

# Building Restrictions (War-Time Contraventions) Act, 1946.

9 & 10 GEO. 6. CH. 35.

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## ARRANGEMENT OF SECTIONS.

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### Section.

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## CHAPTER 35.

An Act to make provision as respects works on land carried out during the war period, and uses of land begun during that period, which do not comply with building laws or planning control. [26th March 1946.]

**B**E it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1.—(1) Where during the period beginning with the third day of September, nineteen hundred and thirty-nine, and ending with the commencement of this Act (in this Act referred to as the "war period") works on land have been carried out which do not comply with a building law, any period of time limiting the taking of steps for enforcing the law shall be calculated without regard to time elapsing during the war period or to time elapsing after the end of that period during which, notwithstanding the provisions of the next following subsection, the building law is unenforceable by reason of the subsistence in or over the land of any interest or right to possession held by or on behalf of the Crown.

Enforcement after end of war period of building laws and planning control.

(2) Where during the war period works on land not complying with a building law or with planning control have been carried out, or a use of land not complying with planning control has been begun, by or on behalf of the Crown, and at any time after the end of the war period there subsists in the land a permanent or long-term interest which is neither held by or on behalf of the Crown nor subject to any interest or right to possession so held, the building law or planning control, as the case may be, shall, so long as such a permanent or long-term interest subsists in the land, be enforceable in respect of the said works or use of land notwithstanding that the works were carried out or the land used by or

on behalf of the Crown and notwithstanding the subsistence in the land of any interest held by or on behalf of the Crown in reversion (whether immediate or not) expectant on the termination of the said permanent or long-term interest.

(3) In this section the expression "permanent or long-term interest" means in relation to any land the fee simple therein, a tenancy thereof granted for a term of more than ten years and not subject to a subsisting right of the landlord to determine the tenancy at or before the expiration of ten years from the beginning of the term, or a tenancy granted for a term of ten years or less with a right of renewal which would enable the tenant to prolong the term thereof beyond ten years.

(4) For the purposes of this section, the question whether at any time a tenancy is or was subject to a subsisting right of the landlord to determine the tenancy at or before the expiration of ten years from the beginning of the term shall, if—

(a) whether by virtue of the Validation of War-Time Leases Act, 1944, or otherwise the tenancy is or was subject to a right of the landlord to determine the tenancy at or before the expiration of any period from the happening of any such event as is mentioned in subsection (2) of section one of the said Act of 1944, and

(b) the event in question has or had not happened at the said time,

be determined as if the event had happened immediately before the said time.

(5) In this section the expression "tenancy" includes a tenancy under an under-lease and a tenancy under an agreement for a lease or under-lease, but does not include an option to take a tenancy and does not include a mortgage.

2.—(1) At any time before the expiration of five years from the end of the war period, a person entitled to make an application under this subsection with respect to any land may apply to an authority responsible for enforcing any building law or planning control for a determination under this section with respect to works on the land carried out, or a use of the land begun, during the war period.

(2) Upon an application being made to them under the last foregoing subsection, the authority shall determine whether the works or use fail to comply with any building laws or planning control which they are responsible for enforcing, and if so shall specify the law or control in question.

(3) Where the authority determine that works or a use fail to comply as aforesaid they shall further determine whether having regard to all relevant circumstances the works or use shall, notwithstanding the failure, be deemed so to comply, either

7 & 8 Geo. 6.  
c. 34.

Power to sanction war-time non-compliance with building laws or planning control.

unconditionally or subject to such conditions as to the time for which the works or use may be continued, the carrying out of alterations, or other matters, as the authority think expedient.

(4) An application under subsection (1) of this section may be made with respect to any land by the owner or occupier thereof, or by any person who proves that he has or intends to acquire an interest in the land which will be affected by a determination given on such an application or that he has borne any of the cost of carrying out works on the land during the war period.

(5) In the case of land owned or occupied by or on behalf of the Crown, or leased to, or to a person acting on behalf of, the Crown, or land with respect to which it is proved that there is held, or intended to be acquired, by or on behalf of the Crown an interest in the land which will be affected as aforesaid or that any of such cost as aforesaid has been borne by the Crown, an application under subsection (1) of this section may be made by any person acting on behalf of the Crown.

(6) An application under subsection (1) of this section shall be accompanied by such plans and other information as are necessary to enable the application to be determined.

