to be a defence that the tent or van was upon his land without his authority. The subsection does not exempt the tent or van dweller himself from his liability, but it is well known that the enforcement of the provisions reproduced in the clause is difficult, if not impossible, in the case of persons who are constantly moving from place to place. The letting of land as pitches for tents, caravans, etc., by farmers and others has now become a well-established practice, and it seems not unreasonable that the persons who profit by the letting should be held responsible for the conditions thereby created. At the same time, the subsection imposes no liability on a farmer merely because people camp without permission from him on land such as roadside margins of which he may legally be the occupier.

We have had under prolonged consideration the question of further powers to control camping. There are two distinct problems: first, that of encampments of a semi-permanent kind, generally on the outskirts of a town, in which persons live for long periods of time and often create slum conditions; and second, that of the holiday maker, whether a motorist, caravan-user, or walker, who camps for short periods, generally in rural areas. As regards the latter problem we understand that negotiations are being carried on with a view to agreement on a Bill designed to give local authorities some measure of control without unnecessary interference; but until substantial agreement between the interests concerned is reached, the matter appears to us to be too controversial for the present Bill.

As regards the semi-permanent encampments, the case is somewhat different. There are a substantial number of provisions in local Acts * which prohibit the use in the district without the consent of the authority of a tent or van for human habitation for a period exceeding three months (or in the more recent provisions, six weeks) and require the approval of the authority for any letting of land for the purpose, unless the land is provided to the satisfaction of the authority with sufficient roads, sewers, water and sanitary accommodation. A right of appeal to a court of summary jurisdiction against a refusal of the local authority to approve an application is conferred.

The clause contains, as a rule, a number of exemptions in favour of shepherds, roundabout proprietors, travelling showmen, certain associations, etc.; some at any rate of these savings would appear to be unnecessary and probably were introduced as being harmless and likely to disarm criticism.

As an urban power, which could be applied by the Minister to a contributory place in a rural district under Clause 13 of the Bill, we should favour the inclusion in the general law of a provision on these lines. The local Act clause, however, in its present form, presents a number of difficulties, not the least being the fact that it is necessary in most cases for the prosecution to prove in advance an *intention* to use the tent or van for human

* e.g. Bury Corporation Act, 1932, Section 143 and Easington Rural District Council Act, 1935, Section 63.

(*y*) Now s. 268 of the Act, p. 234, *ante*.

habitation for a specified period. If a more practicable form of clause can be devised before the introduction of the Bill, we should welcome its inclusion.

Clause 268 (*z*) reproduces Section 314 of the Act of 1875 (*a*) and Section 2 of the Public Health (Fruit Pickers Lodgings) Act, 1882 (*b*), and is extended in view of developments in recent years to cover persons temporarily engaged in the picking or lifting of flowers, bulbs and roots.

PART XII.—GENERAL.

Clause 269 (*c*).—The enactments reproduced in the Bill contain a great diversity of language as regards providing and maintaining hospitals, ambulances, baths, and the like. In some cases an express power to "maintain" and to "equip" or provide "apparatus" is conferred; in others not. Again, sometimes, as in Section 131 of the Act of 1875 (*d*) dealing with hospitals, provision is made for contracting for the use of the subject matter of the section. Throughout the Bill a simple power to "provide" has been inserted in reliance upon the present clause. In view of Sections 105, 106 and 107 of the Local Government Act, 1933 (*e*), there is no need to empower a local authority to appoint the officers required to secure the discharge of the authority's functions. An express power to "maintain" is unnecessary and, if inserted, would cast doubt on similar provisions in other statutes. A general power for a local authority to enter into contracts necessary for the discharge of any of their functions is contained in Section 266 (1) of the Local Government Act, 1933 (*f*).

Clause 270 (*g*) replaces the part of Section 285 of the Act of 1875 (*h*) which deals with combinations of local authorities. The clause is however drafted in somewhat wider language, since the section is limited to combinations "for the purpose of executing and maintaining any works." There may well be purposes under the Bill which involve no works but in which a combination may be of value. The clause is inserted by way of supplementing the general power conferred on local authorities by Section 91 of the Local Government Act, 1933, to appoint joint committees, for the reason that some functions can be successfully discharged in combination without the necessity for establishing a joint committee.

Clause 271 (*i*).—This clause, which takes the place of part of Section 285 of the Act of 1875 (*h*), has called for a good deal of consideration. That section provides that a local authority may, *with the consent of the local authority of any adjoining district*, execute and do in such adjoining district all or any of such works and things as they may execute and do within their own district, and on such terms as to payment or otherwise as may be agreed on between them and the local authority of the adjoining district. At first sight the section appears to prevent a local authority executing any works outside their own area except with the consent of the council of the area in which the works are executed. The well-known decision of the Court of Appeal in *Withington Local Board of Health* v. *Manchester Corporation*, [1893] 2 Ch. 19 (*k*), established, however, that this was not the case, and that an authority may erect a hospital outside their district without consent. The reasons for this decision are elaborately set out in the judgments and need not be here repeated, but we may point out that the reference to "such terms as to payment or otherwise as may be agreed" between the authorities suggests strongly that Parliament had in mind

(*z*) Now s. 270 of the Act, p. 238, *ante*.
(*a*) 13 Halsbury's Statutes 757.
(*b*) *Ibid.*, 797.
(*c*) Now s. 271 of the Act, p. 239, *ante*.
(*d*) 13 Halsbury's Statutes 678.
(*e*) 26 Halsbury's Statutes 361, 362.
(*f*) *Ibid.*, 447.
(*g*) Now s. 272 of the Act, p. 240, *ante*.
(*h*) 13 Halsbury's Statutes 744.
(*i*) Now s. 274 of the Act, p. 240, *ante*.
(*k*) 38 Digest 199, *346*; see also *A.G.* v. *Manchester Corporation*, [1893] 2 Ch. 87; 38 Digest 198, *339*.

some form of joint action by authorities and was not intending to enable one authority to levy something in the nature of a blackmail upon another. This view of the section is confirmed by the later words of the section which proceeds: "Moreover, two or more local authorities may combine together for the purpose of executing and maintaining any works that may be for the benefit of their respective districts or any part thereof." These words, and in particular the word "moreover" which links the two limbs of the section, make it in our view reasonably clear that the section was intended to provide for *joint* action in one of two ways—either by authority A carrying out an undertaking in the area of authority B and allowing B on terms to make use of it, or by the two authorities acting in combination. The final sentence of the section "All moneys which any local authority may agree to contribute for defraying expenses incurred under this section," etc., applies not only to authorities in combination but to contributions made by one authority to the other under the first limb of the section, and provides yet a further indication that the section as a whole deals with combined action.

The Act of 1875 expressly provides for sewerage works and works of water supply being executed outside the area of the authority subject to certain requirements as to notice, and in view of the decision in the Withington case and of the explanation of Section 285 suggested above, we believe that the existing law will be faithfully reproduced by the present clause, which provides that, subject to the special requirements of the Bill with regard to sewerage works and waterworks, an authority may execute any works outside their area which they are entitled to execute inside. Of the various purposes dealt with in the present Bill, those which commonly call for works outside the authority's area are water supplies, sewers and sewage disposal works, and hospitals. Other possible examples are baths, ambulance stations, maternity and child welfare centres, and mortuaries.

Clause 272 (*l*) takes the place of Section 38 (5) of the Act of 1925 (*m*), which enables a local authority to act on behalf of the owner in making communications between sewers and drains. The clause extends the provision to cover water pipes.

Further it enables similar arrangements to be made for the execution of any works which an owner or occupier is required under the Bill to execute.

Clause 273 (*n*) is a generalisation of three provisions—

(1) Section 78 of the Towns Improvement Clauses Act, 1847 (*o*), which deals with the materials of houses pulled down under the powers of the Act;

(2) Section 49 of the Act of 1875 (*p*), which deals with the sale of manure; and

(3) Section 101 of the same Act (*q*), which deals with the sale of any matter or thing moved in the course of abating a nuisance.

In all three sections the obligation to repay to the owner any surplus is qualified by the words "on demand". The clause omits these words as there seems no reason why repayment should not be made whether the owner demands it or not (cf. Section 2 (4) of the Housing Act, 1930 (*r*)).

