



Landlord and Tenant (War Damage) (Amendment) Act 1941

1941 CHAPTER 41

Amendments of principal Act consequent upon War Damage Act, 1941

2 Conditional notice of retention

(1) Where—

- (a) a notice of retention served under the principal Act by the tenant of land which is unfit by reason of war damage contains a statement that the notice is conditional and will be treated as a notice of disclaimer if the War Damage Commission determine to make a value payment under Part I of the War Damage Act, 1941, in respect of the war damage ; and
- (b) a copy of the notice is, within one month from the service thereof on the landlord, served on the War Damage Commission ;

the notice shall have effect in accordance with the following provisions of this Act, and is hereafter in this Act referred to as a " conditional notice of retention ".

(2) As soon as the War Damage Commission have determined whether the payment under Part I of the War Damage Act, 1941, in respect of the war damage to any land to which a conditional notice of retention relates is to be a payment of cost of works or a value payment, they shall serve a notice on the tenant stating their determination, and if the Commission determine to make a value payment subsections (2) and (3) of section eight and subsections (1) to (3) of section nine of the principal Act (which relate to the effect of a notice of disclaimer) shall have effect, as from the date on which the determination becomes final, as if—

- (a) the conditional notice of retention were a notice of disclaimer served on that date;
- (b) the reference in subsection (2) of section eight to a notice of disclaimer in respect of a sub-lease included a reference to a conditional notice of retention ; and

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- (c) the reference in subsection (3) of section nine to the period allowed under the Act for serving a notice to avoid disclaimer were a reference to a period of one month or such longer period as the court may allow.
- (3) Within fourteen days of the said date the tenant shall serve on the landlord and on any person claiming immediately under the tenant (whether as assignee, mortgagee or lessee) in respect of an interest in the land comprised in the lease a notice stating that the conditional notice of retention is to be treated as a notice of disclaimer and containing such particulars as are necessary to identify the lease concerned ; and every person, other than the landlord, upon whom a notice is served under this subsection shall, within fourteen days from the receipt of the notice, serve upon every person (other than the person from whom he has received the notice)—
- (a) who has immediately derived from him an interest in the land comprised in the lease ; or
 - (b) to whom he has immediately assigned such an interest;
- a notice stating the terms of the notice served on him ; and any person who fails to comply with the provisions of this subsection shall be liable to make good to any other person any damage suffered by that other person by reason of the failure.
- (4) Where a tenant has served a conditional notice of retention, his obligation under section ten of the principal Act to render fit the land comprised in the lease shall, pending the War Damage Commission's determination with respect to the kind of payment to be made in respect of the war damage to the land, be deemed to be limited to an obligation—
- (a) to execute all such works as are reasonably practicable for temporarily meeting the circumstances created by the damage ;
 - (b) to take such steps as may be necessary from time to time for the purpose of enabling the Commission to make the said determination ; and
 - (c) to take such steps as are reasonably practicable to secure that, if the Commission determine that the payment is to be a payment of cost of works, the necessary works will be executed without delay ;
- and any question arising under section ten of the principal Act as to whether there has been unreasonable delay on the part of the tenant in rendering the land fit shall be determined accordingly.
- (5) Section six of the principal Act (which relates to the determination of disputes as to the unfitness of premises) shall have effect subject to the modifications specified in the Schedule to this Act, and section fifteen of the principal Act (which contains provisions as to leases comprising two or more tenements) shall have effect as set out with modifications in the said Schedule.
- (6) Where land comprised in a lease to which a conditional notice of retention relates sustains war damage on a subsequent occasion before the land has been rendered fit, the notice shall, unless it is withdrawn under section twelve of the principal Act, extend to the damage on the subsequent occasion as well as to the original damage, and the reference in subsection (4) of this section to the determination of the War Damage Commission shall be construed as including a reference to their determination in respect of the war damage on the subsequent occasion.
- (7) Where a notice of retention has been served, or is deemed to have been served, by a tenant before the date of the passing of this Act, he may, within three months from that date, serve a notice on the landlord containing a statement to the like effect as that mentioned in paragraph (a) of subsection (1) of this section, and if, within one

month from the service of that notice, he serves a copy thereof upon the War Damage Commission, the notice of retention shall be deemed to be a conditional notice of retention.