(7) The authority to whom an application under subsection (1) of this section is made shall within fourteen days from the receipt of the application publish notice thereof in one or more local newspapers circulating in the area in which the land is situated and serve notice thereof on any person appearing to the authority to be specially affected by the application, and shall take into consideration any representations made to them in connection with the application within fourteen days from the publication of the notice; and if within two months from the last day on which such representations may be made the authority have failed to determine the application, the applicant may serve notice on the authority that he appeals to the Minister of Health, and thereupon the authority shall be deemed to have refused to entertain the application.

(8) Where the applicant is aggrieved by a determination given by an authority under this section or by the refusal of an authority to entertain an application made thereunder, or where a person by whom representations have been made as mentioned in the last foregoing subsection is aggrieved by such a determination, he may within the period of twenty-eight days after he has notice of the determination or refusal, or such extended period as the Minister of Health may allow, appeal to that Minister, and that Minister may give, in substitution for the determination, if any, given by the authority, such determination as appears to him to be proper having regard to all relevant circumstances, or, if he is satisfied that the applicant was not

a person entitled to make the application, may decide that the application is not to be entertained :

Provided that at any stage of the proceedings on such an appeal to him the Minister may, and shall if so directed by the High Court, state in the form of a special case for the opinion of the High Court any question of law arising in connection with the appeal.

(9) Subject as hereinafter provided and to any determination or decision of the Minister of Health on an appeal under the last foregoing subsection, any determination given by an authority under this section and any refusal of an authority to entertain an application for such a determination shall be final, and any such determination or decision of the Minister shall be final :

Provided that where a determination has been given under subsection (3) of this section that works on land or a use of land shall not be deemed to comply with a building law or planning control or shall be deemed to comply therewith subject to conditions, then if a person entitled to make an application under subsection (1) of this section with respect to the land satisfies the authority or on appeal the Minister of Health that there has been a material change of circumstances since the previous application was determined, he may make a subsequent application under the said subsection (1) and on such an application the authority or on appeal the Minister may substitute for the determination such determination under subsection (3) of this section as appears proper having regard to all relevant circumstances.

(10) If it appears to the Minister of Town and Country Planning that it is expedient, having regard to considerations affecting the public interest, whether generally or in the locality concerned, that any application under subsection (1) of this section to an authority responsible for enforcing planning control, or any class or description of such applications, should instead of being determined by the authority be referred to the Minister of Health for decision, the Minister of Town and Country Planning may give directions to the authority requiring that application, or applications of that class or description, to be so referred, and this section shall apply to any such reference as if it were an appeal under subsection (8) of this section from a refusal of the authority to entertain the application.

(11) The Minister of Town and Country Planning may give directions to any authority responsible for enforcing planning control requiring them to furnish him with such information with respect to applications under subsection (1) of this section received by them as he considers necessary or expedient in connection with the exercise of his functions under this section.

(12) On any application or appeal under this section the applicant, or in the case of an application referred to the Minister of Health for decision or in the case of an appeal to that Minister the applicant or the authority responsible for enforcing the building law or planning control in question, may require the authority or Minister by whom the application or appeal is to be determined to afford him or them an opportunity before the application or appeal is determined of appearing before and being heard by a person appointed by the authority or the Minister for the purpose.

3.—(1) Where during the period of five years beginning with the end of the war period any person proposes to take steps for enforcing a building law or planning control in the case of works on land not complying with the law or control in question carried out during the war period, or a use of land not complying with the planning control in question begun during that period, then—

Supple-  
mentary  
provisions  
as to  
enforcement.

- (a) unless an application under the last foregoing section in relation to the land has been made which has not been finally determined, he shall serve on every owner and occupier of the land not less than twenty-eight days' notice of the proposal, and if within the said period of twenty-eight days any person makes an application under the last foregoing section in relation to the land and within seven days of the making thereof serves on the person proposing to take steps as aforesaid notice that the application has been made, no steps for enforcing the law or control shall be taken until the final determination of the application ;
- (b) if such an application has been made which has not been finally determined, no such steps shall be taken until the final determination thereof :

Provided that no notice shall be required under paragraph (a) of this subsection if steps for enforcing a building law or planning control in the case of any works on land are begun within twenty-eight days of the final determination of an application under the last foregoing section in relation to the land.

(2) In calculating any period of time limiting the taking of steps for enforcing a building law, any period during which the taking of such steps is delayed by the operation of the last foregoing subsection shall be disregarded.