Clause 274 (*s*) replaces, in a widened form, the third paragraph of Section 306 of the Act of 1875 (*t*), and follows the lines of Section 42 of the Housing Act, 1930 (*u*). As a matter of administration it is essential that local authorities should be in a position to know who is the owner (as defined in Clause 332 of the Bill) of premises within their area. Further, since a charge representing the expenses incurred by a local authority acting in

(*l*) Now s. 275 of the Act, p. 241, *ante*.
(*m*) 13 Halsbury's Statutes 1132.
(*n*) Now s. 276 of the Act, p. 241, *ante*.
(*o*) 13 Halsbury's Statutes 556.
(*p*) *Ibid.*, 646.
(*q*) *Ibid.*, 665.
(*r*) 23 Halsbury's Statutes 399.
(*s*) Now s. 277 of the Act, p. 242, *ante*.
(*t*) 13 Halsbury's Statutes 754.
(*u*) 23 Halsbury's Statutes 427.

default of the owner ranks in priority to all mortgages, it is a practical convenience to mortgagees if authorities are made aware of the existence of mortgages. Negotiations with a mortgagee frequently lead to the work being done without the necessity for the exercise of default powers.

Clause 275 (*v*) differs from Section 308 of the Act of 1875 (*w*) in the following points—

(1) the limit of jurisdiction conferred by the section on a court of summary jurisdiction at the option of either party is increased from £20 to £50;

(2) the jurisdiction of the court is extended to cover the question of liability, as well as the questions of the fact of damage and the amount of compensation.

(3) As regards subsection (3), *see* paragraph 38 of the Report. The latter words of the subsection refer to the discretion conferred on local authorities by Clause 167 (4) (*x*).

(4) Subsection (4) provides that any enhancement of the value of land belonging to the person claiming compensation is to be set off against compensation. This provision for set-off is now common in local Acts and has a number of precedents in the general law: e.g. Section 5 (5) of the Roads Improvement Act, 1925 (*y*), and paragraph 2 (c) of the Schedule to the Development and Road Improvement Funds Act, 1909 (*z*).

Section 308 has been the subject of a number of judicial decisions, and in view of the case law we have thought it advisable, subject to the points noted above, to reproduce the language of the section without material alteration.

In addition to Section 308 there are throughout the Public Health Acts a number of provisions either enabling or requiring local authorities to pay compensation. (*See* Section 121 of the Act of 1875 (*a*); Section 6, Infectious Disease (Prevention) Act, 1890 (*b*); Sections 56, 59 and 66, Act of 1907 (*c*); Sections 37, 45 and 59, Act of 1925 (*d*).) Some of these were probably introduced owing to a doubt whether the provision in the later Acts directing them to be construed with the Act of 1875 could safely be relied on as incorporating Section 308. We have proceeded on the footing that wherever a provision in a later Act requires compensation to be paid, in circumstances where there is no question of default on the part of the owner or other claimant, the provision should be omitted as being covered by the present clause. To insert special provisions of this kind would merely tend to create uncertainty. A special case which presents some difficulty is that of compensation for destruction of infectious bedding and clothing. Section 121 of the Act of 1875 (*e*) provides that a local authority may direct the destruction of such bedding and clothing and "may" give compensation. Section 6 of the Infectious Disease (Prevention) Act, 1890 (*e*), empowers the local authority to require the owner to hand over infectious bedding and clothing for disinfection and to compensate him for any *unnecessary* damage. It is not easy to discover what the policy of the legislature has been in this matter, but it seems that it was intended to give some measure of discretion to the local authority, and in that respect to distinguish the case from a claim falling under Section 308. We have adopted this principle in Clause 167.

Clause 276 (*f*).—*See* paragraph 19 of the Report.

Clause 277 (*g*).—Following the principle adopted in the Local Government Act, 1933, we have substituted for forms scheduled to the Bill a power

(*v*) Now s. 278 of the Act, p. 242, *ante*.
(*w*) 13 Halsbury's Statutes 755.
(*x*) Now s. 167 of the Act, p. 180, *ante*.
(*y*) 9 Halsbury's Statutes 225.
(*z*) *Ibid.*, 217.
(*a*) 13 Halsbury's Statutes 675.
(*b*) *Ibid.*, 819.
(*c*) *Ibid.*, 932, 933, 935.
(*d*) *Ibid.*, 1131, 1134, 1140.
(*e*) *Supra*.
(*f*) Now s. 279 of the Act, p. 243, *ante*.
(*g*) Now s. 283 of the Act, p. 247, *ante*.

for the Minister to prescribe the form of any necessary notices, advertisements, etc.

Clause 278 (*h*) takes the place of Section 266 of the Act of 1875 (*i*), which provides that notices, orders, etc., which require authentication by a local authority may be authenticated by the signature of their clerk, surveyor or sanitary inspector. Subsection (1) somewhat elaborates this and introduces the medical officer of health and chief financial officer, who in practice sign many notices connected with their respective departments.

Subsection (2) is new and deals with a point of practical difficulty. A provision will be found in Section 159 of the Education Act, 1921 (*k*), to the effect that documents purporting to be signed by the clerk of a local education authority or education committee shall, until the contrary is proved, be deemed to have been so signed and may be proved by the production of a copy purporting to be so signed. This provision enables the clerk to sign the original document and to have his signature mechanically reproduced on as many copies as are required. But in the case of large authorities the signing of the original document may well make heavy demands on the time of the principal officers. It is not uncommon, for example, for fifty or a hundred notices in respect of insanitary houses to be issued simultaneously. Under subsection (1) of the clause this difficulty could be avoided by the council delegating the power to sign notices to minor officials. The question which presents itself is whether from the point of view of the public it is more satisfactory that notices should bear a facsimile signature of a well-known officer of the council such as the town clerk or medical officer of health, or that it should bear the actual signature of some minor official whose name might convey nothing to the persons reading the notice. We feel no doubt that a facsimile signature of a well-known officer lends more weight to the document and is more intelligible to the public; and we consider that such a signature should be presumptive, but not more than presumptive, evidence that the document has been duly made and issued, notwithstanding that it is not a copy of an original document signed by the officer with his own hand.

Clause 279 (*l*) takes the place of Section 267 of the Act of 1875 (*m*), but has been drafted on the model of similar provisions in more modern legislation. The provision in Section 267 that a notice served by post is to be deemed to have been served in the ordinary course of post is rendered unnecessary by Section 26 of the Interpretation Act, 1889 (*n*).

In the case of notices to a medical officer of health and to a coroner, the clause authorises service either at his office or his residence, since many of these officers, more particularly in rural areas, have no separate office. Notices to other officers must be served at their offices.

The clause also differs from Section 267 by limiting the procedure of affixing a notice to the premises to cases in which the name or address of the owner or occupier cannot after reasonable inquiry be ascertained.

Clause 280 (*o*).—The public health law contains a wide variety of provisions conferring powers of entry. In the portions of the Act of 1875 with which the present Bill deals, there are four powers (Sections 41, 102, 137 and 305 (*p*)). A further power in the same Act provides for entry for the purpose of inspecting meat, and no less than eight further powers are to be found in the Public Health (Water) Act, 1878, and the Public Health Acts of 1890, 1907 and 1925.

In matters of detail the provisions differ considerably, but in general they are framed on one of two different principles. One type of provision is in effect a right of members and officers of local authorities to be admitted coupled with a penalty on the occupier for refusing admission. The other

(*h*) Now s. 284 of the Act, p. 248, *ante*.
(*i*) 13 Halsbury's Statutes 735.
(*k*) 7 Halsbury's Statutes 209.
(*l*) Now s. 285 of the Act, p. 248, *ante*.
(*m*) 13 Halsbury's Statutes 735.
(*n*) 18 Halsbury's Statutes 1002.
(*o*) Now s. 287 of the Act, p. 249, *ante*.
(*p*) 13 Halsbury's Statutes 642, 665, 681, 753.

type is a right of entry qualified by a provision that, if entry is refused, application for an order of admission may be made to a justice or (in some cases) to a court of summary jurisdiction: in this type of case refusal of admission is not an offence, unless such an order has been obtained. Sections 41 and 118 of the Act of 1875 are examples of the former type, Section 305 of the same Act of the latter.

For the sake of shortening and simplifying the legislation, it is clearly desirable, so far as possible, to substitute a single code for these numerous provisions, and the present clause is intended to cover the whole Bill except in three cases, where special powers are necessary, namely—

(a) a power to enter and inspect registered nursing homes, provided in Clause 191;

(b) a power to enter common lodging-houses (Clause 240 (4)); and

(c) a power of entry on canal boats provided in Clause 254.

In all these cases the existing law confers an absolute right of entry and this has been preserved.