- (8) Subject to subsection (4) of this section, the provisions of the principal Act which relate to the effect of a notice of retention shall, pending the determination of the War Damage Commission with respect to the kind of payment to be made in respect of the war damage to the land, apply to a conditional notice of retention in like manner as they apply to an unconditional notice of retention, and, in a case where the Commission do not determine to make a value payment, shall continue so to apply.

3 Leases comprising separate hereditaments

- (1) Where different parts of the land comprised in any lease to which a conditional notice of retention relates constitute or fall within different hereditaments within the meaning of Part I of the War Damage Act, 1941, and the War Damage Commission determine to make a value payment in respect of one or more of, but not all, those hereditaments, the tenant may, within one month of the date on which the determination became final, apply to the court—

- (a) to order that the lease shall be treated as if it were two separate leases, one comprising the part or parts of the land in respect of which a value payment is to be made, and the other comprising the remainder of the land, and that the conditional notice of retention shall be treated as if it were two notices relating to the respective leases ; and
- (b) to give such consequential directions as to the apportionment of the rent or otherwise as it thinks just, including directions as respects any sub-lease ;

and the court, if it considers it equitable to do so, shall make an order accordingly, and subsections (2) and (3) of the last foregoing section shall have effect, in relation to the first-mentioned separate lease, as if the determination of the Commission to make a value payment had become final on the date of the order.

- (2) If the tenant does not make an application under the last foregoing subsection, or the court refuses such an application, the tenant may, within one month of the date on which the said determination of the War Damage Commission became final or such longer period as the court may allow in a case where an application is made under the last foregoing subsection, serve a notice on the landlord stating that he elects to treat the conditional notice of retention as an unconditional notice of retention, and the notice shall have effect accordingly and subsections (2) and (3) of the last foregoing section shall not apply.
- (3) If the court does not make an order under subsection (1) of this section and the tenant does not serve a notice under the last foregoing subsection, the determination of the War Damage Commission shall have effect, for the purposes of the last foregoing section, as if it were a determination to make a value payment in respect of all the land comprised in the lease, and as if the date on which it becomes final were postponed for one month or, in a case where an application has been made under subsection (1) of this section, for such longer period as the court may fix.

4 Effect of certain determinations of War Damage Commission

For the purposes of the last two foregoing sections of this Act—

- (a) where the War Damage Commission determine to make a payment under section fifteen of the War Damage Act, 1941, or determine to make no value

payment in a case in which the appropriate payment would be a value payment but, owing to the value of the land as a vacant site, its value in the state in which it was immediately after the occurrence of the damage is no less than its value in the state in which it was immediately before the occurrence of the damage, the determination shall have effect as if it were a determination to make a value payment ;

- (b) where, in the case of any such land as is mentioned in subsection (4) of section thirty-nine of the War Damage Act, 1941, the Commission determine to make a payment (other than a payment of cost of works) under paragraph (a) or paragraph (b) of that subsection, or determine to make no payment under either of those paragraphs, the determination shall have effect as if it were a determination to make a value payment;
- (c) where, in the case of land in respect of which a payment of cost of works would be the appropriate payment, the Commission determine to make a value payment by virtue of section sixteen of the said Act (whether in addition to a payment of cost of works or not), the determination shall not be deemed to be a determination to make a value payment.

5 Obligation to reinstate in case where payment of cost of works is made

- (1) Where the War Damage Commission determine that the payment under Part I of the War Damage Act, 1941, in respect of any war damage to land comprised in a lease is to be a payment of cost of works, any obligation (whether of the landlord or tenant) under the principal Act to render the land fit shall, except as may be otherwise agreed and subject to the following provisions of this section, be deemed, as from the date on which the determination becomes final, to be an obligation to reinstate as soon as is reasonably practicable the land in the form in which it existed immediately before the occurrence of the damage, subject to any requirements imposed by the Commission as to the nature of the works, the materials to be used therefor or otherwise :

Provided that, if the reinstatement of any part of the land could have been omitted without detracting from its value, or the omission thereof would have increased the value of the land, that reinstatement shall not be required to be carried out.

