



# War Damage to Land (Scotland) Act 1939

## 1939 CHAPTER 80

An Act to modify the rights and liabilities of persons interested in land in Scotland damaged by war. [1st September 1939.]

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 Relief from obligation to repair in case of war damage**

- (1) Where war damage occurs to any land comprised in a disposition, or in a lease or in a heritable security, nothing in such disposition, lease or heritable security, or in any deed or instrument bearing reference thereto or in the common law, shall be construed as requiring any party having a right or interest under such disposition or the lessor or lessee or the debtor in the heritable security to make good the war damage.
- (2) A condition contained in a disposition or lease or in any deed or instrument bearing reference thereto that the disposition or lease or any such deed or instrument shall be void or voidable whenever there shall not be buildings of a certain Value or description on the land shall not be operative where the failure to have such buildings on the land is due to war damage.
- (3) The provisions of any enactment relating to the repair or maintenance of any building shall not extend to the making good of war damage.

### **2 War damage to land comprised in heritable security not to entitle creditor to enter into possession**

Where war damage occurs to any land comprised in a heritable security nothing in the provisions of the heritable security or in any deed or instrument bearing reference thereto shall be construed as entitling the creditor to enter into possession of the land or sell the same solely on the ground that his security has been diminished by reason of the war damage.

### **3 Obligation to notify war damage in certain cases, and c**

Where war damage occurs to any land comprised in a disposition, a lease or a heritable security, it shall be the duty of the donee or the lessee or the debtor in the heritable security—

- (a) forthwith on the damage becoming known to him to serve a notice on any party having a right or interest under such disposition, or on the lessor or on the creditor in the heritable security stating that the damage has occurred and the general nature thereof so far as known; and
- (b) to permit the person on whom notice shall have been served as aforesaid, or any person authorised by him, at such times as may be reasonable in the circumstances to enter on the land for the purpose of ascertaining the extent of the damage and at his own expense to make good the damage either temporarily or permanently.

### **4 Power to modify contracts on occurrence of war damage**

(1) Where war damage occurs—

- (a) to any land comprised in a disposition, or in a lease or in a heritable security; or
- (b) to any land the proprietor whereof is under obligation to pay the rents and revenues in whole or in part to any other person or to pay to any other person out of such rents and revenues any sum, periodic or otherwise (not being a sum in respect of a loan secured by a heritable security);

it shall be lawful for any person having a right or interest under such disposition, lease or heritable security, or for the proprietor under such obligation, to apply to the court, and on any such application the court may modify or suspend any term (express or implied according to law) of the disposition, lease or heritable security or of the obligation, or of any deed or instrument bearing reference to such disposition, lease, heritable security or obligation, or in the case of a feu or a lease may pronounce a decree of declarator of irritancy thereof, or in the case of a contract of ground annual pronounce a decree of adjudication of the land out of which the ground annual is payable, according as in all the circumstances of the case shall seem just.

- (2) Where a decree of declarator of irritancy of the feu is pronounced in pursuance of the foregoing provisions of this section, the recording of an extract of such decree in the appropriate register of sasines shall have the like force and effect as if the decree were one of declarator of irritancy *ob non solutem canonem*; and where a decree of adjudication is pronounced in pursuance of the said provisions against the proprietor of land out of which a ground annual is payable, the recording of an extract of such decree in the appropriate register of sasines shall have the like force and effect as if the decree were one pronounced under subsection (5) of section twenty-three of the Conveyancing (Scotland) Act, 1924.
- (3) Any decree pronounced by the court in virtue of the provisions of this section (other than a decree of irritancy or of adjudication) shall be open to review by the court from time to time on any application made to it for that purpose by any party interested.

### **5 Provisions as to war damage to building belonging to two or more owners**

Where war damage occurs to any building which comprises two or more separate tenements belonging to two or more owners or in which two or more persons have a common interest, any obligation, express or implied, imposed on any such owner or person by virtue of any deed or instrument or of the common law, to repair or maintain

the building or any part thereof shall be construed as not including liability to make good such war damage, and where such owners or persons are unable to agree as to the making good of the war damage the provisions of sections one hundred and ninety-five to one hundred and ninety-nine of the Burgh Police (Scotland) Act, 1892, shall apply to such building in like manner as those provisions apply to the houses or buildings therein mentioned where the owners are unable to agree as to sale or rebuilding.

## **6 Provision as to war damage to entailed estate**

The making good of war damage which has occurred to an entailed estate shall be deemed to be an improvement within the meaning of the Entail Acts.

## **7 Provision as to notices**

- (1) Any notice required or authorised to be served under this Act shall be in writing.
- (2) Any such notice may be served either—
  - (a) by delivering it to the person on whom it is to be served or to his known agent; or
  - (b) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode; or
  - (c) in the case of an incorporated company or body, by delivering it to the secretary or clerk, manager or other principal officer of the company or body at their registered or principal office or sending it in a prepaid registered letter addressed to the secretary or other officer of the company or body at that office.

A written acknowledgement of receipt by any person to whom a notice has been delivered in pursuance of the foregoing provisions, and a certificate by any person that he posted a registered letter containing a notice in the terms specified in the certificate, accompanied by an acknowledgement or certificate of the delivery of the registered letter issued by the Postmaster-General in pursuance of regulations under the Post Office Act, 1908, shall be sufficient evidence of the service of the notice.

## **8 Prohibition of contracting out**

The provisions of this Act shall have effect notwithstanding any contract to the contrary.

## **9 Application to the Crown**

This Act binds the Crown and shall apply to any land belonging to His Majesty or to a Government Department, or held in trust for His Majesty for the purposes of a Government Department.

## **10 Provisions as to sheriff courts**

- (1) In this Act the expression "the court" means the sheriff court.
- (2) Where in any proceedings under this Act the sheriff in pursuance of Rule 60 of the First Schedule to the Sheriff Courts (Scotland) Act, 1907, remits to any person to report, the remuneration of such person shall be defrayed out of moneys provided by Parliament.

## 11 Interpretation

In this Act—

the expression " disposition " includes any deed or instrument whereby any land or any estate or interest in land is conveyed or created, other than a lease or a heritable security;

the expression " heritable security " has the like meaning as in the Conveyancing (Scotland) Act, 1924, except that it includes a security constituted by ex facie absolute disposition but does not include a real burden ad factum prestandum;

the expression " war damage " means damage caused by, or in repelling, enemy action, or by measures taken to avoid the spreading of the consequences of damage caused by, or in repelling, enemy action.

## 12 Short title and extent

This Act may be cited as the War Damage to Land (Scotland) Act, 1939, and shall extend to Scotland only.