The effect of the present clause is to enable any authorised officer to enter premises at all reasonable hours for the various purposes for which entry is required under the Bill. It provides, however, that the officer is not to demand admission—i.e. demand it from an unwilling occupier—(except where the premises are a factory, workshop or workplace) unless 24 hours' notice has been given and he produces on request a formal document showing his right to enter. Refusal of admission in these circumstances constitutes an offence under Clause 281 (*q*). Further, power is given to apply to a justice for a warrant which will authorise forcible entry if necessary. The justice must be satisfied that notice of the intention to make the application has been given, except where the premises are unoccupied or notice would defeat the object of the entry. The medical officer, surveyor and sanitary inspector are made "authorised officers" *ex-officio* for matters within their respective provinces and the council are empowered to authorise other officers either generally or specially (*see* definition of "authorised officer" in Clause 332 (*r*)). A provision, common in local Acts, that an officer who has entered must leave the premises properly secured has been inserted.

Clause 283 (*s*).—*See* paragraphs 61–3 of the Report.

Clause 284 (*t*) takes the place of Section 257 of the Act of 1875 (*u*). That section contains a number of references to works of private improvement and in view of the fact that, for the reasons stated in paragraph 126 of the Report, the procedure of private improvement expenses has not been reproduced in the Bill, the language has required considerable alteration. Attention may be called to the following points:—

(1) Subsection (1) provides for the recovery of expenses either from the person who was the owner at the date when the works were completed, or from the owner at the date when the demand for expenses is served. In the great majority of cases these two persons will be the same, but occasionally a change of ownership occurs between the two dates, and in that case it may sometimes be convenient for the authority to recover from the first owner and sometimes from the second. From the point of view of the owners this alternative right of recovery involves no inconvenience, for the purchaser has ample notice of the prospective liability and the position as between him and his vendor is covered in every properly drawn contract of sale.

(2) Subsection (2) provides for instalments being payable at any fixed interval and not merely at annual intervals. This has been found convenient for owners. Further, the subsection enables a local

(*q*) Now s. 288 of the Act, p. 251, *ante*.
(*r*) Now s. 343 of the Act, p. 280, *ante*.
(*s*) Now s. 290 of the Act, p. 252, *ante*.
(*t*) Now s. 291 of the Act, p. 253, *ante*.
(*u*) 13 Halsbury's Statutes 732.

authority who have served a demand for the whole cost to adopt the alternative procedure of declaring the expenses to be recoverable by instalments.

In subsection (3) of the clause a slight amendment of Section 77 of the Act of 1925 (*v*) has been made. Under that section the Minister is empowered to fix a rate of interest. It has been suggested to us that owners of property are fully protected, if the Minister fixes the *maximum* rate, and that it is convenient that local authorities should have power within this maximum to adopt such rates as they think fit. The subsection is drafted accordingly.

Clause 285 (*w*) enables a local authority to recover a sum not exceeding 5 per cent. of the expenses incurred by them as establishment charges in connection with works executed in default of or on behalf of owners or occupiers. Such a power is contained in Section 9 (2) of the Private Street Works Act, 1892 (*x*), and has occasionally been conferred on local authorities by Parliament in local Acts. We recommend that it should now form part of the general law.

Clause 286 (*y*).—Section 261 of the Act of 1875 (*z*) enables sums which are recoverable by a local authority summarily to be recovered at their option in the county court, if they are below £50. The clause extends this by enabling the authority to recover in any court of competent jurisdiction and thus introduces the normal county court limit of jurisdiction (£100).

Clause 287 (*a*) takes the place of Sections 240 and 241 of the Act of 1875 (*b*), but has been extended so as to cover not only a person who has advanced money for the execution of works, but a person who has himself expended money for this purpose. The language of the clause has been to some extent based on Section 16 of the Housing Act, 1925 (*c*). The provision in that section requiring a copy of the charging order to be deposited with the clerk of the peace of the county has not been reproduced, as the charge is registrable as a local land charge.

Clause 288 (*d*) reproduces in shortened form Section 251 of the Act of 1875 (*e*) and similar provisions in the Acts of 1890 and 1907, so far as they relate to offences and fines. The summary recovery of money spent by a local authority on behalf of a defaulting owner is dealt with in Clause 286 (*f*).

Clause 289 (*g*) is new. It is only reasonable that where the execution of the order of a court will take some time, e.g. the demolition of a building erected in contravention of byelaws, liability to a daily continuing penalty should not arise until after a time fixed by the court.

Clause 290 (*h*) reproduces Section 253 of the Act of 1875 (*i*) but extends it slightly by providing that whichever council or body has the function of enforcing the provision in question may prosecute.

Clause 291 (*k*) takes the place of Section 8 of the Act of 1890 (*l*) and Section 8 of the Act of 1907 (*m*), but has been redrafted so as to bring it into conformity with the language used in modern local Acts.

Clause 293 (*n*) reproduces a portion of Section 269 of the Act of 1875 (*o*) and corresponding sections in the Acts of 1890, 1907 and 1925 enabling appeals to be made to quarter sessions. These sections have become unnecessary in so far as they deal with persons aggrieved by a rate, since for the reasons pointed out in paragraph 129 the only rate for which the Bill provides is a water rate based on net annual value and provision for appeals

(*v*) 13 Halsbury's Statutes 1151.
(*x*) 9 Halsbury's Statutes 199.
(*z*) 13 Halsbury's Statutes 734.
(*b*) 13 Halsbury's Statutes 725–726.
(*d*) Now s. 296 of the Act, p. 256, *ante*.
(*f*) Now s. 293 of the Act, p. 255, *ante*.
(*h*) Now s. 298 of the Act, p. 257, *ante*.
(*k*) Now s. 299 of the Act, p. 257, *ante*.
(*m*) *Ibid.*, 914.
(*o*) 13 Halsbury's Statutes 736.
(*w*) Now s. 292 of the Act, p. 255, *ante*.
(*y*) Now s. 293 of the Act, p. 255, *ante*.
(*a*) Now s. 295 of the Act, p. 256, *ante*.
(*c*) *Ibid.*, 1012.
(*e*) 13 Halsbury's Statutes 730.
(*g*) Now s. 297 of the Act, p. 256, *ante*.
(*i*) 13 Halsbury's Statutes 731.
(*l*) 13 Halsbury's Statutes 826.
(*n*) Now s. 301 of the Act, p. 258, *ante*.

on the question of net annual value is now made in the Rating and Valuation Act, 1925. The clause accordingly is limited to persons aggrieved by orders or determinations of courts of summary jurisdiction. On the general question of appeals under the Bill, *see* paragraph 18 of the Report.

Clause 295 (*p*) reproduces Section 179 of the Act of 1875 (*q*), but with the difference that it provides for a single arbitrator to be appointed by the parties or, in default of agreement, by the Minister of Health. The procedure under Sections 179 and 180, by which, unless both parties concur in the appointment of a single arbitrator, each party appoints an arbitrator and the two nominate an umpire, is notoriously cumbersome and expensive and was strongly criticised on these grounds in the Report of a Departmental Committee on the Law of Arbitration under the Chairmanship of Mr. Justice Mackinnon (1927, Cmd. 2817, paragraphs 23–6).

In view of the code provided by the Arbitration Acts, 1889 and 1934, the whole of the detailed provisions of Section 180 of the Act of 1875 have been omitted.

Clause 296 (*r*).—Under Section 2 of the Justices of the Peace Act, 1867 (*s*), a justice is not to be incapable of acting at any petty or special or general or quarter sessions on the trial of an offence arising under an Act to be put into execution by a municipal corporation, or other local authority, by reason only of his being as one of several ratepayers liable to contribute to or be benefited by any fund to the account of which the penalty will be carried. Section 258 of the Act of 1875 (*t*) goes further by providing that *membership* of a local authority is not to be a ground of disqualification. It also applies to both civil and criminal matters. The present clause reproduces the latter section in so far as it extends the protection to all cases, whether civil or criminal, arising under the Act, but does not reproduce the provision under which *membership* of a local authority is not to be regarded as a disqualification.

The case law which is collected in Lumley's note to the section shows that, notwithstanding the language of the section, a justice who as a member of a local authority has taken any active part in the proceedings of the authority under review will be held to be disqualified from acting in the case. Further, we doubt whether, even if the justice has not been actually concerned with the matter when it came before the local authority, it is consonant with present day opinion that he should sit on the bench to deal with the case. We understand that the usual practice is for the justice to take no part in the proceedings, notwithstanding the existence of the section. It is also to be observed that the section, in so far as it deals with membership of the local authorities, has no counterpart in any of the later codes dealing with local government services other than public health.

The language of the clause follows generally that of Section 122 of the Public Health (London) Act, 1891 (*u*).