- (2) Any question arising as to the works to be carried out by way of such reinstatement as aforesaid shall be referred to and determined by the War Damage Commission, and either the landlord or the tenant may, if he is not the person upon whom the obligation to reinstate is imposed, apply to the Commission for the transfer to him of that obligation on the ground that there has been, or is likely to be, a failure to carry out that obligation, or to carry it out within a reasonable time, and if the Commission grant the application, there shall be conferred upon the applicant such powers of entry or otherwise as may be necessary to enable him to carry out the obligation.
- (3) Either the landlord or the tenant may apply to the War Damage Commission for a direction that the reinstatement of the land shall include alterations and additions to any buildings or works situated on the land, and if the Commission are satisfied that it is reasonable to do so, they may give such a direction :

Provided that, if the cost of reinstatement exceeds the amount of the payment of cost of works, such part of the excess as is attributable to any such alteration or addition shall be defrayed by the applicant.

- (4) Where the War Damage Commission determine that the payment under Part I of the War Damage Act, 1941, in respect of any war damage to land comprised in a lease is

to be a payment of cost of works, and neither the landlord nor the tenant is under an obligation under the principal Act to render the land fit, the foregoing provisions of this section shall, notwithstanding section one of the principal Act, apply to any obligation to repair under the lease (whether of the landlord or the tenant) which would but for the said section one require him to make good the war damage or the greater part thereof, in like manner as if it were such an obligation to render the land fit; and any question arising under this subsection in relation to any lease shall, on the application either of the landlord or the tenant, be determined by the court.

- (5) Where, by reason of the fact that any land comprised in a lease or any part of such land has been sub-let, two or more persons are under an obligation by virtue of this section to reinstate the land, any landlord or tenant, whether under the lease or under any under-lease, may, in default of agreement between all the parties to the lease or any under-lease, apply to the court" for a direction as to who is to carry out the said obligation ; and the court, after consideration of the terms of the lease and any under-lease and the nature of the interests comprised therein, shall give such a direction, and the foregoing provisions of this section shall have effect accordingly, subject to the modification that any application under subsection (2) or subsection (3) of this section may be made by any landlord or tenant, whether under the lease or under any under-lease, and in the case of an application under subsection (2) it shall be referred to and determined by the court instead of by the War Damage Commission.
- (6) Where any person is under an obligation by virtue of this section to reinstate land comprised in a lease and the land sustains war damage on a subsequent occasion before the reinstatement is completed, the foregoing provisions of this section shall, unless they cease to have effect in relation to the lease by reason of the withdrawal of the notice of retention or the notice to avoid disclaimer under section twelve of the principal Act, be suspended in their application to the lease pending the determination by the War Damage Commission with respect to the kind of payment to be made under Part I of the War Damage Act, 1941, in respect of the damage on the subsequent occasion, and—
 - (a) if the Commission determine that the said payment is not to be a payment of cost of works, the foregoing provisions of this section shall cease to have effect in relation to the lease ;
 - (b) if the Commission determine that the said payment is to be a payment of cost of works, the said provisions shall again apply to the lease as from the date on which their determination became final, and have effect as if the reference to the occurrence of the damage were construed as a reference to the earliest occasion on which war damage occurred to the land, and the reference to the amount of the payment of cost of works were construed as a reference to the aggregate amount of payments of cost of works made in respect of war damage to the land.

6 Provisions where tenant retains lease and value payment is made

- (1) Where the tenant of any land which is unfit by reason of war damage is, by virtue of an unconditional notice of retention, under an obligation to render the land fit, and the War Damage Commission serve a notice on the tenant that they have determined to make a value payment in respect of the damage, then, if—
 - (a) the tenant, within six months from the date on which the Commission's determination became final or such further period as the Commission may allow, submits to the persons having such interests in the land as are hereinafter specified proposals for the reinstatement of the , land, whether

with or without alterations, additions or omissions, or for the construction on the land of buildings or works of the same character as, and of a value not substantially less than, that of buildings or works existing on the land immediately before the occurrence of the damage ;

- (b) the proposals are accepted by the persons having the said interests or, if not so accepted, are in the opinion of the Commission, given on an application made by the tenant, such as ought reasonably to have been accepted by those persons ; and
- (c) the proposals are carried out (subject to such modifications as may be agreed by the tenant and the persons having the said interests or as may be submitted to the Commission by the tenant or any of those persons and approved by the Commission) within such period as is reasonable in all the circumstances;

the whole of the value payment shall, in lieu of being paid as mentioned in section nine of the War Damage Act, 1941, be paid in like manner as if the reinstatement or construction had been the subject of a payment of cost of works, and any obligation under the principal Act to render the land fit shall be discharged :

Provided that—

- (i) this subsection shall not apply to any share of the value payment apportionable to a lease which has determined before the said proposals have been carried out", not being a lease the tenant under which is, by virtue of an unconditional notice of retention, under an obligation to render the land fit;
- (ii) the court may, on the application of any tenant under a lease (not being such a lease as aforesaid) derived from the term created by the lease of the tenant who carried out the proposals, direct that the whole or any part of the share of the value payment apportionable to the lease of the applicant shall be paid as 'mentioned in section nine of the War Damage Act, 1941, and not in the manner aforesaid.