(3) Where a determination under subsection (3) of section two of this Act that works or a use of land shall be deemed to comply with a building law has been given subject to any condition as to time or otherwise, and the determination ceases to have effect by reason of the time expiring or the condition not being, or ceasing to be, complied with, any period of time limited for enforcing the law—

- (a) where apart from this and the next following subsection it would run from the date on which the works were carried out or the use was begun, shall run from the date on which the determination ceased to have effect ;
- (b) where apart from this and the next following subsection it would run from the discovery that the works had been carried out or the use had been begun, shall run from the discovery that the determination has ceased to have effect.

(4) Subject to the provisions of subsection (1) of section one of this Act and of the two last foregoing subsections, the time within which a notice of irregularity may be served under subsection (2) of section eighty-nine of the London Building Acts (Amendment) Act, 1939, in respect of works carried out during the war period shall be the expiration of twelve months from the end of that period or the time limited by the said subsection (2), whichever is the later.

(5) No proceedings for the recovery of a fine or other penalty shall be brought against any person for having carried out during the war period works on land which do not comply with a building law :

Provided that this subsection shall not affect proceedings for the recovery of expenses incurred in taking steps for enforcing a building law.

(6) Where works on land carried out during the war period do not comply with a building law, steps for enforcing the law may, notwithstanding anything in any enactment, be taken without previous conviction of any person of a contravention of the law.

(7) For the purposes of this section, an application shall be treated as having been finally determined notwithstanding that under the proviso to subsection (9) of the last foregoing section a subsequent application may be made under subsection (1) thereof.

4.—(1) Where any works on land carried out, or use of land begun, during the war period remain or continues after the expiration of five years from the end of that period, and no determination has been given under this Act whether the works or use fail to comply with any building law or planning control, the works or use shall by virtue of this section be treated for all purposes as complying therewith unless steps for enforcing the law or control have been begun before the expiration of the said five years.

(2) Where works on land not complying with planning control have been carried out at any time during the war period and before

the commencement of the Town and Country Planning (Interim 6 & 7 Geo. 6. Development) Act, 1943, or a use of land not complying with c. 29. planning control has been begun at any such time, and the land is in an area with respect to which a resolution to prepare or adopt a scheme under the Town and Country Planning Act, 1932, 22 & 23 Geo. 5 was in force at the time when the works were carried out or the use c. 48. was begun, then if the authority responsible for enforcing planning control are satisfied, at any time before the expiration of five years from the end of the war period while such a resolution is in force with respect to the area and the works remain on the land or the use of the land continues, that it is necessary or expedient to exercise the powers conferred by this subsection having regard to the provisions then proposed to be included in the scheme, the said authority may by notice served on every owner and occupier of the land direct that subsection (1) of this section shall not, so far as concerns planning control, have effect in relation to the works or use of land.

5.—(1) During the period of five years beginning with the end of the war period, any officer of an authority responsible for enforcing a building law or planning control shall, on producing, if so required, some duly authenticated document showing his authority to act for the purposes of this section, have a right, subject to the provisions of this section, to enter any premises at all reasonable hours—

- (a) for the purpose of ascertaining whether there are on the premises any works carried out during the war period which do not comply with a building law or with planning control, or whether a use of the premises continues which was begun during that period and does not comply therewith ;
- (b) where an application has been made to the authority under section two of this Act, for the purpose of obtaining any information required by the authority for the exercise of their functions under that section in relation to the application :

Provided that admission to any premises which are occupied shall not be demanded as of right unless twenty-four hours' notice of the intended entry has been served on the occupier.

(2) Any person who wilfully obstructs any officer of an authority acting in the exercise of his powers under this section shall be liable on summary conviction to a fine not exceeding five pounds.

(3) If any person who in compliance with the provisions of this section is admitted into a factory, workshop or workplace, discloses to any person any information obtained by him in the factory, workshop or workplace with regard to any manufacturing

process or trade secret, he shall, unless such disclosure was made in the performance of his duty, be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months.

Service of notices.

6.—(1) Any notice or other document required or authorised to be served under this Act may be served on any person either by delivering it to him, or by leaving it at his proper address, or by post.

(2) Any such document required or authorised to be served upon an incorporated company or body shall be duly served if it is served upon the secretary or clerk of the company or body.

52 & 53 Vict.  
c. 63.

(3) For the purposes of this section and of section twenty-six of the Interpretation Act, 1889, the proper address of any person upon whom any such document as aforesaid is to be served shall, in the case of the secretary or clerk of any incorporated company or body be that of the registered or principal office of the company or body, and in any other case be the last known address of the person to be served.

(4) If it is not practicable after reasonable enquiry to ascertain the name or address of an owner or occupier of land on whom any such document as aforesaid is to be served, the document may be served by addressing it to him by the description of "owner" or "occupier" of the premises (describing them) to which it relates, and by delivering it to some person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

Interpretation.