Clause 297 (*v*) reproduces Section 265 of the Act of 1875 (*w*) which protects members and officers from personal responsibility in respect of acts done *bona fide* in the execution of the Act. When we prepared the Local Government Bill we considered whether a clause on the lines of the section in a generalised form should be inserted in the Bill. We eventually decided not to adopt this course, partly on the ground that the framers of the Public Authorities Protection Act, 1893 (*x*), which re-enacted in a more general form the closely connected Section 264 of the Act of 1875, refrained, for reasons which we could not trace, from taking a similar course with Section 265, and partly because the absence of a similar provision in more modern codes, such as those of education and housing, has not, so far as we are aware, given rise to any difficulty. Moreover, it is well known that the

(*p*) Now s. 303 of the Act, p. 259, *ante*.
(*r*) Now s. 304 of the Act, p. 259, *ante*.
(*t*) 13 Halsbury's Statutes 733.
(*v*) Now s. 305 of the Act, p. 259, *ante*.
(*x*) *Ibid.*, 455.
(*q*) 13 Halsbury's Statutes 702.
(*s*) 11 Halsbury's Statutes 312.
(*u*) 11 Halsbury's Statutes 1092.
(*w*) 13 Halsbury's Statutes 734.

section which is a re-enactment of a section in the Public Health Act, 1848, was mainly required in the days when the bodies exercising public health functions were not corporate bodies and when the members of the body were accustomed themselves to perform many executive acts which would under modern conditions be left to the staff.

The section cannot, however, be regarded as obsolete, at any rate as regards the officers of an authority, and the case of *G. Scammell and Nephew, Ltd.* v. *Hurley and Others*, [1929] 1 K. B. 419 (*y*) suggests that the section may still have some practical application even in the case of members. Whether or not the protection goes too far involves questions of principle of far reaching importance. We understand that the Law Revision Committee appointed by the late Lord Chancellor has within its terms of reference the consideration of the Public Authorities Protection Act, 1893 (*z*), and having regard to the important and difficult legal issues involved in a redrafting of Section 264 we have thought it right to suggest to that Committee that they might possibly regard their terms of reference as covering the cognate question of this section. In the meantime we have reproduced the section in substance unchanged.

Clause 298 (*a*) takes the place of Section 159 (2) of the Local Government Act, 1933 (*b*), which is repealed. The reason why this subsection was inserted temporarily in that Act is stated in the note to Clause 156 on page 85 of our First Interim Report (1933, Cmd. 4272).

Clause 299 (*c*).—Subsection (1) reproduces Section 57 (1) of the Local Government Act of 1929 (*d*) but extends it to cover the provision of hospitals. This follows Section 2 of the Isolation Hospitals Act, 1901 (*e*), which empowers a county council to contribute towards the cost of hospitals *for infectious diseases*. The words in italics have been omitted on the ground that as county councils are now hospital authorities for all purposes, there is no reason why their contributions should be thus limited.

Subsection (2) is new and is intended to make it clear that a county council may contribute to the expenditure of a district council, whether the expenditure is incurred directly or through the agency of a joint board.

Clause 300 (*f*) reproduces so much as remains of Section 229 of the Act of 1875 (*g*). The language of paragraph (a) has been brought into line with that of Section 57 (1) of the Local Government Act, 1929 (*d*) (reproduced in Clause 299 (*c*)) by inserting a reference to sewage disposal works. Further, it is made clear in subsection (2) that expenses incurred by a rural district council in contributing through a joint board to the construction and maintenance of sewerage schemes, sewage works or waterworks are to be special, no less than if they were incurred directly by the council themselves.

Subsection (3) has been inserted to remove a difficulty which has arisen under Section 56 (1) of the Local Government Act, 1929 (*h*) (now Section 190 (4) of the Local Government Act, 1933 (*i*)). That section provides that a rural authority may contribute as part of their expenditure for general purposes to expenses payable as special expenses and treat the remainder, if any, as special expenses. It appears that, where under this provision the whole of the expenditure falling to be met from rates is contributed as general expenses, it is still necessary to keep separate parochial accounts although for all purposes other than accountancy the undertaking is treated as one. The subsection will dispense with this necessity and secure a considerable simplification of the account-keeping.

Clause 301 (*j*) reproduces Section 283 and the first two paragraphs of Section 284 of the Act of 1875 (*k*). The last two paragraphs of the latter

(*y*) Digest Supp.
(*a*) Now s. 306 of the Act, p. 260, *ante*.
(*c*) Now s. 307 of the Act, p. 260, *ante*.
(*e*) 13 Halsbury's Statutes 888.
(*g*) 13 Halsbury's Statutes 720.
(*i*) 26 Halsbury's Statutes 409.
(*k*) 13 Halsbury's Statutes 743.
(*z*) 13 Halsbury's Statutes 455.
(*b*) 26 Halsbury's Statutes 700.
(*d*) 10 Halsbury's Statutes 922.
(*f*) Now s. 308 of the Act, p. 260, *ante*.
(*h*) 10 Halsbury's Statutes 922.
(*j*) Now s. 309 of the Act, p. 261, *ante*.

section, together with the whole of Section 292 of the same Act (*l*), all of which relate to the procedure for securing payment of precepts, are rendered unnecessary by Section 13 of the Rating and Valuation Act, 1925 (*m*), and are repealed without re-enactment.

Subsection (4) extends the clause to joint committees constituted under Clause 8 of the Bill.

Clause 302 (*n*).—A general power of borrowing for any statutory purpose for which borrowing is permissible is now conferred on county councils and local authorities by Part IX of the Local Government Act, 1933. The present clause, reproducing Section 235 of the Act of 1875 (*o*), confers an additional power on local authorities of raising money on the security of land and works for sewage disposal. It is not necessary for the authority, as under the Local Government Act, 1933, to obtain the consent of the Minister to a borrowing. We have felt some doubt whether it is necessary or desirable to retain this exceptional power. This method of borrowing uncontrolled by the central department bears little or no relation to the size or importance of the local authority concerned, for owing to differences of local circumstances a small district may have more sewage property and plant available as a security than a larger and wealthier one which owing, for example, to its proximity to the sea, can dispose of its sewage without treatment. Some of our members, however, felt strongly that the power has in the past proved useful and that, notwithstanding its somewhat anomalous character, it would be a mistake to repeal the section without reproduction. A limit of 30 years for repayment of loans has been inserted.

The second paragraph of the section is no longer necessary and has not been reproduced.

Clause 303 (*p*).—Sections 242 and 243 of the Act of 1875 (*q*) empower the Public Works Loan Commissioners to lend money to local authorities for the purposes of the Act. At the date when the Act was passed, the powers conferred by these sections on the Commissioners were substantially wider than those which they had under the Public Works Loans Act, 1875, in particular with regard to the term of the loan. Under the last-mentioned Act the maximum term was 20 years, whereas Section 243 permits of a term of 50 years. By a series of Public Works Loans Acts passed since 1875 the general powers of the Commissioners to lend to local authorities have been so enlarged that they are now substantially the same as under these sections. The only difference which need be noted is that whereas under Section 242 the Commissioners may lend for any of the *purposes* of this Act, under Section 2 of the Public Works Loans Act, 1896, they may lend for any *work* for which the borrowing authority are authorised to borrow. The clause accordingly enables the Commissioners to lend under their ordinary powers for any *purposes* for which borrowings may be effected under the Bill.

Clause 304 (*r*) replaces so much of Section 184 of the Act of 1875 (*s*) as is left outstanding by the Local Government Act, 1933. The form of the clause is determined by Section 250 (10) of the last mentioned Act (*t*), which defines the term " the confirming authority ".

Clause 305 (*u*).—The effect of the Bill on local Acts gives rise to questions of difficulty. In previous Public Health Acts and legislation of a similar kind, the difficulty has been met in various ways. Thus, under Section 3 (1) of the Act of 1907 (*v*) the Local Government Board were empowered on the application of a local authority to make an order putting Parts or sections of the Act into force and to declare enactments in local Acts which appeared to them to contain provisions " similar to or inconsistent with any such Part or section " to be no longer in force in the district.

(*l*) 13 Halsbury's Statutes 747.
(*n*) Now s. 310 of the Act, p. 262, *ante*.
(*p*) Now s. 311 of the Act, p. 263, *ante*.
(*r*) Now s. 312 of the Act, p. 263, *ante*.
(*t*) 26 Halsbury's Statutes 440.
(*v*) 13 Halsbury's Statutes 911.
(*m*) 14 Halsbury's Statutes 637.
(*o*) 13 Halsbury's Statutes 724.
(*q*) 13 Halsbury's Statutes 726.
(*s*) 13 Halsbury's Statutes 705.
(*u*) Now s. 313 of the Act, p. 264, *ante*.