The interests hereinbefore referred to are the fee simple in the land, any lease comprising the land, and any mortgage of the fee simple or of any lease comprising the land.

- (2) Where it appears to the court that in all the circumstances of the case and having regard to any directions given by the Treasury under section seven of the War Damage Act, 1941, it is not reasonably practicable to require a tenant, who is under an obligation by virtue of an unconditional notice of retention to render fit the land comprised in the lease, to carry out that obligation, or to secure the adoption of alternative proposals under subsection (1) of this section, it may, on the application of the tenant, direct that the obligation shall cease to have effect and that the notice of retention shall be treated as if it were a conditional notice of retention and the determination of the War Damage Commission to make a value payment had become final on the date of the direction.

7 **Modification of lease after reinstatement or reconstruction**

Where any lease or any instrument relating to the land comprised in a lease is affected by any change in the land resulting from anything done under the last two foregoing sections of this Act, and in particular any covenant to repair contained in any such lease or instrument is so affected, the lease or instrument shall have effect subject to such adaptation or modification as may be agreed by the parties concerned, or, in default of such agreement, as may be determined by the court.

8 Notification by War Damage Commission of determinations, and c

- (1) As soon as the War Damage Commission have determined what kind of payment (if any) is to be made under Part I of the War Damage Act, 1941, in respect of any war damage to land comprised in a lease, they shall, if the landlord or tenant of the land has made a request in writing to be notified thereof and they are not required to notify him under section two of this Act, serve a notice on him of their determination.
- (2) For the purposes of this Act, a determination of the War Damage Commission with respect to the kind of payment (if any) to be made under Part I of the War Damage Act, 1941, in respect of war damage to land comprised in a lease shall become final—
 - (a) in a case where no appeal against the determination is brought, on the date when the period within which such an appeal may be brought expires ; or
 - (b) in a case where such an appeal is brought, but does not affect the determination of the Commission in any respect material for the purposes of this Act, on the date when the appeal or (if there is more than one) the last such appeal is finally determined or abandoned, or the date when the period within which such an appeal may be brought expires, whichever is the later.
- (3) Where any such determination of the War Damage Commission is affected in a material respect as the result of such an appeal, the determination shall cease to have effect for the purposes of this Act and the War Damage Commission shall, as soon as the new determination has been made, give notice thereof in accordance with this Act.
- (4) Any copy of a notice required under this Act to be served on the War Damage Commission, and any request in writing made to the Commission under subsection (1) of this section, may be served or made by delivering it to an officer of the Commission at any office of the Commission, or by sending it in a prepaid registered letter addressed to the Commission at any office of the Commission.

9 Extension of certain provisions of the War Damage Act, 1941

- (1) Sections fifty-seven, fifty-eight and ninety of the War Damage Act, 1941, and paragraph 6 of the First Schedule to that Act (which relate to certain powers of the War Damage Commission exercisable in connection with their functions under that Act) shall apply in relation to the functions of the Commission under this Act, and accordingly the said provisions shall have effect subject to the following modifications :—
 - (a) in subsection (1) of section fifty-seven, the references to any other question falling by virtue of Part I of the said Act to be determined by the Commission and to any question arising under the said Part I shall be construed as including references to any question falling to be determined by them under this Act and to any question arising under this Act, respectively, and the reference to a hereditament shall be construed as including a reference to land comprised in a lease ;
 - (b) in subsection (1) of section fifty-eight, the reference to the functions of the Commission shall be construed as including a reference to their functions under this Act;
 - (c) in section ninety, the references to the said Act shall include references to this Act; and
 - (d) in paragraph 6 of the First Schedule, the reference to questions subject to determination by the Commission under the said Act shall be construed as

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including a reference to questions subject to determination by the Commission under this Act.

- (2) The reference in paragraph (a) of subsection (3) of section nine of the War Damage Act, 1941, to any surrender of a tenancy by virtue of the principal Act shall be construed as including a reference to any surrender of a lease resulting from the provisions of subsection (2) of section two of this Act.