7.—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

"authority responsible for enforcing planning control" means—

(a) in relation to land subject to a resolution to prepare or adopt a scheme under the Town and Country Planning Act, 1932, the council of a county, county borough or county district, or joint committee, empowered by an interim development order to permit the development of the land ;

(b) in relation to land subject to such a scheme, the authority responsible for enforcing the relevant provisions of the scheme ;

"building law" means any obligation or restriction as to the construction, nature or situation of works on land

or as to any other circumstances of such works (including the use of the land) having effect by virtue of—

(a) any enactment contained in Part II or IV of the Public Health Act, 1936, or byelaws made under any such enactment. 26 Geo. 5 and  
1 Edw. 8. c. 49.

(b) any enactment contained in Part II or III of the Public Health (London) Act, 1936, or byelaws made under any such enactment, 26 Geo. 5 and  
1 Edw. 8. c. 50.

(c) the London Building Acts, 1930 to 1939, or byelaws made thereunder,

(d) section one hundred and fifty-seven of the Public Health Act, 1875, or subsection (2) of section one hundred and forty of the Housing Act, 1936, or byelaws made thereunder, 38 & 39 Vict.  
c. 55.  
26 Geo. 5 and  
1 Edw. 8. c. 51.

(e) the Public Health (Buildings in Streets) Act, 1888, 51 & 52 Vict.  
c. 52.

(f) the Roads Improvement Act, 1925, 15 & 16 Geo. 5.  
c. 68.

(g) sections thirty to thirty-four of the Public Health Act, 1925, 15 & 16 Geo. 5.  
c. 71.

(h) the Restriction of Ribbon Development Act, 1935, or 25 & 26 Geo. 5.  
c. 47.

(i) any enactment in a local Act made for purposes similar to the purposes of any of the said Acts, or any byelaws made under any such enactment ;

“ local Act ” includes an Act confirming a provisional order ;

“ owner ” has the same meaning as in the Housing Act, 1936, and “ owned ” shall be construed accordingly ;

“ war period ” has the meaning assigned to it by subsection (1) of section one of this Act ;

“ works ” includes any building, structure, excavation or other work on land.

(2) References in this Act to non-compliance with a building law mean, in relation to any works on land, that the construction, nature or situation of the works or any other circumstances thereof (including the use of the land) are such either that the works do not comply with the building law in question or that by virtue of that law the rejection of plans for the works is expressly required or authorised ; and references in this Act to compliance with a building law shall be construed accordingly.

(3) References in this Act to non-compliance with planning control mean—

- (a) in relation to works on land carried out, or a use of land begun, at a time when the land was subject to a resolution to prepare a scheme under the Town and Country Planning Act, 1932, that the works were carried out or the use begun otherwise than in accordance with the terms of an interim development order or of permission granted under such an order ;
- (b) in relation to works on land carried out, or a use of land begun, at a time when the land was subject to such a scheme, that the works were carried out or the use begun otherwise than in conformity with the provisions of the scheme ;

and references in this Act to compliance with planning control shall be construed accordingly.

(4) References in this Act to the enforcement of a building law shall be construed as references to securing (whether by the doing of work on land or the requiring, by injunction or otherwise, that some other person shall do work on land) that works on land not complying with the building law in question shall either be demolished or removed, or be altered so as to comply therewith.

(5) References in this Act to the enforcement of planning control shall be construed as references to the exercise of the powers conferred by section thirteen of the Town and Country Planning Act, 1932 (which gives power to remove, pull down or alter buildings or works not conforming with a scheme under that Act, and to prohibit a use of land not conforming with such a scheme) or by section five of the Town and Country Planning (Interim Development) Act, 1943 (which gives similar powers to enforce interim development control).

(6) In calculating for any of the purposes of this Act the period of five years from the end of the war period there shall be disregarded any time during which, notwithstanding the provisions of subsection (2) of section one of this Act, a building law or planning control is unenforceable by reason of the subsistence in or over land of any interest or right to possession held by or on behalf of the Crown.

Application to  
Scotland.

8.—(1) This Act shall in its application to Scotland have effect subject to the following provisions of this section.

(2) For any reference to the Minister of Health or to the Minister of Town and Country Planning there shall be substituted a reference to the Secretary of State ; for any reference to the High Court there shall be substituted a reference to the Court of Session ; for references to the Town and Country Planning Act, 1932, and the Town and Country Planning (Interim Development)

Act, 1943, there shall be respectively substituted references to the Town and Country Planning (Scotland) Act, 1932, and the Town and Country Planning (Interim Development) (Scotland) Act, 1943. 22 & 23 Geo. 5.  
c. 49.  
6 & 7 Geo. 6.  
c. 43.