In Section 6 of the Act of 1925 (*w*), the Minister is empowered, on the application of a local authority, to make an order making such amendments or adaptations of a local Act as appear to him necessary for the purposes of bringing the provisions of the Act into conformity with the provisions of the Act of 1925.

Section 66 of the Rating and Valuation Act, 1925 (*x*), contains a similar provision, the order in that case being required to be laid before Parliament.

Some other Acts, e.g. Section 21 of the Milk and Dairies (Consolidation) Act, 1915 (*y*), repeal so much of any local Act as deals with the matters dealt with in the Act itself (cf. also Section 122, Road Traffic Act, 1930) (*z*).

In certain clauses of the Bill, special provision is made for the repeal of local Act enactments (*see* Clauses 54 and 55), but we are satisfied that any general repeal of these enactments on the ground that they deal with matters dealt with in the present Bill is likely to give rise to great difficulties of interpretation and should be avoided. We have accordingly followed the procedure of Section 6 of the Act of 1925 (*w*) and empowered the Minister to make orders. Subsection (2), which is new, is necessary to meet a case which has given rise to difficulties in practice, where the authority who apply for the amendment of the local Act are the successors of the authority who promoted the Bill.

Clause 306 (*a*) is drafted on the lines of Section 293 of the Local Government Act, 1933 (*b*), and enables the Minister to substitute provisions of the new public health law for the corresponding repealed provisions in orders constituting joint boards and port sanitary authorities. As in Section 293 the power may be exercised by means of a simple order within two years from the commencement of the Act. After the expiration of that time the order must be provisional.

Clause 307 (*c*) provides machinery for the dissolution of isolation hospital committees, *see* paragraphs 99 and 100 of the Report.

Clause 308 (*d*).—This clause is necessitated by the fact that the procedure for making provisional orders laid down in Section 285 of the Local Government Act, 1933 (*e*), assumes that there is an applicant for the order and requires him to give notice by advertisement of his proposals.

Clause 309 (*f*).—*See* paragraph 134 of the Report.

Clause 312 (*g*) provides for the transfer of properties and liabilities, the transfer of officers and the superannuation of officers transferred. Section 150 and the Fourth Schedule of the Local Government Act, 1933 (*h*), deal with compensation to officers, and Clause 313 accordingly provides for the application of these provisions. The Local Government Act, 1933, however, does not deal with the transfer of property and liabilities nor with the superannuation of transferred officers. As regards these matters therefore Clause 312 applies the provisions of the Local Government Act, 1929.

Clause 313 (*j*) takes the place of Section 309 of the Act of 1875 (*k*). It covers the various classes of case in which a local government officer might lose office or suffer a diminution of salary as a consequence of action taken under the Bill.

The clause follows the general lines of Section 51 of the Town and Country Planning Act, 1932 (*l*), but the existence of the compensation code in the Fourth Schedule to the Local Government Act, 1933 (*m*), which the clause incorporates, enables it to be drafted in a shorter form.

(*w*) 13 Halsbury's Statutes 1117.
(*x*) 14 Halsbury's Statutes 685.
(*y*) 8 Halsbury's Statutes 876.
(*z*) 23 Halsbury's Statutes 687.
(*a*) Now s. 314 of the Act, p. 264, *ante*.
(*b*) 26 Halsbury's Statutes 461.
(*c*) Now s. 315 of the Act, p. 265, *ante*.
(*d*) Now s. 316 of the Act, p. 266, *ante*.
(*e*) 26 Halsbury's Statutes 456.
(*f*) Now s. 317 of the Act, p. 266, *ante*.
(*g*) Now s. 326 of the Act, p. 270, *ante*.
(*h*) 26 Halsbury's Statutes 388, 504.
(*j*) Now s. 327 of the Act, p. 272, *ante*.
(*k*) 13 Halsbury's Statutes 755.
(*l*) 25 Halsbury's Statutes 518.
(*m*) 26 Halsbury's Statutes 504.

Clauses 315 and 316 (*n*).—The existing law with regard to defaulting a local authority is to be found in Section 299 of the Act of 1875 (*o*), Section 16 of the Local Government Act, 1894 (*p*), Section 1 of the Public Health (Tuberculosis) Act, 1921 (*q*), and Section 57 (3) of the Local Government Act, 1929 (*r*). The first-mentioned section was repealed by the Act of 1929 except as regards county borough councils. It enables the Minister, if satisfied after due inquiry that there has been a default, to make an order limiting a time for the performance of the duty and, if the duty is not performed within the time limited, to apply for a mandamus or to appoint some person to perform the duty. Section 16 of the Act of 1894 enables a parish council to complain to the county council that some provision of the Public Health Acts has not been properly put into force by the rural district council, and enables the county council after inquiry to transfer the function in question to themselves. Section 1 of the Act of 1921 relates to failures on the part of county and county borough councils to make adequate arrangements for the treatment of tuberculosis and enables the Minister to act in default. Section 57 of the Act of 1929 enables the Minister, if satisfied after inquiry that a borough or district council are in default in discharging any function relating to public health, to make an order limiting a time for the discharge of the function, and if the function is not discharged within the time so limited, to transfer it to the county council.

So far as we can ascertain, there is no case on record of a county council having exercised their powers under Section 16 of the Act of 1894, and in view of the new powers of default conferred on the Minister by Section 57 of the Act of 1929, we recommend that Section 16 should be repealed without re-enactment and that, while the county council should have the power (and duty) of calling the Minister's attention to alleged defaults on the part of a county district council, the actual weapon of default should be exercised by the Minister alone.

Clause 315 (*s*) accordingly provides for the county council making complaint to the Minister and requires the Minister to hold a local inquiry.

Clause 316 (*t*) combines Section 299 of the Act of 1875 (*o*) and Section 57 (3) of the Act of 1929 (*r*). The language has been to some extent assimilated to that of a more recent default code, Section 52 of the Housing Act, 1930 (*u*).

The default powers have been extended to cover port health authorities, joint boards and joint committees.

As regards county councils, the clause takes the place of and generalises Section 1 (2) of the Act of 1921 (*v*).

Clauses 317 to 319.—These clauses, which are based on Section 63 of the Local Government Act, 1894 (*x*), and Sections 54 and 56 of the Housing Act, 1930, provide the necessary machinery for the performance by the county council or Minister of duties and powers transferred to them or him on default and for the revocation of a default order and the necessary retransfer of property, debts and liabilities.

Clause 320 (*y*).—*See* paragraph 136 of the Report.

Clauses 324, 325 (*z*).—*See* paragraphs 21 and 22 of the Report.

Clause 330 (*a*).—Under the existing Public Health law reference is made to Crown property or to property belonging to Departments of the Crown in the following enactments :—

Section 327 of the Act of 1875 (*b*) provides that nothing in the Act is to authorise a local authority to interfere with sewers (sea defences,

(*n*) Now ss. 321 and 322 of the Act, pp. 267, 268, *ante*.
(*o*) 13 Halsbury's Statutes 750.
(*p*) 10 Halsbury's Statutes 788.
(*q*) 13 Halsbury's Statutes 971.
(*r*) 10 Halsbury's Statutes 923.
(*s*) Now s. 321 of the Act, p. 267, *ante*.
(*t*) Now s. 322 of the Act, p. 268, *ante*.
(*u*) 23 Halsbury's Statutes 431.
(*v*) *Supra*.
(*w*) Now ss. 323–325 of the Act, pp. 268–270, *ante*.
(*x*) 10 Halsbury's Statutes 816.
(*y*) Now s. 328 of the Act, p. 273, *ante*.
(*z*) See ss. 330–334 of the Act.
(*a*) Now s. 341 of the Act, p. 278, *ante*.
(*b*) 13 Halsbury's Statutes 759.

etc.) made by Commissioners of Sewers appointed by the Crown, or to interfere with property belonging to the Admiralty or War Department except with the consent of the Commissioners of the Admiralty or War Department.

Section 9 (7) of the Housing of the Working Classes Act, 1885 (*c*), provides that nothing in the section (which deals with tents, vans, etc.) is to apply to any tent, van, etc., used by H.M. Forces.

Section 15 of the Infectious Disease (Notification) Act, 1889 (*d*), provides that nothing in the Act is to extend to any building, tent, van, shed, or similar structure belonging to His Majesty, or to any inmate thereof.

Section 5 (b) of the Local Government (Emergency Provisions) Act, 1916 (*e*), qualifies the last-mentioned section by requiring the medical attendant to notify cases of notifiable disease in buildings, tents, etc., in the occupation of H.M. Forces.

