



# War Damage to Land (Scotland) Act 1941

## 1941 CHAPTER 40

An Act to make further provision with regard to the rights of landlords and tenants of lands and heritages in Scotland which have sustained war damage and to obligations to insure against war damage to such lands and heritages and to amend the War Damage to Land (Scotland) Act, 1939. [7th August 1941.]

BE 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 Rent of lands and heritages which have sustained war damage**

- (1) Where for any period any dwelling house held under a short lease at a rent not exceeding ninety pounds per annum is unfit by reason of war damage and is not occupied, either in whole or in part, by the tenant no rent shall be payable under the lease in respect of that period.
- (2) Where during any period
  - (a) any such dwelling house as aforesaid is occupied in whole or in part by the tenant while it is unfit by reason of war damage ; or
  - (b) the accommodation in any such dwelling house is substantially reduced by reason of war damage,there shall be payable by the tenant under the lease, in respect of such period, such rent as may, in default of agreement between the landlord and the tenant, be determined in accordance with the provisions hereinafter contained.
- (3) Where the rent of any such dwelling house as aforesaid is payable in advance, and the tenant has paid a sum in name of rent in respect of any period for which no rent is payable under subsection (1) of this section, or a reduced rent is payable under subsection (2) of this section, the tenant shall be entitled to recover from the landlord by deduction from rent thereafter becoming due or otherwise, the sum so paid in name of rent, or the excess thereof over the reduced rent as the case may be.

- (4) For the purposes of this section, a tenant shall not be deemed to be in occupation of any dwelling house which is unfit by reason of war damage by reason only—
- (a) that furniture or other goods belonging to or used by him remain in the dwelling house ;
  - (b) that he visits the dwelling house from time to time for the purpose of removing, or taking steps to preserve, any such furniture or goods ; or
  - (c) that he retains possession of the keys of the dwelling house;

and where the tenant has sublet the whole or any part of the dwelling house, the occupation of the sub-tenant shall, as between the tenant and his landlord, be deemed to be the occupation of the tenant.

- (5) For the purposes of this section, a dwelling house which has been rendered unfit by war damage shall be deemed to be fit if it has been repaired to such an extent as is reasonably practicable having regard to the circumstances prevailing in the locality and sufficient to render the dwelling house reasonably capable of being used for the purposes for which it was used or adapted for use before the occurrence of the war damage, and continues to be in that state of repair.

- (6) A man of skill nominated in accordance with the provisions hereinafter contained may, failing agreement between the landlord and the tenant, issue on the application of either of them a certificate that the dwelling house has been repaired to the extent mentioned in the last foregoing subsection, and any such certificate shall while it remains in force be conclusive evidence that the dwelling house is fit.

- (7) It shall be competent for the tenant to apply for a review of the certificate on the ground that either—

- (a) the dwelling house has again become unfit either by reason of war damage or because the works of repair carried out before the issue of the certificate are no longer effective ; or
- (b) further repairs have been reasonably practicable having regard to the circumstances prevailing in the locality since the issue of the certificate and have not been carried out;

and upon such application a man of skill nominated as aforesaid shall, if he is satisfied that on either of the grounds specified in this subsection the certificate should be revoked, revoke the certificate, and give notice of such revocation to the tenant and to the landlord ; and from the date on which such notice is given and until the landlord and the tenant otherwise agree or in the absence of agreement until a new certificate is issued under the last foregoing subsection, the dwelling house shall be deemed to be unfit by reason of war damage.

No application for a review of the certificate on the ground specified in paragraph (b) of this subsection shall be made unless a period of not less than three months has elapsed since the issue of the certificate or since the last application on that ground.

- (8) In exercising functions under the last two foregoing subsections, a man of skill shall have regard to any general directions issued from time to time by the Secretary of State, and different directions may be issued for different areas.

## **2 Determination of questions under this Act**

- (1) Any question under subsection (1) or subsection (2) of section one of this Act shall be determined by a man of skill nominated in accordance with the provisions of the next succeeding subsection, and his determination thereon shall be final.
- (2) Such number of persons being registered Architects or Fellows of the Chartered Surveyors' Institution or having other qualifications which the Secretary of State may deem suitable as may be appointed by the Secretary of State shall form a panel from which a man of skill to be nominated for any of the purposes of this Act shall be selected in such manner as the Secretary of State may determine.