(3) For any reference to a county borough there shall be substituted a reference to a burgh, and references to county districts shall not apply; for any reference to an interest held in reversion expectant on the termination of another interest there shall be substituted a reference to the interest of the landlord in land subject to a lease; for any reference to the fee simple in land there shall be substituted a reference to the interest of the proprietor of the *dominium utile* or, in the case of land other than feudal land, of the owner; and for any reference to an under-lease there shall be substituted a reference to a sub-lease.

(4) Subsection (8) of section two shall have effect as if for the words "in the form of a special case for the opinion of the High Court" there were substituted the words "a case for the opinion of the Court of Session on".

(5) Section seven shall have effect as if—

(a) for paragraphs (a) to (i) in the definition of "building law" the following paragraphs were substituted—

(a) any enactment contained in the Burgh Police (Scotland) Acts, 1892 to 1903, or in the Public Health (Scotland) Act, 1897, or in the Housing (Scotland) Acts, 1925 to 1938, or byelaws made under any such enactment; 60 & 61 Vict.  
c. 38.

(b) the Roads Improvement Act, 1925;

(c) the Restriction of Ribbon Development Act, 1935;

(d) any enactment in a local Act made for purposes similar to the purposes of any of the aforesaid enactments or any byelaws made under such local enactment, or

(e) any enactment or rule of the common law conferring powers on a dean of guild court or any body performing the functions of such a court; and

(b) for the definition of "owner" the following definition were substituted—

"owner" includes in relation to any land any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking.

9.—(1) This Act shall in its application to Northern Ireland have effect subject to the following provisions of this section. Application to  
Northern  
Ireland.

(2) For any reference to the Minister of Health or to the Minister of Town and Country Planning there shall be substituted a

reference to the Ministry of Health and Local Government for Northern Ireland; for any reference to the High Court there shall be substituted a reference to the High Court of Justice in Northern Ireland.

(3) The definition in subsection (3) of section one of the expression "permanent or long-term interest" shall be extended so as to include in relation to any land in Northern Ireland any freehold estate which is recognised in accordance with the rules of law and equity applicable in Northern Ireland as a valid and subsisting estate in such land.

(4) Subsection (2) of section four shall have effect as if for the references therein to the Town and Country Planning (Interim Development) Act, 1943, and to the Town and Country Planning Act, 1932, there were respectively substituted references to the Planning (Interim Development) Act (Northern Ireland), 1944, and to the Planning and Housing Act (Northern Ireland), 1931.

(5) Section seven shall have effect as if—

(a) for the reference, in paragraph (a) of the definition of "authority responsible for enforcing planning control" contained in subsection (1) thereof, to the council of a county, county borough or county district there were substituted a reference to a local authority;

(b) for the reference, in paragraph (a) of the said definition, and in paragraph (a) of subsection (3) of the section, to the Town and Country Planning Act, 1932, there were substituted a reference to the Planning Acts (Northern Ireland), 1931 and 1944;

(c) for paragraphs (a) to (i) in the definition of "building law" the following paragraphs were substituted—

(a) any enactment contained in the Public Health (Ireland) Acts, 1878 to 1918;

(b) section nine of the Summary Jurisdiction (Ireland) Act, 1851;

(c) the Roads Improvement Act (Northern Ireland), 1928;

(d) any enactment contained in the Housing Acts (Northern Ireland), 1890 to 1945; or

(e) any enactment in a local Act made for purposes similar to the purposes of any of the aforesaid enactments or any byelaws or orders made under such local enactment;

(d) for the definition of "owner" the following definition were substituted—

"owner" includes in relation to any land any person who under the Lands Clauses Acts would be

enabled to sell and convey the land to the promoters of the undertaking ;

(e) for the references in subsection (5) thereof to section thirteen of the Town and Country Planning Act, 1932, and to section five of the Town and Country Planning (Interim Development) Act, 1943, there were respectively substituted references to section seven of the Planning and Housing Act (Northern Ireland), 1931, and to section four of the Planning (Interim Development) Act (Northern Ireland), 1944.

(6) For the purposes of this section, the expressions "enactment" and "local Act" shall respectively be construed as including any enactment and any local Act passed by the Parliament of Northern Ireland.

**10.** This Act may be cited as the Building Restrictions (War- Short title. Time Contraventions) Act, 1946.

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