Section 12 of the Act of 1907 (*f*) declares that nothing in the Act affects prejudicially any right of the Crown, and, in particular, nothing in the Act authorises a local authority to make use of or interfere with any portion of the shore or bed of the sea, etc., " or any land, hereditaments, subjects or right of whatsoever description belonging to His Majesty in right of His Crown and under the management of the Commissioners of Woods or of the Board of Trade " without their consent, which they are authorised by the section to give.

Section 10 of the Act of 1925 (*g*) contains a saving for the Postmaster-General under the Telegraph Act, 1869, and for powers conferred on the Minister of Transport by the London Traffic Act, 1924.

Section 11 of the Public Health (Smoke Abatement) Act, 1926 (*h*), requires a local authority to report a smoke nuisance on Crown premises to the Head of the Department and requires the latter to take steps to abate the nuisance.

In addition, Section 110 of the Act of 1875, and Section 15 of the Infectious Disease (Notification) Act, 1889, exempt H.M. ships from the operation of the Acts.

Of these enactments the following are reproduced in the Bill :—

Section 15 of the Act of 1889 (*d*) and Section 5 (b) of the Act of 1916 (*e*) in Clause 146 (*i*).

Section 11 of the Act of 1926 (*h*) in Clause 105 (*k*).

Section 110 of the Act of 1875 (*l*) (relating to ships) in Clause 266 (*m*).

As regards the general question of the application of the public health law to lands belonging to the Crown, we are aware that some difficulties have arisen in the past and that there is a substantial amount of case law on the subject. We understand also that the various Departments have frequently consulted the Law Officers of the Crown on this matter. The question is one of general importance and we have thought it right to reproduce the three enactments referred to above as they stand, and for the rest, to follow the principle laid down in Section 327 of the Act of 1875 (*mm*) and Section 12 of the Act of 1907 (*f*), that the Bill should not affect houses, buildings or other property belonging to the Crown except with the consent of the Department concerned. We have, however, amplified the law in two respects—

(1) the clause covers Crown land of every description and (following

(*c*) 13 Halsbury's Statutes 808.
(*d*) *Ibid.*, 815.
(*e*) 10 Halsbury's Statutes 854.
(*f*) 13 Halsbury's Statutes 914.
(*g*) *Ibid.*, 1118.
(*h*) *Ibid.*, 1161.
(*i*) Now s. 146 of the Act, p. 170, *ante*.
(*k*) Now s. 106 of the Act, p. 141, *ante*.
(*l*) 13 Halsbury's Statutes 669.
(*m*) Now s. 267 of the Act, p. 233, *ante*.
(*mm*) 13 Halsbury's Statutes 759.

Section 77 of the Land Drainage Act, 1930) (*n*) defines the appropriate authority for giving consent in any particular case ;

(2) adopting the principle of Section 33 of the Town and Country Planning Act, 1932 (*o*), the clause enables the Department concerned to enter into agreements with the local authority with regard to the application of any particular provision of the Bill, and provides that, with the approval of the Treasury, the agreements may contain provisions of a financial character.

Clause 331 (*p*) contains borrowing powers in connection with provisions of the Bill applied to London. The clauses of the Bill so applied are 5, 28, 143, 175 and 248–257 (*q*).

Clause 332 (*r*).—Subsection (1) contains a number of definitions, out of which it is only necessary to refer to two. The definition of " workplace " occurs in Clauses 42, 45, 91 and 280 of the Bill in juxtaposition with factories and workshops. In the enactment (Section 22 of the Act of 1890) (*s*) which is replaced by Clause 45 the words used are " every building used as a workshop or manufactory, or where persons are employed or intended to be employed in any trade or business." This language is clearly wide enough to cover the case of an office forming part of a business establishment, but it has been doubted whether it would cover an office such as that of a non profit-making society, or one in which the work carried on is of a professional rather than a commercial character. There appears to be no reason why a distinction in this respect should be drawn between those different types of offices, and we have come to the conclusion that the true distinction is between work in the nature of domestic service and other employment.

The definition of " street " has been slightly altered from that contained in Section 4 of the Act of 1875 (*t*) so as to include the highway over any bridge. Under the definition in Section 4 " street " includes " any public bridge (not being a county bridge)". The exclusion of county bridges will require consideration in connection with any Bill reproducing the provisions of the Act of 1875 dealing with streets, but is not of importance in connection with the subject matter of the present Bill, and there is no reason why for the purpose of laying sewers and water pipes, the roadway over a county bridge should not be in the same position as any other length of the street in question.

(*n*) 23 Halsbury's Statutes 578.
(*o*) 25 Halsbury's Statutes 505.
(*p*) Now s. 342 of the Act, p. 279, *ante*.
(*q*) Now ss. 5, 28, 143, 175, 249–258 of the Act. Note that s. 98 is also applicable to London.
(*r*) Now s. 343 of the Act, p. 280, *ante*.
(*s*) 13 Halsbury's Statutes 833.
(*t*) *Ibid.*, 624.

TABLE A.

* TABLE SHOWING THE NUMBER OF RURAL DISTRICTS IN WHICH THE PROVISIONS OF PART III OF THE PUBLIC HEALTH ACTS AMENDMENT ACT, 1890, REPRODUCED IN THE BILL ARE IN FORCE.

No. of Section.	No. of Rural Districts in which in force.
16	404
17	404
18	402
19	400
20 (1)	All rural districts.
(2)–(4)	Nil
21	401
22	19
23 (1) & (2)	All rural districts.
(3)	226
(4)	223
24	All rural districts.
25	510
26 (1)	All rural districts.
26 (2)	420
27	All rural districts.
32	400
33	510
36	25

* The figures in these tables represent the position on the 1st December, 1933.

Excluding London, the total numbers of boroughs and urban and rural districts at that date were :—

Boroughs 356 ; Urban Districts 739 ; Rural Districts 600.

TABLE B.

TABLE SHOWING THE NUMBER OF AREAS IN WHICH THE PROVISIONS OF THE PUBLIC HEALTH ACTS AMENDMENT ACT, 1907, REPRODUCED IN THE BILL, ARE IN FORCE.

No. of Section.	Number of areas in which in force.		
	Boroughs.	Urban Districts.	Rural Districts.
Part II :—			
15	187	468	144
16	198	470	137
23	209	446	145
24	221	439	93
25	227	504	153
26	202	383	56
27	210	441	115
Part III :—			
34	241	494	177
35	239	500	183
36	247	492	173
37	232	485	171
38	222	486	181
39–42	182	402	126
43	193	451	146
44	202	485	170
45	216	487	174
46	221	493	179
47	211	478	63
48	186	451	61
49	233	496	153
50	242	486	159
51	258	466	57
Part IV :—			
52	222	467	177
55	236	473	179
56	231	470	180
57	237	471	178
58	227	456	164
59	230	469	166
60	225	457	162
61	197	369	124
62	248	467	176
63	240	464	159
64	241	466	173
65	237	466	179
66	200	414	154
67	169	338	140
68	182	345	95
Part V :—			
69–75	210	314	58
Part X :—			
92	130	173	25
93	150	187	36

TABLE C.

TABLE SHOWING THE NUMBER OF AREAS IN WHICH THE PROVISIONS OF PARTS II, III, IV AND V OF THE PUBLIC HEALTH ACT, 1925, REPRODUCED IN THE BILL, ARE IN FORCE.

No. of Section.	Number of areas in which in force.		
	Boroughs.	Urban Districts.	Rural Districts.
Part II :—			
20	230	499	189
Part III :—			
36	238	509	198
37	237	507	198
38	241	510	200
39	238	504	53
40	236	501	195
41	244	507	210
42	245	508	212
43	253	512	233
44	208	289	23
Part IV :—			
45	247	490	208
46	238	488	208
47	245	489	208
48	236	485	203
49	239	486	203
50	246	488	205
Part V :—			
51	214	308	36
52	214	308	7
53	214	309	41
54	216	312	67
55	216	310	67

PUBLIC SEWERS (CONTRIBUTIONS BY FRONTAGERS) (*a*).

REPORT BY THE JOINT COMMITTEE OF THE HOUSE OF LORDS AND THE HOUSE OF COMMONS ON

1. The Order of Reference directs the Committee :—

"To consider the provisions of Sections 62 and 64 of the Romford Urban District Council Act, 1931, with respect to contributions by frontagers to the expenses of the construction of public sewers and to make recommendations as to the circumstances in which and the conditions upon which similar provisions should be allowed in future Bills."