Any such appointment made by the Secretary of State may be revoked by him.

- (3) The remuneration of a person selected as aforesaid shall be of such amount as may be fixed by the Secretary of State with the consent of the Treasury, and shall be paid out of moneys provided by Parliament.

## **3 Provision as to rights of tenants under 2 and 3 Geo. 6. c. 80, or at common law**

- (1) The tenant of any dwelling house held under a short lease at a rent not exceeding ninety pounds per annum shall not be entitled to any abatement of rent in respect of war damage thereto except in accordance with the provisions of section one of this Act, and accordingly the power of the Court under section four of the War Damage to Land (Scotland) Act, 1939, to modify or suspend any term of a lease shall not extend to the rent payable for any such dwelling house as aforesaid.
- (2) Nothing in this Act shall prejudice or affect any right which the tenant of a dwelling house which has sustained war damage may have at common law to abandon his lease, or, save as provided in the last foregoing subsection, the powers of the court under any enactment in relation to any such dwelling house.

## **4 Relief from occupier's rates granted to landlord of small dwelling house to be passed on to tenant**

Where the Landlord of a dwelling house to which the House Letting and Rating (Scotland) Act, 1911, applies has, in pursuance of the Rating (War Damage) (Scotland) Act, 1941, been granted relief from any proportion of the occupier's rates payable in respect of the dwelling house, the tenant of the dwelling house during a period in which the house was wholly or to a substantial extent incapable of beneficial occupation shall, Unless no rent or only a reduced rent was payable in respect of that period in pursuance of subsection (1) or subsection (2) of section one of this Act, be entitled to recover from the landlord such proportion of any rent paid by the tenant in respect of that period as may, failing agreement between the landlord and the tenant, be determined by the rating authority.

## **5 Relief from obligation to insure against war damage**

Any express obligation to insure lands and heritages against war damage shall be void and be deemed always to have been void and any obligation to insure lands and heritages against fire or other risks shall be construed as not including and as never having included, an obligation to insure against war damage :

Provided that nothing in this section shall affect anything lawfully done before the passing of this Act in consequence of a failure to perform an obligation to insure against war damage.

## 6 Power of entry

- (1) Where any lands and heritages have sustained war damage, any person entitled to execute thereon repairs necessitated by such damage, or any person authorised by him, may, if he cannot obtain permission to enter the lands and heritages from the person having the control thereof, or cannot obtain such permission without unreasonable delay, enter the lands and heritages for the purpose of inspection with a view to the execution of repairs, or of executing the necessary repairs, and may use such force as is reasonably necessary for effecting entry.
- (2) A man of skill shall for the purpose of any function required to be performed by him under this Act in relation to any dwelling house have the like right to enter the dwelling house as is conferred by the last foregoing subsection on a person entitled to execute repairs.

## 7 Interpretation

- (1) In this Act—

" dwelling house " means a house or a part of a house let as a separate dwelling (together with any offices or other buildings occupied in connection therewith), and includes a house or part of a house so let a portion of which is used as a shop or office, or for business, trade or professional purposes ;

" held under a short lease " means held under a lease not exceeding one year or by tacit relocation, and where a person retains possession of a dwelling house by virtue of the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, or the Courts (Emergency Powers) (Scotland) Act, 1939, he shall be deemed to be the tenant of a dwelling house held under a short lease ;

" rent " includes any periodical sum payable by a tenant to his landlord in connection with the occupation of the dwelling house let whether for services, lighting, heating, board, use of furniture or otherwise, and references to rent payable under the lease include references to any such sum contracted to be paid by any agreement;

" unfit " in relation to any dwelling house means unfit for the purposes for which the dwelling house was used or adapted for use immediately before the occurrence of the war damage in question, and the expression " fit " shall be construed accordingly.

- (2) In this Act and in the War Damage to Land (Scotland) Act, 1939, the expression " war damage " shall have the meaning assigned to it by subsections (1) and (2) of section eighty of the War Damage Act, 1941, and subsection (3) of that section shall apply for the purposes of this Act and of the War Damage to Land (Scotland) Act, 1939, as it applies for the purposes of the War Damage Act, 1941, and the definition of the said expression in the War Damage to Land (Scotland) Act, 1939, shall accordingly cease to have effect.

## **8 Extent and citation**

This Act shall extend to Scotland only, and may be cited as the War Damage to Land (Scotland) Act, 1941.