2. The Committee met on 13th and 20th May, 1936, when counsel were heard on behalf of (1) The Association of Municipal Corporations and the Urban Districts Councils Association and (2) a number of Associations representative of the landowning interest. The Committee also had before them Memoranda prepared on behalf of these parties. On the latter date Mr. E. J. Maude of the Ministry of Health, at the invitation of the Committee, gave evidence in explanation of a Memorandum which the Ministry had submitted with regard to Section 62 of the Romford Act. The Committee are indebted to the Ministry and to the parties for the assistance thus afforded. On 17th June, 1936, the Committee met for the purpose of private discussion, when the present Report was agreed upon.

3. Under the existing general law, stated broadly, when a sewer is constructed by the local authority in a street, the right of the local authority to recover contributions to its cost from the frontagers depends upon whether the street is (1) a highway repairable by the inhabitants at large or (2) a private street not so repairable.

If the street is a highway repairable by the inhabitants at large the local authority cannot recover from the frontagers any part of the cost of the sewer which they have constructed.

If the street is a private street not so repairable the local authority may recover the cost of the sewer from the frontagers under one or other of two enactments, viz.: the Public Health Act, 1875, Section 150, or the Private Street Works Act, 1892. The latter Act is adoptive and when in force excludes resort to Section 150 of the Public Health Act, 1875, which it has to a large extent superseded in practice by reason of its more complete and detailed provisions.

4. There has been no serious complaint as to the working of either Section 150 of the Public Health Act, 1875, or the Private Street Works Act, 1892, in the case of private streets. Where land is being developed for building purposes and streets are formed to provide access to the buildings in course of erection it is recognised as equitable that, if the local authority constructs sewers in these streets to serve the needs of the buildings abutting upon them, the frontagers should be called upon to meet the cost of such sewers. Liability and benefit are in such circumstances reasonably commensurate; the sewer presumably is of no larger dimensions than the buildings fronting the street require for the disposal of their sewage and the frontage basis of apportionment of the cost provides a fair measure of contribution.

5. The problem with regard to highways repairable by the inhabitants at large is quite different; and it is with this problem alone that the Committee are concerned under their terms of reference. The local authority has a general duty under Section 15 of the Public Health Act, 1875, to "cause to be made such sewers as may be necessary for effectually draining their district" but this does not impose any liability on the authority to provide sewers in anticipation of the future requirements of their district or so as to enable a landowner to develop his land for building purposes. Conse-

(*a*) As stated in the Preface the author is indebted to the Controller of H.M. Stationery Office for his courtesy in permitting the reproduction of this Report.

quently when the owner of land fronting on a highway proposes to develop it for building purposes and desires that it should be equipped with a sewerage system he cannot require the local authority to lay down a sewer in the highway for his use. But as he must provide some means of sewage disposal for his houses and is naturally averse from installing cesspools which may subsequently have to be scrapped and which are also unattractive to purchasers, resort is had to a practice which has grown up whereby the local authority agrees to construct the requisite sewers on the landowner entering into a voluntary agreement to contribute to the cost. From the landowner's point of view this is quite a satisfactory solution of the difficulty as he contributes only to the cost of the sewers so far as serving the land which he is developing. It is less satisfactory from the point of view of the local authority which may have to construct a sewer in the highway for a considerable distance in order to reach the contributor's land and may be unable to recover any part of the cost of so doing from other landowners fronting on the portion of the highway so traversed, who may nevertheless benefit by the presence of the sewer if and when they in turn come to develop their land for building purposes.

6. It is plainly undesirable in the public interest that lands fronting on a highway should be developed for building purposes without adequate sewerage; the landowner developing his land desires the provision of a sewer in the highway so as to avoid the cost of cesspools and at the same time to improve the value of his buildings; yet there is no statutory means whereby the local authority, if it provides a sewer, can recover the cost of it from those who benefit by it. The local authority is naturally disinclined to provide sewers at the cost of the community for the benefit of individuals. Hence the resort to the system of voluntary contributions, which, as has been shown, provides only a very imperfect solution of the difficulty.

7. The problem has become acute in recent times through a number of associated causes and perhaps chiefly—(1) the construction of a large number of new highways to carry the increasing motor traffic; (2) the great activity in the building trade, particularly on the outskirts of the larger centres of population and (3) the recent estensive alterations in the boundaries of the districts of local authorities. By the new highways fresh land is opened up and rendered accessible, building operations are stimulated by the prospect of profit, and the sewerage problem at once emerges. The Committee are satisfied, and indeed the parties before them were agreed, that some solution of this problem must be sought which on the one hand will encourage local authorities to provide the required sewers and on the other hand will ensure a reasonable contribution to the cost from those who benefit by them.

8. It is obvious that the problem as affecting highways, and particularly new highways driven through previously inaccessible land, is quite different from the problem as affecting private streets which has been satisfactorily met by the existing legislation of 1875 and 1892. In the case of private streets the unit is relatively small; private streets are seldom of great length; the houses generally adjoin each other; the sewerage facilities to be provided are on a modest scale suited to the requirements of the street to be served; and private streets are usually so constructed that they can be opened up for the laying of a sewer at moderate cost. In such a case the apportionment of cost according to frontage provides a reasonably equitable measure of contribution. Highways, on the other hand, may be of indefinite length; they may pass through land in process of being developed or about to be developed and also through land that may not be developed for years if ever; the sewer which it may be necessary to construct may be of dimensions and at a depth quite out of relation to the requirements of a particular group of frontagers, for it may have to serve distant communities; and the modern methods of highway construction involve the provision of a strongly built surface which it is costly to break open for the insertion of sewers. Thus cost and benefit may become widely divorced and the frontage basis of allocation prove quite inequitable.

9. It was with the object of meeting this situation that Section 62 of the Romford Act was devised. The expedient there adopted is to apply to highways the provisions of the Private Streets Works Act, 1892, with modifications. Broadly speaking, the Section empowers the local authority, if it decides that a sewer should be constructed in a highway and that its construction will increase the value of the premises fronting it, to apportion the cost among the frontagers and recover from each his proportion according to the extent of his frontage. Section 10 of the 1892 Act, which is incorporated in Section 62 of the Romford Act empowers the local authority to adopt some other method of apportioning cost than by frontage and, if they think just, to have regard, in settling the apportionment, to the degree of benefit to be derived by any premises from the works and to the amount and value of any work already done by the owners or occupiers of the premises. But this is so entirely discretionary on the part of the local authority as to be scarcely satisfactory to the landowners affected. The owner may object to the provisional apportionment upon him on the grounds set out under five of the six heads in Section 7 of the 1892 Act (which include the objection that the proposed works are unreasonable or the estimated expenses excessive) but two new grounds of objection are also made available to him, viz.:

> "(*g*) That the proposed works will not increase the value of any premises of the objector;
>
> "(*h*) That the sum or proportion to be charged against any premises of the objector under the provisional apportionment is excessive having regard to the degree of benefit to be derived from such premises from the proposed works."

There is also a proviso that no expenses apportioned against agricultural land shall be recoverable or interest thereon chargeable until the land ceases to be agricultural.

10. This enactment has been subjected to considerable adverse criticism. It labours under the defect always attendant on the attempt to apply legislation designed to meet one class of cases to a quite different class of cases and then endeavouring to remove the consequent anomalies by adding a series of qualifications. Among the grounds of criticism of Section 62 the most salient are—that it places on the owner the burden of establishing by formal proceedings that the sewer will not increase the value of his premises, or that the cost to him is in excess of the benefit to be derived by him, both highly controversial topics; that the definition of agricultural land (see Section 2 (2) of the Rating and Valuation Apportionment Act, 1928) affords insufficient protection; that while the highway may pass through land which is in course of being or is about to be developed, it will probably also pass through land which the owner has no intention of developing and which does not need the sewer but yet which is not technically agricultural; that while the presence of a sewer in an adjoining highway may add potentially to the value of undeveloped land that potentiality may never be realised owing to the land never being developed, yet payment may be exacted in respect of the alleged benefit; that the sewer may be constructed of dimensions and laid at a depth quite inappropriate to the particular frontagers' actual or possible requirements; that the cost of construction of the sewer may be greatly enhanced by the fact that the highway which has to be opened up has been built to carry heavy traffic in which the frontager has no interest.

11. Two other criticisms of an economic character have been advanced against Section 62 of the Romford Act. In the first place it is said to be unjust to a purchaser who has bought land fronting on the highway in reliance on the existing law which absolves him from liability to be called upon to contribute to the cost of any sewer which the local authority may construct in the highway. In the second place it is said that it is unjust that a ratepayer who in his past payments of rates has contributed to the cost of sewers laid by the local authority at the general expense in other highways, whereby

other ratepayers have benefited, should find himself called upon to bear individually the cost of the construction of a sewer in his own highway.

12. On these and other grounds it is accordingly maintained that Section 62 of the Romford Act in its endeavour to remedy an existing defect in the law has created new injustices. The Committee are satisfied that Section 62 as it stands, however commendable as a first essay to deal with a difficult situation, does not adequately or completely meet the case. This, indeed, has already been recognised by Parliament. Thus in Section 67 of the Rugby Corporation Act, 1933, which follows the precedent of Section 62 of the Romford Act, a further proviso is added to the effect that no expenses apportioned against premises which prior to five years before 1st January, 1928, were assessed to rates, are to be recoverable unless such premises have been in the interval or shall in future be so altered as to be new buildings. The Wigan Corporation Act, 1933, Section 60 (*a*), also contained a similar addition to the Romford Section 62, but in this case fixed the critical date at 22nd November, 1932, only a year before.

13. In the Bill promoted by the Corporation of Coventry in the present Session of Parliament further modifications of the Romford Section 62 were proposed. In the Bill as amended in the House of Commons Clause 50, while reproducing generally the Romford Section 62, gives the frontager a right to object to a provisional apportionment against him on the new ground—

> "(*i*) That the sewer is of greater capacity than is reasonably requisite for the drainage of (*a*) the street or part of a street in which the sewer is to be constructed or (*b*) the premises erected or to be erected fronting adjoining or abutting on such street or part of a street, regard being had to the capacity requisite for the surface-water drainage of the street or part of a street."

The clause also contains a proviso inter alia exempting premises which were subject to rates before 27th November, 1935, unless and until altered so as to be new buildings; and providing that no apportioned expenses are to be recoverable from any frontagers until they actually connect their premises with the sewer.

14. These emendations have in turn been the subject of further criticisms. Thus it is said that, owing to the many recent alterations in the areas of local authorities, a ratepayer may not in fact have made any payments in the past towards the construction of sewers in the highways of the area in which his premises have only recently been included. And again it is said that to exempt frontagers from contributing to the cost of a sewer until they actually effect a connection with it, is contrary to the public interest as tending to induce them to postpone effecting a connection as long as possible.

15. It will be apparent from the foregoing examination of the position that the task of framing a code which will reconcile all the numerous conflicting interests and avoid inflicting injustice in any of the very varied circumstances of individual property owners, is one of almost insuperable difficulty. The Committee are not satisfied that Section 62, of the Romford Act, either in its original form or as since amended, supplies an adequate solution, and they recognise the force of the criticisms to which it has been subjected. In the opinion of the Committee the case should be dealt with by the Legislature on broader lines which, while they may not be so exhaustive of all the possibilities, will provide a reasonable working system and will avoid many of the complications and controversial provisions with which the clauses hitherto framed bristle. It is worth while to make some sacrifice of ideal justice in order to secure intelligibility and precision in a matter where certainty as to their rights and duties on the part both of local authorities and of landowners and ratepayers is so eminently desirable. In

(*a*) Section 60 of the Act referred to deals with the Capital Reserve Fund. The reference should be to section 30.

leaving the branch of their remit which is concerned with Section 62 of the Romford Act the Committee refer to the specific recommendations on the subject which will be found at the end of this Report.

16. The Committee now pass to the consideration of Section 64 of the Romford Act. This section deals with an exceptional type of case, but it is of the nature of a corollary to the principle embodied in Section 62. Under the powers conferred by Section 16 of the Public Health Act, 1975, a local authority may carry any sewer into, through or under any lands (if on the report of the surveyor it appears necessary). In the exercise of this power a local authority sometimes finds it necessary to lay a sewer through undeveloped land in order to reach the area or premises beyond, which the sewer is to serve. The owner of the undeveloped land traversed by the sewer is entitled to compensation for any damage thereby occasioned to his property. If a street (whether a private street or a highway repairable by the inhabitants at large) is subsequently formed on the line of the sewer, the owner will get the benefit of the sewer for any buildings which may be erected fronting the street. If no provision is made for his contributing to the cost of the sewer he will not only have received compensation in respect of the original construction of the sewer through his land but will also have, without any payment, the benefit of the sewer when it becomes serviceable to him. It was to meet this case that Section 64 of the Romford Act was designed and the Committee are of opinion that it is right that provision should be made to meet such cases. In reading Section 64 it is necessary to have also in mind Section 66 which provides that, where the local authority has to pay compensation in respect of the laying of a sewer through any land, there shall be set off against such compensation any enhancement of value conferred by the sewer upon the land which it traverses.

17. The scheme of Section 64 is to render recoverable by the local authority, in the case figured, a contribution from the landowner to the original cost of the sewer proportional to the frontage of his land upon the new street which overlies the sewer. In calculating the contribution to be exacted any sum deducted for enhancement in assessing the compensation paid to the landowner when the sewer was originally constructed is to be deducted from the contribution recoverable from him. While the general principle of the Section commends itself to the Committee they are of opinion that the method of working it out is quite indefensible. The machinery of the Private Streets Works Act, 1892, is again invoked but in order to make it applicable to such very different circumstances the provisions of the Act have been so mangled as to make the task of understanding what has actually been enacted almost impossible. The Committee were furnished with a copy of the Act of 1892 showing the alterations and adaptations which had been necessitated in order to make it available for the purposes of Section 64, as set out in the First Schedule to the Romford Act, and they venture to say that no worse example of legislation by reference and adaptation is to be found in the Statute Book.

18. In the opinion of the Committee the precedent of Section 64 having regard also to the provisions of Section 66 should not be followed (as it has been already in several Acts). In the first place the Committee do not think that on the original assessment of damage caused by the construction of the sewer any set off should be made in respect of the potential enhancement of the land due to the laying of the sewer. Such enhancement should be left to be paid for, if and when realised, by the landowner, in the contribution which the landowner will be called upon to make when his land comes to be developed and the sewer becomes serviceable to him. In the next place, if the recommendations of the Committee with respect to Section 62 are adopted, a much simpler code will be framed for the recovery of contributions from frontagers. This code should be made to apply with the necessary variations to the case figured in Section 64.

RECOMMENDATIONS.

19.—*A. Section* 62 *of the Romford Act.*

The Committee recommend that in all future Bills in which power is sought by a local authority to recover contributions from frontagers towards the cost of laying a sewer in a highway repairable by the inhabitants at large—

(1) the basis of the apportionment of the cost on each frontager should be the extent of his frontage on the highway :

(2) The cost to be apportioned should not exceed the average cost per lineal yard in the district of providing sewers in private streets under the Private Streets Works Act, 1892, any excess cost to be borne by the general rates :

(3) No part of the cost so ascertained and apportioned should be recoverable from any frontagers whose premises abut upon the highway at the date of the resolution by the local authority to construct the sewer unless and until a new building abutting on the highway is erected on such premises, and then only to an extent proportional to the extent of the frontage of the new building ; no interest should be chargeable on the apportioned cost or any part thereof until it becomes so recoverable.

(4) The re-erection or alteration of an existing building should not be treated as the erection of a new building unless the size or character of the building is substantially altered.

(5) Frontagers whose existing buildings abut upon the highway at the date above specified should be permitted to connect their buildings with the sewer without thereby rendering exigible the share of the cost apportioned on their premises.

(6) If the construction of the sewer is not completed within two years after the date of the resolution, the resolution and all liabilities consequent thereon should lapse.

(7) All existing agreements entered into between the local authority and landowners should be safeguarded.

It may be necessary to make special provision for cases where the frontage is so small as to be quite out of proportion to the area which the sewer will serve.

B. Section 64 *of the Romford Act.*

The Committee recommend that in all future Bills in which power is sought by a local authority to recover contributions from frontagers towards the cost of a sewer which has been laid in land over which a street (whether repairable by the inhabitants at large or not) is subsequently constructed—

(1) There should be no set off in respect of enhancement of value in assessing the compensation payable at the time of the original construction of the sewer to the owner of the land traversed by it.

(2) If and when a street is constructed over the sewer a contribution towards the cost of the sewer should be recoverable from the owners of the land or premises fronting on the street, such contribution to be calculated and exigible in the same manner and subject to the same conditions, with the necessary adaptations, as the Committee have recommended with regard to contributions under Head A.

20. The Committee have not conceived it to be their duty, nor do they feel competent, to frame draft clauses on the lines of these recommendations and they recognise that in the process of actual drafting it may be necessary to adopt different phrasing and to introduce provisions to render the scheme more complete, but they are of opinion that the principles which they have indicated in their recommendations are those upon which future legislation should proceed.

PART V

INDEX